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EQB MONITOR

ENVIRONMENTAL ASSESSMENT WORKSHEETS

EAW Comment Deadline: March 14, 2007

Project Title: Avon Estates

Description: Avon Estates is a proposed residential development located on 186 acres in Avon, MN. The project includes the creation of 118 standard single-family lots, 16 single-family row house lots, 21 patio home lots, and 9 multi-unit dwelling lots (with a maximum of 230 total units). The project will be constructed in 7 phases. The project will be serviced by municipal sewer and water.

RGU: City of Avon

Contact Person:

City of Avon, City Clerk
14- Stratford St. E
PO Box 69
Avon, MN 56310
Phone: 320-356-7922
Fax: 320-356-2259

The *EQB Monitor* is a biweekly publication of the Environmental Quality Board that lists descriptions and deadlines for Environmental Assessment Worksheets, Environmental Impact Statements, and other notices. The *EQB Monitor* is posted on the Environmental Quality board home page at <http://www.eqb.state.mn.us/>.

Upon request, the *EQB Monitor* will be made available in an alternative format, such as Braille, large print, or audio tape. For TTY, contact Minnesota Relay Service at 800-627-3529 and ask for Department of Administration. For information on the *EQB Monitor*, contact:

Minnesota Environmental Quality Board
658 Cedar St., 300 Centennial Office Building
St. Paul, MN 55155-1388
Phone: 651-201-2480
Fax: 651-296-3698
<http://www.eqb.state.mn.us>

Project Title: Crookston Flood Control Project

Description: The proposed flood control project along the Red Lake River in Crookston, Minnesota includes constructing floodwalls, levees, and pump stations within the Sampson's Addition, Chase/Loring Addition, and Jerome's Addition neighborhoods. The project will also require removal of existing emergency levees. The proposed improvements will be constructed in stages as funding becomes available.

RGU: City of Crookston

Contact Person:

Mike MacDonald, Community Development Director
124 No. Broadway
Crookston, MN 56716
Phone: 218-281-1232
mmacdonald@crookston.mn.us

Project Title: Minnehaha Creek Restoration—Methodist Hospital

Description: Methodist Hospital is proposing restoring 1,060 linear feet of straightened channel of Minnehaha Creek to its former channel on Methodist Hospital property (see Figures 1 & 2). The rehabilitated channel will add approximately 400 linear feet, enhance 4 acres of existing wetland, and add an interpretive boardwalk in the wetland area.

RGU: City of St. Louis Park

Contact Person:

Scott Brink, P.E., City Engineer
5005 Minnetonka Blvd.
St. Louis Park, MN 55416
Phone: 952-924-2687
Fax: 952-924-2663

PETITION FILED

The following petitions have been filed with the EQB requesting preparation of an EAW. The EQB has assigned the indicated unit of government to review the petition and decide on the need for an EAW.

- City of Otsego, Eagle Trucking/Frattalone Companies Gravel Mining project

EAW NEED DECISIONS

The noted responsible governmental unit has made a decision regarding the need for an EAW in response to a citizen petition.

- Cass County Planning Commission, Girl Lake Residential Project, Denied
- Department of Agriculture, Re-Registration of Pesticide Products Containing Acetochlor, Denied
- Department of Agriculture, Re-Registration of Pesticide Products Containing Atrazine, Denied
- Department of Agriculture, Re-Registration of Pesticide Products Containing Chlorpyrifos, Denied

EIS NEED DECISIONS

The responsible governmental unit has determined the following projects do not require preparation of an EIS. The dates given are, respectively, the date of the determination and the date the EAW notice was published in the *EQB Monitor*.

- City of Lilydale, One Riverfront View, January 29, 2007 (December 18, 2006)
- Minnesota Pollution Control Agency, Hurd Swine Feedlot Expansion Project, January 23, 2007 (December 4, 2006)
- County of Stearns, 8th Street North (CSAH 4) and Pinecone Road, May 8, 2006 (August 22, 2006)
- Anoka County, CSAH 14 Reconstruction Project, January 23, 2007 (October 9, 2006)

DRAFT AUAR AVAILABLE

SOUTHEAST TOWN OF HASSAN

Comments due 14 March 2007

Description: The Southeast Town of Hassan AUAR has been prepared to assess the impacts of development within an area of approximately 1,043 acres. The area is generally described as lying west of Brockton Lane (CSAH 101), from the southern boarder of Hassan to I-94 on the north and east of Fletcher Lane (CSAH 116.) With the project area, a master planned community of approximately 630 acres is being proposed by Mainstreet LLC. The AUAR evaluates three alternative scenarios: 1) consistent with the Comprehensive Plan 2) with the Stone's Throw project and an assumed new interchange with I-94 and 3) with the Stone's Throw project and no new interchange assumed. Under the three scenarios, project magnitude ranges from 560 new residential units and 5.5 million square feet of new commercial/industrial development for the scenario consistent with the Comprehensive Plan to a worst case scenario of nearly 2,000 new housing units and 4.5 to 5 million square feet of commercial/industrial development. The types and intensities of development and the needed utility infrastructure are consistent with suburban style developments with city services. Copies of the Draft AUAR are available for review at Hassan Town Hall, 25000 – Hassan Parkway; Rogers, MN 55374 or online at www.townofhassan.com. All written comments should be submitted to Emily Martinson on or before March 14, 2007.

RGU: Town of Hassan, Minnesota

Contact Person:

Emily Martinson, Planner

Hassan Township

25000 Hassan Pkwy.

Rogers, MN 55374

Phone: 763-428-4100

Fax: 763-428-2102

emartinson@townofhassan.com

CORRECTION

Project Title: Sartell Section 34 & 35 Development Area Draft AUAR

Description: The Draft Alternative Urban Areawide Review (AUAR) is an assessment of potential environmental impacts associated with the development of a 225-acre area located in portions of Sartell and LeSauk Township. The AUAR addresses three development scenarios that provide a range of development options—from 736-1,142 residential units and from 450,000-700,000 square feet of commercial uses. The area is generally bounded by Highway 15, the Mississippi River, the Sauk River, and St. Cloud city limits.

Document Availability: The AUAR is available for review at Sartell City Hall (125 Pinecone Road No.) and at the Great River Regional Library, St. Cloud (405 St. Germain St. W, St. Cloud, MN 56301). The AUAR is also available on the city's website www.sartellmn.com.

Comment Period: Written comments on the AUAR must be sent to the City of Sartell by 4:30 p.m. on Wednesday, February 28, 2007.

RGU: City of Sartell

Contact Person

Anita Rasmussen,, Planning & Community Development Director

City of Sartell

125 Pinecone Road No.

PO Box 140

Sartell, MN 56377

DRAFT EIS AVAILABLE

MINNESOTA STEEL INDUSTRIES, LLC PROJECT

The Department of Natural Resources (DNR) has prepared a Draft Environmental Impact Statement (EIS) that describes the anticipated environmental and socioeconomic impacts of the proposal by Minnesota Steel Industries, LLC (Minnesota Steel) to create an open pit taconite mine with adjacent stockpile areas, construct new facilities including – a crusher, concentrator, pellet plant, direct reduced iron plant, a steel mill consisting

of two electric arc furnaces, two ladle furnaces, two thin slab casters, a hot strip rolling mill, and construction of a new tailings basin on the site of the former Butler facility tailings basin.

The purpose and need of the project would be to mine taconite ore and produce steel on site in order to provide increased steel product to the domestic and world markets.

The DNR will accept comments on the Draft EIS during the public review and comment period that concludes at **4:30 PM on Monday, April 2, 2007**. Written comments should be submitted to:

Scott Ek, Principal Planner
Minnesota Department of Natural Resources
Division of Ecological Services
Environmental Policy and Review Unit
500 Lafayette Road, Box 25
St. Paul, MN 55155-4025

Comments may also be e-mailed to environmental.review@dnr.state.mn.us with "Minnesota Steel" in the subject line. All e-mails should include a name and legal mailing address.

The DNR will hold a public informational meeting for the purpose of considering public comments on the Draft EIS. The public meeting will be held on Wednesday, March 14, 2007 beginning at 6:00 p.m. at the Nashwauk High School, 400 2nd Street, Nashwauk. Verbal and written comments on the Draft EIS will be accepted at the meeting.

Public review copies of the documents are available at the DNR Library, 500 Lafayette Road, St. Paul; the DNR Regional Office, 1201 East Highway 2, Grand Rapids; the Duluth Public Library, 144 West Second Street, Duluth; and the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis. The documents are also posted on DNR's website at: <http://www.dnr.state.mn.us/input/environmentalreview/minnsteel/index.html>

There are limited hardcopy versions of the Draft EIS available, however a Draft EIS Executive Summary may be requested by calling DNR at 651-259-5156. There are also CD-versions of the full document available upon request.

EIS ADEQUACY DECISION

FINAL EIS ADEQUACY DECISION

The Department of Natural Resources (DNR) prepared an Environmental Impact Statement (EIS) for the proposal by Mittal Steel USA - Minorca Mine, Inc. (formerly Ispat Inland Mining Company) to open the East Reserve; a new open-pit mine area located between the towns of Biwabik and McKinley.

The DNR prepared a Scoping Environmental Assessment Worksheet (EAW) and a Draft Scoping Decision Document (SDD) to identify those project alternatives and issues that would be addressed in the EIS. A notice of the availability of the Scoping EAW and Draft SDD was published in the *EQB Monitor* (Vol. 29, No. 14) on July 4, 2005. The DNR held a public scoping meeting in Biwabik, Minnesota on July 26, 2005, and issued the Final Scoping Decision Document on August 24, 2005.

The EIS preparation notice was published in the *EQB Monitor* (Vol. 29, No. 16) on November 7, 2005. The DNR prepared a Draft EIS that addressed all issues and alternatives raised during the scoping period including identification of reasonable mitigation measures for identified adverse effects.

The Draft EIS notice of availability was published in the *EQB Monitor* (Vol. 30, No. 19) on September 11, 2006. The DNR held a public information meeting on October 12, 2006, and accepted comments on the Draft EIS through October 26, 2006.

The DNR prepared a Final EIS which included responses to all comments received during the Draft EIS review period. The Final EIS notice of availability was published in the *EQB Monitor* (Vol. 30, No. 26) on December 18, 2006. The DNR accepted comments on the adequacy of the Final EIS through January 3, 2007. The DNR received four comment letters during the Final EIS review period. The DNR will forward comments received after the review period to permitting entities for their consideration.

On January 31, 2007, pursuant to the criteria prescribed in Minnesota Rules, part 4410.2800, subpart 4, the DNR determined the EIS is adequate. The DNR prepared a record of its decision and distributed it to all parties in accordance with Minnesota Rules, part 4410.2800, subpart 6. The finding of adequacy concludes environmental review for the proposed project.

The contact person at the DNR is: Scott Ek, Principal Planner, Minnesota Department of Natural Resources, Division of Ecological Services, Environmental Policy & Review, 500 Lafayette Road, Box 25, St. Paul, MN 55155-4025; (651) 259-5156.

NOTICES

MINNESOTA FOREST RESOURCES COUNCIL PUBLIC MEETING NOTICES

The Minnesota Forest Resources Council (MFRC) will meet on Thursday, March 29, 2007 from 9:30 a.m.-3:30 p.m. at the Cloquet Forestry Center located in Cloquet, MN.

For more information please contact Leslie McInenly at 651-603-6761 or go to the calendar on the MFRC website at <http://www.frc.state.mn.us>.

North Central Regional Landscape Committee. The North Central Regional Landscape Committee of the Minnesota Forest Resources Council (MFRC) will meet on Wednesday, February 21, 2007, from 9:30 a.m. - 2:00 p.m. in Grand Rapids at the Forest History Center.

For more information, please contact Lindberg Ekola at 320-256-8300 or go to the calendar on the MFRC website at <http://www.frc.state.mn.us>.

Landscape Committee. The Landscape Committee of the Minnesota Forest Resources Council (MFRC) will meet on Wednesday, February 22, 2007, from 10:00 a.m. -12:00 p.m. in Cloquet at the Cloquet Forestry Center.

For more information, please contact Lindberg Ekola at 320-256-8300 or go to the calendar on the MFRC website at <http://www.frc.state.mn.us>.

Northern Regional Landscape Committee. The Northern Regional Landscape Committee of the Minnesota Forest Resources Council (MFRC) will meet on Wednesday, February 28, 2007, from 9:00 a.m. -2:00 p.m. in International Falls at the Holiday Inn.

For more information, please contact Lindberg Ekola at 320-256-8300 or go to the calendar on the MFRC website at <http://www.frc.state.mn.us>.

Southeast Regional Landscape Committee. The Southeast Regional Landscape Committee of the Minnesota Forest Resources Council (MFRC) will meet on Wednesday, February 26, 2007, from 9:30 a.m. -2:00 p.m. at the Whitewater State Park near Elba, MN.

For more information, please contact Lindberg Ekola at 320-256-8300 or go to the calendar on the MFRC website at <http://www.frc.state.mn.us>.

Public Notice
Availability for Public Review of the Minnesota Forest Resources Council's
Proposed Biomass Guidelines for the Sustainable Harvest of Woody Biomass
From Forestland and Brushland

The Minnesota Forest Resources Council is requesting public review and comment on proposed guidelines for the sustainable harvest of woody biomass from forestland and brushland. Minnesota Statute (M.S. 216B.2424) mandates that the Minnesota Forest Resources Council (Council) and the Minnesota Department of Natural Resources (DNR) must develop guidelines or best management practices for “sustainably managed woody biomass” for both forestland (Council) and brushland (DNR). The statute requires that these guidelines must be reviewed and approved by the Council by July 1, 2007. These guidelines are contained in two documents (i.e., forestland and brushland) titled “Biomass Harvesting on Forest Management Sites in Minnesota” and “Woody Biomass Harvesting on Brushlands and Open Lands in Minnesota.”

Members of the public wanting to review and provide comment on one or both of the proposed guideline documents will be able to view them on the Council Website at www.frc.state.mn.us/FMgdline/BHGC, on March 1, 2007. To receive printed copies of the proposed guideline documents or more information, contact:

Dick Rossman, DNR/Division of Forestry
6603 Bemidji Ave. No.
Bemidji, MN 56601
Telephone: 218-755-4062
Fax: 218-755-4417
dick.rossman@dnr.state.mn.us

Written comments on one or both of the proposed guideline documents must be received by email, postal mail, or fax by Dick Rossman no later than 4 p.m., Tuesday, March 27, 2007.

Minnesota Department of Agriculture

Notifications of Release of Genetically Engineered Organisms

File Number	Company	Crop	Project	County
07-NO-004	Monsanto	Canola	Herbicide Tolerance	Polk, Pennington, Red Lake
07-NO-005	Monsanto	Corn	Herbicide Tolerance	Blue Earth
07-NO-006	Dow AgroSciences	Corn	Herbicide Tolerance	Dakota, Fillmore
07-NO-007	Monsanto	Corn	Cold Tolerance	Renville, Steele, Kandiyohi, Clay (2), Blue Earth (2)
07-NO-008	Monsanto	Corn	Insect Resistance Herbicide Tolerance	Freeborn
07-NO-009	Monsanto	Corn	Herbicide Tolerance	Steele, Rice, Waseca, Freeborn
07-NO-010	Monsanto	Corn	Herbicide Tolerance Insect Resistance	Dakota
07-NO-011	Monsanto	Corn	Herbicide Tolerance Insect Resistance	Martin, Lincoln, Lyon
07-NO-012	Monsanto	Soybean	Herbicide Tolerance	Redwood, Clay
07-NO-013	Syngenta	Corn	Insect Resistance	Goodhue
07-NO-014	Syngenta	Corn	Altered Seed Composition Improved Feed Quality	Rice, Mower, Waseca, Dakota, Goodhue

For more information contact Mary Hanks, Minnesota Department of Agriculture, 625 Robert St N., St. Paul, MN 55155, 651/201-6277, mary.hanks@state.mn.us .

OAH Docket No. 3-2000-17810-2

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Denial of Certification
of the Variance Granted to Robert W.
Hubbard by the City of Lakeland.

**NOTICE AND ORDER FOR
PREHEARING CONFERENCE AND
ORDER FOR HEARING**

TO: ROBERT W. HUBBARD, and his attorney, Scott Strand, 1772 Eleanor Avenue, St. Paul, MN 55116;
and

CITY OF LAKELAND and its attorneys, Nicholas J. Vivian, Eckberg, Lammers, Briggs, Wolff & Vierling P.L.L.P., 1809 Northwestern Avenue, Stillwater, MN 55082-7534.

NOTICE OF HEARING

ROBERT W. HUBBARD AND THE CITY OF LAKELAND ARE HEREBY NOTIFIED that the Minnesota Department of Natural Resources (“DNR”) has initiated this action as a result of the appeals brought by Robert W. Hubbard and the City of Lakeland of DNR’s denial of certification of the variance granted by the City of Lakeland to Robert W. Hubbard for construction of a home within bluffline setback requirements.

ORDER FOR PREHEARING CONFERENCE

IT IS HEREBY ORDERED that a contested case prehearing conference will be held on February 14, 2007, at 10:00 a.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota.

ORDER FOR HEARING

IT IS FURTHER ORDERED that, pursuant to Minn. R. 6105.0540, subp. E(1) (2005) and Minn. Stat. § 103G.311 (2006), a contested case hearing in this matter will be held at a time and place to be decided by the Administrative Law Judge at the prehearing conference.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to Kathleen D. Sheehy, Administrative Law Judge, Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401-2138, telephone (612) 341-7602.

The hearing will be conducted pursuant to the contested case procedures set out in chapter 14 of Minnesota Statutes, the Rules of the Office of Administrative Hearings, Minn. Rules 1400.8505-.8612 (2005), and Minn. Stat. §§ 103F.351 and 103G.311 (2006). A copy of these materials may be purchased from the Minnesota Book Store, telephone (651) 297-3000, or are available at www.revisor.leg.state.mn.us. Copies of the rules are also available at www.oah.state.mn.us. The rules generally provide for the procedural rights of the parties, including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examination, and right to purchase a transcript of the record.

The attorney for DNR, David P. Iverson, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, Telephone (651) 296-0687, may be contacted to discuss discovery or informal disposition of this matter.

After the hearing in this matter, the record and the Administrative Law Judge’s recommendations will be forwarded to the Commissioner of Natural Resources to make a final decision. DNR staff involved in the pretrial conference and subsequent hearing will not participate in the Commissioner’s deliberations in this matter. In addition, the Commissioner will be advised by an attorney other than David P. Iverson.

ALLEGATIONS

1. The lower St. Croix River is a part of the federal wild and scenic rivers system and such inclusion has been recognized and approved by the Minnesota Legislature. *See* Minn. Stat. § 103F.351 (2006). In authorizing such inclusion, the Minnesota Legislature recognized the lower St. Croix River as “a relatively undeveloped scenic and recreational asset” and noted that “preservation of this unique scenic and recreational asset is in the public interest and will benefit the health and welfare of the citizens of the state.” Minn. Stat. § 103F.351, subd. 1 (2006). As a part of its authorization, the Minnesota Legislature directed the Commissioner of Natural Resources to prepare a comprehensive master plan relating to, among other matters, the regulatory boundaries of the riverway, and to adopt rules that establish minimum guidelines and standards for local zoning ordinances applicable to real property riparian to the lower St. Croix River and located within the riverway boundaries. *Id.* at subd. 4. The Legislature then directed local units of government located within the

designated boundaries to adopt zoning ordinances in compliance with the minimum guidelines and standards established by DNR. *Id.*

2. Pursuant to the legislative directive, DNR promulgated minimum standards for the management and development of the lower St. Croix River, which are located at Minn. R. 6105.0351-.0550 (2005). These standards include, among other requirements, minimum structure setbacks from the ordinary high water mark of the river as well as river blufflines. Minn. R. 6105.0380, subp. 5 (2005). A “bluffline” is defined in relevant part as “a line along the top of a slope connecting the points at which the slope, proceeding away from the river ..., becomes less than 12 percent” Minn. R. 6105.0354, subp. 5 (2005). Relevant to this matter, Minn. R. 6105.0380, subp. 5.A(2) (2005) requires a setback of 40 feet from all blufflines for structures located within urban districts. The minimal standards also require that, when substandard structures are being replaced, the new structures “shall comply with the dimensional standards of St. Croix Riverway ordinance.” Minn. R. 6105.0370, subp. 11.D (2005). The City of Lakeland has adopted these minimal standards within its bluffland and shoreland management ordinances found in the City of Lakeland Lower St. Croix River Bluffland and Shoreland Management Ordinance (“Lakeland Ordinance”) at Sections 1 through 8.

3. Pursuant to Section 805.01 of the Lakeland Ordinance, a variance may be granted to an ordinance requirement, including a setback limitation, by the City of Lakeland if the applicant can establish “hardship.” The Lakeland Ordinance defines “hardship” as “the proposed use of the property and associated structures in question cannot be established under the conditions allowed by this ordinance; the plight of the landowner is due to circumstances unique to his property, not created by the landowner after May 1, 1974; and the variance, if granted, will not alter the essential character of the locality.” Lakeland Ordinance Section 805.01. *See also* Lakeland General Ordinance Section 503.01(2) (hardship defined); Minn. R. 6105.0520 (2005) (variance and hardship defined for minimum standards).

4. Pursuant to Minn. R. 6105.0540 (2005), all variances granted to lower St. Croix River bluffland and shoreland ordinances must be submitted to DNR for certification before such variances become effective. DNR must either certify or deny certification within 30 days of receipt of the notice of variance from the local unit of government. DNR’s certification is intended to “ensure that the standards and criteria herein are not nullified by unjustified exceptions in particular cases, and to promote uniformity in the treatment of applications for exceptions....” Minn. R. 6105.0540, subp. 1 (2005).

5. Robert W. Hubbard (“Hubbard”) is the owner of real property located at 1175 Quinlan Avenue, Lakeland, Washington County, Minnesota 55043 (hereinafter referred to as the “Hubbard property”). The Hubbard property is located on and is riparian to the lower St. Croix River, and is within the regulatory boundaries set forth in the comprehensive master plan. Consequently, the Hubbard property is subject to the bluffland and shoreland management ordinance provisions of the Lakeland Ordinance.

6. An existing single-family residence constructed in the 1940s is located on the Hubbard property. The residence is approximately 800 square feet in size and is considered a substandard structure because it is located less than 40 feet from the bluffline. *See* Minn. R. 6105.0380, subp. 5.A(2) (2005) and Lakeland Ordinance Sections 302.01(18) and 402.01(5).

7. Hubbard has proposed to construct a new single-family residence on the real property utilizing and incorporating as part of the new structure the footprint of the existing non-conforming residential structure. While a majority of the proposed residence will be located back from the existing structure, Hubbard proposes that the existing structure be demolished and a “wing” of the new residence be located on the footprint of the old residence. As a replacement of a substandard structure, Hubbard applied to the City of Lakeland for a variance to the 40-foot setback standard set forth in the Lakeland Ordinance at Section 402.01(5).

8. By Resolution No. 2006-09, dated October 17, 2006, the City of Lakeland granted Hubbard a variance from the City’s 40-foot bluffline setback requirement. Among other reasons, the City of Lakeland found that hardship existed because the development would not increase the level of nonconformity with the Lakeland Ordinance relative to the existing structure and that the proposed development is “fundamentally

reasonable.” The City of Lakeland also found that “[t]he lot has multiple grades and bluff lines to contend with from a development standpoint and is unique in its topography and layout affecting sitting(sic) and location.”

9. By letter dated November 29, 2006, DNR notified the City of Lakeland that it was denying certification of its variance decision pursuant to Minn. R. 6105.0540, subp. 3 (2005). DNR’s denial of certification is supported by reasons including, but not limited to, the following:

- a. There is nothing in the City of Lakeland’s resolution that addresses why the proposed residence could not be moved back on the existing lot in a manner to meet the 40-foot bluffline setback. Specifically, the facts known to DNR reveal that there are no “physical conditions unique to the land” that limit such a repositioning of the proposed structure. The City’s reference to “multiple grades and bluff lines” alone does not support a finding of “hardship”. Consequently, reasonable alternatives for location of the proposed residence exist that do not violate the bluffline setback requirement of the Lakeland Ordinance.
- b. The City of Lakeland’s finding that hardship exists because the proposed development is “fundamentally reasonable” is conclusory, is unsupported by the record, and does not support a finding of hardship. The City’s determination that the lot permeable surface requirements are met by the development also do not support the finding of hardship. The City’s finding that the development as proposed “does not increase the level of nonconformity with the ordinances” does not constitute hardship but rather is merely a statement that the extent of the nonconforming structure will not be increased.

10. Hubbard timely appealed the Notice of Noncertification by letter dated December 22, 2006, pursuant to Minn. R. 6105.0540, subp. 3.E (2005). By letter dated December 21, 2006, the City of Lakeland also timely appealed DNR’s Notice of Noncertification.

11.

ISSUES

1. Did the Minnesota Department of Natural Resources appropriately deny certification of the variance granted by the City of Lakeland to Robert W. Hubbard allowing for the construction of a new residence within the 40-foot bluffline setback set forth in the City’s Lower St. Croix River Bluffland and Shoreland Management Ordinance?

The relevant statutes and rules include, but need not be limited to, Minnesota Statutes § 103F.351, and 103G.311 (2006); Minn. R. 6105.0351-.0550 (2005); and City of Lakeland Lower St. Croix River Bluffland and Shoreland Management Ordinance Sections 1 through 8; City of Lakeland General Ordinance Section 503.

ADDITIONAL NOTICE

1. Respondent’s failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that DNR’s allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

2. If any party has good cause for requesting a delay of the prehearing conference, the request must be made in writing to the Administrative Law Judge at least five days prior to the prehearing conference. A copy of the request must be served on the other party.

3. Any party intending to appear at the prehearing conference must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on DNR’s attorney. A Notice of Appearance form is enclosed.

4. At the hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. The parties are entitled

to the issuance of subpoenas to compel witnesses to attend the hearing. The parties will have the opportunity to be heard orally, to present evidence and cross-examine witnesses, and to submit evidence and argument. Ordinarily the hearing is tape-recorded. The parties may request that a court reporter record the testimony at their expense.

5. Persons attending the hearing should bring all evidence bearing on the case, including any records or other documents. Be advised that if data that is not public is admitted into the record, it may become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (2006).

6. Requests for subpoenas for the attendance of witnesses or the production of documents at the hearing shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000 (2005). A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at www.oah.state.mn.us or by calling (612) 341-7600.

7. This case may be appropriate for mediation. The parties are encouraged to consider requesting the Chief Administrative Law Judge to assign a mediator so that mediation can be scheduled promptly.

8. The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court. A Guide to Participating in Contested Case Proceedings at the Office of Administrative Hearings is available at www.oah.state.mn.us or by calling (612) 341-7600. Pursuant to Minnesota Rules 1400.5100, subpart 3a and 1400.5500 (2005), filing may be accomplished by mail, deliver, fax or licensed overnight express mail service. The fax number for the Administrative Law Judge is (612) 349-2665.

9. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, including a foreign language interpreter, the administrative law judge must be promptly notified. To arrange for an accommodation or an interpreter, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, or may call (612) 341-7610 (voice) or (612) 341-7346 (TTY).

Dated this ____ day of _____, 2007.

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

MARK HOLSTEN
Commissioner