

EXHIBIT 1

Comments from Carrol Henderson, Wildlife ecologist and retired Nongame Wildlife Program Supervisor, Minnesota Department of Natural Resources.

Carrol Henderson retired in 2018 after 44 years of service in the Minnesota Department of Natural Resources. He was the supervisor of the nationally acclaimed DNR Nongame Wildlife Program from 1977 through 2018. His conservation accomplishments have been featured on ABC, NBC, and CBS national news, the Wall Street Journal, Los Angeles Times, and USA Today. Henderson is the author of 14 books on wildlife, which have sold over 300,000 copies.

Henderson received the Chevron Conservation Award in 1990 as one of the top 10 conservationists in America. He received the Chuck Yaeger Award in 1992 from the National Fish and Wildlife Foundation for conservation of neotropical migrant birds. In 2012, he received the Gary T. Myers Bird Conservation Award from the US Fish and Wildlife Service as the top bird conservationist in North America. In 2016, Henderson received the Frances K. Hutchinson Conservation Medal from the Garden Clubs of America for his national accomplishments in wildlife conservation. Previous recipients of this award have included Walt Disney, Lady Bird Johnson, Rachel Carson, Sigurd Olson, Roger Tory Peterson and ecologist E. O. Wilson.

THIS IS HENDERSON'S RESPONSE TO THE EAW REGARDING THE BIOLOGICAL AND CONSERVATION SIGNIFICANCE OF GREAT BLUE HERON ROOKERY AT THE PROPOSED PAVILION ESTATES DEVELOPMENT, ROCHESTER TOWNSHIP, OLMSTED COUNTY, MINNESOTA.

UNIQUE QUALITIES OF THE ROCHESTER GREAT BLUE HERON ROOKERY

1. The Rochester Great Blue Heron Rookery is unique in Minnesota and Olmsted County. There were 90 great blue heron colonies identified during Minnesota's statewide Breeding Bird Atlas survey, conducted from 2009-2013. However, this colony was not identified in that survey effort because of its secluded location. It is in a tract of hilly upland mature hardwood forest two miles west of Rochester, Minnesota. The Rochester Rookery is unique because it is the only **verified DISJUNCT** great blue heron colony in Minnesota; that is, the colony is NOT adjacent to a significant body of water like a major lake, river, or beaver pond. The colony is approximately 750' to 800' from Cascade Creek, and it is at an elevation of about 1,175' compared to the lower elevation of 1,050' for Cascade Creek. Its upland site is about 125' higher in elevation than the Cascade Creek bottomland.

2. Long-term sustainability. One common feature of great blue heron colonies is that their droppings are acidic. Over time, the acidic soil tends to kill the nesting trees. This is because the colonies are typically on lowland flat terrain in the vicinity of lakes and rivers. The acidic concentration in the soil increases over multiple years of nesting.

Not so in this case. The Rochester Rookery is on hilly, sloping terrain that is underlain with limestone. Rainfall tends to wash the acidic heron droppings downhill, and the higher pH of the limestone also would contribute to neutralizing the acidity of the excrement. The Rochester Rookery does not show any cumulative loss of nesting trees over time through the multiple decades of its existence.

3. Long-Term Carrying Capacity. Great Blue Herons in the Rochester Rookery appear to have maintained a long-term carrying capacity of about 30 to 40 pairs, in balance with their upland forest habitat and local forage base. This is not a large colony by traditional standards, but it is apparent that the size of this colony is related to the more limited abundance of aquatic food available to them in small streams or other aquatic habitats in the Rochester area. Great Blue Herons are documented to fly as far as about 18 miles from a colony site to foraging sites. It is likely that the species utilized by Rochester Rookery herons would differ from the aquatic species eaten by herons at colonies in more northerly portions of Minnesota since much of Rochester Rookery food would be derived from smaller streams or ponds. This would make a fascinating research project to learn more about how these herons have adapted to life in Rochester's mature upland forest habitats.

4. Summary. Based on my familiarity with great blue heron colonies throughout Minnesota over the past 45 years, I have never observed any other Great Blue Heron colonies in an upland forested site disjunct from a nearby lake, river or beaver pond. I feel that the uniqueness of the Rochester Rookery is so different from any other heronry in Minnesota that it would be an appropriate selection for designation as a state "Scientific and Natural Area" (the highest level of protection under the state land classification system). It could also be an appropriate site for designation as a protected Olmsted County natural area if local officials and citizens prefer that designation.

OTHER REPORTED GREAT BLUE HERON COLONIES IN OLMSTED COUNTY

A review of DNR Natural Heritage Information System files and 1997 County Biological Survey data shows there are five other Great Blue Heron rookeries in Olmsted, County, Minnesota. However, all five were documented from 1989 to 2001. There have been no more recent records on four of those rookeries including the High Forest (Ironwood Springs) rookery - which on August 17, 2021, the former DNR regional nongame wildlife program biologist confirmed had been abandoned. Among the other three colonies, one was inactive, and the other two were not found. Those other three rookeries have not reported for the past 20 years and are believed to be abandoned.

The only other remaining rookery that appears to be active is the "8th Street Rookery", which was documented on June 16, 2021, and June 20, 2021, by Mr. Broberg and Ms. Tuma. The observation on June 16 included one active nest. On June 20, a total of five nests were observed at the "8th Street Rookery."

It is unclear what the qualities of the "8th Street Rookery" are in terms of uniqueness, number of nesting pairs, forest habitat, topography, proximity to water, land

ownership, vulnerability to development, landowner access, relationship to the Rochester Rookery, and history as a rookery. It will require field observations of at least one more year to ascertain the characteristics and qualities of the “8th Street Rookery” for an adequate comparison to the unique features of the Rochester Rookery.

Discussions with the two Rochester Rookery landowners, not part of the proposed development, revealed that their family recollections of the Rochester Rookery go back to at least 38 to 40 years. It is an older colony than the “8th Street Rookery”, which has been known for 32 years. Because of the proximity of the “8th Street Rookery” to the Rochester Rookery, it is possible that the “8th Street Rookery” may have splintered from the original Rochester Rookery site.

Accurate and up-to-date information, that is currently available, suggests that the Rochester Rookery is a unique resource as stated above. There is not enough information currently available about the “8th Street Rookery” to compare it with the characteristics or qualities of the Rochester Rookery. To state again, that would take at least another year of field survey and research for that determination and comparison to be made. It is possible that the “8th Street Rookery” may share some or many of the qualities of the Rochester Rookery, but that does not detract from the fact that the Rochester Rookery demonstrates unique scientific qualities compared to the typical pattern of Great Blue Heron use in Minnesota lowland forests adjacent to lakes, rivers, and beaver ponds. It also does not make the existence of the “8th Street Rookery” an excuse to destroy the Rochester Rookery because there is another rookery nearby.

IN LIGHT OF MY EXPERIENCE AND UNDERSTANDING OF THE BIOLOGY, NESTING HABITS, HABITATS AND DISTRIBUTION OF GREAT BLUE HERONS IN MINNESOTA, THESE ARE MY COMMENTS ON THE CONTENT, ACCURACY, AND COMPLETENESS OF THE PAVILION ESTATES SUBDIVISION EAW AND BLUELINE-XENOPS GREAT BLUE HERON ROOKERY REPORT (July 14, 2021)

Blueline – Xenops Report, page 4, states: “...the evidence and arguments that have been brought forward by the project opponents have not been sufficiently substantiated or justified with a rigorous scientific analysis, to date.”

The contractors for the developers misinterpreted data that was collected by the Minnesota Breeding Bird Atlas project and assumed that every sighting of a Great Blue Heron in Minnesota from 2009 through 2013 was a great blue heron breeding site (rookery), even if the heron was in flight or feeding at the edge of a wetland. That is ludicrous and contrary to the guidelines presented about the data by the Breeding Bird Atlas summary report regarding Great Blue Herons.

There was also significant exaggeration about the Great Blue Heron occurrence data that was collected by Minnesota DNR Minnesota County Biological Survey ornithologists in 1997 and Minnesota Biological Survey ornithologists in 2014. DNR MBS published a map of their occurrences for

Great Blue Herons. The map designated sites where Great Blue Herons were observed, but the purpose of the survey was not to identify Great Blue Heron colonies/rookeries.

However, the Blueline – Xenops Report claims on page 11 that the surveys carried out by MBS ornithologists were carried out to identify “GBH nesting locations” in Minnesota, and that the resulting maps from those surveys identified “breeding GBH colonies” in all but four Minnesota Counties. That is a totally false interpretation of the data from the MBS surveys!

This was an effort to “prove” that herons commonly nest in hardwood forests not necessarily in association significant bodies of water. Since the MN MBS surveys did not identify rookeries, how could the developers have deduced the habitats in which the rookeries occurred when such detailed habitat data was not even collected? The Blueline – Xenops Report (pages 11-15) inaccurately states on page 15 that Great Blue Herons were nesting in counties, like Fillmore, where there are no documented or known Great Blue Heron colonies.

After I began my service as the DNR Nongame Wildlife Program supervisor in 1977, I designed and implemented a statewide citizen science project for volunteers to seek out and report colonial waterbird colonies. Volunteers included members of the DNR, US Forest Service, US Fish and Wildlife Service, National Park Service, and private citizens. The survey was done in 1977, 1978, 1980, and for the 3-year period from 1981-1983. That report was published in 1984.

I have reviewed the data collected for Great Blue Heron colonies from 1977 through 1983 for Olmsted and Fillmore counties. There were NO colonies of Great Blue Herons reported for Olmsted County during that period. A review of the number of Great Blue Heron rookeries for Fillmore County showed only one rookery reported near Forestville in 1980 by a DNR botanist who was doing rare plant surveys. The retired botanist is a friend of mine, whom I contacted on August 11, 2021, to ask what recollections she had about her Great Blue Heron colony report near Forestville. This was the response I received from her later on August 11, 2011:

“I don't recall coming across a heron rookery in that area... I simply don't remember the rookery.”

In other words, there were also no Great Blue Heron rookeries that can be verified in Fillmore County for the period 1977 through 1983.

The DNR also reported significant findings from the MN DNR regional nongame wildlife biologist formerly stationed in Rochester that contradict the EAW. That regional biologist was hired in 2000 and worked in that

capacity for southeastern Minnesota, including Olmsted and Fillmore counties, until 2018. That wildlife biologist was assigned to locate 13 potential Great Blue Heron colonies in Olmsted and Fillmore Counties in 2001. The biologist did not locate or verify any Great Blue Heron colonies during that survey. In fact, the DNR reports that the Rochester regional nongame wildlife specialist did not observe or document any Great Blue Heron colonies in Olmsted or Fillmore Counties for the entire time of service from 2000 to 2018, even though much field work was conducted during that period in Olmsted and Fillmore Counties!

The credibility of this EAW is therefore seriously flawed with misinformation and inaccuracies. It fails to provide objective and accurate information to assess the feasibility and reasonableness of this proposal for a land development project.

Blueline – Xenops Report, pages 6, 7 (twice), 8, 9, 12, and 21, and EAW, page 39, use of words, “virtually ubiquitous”, “ubiquitous”, and “ubiquity.”

Great blue herons are not a “ubiquitous” bird species in Minnesota. Perhaps American robins and common grackles would meet that description. The only thing that is “ubiquitous” in this EAW is the number of times that misleading and inaccurate information is presented about the location, habitat, and abundance of great blue heron rookeries in Minnesota.

Blueline – Xenops Report, page 11, states: “In Olmsted County the survey identified the 8th Street rookery in Section 5 of Rochester Township that is detailed in this report and also identified rookeries in Marion Township at Chester Woods and in Rock Dell and High Forest Townships.”

The MN DNR reports: All MBS Great Blue Heron records in Fillmore and Olmsted counties portrayed on the 2014 MBS maps are “Breeding Season Observations.” None are “nesting sites/rookeries.” The MBS references to Great Blue Herons, on page 11, only reported sightings or occurrences of Great Blue Herons - but not rookeries.

The EAW includes erroneous conclusions regarding imaginary heron rookeries reported for the 2014 Minnesota Biological Survey sites where herons were sighted, BUT NO ROOKERIES WERE DOCUMENTED OR OBSERVED.

Blueline – Xenops Report, page 12, states: “The MBS was the first systematic, statewide effort to document not only GBH rookeries located on islands and major riparian areas, but also rookeries located in forested upland habitats, and it established that GBH is breeding in upland habitats in virtually every county of the state (see discussion of rookery habitat below).”

Nowhere does this Report define a “forested upland habitat.” Then the Report states erroneous conclusions supposedly documenting rookeries in “virtually” every county in the state based on MBS data that was never designed or intended to report the presence of rookeries or breeding sites or the detailed habitat in which imaginary rookeries occurred.

Blueline – Xenops Report, page 14, states: “The published CBS maps from 1997 identify one other GBH nesting site in Olmsted County along Robinson Creek in southern Rock Dell Township along the North Branch of the Root River, eleven and a half miles south.”

There have been no reports of this rookery in the past 20 years so it is believed to be abandoned.

Blueline – Xenops Report, page 14, states: “The 2014 Minnesota Biological Survey of Great Blue Heron Breeding Bird locations identified two rookeries in Rock Dell 11.5 miles south, one in Chester Woods, 11 miles to the east and two in the Whitewater Valley over 20 miles east of the Connelly Property.”

The DNR verified that these reports are not rookeries but, instead, sightings of Great Blue Herons. It was not the intention of this MBS data to report rookeries or breeding locations.

Blueline – Xenops Report, page 15, states: “A review of CBS maps from surrounding counties found three upland nesting sites in Winona County and ten upland nesting sites in Fillmore County (MDNR 1997), establishing that within three abutting counties (spelling error), in Minnesota’s Eastern Broadleaf Forest the typical pattern of GBH rookery site selection is to establish rookeries in upland wooded habitats near streams, similar to the Connelly and 8th Street rookeries.”

The information provided on the CBS maps from 1997 were obtained primarily from surveys done from 1989 to 1997. Many of rookery sites recorded during that era have not been verified as active during the past 24 years and appear out-of-date. This conclusion is also reaffirmed by the observations of the DNR from the Nongame Wildlife Program regional specialist who did not observe any Great Blue Heron rookeries in Olmsted or Fillmore Counties from 2000 to 2018.

Blueline – Xenops Report, page 15, states: “Early surveys for GBH rookery locations focused exclusively on large rookeries located near large lakes and river systems (MNDNR 1984). However, subsequent surveys documented widespread use of wooded upland sites for rookeries throughout Minnesota, and specifically in Olmsted and surrounding counties (MNDNR 2014).”

This conclusion about herons using wooded upland sites for rookeries is false because it is based on the 2014 data provided by the MN DNR MBS

ornithologists who reported only sightings of Great Blue Herons and NOT locations of rookeries!!!

The consultants have attempted to conclude that the disjunct location of the Rochester rookery threatened by development is not unique. However, this situation is different from all heronries that I have observed in Minnesota during my 44-year DNR career in conservation of nongame wildlife.

The Rochester Rookery is the only rookery I have observed in all of Minnesota that is disjunct from adjacent water bodies like a lake or river. There is a small nearby stream, Cascade Creek, which is at least 700 to 800 feet from the rookery. The rookery is on hilly forested terrain in upland hardwood forest where the elevation is approximately 125 feet above the adjacent lowland creek bottom.

EAW REPORT, PAGE 40, states: “GBH’s commonly have rookeries in forested upland settings throughout their range.”

“GBH rookeries in upland settings have been reported for decades in Olmsted and Fillmore Counties...”

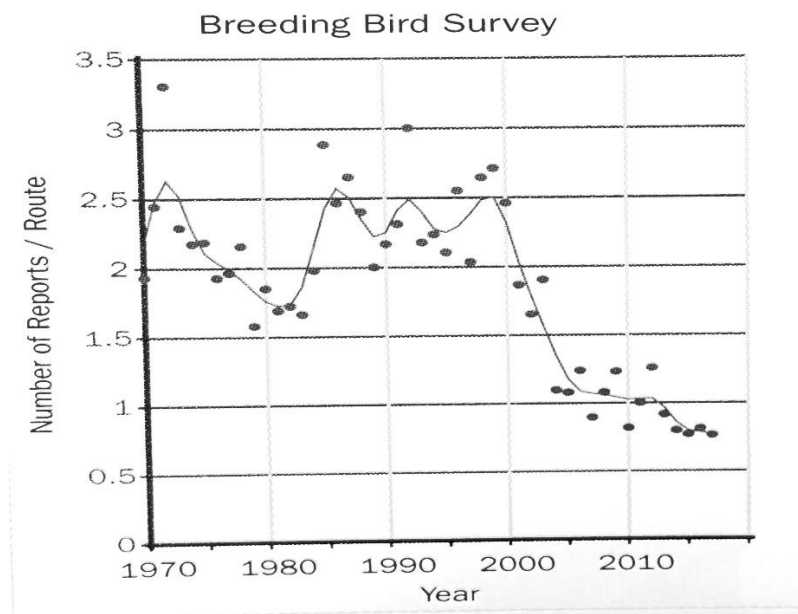
Wrong!! This comment is based on erroneous conclusions in the Blueline – Xenops Report, which claims that all MN DNR Minnesota Biological Survey Great Blue Heron observation data points were Great Blue Heron rookeries in forested upland settings in Olmsted and Fillmore Counties, when in fact there were no rookeries documented in those counties by the DNR and no detailed habitat information was collected at those sites.

The Rochester rookery is unique in Minnesota because of its presence in hilly mature upland forest that is disjunct from wetland habitat. It is about 700 to 800 feet from Cascade Creek and is in a stand of mature hardwood forest about 125’ above the elevation of the creek. There have been recent comments about a possible nearby “satellite” colony on the 8th St. site. It may contain herons that have dispersed from the Rochester colony, but this claim needs to be verified by independent ornithologists.

GREAT BLUE HERONS IN DECLINE - AN EAW OVERSIGHT

There is one important issue that the EAW completely failed to discuss: the long-term decline of Great Blue Heron populations and colonies in Minnesota. When I coordinated a statewide volunteer survey of waterbird colonies for the Minnesota DNR Nongame Wildlife Program in 1980, there were 151 Great Blue Heron colonies located. When the Minnesota Breeding Bird Atlas was carried out from 2009 through 2013, the number of colonies reported was 90-approximately a 40% decline.

The US Geological Survey has conducted annual Breeding Bird Surveys in Minnesota since 1967 using volunteers to survey approximately 50 routes throughout the state. On May 7, 2021, I called John Sauer, head of the US Geological Survey Breeding Bird Survey in Patuxent, Maryland. He verified that Minnesota's Great Blue Heron population has declined about 1.3 % per year over the past 52 years. This is a cumulative decline of about 50% of the initial population level observed in 1967. The greatest decline has occurred since about 2000. Continued declines will likely result in the Great Blue Heron becoming a listed species in Minnesota because of continuing loss of habitat due to land development and wetland drainage. Obviously, the EAW fails to include this information. Below is a graph showing the long-term decline of Great Blue Herons reported on federal Breeding Bird Survey routes from 1967 through 2018.



US Fish and Wildlife Service Breeding Bird Survey results for the number of Great Blue Herons observed per route in Minnesota, 1967 through 2018.

ANOTHER SERIOUS THREAT HANGS OVER THAT PORTION OF THE ROCHESTER ROOKERY THAT IS ON THE CONNELLY PROPERTY

It is also painfully apparent that last March (2021) an attempt was made to destroy that portion of the Rochester Rookery nesting trees by having the trees cut before the herons began the nesting season. They could then claim they were acting in accordance with the terms of the Migratory Bird Treaty Act which, they claim, allows bird nests to be destroyed and nesting trees to be cut down if the nests were not in use with eggs, incubating parents, or nestling young birds present.

There were 14 nesting trees documented on the Connelly property this year which apparently comprises about half of the trees in the entire nesting rookery. If each tree supports two to three nests, the total number of nests on the Connelly property

could be estimated at 25 to 35 nesting pairs. The consultant arranged for the trees to be marked with paint and cut without the knowledge of the adjacent landowners who also had nesting trees on their property. The adjacent landowners succeeded in getting a temporary restraining order, on March 20, 2021, on the tree cutting just in time - within three days when the trees were to be cut. Subsequently, the district court denied a temporary injunction, leaving open the possibility that another attempt to cut trees could be made this summer - after the nesting season - and before the pending lawsuit to protect the rookery is resolved (hopefully, in favor of the Blue Heron Rookery). That is another reason that an EIS should be ordered for this development - so that further accurate details can be identified about the detrimental environmental impacts of this project, along with examination of alternatives to the proposed development and mitigation measures – before any trees are cut.

CONCLUDING COMMENTS

This EAW misconstrues biological data from public and private agencies and conservation organizations to create a false image of the status of Great Blue Herons in Minnesota. Inaccurate claims about Great Blue Heron rookeries, especially in Olmsted and Fillmore Counties, render the entire EAW inadequate and incomplete. The EAW fails to analyze the status of Great Blue Herons in Minnesota and the totally unique ecological qualities of the Rochester Rookery which are denied by the developers.

The Rochester Rookery is seriously threatened with disruption and eventual destruction by this development project. By cutting existing nesting trees and adjacent forest on the Connelly property, it will destroy the portion of the Rookery on the Connelly property and expose nesting trees on the adjacent properties of the other two Rookery landowners to windthrow damage and further destruction of the Rookery. The project, if allowed, will have significant environmental impacts.

Therefore, requiring an Environmental Impact Statement (EIS) is the only and most appropriate way to proceed.

August 19, 2021

Carrol L. Henderson

Carrol L. Henderson

Attachment: Vita (9 pages)