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December 2, 2016

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ELECTRONIC FILING

Hon. Eric L. Lipman
Administrative Law Judge
State of Minnesota, Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

Re: Minnesota Energy Resources Corporation's Post-Hearing Brief in Support of its
Route Permit Application and Proposed Findings of Fact
*In the Matter of the Application of Minnesota Energy Resources Corporation
for a Route Permit for the Rochester Natural Gas Pipeline Project
in Olmsted County*
MPUC Docket No. G011/GP-15-858
OAH Docket No. 8-2500-33180

Dear Judge Lipman:

Enclosed please find the Post-Hearing Brief and Proposed Findings of Fact of Minnesota Energy Resources Corporation. We have electronically filed these documents with the Minnesota Public Utilities Commission and copies have been served on those individuals on the attached service list.

Per your request, we will be forwarding a Microsoft Word version of our proposed findings directly to you.

Please contact me if you have any questions regarding this filing.

Sincerely,

/s/ Kodi Jean Verhalen

Kodi Jean Verhalen

KJV/jy
Enclosures
cc: Service List

In the Matter of the Petition of
Minnesota Energy Resources Corporation
for a Route Permit for the Rochester
Natural Gas Pipeline Project in
Olmsted County

MPUC Docket No. G011/GP-15-858
OAH Docket No. 8-2500-33180

CERTIFICATE OF SERVICE

I, Jill N. Yeaman, hereby certify that on the 2nd day of December, 2016, on behalf of Minnesota Energy Resources Corporation (MERC), I electronically filed true and correct copies of the following documents:

- 1) Minnesota Energy Resources Corporation's Post-Hearing Brief in Support of its Application for a Route Permit; and
- 2) Minnesota Energy Resources Corporation's Proposed Findings of Fact, Conclusions of Law, and Recommendations

on www.edockets.state.mn.us. Said documents were also served via U.S. mail and electronic service as designated on the attached service list.

/s/ Jill N. Yeaman _____

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**STATE OF MINNESOTA
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of Minnesota
Energy Resources Corporation for a Route
Permit for the Rochester Natural Gas Pipeline
Project in Olmsted County

PUC Docket No. G011/GP-15-858
OAH Docket No. 8-2500-33180

**MINNESOTA ENERGY RESOURCES CORPORATION'S
POST-HEARING BRIEF
IN SUPPORT OF ITS APPLICATION FOR A ROUTE PERMIT**

December 2, 2016

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I. INTRODUCTION

Minnesota Energy Resources Corporation (“MERC” or the “Company”) respectfully submits this Post-Hearing Brief (“Brief”) and Proposed Findings of Fact, Conclusions of Law, and Recommendation (“Proposed Findings”) to the Administrative Law Judge (“ALJ”) for a Route Permit for the Rochester Natural Gas Distribution Pipeline Project in Olmsted County, Minnesota (“Project”). MERC continues to recommend the Modified Preferred Route proposed during the comment period on the scope of the Comparative Environmental Analysis (“CEA”), with one alteration in the alignment for the Project.

After a thorough proceeding, the record has been fully developed on the Company’s Route Permit application (“Application”) to enable the ALJ and the Minnesota Public Utilities Commission (“Commission”) to assess the effects of the Project on human settlement, land-based economies, archaeological and historic sites, the natural environment, and other environmental impacts to determine the appropriate route for the Project.

MERC appreciates the input from landowners, agencies, local units of government, and other stakeholders that informed the Route Permit proceeding. This input was obtained through pre-application open houses held in September 2015, public information meetings and written comment periods on the scope of the CEA, development of the CEA, public information meetings and written comment period on the draft CEA, public hearings with a subsequent written comment period, and an evidentiary hearing.

This Brief in support of MERC’s Application, and the Proposed Findings, detail MERC’s proposal, the applicable law, and the record. MERC has satisfied all requirements for a Route Permit for the Project. MERC respectfully requests that the ALJ conclude that the Modified Preferred Route, with one alteration in the anticipated alignment along 70th Avenue SW in Salem Township, as shown on the maps attached to the Company’s Proposed Findings, best meets the criteria in Minnesota Statutes section 216G.02 and Minnesota Rule 7852.1900, and recommends a route width of primarily 500 feet, with a route width of up to 700 feet in one area to address site-specific concerns. The Company also requests that the ALJ recommend the Commission include the siting areas for the proposed rebuilt Town Border Station (“TBS”) in northwest Rochester (“TBS 1D”), the proposed new TBS (“Proposed TBS”), and the proposed new District

Regulator Station (“Proposed DRS”), as well as identified additional temporary workspaces in the Route Permit for the Project.

This Brief first provides a summary of the Project and the routes proposed by MERC in this proceeding. This summary is then followed by an evaluation of these routes against the criteria identified in Minnesota Rule 7852.1900 to establish that the Modified Preferred Route best balances these factors and addresses stakeholder issues or concerns.

II. PROCEDURAL BACKGROUND

The procedural history for the Project is provided in the Proposed Findings submitted in this Docket.

III. PROJECT PROPOSAL

A. Summary of the Project

The Rochester Project is a significant system integrity and system capacity project for MERC and its customers.¹ It is designed to improve the operation and efficiency of MERC’s distribution system.² This Project will also allow MERC to accommodate additional natural gas capacity on its distribution system in and around the City of Rochester, as well as in surrounding communities in southeastern Minnesota, which are currently at capacity and cannot support continued growth without expansion of the supply of interstate gas into the area.³

The proposed Project would install approximately 13 to 14 miles of steel pipeline designed to be capable of operating at 500 pounds per square inch gauge (“psig”), two new TBSs, and one new DRS.⁴ The pipeline would consist of approximately 5.1 miles of 16-inch outside diameter steel pipe to be operated at pressures between 400 psig and 475 psig and approximately 8.0 miles of 12-inch outside diameter steel pipe to be operated at pressures between 250 psig and 275 psig.⁵

¹ Ex. 19 at 4 (Direct Testimony of Amber S. Lee).

² Ex. 19 at 4 (Direct Testimony of Amber S. Lee).

³ Ex. 19 at 4 (Direct Testimony of Amber S. Lee).

⁴ Ex. 19 at 4 (Direct Testimony of Amber S. Lee).

⁵ Ex. 19 at 4 (Direct Testimony of Amber S. Lee).

B. Need for the Project

The proposed Project is needed to: (1) expand the capacity of MERC's natural gas distribution system to meet the projected increase in demand from existing Rochester area customers, as well as from new customers, and (2) provide the ability to shift the supply of natural gas to where it is needed on MERC's high pressure distribution system within the Rochester service area.⁶ The Project is designed to alleviate a two-fold need by: (1) eliminating the operating pressure and piping configuration issues that prevent MERC's existing distribution system in the Rochester area from efficiently and reliably distributing the gas available on the system across Rochester and surrounding communities, and (2) increasing the interstate natural gas pipeline capacity available to Rochester and the surrounding area so that it is adequate to meet existing customer demand as well as projected future demand.⁷ During the public information meetings and public hearings, various members of the public expressed interest in connecting to the pipeline after completion.⁸ After construction of the Project, individuals in the area will be able to make requests to receive natural gas service from the pipeline.⁹

C. MERC's Proposed Routes and Recommendation

On November 3, 2015, MERC submitted its Application identifying a preferred route (the "Application Preferred Route") and three alternate segments (the "BP Pipeline Alternative Route Segment," the "50th St SW/48th St SW Alternative Route Segment," and the "60th Avenue SW Alternative Route Segment," collectively the "Application Alternate Route").¹⁰ On April 13, 2016, during the comment period on the scope of the CEA, MERC proposed the Modified Preferred Route.¹¹ These Routes are shown on Figures 1A, 1B, 1C, and 10 of Exhibit 108.¹² All

⁶ Ex. 108 at xvi (CEA).

⁷ Ex. 19 at 5:5-11 (Direct Testimony of Amber S. Lee).

⁸ *See, e.g.*, Ex. 103 at 26:11-27:17 (Seiffert); Public Hearing Transcript at 76:16-21 (Passe) and 127:13-15 (Connelly).

⁹ Public Hearing Transcript at 127:20-128:6; *c.f.* Overland Public Written Comment (eDocket No. 201611-126682-01) (claiming that the "purpose of the Project is to provide fuel for the Rochester Public Utility (RPU) Westside Energy Station" and is "for a private purpose project" claiming further that the "sales and delivery via this pipeline are to one entity, the Westside Energy Station.").

¹⁰ Ex. 1 (Application).

¹¹ Ex. 10 (MERC CEA Scoping Comments).

¹² Ex. 108 at 46, 48, 56, and Appendix A (CEA).

three Routes proposed by MERC are approximately 13 to 14 miles long¹³ and connect TBS 1D, the Proposed TBS, and the Proposed DRS around the west and south sides of the City of Rochester in Olmsted County.

1. Application Preferred Route

The Application Preferred Route begins at TBS 1D on the southeast corner of 19th Street NW and 60th Avenue NW.¹⁴ The route then proceeds west for 1.2 miles to 70th Avenue NW.¹⁵ The route follows 70th Avenue SW for 4.0 miles to County State Aid Highway (“CSAH”) 25 and the Proposed TBS.¹⁶ The route then proceeds east for 0.5 mile, then south along CSAH 15 for 890 feet, then east (cross country) for 0.5 mile to 60th Avenue SW.¹⁷ The route follows 60th Avenue SW for 1,635 feet, and then proceeds east to the BP refined oil products pipeline (“BP Pipeline”).¹⁸ The Application Preferred Route then follows the BP Pipeline southeast for just over 1.5 miles, then proceeds east (cross country) for approximately 3.25 miles.¹⁹ After crossing Willow Creek, the route proceeds north then northeast (cross country) for about 0.5 mile to 40th Street SW.²⁰ The route then proceeds east, crossing US Highway 63, for about 0.75 mile to its eastern terminus at the Proposed DRS in Section 24 or 25 of Rochester Township.²¹

2. Application Alternate Route

The Application Alternate Route begins at TBS 1D on the southeast corner of 19th Street NW and 60th Avenue NW.²² The route then proceeds west for 1.2 miles to 70th Avenue NW.²³ The route then follows 70th Avenue NW south for approximately 1.9 miles to the intersection of

¹³ Ex. 108 at i (CEA).

¹⁴ Ex. 108 at 47 and Figure 2 (CEA).

¹⁵ Ex. 108 at 47 and Figure 2 (CEA).

¹⁶ Ex. 108 at 47 and Figure 2 (CEA).

¹⁷ Ex. 108 at 47 and Figure 2 (CEA).

¹⁸ Ex. 108 at 47 and Figure 2 (CEA).

¹⁹ Ex. 108 at 47 and Figure 2 (CEA).

²⁰ Ex. 108 at 47 and Figure 2 (CEA).

²¹ Ex. 108 at 47 and Figure 2 (CEA).

²² Ex. 108 at 47 (CEA).

²³ Ex. 108 at 47 (CEA).

the existing BP Pipeline and 70th Avenue NW.²⁴ The route then follows the existing BP Pipeline southeast for about 2.4 miles to 60th Avenue SW near the Proposed TBS, and then continues south along 60th Avenue SW for approximately 0.3 mile.²⁵ The Application Alternate Route continues south along 60th Avenue SW for an additional 1.0 mile to 40th Street SW, and then continues east along 40th Street SW for about 0.5 mile to the existing BP Pipeline.²⁶ The route follows the existing BP Pipeline southeast for roughly 1.1 miles to 50th Street SW.²⁷ The Application Alternate Route then proceeds east along 50th Street SW and then north along County Road 8 to 48th Street SW.²⁸ The route follows 48th Street SW east for about 2.1 miles to 11th Avenue SW and 11th Avenue SW north for approximately 0.2 mile, before continuing northeast for about 0.8 mile to 40th Street SW.²⁹ The route crosses US Highway 63 in the 40th Street SW interchange before terminating at the Proposed DRS in the same manner described for the Application Preferred Route.³⁰

3. Modified Preferred Route

The Modified Preferred Route shares the first three route segments with the Application Preferred Route, following 19th Street NW west for about 1.2 miles and 70th Avenue NW south for approximately 4.0 miles to CSAH 25 near the Proposed TBS.³¹ The route turns east and continues along CSAH 25 for about 0.5 mile, south along CSAH 15 for nearly 0.2 mile, proceeds southeast cross country for about 0.5 mile to 60th Avenue SW, and then continues south for roughly 0.3 mile along 60th Avenue SW.³² The Modified Preferred Route continues south along 60th Avenue SW for an additional 1.0 mile to 40th Street SW, and then follows 40th Street SW east for about 2.0 miles to County Road 8 and south along County Road 8 for approximately 0.5

²⁴ Ex. 108 at 47 (CEA).

²⁵ Ex. 108 at 47 (CEA).

²⁶ Ex. 108 at 47 (CEA).

²⁷ Ex. 108 at 47 (CEA).

²⁸ Ex. 108 at 47 (CEA).

²⁹ Ex. 108 at 47 (CEA).

³⁰ Ex. 108 at 47 (CEA).

³¹ Ex. 108 at 55 (CEA).

³² Ex. 108 at 55 (CEA).

mile.³³ The route then proceeds east cross country for about 2.0 miles on the half section line along field breaks and property lines to 11th Avenue SW.³⁴ The route continues north along 11th Avenue SW for approximately 0.5 mile and then east along 40th Street SW for nearly 1.3 miles, crossing US Highway 63 in the 40th Street SW interchange before terminating at Proposed DRS as described in the Application Preferred Route.³⁵ The Modified Preferred Route was proposed by MERC in response to comments provided at the February 29, 2016, First Public Information Meeting and in the subsequent comment period.

The three routes proposed by MERC and their applicable Route Segments and Segment Alternatives, as identified in the CEA, are summarized in Table 1.

Table 1. Routes, Route Segments, and Segment Alternatives

Route	Route Segments	Segment Alternatives
Application Preferred Route	1P 2P 3P 12 14, 16 6P, 7P 26, 9P	AB-1 BC-1 CD-1 DE-2 EF-2 FH-1 HJ-2
Application Alternate Route	1P 2P 11 4P 14, 18, 20 22, 24, 25 26, 9P	AB-1 BC-1 CD-2 DE-1 EG-4 GH-1 HJ-2
Modified Preferred Route	1P 2P 3P 4P 5P 6P, 7P 8P, 9P	AB-1 BC-1 CD-1 DE-1 EF-1 FH-1 HJ-1

³³ Ex. 108 at 55 (CEA).

³⁴ Ex. 108 at 55 (CEA).

³⁵ Ex. 108 at 55 (CEA).

4. Recommended Route

MERC continues to support the Modified Preferred Route for the Project, with an adjustment to the alignment along 70th Avenue SW based on comments received at the November 9, 2016, public hearing and during the subsequent written comment period. The anticipated impacts of the route are discussed in Section IV of this Brief according to the criteria identified in Minnesota Rule 7852.1900. MERC believes that the Modified Preferred Route is the most prudent and feasible route and suggests specific Route Permit conditions that should be included for the Project in Section IV.7 of this Brief.

D. Proposed Route Width

The Company requests a route width of 500 feet for the majority of the length of the routes it has proposed consistent with Minnesota Rule 7852.0100, Subpart 31. For TBS 1D, the Proposed TBS, and the Proposed DRS, MERC requests siting areas buffered by up to 1.25 miles, consistent with Minnesota Rule 7852.0100, Subpart 31.³⁶ The areas for which the Company requests a route width wider than 500 feet for the Application Preferred Route, the Application Alternate Route, and the Modified Preferred Route are as follows:

- Route Segment 4P of the Application Alternate Route and the Modified Preferred Route has a route width of up to 700 feet in an area along 60th Avenue SW associated with mining activities and to avoid a line of trees along the roadway.³⁷
- Route Segment 12 of the Application Preferred Route has a route width of up to 865 feet in an area along the BP Pipeline north of 40th Street SW to accommodate a landowner request for widening of the route width.³⁸
- Route Segments 22 and 28 of the Application Alternate Route have a route width of 800 feet in their entirety along 48th Street SW for increased route flexibility.³⁹

³⁶ Ex. 108 at 5 (CEA).

³⁷ Ex. 106 at 26 (Comments & Recommendations: Scoping for CEA and Route Proposals); Ex. 108 at Figure 10 at 6 (CEA).

³⁸ Ex. 106 at 27; Ex. 108 at Appendix A, Figure 10, p. 6 (CEA).

³⁹ Ex. 106 at 27 (Comments & Recommendations: Scoping for CEA and Route Proposals); Ex. 108 at Appendix A, Figure 10, p. 8 (CEA).

E. Project Land Requirements

A 100-foot wide right-of-way will be needed for the natural gas distribution pipeline portions of the Project. This 100-foot right-of-way will include a 50-foot wide permanent right-of-way, encompassing approximately 80 acres, and a 50-foot wide temporary construction right-of-way, encompassing approximately 80 acres.⁴⁰ The pipeline may be placed anywhere within the 50-foot permanent right-of-way, so long as a minimum of five feet of separation between the pipeline and the edge of the permanent right-of-way are maintained.⁴¹ The temporary right-of-way may need to be wider at road or water crossings to accommodate boring or horizontal directional drilling (“HDD”) equipment.⁴² The temporary right-of-way will be adjacent to the permanent right-of-way and may be entirely located to one side of the permanent right-of-way or split between the two sides, depending on construction needs.⁴³

For TBS 1D, the Proposed TBS, and the Proposed DRS, a permanent easement measuring 200 feet by 200 feet (0.92 acres) will be necessary.⁴⁴ If, however, the landowner does not grant an easement for one of these areas and instead requests the Company obtain these areas of property in fee, the Company will purchase the 0.92 acres from the landowner.⁴⁵

MERC will require a temporary easement measuring 10.0 acres for storing equipment and materials for construction staging.⁴⁶ The Company will also require two workspaces for each area where HDD is to be used along the proposed Project.⁴⁷ Some workspaces may need to be larger than 20,000 square feet depending on the length, depth, and angle of the HDD.⁴⁸ The Company intends to co-locate all temporary workspaces for HDD within the construction right-of-way (the combined permanent and temporary rights-of-way) but actual construction

⁴⁰ Ex. 108 at 23 (CEA).

⁴¹ Ex. 17 at 2 (MERC Comments on CEA).

⁴² Ex. 108 at 23 (CEA).

⁴³ Ex. 108 at 62 (CEA).

⁴⁴ Ex. 108 at 62 (CEA).

⁴⁵ Ex. 108 at 62 n.59 (CEA).

⁴⁶ Ex. 108 at 62 (CEA).

⁴⁷ Ex. 113 at 10 (Reply to Substantive Comments); Ex. 25 (Proposed Route Permit Maps).

⁴⁸ Ex. 113 at 10 (Reply to Substantive Comments).

conditions may require the temporary workspace to be outside the construction right-of-way or even outside the 500-foot route width in rare circumstances.⁴⁹

IV. APPLICATION OF RELEVANT CRITERIA

A. Statutes and Rules

Minnesota Statutes section 216G.02, subdivision 3 requires that the Commission “adopt rules governing the routing of pipelines” and that the rules must “provide criteria that the Commission will use in determining pipeline routes, which must include, . . . the impact of the proposed pipeline on the natural environment.” In compliance with this requirement, the Commission adopted Minnesota Rules chapter 7852. Specifically, Minnesota Rule 7852.1900 sets forth the criteria that the Commission shall consider in selecting a route for designation and issuance of a pipeline Route Permit.⁵⁰ Minnesota Rule 7852.1900, Subpart 3 requires that the Commission shall consider the impact on the pipeline of the following:

- A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- C. lands of historical, archaeological, and cultural significance;
- D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- E. pipeline cost and accessibility;
- F. use of existing rights-of-way and right-of-way sharing or paralleling;
- G. natural resources and features;
- H. the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;
- I. cumulative potential effects of related or anticipated future pipeline construction;
and

⁴⁹ Ex. 20 at 6:8-14 (Direct Testimony of Lindsay K. Lyle); Ex. 25 (Proposed Route Permit Maps).

⁵⁰ Minn. R. 7852.1900, subp. 3.

- J. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

B. Application of Applicable Routing Factors to MERC's Proposed Routes

Application of applicable criteria to the evidence on the record in this Docket demonstrates that MERC's Modified Preferred Route with an adjustment in the anticipated alignment along 70th Avenue SW, is the best proposal for the Project route and best satisfies the public interest in developing reliable and cost-effective natural gas distribution facilities while minimizing environmental, human settlement, and land use impacts. The evidence on the record would also support selection of Segment Alternative AB-2 instead of Segment Alternative AB-1 for the natural gas pipeline so long as the anticipated alignment for this portion were south of the existing Northern Natural Gas Company natural gas transmission pipeline.⁵¹

1. Effects on Human Settlement

Minnesota Rule 7852.1900, Subpart 3(A) requires consideration of the proposed routes' effects on human settlement, including displacement of residences and businesses, noise created during construction and by operation of the Project, impacts to air quality, existence and density of populated areas, and existing and planned future land use. The record demonstrates the Modified Preferred Route will minimize impacts on human settlement when compared to the other routes in the record.

The overall route lengths and permanent right-of-way acreages are summarized in Table 2.

⁵¹ Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (Brad Larsen Email Comment). Although MERC prefers the Modified Preferred Route (Segment Alternative AB-1) out of TBS 1D, the Company has no objection to locating the pipeline in this area (Segment Alternative AB-2 instead of Segment Alternative AB-1) so long as the anticipated alignment were located south of the existing Northern Natural Gas Company natural gas transmission pipeline to avoid two crossings of that infrastructure. Evidentiary Hearing Transcript at 25:18-26:4 (Lyle).

Table 2. Route Lengths and Permanent Right-of-Way Acreages

	Application Preferred Route	Application Alternate Route	Modified Preferred Route
Permanent Pipeline Right-of-Way (Acres) ⁵²	79.8	82.2	84.9
Pipeline Length (Miles)	13.1	13.4	13.9

a. Displacement

The Company has requested a route width for the Project that would ensure that during detailed design of and easement acquisition for the pipeline, the alignment and construction right-of-way (including both the permanent and temporary rights-of-way) can be modified from the anticipated alignment to minimize impacts to human settlement and environmental features.⁵³ Neither the Application Preferred Route, nor the Application Alternate Route, nor the Modified Preferred Route have any residences within the permanent right-of-way within 50 feet of the anticipated alignment.

The Modified Preferred Route and the Application Alternate Route both have one residence within 50 feet of the anticipated alignment.⁵⁴ The Application Preferred Route, the Application Alternate Route, and the Modified Preferred Route each have at least one agricultural structure within the permanent right-of-way of the anticipated alignment. The Application Alternate Route and the Modified Preferred Route both have one commercial structure within the permanent right-of-way of the anticipated alignment.⁵⁵ MERC intends to use variations within the route width to design the pipeline within the approved route such that the permanent right-of-way would avoid direct impacts to residences or other buildings and the temporary right-of-way would be configured accordingly to avoid direct impacts to these structures.⁵⁶

A summary of structures within 100 feet of the anticipated Project centerline is provided in Table 3.

⁵² Ex. 108 at Table B-3 (CEA).

⁵³ Ex. 108 at 65, 66, 68, 71, 107, 109, 111-113, 114, 116, 117, 121, 122 (CEA).

⁵⁴ Ex. 108 at Table B-25 (CEA).

⁵⁵ Ex. 108 at Table B-25 (CEA).

⁵⁶ Ex. 108 at 66, 137, 140, 144, 147 (CEA).

Table 3. Structures in Proximity to the Anticipated Project Pipeline Centerline

	Type	Application Preferred Route	Application Alternate Route	Modified Preferred Route
Within Permanent Right-of-Way ⁵⁷	Residence			
	Commercial		1	1
	Agricultural	1	1	2
	Other			
	Total	1	2	3
Within 50 Feet	Residence		1	1
	Commercial		1	1
	Agricultural	3	6	6
	Other			
	Total	3	8	8
Within 100 Feet	Residence	3	29	7
	Commercial	1	1	1
	Agricultural	4	12	11
	Other			1
	Total	8	42	20

The primary reason the Application Preferred Route has so few structures within 100 feet of the anticipated alignment for the Project is because it follows portions of the BP Pipeline, which is located in cross-country areas.⁵⁸

During the public information meetings, the public hearings, and subsequent written comment periods, some stakeholders questioned the safety of the Project. In these comments, stakeholders referred to terms like “blast zone,” “impact radius,” and “high consequence areas.”⁵⁹ These terms all relate to natural gas transmission pipelines and not natural gas distribution pipelines, like the Project. More specifically, the Project pipeline is a low-stress pipeline,⁶⁰ meaning if it produced a leak near an ignition source, it would result in a flame or

⁵⁷ Ex. 108 at Table B-25 (CEA).

⁵⁸ Ex. 108 at Figure 10 (CEA).

⁵⁹ Public Hearing Transcript at 42:22-25 (Overland) (“Who would want to live next to a gas transmission line if it explodes could burn up to 300 feet, 600 feet depending, from the line.”); Public Hearing Transcript at 53:7-17 (Pyfferoen) (“I’ve been doing some research on blast zones . . . my personal home is . . . maybe 100 feet from where this pipeline is supposed to go and if there’s really a blast zone of 500 feet”); Public Hearing Transcript at 50:21-51:2 (Pittelko) (“I grew up in Texas, 20 miles from a Phillips 66 plant. I cannot even count the number of explosions that I heard in my house I cannot even imagine having a pipeline explosion across the road from my house”).

⁶⁰ Evidentiary Hearing Transcript at 19:9-12 (Lyle).

burn and not an explosion or “impact radius” like that of a high-stress natural gas transmission pipeline.⁶¹

MERC’s Manager of Engineering has been with the Company for 13 years and in that time has never experienced an incident on the MERC distribution system like what might be encountered on a natural gas transmission pipeline.⁶² MERC provided testimony that if the Project pipeline were struck, “you would get a small leak, you would not get an explosion.”⁶³ Further, that leak would only ignite if the gas to air ratio in the area were 5 to 15 percent natural gas and there was an ignition source in the immediate vicinity.⁶⁴ Such a specific ratio combined with an ignition source would likely not be encountered in the wide open outdoors.

b. Air Quality

Short-term (fugitive dust and air emissions) and long-term (air emissions) air quality impacts will occur during construction of the Project.⁶⁵ Impacts are unavoidable but minimal.⁶⁶

c. Noise

Short-term noise impacts associated with Project construction are anticipated. Impacts are unavoidable but minimal.⁶⁷ Long-term impacts associated with operation and maintenance of the pipeline are anticipated to be minimal and unavoidable. Impacts from vibration are not anticipated.⁶⁸

⁶¹ Evidentiary Hearing Transcript at 20:8-20 (Lyle). It is also worth noting that in both comments at the public hearing (Public Hearing Transcript at 42:5-6) and in written comments (eDocket No. 201611-126682-01), Ms. Overland referenced two pipeline explosions that had occurred recently in Alabama. In her written comments, she specifically referred to these as “two natural gas pipeline explosions recently in Alabama.” The specific pipelines at issue were gasoline pipelines and not natural gas pipelines. See Mahita Gajanan, *Colonial Restarts Alabama Gas Pipeline After Explosion*, TIME (Nov. 6, 2016), www.time.com/4559906/colonial-alabama-pipeline-restart-explosion/. In fact, the October 31, 2016, incident was caused by contractor contact with the gasoline pipeline “not far from where it burst last month.” *Gas Line Explosion Rocks Helena, Alabama*, CBSNEWS (Oct. 31, 2016, 5:05 p.m.), www.cbsnews.com/news/gas-line-explosion-helena-alabama/.

⁶² Evidentiary Hearing Transcript at 20:2-10 (Lyle).

⁶³ Evidentiary Hearing Transcript at 20:8-10 (Lyle).

⁶⁴ Evidentiary Hearing Transcript at 20:14-17 (Lyle).

⁶⁵ Ex. 108 at 138, 141, 145, 148 (CEA).

⁶⁶ Ex. 108 at 138, 141, 145, 148 (CEA).

⁶⁷ Ex. 108 at 137, 141, 145, 148 (CEA).

⁶⁸ Ex. 108 at 137, 141, 145, 148 (CEA).

d. Population and Employment

Impacts to population and employment across all Segment Alternatives and routes are anticipated to be minimal, and positive over both the short- and long-term.⁶⁹

e. Existing and Planned Future Land Use

The Application Preferred Route, the Application Alternate Route, and the Modified Preferred Route all cross areas identified for potential future development.⁷⁰ The Application Preferred Route and the Application Alternate Route cross areas with a valid General Development Plan (“GDP”).⁷¹ These two routes bisect properties within the development identified as Willow Creek Commons and Willow Creek Commons West (the “Willow Creek Development”).⁷²

The Willow Creek Development is a proposed mixed-use development comprised of approximately 83 acres.⁷³ A portion of the Willow Creek Development was platted in November 2014 with the remainder still under development.⁷⁴ Route Segment 26 (included in both the Application Preferred Route and the Application Alternate Route) bisects platted properties within the Willow Creek Development.⁷⁵

The Modified Preferred Route and the Application Preferred Route anticipated alignment follows the property line of two parcels that were included in the out-of-date 2007 Westridge Hills GDP.⁷⁶ The Westridge Hills GDP is a planned community development in Rochester Township near the Willow Creek Golf Course. The Westridge Hills project proposed to develop 79 acres for 86 single-family homes and a church.⁷⁷ The Westridge Hills GDP developers, their

⁶⁹ Ex. 108 at 137, 140, 144, 147 (CEA).

⁷⁰ Ex. 108 at 137, 140, 144, 147 (CEA).

⁷¹ Ex. 108 at 147 (CEA).

⁷² Ex. 21 at Schedule 1 at 10-11 (Direct Testimony of Rick J. Moser).

⁷³ Ex. 108 at 71 (CEA).

⁷⁴ Ex. 108 at 71 (CEA).

⁷⁵ Ex. 108 at Figure 10 at 9 (CEA).

⁷⁶ Ex. 19 at 13:3-8 (Direct Testimony of Amber S. Lee).

⁷⁷ Ex. 108 at 70 (CEA).

engineer, and a church representative all provided comments during the Route Permit proceedings.⁷⁸

The properties included in the Westridge Hills GDP have not been platted.⁷⁹ A GDP from the City of Rochester is only valid for a period of two years unless subsequent development approvals occur according to the City of Rochester Land Use Plan, Section 61.216.⁸⁰ No action has occurred on the Westridge Hills GDP since 2007, according to the City of Rochester, and the development does not appear on the Olmsted County Subdivision Plat records or on the Olmsted County Zoning Information website.⁸¹

The CEA identifies Segment Alternative FH-1, which is included in the Application Preferred Route and the Modified Preferred Route, as one that would have “impacts . . . moderate or significant and unable to be mitigated.”⁸² The CEA, however, fails to acknowledge that the Westridge Hills GDP is out of date. The CEA also does not consider the feasibility of a residential subdivision to be developed around a natural gas distribution line like the Project.

There are three residential developments in Olmsted County that have been successfully designed around natural gas transmission pipelines.⁸³ These natural gas transmission lines have different safety considerations than natural gas distribution lines, like the Project, as discussed above. It is feasible to design residential or commercial developments around a natural gas pipeline when incorporated early in the process. Given that the Westridge Hills GDP is currently out-of-date, the Westridge Hills Development and the natural gas distribution pipeline Project could be designed in a compatible manner.⁸⁴

⁷⁸ Ex. 106 at 18-19 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Project); Ex. 111 at Transcript at 20:16-23:2 (Tointon), 35:6-8 (Peters), 44:11-48:12 (Hruska), and Exhibit A from public meeting (Comments: Public Comments (Verbal and Written) Received on Draft CEA); Ex. 122 (Comments of Eugene Peters – Westridge Hills Corp.); Public Hearing Transcript at 26:9-29:25 (Tointon), 34:5-36:3 (Peters), 36:11-39:12 (Kell); Ex. B (Bill Tointon Submission); Ex. C (David Kell Submission).

⁷⁹ Ex. 19 at 12:8-11 and Schedule 3 (Direct Testimony of Amber S. Lee).

⁸⁰ Ex. 19 at 12:14-15 (Direct Testimony of Amber S. Lee).

⁸¹ Ex. 19 at 12:16-18 (Direct Testimony of Amber S. Lee).

⁸² Ex. 108 at 147 (CEA).

⁸³ Ex. 20 at 9:16-19 and Schedule 1 (Direct Testimony of Lindsay K. Lyle).

⁸⁴ Ex. 20 at 10:7-11 (Direct Testimony of Lindsay K. Lyle).

2. *Natural Environment*

Minnesota Rule 7852.1900, Subpart 3(B) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to “the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands.”

Minnesota Rule 7852.1900, Subpart 3(G) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to natural resources and features. The record demonstrates the Modified Preferred Route will minimize impacts on human settlement when compared to the other routes in the record.

a. Groundwater

The Application Preferred Route, the Application Alternate Route, and the Modified Preferred Route have relatively similar geologic sensitivity. A summary of the acres of areas of geologic sensitivity within the anticipated permanent right-of-way for each of these three routes is provided in Table 4.

Table 4. Geologic Sensitivity Acreage for Permanent Right-of-Way

	Application Preferred Route	Application Alternate Route	Modified Preferred Route
Length of Pipeline in Decorah Edge (feet) ⁸⁵	18,530	17,507	20,253
Very High Sensitivity (Acres)	15.6	18.0	18.7
High Sensitivity (Acres)	15.7	23.7	23.8
High Moderate Sensitivity (Acres)	8.9	9.4	3.6
Moderate Sensitivity (Acres)	13.8	8.7	13.0
Low Moderate (Acres)	9.4	7.0	9.4
Low (Acres)	16.5	15.5	16.5
Total (Acres)	79.8	82.2	84.9

The Modified Preferred Route is the longest of the three routes and has the greatest total acres of geologic sensitivity within its anticipated right-of-way. MERC agrees with the CEA analysis that with the use of standard Route Permit conditions and other mitigation measures discussed in the CEA, any impacts to groundwater resources are anticipated to be minimal.⁸⁶

⁸⁵ Ex. 108 at Table B-1 (CEA).

⁸⁶ Ex. 108 at 138, 142, 146, 149 (CEA).

b. Surface Water

Impacts to surface water, including wetlands, are anticipated to be short-term and minimal as the Company intends to use HDD at all waterbody crossings, the other mitigation measures discussed in the CEA, and the use of general route permit conditions.⁸⁷ Conversion of woody wetlands to a different wetland type may occur, but is anticipated to be minimal with the use of general permit conditions and construction techniques discussed in the CEA.⁸⁸ Surface water impacts of all routes are similar. Surface water impacts for the routes are summarized in Table 5.

Table 5. Surface Water Resources Crossed by Permanent Rights-of-Way

	Application Preferred Route	Application Alternate Route	Modified Preferred Route
Number of Waterbody Crossings ⁸⁹	5	5	5
PEM Wetland (Acres)	2.0	2.6	2.3
PFO and PSS Wetland (Acres)	0.1	0.1	0.4
Total Wetland (Acres)	2.1	2.6	2.8

c. Fauna

Impacts to wildlife and wildlife habitat across all routes are anticipated to be minimal with the use of mitigation measures discussed in the CEA.⁹⁰ Removal of tall, woody vegetation will impact upland forest habitat but such impacts are anticipated to be minimal.⁹¹ Impacts to threatened, endangered, or special status species are anticipated to be minimal across all routes with the use of the mitigation measures discussed in the CEA.⁹²

d. Flora

All Segment Alternatives have similar vegetation types when evaluated against the comparable alternatives in each segment. Right-of-way impacts to forested cover types will be

⁸⁷ Ex. 108 at 138, 139, 142, 146, 149 (CEA).

⁸⁸ Ex. 108 at 149 (CEA).

⁸⁹ Ex. 108 at Table B-41 (CEA). PEM is palustrine emergent, PFO is palustrine forested, and PSS is palustrine shrub.

⁹⁰ Ex. 108 at 139, 142, 146, 149 (CEA).

⁹¹ Ex. 108 at 142 (CEA).

⁹² Ex. 108 at 139, 142, 146, 149 (CEA).

permanent but are anticipated to be minimal with the use of general permit conditions, construction techniques, and proposed best management practices discussed in the CEA.⁹³

In comments filed on April 14, 2016, the Minnesota Department of Natural Resources (“MnDNR”) commented it was concerned about the crossing of native plant communities and/or Minnesota Biological Survey (“MBS”) sites of moderate to high biodiversity.⁹⁴ The MnDNR requested that “greenfield routes” be avoided.⁹⁵ Greenfield crossings are those portions of a route that are not parallel to existing rights-of-way. Most of the greenfield portions of the routes are within agricultural cover types that typically do not contain native plant communities or rare features.⁹⁶

The Application Preferred Route, the Application Alternate Route, and the Modified Preferred Route all cross MBS sites. MERC intends to install the pipeline using HDD underneath MBS sites it cannot avoid by routing.⁹⁷ While large woody vegetation would need to be removed from an area measuring five feet on either side of the pipeline centerline for access for inspection purposes, the MBS site located at 40th Street SW is not classified as forested or forested wetland so vegetation clearing is anticipated to be minimal.⁹⁸ Additionally, vegetation management in this area could be accomplished during the winter months to minimize overall impacts to the site.⁹⁹ A crossing of a Native Prairie would be required to be used for any route selected for the Project, as no other alternatives were proposed for this area.¹⁰⁰ Direct impacts to this feature can be avoided through the use of HDD underneath the railroad right-of-way.¹⁰¹

Any potential impacts to the MBS sites located within the buffer for the Proposed TBS or the buffer for the DRS can be avoided by locating the TBS and the DRS outside the boundaries of the MBS site.¹⁰²

⁹³ Ex. 108 at 139, 142, 146, 149 (CEA).

⁹⁴ Ex. 116 (Letter from MnDNR).

⁹⁵ Ex. 116 (Letter from MnDNR).

⁹⁶ Ex. 108 at 108 (CEA).

⁹⁷ Ex. 21 at 12:5-7 (Direct Testimony of Rick J. Moser).

⁹⁸ Ex. 21 at 12:7-11 (Direct Testimony of Rick J. Moser); Ex. 108 at 109 (CEA).

⁹⁹ Ex. 21 at 12:11-12 (Direct Testimony of Rick J. Moser); Ex. 108 at 109 (CEA).

¹⁰⁰ Ex. 21 at Schedule 1 (Direct Testimony of Rick J. Moser); Ex. 108 at Tables 4-1 to 4-6 (CEA).

¹⁰¹ Ex. 21 at 13:9-13 (Direct Testimony of Rick J. Moser); Ex. 108 at 109 (CEA).

¹⁰² Ex. 21 at 13:4-5 (Direct Testimony of Rick J. Moser).

A summary of permanent impacts to wildlife habitats by any of the routes are summarized in Table 6.

Table 6. Permanent Right-of-Way Wildlife Habitats

	Application Preferred Route	Application Alternate Route	Modified Preferred Route
Upland Forest (Acres) ¹⁰³	3.4	7.5	5.5
Westland Forest (Acres)		0.2	0.2
Scrubland (Acres)	0.1	0.3	0.1
Grassland (Acres)	27.2	19.1	22.3
Emergent Wetland (Acres)	0.7	1.0	0.6
Open Water (Acres)	0.1	0.1	0.1
Total (Acres)	31.5	27.8	28.9

e. Geology and Soils

Karst features, such as sinkholes, caves, and springs, are commonly found in Olmsted County.¹⁰⁴ Generally, impacts to geologic resources are anticipated to range from minimal to moderate moving north to south along the Project.¹⁰⁵ The greatest potential for encountering sinkholes is between the Proposed TBS and County Road 8 along Route Segments that are incorporated only in the Application Alternate Route.¹⁰⁶ The probability of sinkhole formations along the routes is provided in Table 7.

Table 7. Geologic Resources with the Permanent Right-of-Way

	Application Preferred Route	Application Alternate Route	Modified Preferred Route
High Probability Sinkhole Formation (Acres)	1.4	4.3	0
Moderate to High Probability Sinkhole Formation (Acres)	0	0	0
Low to Moderate Probability Sinkhole Formation (Acres)	44.4	48.1	52.9
Low Probability Sinkhole Formation (Acres)	34.0	25.6	32.1
Total Probability (Acres)	79.8	78.1	84.9

¹⁰³ Ex. 108 at Table B-51 (CEA).

¹⁰⁴ Ex. 108 at 95 (CEA).

¹⁰⁵ Ex. 108 at 95 (CEA).

¹⁰⁶ Ex. 108 at 95-96 (CEA).

During construction, ground penetrating radar analysis will be used in areas of high probability for sinkhole formation to determine if sinkholes, underground cavities, or enlarged features are present prior to trenching. If one of these features is inadvertently encountered during trenching, the pipeline can be rerouted and the feature repaired to limit further sinkhole formation and subsidence in addition to reducing the potential for changes in groundwater flow.¹⁰⁷

Direct impacts to soils along any Segment Alternative are anticipated to be minimal. All routes and Segment Alternatives would have similar impacts on soils.¹⁰⁸ Direct impacts to soils at the locations of TBS 1D, the Proposed TBS, and the Proposed DRS footprints will be permanent and significant.¹⁰⁹ These impacts are of a small size, do not affect unique resources, and are unavoidable.¹¹⁰ Impacts to soils can be minimized through the implementation of best management practices utilized in compliance with the required erosion control plan for the Project.¹¹¹ Additionally, construction procedures outlined in the Agricultural Mitigation Plan can minimize impacts to soils or ensure appropriate landowner compensation where impacts to agricultural soils are encountered.¹¹²

3. Lands of Historical, Archaeological, and Cultural Significance

Minnesota Rule 7852.1900, Subpart 3(C) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to lands of historical, archaeological, and cultural significance.

The potential for impact to historical, archaeological, and culturally significant lands is considered to be equal for all routes. Impacts to historic and archaeological sites are anticipated to be minimal with the use of general Route Permit conditions, construction practices, and best management practices discussed in the CEA. While previously-undiscovered resources may be encountered during construction, additional surveys will be conducted prior to construction and

¹⁰⁷ Ex. 108 at 96 (CEA).

¹⁰⁸ Ex. 108 at 97 (CEA).

¹⁰⁹ Ex. 108 at 97 (CEA).

¹¹⁰ Ex. 108 at 98 (CEA).

¹¹¹ Ex. 108 at 98 (CEA).

¹¹² Ex. 108 at 97, 138, 142, 145, 149 (CEA).

further consultation with the State Historic Preservation Office may result in additional mitigation measures for the Project construction.¹¹³

4. *Land Use Economies*

Minnesota Rule 7852.1900, Subpart 3(D) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations. The record demonstrates the Modified Preferred Route will minimize impacts on land use economies when compared to the other routes in the record

a. Agriculture

Construction of the Project will result in permanent and temporary impacts to farmland. Impacts can be mitigated by compensation to landowners and use of measures outlined in the Agricultural Mitigation Plan.¹¹⁴ The Modified Preferred Route has the greatest ability to minimize impacts to agricultural land because, while it crosses the most acres of these lands when compared to the other two routes, it also maximizes the use of road rights-of-way through these areas.¹¹⁵ This provides the greatest opportunity for MERC to locate temporary easements, where practicable, in road rights-of-way and minimize additional impacts to agricultural lands.

b. Forestry

There is no evidence on the record that impacts to forestry are anticipated due to construction of the Project.¹¹⁶

c. Mining

There are mining operations located along the Segment Alternatives under consideration for the Project. Mining operations have been identified along the Application Preferred Route,

¹¹³ Ex. 108 at 136 (CEA).

¹¹⁴ Ex. 108 at 139, 143, 146, 150 (CEA).

¹¹⁵ Ex. 108 at Table B-31 (CEA).

¹¹⁶ Ex. 108 at 139, 143, 146, 150 (CEA).

the Application Alternate Route, and the Modified Preferred Route.¹¹⁷ Impacts to current mining operations along any route selected for the Project are not anticipated.¹¹⁸ The potential for a Segment Alternative to prevent expansion of the mines located along Segment Alternative CD-1 or DE-1, while minimal, is greater than the other Segment Alternatives evaluated in these areas.¹¹⁹ The potential for impacts in this location could be further minimized based on post-permit discussions with the landowner regarding placement of the pipeline.

Although there are existing mining operations along the Modified Preferred Route, these mining operations are located adjacent to existing transportation rights-of-way. Additionally, MERC believes that it can accommodate landowner concerns associated with mining activities during the easement negotiation process.

d. Commercial or Industrial

There is no evidence on the record that impacts to commercial or industrial uses are anticipated due to construction of the Project.¹²⁰

e. Recreational

There is no evidence on the record that impacts to recreational uses are anticipated due to construction of the Project.¹²¹

5. Pipeline Cost and Accessibility

Minnesota Rule 7852.1900, Subpart 3(E) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to pipeline cost and accessibility.

Nearly all Segment Alternatives have similar cost and accessibility considerations.¹²² In evaluating the Segment Alternatives under consideration, and based on landowner feedback

¹¹⁷ Segment Alternatives CD-1 (Application Preferred Route and Modified Preferred Route) and DE-1 (Application Alternate Route and Modified Preferred Route). Ex. 108 at 139 and 143 (CEA).

¹¹⁸ Ex. 108 at 139, 143, 146, 150 (CEA).

¹¹⁹ Ex. 108 at 139, 143 (CEA).

¹²⁰ Ex. 108 at 139, 143, 146, 150 (CEA).

¹²¹ Ex. 108 at 139, 143, 146, 150 (CEA).

¹²² Ex. 21 at 9:3-14 (Direct Testimony of Rick J. Moser); Ex. 108 at 136 (CEA).

received at the September 2015 open houses and confirmed during public information meetings and in comment periods, the Application Preferred Route and the Application Alternate Route have accessibility, design, and engineering concerns where the routes follow the existing BP Pipeline.¹²³

The existing BP Pipeline was constructed in the late 1940s, prior to implementation of state or federal standards for petroleum pipeline depth of cover.¹²⁴ During both of the public information meetings held for the Project, landowners commented on depth of cover concerns associated with the BP Pipeline, including some reports of field or farm equipment encountering the pipeline in recent years.¹²⁵ While the Project could be constructed following the BP Pipeline, accessibility of these areas is a concern unique to these areas and greater separation than initially anticipated between the BP Pipeline and the proposed Project would be necessary. This would result in greater impacts to landowners' property and higher Project costs as matting over the BP Pipeline right-of-way would also be necessary to minimize the risk of damage to the BP Pipeline.¹²⁶

Accessibility and constructability is also a concern with the Application Alternate Route where it incorporates Segment Alternative 20, 24, and 25.¹²⁷ MERC is concerned with the topography of 50th Street SW.¹²⁸ Topography is also a concern for construction along 48th Street SW.¹²⁹

MERC explained in testimony that the Application Preferred Route and the Modified Preferred Route (Segment Alternative HJ-2) cross through a developed commercial area. Property in this area is estimated to be five times the cost of property along other Segment Alternatives that could be used in this area, resulting in the overall cost for these routes to be much higher than other Segment Alternatives.¹³⁰ At the time the Application was submitted, MERC was not aware that the commercial development in this area had proceeded with platting

¹²³ Ex. 20 at 7:18-19 (Direct Testimony of Lindsay K. Lyle).

¹²⁴ Ex. 20 at 7:23-25 (Direct Testimony of Lindsay K. Lyle).

¹²⁵ Ex. 20 at 7:25-8:2 (Direct Testimony of Lindsay K. Lyle).

¹²⁶ Ex. 20 at 8:2-23 (Direct Testimony of Lindsay K. Lyle).

¹²⁷ Evidentiary Hearing Transcript at 22:13-22 (Lyle).

¹²⁸ Evidentiary Hearing Transcript at 22:25-23:20 (Lyle).

¹²⁹ Evidentiary Hearing Transcript at 24:9-25:8 (Lyle).

¹³⁰ Ex. 19 at 9:13-17 (Direct Testimony of Amber S. Lee).

and development. Therefore, the higher property values were not incorporated in the initial cost estimates.

Based on this information, the Modified Preferred Route is the most cost-effective and accessible option for construction and continued operation and maintenance of the Project.

6. Use of Existing Rights-of-Way and Right-of-Way Sharing or Paralleling

Minnesota Rule 7852.1900, Subpart 3(F) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to the use of existing rights-of-way and right-of-way sharing or paralleling. The Modified Preferred Route makes the greatest use of road rights-of-way for the Project while the Application Alternate Route makes the greatest use of total existing rights-of-way, including roads, existing pipelines, and electrical distribution lines. A summary of right-of-way sharing for each route is provided in Table 8. As noted above, there are unique concerns with sharing or paralleling the BP Pipeline right-of-way with respect to the Application Alternate Route.

Table 8. Route Rights-of-Way Sharing

	Application Preferred Route	Application Alternate Route	Modified Preferred Route
Road Right-of-Way ¹³¹	43%	60%	74%
Pipeline Right-of-Way	12%	26%	
Electrical Distribution Line Right-of-Way	5%	5%	5%
Length not Parallel to Existing Right-of-Way	40%	10%	22%

7. Extent Human or Environmental Effects are Subject to Mitigation by Regulatory Control and Permit Conditions

Minnesota Rule 7852.1900, Subpart 3(H) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.2400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices.

A Route Permit issued by the Commission contains standard Route Permit conditions and may also include special Route Permit conditions.¹³² As discussed in the CEA, many of the

¹³¹ Ex. 108 at Appendix B, p. 33, Table B-31 (CEA).

standard Route Permit conditions provide environmental mitigation measures related to construction of the Project. MERC does not object to any of the standard Route Permit conditions. The Company does, however, request modifications to the standard Route Permit condition regarding the Environmental Mitigation Plan and also requests several special conditions.

Condition 5.2 of the Generic Route Permit Template references attaching a copy of an “Environmental Mitigation Plan” to the Route Permit.¹³³ No such plan has been prepared for this Project and none is defined or discussed in the CEA. MERC requests that Condition 5.2 be revised to provide that an Environmental Mitigation Plan shall be filed with the first Plan and Profile submission for the Project and should define what is to be contained in the plan. Specifically, MERC requests that the following language be used for Condition 5.2:

The Environmental Mitigation Plan shall include all environmental control plans and special conditions imposed by permits or licenses issued by state or federal agencies related to agency-managed resources. Plans within the Environmental Mitigation Plan shall include the Agricultural Mitigation Plan (AMP), a Vegetation Management Plan (VMP), and a Stormwater Pollution Prevention Plan (SWPPP). The Environmental Mitigation Plan shall be filed with the Commission with the first Plan and Profile submission. The Environmental Mitigation Plan shall include the following:

1. Identification of and contact information for an Environmental Monitor to oversee the construction process and monitor compliance with the Environmental Mitigation Plan and all plans therein.
2. A process for reporting construction status to the Commission.
3. A process for internal tracking of construction management, including required plan or permit inspection forms.

Condition 5.5 of the Generic Route Permit Template states that the construction practices and material specifications described in the Application shall be followed.¹³⁴ MERC has identified that while the Application stated that “burning of slash, brush, stumps, or other project debris is prohibited,” MERC would like to retain the ability to perform these activities so long as

¹³² Ex. 63 (Generic Route Permit Template and Certificate of Service).

¹³³ Ex. 63 at 3 (Generic Route Permit Template and Certificate of Service).

¹³⁴ Ex. 63 at 4 (Generic Route Permit Template and Certificate of Service).

such activity is agreeable to the landowner.¹³⁵ MERC requests that the ALJ recommend the Route Permit be clarified to allow this activity.

As requested by the MnDNR and agreed to by MERC, the Route Permit should contain a special condition regarding the use of wildlife-friendly erosion control materials. MERC believes that the proposed language in the Generic Route Permit Template regarding this issue is appropriate.¹³⁶

MERC agrees with EERA's analysis in the CEA that preconstruction environmental survey consultations should be completed to determine if any federally-listed threatened or endangered species are present along the permitted route.¹³⁷ Preconstruction environmental survey consultations should also be completed to determine if any state-listed or rare species are present along the permitted route.¹³⁸ The example special condition in the Generic Route Permit Template for "Rare Species Surveys," however, should not be used.¹³⁹ Instead, MERC requests that the ALJ recommend the following special condition for the Project:

The Permittee, in consultation with the USFWS and the MnDNR, will determine the need for rare species surveys (pre-construction) within the approved route. In the areas where these species are known to exist or where the right-of-way passes through habitats where the species are likely to exist, field surveys may be required. In the event impacts cannot be avoided, the Permittee may need to obtain a take permit from the MnDNR or the USFWS for the species of concern. The Permittee shall submit the results of these efforts to the Commission with its Plan and Profile filing.

The example special condition in the Generic Route Permit Template for "Rare and Unique Resources" is not necessary for this Project if the proposed special condition above is recommended.¹⁴⁰

MERC agrees that it would be appropriate to develop a Vegetation Management Plan for the Project. Consistent with the recommendations of the CEA, MERC requests that the following special condition be included in the Route Permit:¹⁴¹

¹³⁵ Ex 17 at 3 (MERC Comments on CEA).

¹³⁶ Ex. 63 at 11 (Generic Route Permit Template and Certificate of Service).

¹³⁷ Ex. 108 at 114 (CEA).

¹³⁸ Ex. 108 at 118 (CEA).

¹³⁹ Ex. 63 at 11 (Generic Route Permit Template and Certificate of Service).

¹⁴⁰ Ex. 63 at 11 (Generic Route Permit Template and Certificate of Service).

Permittee shall submit a Vegetation Management Plan (VMP) with the Environmental Control Plan. The purpose of the VMP shall be to identify measures to minimize the disturbance and removal of vegetation for the Project, prevent the introduction of noxious weeds and invasive species, and re-vegetate disturbed non-cropland areas with appropriate native species in cooperation with landowner and state, federal, and local resource agencies, such that such revegetation does not negatively impact the safe and reliable operation of the Project.

As stated in the Company's Application and throughout this proceeding, the intent is to phase the construction of the Project over a period of approximately six years.¹⁴² Because of the likelihood of periods where no construction activity will occur, the requirement of Condition 10.2 for the Company to complete weekly reports from the "submittal of the plan and profile for the project and continue until completion of restoration" does not seem reasonable.¹⁴³ Instead, MERC requests that Condition 10.2 of the Route Permit include the following:

In the event the Permittee proceeds with phased construction of the Project, such weekly reports should be filed beginning with the submittal of the plan and profile for that phase and continue until the completion of restoration of that phase. If there is any period of time where no construction activity is occurring, restoration of the prior phase of the Project has been completed, and the overall Project is not yet completed, Permittee need only provide status reports monthly.

The general geology of the area for the Project presents the possibility for identification of sinkholes, underground cavities, and enlarged fractures that may require rerouting of the pipeline outside the route width.¹⁴⁴ MERC and the County have also had discussions about the possibility that certain road development projects may come to fruition in the later years of the Project.¹⁴⁵ Additionally, there remains the possibility that a landowner may want the pipeline located elsewhere on that landowner's property but outside the route width.¹⁴⁶ Because of the possibility of these instances, MERC requests, consistent with its Direct Testimony,¹⁴⁷ that the

¹⁴¹ Ex. 108 at 110 (CEA).

¹⁴² Ex. 108 at Table 2-2, p. 25 (CEA).

¹⁴³ Ex. 63 at 13 (Generic Route Permit Template).

¹⁴⁴ Ex. 108 at 138, 142, 145, 149 (CEA).

¹⁴⁵ Ex. 19 at 10 (Direct Testimony of Amber S. Lee).

¹⁴⁶ See Public Hearing Transcript at 68:2-7 (Oldfield).

¹⁴⁷ Ex. 19 at 14:14-30 (Direct Testimony of Amber S. Lee).

ALJ recommend inclusion of the following special condition that has been used in previously-approved petroleum pipeline permits:

Route width variations may be allowed for the Permittee to overcome potential site-specific constraints. These constraints may arise from any of the following:

1. Unforeseen circumstances encountered during the detailed engineering and design process, including a landowner request for a different location entirely on that landowner's property so long as the Permittee is agreeable to the proposed location.
2. Federal or state agency requirements.
3. Existing infrastructure within the pipeline route, including but not limited to railroads, natural gas and liquid pipelines, road expansion projects, high voltage electric transmission lines, or sewer and water lines.

Any alignment modifications arising from these site-specific constraints that would result in right-of-way placement outside of this designated route shall be located to have the same or less impacts relative to the criteria in Minnesota Rules 7852.1900 as the alignment identified in this permit and be specifically identified in and approved as part of the Plan and Profile submitted pursuant to Part VI of this permit.

Finally, MERC has discussed the need to obtain easements for temporary workspaces for HDD crossings for the Project.¹⁴⁸ To ensure sufficient workspace for HDD crossings for the Project, MERC requests that the ALJ recommend the following special condition be included in the Route Permit for the Project:

The Permittee may obtain extra temporary workspace that is needed at locations where the project will cross features such as waterbodies, roads, railroads, side slopes, and other special circumstances and HDD will be utilized. Extra temporary workspace will be allowed for construction activities including, but not limited to, staging equipment and stockpiling spoil material to facilitate construction of the pipeline. These dimensions will vary depending on actual site-specific conditions, but will typically be 20,000 square feet on each side of the features crossed. Extra temporary workspaces that may be required outside the approved Route Width are identified on the maps attached to this Route Permit.

¹⁴⁸ Ex. 20 at 6-7 (Direct Testimony of Lindsay K. Lyle).

8. *Cumulative Potential Effects of Related or Anticipated Future Pipeline Construction*

Minnesota Rule 7852.1900, Subpart 3(I) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to cumulative potential effects of related or anticipated future pipeline construction. MERC agrees with EERA's conclusion that the routes are equal with respect to this criteria because regardless of what route is selected for the project, the connected pipeline facilities to be owned by Northern Natural Gas Company will be constructed in the same general location.¹⁴⁹

9. *Other Local, State, or Federal Rules and Regulations*

Minnesota Rule 7852.1900, Subpart 3(J) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws, including ordinances adopted under Minnesota Statutes section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

MERC agrees with EERA's conclusion that all routes are equal with respect to this criteria in that any route selected by the Commission will be subject to, and must comply with, the relevant applicable policies, rules, and regulations of other state and federal agencies.¹⁵⁰

V. EVALUATION OF ALTERNATIVES TO THE MODIFIED PREFERRED ROUTE

As previously stated, the Modified Preferred Route is the most appropriate route for the Project, based on the record in this proceeding and consideration of the criteria set forth in Minnesota Rule 7852.1900. The only adjustment to the Modified Preferred Route MERC requests is along 70th Avenue SW in Salem Township just north of 10th Street SW. In this area, MERC originally proposed crossing over to the west side of the road. Since that time, a home has been built on the west side of the road, but no residences are in the immediate proximity on

¹⁴⁹ Ex. 108 at 136 (CEA).

¹⁵⁰ Ex. 108 at 136 (CEA). As stated in Minnesota Statutes section 216G.02, subdivision 4, a pipeline Route Permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local, and special purpose governments.

the east side of the road.¹⁵¹ MERC requests that, as shown on the maps attached to the Proposed Findings, the anticipated alignment in this area be located on the east side of 70th Avenue SW.

The CEA evaluated 29 Route Segments that were combined in various forms to create 37 Segment Alternatives.¹⁵² The record evidence demonstrates that no Segment Alternative is a better alternative than the Modified Preferred Route.

Several Segment Alternatives would locate the Project in a developed commercial area east of US Highway 63. As previously stated, acquiring easements through this area is estimated to be approximately five times the cost of equivalent easements elsewhere on the Project. Additionally, space constraints and existing underground utilities would create unique construction and accessibility challenges. Several other Segment Alternatives proposed during scoping for the CEA would locate the Project further south and west than the three Routes proposed by MERC. These are in areas of higher probability for sinkholes and do not reduce overall human settlement or environmental impacts when compared to the three routes proposed by MERC.

Several stakeholders advocated for the Modified Preferred Route from the north to the south, until reaching either County Road 8 or Route Segment 7P. These stakeholders then advocated for the Project to follow 48th Street SW. While use of 48th Street SW would increase the overall right-of-way sharing for the Project, development along this road poses unique construction challenges and also increases the number of residences and other structures within 200 feet of the anticipated alignment for the Project. Within the last decade, the City of Rochester cut down several hills along 48th Street SW to make a flat road through this area. In doing so, large areas of high bedrock hills along the north side of 48th Street SW remain where the pipeline would need to be located if this road were followed due to the proximity of development along the south side of 48th Street SW. Should the City of Rochester ever widen 48th Street SW, not only would the pipeline need to be located further laterally from the roadway, it may need to be buried at varying depths based on how the topography is adjusted for any roadway expansion, posing unique construction issues in the future.

¹⁵¹ Public Hearing Transcript at 119-24 (6:00 p.m. hearing); Public Comment of Larry Franck (eDocket No. 201611-126768-01).

¹⁵² The CEA states that 36 Segment Alternatives were developed. Ex. 108 at 49 (CEA). However, 37 Segment Alternatives were considered in the CEA. Ex. 108 at Tables 4-2 to 4-5 (CEA).

For these reasons, MERC continues to support the Modified Preferred Route for the Project.

VI. CONCLUSION

The record evidence demonstrates that of the routes on the record, the Modified Preferred Route best satisfies the criteria set forth in Minnesota Rule 7852.1900. MERC respectfully requests that the ALJ recommend the Modified Preferred Route for the Project. Further, MERC requests that the ALJ recommend adjusting the alignment for the Modified Preferred Route from that previously contemplated to that shown in the maps attached to MERC's Proposed Findings filed concurrently with this Brief so that the anticipated alignment is located on the east side of 70th Avenue SW north of 10th Street SW in Salem Township. MERC also requests that the ALJ recommend that the Commission incorporate the Route Permit conditions discussed in this Brief into the Route Permit for the Project. Finally, the Company requests that the ALJ adopt the Proposed Findings submitted along with this Brief.

Dated: December 2, 2016

Respectfully submitted,

BRIGGS AND MORGAN, P.A.

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**Attorneys for Minnesota Energy Resources
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**STATE OF MINNESOTA
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of
Minnesota Energy Resources Corporation
for a Route Permit for the Rochester Natural
Gas Pipeline Project in Olmsted County

PUC Docket No. G011/GP-15-858
OAH Docket No. 8-2500-33180

**MINNESOTA ENERGY RESOURCES CORPORATION'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDATIONS**

December 2, 2016

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**STATE OF MINNESOTA
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of Minnesota
Energy Resources Corporation for a Route
Permit for the Rochester Natural Gas Pipeline
Project in Olmsted County

PUC Docket No. G011/GP-15-858
OAH Docket No. 8-2500-33180

Findings of Fact, Conclusions of Law, and
Recommendations

Public hearings were held before the Honorable Eric L. Lipman, Administrative Law Judge, on November 9, 2016, at the Centerstone Plaza Hotel, 401 6th Street SW, Rochester, Minnesota 55905 at 1:00 p.m. and 6:00 p.m.

Kodi Jean Verhalen and Michael C. Krikava, Attorneys at Law, Briggs and Morgan, P.A., and Amber S. Lee, Regulatory and Legislative Affairs Manager, appeared on behalf of Minnesota Energy Resources Corporation (“Applicant” or the “Company”).

Larry Hartman and Andrew Levi, Environmental Review Managers, and Linda S. Jensen, Assistant Attorney General, appeared on behalf of the Department of Commerce, Energy Environmental Review and Analysis (“EERA”).

Michael Kaluzniak, Project Manager, and Kevin George, Public Adviser,¹ Minnesota Public Utilities Commission (“Commission”) Staff, appeared on behalf of the Commission.²

STATEMENT OF ISSUES

1. Has Applicant met the criteria for issuance of a pipeline routing permit (“Route Permit”) set forth in Minnesota Statutes section 216G.02, subdivision 3, and Minnesota Rule 7852.1900, Subpart 3 for the Rochester Natural Gas Pipeline Project located in Olmsted County, Minnesota (“Project”)?

Applicant has met the criteria for issuance of a Route Permit for the Project, and a Route Permit should be issued, subject to the conditions specified below.

2. Do any of the proposed route alternatives minimize the human and environmental impacts associated with the proposed Project to a greater extent than Applicant’s Modified Preferred Route?

¹ Minnesota Rule 7852.1200 requires that a “public adviser” be available to any person to advise that person how to effectively participate in route selection procedures but may not give legal advice or advice that may affect the rights of the person being advised nor may the public adviser act as an advocate.

² Northern Natural Gas Company was granted status as a party to the proceeding via its February 16, 2016, Petition to Intervene (eDocket No. 20162-118340-01) and the Administrative Law Judge’s Third Prehearing Order (eDocket No. 20164-119742-01) but did not appear at the public hearing.

Applicant's Modified Preferred Route, altering the anticipated alignment along 70th Avenue SW north of 10th Street SW to the east side of the roadway, minimizes the overall human and environmental impacts of the Project.

Based on information in the Route Permit Application for the Project ("Application") submitted to the Commission; the Comparative Environmental Analysis ("CEA"); and other evidence in the hearing record,³ the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. PARTIES AND PARTICIPANTS

1. Applicant is a natural gas distribution services utility providing natural gas service to 230,000 natural gas customers in 177 Minnesota communities.⁴

2. EERA was authorized by the Commission to prepare the CEA for the Project, to hold public information meetings, to collect and analyze all route alternative proposals, and to provide a summary, analysis, and recommendation for the Commission's review and determination of routes to be considered at the hearing. EERA was also authorized to administer the route development process and the development of the CEA. The Commission requested that EERA study issues and indicate, during the hearing process, its position on the reasonableness of granting a Route Permit and that EERA issue the CEA in draft form for public comment and reply to substantive comments in pre-filed testimony at least 14 days before the public hearing.⁵

3. Northern Natural Gas Company is an interstate natural gas transmission company operating more than 3,340 miles in the State of Minnesota. Northern Natural Gas Company delivers natural gas to Applicant at 176 Town Border Stations ("TBS") and 1,815 farm taps in the State of Minnesota. Northern Natural Gas Company would provide natural gas service to Applicant's TBS 1D if the Project is issued a Route Permit by the Commission.⁶

II. PROCEDURAL SUMMARY

4. The proposed Project is located along the west and south sides of the City of Rochester in Olmsted County, Minnesota. The Project includes the construction of two new TBSs and one District Regulator Station ("DRS") along with approximately 13 to 14 miles of natural gas distribution pipeline connecting these stations.⁷

³ Certain documents filed on eDockets were not assigned exhibit numbers at the public hearing. These documents are identified herein by the corresponding eDocket number.

⁴ Ex. 58 at 18 (Public Information and Scoping Meeting Presentation).

⁵ Ex. 56 at 9 (Order Finding Application Complete and Granting Variance, Notice of Hearing, and Certificate of Service ("Order on Completeness")).

⁶ Northern Natural Gas Company's Petition to Intervene at 1-2 (eDocket No. 20162-118340-01); Ex. 108 at 4 (CEA).

⁷ Ex. 108 at 4 (CEA).

5. On November 3, 2015, Applicant filed with the Commission an Application for a Pipeline Routing Permit for the Project. The Application was filed pursuant to Minnesota Statutes section 216G.02, subdivision 3 and Minnesota Rule chapter 7852.⁸

6. On November 9, 2015, Applicant filed with the Commission a supplement to its Application, providing tables regarding environmental conditions for the route alternatives discussed in the Application.⁹

7. On November 13, 2015, the Commission issued a Notice of Comment Period on Completeness of the Application.¹⁰

8. On November 30, 2015, EERA filed its comments and recommendations regarding the completeness of the Application and recommended the Application be found complete.¹¹

9. On December 7, 2015, Applicant filed comments replying to EERA comments regarding typographical errors EERA identified in its November 30, 2015, comments.¹²

10. On December 31, 2015, the Commission issued its Notice of Meeting on Application Completeness for January 14, 2016.¹³

11. On January 7, 2016, Commission staff filed briefing papers recommending the Commission find the Application complete, order a CEA be completed for the Project, take no action on an advisory task force at that time, authorize EERA to undertake the CEA development process, vary Minnesota Rule 7852.1400 to provide sufficient time for EERA to fully consider public comments and route alternatives for inclusion in the CEA, delegate authority to the executive secretary under Minnesota Rule 7829.3100 to develop a procedural schedule for the Project, refer the docket to the Office of Administrative Hearings for a contested case proceeding, and approve EERA's proposed budget for CEA development of \$100,000.¹⁴

12. On January 13, 2016, Commission staff filed revised decision options for the January 14, 2016, Commission meeting authorizing EERA to prepare a CEA; hold public information meetings; collect and analyze all route alternative proposals; provide a summary, analysis, and recommendation for the Commission's review and determination of which routes will be considered at hearing; and requesting that EERA issue the CEA in draft form for public

⁸ Ex. 1 (Application).

⁹ Ex. 2 (Application – Supplemental Tables).

¹⁰ Ex. 51 (Notice of Comment Period on Completeness of Route Permit Application and Certificate of Service).

¹¹ Ex. 101 (Comments and Recommendations: Application Acceptance).

¹² Ex. 3 (Minnesota Energy Resources Corporation (“MERC”) – Route Permit Completeness Reply Comments). The Commission also filed documentation that no public comments were received during the comment period. Ex. 52 (Public Comment).

¹³ Ex. 53 (Notice of Commission Meeting and Certificate of Service).

¹⁴ Ex. 54 at 9-11 (Staff Briefing Papers on Completeness).

comment and reply to any substantive comments received as pre-filed testimony at least 14 days prior to the public hearing.¹⁵

13. On January 13, 2016, Applicant filed the corrected Application information identified in its December 7, 2015, Reply Comments in the format required by Minnesota Rule 7852.2000, Subpart 3.¹⁶

14. On January 14, 2016, the Commission met to consider whether the Application was complete.¹⁷

15. On January 28, 2016, Applicant filed proof of mailing copies of the Application, including the November 9, 2015, Application – Supplemental Tables, and the January 13, 2016, Revisions to Application in compliance with Minnesota Rule 7852.2000, Subpart 6.¹⁸

16. On February 3, 2016, the Commission issued its Order on Completeness. The Commission found the Application was complete, containing all information required by Minnesota Rule 7852.0800, and authorized EERA to begin preparation of the CEA for the Project, to hold public information meetings, to collect and analyze all route alternative proposals, and to provide a summary, analysis, and recommendation for the Commission's review and determination of routes to be considered at hearing. The Commission referred the matter to the Office of Administrative Hearings for contested case proceedings, delegated administrative authority to the Executive Secretary, authorized EERA to administer the route development process and the development of the CEA, varied the time periods in Minnesota Rule 7852.1400, Subparts 3 and 4, and approved the EERA proposed Project review budget of \$100,000. The Commission also requested EERA continue to study issues and indicate during the hearing its position on the reasonableness of granting a Route Permit, required Applicant to facilitate continued examination of these issues, required Applicant to place a copy of the Application for review in at least one government center or public library in each county where the route is proposed, directed Commission staff to work with the Administrative Law Judge and EERA on suitable locations for the public hearing, and directed Applicant to work with Commission staff to arrange for appropriate notice to be published in newspapers in the Project area. Finally, the Commission required that pre-filed testimony be filed at least 14 days prior to the public hearing and that EERA issue the CEA in draft form and respond to any substantive public comments on the draft CEA in pre-filed testimony.¹⁹

17. On February 4, 2016, the Commission issued its Notice of Application Acceptance and Public Information and CEA Scoping Meetings to the Project Service List, the

¹⁵ Ex. 55 (Staff Briefing Papers – Revised Decision Option).

¹⁶ Ex. 4 (Revisions to Route Permit Application).

¹⁷ Ex. 56 (Order on Completeness).

¹⁸ Ex. 6 (Affidavits of Mailing of Application).

¹⁹ Ex. 56 at Order Points 1-10 (Order on Completeness).

agency technical representatives list, local units of government, and the landowner mailing list as required by Minnesota Statutes section 216G.02, subdivision 3(b)(3).²⁰

18. On February 11, 2016, Notice of Application Acceptance, as required by Minnesota Rule 7852.0900, and Notice of Public Information Meeting, as required by Minnesota Rule 7852.1300, Subpart 2, including a map depicting the routes included in the Application, was published in the *Rochester Post-Bulletin*.²¹

19. Notice of Application Acceptance was published in the *Minnesota Environmental Quality Board Monitor* on February 15, 2016.²²

20. On February 29, 2016, public information and CEA scoping meetings were held at 2:00 p.m. and 6:00 p.m. at the Kahler Apache Hotel at 1517 16th Street SW, Rochester, Minnesota 55902, as required by Minnesota Rule 7852.1300, Subpart 1(A).²³

21. On April 13, 2016, the scoping comment period ended.²⁴

22. On May 3, 2016, EERA filed the handouts it provided at the February 29, 2016, public information and CEA scoping meetings, as well as the transcript from the meetings.²⁵

23. On May 10, 2016, Applicant issued a Notice of Supplemental Comment Period to landowners inadvertently omitted from the February 4, 2016, mailed notice, extending the comment period for proposing alternative routes to May 30, 2016.²⁶

24. On May 30, 2016, the supplemental scoping comment period ended.²⁷

25. On June 27, 2016, EERA filed its Comments & Recommendations on the scope of the CEA with the Commission.²⁸

²⁰ Ex. 57 (Notice of Application Acceptance – Public Information and CEA Scoping Meeting and Certificate of Service). In April, Applicant identified that several landowners were inadvertently omitted from this list and issued a notice of the routes Applicant proposed in the Application and an extended comment period to these landowners. Ex. 11 (Affidavit of Notice of Supplemental Comment Period).

²¹ Ex. 9 (Affidavit of Publication of Notice of First Public Information Meeting).

²² Ex. 102 (Notice of Permit Application Acceptance, MEQB Monitor).

²³ Ex. 58 (Public Information and Scoping Meeting Presentation).

²⁴ Ex. 58 at 41 (Public Information and Scoping Meeting Presentation).

²⁵ Ex. 103 (February 29, 2016 Public Information Meeting Minutes); Ex. 104 (How to Suggest an Alternative Pipeline Route); Ex. 105 (CEA: Draft Scoping Document for Rochester Natural Gas Pipeline Project).

²⁶ Ex. 11 (Affidavit of Notice of Supplemental Comment Period).

²⁷ Ex. 11 (Affidavit of Notice of Supplemental Comment Period).

²⁸ Ex. 106 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Rochester Natural Gas Pipeline Project).

26. On July 1, 2016, the Commission issued a Notice of Commission Meeting noting that it would consider what action it should take in regard to route alternatives to be evaluated in the CEA at its regular meeting on July 14, 2016.²⁹

27. On July 6, 2016, Commission staff issued briefing papers on the CEA scoping process and alternative routes and recommended that the Commission approve EERA's recommendations regarding the routes to include in the CEA.³⁰

28. On July 14, 2016, the Commission met to consider EERA's memorandum on the CEA scoping process. The Commission directed EERA to include the 29 route segments ("Route Segments") it recommended in its January 27, 2016, filing in the CEA.³¹

29. On August 2, 2016, the Commission filed a Generic Route Permit Template.³²

30. On September 9, 2016, EERA issued a letter to landowners, state agencies, and local units of government notifying them of the routes accepted for the CEA, consistent with Minnesota Rule 7852.1600, that the Second Public Information Meeting under Minnesota Rule 7852.1300, Subpart 1(B) would be held on September 28, 2016, and that the draft CEA would be available beginning on September 16, 2016.³³

31. On September 16, 2016, EERA issued a Notice of Draft CEA Availability and Public Comment Meeting.³⁴

32. On September 16, 2016, EERA issued the draft CEA for the Project.³⁵

33. On September 17, 2016, the Notice of Draft CEA Availability and Second Public Information Meeting was published in the *Rochester Post-Bulletin*.³⁶

34. On September 19, 2016, EERA published the Notice of Draft CEA Availability and Public Comment Meeting in the *Minnesota Environmental Quality Board Monitor*.³⁷

35. On September 28, 2016, the Second Public Information Meeting required under Minnesota Rule 7852.1300, Subpart 1(B) was held at 2:00 p.m. and 6:00 p.m. at the Kahler Apache Hotel, 1517 16th Street SW, Rochester, Minnesota.³⁸

²⁹ Ex. 60 (Notice of Commission Meeting and Certificate of Service).

³⁰ Ex. 61 (Staff Briefing Papers (7/6/2016)).

³¹ Ex. 62 (Order Accepting Comments and Recommendations of EERA Staff for Route Segments and Certificate of Service).

³² Ex. 63 (Generic Route Permit Template and Certificate of Service).

³³ Ex. 107 (DOC EERA: Landowner Letter, September 9, 2016).

³⁴ Ex. 109 (Notice of Draft CEA and Public Comment Meeting).

³⁵ Ex. 108 (CEA).

³⁶ Ex. 15 (Affidavit of Notice of Publication of Second Public Information Meeting).

³⁷ Ex. 110 (Notice of Draft CEA Availability and Public Comment Meeting).

36. On October 18, 2016, the Commission issued its Notice of Public and Evidentiary Hearings consistent with the requirements of Minnesota Rule 1405.0500 and mailed a copy to the Official Service List, the Project Contact List, landowners along all routes included in the CEA, state agencies, and local units of government.³⁹

37. On October 19, 2016, the Commission issued a corrected Notice of Public and Evidentiary Hearings.⁴⁰

38. On October 18, 2016, a Notice of Public and Evidentiary Hearings was published in the *Rochester Post-Bulletin*.⁴¹

39. On October 24, 2016, Applicant filed Direct Testimony of Amber S. Lee, Lindsay K. Lyle, and Rick J. Moser.⁴² Applicant mailed copies of its pre-filed Direct Testimony to the Rochester Public Library.⁴³

40. On October 24, 2016, EERA filed its Reply to Substantive Comments on the draft CEA.⁴⁴

41. On November 9, 2016, Administrative Law Judge Lipman presided over a public hearing at 1:00 p.m. at the Centerstone Plaza Hotel located at 401 6th Street SW, Rochester, Minnesota 55905 and public and evidentiary hearings at 6:00 p.m. at the Centerstone Plaza Hotel.⁴⁵

42. The public and evidentiary hearings concluded on November 9, 2016.⁴⁶

43. The public comment period concluded on November 21, 2016.⁴⁷

III. DESCRIPTION OF THE PROJECT

44. The proposed Project is located along the west and south sides of the City of Rochester in Olmsted County, Minnesota. The Project includes the construction of two new

³⁸ Ex. 110 (Notice of Draft CEA Availability and Public Comment Meeting).

³⁹ Ex. 65 (Notice of Public and Evidentiary Hearings and Certificates of Service).

⁴⁰ Ex. 66 (Corrected Notice of Public and Evidentiary Hearings, Erratum, and Certificate of Service).

⁴¹ Ex. 24 (Affidavit of Publication of Notice of Public Hearing).

⁴² Ex. 18 (Direct Testimony of MERC Filing letter); Ex. 19 (Direct Testimony of Amber S. Lee); Ex. 20 (Direct Testimony of Lindsay K. Lyle); Ex. 21 (Direct Testimony of Rick J Moser).

⁴³ Ex. 22 (Affidavit of Mailing of MERC Direct Testimony to the Rochester Public Library).

⁴⁴ Ex. 113 (Reply to Substantive Comments).

⁴⁵ Ex. 24 (Affidavit of Publication of Notice of Public Hearing); *see* Public Hearing Transcript (Nov. 9, 2016).

⁴⁶ Public Hearing Transcript at 11:14-17.

⁴⁷ Ex. 24 (Affidavit of Publication of Notice of Public Hearing).

TBSs and one DRS along with approximately 13 to 14 miles of natural gas distribution pipeline connecting these stations.⁴⁸

45. The proposed Project would install approximately five miles of 16-inch outside diameter steel pipeline and approximately eight miles of 12-inch outside diameter steel pipeline. The maximum allowable operating pressure will be 500 pounds per square inch gauge (“psig”) for both pipelines. The 16-inch outside diameter pipeline is anticipated to be operated at 400 to 475 psig. The 12-inch outside diameter pipeline is anticipated to be operated at 250 to 275 psig.⁴⁹

46. The proposed Project would connect TBS 1D, to be located adjacent to the existing Northern Natural Gas Company TBS 1D northwest of Rochester in Cascade Township, to a new TBS (“Proposed TBS”), to be located west of Rochester in Salem Township. The proposed Project will then continue on to a new DRS (“Proposed DRS”) located south of Rochester in Marion Township. Once the Project is completed, Applicant’s existing TBS 1B, located in southeast Rochester, will be decommissioned.⁵⁰

47. Applicant proposes to construct the Project in three phases. The first phase will include construction of TBS 1D and is anticipated to occur in 2017. The second phase will include construction of the Proposed TBS and installation of the 16-inch pipeline between TBS 1D and the Proposed TBS and is anticipated to be completed by 2019. The third, and final, phase will include construction of the Proposed DRS and the installation of the 12-inch pipeline between the Proposed TBS and the Proposed DRS and is anticipated to be completed by 2023.⁵¹

48. The total right-of-way for the distribution pipeline portion of the Project is proposed to be 100 feet wide. The 100-foot right-of-way will include a 50-foot permanent right-of-way and a 50-foot temporary right-of-way.⁵²

49. The temporary right-of-way will be adjacent to the permanent right-of-way and may all be located to one side of the permanent right-of-way or split between the two sides, depending on construction needs.⁵³

50. In addition to the pipeline permanent and temporary rights-of-way, Applicant will require the following:

- A permanent easement measuring 200 feet by 200 feet (0.92 acre) for TBS 1D;
- A permanent easement measuring 200 feet by 200 feet (0.92 acre) for the Proposed TBS;

⁴⁸ Ex. 108 at 4 (CEA).

⁴⁹ Ex. 108 at 4 (CEA).

⁵⁰ Ex. 108 at 4 (CEA).

⁵¹ Ex. 108 at 4-5 (CEA).

⁵² Ex. 108 at 30 (CEA).

⁵³ Ex. 108 at 62 (CEA).

- A permanent easement measuring 200 feet by 200 feet (0.92 acre) for the Proposed DRS;
- A temporary easement measuring 10.0 acres for storing equipment and materials and for construction staging;⁵⁴ and
- Two workspaces for each area where horizontal directional drilling (“HDD”) is to be used along the proposed Project. At each of these locations, approximately 225 feet will be excavated and a workspace of at least 20,000 square feet in total size will be needed.⁵⁵

51. The proposed Project is designed to expand the capacity of Applicant’s natural gas system to meet the projected increase in demand from its existing Rochester area customers, as well as from new customers. The Project will provide Applicant with the ability to shift the supply of natural gas to where it is needed on Applicant’s natural gas distribution system within the Rochester service area.⁵⁶

52. More specifically, the Project is designed to alleviate a two-fold need by: (1) eliminating the operating pressure and piping configuration issues that prevent Applicant’s existing distribution system in the Rochester area from efficiently and reliably distributing the gas available on the system across Rochester and surrounding communities; and (2) increasing the interstate natural gas pipeline capacity available to the Rochester area and surrounding communities so that it is adequate to meet existing customer demand and projected future demand.⁵⁷

IV. ROUTES EVALUATED

53. In its Application, Applicant included a route identified as its preferred route for the Project (the “Application Preferred Route”), as required by Minnesota Rule 7852.2600, Subpart 1.⁵⁸ In its Application, Applicant also identified, and included the environmental impact information for three alternate segments (the “BP Pipeline Alternative Route Segment,” the “50th St SW/48th St SW Alternative Route Segment,” and the “60th Avenue SW Alternative Route Segment”) Applicant considered for the Project.⁵⁹ Those three alternatives could be

⁵⁴ Ex. 108 at 62 (CEA). Applicant intends to obtain easements for TBS 1D, Proposed TBS, and Proposed DRS. If, however, the landowner requests that Applicant obtain any of these areas of property in fee, Applicant will purchase the 0.92 acres from the landowner. Ex. 108 at 62 n.59 (CEA).

⁵⁵ Ex. 113 at 10 (Reply to Substantive Comments); Ex. 25 (Proposed Route Permit Maps). Some workspaces may need to be larger than 20,000 square feet depending on the length, depth, and angle of the HDD. Ex. 113 at 10 (Reply to Substantive Comments). Applicant intends to co-locate all temporary workspaces for HDD within the construction right-of-way (the combined permanent and temporary rights-of-way) but actual construction conditions may require the temporary workspace to be outside the construction right-of-way or even outside the 500-foot route width in rare circumstances. Ex. 20 at 6:8-14 (Direct Testimony of Lindsay K. Lyle); Ex. 25 (Proposed Route Permit Maps).

⁵⁶ Ex. 1 at 5 (Application); Ex. 106 at 2-3 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Rochester Natural Gas Pipeline Project).

⁵⁷ Ex. 19 at 5:5-11 (Direct Testimony of Amber S. Lee).

⁵⁸ Ex. 1 at 19 and Figure 1 (Application); Ex. 108 at Figure 1A (CEA).

⁵⁹ Ex. 1 at 19-20 and Figure 6 (Application); Ex. 2 (Application – Supplemental Tables).

combined with portions of the Application Preferred Route to create an alternative route (“Application Alternate Route”).⁶⁰

54. In response to public comments received during the proceeding and Applicant’s continued route evaluation, Applicant modified two segments of the Application Preferred Route and identified the Modified Preferred Route for the Project. The Modified Preferred Route followed 60th Avenue SW to 40th Street SW, to County Road 8 instead of following the BP Pipeline route followed by the Application Preferred Route. The Modified Preferred Route, after reaching 11th Avenue SW, followed 11th Avenue SW to 40th Street SW instead of crossing from 11th Avenue SW to 40th Street SW cross country along the Application Preferred Route.⁶¹

55. The scoping process, undertaken during the spring of 2016, resulted in a total of 29 Route Segments brought forward by EERA to evaluate in the CEA.⁶² The 29 Route Segments were combined into 37⁶³ segment alternatives (“Segment Alternatives”) for purposes of performing comparisons and evaluations in the CEA.⁶⁴ The composition of the 37 Segment Alternatives are summarized in Table 4-2 to Table 4-5 of the CEA.⁶⁵

56. Ten of these Route Segments comprised the Application Preferred Route (1P, 2P, 3P, 12, 14, 16, 6P, 7P, 26, and 9P).⁶⁶ Twelve of these Route Segments comprised the Application Alternate Route (1P, 2P, 11, 4P, 14, 18, 20, 22, 24, 25, 26, and 9P).⁶⁷ Nine of these Route Segments comprised the Modified Preferred Route (1P, 2P, 3P, 4P, 5P, 6P, 7P, 8P, and 9P).⁶⁸

V. PROJECT ROUTE WIDTHS

57. For the Project, Applicant has requested a route width of at least 500 feet.⁶⁹ The following Route Segments have route widths wider than 500 feet:

- 4P (700 feet)
- 12 (700 feet)
- 16 (700 feet)
- 18 and 20 (800 feet)

⁶⁰ Ex. 108 at Figure 1B (CEA).

⁶¹ Ex. 108 at 54-55 and Figure 1C (CEA).

⁶² Ex. 108 at 49 and Tables 4-2 to 4-5 (CEA).

⁶³ Ex. 108 at Tables 4-2 to 4-5 (CEA). The CEA states that 36 Segment Alternatives were developed. Ex. 108 at 49 (CEA). However, 37 Segment Alternatives were considered in the CEA. Ex. 108 at Tables 4-2 to 4-5 (CEA).

⁶⁴ Ex. 108 at 49 (CEA).

⁶⁵ Ex. 108 at Tables 4-2 to 4-5 (CEA).

⁶⁶ Ex. 108 at Table 4-1 (CEA).

⁶⁷ Ex. 108 at Table 4-1 (CEA).

⁶⁸ Ex. 108 at Table 4-6 (CEA). The Modified Preferred Route is approximately 13.9 miles in length. Ex. 108 at 54 (CEA).

⁶⁹ Ex. 1 at 16 (Application); Ex. 25 (Proposed Route Permit Maps).

- 20 and 22 (800 feet)
- 27 (2,000 feet).⁷⁰

58. The Modified Preferred Route has a route width of 500 feet, except for a short portion of Route Segment 4P, which has a route width of 700 feet in Section 19 of Rochester Township and Section 24 of Salem Township.⁷¹

VI. PERMITTEE

59. The permittee for the Project is Minnesota Energy Resources Corporation.⁷²

VII. PUBLIC AND LOCAL GOVERNMENT PARTICIPATION

A. Public Comments

1. Comments on CEA Scope

60. Minnesota Rule 7852.1300 requires that a public information meeting be held in each county crossed by an applicant's preferred pipeline route to explain the route designation process, to respond to questions raised by the public, and to solicit comments on route and route segment proposals and other issues that should be examined in greater detail in the CEA prepared for a project.⁷³

61. On February 29, 2016, the Commission and EERA held two public information and scoping meetings in Olmsted County at 2:00 p.m. and 6:00 p.m. Both meetings started with an overview presentation provided by Commission staff, followed by a brief overview by the Company of the proposed project, and an overview provided by EERA of the Commission's route permitting process. These presentations were followed by questions and comments from the public and responses from Commission, Company, and EERA representatives as appropriate.⁷⁴

62. In addition to the information and scoping meetings, the Rochester Township Board requested that Company representatives and EERA staff attend the monthly board meeting on May 12, 2016, to provide information on the proposed Project, an overview of the Commission's regulatory review process for pipelines, and to respond to questions from the board and the public. Representatives of the Company and EERA attended the meeting and

⁷⁰ Ex. 62 at 2 of Order (Order Accepting Comments and Recommendations of EERA Staff for Route Segments and Certificate of Service).

⁷¹ Ex. 62 at 2 of Order (Order Accepting Comments and Recommendations of EERA Staff for Route Segments and Certificate of Service); Ex. 25 (Proposed Route Permit Maps). Pages 5 and 6 of Exhibit 25 illustrate the area of the Modified Preferred Route with a route width of 700 feet.

⁷² Ex. 1 at 8 (Application); Ex. 108 at i (CEA).

⁷³ Ex. 106 at 11 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Rochester Natural Gas Pipeline Project).

⁷⁴ Ex. 106 at 11-12 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Rochester Natural Gas Pipeline Project); *see also* Ex. 103 (Feb. 29, 2016, Public Information Meeting Minutes).

responded to questions as appropriate. On June 3, 2016, EERA staff spoke with the chair of the Rochester Township Board, who indicated that while the board did not send any written comments, it nonetheless wanted to be kept informed of project-related activities.⁷⁵

63. With respect to written comments, the initial comment period closed on April 13, 2016; however, some landowners were inadvertently omitted and did not receive the mailed notice of the comment period. Although mailed notice of the comment period is not required under Minnesota law, the Company mailed a notice of a supplemental comment period to these landowners with the opportunity to provide comments. The supplemental comment/scoping period closed May 30, 2016.⁷⁶

64. Twenty-eight separate comments were provided by the close of the April 13, 2016, and May 30, 2016, comment periods through various methods, including oral comments provided at the public meetings and documents submitted to EERA staff by mail and email.⁷⁷

a. Oral Comments

65. *Mr. Louis Siefert* inquired as to whether residents along the proposed pipeline could tap into the proposed pipeline for gas service to their homes or farms.⁷⁸

66. *Mr. Daniel DeCook* inquired about the location of the Proposed TBS and depth of burial for the proposed pipeline.⁷⁹

67. *Ms. Carol Overland*, a resident of Red Wing, Minnesota, inquired about whether “phased and connected actions” would be addressed in the environmental review, including the need for Northern Natural Gas Company to run a gas line into the area to provide the Company with natural gas for the proposed Project and suggested that Northern Natural Gas Company’s project be included in the scope for environmental review. Ms. Overland also inquired about a natural gas plant proposed by Rochester Public Utilities and suggested that the environmental review document address that proposal. With respect to “socioeconomic impacts and safety impacts,” Ms. Overland questioned how the Project “relates to the city and county comp plans and the zoning” and “safe separation distances from natural gas transmission pipelines.”⁸⁰ Ms. Overland also submitted several documents to EERA staff at the public meeting.⁸¹

⁷⁵ Ex. 106 at 12 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Rochester Natural Gas Pipeline Project).

⁷⁶ Ex. 106 at 12 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Rochester Natural Gas Pipeline Project).

⁷⁷ Ex. 106 at 13 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Rochester Natural Gas Pipeline Project).

⁷⁸ Ex. 103 at 24-27 (Feb. 29, 2016, Public Information Meeting Minutes) (2:00 p.m. meeting).

⁷⁹ Ex. 103 at 27-32 (Feb. 29, 2016, Public Information Meeting Minutes) (2:00 p.m. meeting).

⁸⁰ The Project is a natural gas *distribution* line.

⁸¹ Ex. 103 at 33-39 (Feb. 29, 2016, Public Information Meeting Minutes) (2:00 p.m. meeting); *see also* Ex. 124A-124C, 125D-125F (documents submitted by Ms. Overland at the 2:00 p.m. public meeting).

68. *Mr. Thomas Roetzler* inquired about how close buildings could be to pipelines, land use restrictions, and how compensation is handled under eminent domain proceedings.⁸²

69. *Mr. John Donovan* inquired about pipeline safety, whether safety standards are set by the federal or state government, depth of burial, and whether the pipeline was going to be located on private land or in the public road right-of-way.⁸³

70. *Mr. Mark Darnell*, a landowner with property along the Application Preferred Route and speaking on behalf of himself and his neighbor, *Mr. Stan Dee*, who was present at the meeting, expressed concern about the location of the Application Preferred Route on their property and indicated they would prefer the Application Alternate Route because said route would not bisect their properties. Mr. Darnell suggested that the Application Preferred Route be moved south approximately 300 yards in order to follow the natural property line and tree line, so as to not disrupt their farming operations or businesses.⁸⁴ Mr. Darnell and Mr. Dee also submitted written comments stating similar sentiments expressed in their oral comments.⁸⁵

71. *Ms. Frances Passe*, a landowner with property along the Application Preferred Route, inquired about why the proposed pipeline changes size from “13 inches to 8 inches,” how the pipeline would cross the Zumbro River, and on what side of 60th Avenue the pipeline would be located. Ms. Passe suggested that the Company take the Application Alternate Route so as to not intersect a portion of her property.⁸⁶

72. *Mr. Dennis Dore* pointed out that a protected wetland is located in the vicinity of where the Application Preferred Route ends, as well as a transfer station, two hotels, and two new apartment buildings under construction. Mr. Dore indicated that the Application Alternate Route is on the south side of a new development. Given the restrictions mentioned by Mr. Dore, he stated that he would like to be apprised of updates.⁸⁷

73. *Mr. Douglas Cranston* inquired about what happens in the event of a leak or rupture of the natural gas pipeline and the operating pressure of the pipelines proposed by the Company and Northern Natural Gas Company.⁸⁸

74. *Mr. Bruce Ryan*, a landowner who owns property along the Application Preferred Route, raised concerns that the proposed route would impact the mature trees on his property and

⁸² Ex. 103 at 39-42 (Feb. 29, 2016, Public Information Meeting Minutes) (2:00 p.m. meeting).

⁸³ Ex. 103 at 42-47 (Feb. 29, 2016, Public Information Meeting Minutes) (2:00 p.m. meeting).

⁸⁴ Ex. 103 at 47-52 (Feb. 29, 2016, Public Information Meeting Minutes) (2:00 p.m. meeting).

⁸⁵ Ex. 123 (Mark A. Darnell/Stanley Dee Written Comments).

⁸⁶ Ex. 103 at 53-60 (Feb. 29, 2016, Public Information Meeting Minutes) (2:00 p.m. meeting).

⁸⁷ Ex. 103 at 60-63 (Feb. 29, 2016, Public Information Meeting Minutes) (2:00 p.m. meeting).

⁸⁸ Ex. 103 at 63-67 (Feb. 29, 2016, Public Information Meeting Minutes) (2:00 p.m. meeting).

suggested that the pipeline be moved approximately 50 feet to the west to an open farm field.⁸⁹ Mr. Ryan also submitted, in written comments, an alternative route proposal.⁹⁰

75. *Mr. Gary Vasdev*, a landowner who owns property along the Application Preferred Route, inquired about the bending of the pipe, whether bending affects the longevity of the pipe, and questioned why the pipeline could not follow the existing road right-of-way because easements are already in place. Mr. Vasdev also questioned whether any compensation is provided for developing over farm fields in the summertime.⁹¹

76. *Mr. Bud Hanson*, a landowner who owns property along the Application Preferred Route, inquired about where the pipeline would be in relation to buildings on his property and how close the pipeline can be constructed to his house.⁹²

b. Written Comments

77. *Mr. Irrold Hanson*, a landowner with property along the Application Preferred Route, commented that the proposed pipeline should be located in road right-of-ways.⁹³

78. *Mr. Harry Meyer*, president of Meyer Farms, Inc. and owner of land along the Application Preferred Route, expressed opposition to the Application Preferred Route due to possible interference with existing tile lines. Mr. Meyer expressed a preference for locating the proposed pipeline on the west side of the right-of-way.⁹⁴

79. *Mr. Gene Peters*, an owner of Westridge Hills (“Westridge Hills”) property, provided background on Westridge Hills’ proposed development and expressed concerns that the Application Preferred Route would diminish the value of the property owned by Westridge Hills and would affect the placement of sewer, water, and stormwater pipes for the proposed development by Westridge Hills. Mr. Peters suggested that the pipeline be placed in the current road right-of-way.⁹⁵

80. *Mr. Jeff Broberg*, Senior Environmental Manager of WSB & Associates, Inc., submitted written comments on behalf of *Mr. Franklin Kottschade*, a landowner along the Application Preferred Route. Mr. Broberg noted Mr. Kottschade’s objection to the proposed pipeline, stating that the Application Preferred Route does not take into consideration the development plans or development history of the properties owned by Mr. Kottschade, nor does it account for the impact that the pipeline may have on any plans for future development. Mr. Kottschade requested that the Commission reject the proposed route and require the Company to

⁸⁹ Ex. 103 at 89-91 (Feb. 29, 2016, Public Information Meeting Minutes) (6:00 p.m. meeting).

⁹⁰ Ex. 119 (Bruce Ryan Written Comments).

⁹¹ Ex. 103 at 91-93, 97-98 (Feb. 29, 2016, Public Information Meeting Minutes) (6:00 p.m. meeting).

⁹² Ex. 103 at 93-96 (Feb. 29, 2016, Public Information Meeting Minutes) (6:00 p.m. meeting).

⁹³ Ex. 118 (Irrold M. Hanson Written Comment).

⁹⁴ Ex. 121 (Meyer Farms Inc./Harry Meyer Written Comment).

⁹⁵ Ex. 122 (Eugene Peters – Westridge Hills Corp. Comment).

consider alternatives that do not have such a substantial impact on the growth of the southern corridor of the City of Rochester.⁹⁶

81. *Ms. Donna Anderson* proposed a route segment that would run adjacent to an existing Northern Natural Gas Company right-of-way near the location of TBS 1D, suggesting the new route segment because it uses agricultural lands, avoids residential lawns, and would be further away from the Olmsted County landfill.⁹⁷

82. *Mr. Ronald Jacobson* stated a preference for the pipeline to be extended to 55th Avenue, follow 55th Avenue north, and connect to the BP Pipeline right-of-way north of 40th Street. Mr. Jacobson provided two aerial photos depicting route proposals.⁹⁸

83. *Mr. Jerry Dee*, a landowner with property along the Application Preferred Route, stated a preference that the pipeline route run on the Application Preferred Route along the north side of his farm.⁹⁹

84. *Wayne and Earlen Laursen* submitted written comments stating that “[t]he preferred route is, by far, our choice.”¹⁰⁰

85. The Minnesota Department of Transportation (“MnDOT”), the Minnesota Department of Natural Resources (“MnDNR”), and the Rochester-Olmsted Planning Department (“ROPD”) submitted written comments on the scope of the CEA. These comments are discussed in Sections VII.B.1, VII.B.2, and VII.B.3 below.

2. Comments on Draft CEA

86. Minnesota Rule 7852.1300, Subpart 1(B) requires that a second public information meeting be held before the public hearing in each county through which a route is proposed to explain the route designation process, present major issues, and respond to questions raised by the public.

87. Two public meetings were held on September 28, 2016, at the Kahler Apache Hotel in Rochester, Minnesota, at 2:00 p.m. and 6:00 p.m., to allow the public to comment on the draft CEA. The format for each meeting was the same, with the meetings starting with an overview presentation provided by EERA staff followed by public questions and comments and responses from EERA staff and representatives of the Company as appropriate.¹⁰¹

88. The public comment period on the draft CEA closed on October 7, 2016. The public could submit comments in multiple ways. Oral comments were accepted at the public

⁹⁶ Ex. 126, 126A-126G (Franklin Kottschade Written Comments and Supporting Documents).

⁹⁷ Ex. 120 (Donna Anderson Written Comments).

⁹⁸ Ronald Jacobson Public Comment (eDocket No. 20164-120688-01).

⁹⁹ Jerry Dee Public Comment (eDocket No. 20164-120687-01).

¹⁰⁰ Ex. 125 (Wayne and Earlen Laursen Written Comments).

¹⁰¹ Ex. 113 at 2 (Reply to Substantive Comments).

meetings. A pre-addressed comment form was provided at the public meetings. Interested persons could submit the form at the public meeting, mail the form after affixing appropriate postage, or mail the form in a separate envelope. An electronic comment form was available on the EERA webpage. Comments could also be provided by fax or email. A total of 9 written comments were received and 18 members of the public commented at the public meetings.¹⁰²

a. Oral Comments

89. *Mr. William Tointon*, a planning consultant in Rochester, Minnesota, and appearing on behalf of Westridge Hills, expressed Westridge Hills' opposition to the pipeline going through its planned residential development. Similarly, *Mr. Gene Peters*, an owner of Westridge Hills property, stated that he did not oppose the Application Preferred Route, but opposed the portion of it intersecting his property.¹⁰³ *Mr. Walt Hruska*, also appearing on behalf of Westridge Hills, inquired about why the preferred route became as such and whether a lot parallel to the pipeline could be built on.¹⁰⁴

90. *Mr. Bruce Ryan*, a landowner who owns property along the Application Alternate Route, stated that he opposed said route because it would cut across the front of his home, interfering with a line of mature trees, but agreed that this issue was covered in the CEA.¹⁰⁵

91. *Mr. Harry Meyer*¹⁰⁶ expressed concerns regarding existing tile lines and stated that he preferred the Application Alternate Route along the BP Pipeline.¹⁰⁷

92. *Mr. John Donovan* inquired as to who monitors the installation of the pipeline to ensure that it is at its required depth and that the installation is done as proposed. Mr. Donovan further asked whether, when a pipeline is to be installed parallel to a road, the pipeline is built as close as possible to the right-of-way.¹⁰⁸

93. *Ms. Lori Shaw* inquired about the size of the pipe used for the Project.¹⁰⁹

¹⁰² Ex. 113 at 2-3 (Reply to Substantive Comments); Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA).

¹⁰³ Ex. 111 at 20-23, 32-35 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (2:00 p.m. meeting).

¹⁰⁴ Ex. 111 at 44-52 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (2:00 p.m. meeting).

¹⁰⁵ Ex. 111 at 36-37 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (2:00 p.m. meeting).

¹⁰⁶ The transcripts of the public meeting inadvertently name Mr. Harry Meyer as Mr. Gary Meyer. See Ex. 111 at 38-44 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (2:00 p.m. meeting).

¹⁰⁷ Ex. 111 at 38-44 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (2:00 p.m. meeting).

¹⁰⁸ Ex. 111 at 53-58 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (2:00 p.m. meeting).

¹⁰⁹ Ex. 111 at 58-59 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (2:00 p.m. meeting).

94. *Mr. Mike Robinson* inquired about the size and depth of the pipeline.¹¹⁰
95. *Ms. Edie Cranston* inquired about whether having a home located in close proximity to the TBS will have any sort of impact on the home.¹¹¹
96. *Ms. Virginia Ranweiler* inquired as to whether the Company's proposed pipeline was going to be built in conjunction with the BP Pipeline.¹¹²
97. *Mr. Jerry Dee* inquired as to what conditions would need to be met to implement the alternate or scoping routes.¹¹³
98. *Mr. Stanley Dee*, a landowner who owns property along the Application Preferred Route, expressed concern that a portion of the pipeline runs through the middle of his farm property and asserted that a goal of drafting the CEA should be to ensure that the pipeline conforms with property lines.¹¹⁴
99. *Mr. Charles Passe*, a landowner who owns property along the Application Alternate Route, stated his opposition to said route and inquired as to whether he would be able to tap into the pipeline.¹¹⁵
100. *Mr. Rick Lutzi*, a Salem Township Board Member, inquired about the township's rights-of-way, road maintenance, and ditch depth.¹¹⁶
101. *Ms. Mary Pyfferoen*, a landowner with property along the Application Preferred Route, inquired as to how lands currently enrolled in a Conservation Reserve Program will be affected by a pipeline crossing and how landowners will be compensated if property values are affected by the pipeline.¹¹⁷

¹¹⁰ Ex. 111 at 84-85, 94-95 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (6:00 p.m. meeting).

¹¹¹ Ex. 111 at 85-87 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (6:00 p.m. meeting).

¹¹² Ex. 111 at 88-90 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (6:00 p.m. meeting).

¹¹³ Ex. 111 at 90-92 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (6:00 p.m. meeting).

¹¹⁴ Ex. 111 at 92-94 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (6:00 p.m. meeting).

¹¹⁵ Ex. 111 at 96-97 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (6:00 p.m. meeting).

¹¹⁶ Ex. 111 at 97-100 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (6:00 p.m. meeting).

¹¹⁷ Ex. 111 at 100-06 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (6:00 p.m. meeting).

b. Written Comments

102. *Mr. Larry Franck*, a landowner with property along the Modified Preferred Route, expressed concerns with the location of the pipeline, namely concerns with why the pipeline crosses the road at some points along the route.¹¹⁸

103. *Ms. Cathy Roetzler*, a landowner with property along the Application Preferred Route, suggested that the Modified Preferred Route be considered for the chosen pipeline route.¹¹⁹

104. *Mr. Brad Larsen*, General Partner at Graham Properties LTD., encouraged approval of the scoping route to keep the Northern Natural Gas Company pipeline and proposed pipeline together, eliminating the disturbance of additional land. Mr. Larsen stated that if the Application Preferred Route were selected, the pipeline should run entirely along the south side of 19th Street NW instead of crossing under the road twice to avoid interfering with a parallel creek and fishing area.¹²⁰

105. *Mr. Eric Funk* expressed concerns with water flow issues resulting from the construction of the pipeline and inquired whether, if water flow changes after completion of the pipeline and causes damage to properties, the Company will work to resolve the issues.¹²¹

106. *Mr. Anthony Roetzler* submitted written comments supporting the Modified Preferred Route.¹²²

107. *Mr. Greg Perry* expressed concerns with Route Segment 11, as the pipeline associated with this plan would infringe on a wet lands and Mr. Perry's property. Mr. Perry suggested that the pipeline follow the right-of-way to ensure no impact on personal property.¹²³

108. *Ms. Margaret Simonson* expressed a preference for the Modified Preferred Route, stating that it is a more direct route with less environmental impact.¹²⁴

¹¹⁸ Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (Larry Franck Email Comment).

¹¹⁹ Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (Cathy Roetzler Email Comment).

¹²⁰ Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (Brad Larsen Email Comment). Although the Company has stated a preference for the alignment that follows 19th Street SW, the Company has no objection to locating the pipeline in this area (Segment Alternative AB-2 instead of Segment Alternative AB-1) so long as the anticipated alignment were located south of the existing Northern Natural Gas Company natural gas transmission pipeline to avoid two crossings of that infrastructure. Evidentiary Hearing Transcript at 25:18-26:4 (Lyle).

¹²¹ Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (Eric Funk Email Comment).

¹²² Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (Anthony Roetzler Comment Form).

¹²³ Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (Greg Perry Comment Form).

109. The Minnesota Pollution Control Agency (“MPCA”) also provided written comments on the draft CEA, which are discussed in detail in Section VII.B.4 below.¹²⁵

3. Summary of Testimony at the Public Hearings

110. Pursuant to Minnesota Rule 7852.1700, the Administrative Law Judge conducted public hearings to elicit public comment regarding the routing of the proposed Project. Two public hearings were held on November 9, 2016, at 1:00 p.m. and 6:00 p.m., at the Centerstone Plaza Hotel in Rochester, Minnesota. Twenty-one members of the public testified at the public hearings.¹²⁶

111. The public comment period closed on November 21, 2016.¹²⁷ Six members of the public submitted written comments.¹²⁸

a. Oral Comments

112. *Mr. Bruce Ryan* stated that he favored the Modified Preferred Route, as the Application Preferred Route would impact mature trees currently located on his property.¹²⁹

113. *Mr. William Tointon*, a planning consultant representing Westridge Hills, and *Mr. Gene Peters*, owner of Westridge Hills property, expressed concerns that the Application Preferred Route and Modified Preferred Route bifurcates a residential development plan on Westridge Hills’ property and interferes with utility flow for the development, and stated a preference for a pipeline route that abuts the development easement.¹³⁰ *Mr. David Kell*, representing Hope Summit Christian Church which owns property adjacent to Westridge Hills, stated concerns with respect to retaining the ability to construct a church on the property and preserving the viability of future development of adjacent lands. Mr. Kell recommended locating the entire pipeline along the 40th Street right-of-way, an option not presented by the Company, and, secondarily, supported the Application Alternate Route.¹³¹

114. *Mr. Harry Meyer* testified that he opposes the Application Preferred Route, expressing concerns that the route would interfere with the tile lines on his property and stated support for the Application Alternate Route.¹³²

¹²⁴ Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (Margaret Simonson Comment Form).

¹²⁵ See Ex. 113 at 12-14 (Reply to Substantive Comments).

¹²⁶ Public Hearing Transcript at 1, 3-4.

¹²⁷ Public Hearing Transcript at 11.

¹²⁸ See Public Comments of Carol Overland (eDocket No. 201611-126682-01); Public Comment (eDocket No. 201611-126768-01).

¹²⁹ Public Hearing Transcript at 24-25 (2:00 p.m. hearing).

¹³⁰ Public Hearing Transcript at 26-30, 34-26 (2:00 p.m. hearing).

¹³¹ Public Hearing Transcript at 36-39, 61-64 (2:00 p.m. hearing).

¹³² Public Hearing Transcript at 30-32 (2:00 p.m. hearing).

115. *Mr. Charles Passe* stated his support for the Application Preferred Route and wanted to ensure that the route would not impact trees along his property on the east side of 60th Avenue. Company representative Ms. Amber Lee responded that the proposed alignment runs on the west side of 60th Avenue. Mr. Passe also inquired about what would happen in the future if road expansion occurs or the high-speed rail is constructed along the pipeline corridor.¹³³

116. *Ms. Carol Overland* stated concerns with the safety of installing a pipeline close to residential areas, questioned the need for the pipeline, and inquired about the limitations placed on use of land after the pipeline is installed. Ms. Overland further inquired about specific designations included on the maps present at the public hearings. Ms. Overland also submitted written comments, articulating similar sentiments as provided at the public hearing, with the additional assertion that eminent domain should not apply to the Project because, according to Ms. Overland, the pipeline is being constructed for a “private market purpose.”¹³⁴

117. *Mr. William Oldfield*, a landowner with property along the Application Preferred Route and Modified Preferred Route, raised concerns that the pipeline may disturb his ability to develop the property. Mr. Oldfield stated that he supports the Application Alternate Route.¹³⁵

118. *Gerry and Carolyn Pettelko*, landowners with property along the Application Alternate Route, raised concerns with pipeline safety and the impact the pipeline may have on property values. They also inquired about the size of the right-of-way and why the pipeline does not avoid residential areas when a significant amount of undeveloped property is located near the Application Preferred Route. Mr. and Mrs. Pettelko stated a preference that the pipeline be routed through open fields rather than close to residential areas.¹³⁶

119. *Ms. Mary Pyfferoen* expressed concerns about the impact the pipeline may have on property values and pipeline safety and inquired about the possibility of future road expansion along the pipeline route.¹³⁷

120. *Ms. Carol Ausrud*, a landowner with property along the Modified Preferred Route, inquired about how far from the road the pipeline would be built. Ms. Ausrud, along with *Mr. Dallas Ausrud*, also submitted written comments requesting that the Application Alternate Route not be implemented due to its proximity to homes and stated a preference for the Application Preferred Route and the Modified Preferred Route.¹³⁸

121. *Mr. Mark Darnell*, speaking on behalf of himself and *Mr. Stanley Dee*, stated concerns that the Application Preferred Route severs Mr. Darnell’s and Mr. Dee’s properties and

¹³³ Public Hearing Transcript at 32-33 (2:00 p.m. hearing).

¹³⁴ Public Hearing Transcript at 40-43, 72-75 (2:00 p.m. hearing); Public Comments of Carol Overland (eDocket No. 201611-126682-01).

¹³⁵ Public Hearing Transcript at 44-50, 67-68 (2:00 p.m. hearing).

¹³⁶ Public Hearing Transcript at 50-52, 65-67, 69-70. (2:00 p.m. hearing).

¹³⁷ Public Hearing Transcript at 52-54, 70-72 (2:00 p.m. hearing).

¹³⁸ Public Hearing Transcript at 54-58 (2:00 p.m. hearing); Public Comment of Dallas and Carol Ausrud (eDocket No. 201611-126768-01).

would impact their haying and farming operations. Mr. Darnell stated that he and Mr. Dee were in favor of the Modified Preferred Route, Application Alternate Route, and scoping route. Mr. Dee personally inquired as to whether individual homes would have access to natural gas after construction was complete.¹³⁹

122. *Mr. Craig Milde*, a landowner with property adjacent to the Modified Preferred Route, inquired about land use restrictions after the pipeline is built and whether the construction of the pipeline would impact the vegetation on his property.¹⁴⁰

123. *Mr. Irrold Hanson* expressed concern that Route Segment 7P may interfere with leveling and developing his property. Mr. Hanson also submitted written comments reiterating his oral comments during the public hearing.¹⁴¹

124. *Mr. Rick Lutzi* stated that culvert replacement and tile line installation would be occurring along the Modified Preferred Route and wanted to ensure that the Salem Township Board and the Company effectively communicate regarding work on and along the roadways.¹⁴²

125. *Mr. Larry Franck* and *Mr. John Adamson*, landowners with property along the Application Preferred Route and Modified Preferred Route along 70th Street SW, separately inquired about why the Modified Preferred Route crosses the road at some points along the route rather than maintaining a path along one side of the road. Mr. Franck also submitted written comments stating that he would like the pipeline to avoid his property and submitted a map with an alternate alignment on the east side of 70th Avenue SW.¹⁴³

126. *Mr. Brian Connelly* inquired about the depth of the pipeline, whether installation of the pipeline would affect existing tile lines, and whether any safeguards are in place to combat the possible impact erosion on agricultural lands may have on the depth of the pipeline and associated safety concerns. Mr. Connelly also asked about how close a landowner needs to be located to hookup to the pipeline.¹⁴⁴

b. Written Comments

127. *Ms. Cathy Roetzler* submitted written comments supporting the Modified Preferred Route, stating concerns that construction of the Application Preferred Route would interfere with future organic farming plans, damage farm land, and affect a natural spring.¹⁴⁵

¹³⁹ Public Hearing Transcript at 95-104 (6:00 p.m. hearing).

¹⁴⁰ Public Hearing Transcript at 110-13 (6:00 p.m. hearing).

¹⁴¹ Public Hearing Transcript at 113-16 (6:00 p.m. hearing); Public Comment of Irrold Hanson (eDocket No. 201611-126768-01).

¹⁴² Public Hearing Transcript at 116-19 (6:00 p.m. hearing).

¹⁴³ Public Hearing Transcript at 119-24 (6:00 p.m. hearing); Public Comment of Larry Franck (eDocket No. 201611-126768-01).

¹⁴⁴ Public Hearing Transcript at 124-28 (6:00 p.m. hearing).

¹⁴⁵ Public Comment of Cathy Roetzler (eDocket No. 201611-126768-01).

128. Other written comments received were by stakeholders who testified at the public hearing. The information contained in their written comments is included with their public hearing testimony summarized above.

B. Local Government and State Agency Participation

1. Minnesota Department of Transportation

129. MnDOT submitted written comments on April 13, 2016, addressing the scope of the CEA, requesting that the CEA address the permit requirements of MnDOT, as well as relevant permits or authorizations the Company must obtain from road authorities relating to any formal policy and procedures for accommodation of utilities on highway right-of-ways. MnDOT also addressed permit requirements for crossing highways US 14 and US 63 and oversize/overweight permits for the hauling of pipe and equipment, providing that MnDOT should be involved in planning and coordinating activities that may affect MnDOT rights-of-way.¹⁴⁶

2. Minnesota Department of Natural Resources

130. The MnDNR submitted written comments on April 13, 2016, addressing the scope of the CEA and suggesting that potential impacts to several sensitive, rare, and valuable features within the Project area be fully explored and considered in the CEA and route selection. The MnDNR also commented that calcareous fens and impacts are regulated by the MnDNR in accordance with the Minnesota Wetland Conservation Act. The MnDNR noted that several of the Company's proposed Route Segments involve the crossing of a MnDNR public water, wetland, or land and that crossing these features requires a MnDNR License to Cross, and suggested that consideration of routes or Route Segments that avoid impacting protected natural resource features may be warranted. The MnDNR also suggested that the CEA include an assessment of HDD as a mitigation measure for any impacts to sensitive environmental features found in surveys and requested a description of where wildlife-friendly erosion control would be used, recommending it be used wherever possible.¹⁴⁷

3. Rochester-Olmsted Planning Department

131. The ROPD submitted written comments on April 13, 2016, addressing the scope of the CEA, noting that the Application Preferred Route bisects developed, residentially-planned land within the present Rochester urban growth area that will affect the development potential of these properties and suggested that moving the route further south would not have a negative effect on the growth of the area. The ROPD raised concerns that the proposed pipeline cuts through a sensitive bedrock formation and suggested that, to minimize the impact, the Company should minimize grading, install seep collars or other mitigation strategies to control ground water movement along the pipe, and use vegetation to control erosion to mitigate potential changes to groundwater flows. The ROPD also questioned what construction mitigation strategies would be employed if subsurface excavation uncovers or exacerbates karst features

¹⁴⁶ Ex. 115 (Letter from MnDOT to EERA (4-13-16)).

¹⁴⁷ Ex. 116 (Letter from MnDNR (4-14-16)).

and if it is possible to replace tree cover within the pipeline right-of-way to minimize impact on wildlife habitat and visual appeal. The ROPD requested that the Company share its hazard mitigation documents with several local government agencies to ensure inclusion of the hazard/mitigation strategies in public emergency management plans.¹⁴⁸

132. At the September 28, 2016, public information meeting to discuss the draft CEA, *Mr. Michael Sheehan*, an employee of the Olmsted County Public Works Department, expressed concern regarding what a 500-foot-width route means in the preliminary property rights that the Company is obtaining. Mr. Sheehan speculated that County Road 117 and County Road 104 may need to be reconstructed in the future and requested that the Company work with Olmsted County to ensure that the pipeline does not need to be relocated due to future road construction activities, but stated that there is no timeline for expansion and the expansion is not included in the county's five-year plan.¹⁴⁹ Mr. Sheehan's oral comments were submitted in conjunction with written comments submitted by *Mr. Thomas Canan*, Senior Assistant Olmsted County Attorney, who expressed the same concerns articulated by Mr. Sheehan.¹⁵⁰

133. In its October 25, 2016, Reply to Substantive Comments, EERA responded to the written and oral comments of Mr. Sheehan and Mr. Canan, respectively.¹⁵¹

134. The Company met with the Olmsted County Public Works Department and the Olmsted County Engineer on October 17, 2016. The Company confirmed that it would work with the county and county engineer on the final alignment for the Project as it relates to road rights-of-way and future development plans to determine where appropriate mitigation measures may be incorporated to avoid duplicate construction of infrastructure wherever practicable along the selected route.¹⁵²

135. At the November 9, 2016, public hearing, *Ms. Kaye Bieniek*, an Olmsted County engineer representing the Olmsted County Public Works Department, expressed concerns regarding the impact the pipeline may have on future expansion capabilities of roadways marked for improvements though the long-range (2040) transportation plan prepared by the Rochester-Olmsted Council of Governments. Ms. Bieniek noted that the Olmsted County Public Works Department had met with Company representatives to discuss available options that would allow flexibility in planning roadway improvements.¹⁵³

4. Minnesota Pollution Control Agency

136. The MPCA provided written comments on the draft CEA that focused on the informational needs associated with the MPCA 401 Water Quality Certification for the proposed

¹⁴⁸ Ex. 117 (Olmsted County Planning Department (4-13-16)).

¹⁴⁹ Ex. 111 at 23-32 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (2:00 p.m. meeting).

¹⁵⁰ Ex. 112 (Public Comment – Additional Public Comment).

¹⁵¹ Ex. 113 at 3-4, 9 (Reply to Substantive Comments).

¹⁵² Ex. 19 at 10:14-21 (Direct Testimony of Amber S. Lee).

¹⁵³ Public Hearing Transcript at 104-10 (6:00 p.m. hearing).

Project and the potential requirements the MPCA may necessitate through the 401 Certification. The MPCA requested confirmation that no Outstanding Resource Value Waters, impaired waters, trout waters, or wild rice waters would be crossed in the construction of the pipeline. The MPCA also requested details of the crossing method and best management practices used when crossing the Zumbro River, and Cascade and Willow Creeks; descriptions of how the Company will return each wetland temporarily impacted by the construction of the pipeline to pre-construction contours and wetland quality; and clarification as to whether the Company anticipates impacts to stream banks and, if so, how the Company will stabilize and return each streambank impacted during crossing to its original form and function.¹⁵⁴

137. In its October 25, 2016, Reply to Substantive Comments, EERA responded to the MPCA's comments.¹⁵⁵

VIII. FACTORS FOR A ROUTE PERMIT

138. Minnesota Statutes section 216G.02, subdivision 3 requires that the Commission “adopt rules governing the routing of pipelines” and that the rules must “provide criteria that the Commission will use in determining pipeline routes, which must include, . . . the impact of the proposed pipeline on the natural environment.” In compliance with this requirement, the Commission adopted Minnesota Rules chapter 7852. Specifically, Minnesota Rule 7852.1900 sets forth the criteria that the Commission shall consider in selecting a route for designation and issuance of a pipeline Route Permit.¹⁵⁶

139. Minnesota Rule 7852.1900, Subpart 3 requires that the Commission consider the impact of the following on the pipeline:

- A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- C. lands of historical, archaeological, and cultural significance;
- D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- E. pipeline cost and accessibility;
- F. use of existing rights-of-way and right-of-way sharing or paralleling;
- G. natural resources and features;

¹⁵⁴ Ex. 113 at 12-14 (Reply to Substantive Comments); Ex. 111 (Comments: Public Comments (Verbal and Written) Received on Draft CEA) (MPCA 401 Water Quality Certification Review).

¹⁵⁵ Ex. 113 at 13-14 (Reply to Substantive Comments).

¹⁵⁶ Minn. R. 7852.1900, subp. 3.

H. the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;

I. cumulative potential effects of related or anticipated future pipeline construction; and

J. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

140. There is sufficient evidence on the record for the Administrative Law Judge to assess the Segment Alternatives.

A. Effects on Human Settlement

141. Minnesota Rule 7852.1900, Subpart 3(A) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to human settlement, the existence and density of populated areas, existing and planned future land use, and management plans.

1. Displacement

142. The route width for the Project has been requested by Applicant to ensure that, during detailed design of, and easement acquisition for, the pipeline, the alignment and construction right-of-way (including both the permanent and temporary rights-of-way) can be modified from the anticipated alignment to minimize impacts to human settlement and environmental features.¹⁵⁷

143. To evaluate the potential for impacts to human settlement, EERA included in the CEA an evaluation of the construction right-of-way associated with the anticipated alignment for the three complete routes under consideration and all Segment Alternatives.¹⁵⁸

144. The Application Preferred Route, the Application Alternate Route, and the Modified Preferred Route all have no residences within the permanent right-of-way within 50 feet of the anticipated alignment. The Modified Preferred Route is the only route with a residence within the temporary right-of-way within 50 feet of the anticipated alignment.¹⁵⁹ For purposes of evaluation, the CEA evaluated that the temporary right-of-way would be evenly split between both sides of the permanent right-of-way. In practice, however, the temporary right-of-way may be located all on one side of the permanent right-of-way or split between the two sides

¹⁵⁷ Ex. 108 at 65, 66, 68, 71, 107, 109, 111-113, 114, 116, 117, 121, 122 (CEA).

¹⁵⁸ Ex. 108 at 66 and Tables B-25 to B-30 (CEA).

¹⁵⁹ Ex. 108 at Table B-25 (CEA).

of the permanent right-of-way in some way so as to ensure that no structures were within the right-of-way.¹⁶⁰

145. The Application Preferred Route, the Application Alternate Route, and the Modified Preferred Route all have at least one agricultural structure within the permanent right-of-way of the anticipated alignment. The Application Alternate Route and the Modified Preferred Route both have one commercial structure within the permanent right-of-way of the anticipated alignment.¹⁶¹

146. Although there are residential, commercial, agricultural, and other buildings within the anticipated permanent right-of-way of Route Segments 4P, 7P, and 29 and agricultural buildings within the anticipated temporary right-of-way of Route Segment 5P, Applicant intends to use variations within the route width to design the pipeline within the approved route such that the permanent right-of-way would avoid direct impacts to residential or other buildings. Additionally, the temporary right-of-way would be configured accordingly to avoid direct impacts to residential or other buildings.¹⁶²

147. No displacement is anticipated as a result of the Project.

2. Air Quality

148. Short-term (fugitive dust and air emissions) and long-term (air emissions) air quality impacts will occur during construction of the Project. Impacts are unavoidable but minimal.¹⁶³

3. Noise

149. Short-term noise impacts associated with Project construction are anticipated. Impacts are unavoidable but minimal. Long-term impacts associated with operation and maintenance of the pipeline are anticipated to be minimal and unavoidable. Impacts from vibration are not anticipated.¹⁶⁴

4. Population and Employment

150. Impacts to population and employment across all Segment Alternatives and routes are anticipated to be short- and long-term, minimal, and positive.¹⁶⁵

¹⁶⁰ Ex. 108 at 62 (CEA).

¹⁶¹ Ex. 108 at Table B-25 (CEA).

¹⁶² Ex. 108 at 66, 137, 140, 144, 147 (CEA).

¹⁶³ Ex. 108 at 138, 141, 145, 148 (CEA).

¹⁶⁴ Ex. 108 at 137, 141, 145, 148 (CEA).

¹⁶⁵ Ex. 108 at 137, 140, 144, 147 (CEA).

5. Existing and Planned Future Land Use

151. No Segment Alternatives, with the exception of FH-1, FI-2, GH-2, GI-2, HJ-2, and IJ-2, cross a proposed future development area. Therefore, impacts will be moderate in all but these six areas.¹⁶⁶ By contrast, impacts in FH-1, FI-2, GH-2, GI-2, HJ-2, and IJ-2 will be significant, according to the CEA.¹⁶⁷

152. Segment Alternatives FH-1, FI-2, GH-2, and GI-2 all include Route Segment 7P, and bisect the development area identified as Westridge Hills.¹⁶⁸ Both the Application Preferred Route and the Modified Preferred Route include Route Segment 7P (and Segment Alternative FH-1).¹⁶⁹

153. The Westridge Hills General Development Plan (“GDP”) is a planned community development in Rochester Township near the Willow Creek Golf Course. The project would develop 79 acres for 86 single-family homes and a church.¹⁷⁰

154. The Westridge Hills GDP developers, their engineer, and a church representative all provided comments during the Route Permit proceedings.¹⁷¹

155. The Westridge Hills GDP is no longer valid and the properties included within the GDP have not been platted.¹⁷² A GDP from the City of Rochester is only valid for a period of two years unless subsequent development approvals occur according to the City of Rochester Land Use Plan, Section 61.216.¹⁷³ No action has occurred on the Westridge Hills GDP since 2007, according to the City of Rochester, and the development does not appear on the Olmsted County Subdivision Plat records or on the Olmsted County Zoning Information website.¹⁷⁴

156. The Modified Preferred Route anticipated alignment follows the property line of two parcels that were included in the out-of-date 2007 Westridge Hills GDP.¹⁷⁵ The CEA does not include that the GDP for this development is out-of-date.

¹⁶⁶ Ex. 108 at 137, 140, 144, 147 (CEA).

¹⁶⁷ Ex. 108 at 144, 147 (CEA).

¹⁶⁸ Ex. 21 at Schedule 1 at 7-10 (Direct Testimony of Rick J Moser); Ex. 108 at Figure 10 at 8 (CEA).

¹⁶⁹ Ex. 108 at Table 4-1 at 47, Table 4-4 at 52, and Table 4-6 at 55 (CEA).

¹⁷⁰ Ex. 108 at 70 (CEA).

¹⁷¹ Ex. 106 at 18-19 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Project); Ex. 111 at Transcript at 20:16-23:2 (Tointon), 35:6-8 (Peters), 44:11-48:12 (Hruska), and Exhibit A from Public Meeting (Comments: Public Comments (Verbal and Written) Received on Draft CEA); Ex. 122 (Comments of Eugene Peters – Westridge Hills Corp.); Public Hearing Transcript at 26:9-29:25 (Tointon), 34:5-36:3 (Peters); 36:11-39:12 (Kell); Ex. B (Bill Tointon Submission); Ex. C (David Kell Submission).

¹⁷² Ex. 19 at 12:8-11 and Schedule 3 (Direct Testimony of Amber S. Lee).

¹⁷³ Ex. 19 at 12:14-15 (Direct Testimony of Amber S. Lee).

¹⁷⁴ Ex. 19 at 12:16-18 (Direct Testimony of Amber S. Lee).

¹⁷⁵ Ex. 19 at 13:3-8 (Direct Testimony of Amber S. Lee).

157. There are three residential developments in Olmsted County that were successfully designed around natural gas transmission pipelines.¹⁷⁶ It is feasible to design residential or commercial developments around a natural gas pipeline when incorporated early in the process. Given that the Westridge Hills GDP is currently out-of-date, it is reasonable that the Westridge Hills development and the Project could be designed in a compatible manner.¹⁷⁷

158. Several members of the public commented about concerns regarding the possibility of an explosion on the natural gas pipeline for the Project.¹⁷⁸ The “blast zone,” “impact radius,” and “high consequence areas” referred to in these comments are related to natural gas transmission pipelines that are high-stress pipelines.¹⁷⁹ The Project pipeline is a low-stress pipeline.¹⁸⁰ A low-stress pipeline like the Project, if it produced a leak near an ignition source, would result in a flame or burn and not an explosion or “impact radius” like that of a high-stress natural gas transmission pipeline.¹⁸¹

159. Segment Alternatives HJ-2 and IJ-2 both include Route Segment 26 and bisect the development identified as Willow Creek Commons and Willow Creek Commons West (the “Willow Creek Development”).¹⁸² The Application Preferred Route and the Application Alternate Route include Route Segment 26 and Segment Alternatives HJ-2 and IJ-2.¹⁸³

160. The owner of the Willow Creek Development contains mixed use developments over 83 acres.¹⁸⁴ A portion of the Willow Creek Development was platted in November 2014 with the remainder still under development.¹⁸⁵ Route Segment 26 bisects platted properties within the Willow Creek Development.¹⁸⁶ Unlike the Westridge Hills development which has an

¹⁷⁶ Ex. 20 at 9:16-19 and Schedule 1 (Direct Testimony of Lindsay K. Lyle).

¹⁷⁷ Ex. 20 at 10:7-11 (Direct Testimony of Lindsay K. Lyle).

¹⁷⁸ Public Hearing Transcript at 42:22-25 (Overland) (“Who would want to live next to a gas transmission line if it explodes could burn up to 300 feet, 600 feet depending, from the line.”); Public Hearing Transcript at 53:7-17 (Pyfferoen) (“I’ve been doing some research on blast zones . . . my personal home is . . . maybe 100 feet from where this pipeline is supposed to go and if there’s really a blast zone of 500 feet . . .”); Public Hearing Transcript at 50:21-51:2 (Pittelko) (“I grew up in Texas, 20 miles from a Phillips 66 plant. I cannot even count the number of explosions that I heard in my house . . . I cannot even imagine having a pipeline explosion across the road from my house . . .”).

¹⁷⁹ Evidentiary Hearing Transcript at 19:12-14 and 26:9-23 (Lyle).

¹⁸⁰ Evidentiary Hearing Transcript at 19:9-12 (Lyle).

¹⁸¹ Evidentiary Hearing Transcript at 20:8-20 (Lyle).

¹⁸² Ex. 21 at Schedule 1 at 10-11 (Direct Testimony of Rick J. Moser).

¹⁸³ Ex. 108 at Table 4-1 at 47 and Table 4-5 at 53 (CEA).

¹⁸⁴ Ex. 108 at 71 (CEA).

¹⁸⁵ Ex. 108 at 71 (CEA).

¹⁸⁶ Ex. 108 at Figure 10 at 9 (CEA).

out-of-date GDP, the Willow Creek Development is being actively developed and has been partially platted, including the portion bisected by Route Segment 26.¹⁸⁷

161. It is appropriate to not use Segment 26 for the Project because of the properties' stage of development. It is appropriate to use Segment 7P for the Project because of the properties' stage of development and the ability of the development and the pipeline alignment to be developed concurrently.

B. Natural Environment

162. Minnesota Rule 7852.1900, Subpart 3(B) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to the natural environment, public lands, and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands.

163. Minnesota Rule 7852.1900, Subpart 3(G) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to natural resources and features.

1. Groundwater

164. Most Segment Alternatives have relatively similar geologic sensitivity. With the use of general Route Permit conditions and other mitigation measures discussed in the CEA, any impacts are anticipated to be minimal.¹⁸⁸ The EF, EG, FH, FI, GH, and GI Segment Alternatives have relatively higher geologic sensitivity, but less length in the Decorah Edge.¹⁸⁹ These Segment Alternatives also have greater portions of their length within bedrock of less than five feet.¹⁹⁰

165. Direct impacts to groundwater resources are anticipated to be short-term and minimal provided that preconstruction surveys are completed. Direct impacts to groundwater resources could occur if pipeline installation through shallow bedrock alters the flow of groundwater by creating a new, lower-resistance pathway for groundwater movement.¹⁹¹

2. Surface Water

166. Impacts to surface water, including wetlands, are anticipated to be short-term and minimal as Applicant intends to use HDD at all waterbody crossings, the other mitigation measures discussed in the CEA, and general route permit conditions.¹⁹² From the Proposed TBS

¹⁸⁷ Ex. 19 at 11:10-12:4, 13:3-8 and Schedules 2 and 3 (Direct Testimony of Amber S. Lee); Ex. 108 at 70-71 and Figure 10 at 8-9 (CEA).

¹⁸⁸ Ex. 108 at 138, 142, 146, and 149 (CEA).

¹⁸⁹ Ex. 108 at 149 (CEA).

¹⁹⁰ Ex. 108 at 149 (CEA).

¹⁹¹ Ex. 108 at 100 (CEA).

¹⁹² Ex. 108 at 138, 139, 142, 146, 149 (CEA).

to the Proposed DRS, there are no waterbody crossings for any Segment Alternative.¹⁹³ Conversion of woody wetlands to a different wetland type may occur, but are anticipated to be minimal with the use of general permit conditions and construction techniques discussed in the CEA.¹⁹⁴

3. Fauna

167. The MnDNR requested that the Company use wildlife-friendly erosion control materials during Project construction.¹⁹⁵ Applicant has stated no objection to using these materials in higher priority areas, consistent with the MnDNR guidelines.¹⁹⁶

168. Impacts to wildlife and wildlife habitat across all Segment Alternatives are anticipated to be minimal with the use of mitigation measures discussed in the CEA.¹⁹⁷ Removal of tall, woody vegetation will impact upland forest habitat but impacts are anticipated to be minimal.¹⁹⁸

169. Impacts to threatened, endangered, or special status species are anticipated to be minimal across all Segment Alternatives with the use of the mitigation measures discussed in the CEA.¹⁹⁹

4. Flora

170. In comments filed on April 13, 2016, the MnDNR commented it was concerned about the crossing of native plant communities and/or Minnesota Biological Survey (“MBS”) sites of moderate to high biodiversity. The MnDNR requested that “greenfield routes” be avoided.²⁰⁰ Greenfield crossings are those portions of a route that are not parallel to existing rights-of-way. Most of the greenfield Route Segments for the Project are within agricultural cover types that typically do not contain native plant communities or rare features.²⁰¹

171. Any potential impacts to the MBS sites located within the buffer for the Proposed TBS or the buffer for the DRS can be avoided by locating the TBS and the DRS outside the boundaries of the MBS site.²⁰²

¹⁹³ Ex. 108 at 142, 146, 149 (CEA).

¹⁹⁴ Ex. 108 at 149 (CEA).

¹⁹⁵ Ex. 116 (Letter from MnDNR (4-14-16)).

¹⁹⁶ Ex. 21 at 11:4-5 (Direct Testimony of Rick J. Moser).

¹⁹⁷ Ex. 108 at 139, 142, 146, 149 (CEA).

¹⁹⁸ Ex. 108 at 142 (CEA).

¹⁹⁹ Ex. 108 at 139, 142, 146, 149 (CEA).

²⁰⁰ Ex. 116 (Letter from MnDNR (4-14-16)).

²⁰¹ Ex. 108 at 108 (CEA).

²⁰² Ex. 21 at 13:4-5 (Direct Testimony of Rick J. Moser).

172. Applicant has stated that if any route that incorporates Segment Alternatives HJ-1, HJ-2, IJ-1, or IJ-2, where MBS sites have been identified, it would install the pipeline using HDD underneath the wetland complex.²⁰³ Although large woody vegetation that would need to be removed from an area measuring five feet on either side of the pipeline centerline for access for inspection purposes, the area of this MBS site is not classified as forested or forested wetland so vegetation clearing is anticipated to be minimal.²⁰⁴ Additionally, vegetation management in this area could be accomplished during the winter months to minimize overall impacts to the site.²⁰⁵

173. Applicant has stated that direct impacts to the MBS site along Segment Alternative BC-1 can be avoided through the use of HDD underneath the railroad right-of-way.²⁰⁶

174. Applicant has stated that direct impacts to the MBS site along Segment Alternative EG-8 can be avoided by locating the permanent right-of-way and construction area outside the MBS site.²⁰⁷

175. Segment Alternative BC-1 would be required to be used for any route selected for the Project as no other alternatives were proposed for this area. Segment Alternative HJ-1 is incorporated into the Modified Preferred Route. Segment Alternative HJ-2 is incorporated into the Application Preferred Route. Segment Alternative IF-2 is incorporated into the Application Alternate Route.²⁰⁸

176. All Segment Alternatives have similar vegetation types when evaluated against the comparable alternatives in each segment. Right-of-way impacts to forested cover types will be permanent but are anticipated to be minimal with the use of general permit conditions, construction techniques, and proposed best management practices discussed in the CEA.²⁰⁹

5. Geology and Soils

177. Impacts to geologic resources within Segment Alternatives AB-1, AB-2, BC-1, DE-1, DE-2, EF-1, and EG-1 are not anticipated. Segment Alternatives CD-1 and CD-2 are within an area of low to moderate probability for sinkhole formation but impacts are anticipated to be minimal with the use of general permit conditions. Impacts to geologic resources across Segment Alternatives EF-2, EF-3, EG-2, EG-3, EG-4, EG-5, EG-6, EG-7, EG-8, FH-1, FH-2,

²⁰³ Ex. 21 at 12:5-7 (Direct Testimony of Rick J. Moser).

²⁰⁴ Ex. 21 at 12:7-11 (Direct Testimony of Rick J. Moser); Ex. 108 at 109 (CEA).

²⁰⁵ Ex. 21 at 12:11-12 (Direct Testimony of Rick J. Moser); Ex. 108 at 109 (CEA).

²⁰⁶ Ex. 21 at 14:9-13 (Direct Testimony of Rick J. Moser); Ex. 108 at 109 (CEA).

²⁰⁷ Ex. 21 at 12:14-18 (Direct Testimony of Rick J. Moser); Ex. 108 at 109 (CEA).

²⁰⁸ Ex. 21 at Schedule 1 (Direct Testimony of Rick J. Moser); Ex. 108 at Tables 4-1 to 4-6 at 47-55 (CEA).

²⁰⁹ Ex. 108 at 139, 142, 146, 149 (CEA).

FH-3, FI-1, FI-2, FI-3, GH-1, GH-2, GI-1, GI-2, GI-3, HJ-1, HI-2, HJ-3, HJ-4, IJ-1, IJ-2, IJ-3, and IJ-4 are anticipated to be moderate with the use of general permit conditions.²¹⁰

178. During construction, ground penetrating radar analysis will be used in areas of high probability for sinkhole formation to determine if sinkholes, underground cavities, or enlarged features are present prior to trenching. If one of these features is inadvertently encountered during trenching, the pipeline can be rerouted and the feature repaired to limit further sinkhole formation and subsidence in addition to reducing the potential for changes in groundwater flow.²¹¹

179. Direct impacts to soils along any Segment Alternative are anticipated to be minimal. All routes and Segment Alternatives would have similar impacts on soils.²¹² Direct impacts to soils at the locations of TBS 1D, the Proposed TBS, and the Proposed DRS footprints will be permanent and significant.²¹³ These impacts are of a small size, do not affect unique resources, and are unavoidable.²¹⁴

180. Impacts to soils can be minimized through the implementation of best management practices utilized in compliance with the required erosion control plan for the Project.²¹⁵ Additionally, construction procedures outlined in the Agricultural Mitigation Plan can minimize impacts to soils or ensure appropriate landowner compensation if impacts to agricultural soils are encountered.²¹⁶

C. Lands of Historical, Archaeological, and Cultural Significance

181. Minnesota Rule 7852.1900, Subpart 3(C) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to lands of historical, archaeological, and cultural significance.

182. EERA concluded that the potential for impact to historical, archaeological, and culturally significant lands is considered to be equal for all Segment Alternatives. Impacts to historic and archaeological sites are anticipated to be minimal with the use of general Route Permit conditions, construction practices, and best management practices discussed in the CEA. While previously-undiscovered resources may be encountered during construction, additional surveys will be conducted prior to construction and further consultation with the State Historic Preservation Office may result in additional mitigation measures for the Project construction.²¹⁷

²¹⁰ Ex. 108 at 138, 142, 145, 149 (CEA).

²¹¹ Ex. 108 at 96 (CEA).

²¹² Ex. 108 at 97 (CEA).

²¹³ Ex. 108 at 97 (CEA).

²¹⁴ Ex. 108 at 98 (CEA).

²¹⁵ Ex. 108 at 98 (CEA).

²¹⁶ Ex. 108 at 97, 138, 142, 145, 149 (CEA).

²¹⁷ Ex. 108 at 136 (CEA).

D. Land Use Economies

183. Minnesota Rule 7852.1900, Subpart 3(D) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations.

184. Impacts to agriculture for any route selected will be short-term. Impacts can be mitigated by compensation to landowners and use of measures outlined in the Agricultural Mitigation Plan.²¹⁸

185. Impacts to current mining operations along any route selected for the Project are not anticipated.²¹⁹ The potential for Segment Alternatives to prevent expansion of the mine located along Segment Alternative CD-1, DE-1, or EF-1, while minimal, is greater than the other Segment Alternatives evaluated in this area.²²⁰ The potential for impacts in this location could be further minimized based on post-permit discussions with the landowner regarding placement of the pipeline.

186. Impacts to forestry, commercial or industrial, or recreational uses by the Project are not anticipated.²²¹

E. Pipeline Cost and Accessibility

187. Minnesota Rule 7852.1900, Subpart 3(E) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to pipeline cost and accessibility.

188. Nearly all Segment Alternatives have similar cost and accessibility considerations.²²²

189. Applicant has identified accessibility, design, and engineering concerns with Segment Alternatives CD-2, DE-2, EF-2, EG-2, EG-3, and EG-4.²²³ The alternatives all, in some form, follow the existing BP Pipeline, which was constructed in the late 1940s, prior to implementation of state or federal standards for petroleum pipeline depth of cover.²²⁴ During both of the public information meetings held for the Project, landowners commented on depth of cover concerns associated with the BP Pipeline, including some reports of field or farm equipment encountering the pipeline in recent years.²²⁵ While these Segment Alternatives could

²¹⁸ Ex. 108 at 139, 143, 146, 150 (CEA).

²¹⁹ Ex. 108 at 139, 143, 146, 150 (CEA).

²²⁰ Ex. 108 at 139, 140, 143 (CEA).

²²¹ Ex. 108 at 139, 143, 146, 150 (CEA).

²²² Ex. 21 at 9:3-14 (Direct Testimony of Rick J. Moser); Ex. 108 at 136 (CEA).

²²³ Ex. 20 at 7:18-19 (Direct Testimony of Lindsay K. Lyle).

²²⁴ Ex. 20 at 7:23-25 (Direct Testimony of Lindsay K. Lyle).

²²⁵ Ex. 20 at 7:25-8:2 (Direct Testimony of Lindsay K. Lyle).

be constructed, accessibility of these areas is a concern unique to these Segment Alternatives and additional separation between the BP Pipeline and the proposed Project would be necessary, resulting in greater impacts to landowners' property and higher costs as matting over the BP Pipeline right-of-way would also be necessary to minimize the risk of damage to the BP Pipeline.²²⁶

190. Applicant provided testimony that Segment Alternatives HJ-2, HJ-4, IJ-3, and IJ-4 cross through densely developed commercial areas. Property in this area is estimated to be five times the cost of property along other Segment Alternatives that could be used in this area, resulting in the estimation of the overall cost for these four Segment Alternatives to be much higher than other Segment Alternatives.²²⁷

191. Applicant also identified concerns with accessibility and more difficult constructability along Route Alternatives 13, 17, and 20.²²⁸ The concerns related to the topography of the roadways and curves in 50th Street SW as it joins 55th Avenue SW.²²⁹ Topography is also a concern for construction along 48th Street SW.²³⁰

192. Should the Commission select Route Segment 10, Applicant has requested that the anticipated alignment be located south of the Northern Natural Gas Company pipeline instead of on the north as it is currently shown on CEA maps.²³¹ Placement of the Project along the south side in this area would avoid the need for the Project pipeline to cross Northern Natural Gas Company's natural gas transmission line twice.²³²

F. Use of Existing Rights-of-Way and Right-of-Way Sharing or Paralleling

193. Minnesota Rule 7852.1900, Subpart 3(F) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to the use of existing rights-of-way and right-of-way sharing or paralleling.

194. Segment Alternatives AB-1, AB-2, BC-1, CD-1, CD-2, DE-1, DE-2, EF-1, EG-1, EG-4, EG-7, EG-8, FH-3, FI-3, GH-1, GI-1, HJ-1, and IJ-1 parallel existing rights-of-way for a significant portion of their length.²³³ The only Segment Alternative incorporated into the Modified Preferred Route that does not parallel existing rights-of-way for a significant portion of

²²⁶ Ex. 20 at 8:2-23 (Direct Testimony of Lindsay K. Lyle).

²²⁷ Ex. 19 at 9:13-17 (Direct Testimony of Amber S. Lee).

²²⁸ Evidentiary Hearing Transcript at 22:13-22 (Lyle).

²²⁹ Evidentiary Hearing Transcript at 22:25-23:20 (Lyle).

²³⁰ Evidentiary Hearing Transcript at 24:9-25:8 (Lyle).

²³¹ Evidentiary Hearing Transcript at 25:18-26:4 (Lyle).

²³² Evidentiary Hearing Transcript at 26:2-4 (Lyle).

²³³ Ex. 21 at Schedule 1 at 1-11 (Direct Testimony of Rick J. Moser); Ex. 108 at 143, 147, 150 (CEA).

its length is Segment Alternative FH-1.²³⁴ Applicant has stated that following the existing rights-of-way in this area (48th Street SW) poses constructability concerns.²³⁵

G. Extent Human or Environmental Effects are Subject to Mitigation by Regulatory Control and Permit Conditions

195. Minnesota Rule 7852.1900, Subpart 3(H) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.2400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices.

196. On August 2, 2016, the Commission filed a Generic Route Permit Template for review and comment.²³⁶ The Generic Route Permit Template references an Environmental Mitigation Plan.²³⁷

197. Unlike an Agricultural Mitigation Plan, which has already been prepared for this Project, no Environmental Mitigation Plan has been prepared for this Project and none is defined or discussed in the CEA. Condition 5.2 should be modified to state that the Environmental Mitigation Plan “shall be provided upon filing of the first Plan and Profile submission for the Project.” Additionally, the condition should clarify that the Environmental Mitigation Plan shall include the Agricultural Mitigation Plan, the Vegetation Management Plan, and the Stormwater Pollution Prevention Plan. It shall also include, by reference, any environmental control plans or other special conditions imposed by permits or licenses issued by state or federal agencies related to agency-mandated resources. It shall also include:

1. Identification of and contact information for an Environmental Monitor to oversee the construction process and monitor compliance with the Environmental Mitigation Plan and all plans therein.
2. A process for reporting construction status to the Commission.
3. A process for internal tracking of construction management, including required plan or permit inspection forms.

198. Condition 5.5 states that the construction practices and material specifications described in the Application shall be followed.²³⁸ Applicant has identified that while the Application stated that “burning of slash, brush, stumps, or other project debris is prohibited,”

²³⁴ Ex. 21 at Schedule 1 at 7 (Direct Testimony of Rick J. Moser).

²³⁵ Evidentiary Hearing Transcript at 24:9-25:8 (Lyle).

²³⁶ Ex. 63 (Generic Route Permit Template and Certificate of Service).

²³⁷ Ex. 63 at 3 (Generic Route Permit Template and Certificate of Service).

²³⁸ Ex. 63 at 4 (Generic Route Permit Template and Certificate of Service).

Applicant would like to retain the ability to perform these activities so long as such activity is agreeable to the landowner.²³⁹ The Route Permit should be clarified to allow this activity.

199. As requested by the MnDNR and agreed to by Applicant, the Route Permit should contain a special condition regarding the use of wildlife-friendly erosion control materials. The proposed language in the Generic Route Permit Template is appropriate.²⁴⁰

200. Preconstruction environmental survey consultations should be completed to determine if any federally-listed threatened or endangered species are along the permitted route.²⁴¹ Preconstruction environmental survey consultations should also be completed to determine if any state-listed or rare species occur within the Project area.²⁴² The example special condition in the Generic Route Permit Template for “Rare Species Surveys” should not be used.²⁴³ Instead, the following special condition is appropriate for the Project:

The Permittee, in consultation with the USFWS and the MnDNR, will determine the need for rare species surveys (pre-construction) within the approved route. In the areas where these species are known to exist or where the right-of-way passes through habitats where the species are likely to exist, field surveys may be required. In the event impacts cannot be avoided, the Permittee may need to obtain a take permit from the MnDNR or the USFWS for the species of concern. The Permittee shall submit the results of these efforts to the Commission with its Plan and Profile filing.

201. The example special condition on the Generic Route Permit Template for “Rare and Unique Resources” is not necessary for this Project.²⁴⁴

202. In compliance with the recommendations of the CEA, the following special condition should be included in the Route Permit:²⁴⁵

Permittee shall submit a Vegetation Management Plan (VMP) with the Environmental Control Plan. The purpose of the VMP shall be to identify measures to minimize the disturbance and removal of vegetation for the Project, prevent the introduction of noxious weeds and invasive species, and re-vegetate disturbed non-cropland areas with appropriate native species in cooperation with landowner and state, federal, and local

²³⁹ Ex. 17 at 3 (Minnesota Energy Resources Comments on CEA).

²⁴⁰ Ex. 63 at 11 (Generic Route Permit Template and Certificate of Service).

²⁴¹ Ex. 108 at 114 (CEA).

²⁴² Ex. 108 at 118 (CEA).

²⁴³ Ex. 63 at 11 (Generic Route Permit Template and Certificate of Service).

²⁴⁴ Ex. 63 at 11 (Generic Route Permit Template and Certificate of Service).

²⁴⁵ Ex. 108 at 110 (CEA).

resource agencies, such that such re-vegetation does not negatively impact the safe and reliable operation of the Project.

203. Applicant has stated the intent to phase the construction of the Project over a period of approximately six years. Because of the likelihood of periods where no construction activity will occur, the requirement of Condition 10.2 for Applicant to complete weekly reports from the “submittal of the plan and profile for the project and continue until completion of restoration” should be revised to include the following:

In the event the Permittee proceeds with phased construction of the Project, such weekly reports should be filed beginning with the submittal of the plan and profile for that phase and continue until the completion of restoration of that phase. If there is any period of time where no construction activity is occurring, restoration of the prior phase of the Project has been completed, and the overall Project is not yet completed, Permittee need only provide status reports monthly.

204. Because of the possibility for identification of sinkholes, underground cavities, and enlarged fractures that may require rerouting of the pipeline outside the route width, because of the possibility of road development in the area over the time the Project will be constructed, and to accommodate the possibility a landowner may want the pipeline located elsewhere on that landowner’s property (so long as such location is agreeable to Applicant),²⁴⁶ it is appropriate for the Commission to include the following special condition that has been used in other petroleum pipeline proceedings:

Route width variations may be allowed for the Permittee to overcome potential site-specific constraints. These constraints may arise from any of the following:

1. Unforeseen circumstances encountered during the detailed engineering and design process, including a landowner request for a different location entirely on that landowner’s property so long as the Permittee is agreeable to the proposed location.
2. Federal or state agency requirements.
3. Existing infrastructure within the pipeline route, including but not limited to railroads, natural gas and liquid pipelines, road expansion projects, high voltage electric transmission lines, or sewer and water lines.

Any alignment modifications arising from these site specific constraints that would result in right-of-way placement outside of this designated route shall be located to have the same or less impacts relative to the criteria in Minnesota Rule 7852.1900 as the alignment identified in this

²⁴⁶ See Public Hearing Transcript at 68:2-7 (Oldfield).

permit and be specifically identified in and approved as part of the Plan and Profile submitted pursuant to Part VI of this permit.

205. To ensure sufficient workspace for HDD crossings for the Project, it is appropriate to include the following special condition in the Route Permit for the Project:

The Permittee may obtain extra temporary workspace that is needed at locations where the project will cross features such as waterbodies, roads, railroads, side slopes, and other special circumstances and HDD will be utilized. Extra temporary workspace will be allowed for construction activities including, but not limited to, staging equipment and stockpiling spoil material to facilitate construction of the pipeline. These dimensions will vary depending on actual site-specific conditions, but will typically be 20,000 square feet on each side of the features crossed. Extra temporary workspaces that may be required outside the approved Route Width are identified on the maps attached to this Route Permit.²⁴⁷

H. Cumulative Potential Effects of Related or Anticipated Future Pipeline Construction

206. Minnesota Rule 7852.1900, Subpart 3(I) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to cumulative potential effects of related or anticipated future pipeline construction.

207. EERA concluded that all Segment Alternatives are equal with respect to this criteria because, regardless of what route is selected for the Project, the connected pipeline facilities to be owned by Northern Natural Gas Company will be constructed in the same general location.

I. Other Local, State, or Federal Rules and Regulations

208. Minnesota Rule 7852.1900, Subpart 3(J) states that in selecting a route for designation and issuance of a Route Permit, the Commission shall consider the impact of the pipeline as it relates to the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws, including ordinances adopted under Minnesota Statutes section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

209. EERA concluded that all Segment Alternatives are equal with respect to this criteria in that any route selected by the Commission will be subject to, and must comply with, the relevant applicable policies, rules, and regulations of other state and federal agencies.²⁴⁸

²⁴⁷ Ex. 19 at 14:14-30 (Direct Testimony of Amber S. Lee); Ex. 20 at 6-7 (Direct Testimony of Lindsay K. Lyle).

²⁴⁸ Ex. 108 at 136 (CEA). As stated in Minnesota Statutes section 216G.02, subdivision 4, a pipeline Route Permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local, and special purpose governments.

IX. NOTICE

210. Minnesota statutes and rules required Applicant to provide certain notice to the public and local governments before and during the Application for a Route Permit process.²⁴⁹

211. Applicant provided notice to the public and local governments in satisfaction of Minnesota statutory and rule requirements.²⁵⁰

212. Some of these notices were provided by EERA and the Commission and were provided in satisfaction of Minnesota statutes and rules.²⁵¹

X. COMPLETENESS OF CEA

213. The Commission is required to determine the completeness of the CEA.²⁵² A CEA is complete if it and the record address the issues and alternatives identified in the scoping decision.

214. The evidence on the record demonstrates that the CEA is adequate because the CEA, EERA's pre-filed testimony, and the record created at the public hearing and during the subsequent comment period address the issues and alternatives raised in the proposed scope for the CEA that was approved by the Commission.²⁵³

Based on the foregoing Findings of Fact and the record in this proceeding, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commission has jurisdiction to consider Minnesota Energy Resources Corporation's Application for a Route Permit.

²⁴⁹ Minn. Stat. § 216G.02, subs. 3(b)(2)-(3); Minn. R. 7852.0900; Minn. R. 7852.1300, subp. 2; Minn. R. 7852.1600; Minn. R. 7852.2000, subp. 6; Minn. R. 1405.0500.

²⁵⁰ Ex. 5 (Affidavit of Mailing of Revisions to Route Permit Application); Ex. 6 (Affidavits of Mailing of Route Permit Application); Ex. 9 (Affidavit of Publication of Notice of First Public Information Meeting); Ex. 11 (Affidavit of Notice of Supplemental Comment Period); Ex. 15 (Affidavit of Notice of Publication of Second Public Information Meeting); Ex. 16 (Affidavit of Mailing of Comparative Environmental Analysis); Ex. 22 (Affidavit of Mailing of MERC Direct Testimony to the Rochester Public Library); Ex. 23 (Affidavit of Mailing of Route Permit Applications to the Rochester Public Library); Ex. 24 (Affidavit of Publication of Notice of Public Hearing).

²⁵¹ Ex. 57 (Notice of Application Acceptance – Public Information and CEA Scoping Meeting and Certificate of Service); Ex. 65 (Notice of Public and Evidentiary Hearings and Certificates of Service); Ex. 66 (Corrected Notice of Public and Evidentiary Hearings, Erratum, and Certificate of Service); Ex. 102 (Notice of Permit Application Acceptance, MEQB Monitor); Ex. 107 (DOC EERA: Landowner Letter, September 9, 2016); Ex. 109 (Notice of Draft CEA Availability and Public Meeting); Ex. 110 (Notice of Draft CEA Availability and Public Comment Meeting).

²⁵² Minn. R. 7852.1500.

²⁵³ See Ex. 62 (Order Accepting Comments and Recommendations of EERA Staff for Route Segments and Certificate of Service); Ex. 106 (Comments & Recommendations: Scoping for CEA and Route Proposals for the Rochester Natural Gas Pipeline Project); Ex. 108 (CEA); Ex. 113 (Reply to Substantive Comments).

2. The Commission determined that the Application was substantially complete and accepted the Application on February 3, 2016.²⁵⁴

3. EERA has conducted an appropriate environmental analysis of the Project for purposes of this Route Permit proceeding and the CEA satisfies Minnesota Rule 7852.1500. Specifically, the CEA and the record address the issues and alternatives identified in the proposed scope for the CEA approved by the Commission to a reasonable extent and includes the items necessary for the Commission to evaluate the criteria identified in Minnesota Rule 7852.1900.

4. Notice was provided as required by Minnesota Statutes section 216G.02 and Minnesota Rule chapter 7852.

5. Public hearings were conducted in the community near the Project area. Proper notice of the public hearings was provided, and the public was given the opportunity to speak at the hearings and to submit written comments. All procedural requirements for the Route Permit were met.

6. The evidence on the record demonstrates that all Route Segments, Segment Alternatives, and routes are constructible and all satisfy the criteria in Minnesota Rule 7852.1900 that the Commission shall consider with issuing a Route Permit.

7. The evidence on the record demonstrates that all Route Segments, Segment Alternatives, and routes do not present the potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act.

8. The evidence on the record demonstrates that the Modified Preferred Route, with one adjustment to the anticipated alignment along 70th Street SW, is the best alternative on the record for the Project because it most appropriately balances the criteria identified in Minnesota Rule 7852.1900.

9. The evidence on the record demonstrates that the Route Permit should be granted for the Modified Preferred Route with the anticipated alignment along the east side of 70th Avenue SW between the BP Pipeline and 10th Street SW in Salem Township.

10. The evidence on the record also supports the use of Segment Alternative AB-2 instead of AB-1 for the Modified Preferred Route.

11. The evidence on the record demonstrates that the general Route Permit conditions, as clarified in Section VIII.G of this Report are appropriate for the Project.

12. The evidence on the record demonstrates that the special Route Permit conditions identified in Section VIII.G of this Report are appropriate for the Project

²⁵⁴ Ex. 56 (Order on Completeness).

13. Any of the forgoing Findings more properly designated as Conclusions are hereby adopted as such.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATIONS

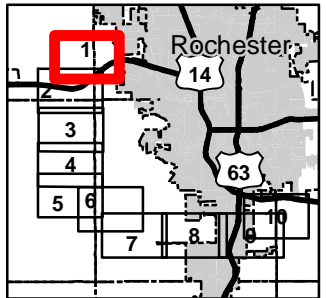
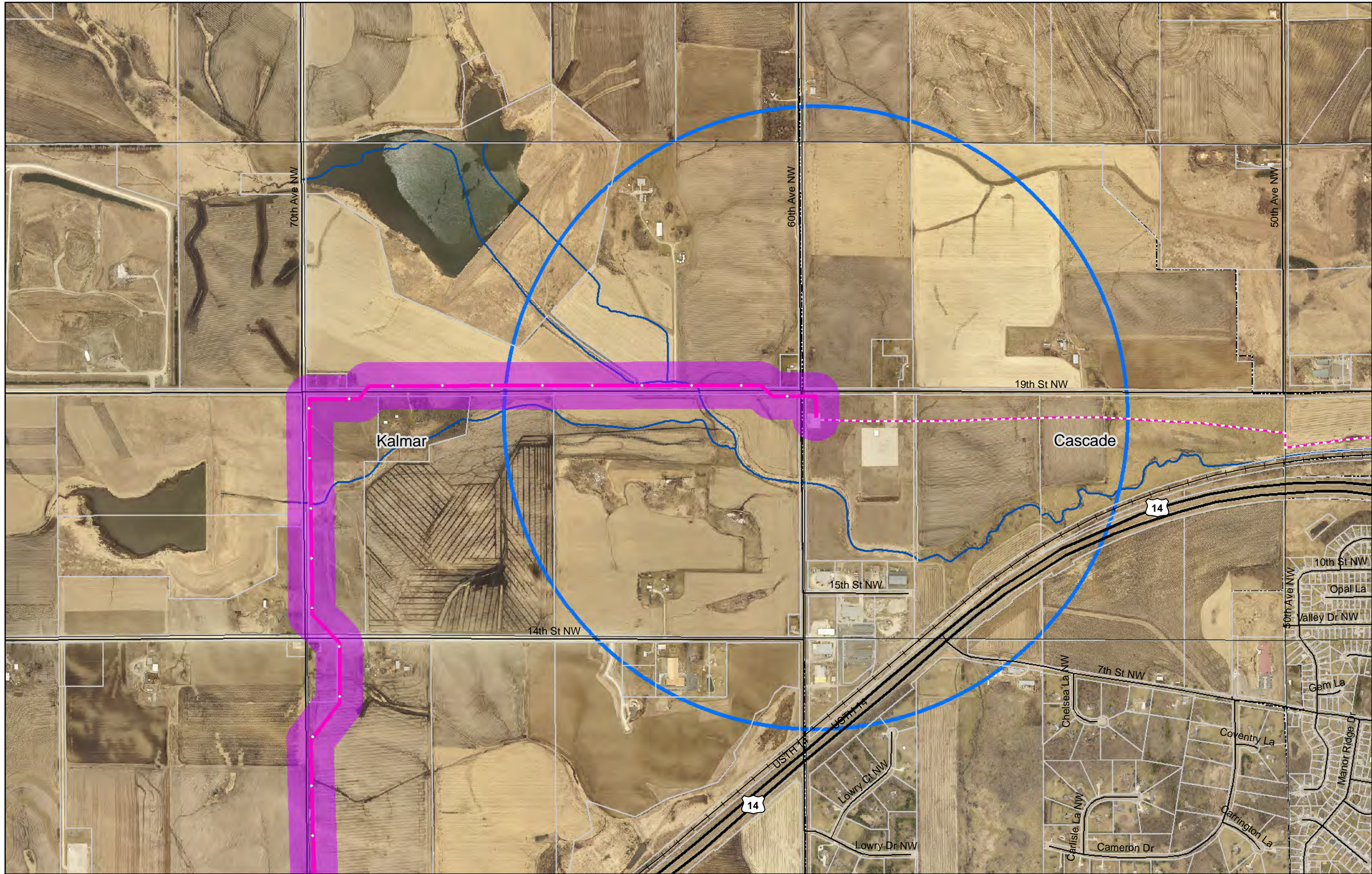
The Commission should issue to Minnesota Energy Resources Corporation the following permit for the Project:

A Route Permit for a natural gas distribution pipeline along the Modified Preferred Route which is depicted on the maps attached hereto, differing from what was proposed by the Company in the proceeding only in the area of 70th Avenue SW in Salem Township, in Olmsted County, Minnesota.

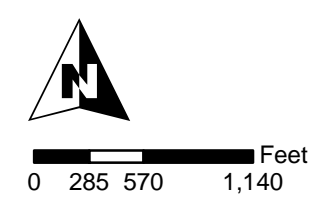
THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE MINNESOTA PUBLIC UTILITIES COMMISSION WILL ISSUE THE ORDER THAT MAY ADOPT OR DIFFER FROM THE PRECEDING RECOMMENDATION.

Dated on _____

Eric L. Lipman
Administrative Law Judge

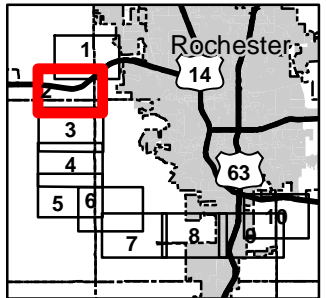
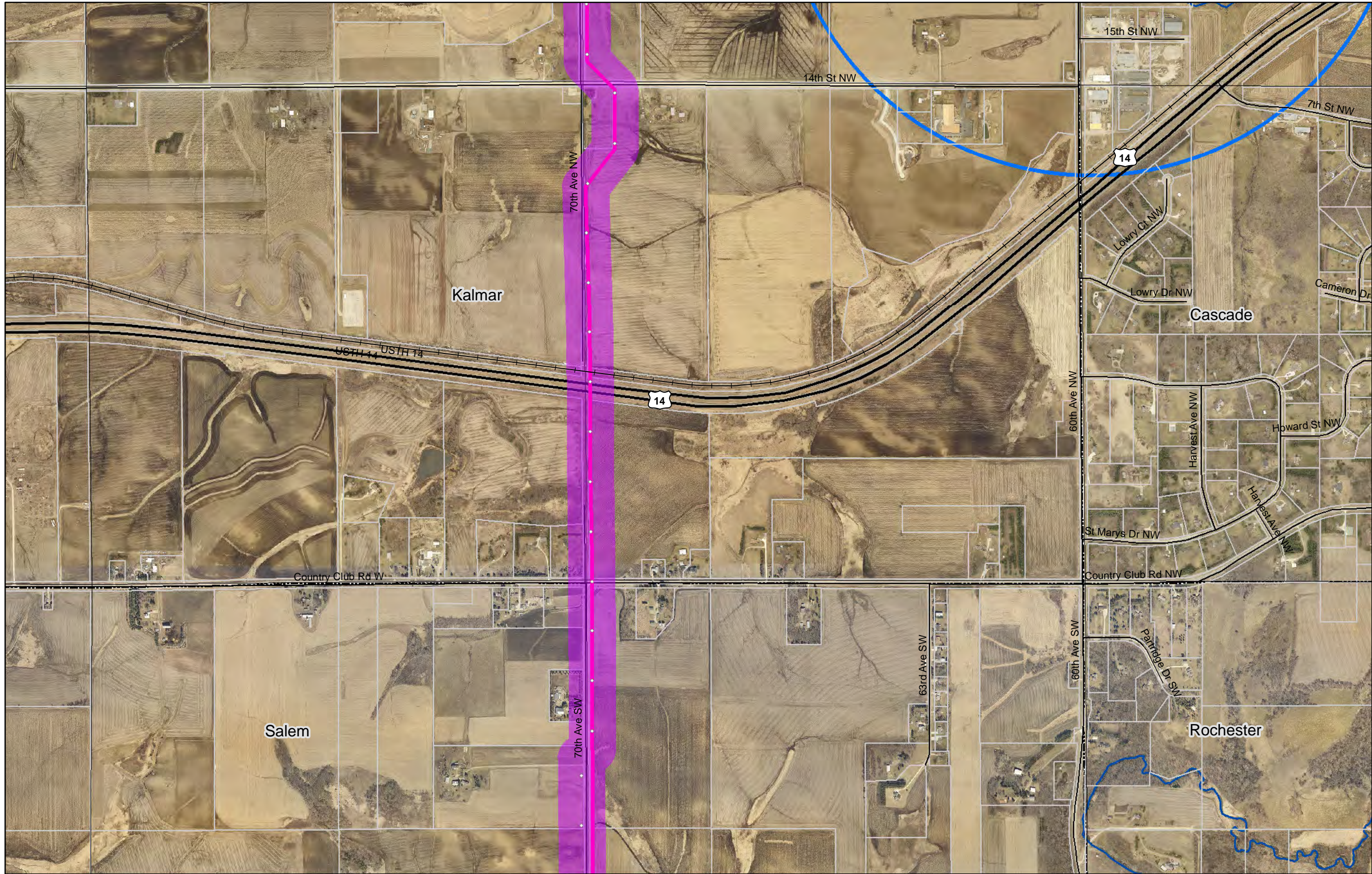









- Anticipated Alignment
- Milepost
- Route Width
- Extra Temporary Workspace
- District Regulator Station Buffer
- Town Border Station Buffer
- - - Existing MERC Distribution Main
- Roadway
- + + + Railroad
- Parcels
- Municipality
- Public Waters Inventory Waters



PROPOSED ROUTE PERMIT MAPS

Rochester Natural Gas Pipeline
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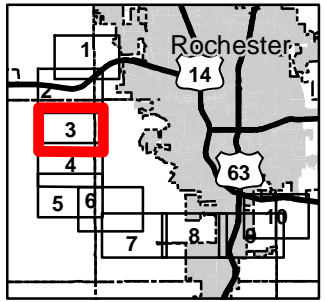
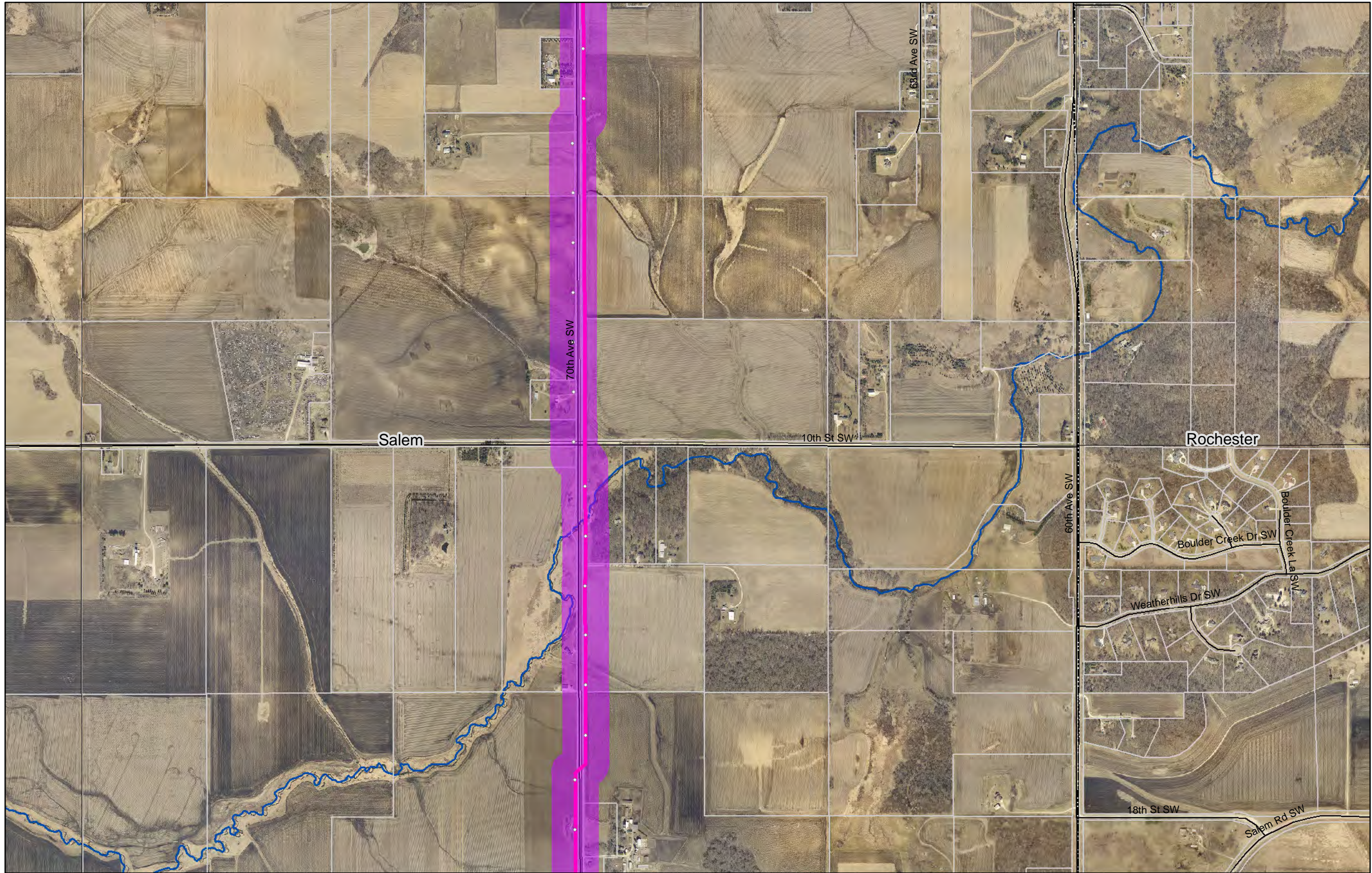


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-  Route Width
-  Extra Temporary Workspace
-  District Regulator Station Buffer
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-  Existing MERC Distribution Main
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-  Railroad
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-  Municipality
-  Public Waters
-  Inventory Waters

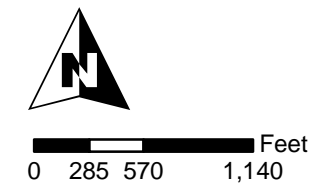


PROPOSED ROUTE PERMIT MAPS

Rochester Natural Gas Pipeline
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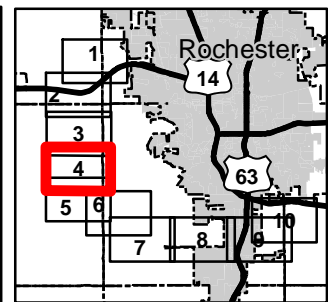
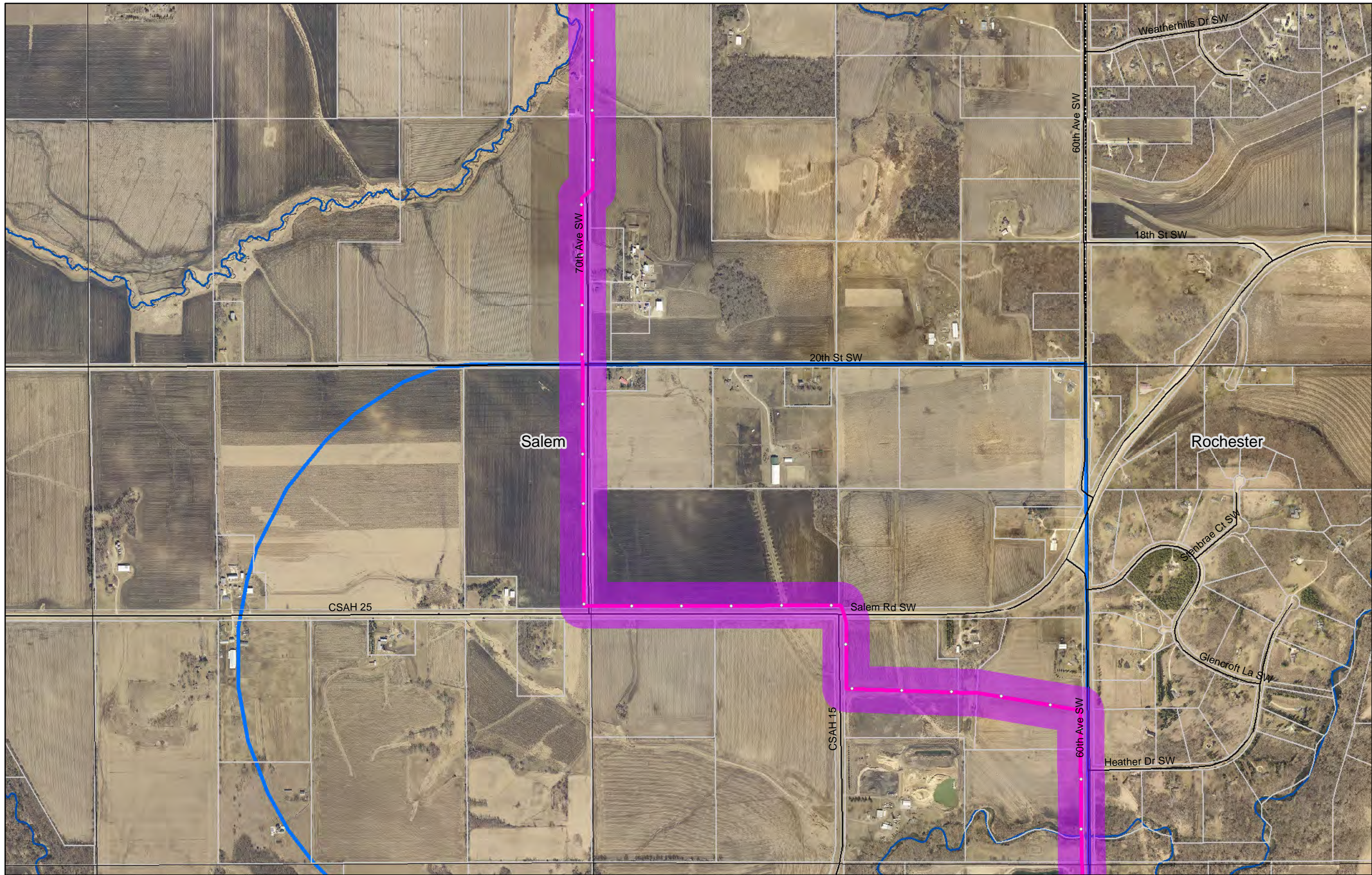
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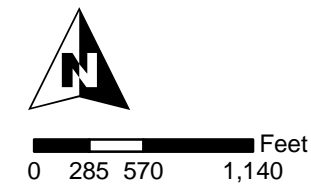
PROPOSED ROUTE PERMIT MAPS

Rochester Natural Gas Pipeline

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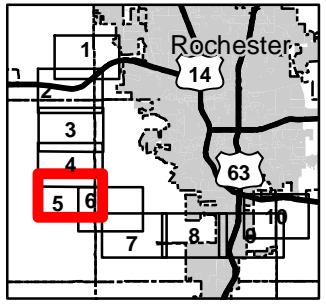
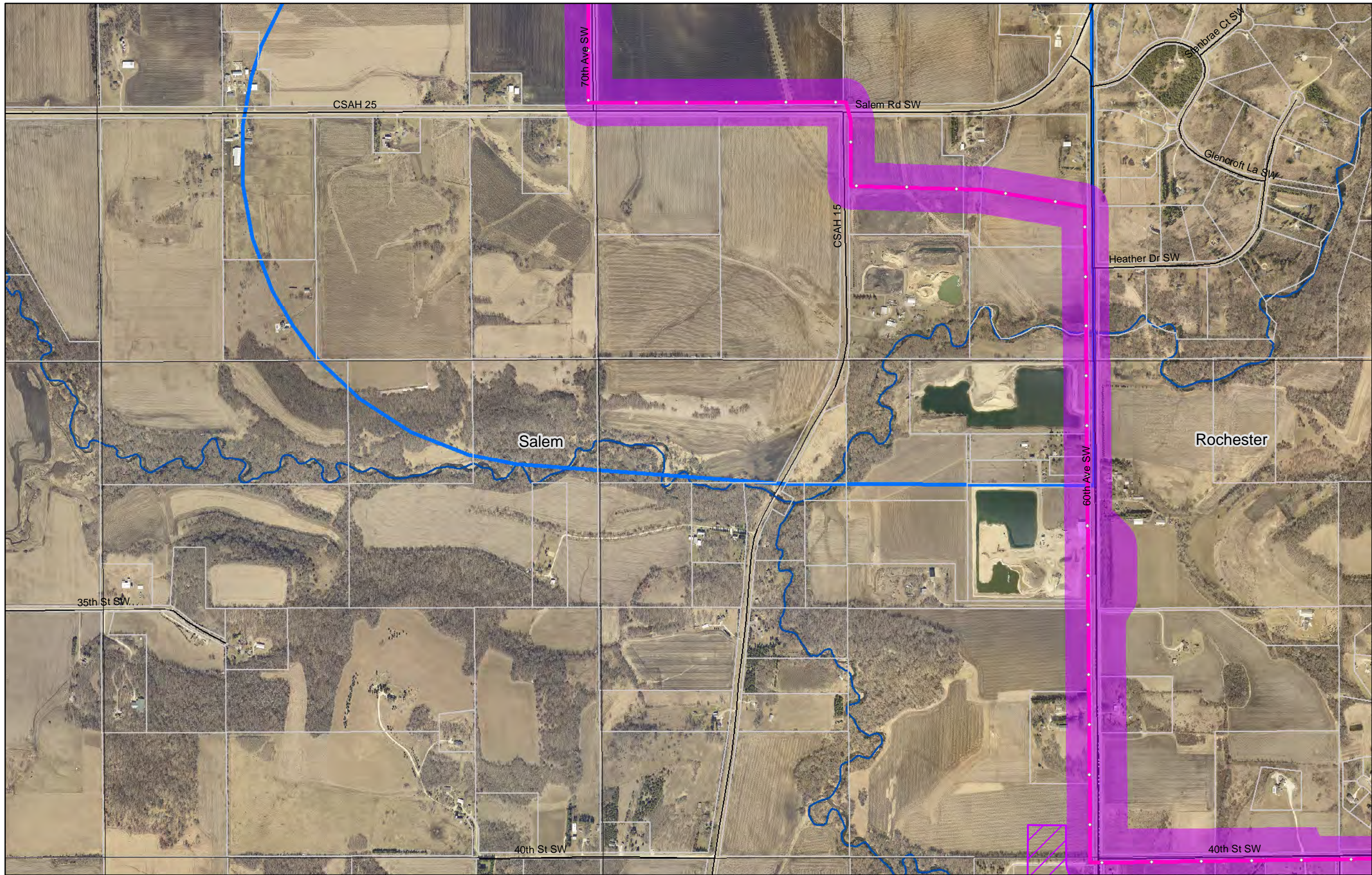


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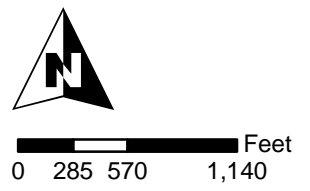


PROPOSED ROUTE PERMIT MAPS

Rochester Natural Gas Pipeline
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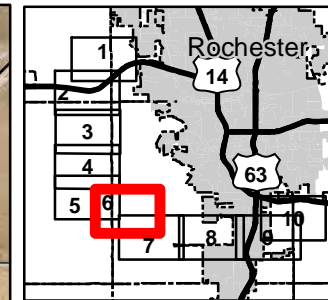
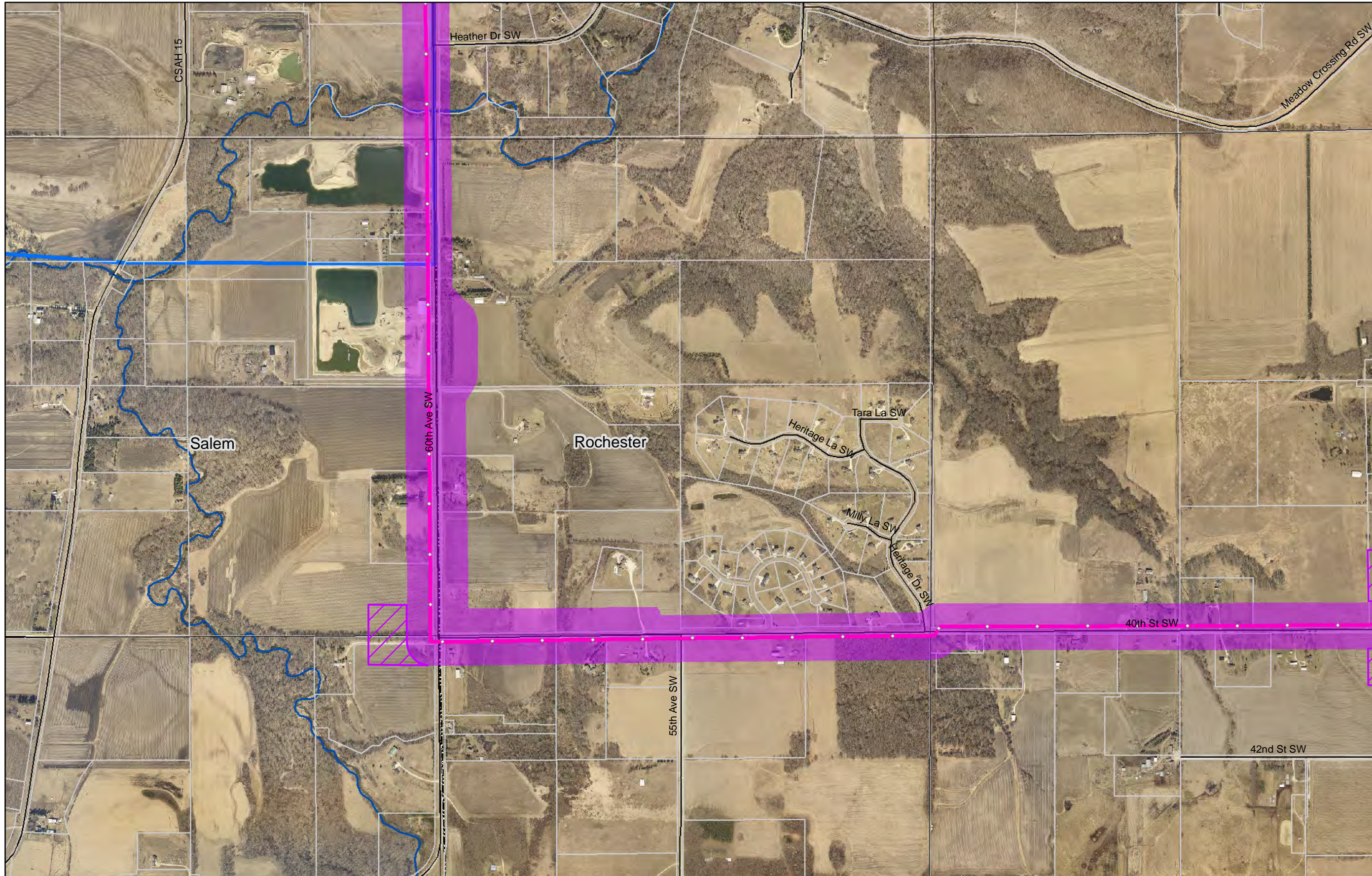


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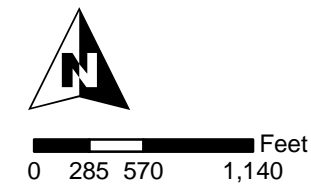


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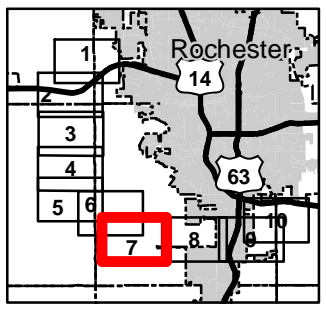
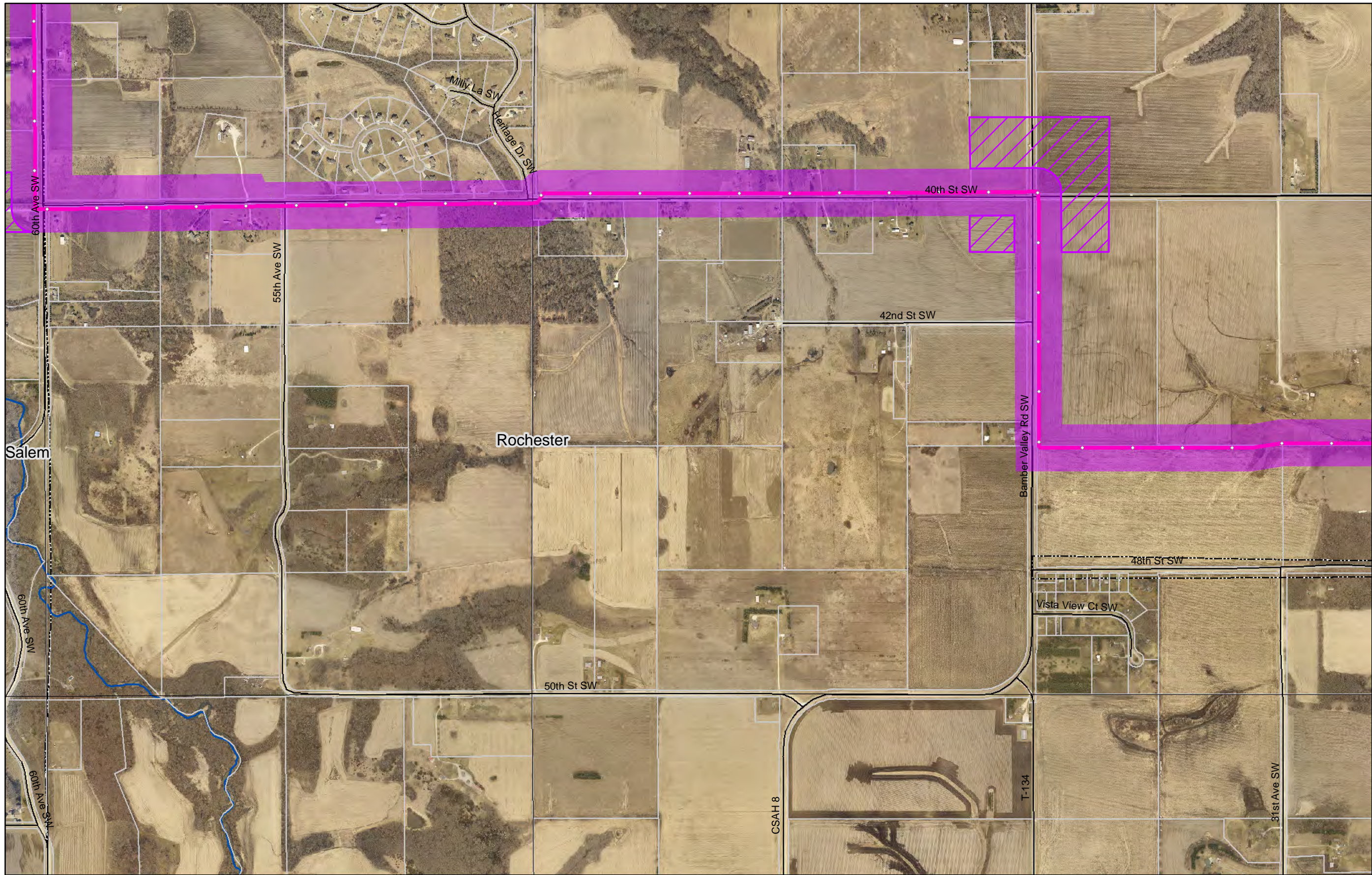




- Anticipated Alignment
- Milepost
- Route Width
- Extra Temporary Workspace
- District Regulator Station Buffer
- Town Border Station Buffer
- Existing MERC Distribution Main
- Roadway
- Railroad
- Parcels
- Municipality
- Public Waters Inventory Waters

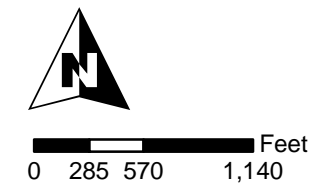


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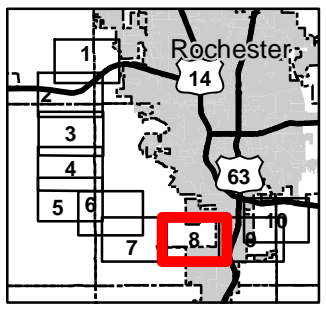
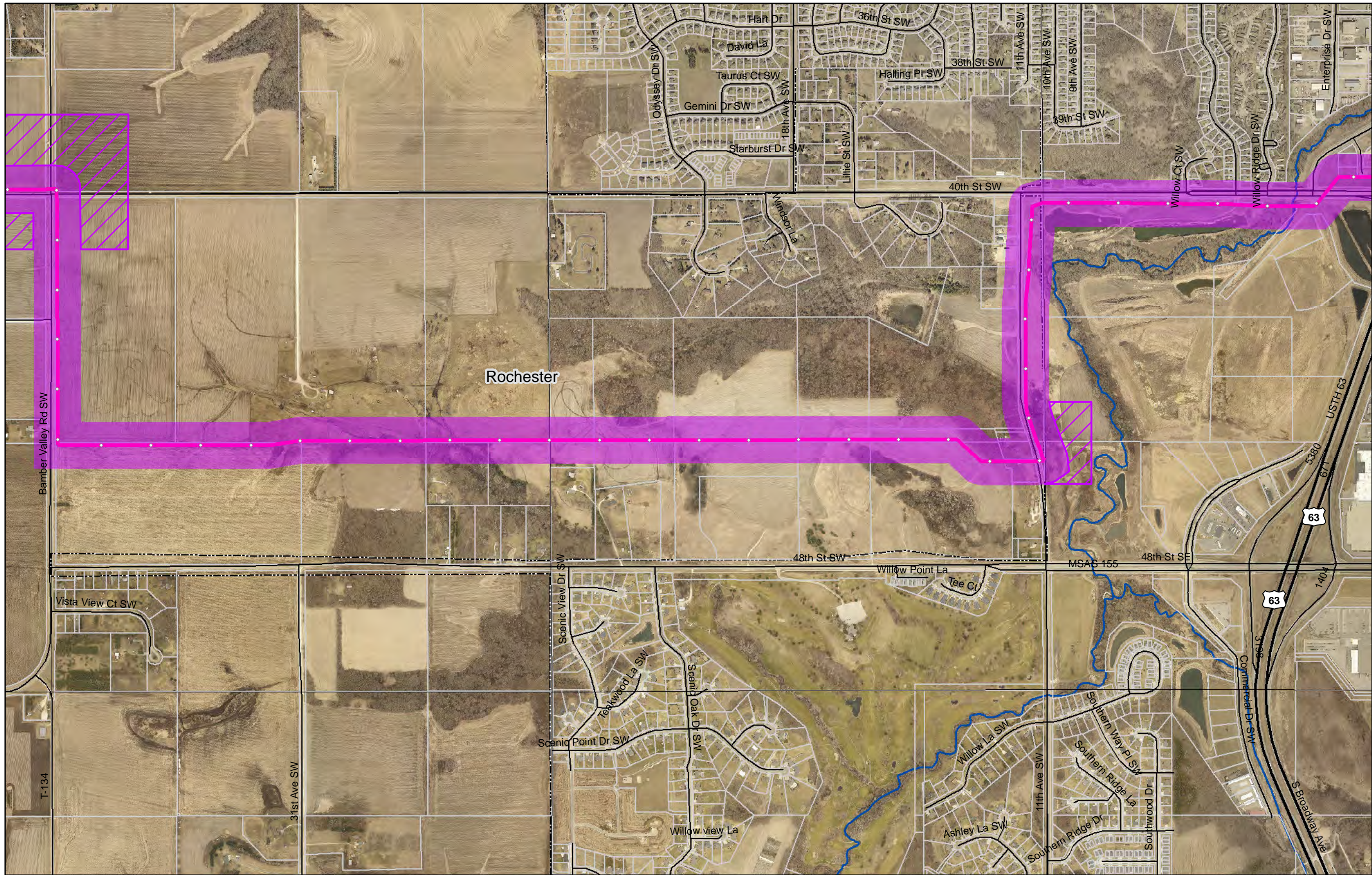


-  Anticipated Alignment
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-  Route Width
-  Extra Temporary Workspace
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-  Railroad
-  Parcels
-  Municipality
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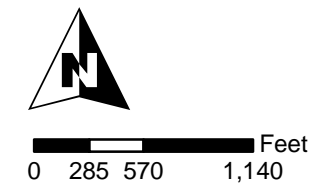


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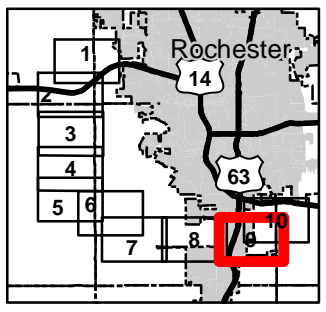
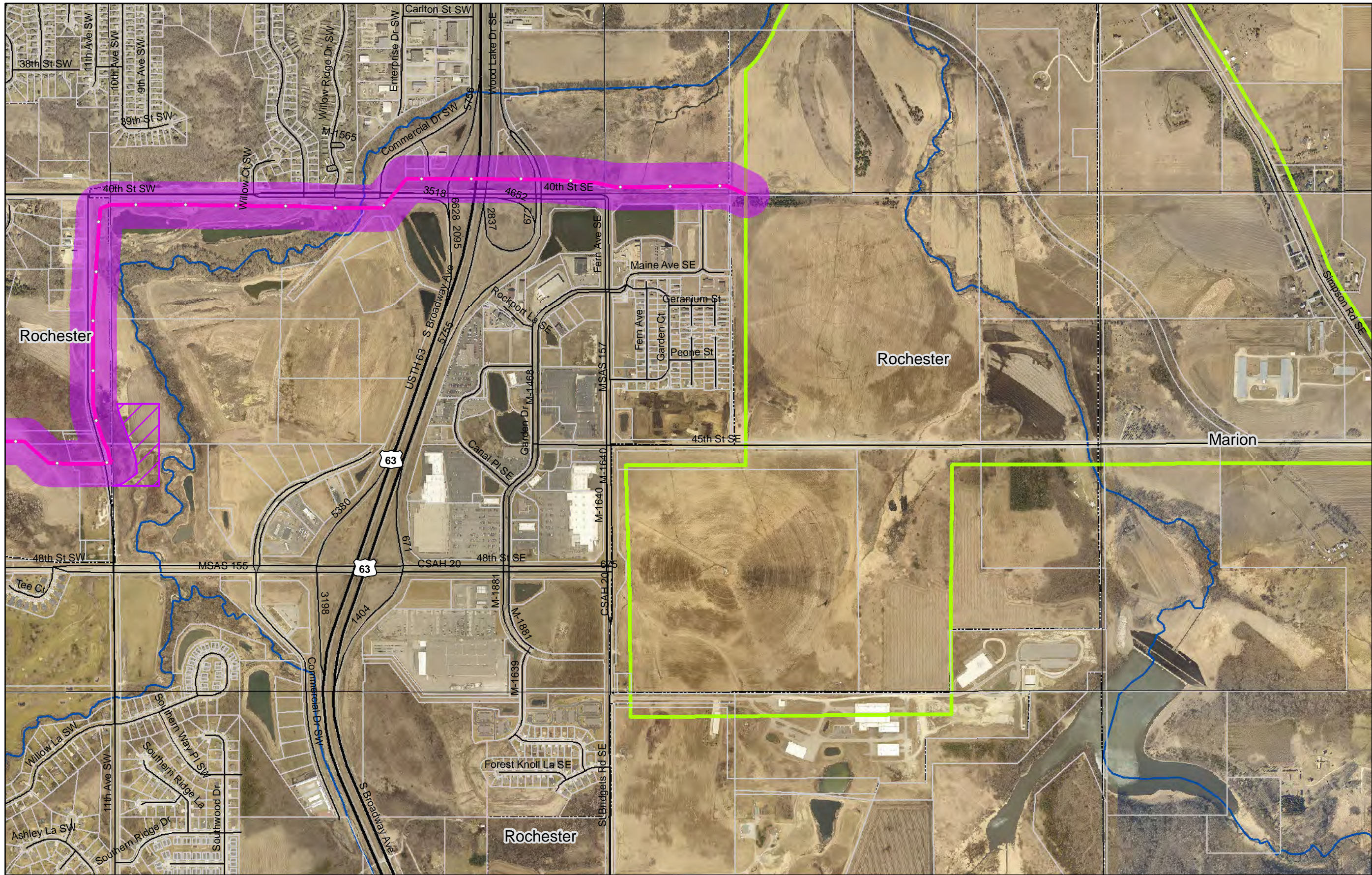


- Anticipated Alignment
- Milepost
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- + Railroad
- Parcels
- Municipality
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- Inventory Waters

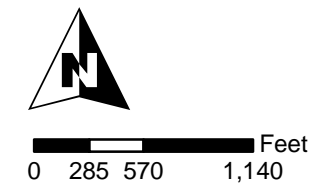


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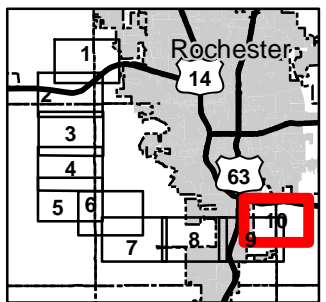
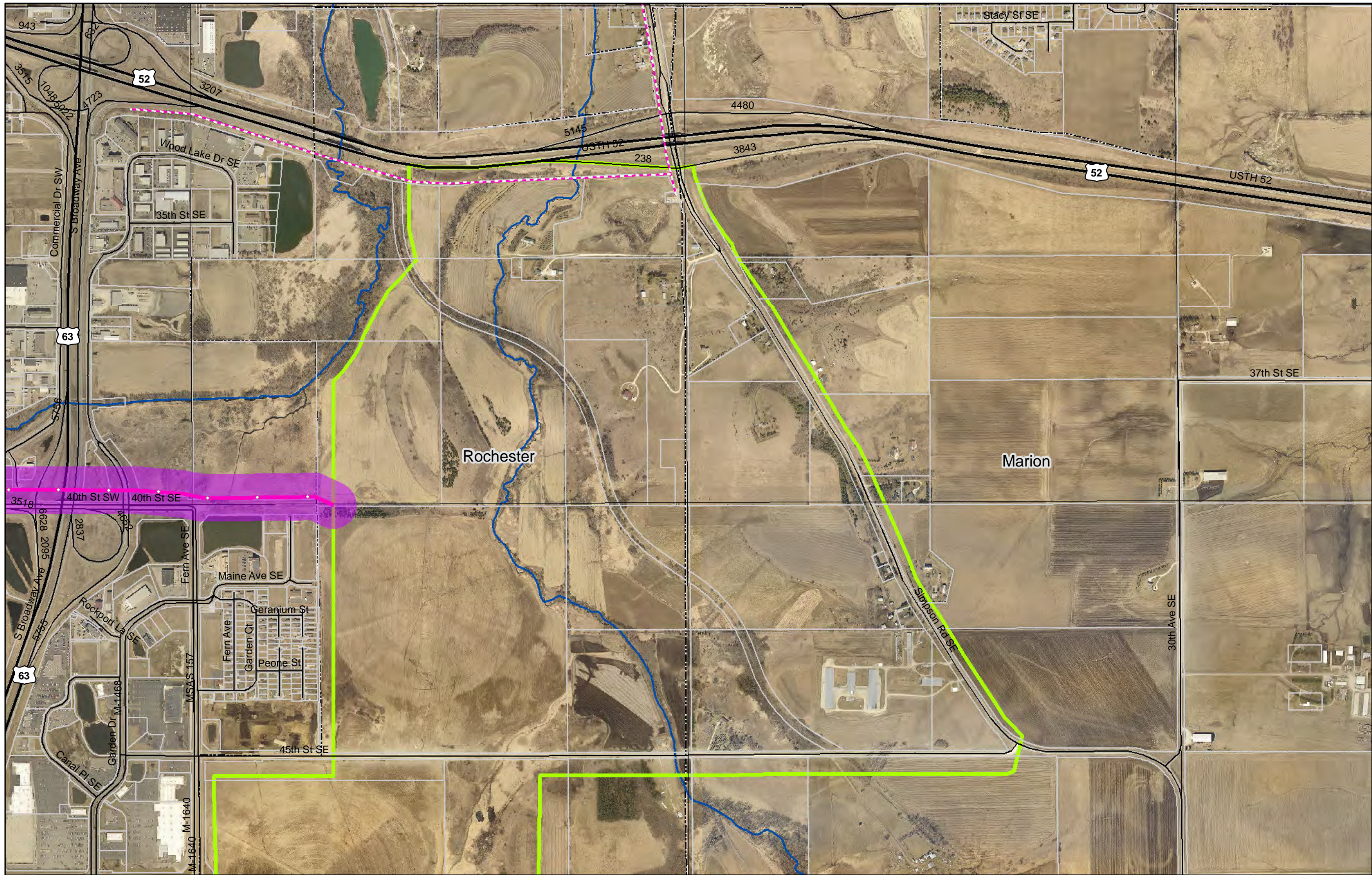




- Anticipated Alignment
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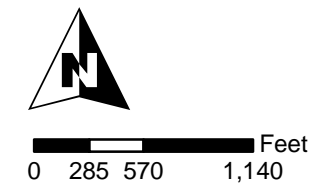


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-  Anticipated Alignment
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