



MEMORANDUM

DATE: March 26, 2021

TO: Duluth City Planning Commission

FROM: Steven Robertson, Senior Planner

RE: Decision on 319-333 E Superior Street, Duluth MN EAW (PL 21-008)

At the March 30, 2021 special meeting, the Duluth City Planning Commission, as the Responsible Governmental Unit (RGU), will make a decision on whether an Environmental Impact Statement (EIS) is required for the 319-333 E Superior Street, Duluth MN Project. An EIS shall be ordered for projects that have the potential for significant environmental effects according to MN Rules, Part 4410.1700, Subp. 1.

According to the Rule, the RGU (Planning Commission) shall base its decision regarding the need for an EIS on the information gathered during the Environmental Assessment Worksheet (EAW) process and the comments received on the EAW (MN Rules, Part 4410.1700, Subp. 3). In deciding whether a project has the potential for significant environmental effects, the RGU shall compare the impacts that may be reasonably expected to occur from the project with the following criteria (MN Rules, Part 4410.1700, Subp. 6 & 7):

- a) Type, extent, and reversibility of environmental effects;
- b) Cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
- c) The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and
- 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.

Documents to be considered in the decision on the need for the EIS include:

- The EAW document posted at <https://duluthmn.gov/planning-development/environmental/environmental-assessment-worksheets/> (paper copies available by request)
- Comments received during the 30-day comment period (included in the Record of Decision)
- Responses to comments and draft Findings of Fact and Record of Decision prepared by staff (attached)



RECORD OF DECISION

319-333 E SUPERIOR STREET, DULUTH
MN EAW
DULUTH, MN

MARCH 26, 2021

Prepared for:
City of Duluth
411 West First Street
Duluth, MN 55802

WSB PROJECT NO.017127-000





Planning & Development Division
Planning & Economic Development Department

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CITY OF DULUTH, MINNESOTA

DULUTH CITY PLANNING COMMISSION

FINDINGS OF FACT AND RECORD OF DECISION

~ DRAFT FOR PLANNING COMMISSION CONSIDERATION ~

Date: March 26, 2021
RE: Decision on the Need for an Environmental Impact Statement
Project: 319-333 E Superior St, Duluth MN

BACKGROUND

Pursuant to Minnesota Rule 4410.4300, the City of Duluth has prepared an Environmental Assessment Worksheet (EAW) for the proposed 319-333 E Superior St, Duluth MN project (Project). This Findings of Fact and Record of Decision addresses the State of Minnesota environmental review requirements as established in Minnesota Rule 4410.1700. Northstar Development Interests, LLC is the project proposer and City of Duluth 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 February 23, 2021. Notices of Availability were published on the City of Duluth Website on February 23, 2021 and a notice was published in the Duluth News Tribune on February 19, February 26, and March 6, 2021. A public hearing was held on March 9, 2021.

The public comment period ended March 25, 2021. Comments were received from the MPCA, Duluth Fire Department, and seven members of the public. All comments were considered in determining the potential for significant environmental impacts.

BRIEF PROJECT DESCRIPTION

The project involves the demolition of three buildings in downtown Duluth at the southwest corner of Superior St E and N 4th Ave E that will be replaced by a 15-story mixed-use complex. The complex will house retail space on the first and second floors and 200 apartments including three townhome units. The new facility will provide parking for the three townhome units and a loading zone. Additional parking spaces have been secured in a parking ramp on an adjoining property.

COMMENTS RECEIVED, RESPONSES, AND OTHER DOCUMENTS REVIEWED

During the 30-day comment period from February 23, 2021 to March 25, 2021, seven written comments were received from the public (via email) and two agency/organization letters were received:

1. Karen Kromer, MPCA, March 23, 2021
2. Sandy McComb, Duluth Fire Department, February 16, 2021
3. Debora Almirall, Citizen, February 23, 2021
4. Dave Updegraff, Citizen, February 25, 2021
5. Rhett Abrahamson, Citizen, February 26, 2021
6. Mavis Gagne, Citizen, March 3, 2021
7. Chris Wilcox, Citizen, March 4, 2021
8. Respect Starts Here and Dr. Eric Ringsred, Citizen, March 25, 2021
9. Christine Dearing, Citizen, March 25, 2021

The RGU held a public hearing on Tuesday March 9, 2021, 5:00 p.m. No comments were received.

Table 1 provides the EAW comments and responses to each.

TABLE 1. Environmental Assessment Worksheet Record of Decision for the 319-333 E Superior Street Project

Response to Public Comments

March 2021

Comment Number	EAW Content/Section Number	Comment	Response
<i>MPCA Comments – Karen Kromer, Project Manager, Environmental Review Unit</i>			
1.	Permits and Approvals (Item 8)	If the redevelopment disturbs less than 1 acre of land and is not part of a larger common plan of development taking place on a different timeline, the National Pollutant Discharge Elimination System/State Disposal System General Construction Stormwater permit is not required. However, since the site is located near Lake Superior, the Project proposer is encouraged to implement improvements, such as use of green stormwater infrastructure practices, to reduce stormwater runoff contributing to Lake Superior. Please direct questions regarding Construction Stormwater Permit requirements to Roberta Getman at 507-206-2629 or Roberta.Getman@state.mn.us .	Comment noted.
2.	Contamination/ Hazardous Materials/ Wastes (Item 12)	As noted in the EAW, there are several properties near the Project area with actual or potential soil and/or groundwater contamination. State law requires that persons properly manage contaminated soil and water they uncover or disturb - even if they are not the party responsible for the contamination. Developers considering construction on or near contaminated properties should begin working early in their planning process with the MPCA's Brownfields Program to receive necessary technical assistance in managing contamination. For some properties, special construction might be needed to prevent the further spreading of the contamination and/or prevent vapors from entering buildings or utility corridors. Information regarding the Brownfields Program can be found at: https://www.pca.state.mn.us/waste/brownfields . If contamination is found, it must be reported immediately to the state duty officer at 651-649-5451 or 800-422-0798.	Developers have been encouraged to begin working early in their planning process with the MPCA's Brownfields Program to receive necessary technical assistance in managing contamination.
3.	Noise (Item 17)	The MPCA appreciates the Project proposer's attention to construction noise in the area. Given	Comment noted

Comment Number	EAW Content/Section Number	Comment	Response
		the Project's proximity to Interstate 35 (I-35), however, it would be reasonable for the Project proposer to conduct a noise study (monitoring) at the site to understand any potential noise impacts from I-35 on inhabitants of the newly-constructed residences. Doing so could help identify mitigation techniques that could be used in building construction to successfully attenuate any noise attributable to traffic on I-35, so that residents inside their homes are not impacted by the traffic noise. For noise related questions, please contact Fawkes Char at 651-757-2327 or Fawkes.Char@state.mn.us .	
Email Submission Comments – Sandy McComb, Division of Life Safety, Fire Marshall			
1.	General	<p>The above referenced property has been identified as a vacant building due to one or more of the following criteria:</p> <ul style="list-style-type: none"> • Unoccupied/Unsecure for 30 days or more <p>Please complete and return the enclosed Vacant Building Registration Form with payment of fee within 10 days. Unpaid fees shall be levied and collected as a special assessment against the property as provided for under Section 10-3 of the Duluth City Code.</p>	Comment noted. The owner will be required to submit any required documents to the City as part of development review and permitting.
Email Submission Comments – Debora Almirall, Citizen			
1.	General	Hello - Thank you very much to comment on this proposed project. Duluth does need housing, but we do not need more expensive, upscale housing. I would be in favor of this project should the rents be categorized as "affordable" according to HUD guidelines. I am certainly not in favor of another expensive apartment project going up, particularly if it will receive tax increment financing or tax credits and not pay its fare share. Unfortunately, the city has had a number of projects which received tax breaks for developers who did not need a tax break and we have no place for regular people to live. Look around downtown, there are plenty of vacant spaces which could be renovated to serve this purpose should it be needed. There are already many upscale housing projects, Endi, Bluestone(where another building is coming online shortly), Kenwood, Stoneridge,etc. which are not yet full. It would also be good to have a grocery store in the downtown area, but maybe	Comment noted

Comment Number	EAW Content/Section Number	Comment	Response
		one could be put into the bottom of the nearly empty maurices building or one of the other empty spaces of which there are many. If it is an upscale grocery, Fitger's already has the marketplace which is right across the street. I would hate to see that one close due to another one so close. Again, thank you for the opportunity to comment. I would rather see the city take this money and put it towards some regular housing in the east hillside. Thanks!	
Email Submission – Dave Updegraff, Citizen			
1.	General	I applaud the City of Duluth for this project. Derelict old buildings are pointedly not historical or cultural landmarks. I am also encouraged by the housing density and lack of wasteful surface parking spaces. Obviously in a better world some provisions for low income access to the units would be ideal, so hopefully some compromise can be made there. There is just so much.. so very much, old, terribly substandard and energy-wasteful housing in Duluth, that any project like this is a step in the right direction.	Comment noted.
Email Submissions – Rhett Abrahamson, Citizen			
1.	General	Hello, What has the DHPC done to aid and prevent the two contributing historic buildings from being demolished, as part of this monstrosity of a proposed project? The indication of “continuing education of the citizens of the city with respect to the historic and architectural heritage of the city” does not seem to apply here? Why has the DHPC not advocated against the loss of these two buildings?	The historical review of the existing building has been included in the EAW. Additional review of the project will occur during the permitting phase of the proposed project.
Email Submissions – Mavis Gagne, Citizen			
1.	General	I think we need a long-term plan to conserve the view of Lake Superior. It seems as if this could be at risk. Davis California has set a restriction on buildings and industry that supports the downtown small business, conserving the downtown from the mega businesses. Can we protect the view for our citizens? Are their empty spaces and buildings that could be developed? Could you restrict the height? Our greatest asset, Lake Superior is precious to all.	The City of Duluth has described a viewshed planning process in the 2006 Comprehensive Land Use Plan. An updated process for evaluating important views would support the establishment of parameters regulating the development types and heights across Duluth (<i>Imagine Duluth 2035</i>). Through this process, important vistas have been

Comment Number	EAW Content/Section Number	Comment	Response
			identified, including views from Skyline Parkway. This project will not impact the views from Skyline Parkway.
Email Submissions – Chris Wilcox, Citizen			
1.	General	I am wondering if the 319-333 E. Superior Street project would cause property taxes to rise? What would the expenses look like? Personally, I don't have the money to live there and if property taxes were to rise, I am opposed to this type of housing coming into our city. I would say we need more lower-income housing instead.	Comment is not related to the content of an EAW. No response required.
Respect Starts Here and Dr. Eric Ringsred, Citizen			
1.	Necessity for this project	<p>In the EAW we see some general commentary that this project somehow fills a need for housing in Duluth. I would challenge that idea, and request a serious evaluation of the housing supply in Duluth, and the project's effect on the housing market in Duluth.</p> <p>One constantly hears about the need for more housing in Duluth. This flies in the face of common sense and logic. Duluth has gained many housing units over the past 5 years, this should be documented. And the units proposed for the renovation of Old Central High School only 5 blocks away from this proposed project. We are not gaining population. The universities have lost enrollment. Children are increasingly staying longer at home with parents into adulthood. One sees numerous "for rent" signs all over town, where we did not see these 5 or 10 years ago. If there is a housing surplus, as we suspect there is, this project will weaken the rental market overall, there will be more empty units, and less ability by landlords to maintain those existing units. The result is neighborhood deterioration and blight.</p> <p>These issues will need to be reviewed in an Environmental Impact Statement.</p>	Comment noted.
2.	Impact on Historic Resources	This project destroys the Hacienda Building and the Oriental Grocery Building, which are considered protected resources under state and federal law. There is no evaluation as to whether this project can be built on another site; nor of other alternatives such as construction over the top of these 2 historic buildings.	Both the Hacienda Building and the Oriental Grocery Building are privately owned properties. Although they have been identified as "contributing resources" to the <i>National Register of</i>

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			<i>Historic Places</i> (NRHP) listed Duluth Commercial Historic District, neither is individually eligible. Protection of contributing resources does not come with NRHP listing. The EAW provides an overview of the history and condition of the structures as well as proposed impact to the structures.
3.		<p>The destruction of the Hacienda Building and Oriental Grocery Building is a “significant environmental effect” which will require an Environmental Impact Statement. The purpose of an EAW under Minnesota law is to determine whether there is “potential for significant environmental effects” of a proposed project.</p> <p>“The responsible governmental unit's decision on the need for an environmental impact statement must be based on the environmental assessment worksheet and the comments received during the comment period, and must be made within 15 days after the close of the comment period.” Minn. Stat. 116D.04 Subd. 2(d)</p>	Comment noted. The purpose of the EAW process is to determine if an Environmental Impact Statement is needed.
4.	Environmental Standards for this Project to Move Forward	Subd. 6.Prohibitions. No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.	Comment noted.
Email Submission – Christine Dearing, Citizen			
1.	General	Governor Walz and Attorney General Keith Ellison are currently suing the oil industry over the environmental effects of carbon emissions in the	Greenhouse gas emissions is described under Section 16 of the EAW.

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		<p>State of Minnesota. Please see: https://climateinvestigations.org/climate-lawsuit-state-of-minnesota-v-exxonmobil-koch-industries-api-june-2020%E2%BB%BF/</p> <p>The City of Duluth over this past year has established an office of “sustainability”. According to their web site, Duluth has a goal of 80% reduction of Greenhouse gasses by 2050. Have they been consulted on this project? Carbon emissions are the ultimate “sustainability” issue. This issue requires thoughtful analysis in a full Environmental Impact Statement.</p> <p>The Northstar Tower project at \$75 million of construction would incur a huge carbon footprint. I don’t see anything about this in the EAW; and nothing about mitigation. This issue is far more important than the environmental issues that are discussed in the EAW. There needs to be some quantification of CO2 emissions into our planet’s atmosphere to allow informed decision making, and to approve this project moving forward.</p> <p>The calculator at Green Footstep http://www.greenfootstep.org/ is an example of one tool that can be used in determining a building project's greenhouse gas emissions from site development, construction, and operation. Using this Calculator yields the following estimated results for the Northstar Tower Project:</p> <p>1) Construction CO2 : 200 x 150 sq. ft. per floor x 15 floors = 450,000 sq. ft. = 50,000 sq. meters x .404 metric tons per sq. meter = 20,200 metric tons = 44,440,000 lbs. CO2 emissions</p> <p>2) Operational CO2 50,000 sq. meters x .096 metric tons per sq. meter per year = 4,809 metric tons per year = 10,580,000lbs CO2 per year or 211,600,000lbs over the next 20 years</p> <p>3) Transportation Transportation estimated on p. 27 of EAW = 2270 weekday trips x 1 gallon fuel per trip x 20 lbs. CO2</p>	<p>The EQB is currently updating their recommendations for the inclusion of greenhouse gas (GHG) emissions into the EAW process. The recommendations on the proposed rule state an EIS be triggered with a threshold of 100,000 tons per year of CO₂e released by the project. It is not expected for this project to exceed the recommended threshold in the proposed rules under consideration of the EQB.</p>

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		<p>emissions per gallon = 45,400 lbs./week (20.63 metric tons/week) = 2,360,997 lbs./year (1,073 metric tons/</p> <p>This project clearly has “the potential for significant environmental effects” which is the threshold for preparing an Environmental Impact Statement.</p> <p>116D.04 ENVIRONMENTAL IMPACT STATEMENTS. Subd. 6.Prohibitions. No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.</p>	

ENVIRONMENTAL ISSUES SUMMARY

Based upon the information contained in the EAW and provided in written comments received and in response to those comments, the City of Duluth has considered the following summary of environmental issues identified for the 319-333 E Superior Street Project:

1. Removal of two resources from the Duluth Commercial Historic District

Demolition of the Hacienda del Sol and Duluth Oriental Grocery would remove two contributing resources from the Duluth Commercial Historic District. However, setting and feeling of the district has been compromised with the 2006 construction of the adjacent 11-story Sheraton Hotel. The current vacancy of the Hacienda del Sol and Duluth Oriental Grocery place safety risks on the landowners and City and create a potential fire hazard for the historic district. Incorporation or reuse of the existing structures is not practical. The creation of a mixed-use complex will open access to the downtown historic district, create much needed housing and commercial space and promote the cultural opportunities within the existing district.

The project has the potential to affect the adjacent and nearby contributing resources. Protective measures could be implemented to provide adequate protection to adjacent historic buildings.

Additional mitigation measures may include:

- Interpretation and signage acknowledging the non-extant properties.
- Salvage opportunities for historic components prior to or during demolition.
- Recordation of the Hacienda del Sol and Duluth Oriental Grocery buildings following the Minnesota Historic Property Record (MHPR) guidelines for Level I or Level II Documentation.

2. Obstruction of views of Lake Superior

The project site is located three blocks from Lake Superior and the lake can be viewed from the site. The proposed 15-story building may obstruct views of the lake from further uphill despite significant elevation change. The neighboring property to the southwest of the project site is an 11-story hotel and condominium complex that nearly matches the height of the proposed building and new construction adjacent to the northeast of the project will be an 18 story medical facility. New construction of tall structures in this general area will naturally obstruct some views of the lake. The City of Duluth has described a viewshed planning process in the 2006 Comprehensive Land Use Plan. An updated process for evaluating important views would support the establishment of parameters regulating the development types and heights across Duluth (*Imagine Duluth 2035*). Official viewsheds, evaluation, and implementation actions have not been created, however, important vistas have been identified, including views from Skyline Parkway. The nearest section of Skyline Parkway is located approximately 0.7 miles to the north and northwest of the project site and views are not expected to be impacted by the project development. Elevation at the project site is approximately 660 feet above sea level (ASL) and Skyline Parkway is over 1000 feet ASL.

3. Increased Traffic

Both traffic and noise/dust will be temporarily impacted during construction activities and be restored once construction is complete. Road and alleyway closures will be coordinated among nearby projects to limit impacts to traffic. Concurrent schedules will also limit the timeframe where noise and dust will be produced, limiting impacts to sensitive receptors.

COMPARISON OF POTENTIAL IMPACTS WITH EVALUATION CRITERIA UNDER MN RULES:

In deciding whether a project has the potential for significant environmental effects and whether an Environmental Impact Statement (EIS) is needed, the RGU (in this case, the Duluth City Planning Commission) must compare the impacts that may be reasonably expected to occur from the project with the four criteria by which potential impacts must be evaluated (Minn. Rules, Part 4410.1700, Subp. 7.A through 7.D)

A. Type, extent, and reversibility of environmental impacts:

Based upon information provided in the EAW and the Responses to Comments, including the comments and responses received by the MPCA, Duluth Fire Department, and members of the general public, the City of Duluth concludes that the potential environmental effects of the project, will be limited and can be addressed through the permitting process.

B. Cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project:

The 319-333 E Superior Street project would not contribute to any negative cumulative potential effects when viewed in connection with other projects slated for implementation, or previously implemented in or near the project site.

C. The extent to which environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project:

Mitigation of any adverse environmental impacts from the project will be achieved through design and inclusion of best management practices (BMPs) and through regulations currently in place, including permit approvals, enforcement of regulations or other programs as listed here:

Table 5. Required Permits

Unit of Government	Type of Application	Status
State		
Pollution Control Agency	NPDES/SDS Construction Stormwater Permit	To be obtained, if needed
	Section 401 Certification	To be obtained, if needed
	Pre-demolition checklist and notification	To be completed
	Response Action Plan	To be obtained

Unit of Government	Type of Application	Status
	Sanitary Sewer Extension	To be obtained, if needed
Department of Health	Watermain Extension Plan Review	To be obtained, if needed
Local		
City of Duluth	Right of way permit	To be obtained
	Zoning approvals	To be obtained
	NPDES Excavation/sewer/backfill/utility connection permit	To be obtained
	Building Permit	To be obtained
	Demolition Permit	To be obtained
	Erosion and sediment control permit (ESCP)	To be obtained
	Shoreland Permit	To be obtained

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 EIS's:

No use of any other EA's, EIS's, or other public agency documents would be needed to anticipate/control environmental effects. Environmental effects from the project would be controlled using Minnesota specific best management practices (when appropriate) during construction.

DECISION ON THE NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT

Minnesota Rules 4410.0300 Subp. 3. Purpose states (in part)

Environmental documents shall not be used to justify a decision, nor shall indications of adverse environmental effects necessarily require that a project be disapproved. Environmental documents shall be used as guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid or minimize adverse environmental effects and to restore and enhance environmental quality.

Minnesota Rules 4410.0300 Subp. 4. Objectives further sets forth:

The process created by parts 4410.0200 to 4410.6500 is designed to:

- A. provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project;*

- B. provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;*
- C. delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;*
- D. reduce delay and uncertainty in the environmental review process; and*
- E. eliminate duplication.*

Based on the Environmental Assessment Worksheet and related documentation for this Project, the planning staff recommend that the Duluth City Planning Commission, as the Responsible Governmental Unit (RGU) for this environmental review, makes the following conclusions:

1. The Environmental Assessment Worksheet and related documentation for the 319-333 E Superior Street Project were prepared in compliance with the procedures of the Minnesota Environmental Policy Act and Minnesota Rules, Parts 4410.1000 to 4410.1700.
2. The record demonstrates that implementation of this Project does not have the potential for significant environmental effects. Therefore, the Duluth City Planning Commission makes a Negative Declaration and does not require the preparation of an environmental impact statement (EIS) for this Project.

Recommended Motion: Motion to adopt the Record of Decision regarding the Environmental Assessment Worksheet for 319-333 East Superior Street, making a finding of no potential for significant environmental effects; a Negative Declaration and that preparation of an Environmental Impact Statement is not required; and adopting and incorporating the entirety of the City of Duluth Planning File PL21-008 as findings supporting the determination.