



## MINNESOTA ENVIRONMENTAL QUALITY BOARD

520 Lafayette Road  
St. Paul, MN 55155-4194

Phone: 651-757-2873  
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[www.eqb.state.mn.us](http://www.eqb.state.mn.us)

Wednesday, March 20, 2013

**Meeting Location: MPCA Board Room**

**St. Paul, Minnesota**

**1:00 p.m. – 4:00 p.m.**

### AGENDA

- I. \*Adoption of Consent Agenda  
Proposed Agenda for March 20, 2013, Board Meeting  
February 20, 2013, Meeting Minutes
- II. Introductions
- III. Chair's Report
- IV. Executive Director's Report
- V. \*\*473H Eminent Domain Decision Item
- VI. \*\*Fillmore-Houston-Winona County Request for Re-Designation of RGU for Environmental Review
- VII. Silica Sand Report Discussion Item
- VIII. Adjourn

Note: Items on the agenda are preliminary until the agenda is approved by the board.

This agenda and schedule may be made available in other formats, such as Braille, large type or audiotape, upon request. People with disabilities should contact Elizabeth Tegdesch, Board Administrator, as soon as possible to request an accommodation (e.g., sign language interpreter) to participate in these meetings.

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\* Items requiring discussion may be removed from the Consent Agenda

\*\*Denotes a decision item





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Wednesday, March 20, 2013

**Meeting Location: MPCA Board Room**

**St. Paul, Minnesota  
1:00 p.m. – 4:00 p.m.**

### ANNOTATED AGENDA

#### General

This month's meeting will take place in the MPCA Board Room at 520 Lafayette Road in St. Paul. The meeting will begin at 1:00 p.m. Staff will be available for briefing and questions at 12:30 p.m.

#### I. \*Adoption of Consent Agenda

Proposed Agenda for, March 20, 2013, Board Meeting  
February 20, 2013, Meeting Minutes

#### II. Introductions

#### III. Chair's Report

#### IV. Executive Director's Report

#### V. \*\*473H Eminent Domain Item

**Presenter:** Jeff Smyser  
EQB Staff, (651)757-2279

#### Materials enclosed:

- Findings of Fact, Conclusions, and Order
- 2030 Regional framework planning areas
- Dakota County, MN, 2030 Future Land Use
- Vermillion Township – Future Land Use Map
- Site map, Werner Properties
- Hampton substation/Metropolitan Agricultural Preserves
- Vermillion Township meeting minutes, February 19, 2013
- MN Department of Agriculture letter, February 20, 2013
- Metropolitan Council letter, February 19, 2013
- Minnesota Statutes Chapter 473H
- Xcel NSP Notice of Intent

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\* Items requiring discussion may be removed from the Consent Agenda

\*\*Denotes Decision Item

**Issue before the Board:**

Whether or not a proposed eminent domain action might have an unreasonable effect on agriculture and agricultural resources.

**Background:**

Minnesota Statute 473H created the Metropolitan Agricultural Preserves Program to protect agricultural lands in the metropolitan area. Land enrolled in the program can only be taxed at agricultural rates and is protected from assessments that often are applied to property for infrastructure projects. To be removed from the program, the property owner must file a notice and then wait eight years. The statute is included in the packet as an attachment.

If an eminent domain action is proposed for ten acres or more of land that is enrolled in the program, Minn. Stat. 473H.15 requires that the agency taking the action must file a notification with the EQB. To summarize the statute, the EQB, in consultation with affected units of government, must review the proposed action to determine the effect on the preservation and enhancement of agriculture and agricultural resources within the preserves and the relationship to local and regional comprehensive plans (473H.15, Subd. 3). If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on an agricultural preserve or preserves, the EQB shall issue an order within the 60-day period for the party to desist from such action for an additional 60-day period (Subd. 4). During the additional 60-day period, the Environmental Quality Board must hold a public hearing concerning the proposed action (Subd. 5). The Board has the authority to suspend the eminent domain action for up to one year if it determines that the action is contrary to the statute and there are feasible and prudent alternatives which have less negative impact on the agricultural preserves (Subd. 9). The statute does not define or provide guidance for deciding what is “an unreasonable effect”.

Northern States Power (Xcel Energy) has filed a notification regarding a proposed eminent domain action in Vermillion Township in Dakota County. They intend to acquire 15 acres for the Hampton electrical substation that is part of the CapX transmission line.

**Discussion:**

The 15 acres to be acquired through eminent domain is part of property currently within the Metropolitan Agricultural Preserves Program. The owner of this parcel owns four parcels that total approximately 240 acres. A great amount of the surrounding land also is included in the Metropolitan Agricultural Preserves Program. Vermillion Township’s 2030 Comprehensive Plan, adopted October 2010, includes land use data indicating that 86% (18,881 acres) of the township is guided for Agriculture land use.

The CapX project underwent review by the Department of Commerce, including an Environmental Impact Statement. The route permit was granted in September 2010 by the Minnesota Public Utilities Commission. In response to public comments, particularly comments from the land owner, the size of the Hampton substation site was reduced to 15 acres. In February 2012 the permit with that and other amendments was approved. The permit amendment notes that the “existing route permit includes conditions to ensure the line is

constructed in a safe, reliable manner and that impacts are minimized or mitigated.” NSP states in its Notice of Intent that it is acquiring the minimum acreage necessary for the substation and that locating the substation along the property boundary minimizes the impact.

The Findings and Conclusions result in an Order that no action need be taken by the Board.

**VI. \*\*Fillmore-Houston-Winona County Request for Re-Designation of RGU for Environmental Review**

**Presenter:** Bob Patton  
EQB, 651-201-6226

**Materials enclosed:**

- Draft Findings of Fact, Conclusions of Law and Order
- Sample Resolution to the Minnesota Environmental Quality Board
- Minnesota Sands Briefing Memo, dated March 20, 2013
- Land Stewardship Project Letter, dated February 25, 2013
- Fillmore County Letter, dated February 26, 2013
- Kelly Stange Letter, dated March 4, 2013
- David Williams Letter, dated March 4, 2013
- Houston County Letter, dated March 5, 2013

**Issue before the Board:**

Whether to designate a state agency as Responsible Governmental Unit (RGU) for silica sand mines proposed by Minnesota Sands LLC in Fillmore, Houston, and Winona Counties.

**Background:**

Minnesota Sands, LLC, is proposing silica sand mines in three counties: Fillmore, Houston, and Winona. According to staff of the three counties, 11 mines are proposed:

- Fillmore: Boyum, Dabelstein, Kesler, and Wadewitz mines
- Houston: Erickson, Tostenson, Olson, Chapel, and Johnson mines
- Winona,: Dabelstein and Yoder mines

EAWs have been completed for the Dabelstein and Yoder mines in Winona County.

In accordance with the Minnesota environmental review rules, Fillmore, Houston, and Winona Counties are RGUs for the proposed mines in their respective counties. As of writing, the EQB has received requests for reassignment of the RGU from Fillmore and Houston Counties. In addition, EQB staff has learned from Winona County that the County Board has voted to send a similar letter to Fillmore County with caveats pertaining to consultation with local officials on the scoping process and how local issues will be addressed.

The EQB'S authority to designate a different RGU is contained in Minn. R. 4410.0500, Subp. 6:

Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

**Discussion:**

EQB staff's analysis examined:

- The nature of the Minnesota Sands silica mines projects as related to the applicability of the environmental review rules; and
- The question of expertise as required by Minn. R. 4410.0500, Subp. 6.

Definition of the project (see Findings 8-19 in the Draft Findings, Conclusions, and Order)

Regarding the applicability of the Minnesota environmental review rules to the Minnesota Sands silica mine projects, EQB staff found that:

1. Minnesota Sands LLC is the proposer as defined in the rules;
2. The projects proposed by Minnesota Sands are phased actions as defined in the rules;
3. As phased actions, all the individual silica sand mines proposed by Minnesota Sands in the three counties must be considered in total in the environmental review; and
4. The related actions EIS provision of the environmental review rules (Minn. R. 4410.2000, Subp. 5. See Finding 17) is applicable to the Minnesota Sands projects, having the implication that the projects can be reviewed in a more effective and efficient manner through a single EIS.

The implication of the above findings of staff is that, regardless of the commendable willingness of the project proposer to conduct an EIS for the multiple sites, environmental review of all the Fillmore, Houston, and Winona sites, when considered in total, is mandatory.

Expertise (see Findings 20-38 in the Draft FCO)

EQB staff is of the opinion that generally local government units are the proper RGU for nonmetallic mineral mining, including silica sand mining, as supported by the mandatory EAW and EIS categories. However, EQB staff finds that there are special circumstances in the case of these multiple projects in multiple jurisdictions. It is reasonable that staffs of the counties find themselves without sufficient expertise or experience to deal with multiple sites in multiple counties. State agency experience in dealing with such a situation is also limited. However, the MPCA prepared an EIS for a multi-site, multi-county livestock facility in 2003. (Hancock Pro Pork). Additionally, the understanding of and experience with the environmental review rules and conduct of environmental review generally among EQB staff and environmental review staff of member agencies would be helpful for the complexities of multi-site, multi-jurisdictional review.

The environmental review of silica sand mining, and particularly the review of associated operations (such as processing and transportation) and cumulative effects, is complex, but not by itself beyond the capabilities and expertise of local government RGUs. State-level expertise is available to support local government RGUs for particular issue areas, such as air, water, or transportation impacts and for environmental review generally. However, because of the multiple-site nature of this set of projects, the level of complexity is increased, and re-designation of RGU status to the State appears to be reasonable.

In regard to which state agency should assume RGU status for these projects, the MPCA or the DNR are among the most likely candidates. However, EQB staff is of the opinion that no one environmental issue of silica sand mining and associated operations and facilities is predominant. Because EQB's mission is multi-agency and multi-topical, and because the EQB brings together the expertise of multiple agencies, EQB staff's opinion is that the EQB itself is the most appropriate RGU.

**Staff Recommendation:**

EQB staff recommends that the EQB adopt the sample resolution approving and adopting the findings of fact, conclusions of law, and order, designating the Environmental Quality Board as the responsible governmental unit (RGU) for silica sand mines proposed by Minnesota Sands LLC in Fillmore Houston and Winona counties, and authorizing the chair to sign the findings, conclusions, and order.

**VII. Silica Sand Report Discussion Item**

**Presenter:** Jeff Smyser  
EQB Staff, (651)757-2279

**Materials enclosed:**

- Final Silica Sand Report, dated March 20, 2013

**Issue before the Board:**

Discuss finalized draft of the Silica Sand Report.

**Background:**

In 2012 the Environmental Quality Board received a petition supporting the preparation of a Generic Environmental Impact Statement (GEIS) to analyze the potential environmental effects of the silica sand industry in Minnesota. At the Environmental Quality Board meeting in October 2012, the Board requested that state agency staff look at the issues related to the silica sand mining industry and prepare information on what is known and what is not known. A preliminary working draft report was provided to board members at the January meeting.

**Discussion:**

With extensive assistance from several member agencies, staff has completed the report. The final report was distributed with the board packet.

The report provides a summary of information relevant to the questions at hand. It does not pretend to be encyclopedic. The report does not advocate a particular perspective on the silica sand issues: it is not pro- or anti-silica sand mining.

The preparation of a GEIS remains an option. In fact, several bills are being considered by the 2013 Legislature. It seems likely that even in its draft form, report did help inform the bill drafters. The intent of the report is to provide a basis for further research, whether that occurs through a GEIS or through other means.

## **VIII. Adjourn**

**MINNESOTA ENVIRONMENTAL QUALITY BOARD  
MEETING MINUTES**

**Tuesday, February 20, 2013  
MPCA Room Board Room, 520 Lafayette Road, St. Paul**

**EQB Members Present:** Dave Frederickson, Brian Napstad, John Saxhaug, Erik Tomlinson, Mike Rothman, John Linc Stine, Ed Ehlinger, Kate Knuth, Barb Naramore (for Tom Landwehr), Kristin Duncanson

**EQB Members Absent:** Julie Goehring, Spencer Cronk, Katie Clark Sieben, Tom Landwehr, Charlie Zelle

**Staff Present:** Bob Patton, Kate Frantz, Jeff Smyser (EQB), Leah Hedman (AG), Beth Tegdesch (MPCA for EQB)

Chair Dave Frederickson called the meeting to order at 1:10 p.m.

**I. Adoption of Consent Agenda and Minutes**

A motion to adopt the Consent Agenda and approve the January 16, 2013, meeting minutes was made, seconded, and carried unanimously.

**II. Introductions**

Welcome to Assistant Commissioner Barb Naramore, representing the Department of Natural Resources. Members of the EQB and those in attendance introduced themselves.

**III. Chair's Report**

The Joint Hearing of the House and Senate Committee on the Environment met yesterday. Senator Marty chaired the hearing. It was an overflow crowd. Commissioner Stine, and Frederickson, along with MnDOT, Dept. of Health, and DNR were there to testify; EQB led off with a testimony basically giving them a timeline of what we had done and the engagement the EQB had with the issue of frac sand mining. Because we were close to the time the Legislature would convene, the Governor was interested in making sure all parties were engaged and that the Legislature would have the opportunity to lead on this also. There were 41 testifiers; about a little over half were able to have their opinions and thoughts heard, both from an industry perspective and from a citizen perspective.

Thank you to EQB and agency staff for preparing the documents on silica sand mining.

**IV. Executive Director's Report**

- Executive Director Bob Patton brought up the fact that the Environmental Quality Board is required by rule to elect a new vice-chair in February.
- EQB Board Chair, Dave Frederickson, opened up nominations for vice-chair of the EQB. Brian Napstad is the current vice-chair, and was nominated for a second term for vice-chair of the EQB; there were no other nominations. Mr. Frederickson asked to cast a unanimous ballot in favor of Mr. Napstad; Commissioner Ehlinger seconded, motion carries. Congratulations to Mr. Napstad on a second term as the vice-chair of the EQB.

**V. Update on Minnesota Environmental Congress**

The completed Citizen Forums and the plans for the Environmental Congress (Congress) event were presented. These plans are satisfying Part Four of Executive Order 11-32, dated November 16, 2011.

Presenter: Ellen Anderson, Senior Advisor to the Governor

Ellen introduced Helene Johnson, from GTS Education Events; Helene will be the event planner for the Environmental Congress.

The desired outcomes the Congress is working towards are:

- a. long term goals are to help Minnesota achieve a long term vision for the environment
- b. shorter term goals are to narrow down a prioritized list of action items that citizen leaders recommend to the EQB

The Congress will be held March 15<sup>th</sup> from 8:00 am-5:00 pm at the Ramada Inn in Bloomington, the former Thunderbird Hotel. Invitations were sent, mostly via e-mail, to over 400 people; a broad cross-section of experts, community leaders, and stakeholders were invited; leaders from environmental, conservation, and agricultural organizations, chambers of commerce, scientists and other experts, representatives from all levels of government, tribal leaders, as well as leaders from the business, student, and faith communities will be invited to attend. In addition, interested members of the public will be welcome to register as space allows. Registration will open the first week of March. The goal is 550 attendees.

The budget was discussed. John Linc Stine, Commissioner of the PCA, made a motion to fund the Environmental Congress with a budget up to \$70,000 total with equal shares provided by MnDOT, DNR, PCA, Dept. of Admin, Dept. of Commerce, Dept. of Health, and DEED at \$8,572 each, and the Board of Water and Soil Resources and the Dept. of Agriculture will fund up to \$5,000 each. Motion was made, seconded, and motion carries.

**VI. Living Word Bible Camp Decision Item**

Presenter: Bob Patton

The EQB has received three requests to designate a different responsible governmental unit (RGU) for the preparation of an Environmental Assessment Worksheet (EAW) for the Living Word Bible Camp on Deer Lake in Itasca County. The RGU is Itasca County. The three requests are from:

1. Itasca County; the Itasca County Board voted to refer the Living Word Bible Camp EAW “to the Environmental Quality Board (EQB) for the selection of a Responsible Governmental Unit (RGU) in place of Itasca County such as the Minnesota Pollution Control Agency (MPCA) or such other appropriate entity as the EQB may appoint;”
2. Neighboring landowners, who requested the EQB designate MDNR as the new RGU for the proposed project; and
3. The project proposers, to “designate the government unit with the most authority and expertise, the MPCA, as the RGU.”

The parties in this matter, Itasca County, the neighboring landowners, and the proposer, and their council were fully informed of this proceeding and sent FOF in time to meet rule requirements; and have not had any communication back from any of the parties and have chosen not to attend this meeting.

The draft Findings of Fact, Conclusions, and Order are written in support of staff's recommendation to deny the requests to designate a different RGU. New findings would be required if the Board chooses to designate a different RGU.

This motion was a roll call vote; 8 votes in favor, 1 recusal; so moved, motion seconded, motion carries.

**RESOLUTION OF THE  
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

Decision Regarding the Possible Designation of Different Responsible Governmental Unit for Preparation of an Environmental Assessment Worksheet for Proposed Recreational Development in Shoreland (Living Word Bible Camp)

BE IT RESOLVED, that the Minnesota Environmental Quality Board denies requests for designating a new responsible governmental unit (RGU) for the environmental review of the proposed recreational development in shoreland (Living Word Bible Camp) in Itasca County, Minnesota; and

BE IT FURTHER RESOLVED, that David J. Frederickson, Chair of the Board, is authorized to sign Findings of Fact, Conclusions and Order.

**VII. 473H Eminent Domain Discussion**

Presenter: Jeff Smyser

The issue before the Board is whether or not a proposed eminent domain action might have an unreasonable effect on agriculture and agricultural resources.

This is a discussion item. Staff is asking for input from the Board. Jeff will give a full report before the Board at the March 20 meeting.

An attorney representing Xcel Energy made a brief comment and was available to answer any questions and give an overview to the Board.

**IX. Adjourn**



**STATE OF MINNESOTA  
ENVIRONMENTAL QUALITY BOARD**

In the Matter of the Notice of Intent to Terminate Enrollment Status in the Metropolitan Agricultural Preserves for Certain Lands in Vermillion Township, Dakota County; by Northern State Power (Xcel Energy) for the Purpose of an Electrical Substation Site

FINDINGS OF FACT,  
CONCLUSIONS AND  
ORDER

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The above-captioned matter came before the Minnesota Environmental Quality Board (EQB) at a regular meeting on March 20, 2013, pursuant to a Notice of Intent by Northern State Power (Xcel Energy) to cause early termination in enrollment in the Metropolitan Agricultural Preserves of fifteen acres in Vermillion Township by eminent domain action, for the purpose of securing a site for a proposed electrical substation.

Based upon all of the proceedings herein, the Minnesota Environmental Quality Board makes the following:

**FINDINGS OF FACT**

1. Northern States Power (Xcel Energy) proposes to take land by eminent domain action in Vermillion Township, Dakota County. The land it proposes to take is enrolled as Agricultural Preserve in the Metropolitan Agricultural Preserves under Minnesota Statutes Chapter 473H. The purpose of taking is to terminate the land's Agricultural Preserve status so that Northern States Power (Xcel Energy) can construct an electrical substation on this land.
2. The EQB received a Notice of Intent from Northern States Power (Xcel Energy) on February 7, 2013, notifying the EQB of the intent of Northern States Power (Xcel Energy) to take by eminent domain a 15 acre parcel of land in Vermillion Township, Dakota County. The 15.1 acres of land are enrolled in the Metropolitan Agricultural Preserves.
3. This program of Metropolitan Agricultural Preserves under Minnesota Statutes Chapter 473H gives the landowner certain tax relief and protections in exchange for using the land for agricultural purposes through enrollment of the land into an Agricultural Preserves covenant. Enrollment is for at least eight years and continues indefinitely, or until eight years after the landowner applies for termination of the Agricultural Preserves status.
4. Minnesota Statutes, Section 473H.15, reads:

#### 473H.15 EMINENT DOMAIN ACTIONS.

Subdivision 1. Follow procedures here. Any agency of the state, any public benefit corporation, any local, county or regional unit of government, or any other entity possessing powers of eminent domain under chapter 117, shall follow the procedures contained in this section before (1) acquiring any land or easement having a gross area over ten acres in size within agricultural preserves; or (2) advancing a grant, loan, interest subsidy or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve nonfarm structures within agricultural preserves.

Subd. 2. Notice of intent to EQB. At least 60 days prior to an action described in subdivision 1, notice of intent shall be filed with the Environmental Quality Board containing information and in the manner and form required by the Environmental Quality Board. The notice of intent shall contain a report justifying the proposed action, including an evaluation of alternatives which would not require acquisition within agricultural preserves.

Subd. 3. EQB review. The Environmental Quality Board, in consultation with affected units of government, shall review the proposed action to determine the effect of the action on the preservation and enhancement of agriculture and agricultural resources within the preserves and the relationship to local and regional comprehensive plans.

Subd. 4. EQB order. If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on an agricultural preserve or preserves, the Environmental Quality Board shall issue an order within the 60-day period for the party to desist from such action for an additional 60-day period.

Subd. 5. Hearing. During the additional 60-day period, the Environmental Quality Board shall hold a public hearing concerning the proposed action at a place within the affected preserve or otherwise easily accessible to the preserve upon notice in a newspaper having a general circulation within the area of the preserves, and individual notice, in writing, to the municipalities whose territory encompasses the preserves, the agency, corporation or government proposing to take the action, and any public agency having the power of review of or approval of the action, in a manner conducive to the wide dissemination of the findings to the public.

Subd. 6. Joint review. The review process required in this section may be conducted jointly with any other environmental impact review conducted by the Environmental Quality Board.

Subd. 7. AG may sue to enjoin. The Environmental Quality Board may request the attorney general to bring an action to enjoin any agency, corporation or government from violating the provisions of this section.

Subd. 8. Does not apply to emergency. This section shall not apply to an emergency project which is immediately necessary for the protection of life and property.

Subd. 9. EQB suspension. The Environmental Quality Board shall be empowered to suspend any eminent domain action for up to one year which it determines to be contrary to the purposes of sections 473H.02 to 473H.17 and for which it determines there are feasible and prudent alternatives which have less negative impact on the agricultural preserves.

Subd. 10. When agricultural preserve ends. The agricultural preserve designation and all benefits and limitations accruing through sections 473H.02 to 473H.17 for the preserve and the restrictive covenant for that portion of the preserve taken, shall cease on the date the final certificate is filed with the court administrator of district court in accordance with section 117.205.

Minn. Stat. Section 473H.15 (2011)

5. The EQB finds that an entity with eminent domain authority given to it under Minnesota Statutes chapter 117 may terminate Agricultural Preserves status of land that it desires to acquire by following the procedures set out in Minnesota Statutes 473H.15.
6. The EQB finds that the proposed action is subject to EQB review under Minnesota Statutes section 473H.15 of the Metropolitan Agricultural Preserves as it affects a parcel greater than 10 acres in size.
7. The EQB finds that Northern States Power (Xcel Energy) properly filed with the EQB a notice of intent to exercise its eminent domain authority on land in Vermillion Township, Dakota County in accordance with Minnesota Statutes section 473H.15, subdivision 2.
8. The EQB finds that the EQB has a duty under Chapter 473H.15, subdivision 3, to review the proposed action to determine the effect of the action on the preservation and enhancement of agriculture and agricultural resources within the preserves and the relationship to local and regional comprehensive plans.
9. The EQB finds that the EQB is empowered to suspend any eminent domain action for up to one year which it determines to be contrary to the purposes of sections 473H.02 to 473H.17 and for which it determines there are feasible and prudent alternatives which have less negative impact on agricultural preserves.

10. The EQB finds that the Notice of Intent and the included report show that:
- a. 15.01 acres of a 214 acre parcel are requested to be removed;
  - b. all acreage is in cropland;
  - c. Northern States Power (Xcel Energy) received comments from Dakota County on the county's comprehensive plan during routing meetings for the project held on January 16, 2008 and September 22, 2008; and
  - d. the purpose of Northern States Power (Xcel Energy) in securing this site for an electrical station is supported by Dakota County.
11. The EQB finds that the proposed use of this property, as it comes under the Metropolitan Agricultural Preserves, for agriculturally-related production of a value-added agricultural product does not have an unreasonable effect on the preservation and enhancement of agriculture and agricultural resources and the relationship to local and regional comprehensive plans.
12. EQB finds that the Notice of Intent contains a report justifying the proposed action; and there are no feasible and prudent alternatives which have less negative impact on the agricultural preserves.

Based on the foregoing Findings of Fact, the Minnesota Environmental Quality Board makes the following:

#### **CONCLUSIONS OF LAW**

1. Any of the foregoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.
2. The EQB has jurisdiction over the subject matter of this proceeding pursuant to Minnesota Statutes chapter 473H
3. The EQB concludes, based upon examination of the Notice of Intent and the report contained therein establishes that the action is consistent with the aims of the Metropolitan Agricultural Preserves.
4. The EQB concludes it has no need to take further action.

Based on the Findings of Fact, Conclusions and the entire record of this proceeding, the Minnesota Environmental Quality Board hereby makes the following:

## ORDER

In the matter of the Notice of Intent to terminate enrollment status in the Metropolitan Agricultural Preserves for 15.01 acres of land in Vermillion Township, Dakota County as a site for an electrical substation, the EQB hereby affirms no action need be taken in this matter.

Approved and adopted this 20th day of March, 2013.

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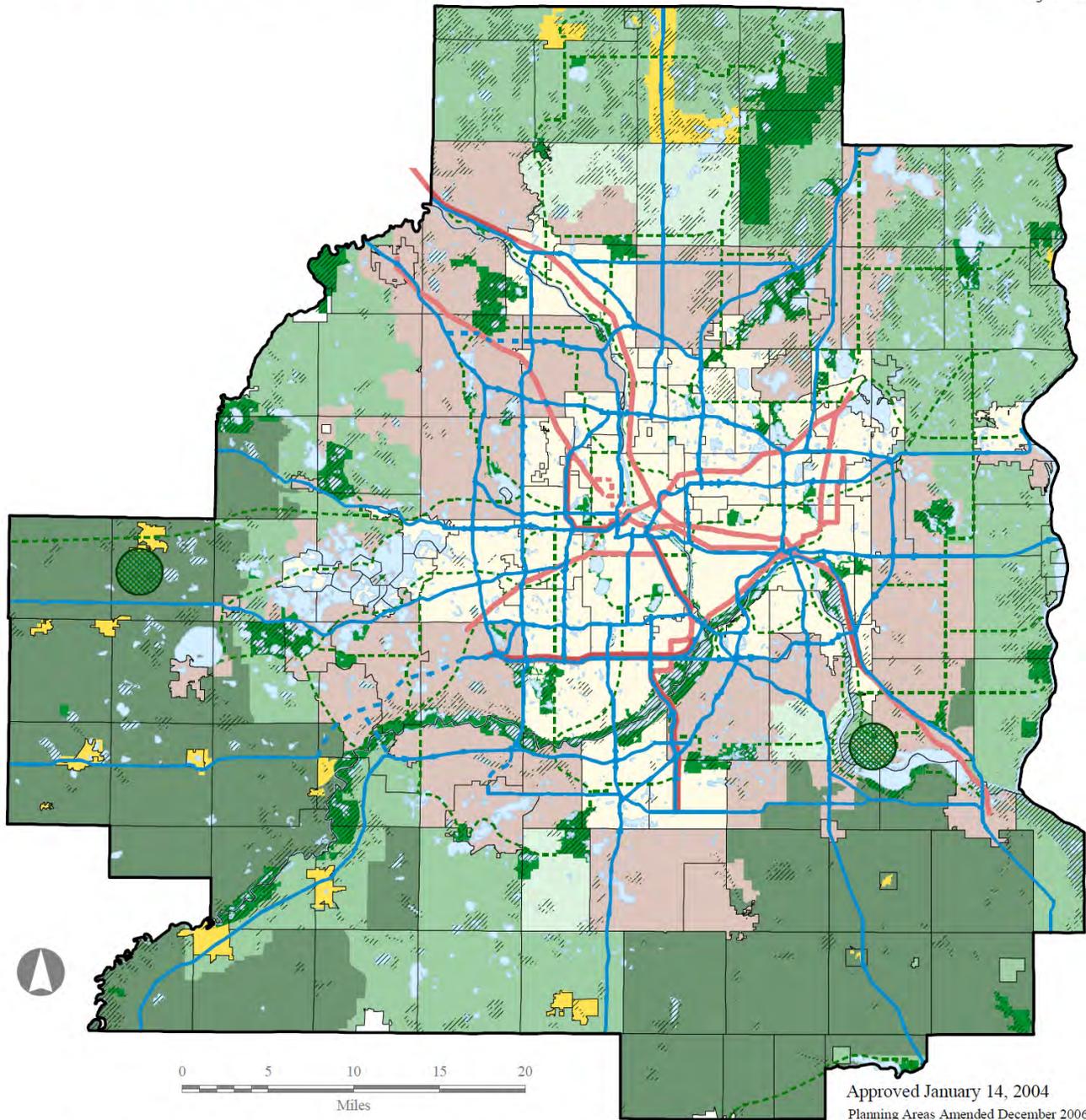
David J. Frederickson, Chair  
Minnesota Environmental Quality Board

DRAFT



# 2030 Regional framework planning areas

Figure 4.2.7



Approved January 14, 2004  
 Planning Areas Amended December 2006

NOTE: Please refer to the Comprehensive Plans Composite map or the Regional Systems maps for the most recent information. These maps are available at the Metropolitan Council Data Center (651) 602-1140.

Geographic Planning Areas		Additional Information	
<b>Urban Planning Areas</b>	<b>Rural Planning Areas</b>	Regional Natural Resource Areas (includes Terrestrial and Wetland Areas) SOURCE: Metro DNR in coordination with the Metropolitan Council	Regional Trail
Developing Area	Rural Center	Regional Park	Transit 2025 Corridor
Developed Area	Agricultural	Proposed Regional Park	Principal Arterial
	Diversified Rural		Open Water
	Rural Residential		



# Dakota County, MN

## Figure 6

### 2030 Future Land Use

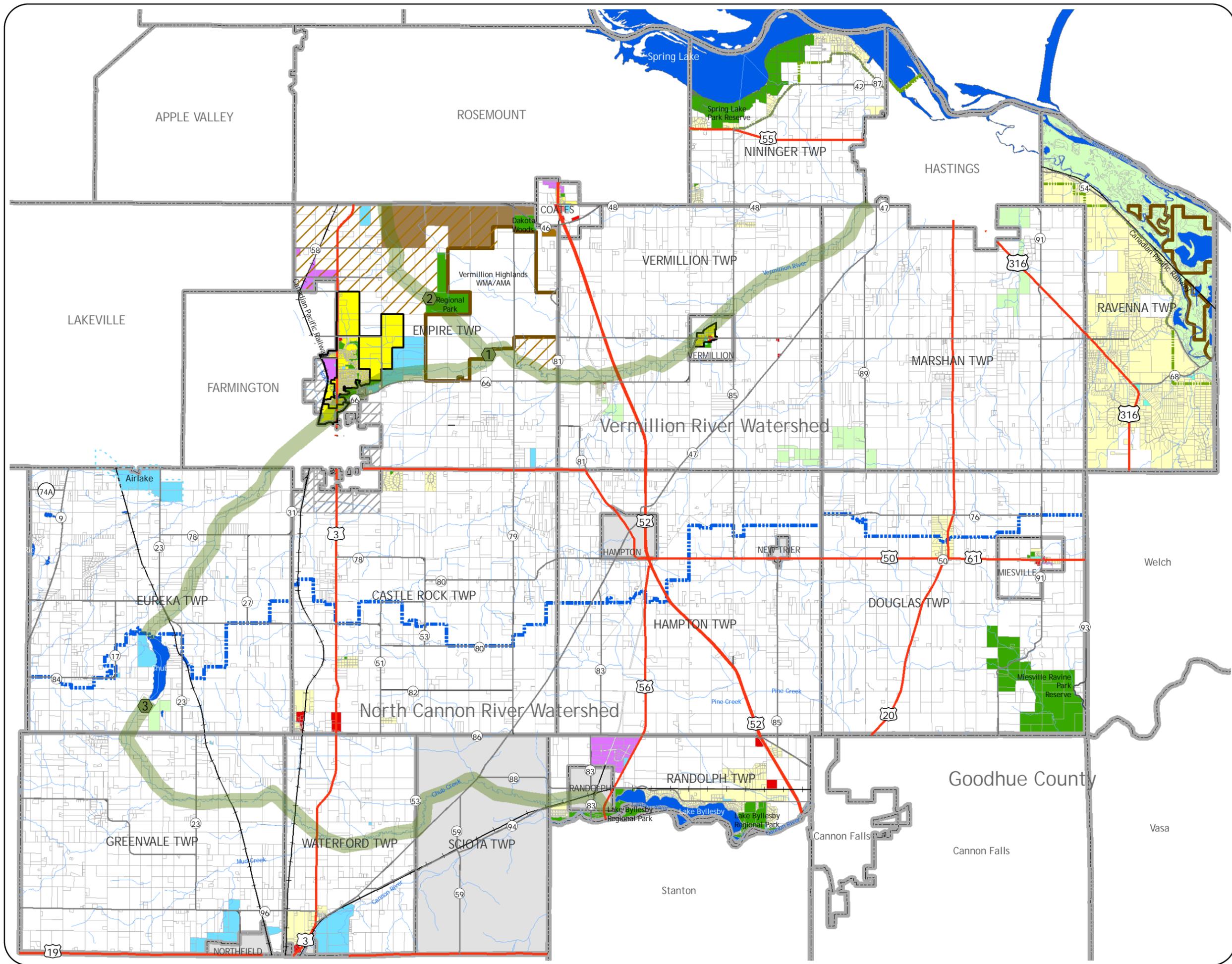
#### Land Use Category

- Agriculture
- Rural Residential
- Low Density/Single Family Residential
- Medium Density/Multiple Residential
- Industrial
- Commercial
- Public/Institutional
- Public Park, Recreation and Open Space
- UMORE (Univ. of MN)
- Conservancy
- Mining Overlay Area (Empire Twp)
- Orderly Annexation Area
- 2030 MUSA
- MNRRRA Boundary
- Wildlife Management Area (WMA)
- Watershed Boundary
- Streams
- Lakes

- #### Regional Trail Search Corridor
- 1 Vermillion River Greenway
  - 2 Vermillion Highlands Greenway
  - 3 Chub Creek Greenway



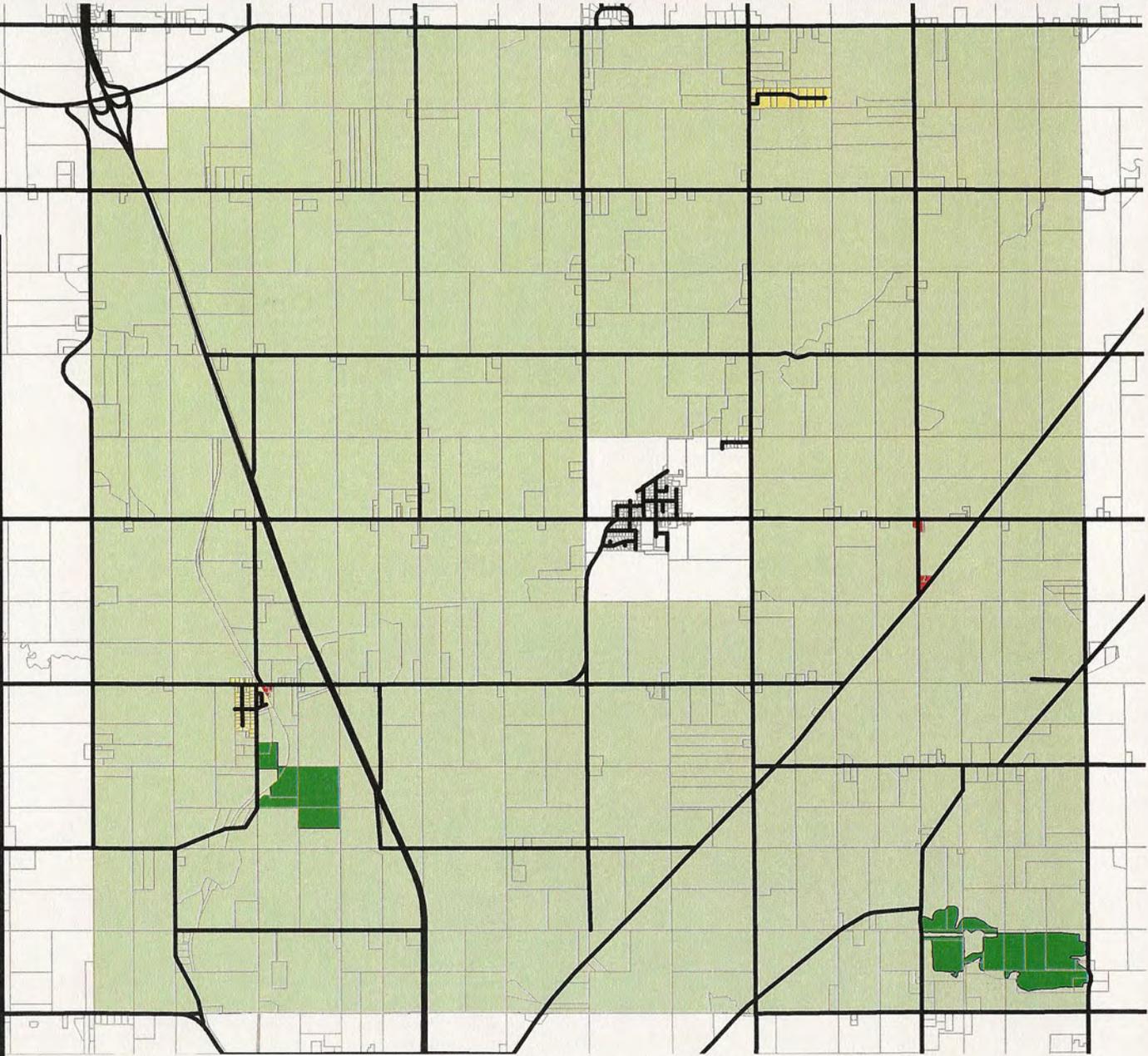
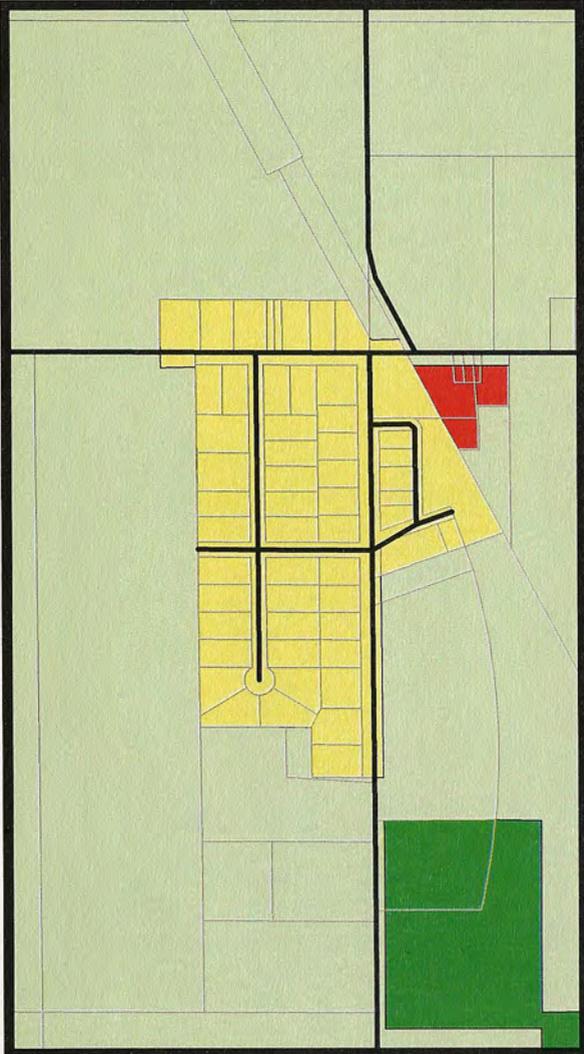
Source: Dakota County GIS April 2009



# Vermillion TWP - Future Land Use Map

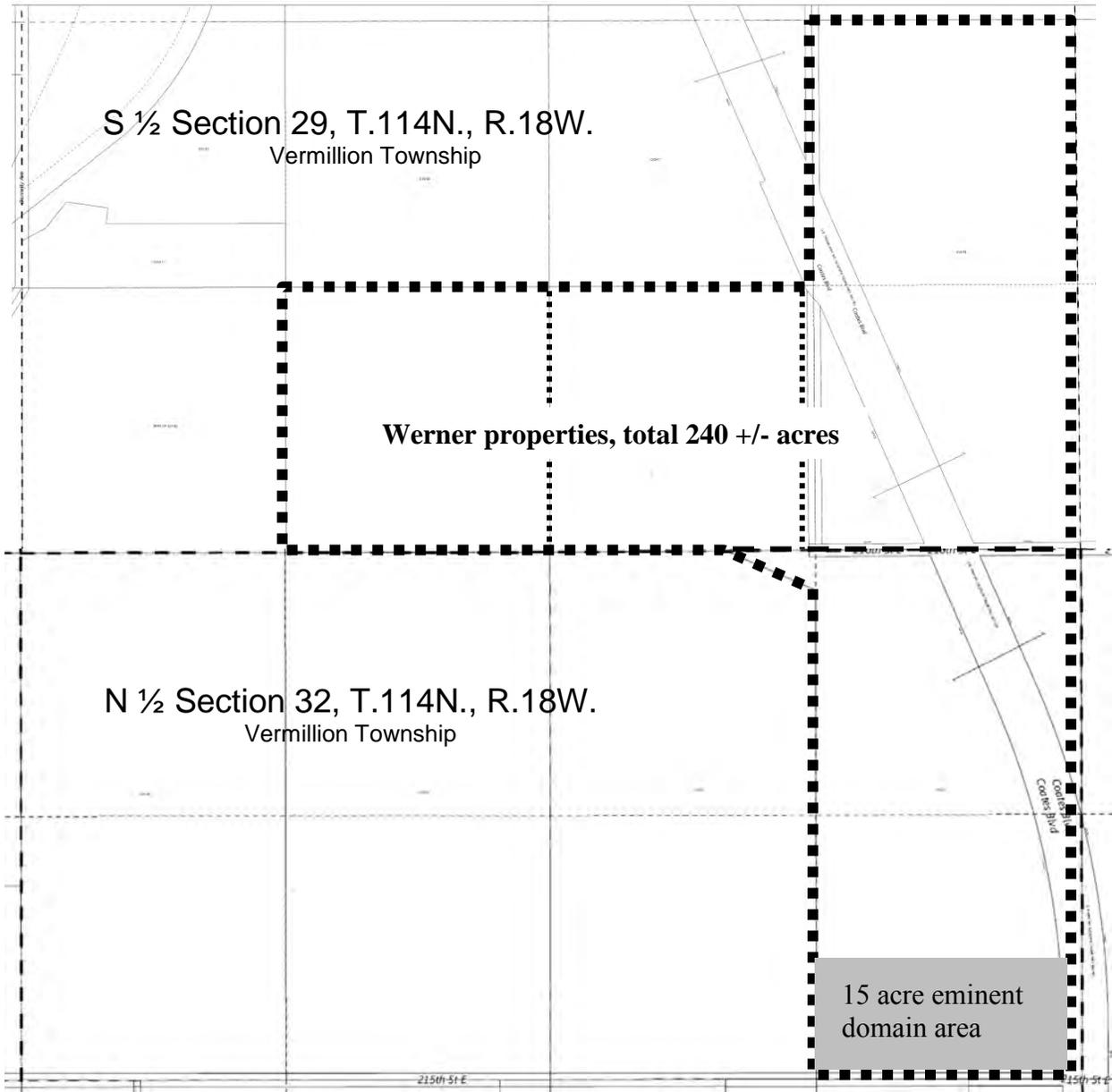
- R- Residential
- GB - General Business
- CON - Conservation
- AG - Agricultural

Zoom Area



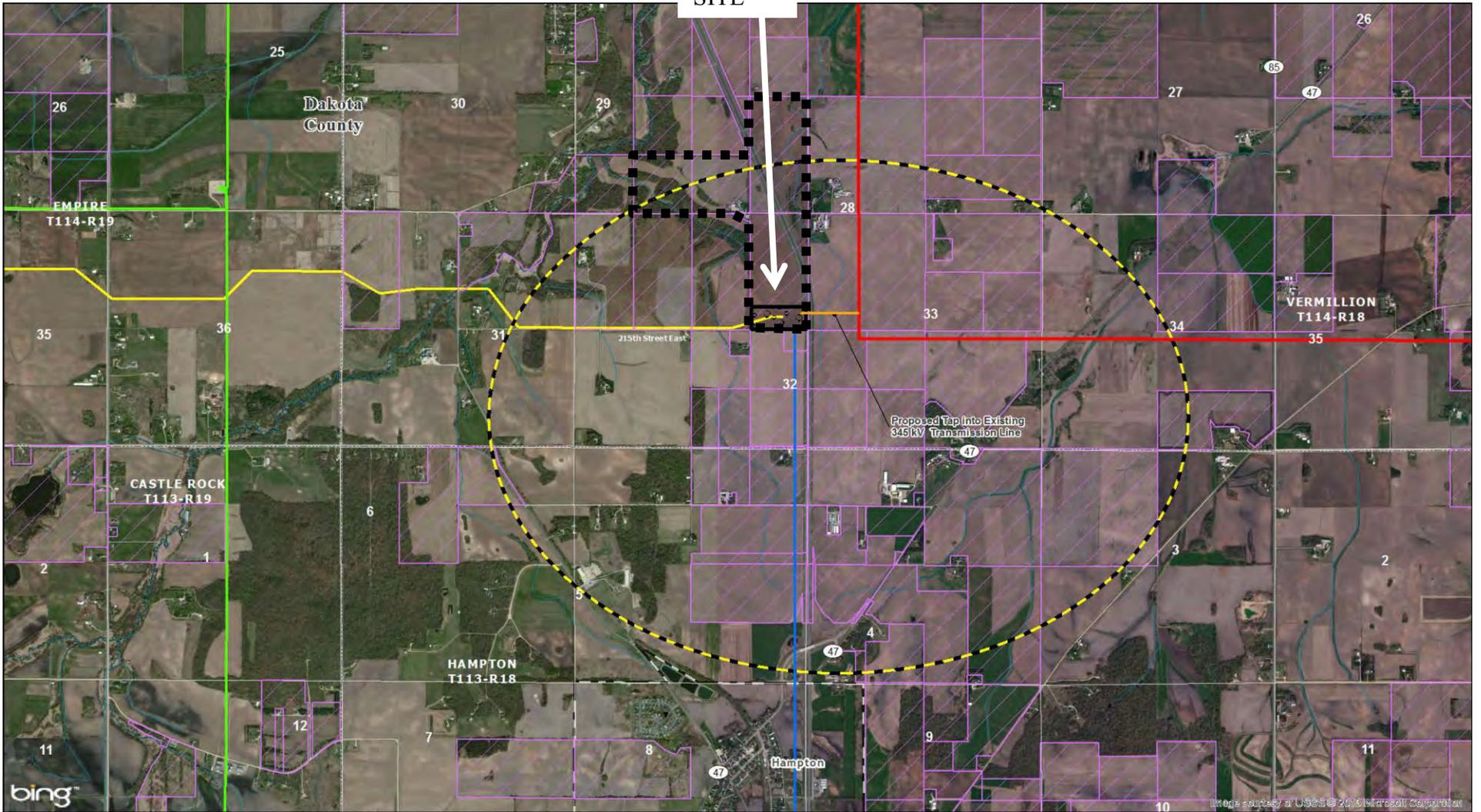
0 0.5 1 2 3 4 Miles June 2008

# Site Map, Werner Properties

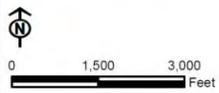




SITE



**CapX2020**  
Delivering electricity you can rely on



- Brookings - Hampton 345 kV Line
- Designated Hampton Substation Site
- Preferred Hampton Substation Area
- Metropolitan Agricultural Preserve
- City
- Township
- County
- Hampton - Rochester - LaCrosse 345 kV Line
- Existing 115 kV Transmission Line
- Existing Prairie Island - Blue Lake 345 kV Line

**Hampton Substation/  
Metropolitan Agricultural Preserves**



# Vermillion Township

## Regular Meeting

### February 19, 2013

#### Opening

Chairman Bob Bohn opened the meeting with the Pledge of Allegiance at 7:30 p.m. In attendance were:

Supervisor Wally Stoffel  
Supervisor Chris Schaffer  
Clerk Maryann Stoffel  
Treasurer Ralph Stoffel  
Township Attorney Fluegel

Clerk Stoffel read the meeting minutes from the January 15, 2013 regular township meeting. Motion by Bob to accept the minutes. Seconded by Wally. Motion carried.

The Clerk presented the claims for payment. Motion by Chris to pay the claims as presented. Seconded by Wally. Motion carried.

#### Building Permits

*Siebenaler – single family home*

Jack and Sally Siebenaler requested to build a single family home at 21489 Lewiston Blvd. Motion by Chris to grant the permit. Seconded by Wally. Motion carried.

#### Old Business

*Mike Tix – vehicles*

This item was tabled until the next meeting. The Board directed the Clerk to send a notice to Mr. Tix to attend the next meeting in February.

*Joint Powers Agreement – Dakota County*

The Board had brief discussion regarding the pros and cons of a joint powers agreement with Dakota County for enforcement actions. The Board requested a copy of the agreement to review.

#### New Business

*Hampton Substation – Eminent Domain*

Attorney Fluegel reviewed the packet of information he had received regarding the Hampton Substation. The information received indicated that a portion of Mr. Jerry Werner's property was involved. Since this property is located in an Ag Preserves area the acquisition of this land would require an eminent domain action. There was no further discussion by the Board.

*Run for the Roses*

Mikayla Fischer addressed the Board regarding a 5K run that This Old Horse is sponsoring. Ms. Fischer indicated that she had already talked with Dakota County and they did not have any

Vermillion Township Regular Meeting

February 15, 2013

Page 2 of 2

issues with this proposal. The run would be taking place on May 4, 2013 and last approximately two hours. There would be less than 200 runners. The Board didn't have any issues.

**Updates**

Dakota County Deputy stopped by to hear concerns from the residents and to provide an update regarding community happenings.

The Clerk presented a new price list from Pine Bend Paving for gravel for 2013.

Attorney Fluegel indicated that the agreement with the renters at 5301 200<sup>th</sup> Street East had been signed and filed with the courts.

Motion by Wally at 8:36 pm to close this meeting. Second by Chris. Motion carried.

Respectfully submitted,

Maryann Stoffel  
Clerk, Vermillion Township

February 20, 2013

(651) 201-6369

Jeff Smyser, Principal Planner  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155-4194

RE: Notice of Intent to Acquire Land in Metropolitan Agricultural Preserve Pursuant to Minn. Stat. 473H.15

Dear Mr. Smyser:

The purpose of this memo is to provide the EQB with MDA staff's preliminary analysis of the proposed eminent domain action from an agricultural land preservation point of view.

MDA staff routinely reviews and occasionally comments on environmental review documents in regard to impacts of projects on agriculture and preservation of agricultural land. In many cases, the impact of a project extends beyond the project boundaries. Projects may have an adverse effect on surrounding agricultural use due to factors such as a project inducing further development (e.g., a highway interchange), creation of conflict between uses (e.g., between new residents of a housing development and surrounding livestock operations), introduction of traffic that conflicts with slow-moving agricultural equipment on rural roads, or extension of utilities (which may induce further development).

The analysis of the "effect of the action on the preservation and enhancement of agriculture and agricultural resources within the preserves" is similar. Preliminarily, other than the taking of land for the substation itself, MDA staff does not find factors that would have an adverse effect on surrounding agricultural use.

Please let me know if you have questions or need more information.

Sincerely,



Becky Balk  
Agricultural Land Use Planner

Cc: Commissioner Frederickson  
Bob Patton  
Victoria Dupre, Metropolitan Council

RECEIVED  
FEB 20 2013

 **Metropolitan Council**

February 19, 2013

Jeff Smyser, AICP, Principal Planner  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55355

RE: Northern States Power (NSP) Company's Notice of Intent Pursuant to Minnesota Stat.473.15, subd. 2 for the Hampton Substation Site  
Review File No. 21082-1  
Metropolitan Council District 16 (Wendy Wulff)

Dear Mr. Smyser:

The Metropolitan Council received a Notice of Intent from Northern States Power Company on February 7, 2013 that describes NSP's intent to acquire 15.01 acres of land enrolled in the Metropolitan Agricultural Preserves Program through eminent domain.

Minnesota Statutes section 473H.15 requires the Environmental Quality Board (EQB) to consult with affected units of government to determine the effect of the action on the preservation and enhancement of agriculture and agricultural resources within the preserves, and the relationship to local and regional comprehensive plans.

The Metropolitan Council's regional plan, the *2030 Regional Development Framework*, designates the area around the proposed substation site as agricultural. The Vermillion Township comprehensive plan guides the land use of the substation site as agricultural, and zones the site as agricultural. The Vermillion Town Board certifies land as eligible for enrollment in the agricultural preserves program.

Council staff finds that the Notice of Intent includes an evaluation of alternatives that would not involve agricultural preserve lands. This evaluation and an agricultural impact mitigation plan are included in the Notice of Intent.

Thank you for the opportunity to review the project.

Sincerely,



LisaBeth Barajas, Manager  
Local Planning Assistance

cc: Becky Balk, Minnesota Department of Agriculture  
Wendy Wulff, Metropolitan Council District 16

N:\CommDev\LPA\Ag Preserve Status Reports and Related\2013 EQB Notice of Intent Xcel Energy Hampton Substation.docx

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## CHAPTER 473H

### METROPOLITAN AGRICULTURAL PRESERVES

473H.01	CITATION; POLICY; PURPOSE.	473H.10	AD VALOREM PROPERTY TAXES.
473H.02	DEFINITIONS.	473H.11	LIMITATION ON CERTAIN PUBLIC PROJECTS.
473H.03	REQUIRED SIZE OF PARCEL; EXCEPTIONS.	473H.12	PROTECTION FOR NORMAL FARM PRACTICES.
473H.04	AUTHORITY MUST CERTIFY ELIGIBLE PRESERVE LANDS.	473H.14	ANNEXATION PROCEEDINGS.
473H.05	APPLICATION; COVENANT AGREEMENT.	473H.15	EMINENT DOMAIN ACTIONS.
473H.06	NOTIFICATION.	473H.16	CONSERVATION.
473H.07	COMMENCEMENT OF PRESERVE.	473H.17	LAND USE.
473H.08	DURATION.	473H.18	TRANSFER FROM AGRICULTURAL PROPERTY TAX LAW TREATMENT.
473H.09	EARLY TERMINATION.		

#### 473H.01 CITATION; POLICY; PURPOSE.

Subdivision 1. **Citation.** Sections 473H.02 to 473H.17 may be cited as the "Metropolitan Agricultural Preserves Act."

Subd. 2. **Policy; purpose.** It is the policy of the state to encourage the use and improvement of its agricultural lands for the production of food and other agricultural products. It is the purpose of sections 473H.02 to 473H.17 to provide an orderly means by which lands in the metropolitan area designated for long-term agricultural use through the local and regional planning processes will be taxed in an equitable manner reflecting the long-term singular use of the property, protected from unreasonably restrictive local and state regulation of normal farm practices, protected from indiscriminate and disruptive taking of farmlands through eminent domain actions, protected from the imposition of unnecessary special assessments, and given such additional protection and benefits as are needed to maintain viable productive farm operations in the metropolitan area.

**History:** 1980 c 566 s 1

#### 473H.02 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of sections 473H.02 to 473H.17 the terms defined in this section shall have the meanings given them.

Subd. 2. **Agricultural preserve or preserve.** "Agricultural preserve" or "preserve" means a land area created and restricted according to section 473H.05 to remain in agricultural use.

Subd. 3. **Agricultural use.** "Agricultural use" means the production for sale of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, or bees and apiary products. Wetlands, pasture and woodlands accompanying land in agricultural use shall be deemed to be in agricultural use.

Subd. 4. **Authority.** "Authority" means the unit of government exercising planning and zoning authority for the land specified in an application as provided under section 473H.05 and pursuant to sections 394.21 to 394.37, 462.351 to 462.364, or 366.10 to 366.19. Where both a county and a township have adopted zoning regulations, the authority shall be the unit of government designated to prepare a comprehensive plan pursuant to section 473.861, subdivision 2.

Subd. 5. **Certified long-term agricultural land.** "Certified long-term agricultural land" means land certified pursuant to section 473H.04 as eligible for designation as agricultural preserves.

Subd. 6. **Covenant.** "Covenant" means a restrictive covenant initiated by the owner and contained in the application provided for in section 473H.05 whereby the owner places the limitations on specified land and receives the protections and benefits contained in sections 473H.02 to 473H.17.

Subd. 7. **Long-term agricultural land.** "Long-term agricultural land" means land in the metropolitan area designated for agricultural use in local or county comprehensive plans adopted and reviewed pursuant to sections 473.175, and 473.851 to 473.871, and which has been zoned specifically for agricultural use permitting a maximum residential density of not more than one unit per quarter/quarter.

Subd. 8. **Metropolitan area.** "Metropolitan area" has the meaning given it in section 473.121, subdivision 2.

Subd. 9. **Owner.** "Owner" means a resident of the United States owning land specified in an application pursuant to section 473H.05, and includes an individual, legal guardian or family farm corporation as defined in section 500.24, having a joint or common interest in the land. Where land is subject to a contract for deed, owner means the vendor in agreement with the vendee.

Subd. 10. **Quarter/quarter.** "Quarter/quarter" means one quarter of one quarter of any section in the rectangular land survey system.

Subd. 11. [Repealed, 1999 c 11 art 1 s 72]

**History:** 1980 c 566 s 2; 1982 c 523 art 32 s 1,2; 1999 c 11 art 1 s 8

#### **473H.03 REQUIRED SIZE OF PARCEL; EXCEPTIONS.**

Subdivision 1. **40 acres or more.** Long-term agricultural land comprising 40 or more acres shall be eligible for designation as an agricultural preserve.

Subd. 2. **If noncontiguous.** Noncontiguous parcels may be included to achieve the minimum acreage requirement in subdivision 1, provided that each parcel is at least ten acres in size and provided that all separate parcels are farmed together as a unit.

Subd. 3. **35-acre exception.** The minimum acreage requirement in subdivision 1 may be reduced to 35 acres provided the land is a single quarter/quarter parcel and the amount less than 40 acres is due to a public road right-of-way or a perturbation in the rectangular survey system resulting in a quarter/quarter of less than 40 acres.

Subd. 4. **20-acre exception.** Contiguous long-term agricultural land comprising not less than 20 acres and surrounded by eligible land on not less than two sides shall be eligible for designation as an agricultural preserve provided the authority by resolution determines that: (i) the land area predominantly comprises Class I, II, III, or irrigated Class IV land according to the Land Capability Classification Systems of the Soil Conservation Service and the county soil survey; (ii) the land area is considered by the authority to be an essential part of the agricultural region; and (iii) the parcel was a parcel of record prior to January 1, 1980, or the land was an agricultural preserve prior to becoming a separate parcel of at least 20 acres.

Subd. 5. **Two or more authorities.** Contiguous long-term agricultural land meeting the total acreage requirements of this section but located in two or more authorities so that the

minimum acreage requirement is not met in one or more of the authorities shall be eligible by joint resolution of the affected authorities.

Subd. 6. **Owner's adjoining preserve parcel.** Contiguous long-term agricultural land not meeting the total acreage requirements of this section but under the same ownership as an agricultural preserve adjoining it on at least one side shall be eligible for designation as an agricultural preserve.

**History:** 1980 c 566 s 3; 1989 c 313 s 9

#### **473H.04 AUTHORITY MUST CERTIFY ELIGIBLE PRESERVE LANDS.**

Subdivision 1. **With maps; published notice.** Each authority in the metropolitan area having land classified agricultural pursuant to section 273.13 shall certify by resolution using appropriate maps which lands, if any, are eligible for designation as agricultural preserves. Maps shall be in sufficient detail to identify eligible lands by property boundaries. At least two weeks before the resolution is to be adopted, the authority shall publish notice of its intended action in a newspaper having a general circulation within the area of jurisdiction of the authority. No additional lands shall qualify for designation as agricultural preserves until the authority certifies qualification.

Subd. 2. **When eligibility ends.** Land shall cease to be eligible for designation as an agricultural preserve when the comprehensive plan and zoning for the land have been amended so that the land is no longer planned for long-term agricultural use and is no longer zoned for long-term agricultural use, evidenced by a maximum residential density permitting more than one unit per 40 acres. When changes have been made, the authority shall certify by resolution and appropriate maps which lands are no longer eligible. At least two weeks before the resolution is to be adopted, the authority shall publish a notice of its intended action in a newspaper having a general circulation within the area of jurisdiction of the authority.

Subd. 3. **Maps to Met Council.** The authority shall provide the Metropolitan Council with suitable maps showing any lands certified eligible pursuant to subdivision 1 or decertified pursuant to subdivision 2. The Metropolitan Council shall maintain maps of the metropolitan area showing all certified long-term agricultural lands.

**History:** 1980 c 566 s 4; 1982 c 523 art 32 s 3,4

#### **473H.05 APPLICATION; COVENANT AGREEMENT.**

Subdivision 1. **Before June 1 for next year's taxes.** An owner or owners of certified long-term agricultural land may apply to the authority with jurisdiction over the land on forms provided by the commissioner of agriculture for the creation of an agricultural preserve at any time. Land for which application is received prior to June 1 of any year shall be assessed pursuant to section 473H.10 for taxes payable in the following year. Land for which application is received on or after June 1 of any year shall be assessed pursuant to section 473H.10 in the following year. The application shall be executed and acknowledged in the manner required by law to execute and acknowledge a deed and shall contain at least the following information and such other information as the commissioner deems necessary:

(a) Legal description of the area proposed to be designated and parcel identification numbers if so designated by the county auditor and the certificate of title number if the land is registered;

(b) Name and address of owner;

(c) An affidavit by the authority evidencing that the land is certified long-term agricultural land at the date of application;

(d) A statement by the owner covenanting that the land shall be kept in agricultural use, and shall be used in accordance with the provisions of sections 473H.02 to 473H.17 which exist on the date of application and providing that the restrictive covenant shall be binding on the owner or the owner's successor or assignee, and shall run with the land.

Subd. 2. **May be fee.** The authority may require an application fee, not to exceed \$50, to defray administrative costs.

Subd. 3. [Repealed, 1999 c 11 art 1 s 72]

Subd. 4. **Reenrolling.** If an owner's property was initially granted agricultural preserve status under subdivision 1 but the owner filed an agricultural preserve termination notice on that property, the owner may reenroll the property in the program as provided in this subdivision. In lieu of the requirements in subdivision 1, the county may allow a property owner to reenroll by completing a one page form or affidavit, as prepared by the county. The county may require whatever information is deemed necessary, except that approval by the city or township, in which the property is located, shall be required on the form or affidavit.

The county may charge the property owner a reenrollment fee, not to exceed \$10, to defray any administrative cost.

Reenrolling property under this subdivision shall be allowed only if the same property owner or owners wish to reenroll the same property under the same conditions as was originally approved under subdivision 1.

**History:** 1980 c 566 s 5; 1982 c 523 art 32 s 5,6; 1986 c 444; 1994 c 587 art 5 s 24; 1999 c 11 art 1 s 9; 2010 c 389 art 1 s 24

#### **473H.06 NOTIFICATION.**

Subdivision 1. **Application.** Upon receipt of an application, the authority shall determine if all material required in section 473H.05 has been submitted and, if so, shall determine that the application is complete. When used in this chapter, the term "date of application" means the date the application is determined complete by the authority. Within five days of the date of application, the authority shall forward the completed and signed application to the county recorder, and copies to the county auditor, the county assessor, the Metropolitan Council, and the county soil and water conservation district.

Subd. 2. **Recording; memorialization.** The county recorder shall record the application containing the restrictive covenant and return it to the applicant. If the land is registered, the registrar of titles shall memorialize the application containing the restrictive covenant upon the certificate of title. The authority shall be notified by the recorder or registrar of titles that the application has been recorded or memorialized.

Subd. 3. **Taxes.** The county auditor, for taxes payable in the following year and thereafter for the duration of the preserve, shall determine local tax rates, assessments and taxes involving the preserve according to the provisions of section 473H.10.

Subd. 4. **Validation, assessment.** The county assessor, for taxes payable in the following calendar year and thereafter for the duration of the preserve, shall value and assess the agricultural preserve according to section 473H.10.

Subd. 5. **Maps; reports.** The Metropolitan Council shall maintain agricultural preserve maps, illustrating (a) certified long-term agricultural lands; and (b) lands covenanted as agricultural preserves. The council shall make yearly reports to the Department of Agriculture and such other agencies as the council deems appropriate.

Subd. 6. **Monitoring.** County auditors shall maintain records of the taxes assessed and paid on agricultural preserves in a manner prescribed by the commissioner of revenue for the orderly monitoring of the program.

Subd. 7. **Conservation problem statements.** The county soil and water conservation district may prepare an advisory statement of existing and potential conservation problems for the agricultural preserve land. The statement shall be forwarded to the owner of record and a copy of the statement shall be forwarded to the authority.

**History:** 1980 c 566 s 6; 1981 c 356 s 242,248; 1982 c 523 art 32 s 7-9; 1983 c 289 s 115 subd 1; 1987 c 312 art 1 s 26 subd 2; 1988 c 719 art 5 s 84; 1Sp1989 c 1 art 2 s 11; 1993 c 163 art 1 s 33; 1999 c 11 art 1 s 10,11

#### **473H.07 COMMENCEMENT OF PRESERVE.**

A land area shall be deemed an agricultural preserve and subject to all the benefits and restrictions of sections 473H.02 to 473H.17 commencing 30 days from the date of application.

**History:** 1980 c 566 s 7

#### **473H.08 DURATION.**

Subdivision 1. **Till expiration started.** Agricultural preserves shall continue until either the landowner or the authority initiates expiration as provided in this section.

Subd. 2. **Expiration by landowner.** A landowner may initiate expiration by notifying the authority on a form provided by the commissioner of agriculture. The notice shall describe the property for which expiration is desired and shall state the date of expiration which shall be at least eight years from the date of notice. The notice and expiration may be rescinded by the owner at any time during the first two years following notice.

Subd. 3. **Expiration by authority.** The authority may initiate expiration by notifying the landowner by registered letter on a form provided by the commissioner of agriculture, provided that before notification (i) the comprehensive plan and the zoning for the land have been officially amended so that the land is no longer planned for long-term agriculture and is no longer zoned for long-term agriculture, evidenced by a maximum residential density permitting more than one unit per quarter/quarter, and (ii) the authority has certified such changes pursuant to section 473H.04, subdivision 2. The notice shall describe the property for which expiration is desired and shall state the date of expiration which shall be at least eight years from the date of notice.

Subd. 4. **Notice to others.** Upon receipt of the notice provided in subdivision 2, or upon notice served by the authority as provided in subdivision 3, the authority shall forward the original notice to the county recorder for recording, or to the registrar of titles if the land is registered, and shall notify the county auditor, county assessor, the Metropolitan Council, and the county soil and water conservation district of the date of expiration. Designation as an agricultural preserve and all benefits and limitations accruing through sections 473H.02 to 473H.17 for the preserve shall cease on the date of expiration. The restrictive covenant contained in the application shall terminate on the date of expiration.

**History:** 1980 c 566 s 8; 1982 c 523 art 32 s 10; 1999 c 11 art 1 s 12

**473H.09 EARLY TERMINATION.**

Termination of an agricultural preserve earlier than a date derived through application of section 473H.08 may be permitted only in the event of a public emergency upon petition from the owner or authority to the governor. The determination of a public emergency shall be by the governor through executive order pursuant to sections 4.035 and 12.01 to 12.46. The executive order shall identify the preserve, the reasons requiring the action and the date of termination.

**History:** 1980 c 566 s 9

**473H.10 AD VALOREM PROPERTY TAXES.**

Subdivision 1. **Valuation, assessment.** Real property within an agricultural preserve shall be valued and assessed pursuant to chapter 273, except as provided in this section.

Subd. 2. **No nonagricultural factors.** All land classified agricultural and in agricultural use, exclusive of buildings, shall be valued solely with reference to its appropriate agricultural classification and value, notwithstanding sections 272.03, subdivision 8, and 273.11. In determining the value for ad valorem tax purposes the assessor shall not consider any added values resulting from nonagricultural factors.

Subd. 3. **Computation of tax; state reimbursement.** (a) After having determined the market value of all land valued according to subdivision 2, the assessor shall compute the net tax capacity of those properties by applying the appropriate class rates. When computing the rate of tax pursuant to section 275.08, the county auditor shall include the net tax capacity of land as provided in this paragraph.

(b) The county auditor shall compute the tax on lands valued according to subdivision 2 and nonresidential buildings by multiplying the net tax capacity times the total local tax rate for all purposes as provided in paragraph (a).

(c) The county auditor shall then compute the tax on lands valued according to subdivision 2 and nonresidential buildings by multiplying the net tax capacity times the total local tax rate for all purposes as provided in paragraph (a), subtracting \$1.50 per acre of land in the preserve.

(d) The county auditor shall then compute the maximum ad valorem property tax on lands valued according to subdivision 2 and nonresidential buildings by multiplying the net tax capacity times 105 percent of the previous year's statewide average local tax rate levied on property located within townships for all purposes.

(e) The tax due and payable by the owner of preserve land valued according to subdivision 2 and nonresidential buildings will be the amount determined in paragraph (c) or (d), whichever is less. The state shall reimburse the taxing jurisdictions for the amount of the difference between the net tax determined under this paragraph and the gross tax in paragraph (b). Residential buildings shall continue to be valued and classified according to the provisions of sections 273.11 and 273.13, as they would be in the absence of this section, and the tax on those buildings shall not be subject to the limitation contained in this paragraph.

The county may transfer money from the county conservation account created in section 40A.152 to the county revenue fund to reimburse the fund for the tax lost as a result of this subdivision or to pay taxing jurisdictions within the county for the tax lost. The county auditor shall certify to the commissioner of revenue on or before June 1 the total amount of tax lost to the county and taxing jurisdictions located within the county as a result of this subdivision and the extent that the tax lost exceeds funds available in the county conservation account. Payment

shall be made by the state on December 26 to each of the affected taxing jurisdictions, other than school districts, in the same proportion that the ad valorem tax is distributed if the county conservation account is insufficient to make the reimbursement. There is annually appropriated from the Minnesota conservation fund under section 40A.151 to the commissioner of revenue an amount sufficient to make the reimbursement provided in this subdivision. If the amount available in the Minnesota conservation fund is insufficient, the balance that is needed is appropriated from the general fund.

**History:** 1980 c 566 s 10; 1984 c 593 s 41; 1985 c 300 s 26; 1986 c 398 art 28 s 4; 1986 c 444; 1987 c 396 art 7 s 4; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1Sp1989 c 1 art 2 s 11; art 9 s 78; 1990 c 604 art 3 s 42; 1992 c 511 art 2 s 40; 1993 c 375 art 3 s 44

#### **473H.11 LIMITATION ON CERTAIN PUBLIC PROJECTS.**

Notwithstanding chapter 429, construction projects for public sanitary sewer systems and public water systems benefiting land or buildings in agricultural preserves shall be prohibited. New connections between land or buildings in agricultural preserves and sanitary sewers or water systems shall be prohibited. Public sanitary sewer systems, public storm water sewer systems, public water systems, public roads, and other public improvements built on, adjacent to, or in the vicinity of agricultural preserves after August 1, 1993, are deemed of no benefit to the land and buildings in agricultural preserves.

For purposes of this section, "public storm water sewer systems" means any wholly or partially piped system which is owned, operated, and maintained by the authority, that is designed to carry storm water runoff, surface water, or other drainage primarily for the benefit of land which is not in agricultural preserves.

**History:** 1980 c 566 s 11; 1993 c 141 s 1

#### **473H.12 PROTECTION FOR NORMAL FARM PRACTICES.**

Local governments and counties shall be prohibited from enacting or enforcing ordinances or regulations within an agricultural preserve which would, as adopted or applied, unreasonably restrict or regulate normal farm structures or farm practices in contravention of the purpose of sections 473H.02 to 473H.17 unless the restriction or regulation bears a direct relationship to an immediate and substantial threat to the public health and safety. This section shall apply to the operation of farm vehicles and machinery in the planting, maintenance and harvesting of crops and in the care and feeding of farm animals, the type of farming, and the design of farm structures, exclusive of residences.

**History:** 1980 c 566 s 12; 1993 c 141 s 2

**473H.13** [Repealed, 1982 c 512 s 17]

#### **473H.14 ANNEXATION PROCEEDINGS.**

Agricultural preserve land within a township shall not be annexed to a municipality pursuant to chapter 414, without a specific finding by the chief administrative law judge of the state Office of Administrative Hearings that either (a) the expiration period as provided for in section 473H.08 has begun; (b) the township due to size, tax base, population or other relevant factors would not be able to provide normal governmental functions and services; or (c) the agricultural preserve would be completely surrounded by lands within a municipality.

This section shall not apply to annexation agreements approved under proceedings authorized by chapter 414 prior to creation of the preserve.

**History:** 1980 c 566 s 14; 1982 c 523 art 32 s 11; 2003 c 2 art 5 s 13; 2008 c 196 art 2 s 11

#### **473H.15 EMINENT DOMAIN ACTIONS.**

Subdivision 1. **Follow procedures here.** Any agency of the state, any public benefit corporation, any local, county or regional unit of government, or any other entity possessing powers of eminent domain under chapter 117, shall follow the procedures contained in this section before (1) acquiring any land or easement having a gross area over ten acres in size within agricultural preserves; or (2) advancing a grant, loan, interest subsidy or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve nonfarm structures within agricultural preserves.

Subd. 2. **Notice of intent to EQB.** At least 60 days prior to an action described in subdivision 1, notice of intent shall be filed with the Environmental Quality Board containing information and in the manner and form required by the Environmental Quality Board. The notice of intent shall contain a report justifying the proposed action, including an evaluation of alternatives which would not require acquisition within agricultural preserves.

Subd. 3. **EQB review.** The Environmental Quality Board, in consultation with affected units of government, shall review the proposed action to determine the effect of the action on the preservation and enhancement of agriculture and agricultural resources within the preserves and the relationship to local and regional comprehensive plans.

Subd. 4. **EQB order.** If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on an agricultural preserve or preserves, the Environmental Quality Board shall issue an order within the 60-day period for the party to desist from such action for an additional 60-day period.

Subd. 5. **Hearing.** During the additional 60-day period, the Environmental Quality Board shall hold a public hearing concerning the proposed action at a place within the affected preserve or otherwise easily accessible to the preserve upon notice in a newspaper having a general circulation within the area of the preserves, and individual notice, in writing, to the municipalities whose territory encompasses the preserves, the agency, corporation or government proposing to take the action, and any public agency having the power of review of or approval of the action, in a manner conducive to the wide dissemination of the findings to the public.

Subd. 6. **Joint review.** The review process required in this section may be conducted jointly with any other environmental impact review conducted by the Environmental Quality Board.

Subd. 7. **AG may sue to enjoin.** The Environmental Quality Board may request the attorney general to bring an action to enjoin any agency, corporation or government from violating the provisions of this section.

Subd. 8. **Does not apply to emergency.** This section shall not apply to an emergency project which is immediately necessary for the protection of life and property.

Subd. 9. **EQB suspension.** The Environmental Quality Board shall be empowered to suspend any eminent domain action for up to one year which it determines to be contrary to the purposes of sections 473H.02 to 473H.17 and for which it determines there are feasible and prudent alternatives which have less negative impact on the agricultural preserves.

Subd. 10. **When agricultural preserve ends.** The agricultural preserve designation and all benefits and limitations accruing through sections 473H.02 to 473H.17 for the preserve and the restrictive covenant for that portion of the preserve taken, shall cease on the date the final certificate is filed with the court administrator of district court in accordance with section 117.205.

**History:** 1980 c 566 s 15; 1982 c 523 art 32 s 12; 1Sp1986 c 3 art 1 s 82

#### **473H.16 CONSERVATION.**

Subdivision 1. **Unsound conservation practices described.** Land within an agricultural preserve shall be farmed and otherwise managed according to sound soil and water conservation management practices. Management practices which are not sound shall be any use of the land resulting in wind or water erosion in excess of the soil loss tolerance for each soil type as found in the United States Soil Conservation Service, Minnesota Technical Guide.

Subd. 2. **Enforcement.** The authority shall be responsible for enforcing this section. Upon receipt of a written complaint stating the conditions or land management practices which are believed to be in violation of this section, the authority shall consult with the county soil and water conservation district. The district shall determine the average soil loss in tons per acre per year for each field cited in the complaint according to the universal soil loss equation and the wind erosion equation, and shall return to the authority a report showing the average soil loss in tons per acre per year for each field and a list of alternative practices that the landowner can use to reduce the soil loss to the limit allowed in subdivision 1. After consultation, and if in the judgment of the authority the land is not being managed properly as required by this section, the authority shall adopt a resolution to this effect and shall seek corrective measures from the owner. At the request of the landowner, the district shall assist in the planning, design and application of the practices selected to reduce the soil loss to an acceptable level and shall give such landowners a high priority for providing technical and cost share assistance.

Subd. 3. **Civil penalty.** Any owner who fails to implement corrective measures to the satisfaction of the authority within one year of notice from the authority shall be subject to a civil penalty of not more than \$1,000. The authority may recover the penalty by a civil action in a court of competent jurisdiction.

Subd. 4. **Costs.** Costs incurred by the authority in the enforcement of this section may be charged to the property owner. Charges not timely paid may be placed on the tax rolls and collected as a special assessment against the property.

**History:** 1980 c 566 s 16; 1982 c 523 art 32 s 13

#### **473H.17 LAND USE.**

Subdivision 1. **For agricultural production.** Land within an agricultural preserve shall be maintained for agricultural production. The average maximum density of residential structures within an agricultural preserve shall not exceed one unit per 40 acres. The location of any new structure shall conform to locally applicable zoning regulations. Commercial and industrial uses shall not be permitted except as provided in subdivision 2 after the user is issued a permit by the authority. The authority shall be responsible for enforcing this section.

Subd. 1a. **Allowed commercial and industrial operations.** (a) Commercial and industrial operations are not allowed on land within an agricultural preserve except:

(1) small on-farm commercial or industrial operations normally associated with and important to farming in the agricultural preserve area;

(2) storage use of existing farm buildings that does not disrupt the integrity of the agricultural preserve; and

(3) small commercial use of existing farm buildings for trades not disruptive to the integrity of the agricultural preserve such as a carpentry shop, small scale mechanics shop, and similar activities that a farm operator might conduct.

(b) "Existing" in paragraph (a), clauses (2) and (3), means existing on August 1, 1987.

Subd. 2. **Density restriction after subdivision.** When a separate parcel is created for a residential structure, commercial, or industrial use permitted under subdivision 1, the parcel shall cease to be an agricultural preserve unless the eligibility requirements of section 473H.03 are met. However, the separate parcel shall remain under the maximum residential density restrictions in effect for the original preserve at the time it was placed into the preserve until the agricultural preserve status for the original parcel ends.

**History:** 1980 c 566 s 17; 1987 c 396 art 7 s 5-7

#### **473H.18 TRANSFER FROM AGRICULTURAL PROPERTY TAX LAW TREATMENT.**

When land which has been receiving the special agricultural valuation and tax deferment provided in section 273.111 becomes an agricultural preserve pursuant to sections 473H.02 to 473H.17, the recapture of deferred tax and special assessments, as provided in section 273.111, subdivisions 9 and 11, shall not be made. Special assessments deferred under section 273.111 shall continue to be deferred for the duration of the preserve. For purposes of this section, "deferred special assessments" shall include the total amount of deferred special assessments under section 273.111 on the property, including any portion of the deferred special assessments which have not yet been levied at the time the property transfers to the agricultural preserves program under this chapter. All special assessments so deferred shall be payable within 90 days of the date of expiration unless other terms are mutually agreed upon by the authority and the owner. In the event of early termination of a preserve or a portion of it under section 473H.09, all special assessments accruing to the terminated portion plus interest shall be payable within 90 days of the date of termination unless otherwise deferred or abated by executive order of the governor. In the event of a taking under section 473H.15 all special assessments accruing to the taken portion plus interest shall be payable within 90 days of the date the final certificate is filed with the court administrator of district court in accordance with section 117.205.

**History:** 1982 c 523 art 32 s 14; 1Sp1986 c 3 art 1 s 82; 1994 c 587 art 5 s 25



414 Nicollet Mall  
Minneapolis, MN 55401

**VIA HAND-DELIVERY**

February 7, 2013

Ms. Kate Frantz  
Environmental Quality Board  
520 Lafayette Road North  
Saint Paul, MN 55155

Re: Northern States Power Company's Notice of Intent Pursuant to Minn. Stat § 473H.15, subd. 2 – Hampton Substation Site

Dear Ms. Frantz:

Northern States Power Company ("NSP"), along with other utilities, has undertaken to construct and operate a new 345 kV high voltage transmission line and associated facilities between Brookings, South Dakota, and Hampton, Minnesota (the "CapX Brookings Project"). As part of the CapX Brookings Project, NSP intends to acquire fee title to 15.01 acres of land, excluding road right-of-way (15.81 acres, including road right-of-way), in Dakota County, Minnesota, for the new Hampton Substation. The 15.01 acres of land, excluding road right-of-way (15.81 acres, including road right-of-way), are contained in a larger 241-acre tract designated as metropolitan agricultural preserve under Minn. Stat. Ch. 473H (2012).

In accordance with Minn. Stat. § 473H.15, subd. 2 (2012), NSP hereby provides to the Environmental Quality Board ("EQB") notice of its intent to acquire the above-referenced 15.01 acres of land, excluding road right-of-way (15.81 acres, including road right-of-way), via eminent domain. NSP understands that the EQB will meet on February 20, 2013, and respectfully requests that, at the February 20th meeting, the EQB review NSP's proposed action and issue a written determination that the proposed action will not unreasonably affect an agricultural preserve.

A. Project Identification

1. Name of project: **Hampton Substation (part of the CapX Brookings Project).**

2. Responsible entity – check one and give name:

\_\_\_\_\_ state agency:

\_\_\_\_\_ local, county, or regional unit of government:

\_\_\_\_\_ public benefit corporation:

another entity possessing powers of eminent domain: **Northern States Power Company, a public service corporation and public utility possessing the power of eminent domain pursuant to Minn. Stat. §§ 216E.12, 222.36, and 301B.02.**

Contact persons and telephone:

**Sarah B. Schwartz**  
**Xcel Energy**  
**Senior Land Rights Agent**  
**1414 Hamilton Ave., P.O. Box 8**  
**Eau Claire, WI 54702-0008**  
**715.737.1177**  
**sarah.b.schwartz@xcelenergy.com**

**Mollie M. Smith**  
**Fredrikson & Byron, P.A.**  
**200 South Sixth Street, Suite 4000**  
**Minneapolis, MN 55402-1425**  
**612.492.7270**  
**msmith@fredlaw.com**

3. Reason for filing notice of intent – check one:

acquisition of land or easement ten acres gross or more within agricultural preserves.

\_\_\_\_\_ grant, loan, interest subsidy or other funds to construct residential, commercial, or industrial facilities, or water or sewer facilities which may serve nonfarm structures, within agricultural preserves.

B. Location

1. **The South 563.50 feet of the East Half of the Northeast Quarter, Section 32, Township 114 North, Range 18 West, Dakota County, Minnesota, which lies west of the westerly right-of-way of Highway 52.**
2. Attach a copy of USGS 7 ½ minute quadrangle map or similar map showing project site boundaries:

**See attached Exhibit 1, which provides a map and a survey of the Hampton Substation site.**

C. Site Characteristics

1. Date on which site became an agricultural preserve: **March 25, 1982.**
2. Acreage of site: **Approximately 15.01 acres, excluding road right-of-way (approximately 15.81 acres, including road right-of-way).**

Is whole site within an agricultural preserve? If not, specify the percentage within the preserve.

**Yes. The entire site falls within a larger 241-acre tract of metropolitan agricultural preserve.**

3. Provide any of the following if known:
  - a. SCS capability class(es) of site: **The site is classified as either prime farmland or farmland of statewide importance.**
  - b. SCS soil classification(s) of site: **The site consists of the following soil classifications: ostrander loam, carmi loam, rockton loam, and ostrander-carmi loams.**
  - c. Agricultural uses over the last five years: **To NSP's knowledge, the site has been used as cropland during the last 5 years, and corn was the most recent crop planted on the site.**
  - d. Percentages of site in the following:  
(If only part of the site is an agricultural preserve respond only for that portion.)  
  
cropland 94.94% wetland \_\_\_\_\_ type:  
grassland \_\_\_\_\_ brush \_\_\_\_\_  
woodland \_\_\_\_\_ other 5.06% specify: **Road right-of-way**
  - e. Other notable natural or human features (including drainage systems):  
  
**No drain tile or other notable natural or human features are present on the site, except for the road right-of-way associated with 215th Street East.**

D. Consistency with Local and Regional Comprehensive Plans

1. Is the project consistent with the local comprehensive plan? Please explain.

**As discussed under Section E below, the Minnesota Public Utilities Commission (“MPUC”) issued a Route Permit for the CapX Brookings Project, including the Hampton Substation, pursuant to Minn. Stat. § 216E.03 and Minn. R. Ch. 7850. See Exhibit 2 (Order Granting Route Permit, dated September 14, 2010, MPUC Docket No. ET-2/TL-08-1474). In Minnesota, a Route Permit is the only siting approval required for a high voltage transmission line, and a Route Permit supersedes and preempts all local zoning, building, or land use rules, regulations, or ordinances. See Minn. Stat. § 216E.10, subd. 1.**

**While local land use regulations do not govern the CapX Brookings Project, the Comprehensive Plan was discussed during the routing process. Dakota County participated in routing meetings for the CapX Brookings Project held on January 16, 2008, and September 22, 2008. See Application to the Minnesota Public Utilities Commission for a Route Permit for the Brookings County – Hampton 345 kV Transmission Line Project, dated December 29, 2008, MPUC Docket No. ET-2/TL-08-1474 (the “Route Permit Application”). Dakota County and project planners discussed the Comprehensive Plan at the January 16, 2008 meeting. See *id.***

Has the plan been or will it be amended to allow for this project? Please explain.

**As noted above, the Route Permit issued for the CapX Brookings Project preempts local zoning, building, and land used rules, regulations, and ordinances. Therefore, the Comprehensive Plan does not need to be amended to account for the project.**

2. Is the project included in the adopted five-year capital improvements plan, if one exists? Please explain.

**No. NSP and other utilities are planning, constructing, and funding the CapX Brookings Project and are not requesting that Dakota County commit funding to the project.**

3. Is the project consistent with regional plans? Please explain.

**The CapX Brookings Project, including the Hampton Substation, is part of the CapX 2020 Transmission Expansion Initiative (“CapX 2020”). CapX 2020 is a joint initiative of 11 transmission-owing utilities in Minnesota and the surrounding region formed to upgrade and expand the regional electric transmission grid to ensure continued reliable service. Electric customers in**

**Minnesota and the surrounding region will benefit from the more robust and reliable electric transmission system resulting from CapX 2020.**

4. Attach copies of relevant sections of the adopted local comprehensive plan to this notice. (Note: if more convenient, enclose a copy of the entire plan which EQB can use on a loan basis and return upon completion of review.)

***See response to Section D.1 above.***

E. Project Description

Describe the project to be constructed on the site, emphasizing aspects which may affect agricultural activities or the agricultural nature of the preserve. Include ancillary facilities, such as parking areas, utilities and roadways. Include site plans or diagrams as appropriate.

**The CapX Brookings Project will consist of approximately 240 miles of 345 kV transmission line and associated facilities in Lincoln, Lyon, Yellow Medicine, Chippewa, Redwood, Brown, Renville, Sibley, Le Sueur, Scott, and Dakota counties. As part of the CapX Brookings Project, NSP will construct the Hampton Substation in Vermillion Township, Dakota County. The Hampton Substation site will be 15.01 acres, excluding road right-of-way (15.81 acres, including road right-of-way), and will include space necessary for equipment (such as line switches, a control house, relay panels, foundations, and steel structures), drainage and stormwater ponding, graded access roads, and setbacks or buffer. *See Exhibit 1.***

**The MPUC issued a Route Permit for the CapX Brookings Project, including the Hampton Substation site, on September 14, 2012. *See Exhibit 2 (Order Granting Route Permit, dated September 14, 2010, MPUC Docket No. ET-2/TL-08-1474).* Following issuance of the Route Permit, the current landowner filed comments with the MPUC noting the importance of minimizing the size of the Hampton Substation site in order to reduce the impacts on tillable acreage. Taking those comments into consideration, NSP and Great River Energy (“GRE”), co-applicants for the Route Permit, clarified that approximately 15 acres (excluding road right-of-way) is the minimum acreage necessary for construction, operation, and maintenance of the Hampton Substation, and requested that the MPUC incorporate this clarification into the Route Permit. *See Exhibit 3 (Application for Approval of Minor Alteration for Interconnections, Hampton Substation and Interstate 35 Crossing, dated January 5, 2012, MPUC Docket No. ET-2/TL-08-1474).* The MPUC approved the request. *See Exhibit 4 (Order, dated February 29, 2012, MPUC Docket No. ET-2/TL-08-1474).***

F. Past or Current Environmental Review

If state environmental review pursuant to EQB rules or any federal environmental review has occurred for the project, describe the review and its results. List all documents prepared as part of the review and any alternatives examined.

**The MPUC has assessed the CapX Brookings Project, including the Hampton Substation, in two separate environmental-review processes. During the Certificate of Need proceeding for the CapX 2020 Phase I Projects, which includes the CapX Brookings Project, the Minnesota Department of Commerce Office of Energy Security (“OES”) prepared an environmental report. See Environmental Report: CapX 2020 Group 1 Transmission Projects, dated March 31, 2008, MPUC Docket No. ET-2/CN-06-1115. The Environmental Report included an analysis of project system alternatives.**

**Additionally, during the Route Permit proceeding, OES prepared an Environmental Impact Statement (“EIS”) specifically for the CapX Brookings Project, which analyzed the potential environmental impacts of proposed route alternatives. See Draft EIS and Final EIS, MPUC Docket No. ET-2/TL-08-1474. Relevant sections of the Draft EIS and the Final EIS are attached as Exhibit 5, and the complete Draft EIS and Final EIS are available on the MPUC’s docket website at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showDocketsSearch&searchType=new>.**

G. Justification for Project and Evaluation of Alternatives

By statute this notice of intent must include “a report justifying the proposed action, including an evaluation of alternatives which would not require acquisition within agricultural preserves” (473H.15 subdivision 2).

**The CapX Brookings Project will improve reliability throughout southwest and west central Minnesota and the Twin Cities, as well as enable access to new generation, including renewable energy resources. As noted above, the CapX Brookings Project is one of several projects developed by CapX 2020 to upgrade and expand the regional grid to ensure continued reliable electric service. The MPUC issued a Certificate of Need and a Route Permit for the CapX Brookings Project. See Exhibit 6 (Order Issuing Certificates of Need, dated May 22, 2009, MPUC Docket No. ET-2, E-002, *et al.*/CN-06-1115), and Exhibit 2 (Order Granting Route Permit, dated September 14, 2010, MPUC Docket No. ET-2/TL-08-1474).**

Key considerations for NSP and GRE in selecting a site for the Hampton Substation were identifying a buildable, accessible site that would accommodate interconnection of the existing Prairie Island – Blue Lake 345 kV Line, the proposed CapX Hampton – Rochester – La Crosse 345 kV Line, and the proposed CapX Brookings – Hampton 345 kV Line. In particular, the goal was to identify an appropriate site as close as possible to the where the Prairie Island – Blue Lake 345 kV Line turns from going north-south to going east-west in Section 33 of Vermillion Township, Dakota County. As shown in the map attached as Exhibit 7, a significant portion of the area near this location is designated as metropolitan agricultural preserves.

In the Route Permit Application for the CapX 2020 Brookings Project, NSP and GRE identified a preferred area for the Hampton Substation. From there, NSP and GRE analyzed a number of potential sites and selected 2 proposed sites based on proximity to the Prairie Island – Blue Lake 345 kV Line, constructability, accessibility, and distance from homes. These 2 sites – one on the north side of 215th Street East and the other on the south side of 215th Street East – were presented to the MPUC in testimony submitted by NSP and GRE during the Route Permit proceeding. After analyzing all of the testimony and evidence presented during the routing process, the OES Energy Permitting Staff recommended, and the MPUC ultimately approved, the site north of 215th Street East because the site would minimize the distance to connect to the Prairie Island – Blue Lake 345 kV line. *See Exhibit 2 (Order Granting Route Permit, dated September 14, 2010, MPUC Docket No. ET-2/TL-08-1474).*

In the process of selecting the 2 sites proposed to the MPUC, NSP and GRE identified only 1 potential site that was not located within a metropolitan agricultural preserve. That site was not selected because a house is located immediately adjacent to the site and, as compared to the 2 proposed sites, the site would have required more transmission line miles to be constructed to facilitate interconnection of the three transmission lines at the substation. Thus, the site would have resulted in greater human and environmental impacts. All other potential sites for the Hampton Substation (including the 2 proposed sites) were located within metropolitan agricultural preserves.

In addition to identifying those parcels that have been designated as metropolitan agricultural preserves in the area surrounding the Hampton Substation site, Exhibit 7 also depicts the preferred area for the Hampton Substation identified in the Route Permit Application, the Hampton Substation site approved by the MPUC, and the three interconnecting transmission lines (the existing Prairie Island – Blue Lake 345 kV Line, the approved CapX Hampton – Rochester – La Crosse 345 kV Line, and the approved CapX Brookings – Hampton 345 kV Line).

H. Effect on the Normal Agricultural Use of the Land

State whether the project will interfere with, preclude the use of, or in any way prevent the continued agricultural use of the land, or the practical use of farm equipment, irrigation systems and other facilities normally associated with farming at this site. Will mitigative measures be adopted to overcome any interferences?

**Agricultural use will be precluded on the 15.01 acre site, excluding road right-of-way (15.81 acres, including road right-of-way), acquired for the Hampton Substation. However, the site is only a small portion of a larger 241-acre tract of metropolitan agricultural preserve. As discussed under Section E above, NSP is acquiring the minimum acreage necessary for the Hampton Substation, which allows for the continued agricultural use of the maximum number of metropolitan agricultural preserve acres. Additionally, by locating the Hampton Substation adjacent to 215th Street East, along the southern portion of the property, NSP has minimized the impact on farming operations within the metropolitan agricultural preserve. Moreover, development of the Hampton Substation site will not affect the continued agricultural use of other metropolitan agricultural preserves near the site.**

**NSP and GRE collaborated with the Minnesota Department of Agriculture to develop an Agricultural Impact Mitigation Plan (“AIMP”), dated June 2009, which identifies measures NSP and GRE will take to avoid, mitigate, repair, and/or provide compensation for impacts that may result from the CapX Brookings Project. A copy of the AIMP is provided in Exhibit 2.**

February 7, 2013

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CERTIFICATION:

I hereby certify that the information contained in this document is true to the best of my knowledge.

Signature: \_\_\_\_\_

David G. Callahan

Date \_\_\_\_\_

2-7-2013

Title: \_\_\_\_\_

Supervisor, Siting and Land Rights

cc: Ms. Victoria Dupree, Metropolitan Council  
Ms. Maryann Stoffel, Clerk, Vermillion Township, Minnesota  
Office of Planning and Analysis, Dakota County, Minnesota  
Ms. Becky Balk, Minnesota Department of Agriculture  
Mr. James M. Burkhardt, Esq.



**STATE OF MINNESOTA  
ENVIRONMENTAL QUALITY BOARD**

In the Matter of Requests to Designate a  
Different Responsible Governmental Unit For  
Environmental Review of Multiple Silica  
Sand Projects Proposed by Minnesota Sands,  
LLC, in Fillmore, Houston, and Winona  
Counties

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

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The above-captioned matter came before the Minnesota Environmental Quality Board (EQB) at a special meeting on March 20, 2013, pursuant to requests from Fillmore and Houston Counties to designate a different responsible governmental unit (RGU) for silica sand mines proposed by Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties.

Based upon all of the proceedings herein, the Minnesota Environmental Quality Board makes the following:

**FINDINGS OF FACT**

1. The EQB received a letter from Fillmore County dated February 28, 2013, stating that Minnesota Sands, LLC “proposes to operate [silica sand] mines in at least the following: Fillmore County at the Boyum, Dabelstein, Kesler, and Wadewitz sites; Houston County at the Erickson site; and Winona County at the Dabelstein and Yoder sites.”
2. The February 28, 2013 Fillmore County letter states that “Fillmore County understands the need to complete and Environmental Impact Statement (EIS) because the sites are located in close proximity, span across the three counties, and concern the same developer.”
3. The February 28, 2013 Fillmore County letter states, “[i]n Fillmore County, Minnesota Sands planned to complete separate EAWs for the Boyum, Dabelstein, and Kesler sites, but has voluntarily agreed to complete an EIS for their proposed projects spanning Fillmore, Houston, and Winona Counties. Fillmore County agrees one comprehensive EIS is appropriate for the Minnesota Sands projects located in all three counties.”
4. The February 28, 2013 Fillmore County letter states. “Fillmore County requests the Environmental Quality Board to designate a State agency to act as the regulatory government unit (RGU) to prepare an EIS for the Minnesota Sands projects...”
5. The EQB received a letter from Houston County dated March 5, 2013, stating, “...Houston County requests the Environmental Quality Board to designate a State

agency to act as the regulatory governmental unit (RGU) to prepare an EIS for the proposed frac sand mines [concerning Minnesota Sands, LLC].”

6. EQB staff has been in communication with Winona County staff about the requests from Fillmore and Houston Counties.
7. Based on discussions with Houston County staff, in addition to the Boyum, Dabelstein (Fillmore County), Kesler, Wadewitz; Erickson; Dabelstein (Winona County), and Yoder sites, there are also mines proposed by Minnesota Sands, LLC, in Houston County on land owned by Leonard and Kathleen Tostenson, Porteous Olson, James Chapel, and Thomas and Virginia Johnson.
8. Minnesota Rule 4410.0200, Subp. 68 reads:

"Proposer" means the person or governmental unit that proposes to undertake or to direct others to undertake a project.

Minn. R 4410.0200, Subp. 68 (2011).
9. The EQB finds that Minnesota Sands, LLC, as the entity proposing to operate silica sand mines in Fillmore County, Houston County, and Winona County, meets the definition of “proposer.”
10. Minnesota Rule 4410.0200, Subp. 60 reads:

"Phased action" means two or more projects to be undertaken by the same proposer that a RGU determines:

  - A. will have environmental effects on the same geographic area; and
  - B. are substantially certain to be undertaken sequentially over a limited period of time.

Minn. R. 4410.0200, Subp. 60 (2011).
11. The EQB finds that the Boyum, Dabelstein (Fillmore County), Kesler, Wadewitz; Erickson; Dabelstein (Winona County), and Yoder sites are within an 8.5 mile radius. When the Tostenson, Olson, Chapel, and Johnson sites are included, all the sites together are within a 12.5 mile radius.
12. The EQB finds that the projects are in various stages of local approval and therefore are substantially certain to be undertaken over a limited period of time.
13. The EQB finds that the projects proposed by Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties:
  - a. are two or more projects to be undertaken by the same proposer;

- b. will have environmental effects on the same geographic area; and
- c. are substantially certain to be undertaken sequentially over a limited period of time.

14. The EQB finds that projects proposed by the Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties meet the definition of a phased action.

15. Minnesota Rule 4410.1000, Subp. 4 reads in relevant part:

Connected actions and phased actions. Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when determining the need for an EAW, preparing the EAW, and determining the need for an EIS.

\*\*\*

Minn. R. 4410.1000, Subp. 4 (2011).

16. Minnesota Rule 4410.2000, Subp. 4 reads in relevant part:

Connected actions and phased actions. Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when determining the need for an EIS and in preparing the EIS.

\*\*\*

Minn. R. 4410.2000, Subp. 4 (2011).

17. Minnesota Rule 4410.2000, Subp. 5 reads:

Related actions EIS. An RGU may prepare a single EIS for independent projects with potential cumulative environmental impacts on the same geographic area if the RGU determines that review can be accomplished in a more effective or efficient manner through a related actions EIS. A project must not be included in a related actions EIS if its inclusion would unreasonably delay review of the project compared to review of the project through an independent EIS.

Minn. R. 4410.2000, Subp. 5 (2011).

18. The EQB finds that projects proposed by the Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties are multiple projects that are phased actions, and therefore must be considered in total when preparing an EAW or EIS.

19. The EQB finds that projects proposed by the Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties have potential cumulative environmental impacts on

the same geographic area and review of the projects can be accomplished in a more effective and efficient manner through a single EIS.

20. Minn. R. 4410.4300, Subp. 12 reads in relevant part:

Nonmetallic mineral mining. Items A to C designate the RGU for the type of project listed:

\*\*\*

B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence, the local government unit shall be the RGU.

\*\*\*

21. Minn. R. 4410.4400, Subp. 9 reads in relevant part:

Nonmetallic mineral mining. Items A to C designate the RGU for the type of project listed:

\*\*\*

B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence, the local government unit shall be the RGU.

\*\*\*

Minn. R. 4410.4400, Subp. 9 (2011).

22. Minn. R. 4410.0500, Subp. 1 reads:

RGU for mandatory categories. For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of part 4410.4400, the RGU shall be determined as specified in subpart 5.

Minn. R. 4410.0500, Subp. 1 (2011).

23. Minnesota Rule 4410.0500, Subp. 5 reads:

For any project where the RGU is not listed in part 4410.4300 or 4410.4400 or which falls into more than one category in part 4410.4300 or 4410.4400, or for which the RGU is in question, the RGU shall be determined as follows:

A. When a single governmental unit proposes to carry out or has sole jurisdiction to approve a project, it shall be the RGU.

B. When two or more governmental units propose to carry out or have jurisdiction to approve the project, the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the project as a whole. Where it is not clear which governmental unit has the greatest responsibility for supervising or approving the project or where there is a dispute about which governmental unit has the greatest responsibility for supervising or approving the project, the governmental units shall either:

(1) by agreement, designate which unit shall be the RGU within five days of receipt of the completed data portion of the EAW: or

(2) submit the question to the EQB chairperson, who shall within five days of receipt of the completed data portions of the EAW designate the RGU based on consideration of which governmental unit has the greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

Minn. R. 4410.0500, Subp. 5 (2011).

24. The EQB finds that Minnesota Rule 4410.0500, Subp. 5, paragraph B is applicable to the projects proposed by the Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties because two or more governmental units have jurisdiction to approve the projects.

25. The EQB finds that Fillmore, Houston, or Winona Counties could be RGU for a single EIS on multiple sites in multiple counties pursuant to Minn. R. 4410.0500, Subp. 5, paragraph B.

26. Minn. R. 4410.0500, Subp. 6 reads:

Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

Minn. R. 4410.0500, Subp. 6 (2011).

27. The EQB finds that, in the instances of the Boyum, Dabelstein, Kesler, and Wadewitz sites in Fillmore County, and the Erickson, Tostenson, Olson, Chapel, and Johnson sites in Houston County, no EAW has been started, and therefore no completed data portion of the new EAW has yet been received by an RGU, or EQB.
28. The EQB finds that, in its history of applying Minn. R. 4410.0500, Subp. 6, in every known instance, no EAW data submittal had been made.
29. The EQB finds that, to designate a different RGU than Fillmore County, under Minn. R. 4410.0500, Subp. 6, the EQB must determine that the designee has greater expertise in analyzing the potential impacts of the project.
30. The EQB finds that local governments are the RGU for mandatory EAWs and EISs for nonmetallic mineral mining projects, with the exception of peat mines.
31. The EQB finds that by application of Minn. R. 4410.0500, Subp. 1 and 5, local governments are commonly presumed to have greater responsibility for approving, and greater expertise in analyzing potential impacts of nonmetallic mineral mining projects than other units of government. However, in this case, multiple projects are proposed in multiple counties that are phased actions. Based on Minn. R. 4410.1000, Subp. 4, paragraph 1, and 4410.2000, Subp. 4, paragraph 1, multiple projects that are phased actions must be considered in total in preparing an EAW or EIS. Additionally, state agencies may have greater expertise than local government in analyzing certain potential impacts.
32. The Minnesota Pollution Control Agency was RGU for the EIS for Hancock Pro Pork Feedlot Project, in Stevens and Pope Counties. The project consisted of feedlot facilities on multiple sites in two counties, Stevens and Pope.
33. The EQB finds that the MPCA has expertise regarding multi-site and multi-county EISs.
34. The EQB finds the projects proposed by Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties have potential impacts such as those on air quality, water resources, and transportation, where state agencies have greater expertise than local government.
35. The EQB finds that the potential impacts for the proposed projects encompass the responsibilities of several state agencies.
36. Minnesota Statutes, Section 116C.01, reads:

## FINDINGS.

The legislature of the state of Minnesota finds that problems related to the environment often encompass the responsibilities of several state agencies and that solutions to these environmental problems require the interaction of these agencies. The legislature also finds that further debate concerning population, economic and technological growth should be encouraged so that the consequences and causes of alternative decisions can be better known and understood by the public and its government.

Minn. Stat. Section 116C.01 (2011)

37. The EQB finds that its membership includes the heads of state agencies including the Departments of Administration, Agriculture, Commerce, Employment and Economic Development, Health, Natural Resources, and Transportation, the Pollution Control Agency, and the Board of Water and Soil Resources, and the EQB is able to draw upon the expertise of its member agencies.
38. The EQB finds the EQB has greater expertise in analyzing the potential impacts of the multiple, phased-action, and cross-county projects than Fillmore, Houston, or Winona Counties.

Based on the foregoing Findings of Fact, the Minnesota Environmental Quality Board makes the following:

#### **CONCLUSIONS OF LAW**

1. Any of the foregoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.
2. The Environmental Quality Board has jurisdiction over the subject matter of this proceeding pursuant to Minnesota Statutes chapter 116D and Minnesota Rules 4410.0500, Subpart 6.
3. The request for EQB to decide the question whether to designate a different RGU for the proposed projects were properly brought to the EQB Board.
4. The EQB concludes that the EQB has greater expertise in analyzing the potential impacts of the proposed project than Fillmore, Houston, or Winona Counties.

Based on the Findings of Fact, Conclusions and the entire record of this proceeding, the Minnesota Environmental Quality Board hereby makes the following:

#### **ORDER**

The EQB hereby reassigns the status and responsibilities of responsible governmental unit for silica sand mines proposed by Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties, from Fillmore, Houston, or Winona County to the Environmental Quality Board.

Approved and adopted this 20th day of March, 2013.

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David J. Frederickson, Chair  
Minnesota Environmental Quality Board

DRAFT

**SAMPLE**

**RESOLUTION OF THE**

**MINNESOTA ENVIRONMENTAL QUALITY BOARD**

Designation of a Different Responsible Governmental Unit (RGU)  
for Environmental Review of Multiple Silica Sand Projects Proposed by  
Minnesota Sands, LLC, in Fillmore, Houston, and Winona Counties

BE IT RESOLVED, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order designating the Environmental Quality Board as the responsible governmental unit (RGU) for the environmental review of the proposed silica sand projects in Fillmore, Houston, and Winona Counties; and

BE IT FURTHER RESOLVED, that David J. Frederickson, Chair of the Board, is authorized to sign the adopted Findings of Fact, Conclusions and Order.





March 20, 2013

TO: EQB Members

FROM: Bob Patton, Executive Director

SUBJECT: Briefing Information for Fillmore-Houston-Winona County Request for Re-Designation of RGU for Environmental Review (Minnesota Sands, LLC Projects)

**Issue before the Board:**

Whether to designate a state agency as responsible governmental unit for silica sand mines proposed by Minnesota Sands LLC in Fillmore, Houston, and Winona Counties.

**Background**

Minnesota Sands, LLC, is proposing silica sand mines in three counties: Fillmore, Houston, and Winona. According to staff of the three counties, 11 mines are proposed: Below is a summary of the mines (see map, last page of this memo):

County	Name	Landowner	Proposed Mine Area (Acres)
Fillmore	Boyum	Randy & Karolyn Boyum	50.00
Fillmore	Dabelstein	Alice Dabelstein Revocable Trust	50.00
Fillmore	Kesler	Harry & Jane Kesler Trust	30.00
Fillmore	Wadewitz	David Wadewitz	30.00
Houston	Erickson	Tracie & Michelle Erickson	19.11
Houston	Tostenson	Leonard and Kathleen Tostenson	35.90
Houston	Olson	Porteous Olson	160
Houston	Chapel	James Chapel	80
Houston	Johnson	Thomas L. & Virginia L. Johnson	39.50
Winona	Dabelstein	Roger Dabelstein	36.50
Winona	Yoder	William & Ida Yoder	84.30

In accordance with the Minnesota environmental review rules, Fillmore, Houston, and Winona Counties are RGUs for the proposed mines in their respective counties. As of the writing of this memorandum, the EQB has received requests for reassignment of the RGU from Fillmore and Houston Counties. In addition, EQB staff has learned from Winona County that the County Board has voted to send a similar letter to Fillmore County with caveats pertaining to consultation with local officials on the scoping process and how local issues will be addressed.

The EQB'S authority to designate a different RGU is contained in Minn. R. 4410.0500, Subp. 6:

Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

## **Discussion**

EQB staff's analysis examined:

- The nature of the Minnesota Sands silica mines projects as related to the applicability of the environmental review rules; and
- The question of expertise as required by Minn. R. 4410.0500, Subp. 6.

### Definition of the project (see Findings 8-19 in the Draft Findings, Conclusions, and Order)

Regarding the applicability of the Minnesota environmental review rules to the Minnesota Sands silica mine projects, EQB staff found that:

1. Minnesota Sands LLC is the proposer as defined in the rules;
2. The projects proposed by Minnesota Sands are phased actions as defined in the rules;
3. As phased actions, all the individual silica sand mines proposed by Minnesota Sands in the three counties must be considered in total in the environmental review; and
4. The related actions EIS provision of the environmental review rules (Minn. R. 4410.2000, Subp. 5. See Finding 17) is applicable to the Minnesota Sands projects, having the implication that the projects can be reviewed in a more effective and efficient manner through a single EIS.

The implication of the above findings of staff is that, regardless of the commendable willingness of the project proposer to conduct an EIS for the multiple sites, environmental review of all the Fillmore, Houston, and Winona sites, considered in total, is mandatory.

### Expertise (see Findings 20-38 in the Draft FCO)

EQB staff is of the opinion that generally local government units are the proper RGU for nonmetallic mineral mining, including silica sand mining, as supported by the mandatory EAW

and EIS categories. However, EQB staff finds that there are special circumstances in the case of these multiple projects in multiple jurisdictions. It is reasonable that staffs of the counties find themselves without sufficient expertise or experience to deal with multiple sites in multiple counties. State agency experience in dealing with such a situation is also limited. However, the MPCA prepared an EIS for a multi-site, multi-county livestock facility in 2003. (Hancock Pro Pork). Additionally, the understanding of and experience with the environmental review rules and conduct of environmental review generally among EQB staff and environmental review staff of member agencies would be helpful for the complexities of multi-site, multi-jurisdictional review.

The environmental review of silica sand mining, and particularly the review of associated operations (such as processing and transportation) and cumulative effects, is complex, but not by itself beyond the capabilities and expertise of local government RGUs. State-level expertise is available to support local government RGUs for particular issue areas, such as air, water, or transportation impacts and for environmental review generally. However, because of the multiple-site nature of this set of projects, the level of complexity is increased, and re-designation of RGU status to the State appears to be reasonable.

In regard to which state agency should assume RGU status for these projects, the MPCA or the DNR are among the most likely candidates. However, EQB staff is of the opinion that no one environmental issue of silica sand mining and associated operations and facilities is predominant. Because EQB's mission is multi-agency and multi-topical, and because the EQB brings together the expertise of multiple agencies, EQB staff's opinion is that the EQB itself is the most appropriate RGU.

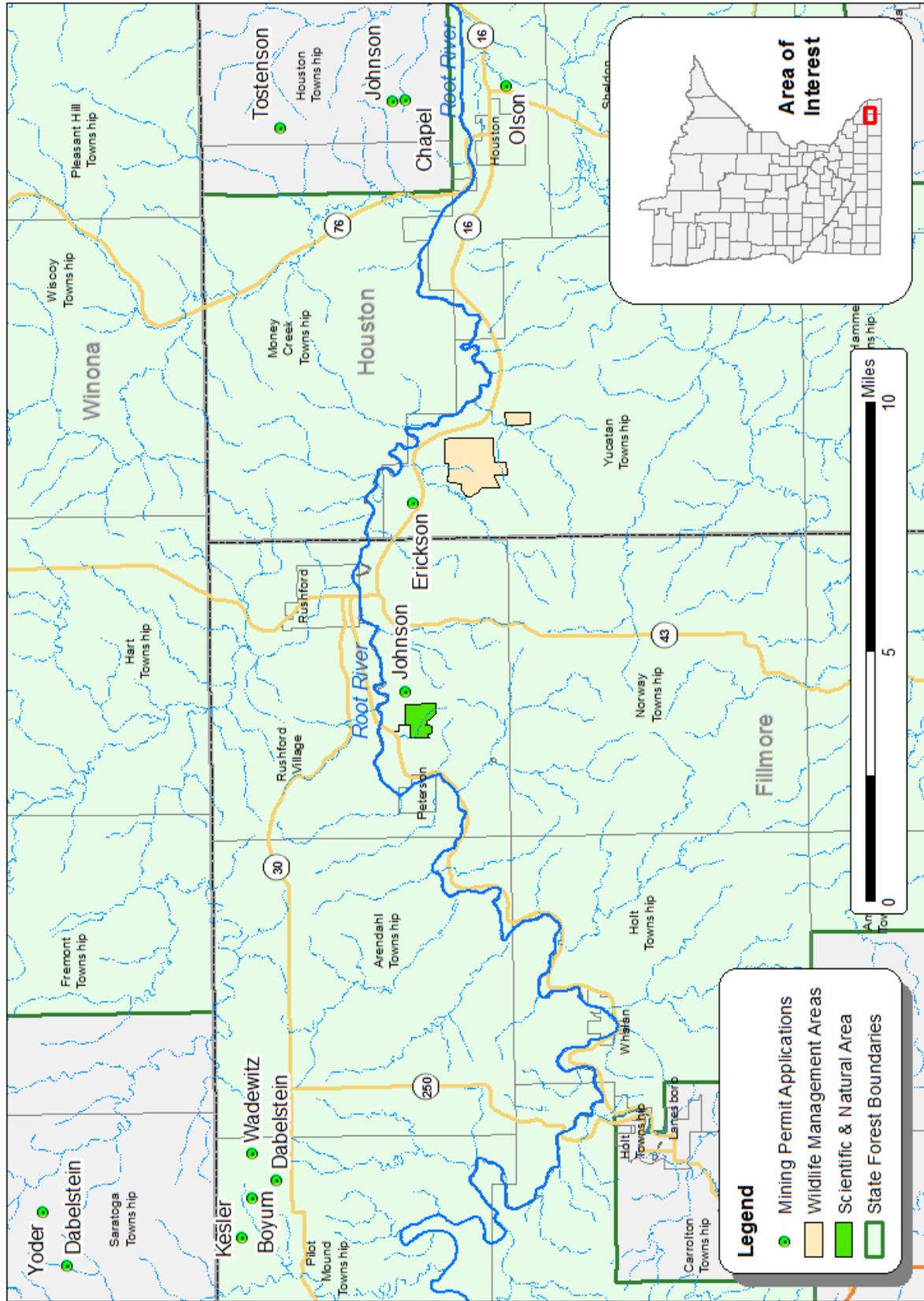
**Staff recommendation.**

EQB staff recommends that the EQB adopt the sample resolution approving and adopting the findings of fact, conclusions of law, and order, designating the Environmental Quality Board as the responsible governmental unit (RGU) for silica sand mines proposed by Minnesota Sands LLC in Fillmore Houston and Winona counties, and authorizing the chair to sign the findings, conclusions, and order.

CC: EQB Technical Representatives



# Minnesota Sands, LLC-Proposed Silica Sand Mines in Fillmore, Houston, and Winona Counties







LAND  
STEWARDSHIP  
PROJECT

180 E Main St Box 130  
Lewiston, MN 55952  
Phone: 507-523-3366

[landstewardshipproject.org](http://landstewardshipproject.org)

Monday, February 25, 2013

Mr. Duane Hebert  
Winona County Administrator  
177 Main Street  
Winona, MN 55987

Dear Mr. Hebert,

I write in response to the announcement of Thursday, February 21, 2013, that an Environmental Impact Statement (EIS) will be conducted on the proposed Yoder and Dabelstein frac sand mines in Saratoga Township. We are glad to see that an EIS will be conducted, as it is an important step in protecting the land and people of Winona County from the hasty and unexamined mineral exploitation that has been proposed.

As has been previously explained in the Land Stewardship Project's comment letters of February 6, 2013, an EIS was required on these proposed mines, both because they have the potential for significant environmental effects and because they constitute two parts of a larger project exceeding the mandatory EIS threshold. Therefore, it is incorrect for this EIS to be referred to as "voluntary."

Furthermore, it is crucial that both Winona County and the mine proposers (Minnesota Sands, LLC) properly understand their respective roles in the EIS process. Winona County is currently the Responsible Government Unit (RGU) for this process. The RGU must conduct the EIS in a manner that ensures a comprehensive and unbiased study of the environmental, economic, employment, and sociological effects of the proposed projects, as set forth in Minnesota law. Should any additional or different RGU (such as Fillmore County or the Minnesota Pollution Control Agency) be designated, the RGU's responsibilities in the process remain the same.

It is important to note that the scope of the EIS must be determined by the RGU with citizen input, not by the project proposers. The RGU must follow the scoping process laid out in Minnesota's environmental review rules, which must include at least one public scoping meeting. An independent consultant or consultants to prepare the EIS must be selected and paid by the RGU, not by the project proposers. A cost agreement must be prepared as described in the environmental review rules, under which the RGU must assess the project proposers for this and other costs of EIS preparation.

Any information submitted by the project proposers at any point in the EIS process must be subject to thorough review by the RGU to determine its completeness, accuracy, and adequacy. The RGU's thoroughness in this role is particularly important in light of

Minnesota Sands' documented unwillingness to fully disclose the information necessary to engage in a proper environmental review process. For instance, the company at first refused even to admit its identity as the proposer of these mines, instead claiming in Environmental Assessment Worksheets (EAWs) that the landowners were the sole proposers. The proposers have also attempted to deny the shared ownership of Minnesota Sands and Minnesota Proppant, the company proposing a frac sand processing and transport facility near St. Charles. Minnesota Sands has further refused to acknowledge that the Yoder and Dabelstein mines are two elements of a single project, instead insisting that they be treated as separate projects. Given this pattern, the RGU must demand full disclosure from Minnesota Sands of all information relevant to the EIS process, and must also take great care to ensure the completeness and accuracy of all submitted information.

Most importantly, the EIS must be an independent and comprehensive study of the potential impacts and ways to mitigate these impacts of these proposed frac sand mines on the land, air, water, and people of Saratoga Township and Winona County, conducted by the RGU, not Minnesota Sands. The scope of the EIS, its framework and content, are not subject to the requirements or control of Minnesota Sands, but are to be set by the responsible government entity, acting in the interest of the people of the state and the health of our environment. Whether Winona County continues to be the RGU or another governmental unit takes on this role, the Land Stewardship Project will remain fully engaged to ensure that the interests of citizens and the well-being of the land are served throughout the entire EIS process.

Sincerely,



Johanna Rupprecht  
Policy Organizer

cc: Jason Gilman, Winona County Planning Director  
Karin Sonneman, Winona County Attorney  
Winona County Commissioners Wayne Valentine (Chair), Steve Jacob, Greg Olson, Jim Pomeroy, & Marcia Ward  
John Linc Stine, Commissioner, MPCA  
Craig Affeldt, Supervisor, Environmental Review Unit, MPCA  
Bob Patton, Executive Director, EQB  
Dave Frederickson, Chair, EQB  
Chris Graves, Fillmore County Zoning Administrator



# FILLMORE COUNTY

COURTHOUSE • P.O. BOX 466 • PRESTON, MINNESOTA 55965  
KAREN BROWN • COUNTY COORDINATOR • (507) 765-4566

February 26, 2013

Environmental Quality Board  
Attn: Mr. Bob Patton  
520 Lafayette Road North  
Saint Paul, Minnesota 55155

**Subject: Environmental Impact Statements on Proposed Silica Sand Projects in Fillmore, Houston, and Winona Counties Concerning Minnesota Sands, LLC**

Dear Mr. Patton:

Southeastern Minnesota has seen an increase in the number of silica sand mines that developers would like to establish, and some of the operators would like to develop sites spanning several counties. Specifically, Minnesota Sands, LLC is interested in obtaining approval to operate silica sand mines in Fillmore, Houston, and Winona counties. Minnesota Sands proposes to operate mines in at least the following: Fillmore County at the Boyum, Dabelstein, Kesler, and Wadewitz sites; Houston County at the Erickson site; and Winona County at the Dabelstein and Yoder sites. Fillmore County understands the need to complete an Environmental Impact Statement (EIS) because the sites are located in close proximity, span across the three counties, and concern the same developer.

Recently several state agencies, through the Environmental Assessment Worksheet (EAW) process, asked Winona County to complete an EIS for the Minnesota Sands' Winona County projects. In Fillmore County, Minnesota Sands planned to complete separate EAWs for the Boyum, Dabelstein, and Kesler sites but has voluntarily agreed to complete an EIS for their proposed projects spanning Fillmore, Houston, and Winona counties. Fillmore County agrees one comprehensive EIS is appropriate for the Minnesota Sands projects located in all three counties.

Fillmore County takes the position it is not the responsibility of one county to perform the task of conducting an EIS when several counties are involved. Fillmore County requests the Environmental Quality Board to designate a State agency to act as the regulatory government unit (RGU) to prepare an EIS for the Minnesota Sands projects for the following reasons:

- It is not practical or legal for Winona County to conduct an EIS on property outside of its jurisdiction;
- The State would serve as the arbiter of county (local control) scoping request;

BOARD OF COMMISSIONERS

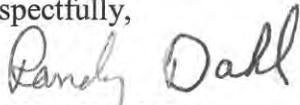
<i>First District</i> Thomas Kaase	<i>Second District</i> Randy Dahl	<i>Third District</i> Chuck Amunrud	<i>Fourth District</i> Duane Bakke	<i>Fifth District</i> Marc Prestby
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• AN EQUAL OPPORTUNITY EMPLOYER •

- The State's environmental experts would be less likely to be challenged regarding the scope and completeness of the final document; and
- One RGU (the State) handling an EIS would create less confusion, maintain consistent information, and provide a better study of this phenomenon.

Please consider this request as Fillmore County believes it is the best method for studying the comprehensive effects of the Minnesota Sands projects. The State is better equipped to move forward on projects that involve several counties. Thank you for your time and assistance. If you have any questions, please contact Christopher Graves, Fillmore County Zoning Administrator at 507-765-3325 or via e-mail at [cgraves@co.fillmore.mn.us](mailto:cgraves@co.fillmore.mn.us).

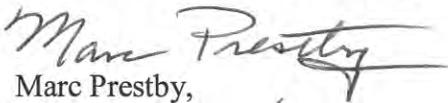
Respectfully,



Randy Dahl, Chair  
Fillmore County Commissioners



Duane Bakke,  
Commissioner, Fillmore County



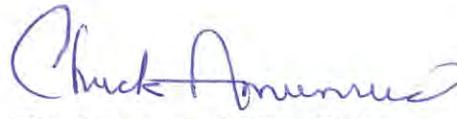
Marc Prestby,  
Commissioner, Fillmore County



Ronald Gregg,  
Fillmore County Highway Engineer



Lantha Stevens,  
Fillmore County CS: Public Health



Chuck Amunrud, Vice-Chair  
Fillmore County Commissioners



Thomas Kaase,  
Commissioner, Fillmore County



Christopher Graves,  
Fillmore County Zoning Administrator



Brett Corson,  
Fillmore County Attorney



Donna Rasmussen, Fillmore County  
Soil & Water Conservation District

cc: Houston County Commissioners  
Houston County Planning Department  
Winona County Commissioners  
Winona County Planning Department  
Representative Rick Hansen

Senator Jeremy Miller  
Senator Matt Schmitt  
Representative Greg Davids  
Representative Gene Pelowski

BOARD OF COMMISSIONERS

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Second District  
Randy Dahl

Third District  
Chuck Amunrud

Fourth District  
Duane Bakke

Fifth District  
Marc Prestby

# Kelley Stange

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Monday, March 4, 2013

Bob Patton  
Executive Director  
Minnesota Environmental Quality Board  
520 Lafayette Road  
St. Paul, MN 55155

Dear Mr. Patton:

I support the request by the Fillmore County Board of Commissioners to designate a state agency to act as RGU for the environmental review of the proposed Minnesota Sands, LLC (including Minnesota Proppant, LLC) projects in Southeast Minnesota.

This company has proposed several projects in Winona County, Fillmore County and Houston County. These projects should be considered phased and connected actions and, as such, the cumulative effects on our region must be considered. Reviews of EAWs on their projects by a variety of governments and agencies reveals data insufficient to identify potential environmental, health and safety impacts.

Because these projects span multiple counties, it makes sense for a state agency to act as the RGU for the EIS. And, because concerns about frac sand mining span the authority of several state agencies, including the DNR, the MPCA, MNDOT and the Department of Health, the EQB is the most logical choice to act as RGU.

According to the Minnesota Secretary of State, Minnesota Sands was formed on 2/27/2012, and Minnesota Proppant was formed on 8/2/2012. The registered agent for both companies is Richard Frick, of Houston, MN. In its public relations materials, the company has produced no evidence that any of the individuals identified as investors have any experience in mining. At a recent Houston Township meeting, Mr. Frick announced a reorganization of the ownership structure of the company was pending.

Given the large scale of their projects, the absence of mining experience, the absence of a track record of sound mining practices, an apparently unstable investor/ownership structure, and their inability to provide sufficient information on EAWs, it would seem prudent to conduct a very careful analysis of any projects proposed by the company.

Rather than several analyses being performed by separate RGUs, it makes sense to centralize the effort to ensure consistent, rigorous analysis of possible impacts of the various projects.

Sincerely,



Kelley Stange



*David Williams*

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40722 County Road 12  
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Telephone: 507-467-2611  
Cellphone: 507-421-0715  
Email: davidw@acegroup.cc

Monday, March 4, 2013

Bob Patton  
Executive Director  
Minnesota Environmental Quality Board  
520 Lafayette Road  
St. Paul, Minnesota 55155

Dear Mr. Patton:

I am writing you in support of the letter from the Fillmore County Board of Commissioners and other county staffers dated February 26, 2013 regarding *Environmental Impact Statements on Proposed Silica Sand Projects in Fillmore, Houston and Winona Counties Concerning Minnesota Sands LLC*. Fillmore County requests (i) that the EQB re-designate a state agency to act as RGU for environmental review of these proposed clustered mining projects, and (ii) that an environmental impact statement (EIS) be prepared for the proposed clustered mining sites that *“are located in close proximity, span across the three counties, and concern the same developer.”*

I am requesting that the EQB re-designate either the EQB (or the PCA if the EQB declines) as the responsible government unit (RGU) to supervise an environmental impact statement (EIS) on the proposed silica sand mining projects in Fillmore, Houston and Winona counties operated by Minnesota Sands LLC. Under Minnesota Rule 4410.0500, subp. 6, the EQB can override the rule designation of the local government unit as RGU if the *“EQB determines the designee has greater expertise in analyzing the potential impacts of the project.”*

I understand that the EQB has the option of re-designating one or more of the affected county governments as the RGU of these proposed mining projects. However, the better re-designation solution is for the EQB to name itself as the RGU, since most of the issues involved in these proposed mining projects are state agency issues. The substantive issues to be reviewed carefully include air emissions, water appropriation, water degradation, state highway repair and deterioration, public health and safety, and environmental damage. These are issues that command the aggressive involvement of the Pollution Control Agency, Department of Health, Department of Transportation, and Department of Natural Resources. These are not issues that can be resolved by the occasional input of these state agencies into a process supervised by local government.

The need for an EIS on these clustered mining projects is obvious. The operation of these clustered mining sites by a newly organized mining operator with little experience in mining is a tragic recipe for permanent environmental disaster in the region. Attached is an environmental review comment letter dated February 6, 2013 from lawyers for Unimin Corporation, one of the largest silica sand mining operators in this country. The entire letter shows Unimin’s concern that these proposed clustered mines to be operated by Minnesota Sands, LLC could lead to permanent environmental degradation is this

David Williams

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region. I cannot recall a similar instance of a recognized mining operator requesting an EIS on projects proposed by a startup mining developer.

Adding to Unimin's concern are, more importantly, the concerns of the Minnesota Department of Health and Pollution Control Agency commissioners, who both firmly request an EIS of these clustered mining projects being proposed by Minnesota Sands, LLC. Attached are letters to Jason Gilman, Winona County Planning and Environmental Services Department (i) dated February 4, 2013 from John Linc Stine, Commissioner of the Pollution Control Agency and (ii) dated February 6, 2013 from Edward P. Ehlinger, Commissioner of the Department of Health.

In his letter, Commissioner Stine states that *"the information provided in the EAWs (prepared by Winona County) is insufficient to fully identify and assess the environmental effects of the projects. The MPCA believes the necessary information can be obtained and evaluated most effectively by preparing an Environmental Impact Statement (EIS)."*

Commissioner Stine characterizes these Minnesota Sands, LLC clustered mining projects as phased and connected actions that *"should be considered together in one environmental review process"* because these proposed clustered mining projects have the potential for *"cumulative environmental impacts on the same geographic area."*

In his letter, Commissioner Ehlinger states that all *"of these projects are connected/phased actions that require a thorough analysis in an EIS. Analysis of these projects as connected actions will result in a more comprehensive, and accurate, assessment of the potential health impacts associated with increased truck trips, air quality, and groundwater use."*

Commissioner Ehlinger declares that these environmental review of clustered mining projects would certainly benefit from a health impact assessment tool administered by the Department of Health.

#### Conclusion

I strongly support Fillmore County's letter, and urge the EQB to (i) re-designate the EQB (or the PCA if the EQB declines the re-designation) as the RGU for these proposed clustered mining projects, and (ii) that such re-designated RGU issue a positive declaration requiring a phased and connected actions EIS review of these proposed clustered mining projects.

The EQB approved recommendations for improving environmental review on November 14, 2012. The first priority among these recommendations is to strengthen EQB capacity for oversight and assistance in implementing environmental review. This emerging phenomenon of silica sand mining activity is the perfect opportunity for the EQB to assert leadership over an important regional environmental review project.

Respectfully,



David Williams

**BOARD OF COMMISSIONERS**  
**HOUSTON COUNTY, MINNESOTA**  
*304 South Marshall*  
*Caledonia, Minnesota 55921*

March 5, 2013

Environmental Quality Board  
Attn: Mr. Bob Patton  
520 La Fayette Road North  
Saint Paul, Minnesota 55155

**Subject: Southeastern Minnesota (Houston, Fillmore and Winona Counties) Environmental Impact Statements (EIS) on proposed frac sand mines concerning Minnesota Sands, LLC**

Dear Mr. Patton:

As commissioners of Houston County we have taken an oath to protect the health, safety and wellbeing of our citizens. With this in mind our philosophy regarding frac sand mining in Houston County has been to err on the side of caution taking the most conservative route.

In traveling the conservative route we as a board understand the need for an Environmental Impact Statement (EIS) as Minnesota Sands, LLC is interested in obtaining approval to operate frac sand mines in Houston, Fillmore and Winona counties. Because these proposed mines would span over three Southeastern Minnesota counties and involve the same prospector Houston County requests the Environmental Quality Board to designate a State agency to act as the regulatory government unit (RGU) to prepare an EIS for the proposed frac sand mines. It would not be in the best interest or legal for one county to take the responsibility of conducting an EIS when several counties are involved.

*1st District*  
*Judy Storlie*  
*28 S Elm Street*  
*La Crescent, MN 55947*  
*(507) 895-8994*

*2nd District*  
*Justin Zmyewski*  
*17275 State 16*  
*Houston, MN 55943*  
*(507)450-8297*

*3rd District*  
*Steve Schuldt*  
*12874 County 10*  
*Caledonia, MN 55921*  
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*5th District*  
*Dana Kjome*  
*149 1<sup>st</sup> Street NW*  
*Spring Grove, MN 55974*  
*(507) 498-5676*

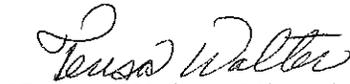
**HOUSTON COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER**

On behalf of the citizens of Houston County your consideration of our request is greatly appreciated.

Respectfully,



Justin Zmyewski, Chair  
Houston County Commissioners



Teresa Walter, Vice-Chair  
Houston County Commissioners



Steve Schuldt  
Commissioner, Houston County



Dana Kjome  
Commissioner, Houston County



Bob Scanlan  
Houston County Zoning Administrator



Brian Pogodzinski  
Houston County Engineer



Deb Rock  
Houston County Public Health



Ron Meiners  
Houston County Soil Conservation