

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE METROPOLITAN COUNCIL

In the Matter of the System Statement of
the City of Oak Grove

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
RECOMMENDATION
AND ORDER**

This matter came on for hearing before Administrative Law Judge Jim Mortenson at 9:30 a.m. on March 15, 2016, at the Office of Administrative Hearings, in St. Paul, Minnesota. The record closed on April 11, 2016, with the filing of the parties post-hearing briefs and proposed findings of fact, conclusions and recommendations.

Ann K. Bloodhart, Associate General Counsel, and David Theisen, Deputy General Counsel, appeared on behalf of the Metropolitan Council (Council).

James J. Thomson and Robert J. Vose, Kennedy & Graven, Chartered, appeared on behalf of the city of Oak Grove (Oak Grove or City).

STATEMENT OF THE ISSUE

What recommendations should the Administrative Law Judge make to the Metropolitan Council, if any are appropriate, regarding the City's proposed amendments to its 2015 System Statement?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge recommends the proposed amendments to the City's 2015 System Statement be denied. The City has challenged the need for or reasonableness of parts of the metropolitan system plan, and so the requested amendments may not be considered in a hearing.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

The Metropolitan Council and Regional Land Use Planning

1. The Metropolitan Council is responsible for the long-range planning and coordination of land-use and wastewater infrastructure in the Twin Cities metropolitan area.¹

2. The legislature adopted the Metropolitan Land Planning Act (MLPA) in 1976.² The purpose of the MLPA is to coordinate plans, programs and controls by all local governmental units in order to protect the health, safety and welfare of metropolitan area residents, and to ensure coordinated, orderly, and economically efficient development.³

3. The MLPA establishes a regional planning framework so that “the parts of the metropolitan area work together for the benefit of the whole[.]”⁴

4. The purpose of the MLPA is to: (1) establish requirements and procedures to accomplish comprehensive local planning with land use controls consistent with planned, orderly and staged development and the metropolitan system plans; and (2) provide assistance to local governmental units within the metropolitan area for the preparation of plans and official controls appropriate for their areas and consistent with metropolitan system plans.⁵

5. Under the MLPA, the Council is required to develop a “comprehensive development guide for the metropolitan area” that consists of “policy statements, goals, standards, programs and maps prescribing guides for the orderly and economical development, public and private, of the metropolitan area.”⁶

6. *Thrive MSP 2040* is the Council’s current comprehensive development guide.⁷

7. The Council updates its comprehensive development guide on a 10-year planning cycle.⁸

8. The Council is also required to develop long-range comprehensive policy plans for transportation and wastewater treatment.⁹ These plans must substantially

¹ Minn. Stat. §§ 473.851-.871 (2014). The Council also plans for transportation and recreational open space—matters that are not at issue in this proceeding.

² *Id.*

³ Minn. Stat. § 473.851.

⁴ *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 5 (Minn. 2004).

⁵ Minn. Stat. § 473.851.

⁶ Minn. Stat. § 473.145 (2014). See *City of Lake Elmo*, 685 N.W.2d at 5.

⁷ Exhibit (Ex.) 1.

⁸ Testimony (Test.) of Lisa Barajas.

⁹ Minn. Stat. § 473.146 (2014).

conform to the comprehensive development guide and reflect the Council's goals, objectives and priorities with respect to the systems within its scope.¹⁰

9. The transportation portion of the Comprehensive Development Guide, and the policy plans, and capital budgets for metropolitan wastewater service, transportation, and regional recreation open space are "metropolitan system plans."¹¹ The metropolitan system plans are the foundation for the region's coordinated regional planning efforts and the implementation of regional land use policies at the local level.¹² The system plans identify where current metropolitan systems exist and where they are proposed to be expanded for the region's continued growth. Importantly, the system plans include planning expectations of local governments.¹³

10. The 2040 Water Resources Policy Plan (*2040 WRPP*) is the Council's current metropolitan system plan for wastewater service.¹⁴ The *2040 WRPP* identifies areas that are designated for future potential and planned sewer development post-2040 (long-term wastewater service areas).¹⁵

11. The Comprehensive Development Guide and the metropolitan system plans coordinate and steer the Council's infrastructure program for the seven-county metropolitan area over the course of the next 40 years.¹⁶

12. When the Council revises its Comprehensive Development Guide, or when the Council modifies a metropolitan system plan, the Council transmits to each affected local government unit a "metropolitan system statement."¹⁷

13. Metropolitan system statements contain information specific to each local governmental unit that the Council deems necessary for the unit to consider when reviewing its own comprehensive plan. The Council's expectation is that local units of government will review the statements and determine whether a comprehensive plan amendment is necessary to ensure continued conformity with metropolitan system plans.¹⁸

14. Metropolitan system statements may include information relating to the timing, character, function, location, projected capacity, and conditions on use for existing or planned metropolitan public facilities. They also include the population, employment, and household projections used by the Council for its metropolitan system plans.¹⁹

¹⁰ Minn. Stat. §§ 473.146-.147 (2014).

¹¹ Minn. Stat. § 473.852, subd. 8.

¹² Test. of L. Barajas.

¹³ *Id.*

¹⁴ Ex. 2.

¹⁵ Ex. 2-53; Ex. 2-106.

¹⁶ Minn. Stat. §§ 473.146, .851; *See City of Lake Elmo*, 685 N.W.2d at 5.

¹⁷ Minn. Stat. § 473.856; Test. of L. Barajas.

¹⁸ Minn. Stat. § 473.856.

¹⁹ *Id.*

15. System statements are a distillation of the plans and policies that are already within the current Comprehensive Development Guide and metropolitan system plans.²⁰ System statements direct local government units to review and update their local comprehensive plans within three years to meet their decennial planning obligations under the MLPA.²¹

16. Every local government unit in the metropolitan area is required to prepare a comprehensive plan that sets out its land use planning and projections.²²

17. After receiving their system statements, local government units must review their comprehensive plans to determine if an amendment is necessary to conform to the metropolitan system plans. The local government must either certify that no amendments to its comprehensive plan are necessary or, if an amendment is necessary, prepare the amendment and submit it to the Council for review.²³

18. The Council must review and comment on the comprehensive plan of each city in the metropolitan area to determine its compatibility with other comprehensive plans and metropolitan system plans.²⁴ A city may not put a comprehensive plan into effect until the Council has reviewed it and issued a determination.²⁵

19. The Council reviews amended comprehensive plans of local governments for compatibility with other local comprehensive plans, and conformity with the metropolitan system plans.²⁶ The Council may require a local government to modify any comprehensive plan or part thereof if the Council concludes the plan is more likely than not to have a substantial impact on, or contain a substantial departure from, metropolitan system plans.²⁷

20. If a local government unit and the Council are unable to resolve disagreements over the content of a system statement, the local government unit may request a hearing to consider its proposed amendment.²⁸ The Council has engaged in discussions with several cities over the years regarding disagreements over the content of the Council's system statements and the actions those system statements require of local governments.²⁹ The Council and the local government units were able to resolve their disagreements by stipulations in all but one of the matters where hearings were requested under Minn. Stat. § 473.857.³⁰

²⁰ Test. of L. Barajas.

²¹ Minn. Stat. § 473.856; Test. of L. Barajas.

²² Minn. Stat. § 473.858.

²³ Minn. Stat. § 473.864, subd. 2.

²⁴ Minn. Stat. § 473.175, subd. 1 (2014).

²⁵ Minn. Stat. § 473.175, subd. 2 (2014).

²⁶ Minn. Stat. §§ 473.175, subd. 1; .858, subds. 1, 2; .864, subd. 2; Exs. 1-19 and 1-182.

²⁷ Minn. Stat. § 473.175, subd. 1.

²⁸ Minn. Stat. § 473.857.

²⁹ Exs. 48 through 54.

³⁰ Ex. 55-10 and 56.

Development Guidance in Rural Service Areas

21. In conducting regional planning, the Council designates areas as Urban Service Areas, where regional wastewater service is provided, or Rural Service Areas.³¹ Rural Service Areas are designated to broadly protect agricultural lands, natural resources, and prevent the premature expansion of regional wastewater services.³²

22. A Metropolitan Urban Service Area (MUSA) is an area to which the Council currently provides or plans to provide wastewater services within the planning period.³³ In this matter, the terms “long-term service area” and MUSA are used interchangeably.³⁴

23. Within Rural Service Areas, further community designations are made, including Diversified Rural and Rural Residential.³⁵ The Diversified Rural designation is given to a variety of farm and nonfarm uses, including: very large-lot residential; clustered housing; hobby farms; and agricultural uses. The Diversified Rural designation protects rural land that has the potential of becoming urbanized after 2040 by reserving it to ensure efficient and economical sewered development can occur once direct wastewater services are provided. The maximum allowable density in Diversified Rural areas is 1 unit per 10 acres.³⁶

24. Rural Residential communities have residential patterns characterized by large lots and do not have plans to provide urban infrastructure. Maximum allowable density is 1 unit per 2.5 acres.³⁷

25. Rural Residential communities do not have densities that would support the economical extension of regional wastewater services.³⁸ The Council specifically discourages the expansion of Rural Residential areas because the pattern of development does not advance the Council’s mission of ensuring orderly and economical development and in some cases increases the potential for damage to the environment, including water quality and quantity.³⁹

26. In March of 2008, the Council completed a study of residential development ordinances in rural areas known as the Flexible Development Ordinance Study.⁴⁰ The Study concluded that Diversified Rural communities across the region were implementing ordinances in a manner that was detrimental to providing future wastewater treatment in long-term service areas. The development densities were considerably higher than the

³¹ Ex. 1-99; Ex. 2-19 to 2-20.

³² Ex. 1-99; Ex. 1-111; Test. of L. Barajas.

³³ Test. of Kyle Colvin; Ex. 1-99.

³⁴ *Id.*

³⁵ Ex. 1-111 to 1-114; Ex. 2-20 to 2-21; Test. of L. Barajas.

³⁶ Ex. 1-111; 2-20; Test. of L. Barajas.

³⁷ Ex. 2-20.

³⁸ Test. of L. Barajas.

³⁹ Ex. 1-113 (*Thrive MSP 2040*).

⁴⁰ Ex. 45.

guidance, and lower than the density needed to economically accommodate post-2030 residential growth connected to regional wastewater services.⁴¹

27. As a result, the Council developed and adopted the *Flexible Residential Development Ordinance Guidelines* for residential development ordinances. The *Guidelines* were applicable to areas that exceeded the maximum 1 unit per 10 acre density standard for Diversified Rural Areas.⁴² The Council developed the guidelines for those communities located within the long-term service area that have a Diversified Rural designation.⁴³ The guidelines serve to accommodate the real demand for development in these areas without precluding the economical expansion of future wastewater services.⁴⁴

28. The policy guidelines from the *Flexible Residential Development Ordinance Guidelines* were incorporated into *Thrive MSP 2040*. *Thrive MSP 2040* provides that Diversified Rural communities should plan for growth not to exceed 4 units per 40 acres, and to preserve areas where post-2040 growth can be accommodated with cost-effective and efficient urban infrastructure.⁴⁵ While the Diversified Rural designation limits residential development to no more than 4 housing units per 40 acres overall for the community, it allows for densities greater than 4 units per 40 acres, with no specified maximum number of units provided, if the development follows the *Flexible Residential Development Ordinance Guidelines*.⁴⁶

City of Oak Grove

29. The City is located in the northern part of Anoka County and is part of the seven-county metropolitan area subject to the MLPA.⁴⁷ Most of the City is rural in nature and served by private septic systems.⁴⁸ The City is bordered by Andover to the south, East Bethel to the east, Nowthen to the west, and St. Francis to the north. Ham Lake is located southeast of the City.

30. Since 1988, the Council has designated the City in its comprehensive development guides to maintain rural development patterns at gross densities of no greater than 1 unit per 10 acres (Diversified Rural).⁴⁹

⁴¹ Test. of L. Barajas; Ex. 45.

⁴² Test. of L. Barajas; Ex. 46.

⁴³ The Council identified 28 communities that have both the long term service area and Diversified Rural designations. Ex. 46-4; Test. of L. Barajas.

⁴⁴ Test. of L. Barajas.

⁴⁵ Ex. 1-111 to 1-112, Ex. 1-170 to 1-172, and Ex. 46-7.

⁴⁶ Test. of L. Barajas; Ex. 46 and Ex. 1-170 to 1-172.

⁴⁷ Minn. Stat. §§ 473.121, subd. 2, 473.851-.871 (2014); Test. of Rick Juba.

⁴⁸ Test. of R. Juba.

⁴⁹ Ex. 58-23; Ex. 59-50; Ex. 60-31; Test. of L. Barajas; Test. of R. Juba.

31. In 1992, the Council approved the City's (then township's) Comprehensive Land Use Plan 1992 (later referred to as the 1994 Plan) and authorized the City to place it into effect in January 1993.⁵⁰

32. The Council recognized that a small area of the City had developed on 2.5 acre lots, but noted that the rest of the City was planned for densities of 1 unit per 10 acres. In comparing the City's plan to the Council's then-current comprehensive development guide, the Council concluded that the "rural area densities proposed for the township are consistent with the Council's rural area policies, except those areas planned for four residential units per 10 acres."⁵¹

33. The Council authorized the City to place the City's subsequent update to its Comprehensive Plan (City's Comprehensive Plan Update 1998 for the 2020 planning year) into effect on January 26, 2000.⁵² The Council found that the City's plan was consistent with the development policies in the 1994 Comprehensive Development Guide, the *Regional Blueprint*.⁵³ In that comprehensive plan, the City continued the land use guiding of 1 unit per 10 acres, except for the 2.5 acre lots approved only in the central portion of the community, consistent with the City's previously approved plan.⁵⁴

Amendments to City's Comprehensive Plan

34. Between the years 2000 and 2005, the City submitted 14 proposed amendments to its Comprehensive Plan to the Council for its review and approval.⁵⁵

35. The Council reviewed the amendments for conformance with metropolitan system plans, consistency with the Comprehensive Development Guide and Council policies, and compatibility with the plans of adjacent and affected jurisdictions.⁵⁶

36. The Council approved all 14 amendments proposed by the City between 2000 and 2005. The Council found some of the City's proposed amendments to be in conformance with the metropolitan system plans, consistent with the Council's policies in the Regional Blueprint, and compatible with the plans of adjacent and affected jurisdiction.⁵⁷ Other amendments to the City's Comprehensive Plan that proposed residential 2.5 acre lot development were found to be inconsistent with the Council's density policy for rural areas.⁵⁸ However, the Council did not find that these amendments constituted a substantial departure from a regional system plan because the Council's plans at that time did not include a long-range service area for the City.⁵⁹ Generally, the Council found that the developments governed by these amendments were small in size

⁵⁰ Ex. 11.

⁵¹ Ex. 12-1; Test. of L. Barajas.

⁵² Ex. 13.

⁵³ Exs. 15, 59.

⁵⁴ Test. of L. Barajas.

⁵⁵ Exs. 16-21; Test. of L. Barajas.

⁵⁶ Test. of L. Barajas.

⁵⁷ Test. of L. Barajas; Ex. 16-21.

⁵⁸ Test. of L. Barajas; Exs. 22-27.

⁵⁹ Test. of L. Barajas; Exs. 22-27.

and, on their own, did not rise to the level of a substantial departure from a metropolitan system plan.⁶⁰

2030 Planning Framework

37. In 2004 and early 2005, the Council adopted the *2030 Regional Development Framework (2030 Framework)*⁶¹ and the *2030 Water Resources Management Policy Plan (2030 WRMPP)*.⁶²

38. The *2030 Framework* designated the entire City as Diversified Rural, carrying forward the *Regional Blueprint's* Permanent Rural density policy of no more than 1 unit per 10 acres.⁶³

39. In the *2030 WRMPP*, the Council designated the City as part of the long-term service area, indicating that the City was part of an area for "Potential Sewered Development by Wastewater Treatment Plant (WWTP) with Rapid Infiltration."⁶⁴

40. In May 2005, after the Council issued the *2030 Framework* and *2030 WRMPP*, the City submitted its 14th amendment to its comprehensive plan, which proposed to change the land use designation for 90 acres from Agriculture (one unit per 10 acres) to Single-Family Residential (one unit per 2.5 acres).⁶⁵ It was at this time that the Council was beginning to explore siting a wastewater treatment facility in East Bethel. The Council allowed the amendment but cautioned the City that:

following the Council's adoption of the 2005 Water Resources Management Policy Plan [*2030 WRMPP*], the Council may conclude that future amendments proposing rural residential development greater than 1 unit per 10 acres in Diversified Rural areas are "more likely than not" to be a substantial departure from this system plan.⁶⁶

41. In September 2005, the Council issued a system statement to the City that triggered the City's obligation to update its comprehensive plan through the 2030 planning horizon.⁶⁷ The *2030 WRMPP* included the long-term service area designation for the City, and likewise included guidance to not exceed the density policy of 1 unit per 10 acres for its community designation.⁶⁸

⁶⁰ Test. of L. Barajas.

⁶¹ Ex. 60.

⁶² Ex. 61.

⁶³ Test. of L. Barajas; Ex. 60-31 to 60-32; Ex. 15-1; Ex. 35-2.

⁶⁴ Ex. 61-122; Test. of L. Barajas.

⁶⁵ Test. of L. Barajas; Ex. 29.

⁶⁶ Ex. 29-1; Ex. 30-1; Test. of L. Barajas.

⁶⁷ Test. of L. Barajas. See Minn. Stat. §§ 473.856, .858, subd. 1.

⁶⁸ Test. of L. Barajas.

42. In May 2007, the City entered into discussions with the Council regarding planning for future wastewater services and its community designations.⁶⁹

City's Proposed Swan Lake Amendment

43. In June 2007, the City submitted to the Council an amendment to its Comprehensive Plan that would change the designation of 172 acres within the City from Agricultural (1 unit per 10 acres) to 2.5 acre development (4 units per 10 acres).⁷⁰ The amendment was in response to a developer's proposal, and was known as the Swan Lake Preserve Comprehensive Plan Amendment.⁷¹

44. The Council reviewed the City's proposed amendment and determined that it substantially departed from the Council's 2030 Water Resources Management Policy Plan because it allowed development at densities that exceeded the Council's policy of 1 unit per acre for Diversified Rural areas.⁷² The Council also found that the proposed amendment and the cumulative effect of previous comprehensive plan amendments "may have a substantial impact on regional systems, and ultimately affect how metropolitan wastewater and other regional systems are planned, constructed and operated."⁷³

45. On June 27, 2007, the Council adopted Resolution 2007-15 finding that the City's proposed amendment had a substantial impact on and contained a substantial departure from the metropolitan system plans, and requiring plan modifications to ensure conformity with metropolitan system plans.⁷⁴ The Council directed the City to ensure that development occur at densities of 1 unit per 10 acres, or cluster development at the same density, and to work with the Council to plan for potential future wastewater systems.⁷⁵

46. In response to the Council's Resolution, the City withdrew the amendment and denied the developer's proposal.⁷⁶

The City's Proposed Designation Compromise

47. In July of 2007, the City sent a letter to the Council in which it proposed to include about 1,200 acres in the southeast corner of the City (south and east of Cedar Creek) in a long-term service area and designate it as Diversified Rural provided that the remainder of the City be designated Rural Residential.⁷⁷

48. In the letter, the City explained its proposal to the Council as follows:

⁶⁹ Test. of L. Barajas; Ex. 42-1.

⁷⁰ Test. of L. Barajas; Ex. 34.

⁷¹ Test. of L. Barajas.

⁷² Test. of L. Barajas; Ex. 34-1.

⁷³ Ex. 34-1.

⁷⁴ Ex. 35.

⁷⁵ Ex. 34-1.

⁷⁶ Test. of L. Barajas.

⁷⁷ Exs. 42-1 through 42-3; Test. of L. Barajas.

The City's evaluation of potential MUSA in Oak Grove was conducted with the understanding that there is opportunity to compromise on the regional planning area designation. I anticipate that the City of Oak Grove can be supportive of bringing MUSA within its boundaries, but only if the Metropolitan Council will simultaneously designate the balance of the community as Rural Residential. This compromise will further the regional goals of accommodating future urban growth, as well as Oak Grove's goal of preserving its rural identity over the balance of the community.⁷⁸

49. The City believed that, in order to have most of the City designated as Rural Residential, it had to agree to set aside an area for long-term wastewater service.⁷⁹ Otherwise, the City believed it would continue to have future amendments for 2.5 acre development disapproved by the Council.⁸⁰

50. After receiving the City's July 2007 correspondence regarding the area it proposed for a long-term service designation, the Council amended the *2030 WRMPP* and the *2030 Framework* to reflect the smaller long-term service area.⁸¹

51. The Council authorized the City to place its 2030 Comprehensive Plan Update into effect on June 24, 2009, and to revise the community designation outside of the long-term service area to Rural Residential.⁸²

52. After the Council's review and authorization, the City adopted its 2030 Comprehensive Plan Update in 2009, designating the southeastern portion of the City as Diversified Rural and part of the long-term service area.⁸³

53. The City's 2030 Comprehensive Plan Update shows that the southeast corner has severe septic limitations due to unfavorable soil properties.⁸⁴ These limitations support regional sewered development.

East Bethel Wastewater Facility

54. The city of East Bethel is located to the east of Oak Grove in the northern part of Anoka County.

55. The city of East Bethel began exploring the possibility of sewered development along Highway 65 in 2004. In April 2005, East Bethel formally asked the Council to consider providing regional wastewater services to it and locating a wastewater facility within East Bethel.⁸⁵

⁷⁸ Ex. 42-2.

⁷⁹ Test. of R. Juba.

⁸⁰ *Id.*

⁸¹ Test. of K. Colvin; Test. of L. Barajas; Ex. 43.

⁸² Ex. 44; Test. of R. Juba.

⁸³ Ex. 14-129 to 14-168; Ex. 44.

⁸⁴ Ex. 14-31.

⁸⁵ Test. of K. Colvin.

56. In January of 2006, the Council completed a hydrogeological study of the area to determine the siting feasibility and preliminary design criteria.⁸⁶ This study primarily considered the technical feasibility of siting a water reclamation facility in this area using rapid infiltration basins as a means of disposing of treated water.⁸⁷

57. In April of 2006, East Bethel submitted a comprehensive plan amendment to the Council requesting that a portion of East Bethel be designated as Rural Growth Center with regional wastewater services provided along the Highway 65 corridor.⁸⁸

58. In January of 2007, the Council amended its 2030 *WRMPP* to identify the future East Bethel Facility.⁸⁹ The Council included the city of Oak Grove as an area for potential sewered development.⁹⁰

59. From 2008 to 2010, the Council completed the facility planning, land acquisition, environmental review, and permitting process for the wastewater treatment facility.⁹¹

60. The East Bethel Wastewater Facility is unique in that all of the Council's other wastewater facilities discharge into rivers.⁹² The East Bethel Facility treats wastewater to a higher quality standard and then discharges it into infiltration basins to be returned to the groundwater.⁹³

61. Because the Council's infrastructure investments are regional in nature, the studies conducted for the East Bethel Facility included the potential for service outside of East Bethel within the surrounding communities, including Oak Grove, Andover, and Ham Lake.⁹⁴

62. In studying the feasibility of the East Bethel Facility, the Council reviewed the existing land development patterns in nearby communities.⁹⁵ The Council requires that a city have 1,000 acres of developable land in close proximity to qualify for regional wastewater service.⁹⁶ The Council determines the availability of developable land that could reasonably be served by regional facilities by removing "unsuitable" lands from consideration, such as floodplains, wetlands, established parks, identified ecologically sensitive areas, and lands with a classification other than vacant or agricultural.⁹⁷

⁸⁶ Ex. 36; Test. of K. Colvin.

⁸⁷ *Id.*

⁸⁸ Test. of K. Colvin.

⁸⁹ Ex. 61-60 to 61-61; Test. of K. Colvin.

⁹⁰ *Id.*

⁹¹ Test. of K. Colvin.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Ex. 38-1, Ex. 9-7; Test. of K. Colvin.

⁹⁵ Test. of K. Colvin.

⁹⁶ *Id.*

⁹⁷ *Id.*

63. The Council determined that the southeast corner of Oak Grove had 1,000 qualifying developable acres, even with its existing wetlands.⁹⁸ The Council also determined that Andover, Ham Lake and Nowthen, the other communities in close proximity to East Bethel, did not have sufficient developable land.⁹⁹

64. The long-term service area in Andover has historically been considered part of the service area of the Metropolitan Wastewater Treatment Plant, which is located in St. Paul.¹⁰⁰ A study conducted by Andover to expand its service area to the Metropolitan Wastewater Treatment Plant in St. Paul determined that there was insufficient local system capacity.¹⁰¹ An analysis by the Council also determined that there was insufficient undeveloped large lot areas within Andover to satisfy the Council's 1,000 acre developable land requirement for regional interceptor service.¹⁰² Consistent with the *2030 Framework*, the Council allowed Andover to continue designating the northern area of its community as Rural Residential in its 2030 Comprehensive Plan and the Council decided not to add this area as part of the long-term service area for the East Bethel Facility.¹⁰³

65. The land planning designation and existing development patterns in Ham Lake have been Rural Residential for many years.¹⁰⁴ The Council concluded after further evaluation that extension of regional wastewater service into Ham Lake would not be economical.¹⁰⁵ Unlike Oak Grove, Ham Lake lacks 1,000 contiguous acres of developable land in close proximity to the East Bethel Facility.¹⁰⁶ In addition, a large area of Ham Lake is already developed on 2.5 acre lots.¹⁰⁷ Trying to provide wastewater services to an already developed area that was not planned to support economical connection to future wastewater service is more difficult than requiring a community to ensure future development occurs in a way that can be served by the regional wastewater system.¹⁰⁸

66. The city of Nowthen was originally planned to be served by the Metropolitan Wastewater Treatment Plant facilities in Ramsey, Minnesota.¹⁰⁹ However, the Council determined it was not economically feasible to extend local trunk service to Nowthen because it would have required miles of new interceptor investments through developed areas of the city of Ramsey and therefore was cost-prohibitive.¹¹⁰ As a result, the Council

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Ex. 37-1 to 37-2.

¹⁰⁴ Test. of K. Colvin; Test. of L. Barajas; Test. of R. Juba.

¹⁰⁵ Test. of K. Colvin; Test. of L. Barajas.

¹⁰⁶ Ex. 38; Test. of K. Colvin.

¹⁰⁷ Test. of K. Colvin.

¹⁰⁸ *Id.*

¹⁰⁹ Test. of L. Barajas.

¹¹⁰ *Id.*; Test. of K. Colvin.

eliminated the city of Nowthen from a long-term service area.¹¹¹ The Council did not change the city of Nowthen's community designation; it remains Diversified Rural.¹¹²

67. The Council concluded that long-term service to southeastern Oak Grove from the East Bethel Facility was feasible and prudent, but that service to Andover and Ham Lake was not.¹¹³ Therefore, the Council constructed a sanitary sewer facility to serve East Bethel and to serve Oak Grove post-2040.¹¹⁴

68. In 2010, East Bethel and the Council entered into a Construction Cooperation and Cost Sharing Agreement to construct a gravity interceptor for the water treatment plant in East Bethel.¹¹⁵ In anticipation of the added wastewater flow that would be generated within the long-term service area in Oak Grove, the Council decided to increase the interceptor capacity.¹¹⁶

69. The total regional investment for constructing the gravity interceptor was \$6.3 million. Of that amount, \$3.61 million was directly related to costs associated with serving the long-term service area in Oak Grove.¹¹⁷ The interceptor pipe currently connects to East Bethel's water treatment plant on Viking Drive and will be extended west to Oak Grove's long term service area in the future when Oak Grove requests service.¹¹⁸ The long-term service area in Oak Grove is currently staged for wastewater service in the City's comprehensive plan for after 2040.¹¹⁹

70. The Council expects to ultimately recoup the \$3.6 million in costs for the additional interceptor capacity from cities that will connect to the East Bethel Facility in the future, including Oak Grove.¹²⁰

71. In 2010, prior to construction of the East Bethel Facility, the Council and East Bethel entered into a wastewater service agreement.¹²¹ This agreement incorporated financial terms, including growth forecasts, sewer availability charges (SAC), and an automatic SAC loan with repayment provisions, in the event that actual growth falls below forecasted growth.¹²² The total cost of the East Bethel facility, including the reclamation plant, rapid infiltration basins, and flow storage facilities was \$25.8 million.¹²³

¹¹¹ *Id.*

¹¹² Test. of L. Barajas.

¹¹³ Ex. 38-1, Ex. 9-7; Test. of K. Colvin.

¹¹⁴ *Id.*

¹¹⁵ Ex. 40.

¹¹⁶ Ex. 40-2; Test. of K. Colvin.

¹¹⁷ Test. of K. Colvin.

¹¹⁸ *Id.*; Ex. 41.

¹¹⁹ Test. of K. Colvin.

¹²⁰ *Id.*

¹²¹ Ex. 39; Test. of K. Colvin.

¹²² Ex. 39.

¹²³ Ex. 39; Test. of K. Colvin.

72. Construction began on the East Bethel Facility in 2011, and was completed in 2014. Wastewater service to East Bethel began in July of 2014.¹²⁴

73. In 2014, East Bethel requested that the Council modify the terms of the Cost Sharing Agreement for the wastewater facility.¹²⁵ East Bethel maintained that the agreement was based on unrealistic economic and population growth projections that rendered the terms of the agreement financially unfeasible.¹²⁶

74. Ultimately, the Council agreed to remove the demonstration costs associated with the Facility from East Bethel's overall debt service.¹²⁷ The Council agreed that some of the unique features of the East Bethel Facility should be considered demonstration costs.¹²⁸ Specifically, the Council concluded that the debt associated with the cost of the treated wastewater pipeline and the remotely located infiltration basins should not be included in the overall debt assigned to East Bethel.¹²⁹ As a result, in 2015, the Council amended the wastewater service agreement to allocate \$9.8 million as demonstration costs to be borne by all users in the region as part of the overall regional debt service.¹³⁰

75. Most, if not all, of the debt for the East Bethel Facility will be retired before 2040 when service to the long-term service area in Oak Grove is expected to be requested.¹³¹

76. The Council did not change or reduce any of the land use planning expectations for East Bethel as part of the amended wastewater service agreement.¹³² East Bethel is still required to plan for its forecasted growth while supporting the prescribed densities identified for its community in the *Thrive MSP 2040* and *2040 WRPP*.¹³³ East Bethel is identified as a Rural Center where wastewater services are planned to be provided, with a minimum density expectation for residential development of three units per acre.¹³⁴ Outside of the area where the Council is currently providing wastewater service, East Bethel's designation is Diversified Rural.¹³⁵

The City's 2040 Planning

77. In 2014, the Council adopted its current comprehensive Development Guide, *Thrive MSP 2040*,¹³⁶ which replaced the *2030 Framework*.¹³⁷ In drafting this

¹²⁴ Test. of K. Colvin.

¹²⁵ Ex. 10.

¹²⁶ *Id.*

¹²⁷ Test. of K. Colvin; Ex. 10.

¹²⁸ Test. of K. Colvin.

¹²⁹ *Id.*

¹³⁰ *Id.*; Ex. 39-16 to 39-20.

¹³¹ Test. of K. Colvin.

¹³² Test. of L. Barajas; Test. of K. Colvin.

¹³³ *Id.*

¹³⁴ *Id.*; Ex. 2-20 to 2-21.

¹³⁵ Ex. 2-21.

¹³⁶ Ex. 1.

¹³⁷ Ex. 60.

updated comprehensive Development Guide, the Council considered the recently adopted local comprehensive plans that planned through 2030, including the City's comprehensive plan, 2010 U.S. Census Data, and research regarding regional development trends.¹³⁸ The Council also adopted its 2040 Water Resources Policy Plan (2040 WRPP).¹³⁹

78. *Thrive MSP 2040* and the 2040 WRPP designate the southeast corner of the City as Diversified Rural and within the long-term service area.¹⁴⁰ The Council used Oak Grove's community designation from its 2030 Comprehensive Plan Update to develop the City's community designations and long-term service areas in its 2040 planning.¹⁴¹ The community designations for the City in *Thrive MSP 2040* and the 2040 WRPP, and the City's long-term service area in the 2040 WRPP are identical to the City's Comprehensive Plan.¹⁴²

79. By letter dated April 15, 2014, the City objected to its community designations and inclusion in the long-term service area in *Thrive MSP 2040*. The City requested that the Council remove the future MUSA designation assigned to the southeast corner of the City and instead designate the entire City as Rural Residential.¹⁴³

80. On March 20, 2015, the City submitted an objection to the draft 2040 WRPP, which designated the southeastern portion of the City as Diversified Rural and part of a long-term service area.¹⁴⁴ The City again requested that the area identified as a long-term service area and labeled "potential East Bethel" in Appendix F of the draft 2040 WRPP be removed and the entire City designated Rural Residential.¹⁴⁵

81. The Council declined to change the designation of the southeast corner of the City or remove it from the long-term service area.¹⁴⁶ The Council noted that after approval of the designation, regional investments were made in the East Bethel Facility, including interceptor capacity for Oak Grove.¹⁴⁷

82. On May 20, 2015, following the public comment period, the Council adopted the 2040 WRPP and designated the southeastern corner of the City as Diversified Rural and part of the long-term service area, consistent with *Thrive MSP 2040* and the City's 2030 Comprehensive Plan Update.¹⁴⁸

¹³⁸ Test. of L. Barajas.

¹³⁹ Ex. 2.

¹⁴⁰ Ex. 1-98 through 1-100; Ex. 2-21; Ex. 2-106.

¹⁴¹ Test. of L. Barajas.

¹⁴² Ex. 1-98 through 1-100; Ex. 2-21; Ex. 2-106; Ex. 14-106; Ex. 14-110; Ex. 14-138.

¹⁴³ Ex. 4; Test. of R. Juba.

¹⁴⁴ Ex. 5.

¹⁴⁵ Ex. 5-2.

¹⁴⁶ Ex. 47-9.

¹⁴⁷ *Id.*

¹⁴⁸ Ex. 2-21 and Ex. 2-106.

83. On September 17, 2015, the Council issued a system statement to the City based on *Thrive MSP 2040* and the revised metropolitan system plans, including the *2040 WRPP*.¹⁴⁹

84. In the City's 2015 System Statement, the Council stated that it has no immediate plans to provide regional wastewater services to the City,¹⁵⁰ but it cautioned as follows:

However, the southeast portion of Oak Grove is located within the Council's long-term wastewater service area, and as such the City's land use plan will be expected to guide interim development within the future service area in a way so that redevelopment can occur and provide economical wastewater service to the area. Recent regional wastewater system improvements were made in East Bethel that will be utilized in the future to provide southeast Oak Grove with regional wastewater service.¹⁵¹

85. On November 3, 2015, the City timely requested a hearing on its disagreement over the content of its 2015 System Statement as provided by Minn. Stat. § 473.857. Specifically, the City requested that the designation of the southeast corner of the City be changed from Diversified Rural to Rural Residential. The City also requested that the two sentences noted above be deleted from its 2015 System Statement.¹⁵²

86. The City maintains that removing these sentences from the 2015 System Statement would remove the southeastern area of the City from the long-term service area in the *2040 WRPP*.¹⁵³

87. The City acknowledged that it could develop the designated Diversified Rural area at higher densities if it used clustered development, but it maintains that that type of development is not what people who move out to the City want. It argues that such developments do not make sense to pursue.¹⁵⁴

88. The City wants to pursue development of 2.5 acre lots in the southeast corner of the City.¹⁵⁵ However, the City's 2030 Comprehensive Plan Update indicated that conditions in the southeast corner of the City were not conducive to development using septic systems as there were "severe" septic limitations.¹⁵⁶ The City's 2030 Comprehensive Plan Update states: "Soil properties are so unfavorable [for septic] and so difficult to overcome that major soil reclamation, special design, or intensive

¹⁴⁹ Test. of L. Barajas; Ex. 3.

¹⁵⁰ Ex. 3-22.

¹⁵¹ *Id.*

¹⁵² Ex. 7-1.

¹⁵³ Test. of R. Juba.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Ex. 14-31; Test. of K. Colvin.

maintenance is required.” In those areas, it is more feasible to develop the properties as part of the regional system because individual septic systems are severely limited.¹⁵⁷

89. The Council concurs with the City’s 2030 Comprehensive Plan Update’s conclusion that the southeast corner of the City is not suited for development on septic systems given the numerous wetlands and the poor percolation properties of the soil.¹⁵⁸

Based upon the foregoing Findings of Fact, and for the reasons explained in the memorandum below, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Metropolitan Council and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § 473.857.

2. The City timely requested a hearing by resolution to consider proposed amendments to its 2015 System Statement as required by Minn. Stat. § 473.857. The date to hold the hearing was extended by agreement of the parties.¹⁵⁹

3. Proper notice was given for the hearing in this matter, and all other substantive and procedural requirements of law or rule have been met.

4. The Council has broad authority to prepare and adopt long-range metropolitan plans.¹⁶⁰

5. Metropolitan system plans are “the transportation portion of the Metropolitan Development Guide, and the policy plans, and capital budgets for metropolitan wastewater service, transportation, and regional recreation open space.”¹⁶¹

6. The Council provides local government units with “metropolitan system statements” that contain “information relating to the unit and appropriate surrounding territory that the council determines necessary for the unit to consider in reviewing the unit’s comprehensive plan.”¹⁶² The system statement may include, among other things, “the timing, character, function, location, projected capacity, and conditions on use for existing or planned metropolitan public facilities, as specified in metropolitan system plans....”¹⁶³

7. When a local governmental unit such as a city and the Council are unable to resolve disagreements over the content of a system statement, the unit may request a hearing be conducted by the Council’s advisory committee or by the Office of

¹⁵⁷ *Id.*

¹⁵⁸ Test. of K. Colvin.

¹⁵⁹ Minn. Stat. § 473.857, subd. 2.

¹⁶⁰ See Minn. Stat. §§ 473.146-.147, 473.175, .851-.871.

¹⁶¹ Minn. Stat. § 471.852, subd. 8 (2014).

¹⁶² Minn. Stat. § 473.856 (2014).

¹⁶³ *Id.*

Administrative Hearings for the purpose of considering amendments to the system statement.¹⁶⁴

8. A hearing to resolve disagreements over the content of a system statement “shall not consider the need for or reasonableness of the metropolitan system plans or parts thereof.”¹⁶⁵

9. The Council’s 2040 Water Resources Policy Plan¹⁶⁶ is a metropolitan system plan.¹⁶⁷ This policy plan designates the southeastern corner of Oak Grove as Diversified Rural, and includes it in the long-term service area of the regional wastewater system.¹⁶⁸

10. By objecting to its Diversified Rural designation and inclusion in the long-term service area, the City is challenging the need for or reasonableness of a metropolitan system plan. Therefore, pursuant to Minn. Stat. § 473.857, the City’s requested amendments to its 2015 System Statement may not be considered.

11. The costs of this proceeding shall be apportioned equally between the Council and the City of Oak Grove.¹⁶⁹

RECOMMENDATION AND ORDER

IT IS HEREBY RECOMMENDED THAT:

1. The City’s request to amend its 2015 System Statement by changing the designation of the southeast corner of the City from Diversified Rural to Rural Residential and removing references to that portion of the City being included in the regional wastewater service area be **DENIED**, pursuant to Minn. Stat. § 473.857, as an impermissible challenge to the need for or reasonableness of a part of a metropolitan system plan.

IT IS HEREBY ORDERED THAT:

2. The costs associated with this proceeding be divided equally between the parties.

Dated: May 10, 2016



JIM MORTENSON
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

¹⁶⁴ Minn. Stat. § 473.857, subd. 1.

¹⁶⁵ Minn. Stat. § 473.857, subd. 2.

¹⁶⁶ Ex. 2.

¹⁶⁷ See Minn. Stat. § 473.852, subd. 8 (defining “metropolitan system plans” to include the policy plans for metropolitan wastewater service.).

¹⁶⁸ Ex. 2-21 and 2-106.

¹⁶⁹ See Minn. Stat. § 473.857, subd. 2.

NOTICE

This report is a recommendation, not a final decision. Pursuant to Minn. Stat. § 473.857, subd. 3, the Metropolitan Council will make the final decision within 30 days of receipt of the Administrative Law Judge's report.

MEMORANDUM

The Metropolitan Council is responsible for the long-range planning and coordination of land-use and wastewater infrastructure in the Twin Cities metropolitan area.¹⁷⁰ Under the MLPA, the Council develops a comprehensive Development Guide and "metropolitan system plans" governing the long-range policy plans and budgets for metropolitan transportation, wastewater service, and regional recreation open space.¹⁷¹

When the Council updates or revises its Comprehensive Development Guide or amends or modifies a metropolitan system plan, the Council issues a "metropolitan system statement" to each affected local government.¹⁷² Metropolitan system statements contain information specific to each local government that the Council deems necessary for the local government to consider when reviewing its own comprehensive plan and determining whether an amendment is needed to ensure continued conformity with the metropolitan system plans.¹⁷³ If a local government and the Council are unable to resolve disagreements over the content of a system statement, the local government may request a hearing to consider the matter.¹⁷⁴

In this case, the Council issued a 2015 System Statement to the City that includes the designation of the City's southeastern corner as Diversified Rural and reflects that area's placement in the long-term wastewater service area. The maximum allowable density for Diversified Rural areas is 1 unit per 10 acres. The Diversified Rural designation of the City's southeast corner and its inclusion in the long-term service area come from and are consistent with the Council's 2040 Comprehensive Development Guide (*Thrive MSP 2040*) and 2040 Water Resources Policy Plan (*2040 WRPP*), as well as with the City's 2030 Comprehensive Plan Update. The designation and inclusion in the long-term service area are also consistent with the compromise the City proposed to the Council in 2007, which allowed the remainder of the City to be designated Rural Residential (with 1 unit per 2.5 acre maximum allowable density). The Council agreed to the City's proposed compromise and has planned accordingly ever since, including constructing the East Bethel wastewater facility with an interceptor built to serve the City's future wastewater treatment needs.

The city of Oak Grove is now seeking to change the designation of the southeast corner from Diversified Rural to Rural Residential and to remove it from the long-term service area. The City argues that the Diversified Rural designation in its southeast

¹⁷⁰ Minn. Stat. §§ 473.851-.871.

¹⁷¹ Minn. Stat. §§ 473.145-.147.

¹⁷² Minn. Stat. § 473.856.

¹⁷³ *Id.*

¹⁷⁴ Minn. Stat. § 473.857.

corner, and the associated limitation on landowner development rights, is arbitrary and contrary to the Council's regional planning powers. The City contends that the Council is seeking to impose the burdens of the East Bethel wastewater facility on the City, while imposing no development limitations on the adjacent communities of Andover and Ham Lake.

The Council argues that the City's proposed amendment to the 2015 System Statement is an impermissible challenge to the need for or reasonableness of the metropolitan system statements and may not be considered pursuant to Minn. Stat. § 473.857, subd. 2.

The Council points out that, except for a limited area of development around Lake George, the City has been designated to maintain rural development patterns at residential densities no greater than 1 unit per 10 acres since the 1990s. Although the Council permitted some 2.5 acre developments by amendments over the years, the Council maintains that these were reviewed on a case-by-case basis and approved prior to the Council's adoption of its 2030 Comprehensive Development Guide and Water Resources Management Plan, which designated the entire City as Diversified Rural.

Following discussions with the City in 2007, and acceptance of its compromise for accommodating urban growth as well as preserving the City's rural identity, the Council designated the southeast corner of the City Diversified Rural and included it in the long-term wastewater service area in the *2040 WRPP*. The designation recognized the potential for regional wastewater services via the East Bethel Wastewater Facility sometime after 2040. The Council contends that by objecting to the designation and inclusion of the southeast corner in the long-term wastewater service agreement, the City is objecting to the reasonableness of the Council's wastewater policy plans.

The Council also argues that the City has not demonstrated that its amendments to the 2015 System Statement should be granted on the merits.

The City asserts that it is not impermissibly challenging the need for or reasonableness of Council's system plans. Instead it is arguing that the Council has exceeded its statutory authority and acted arbitrarily by limiting development rights in a portion of the City "based on a totally unevaluated possibility that sewer might be extended there at some point ... post-2040."¹⁷⁵ The City maintains that, pursuant to Minn. Stat. § 14.69 (2014), an agency decision may be reversed if the agency exceeds its statutory authority or if the decision is arbitrary or capricious.

The Administrative Law Judge is not persuaded by the City's arguments and finds that its request to amend its 2015 System Statement is an impermissible challenge to the need for or reasonableness of the Council's metropolitan system plans that may not be considered. In addition, the Administrative Law Judge finds the City's reliance on the standards set forth in Minn. Stat. § 14.69 is misplaced. Minn. Stat. § 14.69 contains the appropriate standard of judicial review that would be applied on appeal of the Metropolitan

¹⁷⁵ City's Post-Hearing Brief at 6.

Council's final decision in this case. Nevertheless, the City has failed to articulate, beyond mere conclusory assertions, how exactly the Council exceeded its statutory authority or acted arbitrarily. The Administrative Law Judge finds, contrary to the City's claim, that the record does not support finding that the Council acted arbitrarily or in excess of its statutory authority in designating the southeastern corner of the City as Diversified Rural and within the long-term wastewater service area. The City's request to amend its 2015 System Statement is therefore denied.

Under Minn. Stat. § 473.857, subd. 2, the costs of this hearing are to be apportioned among the parties. While the City's claims do not prevail, and are not to be considered at hearing, there is no indication the City has not proceeded in good faith in its dispute with the Council. Because of the complicated nature of the regional planning process set forth in statute, this matter required close examination of the facts to even determine whether the requested amendments were a part of the metropolitan system plans. Thus, the Administrative Law Judge believes that it is reasonable and fair to require that the costs associated with this proceeding be equally divided between the City and the Council.

J. R. M.