STATE OF MINNESOTA DISTRICT COURT

COUNTY OF WASHINGTON TENTH JUDICIAL DISTRICT

Friends of Grey Cloud,

Plaintiff,

v.

City of Cottage Grove,

Defendant-Respondent,

and

Rachel Development, Inc.,

Defendant.

Court File No. 82-CV-24-1270

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PLAINTIFF'S MOTION FOR A TEMPORARY INJUNCTION

The above-captioned matter came for hearing before Douglas B. Meslow, Judge of District Court, on May 17, 2024, via remote technology, on Plaintiff's motion for a temporary injunction. Appearances were noted on the record.

Based upon the file, record, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

Plaintiff Friends of Gray Cloud is a non-profit organization that opposes the Mississippi Landing Project (the "Project"), which intends to redevelop a former golf course into a 377-home subdivision.[1] Defendant City of Cottage Grove ("City") approved the Preliminary Plat and Planned Unit Development (PUD) for the Project, which was submitted by Defendant Rachel Development, Inc.[2]

[1] Petition and Complaint for Declaratory and Injunctive Relief, filed March 19, 2024, at 4.
[2] *Id.* at 7.

In mid-1990s, the Project site in dispute was developed into a golf course.[3] Development of the golf course required mass grading and soil disturbance to convert the site into a manicured landscape greens, bunkers, fairways, and infrastructure.[4] Mounds were built as part of the golf course landscape, as well as an asphalt cart path going throughout much of the course, a clubhouse, and other buildings.[5] The Project site remained a golf course until 2017.[6] Plaintiff asserts that in 2017, after the golf course closed, while the Project site was vacant, the site rewilded, providing a buffer zone and habitat corridor between the City's developed areas and the Mississippi River bluffs and riparian corridor abutting Grey Cloud Dunes Scientific and Natural Area and Lower Grey Cloud Island.[7]

In 2021, prior to the Project proposed by Rachel Constructing, another developer, Pulte Homes of Minnesota, LLC applied to the City for a zoning amendment, site-plan review, and preliminary plat to redevelop the former golf-course into 499 housing units, which would include 369 single family homes and a 130-unit senior residence ("The Pulte Proposal").[8] The Pulte Proposal advanced through several stages of review, including preparation of an Environmental Assessment Worksheet ("EAW").[9]

On December 20, 2021, the Planning Commission held a hearing on the EAW and voted to recommend no additional environmental review. ("Resolution No. 2022-015").[10] Several

[3] Memorandum in Opposition to Motion for Temporary Injunction ("Rachel Development's Br."), filed May 6, 2024, at 2.
[4] *Id.*; Lauterbach-Barrett Decl., Ex. E.
[5] *Id.*
[6] Petition and Complaint for Declaratory and Injunctive Relief, filed March 19, 2024, at 7; Lauterbach-Barrett Decl., Ex. E.
[7] Petition and Complaint for Declaratory and Injunctive Relief, filed March 19, 2024, at 5.
[8] *Id.;* Defendant-Respondent City of Cottage Grove's Memorandum of Law in opposition to Plaintiff's Motion ("City's Br."), filed May 6, 2024, at 7.
[9] Lauterbach-Barrett Decl., Ex. A; Petition and Complaint for Declaratory and Injunctive Relief, filed March 19, 2024, at 5.
[10] Bradford Aff. Ex. D, at *11.

citizens attempted to challenge Resolution No. 2022-015 under Minn. Stat. 116D.04, subd. 10, of MEPA by filing a petition for writ of certiorari with the Minnesota Court of Appeals.[11] The appeal was dismissed with prejudice for failure to serve the certiorari petition and issued writ of certiorari on Pulte Homes of Minnesota, LLC after the appeal period expired.[12]

In March 2022, the City Council adopted Resolution No. 2022-015, however, Pulte Homes of Minnesota, LLC did not move forward with the approved project.[13] The preliminary plat and site plan review approvals from March 2022 was set to expire in March of 2024.[14] On September 6, 2023, the City Council held a hearing and unanimously voted to approve a preliminary development agreement between the City and Rachel Development related to the Project site.[15] On December 21, 2023, Rachel Contracting submitted a formal application to the City for a Preliminary Plat and PUD for the Project.[16]

On February 21, 2024, the City Council adopted Resolution 2024-029 approving the PUD for the Project[17] and on March 6, 2024, the City Council approved Resolution 2024-029, with 69 conditions, finding that no EAW or EIS would be required for the Project because the proposal was not substantially different from the Pulte Proposal.[18]

On March 19, 2024, Plaintiff filed a Petition and Complaint for Declaratory and Injunctive Relief and an emergency temporary restraining order. On March 20, 2024, the

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[11] *In re Resolution 2022-15 Approving Former Mississippi Dunes Golf Course Environmental Assessment Worksheet (EAW) Finding NO Need for Environmental Impact Statement (EIS)*, No. A22-0358 (Minn. App. Sept 20, 2022) (order).
[12] *Id.* at 4.
[13] Lauterbach-Barrett Decl, Exhibit A; Petition and Complaint for Declaratory and Injunctive Relief, filed March 19, 2024, at 5.
[14] Bradford Aff., Ex. D, at *7.
[15] Declaration of Tamara Anderson, Exhibits 3-4.
[16] Swenson Decl. Ex. 8, City of Cottage Grove, Minn., Resolution 2024-029.
[17] *Id.*; Bradford Aff., Ex. D.
[18] Swenson Decl. Ex. 9.

Honorable Francis Green, Judge of District Court, denied the Emergency Motion.[19] On April 26, 2024, Plaintiff moved for temporary injunction to prevent Rachel Development from engaging in further site preparation,[20] until (1) a proper habitat assessment is conducted for federally endangered rusty patched bumble bee;[21] and (2) water and soil testing is conducted by a certified professional to determine whether PFAS is present in the site's wetlands, ponds, streams, and soils.[22] Additionally, Plaintiff seeks to prevent the City from issuing any permits or approvals for site preparation until the resolution of this lawsuit.[23] On May 6, 2024, Defendants filed separate briefs opposing Plaintiff's motion. This hearing follows.

CONCLUSIONS OF LAW

"A temporary injunction is an extraordinary equitable remedy that preserves the status quo pending a trial on the merits." *Central Lakes Educ. Ass'n v. Indep. Sch. Dist. No. 743*, 411 N.W.2d 875, 878 (Minn. App. 1987). Accordingly, it is not sufficient for Plaintiff merely to raise the possibility that injunctive relief is appropriate. *Thompson v. Barnes*, 200 N.W.2d 921, 926 (Minn. 1972). In determining whether to grant a temporary injunction, the Court considers the five factors set forth in *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965).[24]

[19] Notice of Judicial Determination, filed March 20, 2024.
[20] Site preparation includes any and all vegetation clearing, grading, soil disturbance, excavation, filing of wetlands, or construction at the Project site.
[21] If suitable habitat is present, a proper presence / probable absence survey is conducted in accordance with published federal protocols by a federally permitted surveyor.
[22] Plaintiff's Notice of Motion and Motion for Temporary Injunction, filed April 26, 2024, at 1-2.
[23] *Id*.
[24] Those factors are: "(1) the preexisting relationship between the parties; (2) the harm that would result if the injunction were denied or issued; (3) the public policy of granting or denying the injunction in light of the facts; (4) any administrative burdens in the judicial oversight and enforcement of the injunction; and (5) the likelihood that one party or the other will prevail on the merits." *In re Est. of Nelson*, 936 N.W.2d 897, 910 (Minn. App. 2019) (citing *Dahlberg*, 137 N.W.2d at 321–22).

Plaintiff asserts that the two-part test for an injunction in *Wadena Implement Co. v. Deere & Co., Inc*.., 480 N.W.2d 383 (Minn. App. 1992),[25] not the five factors set forth in *Dahlberg,* applies.[26] However, in *Wadena*, the prerequisites for injunctive relief under the applicable statute was met because the court combined the injunction and summary judgment hearings. *Id*. at 389. No such determination has been made here. On the contrary, this is precisely what is in dispute; whether the Defendants violated MEPA or MERA. As such, statutory entitlement to a temporary injunction is not automatic and this Court must consider all five *Dahlberg* factors.

The party seeking a temporary injunction bears the burden of demonstrating that issuance of an injunction is warranted. *See AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 110 N.W.2d 348, 351 (Minn. 1961). "Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). The party seeking a temporary injunction must, in other words, make a "threshold showing" of irreparable harm.[27] Failure to show irreparable harm "is, by itself, a sufficient ground for denying a temporary injunction." *Medtronic, Inc. v. Adv. Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. App. 2001) (citing *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1990)). The threatened injury must be "real, substantial, and irreparable." *Ind. School Dist. No. 35, Marshall County v. Engelstad*, 144 N.W.2d 245, 248 (Minn. 1966). Importantly, "injunctive relief cannot be given for what is a mere assumption of a possible result" *Id.* Here, Plaintiff has

[25] In *Wadena,* the Court of Appeals held that where injunctive relief is authorized by statute, an injunction may be granted provided that: (1) the prerequisites for the injunctive remedy have been shown; and (2) the injunction would fulfill the legislature's purpose. *Id.* at 389.
[26] Pl. Br., at 10-11.
[27] *City of Mounds View v. Metro. Airports Comm'n.*, 590 N.W.2d 355, 357 (Minn. App. 1999); *see* 2A David F. Herr & Roger S. Haydock, Minnesota Practice, Civil Rules Annotated § 65.14 (5th ed. 2012) (observing that the same requirement of irreparable harm that applies in the context of a motion for a TRO under Rule 65.01 "also applies to temporary injunctions").

failed to make the requisite threshold showing of irreparable harm for the Court to grant its Motion for a Temporary Restraining Order because Plaintiff's alleged harms are purely speculative and cannot be categorized as irreparable. *See MF Pinspotters, Inc*., 110 N.W.2d 348, 351 (Minn. 1961) ("An injunction will not issue to prevent an imagined injury. The threatened injury must be real and substantial."). Furthermore, in applying the *Dahlberg* factors, this Court finds that the Motion for a Temporary Restraining Order must be denied.

Factor 1 – Nature of the relationship between the parties before dispute arose.

Under the first *Dahlberg* factor, the Court considers "[t]he nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief." *Dahlberg*, 137 N.W.2d at 321. The nature of the relationship between the parties is relevant to whether a temporary injunction should be granted because it affects the parties' reasonable expectations. *Id*. at 322. Courts have found that this factor weighs in favor of injunctive relief when parties form a long-term relationship. *Id*. at 276. Plaintiff asserts that they have a strong relationship with the Project site but does not have an established working relationship with the City or Rachel Development.[28] The reasonable expectation of the parties will not be affected. By the admission of the parties[29] and a review of the record, this Court finds that the parties do not have a long-standing relationship or specialized relationship, which would favor the issuance of a temporary injunction. *Mercy Fin. Group, LLC v. George A. Hormel II Tr*., A08-2076, 2009 WL 4040452, at *6 (Minn. Ct. App. Nov. 24, 2009).

Factor 2 – Relative hardships.

[28] Plaintiff's Memorandum of Law in Support of its Motion ("Plaintiff's Br."), filed April 26, 2024, at 30.
[29] *Id*.; City's Br., at 15-16.

The second factor considers the relative harm to the parties. A temporary injunction should be granted "only when it appears that more harm will result from its denial than from its issuance." *Town of Burnsville v. City of Bloomington*, 117 N.W.2d 746, 750 (Minn. 1962). Generally, the failure to show irreparable harm is, by itself, a sufficient ground for denying a temporary injunction. *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1900), *review denied* (Minn. Sept. 28,1990).

Respondents argue that Plaintiffs have failed to show "a threatened injury which is real, substantial, and irreparable."[30] This Court agrees. Plaintiff asserts that the Project threatens to degrade and damage natural resources by replacing the existing habitat for protected and sensitive species with a neighborhood.[31] According to the Plaintiff, the entire Project site is located within an area designated by the U.S. Fish and Wildlife Service (FWS) as a High Potential Zone (HPZ) for the Rusty Patched Bumble Bee ("RPBB"), an endangered species under the Federal Endangered Species Act, 16 U.S.C. §§ 1531-1544.[32]

Rachel Development does not dispute that the Project site is within a HPZ for RPBB, but notes that this is not a unique to most of the Twin Cities metro area, as most of Cottage Grove, all of Woodbury and Saint Paul, are considered a HPZ for RPBB.[33] Furthermore, Rachel Development asserts that it coordinated with FWS specifically with respect to the RPBB.[34] The FWS required a survey or a habitat assessment of the site to determine the presence of RPBB.[35] Under this guidance, Rachel Development worked with Resource Environmental Solution, LLC,

[30] City's Br., at 16-17; Rachel Development's Br., at 30-31.
[31] Plaintiff's Br., at. 31.
[32] *Id*. at 4.
[33] Rachel Development's Br., at 8.
[34] *Id*. at 9.
[35] *Id*.

to prepare a RPBB habitat assessment ("RES Report").[36] The RES Report concluded that the Project site had "low"[37] suitability to support RPBB and acknowledged that although the assessment occurred while there were approximately three inches of snow on the ground, many of the herbaceous plant species to assess the habitat were still recognizable during the winter site survey.[38] Additionally, the results of the RES Report were shared with the FWS, who concluded that "[w]hile the [RPBB] has been observed approximately 0.4 miles from the project areas, there are no known records of this species within the proposed project boundaries… suitable habitat for the [RPBB] is likely limited to areas not frequently disturbed…Negative impact to the species are unlikely[.]"[39]

Other protected species alleged by the Plaintiff that ***may*** be present in and around the Project site, include: the Higgins Eye Pearly Mussel (Lampsilis higginsii), the Northern Long-Eared Bat (Myotis septentrionalis), the Loggerhead Shrike (Lanius ludovicianus), the Henslow's Sparrow (Centronyx henslowii), the Blanchard's Cricket Frog (Acris blanchardi), and the Blanding's Turtle (Emydoidea blandingii).[40] FWS reported no known record of the Northern Long-Eared Bat within the Project's boundaries and no impact on the Higgings Eye Pearly Mussel's habitat is anticipated.[41] The threatened native plants alleged by the Plaintiff which ***may*** also be present**,** include the Louisiana Broomrape (Orobanche ludoviciana), the Seaside Three-awn (Aristida tuberculosa), the Dry Barrens Prairie (Southern), the Sugar Maple-Basswood-(Bitternut Hickory) Forest, and the Pine-Burr Oak woodlands.[42] The survey conduct by Midwest

[36] *Id*. *See also* Lauterbach-Barrett Decl, Exhibit H.
[37] The area that was determined to be of moderate suitability for the RPBB will not be developed, as it will be acquired by the Minnesota Department of Natural Resources ("DNR") as part of the expansion of the existing scientific and natural area. Rachel Development's Br., at 8; Lauterbach-Barrett Decl, Exhibit J.
[38] *Id.*
[39]Rachel Development's Br., at 11; Lauterbach-Barrett Decl, Exhibit K.
[40] Plaintiff's Br., at. 4.
[41] Lauterbach-Barrett Decl, Exhibit K.
[42] Plaintiff's Br., at. 5.

Natural Resources, Inc. only observed the presence of the Seaside Three-awn and concluded that based on the design concept, the species will not be directly impacted.[43]

At the hearing, Plaintiff acknowledged that other than a Star Tribune Article and a 3M Settlement Update, it provided no other evidence to support the presence of PFAS.[44] Plaintiff's theory of irreparable harm rests on speculative harms that was further unsupported by the evidence brought forth by the Respondents. On the other hand, it is clear that granting the TRO will impact Rachel Development. According to Rachel Development, a delay of a few months would cause the Project to be set back for a year and damages in excess of $3.4 million.[45] Further, the Project has already begun, and Rachel Development completed the tree removal on March 18, 2024, pursuant to their permit and prior to the commencement of this action.[46] Plaintiff did not oppose the estimated damages claimed by Rachel Development or the fact that the tree removal was completed. The Court finds this factor does not favor the issuance of a temporary injunction.

Factor 3 – Likelihood of success on the merits.[47]

This factor is the "most important" factor in the *Dahlberg* analysis. *Softchoice, Inc. v. Schmidt*, 763 N.W.2d 660, 666 (Minn. App. 2009); *see also Minneapolis Fed'n of Teachers v. Minneapolis Pub. Schools*, 512 N.W.2d 107, 110 (Minn. App. 1994) ("A primary factor in determining whether to issue a temporary injunction is the proponent's probability of success in the underlying action."). The plaintiff is not required to demonstrate a complete *certainty* of success on the merits, but rather a "likelihood" or "probability" of success. *See Hargreaves v.*

[43] Lauterbach-Barrett Decl, Exhibit K.
[44] *See* Plaintiff's Br., at. 9.
[45] Rachel Development's Br., at 17.
[46] *Id.* at 16.
[47] It should be emphasized that "neither issuing nor denying a temporary injunction is a decision on the merits." *Afremov v. Amplatz*, 2004 WL 77851, at *5 (Minn. Ct. App. Jan. 13, 2004) (unpublished) (citing *Thompson v. Barnes*, 200 N.W.2d 921, 927 (Minn. 1972)); *see also Village of Blaine v. Indep. Sch. Dist. No. 12*, 121 N.W.2d 183, 187 (Minn. 1963) ("[A]n order granting or refusing such remedy [a temporary injunction] neither establishes the law of the case nor constitutes an adjudication of the issues on the merits.").

Fed. Deposit Ins. Corp., 1990 WL 77060, at *2 (Minn. App. June 12, 1990) (unpublished) (concluding that the district court applied an incorrect standard). "[I]t has often been held proper to maintain the status quo by a temporary injunction even though complainant's right to permanent relief is doubtful." *Id*. (quoting *Dahlberg*, 137 N.W.2d at 321 n.13). "The greater the probability that a plaintiff will prevail the greater the need for a temporary injunction to maintain the status quo during the pendency of litigation." 2A David F. Herr & Roger S. Haydock, Minnesota Practice, Civil Rules Annotated § 65.14 (5th ed. 2012) (citing *Jannetta v. Jannetta*, 285 N.W.2d 619 (Minn. 1939).)

Here, Plaintiff seeks this relief under the Minnesota Environmental Policy Act (MEPA), Minn. Stat. § 116D.01 et seq. and the Minnesota Environmental Rights Act (MERA), Minn. Stat. § 116B.01.

A. MEPA

Defendants argue that this Court lacks jurisdiction to hear Plaintiff's claim under MEPA.[48] Plaintiff argues that Minn. Stat. § 116D.04, subd. 103, authorizes the court to make findings of MEPA violation to issue an injunction.[49]

Where the legislature has not provided by statute for judicial review of "quasi-judicial" administrative decisions, judicial review is limited to review by certiorari. *Plunkett v. First Nat'l Bank of Austin*, 115 N.W.2d 235, 245 (1962). The court of appeals has initial jurisdiction over writs of certiorari. *Township of Honner v. Redwood County*, 518 N.W.2d 639, 641 (Minn. App. 1994), pet. for rev. denied (Minn. Sept. 16, 1994). Minn. Stat. § 116D.04, subd. 10, makes it clear that "[a] person aggrieved by a final decision on the need for an environmental assessment

[48] City's Br., at 21-22; Rachel Development's Br., at 19-20.
[49] Plaintiff's Br., at. 13-14.

worksheet, the need for an environmental impact statement, or the adequacy of an environmental impact statement" must seek review "with the court of appeals." Subdivision 13 is merely an enforcement provision;[50] it does not authorize the party to obtain judicial review in district court. The Court finds that Plaintiff is unlikely to be successful in this claim on the merits.

B. MERA

The Minnesota Environmental Rights Act established a private right of action by which "[a]ny person residing within the state" might sue—in the name of the state—any person for declaratory or equitable relief to protect the state's natural resources from "pollution, impairment, or destruction." Minn. Stat. § 116B.03, subd. 1. Under MERA, a *prima facie* case is established by showing the existence of a protectible natural resource and conduct likely to have a materially adverse effect. Minn. Stat. § 116B.04. Whether conduct will have a materially adverse effect on environment is determined by weighing the following factors:

> (1) The quality and severity of any adverse effects of the proposed action on the natural resources affected;
>
> (2) Whether the natural resources affected are rare, unique, endangered, or have historical significance;
>
> (3) Whether the proposed action will have long-term adverse effects on natural resources, including whether the affected resources are easily replaceable (for example, by replanting trees or restocking fish);
>
> (4) Whether the proposed action will have significant consequential effects on other natural resources (for example, whether wildlife will be lost if its habitat is impaired or destroyed);
>
> (5) Whether the affected natural resources are significantly increasing or decreasing in number, considering the direct and consequential impact of the proposed action.

[50]Minn. Stat. § 116B.03, subd, 13. Enforcement. This section may be enforced by injunction, action to compel performance, or other appropriate action in the district court of the county where the violation takes place. Upon the request of the board or the chair of the board, the attorney general may bring an action under this subdivision.

State by Schaller v. Cnty. of Blue Earth, 563 N.W.2d 260, 267 (Minn. 1997). Even though the *Schaller* factors are intended as flexible guidelines and MERA has been broadly interpreted, the Minnesota Supreme Court has recognized that MERA "requires something more than merely an adverse environmental impact to trigger its protection." *Id.* at 266. "[A]lmost every human activity has some kind of adverse impact on a natural resource," but MERA is not construed as "prohibiting virtually all human enterprise." *Id*. at 265.

As set forth above, Plaintiff has failed to establish the presence of the species in the Project site that it seeks to protect. Plaintiff has also failed to establish how the protective measures are inadequate. *Zander v. State*, 703 N.W.2d 845, 856 (Minn. Ct. App. 2005) (finding that the mere fact that the valerian plants are rare, without further evidence of how they will be affected despite the protective measures, does not suffice to meet plaintiff's burden). Defendants provided ample evidence of the remedial measures and conditions taken to move forward with the Project. Most of the exhibits provided by the Plaintiff are either not specific to the Project site; written by third parties who are not affiants; or consist of non-expert opinion testimony that the Court did not find helpful.[51] Minn. R. Evid. 701 (If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are . . . helpful to a clear understanding of the witness' testimony or the determination of a fact in issue).

Lastly, the court notes that "MERA may not be used to seek review of an agency's decision not to prepare an [Environmental Impact Statement] because MEPA is the appropriate avenue for such decisions." *Nat'l Audubon Soc. v. Minn. Pollution Control Agency*, 569 N.W.2d 211, 218-19 (Minn. Ct. App. 1997). Ultimately, the Court finds that Plaintiff has failed to establish a *prima facie* case and that this factor also disfavors the injunction.

[51] Affidavit of Elaine Evans, Exhibits 1-61.

Factor 4 – Public policy.

When weighing the *Dahlberg* public policy factor, courts should consider that a "court's authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked." *Queen City Const, Inc. v. City of Rochester*, 604 N.W.2d 368, 379 (Minn. App. 1999) (quoting *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982)).

Plaintiff is requesting this Court to step into the role of an administrative body and substitute its judgment for that of numerous state and federal agencies. In its brief, Rachel Development provided a list of the following agencies which reviewed different elements of the Project and issued the necessary approvals:

> (1) FWS reviewed information provided by KES and concluded the Project would not negatively impact protected species such as the RPBB. *Lauterbach-Barrett Decl.* Ex. K.
> (2) DNR determined that the Project would not require a take permit with respect to protected plant species. *Lauterbach-Barrett Decl.* Ex. M; *see also Lauterbach-Barrett Decl.* Ex. C.
> (3) MPCA approved a National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) permit for the Project. *Robinson Decl.* Ex. C.
> (4) South Washington Watershed District ("SWWD") approved a wetland replacement plan. *Lauterbach-Barrett Decl.* Ex. O. SWWD approved wetland impacts conditioned upon Rachel Development purchasing 0.9904 wetland credits (which was a two-to-one replacement ratio). *Id.*
> (5) The United States Army Corps of Engineers issued a Nationwide Permit for the Project. *Lauterbach-Barrett Decl.* Ex. P. This permit authorized the discharge of fill material into 0.30 acres of wetland and 198 linear feet of tributary. *Id.*

On February 21, 2024, Rachel's proposal came before the City Counsel and approved it by 5 votes to 0 with limitations and conditions designed to mitigate potential environmental impacts.[52] *PTL, L.L.C. v. Chisago Cnty. Bd. of Com'rs*, 656 N.W.2d 567, 571 (Minn. App. 2003)

[52] The City Council's approval of the project was subject to a list of 69 conditions. *See* Mueller Aff. ¶ 10.

(local officials have broad discretion in deciding whether to grant or deny a proposed land use and great deference is afforded to their decision). The Court finds that this factor disfavors the injunction.

Factor 5 – Administrative burdens.

The court finds that the administrative burden imposed by granting the injunction weighs neither against nor in favor of granting Plaintiffs' motion. This factor is neutral.

As discussed above, the Court finds that the Plaintiff has failed to meet its threshold burden of demonstrating irreparable harm. The court also finds that four Dahlberg factors weigh against granting Plaintiff's requested injunctive relief, and the fifth factor is neutral.

ORDER

1. Plaintiffs' Motion for Temporary Restraining Order is hereby **DENIED.**
2. The Court Administrator shall serve a copy of this Order on counsel of record, which constitutes due and proper notice of its provisions for all purposes.

BY THE COURT:

Meslow, Douglas (Judge) 2024.08.15 10:55:22 -05'00'

Dated: _____

Douglas B. Meslow
Judge of District Court