

Record of Decision

Canterbury Commons EAW

City of Shakopee

August 1, 2017

Prepared by:

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I. ADMINISTRATIVE BACKGROUND

Pursuant to Minnesota Rule 4410.4300, the City of Shakopee has prepared an Environmental Assessment Worksheet (EAW) for the proposed Canterbury Commons. This Record of Decision addresses State of Minnesota environmental review requirements as established in Minnesota Rule 4410.1700. Canterbury Development, LLC is the project proposer for this project. The City of Shakopee is the Responsible Governmental Unit (RGU).

The EAW was filed with the Minnesota Environmental Quality Board (EQB) and circulated for review and comments to the required EAW distribution list. A Notice of Availability for the initial EAW was published in the EQB Monitor on June 19, 2017. Notice of the EAW was published in the *Shakopee Valley News* on June 19, 2017.

The public comment period ended July 19, 2017. Comments were received from the Minnesota Historical Society, Minnesota Department of Transportation (MnDOT), Minnesota Department of Natural Resources (DNR), Metropolitan Council, Scott County, and the Minnesota Pollution Control Agency (MPCA). All comments were considered in determining the potential for significant environmental impacts. Summaries of the comments received, and the City of Shakopee's responses to those comments, are provided in **Section III**, below.

II. FINDINGS OF FACT AND CONCLUSIONS

As to the need for an Environmental Impact Statement (EIS) on this project and based on the record in this matter, including the EAW and comments received, the City of Shakopee makes the following Findings of Fact and Conclusions:

A. PROJECT DESCRIPTION

Doran Properties proposes to develop 856 residential units (700 apartments and 156 townhomes), 93,000 square feet of commercial uses (retail, restaurant and entertainment) and a 120-room hotel on 68.5 acres in Shakopee, MN.

B. PROJECT HISTORY

- The project was subject to a mandatory EAW per Minnesota Rule 4410.4300 Subpart 19d and Subpart 32.
- The EAW was distributed to the EQB on June 9, 2017 and to the EQB mailing list on June 14, 2017.
- Public notices containing information about the availability of the EAW for public review was provided to the *Shakopee Valley News* for publication in the June 19, 2017 paper.
- Hard copies of the EAW were provided for public review at Shakopee City Hall and Environmental Conservation Library, and an electronic copy was provided on the City's website.
- A notice was published for the EAW in the June 19, 2017 EQB Monitor. The public comment period ended July 19, 2017. Comments were received from the Minnesota Historical Society, Minnesota Department of Transportation (MnDOT), Minnesota Department of Natural Resources (DNR), Metropolitan Council, Scott County, and the Minnesota Pollution Control Agency (MPCA). Copies of these comment letters are hereby incorporated for reference and included in **Attachment A**.

C. CRITERIA FOR DETERMINING THE POTENTIAL FOR SIGNIFICANT ENVIRONMENTAL EFFECTS.

Minnesota Rule 4410.1700, subp. 1, states “An EIS [Environmental Impact Statement] shall be ordered for projects that have the potential for significant environmental effects.” In deciding whether a project has the potential for significant environmental effects, the City of Shakopee must consider the four factors set out in Minnesota Rule 4410.1700, subp. 7. With respect to each of these factors, the City of Shakopee finds the following:

1. MINNESOTA RULE 4410.1700, SUBP. 7.A - TYPE, EXTENT, AND REVERSIBILITY OF ENVIRONMENTAL EFFECTS

- a. The type of environmental impacts and mitigation efforts anticipated as part of this project include:

Soil Disturbance - The project will involve soil disturbance. A National Pollutant Discharge Elimination System (NPDES) permit will be required and erosion control best management practices (BMPs) will need to be in place throughout construction. Since the project is expected to disturb more than 50 acres and it drains to an impaired water within one mile, a 30-day review of the Storm Water Pollution Prevention Plan (SWPPP) at MPCA will be required.

Land Use – The proposed residential uses would be consistent with the residential land uses located adjacent and west of the project site. The City has reviewed the proposed project with respect to its Comprehensive Plan which states that the area has been reserved for expansion and spin-off uses. The intent of the Major Recreation zone is to accommodate recreation and associated uses. The City has determined the project is in conformance with the Comprehensive Plan.

Wastewater – The project will increase average day sanitary sewer flows by an estimated 309,615 gallons per day. Wastewater will be conveyed to the Blue Lake Wastewater Treatment Plant (WWTP) via the City of Shakopee sanitary system. The existing wastewater treatment system is capable of handling the increase sanitary flow.

Water Supply – The proposed development will increase average water demands by approximately 309,000 gallons per day. The project will include extension of an onsite looped water supply system connected to the existing public 12” watermain located in Eagle Creek Boulevard. The City’s Water Supply Plan has accounted for development growth and there is sufficient capacity within the system to accommodate the project.

Water Quality – The development needs to provide water quality and quantity treatment and rate control to meet the City’s Water Resource Management Plan. The project area is also within a Drinking Water Supply Management Area (DWSMA) and therefore infiltration will not be allowed. Stormwater ponds that provide treatment and rate control without infiltrating the water will be constructed in the project area.

Threatened and Endangered Species – The project area contains suitable habitat for loggerhead shrike, a state-listed endangered bird. The gopher snake, a state listed species of special concern, has also been documented in the

project area. During construction, there is potential to disturb or harm these species if they occur at the site. The loggerhead shrike nests between April and July and removal of trees or shrubs during this time will be prohibited. Trees will also be inspected for active nests before removal if removal needs to occur during the nesting season. Loggerhead shrike sitings will be reported to the DNR. Also, wildlife friendly erosion control mesh will be used where needed at the site during construction.

Transportation (Parking and Traffic) - A Traffic Impact Analysis was completed for the project. This Analysis provided a comprehensive look at anticipated traffic impacts for the regional area along with improvements that would be needed. The developer and City will coordinate with the County on these items.

The extent and reversibility of environmental impacts for the proposed project are consistent with those typical of this type of development project. Impacts will be minimized to the extent practical, with mitigation provided for those impacts which cannot be avoided to resources such as water surface runoff, traffic etc.

2. MINNESOTA RULE 4410.1700, SUBP. 7.B - CUMULATIVE POTENTIAL EFFECTS OF RELATED OR ANTICIPATED FUTURE PROJECTS

The proposed project will result in development of the 68-acre project area. No known development is planned adjacent to the proposed project at this time. Development of this project is not anticipated to cause any future projects. Continued redevelopment of the Canterbury Park site is always a possibility, but any changes in land use on the adjacent site would be reviewed by the City and may require a separate environmental review.

3. MINNESOTA RULE 4410.1700, SUBP. 7.C - THE EXTENT TO WHICH ENVIRONMENTAL AFFECTS ARE SUBJECT TO MITIGATION BY ONGOING PUBLIC REGULATORY AUTHORITY

a) The following permits or approvals will be required for the project:

Unit of government	Type of application	Status
Federal		
US Army Corps of Engineers	Section 404 Permit	To be obtained
State		
MPCA	NPDES Construction Stormwater Permit & SWPPP (with 30-day review by MPCA)	To be obtained
MPCA	Sanitary Sewer Extension	To be obtained
DNR	Water Appropriation Permit	To be obtained, if necessary
Mn Dept of Health	Watermain extension	To be obtained, if necessary
Metropolitan Council	MCES Permit for sewer extension	To be obtained, if necessary
Local		
City of Shakopee	-Preliminary Plat -Final Plat -Planned Unit Development Overlay -Site/Building Plan Review -Building Permit -Wetland Conservation Act approval	To be obtained

- b) The City of Shakopee finds that the potential impacts identified as part of the proposed Canterbury Commons project are minimal and can be addressed through the regulatory agencies as part of the permitting process. As a result, additional analysis outside of the permitting process is not required.
4. MINNESOTA RULE 4410.1700, SUBP. 7.D - THE EXTENT TO WHICH ENVIRONMENTAL EFFECTS CAN BE ANTICIPATED AND CONTROLLED AS A RESULT OF OTHER AVAILABLE ENVIRONMENTAL STUDIES UNDERTAKEN BY PUBLIC AGENCIES OR THE PROJECT PROPOSER, INCLUDING OTHER EISs.

The proposed project is subject to the following plans prepared by the City:

1. Comprehensive Plan
2. Stormwater Management Plan
3. Transportation Plan
4. Sanitary Sewer Plan
5. Water Plan

The City of Shakopee finds that the environmental effects of the project can be anticipated and controlled as a result of the environmental review, planning, and permitting processes.

D. CONCLUSIONS

The Canterbury Commons EAW and comments received have generated information adequate to determine that the proposed project does not have the potential for significant environmental effects.

The EAW has identified areas where the potential for environmental effects exist, but appropriate mitigation measures have been incorporated into the project plans and the required approvals and permits to mitigate these effects will be obtained. The project will comply with all county, city, and federal review agency requirements.

Based on the criteria established in Minnesota Rule 4410.1700, the project does not have the potential for significant environmental effects.

Based on the Findings of Fact and Conclusions, the project does not have the potential for significant environmental impacts.

Therefore, an EIS is not required for Canterbury Commons project.

III. AGENCY COMMENTS AND CITY OF SHAKOPEE RESPONSES

A 30-day comment period for the above-referenced EAW ended on July 19, 2017. Comments were received from the Minnesota Historical Society, Minnesota Department of Transportation (MnDOT), Minnesota Department of Natural Resources (DNR), Metropolitan Council, Scott County, and the Minnesota Pollution Control Agency (MPCA). On behalf of the City of Shakopee as the RGU, comment responses are provided below.

These letters are included in **Attachment A**. Comments received and responses are summarized below.

Comment 1 - Minnesota Historical Society

Based on our review of the project information, we conclude that there are no properties listed in the National or State Registers of Historic Places, and no known or suspected archaeological properties in the area that will be affected by this project.

Response to Comment 1: No response is needed.

Comment 2 - MnDOT

Planning: As the plans for this site develop further, MnDOT would like the opportunity to review the updated plans and may have additional comments regarding right of way, design, and water resources. For questions regarding these comments please contact Jennifer Wiltgen at (651) 234-7788 or jennifer.wiltgen@state.mn.us

Response to Comment 2: The City will forward site plans as they become available.

Comment 3 - MnDOT

Traffic: Please submit the Synchro files to MnDOT's Metro traffic section so that they can evaluate the timing used in the analysis.

Additional discussions should be held between MnDOT, Scott County, and the City of Shakopee to identify the overall plan and policy regarding future developments along this corridor. Specifically, the County and City developed a CR 83. Corridor Readiness study that identified a list of planned improvements.

For questions regarding these comments please contact Kevin Schwartz (MnDOT Metro Signals) at 651-234- 7840 or kevin.schwartz@state.mn.us

Response to Comment 3: The City will have the developer submit the Synchro modeling files from the Traffic Study to MnDOT. The City will coordinate with MnDOT and Scott County on this project and future development in the corridor.

Comment 4 - MnDOT

Right of Way: Although there are no direct connections to MnDOT right of way, MnDOT would like to stay a part of the discussion as the development progresses. This will ensure that if right of way needs to be shown, it is shown correctly. For questions regarding these comments please contact Matt Aguirre at (651) 234-7599, or matt.aguirre@state.mn.us

Response to Comment 4: The City will keep MnDOT informed in the process.

Comment 5 – MnDOT

Water Resources: MnDOT would like to review drainage and grading plans when they become available.

For questions regarding this comment please contact Hailu Shekur at 651-234-7521 or hailu.shakur@state.mn.us.

Response to Comment 5: The City will keep MnDOT informed in the process.

Comment 6 - MnDOT

Permits: Any work that impacts MnDOT right of way will require a permit. Send applications to metropermitapps.dot@state.mn.us.

Response to Comment 6: Currently, the project does not impact MnDOT right of way. If that changes, a permit will be required.

Comment 7 - DNR:

Page 6. Carbonate Units of the Prairie du Chien Group have developed karst features in Wisconsin and Minnesota that include caves and sinkholes. Since the bedrock is found within 3 feet of the surface of this site, great care should be taken to ensure that structures are constructed with footings located on solid bedrock.

Response to Comment 7: The City will require the applicant to submit additional geotechnical and engineering information for the site that evaluates this issue, as the Geotech report only covers a portion of the site.

Comment 8 - DNR

Page 8. As noted, the site is located within the Drinking Water Supply Management Area of the City of Shakopee. The Department of Health believes that any pollutant that is spilled within this area will be in the drinking water of the City of Shakopee within ten-years. This is particularly true given the shallow depth to the Prairie du Chen Aquifer and potential karst features. When work is done for this development great care must be taken to protect the aquifer from petroleum products and other potential pollutants, including storm water

Response to Comment 8: The EAW acknowledges that the groundwater is vulnerable to contamination in this area. Stormwater management will be met through wet ponds or filtration ponds, but not infiltration ponds. The City will require the developer to prepare a spill prevention plan prior to construction.

Comment 9 - DNR

Page 13. Should construction dewatering be required in volumes that exceed 10,000 gallons per day, or one million gallons per year, then a DNR Water Appropriation Permit will be required for the construction dewatering. The EAW notes that the project will be constructed in phases, if dewatering is necessary, a DNR Water Appropriation Permit will need to be applied for each phase of the project. A DNR Water Appropriation Permit can be applied for online using the Minnesota Permitting and Reporting System (MPARS) at: <http://www.dnr.state.mn.us/mpars/>.

Response to Comment 9: The EAW notes that if dewatering is necessary, a DNR dewatering permit will be obtained.

Comment 10 - DNR

In landscaped areas, we recommend incorporating plantings of native species to provide beneficial habitat and food to pollinators and other wildlife. Native plant species can help prevent erosion and will require less maintenance (watering, mowing, frost protection, etc.).

Response to Comment 10: The City of Shakopee will take this under advisement and discuss with the developer.

Comment 11 – Metropolitan Council

Item 8 – Permits and Approvals. In accordance with Minnesota Statute Section 473.513, at the time the project proposer makes application to the Minnesota Pollution Control Agency (MPCA) for a permit to construct each segment of sanitary sewer for the proposed project, a copy of the plans, design data, and a location map of the project will also need to be submitted to the Metropolitan Council. The Council's Environmental Service Engineering Programs staff will need to review, comment, and issue a nonobjection decision relative to issuance of the construction permit by the MPCA before connection can be made to the City's wastewater disposal system.

A Comprehensive Plan Amendment is also required to adjust forecasts and clarify land uses related to this project. The Metropolitan Council should be added to the list of agency approvals needed for the project.

Response to Comment 11: This permit was noted in the EAW and is included in the Record of Decision. See response to Comment 12 regarding the CPA.

Comment 12 – Metropolitan Council

Item 9b – Land Use. This section states that the project does not require a Comprehensive Plan Amendment (CPA), which is incorrect. A CPA is required. The City's Proposed Land Use map in the Comprehensive Plan identifies the land use for the proposed development as Entertainment. There is not a definition of the Entertainment land use in the City's current Comprehensive Plan. Zoning does not take the place of planned land use, so it is inappropriate to use zoning category descriptions to evaluate land use.

Residential uses like apartments and townhomes are not described as allowable uses in an Entertainment land use designation. As such, the Metropolitan Council did not consider residential uses in this area, or their potential for impacts on the regional system, in its review of the City's plan. The current Comprehensive Plan does not provide the necessary information to adequately review the Entertainment land use without clarification. These items need to be resolved through submittal of a CPA. The EAW should indicate that a plan amendment is needed to allow for the proposed development, whether that is through modifications to the Entertainment land use category or by regrading to another land use category.

Response to Comment 12: A Comprehensive Plan Amendment (CPA) will be submitted that addresses the Metropolitan Council's concerns.

Comment 13 – Metropolitan Council

Item 9b – Land Use. Forecasts are not discussed in the EAW. Revised Transportation Analysis Zone (TAZ) forecasts would be helpful information for assessing transportation impacts. A preliminary set of TAZ forecasts for 2040 has been prepared by the Metropolitan Council and is available for local governments to review.

The Canterbury Commons site is a very small part of TAZ #2130 (in the middle of Shakopee). The area is mostly commercial, and currently forecasted to gain only +200 households during 2014 - 2040. The EAW states that the proposed new housing is allowed or conditionally permissible per the City's Major Recreation zoning district. However, the Metropolitan Council did not interpret "Recreation" as a residential category when forecasts were modeled.

As the City pursues this site development, changes will be needed to both the community-wide forecast and the TAZ forecast. Council staff recommend adjusting the communitywide forecast and TAZ #2130 forecast by +700 households, +1,700 population, and +100 jobs. Please consult with Metropolitan Council staff to accomplish the adjustments.

Response to Comment 13: The City is in the process of updating its Comprehensive Plan. The City of Shakopee will work with Metropolitan Council in updating the TAZ forecasts through those processes.

Comment 14 – Metropolitan Council

Item 18 – Transportation. The project sponsor should consider if a right turn overlap can eliminate the need for the double right turn lane at CR 83 & Eagle Creek Blvd.

Response to Comment 14: The City of Shakopee will work with Scott County in determining the appropriate lane configuration and traffic signal phasing at this intersection.

Comment 15 – Scott County Community Services Division

The Phase I 2020 mitigation calls for turn lane improvements on CH 83. These suggested mitigation improvements will need further discussion between the County, City and developer. Additional data will be needed to determine if these are the appropriate mitigations and are feasible.

Response to Comment 15: The City of Shakopee will work with Scott County and seek approval on the any improvement to CH 83.

Comment 16 – Scott County Community Services Division

The full build 2025 identify improvements to TH169 ramps at CH 83. These potential improvements will need further discussion and be coordinated with both MnDOT and Scott County.

Response to Comment 16: The City of Shakopee will work with Scott County and MnDOT on any future recommended improvement to CH 83 at the TH 169 ramp intersections.

Comment 17 – Scott County Community Services Division

It is the County's understanding that a TIF district is being proposed over the entire Canterbury site. There are no improvements identified to CH 83 in the County's current TIP except for the Amazon related improvements at CH 83 and 4th Avenue. The TIF district planning should take into account improvements needed for the County road system to mitigate traffic related to this development identified in this EAW and the overall traffic generated by the Canterbury site.

Response to Comment 17: The County's comment that the current TIF district is being proposed over the entire Canterbury site is incorrect, but only pertains to the westerly development area portion. While the county does not have CH 83 improvements (from south of 4th Avenue to Eagle Creek Blvd) programmed in the county's transportation improvement plan, it is the City's understanding that the county applied for and was selected under the regional federal solicitation for funding in the amount of \$7 million for improvements to this section of county highway. It is appropriate that the county include this county highway project in the county's transportation improvement plan and program the required local cost share.

Comment 18 – Minnesota Pollution Control Agency

Permits and Approvals (Item 8). This section indicates that a Clean Water Act (CWA) Section 404 Permit from the U.S. Army Corps of Engineers (USACE) for project related wetland impacts may be necessary. Please be aware that if a USACE Section 404 Individual Permit is required for any project activity, then an MPCA CWA Section 401 Water Quality Certification or waiver must also be obtained as part of the permitting process. The Section 401 Water Quality Certification ensures that the activity will comply with the state water quality standards. Any conditions required within the MPCA 401 Certificate are then incorporated into the USACE 404 Permit. You can find additional information about the MPCA's 401 Certification process at <https://www.pca.state.mn.us/water/clean-water-act-section-401-water-quality-certifications>. For further information about the 401 Water Quality Certification process, please contact Jim Brist at 651-757-2245 or Bill Wilde at 651-757-2825.

Response to Comment 18: Comment noted.

Comment 19 – Minnesota Pollution Control Agency

Water Resources (Item 12). Please note that because the Project will result in over 50 acres of disturbed area and has a discharge point within one mile of the Minnesota River, an impaired water, the Project proposer is required to submit their Stormwater Pollution Prevention Plan (SWPPP) to the MPCA for a review at least 30 days prior to the commencement of land disturbing activities. If the SWPPP is found to be out of compliance with the terms and conditions

of the General Permit, further delay may occur. The MPCA encourages the Project proposer to meet with staff at preliminary points to avoid this situation. Questions regarding SWPPPs should be directed to Todd Smith at 651-757-2732.

Response to Comment 19: The developer will be required to prepare a SWPPP and obtain all the necessary approvals. This has been added to the Record of Decision.

Comment 20 – Minnesota Pollution Control Agency

Noise (Item 17). There is not enough information in the EAW to make a determination one way or another regarding the noise levels following completion of the proposed development, in comparison to the state standards.

Due consideration has not been given to the state noise standard in the EAW; only ordinances passed by the city of Shakopee were included, and only the times of day were discussed. There are several aspects of the State noise rule that the City should consider as part of this project. First, noise limits are most stringent on residential properties and the noise area classifications (NACs) are determined independently of municipal zoning. This means that noise from neighboring sources must be at residential levels by the time it reaches the residential property line. Additionally, the noise rule is for total noise, so when monitoring for compliance with the noise standard, all noise sources are considered together.

Per Minn. R. Ch. 7030.0030, "[A]ny municipality having authority to regulate land use shall take all reasonable measures within its jurisdiction to prevent the establishment of land use activities listed in noise area classification (NAC) 1, 2, or 3 in any location where the standards established in part 7030.0040 will be violated immediately upon establishment of the land use." The MPCA receives several noise complaints resulting from development spreading into previously unoccupied areas, especially where noise levels were not sufficiently scrutinized prior to construction. For that reason, I recommend that noise monitoring be done at various locations throughout the proposed development site prior to the finalization of development plans. This would help to ensure that the current noise level at the site would not lead to an automatic exceedance after development. Given the proposed development's proximity to Canterbury Park, Eagle Creek Boulevard, the new power plant (currently under construction at the intersection of Eagle Creek Boulevard and Vierling Drive East), and Highway 169, it is possible that background noise at the location is already relatively high. If noise levels are found to exceed residential noise standards, mitigation actions should be taken.

Response to Comment 20: The City will take this comment under advisement during the permitting process and may require additional noise analysis from the developer.

Comment 21 – Minnesota Pollution Control Agency

Noise (Item 17). Finally, all construction equipment should be fitted with the appropriate mufflers during each phase of construction to maintain compliance with the State noise standards. Please address questions regarding noise standards to Christine Steinwand at 612-757-2327.

Response to Comment 21: Construction will be required to meet local and state requirements for construction standards.

ATTACHMENT A – Agency Comment Letters