

STATE OF MINNESOTA
COUNTY OF WASHINGTON

DISTRICT COURT
TENTH JUDICIAL DISTRICT

In the Matter of the Proposed Mississippi
Landing Development,

FRIENDS OF GREY CLOUD,

Relator and Plaintiff,

v.

CITY OF COTTAGE GROVE,

Respondent and Defendants, and

RACHEL DEVELOPMENT, INC. d/b/a
Rachel Contracting or Rachel Development,
LLC,

Defendant.

Judge _____

Court File No. _____

**PETITION AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF PURSUANT TO MERA AND
MEPA**

Friends of Grey Cloud brings this action on behalf of the public interest and the people of the State of Minnesota pursuant to the Minnesota Environmental Rights Act (“MERA”), Minn. Stat. §§ 116B.01 *et seq.*, the Minnesota Environmental Policy Act (“MEPA”), Minn. Stat. § 116D.01 *et seq.*, and Rule 65 of the Minnesota Rules of Civil Procedure to challenge the planned development of land known as the Mississippi Landing Project in Cottage Grove, Minnesota. Plaintiff asks this Court to immediately enjoin the current permit holder, Defendant RACHEL DEVELOPMENT, INC. d/b/a Rachel Contracting or Rachel Development, LLC (“Rachel Contracting”), from commencing activity, including any and all site preparation, soil disturbance and tree removal or vegetation clearing on the Mississippi Landing Project, unless and until Defendants have complied with MEPA and MERA. Plaintiff further requests that this Court enjoin Defendant City of Cottage Grove (“City”) from issuing any further permits for the Project, to declare the Preliminary Plat and Planned Unit Development as-issued inadequate to

protect the air, water, land, and other natural resources from pollution, impairment, or destruction, and to order the City to institute administrative proceedings to properly consider the environmental impact of the Mississippi Landing Project, as required by MEPA and MERA.

Accordingly, Plaintiff alleges as follows:

INTRODUCTION

1. The Mississippi Landing Project intends to develop a site that warrants special protection due to its unique location and physical features, including riparian habitat and wetlands, and historic and cultural values, and its proximity to Grey Cloud Dunes Scientific and Natural Area (“SNA”).

2. The Mississippi dunes and wetlands are a defining feature of Minnesota’s Mississippi River corridor and the City of Cottage Grove, due to their unique landforms, ecological communities, native plants, wildlife habitat, aesthetic value, historic and cultural values, and hydrological functions.

3. Historic development and recent subdivision developments have encroached upon the Mississippi River’s dunes and wetlands, permanently altering their unique character. Without preservation, the few remaining remnants of this unique habitat will become increasingly isolated, undermining the preservation of biodiversity and threatening to permanently alter the landscape such that future generations cannot enjoy them.

4. Although segments of the proposed site for the development of the Mississippi Landing Project were previously modified for use as a golf course, the landscape surrounding these areas has remained undeveloped and serves as an important wildlife corridor. The site provides important habitat for numerous wildlife species, pollinators, and nesting birds. The site also contains historical structures and is likely to contain archaeological artifacts from habitation by native peoples prior to settlement.

5. The proposed Mississippi Landing Project intends to subdivide and develop this site with 377 homes, which will destroy the natural character of the existing landscape, eliminate

thousands of trees and native plants, eliminate habitat for protected and sensitive species, impact migratory birds, expose an impaired water body to additional pollution, eliminate historic structures, build over a site of potential archaeological significance, and expose the Grey Cloud Dunes SNA to increased human activity, population pressure, increased habitat fragmentation, and pollution.

6. The proposed site and natural resources therein are under immediate threat of irreversible harm by the developer, Rachel Contracting, which plans to commence tree removal and vegetation clearing on March 20, 2024, in order to complete this before nesting bird and pollinator restrictions are enforced April 1st. This will destroy important habitat for many sensitive species. In addition, due to the effects of climate change, many birds and pollinators are already present and likely to be harmed unless these tree removal and land clearing are immediately enjoined.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter under sections 116.03 and 116B.10 of the Minnesota Environmental Rights Act. Minn. Stat. §§ 116B.03, subds. 1 and 4; 116B.07; 116B.10, subd. 1. This case raises questions under the laws of the State of Minnesota. Therefore, this Court has jurisdiction over each of Plaintiff's claims.

8. This Court also has jurisdiction under section § 116D.04, subd. 13, of the Minnesota Environmental Policy Act (MEPA), which provides for judicial enforcement by the district court of the county where a violation takes place. This court has jurisdiction because plaintiff and relator alleges violations of MEPA by a municipality located in Washington County and affecting property and natural resources located in Washington County.

9. This Court is authorized to grant injunctive relief pursuant to Rule 65 of the Minnesota Rules of Civil Procedure and section 116B.10 of the Minnesota Statutes, declaratory relief pursuant to sections 116B.07, 116B.10, and 555.01 of the Minnesota Statutes, remittitur under section 116B.10 of the Minnesota Statutes, and other equitable relief pursuant to sections

116B.07 and 116B.10 of the Minnesota Statutes. See Minn. Stat. §§ 116B.07, 116B.10, subd. 3, 555.01; Minn. R. Civ. P. 65.

10. Pursuant to sections 116B.03, 116B.10, and 542.09 of the Minnesota Statutes, venue is proper because one of the Defendants, the City of Cottage Grove, has its principal office in Washington County and is the entity that issued the permit that is the subject of this action. See Minn. Stat §§ 116B.03, subd. 4, 116B.10, subd. 5, 542.09.

PARTIES

11. Relator and Plaintiff FRIENDS OF GREY CLOUD is a non-profit organization in the State of Minnesota that advocates for the preservation of the Grey Cloud Dunes SNA and the Mississippi River corridor in Minnesota. Plaintiff and its members use, enjoy, and benefit from the natural resources within this area of Washington County that the City has approved for development. In particular, Friends of Grey Cloud’s members include individuals who reside near the proposed Mississippi Landing development site and who regularly visit this site and the adjacent Grey Cloud Dunes SNA for recreation and aesthetic enjoyment of the river corridor and observation of its native plants, birds, and wildlife. Plaintiff is a “person” under Chapter 116B of the Minnesota Statutes. Minn. Stat. § 116B.02, subd. 2.

12. Respondent and Defendant CITY OF COTTAGE GROVE (“The City”) is a municipality, which is considered a “person” under Chapter 116B of the Minnesota Statutes. Minn. Stat. § 116B.02, subd. 2.

13. Defendant RACHEL DEVELOPMENT, INC. d/b/a Rachel Contracting or Rachel Development, LLC (“Rachel Contracting”) is a for-profit company that performs heavy construction and specializes in earthwork, demolition, utilities, and other specialty contracting for public and private markets. Defendant Rachel Contracting is a “person” under Chapter 116B of the Minnesota Statutes, Minn. Stat. § 116B.02, subd. 2, with a registered address at 4180 Napier Court, N.E., St. Michael, Minnesota 55376.

STATEMENT OF FACTS

I. Background

A. Procedural History: The Mississippi Landing Project

14. The Mississippi Landing Project (“The Project”) is a proposed development by Rachel Contracting for 377 single-family residential lots to be constructed on the approximately 165-acre site of the former Mississippi Landing Golf Course, which closed in 2017. For the past seven years, the site has been left largely untouched, providing a buffer zone and habitat corridor between the City’s developed areas and the Mississippi River bluffs and riparian corridor abutting Grey Cloud Dunes SNA and Lower Grey Cloud Island.

15. The Project Site is located in the southernmost portion of the City of Cottage Grove and Washington County. It is bounded by Grey Cloud Trail on the west, 103rd Street on the north, the northern channel of the Mississippi River on the south, and the Chicago, Burlington & Quincy railroad on the east. Grey Cloud Trail is lined with single-family residences, but the land is vacant and undeveloped to the north and east. The Project’s southern boundary is formed by the north bluff of the modern, northern channel of the Mississippi River (“Project Site”).

16. Prior to the current Project proposed by Rachel Contracting, another developer, Pulte Homes, had submitted a development proposal to the City for a Mississippi Landing residential development consisting of 499 housing units, including 369 single family homes and a 130-unit senior residence (“The Pulte proposal”).

17. The Pulte proposal was submitted just after the City updated its Master Plan in December 2021, which prioritized public access to the Mississippi River and preservation of open space as priorities for any proposed redevelopment of the site.

18. The Pulte proposal advanced through several stages of review, including preparation of an Environmental Assessment Worksheet (“EAW”) that was completed in February 2022. On February 2, 2022, the City adopted Resolution 2022-015 approving the EAW and finding no need for an Environmental Impact Statement (“EIS”).

19. Although several citizens filed a complaint to challenge Resolution 2022-015, alleging that the City's failure to require an EIS violated the Minnesota Environmental Protection Act ("MEPA"), the complaint was dismissed without a hearing on the merits due to improper service.

20. The Pulte proposal was approved by the Planning Commission on February 28, 2022, and then by the City Council on March 16, 2022, but Pulte Homes did not move forward with the project and discontinued their agreement with the property owner.

21. During this period, in conjunction with its approval of the Pulte proposal, the City also initiated a Comprehensive Plan amendment to facilitate residential zoning of the site, which had previously been designated as a Transitional Planning Area to be evaluated for future development. The Comprehensive Plan amendment was approved by the Metropolitan Council on August 24, 2022.

22. The City obtained funding through Washington County's Land and Water Legacy Program to purchase a 19.9-acre section of the river frontage along the south edge of the Project site to preserve as open space for public access. This purchase was completed on June 30, 2023.

23. In September 2023, Rachel Contracting presented a modified development proposal for the Mississippi Landing Project to the City Council. Plaintiff's members who attended this meeting were led to believe that the presentation was solely informational. There was no public disclosure that the City had agreed to enter into a tentative development agreement with Rachel.

24. On September 6, 2023, the City quietly and without public disclosure or notice entered into a Preliminary Development Agreement with Rachel Contracting that specified certain cost-sharing terms, agreed to eliminate tree removal restrictions in exchange for state acquisition of certain lots for preservation, and an agreed price for the City to obtain certain lots for a public park.

25. On December 21, 2023, Rachel Contracting submitted a formal application to the City for a Preliminary Plat and Planned Unit Development (PUD) for the Mississippi Landing

Project. This application was deemed accepted by the City on December 27, 2023, which launched a 60-day review period.

26. The public was first notified of the Project in January 2024 when it was scheduled for review by the City Planning Commission.

27. On January 22, 2024, the Project was approved by the City Planning Commission and recommended for City Council approval.

28. On February 21, 2024, the City Council adopted Resolution 2024-029 approving the Preliminary Plat and Planned Unit Development for Mississippi Landing Project.

29. On March 6, 2024, the City Council approved Resolution 2024-039, finding that no EAW or EIS would be required for the Project because it was deemed sufficiently similar to the Pulte proposal to waive any further review.

30. The City's pre-development agreement was released to the public on March 15, 2024, at which time it was characterized as part of the preliminary Plat approval.

B. Environmental Setting

31. The Project Site is located within the Mississippi River corridor along the north bluff of the Mississippi River. The site has gently rolling terrain characteristic of river dunes and dry prairie bluff landforms, and includes significant remnants of prairie and woodland vegetation, and wetlands.

32. The Project Site is located within the St. Paul-Baldwin Plains and Moraines subsection of the Minnesota Department of Natural Resources ("DNR") Ecological Classification System. The dominant landform is a large glacial moraine and areas of outwash plain. Topography is rolling to hummocky on the moraine (steep, short complex slopes) and level to rolling on the outwash. Prior to settlement, oak and aspen savanna with areas of tallgrass prairie and maple-basswood forest were the primary plant communities. Tallgrass prairie was concentrated on level to gently rolling portions of the landscape, while Bur oak savanna developed on rolling moraine ridges and in some ravines.

33. The Department of Natural Resources has found that 149 Species of Greatest Conservation Need (SGCN) are known or predicted to occur within the St. Paul Baldwin Plains and Moraines, the second most of all subsections in Minnesota. These SGCN include 74 species that are federal or state endangered, threatened, or of special concern. Featured species include bald eagles, peregrine falcons, red-shouldered hawks, Blanding's turtles, trumpeter swans, hooded warblers, and bobolinks. Habitat loss is the primary threat to these SGCN. *See* DNR, St. Baldwin Plains and Moraines Subsection Overview.

34. The Mississippi Grey Cloud Dunes landscape today grandly illustrates the story of the Mississippi River's past. Two terraces roughly 50 and 110 feet above the present-day water surface are the handiwork of Glacial River Warren, which drained Glacial Lake Agassiz between 12,000 and 10,000 ago. The former Mississippi Dunes property, and the Grey Cloud Dunes SNA on its eastern border, showcase a variety of native plant communities. Uplands host dry prairie, oak woodland, and savanna, while lowlands along the river contain a floodplain forest of elm, silver maple, cottonwood, and box elder. A small pond, backwater slough, and a half-mile of shoreline along the river add to the diversity of the site.

35. Even as a golf course, the site provided a habitat corridor for wildlife movement between the undeveloped areas surrounding the Site, including Grey Cloud Dunes SNA, and the Mississippi River corridor. Undeveloped portions of the site also have mitigating effects on habitat fragmentation, allowing remnants of native prairies and forests to persist and supplement the relatively small area of habitat protected by the SNA. These remnants can be critically important for endangered pollinators and other sensitive species that require a larger range than is currently protected to secure their survival.

36. The Project Site provides a critical buffer zone between existing development and Grey Cloud Dunes SNA, which is one of the state's most important ecological preserves. SNAs protect natural features of exceptional scientific or educational value. Minn. Stat. § 86A.05, subd. 5. SNAs were established to preserve the state's ecological and geological diversity with particular emphasis on sustaining native plant communities and rare features. They are

established by the DNR Commissioner's designation orders. State law and policies provide a very high level of protection for Scientific and Natural Areas. The Minnesota Biological Survey has identified Grey Cloud Dunes SNA as an “outstanding” site of biodiversity significance, which indicates that it contains among the best occurrences of the state’s rarest species, outstanding examples of the rarest native plant communities, and/or the largest, most intact functional landscapes present in the state.

37. The Minnesota Biological Survey has also identified two sections within the Project Site as “moderate” sites of biodiversity significance due to the presence of rare Native Plant Communities. A 2022 rare plant survey by Midwest Natural Resources identified the presence of Dry Barrens Prairie (Southern) (UPs13a), which is considered critically imperiled (S1) within Minnesota, and Sugar Maple - Basswood - (Bitternut Hickory) Forest (MHs39a), which is considered imperiled (S2) in Minnesota within the project site.

38. The Project Site is also designated as an Important Bird Area (“IBA”) and is part of the Mississippi River Twin Cities IBA. Important Bird Areas (“IBAs”) provide essential habitat for one or more breeding, wintering, and/or migrating bird species. *See* Audubon Minnesota, “Minnesota Important Bird Areas” (Map).¹ The Mississippi River Twin Cities IBA is part of the Mississippi Flyway, a migratory corridor for 40% of America’s waterfowl and shorebirds. At least six Minnesota threatened and special concern species have been documented within this IBA, including breeding pairs of Bald Eagles, Black-crowned Night-herons, Great Egrets, and Peregrine Falcons. This IBA supports 229 species of birds, with as many as 207 species observed at Lower Grey Cloud Island, which is located in the river section adjacent to the Project Site. National Audubon Society, Mississippi River Twin Cities IBA Report (March 15, 2024).

39. The Project Site is located within the Mississippi River Corridor Critical Area (“MRCCA”), which was created to protect the area’s natural, cultural, and scenic resources

¹ *See* Audubon Minnesota Important Bird Areas, <https://mn.audubon.org/conservation/minnesota-important-bird-areas>.

through model ordinances intended to protect existing bluffs, islands, floodplains, and wetlands and to be enforced by local jurisdictions. Pursuant to the City's MRCCA ordinance, areas adjacent to the river should be managed to maintain the character of the river corridor, and to protect and enhance habitat, parks and open space, public river corridor views, and scenic, natural, and historic areas, while minimizing erosion and water pollution. Providing public access to and public views of the river, and restoring natural vegetation in riparian areas and tree canopy are also key priorities for areas that are more separated from the river.

40. The Project Site contains 3931 trees of various species and sizes, of which 2536, or 65%, are slated to be removed to clear the site for grading and construction. *See* Plan Sheets Nos. 95, 104-110. These trees provide important habitat for migratory birds, bats, other mammals, and endangered pollinators.

41. The Project Site also contains multiple wetland features that will be disturbed and divided by Project construction, some of which will be partially filled and surrounded by new homes and roads, significantly degrading their current habitat value for nesting and migrating birds and other area wildlife. *See* Plan Sheets Nos. 80-81.

42. The Project will increase the Project Site's impervious areas by 34.68 acres, eliminating natural soils and vegetation, and permanently altering the site's hydrology and drainage patterns. Bolton & Menk, Mississippi Landing Review, p. 17. Wastewater infrastructure may also modify the Site's natural drainage patterns.

43. The site contains geologic features and sandy soils that are subject to erosion and exhibit a potential for sinkhole formation. Contaminated soils and groundwater are also documented to impact the Project Site, raising concerns that construction and landscaping could release additional pollution into the river through contaminated runoff and percolation.

44. The Project site is located along a section of the Mississippi river that is designated as an impaired water under section 303d of the Clean Water Act. This area of the river also has high chloride levels, which may be exacerbated by the additional road de-icing in and around the Project Site to address increased traffic on roads near the River. Soil

destabilization and increased pollution and runoff from the site may cause pollution to further impair this stretch of the river.

II. Natural Resources at Risk from Project

A. Biological Resources

45. The Project Site contains diverse native habitat types and plant communities that may provide habitat for sensitive species. The Site's adjacency to an SNA, wetland features, mature trees, prairie fragments, and its inclusion in the Mississippi River Twin Cities Important Bird Area and the HPZ for Rusty Patched Bumble Bees underscores the site's potential importance to biological resources.

46. The construction of 377 single-family residences and supporting infrastructure on a site that is currently minimally developed will significantly modify the character of the landscape by eliminating vegetation and disturbing soil and vegetation that may provide food sources and important habitat for a variety of species, including sensitive and protected species. This will also increase habitat fragmentation and substantially decrease the size of any remaining native plant communities and wildlife habitat in and around the Project Site.

47. Several state-listed threatened and endangered mussels and fish have been documented in the Mississippi River in the vicinity of the proposed project. These species are particularly vulnerable to deterioration in water quality, especially increased siltation. DNR Natural Heritage Review (Jan. 16, 2024). The U.S. Fish and Wildlife Service's Information for Planning and Consultation (IPaC) online system also indicates that the endangered Higgins Eye Pearly mussel (*Lampsilis higginsii*) may be adversely impacted by the Project.

48. Special status birds, including the loggerhead shrike (*Lanius ludovicianus*) and Henslow's sparrow (*Centronyx henslowii*), both state-listed endangered birds, and Bell's vireo (*Vireo bellii*) and lark sparrow (*Chondestes grammacus*), both state-listed bird species of special concern, have been documented in the vicinity of the proposed project. These bird species nest in a variety of areas including shrubs, trees, and the ground. DNR Natural Heritage Review (Jan.

16, 2024).

49. Rare native plants, including Louisiana broomrape (*Orobanche ludoviciana*) and seaside three-awn (*Aristida tuberculosa*), both state-listed threatened plant species, and purple sandgrass (*Triplasis purpurea* var. *purpurea*) and Hill's thistle (*Cirsium pumilum* var. *hilli*), both state-listed plant species of special concern, have been documented in the vicinity of the proposed project. These species are found primarily in prairie habitats with sandy soils and dunes. DNR Natural Heritage Review (Jan. 16, 2024).

50. North American racer (*Coluber constrictor*), a state-listed species of special concern, has been documented in the vicinity of the proposed project and may be encountered on site. These snakes prefer grassy areas with sandy and gravel soils. DNR Natural Heritage Review (Jan. 16, 2024).

51. The Leonard's skipper (*Hesperia leonardus leonardus*) and regal fritillary (*Argynnis idalia*), both state-listed butterfly species of special concern, have been documented within the vicinity of the project. These species populations have declined historically due to the widespread conversion of native prairie for agriculture and other uses. Less than 1% of Minnesota's native prairie remains and this mostly consists of widely scattered small fragments surrounded by agriculture and development. To protect these prairie obligate butterfly species, avoiding disturbance to native prairie is strongly recommended. DNR Natural Heritage Review (Jan. 16, 2024).

52. Rare and endangered bat species may also occur within the Project Site. The Natural Heritage Information System (NHIS) tracks bat roost trees and hibernacula plus some acoustic data, but this information is not exhaustive. Even if there are no bat records listed nearby, all seven of Minnesota's bats, including the federally endangered northern long-eared bat (*Myotis septentrionalis*), can be found throughout Minnesota. During the active season (approximately April-November) bats roost underneath bark, in cavities, or in crevices of both live and dead trees. Tree removal can negatively impact bats by destroying roosting habitat.

53. The Project Site contains endangered species habitat. Because the site is within a

designated High Potential Zone (“HPZ”) for the Rusty Patched Bumble Bee, any development is subject to the requirements of the federal Endangered Species Act, 16 U.S.C. §§ 1531-1544.

54. The Project Site is located within a High Potential Zone (“HPZ”) for occurrences of the Rusty Patched Bumble Bee (*Bombus affinis*), which was listed as a federal Endangered Species in 2017. This species has been documented within the adjacent Grey Cloud Dunes Scientific and Natural Area (SNA) and within feet of the property boundary for the proposed development project. (Smith Decl., ¶ 11) (citing BumbleBeeWatch.org, accessed March 2024). Rusty Patched Bumble Bee is also listed as a critically endangered species under the International Union for Conservation of Nature (“IUCN”) Red List of Threatened Species. “HPZs provide a reasonable basis for describing where the species is likely to be present” and serve as a guide for agencies in determining whether to consult with USFWS prior to an agency actions. *See* USFWS, High Potential Zone Model for Rusty Patched Bumble Bee (October 4, 2022).²

55. The Project developer and City have disregarded evidence that Rusty Patched Bumble Bees utilize the Project Site, relying on a habitat survey conducted in January when the site was under three inches of snow as evidence that the requisite plant species to support Rusty Patch Bumble Bees are not present. In fact, that this survey is misleading and inaccurate, as documented by the Xerxes Society for Invertebrate Conservation in its public comment letter on the Project. Xerxes Society (Feb. 20, 2024). It is also incorrect to infer that Rusty Patched Bumble Bees would not be harmed by tree and brush removal during their dormant season, between December and April. Rusty Patched Bumble Bees dwell in underground nests, such as abandoned rodent holes, which could be destroyed by construction of the project. *See* USFWS, High Potential Zone Model for Rusty Patched Bumble Bee (October 4, 2022); Xerxes Society (Feb. 20, 2024). Emerging bees that survive this disruption could also die before they can locate other suitable habitat to establish new seasonal colonies.

² *See* U.S. Fish & Wildlife Service, “Rusty Patch Bumble Bee,” <https://www.fws.gov/species/rusty-patched-bumble-bee-bombus-affinis>.

56. In addition, a Blanding's turtle overwintering site occurs occur within 2.5 miles from the proposed development. Blanding's turtles may travel many miles, over land or in water throughout the course of a year to meet their overwintering, summer foraging and breeding, and nesting needs. The proposed project easily falls within the dispersal ability of this species and represents good quality sandy habitat frequently used by this species for foraging and nesting in this region of Minnesota. Blanding's turtles are currently listed as threatened under state law, and are currently evaluated for federal listing under the Endangered Species Act of 1973, as amended. (Smith Decl., ¶ 7.)

57. Blanchard's cricket frogs (*Acris blanchardi*), Minnesota's only state endangered amphibian, have also been documented within 1.75 miles of the proposed project area (personal observation, unpublished National Park Service data). In this area of Minnesota, this species frequently inhabits Mississippi River shorelines and river backwaters, as well as artificial (i.e., constructed stormwater ponds) and natural wetlands in the vicinity (within approximately ½ mile) of the Mississippi River. This species breeds, overwinters, and forages along rivers and adjacent wetlands. Individual cricket frogs can move several miles through suitable habitat within a single year. Suitable habitat for this species exists within the project footprint, documented occurrences of the species occur both upstream and downstream of the site. (Smith Decl., ¶ 8.)

58. The development of the Project Site will also restrict the SNA managers' ability to utilize prescribed fire as a management technique, which is vital to the maintenance of a dry prairie-oak barren plant community. There are hundreds of documented cases where natural areas/nature preserves have died a slow death as a result of pesticide drift, erosion, encroachment by neighboring landowners, domestic pet predation on native birds (especially ground-nesting grassland birds, the majority of which are considered to be imperiled) and small mammals. The Mississippi Dunes master plan from the city shows planned trails leading directly to the SNA from the dense housing development. The SNA intentionally does not have any maintained trails as a level of protection for this exceptional site, nor does it allow dogs, in order to protect fragile

plant communities and birds.

59. In sum, the construction of 377 single-family homes on the Project Site will significantly increase human presence and activity on the site, which may impeded and deter the use of the area by birds and other wildlife. Increased presence of family pets may also impact use of the area by wildlife. In addition, landscaping by homeowners, including introduction of lawns and non-native species, including pets and potentially invasive species, will further adversely impact native plant communities and wildlife habitat.

60. Construction of the Project will displace previously undeveloped riparian areas and wetlands, woodlands, native prairie, and river bluff remnants, significantly modifying the character of the landscape. The Proposed Project will require extensive grading and vegetation removal to prepare the proposed building sites and roadways. This will damage and eliminate native plants and trees, disrupt local and itinerant wildlife, and destroy important nesting and foraging habitat for sensitive native species, birds, and pollinators.

B. Additional Resource Impacts

61. The Project will eliminate a riparian buffer zone abutting the Mississippi river. This includes wetlands and riparian vegetation that absorbs flood waters and protects both the river and the surrounding community. The Project will increasing the watershed's already high percentage of impervious cover and by eliminating trees and reducing forest cover, making it more difficult to restore the river corridor to a higher-quality condition.

62. Project construction will destabilize soils, which may increase erosion and release increase runoff of sediments into the Mississippi River.

63. Construction of the Project will substantially increase the area's impervious surface coverage and significantly change the drainage and groundwater features of the Project Site, and may cause increased water pollution from soil disturbance, runoff, increased trash, and pesticide drift.

64. The Project will increase the number of people and roads on the site, which could

also increase the range of pollutants entering runoff, including increased chloride pollution from road salt, further impairing water quality. Other potential pollutants include include residue from lawn fertilizers, insecticides, household chemical spills, leaking vehicle fluids, pet waste, and trash.

65. Adding an additional 377 homes will increase traffic and noise, which may further deter wildlife from using the area. Increased vehicle traffic may also impact wildlife through air pollution and risk of collisions.

66. Increased traffic from the creating of a subdivision remote from City services will also increase vehicle emissions and greenhouse gasses (GHG) that contribute to global warming. Neither the City nor the project developers have made any effort to analyze or mitigate this Project impact, which is contrary to state and national efforts to reduce GHG emissions. A Traffic Study conducted for Pulte Homes completely ignores this issue.

67. Project construction noise and machinery exhaust may impact wildlife and deter animals from using the Project Site. These impacts may also adversely affect the neighboring community.

68. Air pollution from increased vehicle traffic air pollution may adversely impact the health of nearby residents, wildlife, and visitors to the adjacent SNA.

69. The Project and its construction will also impact views and aesthetic enjoyment of the area, including views from the River and Lower Grey Cloud Island, and views and enjoyment of the Grey Cloud Dunes SNA.

C. Historical and Cultural Values of Site

70. The Project Site also contains historical structures and the potential for archaeological resources of significance.

71. The William Cowan/Okey House located at 10301 Grey Cloud Trail has been identified as a priority site in the City's Historic Preservation Strategy Report. The City's report indicated the structure embodies the distinguishing characteristics of architectural type or style,

or elements of design, detail, materials, or craftsmanship. The house was built circa 1850s and is of Greek Revival architecture. A Finding of Significance was completed by the Cottage Grove Advisory Committee of Historical Preservation in 1990 and submitted to Minnesota State Historic Preservation Office. The developer is proposing to remove this structure to construct a new intersection and access route into the Project Site.

72. The project area has an extensive history of human use, including Indigenous settlement.

73. Grey Cloud Island, which is located directly across a short channel from the Project Site, contains rare pre-contact archaeological resources, including Washington County's largest known concentration of burial mounds and the site of the only documented Indigenous village in Washington County. It is reasonable to believe that the Mississippi Dunes project area may also contain archaeological resources given its proximity to these documented sites.

74. The Project Site has not been surveyed for archeological resources and a recent Phase one survey was limited to a small area of the site believed to be relatively undisturbed.

75. Research conducted as part of an archaeological survey identified 25 documents sites of historical/architectural significance within one mile of the Project Site, and four known sites of documented Native American prehistoric artifacts within one mile of the Project, including a major townsite and burial mounds that have yet to be fully evaluated. (Phase I Archaeological Survey, p. 12-13.)

76. Any disturbance of land on which Native American burial grounds exist requires the permission of the Minnesota Indian Affairs Council. Minn. Stat. § 307.08, subd. 3a. It is unclear if this consultation has taken place or that permission has been granted.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Minnesota Environmental Rights Act, Minn. Stat. §§ 116B.03, 116B.10, against all Defendants for Air and Water Pollution)

77. Plaintiff hereby realleges and incorporates each of the above paragraphs as if fully

set forth herein.

78. MERA authorizes any person to bring a civil action for declaratory or equitable relief in the name of the State of Minnesota against any person for the protection of natural resources located within the State from pollution, impairment, or destruction. Minn. Stat. § 116B.03, subd. 1.

79. Plaintiff Friends of Grey Cloud is a “person” under MERA. Minn. Stat. § 116B.02, subd. 2.

80. Defendants City and Rachel Contracting are “person[s]” under MERA. Minn. Stat. § 116B.02, subd. 2.

81. “Natural resources” are defined under MERA to include, “but not to be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.” Minn. Stat. § 116B.02, subd. 4.

82. Water and air are defined as natural resources under MERA. Minn. Stat. § 116B.02, subd. 4.

83. “Pollution, impairment, or destruction” is defined under MERA as, inter alia, “any conduct which materially adversely affects or is likely to materially adversely affect the environment.” Minn. Stat. § 116B.02, subd. 5.

84. The Minnesota Supreme Court has identified five non-exclusive factors used as a guideline to determine whether conduct will materially adversely affect or is likely to materially adversely affect the environment, noting that each factor does not have to be met in order to find a materially adverse effect: (1) The quality and severity of any adverse effects of the proposed action on the natural resources affected; (2) whether the natural resources affected are rare, unique, endangered, or have historical significance; (3) whether the proposed action will have long-term adverse effects on natural resources, including whether the affected resources are easily replaceable; (4) whether the proposed action will have significant consequential effects on other natural resources; (5) whether the affected natural resources are significantly increasing or

decreasing in number, considering the direct and consequential impact of the proposed action.
State by Schaller v. Cty. of Blue Earth, 563 N.W.2d 260, 267 (Minn. 1997).

85. The Project will or is likely to materially adversely the water quality by increasing risk of erosion and toxic runoff associated with increased human activity, vehicle fluids, de-icer, and soil destabilization.

86. Removal of trees and other vegetation will also substantially increase the Site's impervious surface increasing run off, increased pollutant loads from construction and residential activities, lawn fertilizers, lawn insecticides runoff, and infiltration to groundwater.

87. The removal of hundreds of trees will also remove a significant part of the buffer that has operated to curb excess stormwater flow and erosion into the river.

88. The removal of hundreds of trees to facilitate the Project will also, or is likely to, materially adversely affect the air quality due to the removal of hundreds of trees that provide important carbon reduction measures by sequestering and storing significant amounts of carbon per year, in addition to producing significant amounts of oxygen and removing pollution.

89. Therefore, any activity taken on the Project is likely to pollute, impair, and destroy natural resources because it will materially adversely affect the downgradient water bodies and air quality at and surrounding the Project Site.

90. Plaintiff is entitled to judgment imposing conditions necessary to ensure that the Project will not have a material adverse effect on the environment, including, but not limited to, the performance of a slope stability analysis using methodology appropriate to the complexity of the proposed development and Project Site and a comprehensive analysis of the water in the Spring. Minn. Stat. §§ 116B.07, 116B.10; Minn. R. Civ. P. 65.

SECOND CAUSE OF ACTION

(Minnesota Environmental Rights Act, Minn. Stat. §§ 116B.03, 116B.10, against the Watershed District for Animal and Botanical Destruction)

91. Plaintiff hereby realleges and incorporates each of the above paragraphs as if fully set forth herein.

92. Animals and botanical resources are defined as natural resources under MERA. Minn. Stat. § 116B.02, subd. 4.

93. Though “animal” and “botanical” are not defined by MERA, “[i]n the absence of a statutory definition, we generally turn to the plain, ordinary meaning of a statutory phrase.” *State v. Leathers*, 799 N.W.2d 606, 609 (Minn. 2011). When determining the plain and ordinary meaning of undefined words or phrases in a statute, courts should look to the dictionary definitions of those words and apply them in the context of the statute. *See, e.g., A.A.A. v. Minn. Dept. of Human Servs.*, 832 N.W.2d 816, 820-21 (Minn. 2013). An “animal” is defined as “any living creature (besides plants) other than a human being.” *See Animal*, Black’s Law Dictionary (10th ed. 2014). “Botanical” is defined as “of or relating to plants or botany.” *See Botanical*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/botanical> (last visited June 7, 2023). Therefore, the plain and ordinary meaning of “animal” includes species of bees and birds since they are living creatures that are neither human beings nor plant species, and the plain and ordinary meaning of “botanical” includes any plant species.

94. Birds and the Rusty Patched Bumble Bee are “animal[s]” under MERA, and the sensitive plant communities and species identified herein are “botanical” resources under MERA.

95. The Rusty Patched Bumble Bee is listed as an endangered species under the federal Endangered Species Act, 16 U.S.C. §§ 1531-1544. It is also listed as a critically endangered species under the IUCN’s Red List of Threatened Species. Portions of the Project Site are listed as a “high priority zone” for Rusty Patch Bumble Bee habitat by the U.S. Fish and Wildlife Service.

96. The Project Site is an “Important Bird Area,” as it provides critical habitat for vulnerable migrant land birds and waterfowl as well as other sensitive bird species. Grassland birds have declined over 40 percent, which is more than any other habitat group in North America.

97. Defendants’ actions on the Project are likely to pollute, impair, and destroy

natural resources because they will destroy the habitat for animal and botanical species, including species that endangered, threatened, and/or of special concern.

98. Plaintiff is entitled to judgment imposing conditions necessary to ensure that the Project will not have a material adverse effect on the animal and botanical resources at and surrounding the Project Site. Minn. Stat. §§ 116B.07, 116B.10; Minn. R. Civ. P. 65.

THIRD CAUSE OF ACTION

(Minnesota Environmental Rights Act, Minn. Stat. §§ 116B.03, 116B.10, against all Defendants for Destruction of Historical Resources)

99. Plaintiff hereby realleges and incorporates each of the above paragraphs as if fully set forth herein.

100. Historical resources are defined as natural resources under MERA. Minn. Stat. § 116B.02, subd. 4.

101. Though “historical” is not defined by MERA, “[i]n the absence of a statutory definition, we generally turn to the plain, ordinary meaning of a statutory phrase.” *State v. Leathers*, 799 N.W.2d 606, 609 (Minn. 2011). When determining the plain and ordinary meaning of undefined words or phrases in a statute, courts should look to the dictionary definitions of those words and apply them in the context of the statute. *See, e.g., A.A.A. v. Minn. Dept. of Human Servs.*, 832 N.W.2d 816, 820-21 (Minn. 2013). “Historical” is defined as “of, relating to, or having the character of history,” and “history” is defined as, inter alia, “events of the past” and “a chronological record of significant events (such as those affecting a nation or institution) often including an explanation of their causes.” *See Historical*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/historical> (last visited June 7, 2023); *History*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/history> (last visited June 7, 2023). Therefore, the plain and ordinary meaning of “historical” includes artifacts and burial remains since they relate to the past and mark significant events of the past that provide information on American Indian history.

102. The Project Site is located in the vicinity of numerous important historical and

cultural significance to the local community.

103. The locally significant historic Cowan House will be removed as a result of the proposed project, eliminating a unique cultural resource documenting the City's history.

104. The Project Site is located in or near an area of important archaeological significance. Archeological artifacts located within one mile of the Project Site indicate the likely presence of additional Native American artifacts and/or burial grounds at the Project Site, such that any disturbance of the land on which those burial grounds exist requires the approval of the Minnesota Indian Affairs Council. Minn. Stat. § 307.08, subd. 3a.

105. The Project Site has not been adequately surveyed for archeological resources and a recent Phase one survey was limited to a small area of the site believed to be relatively undisturbed.

106. Defendants' actions on the Project are likely to pollute, impair, and destroy historical resources because they will damage any remaining artifacts and disturb burial grounds without the consent of the Minnesota Indian Affairs Council, in contravention of Minnesota law. Minn. Stat. § 307.08, subd. 3a.

107. Plaintiff is entitled to judgment imposing conditions necessary to ensure that the Project will not have a material adverse effect on the historical resources at the Project Site. Minn. Stat. §§ 116B.07, 116B.10; Minn. R. Civ. P. 65.

FOURTH CAUSE OF ACTION

(Declaratory and Injunctive Relief, Minn. Stat. §§ 116.07, subd. 4a, 116B.10, 555.01, against all Defendants)

108. Plaintiff hereby realleges and incorporates each of the above paragraphs as if fully set forth herein.

109. Minnesota's Declaratory Judgments Act gives district courts the power "to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minn. Stat. § 555.01. The statute "is remedial, intended to settle and to afford relief from uncertainty with respect to rights, status, and other legal relations." *McCaughtry v. City of*

Red Wing, 808 N.W.2d 331, 337 (Minn. 2011) (quotation omitted). District courts have jurisdiction over a declaratory judgment proceeding only if there is a justiciable controversy. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 617 (Minn. 2007). For a claim to be justiciable, the claim must “(1) involve[] definite and concrete assertions of right that emanate from a legal source, (2) involve[] a genuine conflict in tangible interests between parties with adverse interests, and (3) [be] capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.” *Id.* at 617-18.

110. MERA confers upon this Court the authority to “grant declaratory relief, temporary and permanent equitable relief,” or to “impose such conditions upon a party as are necessary or appropriate to protect the air, water, land or other natural resources located within the state from pollution, impairment, or destruction.” Minn. Stat. § 116B.07.

111. Plaintiffs are entitled to declaratory judgment under sections 555.01 and 116B.07 of the Minnesota Statutes that any activity to develop the Project Site will or is likely to cause pollution, impairment, and destruction.

112. Plaintiffs are entitled to injunctive relief to: enjoin Defendant Rachel Contracting from commencing any development of the Project Site, including tree removal and vegetation clearing or grading; require Defendant Rachel Contracting, or authorize a third-party expert, to complete adequate surveys for endangered Rusty Patch Bumble Bees and to consult with and seek an Incidental Take permit from the U.S. Fish and Wildlife Service; and to require Defendants to collaborate with the Minnesota Indian Affairs Council pursuant to Minn. Stat. § 307.08, subds. 7a and 9, and to receive approval prior to beginning any development of the Project Site. Minn. Stat. §§ 116B.07, 116B.10; Minn. R. Civ. P. 65.

FIFTH CAUSE OF ACTION

(Minnesota Environmental Policy Act, Minn. Stat. § 116D.04, against the City for Failure to Require an EIS to Analyze the Project’s Significant Environmental Impacts)

113. Plaintiff hereby realleges and incorporates each of the above paragraphs as if fully set forth herein.

114. MEPA provides that “[t]his section may be enforced by an injunction, action to compel performance, or other appropriate action in the district court of the county where the violation takes place.” Minn. Stat. § 116D.04, subd. 13. Thus, any finding by the Court of a MEPA violation meets the statutory prerequisite for injunctive relief, including procedural violations.

115. MEPA further provides for two types of environmental review of proposed actions—an EAW and an EIS. Minn. Stat. § 116D.04, subds. 1a(c), 2a(a).

116. Minnesota Administrative Rules provide that “[a]n EIS must be prepared for projects that meet or exceed the threshold of any subparts found in (Minn. Stat. § 4410.4400).” Under Minn. Rules Part 4410.0200, Subp. 11 & 11a, cumulative impacts are defined as “the effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or for which a basis of expectation has been laid, regardless of what person undertakes the other projects or what jurisdictions have authority over the projects.”

117. As alleged herein, the Project will have significant impacts on biological resources, air and water pollution, historic and cultural sites. This includes significant impacts on state and federally protected species.

118. An EIS should be required for this Project, because the City failed to properly consider the potential for significant environmental effects as well as the potential for significant cumulative impacts.

119. Notably, the Project’s plan to establish a new wastewater lift station and sewer infrastructure connecting to south Cottage Grove indicates an increased likelihood of more future development in the area. This is also evident in the City’s updated Comprehensive Plan and Master Plans. The local Washington County Watershed District also anticipates the complete development of nearby and surrounding areas in the coming decades, including development of Grey Cloud Island. The likelihood that the Project infrastructure will affect future development

that will cause additional cumulative impacts to the natural resources in and around the Project Site has not been adequately evaluated.

120. The potential for significant impacts due to increased habitat fragmentation, loss of habitat and wildlife travel corridors, and other impacts caused by increased human presence and activities will adversely impact natural resources and may jeopardize and degrade the ecologically integrity current Grey Cloud SNA.

121. The City has also failed to consider alternatives to intensive residential development of the Project Site.

122. Plaintiff and Relator is entitled to declaratory and injunctive relief to: Declare invalid the City's Resolution 2024-039 and require the City to prepare a full EIS to ensure that the impacts of the Project are fully disclosed and properly mitigated to prevent irreversible harm to natural resources.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue an ORDER:

1. Declaring that Defendant City of Cottage Grove's issuance of Resolution 2024-029 for the Mississippi Landing Project constitutes conduct that is likely to materially adversely affect natural resources pursuant to section 116B.03, subdivision 1, of the Minnesota Statutes.
2. Declaring that any action taken pursuant to Resolution 2024-029 on the Mississippi Landing Project constitutes conduct that is likely to materially adversely affect natural resources pursuant to section 116B.03, subdivision 1, of the Minnesota Statutes.
3. Enjoining Defendant Rachel Contracting from taking any action pursuant to Resolution 2024-029 on the Mississippi Landing Project until the conclusion of this litigation;
4. Compelling Defendant City of Cottage Grove to rescind its approval of the Mississippi Landing Project under section 116B.07 of the Minnesota statutes and Rule 65 of the

Minnesota Rules of Civil Procedure; or, in the alternative, remitting the parties to the City of Cottage Grove pursuant to 116B.10, subdivision 3, to require that Defendant City of Cottage Grove institute appropriate administrative proceedings to consider and make findings and an order consistent with the evidence produced by Plaintiff.

5. Declaring that Resolution 2024-039 violates MEPA and is therefore null and void.
6. Compelling Defendant City of Cottage Grove to require a complete EIS to be prepared prior to any further development activities at the site, or any additional permits and approvals related to the Mississippi Landing Project.
7. Awarding Plaintiffs their costs and reasonable attorneys' fees incurred in bringing this action;
8. Granting such other relief as the Court finds just and fitting.

Date: March 19, 2024

Respectfully submitted,

/s/ Miles J. Ringsred

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VERIFICATION

I, Lisa Mueller, am a member of the leadership committee for Friends of Grey Cloud. I have read the foregoing Verified Complaint and know its contents. The facts alleged in the above complaint are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of Minnesota that the foregoing is true and correct.

Dated: March 19, 2024

Friends of Grey Cloud

/s Lisa Mueller
Lisa Mueller

ACKNOWLEDGEMENT

By presenting this form to the court, I certify that to the best of my knowledge, information, and belief, the following statements are true. I understand that if a statement is not true, the court can order a penalty against me (such as to pay money to the other party, pay court costs, and/or other penalties).

1. The information I included in this form is based on facts and supported by existing law.
2. I am not presenting this form for any improper purpose. I am not using this form to:
 1. Harass anyone;
 2. Cause unnecessary delay in the case; or
 3. Needlessly increase the cost of litigation.
3. No judicial officer has said I am a frivolous litigant.
4. There is no court order saying I cannot serve or file this form.
5. This form does not contain any “restricted identifiers” or confidential information as defined in Rule 11 of the General Rules of Practice or the Rules of Public Access to Records of the Judicial Branch.

If I need to file “restricted identifiers,” confidential information, or a confidential document, will use Form 11.1 and/or Form 11.2, as required by Rule 11.

Dated: March 19, 2024

By: /s Miles Ringsred