

**BEFORE THE MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**
100 Washington Square, Suite 1700
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FOR THE PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Application of Minnesota
Pipe Line Company for a Routing Permit for a
Crude Oil Pipeline

MPUC Docket No. PL-5/PPL-05-2003
OAH Docket No. 15-2500-17136-2

**GARDENS OF EAGAN PROPOSAL FOR
MODIFICATION OF AGRICULTURAL
IMPACT MITIGATION PLAN AND
ENVIRONMENTAL ASSESSMENT**

SUMMARY

Gardens of Eagan is a federally registered, certified organic farm in Dakota County, approximately 35 miles from either downtown Minneapolis or St. Paul. This 100-acre organic farm received organic certification in 1974 and supplies brand name vegetables and fruit to local groceries and cooperatives. The crude oil pipeline route proposed by the Minnesota Pipeline Company (MPL) cuts across the center of the Gardens of Eagan organic farm. If routed across the Gardens of Eagan, the MPL pipeline would cause irreparable harm, to the farm's ecosystem and crops, to local markets for its specialty organic produce and, potentially, to its organic certification and sustainability.

In its application, MPL is required to analyze the potential human and environmental impacts of pipeline right-of-way preparation, construction, operation and maintenance, including but not limited to the impacts for which criteria are specified in Minnesota Rules parts 4415.0040 and 4415.0100. Environmental assessment may affect pipeline routes, alignments within routes and permit conditions, all of which are subject to the jurisdiction of the Minnesota Public Utilities Commission.

In this matter, MPL described impacts of the pipeline in its Pipeline Routing Permit Application, Environmental Assessment Supplement to the Pipeline Routing Permit Application and an Agricultural Impact Mitigation Plan (Appendix C to the Environmental Assessment Supplement) intended to describe and mitigate impacts on agricultural lands. MPL characterized the impacts of the pipeline on agriculture as short-term and readily mitigable:

In cultivated areas, construction will result in a short-term loss of crops and may interfere with planting of harvesting, depending on the timing of construction. Impacts on agricultural areas will be minimized by the segregation and replacement of topsoil, rock removal and deep tillage of construction areas to alleviate compaction. . . Following construction and restoration, agricultural activities will be allowed to resume along the permanent right-of-way. (MPL Environmental Assessment Supplement (EAS) to the Pipeline Routing Permit Application, p. 35)

This description of environmental and human impacts of a crude oil pipeline is wholly inadequate when applied to an organic farm providing specialty produce to local organic markets. The strategies designed to mitigate impacts contained in MPL's Environmental Assessment Supplement (EAS) and Agricultural Impact Mitigation Plan (AIMP) are similarly deficient.

1. The EAS and AIMP fail to provide standards according to which MPL will avoid specific agricultural resources that would be irreparably harmed by the routing of a crude oil pipeline.
2. The EAS and AIMP make no distinction between conventional agriculture and organic agriculture, where integrated ecosystems of soil, plant life and fauna are vulnerable to irreparable harm and where legal certification may be jeopardized by construction and maintenance of a crude oil pipeline.
3. The EAS and AIMP make no distinction between large-scale commodity production and small-scale specialty farming, where the demands for construction and permanent right-of-way may permanently eliminate crops and undermine local food markets.

On behalf of the Gardens of Eagan, it is requested that Minnesota Pipe Line Company be required to revise their Environmental Assessment Supplement and Agricultural Impact Mitigation Plan to describe organic and specialty farming resources and to specify that, for pipeline routes and alignment selection:

- A. MPL's MinnCan crude oil pipeline route will avoid organic farms unless there are no feasible alternatives.
- B. MPL's MinnCan crude oil pipeline route will avoid small-scale specialty farms which are vital to local food supplies, unless there are no feasible alternatives.

In addition to selection of pipeline routes and alignments, the Public Utilities Commission has the authority, as previously exercised by the Environmental Quality Board, to incorporate conditions described by the Agricultural Impact Mitigation Plan as conditions of a pipeline routing permit. Gardens of Eagan requests that the AIMP be modified and incorporated in permit conditions to protect organic and specialty farms:

- C. If there is a route segment where there is no feasible alternative to crossing an organic farm, AIMP conditions should require detailed mitigation calculated to enable that farm to preserve organic integrity and organic certification, including specifications to prevent soil contamination or erosion during construction or during maintenance, to rebuild soils to organic production standards, to provide on-site organic expertise and provide for purchase of the farm in the event of an oil spill or decertification related to the pipeline.

- D. If there is a route segment where there is no feasible alternative to crossing a small-scale specialty farm which serves local markets, AIMP conditions should require compensation based on impairment or destruction of specific fields, crops and markets in addition to any general land value compensation.

After receiving testimony as to the impacts of the Minnesota Pipe Line Company on the Gardens of Eagan organic farm, Dakota County unanimously voted on May 23, 2006 to request that mitigation plans be developed for the pipeline by the Minnesota Department of Agriculture and considered by the Public Utilities Commission “which recognize the unique characteristics associated with organic farming.” See Attachment A, Dakota County Resolution No. 06-228.

DISCUSSION

1. MPL’s Environmental Assessment and Agricultural Mitigation Plan Must Provide for Avoidance of Impacts as Well as Efforts to Repair Harm

An Environmental Assessment that does not provide for avoidance of agricultural areas that are at risk of irreparable harm fails to describe the “mitigation” required under Minnesota law.

Protection of agricultural land from the adverse effects of pipeline routing and construction is required under Minnesota law, Minn. Stat., 116I.06. Rules have been adopted by the State recognizing that “pipeline location and restoration of the affected area after construction is important to citizens and their welfare and that the presence or location of a pipeline may have a significant impact on humans and the environment.” Minn. R. 4415.0015, Subp.3. The purpose of the applicable Rules is “to aid in the selection of a pipeline route and to aid in the understanding of its impacts and how those impacts may be reduced or mitigated.” *Ibid.*

In the State’s determination whether to issue a pipeline routing permit, criteria for decision include “the extent to which human or environmental effects are subject to mitigation” either by regulatory controls or by application of permit conditions for pipeline right-of-way preparation, construction, cleanup, and restoration. Minn. R. 4415.0110, Subp. 3 H.

The principle of “mitigation” of the impacts of pipeline routing and construction is derived from environmental review statutes and rules. Minnesota rules define “mitigation” to include a range of activities including avoiding and minimizing impacts as well as repairing or restoring affected areas.

Minn. R. 4410.0200, Subp. 51. **Mitigation.** "Mitigation" means:

- A. avoiding impacts altogether by not undertaking a certain project or parts of a project;
- B. minimizing impacts by limiting the degree of magnitude of a project;
- C. rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
- D. reducing or eliminating impacts over time by preservation and maintenance operations during the life of the project;
- E. compensating for impacts by replacing or providing substitute resources or environments; or
- F. reducing or avoiding impacts by implementation of pollution prevention measures.

The impacts of pipeline construction on certain physical conditions may be rectifiable by the type of repair and restoration measures contained in MPL's proposed Agricultural Impact Mitigation Plan. However, where organic farming has developed a fragile and integrated ecosystem, agricultural mitigation may require avoiding impacts altogether by routing the pipeline so it does not cause irreparable harm to the organic farm's ecology and certification.

Similarly, where a crude oil pipeline would eliminate fields and crops that are vital to a local food supply, substitute resources may not be available. Agricultural mitigation may require avoidance of the farm to protect crop production and local food markets.

2. Organic Ecosystems and Certification are Vulnerable to Irreparable Harm from MPL's Pipeline

Gardens of Eagan is one of the longest certified organic operations in the United States. In 2004, the Gardens of Eagan received the MOSES Organic Farmer of the Year national award and the Dakota County Farmer of the Year award. Gardens of Eagan farmers have provided written testimony explaining how an organic farm such as theirs can be irreparably harmed as result of pipeline construction and maintenance.¹

An organic farming system is vulnerable to irreparable harm from crude oil pipeline construction and maintenance. In an organic system, fertile soil creates healthy plant growth, which is the main defense against crop disease, insect infestation and weed pressure. This type of fertility development cannot be replaced by short-term application of highly soluble chemical fertility as it can on a conventional farm.

Compaction due to pipeline construction destroys organic soil fertility, which MPL's proposed mitigation by tillage does not restore. When topsoil is removed for construction activities, its physical replacement by construction equipment does not restore topsoil health, which can only be restored over years of rebuilding. Watering of organic vegetable and fruit crops in times of drought is critical to preserving soil productivity. Even a few days interruption in underground irrigation if construction damages irrigation systems can cause the loss of an entire crop.

Healthy soil structure takes many years to build through planting and incorporation of cover crops, crop rotation, sheet composting, application of finished compost and other crop management to develop soil tilth, soil nutrients, worms and biological life. Gardens of Eagan, in its current Eureka township location, has had 15 years of soil building programs. It is unknown how long it would take to restore the soil to current productive levels after pipeline construction or even whether such restoration would be possible.

An organic farm does not use chemical fungicides or pesticides. Protection of crops from pests and disease depends both on fertile soil and upon a delicate balance of beneficial insects, nearby habitat for birds and mammals, soil biological life, crop rotations, cover cropping, compost application and water drainage.

¹ Discussion of organic farming practices and impacts is based on affidavit of Atina Diffley.

Destruction of vegetation on non-crop producing waterways and hedgerows affects beneficial insects and other aspects of farm ecology, which will impact pest and disease control on the entire farm, placing all crops at risk.

Organic farms are vulnerable to disease, such as the tobacco mosaic virus, which is one of the most common causes of plant disease in Minnesota. Tobacco products, smoking materials and human vectors for tobacco products are potential carriers of the disease, which is known to infect members of nine plant families, and at least 125 individual species, including tobacco, tomato, pepper and melons. The only organic treatment available for tobacco mosaic is prevention.

Pipeline construction and maintenance practices that may not be significant for conventional commodity agriculture may contaminate organic soils and threaten organic certification. Even strategies identified by MPL in its Agricultural Impact Mitigation Plan create a risk of organic decertification.

Equipment brought on site for construction and maintenance of the crude oil pipeline, refueling or servicing of vehicles and other activities of workers as well as leaks and spills may bring fertilizers, pesticides, herbicides, tobacco, heavy metal, toxic petrochemicals and other contaminants onto an organic farm. The pipeline itself is treated with chemicals that may not be permitted on a certified organic farm. National Organic Program standards preclude prohibited substances for a period of 3 years immediately preceding harvest of an organic crop. NOP, 7 C.F.R. §§205.105, 205.202(b). Contamination with plant nutrients, pathogenic organisms, heavy metals or residues of prohibited substances is specifically prohibited. NOP §205.203(b).

Pumping of water through trenches on adjacent properties as well as on the organic farm creates a risk of contamination through materials suspended in runoff. Construction and erosion along the pipeline adjoining an organic farm brings non-organic soils onto the farm. In the case of the Gardens of Eagan, proposed construction in the intermittent stream in the center of the farm would both destroy beneficial wildlife habitat and interfere with diversion of chemically contaminated runoff from neighboring conventional fields. NOP standards preclude contact with prohibited substance carried through runoff and require both runoff diversions and defined buffer zones to prevent the unintended application of a prohibited substance from adjoining land. NOP, 7 C.F.R. §205.202(c).

The AIMP proposal to prevent “excessive” erosion would also conflict with more stringent NOP standards for erosion prevention. NOP, 7 C.F.R. §§205.203(a), 205.205. In addition, NOP standards would require an additional buffer zone for organic crops in addition to the 100-foot to 125-foot construction easement and the 50-foot permanent easement. NOP, 7 C.F.R. §205.202(c).

It is acknowledged that crude oil and its chemical constituents are highly toxic chemicals. (MPL Pipeline Routing Permit Application, June 5, 2006, Attachment 4415.0120 Material Safety Data Sheet). The proposed MPL pipeline has an initial design capacity of 165,000 barrels of petroleum crude oil per day, with an ultimate capacity of 350,000 barrels per day with additional pumping stations. (MPL Application for a

Certificate of Need (“CON”, p. 27) The pipeline will operate at a maximum pressure of 1,462 pounds per square inch. (MPL CON, p. 30).

Certifiers have expressed uncertainty about the effects of pipeline construction on certification of organic lands. The customary three-year time frame to prepare land for certification was intended where the prior land use was agricultural. Land used for pipeline construction would be like an industrial usage and restoration of organic certification would present new and troubling issues.

Although MPL reports that its operator, Koch Pipeline (KPL), has significantly reduced the incidence of reportable leaks and spills, MPL’s data shows 176 reportable spills since 2000, reflecting approximately 10,134 barrels or 425,628 gallons of petroleum releases from KPL pipelines. (MPL CON, p. 17)

A leak or spill on an organic farm would almost certainly result in revocation of organic certification. See NOP, 7 C.F.R. §205. 662. An organic farmer, such as the Gardens of Eagan cannot simply purchase other acreage and move the farm. Not only is land in close proximity to Twin Cities markets rare and prohibitive, not all soil or topography is suitable for organic farming. It takes a minimum of 3 years to bring land up to certification standards, and it can take a decade or more to bring soils up to organic quality levels, in addition to costs for irrigation systems, pack sheds and other infrastructure.

Due to the rareness of organic farms and the level of purity required for organic production, routing of the crude oil pipeline proposed by MPL across an organic farm such as the Gardens of Eagan would create a substantial and unacceptable risk of irreparable environmental harm.

3. Small Specialty Farms and Local Markets are Vulnerable to Irreparable Harm from MPL’s Pipeline

Although MPL claims that “long-term effects on crop yields are not expected because MPL will use construction and restoration techniques designed to protect or restore soil productivity,” (MPL, EAS, p. 30), this claim fails to take into account the irreparable losses that would be experienced by an organic farm with small fields designed for specialty crops.

MPL’s proposed 100-to-125 foot construction easement, along with buffering to protect organic certification, would directly affect 6 acres on the Gardens of Eagan organic farm. The proposed pipeline route across the Gardens of Eagan could eliminate seven fields, which gross from \$4,000 to \$70,000 per acre, depending on the crop in rotation. On a small-scale specialty farm, the losses from these direct effects could affect overall economic sustainability.

Even if certification issues could be addressed, impacts of reduced soil quality in the construction zone are likely to be long-term if not permanent. In a conventional corn or soybean operation headed for the commodity market, reduced soil quality causing reduced yields does not render the remaining crop non-saleable. It lowers the weight and nutritive quality of the crop but it is still marketable.

For a specialty farm dependent on brand name and image, lower quality produce cannot be sold without irreparably damaging the farm's reputation. Gardens of Eagan is a brand name organic producer. The farm's brand image and consumer success are based on strict quality standards.

Sub-standard soil quality produces substandard products, such as smaller ears of corn, corn not filled out to the tip, lower levels of nutrition, more cosmetic insect damage, more disease, and lower nutrient levels. Produce grown on post-pipeline soil will not be up to shippable standards, causing a 100 percent loss of yield until the soil is brought back to pre-pipeline health.

In addition to the impacts on the farm itself, reduced production from a specialized farm serving the local community may have significant economic impacts on local food markets.² The Gardens of Eagan organic specialty farm provides an example of this effect. Gardens of Eagan is located approximately 35 miles from downtown Minneapolis or St. Paul. In 2005 Gardens of Eagan shipped approximately 650,000 pounds of produce to Twin Cities grocers, including Customers Lunds, Byerly's and Whole Foods and a network of cooperative grocers, such as the Wedge Coop and Mississippi Market.

Particularly for the cooperative grocers, loss of Gardens of Eagan produce may cause substantial hardship. In coops like the Wedge, Gardens of Eagan produce is identifiable to customers and is an important part of the attraction of customers to the store as well as an important part of sales revenues. Should Gardens of Eagan produce be lost, this locally-grown high quality organic product may not be replaceable. Local organic grocers as well as the farmers directly involved may suffer financial losses as a result of MPL's proposed pipeline.

RECOMMENDATIONS

MPL's Supplemental Environmental Assessment and Agricultural Impact Mitigation Plan should be revised to include a section defining the types of unique and vulnerable agricultural resources that the pipeline route will avoid to mitigate impacts on humans and the environment pursuant to Minn. R. 4410.0200, Subp. 51.A. This section of the AIMP should state:

A. MPL's MinnCan crude oil pipeline route will avoid organic farms unless there are no feasible alternatives.

B. MPL's MinnCan crude oil pipeline route will avoid small-scale specialty farms which are vital to local food supplies, unless there are no feasible alternatives.

In the specific case of the Gardens of Eagan organic farm, there are several feasible alternative routes that would avoid impacts to the farm's ecosystems and the local food markets that depend on its organic produce. In other situations, there may be an organic farm along a pipeline route for which there is no feasible alternative. For such a situation, the AIMP should state:

² Discussion of impacts to local food markets is based on affidavits of Atina Diffley and Lindy Bannister

C. If there is a route segment where there is no feasible alternative to crossing an organic farm, AIMP conditions will require detailed mitigation calculated to enable that farm to preserve organic integrity and organic certification, including specifications to prevent soil contamination or loss during construction, prevent contamination during maintenance, prevent erosion, rebuild soils to organic production standards, provide on-site organic expertise and provide for purchase of the entire farm in the event of an oil spill or the loss of organic certification related to the pipeline. If a route segment is located adjacent to an organic farm, precautions will be taken to avoid off-site contamination of the organic farm.

Minnesota Rules require that in pipeline preparation, construction, cleanup and restoration, “precautions to protect livestock and crops must be taken by the permittee” and “all appropriate precautions to protect against pollution of the environment must be taken by the permittee.” Minn. R. 4415.0195, F., G. The Rules also require that, “The permittee shall, to the extent possible, restore the area affected by the pipeline to the natural conditions that existed immediately before construction of the pipeline.” Minn. R. 4415.0195, N. Based on the National Organic Program (NOP) regulations for organic certification and the expertise of organic farmers Atina and Martin Diffley, precautions to avoid damaging organic crops, integrity and certification and efforts to restore organic farm conditions should include at least the following.

1. Prevent Soil Contamination, Loss or Destruction During Pipeline Construction
 - a. Pressure wash all pipeline equipment before entering organic property.
 - i. Washing may not be done on organic land.
 - ii. Wash water must not drain onto organic land.
 - b. Inspect all hydraulic hoses by a heavy-equipment-certified mechanic before entry on property and replace any hoses showing wear.
 - c. Bar any refueling, servicing or maintenance of vehicles on organic land or land which drains onto organic property.
 - d. Mulch materials used on project must be in compliance with NOP, 7 C.F.R. §205.203(c)(3) and 205.203(d).
 - e. When water is pumped from open trenches:
 - i. Water must be tested before pumping and may not be pumped into trenches if it is not in compliance with NOP standard 7 C.F.R. §205.203(c).
 - ii. Water must not be pumped onto or allowed to drain onto adjoining organic fields.
 - iii. Water that comes in contact with adjoining non-organic land must not be permitted to drain onto organic land.
 - f. Drainage from adjoining properties which has been altered by the pipeline construction must be diverted/drained to prevent entry to organic farm.
 - g. Physical barriers must be provided to prevent soil entry from adjacent properties during or after the construction process.
 - h. No herbicide, pesticide or other material prohibited by NOP, 7 C.F.R. §205.105 may be used in project construction.
 - i. Soil integrity must be maintained during construction and restoration. MPL may not allow topsoil on organic lands to erode and may not use topsoil for other purposes, such as creating access ramps at road crossings:
 - i. Soil on the organic farm cannot be removed from the farm.
 - ii. No subsoil or topsoil can be brought in from off the organic farm.

- j. Tobacco products may not be allowed on organic land during construction and no person with tobacco smoke on their clothes or hair may be allowed on the farm.
2. Prevent Soil Contamination or Erosion During Pipeline Maintenance
 - a. Bar any refueling, servicing or maintenance of vehicles on organic land or land which drains onto organic property.
 - b. Physical barriers must be provided to prevent soil entry from adjacent properties after the construction process.
 - c. No herbicide, pesticide or other material prohibited by NOP, 7 C.F.R. §205.105 may be used in project easement maintenance.
 - d. Soil integrity must be maintained during easement maintenance. MPL may not allow topsoil cover on organic lands to erode from its original level and may not use topsoil for other purposes, such as creating access ramps at road crossings:
 - i. Soil on the organic farm cannot be removed from the farm.
 - ii. No subsoil or topsoil can be brought in from off the organic farm.
 - e. In the event of severe erosion where it is necessary to bring in topsoil from off the farm to restore the easement, a minimum 3-year, organic transitional period where cover crops are provided shall be required. NOP, 7 C.F.R. §205.202 (b)
 - f. Tobacco products may not be allowed on organic land during maintenance and no person with tobacco smoke on their clothes or hair may be allowed on the farm.
 3. Rebuild Soils and Ecosystem to Organic Production Standards
 - a. Measure soil compaction/porosity, biological activity, organic matter content, heavy metals, residues of prohibited materials and nutrient levels prior to construction.
 - b. Require soil to be rebuilt until it returns to pre-pipeline levels of porosity, biological activity, organic matter content, and nutrient value and has no more than pre-pipeline levels of heavy metals and prohibited material residues:
 - i. Rebuild through compost application and cover crop growth with organic seed for cover crop in accordance with NOP, 7 C.F.R. §205.204(a)(1).
 - ii. Requires at least 3 years of soil rebuilding with repeated tests for soil quality.
 - iii. Crop yield loss must be paid until soil is returned to pre-pipeline organic soil quality standards.
 - c. Measure and replace beneficial insect and bird populations and habitat:
 - i. Take pre-pipeline counts of beneficial insects by entomologist at appropriate season.
 - ii. Replace and restore any beneficial insect or bird habitat that is impacted by construction.
 - iii. Reintroduce and count beneficial insects until populations are reestablished.
 4. Provide On-Site Organic Expertise
 - a. Require Agricultural inspector and Agricultural Monitor to complete organic certification training.
 - b. Provide training to all construction and maintenance crews on the AIMP provisions for mitigation of impacts to organic farms.
 5. Provide for Purchase of the Farm in the Event of Oil Spill or Loss of Organic Certification as a Result of Pipeline
 - a. Require that any contract establishing an easement for a pipeline across an organic farm contain an option that the farmer may exercise to require MPL to purchase the entire farm in the event of an oil spill or leak affecting organic soils.

- b. Require that any contract establishing an easement for a pipeline across an organic farm contain an option that the farmer may exercise to require MPL to purchase the entire farm in the event that the farm loses organic certification as a result of the construction, maintenance or other activities of MPL in connection with the pipeline on the organic farm or on adjoining properties.

Precautions adjacent to an organic farm should include the following:

1. Prevent Soil Contamination or Erosion Impacting Adjacent Organic Destruction During Pipeline Construction, Operation and Maintenance
 - a. Vehicles may not drive on, materials may not be stored on, soil cannot be placed on and workers may not cross organic lands.
 - b. When washing, pumping or trenching activities are conducted
 - i. Water may not be pumped or allowed to drain onto organic land.
 - ii. Wash water must not drain onto organic land.
 - iii. Specific berms and diversion trenches must be provide to prevent entry of water onto organic land.
 - c. Physical barriers, such as vegetated berms, must be provided to prevent soil entry from adjacent properties during or after the construction process.
 - d. No herbicide, pesticide or other material prohibited by NOP, 7 C.F.R. §205.105 may be used in project construction or maintenance in such a way as to allow airborne contamination of organic lands.
 - e. MPL may not allow erosion from construction to impact adjacent organic lands.

MPL's Agricultural Impact Mitigation Plan contains a brief reference to procedures that should be put in place for the processing of construction-related damages in order to standardize and minimize concerns regarding the recovery of damages. (MPL, AIMP, p. 12) In the case where a route segment crosses a small-scale specialty farm which serves local markets, the AIMP should provide greater specificity as to the nature of losses for which MPL will provide compensation.

D. If there is a route segment where there is no feasible alternative to crossing a small-scale specialty farm which serves local markets, mitigation will require compensation based on impairment or destruction of specific fields, crops and markets in addition to any general land value compensation.

Based on the experience of the Gardens of Eagan organic specialty farm and the evidence provided by cooperative grocers about the dependence of local markets on the produce grown on that farm, availability of compensation for at least the following losses should be specifically delineated in the AIMP:

1. Compensation should be provided for loss of specific crops during construction and maintenance:
 - a. Provide compensation for temporary loss of crops in any specific field that cannot be farmed due to construction activities.
 - b. Provide compensation for permanent loss of crops in any specific field that can no longer be farmed due to pipeline easement and buffering requirements.
 - c. Provide compensation to the farmer for loss of crops due to reduction in quality due to substandard soils.
2. Compensation should also be provided to local food markets dependent on specialty farm production:

- a. Provide compensation for lost profits to the extent that products provided by the farm cannot be replaced or substituted.
- b. Provide compensation for lost customers to the extent that customer base relied on identifiable products provided by the local specialty farm.

CONCLUSION

The Environmental Assessment Supplement and Agricultural Impact Mitigation Plan prepared by the Minnesota Pipe Line Company in this matter are insufficient to identify, avoid or mitigate impacts to a farm like the Gardens of Eagan, which operates under strict organic certification and also produces specialty products for local markets on small fields. The EAS and AIMP should recognize the differing vulnerability of organic and small-scale specialty farms to the environmental and human impacts of a crude oil pipeline. Wherever feasible irreparable impacts to such vulnerable agricultural and ecological resources should be avoided. In the case of the MPL proposal to bisect the Gardens of Eagan organic farm, there are readily available routing alternatives.

In other situations, where it may not be feasible to avoid an organic farm or a small-scale specialty farm, the Agricultural Impact Mitigation Plan must provide construction and maintenance practices and compensation appropriate to the nature of the agricultural resource that would be impacted by a crude oil pipeline. The protections described herein should be required of any project proposed to cross an organic farm producing specialty crops for a local market.

On behalf of the Gardens of Eagan, we would request that the Minnesota Pipe Line Company be required to revise its Environmental Assessment Supplement and its Agricultural Impact Mitigation Plan to include the protections described herein.

Respectfully submitted,

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