US Army Corps
of Engineers
St Paul District

Public Notice

ISSUED: July 30, 2007
EXPIRES: August 9, 2007

APPLICANT: See Section 2

REFER TO: See Section 2

SECTION: 404 - Clean Water Act

1. APPLICATION FOR PERMIT TO retain and discharge additional dredged and fill material into wetlands adjacent to an unnamed tributary to Rocky Run Creek.

2. SPECIFIC INFORMATION. This public notice serves as notification that the following property owner in the Jackson Estates First Addition residential development is seeking Department of the Army authorization to implement the on-the-ground component of a Corps of Engineers developed settlement proposal to resolve the Clean Water Act violations and permit non-compliance issues on their property. The property owner has submitted an individual permit application to the U.S. Army Corps of Engineers, St. Paul District (Corps). The Corps will conduct an evaluation of the application consistent with the LOP permit procedures issued on May 21, 2007 for the Jackson Estates First Addition and our regulations at 33 CFR Part 325. The settlement proposal is described in detail in the section of this public notice titled "DESCRIPTION OF PROJECT". The special LOP procedures for the Jackson Estates First Addition can be viewed on the St. Paul District web page at: www.mvp.usace.army.mil/regulatory.

Name	Corps ID Number	Address	Property Identification
Brad Kutz	2007-03743-TJS	4215 Washington Drive Hermantown, MN 55811	Block 4 Lot 3

PROJECT LOCATION: The Jackson Estates First Addition is located in the NE ¼ of Sec. 16, T.50N., R15W., St. Louis County, Minnesota (Figure 1).

DESCRIPTION OF PROJECT: On September 8, 2005, the Corps issued a Cease and Desist Order (C&D) to Mr. Jeff Gilbert and Mr. Gary Gilbert of JLG enterprises for violations of the Clean Water Act associated with the residential development referred to as the Jackson Estates First Addition. After conducting compliance inspections on every lot in the development that contained wetlands and where some type of site development activity had taken place, the Corps determined that unauthorized discharges of dredged and fill material had occurred on twenty-two of the twenty-three lots. The amount of unauthorized wetland impact was approximately 5.5 acres.

The Corps has determined that referral to the U.S. Department of Justice (USDOJ) is the appropriate enforcement tool to resolve the Clean Water Act violations in the Jackson Estates First Addition. As part of the referral to the USDOJ, the Corps has prepared a "settlement" proposal that would satisfactorily resolve the violations through a civil (monetary) penalty and "on-the-ground" activities. In order to expedited a resolution for the affected homeowner, the Corps has decided to accept permit applications for discharges of dredged or fill material that implement the on-the-ground components of the settlement proposal (The civil penalty is handled by the USDOJ and is outside the scope of this process). The on-the-ground activities would include wetland restoration where environmentally beneficial and technically feasible, after-the-fact authorizations and compensatory mitigation for all

unauthorized discharges that would remain in place and resolution of non-compliance with permit conditions. A summary of the on-the-ground activities for Block 4 Lot 3 is provided in Table 1.

The affected wetlands at the site were classified as hardwood swamp per Eggers and Reed (1997) and were dominated by black ash. Currently, only scattered patches of undisturbed wetland remain following the clearing, grading, and home construction activities that have taken place since 2002. The Jackson Estates First Addition is bordered on the north and west by undeveloped land, the east by low density residential development, and on the south by open lands being considered for additional phase of the Jackson Estates residential development.

PROPOSED MITIGATION: JLG Enterprises has committed to provide the compensatory mitigation required under the settlement proposal for all of the homeowners who pursue Department of the Army authorizations. The mitigation proposal consists of preservation of a large area of wetlands located west and southwest of the site. At a minimum, the preservation will encompass slightly over 82 acres consisting of forested, scrub/shrub, and emergent wetlands, as well as upland buffer. The preservation lands also contain an unnamed perennial tributary to Rocky Run Creek, a designated trout stream. The Corps is currently evaluating this proposal and determining the amount of mitigation credits generated by the wetland preservation. The Corps has made a preliminary determination that preservation would be appropriate in this case and has verified that JLG owns sufficient property along the proposed corridor that could be added to the acreages already identified for preservation should additional credits be required.

SOURCE OF FILL MATERIAL: Fill material would be obtained from commercial sources for any residential projects which may include landscaping or garage construction.

THE FOLLOWING POTENTIALLY TOXIC MATERIALS COULD BE USED AT THE PROJECT SITE: No toxic materials are known to be on the site. Construction equipment used for the project would use petroleum projects for fuel and lubrication, but the chance of spills or contamination is not any greater than any other construction site.

THE FOLLOWING PRECAUTIONS TO PROTECT WATER QUALITY HAVE BEEN DESCRIBED BY THE APPLICANT: A storm water management system was constructed as part of the Jackson Estates First Addition. This system collects and treats surface flows from the development before discharging into the wetlands west of the property. In addition to this system, contractors and or individual homeowners would be responsible for implementation and maintenance of erosion control best management practices in work areas with bare soil.

3. REPLIES/COMMENTS. Interested parties are invited to submit to this office written facts, arguments, or objections within 10 days of the date of this notice. These statements should bear upon the suitability of the location and the adequacy of the project and should, if appropriate, suggest any changes believed to be desirable. Comments received may be forwarded to the Applicant.

Replies may be addressed to Corps of Engineers, St. Paul District, Regulatory Branch ATTN: Tim Smith, 190 Fifth Street East, Saint Paul, MN 55101-1638.

Or, IF YOU HAVE QUESTIONS ABOUT THE PROJECT, call Tim Smith at the St. Paul Office of the Corps, telephone number (651) 290-5432.

4. FEDERALLY-LISTED THREATENED OR ENDANGERED WILDLIFE OR PLANTS OR THEIR CRITICAL HABITAT. The Jackson Estates first Addition project was previously coordinated with the U.S. Fish and Wildlife Service (FWS) during review of the permit application in 2002. At that time, St. Louis County was identified as being within the known or historic range of the bald eagle. This public notice is being coordinated with the U.S. Fish and Wildlife Service. Any comments it may have concerning Federally-listed threatened or endangered wildlife or plants or their critical habitat will be considered in our permit review and analysis for these applications.

5. JURISDICTION. The wetlands at the site have a continuous surface connection to an unnamed perennial tributary to Rocky Run Creek, which is a tributary to the St. Louis River, a navigable water of the United States.

REGULATORY AUTHORITY: This application will be reviewed according to the provisions of Section 404 of the Clean Water Act. Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 Code of Federal Regulations 230).

6. STATE SECTION 401 WATER QUALITY CERTIFICATION. Valid Section 404 permits cannot be issued for any activity unless state water quality certification for the activity is granted or waived pursuant to Section 401 of the Clean Water Act. The state Section 401 authority in Minnesota is the Minnesota Pollution Control Agency (MPCA). The St. Paul District has provided this public notice and a copy of the applicant's Section 404 permit application form to the MPCA. If MPCA needs any additional information in order for the Section 401 application to be considered complete by MPCA, the MPCA has indicated that it will request such information from the applicant. It is the permit applicant's responsibility to ensure that the MPCA has received a valid, complete application for state Section 401 certification and to obtain a final Section 401 action from the MPCA.

The MPCA has indicated that this public notice serves as its public notice of the application for Section 401 water quality certification under Minnesota Rules Part 7001. The MPCA has also indicated that the Section 401 process shall begin to commence upon the issuance date of this public notice unless the MPCA notifies both the St. Paul District and the permit applicant to the contrary, in writing, before the expiration date of this public notice.

Any comments relative to MPCA's decision regarding Section 401 Certification for the activity proposed in this public notice may be sent to:

Minnesota Pollution Control Agency
Regional Environmental Management Division
Attention 401 Certification
520 Lafayette Road, North
St. Paul, Minnesota 55155-4194

7. HISTORICAL/ARCHAEOLOGICAL. The Jackson Estates First Addition project was previously coordinated with these agencies during review of the permit application in 2002. The Corps determined in its 2002 decision document that no cultural resources would be affected by the work authorized by the permit. The latest version of the National Register of Historic Places has been consulted and no listed properties (known to be eligible for inclusion, or included in the Register) are located in the project area.

8. PUBLIC HEARING REQUESTS. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

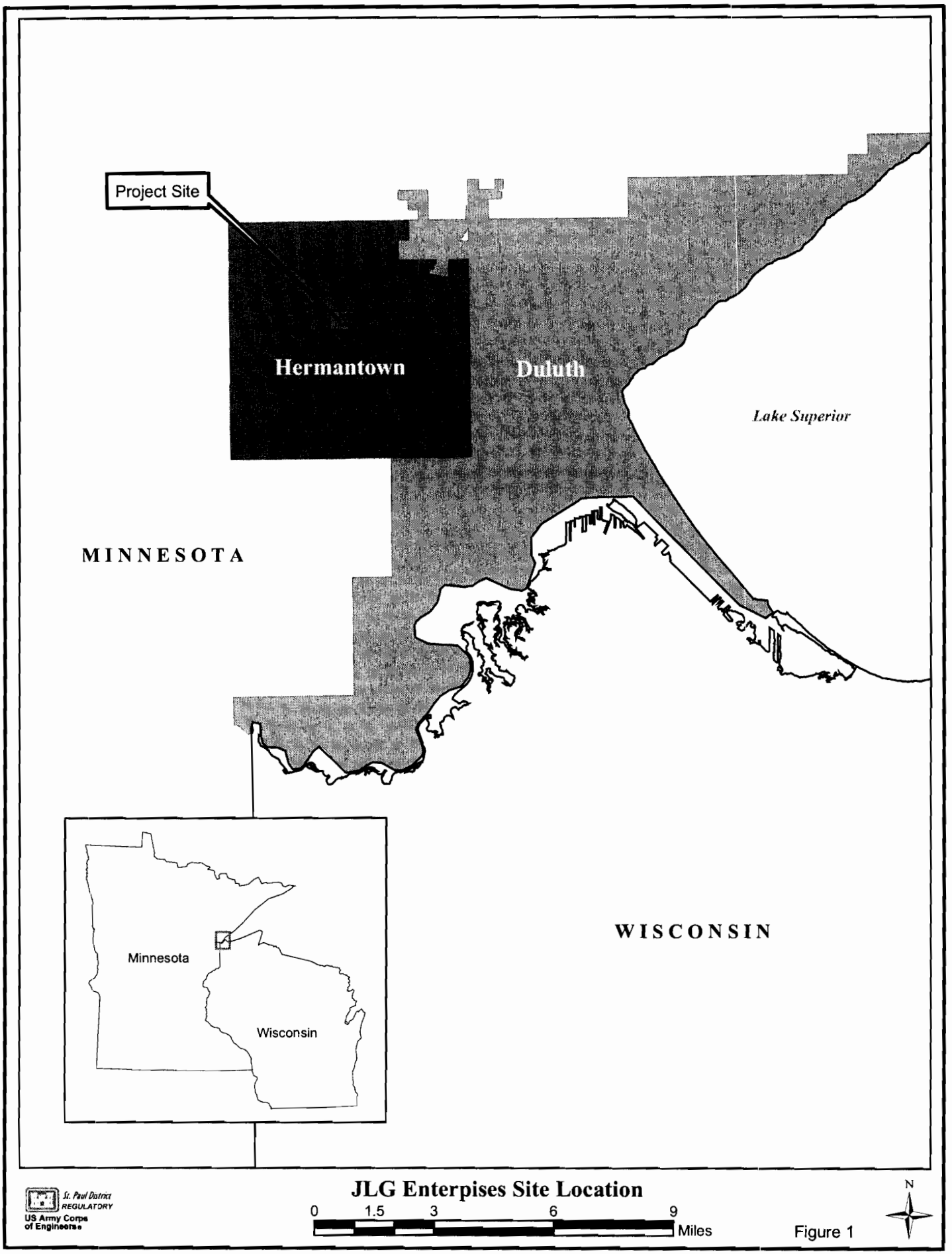
9. PUBLIC INTEREST REVIEW. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. Environmental and other documents will be available for review in the St. Paul District Office.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Robert J. Whiting
Chief, Regulatory Branch

Enclosures

NOTICE TO EDITORS: This public notice is provided as background information and is not a request or contract for publication.



JLG Enterpises Site Location

Figure 1