

**STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
VARIANCE REQUESTS OF THE CITY OF ST. FRANCIS**

DATE: May 17, 2019

Re: Findings of Fact, Conclusions, and Order.

Based on the thorough consideration of the variance petition dated February 8, 2019 (Petition), together with all public comments received, and information on file at the Minnesota Department of Natural Resources (DNR), Division of Ecological and Water Resources, the Petition brought pursuant to Minn. Stat. § 14.055 is hereby DENIED as set forth herein.

I. PETITION.

1. Pursuant to Minn. Stat. § 14.055, the City of St. Francis (Petitioner) has petitioned the Department of Natural Resources (DNR) for six variances from the administrative rules regulating the management of rivers designated as wild, scenic, and recreational rivers. Petition at 1. The proposed variances relate to certain portions of land within the City of St. Francis that abut the Rum River. *Id.*

2. The portion of the Rum River affected by the variances is a designated “scenic river.” *Id.*; Minn. R. 6105.1430. “Scenic rivers” are “those rivers that exist in a free-flowing state and with adjacent lands that are largely undeveloped.” Minn. Stat. § 103F.311, subd. 7. While not explicitly stated in the Petition, the proposed variances would presumably allow Petitioner to adopt ordinances relating to the affected portions of land that are less restrictive than the statewide minimum standards established in rule. *See* Minn. Stat. §§ 103F.321, subd. 2, .335, subds. 1-2 (requiring DNR to develop statewide standards for the protection of shoreland within the boundaries of wild, scenic, and recreational rivers, and requiring local governmental units to bring their ordinances into compliance with those minimum standards and exercise their powers to implement those standards).

3. The Petition requests six variances from the rules governing wild, scenic, and recreational rivers. Petition at 1-2. As described in the Petition, the requested variances are as follows:

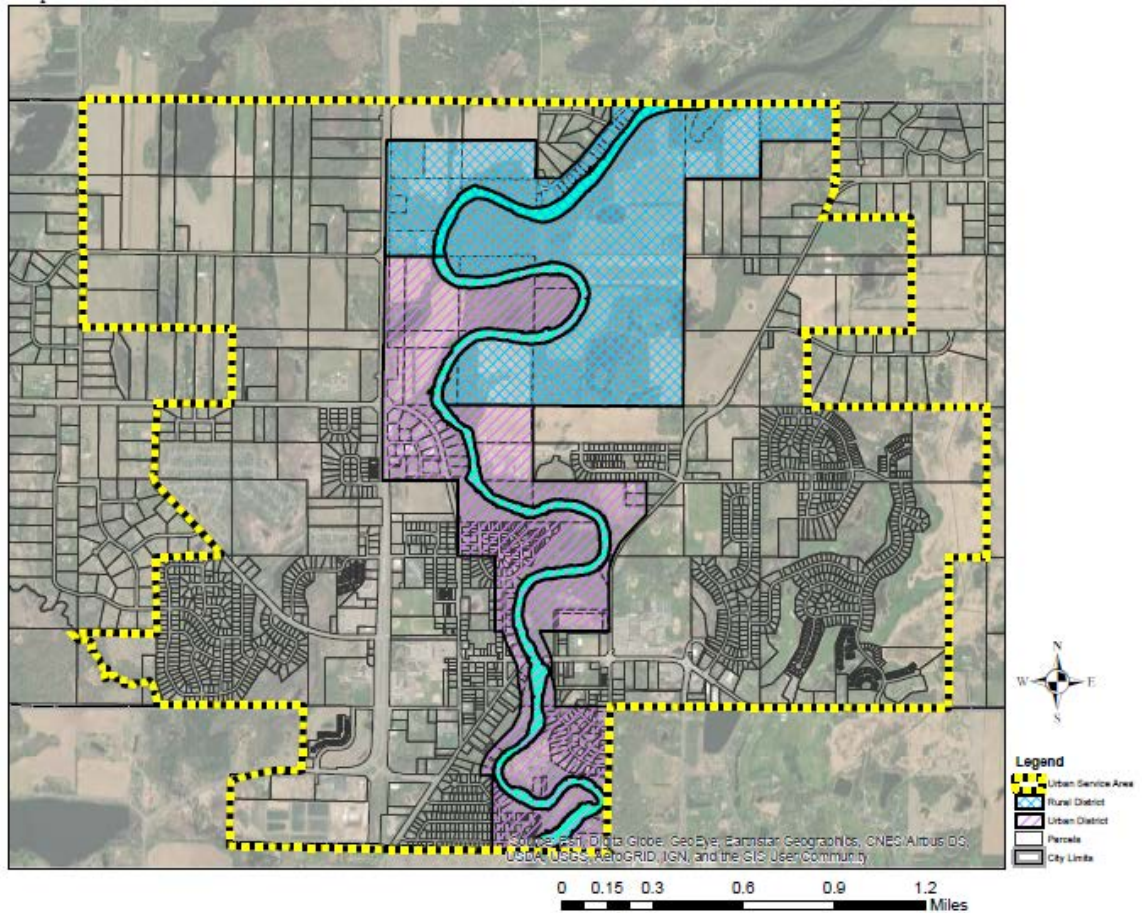
- a. “Allow riparian lots with minimum areas of 20,000 square feet.” *See* Minn. R. 6105.0110, subp. 2(B) (requiring minimum lot sizes of at least four acres in area for lots abutting a scenic river).
- b. “For non-riparian lots, allow the minimum required lot acre to be determined by the densities shown on the 2040 draft Future Land Use Map (attached as Map 2).” *See* Petition at Map 2 and Map 7 (classifying

the affected areas as “Low Density Residential,” “Medium Density Residential,” and “Med/High Density Residential,” with corresponding planned densities of “2-3 DU/Ac,” “3-7 DU/Ac,” and “7-12 DU/Ac,” respectively); *see* Minn. R. 6105.0110, subp. 2(B) (requiring minimum lot sizes of at least four acres in area for lots abutting a scenic river); Minn. R. 6105.0110, subp. 3(A) (stating that “[t]he density of dwelling units shall not exceed one dwelling unit per lot”).

- c. “Allow minimum lot widths as measured from the building line and the ordinary high water line of 70 feet.” *See* Minn. R. 6105.0110, subp. 2(B) (requiring at least 250 feet in width at the building line and at least 250 feet at the water line for lots abutting a scenic river).
- d. “Allow a setback of 75 feet from the ordinary high water line for riparian lots.” *See* Minn. R. 6105.0110, subp. 3(B)(1) (requiring structures to be setback 150 feet from the normal high water mark).
- e. “Allow attached housing products as permitted uses.” *See* Minn. R. 6105.0100, subp. 3 (limiting development uses to single family residential uses).
- f. “Allow development to be processed through the Planned Unit Development (PUD) approach.” *See* Minn. R. 6105.0140, subp. 3 (describing the requirements of allowing “planned cluster developments”).

4. The following map, submitted by Petitioner, depicts those portions of land that abut the Rum River within the City of St. Francis:

Map 1. Wild & Scenic Boundaries.



5. The purple and blue areas identified above make up the regulated area of the Rum River scenic district that runs through the City of St. Francis. Those portions in purple represent the “urban” area of the district, while the blue portions represent the “rural” area of the district. The wild, scenic, and recreational river rules governing the Rum River identify certain urban areas along the river to which a distinct set of regulations apply. Minn. R. 6105.1440, subp. 4(G).

6. The proposed variances only relate to those portions of land in the rural district, identified above in the blue crosshatched area. The rural district consists of approximately 494 acres of land. This portion of land is referred to herein as the “affected area(s).”

7. In recognition of the substantial nature of the proposed variances, and understanding that it must take proactive steps to maintain the scenic quality of the Rum River, the Petitioner includes certain conditions to be attached a variance approval. Petition at 10-11. Generally speaking, those conditions require: (1) any development in the rural district to utilize public utilities; (2) any development in the rural district to maintain a 60-foot wide average buffer from the ordinary high water line consisting of native vegetation; (3) a prohibition against clear cutting trees over four inches in diameter within 150 feet of the ordinary high water line; (4) a general prohibition against grading within 75 feet from

the ordinary high water line; and (5) a maximum total area of impervious surface on each lot of 30%. *Id.*

8. The Petition includes 13 maps, titled: (1) Wild & Scenic Boundaries; (2) 2040 Draft Future Land Use Map; (3) Barriers to Development; (4) 2030 Comprehensive Plan MUSA Boundaries; (5) 2040 Comprehensive Plan Phased Growth Areas; (6) St. Francis Community Designation; (7) 2040 Proposed “Rural” Development Densities; (8) “Rural” Land Distance from Rum River; (9) City of Ramsey Zoning Map; (10) Ridgeline Along Rum River with 75’ Setback; (11) Existing Sanitary Sewer; (12) Existing Watermain System; and (13) Vegetative Buffer Example.

9. The Petition includes a copy of Resolution 2018-46, approving the submittal of the variance application to the DNR.

10. Petitioner argues that it is entitled to a discretionary variance pursuant to Minn. Stat. § 14.055, subd. 4 because: (1) the application of the rule will result in a hardship or injustice to the Petitioner; (2) the variance would be consistent with the public interest; and (3) the variance would not prejudice the legal or economic rights of any person or entity.

II. COMMENT PROCESS.

11. Upon receiving a variance petition under Minn. Stat. § 14.055, an agency “shall make reasonable efforts to ensure that persons or entities who may be affected by the variance have timely notice of the request for a variance.” Minn. Stat. § 14.056, subd. 3.

12. To satisfy this obligation, the DNR issued notices to the following organizations: Minnesota Pollution Control Agency, Metropolitan Council, Upper Rum River Watershed Management Organization, Builders Association of the Twin Cities, Twin Cities Association of Realtors, Isaac Walton League, Friends of the Rum River, Anoka County Parks, Anoka Conservation District, The Water Trails Advisory Committee, the DNR Division of Fisheries, the DNR Division of Parks and Trails, and the DNR Division of Lands and Minerals. Additionally, the DNR worked with Petitioner to provide notice to the individual landowners who may be affected by the proposed variances. Petitioner provided notice to all landowners in the affected areas, as well as all landowners within 350 feet of the affected area. The Petitioner also independently sent a letter to all water and sewer utility users. The DNR also hosted a webpage, which provided the Petition, the Petition’s attachments, and a brief summary of the Petition’s contents. The notices included directions to this webpage, as well as instructions on how to comment.

13. The comments received are summarized below. The first portion summarizes the comments received from government entities and interest groups. The second portion summarizes the comments received from the general public. Due to the large number of comments received from the public, the second portion is organized by subject category.

a. Comments from Government Entities and Interest Groups.

i. Comments from St. Francis Schools.

14. The commenter supports the approval of the variance as it will allow Petitioner to attract more jobs, businesses, and recreational opportunities. The commenter states that further development of the city allows the school district to grow and continue to meet the needs of current and future students.

ii. Comments from Isanti County Zoning Office.

15. The commenter recommends disapproval of the Petition. The commenter states that the affected area is on the Anoka Sand Plain, which contains highly erodible soils. The commenter states that the proposed density and structure setbacks will likely contribute additional sediment and phosphorus loads to the Rum River, destroying habitat used by multiple terrestrial and aquatic animal species. The commenter states that variance approval would result in vegetation clearing, increased impervious surface, and increased runoff causing bank erosion and downstream flooding. The commenter states that approval of the variances would work at cross purposes to watershed protection goals.

iii. Comments from Isanti County Soil and Water Conservation District.

16. The commenter states that there are few Minnesota rivers and their adjacent lands that are recognized as possessing outstanding scenic, recreational, natural, historical and scientific values. The commenter states that the variance requests have the potential to negatively impact all criteria that define a scenic river in Minnesota, as well as increase the risk of downstream harm.

iv. Comments from Anoka Conservation District (ACD).

17. The ACD states that allowing development consistent with that proposed in the variance petition would compromise the scenic, water quality, and ecological characteristics of the Rum River and as such, the ACD cannot support the Petition. The ACD suggests a variety of ideas for preserving the integrity of the river while accommodating some demand for growth, minimizing long-term infrastructure costs, and reducing the number of structures built in areas imperiled by riverbank erosion. Ideas include:

- The ACD suggests changing the district designation to urban in areas beyond 300 feet of the river or 250 feet of the bluff line and consider removing areas beyond 500 feet of the bluff line from the district altogether. The ACD states that maintaining lower densities in areas close to the river is important for

preserving scenic, water quality and ecological characteristics. The ACD states that much of the rural district is too far from the river to have a meaningful impact on these characteristics.

- The ACD suggests considering using a homeowners' association to create limited, shared riparian access at optimal locations that limit or do not exacerbate erosion. The ACD states that riparian rights for water access allow property owners to install stairs or other structures and docks for accessing the water. The ACD states that these features will negatively affect scenic qualities and because the riverbank is tall, steep and highly erodible in this area, subsequent erosion from these features will affect water quality, fish spawning and imperil structures at the top of the bluff.
- The ACD suggests using the planned cluster development approach for the rural district to conserve a permanent natural riparian corridor. The ACD states that this could accommodate a regional trail corridor. The ACD states that the proposed lot widths and development densities would mar the river's scenic quality and that the proposed 70-foot lot widths are exceptionally narrow and less than the 90-foot lot widths required in the Petitioner's urban district. The ACD states that minimum riparian lot widths in Andover and Ramsey within the MUSA are generally over 100 feet and average over 150 feet.
- The ACD suggests maintaining riparian structure setbacks at least five times the height of the bluff to the OWHL. The ACD similarly suggests measuring riparian buffer depths from the bluff line, not the OWHL, and defining them by depth, not width. The ACD states that rivers naturally scour and erode the outside bends and deposit sediment on the inside bends. The ACD states that the placement of homes and infrastructure should anticipate these natural processes and stay safely away from them. The ACD states that three substantial active erosion sites were identified along the affected reach of the river.
- The ACD states that much of the riparian zone is comprised of the riverbank, which is high and very

steep with little vegetation. The ACD states that it is important to protect the vegetation beyond the bluff line and to use written standards that protect that vegetation. The ACD states that, as proposed in the variance petition, leaving a single 4+ inch diameter tree would comply with the clearcutting restriction. The ACD states that changing the term “clear-cutting” to “removal” and “OHWL” to “bluff line” would strengthen the written standards to better address the existing resource conditions.

- The ACD suggests framing the discussion on meeting the Petitioner’s desired growth in terms of the entire land base, not just the affected area. The ACD states that rezoning other low density residential areas of the City of St. Francis to medium and high density should be considered instead of expecting the scenic Rum River district to satisfy the desired growth. The ACD states that Table 2 of the Petition shows the Petitioner trying to accommodate 38% to 79% of the 2040 projected growth on the 500-acre area. The ACD states that Petitioner’s proposed density exceeds that of the urban district standards, which allow 5.5 times the density of the rural district, and that the proposed density would allow 8 to 16.75 times the density of the rural district.
- The ACD states that the capacity of the Petitioner’s wastewater treatment facility to treat more wastewater is an insufficient justification for the variances. The ACD states that a well-functioning septic system is demonstrably better for the environment than a municipal treatment system in terms of groundwater recharge and surface water quality.

v. Comments from the Metropolitan Council.

18. The comments from the Metropolitan Council (Council) respond to two assertions from Petitioner regarding how the Council calculates density and the process available for revisions to the Petitioner’s growth forecast.

19. First, Council states that the Petitioner asserts that it cannot meet its overall required minimum density of 3 units per net acre within the Rural Center area if growth is limited in the 500-acre area to density required by the Rural District. The Council’s position is that land used for calculating density does not include undevelopable land or

land with density restrictions protected by local zoning ordinances. Therefore, the Council states, the density constraints of the Rum River rural district in the affected area may allow for it to be “netted out” of the minimum net density calculation for the Petitioner.

20. Second, the Council states that the Petitioner asserts that the rural district needs to be developed to meet the Council’s forecasted population growth. The Council’s position is that forecasts reflect market demand constrained by local land use controls. The Council states that planned land use and planned development intensity, and staging define what is possible. The Council states that communities can request forecast changes by including their forecasts in the 2040 Comprehensive Plan Update. The Council states that a forecast change would be justified here based on the limited development potential of the rural district.

vi. Comments from Sustainable Earth Advocates (SEA).

21. SEA requests denial of the petition. SEA states that a hardship or injustice has not been proven. SEA states that the Petitioner has not provided a fiscal impact analysis to prove that, if the variance was granted, the additional costs to the Petitioner would be exceeded by the economic benefits. SEA states that the Petition contains unsupported allegations. SEA states that the Petitioner has not factored environmental costs into its analysis such as shoreland erosion, habitat destruction, and impairment of fish and wildlife habitat from increased dockage and river access.

22. SEA states that it is not in the public interest to grant the variances. SEA states that it is in the interest of present and future generations to protect outstanding scenic, recreational, natural, historical, and scientific values of certain Minnesota rivers and their adjacent lands. SEA states that “approving the variance would set an adverse precedent, thereafter burdening the DNR and taxpayers with more variance applications.”

23. SEA states that the variances would prejudice the substantial legal or economic rights of SEA under the Minnesota Environmental Rights Act (MERA), which entitles each person to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state. SEA states that the DNR is also subject to the Minnesota Environmental Policy Act (MEPA) prohibiting state agency action that would significantly affect environmental quality when there are feasible and prudent alternatives, including variance denial, available. SEA states that economic considerations alone shall not justify such conduct.

vii. Comments from DNR Division of Ecological & Water Resources (DNR-EWR).

24. DNR-EWR’s comments summarize potential impacts to biodiversity. DNR-EWR states that a portion of the affected land has been mapped by the Minnesota Biological Survey (MBS) as a site of “Moderate Biodiversity Significance” with three native plant communities (NPCs). DNR-EWR states that moderate sites contain occurrences of rare species, moderately disturbed NPCs and/or landscapes that have strong

potential for recovery of NPCs and characteristics ecological processes. DNR-EWR states that Blanding's turtles, a state-listed threatened species, have been known to occur in this area, as well as up and down the river, indicating a population of this rare turtle may occur in the area. DNR-EWR states that this turtle requires both aquatic and upland habitats and is known to travel long distances over land, spending considerable time in riparian areas and sandy stream edges and nearby habitat, both critical for hatchlings and are present in the affected area. Additionally, DNR-EWR states that state-listed mussel species have been found in the Rum downstream of this area. DNR-EWR states that high-density development would likely impact the NPCs/MBS site, unless this particular area was restricted from the variance. DNR-EWR states that dense development up to the edge of the mapped NPCs/MBS site could also create impacts in the form of introduced non-native and invasive species. DNR-EWR states that higher density development, along with reduced structure setbacks from the river, has the potential to increase sedimentation entering the river, potentially impacting mussels and other aquatic organisms. DNR-EWR states that increased development can impact the Blanding's turtles, including increased exposure while crossing roads and a reduction of naturally vegetated corridors between aquatic and upland habitats.

viii. Comments from DNR Division of Lands & Minerals (DNR-LAM).

25. Comments from DNR-LAM summarize potential impacts to conservation easements held by the Wild & Scenic River (WSR) Conservation Easement Program, in particular a conservation easement purchased in 1979 (PIN 293424420001) on land surrounded by the affected area. DNR-LAM states that the easement protects 12.3 acres on a peninsula with approximately ¼ mile of river frontage. DNR-LAM states that public funds were used for this acquisition to protect the “interest of present and future generations to preserve and protect the outstanding scenic, recreational, ecological, historical, and scientific values of certain Minnesota rivers and their adjacent lands.” DNR-LAM states that ongoing stewardship of the WSR Easement Program is funded by the state and administered by the DNR. DNR-LAM states that the easement is near other state conservation lands which enhance its conservation value and scenic nature and that the intent of the easement was to preserve the scenic qualities of the river as it was at the time of purchase. DNR-LAM states that the owners selling the easement were eager to have their land preserved in its present wild condition and that these easements are agreements between the original landowner and the state to protect the conservation values of the protected property. DNR-LAM states that the easement is perpetually held for the benefit of the people of Minnesota and that the DNR holds 53 conservation easements on the Rum River, including three in Anoka County. DNR-LAM states that the main values protected by the subject easement are the scenic views of the river and shoreline, and, indirectly, bank stability, water quality, riparian health and overall watershed health. DNR-LAM further states that all of Minnesota's scenic rivers are designated water trails providing valuable recreational tourism opportunities for Minnesota citizens. DNR-LAM concludes that granting the variance is not in the public interest as it will negatively impact the scenic quality of the river by allowing development and density along the scenic district. In particular, DNR-LAM states that the scenic view would be compromised and the variances

would effectively eliminate the scenic designation in this area and be contrary to the public interest and to the state’s investment in the WSR Easement Program. DNR-LAM states that the variances would diminish the legal and economic rights of the state as the holder of the easement and that it is unlikely the state would have purchased the easement had the area been classified as “urban” at the time of its designation.

ix. Comments from DNR Division of Fish & Wildlife (DNR-FAW).

26. The comments from DNR-FAW summarize potential impacts on wildlife, stating that reducing the lot size, riparian lot width, and structure setback requirements as proposed in the variance petition will negatively affect wildlife by increasing habitat fragmentation adjacent to the river corridor, reducing native vegetation, and increasing the amount of human disturbance throughout the seasons.

x. Comments from Water Trails Citizen Advisory Committee (Committee).

27. The Committee states that, according to reports, the Petitioner is asking for the variance to broaden its tax base. The Committee states that under Minn. Stat. § 462.357, subd. 6, “economic considerations alone shall not suffice” when granting a variance for “practical difficulties” in a municipality. The Committee states that it does not want to see a precedent-setting variance be approved on one of only six wild and scenic rivers that were designated to be preserved and protected for public purposes.

b. Comments from the General Public.

28. The DNR received comments from 196 individuals. Given the large number of submissions and individual comments received during the public-comment process, the DNR grouped similar comments into themes. Most comments can be categorized into the following topical areas, categorized from most frequently mentioned to least.

i. Wildlife & habitat.

29. One of the top areas of concerns identified by the general public was that the development allowed by the variances would destroy aquatic and terrestrial habitat, negatively affecting wildlife. The commenters provide many examples of specific wildlife that they see and enjoy viewing. Commenters feel that the river system and surrounding lands are important resources for migrating birds and other animals that need continuous habitat for movement. A commenter mentions that with climate change, many species are already struggling and that maintaining connected habitat helps species to move to more suitable locations as the climate changes. Many commenters express the sentiment that once you take away habitat, you can never bring it back.

ii. Undermining the purpose of the Minnesota Wild and Scenic Rivers Act (MRA) to permanently protect the river.

30. The commenters state that the purpose of the MRA was to protect the scenic and environmental quality from development in perpetuity and for future generations. Many also stated that the MRA was put in place in anticipation of future threats from growth and development. The commenters state that the river was designated for a reason and there are very few wild and scenic designated rivers in Minnesota. The commenters state that designation serves a public purpose by giving all citizens access to natural places free from human encroachment and many feel that the Rum River is still a relatively unspoiled resource because the protections contemplated by the MRA have been in place.

iii. Impacts to scenic character and recreational use.

31. The comments opposing the variance discuss the scenic character and recreational use of the affected area. Nearly all commenters who state that the Rum River is valuable for canoeing/kayaking, hunting and fishing said so it was so because it is a beautiful and scenic area. These commenters state that the proposed development would significantly alter the river's character, reducing its recreational value. One commenter states that with development, canoeing the river would be like driving down a street with obvious housing on both sides. Another commenter states that they did not want the river to become a residential street. Others felt that development would reduce hunting and fishing opportunities.

iv. Growth.

32. Comments discussing growth come from both those supporting and opposing the variances.

33. Those supporting the Petition state that the variances would allow for more residential growth, which would drive the creation of commercial and industrial jobs in the city. Those comments state that the higher tax base would allow the Petitioner to fund more projects and allow the school district to grow. Those comments also state that the Petitioner is a relatively small city and wetlands limit where growth can occur.

34. Those opposing the Petition state that the Petitioner can grow east or west around the wetlands. Those comments also state that chasing tax base growth at the expense of the environment is unwise. Many express doubts that there will be any positive effects from growth, stating that potential reductions in utility costs will likely be offset by higher public safety and school costs. Others mention that Petitioner's geographic location is unlikely to draw much business and industrial activity.

v. Water quality.

35. Many commenters are concerned that increasing the amount of density and impervious surface in an area with sandy erodible soils, including erodible river banks, will result in increased amounts of erosion and nutrient-laden sediment entering the river, as well as increased flooding downstream. Commenters state that they are concerned that, by

building homes along the river, most of the existing vegetation would be replaced with suburban style lawns, and, due to lawn maintenance practices witnessed in the area, lawn chemicals and grass clippings would end up in the river.

vi. Fairness.

36. Comments on fairness came from both those supporting and opposing the variance.

37. Commenters supporting the Petition state that with more homeowners on the river, more people—the homeowners—would benefit by having access to the river compared to the relatively few who own land along the river and have access now.

38. Commenters opposing to the Petition state that they are concerned that the Petitioner only sent letters to sewer and water customers and encouraged the customers to send comments to the DNR in support of the Petition. Commenters state that they felt it was unfair of the Petitioner to target its notification to those likely to financially benefit from the variances. Commenters also state concerns relating to the legal or economic rights of property owners in the affected area. Many commenters, including property owners in the subject area, state that they know that variance approval will result in up-zoning the land and subsequent property tax increases commensurate with the developable value of the land. Commenters state that property owners would be forced to sell their land, due to unaffordable property taxes, despite their desire to continue to live on their land.

vii. Utility Costs.

39. Comments on utility cost came from those supporting and opposing the variance.

40. Nearly all comments in support of the Petition include the following statement: “As a St. Francis resident, I fully support the City of St. Francis’ requested variances from the administrative rules relating to the Wild, Scenic and Recreational Rivers.”

41. Nearly all comments opposing the Petition state that the variance request is motivated solely by the Petitioner’s desire to reduce water and sewer costs. Commenters also state that the Petitioner made mistakes by not planning well for its infrastructure and that the variances are a quick, short-sighted fix to solving utility cost problems at the cost of reducing decades-old river protections.

viii. Precedent setting.

42. Some commenters state that DNR approval of the Petitioner’s variances is a slippery slope that would encourage other cities to request variances resulting in the gradual degradation of wild and scenic river protections throughout Minnesota.

ix. Rural character.

43. Some commenters state they moved to the area due to its rural character and for the beauty and natural surroundings provided by the Rum River. These commenters state that high-density housing is not appropriate for a rural area.

x. Significant change.

44. Some commenters state that the Petitioner's variance requests are a significant, not incremental, deviation from the existing standards that would affect a large amount of land.

III. THE MINNESOTA WILD AND SCENIC RIVERS ACT AND THE ADMINISTRATIVE RULES RELATING TO WILD, SCENIC, AND RECREATIONAL RIVERS.

45. In 1968, Congress established the National Wild and Scenic Rivers Act to protect certain rivers throughout the United States. Wild and Scenic Rivers Act (Federal Act), Pub. L. No. 90-542, 82 Stat. 906 (1968) (codified as amended at 16 U.S.C. §§ 1271-87). Four years later, Congress added the lower St. Croix River to the National Wild and Scenic Rivers system. Lower St. Croix River Act of 1972 (Federal Lower St. Croix Act), Pub. L. No. 92-560, § 2, 86 Stat. 1174 (codified at 16 U.S.C. § 1274(a)(9)). As a condition of the Lower St. Croix's inclusion in the federal system, Congress required Minnesota and Wisconsin to develop and execute a master plan for joint state administration of the Federal Lower St. Croix Act. *Id.*, §§ 3, 6(b), 86 Stat. 1174-75. In order to comply with these conditions, the Minnesota Legislature enacted the Lower St. Croix Wild and Scenic River Act of 1972 (MLSCA). Act of May 12, 1973, ch. 246, 1973 Minn. Laws 480 (codified as amended at Minn. Stat. § 103F.351). Under the MLSCA, the DNR is authorized to establish standards for local zoning ordinances, and cities, counties, and towns within the affected areas shall adopt zoning ordinances complying with the standards prescribed by the DNR. *Id.*, subd. 4(c).

46. Also occurring in 1973, during the same legislative session in which it enacted the MLSCA, the Minnesota Legislature enacted a separate statute relating to Minnesota's wild and scenic rivers: the Minnesota Wild and Scenic Rivers Act (MRA). Act of May 16, 1973, ch. 271, 1973 Minn. Laws 521 (codified as amended at Minn. Stat. § 103F.301-.345). The MRA serves as a state analog to the Federal Act and was enacted with a stated policy that "[t]he legislature finds that certain of Minnesota's rivers and their adjacent lands possess outstanding scenic, recreational, natural, historical, scientific and similar values" and that "[i]t is in the interest of present and future generations to retain these values, and a policy of the state, and an authorized public purpose to preserve and protect these rivers." Minn. Stat. § 103F.305.

47. The MRA required the DNR to study individual Minnesota rivers for inclusion within the protections afforded by the MRA. Minn. Stat. § 103F.321. Upon proposing a river for designation within the system, the DNR was required to first prepare a management plan and make it available for comment to affected local governmental

bodies, shoreland owners, conservation/outdoor recreation groups, and the general public. Minn. Stat. § 103F.325. After holding a public hearing, and upon further consideration by various agencies and public officials, the DNR commissioner then decides whether to designate the river, or a portion thereof, for inclusion in the wild and scenic rivers system. *Id.*

48. Similar to the MLSCA, the MRA also authorizes the DNR to adopt statewide minimum standards for the preservation and protection of shorelands within the boundaries of designated rivers. Minn. Stat. § 103F.321. The MRA requires local governments to “adopt or amend [their] ordinances” to be in compliance with the DNR minimum standards, and if local governments do not do so in a timely matter, the MRA provides that the DNR shall adopt such ordinances for them. Minn. Stat. § 103F.335.

49. In April 1974, the DNR, in accordance with the Minnesota Administrative Procedures Act, promulgated the statewide minimum standards and criteria for shorelands within the boundaries of certain designated rivers. *In the Matter of the Proposed Adoption of the Rules of the Commissioner of Natural Resources establishing the Statewide Standards and Criteria for the Minnesota Wild and Scenic Rivers System* (April 8, 1974) (1974 SONAR). The minimum standards were adopted only after the DNR undertook three public hearings in December 1973, wherein interested persons, associations, and groups were afforded the opportunity to present oral and written statements and arguments relating to the proposed minimum standards. 1974 SONAR at 2. As recognized by the Minnesota Supreme Court, the minimum standards “reflect the wide public participation at the hearings,” and notes that “[s]pecifically, the regulatory provisions regarding minimum lot size, building setbacks, lot width, and timber cutting were each modified in response to comments received during the hearing process.” *Pine Cty. v. State, Dep’t of Nat. Res.*, 280 N.W.2d 625, 627 n.1 (Minn. 1979).

50. In 1976, the DNR collaborated with a thirty-five-member local advisory council to develop Rum River management plan in preparation for the Rum River’s proposed designation under the MRA. Jay Krienitz & Susan Damon, “*The Rivers Belong to the People!: The History and Future of Wild and Scenic River Protection in Minnesota*,” 36 WM. MITCHELL L. REV. 1179, 1231 (2010). In August and September 1977, the DNR held five public hearings in which all interested groups or persons were heard. *In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational River’s System of the Portion of the Rum River from the Ogechie Lake Spillway to a Line Crossing the River Between the Center Lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this Proposed Wild, Scenic and Recreational River: Report of Hearing Examiner*, at 1 (October 19, 1977) (1977 Report). Over 200 persons attended the hearings. *Id.* The transcript of the testimony is 537 pages long and more than 170 pages of written comments were submitted after the hearings closed. *Id.* At the conclusion of these hearings, the hearing examiner reported that the Rum River management plan was “the best that the Hearing Examiner has seen, and is doubtless the major reason for the widespread public acceptance evident throughout the hearing process.” *Id.* at 4. Accordingly, the hearing examiner recommended the proposed rules be promulgated, subject to certain modifications. *Id.* In January 1978, the DNR

adopted the recommendations of the hearing examiner, subject to certain adjustments, and promulgated rules adding the Rum River to Minnesota's wild and scenic rivers system. *In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational River's System of the Portion of the Rum River from the Ogechie Lake Spillway to a Line Crossing the River Between the Center Lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this Proposed Wild, Scenic and Recreational River: Findings and Conclusions of the Commissioner*, at 8 (January 11, 1978) (1978 Findings).

51. The Rum River has segments in all three "wild," "scenic," and "recreational" classifications. Petitioner's variance requests affect land located within an area where the Rum River is classified as "scenic." Minn. R. 6105.1430,

IV. STANDARD OF REVIEW.

52. All six of Petitioner's proposed variances are requests for "discretionary variances." See Minn. Stat. § 14.055, subs. 3, 4 (describing the differences between petitions for "mandatory" and "discretionary" variances).

53. Discretionary variances must satisfy a three-pronged standard for an agency to consider granting the request. Minn. Stat. § 14.055, subd. 4. Under the statute, an agency may issue discretionary variances if it finds: (1) the application of the rule to the petitioner would result in hardship or injustice; (2) variance from the rule would be consistent with the public interest; and (3) variance from the rule would not prejudice the substantial legal or economic rights of any person or entity. *Id.*, subd. 4. All three prongs must be met for an agency to consider granting a discretionary variance. *Id.*

54. The first prong of Minn. Stat. § 14.055, subd. 4 requires the Petitioner to establish that the application of the rules to the Petitioner would result in hardship or injustice. In reviewing this prong, DNR takes note of Minn. Stat. § 462.357, subd. 6(2), which details the criteria that a city must use to evaluate a variance proposal from its own zoning ordinances. See Minn. Stat. 14.055, subd. 5 (providing that "[a]n agency also may grant variances based on standards specified in other law"). Under Minn. Stat. § 462.357, subd. 6(2), a city may grant a variance if there are "practical difficulties" in complying with the zoning ordinance.¹ "Practical difficulties" are established when: (1) the applicant proposes to use the property in a *reasonable manner* not permitted by the zoning ordinance; (2) the plight of the applicant is due to circumstances *unique to the property and not created*

¹ A previous version of Minn. Stat. § 462.357 contained an "undue hardship" standard for evaluating variance requests. In 2011, in response to the Minnesota Supreme Court's ruling in *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721 (Minn. 2010), the Minnesota Legislature amended the statute to, among of items, clarify the intent behind the "reasonableness" prong of a variance evaluation and to make the language consistent between city land-use planning statutes and county variance authority. See 2001 Minn. Laws, ch. 19, § 2. Although the 2011 amendment renamed the municipal variance standard from "undue hardship" to "practical difficulties," the three-factor structure of (1) reasonableness, (2) uniqueness, and (3) essential character, remained the same. *Id.* As such, the three-factor structure of the "practical difficulties" standard remains instructive when evaluating whether the Petitioner has shown that the application of the rules would result in hardship or injustice.

by the applicant; and (3) the variance would not alter the *essential character* of the locality. Minn. Stat. § 462.357, subd. 6(2). DNR finds this three-factor test instructive for evaluating the first prong of Minn. Stat. § 14.055, subd. 4. Accordingly, these factors—*reasonableness*, *uniqueness*, and *essential character*—will be considered when determining whether the application of the rule to the Petitioner would result in hardship or injustice.

55. The second prong of Minn. Stat. § 14.055, subd. 4 requires the Petitioner to establish that the variance is “consistent with the public interest.” With the adoption of the MRA, the Minnesota Legislature found that certain Minnesota rivers and adjacent lands “possess outstanding scenic, recreational, natural, historical, scientific and similar values.” Minn. Stat. § 103F.305. The legislature went on to specifically identify a public interest in protecting these areas, stating: “It is in the interest of present and future generations to retain these values, and a policy of the state, and an authorized public purpose to preserve and protect these rivers.” *Id.* The 1977 SONAR that accompanied the proposed designation of the Rum River offers additional insight into the public’s interests in the river’s protection. *Relating to the proposed designation, classification and management of the Rum River as a wild, scenic and recreational component of the Minnesota wild, scenic and recreational rivers system*, at 4-10 (July 13, 1977) (1977 SONAR). DNR will consider such interests when evaluating whether the Petitioner’s proposed variances are “consistent with public interest.” Minn. Stat. § 14.055, subd. 4(2).

56. The final prong of Minn. Stat. § 14.055, subd. 4 requires the Petitioner to establish that the variance “would not prejudice the substantial legal or economic rights of any person or entity.” Minn. Stat. § 14.055, subd. 4(3).

V. ANALYSIS.

57. The Petitioner’s arguments are largely split into two parts. Pages 2-8 of the Petition appear to contain arguments meant to support all six variance requests at once, rather than any one particular request. Petition at 2-8. Pages 8-10 of the Petition contain individual “explanations” corresponding to a specific variance request. *Id.* at 8-10. The DNR has considered arguments from both of these parts in arriving at the analysis below. For clarity’s sake, and in an effort to mirror the structure of the Petition, the DNR’s analysis is also split into two parts. The first portion of the analysis discusses the general assertions in pages 2-8 of the Petition. The second portion of the analysis discusses the specific explanations in pages 8-10 of the Petition.

a. General Assertions Relating to All Six Variance Requests.

58. Following the three-pronged format of Minn. Stat. § 14.055, subd. 4, the Petitioner asserts that: (1) application of the rules to the Petitioner would result in hardship or injustice; (2) variances from the rules would be consistent with the public interest; and (3) variances from the rules would not prejudice the substantial legal or economic rights of any person or entity. *Id.* at 2-8. These assertions relate to all six proposed variances as a whole, rather than one individual request.

i. Petitioner has not established that the application of the rules to the Petitioner would result in hardship or injustice.

59. Petitioner argues that application of the rules governing wild, scenic, and recreational rivers would result in a hardship because the Petitioner would be unable to: (1) accommodate a growing population; (2) meet the density requirements of the Council; (3) lower the sewer fees on the current residents; (4) allow for development on certain large parcels of land that have areas located far from the river. *Id.* at 2-7.

60. As previously discussed, when determining whether the application of the rules would result in hardship or injustice, DNR takes note of the three-factor approach of Minn. Stat. § 462.357, subd. 6(2). Under that statute, a variance may be granted when: (1) the applicant proposes to use the property in a *reasonable manner* not permitted by the zoning ordinance; (2) the plight of the applicant is due to *circumstances unique to the property* and not created by the applicant; and (3) the variance would not alter the *essential character* of the locality. Minn. Stat. § 462.357, subd. 6(2). Petitioner’s arguments will be evaluated against these factors to determine whether the application of the rules would result in hardship or injustice.

1. *Reasonableness.*

61. Petitioner has not established that it is proposing to use the affected area in a reasonable manner.

62. Proportionality is a key element of the reasonableness determination. In *Property Cont'l Prop. Grp., LLC v. City of Wayzata*, the Minnesota Court of Appeals determined that a city properly considered the reasonableness factor when it denied a variance request for “*far exceed[ing]* what was allowed under the ordinance” because the proposal exceeded the story limit by two stories, and the height limit by 26 feet. No. A15-1550, 2016 WL 1551693, at *4-5 (Minn. Ct. App. Apr. 18, 2016) (Emphasis in original). In *Davis v. Le Sueur Cty. Planning & Zoning Bd. of Adjustment*, the court reiterated the emphasis placed on the *degree* of the variance requested, determining that when a county reviewed an application for a variance under Minn. Stat. § 394.27, subd. 7—which is the county analog to, and contains the exact same language as, Minn. Stat § 462.357, subd. 6(2)—it was indeed appropriate to “consider the degree of the variance in whether [applicant] proposes to use the Property in a reasonable manner.” No. A17-2019, 2018 WL 2407262, at *8 (Minn. Ct. App. May 29, 2018).

63. Here, Petitioner’s variance requests represent significant deviations from the rules. For example, Petitioner’s requests would allow minimum lot sizes for riparian lots of 20,000 square feet. Petition at 1. Under Minn. R. 6105.0110, subp. 2(B), the minimum lot size in designated areas is four acres, or approximately 174,240 square feet. This request represents a deviation of 154,240 square feet from the established rule, or, put another way, an approximately 88.5% reduction in the minimum lot size. Petitioner’s requests would also allow minimum lots size for non-riparian lots to be determined by the

2040 draft Future Land Use Map. Petition at 2. That map shows lot sizes of 2-3 dwelling units per acre, 3-7 dwelling units per acre, and 7-12 dwelling units per acre within the designated areas. Petition at Map 2, Map 7. The current rules allow for a density of *one* dwelling unit per *four*-acre lot. See Minn. R. 6105.0110, subps. 2(B), 3(A). A variance allowing between 2-12 dwelling units per one acre—when the rules permit *one* unit per *four* acres—is a significant deviation. Petitioner’s variance requests would also allow lot widths of 70 feet, and a setback of 75 feet. Petition at 2. Because the current rules require lot widths of 250 feet and a setback of 150 feet, these requests represent a 72% reduction and a 50% reduction from what is require in the rule.

64. DNR finds these requests to be significant deviations from the rule. Accordingly, Petitioner has failed to establish that it is proposing to use the affected area in a reasonable manner.

2. Uniqueness.

65. Petitioner has not demonstrated that the plight of the Petitioner is due to circumstances unique to the affected area and not created by the Petitioner.

66. Petitioner first argues that it is experiencing a hardship because the City of St. Francis is growing and urbanizing. Petition at 2-3. These are not circumstances unique to the affected area. According to publicly available information from the Minnesota State Demographic Center, the State of Minnesota, in general, experienced a population increase of approximately 1,201,822 persons from 1990 to 2017, representing a 27.47% overall increase. *Historical estimates of Minnesota, its Economic Development Regions, and its counties’ population and households, 1990-2017*, MINN. ST. DEMOGRAPHIC CTR., <https://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/>. Anoka County underwent a population increase of approximately 4.75% during that same time period. *Id.* Mille Lacs, Sherburne, and Isanti Counties, all containing designated portions of the Rum River, experienced population increases of approximately 38.61%, 125.87%, and 52.59%, respectively. *Id.* Despite these increases, local governmental units were still required to manage and plan in a manner that did not violate the rules governing wild, scenic, and recreational rivers. Looking forward, Anoka County is forecasted to experience a 33.12% population increase between 2010 and 2040, according to publically available data from the Council. *Local forecasts for cities and townships*, METROPOLITAN COUNCIL, <https://metro council.org/Data-and-Maps/Data/Census,-Forecasts,-Estimates-NEW/Council-Forecasts.aspx>. Andover, Oak Grove, and Ramsey, neighboring cities along the Rum River, are projected to experience growth of approximately 36.94%, 29.50%, and 46.61%, respectively. *Id.* While Petitioner’s projected growth rate of 74.56% is higher than these figures, it does not establish that Petitioner is experiencing a circumstance unique to the affected area, especially when considering the historic and projected population growth experienced at the state, regional, and local level.

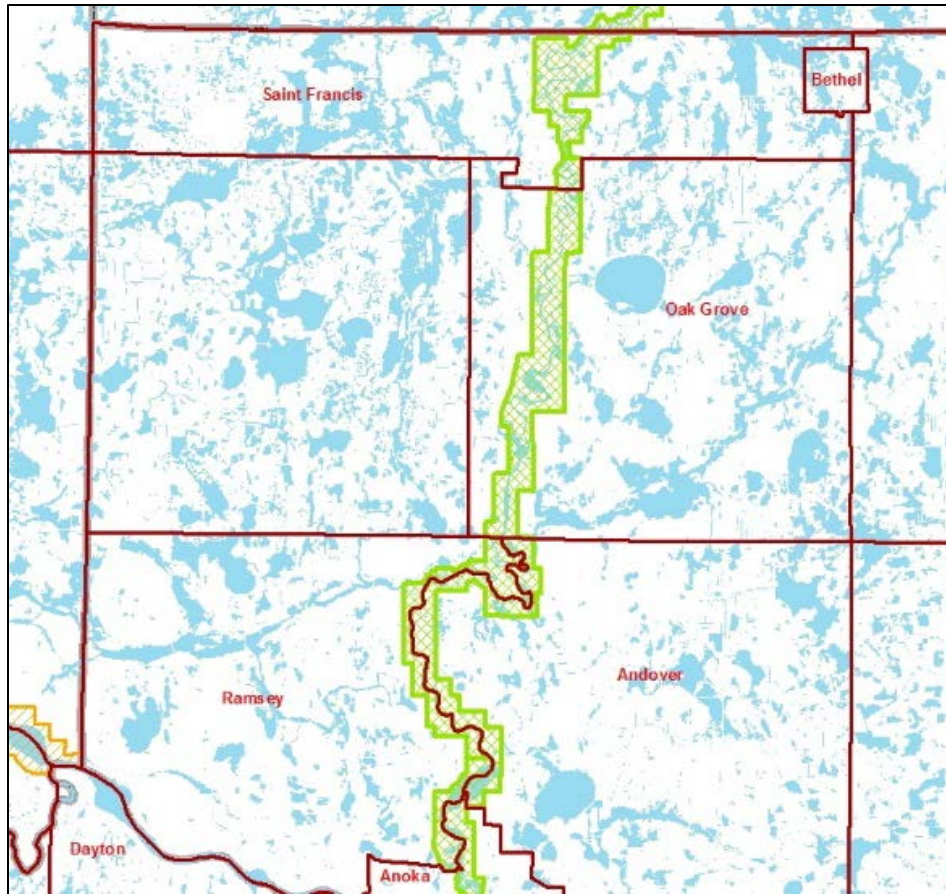
67. That Petitioner would undergo population growth and urbanization was an understood expectation, not a unique circumstance, at the time of the Rum River’s designation. The 1977 SONAR states:

Population trends and projections indicate that the rapid population increase in the Rum River area will continue (Anoka County, in fact, is now the fastest-growing county in the state). As the population grows, development pressure grows, meaning that more and more riverside land will be subdivided and developed. Well-designed and well-enforced zoning can be expected to help prevent overpopulation and ruination of riverside lands.

1977 SONAR at 6. This language indicates that increased population growth and urbanization was a main reason for the Rum River's designation in the first place. That those concerns have since materialized cannot be considered a circumstance unique to the affected area. If anything, the fact that the area has experienced population growth supports the need for adherence to the rule. As such, Petitioner has not established unique circumstances, and thus has not established a hardship or injustice.

68. Petitioner also asserts that the configuration of two wetland complexes, when combined with the increase in growth and the shape of the city, make it difficult to develop in locations other than the affected areas. Petition at 3. Again, these are not circumstances unique to affected area. There are approximately 10.6 million acres of wetlands present in Minnesota, a number of which are located in the metropolitan area. As shown in Figure 1 below, the neighboring cities of Oak Grove, Ramsey, and Andover along the Rum River in Anoka County all have large wetland complexes that constrain development. The protected Rum River area is displayed in green, and wetland complexes are displayed in blue:

Figure 1: Wetland Complexes in Neighboring Cities in Anoka County



Integrating protected natural spaces, like wetlands, into developed areas is a reason why the Twin Cities area is a highly desirable living area. Communities with wetland areas already deal with infrastructure growth that must leap frog around large protected spaces, including a large amount of wetlands that exist in northern Anoka County. As such, Petitioner has not shown that it is experiencing a unique circumstance by virtue of its wetland configuration, and thus has not established a hardship or injustice.

69. Petitioner next argues that it is experiencing a hardship because the rules prevent it from meeting density requirements for “rural centers” established by the Council. Petition at 4-5. Rural centers, Petitioner states, are local commercial, employment, and residential activity centers serving rural areas. *Id.* at 4. Petitioner asserts that such areas should strive for higher-density commercial uses and compatible higher-density residential land uses. *Id.* To meet these goals, the Council designates that the overall average density in rural center areas should be at least three units per net acre between 2020 and 2040. *Id.* Petitioner asserts that it is currently unable to meet the Council’s three-units-per-net-acre level of density due to the lot size requirements of the rules. *Id.*

70. Petitioner’s argument is belied by the comments received from the Council. As the Council indicates, the land used for forecasting growth and calculating density does not include land with density restrictions protected by local ordinances. The Council

explains that because of the restrictions imposed within the designated area along the Rum River, the affected area “could be netted out of the minimum net density calculation for the Rural Center area of the City.” Therefore, the Council concludes, “the current development constraints in the 500-acre area may allow for it to be netted out of the minimum net density calculation of the Rural Center area.” Additionally, the Council responds to Petitioner’s assertion that the affected area needs to be developed in order to meet the Council’s forecasted growth. The Council’s comments clarify that growth forecasts “reflect real estate market demand in the residential and nonresidential sectors, constrained by local land use controls” and that Petitioner could “justifiably request a forecast change based on the limited development potential of the designated area.” Given these comments, DNR finds that Petitioner is not in the unique position of requiring a variance in order to meet the Council’s density requirements or forecasted growth.

71. Petitioner next argues that it is experiencing a hardship because, under the current rule restrictions, residents of the City of St. Francis experience high wastewater costs. Petition at 5-7. As Petitioner explains, these costs are the result of Petitioner’s investment in a new wastewater treatment facility in 2015. *Id.* at 5. This facility was constructed after it was determined that the preexisting facility would be undersized by 2035 for the proposed design flows and landings. *Id.* Petitioner determined that the most efficient route would be to construct a new facility that would meet standards from the Minnesota Pollution Control Agency, and the planned increase in wastewater generated from population, household, and business growth. *Id.* The facility’s size was based on population estimates by the state demographer and an assumption that growth would occur in northern St. Francis. *Id.* at 6. Because the new facility was built to serve a larger population than the current population, Petitioner asserts that St. Francis residents are currently subject to abnormally high tax burdens. *Id.* Petitioner asserts that these charges will remain high unless the Petitioner experiences enough development in the affected areas to bring the costs down. *Id.* at 7.

72. A basic tenet of the “uniqueness” analysis is that the plight of the applicant cannot be created by the applicant. *See* Minn. Stat. § 462.357, subd. 6(2) (identifying “unique” circumstances as those in which “the plight of the landowner is due to circumstances unique to the property *not created by the landowner*”) (emphasis added). As the Petition indicates, the high wastewater costs experienced by St. Francis residents stem from the Petitioner’s own installation of a new wastewater facility. That the larger facility was installed under the assumption that growth would occur in northern St. Francis does not save Petitioner’s argument; the rule restrictions have been in place since the Rum River’s designation in 1978 and Petitioner offers no explanation for why it assumed they would not apply to northern St. Francis when it undertook its population estimates. Furthermore, Petitioner has had the past 40 years to plan for and guide higher density development on suitable land outside of rural area of the scenic district, but has instead guided that land for single-family development, thus creating the current need for greater density.

73. Because the Petitioner is not experiencing unique circumstances not created by the Petitioner, the Petitioner’s arguments relating to the wastewater treatment

facility do not establish that the application of the rule to the Petitioner would result in hardship or injustice.

74. Lastly, Petitioner argues that it is experiencing a hardship because the lands abutting the Rum River that were included in the wild, scenic, and recreational river rules were designated by parcel, instead of establishing a buffer distance around the river based on natural features or area topography. Petition at 7. Petitioner asserts that by designating entire parcels for protection, the rules restrict development on lands that are far from the river. *Id.* As an example, Petitioner points to a portion of land currently located in the rural area of the scenic district that is located almost ½ mile from the river. *Id.* Petitioner asserts that this significantly hinders development potential and notes that in the neighboring City of Ramsey, the parcel lines are smaller, meaning the restrictions on development only exist on those parcels that are closer to the river. *Id.*

75. Having to following scenic river rules based on land parcels, instead of buffer distances, is not a circumstance unique to the affected area. Minn. R. 6105.1480 designates certain parcels of land along the Rum River for protection. As that rule identifies, there are 33,654.91 acres of designated land as part of the Rum River rules. This area spans four counties and the district boundaries are based primarily on land parcels, with some small buffer distances through existing central business districts. Local governmental units across this entire area are obligated to follow the restrictions of the rules, and the City of St. Francis is not the only governmental unit with larger parcels within its limits. Three neighboring cities, all in Anoka County, also have large parcels of land located within the scenic river district and subject to the rural development standards: Ramsey, Andover, and Oak Grove. Petitioner points to the City of Ramsey to the south, where the scenic river district is much narrower due to Ramsey having smaller established parcel sizes at the time of designation. *Id.* Upon reviewing the scenic river district in the neighboring cities referenced above, DNR found that the average district width and acreage per river mile on each side of the river is similar for all four cities, as displayed below in Table 1:

Table 1: Average Scenic District Area and Width in Neighboring Cities

City Name	Scenic District Total Area (acres)	River Length (miles)	Scenic District Average Acres/ River Mile	Scenic District Average Width (feet)
Andover - E	1174	9	130	1076
Ramsey - W	1114	11	101	836
Saint Francis - E	588	5	118	970
Saint Francis - W	384	5	77	634
Oak Grove - E	920	8	115	949
Oak Grove - W	939	8	117	968

While some portions of the affected area in St. Francis extend just over 2,000 feet from the river, other portions of the scenic river district in St. Francis are quite narrow, coming within 300 feet from the river in some places. As shown above, the average district width

and acreage per river mile in St. Francis is nearly the same as in the neighboring cities. Moreover, the widest portion of the affected area in St. Francis features two large river meanders, as well as floodplains and wetland complexes.

76. Because Petitioner has not established that following the district boundary based on parcels as laid out in the management plan and rules qualifies as a unique circumstance, the Petitioner has not establish that the application of the rules would result in a hardship or injustice.

3. *Essential Character.*

77. Petitioner has not established that the variances, if granted, would not alter the essential character of the locality.

78. The essential character of the locality was described in the Rum River's designation documents. The 1977 SONAR, summarizing from the management plan, describes the Rum River as follows:

The Rum, a narrow, meandering river, passes extensive backwaters and marshes, sandy upland plains, and bottomlands supporting maple, ash and other hardwoods. Small stands of red and white pine near the river's lower reaches are what remain of vast pine forests that were cut during the state's logging heyday near the turn of the century.

The river valley supports a variety of wildlife, including many game species. The river itself harbors many sport and game fish and is noted for a particularly high concentration of smallmouth bass.

...

The Rum River was an important landmark for Minnesota Indians and early explorers searching the Mississippi River valley. The river valley and its dense pine forests played an even more important role as the spur to economic development in the area during the mid-1800s.

...

The natural beauty, the fish and wildlife, and the historical legacy of the Rum River valley all contribute to the river's importance as a recreational resource. In fact, the river attracts many canoeists, fishermen, hunters and other people who enjoy the outdoors.

1977 SONAR at 4-5. These comments describe the essential character of the Rum River in terms of scenic, ecological, historical, and recreational value.

79. The comments DNR received in response to the Petition describe the essential character of the affected area in similar terms. The commenters provided many examples of the specific wildlife they enjoy viewing in the affected area, including migrating birds that need continuous habitat for movement. Many expressed concern that once a habitat is taken away, it can never be brought back. Commenters indicate that the scenic nature and beauty of the affected area make it desirable for canoeing, kayaking, hunting, and fishing. These commenters were concerned that development would make canoeing or kayaking similar to driving down a suburban street, and that hunting and fishing opportunities would be reduced. Many felt that the affected area is relatively unspoiled because of the type of protections that are in place. A number of commenters noted that they moved to the area precisely because of the Rum River's beauty, natural surroundings, and rural character.

80. The Petition indicates that the requested variances are designed to provide for higher-density development within the affected area. Petition at 2-5. As such, the variances are inconsistent with the scenic, ecological, historical, and recreational character of the affected area, as described above. *See* 1977 SONAR at 5 (“The greatest threat to the Rum River is the development of its shoreline, which could quickly destroy the river’s natural character.”). Accordingly, Petitioner has not established that the variances, if granted, would not alter the essential character of the locality.

ii. Petitioner has not established that the variance requests would be consistent with the public interest.

81. Petitioner states that with the proposed variances, it is hoping to provide the opportunity for quality, higher-density development while continuing to maintain the river’s scenic quality. Petition at 8. Petitioner asserts that this type of development will increase the tax base, decrease wastewater treatment facility costs for residents, and accommodate the forecasted population growth in a logical and efficient growth pattern. *Id.*

82. Petitioner presumes that any public interest in higher-density property development is paramount to the state’s interest in preserving those areas designated as part of the wild, scenic, and recreational river system. This position is contrary to the public interest identified in the MRA, which states:

The legislature finds that certain of Minnesota's rivers and their adjacent lands possess outstanding scenic, recreational, natural, historical, scientific and similar values. It is in the interest of present and future generations to retain these values, and a policy of the state, and an authorized public purpose to preserve and protect these rivers.

Minn. Stat. § 103F.305. To effectuate that purpose, the Minnesota Legislature conferred powers on the DNR, including the express authority to designate rivers for protection and to set minimum standards for local zoning ordinances. Minn. Stat. §§ 103F.325, .321. The rules relating to the Rum River were adopted under this authority, with the intent to further the public purpose of preservation and protection. Those rules were adopted with the understanding that the type of high-density development proposed here would be inconsistent with public interest in preservation and protection of the river:

The greatest threat to the Rum River is the development of its shoreline, which could quickly destroy the river's natural character.

...

The need for designation is immediate. Unless certain riverside land are protected through better land use controls and acquisition, the values of the river could soon be lost. The rate at which riverside lands along the Rum River are being subdivided and developed is equal to few other rivers in the states.

1977 SONAR at 5. As such, DNR finds that any public interest in high-density development does not outweigh the state's express and paramount interest in protecting Minnesota's wild, scenic, and recreational rivers.

83. The comments received also indicate that the variance requests would not be consistent with the public interest. Comments from the Isanti County Zoning Office state that exposing more highly erodible sandy soils and slopes to construction, heavy rains, and developing small lots sizes would likely impact the river by adding sediment loads, increasing phosphorus loading, and destroying habitat used by wildlife, waterfowl, and fish. The DNR's Division of Fish and Wildlife states that increased development would negatively affect wildlife by increasing habitat fragmentation adjacent to the river corridor, reducing native vegetation, and increasing the amount of perimeter fencing and other human disturbances throughout the seasons. The DNR's Division of Ecological and Water Resources states that higher density development would likely impact the native plant communities, and has the potential to increase the sediment entering the river, which could impact the state-listed mussel population and other aquatic organisms. Those comments also note that a population of Blanding's turtles, a state-listed threatened species, have been known to occupy the area, using riparian edges and sandy stream edges for hatchlings. Higher density development could impact the Blanding's turtle population in a number of ways, including exposure while crossing roads and a reduction of naturally vegetated corridors. Many comments from the general public echo these concerns about the effect of high-density development. Furthermore, the Rum River is a designated Outstanding Resource Value Water (ORVW), a special classification of waters under the Minnesota Pollution Control Agency's (MPCA) administrative rules. Minn. R. 7050.0335, subps. 1, 3. Additionally, available data through the MPCA's water quality site for the Rum River

section through St. Francis indicate a thriving community of fish and other aquatic organisms. *Rum River: Stanchfield Cr to Seelye Bk*, MINN. POLLUTION CONTROL AGENCY, <https://cf.pca.state.mn.us/water/watershedweb/wdip/waterunit.cfm?wid=07010207-504&tab=Assessments>.

84. The above-referenced comments support a finding that a public interest in high-density development does not outweigh the state's paramount interest in protecting designated wild, scenic, and recreational rivers.²

iii. Petitioner has not shown that the variance requests would not prejudice the substantial legal or economic rights of any person or entity.

85. Petitioner asserts that the variance requests would not prejudice the substantial legal or economic rights of any person or entity because the variances would enhance the development potential of all parcels in the rural district. Petition at 8. Petitioner asserts that this would benefit all property owners along the river without raising one above the other. *Id.*

86. Petitioner's assertions are belied by comments received from DNR's Division of Lands and Minerals. As these comments point out, the MRA authorized the DNR to acquire scenic easements from willing landowners in order to implement the wild, scenic, and recreational river system. Minn. Stat. § 103F.331. Pursuant to this authority, the DNR holds 134 Wild and Scenic River easements, which are monitored and enforced by DNR staff. DNR holds 53 easements on the Rum River.

87. The comments further indicate that in 1979, the DNR purchased a conservation easement from John and Doriene Croteau on behalf of the State of Minnesota. The easement property is approximately 12.27 acres and protects a peninsula with approximately ¼ mile of river frontage along the Rum River. The land protected by the easement is surrounded by the areas affected by the variance requests. The intent of the easement was to preserve the scenic qualities of the river, as indicated by the easement language stating: "Owners are eager to have the land preserved in its present wild condition."

88. As the comments indicate, granting the variance requests would diminish the legal and economic rights of the State of Minnesota as the holder of the conservation easement. The conservation values protected by the easement include protecting the scenic view shed of the river and the river shoreline and indirectly, bank stability, water quality, riparian health, and overall watershed health. These values would be significantly

² The Petitioner asserts that developing the area for primarily residential uses would be in the public interest because it would decrease the amount of potential negative effects that may occur as a result of the current agricultural uses of the land. Petition at 8. Petitioner does not specify or otherwise support its claim that agricultural uses are currently negatively affecting the area. Moreover, Petitioner does not otherwise explain how higher-density development would be an appropriate remedy given the above-referenced negative effects that accompany high-density developments, in addition to the legislature's identified public interest in preserving and protecting the designated areas.

diminished if the variances were granted to the approximately 500 surrounding acres. As the comments note, if this segment of river fell within the urban district at the time of designation, the State would likely not have made the initial and continued investments in the conservation easement to protect this area.

89. The public comments also indicate that requested variances may result in rezoning the land and raising property taxes to be commensurate with the developable value of the land. Commenters indicate that this would likely force many landowners to sell, due to unaffordable property taxes, despite their desire to continue to live in the area.

90. The proposed variance would prejudice the legal or economic rights of the State of Minnesota as an easement holder, and may prejudice the legal or economic rights of landowners within and around the affected area. As such, Petitioner has not satisfied the third prong of Minn. Stat. § 14.055, subd. 4.

b. Specific Assertions Relating to Individual Variance Requests.

91. Pages 8-10 of the Petition contain “variance request explanations” relating to specific variance requests. Petition at 8-10. Many of these arguments are a recitation of the general arguments identified above, and as such, the same reasoning applies. However, in an effort to address all of Petitioner’s assertions, DNR analyzes and responds to each explanation below.

i. Petitioner’s explanations relating to lot area.

92. Petitioner’s variance requests relating to lot area propose that the minimum lot area be 20,000 square feet for riparian lots, and that minimum lot areas for non-riparian lots be determined by the densities in the 2040 draft Future Land Use Map, which range from 3 to 12 dwelling units per acre. Petition at 8-9. Petitioner states that these requests are made in order to cluster development in a way that creates more compact development patterns, be better suited to take advantage of development potential, and to prevent development “leapfrogging.” *Id.* at 5, 8-9.

93. Petitioner has not demonstrated that the application of the rules relating to lot areas to the Petitioner would result in a hardship. As stated in Paragraphs 61-64, these variance requests are not reasonable because they represent a significant departure from the rules. Moreover, Petitioner has not demonstrated that the plight of the Petitioner is due to circumstances unique to the affect area not created by the Petitioner. The affected area was designated as a rural district with four-acre minimum lot sizes in 1978 and this density level has been recognized in Petitioner’s zoning ordinance since that time. As explained in the Petition, the recent plight of the Petitioner is a result of recent decisions made by Petition to expand its utility infrastructure in full knowledge of the development restrictions on the rural district, and not due to any circumstances unique to the affected area. *Id.* at 5-7. The density limits and physical character of the rural district land is not materially different from other rural district lands in other cities that operate sewer systems on the Rum River.

94. Petitioner is proposing to accommodate 37.5% to 79.2% of the total projected city-wide growth by 2040 in the affected area. *Id.* at 5. This is a disproportionate percentage of total anticipated future growth for one area of the city. The City of St. Francis contains a significant amount of low-density land. These areas could accommodate higher density and more growth instead of expecting the rural district to satisfy the brunt of the Petitioner's growth areas. As explained above, the Council has indicated that it would allow Petitioner to request a reduced population forecast change and to "net out" the minimum net density calculations for the Rural Center part of the city to account for the rural district designation.

95. Petitioner's concerns that preserved natural areas or low-density areas would require development to leap frog is not unique to the affected area. Anoka County is characterized by large areas of wetlands requiring development to leapfrog. The Twin Cities Metropolitan region is an attractive area because large protected natural resource areas and low-density areas are integrated into the development pattern, providing recreational and scenic opportunities within close proximity to many metro area residents.

96. Additionally, for the same reasons discussed in Paragraphs 81-90, Petitioner has not demonstrated that the variances from the rules governing minimum lot sizes would be consistent with the public interest or would not prejudice the substantial legal or economic rights of any person or entity.

97. For the reasons identified above, Petitioner's variance requests relating to lot area do not meet the criteria of Minn. Stat. § 14.055, subd. 4.

ii. Petitioner's explanations relating to lot width.

98. Petitioner requests that the minimum lot width for lots in the rural district be reduced from 250 feet to 70 feet. *Id.* at 9. Petitioner states that the request is intended to create usable lots with practical proportions and that lot widths of 70 feet are consistent with a logical development pattern. *Id.*

99. As stated in Paragraphs 61-64, these variance requests are not reasonable because they represent a significant departure from the rules. In fact, the proposed lot width of 70 feet is less than the 90 feet currently required in the urban district. As stated in Paragraphs 66-70, accommodating a growth pattern and desiring high-density development are not circumstances unique to the affected area, and as such the same reasoning applied in those paragraphs applies here. As such, Petitioner has not demonstrated that application of the rules governing lot width would result in a hardship.

100. Additionally, for the same reasons discussed in Paragraphs 81-90, Petitioner has not demonstrated that the variances from the rules governing lot width would be consistent with the public interest or would not prejudice the substantial legal or economic rights of any person or entity.

101. For the reasons identified above, Petitioner’s variance request relating to lot width does not meet the criteria of Minn. Stat. § 14.055, subd. 4.

iii. Petitioner’s explanations relating to the setback.

102. Petitioner requests that the 150-foot setback be reduced to 75 feet. Petitioner asserts that this variance is related to the other variances requested. *Id.* Petitioner asserts that a setback of 75 feet would allow much of the development to take place on top of the riverbank behind a ridge. *Id.* Petitioner asserts that most of the development would be hidden from view of the river at a distance of 75 feet because buildings would be no more than 35 feet tall. *Id.*

103. As stated in Paragraphs 61-64, these variance requests are not reasonable because they represent a significant departure from the rules. The explanations referred to here are similar to the explanations referenced above relating to the need for a variance from lot area and width. Again, these explanations were discussed in Paragraphs 66-70 and the same reasoning applies here. Accordingly, Petitioner has not demonstrated that application of the rules governing setback would result in a hardship.

104. Petitioner has not demonstrated that this variance would be consistent with the public interest. Petitioner asserts that because of the topography of the affected area, a 75-foot setback would result in much of the development occurring on top of the riverbank behind a ridge, and hidden from view. *Id.* at 9. DNR notes that it is true that “[b]ecause of the erosive nature of soils along much of the Rum River” structures are prohibited on slopes greater than 12 percent, Minn. R. 6105.1440, subp. 4(A), and must be setback 30 feet from a bluffline along a scenic river, Minn. R. 6105.0110, subp. 3(B)(2). It is also true that structure heights are limited to 35 feet. Minn. R. 6105.0110, subp. 3(D). However, DNR does not agree that these rules, combined with a reduced 75-foot setback, would result in much of the development occurring above the riverbank, behind a ridge, and hidden from view. The existing riverfront homes along River Bank Lane NW in St. Francis, shown in Figures 2-4 below, are generally setback 150 feet from the river and are located behind the top of a ridge.³ These homes, even at 150 feet, are still visible from the river.

Figure 2: Location of River Bank Lane NW in St. Francis

³ Figures 2-4, 6 come from publically available “Street View” images of the Rum River. Archive of Google Street View Image of Rum River captured April 2017, GOOGLE MAPS, <https://www.google.com/maps/@45.4094232,-93.3546385,3a,75y,280h,100t/data=!3m8!1e1!3m6!1sAF1QipMM0kyqVhjDoxLBT6f76wfxZAqA2IIGrY1sGd3T!2e10!3e11!6shttps:%2F%2Flh5.googleusercontent.com%2Fp%2FAF1QipMM0kyqVhjDoxLBT6f76wfxZAqA2IIGrY1sGd3T%3Dw203-h100-k-no-pi-8.131118-ya135.15344-ro1.7532183-fo100!7i7200!8i3600>.

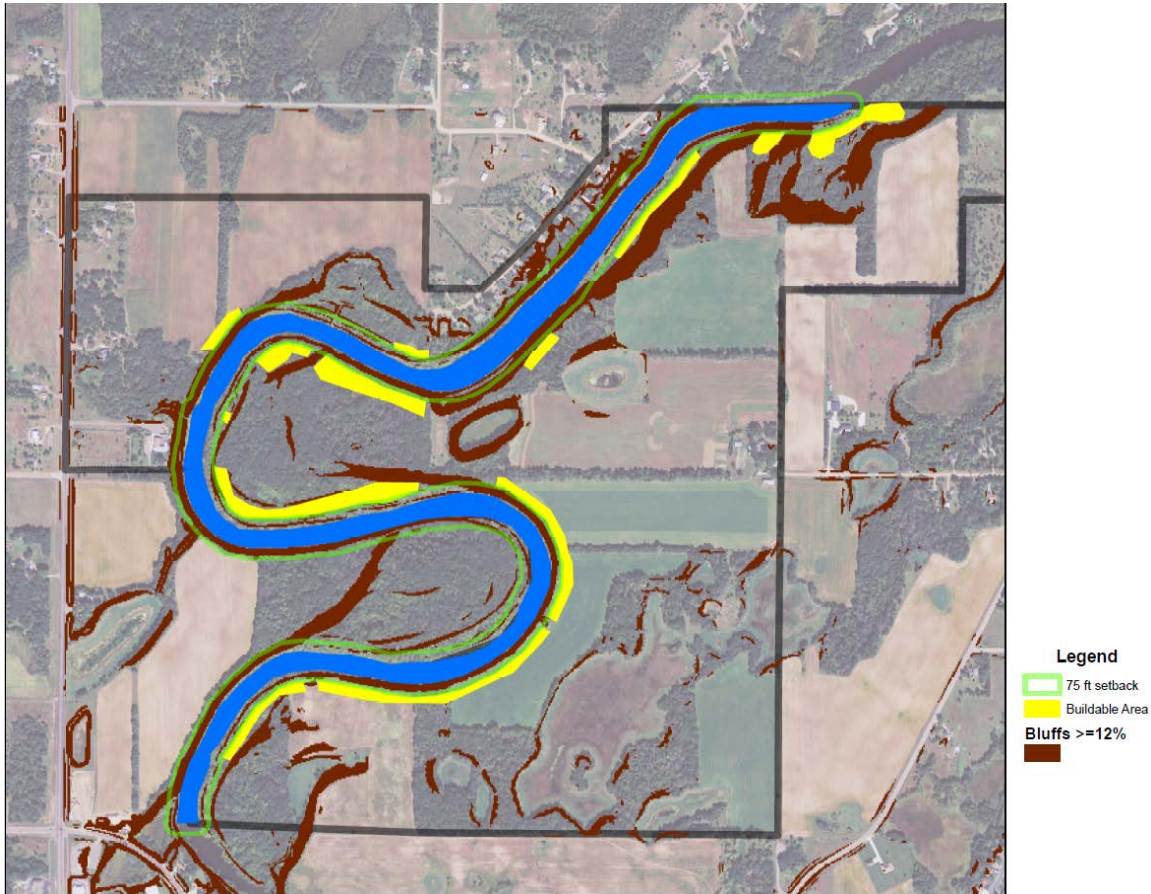


Figures 3-4: Homes on River Bank Lane NW as Viewed from River



Moreover, a review of the topography of the riparian area displayed in Map 10 of the Petition does not show, as Petitioner asserts, that much of the development would take place above the bluffline. Petition at 9, Map 10. As shown in the yellow area in Figure 5 below, the proposed reduction would leave several places where a structure could be placed just outside the 75-foot setback, but prior to the beginning of any 12% slope:

Figure 5: Buildable Area at a 75-foot Setback



The yellow area above makes up over 9,500 feet of shoreline, or 65% of the total 14,800 feet of undeveloped river frontage. This means that for the majority of the river frontage in the affected area—approximately 65% or over 9,500 feet—a structure could be placed right at the edge of 75 feet from the river, and not on top of a riverbank behind a ridge, as Petitioner claims. Accordingly, the proposed 75-foot structure setback, along with the proposed reduced lot size and width, would result in many homes that would be highly visible from the river. This would change the essential character of the locality and negatively affect the scenic quality of the riverfront when compared to the current standards. In contrast, Figure 6 below shows the river view across the river in the undeveloped rural area of the scenic district.

Figure 6: Undeveloped Land in Scenic/Rural District as Viewed from River



105. Additionally, the proposed variance would likely result in clearcutting vegetation to allow the permitted construction of a structure at 75 feet from the normal high water level. While Petitioner states that no grading would occur closer than 75 feet from the river, this seems improbable given that construction grading outward around a house foundation is necessary both to accommodate construction activity and to grade for drainage away from the structure. Petition at 10. Moreover, the proposed 75-foot setback conflicts with Petitioner’s own ordinance, which prohibits clearcutting within 150 feet of the normal high water mark. ST. FRANCIS, MINN., CODE OF ORDINANCES, ch. 10, § 82-7 (2019). This would result in significant degradation of the scenic qualities for which the river was designated.

106. Petitioner also proposes a 60-foot native buffer to be permanently protected as a condition of a variance approval. Petition at 10. While no such requirement exists in the wild, scenic, and recreational rules or ordinance, much of the shoreline in the affected area is heavily forested and the forested land extends well beyond 60 feet from the riverbank. There is currently 12,000 linear feet of undeveloped shoreline out of 14,800 feet of total shoreline in the affected area (81 % of the shoreline in the affected area) with more than a 60-foot vegetative buffer. Under the current ordinance and rules, clearcutting within 150 feet of the river is prohibited. Thus the Petitioner’s proposal would result in loss of vegetation and habitat that is important to the species in this area. Furthermore, the Petitioner’s proposal to prohibit clearcutting of trees over four inches in diameter within 150 feet of the river does not add any protection, and is in fact counter to its proposed variance for reduced setbacks to allow building sites 75 feet from the normal high water mark. Because the Petitioner’s definition of clearcutting means the removal of an entire stand of trees or similar vegetation, one could remove all trees over four inches in diameter except for one and not violate the clearcutting prohibition.

107. Additionally, for the same reasons discussed in Paragraphs 81-90, Petitioner has not demonstrated that the variances from the rules governing the setback would be consistent with the public interest or would not prejudice the substantial legal or economic rights of any person or entity.

108. For the reasons identified above, Petitioner's variance request relating to the setback rule does not meet the criteria of Minn. Stat. § 14.055, subd. 4.

iv. Petitioner's explanations relating to permitted uses.

109. Petitioner requests that attached housing products be included as a permitted use within the affected area. Petition at 9. Minn. R. 6105.0100, subp. 3 limits development in the rural district to single family residential uses. Petitioner appears to request this variance in order to allow multi-family or attached housing units within the affected area, subject to the amount of impervious surface and density shown on the 2040 draft Future Land Use Map. *Id.* Petitioner asserts that this variance is requested because the majority of the city's population growth is projected to take place in the affected areas and it is important that the types of development meet the diverse housing needs of future residents. *Id.*

110. Petitioner's arguments relating to planned growth in the rural area have already been discussed above. For the reasons identified in Paragraphs 66-70, Petitioner has not demonstrated that the application of Minn. R. 6105.0100, subp. 3 would result in a hardship. DNR notes that it appears the vast majority of current housing types within the city are single family and Petitioner has guided a large amount of land in the current urban district and elsewhere in the city to single-family housing. Some current land guided for multifamily housing also remains vacant.

111. Petitioner has not demonstrated that this variance would be consistent with the public interest. Because the rules for wild, scenic, and recreational rivers do not regulate impervious surface, one of the main purposes of limiting housing types to single family is to preserve a sufficient level of pervious or green surface consistent with the rural and scenic qualities important to the character of the designated area. Petitioner proposes a maximum impervious coverage amount of 30% for development in the affected area. *Id.* at 11. Because Petitioner currently allows up to 50% impervious surface in multi-family zoning districts, it is not clear if Petitioner intends to allow up to 50% coverage on proposed multi-family development or limit that to 30%. In either case, such coverages constitute a significant amount. For example, a 10,000 square foot impervious surface cover of a four-acre lot, a considerable amount, would still only equate to 6% coverage, whereas the proposal would allow for up to 30% or 50%. By comparison, the rules governing shoreland areas that do not fall within the wild, scenic, and recreational river designations only allow impervious surface coverages of 25% of the lot area. Minn. R. 6120.3300, subp. 11(B)(1). As such, a 30% or 50% impervious coverage limit would be a significant increase over the amount that is under the current ordinance and would be inconsistent with the public interest in preserving and protecting the river.

112. Additionally, for the same reasons discussed in Paragraphs 81-90, Petitioner has not demonstrated that the variances from the rules governing permitted uses would be consistent with the public interest or would not prejudice the substantial legal or economic rights of any person or entity.

113. For the reasons identified above, Petitioner’s variance request relating to permitted uses does not meet the criteria of Minn. Stat. § 14.055, subd. 4.

v. Petitioner’s explanations relating to Planned Unit Development.

114. Petitioner requests a variance from Minn. R. 6105.0140, subp. 3 to allow the affected area to be processed as a Planned Unit Development. Petition at 10. Petitioner asserts that the PUD process would allow the Petitioner to apply standards unique to specific development sites that would preserve the river’s scenic qualities while assisting developments to meet market demand and achieve reasonable density. *Id.*

115. Petitioner’s arguments for substituting the Planned Cluster Development (PCD) criteria of Minn. R. 6105.0140, subp. 3 for its local PUD criteria are again related to population growth and allowing higher-density development. These arguments have been discussed above. For the reasons identified in Paragraphs 66-70, Petitioner has not demonstrated circumstances unique to the affected area, and thus has not shown that the application of Minn. R. 6105.0140, subp. 3 would result in a hardship.

116. Petitioner has not demonstrated that the variance would be consistent with the public interest. Petitioner’s PUD provisions, like many PUD provisions found in local ordinances, are aimed at providing flexibility for a city and developer to negotiate a development. The main function of these provisions is to proscribe review and approval procedures. They do not provide specific standards for resource protection. By contrast, the PCD provisions of Minn. R. 6105.0140, subp. 3 provide flexibility in clustering developments and lot sizes, so long as the clustering “provides a means of preserving agricultural land, open space, woods, scenic views and other features of the natural environment.” As such, Petitioner has not demonstrated how the variance—which would substitute a process that contemplates resource protection for one that does not—is consistent with the public interest in preserving and protecting the river.

117. Additionally, for the same reasons discussed in Paragraphs 81-90, Petitioner has not demonstrated that the variances from the rules governing PCDs would be consistent with the public interest or would not prejudice the substantial legal or economic rights of any person or entity.

118. For the reasons identified above, Petitioner’s variance request relating to PUD processing does not meet the criteria of Minn. Stat. § 14.055, subd. 4.

VI. CONCLUSION.

1. As set forth in the Paragraphs above, Petitioner has failed to show that application of the rules to the Petitioner would result in a hardship or injustice;


2. As set forth in the Paragraphs above, Petitioner has failed to show that the requested variances from the rules would be consistent with the public interest; and

3. As set forth in the Paragraphs above, Petitioner has failed to show that the requested variances from the rules would not prejudice the substantial legal or economic rights of any person or entity.

NOW THEREFORE:

Pursuant to Minnesota Statute section 14.055, subd. 4, Petitioner's requests for a discretionary variances to certain rules within Chapter 6105 are hereby DENIED.

Dated: May 17, 2019



Steve Colvin
Division Director
Ecological and Water Resources
Department of Natural Resources

STATE OF MINNESOTA)

) ss.

COUNTY OF RAMSEY)

Signed or attested before me this 17th day of May, 2019 by



Notary Public

