

STATE OF MINNESOTA

Department of Natural Resources
Division of Waters

In the Matter of a Proposed Amendment
to the Management Plan for Parts of the
Mississippi Wild and Scenic River,
Minnesota Rules, Part 6105.0870

**STATEMENT OF NEED
AND REASONABLENESS**

I. Statement of Need

The Mississippi River was officially designated as part of the Wild and Scenic Rivers system on October 11, 1976, pursuant to Minnesota Statutes, Section 103F.325. The Management Plan for Parts of the Mississippi River in Minnesota Rules, Part 6105.0870 charges that:

In accordance with the Minnesota wild and scenic rivers act, Minnesota Statutes 1974, section 104.36 each local government shall, within six months of designation of the scenic and recreational river, adopt or amend its local ordinances and land use district maps to the extent necessary to comply with the statewide standards and criteria and the management plan as follows.

The rules then specify in subparts 2 - 10 minimum standards for Stearns, Sherburne, and Wright Counties; the municipalities of Saint Cloud, Clearwater, Monticello, Elk River, Becker, Dayton, and Ramsey; Elk River Township before and after incorporation in the City of Elk River; and lands within the orderly annexation area adjacent to the city of Monticello in 1972.

The Town of Otsego petitioned for incorporation pursuant to Minnesota Statutes, Chapter 414. The Municipal Board of the State of Minnesota ordered on September

21, 1990, and as amended on December 18, 1990, that the Town of Otsego be incorporated into a city. The area subject to incorporation includes lands within the Mississippi River wild and scenic land use district as identified in the land use district property descriptions listed in Minnesota Rules, part 6105.0910.

The Municipal Board further ordered:

That the ordinances of the Town of Otsego as well as the Land Use and Planning Controls of the County of Wright shall continue in effect within the former boundaries of the Town of Otsego until repealed or replaced by the governing body of the new City of Otsego.

On February 5, 1991, the Department of Natural Resources received a petition from the City of Otsego for an amendment to the Management Plan for Parts of the Mississippi River to either amend the district boundaries for the entire City of Otsego, or exclude all of three blocks in Section 17. In accordance with Minnesota Statutes, section 14.09, the Department carefully reviewed the petition and found no justification for granting the particular request based on the Department's statutory and regulatory mandate. Since the 1976 Management Plan for the Mississippi River names no specific standards for official land use controls for the newly-incorporated City of Otsego, we proposed instead an amendment to cite minimum criteria that the City of Otsego must follow when adopting their ordinance. Although the area within the Wild and Scenic River District remains protected and regulated under the City-adopted Wright County Zoning Ordinance, the City will soon be prepared to adopt their own zoning ordinance for this district following rule amendment.

The Agency's statutory authority to adopt the rules is set forth in Minnesota Statutes, section 103F.321, subd. 2 (a) which provides:

The commissioner shall adopt statewide minimum standards and criteria for the preservation and protection of shorelands within the boundaries of wild, scenic, and recreational rivers.

Under this statute the Agency has the necessary statutory authority to adopt the proposed rules.

II. Statement of Reasonableness

Proposed Subpart 11, item A. reflects Minnesota Rules, part 6105.0840, which classifies this portion of the Mississippi River in Otsego as recreational. Like other local governments along this portion, Otsego is required to establish a recreational land use district. Minnesota Rules, part 6105.0870, subpart 1 states that the land use controls referenced shall apply to the entire area within the land use district boundaries as identified on the land management maps in part 6105.0950 and the land use district property descriptions. These descriptions are found in Minnesota Rules, part 6105.0910.

Land use controls are to be employed to preserve and protect the values of the river which justified its selection and classification as a Wild, Scenic and Recreational River. In order to preserve and protect the outstanding values of the Mississippi River, the natural landscape is protected as much as possible by limiting the lot size and number of houses and thereby the amount of vegetative cutting, grading and filling, erosion problems, and sewage seepage problems. The standards for the

western half of the City in Item B. follow the City's stated policy of retaining land within the western one-half of the City for rural use and preservation of prime agricultural land. The minimum standards of the Wild and Scenic River Rules in parts 6105.0010 to 6105.0250 are proposed for this portion of the district to fulfill that policy and the intent of the Wild and Scenic River Act. These proposed standards also conform to the charge in part 6105.0860, subpart 2 of assigning these provisions to all lands within the scenic and recreational land use districts that were within unincorporated areas of the counties at the time of designation of the Mississippi River.

Standards proposed for the eastern half of the City in Items C. and D. comply with the minimum standards of the Wild and Scenic River Rules, except for provisions relating to land use districts, uses, dimensional standards, and standards for impervious surface coverage. Minnesota Statutes, section 103F.325, subd. 1, (c) states:

[T]he plan may include proposed standards and criteria adopted under section 103F.321 for local land use controls that differ from statewide standards and criteria to the extent necessary to take account of the particular attributes of the area.

Minnesota Rules, part 6105.0070, subp. 2 D. further confirms that the proposed regulations for local land use control

shall be consistent with the river classification, but may differ from the standards and criteria of parts 6105.0010 to 6105.0250 to the extent necessary to take account of the particular attributes of the area.

Minnesota Statutes, section 103F.325, subd. 1 adds that the plan must be prepared with no unreasonable restrictions upon compatible, preexisting economic uses of particular tracts of land.

Because of these directives and the fact that the eastern half along the Mississippi is considerably developed, a separate set of zoning standards is required for this area. The proposed standards for this area are very similar to the standards which apply to Onamia, Milaca, Princeton, Cambridge, Isanti, Anoka, and portions of St. Francis and Ramsey on the Rum Wild and Scenic River. By substituting the land use district, uses, and use standards of the shoreland management rules from Chapter 6120, the City can more appropriately provide for land use in the eastern half in conformance with their comprehensive plan and preexisting uses. Based on a careful analysis of the uses associated with the shoreland management river classes in conjunction with the City's comprehensive plan, we are proposing that the Urban river class be applied for uses for the areas in Items C. and D. This classification appears to be the best choice for identifying uses in each of the future land use districts which will be permitted, conditionally permitted, or prohibited.

The proposed differing dimensional standards in Items C. and D. reflect criteria that have been used for the Monticello Orderly Annexation Area to the north on the Mississippi and the above-mentioned Rum Wild and Scenic River municipalities, as well as Cannon Falls on the Cannon. These dimensional standards relating to minimum lot size, minimum lot width, and structure setbacks acknowledge the preexisting development and the future possibility of the establishment of a public sewage system. These differing rules for dimensional standards will not jeopardize

the original intent and purpose of designating the Mississippi and its lands as a component of the state wild and scenic rivers system.

Item C., subitem (9) provides the replacement of maximum standards for impervious surface coverage with performance standards. As land is covered with roads, buildings, and parking lots, the amount of rainfall that can infiltrate into the soil is reduced. This increases the volume of runoff from the watershed. When an urban area is developed, natural drainage patterns are modified as runoff is channeled into paved areas. These modifications increase the velocity of runoff. The increased volume and velocity of runoff after development is significant because of the increased pollutant loading it can deliver as well as potential flooding and channel erosion and sedimentation problems.

Higher flows can cause flooding and have adverse effects on natural rivers. Increased flows can also cause previously stable channels to erode. Material that erodes can smother riverine organisms. Sediment from streambank erosion eventually settles and adds additional silt to the river. Also, as shallow infiltration is reduced by increased impervious cover, the volume of water available for base flow in streams is reduced. These changes in hydrology, combined with increased pollutants, can have a dramatic effect on the aquatic ecosystem in rivers.

Comprehensive approaches and good site planning can do a great deal to avoid increases in runoff and reduce the potential for erosion and sedimentation, pollutant, and flooding problems. Since the performance of best management practices can be site specific and dependent on many factors, the required performance standards are the most applicable practices consistent with Protecting Water Quality in Urban Areas, Best Management Practices for Minnesota, Minnesota Pollution

Control Agency, October 1989. It is usually necessary to use a combination of practices to meet the above goals rather than relying on one practice. Implementation, inspection, and maintenance are key performance factors for the success of comprehensive practices to prevent adverse impacts for present and future generations. Land with slopes greater than 13% is excluded from the variation because of the potential for significant erosion or soil slumping problems on steeper slopes or on highly erosive soils.

Geographical areas within the City that are covered in Item D. are proposed to conform to the same provisions in Item C. except for minimum lot size and impervious surface requirements. The City has proposed that the minimum lot size be 2 1/2 acres for the western half of the City and for areas generally east of State Highway 101 and CSAH 36, as noted in Proposed Rules, part 6105.0870, subp. 11, items B. and D [see Proposed Rules for exact description]. This proposal puts into action some of the goals and policies listed in the City's June 1991 Comprehensive Plan:

Goals:

Land use and development is to be compatible with features of the natural environment and is to be accommodated without destroying environmental features and natural amenities;

Prevent overcrowding and overutilization of land use;

Prevent overintensification of land use development; and

Protect shorelands and river corridors and prevent development misuse.

Policies:

Land adjacent to the river corridors and shorelands shall be protected from overintensification of use and development.

Adequate lot sizes and soundly constructed buildings of sufficient size shall be required.

DNR agrees with the City's approach in terms of lot size for these particular areas in order to preserve and enhance the values that cause the river to be designated a Wild and Scenic River. Part 6105.0080 affirms that one of the purposes in enacting land use ordinances for Wild and Scenic Rivers is to "reduce the effects of overcrowding and poorly planned development of such adjacent lands." This more restrictive provision for lot size, instead of the typical requirement of 2 acres for recreational rivers under MN Rules, is acceptable to the Department in fulfilling the intent of the Wild and Scenic Rivers Act.

Although standards in the referenced part 6120.3300, subpart 11 require that impervious surface coverage of lots must not exceed 25 percent of the lot area, we are reiterating it here to distinguish this geographical area from the one cited in Item C. This wording is also reasonable in that it clarifies that the percentage of impervious surface coverage may not be varied.

III. Impact on Agricultural Lands

This rule will not pose any direct adverse impacts on agricultural land as specified in Minnesota Statutes, sections 17.80 to 17.84. All of the land within the City has been part of the Mississippi Wild and Scenic River District and regulated by the Wright

County ordinance since 1978. Agricultural uses have always been permitted uses under the minimum standards and this ordinance. These proposed rules reasonably achieve the State's policy of preserving agricultural land and encourage the planned growth and development of urban and rural areas to ensure the most effective use of agricultural land. The City can continue to allow agricultural uses in the Wild and Scenic River District. Standards are provided that conserve and enhance soil and water resources in accordance with the State's policy. Planned growth and development of urban and rural areas can be accomplished by the City using the framework of land use descriptions and allowable uses and accompanying development standards.

IV. Small Business Considerations in Rulemaking

In accordance with Minnesota Statutes, section 14.115, subd. 2, the DNR has considered each of the following methods for reducing the impact of the rule on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses:

The proposed rules have no requirements dealing with the reporting of business activities. The rules have specific zoning compliance standards for commercial, industrial and extractive uses, some of which could include small businesses. The rule further differentiates between those uses that need to be near shoreline and those uses that do not. It is reasonable to require that a use that is not dependent

on access to or use of the riparian zone for a function of its business does not need to be located in this area.

Small businesses are treated no differently or exceptionally less or more restrictive than non-small businesses. Depending on their exact nature, some may have a large potential for impacting the Wild and Scenic River values that are to be preserved and protected, whereas others may have minimal potential impacts. It is reasonable that these rules contain standards that equitably provide specific rule requirements, review procedures, and performance criteria that protect and manage the Wild and Scenic River District from potential environmental impacts of both small and non-small businesses.

- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements:

Specific schedules and deadlines for compliance or reporting requirements of small businesses are not contained in these rules.

- (c) the consolidation or simplification of compliance or reporting requirements:

The potential for consolidation and simplification of zoning compliance requirements were constantly weighed against the statutory requirements relevant to these rules. Requirements were consolidated and/or simplified whenever possible, while statutory requirements

necessitated more complex rule requirements in other cases. The City of Otsego will implement these minimum standards and criteria through local land use ordinances that can be based on prepared model ordinances.

- (d) the establishment of performance standards to replace design or operational standards required in the rule:

The Department is proposing a separate set of zoning standards for the eastern half of the City which relate to land use district uses and use standards. The type of permitted uses and accompanying use standards are from the shoreland management rules of Chapter 6120, rather than the more restrictive wild and scenic river rules of Chapter 6105. The City can more appropriately provide for land use in the eastern half in conformance with their comprehensive plan and preexisting uses and statutory requirements. In a certain portion of the eastern half [Subp. 11 C], impervious surface coverage requirements may be varied without a variance if certain performance standards are met. These proposed standards reduce the impact on both small and non-small businesses in the Wild and Scenic River District.

- (e) the exemption of small businesses from any and all requirements of the rule:

The Department considered this method and found that the purposes, intent, and legal requirements of Minnesota Statutes, section 103F.301 - 103F.345 would not be met if this method were implemented. The

agency has incorporated where feasible and prudent methods to reduce impacts to small businesses and still fulfill the intent of the Wild and Scenic Rivers Act. One example is the development of land use district uses in which small businesses could be located or allowed to remain consistent with the proposed framework of that section.

V. Costs to Local Public Bodies

If fiscal responsibility is shown, the implementation of this rule will not have a total cost of over \$100000 to local public bodies in either of the two years immediately following adoption of the rule. The Department of Natural Resources provides free technical assistance and model ordinances for each community in adopting and implementing the rules, eliminating the need for costly outside sources. Other Wild and Scenic River communities estimate that the time spent on administration averages 5% of a full-time position. Minnesota Statutes, section 14.11, subd. 1 is not applicable.

VI. List of Witnesses and Exhibits

A. Witnesses

In support of the need for and reasonableness of the proposed rules, the following witnesses will testify at the rulemaking hearing:

1. Ms. Sandra Fecht will testify to the need and reasonableness of the proposed rule. Other DNR staff may be present to answer questions as necessary.
2. Representative of the City of Otsego.

B. Exhibits

In support of the need for and reasonableness of the proposed rules, the following exhibits will be entered into the hearing record by the Agency:

<u>Exhibit No.</u>	<u>Document</u>
1	Proposed rules with Revisor's approval as to form
2	Order for hearing
3	Statement of Need and Reasonableness
4	Notice of hearing
5	Certification of mailing list and affidavit of mailing
6	Notice of Solicitation of Outside Opinion
7	Photocopy of State Register publication of notice
8	Copy of map showing Wild and Scenic River boundaries within the city limits
9	<u>Protecting Water Quality in Urban Areas, Best Management Practices for Minnesota</u> , Minnesota Pollution Control Agency, October 1989.
10	Excerpts from the City of Otsego Comprehensive Plan, June 1991.

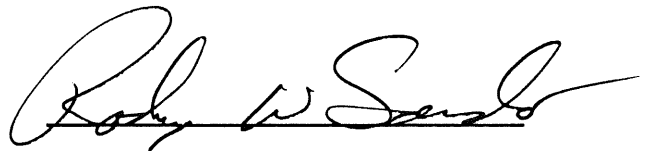
VII. Conclusion

The City of Otsego is already administering and enforcing regulations affecting the Wild and Scenic River District under the City-adopted Wright County Zoning Ordinance. Since the City desires to adopt their own zoning ordinance, this amendment will cite minimum criteria that the City of Otsego must follow when adopting their ordinance. It was unknown at the time the Mississippi River was designated a Wild and Scenic River that Otsego Township would petition to be incorporated into a city.

In conclusion, the proposed Minnesota Rules, part 6105.0870. subp. 11 is needed and reasonable since the 1976 Management Plan for the Mississippi River names no specific standards for official land use controls for the recently-incorporated City of Otsego. This amendment cites reasonable, minimum criteria that the City of Otsego must follow when adopting their ordinance. The proposed rule change appears consistent with the goals of the statutes and Wild and Scenic River Rules and Management Plan for the Mississippi River. These provisions preserve and protect the outstanding values of the Mississippi River in accordance with the Wild and Scenic Rivers Act.

This statement of need and reasonableness can be made available in other formats, including Braille, large print and audio tape. TDD: (612) 296-5484; MN Toll Free 1-800-657-3929.

Dated: 9-17-93



Rodney W. Sando

Commissioner



STATE OF
MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

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DNR INFORMATION
(612) 296-6157

September 20, 1993

Maryanne Hruby
Legislative Commission To Review
Administrative Rules
Room 55 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155-1201

Dear Maryanne,

As prescribed by Minnesota Statutes, section 14.23, I have attached a copy of the statement of need and reasonableness for the department's proposed rule governing wild and scenic river management plans for part of the Mississippi River. This rule has been submitted to the state register and will be published with a dual notice on October 4, 1993.

If you have any questions, please do not hesitate to call. My number is 297-7031.

Sincerely,

Chuck Armstrong
Administrative Rule Coordinator

The Legislative Commission to
Review Administrative Rules

SEP 21 1993

