

May 10, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620
Fax: 651-539-0310

RECEIVED
16 MAY 13 AM 8:20

ADMINISTRATIVE
HEARINGS

Re: Proposed permanent rules relating to Mississippi River Corridor

Judge Lipman,

The DNR was tasked to develop rules for the river corridor; this process has failed year after year at the legislature because the proposed rules were not palatable to the parties involved. Now through an administrative process the DNR is attempting to enact rules without proper process. This is not legal, proper or intended and is not how the DNR was directed to develop these rules. At a minimum the DNR should be directed to go back to the legislature "the proper body for passing new land use law". The proposed rule has significant changes that have not been vetted in a rule making process and cannot be allowed to become law. The DNR is trying to circumvent the intended process and if allowed this proposed rule will result in regulatory takings on private lands.

These are general comments, and concerns on the proposed rules.

- 1) Within the document is a local control vs. State control issue; the association of Minnesota cities and the association of Minnesota counties have always weighted in very strongly on this issue. The original documents created "guidelines" this was acceptable to most parties. The new document creates minimum standards that "must be applied" and "must adopt, administer and enforce plans and ordinance" by all governing agencies. This single change is so dramatic that the document needs to be rejected and sent to formal rule making at the legislature.
- 2) Cost to local cities, who? will pay for all of the new ordinances and reviews. No state dollars are earmarked for this project and the burden will fall to the local taxpayer. This is why the legislature must be the rule making body. As a tax payer we need to be represented when people are spending our tax dollars.
- 3) The proposed rule creates a major problem for landowners, the rules as proposed become effective before the local cities have time to create ordinance, with no process for project approvals.
- 4) The DNR commissioner has the proposed right to accept or reject all of the local plans, extending the no process for approval in number 3
- 5) There is no process to pay landowners for lands that the plan designates "special" primary conservation, views, or restoration priorities. This action will be a regulatory taking
- 6) The toughest part of the proposed rules is the fact that they references over 4000 pages of other documents. So if the rules don't get the DNR to the end result they want they just change one of the reference documents and it changes the rules. We would very likely never even see the change until it impacted the stakeholders. I think the document rules should state the intentions and references should be for guidelines not hidden laws that no one will be fully aware of.

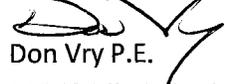
- 7) CA-RN homes are limited by this proposed rule to 35 feet, however in a survey last year in the Champlin and Anoka area it was clear that many homes already exceed this height, it would be more logical to have a process on how to measure, front or rear yards and limit height only in areas where new platting and development is occurring
- 8) Location of structures, the proposed rule contradicts itself, it allows water oriented accessory structures to be placed within 10 feet of the ordinary high water mark and then prohibits structures in the shore impact zone. This contradiction will cause many issues for the landowners.
- 9) Private access paths, on private land are limited in the proposed rule to 8 feet or 4 feet depending on the steepness of the slopes. This is not reasonable the path must be able to provide access to equipment to fix, maintain erosional areas and repair existing riprap and retaining walls, this access must be a minimum width of 10 feet to provide this access in a safe manner.
- 10) The proposed rule restricts local governments from having rules to restrict height of ground cover; this proposed rule would allow bad neighbors to never mow, to impair other values by allowing cluttered, weed infested, tick infested, buckthorn infested, and unsightly yards with no recourse for the neighbors or the cities. Impairing our land values.
- 11) Line 51.18 has a definitional error, in the definitions the term "professional engineer is used" in this line the term professional was left out creating an ambiguity in the intent
- 12) Line 53.23 in the last circulated documents a professional engineer could certify the need for erosion control in the bluff impact zone, this is now up to local government that has no expertise to make that decision.
- 13) Line 54.23 and 54.24 limits the height of retaining walls to 5 feet, and the spacing to 10 feet. These arbitrary numbers create a situation where in a flood the wall will be over topped by the river and will washout and erode. The height and separations should be designed by a professional engineer and should be appropriate for the soils and setback areas.
- 14) Line 55.1 Rip rap must not exceed the height of the regulatory flood protection elevation, this is another area that should be designed by a professional engineer, the soil type determines the need for protection levels and no arbitrary number is a solution for all cases.
- 15) Steep slopes, this is the worst definition in the proposed draft, I surveyed my neighborhood and of twenty some lots all fit into this category and yet have gently sloping yards and reasonable slopes. I doubt very many people understand they fit into this category.

Judge Lipman,

This process and proposed rule has many flaws. I would ask that you issue an administrative order that puts this process on hold and sends it back to the legislature for proper rule making.

Thank you for your efforts on this process. Please feel free to contact me if you have any questions.

Sincerely,



Don Vry P.E.

11848 Mississippi Drive N
Champlin, MN 55316



Anoka County

COUNTY ADMINISTRATION

Respectful, Innovative, Fiscally Responsible

May 18, 2016

Administrative Law Judge Eric L. Lippman
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

9014-33236

RECEIVED
2016 MAY 20 AM 9:18
ADMINISTRATIVE
HEARINGS

Re: Proposed Rules Governing Mississippi River Corridor Critical Area, Minnesota Rules chapters 6106 and 4410; Revisor's ID Number R-04240

Dear Honorable Judge Lippman,

On behalf of the Anoka County Parks and Recreation System we are pleased to submit this letter in support of the proposed rules for the Mississippi River Corridor Critical Area (MRCCA).

Given our County's long history of investment in recreation lands along the Mississippi River, we have had a keen interest in the MRCCA rule-making throughout this process. During the last four decades, our County has been deeply committed to the planning, development, and management of nearly 1,000 acres of open space that it owns and operates along the Mississippi River. Our five regional parks and two regional trails, which stretch from the Minneapolis border to Elk River, accommodate more than one million visitors each year.

Throughout the rule-making process, the Minnesota Department of Natural Resources (DNR) has been very open to taking comments from the general public and other interested stakeholders. We have been pleased with their interest in ensuring that the final rules are workable for both the protection of natural resources, as well as, accommodating to the uses of a working urban river.

Anoka County along with the other Regional Park Implementing Agencies in the Metropolitan Area met several times with staff of the DNR to discuss initial concerns over the early versions of the draft rules. We found the staff to be open to learning about the unique characteristics of the regional park system, along with the many practices and policies already in place to protect and restore the natural resources in the regional parks located on the Mississippi River.

Most of our attention during the draft rule making process was focused on those portions of the rules governing the development of facilities, parking lots, and trails in the shore and bluff impact zones; placement of water access facilities; structure height and setback requirements; and permitting requirements related to vegetation management and land alteration.

We are pleased to note that virtually all of our concerns were addressed by the DNR. Additionally, many of our ideas for language changes were subsequently incorporated into the

final draft rules. The published draft of the proposed rules appears to be very workable to Anoka County in the long-term and day-to-day management of our park resources located on the Mississippi River.

In closing, we would like to acknowledge and thank several of the staff at the Minnesota Department of Natural Resources who led the rule-writing process: Tom Landwehr, Commissioner; Dan Petrik, Jenny Shillcox, Suzanne Rhees, Matt Bauman, Kathy Metzker, Sherry Enzler, and Beth Carlson. We thank you for the opportunity to comment on the proposed rules for the management of the Mississippi River Corridor Critical Area.

Sincerely,



Jim Kordiak, Chair
Anoka County Parks and Community Services Committee



John VonDeLinde
Division Manager, Parks and Community Services

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2016 MAY 23 AM 7:38

ADMINISTRATIVE
HEARINGS

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

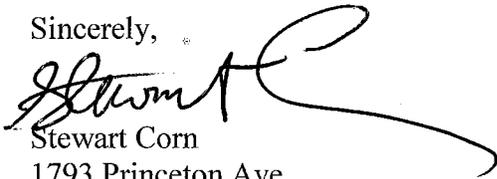
#33236

21 May 2016

Dear Judge Lipman:

I live near the Mississippi River Corridor Critical Area, and use it year round for recreation and bird watching. Buildings at heights greater than currently allowed would dramatically change the wild character of the river corridor, and pose a hazard to migrating birds. I am opposed to rule changes that would allow such changes.

Sincerely,



Stewart Corn
1793 Princeton Ave.
St. Paul MN 55105



RECEIVED
by OAH on 5/23/16 @ 11:54 am

May 23, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, MN 55164-0620

cc: Dan Petrik, Land Use Specialist
Minnesota Department of Natural Resources
500 Lafayette Road, Saint Paul, MN 55155-4025

RE: Mississippi River Corridor Critical Area Comments

Dear Judge Lipman:

The Saint Paul Area Chamber of Commerce (SPACC), the largest local chamber in Minnesota, is a network of businesses and individuals that advocates for building communities that foster economic prosperity and a high quality of life for all. We submitted extensive comments in response to the Minnesota Department of Natural Resources' (DNR) request for comments regarding the "Proposed Permanent Rules Relating to Mississippi River Corridor Critical Area"¹ and appreciate the opportunity to comment on the DNR's Statement of Need and Reasonableness through this forum. We also value the DNR's willingness to consider the interests of stakeholders throughout this rulemaking process.

The Mississippi River continues to be a critical asset to the State of Minnesota, serving recreational, aesthetic, cultural, and historical value. It is also a working river and an important transportation corridor.

In re-authorizing the DNR's administrative rulemaking authority in 2013, the Minnesota Legislature made several important changes to the enabling legislation that must guide the rulemaking process, making it clear that the river corridor is a multi-purpose resource.² The law states that one of the important interests served by the river is redevelopment of commercial and industrial property, and includes commercial, industrial, and residential resources in the list of key features served by the river that must be protected and/or enhanced by any rules promulgated by the DNR.³

¹ See attached SPACC comments dated August 11, 2014.

² Minn. Laws Ch. 137, Art. 2, § 18-21 (2013).

³ Minn. Stat. § 116G.15.

FAILURE TO DEMONSTRATE THAT THE PROPOSED RULES ARE NEEDED AND REASONABLE

The Legislature designed the rulemaking process to ensure that state agencies have met all the requirements that Minnesota law specifies for adopting rules, including a statement as to the need for and reasonableness of the rule.⁴ The DNR has failed to meet this requirement through at least three of the necessary factors for regulatory analysis.

1. The DNR Fails to Show There Are Not Less Intrusive Methods for Achieving the Purpose of the Proposed Rules

One of the nine factors for a regulatory analysis that must be included in the Statement of Need and Reasonableness (SONAR) is a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.⁵

SPACC disagrees with the DNR's assessment that there are not less intrusive methods for achieving the purpose of the proposed rules.

a. Creating Nonconforming Structures is Intrusive

The SONAR states that "A primary goal of the rules is to reduce complexity and be less intrusive for property owners, developers, and local governments wherever possible by focusing on the specific development impacts on those key resources and features identified in Minn. Stat. § 116G.15."⁶ However, creation of nonconforming structures will increase complexity and be more intrusive for property owners, developers, and local governments.

The City of Saint Paul's 2014 analysis shows that more than 1,000 existing buildings in Saint Paul will become legally nonconforming as a result of the proposed rules.^{7,8} Structures that currently conform to all standards that would become legally nonconforming under the proposed rules would be allowed to conduct repairs, replacements, maintenance, and improvement. Those structures would not, however, be allowed to **expand** without obtaining a permit, by ordinance, from the appropriate municipality.⁹

Creating legally nonconforming structures will create an administrative burden for property owners and the City, lower property values and reduce the strength of Saint Paul's tax base, and will prevent some businesses from expanding in Saint Paul. These consequences are highly intrusive for property owners, City finances, and the vibrant business community in Saint Paul.

⁴ Minn. Stat. § 14.131.

⁵ Minn. Stat. § 14.131(3); SONAR p. 11.

⁶ State of Minnesota Department of Natural Resources, "In the Matter of Proposed Rules Relating to the Mississippi River Corridor Critical Area (MRCCA), Statement of Need and Reasonableness (SONAR)," p. 12.

⁷ See attached SPACC comments dated August 11, 2014, p. 3.

⁸ The proposed rules will result in less legal nonconformities than there are currently, but that is of no comfort to property owners of those new nonconformities.

⁹ Minn. Stat. § 462.357 Subd. 1e(b).

In addition, Minnesota law states that the MRCCA must be managed as a multipurpose resource in a way that “conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic functions of the river corridor” and “provides for the continuation, development, and redevelopment of a variety of urban uses, including industrial and commercial uses, and recreational and residential uses, where appropriate, within the Mississippi River corridor.”¹⁰

It is extremely important that the rules reflect the language of the authorizing statute, which clearly states that the river corridor should be managed in a way that provides for the development and redevelopment of a variety of urban uses. Requiring additional administrative burdens to businesses wanting to expand does not conform to the statute.

b. There Are Less Intrusive Alternatives

The goals of the proposed rules can be met without making existing structures legally nonconforming. For example, the SONAR states that the purpose of the bluff setback requirements is to protect natural resource values and public safety, help prevent bluff failure and erosion, and limit visual impact of structures on scenic resources.¹¹ The rules would create a new Bluff Impact Zone (BIZ) to achieve these goals. As of the City’s 2014 analysis, 440 structures would be affected by the proposed Bluff Impact Zone rules (BIZ).¹²

However, the broad definition of “bluff” in the proposed rules includes some low and gentle slopes, and the integrity of those slopes can be protected, and erosion prevented, by requiring that development be done according to best management practices specified by qualified professionals. It is possible to protect slope stability without outright prohibitions on development on or near them.

Rather than strict prohibitions regarding what can be done on a wide variety of landscapes that fit a broad definition, the rules should provide a clear path for a property owner and its local government to study the land and determine, using engineering best practices, what is allowable on that land.

To further make this point, the SONAR notes that “The geology across the MRCCA is variable,” giving examples of different types of geology throughout the Area.¹³ This is another reason that the one-size-fits-all rule is inappropriate.

Under Minnesota law the rules must be managed in a way that provides for the

¹⁰ Minn. Stat. § 116G.15 Subd. 2 (1) and (3).

¹¹ SONAR, p. 49.

¹² See attached SPACC comments dated August 11, 2014, page 3.

¹³ SONAR, p. 22.

development and redevelopment of industrial and commercial uses.¹⁴ The proposed rule will unnecessarily burden existing businesses wanting to contribute more to the region and will act as an intrusive disincentive to investment for businesses in the MRCCA.

2. The DNR Fails to Provide Appropriate Probable Costs Borne By Affected Parties

Another of the nine factors for a regulatory analysis that must be fulfilled in the SONAR is: “The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.”¹⁵

a. Governmental Units

The DNR asserts that governmental units will only incur modest changes in the direct or indirect costs of complying with the proposed rule.

The DNR has a history of grossly underestimating the costs of these proposed rules for local governments. In its January 14, 2014 report to the Legislature, the DNR estimated the long-term costs to local communities in implementing the proposed rules at \$5,000 per community. The DNR indicated that the costs would likely be higher in the future, somewhere between \$7,000 and \$10,000 per community.¹⁶

We appreciate that the DNR then sent a cost survey to all local governments within the MRCCA in October 2014 asking them to estimate the cost to update their MRCCA plan and ordinance. In its results, the DNR stated, “With a few exceptions, total costs per local government were under \$20,000.”¹⁷ Unfortunately, these “few exceptions” are not minor: \$30,700 for the City of Anoka, \$100,000 for Brooklyn Park, \$55,000 for Grey Cloud Island Township, and \$210,000 for Minneapolis.¹⁸

In the DNR’s January 14, 2014 report to the Legislature, it estimated that the total cost for the applicable jurisdictions would be between \$200,000-\$300,000.¹⁹ In fact, the total cost as estimated by the local governments in the DNR’s survey adds up to \$587,590, which does not include estimates from 9 local governments, including Saint Paul.²⁰

Chronic underestimation of costs and failure to include 9 local governments in its

¹⁴ Minn. Stat. § 116G.15 Subd.2 (1) and (3).

¹⁵ Minn. Stat. § 14.131(5); SONAR p. 13.

¹⁶ Minnesota DNR Report to Legislature on Mississippi River Corridor Critical Area Rulemaking dated January 15, 2014, p. 12-13, <http://files.dnr.state.mn.us/input/rules/rulemaking/mrcca/final-report-legis.pdf>

¹⁷ SONAR, p. 14.

¹⁸ SONAR, p. 14-15.

¹⁹ Minnesota DNR Report to Legislature on Mississippi River Corridor Critical Area Rulemaking dated January 15, 2014, p. 12-13, <http://files.dnr.state.mn.us/input/rules/rulemaking/mrcca/final-report-legis.pdf>

²⁰ SONAR, p. 14-15.

analysis, including Saint Paul, is evidence of the DNR's failure to meet this fifth factor necessary to show need and reasonableness of the proposed rules.

b. Businesses and Individuals

The DNR makes no attempt to lay out the probable costs to businesses or individuals, as required in the fifth factor necessary to show the need and reasonableness of the proposed rules. When local governments need to establish new licensing programs, update local plans, ordinances, and maps, and provide additional staff support, those costs will be passed along to property owners in the form of increased taxes, licensing fees, and other development-related costs. However, nothing about these costs are noted in the SONAR, and no attempt to study this issue was made.

The DNR skirts the intention of the legislative requirement to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.”²¹ The SONAR merely states that it will take longer than a year for local governments to revise their plans and ordinances, so the proposed rules will not impact businesses within the MRCCA within a year's time.

This is true, but does not follow the intent of the statute, which is to assist the community in understanding the values and consequences of the proposed rules, including costs to businesses and individuals. Making absolutely zero effort to determine cost of the proposed rules for businesses and individuals is unacceptable. The DNR has failed to meet its obligation in the fifth factor.

In addition, we take exception to one specific statements in the SONAR related to effects on businesses. The SONAR notes that “small businesses already in existence would not be subject to additional restrictions, except in cases where these businesses choose to expand or redevelop.”²² Again, Minnesota law states that development and redevelopment of industrial and commercial uses must be provided for in the MRCCA rules.²³ The statement in the SONAR that small businesses would only be subject to additional restrictions if they choose to expand or redevelop shows a lack of attention for this component of the law.

3. The DNR Fails to Adequately Address Probable Costs or Consequences of Not Adopting the Proposed Rules

The sixth factor that the DNR must fulfill to show need and reasonableness of the rules states: “The probable costs or consequences of not adopting the proposed rule, including

²¹ Minn. Stat. § 14.127, subd. 1.

²² SONAR, p. 20.

²³ Minn. Stat. § 116G.15 Subd. 2 (1) and (3)

those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.”²⁴

In the SONAR, the DNR provides scant evidence of a positive relationship between water quality and natural landscapes and property values, in fact only stating that “there is a positive relationship” between these things. The DNR then concludes that “persons owning or developing property within the MRCCA...will benefit economically from the amenities that the proposed MRCCA rules are intended to preserve.”²⁵

In addition, the DNR states with zero evidence or explanation that “There may also be indirect costs to the public and property owners if the proposed rules are not adopted....”²⁶

It is the DNR’s role to explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken. The leap of logic provided by the DNR gives almost no evidence and no rational connection to the proposed rules.

OTHER CONCERNS

While we recognize that it is not the Administrative Law Judge’s role to determine which policy alternatives present the “best” approach, we would like to use this forum of public comments to state a few more concerns.

Specific Districts

SPACC believes that certain proposed districts in Saint Paul are inconsistent with existing development and potential new commercial, industrial, and residential opportunities.

1. Ford site: The proposed districts do not align with the City of Saint Paul’s vision for redeveloping this critically important urban site. The City is engaging the community in a public process to prepare a plan for the redevelopment of the Ford site. This process will result in a community-based redevelopment plan, which will include a determination of the building heights most appropriate for this site. If the DNR restricts building heights before the community has the opportunity to complete the planning process, proposed district designations may unnecessarily restrict redevelopment of the Ford site. Accordingly, the dimensional standards applicable to the Ford site should be governed by Saint Paul’s underlying zoning code.
2. West Side Flats: The proposed rules call for the West Side Flats, a 45-acre area directly

²⁴ Minn. Stat. § 14.131(6); SONAR, 15.

²⁵ SONAR, p. 15.

²⁶ SONAR, p. 15.

across the river from downtown Saint Paul, to be designated as an Urban Mixed (CA-UM) district. This designation is inconsistent with community's vision for revitalizing the West Side Flats. Instead, the West Side Flats should be designated as an Urban Core (CA-UC) district to better align with the community's vision in the *West Side Flats Master Plan*. We agree with the Saint Paul Planning Commission that another way to address this would be to allow for more height without requiring a conditional use permit (CUP) in the CA-UM district.

Visual Impacts; Variances

1. The rules limit building heights and state that this is to reduce visual impacts and protect views of the river and views from the river. The term "visual impacts" is not defined, and it is unclear how a local government will determine if a CUP is appropriate. This will lead to otherwise avoidable confusion and conflicts for businesses wanting to build or expand.
2. The proposed rules state that when a local government evaluates a request for a variance or CUP and identifies a "potential negative impact," the variance or CUP must require mitigation and that "Mitigation must be directly related to and must bear a rough proportionality to the impact of the project on primary conservation areas, public corridor views, and other resources identified in the local government's plan."²⁷

The proposed rules are overly broad with respect to when mitigation is required, and local governments should have discretion in choosing to require mitigation even where a variance affects the defined natural resource.²⁸

CONCLUSION

The DNR has failed to meet at least three of the nine factors necessary for a complete regulatory analysis. In addition, the DNR has not followed state law in providing for development and redevelopment of industrial and commercial uses in the MRCCA rules.²⁹

Respectfully,



Marie Ellis
Director of Public Affairs and Legal Counsel
Saint Paul Area Chamber of Commerce

²⁷ Minnesota Department of Natural Resources, Proposed Permanent Rules Relating to Mississippi River Corridor Critical Area, dated 02/26/16, § 6106.0080 Subp. 5.

<http://files.dnr.state.mn.us/input/rules/rulemaking/mrcca/proposed-rules.pdf>.

²⁸ To read more on our concerns about this, please see attached SPACC comments dated August 11, 2014, p. 4-5.

²⁹ Minn. Stat. 116G.15 Subd. 2 (1) and (3).

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by OAH on 5/23/16 @ 11:23 am



August 11, 2014

Mr. Daniel Petrik
C/O MRCCA Rulemaking Project
Minnesota Department of Natural Resources
500 Lafayette Road, St. Paul, MN 55155-4032

VIA EMAIL

RE: Mississippi River Corridor Critical Area Comments

Dear Mr. Petrik:

The Saint Paul Area Chamber of Commerce (SPACC) is a dynamic network of businesses and individuals that advocates for building communities that foster economic prosperity and a high quality of life for all. As the largest local chamber in Minnesota, SPACC submits these comments in response to the Minnesota Department of Natural Resources' (DNR) request for comments regarding the proposed rules governing land development in the Mississippi River Corridor Critical Area (MRCCA).¹

OVERVIEW

The Mississippi River is a critical asset to our great State. For more than a century, the river has served a variety of important interests. The river is an internationally famous scenic recreational asset that provides great natural, aesthetic, cultural, and historical value of unparalleled significance. At the same time, it is also a working river and an important transportation corridor that has defined our region's history as a catalyst for economic growth and prosperity. As Mark Twain appropriately said in *Life on the Mississippi*, "It is not a commonplace river, but on the contrary is in all ways a remarkable river."

In re-authorizing the DNR's administrative rulemaking authority in 2013, the Minnesota Legislature made several important changes to the enabling legislation that must guide the rulemaking process.² First, the legislature added redevelopment of commercial and industrial property as one of the important interests served by the river. Second, the legislature modified the considerations for creating new districts, substituting the importance of major river features in existence in 1979 for greater emphasis on the natural character of the river and existing property development with consideration for new commercial, industrial, and residential development. Finally, the legislature added commercial, industrial, and residential resources to the list of key features served by the river that must be protected and/or enhanced by any rules promulgated by the DNR.

¹ The "proposed rules" refer to the working draft rules released by the DNR on June 2, 2014, *available at* <http://files.dnr.state.mn.us/input/rules/rulemaking/mrcca/2014-clean.pdf>.

² Minn. Laws Ch. 137, Art. 2, §§ 18-21 (2013).

To ensure that the river, and its surrounding area, continues to serve such an important role in the region, SPACC encourages the DNR to adopt rules that protect existing property and respect the multi-purpose nature of the river, particularly in Saint Paul, which makes up a large portion of the MRCCA.³ SPACC appreciates the opportunity to submit these comments, as well as the DNR’s willingness to consider the interests of stakeholders throughout the rulemaking process.

GENERAL CONCERNS

Based on a detailed review of the proposed rules, the following items are of concern to SPACC. We encourage the DNR to consider these general concerns while developing the final rules.

I. Insufficient Study into How Proposed Rules Affect Existing Development and Land.

The DNR proposes to increase the amount of regulatory control on existing structures and parcels of land within the MRCCA without a sufficient understanding of how much of an impact the changes will have on existing property.⁴ This is alarming, particularly in light of the fact that the proposed rules appear to overwhelmingly burden existing development. We believe the proposed rules work against public and private efforts designed to stimulate regional job growth, increase capital investment, and grow the local tax base.

To determine the extent to which the proposed rules affect existing structures and parcels of land, the City of Saint Paul conducted a GIS-based analysis of the proposed changes. As reflected in the tables below, the City’s analysis demonstrates that existing property owners are being asked to bear the greatest costs of the proposed rules:⁵

Structures Affected by Proposed Rules	
Existing Structures in Saint Paul	135,231
Structures in Saint Paul and the MRCCA	5,732
Structures affected by Slope Preservation Zone	1,374
Structures affected by Bluff Impact Zone	440
Structures affected by Shoreline Impact Zone	31
Structures affected by 40' Slope Setback	370
Structures affected by 100' Slope Setback	223
Structures affected by Shoreline Setback	61

³ Approximately 7,150 acres of land in Saint Paul (or 21 percent of the City) is within the MRCCA. There are roughly 17,000 parcels of land in the MRCCA. Of these, 3,948 are located in Saint Paul. Accordingly, Saint Paul represents about 23 percent of the total number of parcels of land in the MRCCA.

⁴ On several occasions, DNR staff indicated that a GIS-based analysis of how the rules impact existing structures and parcels of land was not performed prior to the publication of the proposed rules on June 2, 2014.

⁵ The information in the tables was provided by the City of Saint Paul on July 25, 2014. The figures were calculated using preliminary data on geographic features and are therefore an approximation of the impact on existing structures and parcels of land. The data is subject to change.

Parcels of Land Affected by Proposed Rules	
Existing Parcels of Land in Saint Paul	76,128
Parcels in Saint Paul and the MRCCA	3,948
Parcels affected by Slope Preservation Zone	1,829
Parcels affected by Bluff Impact Zone	908
Parcels affected by Shoreline Impact Zone	169
Parcels affected by 40' Slope Setback	576
Parcels affected by 100' Slope Setback	465
Parcels affected by Shoreline Setback	205

The City's analysis further shows that more than 1,000 existing buildings in Saint Paul will become legally nonconforming as a result of the proposed rules.⁶ This is unreasonable and inconsistent with Minn. Stat. § 116G.15.

SPACC is concerned that the proposed rules will negatively affect redevelopment opportunities and future investment in the East Metro. SPACC urges the DNR to conduct a similar GIS-based study to determine how existing development will be affected in each community within the MRCCA. The additional study should include mapping preservation zones, impact zones, and setback areas. Without performing this geographic-based analysis, it cannot be said that the DNR has sufficiently ascertained the (1) probable costs or consequences of adopting the proposed rules, (2) extent to which the proposed rules affect existing structures and parcels of land, or (3) cumulative effect of the proposed rules on each community within the MRCCA.

II. Recognizing Importance of Balancing Interests Served by the Mississippi River, including Existing Commercial, Industrial, and Residential Property.

Over the last 30 years, businesses, citizens, and local units of government (LGUs) have worked together to develop a regulatory framework for the MRCCA that balances the important interests served by the river. The balance achieved by the existing framework provides for the enhancement of the environmental and cultural interests of the MRCCA while ensuring that the river continues to play an important economic role in the development of our region. LGUs, particularly Saint Paul, have carefully planned and managed the MRCCA as an important asset that serves a large number of stakeholders, including existing property interests.

The proposed rules do not sufficiently provide for the continuation and enhancement of existing commercial, industrial, and residential property. If the proposed rules are adopted, a significantly large number of structures and parcels of land will be detrimentally affected by the regulatory changes. The increased regulations will unnecessarily cause affected properties to become legally nonconforming, particularly in Saint Paul. This will harm local communities as property owners refrain from investing in their property, property values go down, and real estate transactions become discouraged.

If new land use and zoning rules are promulgated by the DNR, it is imperative that the rules recognize the multi-purpose nature of the river and the institutional knowledge of LGUs that have effectively managed the MRCCA over the last 30 years. As discussed in greater detail below, the

⁶ This information was provided to the Comprehensive Planning Committee of the City of Saint Paul on August 5, 2014 by city-planning staff.

proposed rules should be revised to provide greater protection of existing commercial, industrial, and residential properties as required by Minn. Stat. § 116G.15.

III. Cost Implications.

According to the DNR’s January 14, 2014 report to the legislature, the long-term costs to local communities in implementing the proposed rules are estimated at \$5,000 per community.⁷ The DNR indicates that the costs will likely be higher in the future, somewhere between \$7,000 and \$10,000 per community. In total, the DNR estimates that it will cost between \$200,000 and \$300,000 for the applicable jurisdictions that will be required to implement the new rules. SPACC believes the cost estimates are grossly underestimated. LGUs will be forced to establish new licensing programs, update local plans, ordinances, and maps, as well as provide additional staff support as needed. These costs will undoubtedly be passed along to property owners in the form of increased taxes, licensing fees, and other development-related costs.

SPECIFIC CONCERNS

Based on a careful review of the proposed rules, SPACC’s specific concerns include but are not limited to the following (ordered sequentially to track the proposed rules):

I. PART 6106.0080 ADMINISTRATIVE PROVISIONS FOR ORDINANCES.

a. Subparts 2 and 4. Variances and Conditional Use Permits.

The proposed rules include a section on variances. This is important because it provides LGUs with flexibility in managing the MRCCA and allows them to retain authority over quasi-judicial decision making. With that being said, SPACC is concerned that the variance provision fails to explicitly state whether LGUs have authority to grant variances and, if so, whether further approval by the DNR is required when a LGU grants a variance. SPACC is of the position that the provision should be revised to read “a local government is permitted to issue variances from the MRCCA rules⁸ consistent with Minnesota statutes chapters 394 and 462.” If a LGU grants a variance, SPACC believes that further approval of that variance by the DNR is unwarranted except as otherwise explained below. LGUs have effectively managed the river corridor and adding another layer of approval will only serve to discourage private investment in the MRCCA.

Moreover, for variances and conditional use permits that affect certain areas or natural resources, the proposed rules require mitigation “proportional to the impact of the project on primary conservation areas.” This raises three additional concerns:

⁷ The DNR’s estimates are based on survey data from 2010. Minnesota Department of Natural Resources, *Report to Legislature on Mississippi River Corridor Critical Area Rulemaking 12-13*, dated January 15, 2014. The report does not provide any information as to the scope of the survey, the questions raised in the survey, and the identities of the communities that actually responded to the survey. SPACC understands that key communities, including the City of Saint Paul, did not participate in the survey. Because not all of the communities responded, SPACC is of the position that the data does not provide an accurate representation of the projected costs.

⁸ If the term “MRCCA rules” is used, the rules should contain a citation section providing for said reference.

- (1) The variance and conditional use permits provisions are overly broad with respect to when mitigation is required. The provisions state that for variances and conditional use permits that affect “primary conservation areas or other identified resources,” mitigation is required. The term primary conservation area is openly defined to include a large number of “key resources and features.” This definition will certainly leave LGUs struggling to interpret what resources and features need to be affected to trigger the mitigation requirement. The use of the phrase “or other identified resources” does not provide any additional clarity but rather adds to the confusion as to the scope of the resources covered. These provisions should be revised to provide more clarity;
- (2) LGUs should have discretion in choosing to require mitigation even where a variance and/or conditional and/or interim use permit affects the defined natural resources. There will undoubtedly be scenarios where mitigation is not warranted. For those situations, LGUs should have the flexibility to avoid the mitigation requirement. If the DNR is concerned that this approach will provide too much flexibility to LGUs, the proposed rules could be revised to include more flexibility while providing greater agency oversight. For example, the variance and conditional use provisions could be revised to state that “if a local government determines that mitigation shall not be required where a variance, conditional use permit, or interim use permit affects [insert defined natural resources triggering the mitigation], the local government must obtain approval from the DNR in not requiring mitigation.” If such a provision is allowed, the proposed rules should also include a provision requiring the DNR to approve or deny the request within 10 business days; and
- (3) Finally, for those situations that warrant mitigation, the proposed rules incorporate a standard that is inconsistent with existing state and federal law. A condition that is tied to the issuance of a variance or permit need only bear rough proportionality to the impact created by the variance or permit. Minn. Stat. § 462.357, subd. 6(2); *see also Dolan v. City of Tigard*, 512 U.S. 374 (1994). The proposed variance rule increases this standard by requiring strict proportionality. This would drastically change existing law surrounding variances and conditional permits in Minnesota. The variance and conditional use provisions should be revised to state that mitigation must be “roughly proportional.”

b. Subpart 3. Nonconformities.

The proposed rule concerning nonconformities permits LGUs to allow expansion of legally nonconforming principal structures that violate the setback requirements enumerated in Part 6106.0120. The authority to expand existing structures appears unnecessarily limited to the expansion of principal structures and only to the extent that those structures violate the setback requirements. As written, the proposed rules could be interpreted to disallow expansion of existing structures (principal or accessory) that become nonconforming as a result of the other regulatory changes. This is far too restrictive. A more reasonable approach would be to permit expansion of all existing structures that become legally nonconforming as a result of the proposed rules. This approach respects the effectiveness of LGUs in managing the MRCCA, helps balance the many interests served by the river, and protects existing development.

II. PART 6106.0100 DISTRICTS.

a. Subpart 9. District Boundaries.

The enabling legislation permits the DNR to establish new land-use districts within the MRCCA. Minn. Stat. § 116G.15, subd. 13 (2013). The DNR proposes to increase the number of districts within the MRCCA from four to six.⁹ While SPACC largely agrees with increasing the number of districts, SPACC believes that certain proposed districts in Saint Paul are inconsistent with existing development and potential new commercial, industrial, and residential opportunities. Specifically, SPACC is concerned about the following areas within the proposed districts in Saint Paul:

i. Application of Rural & Open Space (CA-ROS) District to Urban Spaces.

The proposed rules call for a large amount of land within Saint Paul to be designated as Rural & Open Space (CA-ROS). The CA-ROS district is “characterized by *rural* low density development patterns and land uses.” Part 6106.0100, subp. 2 (emphasis added). However, Saint Paul is not a rural community. It is a unique urban environment. Presently, there is no land in Saint Paul designated as rural open space.

By reclassifying land as CA-ROS in Saint Paul, the dimensional standards governing property development and redevelopment become more restrictive and burdensome, particularly with respect to building setbacks and height limits. For example, structures located within current districts are not allowed within 40 feet of blufflines. By contrast, structures within the proposed CA-ROS district must be at least 100 feet away from blufflines and very steep slopes. In replacing the current districts with the CA-ROS district, the setback requirement applicable to development will increase by 60 feet (from 40 to 100 feet). These are significant changes that will affect a large number of properties. This is particularly troublesome in urban-developed areas such as the Highwood neighborhood in Saint Paul.

ii. Ford Site.

The proposed rules designate the front portion (closest to river) of the Ford site in Highland Park to be a River Towns & Crossing (CA-RTC) district and the back portion to be an Urban Mixed (CA-UM) district. The dimensional standards applicable to each district govern building height. Specifically, the proposed rules call for a 56-foot height limit within the CA-RTC district and 65-foot limit in the CA-UM district. The draft rules provide that taller buildings may be allowed by a conditional use permit. However, before a conditional use permit may even be considered, the permit applicant must satisfy a number of conditions, including (1) completing a visual impact assessment based on the methods detailed in the *Mississippi National River and Recreation Area Visual Resources Protection Plan*, (2) identifying techniques to minimize views of buildings, and (3) identifying opportunities to enhance public river corridor views.¹⁰

⁹ The current districts are (1) Rural Open Space, (2) Urban Open Space, (3) Urban Developed, and (4) Urban Diversified. In addition, some communities have created their own districts based on their particular needs. For example, the City of Saint Paul uses Floodway and Flood Fringe districts to manage the MRCCA. As with the current districts, the new districts will be governed by a series of dimensional standards that will apply to property development and redevelopment activities.

¹⁰ SPACC believes that the final rules should provide greater clarity into what public river corridor views are to be protected and the standards used to determine whether said protection has been achieved.

SPACC is concerned that the proposed districts do not align with the City of Saint Paul’s vision for redeveloping this critically important urban site into a 21st-century community. The City is in the early stages of engaging the community in a public process to prepare a land use and zoning plan for the redevelopment of the Ford site. This process will result in a community-based redevelopment plan, which will include a determination of the building heights most appropriate for this site. If the DNR restricts building heights before the community has the opportunity to complete the planning process, SPACC believes that proposed district designations may unnecessarily restrict redevelopment of the Ford site. Accordingly, SPACC believes the dimensional standards applicable to the Ford site, including the two structures located on the river parcel—the former steam plant and water treatment plant—should be governed by Saint Paul’s underlying zoning code.

iii. Downtown Saint Paul.

The proposed rules designate a portion of downtown Saint Paul as an Urban Core (CA-UC) district. SPACC agrees with the designation of this area as Urban Core but is concerned that the applicable dimensional standards are not consistent with existing development, and may prevent the City and County of Ramsey from achieving their vision for redeveloping key areas of downtown, including the former county jail and West Publishing buildings. SPACC urges the DNR to exempt the area from Chestnut Street to the Lafayette/Highway 52 Bridge in downtown from the proposed dimensional standards. This approach is more consistent with efforts to strengthen the local tax base through redevelopment while preserving the river as a natural, scenic, and environmental asset.

iv. West Side Flats.

The proposed rules call for the West Side Flats, a 45-acre area directly across the river from downtown Saint Paul, to be designated as an Urban Mixed (CA-UM) district. This designation is inconsistent with the community’s vision for revitalizing the West Side Flats. Instead, SPACC believes the West Side Flats should be designated as an Urban Core (CA-UC) district. This designation better aligns with the community’s vision. According to the West Side Flats Master Plan & Development Guidelines from 2001 (original Master Plan), “[w]hile the area has suffered from disinvestment over the last several decades and is currently the location of several acres of vacant land, the [West Side] Flats hold great promise to be transformed in a way that will complement the greater West Side area and reconnect it to the Mississippi River.”¹¹

To facilitate reinvestment in the West Side Flats, the community engaged in an extensive planning process that culminated in a “vision of Saint Paul as a city on both sides of the Mississippi River, where the river joins, rather than separates, neighborhoods.”¹² According to the original Master Plan, the community’s vision for West Side Flats is centered on a series of linked urban villages where people live, work, and play. “The Mississippi River is an integral part of the neighborhood [with] opportunities to experience it from a number of perspectives and vantage points.”¹³ This vision has facilitated new commercial, industrial, and residential investment in the West Side Flats—activity that SPACC strongly supports.

¹¹ City of Saint Paul, *West Side Flats Master Plan & Development Guidelines 1* (August 2001), available at <http://www.stpaul.gov/DocumentCenter/View/73938> (last visited July 25, 2014).

¹² *Id.* at 2.

¹³ *Id.*

More recently, the City of Saint Paul re-engaged the community to revise the West Side Flats Master Plan & Development Guidelines (updated Master Plan) as a way to guide future private development and public infrastructure projects in the West Side Flats area.¹⁴ The updated Master Plan reaffirms that the “overall development goal of the [West Side] Flats is to extend and reconnect the greater West Side community to the river.” To achieve that goal, the updated Master Plan outlines a redevelopment strategy that envisions an urban mixed-use commercial corridor with green infrastructure, parks and open space, as well as the preservation of important industrial uses.

The proposed rules fail to appreciate the extensive planning efforts that have taken place to prepare a community-based vision for redeveloping the West Side Flats. Under the proposed rules, for example, buildings would be limited to heights of 65 feet (unless a conditional use permit is obtained). By contrast, the community's vision calls for maximum building heights ranging from 50 feet to 90 feet. The proposed rules are therefore inconsistent with the community's vision for revitalizing this important urban area. SPACC believes the West Side Flats should be designated as a CA-UC district. This approach would respect the community's vision and allow Saint Paul's underlying zoning to govern dimensional standards applicable to existing and future development.

III. PART 6106.0120 DIMENSIONAL STANDARDS.

a. Subpart 2(D). Structure Height CUPs.

LGUs should be permitted to develop their own standards for issuing CUPs with respect to height requirements. This will provide LGUs with greater flexibility in crafting conditional requirements that are consistent with the particular needs of individual communities.

b. Subparts 3(A) and (B). Location of Structures and Setback Requirements.

The proposed rules prohibit construction of structures and impervious surfaces (1) in areas defined as either a Slope Preservation Zone (SPZ) or Bluff Impact Zone (BIZ) (collectively referred to as “protected zones”) and (2) within the setback areas applicable to blufflines and very steep slopes. These restrictions apply regardless of the contiguous nature of the slope and/or whether it is connected to a larger bluff complex. Any structures that violate the locational restrictions will become legally nonconforming. The proposed rules are problematic for several reasons.

First, the setback requirements applicable to “very steep slopes” (40 feet in non-ROS districts and 100 feet in the ROS district) are unreasonable and overly restrictive. Presently, there is no setback requirement for very steep slopes in Saint Paul. The existing setback regulation prohibits construction of new structures within 40 feet of slopes that average more than 18 percent and rise more than 25 feet over the ordinary high water level (OHWL) or toe of the slope. The DNR proposes that relatively modest slopes with as little as 10 feet rise (i.e. very steep slopes) trigger the setback restriction. SPACC opposes this approach.

Second, the outright prohibition against building in protected zones, which includes the area within 20 feet of the zones, is unreasonable and overly restrictive. The proposed change is also inconsistent with existing regulations that have been operating for more than 30 years. While existing

¹⁴ City of Saint Paul, *West Side Flats Master Plan & Development Guidelines* (July 2014), available at <http://www.stpaul.gov/DocumentCenter/View/73938> (last visited July 25, 2014).

regulations preclude commercial and industrial development on slopes greater than 12 percent and residential development on slopes more than 18 percent, there is currently no limitation on development within 20 feet of very steep slopes. The creation of protected zones and the extension of setback requirements to the zones are drastic regulatory changes that will affect a significantly large number of existing structures and parcels of land. In Saint Paul, for example, more than 1,000 buildings will become nonconforming under the proposed regulations.

It should also be pointed out that, despite the DNR's representations to the contrary (*see. e.g.* Homeowner Guide to Commenting), Executive Order 79-19 did not impose a setback requirement for very steep slopes. Executive Order 79-19 required a 40 foot setback from blufflines—this is not the same as a very steep slope.¹⁵ The proposed rules significantly increase the extent to which the regulations apply without sufficient justification. The standards and guidelines enumerated in Executive Order 79-19 cannot be interpreted as prohibiting development on or near very steep slopes. The extension of the prohibition against development to very steep slopes and protected zones appears arbitrary and is unreasonable, unnecessary, and intrusive.

Moreover, while it may be true that a landowner could seek a variance from the 20-foot zone restriction, the practical reality is that it will be extremely difficult, if not impossible, to obtain a variance. This is principally due to the outright prohibition against construction in the zones, which will operate above and beyond the proposed setback requirements. Under current Minnesota law, variances “shall only be permitted when they are in harmony with the general purposes and intent of the [zoning restrictions].” Minn. Stat. § 462.357, subd. 6(2). By including an outright prohibition against construction within the zones, it can hardly be said that granting a variance for constructing a building within 20 feet of a very steep slope would be in harmony with the proposed rules.

Finally, the exceptions listed in Table 1 are ambiguous in many respects. For example, the proposed rules provide an exception for the “expansion of nonconforming structures due to setbacks.” Table 1 indicates that the exception is applicable to setbacks and protected zone restrictions.¹⁶ However, it is unclear if the exception applies to existing structures that are entirely within a protection zone, or whether the exception applies only if the structure is in both a protection zone and the corresponding setback area. This should be clarified. Furthermore, Table 1 states that exemptions applicable to protection zones are also subject to, *inter alia*, the land alteration standards. However, the land alteration standards prohibit all activities that expose the soil or change the topography or drainage within protection zones. The exceptions are therefore inconsistent with the practical operation of the other rules. As a result, the exceptions will not function as intended.

In summary, the proposed location and setback requirements are overly restrictive and fail to sufficiently consider the important interests served by existing development. When combined with the nonconformity provision discussed above, the excessively restrictive location and setback requirements

¹⁵ Executive Order 79-19, Appendix C(8).

¹⁶ On July 21, 2014, during a stakeholder meeting co-hosted by the Saint Paul Area Chamber of Commerce, DNR staff indicated that the exception in Table 1 of the proposed rules related to the expansion of nonconforming structures that violate the locational restrictions applicable to the protected zones was an error. DNR staff explained that structures within the protected zones should not be allowed to expand. This explanation was reconfirmed by the DNR on July 31, 2014 at a stakeholder meeting hosted by the Saint Paul Area Association of Realtors. If the dimensional standards applicable to the protected zones are not substantially revised as recommended, SPACC encourages the DNR to preserve the exception.

make it difficult, if not impossible, for existing commercial, industrial, and residential properties to expand. The proposed restrictions affect a large number of properties and represent a significant increase in the level of regulatory control over existing regulations. A more reasonable approach would be to eliminate location restrictions applicable to protection zones and impose a setback requirement for slopes that are greater than 18 percent and rise more than 25 feet in height. Additionally, the setback requirements should only apply to slopes or bluffs facing the Mississippi River Valley that are connected to a larger bluff complex. Finally, SPACC is of the position that LGUs should be permitted to map and draw their own blufflines for purposes of establishing the trigger setback lines. These changes would be more consistent with existing regulations and better protect existing development.

IV. PART 6106.0150 VEGETATION MANAGEMENT AND LAND ALTERATION STANDARDS.

The proposed rules impose a number of new restrictions that are unreasonable and excessive with respect to vegetation-related activities and land alteration. SPACC is concerned that the proposed rules (1) contain triggering thresholds that are too low, (2) impose unnecessary licensing requirements, and (3) will prevent property owners from making necessary improvements to existing structures.

For vegetation removal and/or land alteration that occurs outside the protected zones, a permit will be required for any activity that exceeds a certain threshold. SPACC is concerned that the proposed thresholds are far too low. In terms of land alteration, the threshold is disturbing 250 sq. ft. or more of total surface area. With respect to vegetation removal, the proposed threshold is simply removing more than 5% or 1,000 sq. ft. of tree canopy or vegetative cover. This is also an unreasonably low threshold. Additionally, SPACC questions the need to require a permit for these activities, or whether the stated purposes of the proposed rules could be achieved by less burdensome means.

Moreover, the proposed rules will unnecessarily prevent property owners from improving existing structures. For property within the protected zones, the proposed rules prohibit any land alteration unless an exception in Table 1 applies. This is far too restrictive and problematic. There is not an exception for improving existing structures. Thus, when combined with the nonconformity provision in part 6106.0080, subp. 3, the proposed land alteration standards excessively burden existing development. Without an exception for improving existing structures, property owners will not be allowed to make any repairs that necessarily require land alteration activities, such as fixing a compromised or damaged building foundation. The proposed rules are therefore inconsistent with Minnesota statutes chapters 394 and 462, which allow for the “repair, replacement, restoration, maintenance, or improvement” of nonconforming structures. Minn. Stat. §§ 394.36, subd. 4 and 462.357, subd. 1(e).

SPACC encourages the DNR to include an exception in the proposed rules for improving and/or repairing existing structures. We also encourage the DNR to consider eliminating the applicability of vegetation management and land alternation standards from very steep slopes and Slope Preservation Zones. Finally, SPACC believes LGUs should be permitted to issue exemptions from vegetation management and land alternation standards without further approval from the DNR.

V. PART 6106.0170 SUBDIVISIONS AND DEVELOPMENT STANDARDS.

c. Subpart 3(A). Design Standards and Protected Open Space.

The proposed rules require that a certain amount of land be set aside as protected open space for new subdivisions, planned unit developments, and redevelopments involving 10 or more acres.¹⁷ The amount of area to be set aside is calculated as a percentage of the overall size of the land in the district where the development or redevelopment occurs. The amount of land to be set aside ranges from 10% to 50% of the entire tract of land to be developed and/or redeveloped. These changes raise questions of whether the proposed rules will require LGUs to pay property owners just compensation in exchange for satisfaction of the open space requirements.

Because the proposed rules condition approval of developing/redeveloping a piece of property on private land being set aside for public use (e.g. protecting private land as open space and connecting it to “abutting open space, natural areas, and recreational areas”), the rules must be analyzed under the body of law governing exactions under the United States and Minnesota constitutions. *See Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Essentially, if an LGU cannot demonstrate that an “essential nexus” exists between the exaction and the public use and that the exaction is “‘roughly proportional’ in nature and extent to the impact of the proposed development,” the LGU will be ordered to pay just compensation for requiring the property owner to set aside private property as protected open space. *Id.*

In addition, the proposed open space rules, while seemingly legislatively imposed, appear to allow for adjudicative decision-making because LGUs will be required to make individualized determinations as to exactly how much private land must be set aside as protected open space. Accordingly, the adjudicative decisions will be subject to heightened scrutiny (as opposed to the lesser standard of deferential scrutiny) upon judicial review. *Id.* As a result, LGUs will be at greater risk of having to pay just compensation if their decisions are challenged.

Moreover, even if the proposed open space requirements are not construed as an exaction and therefore not subject to a *Dolan* and *Nollan*-type analysis, the requirements will certainly be subject to the body of jurisprudence governing regulatory takings, namely the balancing test established by the United States Supreme Court in *Penn Central Transportation Co. v. City of New York*. 438 U.S. 04 (1978); *see also Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623 (Minn. 2007). Under *Penn Central*, courts must balance the following three factors when deciding whether a regulatory taking has occurred and just compensation to the property owner is required: (1) the extent to which the regulation has interfered with the property owner’s reasonable investment-backed expectations, (2) the economic impact of the regulation on the property owner, and (3) the character of the governmental action at issue. A property owner’s investment-backed expectations, alone, support finding that a regulatory taking has occurred, particularly where private property is already owned after the proposed open space requirements take effect.

SPACC would also like to point out that many communities within the MRCCA already impose land dedication requirements. For example, the City of Saint Paul requires a dedication of parkland (or payment in-lieu of) under certain situations. If the protected open space requirements are included in

¹⁷ Individual parcels must be aggregated if they are part of a common redevelopment plan. However, it is not clear what constitutes a “common plan.” This should be clarified.

the final rules, SPACC urges the DNR to also include a provision that requires LGUs with land dedication ordinances to accept satisfaction of the state set-aside MRCCA standard as also meeting the locally-enacted land dedication requirement. Property owners should not have to satisfy both requirements. Finally, SPACC is of the position that industrial redevelopments should be exempt from the protected open space requirements.

CONCLUSION

In summary, SPACC is concerned that the proposed rules will have a negative impact on future investment in our community. The proposed rules, as written, will increase restrictions on property use and development. As a result, the rules will cause a large number of existing properties to become legally nonconforming. At the same time, LGUs will have less flexibility in regulating the MRCCA. Moreover, the cost of implementing the rules will be significant. To ensure that the river remains an important national asset vital to the economic health of our region, SPACC encourages the DNR to adopt rules that provide greater protection of commercial, industrial, and residential resources within the MRCCA.

Please feel free to contact me with any questions or comments.

With Kind Regards,

A handwritten signature in black ink, appearing to read 'MB', with a long horizontal flourish extending to the right.

Michael J. Belaen
Director of Public Affairs and Legal Counsel

CAPTAIN KEN'S FOODS INC.®

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(Hand delivered to Administrative Law Judge Eric L. Lipman on May 31, 2016)

May 26, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
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Saint Paul, MN 55164-0620

cc: Dan Petrik, Land Use Specialist
Minnesota Department of Natural Resources
500 Lafayette Road, Saint Paul, MN 55155-4025

9014-33234

RECEIVED
MAY 31 2016
**ADMINISTRATIVE
HEARINGS**

RE: Mississippi River Corridor Critical Area Comments (MRCCA)

Dear Judge Lipman:

Below are Captain Ken's Foods' written comments regarding the Minnesota Department of Natural Resources (DNR) Notice of Hearing to adopt rules for the MRCCA.

Mission Statement

Captain Ken's Foods, Inc. is a food processor that produces consistent quality products for the foodservice and retail markets, and other food processors. We will work with our customers to develop innovative processed food solutions and provide dependable service from our USDA certified facility and will continue the rich tradition that was started in 1967 by Ken Freiberg, the company's founder.

Company History and Background

In 2017 Captain Ken's Foods will witness its 50th year in business in the City of St. Paul. The company was started in 1967 by a St. Paul Fire Department ("SPFD") Captain, Kenneth J. Freiberg (aka Captain Ken). The company has been owned and operated by Mike & John Traxler since October 27, 1999. We have a younger brother Tom who is in sales for the company and my CPA wife, Linda, is our Controller and Human Resources Manager. We are a family operated business and we are active in the business every day, and that includes many weekends, i.e., National Restaurant Association event in Chicago this past weekend and active on-site sponsor of the Minnesota Governors Fishing Opener the weekend before that.

Captain Ken's Foods has operated at its current Robert Street South location since 1980 when the St. Paul Port Authority, according to Captain Ken, "*wined and dined*" him to buy the vacant "Peters Meats" building. The building at that time had been vacant for over 4 years. Captain Ken's Foods' purchase of this facility, and commencement of refurbishing it, was part of the very beginning of an economic revival of the West Side when buildings formerly housing Peters Meats, Drake Marble, St. Paul Hoist and Derrick, St. Paul Commercial Club and other sections of the West Side were either closed, fading away or economically depressed. Over the course of the past 36 years Captain Ken's Foods has been an anchor of this St. Paul community as a steady employer and contributor to the community.

Captain Ken's Foods is a high profile small business in St. Paul. We are known in Minnesota as a "retail baked bean" company. Outside of Minnesota we are known as a "foodservice chili" company. We produce 40+ different products and pack sizes. The plant operations are subject to inspection every shift by the USDA or FDA.

Captain Ken's Foods is active in communities and community events throughout the State of MN and Twin Cities Metro Area. And, during the past 17 years Mike and I and Captain Ken's employees are proud that Captain Ken's Foods has been the recipient of many positive notoriety and recognitions including, but not limited to:

- Deubener Award from St. Paul Chamber of Commerce (2002);
- Sal Lobaido Volunteer Service Award from St. Paul Festival and Heritage Foundation (2013);
- Friend of Tourism Award ("*For significant contributions to the Minnesota travel and tourism industry*") from Explore Minnesota (aka MN Office of Tourism) (February 2, 2016)
- Police Athletic League (PAL) Appreciation from St. Paul Police Department (this morning, May 26, 2016)

For the past four (4) decades Captain Ken's has participated in hundreds of community parades with Captain Ken's antique 1923 Ahrens Fox Fire Engine and/or horse-drawn steam pumpers. Parades include, but are not limited to:

- St. Paul Winter Carnival's Grande Day Parade and Torchlight Parade
- Cinco De Mayo Parade
- Grand Old Day Parade
- Minnesota State Fair (Daily) Parades

Captain Ken's Foods has responded to hundreds of charitable requests, and helped support hundreds of fundraisers along with donating food products to communities, organizations, charities and foodshelves. For example, we have been an annual sponsor for different MN communities' hostings of the Minnesota Governors Fishing Opener every year since 2002 during which donating close to 10,000 Lbs. of Captain Ken's food products for those events alone. In addition, we annually contribute to the St. Paul Winter Carnival whatever their chili needs are every year, and our donations don't stop there. Already this year we have contributed over 10,000 Lbs. of high-quality Captain Ken's food products to Neighborhood House, Loppet Foundation, St. Paul Winter Carnival, and Dorothy Day Foundation (Catholic Charities).

I share the above because all too often I am concerned that some of those people and organizations who are promoting, and trying to apply loose fitting MRCCA rules, either forget, don't realize, or don't care that small businesses like Captain Ken's Foods will indeed be burdened by the ultimate MRCCA additional regulation.



Location of Captain Ken's Foods building on MRCCA bluffline

Captain Ken's Foods' building is located approximately ¼ mile south of downtown St. Paul and Mississippi River at 344 Robert Street South and is zoned I-1, Light Industrial. The predecessor owner of the property, Peter's Meats and Nordic Pride Meats, also had I-1 zoning, Light Industrial. The northernmost portion of this Captain Ken's building on the bluff on the West Side has been standing in its current location for over 130 years. Most parts of this building on the bluff have been standing in their location for over 80 years. A portion of this building is within 20' of a bluffline that is identified in the MRCCA.

Law change in 2013

Captain Ken's Foods very much appreciates that the Minnesota state legislature changed the law in 2013 to ensure that the MRCCA is "managed as a multipurpose resource in a way that...(3) provides for the continuation, development, and redevelopment of a variety of urban uses, including industrial and commercial uses..." The new language also requires that the districts created within the MRCCA must be created with the "management of the river corridor consistent with its natural characteristics and its existing development, and in consideration of potential new commercial, industrial, and residential development..." in mind. (Minnesota Laws Chapter 137, Article 2, sections 18-21, 2013).

Need for less intrusive methods

The MRCCA has a very diverse geography. There are less intrusive methods and available alternatives to achieving the purposes of the proposed rules. For example, one of the main purposes of the MRCCA initiative is to protect the integrity of the bluffs. This should be done on a land-by-land basis, not by creating rules to broadly cover every parcel of land in such a diverse area.

Regulatory burden

If Captain Ken's wants to expand, we will need to get a permit, by ordinance, from the City of St. Paul. Minnesota statute is clear when it says the river corridor should be managed in a way that provides for the development and redevelopment of a variety of urban uses. Requiring additional administrative burdens to small businesses like Captain Ken's Foods wanting to expand does not accommodate that provision.

Furthermore, under the proposed rules, Captain Ken's buildings will become legally nonconforming. There is no need for that classification. Instead, buildings in the MRCCA should be subjected to engineering best practices when facilities need to be expanded or modified. This will allow for development and redevelopment in the MRCCA in accordance with Minnesota Statute while still protecting the natural resources of the river area. The rules should lay out how any business or property owner and the local government can determine what is allowable on every parcel of land rather than terming them all as a non-conforming structure. Such a course would be more in-line with current practices.

Statement of Need and Reasonableness (SONAR)

The DNR's Statement of Need and Reasonableness does not explain probable costs to businesses as required (SONAR, page 13). There has been no requests for estimates of costs from us, nor was any effort made to explain potential costs to businesses or property owners. This is required by state law (Minnesota Statute section 14.131, #5). This business does not know if there will be higher taxes or licensing fees, or other additional costs. This business does not know what additional regulatory burdens are imminent based on rules as they are currently proposed.

The SONAR says that small businesses won't be subject to additional restrictions, "except in cases where these businesses choose to expand or redevelop." (SONAR, p. 20) This shows that the DNR is not adhering to Minnesota law, which states that development and redevelopment of industrial and commercial uses must be provided for in the MRCCA rules. (Minnesota Statute section 116G.15 Subdivision 2)

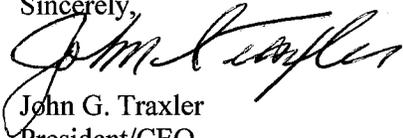
And finally, in what I personally refer to as a troubling symptom of the "spirit of disregard", the DNR skirts the intention of the legislative requirement to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees." (Minnesota Statute section 14.127, subdivision 1). The SONAR merely states that it will take longer than a year for local governments to revise their plans and ordinances, so the proposed rules will not impact businesses within the MRCCA within a year's time. While this is true, it does not follow the intent of the statute, which is to assist the community (and this business) in understanding the values and consequences of the proposed rules, including costs to businesses and individuals. Making absolutely zero effort to determine cost of the proposed rules for businesses and individuals is unacceptable. The DNR has failed to meet its obligation in the fifth factor.

Conclusion

The DNR has failed to meet at least three of the nine factors necessary for a complete regulatory analysis. In addition, the DNR has not followed state law in providing for development and redevelopment of industrial and commercial uses in the MRCCA rules. [Minn. Stat. 116G.15 Subd. 2 (1) and (3)]

There remain outstanding questions and alternatives that require prudent research and discovery which law currently requires.

Sincerely,



John G. Traxler
President/CEO
Captain Ken's Foods, Inc.

\jgt



9014-33234



Senate

State of Minnesota

KATIE SIEBEN

Assistant Majority Leader
Senate District 54
208 State Capitol Building
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1606
Phone: (651) 297-8060
Email: katies@senate.mn

June 14, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164

Dear Judge Lipman:

Thank you for considering my comments on the DNR's proposed rules for the Mississippi River Corridor Critical Area (MRCCA). I appreciate the thoughtful and thorough approach taken in drafting these rules, and my comments will focus on how we got to this point and why adopting rules is an important tool to help protect the Mississippi River.

The Mississippi River and corridor is one of the state's premier natural, cultural and water resources and fittingly there is a long history of conservation. In 1976, the state recognized the need to protect the Mississippi River through the Twin Cities by designating the 72-mile corridor as a State Critical Area. Legislation and an Executive Order of the Governor established the MRCCA to ensure the river be managed in a way that does not damage this vital statewide resource.

As much changed in the thirty years that followed, the existing Executive Order has been at times too vague and inconsistently interpreted and adopted by the thirty local units of government with land-use authority along the river. As development increased, it became clear the framework should be revisited.

In 2008 the DNR conducted a study to examine the efficacy of the program and recommend potential changes. Representative Rick Hanson and I convened a study group in the fall of 2008 to work through the many management options that resulted from the study and to draft legislation for the 2009 Session. The study group included representatives from the League of Minnesota Cities, developers, the DNR, the National Park Service and Friends of the Mississippi River, among others.

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The study group met several times leading up to the 2009 Session. During these meetings and throughout the committee hearings it was our intention that a broad and inclusive process was needed to sort out the details of definitions, standards and guidelines to protect identified corridor resources. In directing the rulemaking process, the law gives clear and specific guidance for what resources the new rules must protect: floodplains; wetlands; gorges; areas of confluence with key tributaries; natural drainage routes; shorelines and riverbanks; bluffs; steep slopes and very steep slopes; unstable soils and bedrock; significant existing vegetative stands, tree canopies, and native plant communities; scenic views and vistas; publicly owned parks, trails and open spaces; cultural and historic sites and structures; and water quality.

Furthermore, given the competing definitions across municipalities and our goal of establishing uniformity, we had extensive conversations to arrive at the definitions included in the legislation for key features including: base of the bluff, bluff line, bluff face, bluff, steep slopes and very steep slopes. This inclusive and comprehensive process resulted in bipartisan legislation that was signed into law by then Governor Pawlenty.

The proposed rules being considered today honor the work of the 2009 legislation by balancing the shared goals of flexibility, local control and conservation. The new rules will provide clear and consistent guidelines that are easy for all stakeholders to understand.

The Mississippi River is a resource of great significance for our region, state and nation. Here in the Twin Cities it is a tremendous asset to the communities through which it flows. The proposed rules represent the culmination of years of work and broad stakeholder involvement; they establish clear guidelines for corridor development and ensure protection of the river for current and future generations.

Again, thank you for considering my comments.

Sincerely,



Katie Sieben
State Senator
District 54

PAS ASSOCIATES, LTD.

2565 Walnut St.
Roseville, MN 55113
(651) 361-6440 Fax (651) 361-6807

9014-33236 ✓

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ADMINISTRATIVE
HEARINGS

June 15, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

RE: Proposed Rules Governing Mississippi River Corridor Critical Area, Minnesota Rules, chapters 6106 and 4410; Revisor's ID Number R-04240

Dear Judge Lipman:

PAS Associates Limited Partnership (PAS) has a recommendation/request.

REQUESTED ACTIONS

The Department of Natural Resources (DNR) needs to change its proposed district designation and map for Lower Grey Cloud Island to an Urban mixed district (CA-UM). DNR's map of the corridor from St. Paul to Nininger (attached) shows the island as a "Rural and Open Space District" which it is not.

The proposed rules should be amended to expressly provide for the redevelopment of commercial nonconforming conditional uses, such as nonmetallic mining, to a residential PUD consistent with the definitions currently in the proposed rules.

PAS has owned its approximately 2,600 acres in the corridor for more than 75 years. Attached are several exhibits in evidence and a summary of its reasoning as follows:

EVIDENCE / REASONS

The amendments to Minn. Stat., §116G.15 in 2013 and one of the DNR's goals in the proposed rulemaking are the recognition of existing commercial, industrial, and residential development and the importance of redevelopment and reinvestment within the corridor.

Of the six districts in the proposed rules, Urban mixed district (CA-UM) is the appropriate one for Lower Grey Cloud Island. It is defined as an area "of highly urbanized mixed use that are part of the urban fabric of the river" and includes "commercial, industrial and residential areas". The City of Cottage Grove zones PAS's property as "Commercial Extraction".

The island has been commercially and intensely mined for more than 50 years. Mine operators have continually used the river to barge the aggregate. Currently, the island houses a large concrete casting facility which produces hundreds of spans for the St. Croix Bridge.

Per the DNR's map, the island abuts a River neighborhood district (CA-RN). From aerial photos, the island has never been "characterized by primarily residential neighborhoods" or "limited commercial" per that definition. DNR has mapped Urban mixed districts (CA-UM) for industrial areas just across river that can be clearly seen from the island and another on the river just south of it. The island's area and use has been exclusively and intensely commercial for 75 years. The surrounding area is a combination of residential, commercial and industrial.

For 30 years in cooperation with the City of Cottage Grove, PAS has planned for an urban mixed use development on its property following the end of commercial nonmetallic mining. The definitions in the proposed rules, including "nonconformity", "conditional use", "nonmetallic mining", "variance", and "Planned unit development", provide for a PUD redevelopment. Management of an Urban mixed district (CA-UM) provides for "future growth" and "potential transition of intensely developed areas" which do not negatively affect "corridor views". PAS's Harbor Town plans are submitted as part of the annual mine permit application.

In accord with the proposed rules and the statutory protections for an owner's rights, Minn. Stat. §116G.13, the DNR's proposed zoning must recognize the property's historic, actual and exclusive commercial use by zoning it as an Urban mixed use (CA-UM). Further, it should add express provisions in the rules for PUD redevelopment of a nonmetallic mine.

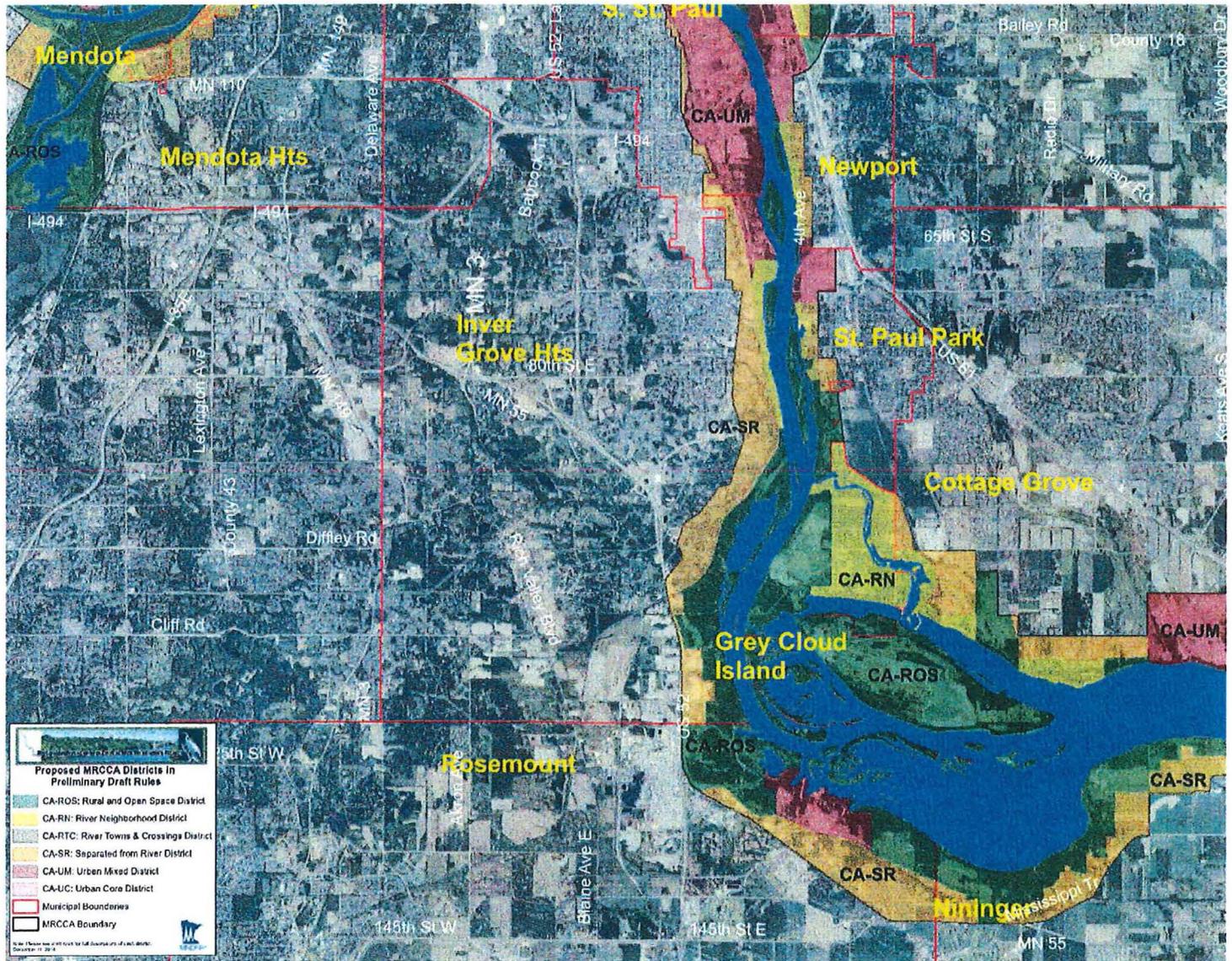
Supplementing its comments, PAS attaches the following exhibits:

1. MDNR proposed corridor map - St. Paul to Nininger;
2. Hugh K. Schilling History of Lower Grey Cloud Island, including;
 - a. Aerial photographs from 1937 to the present of Lower Grey Cloud Island, including Schilling Family ownership of Lower Grey Cloud Island;
 - b. 1982 "Chapman" PUD Concept Plan;
 - c. 1990 "Harbor Town" Detailed Plan.
3. Past/Current Cottage Grove Comprehensive Plans showing residential end use.



Hugh K. Schilling
Managing Partner
PAS Associates, Ltd
651 361 6440
2565 Walnut Street
Roseville, MN 55113

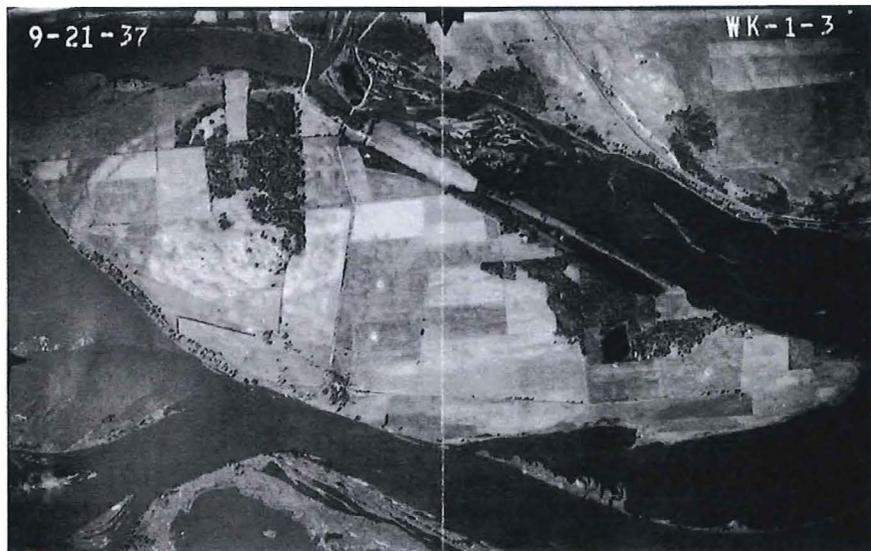
MRCCA Rulemaking Districts St. Paul to Nininger



History of Lower Grey Cloud Island 1937-2016

June 2016

1937 – Lower Grey Cloud Island



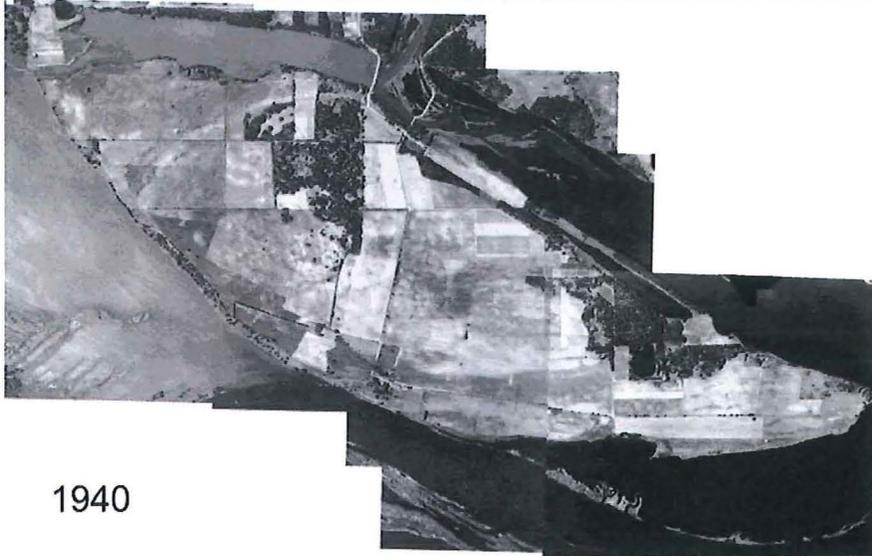
Lower Grey Cloud History

- 1940: Paul A. Schilling purchases property on Lower Grey Cloud Island consisting of approximately 2,600 acres.

PAS Associates, Ltd. Land Owned and Controlled – Lower Grey Cloud Island



Lower Grey Cloud History - 1940



1940

Lower Grey Cloud History - 1947



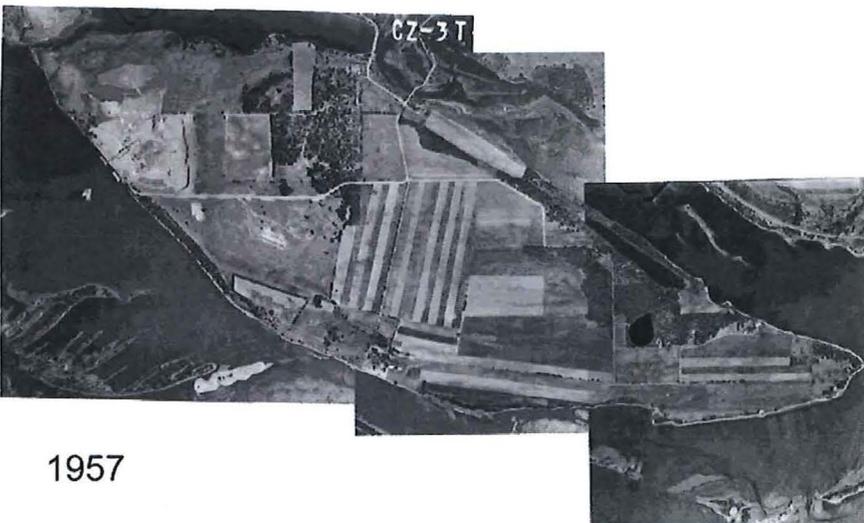
1947

Lower Grey Cloud History - 1953



1953

Lower Grey Cloud History - 1957



1957

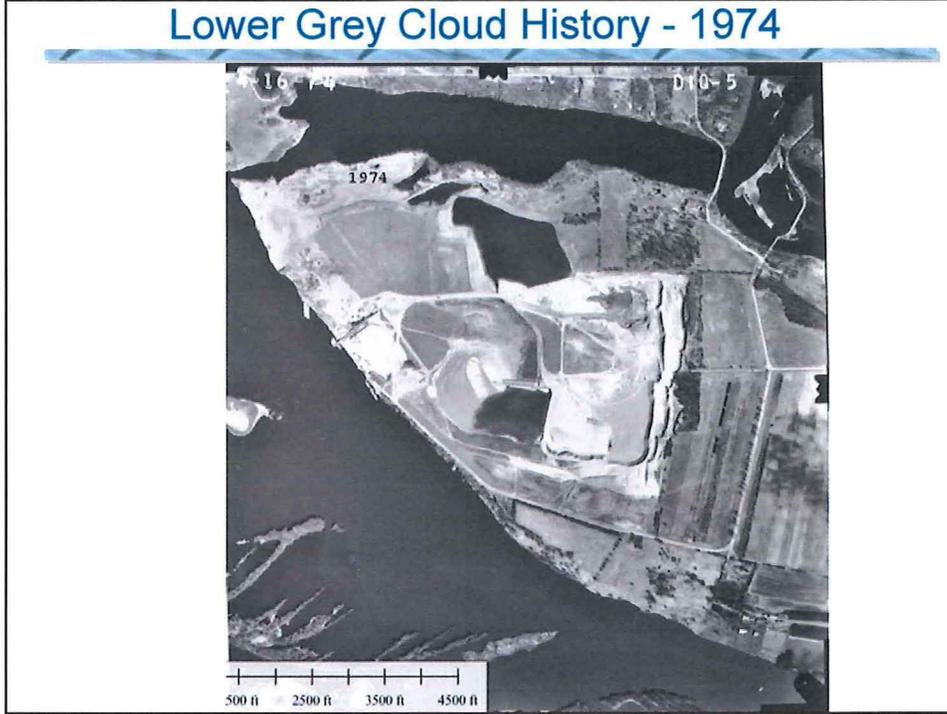
Lower Grey Cloud History

- 1954-1991: Basic dry-land mining
- 1992-2016: Underwater dredging

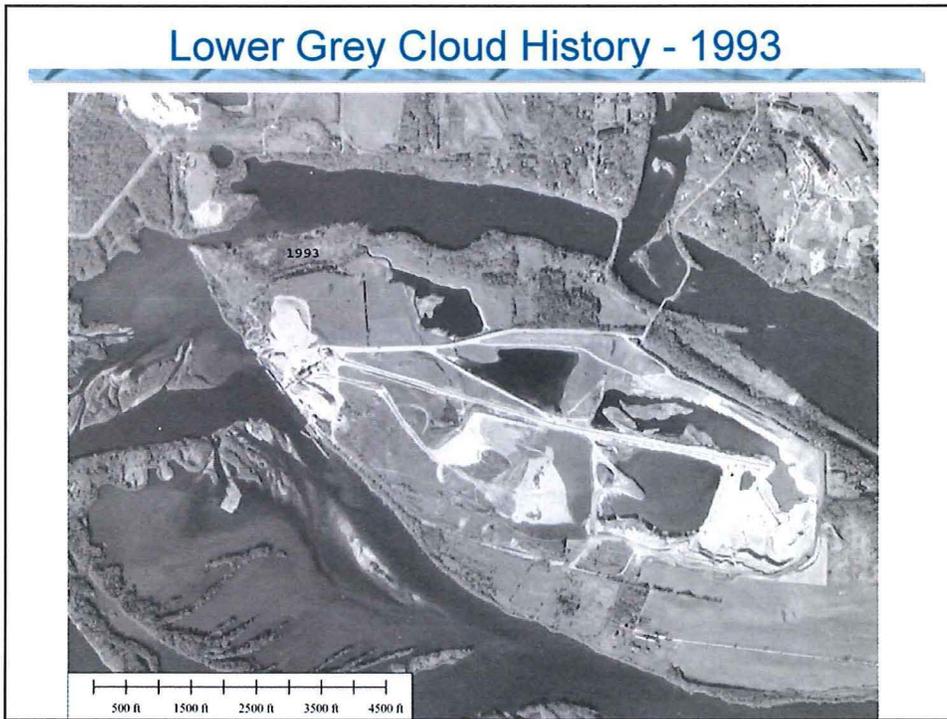
Lower Grey Cloud History - 1964



Lower Grey Cloud History - 1974



Lower Grey Cloud History - 1993



Lower Grey Cloud History - 2000



Lower Grey Cloud History - 2002



Lower Grey Cloud History - 2006



Lower Grey Cloud History - 2014

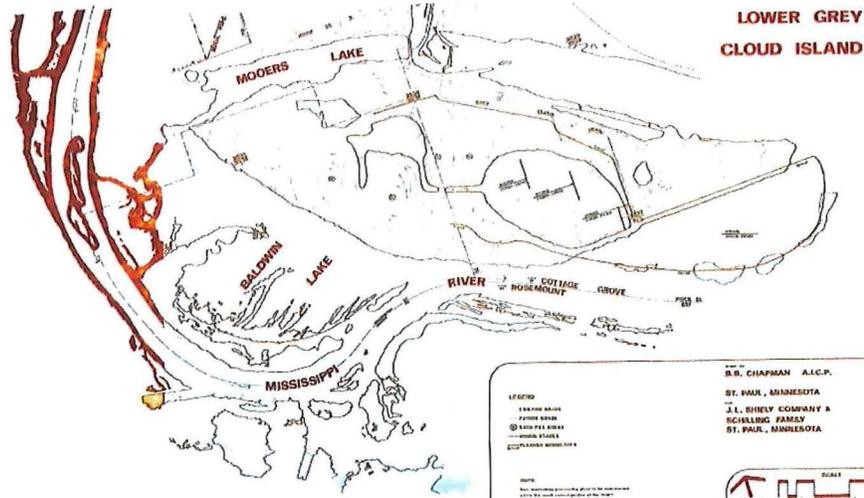


Nelson Air Photo

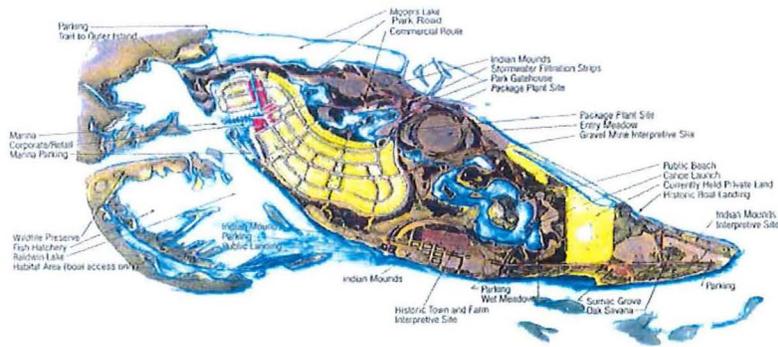
0 500 1000 2000 Feet
Air Photo Date: October 10, 2014



Grey Cloud Island BB Chapman - 1982



Harbor Island Proposal 1990's



Harbor Island PAS ASSOCIATES, LTD SIENNA CORPORATION
2565 Walnut St. Roseville, MN 55113

SIENNA CORPORATION
Cuningham Group

Figure 2-6 2030 Future Land Use Map

Cottage Grove Future Land Use 2030

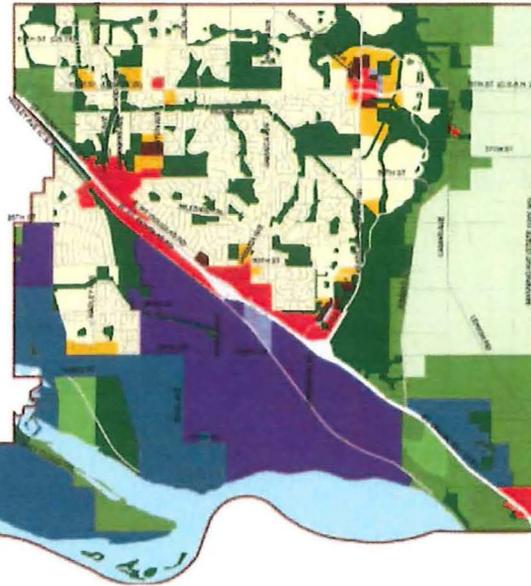
Legend

- City boundary
- Mississippi river
- Agricultural
- Rural Residential
- Low Density Residential
- Med Density Residential
- High Density Residential
- Mixed Use
- Commercial
- Industrial
- Transition Planning Area
- Park/Recreational/Open Space
- Golf Course
- Mississippi River

0 0.5 1 2 Miles



2-12



June 19, 2016

Comments about proposed new river rules from Michaelene Zawistowski, St. Paul



1. As a former travel writer for an in-flight magazine, my job was to promote individual U.S. cities. 2. With development, density and height restrictions being debated along the Mississippi, please keep the unique river vistas open for St. Paul. 3. Those include an unobstructed view of the river, bluffs, and the domes of the capitol and cathedral rising behind. 4. The breathtaking view from the High Bridge approaching downtown is one of several visual treasures. 5. St. Paul's natural attributes should not be diminished as part of urban cloning. 6. I caution against the rubber stamp I have seen in my travels. 7. The attached rendering is not acceptable. 8. It does not enhance. 9. It detracts. 10. Develop the river for recreation and let Wabasha Street serve as a commercial link to the river.

Supporting Statements

1. "A great city is one that respects its environment." --Mayor Chris Coleman, Pioneer Press, May 7, 2006

#5 sentence

2. The Knight Foundation Soul of the Community research (2010) ranked St. Paul's physical setting as #2 in desirable assets. "This factor needs to be considered when thinking about economic growth and development." # 3,5,6

3. Heritage tourists are "looking for an authentic sense of community—what makes this town unique."

--Pioneer Press article about distinctive destinations, Feb. 16, 2011 #2,3,5

4. "Evoke a sense of place. The key is to use the city's unique physical qualities—natural setting, parks and buildings—to strategically enhance them and improve relationships among them."

--St Paul Development Framework, Principle 1, p. 5 # 2,3,4,5,8

5. "People come from across the country and world to look at and touch the Mississippi River."

--National Great River Park Framework 2007 # 2,3,4,10

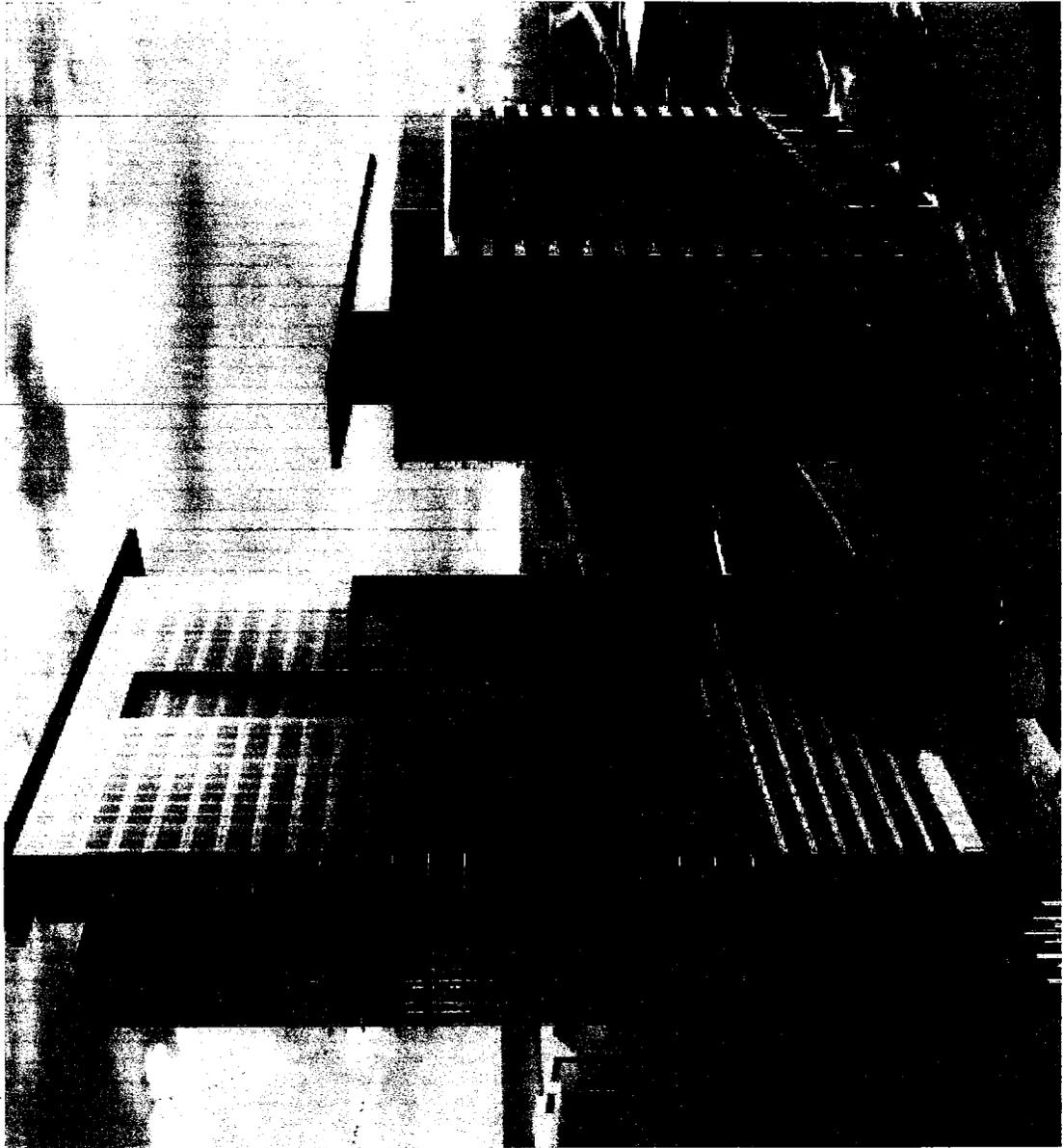
6. "Where it is physically not possible to get to the river, people want to at least see it."

--National Great River Park Framework, p.13 # 3,4

7. "Maintain and improve visual connectivity to the river and river valley." -- National Great River Park Framework, Goal 1, p.13 #3,10

Michaelene Zawistowski—1480 Randolph Ave. #105, St. Paul 55105--- 651-698-2199

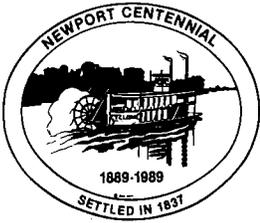
...not acceptable...in...unique...natural setting.....



The Most Livable City in America.....

While most of the community conversation equates “more urban” with more people, more private development and more parks, Saint Paul citizens also have very high expectations for the quality of urban development, both at the river’s edge and in adjacent neighborhoods. They urge us to think of new urban development in terms of “better” urban, not just “more” urban. High-quality urban development is balanced with its environmental impacts, economic feasibility, urban design/aesthetics and metropolitan/smart growth goals. It enhances, rather than detracts from, the natural environment. This more urban density will create the engine that will finance the development of a high quality public realm.

text: St. Paul National Great River Park Framework



CITY OF NEWPORT

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June 16, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

Re: City of Newport Comments on Proposed Mississippi River Corridor Critical Area (MRCCA) Rules
TKDA Project No. 15482.000

Dear Judge Lipman:

The City of Newport is submitting its comments to you on the proposed MRCCA Rules. The City previously commented several times on the draft rules between 2010 and 2015. While some of Newport's comments and other communities' comments on the draft rules were addressed in the proposed rules, some significant issues remain that are of high concern to the City.

- 1. The City is concerned about the elements of the proposed rules that will require 1) new local permits, 2) new and complicated mapping, monitoring and enforcement by local governments and 3) that these new mandates will create significant costs with no demonstrated resource benefits that will be borne by local residents, businesses and tax payers.** The City sees no justification for the proposed permits in the rationale and purpose for the new rules, and believes that the new requirements will not result in improved resource management because many of the requirements and standards in the rules are vague, unnecessarily duplicate existing regulations, and will result in inconsistencies in interpretation and enforcement throughout the corridor.

Specifically, the City sees no purpose requiring the proposed new local permits, mapping, and requirements that are proposed to regulate the following:

- Intensive vegetation clearing activities (6106.0150, Subp. 4)
- Rock riprap, retaining walls, and other erosion control structures
- Land alteration and storm water management (6106.0160, Subp 5)
- Protection of Primary Conservation Areas required for new subdivisions

Intensive vegetation clearing permit. 1) The City believes that existing Shoreland Management regulations address these issues sufficiently. The rationale and purpose for the new rules does not provide a justification for the new permit requirements.

2) The local permit conditions are vague or impossible to apply—requiring that “native plant communities removed are replaced with vegetation that provides equivalent

biological and ecological functions” without any standard for determining what is “equivalent,” and requiring that “Vegetation species, composition, density, and diversity must be guided by nearby patches of native plant communities.” In many older, fully-developed communities like Newport there may be no “nearby” patches of native plant communities, and those that exist are may be very poor in quality and should not serve as models for replacement plans.

3) The regulations require a maintenance plan (Subd. 6, item 3) but include no provision for monitoring or enforcing the plan. Without monitoring and enforcement for the long-term, restoration plans are not likely to be successful, and the restoration required by permits will be useless.

The DNR should eliminate the new permit requirement, or provide the following to local governments: 1) a clear rationale regarding the need for the new permit, and why existing Shoreland Management vegetative cutting and clearing standards are not sufficient to achieve the purposes of the rules; and 2) clear, quantitative standards that do not rely on vague definitions or the existence of “nearby patches” of native plant communities, which may not exist in many sections of the corridor, 3) requirements and standards for monitoring and enforcement of the permits.

Rock riprap, retaining walls, and other erosion control structures. Permits for these structures should be managed through existing permitting processes. The rules provide no justification for a new and separate permit process for such structures in the MRCCA.

Land alteration and storm water management permit. Like most communities in the corridor, Newport is an MS4 community, and has completed an approved MS4 permit and adopted a stormwater ordinance and standards that meet the MPCA’s requirements. The city has an existing permit and enforcement process for stormwater management and land alteration. The permit standards, and process address the MPCA’s requirements for the Mississippi River’s status as an impaired water. The rules provide no justification for an additional stormwater permit and higher standards within the MRCCA.

Proposed stormwater management standard. The proposed rules require a permit for all development that creates new or fully reconstructs impervious surface of more than 10,000 square feet on parcels that abut a public water body, wetland or natural drainage way. (6106.0160, Subp.7). In some cases, replacement of a driveway would trigger this requirement. The threshold for creation of new impervious surface is one acre under the current MPCA requirements, and the City’s MS4 permit. The rationale for the MRCCA rules does not given a rationale for the significantly higher standard than the one required by the MPCA through the MS4 permit process.

The City recommends that the existing MS4 permit requirements are reasonable and sufficient to protect resources in the MRCCA District. The proposed rule should be changed to be consistent with the MS4 Permit requirements.

Identification and establishment of Primary Conservation Areas (PCA). The

proposed rules require that local governments identify “primary conservation areas” within the MRCCA. The areas must include shore impact zones, bluff impact zones, floodplains, wetlands, gorges, areas of confluence with tributaries, natural drainage routes, unstable soils and bedrock, native plant communities, public river corridor view areas, scenic views and vistas, and cultural and historic properties, significant existing vegetation stands, tree canopies, and other resources identified in local government plans. Local government will need to identify all of these areas and create and continuously update maps of the PCA’s so that they can be used to complete required plans and to evaluate permit and subdivision applications in the MRCCA.

Identification and mapping of these areas will be a time-consuming and costly effort for many local governments. Smaller communities like Newport do not have in-house GIS mapping capabilities, and will be required to contract for services to complete and maintain the required mapping for PCA’s. It also does not have in-house staff to complete the field work necessary to identify many of the features listed. The City suggests the following:

- The DNR should provide funding to local governments to complete the required field work and mapping.
- The DNR should ensure that it complies with private property rights in requiring or completing any surveying and mapping in the MRCCA.
- Some of the categories are not defined in the new rules. There is no definition for “significant existing vegetation” or “natural drainage routes”; “tree canopy”, etc. The rules do not indicate if “wetlands” means jurisdictional wetlands under the Wetland Conservation Act, wetlands identified in the National Wetland Inventory maps, or something else. If local communities must define the terms and have freedom to map the PCA’s based on their own definitions, the PCA’s will not be consistent among communities, and permit requirements will not be consistent across the MRCCA.

The City recommends that if inventory and mapping of additional features to identify PCA’s is necessary, the State of Minnesota should provide funding to local to local governments to cover the costs of the new mandates that will require extensive field work and mapping. The PCA’s should include only elements that can be clearly defined, so that the PCA’s are consistent throughout the MRCCA and permit requirements are equitable.

- **Subdivision of land—protection of Primary Conservation Areas required (6106.0170).** The MRCCA rules propose that when subdivision occurs the developer must set-aside a portion of the area within the Primary Conservation Area identified on the property and dedicated open space, and that native vegetation communities be restored within that area. Community’s experience with similar protected areas that have been required for “conservation” or “open space” subdivisions have resulted in the protection of small, disconnected open space areas that provide no habitat or natural resource benefits, and that are compromised over the long term due to the behaviors of adjacent land owners and lack of monitoring and enforcement by homeowner’s associations and organizations charged with monitoring conservation easements.

This requirement will also create conflicts with the City’s Park and Open Space dedication requirements. It will place a priority on dedication of the primary conservation

areas as park and open space areas, and may limit the City's ability to require the dedication of park and open space areas outside the primary conservation areas that meet its long-term park and trail plans as a part of development.

The City of Newport already owns and maintains a large amount of public park and open space areas. The City does not have the resources to manage additional small patches of open space and restored vegetation that do not serve the public interest or support the City's adopted park and trails plans. The Trust for Public Land is no longer interested in accepting conservation easements for small patches of open space, and Washington County and the DNR have indicated that they will not do so.

Primary Conservation Areas such as wetlands, bluffs, steep slopes and floodways have protection under current rules, and do not need to be dedicated as permanent open space in order to be protected from development. The rules should be revised to indicate that the City may consider the other resources that are proposed for in the definition of PCA's for dedication, but should give the City the flexibility to determine whether these areas are already adequately protected or needed, so that open space dedication and resources can be better applied elsewhere to meet the City's adopted park, trail and open space plans.

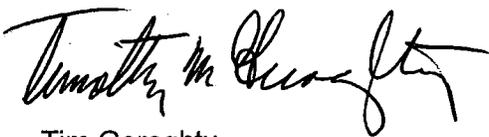
2. The City appreciates the Flexibility provisions included in the proposed Rules.

The City appreciates the inclusion of Subpart 6 in the proposed rules that states that local governments may adopt standards in their ordinances that are not in strict conformity with the Rules. The City anticipates requesting flexibility from the setback requirements in light of the location of existing sewer and water infrastructure that may make it difficult to develop some parcels or replace some structures to comply with the proposed setback requirements in the rules.

The city requests that the DNR obtain State funding for new MRCCA-Mandated Activities that are required for local governments before the rules are adopted. At the August 19, 2014 meeting on the proposed rules, DNR Commissioner Landwehr indicated that the DNR would make a budget request to the Legislature for funds to assist with the implementation of the proposed rules. The DNR requested that City's provide an estimate of costs to implement the rules, and the City complied with this request. The City believes that the new mandates for local governments in the rules should only be adopted if there is new funding for local governments to support implementation of the rules.

Thank you for considering Newport's comments on the proposed MRCCA Rules. If you have questions about these comments, please contact City Administrator Deb Hill at 651.556.4600.

Sincerely,



Tim Geraghty
Mayor

Cc: Deb Hill, City Administrator
Newport City Council and Planning Commission Members



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2016 JUN 24 AM 7:30

ADMINISTRATIVE
HEARINGS

June 21, 2016

Office of the
County Board

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Administration Center
1590 Highway 55
Hastings, MN 55033-2372

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Fax: 651.438.4405
www.dakotacounty.us

Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

RE: Mississippi River Corridor Critical Area Rules

Dear Honorable Judge Lipman,

Thank you for the opportunity to provide comment on the proposed Mississippi River Corridor Critical Area ("MRCCA") Rules.

Dakota County is a regional park implementing agency and has protected land along the Mississippi River for regional natural resource based recreation within the MRCCA since 1970, including Spring Lake Park Reserve ("SLPR") and the Mississippi River Regional Trail ("MRRT"). Dakota County submits this letter to address concerns regarding restrictions on public recreation facilities within the MRCCA. The proposed Rules unreasonably restrict public recreation in the MRCCA, which defeats a primary purpose of the MRCCA – the preservation of the area for public use.

Dakota County's efforts to protect and preserve land within the MRCCA pre-date the establishment of the MRCCA. The MRCCA was established in 1976 by Executive Order 130, which was renewed by Executive Order No. 79-19. In 1970, the Dakota County Parks and Recreation Facility Plan first proposed SLPR as a public park. The 1974 Metropolitan Council Regional Recreation Open Space Plan designated SLPR as a regional park. In 1975, Dakota County Parks System Plan established the boundaries of SLPR. More recently, between 2002 and 2003, Dakota County updated the Spring Lake Park Reserve master plan. The master plan was prepared with due diligence inventorying natural resources, establishing best management practices, and evaluating recreation suitability and use. The master planning process included a public participation process consisting of four public open houses and a comment period. The master plan was reviewed and approved by the Metropolitan Council and the Dakota County Board of Commissioners in 2003 (the "Master Plan").¹

The establishment, planning and development of SLPR are consistent with the directives of Executive Order 79-19. The Executive Order directed local government to develop plans and regulations to maximize the creation and maintenance of open space and recreational potential of the Corridor, including scenic overlooks, protected open space, beaches and undeveloped river frontage suitable for recreation purposes, public access points to the river, and a trailway for the entire length of the corridor.² SLPR and its Master Plan exist to provide the general public natural resource based recreational opportunities along the river.

¹ A copy of the 2003 Master Plan is located at:
<https://www.co.dakota.mn.us/parks/Planning/ParkPlans/Pages/spring-lake-park-master-plan.aspx>

² See Executive Order 79-19, Appendix B, Sec. C. 6.



While the County's plans are consistent with the overarching purpose identified in proposed Rule 6106.0010, Dakota County is concerned that the clearly stated recreational goals of Executive Order 79-19 appear to be minimized in the proposed Rules. Further, the implementation of public recreational opportunities is inhibited by the proposed Rules, while private residential and commercial users have more leeway to enjoy the use of land along the river.

Under the proposed Rules, Public Recreational Facilities are governed by the general districts established by the Rules. The proposed Rules place SLPR in the rural and open space district (CA-ROS). This is the most restrictive district. So, in addition to be treated differently from residential and commercial river uses, SLPR is treated differently from many, if not all, other parks established along the river.

The attached Appendix A demonstrates some of the facilities that a park typically locates near public river use areas. Due to the shore impact zone and bluff impact zone regulations proposed for SLPR, these facilities, such as bathrooms and any other structure with walls, are prohibited by the proposed Rules.³

The most practical way to address this issue is to provide an exemption for public recreational facilities implemented in accordance with master plans that have been adopted and reviewed pursuant to Minnesota Statutes Section 473.313.⁴ Dakota County advocated for this exception, but the Minnesota Department of Natural Resources ("MN DNR") did not include the exemption in its proposed Rules. Dakota County understands the difficulty of preparing Rules that account for all the complex issues in the MRCCA and appreciates the dialogue MN DNR has engaged in on these issues, but an exemption for master planned parks is a significant omission.

The exemption for master planned park facilities can easily be added to the exemptions listed in proposed Rule 6106.0180 by adding the following under the public recreational facilities section:

Structures, facilities and improvements E E E E
included in a park master plan adopted
pursuant to Minn. Stat. 473.313 or any
successor, revised or related law.

The proposed exemption is necessary to permit Dakota County to serve the public by providing natural resource based public recreational facilities to promote the public use and enjoyment of the MRCCA in ways that are sensitive to the natural resources present in the corridor.

The proposed exemption is reasonable and consistent with the proposed Rules provision for flexibility when drafting ordinances.⁵ Proposed Rule 6106.0070, Subp. 6 allows flexibility (i.e. an exemption) in certain circumstances such as where the areas are managed under other water and related land resource

³ See attached Appendix B containing maps depicting the topography in SLPR and Appendix C illustrating the impact of the restrictions.

⁴ 473.313 MASTER PLANS.

Subdivision 1. Adoption.

Each park district located wholly or partially within the metropolitan area, and each county in the metropolitan area not wholly within a park district, shall prepare, after consultation with all affected municipalities, and submit to the Metropolitan Council, and from time to time revise and resubmit to the council, a master plan and annual budget for the acquisition and development of regional recreation open space located within the district or county, consistent with the council's policy plan.

Subd. 2. Council review.

The Metropolitan Council shall review with the advice of the commission, each master plan to determine whether it is consistent with the council's policy plan. If it is not consistent, the council shall return the plan with its comments to the municipalities, park district or county for revision and resubmittal.

⁵ See SONAR p. 40 and proposed Rule 6106.0070, Subp. 6.

management programs authorized by state or federal legislation with goals compatible with the Rules or areas where detailed modeling of visual, physical or other resource impacts has been completed as part of a public planning process. A master plan is developed with a public planning process pursuant to state law. The SLPR Master Plan took into consideration the park's setting, recreational and educational needs of the region, and the natural and cultural resources of the park to establish a vision for the park and guidelines for its ecological management and physical development to appropriately accommodate public use.⁶ As noted above, the SLPR Master Plan was developed through an extensive public process. In addition to being approved by the Metropolitan Council, MN DNR participated in the development of the Master Plan.⁷

Since establishing SLPR in 1970, Dakota County has acquired 1097 acres of parkland and constructed three picnic shelters, two picnic grounds, the Scharrs Bluff Gathering Center, the Spring Lake Retreat Center, ten group campsites, an archery trail and eleven miles of trails. SLPR is located along the banks of the Mississippi River to allow the public to enjoy recreation opportunities along the river. As shown in Appendix B, SLPR will provide use areas at four locations along the river. These areas are identified in the Master Plan, but have not been fully implemented due to land ownership and access issues. Acquisition of land along the Mississippi River within SLPR in recent years will allow the County to begin providing the public to access the shores of the Mississippi River.

The Master Plan was developed through an extensive public approval process and substantial resources have been spent to begin the implementation of the plan. Dakota County has a vested interest in completing SLPR to provide public recreation opportunities along the Mississippi River.⁸

On page 1 of the Statement of Need and Reasonable ("SONAR") supporting the proposed Rules for the MRCCA, it states that the Rules take into account "existing local plans and policies." The proposed Rules do not appear to take into account the SLPR Master Plan and the difficulties of developing recreational facilities to serve the public within the topographically challenging landscape of SLPR. "A primary goal of the Rules is to reduce complexity and be less intrusive for property owners, developers, and local governments."⁹ That goal was not achieved in respect to SLPR. Implementation of the Master Plan will be more complex due to the intrusive and limiting effect of the proposed Rules. An exemption for master planned parks will correct this issue.

SLPR exists because of its connection to the Mississippi River. Dakota County shares the goals stated on page 29 of the SONAR in respect to Rule 6106.0010 to "preserve and enhance [the MRCCA's] natural, aesthetic, cultural, and historical value for public use, and protect its environmentally sensitive areas." The Rules should provide local government flexibility to achieve these goals, including the goal of *public use*.

Public recreational use in the MRCCA requires public facilities, including facilities in the shore impact zone to support appropriate recreational uses along the shoreline. A fundamental aspect of developing a park along a river is to make use of the river for recreation. A park along a river is a river-dependent use and many facilities within a park located along a river are shoreline facilities. Appendix A illustrates this point, but public recreational use is not included in the definition of "River-Dependent Use" and public

⁶ SLPR Maser Plan p. 1.1.

⁷ See page A.2 of the SLPR Master Plan.

⁸ SLPR is designated as a park reserve, so at least 80 percent of the park must be managed as wild lands that protect the ecological functions of the native landscape. Only twenty percent of a park reserve is available to be improved for compatible recreational activities. The primary improved use areas are located on top of the bluff on the east and west ends of the park, but the river is the focal point of the park and four use areas along the shore are included in the Master Plan. These use areas and facilities are planned to be unobtrusive.

⁹ SONAR, p. 12.

recreational facilities are not included in the definition of "Shoreline Facilities."¹⁰ These omissions fail to take into account the nature of park facilities along a river. These omissions result in unreasonable restrictions on public recreation, which defeats a purported primary need for the proposed Rules – the preservation of the area for public use. If suitable public recreational facilities are not permitted, only a limited portion of the public, those privileged enough to privately own land on the river or have access to use a boat on the river, will enjoy meaningful use of the MRCCA while the general public will be excluded. An exemption for master planned parks will address this issue.

Dakota County has committed significant resources to understanding the public's expectations for recreation and recreational services. Currently, Dakota County is in the process of creating a Park Visitor Services Strategic Operations Plan with the assistance of PROS Consulting. Initial public survey results demonstrate that Dakota County residents enjoy the natural settings provided by the County park system, but there is a need for more recreation opportunities. The survey also found that non-users and under-represented groups, including youth, seniors, racial minorities and people with disabilities, have a high interest in amenities, events, learning about nature, activities, active areas, social areas and enhanced accessibility. Protecting natural resources is a primary goal of Dakota County and its residents, and a careful balance must be established with park use, but the proposed Rules create unreasonable restrictions on public recreational facilities instead of creating a careful balance between natural resource protection and public recreation. That balance is achieved in a public master planning process. An exemption for master planned parks is critical to providing natural resource based recreational opportunities for the public to enjoy the MRCCA, which was a primary goal for the creation of the corridor.

If a simple exemption for master planned parks is not included in the proposed Rules, then some of the specific Rules that overly restrict public natural resource-based recreational uses must be revised in a piecemeal fashion. Specifically, as an alternative solution to the master plan exemption, Dakota County requests that the proposed Rules be amended to address the following issues at a minimum:

1) Americans with Disabilities Act (ADA). The proposed Rules prohibit hard surface trails where slopes are greater than 30%. SLPR has a near continuous 30% slope bluffline that separates park upland areas from riverfront public use areas.¹¹ MN DNR acknowledges on page 43 of the SONAR that the MRCCA Rules need to comply with ADA law. *In order to provide ADA accessibility to these riverfront public use areas, the County requests that the prohibition of hard surface trails on 30% slopes language in table line 63.11 be removed from the proposed Rules.* MN DNR has suggested that ADA compliant trails could be constructed along roads within the park. However, that suggestion does not account for the fact that the grades of the roads are not ADA compliant, that significant revision to the roads and associated ditches and drainage would be required to add ADA compliant trails and that such improvements may be more intrusive and damaging to natural resources than other trail locations and solutions. Public agencies must be given flexibility to construct improvements in cost effective ways that minimize impacts to natural resources.

2) Bathrooms, Sanitary and Other Facilities. The proposed Rules prohibit buildings in the Shoreland Impact Zone and the Bluff Impact Zone with the exception of open sided picnic shelters. SLPR has four existing or planned public riverfront use areas. Given the topography of SLPR, it is not practical to locate bathrooms and other small structures for riverfront use on uplands away from these public use areas because of distance and elevation change.¹² *Dakota County requests that small structures for riverfront use and support structures such as bathrooms be permitted in Shoreland Impact Zone at planned or existing public use areas where the Bluff Impact Zone abuts the Shoreland Impact Zone.* There will be use areas along the river, such as picnic shelters, regardless of whether bathroom facilities are present. The absence of conveniently located bathrooms will not prevent nature from running its course in those

¹⁰ See SONAR, p. 33 and proposed Rule 6106.0050, Subp. 65 and See SONAR, p. 34 and proposed Rule 6106.0050, Subp. 69.

¹¹ See Appendix B and C.

¹² See Appendix C illustrating the relationship between the shoreland and the bluff impact zones.

areas. (For example, many kids do not give parents sufficient warning to make the hike back up the bluff to reach the bathroom in time.) The river and wooded areas will become the bathrooms, creating sanitary and other issues.

3) Stairs and Lifts. The proposed Rules do not allow for stairs and lifts at public recreational facilities in the Bluff Impact Zone. However, stairs and lifts are allowed for private residential and commercial water access and use facilities within the Bluff Impact Zone in table line 64.13. In discussions with DNR staff we understand that language that allows stairs and lifts was inadvertently left out of the public facilities section in the proposed Rules. *Dakota County requests that the Rules be amended to allow stairs and lifts in Bluff Impact Zones for public recreational facilities.*

To address these issues, and as an alternative to the exemption for master planned parks, Dakota County proposes revisions to various definitions and other provisions of the proposed Rules. A red-line draft of the proposed revisions is attached as Appendix D. To be clear, Dakota County believes the exemption for master planned parks is the most appropriate and reasonable revision to the proposed Rules to meet the public recreational needs of the public.

Thank you again for the opportunity to comment on the proposed Critical Area Rules. If you have any questions relating to these comments, please contact the Physical Development Director, Steven C. Mielke, at 952-891-7007 or steven.mielke@co.dakota.mn.us

Sincerely yours,



Nancy Schouweiler, Chair
Dakota County Board of Commissioners

cc: Dakota County Board of Commissioners
Matt Smith, County Manager
Jay Stassen, Dakota County Attorney's Office
Steven C. Mielke, Physical Development Director
Mark Krebsbach, Transportation Director
Taud Hoopingarner, Operations Management Director
Dan Petrik, Land Use Specialist

Point Douglas Park, Hastings MN (Washington County Parks)

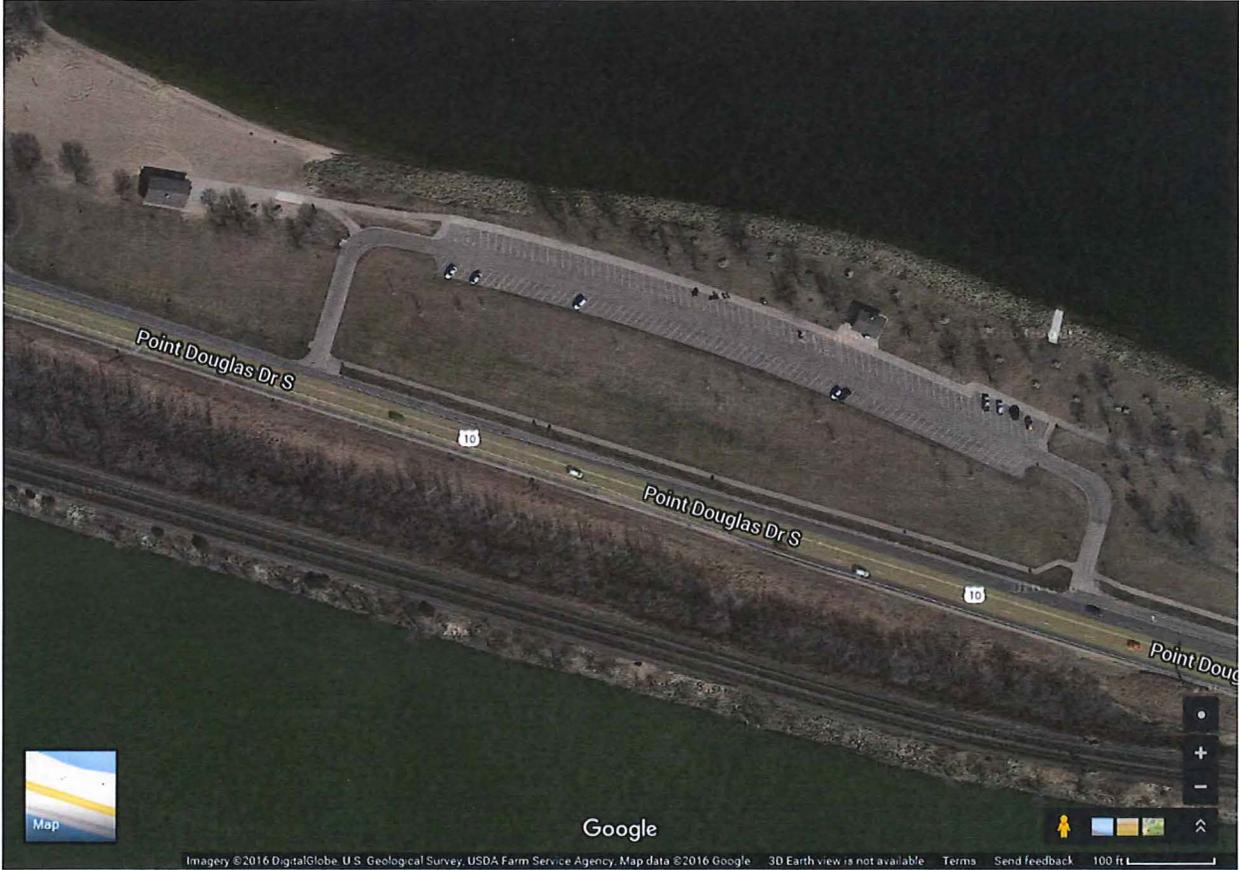
Home Site with image:

<https://www.co.washington.mn.us/index.aspx?NID=1366>



The red boxes are the approximate area of the Google Maps enlargement.

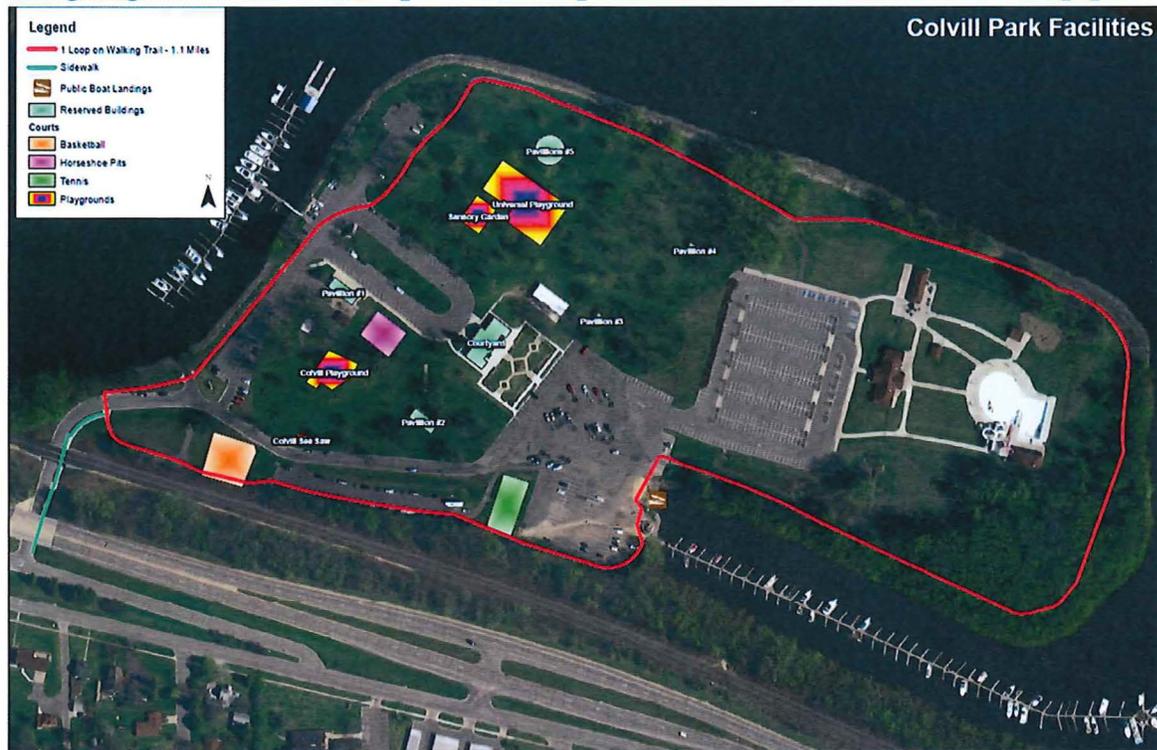
Google Maps:



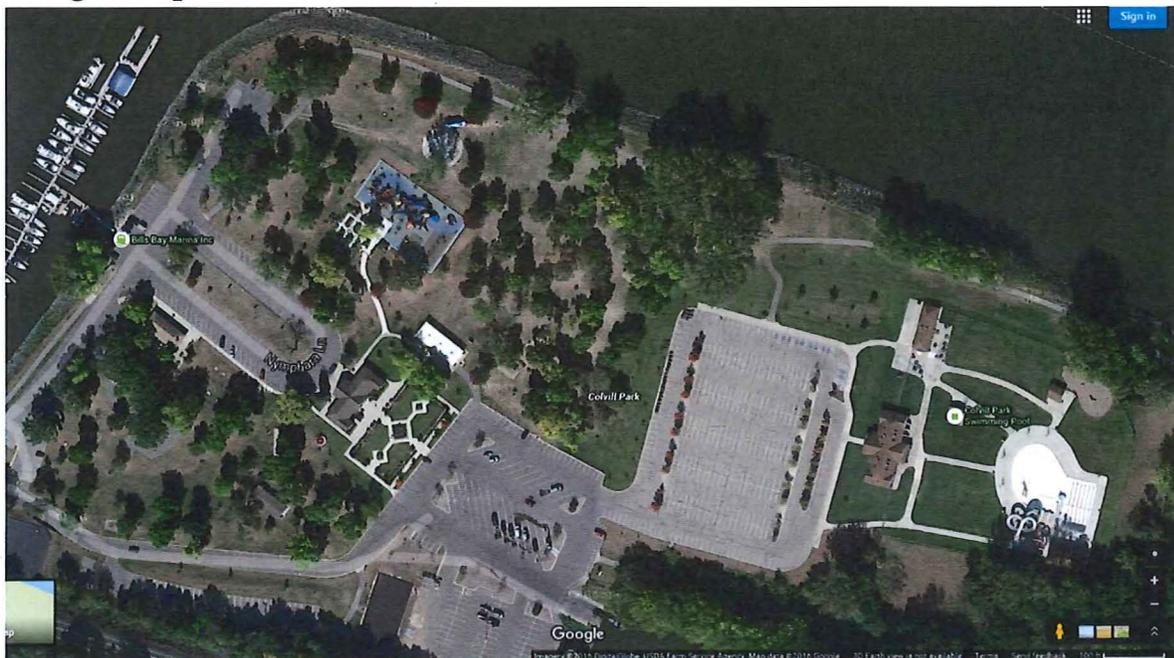
Colvill Municipal Park, Red Wing, MN (Red Wing City Parks) – Pavilion 1 has running water

Home Site: <http://www.red-wing.org/colvillpark.html>

Image: [http://www.red-wing.org/media/files/departments/public works/Colvill Park Map.pdf](http://www.red-wing.org/media/files/departments/public%20works/Colvill%20Park%20Map.pdf)

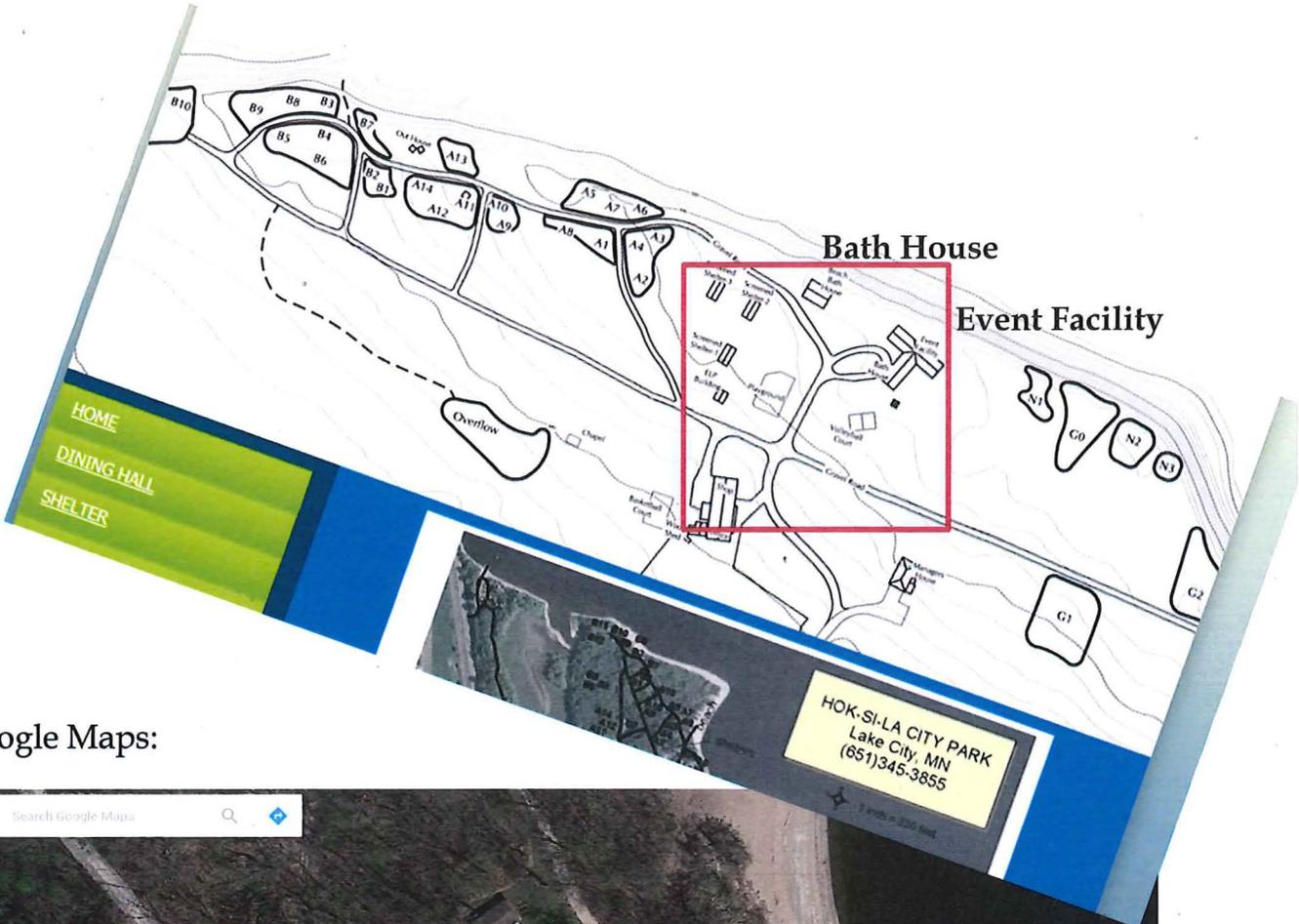


Google Maps:



Hok-Si-La Park Public Access Lake City (by Lake Pepin/Mississippi River)

Home site: <http://hoksilapark.org/maps.html> (rotated for comparison)



Google Maps:

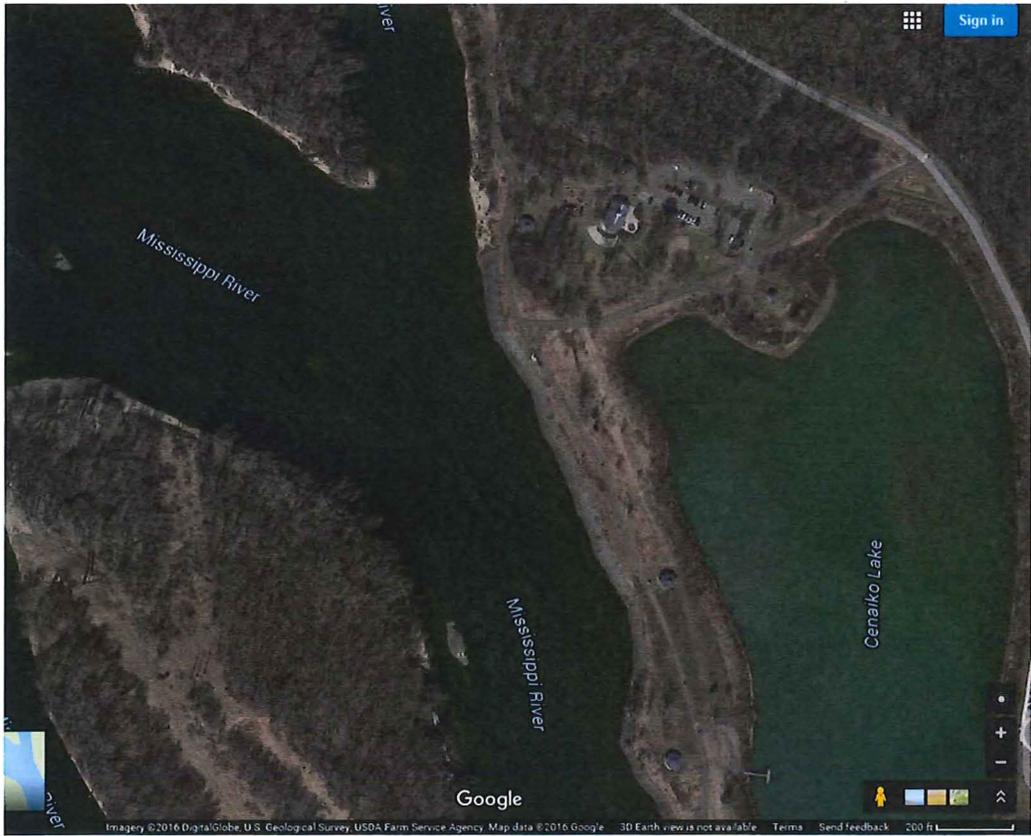


Coon Rapids Dam Regional Park:

Source: <https://www.anokacounty.us/723/Coon-Rapids-Dam-Regional-Park>



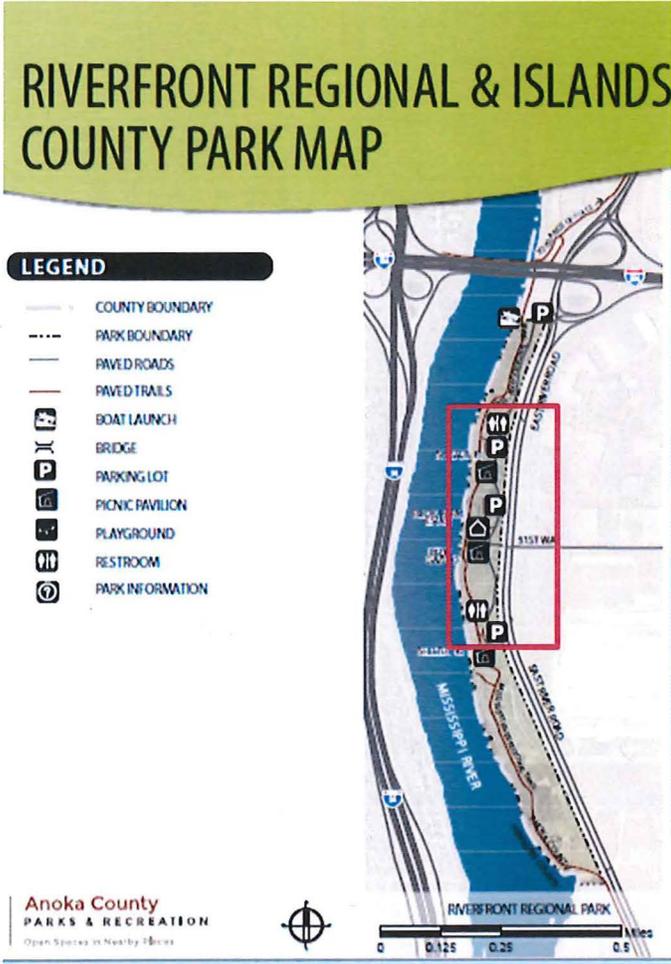
Google Maps:



Riverfront Regional Park (Anoka County):

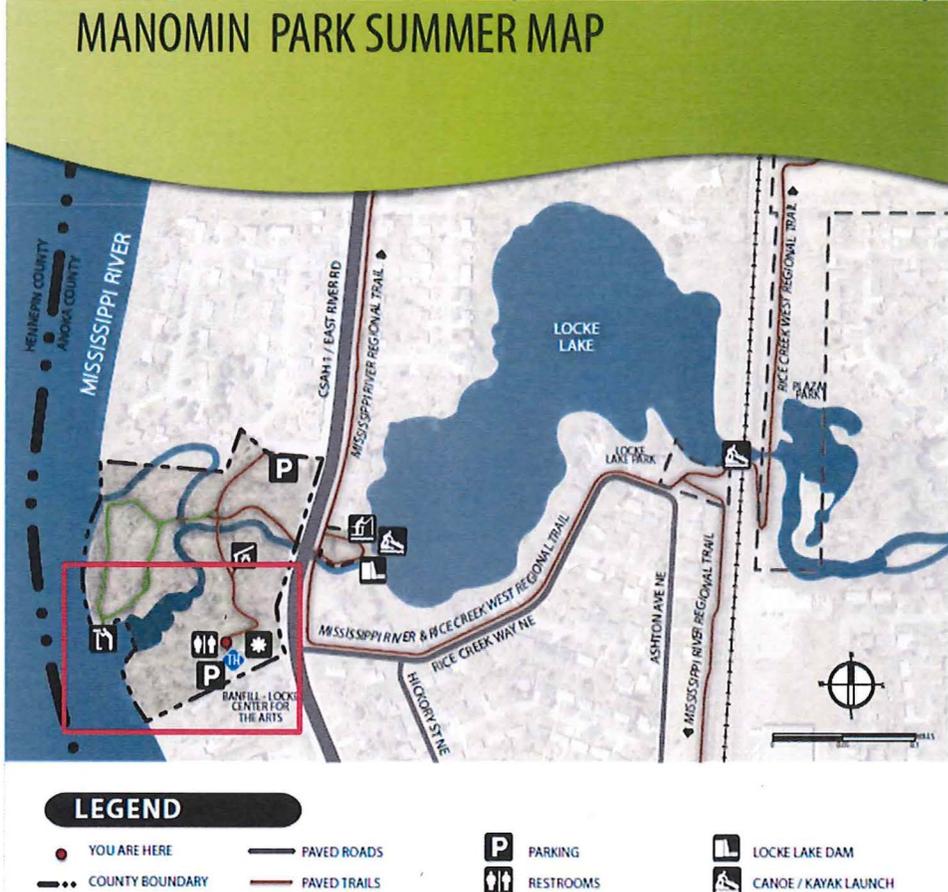
Source: <http://www.anokacounty.us/DocumentCenter/View/420>

Google Maps:

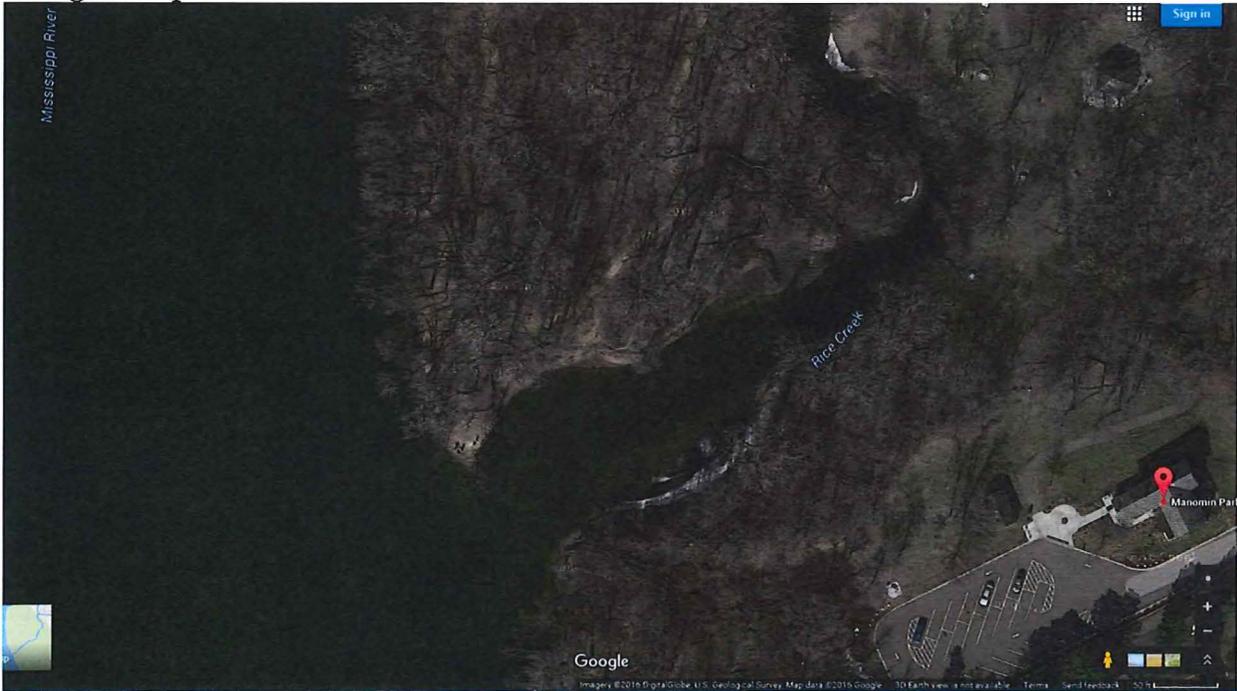


Manomin Park (Anoka County):

Source: <http://www.anokacounty.us/772/Manomin-County-Park>

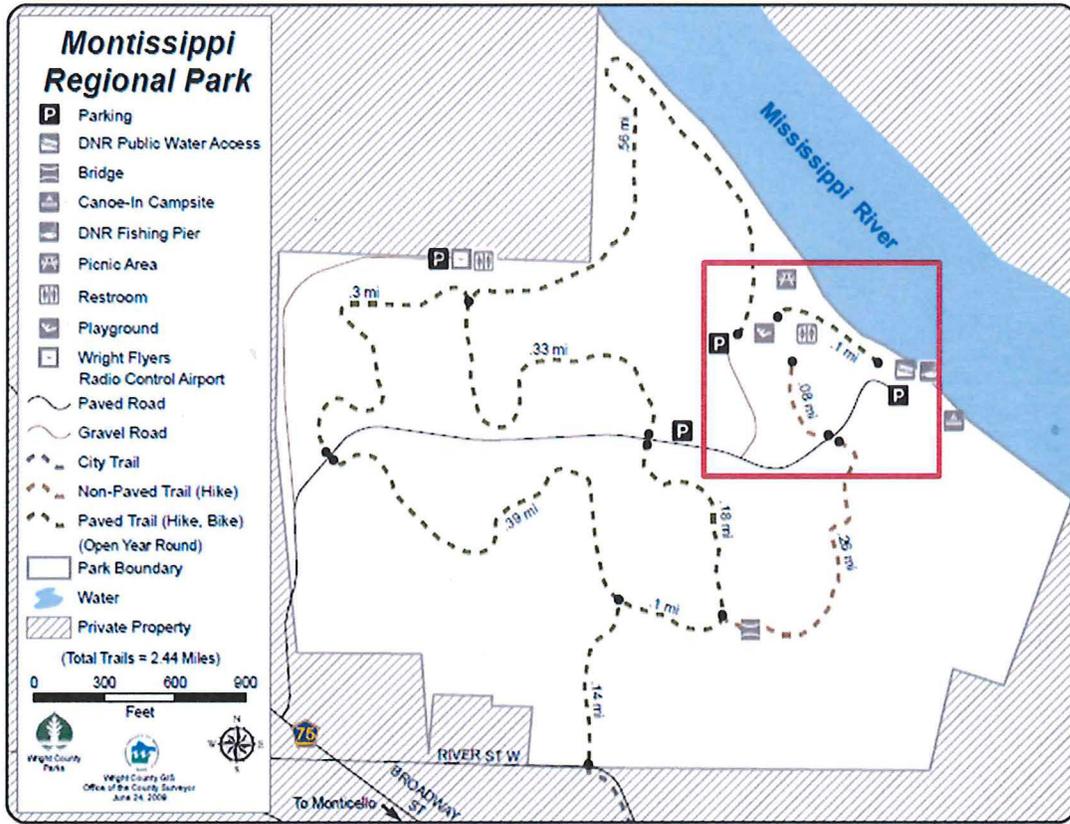


Google Maps:



Montissippi Regional Park (Wright County)

Source: <http://www.co.wright.mn.us/DocumentCenter/View/88>



Google Maps:

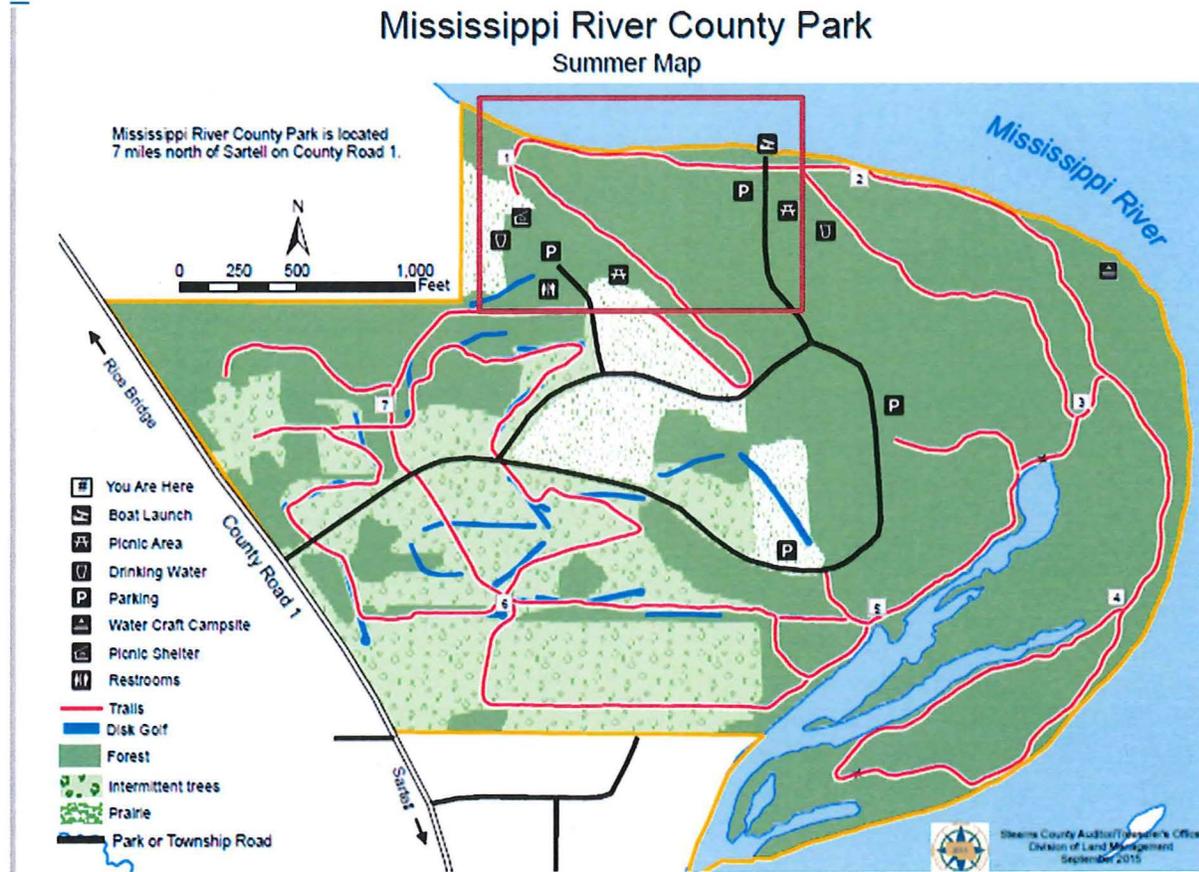


Mississippi River County Park (Stearns County):

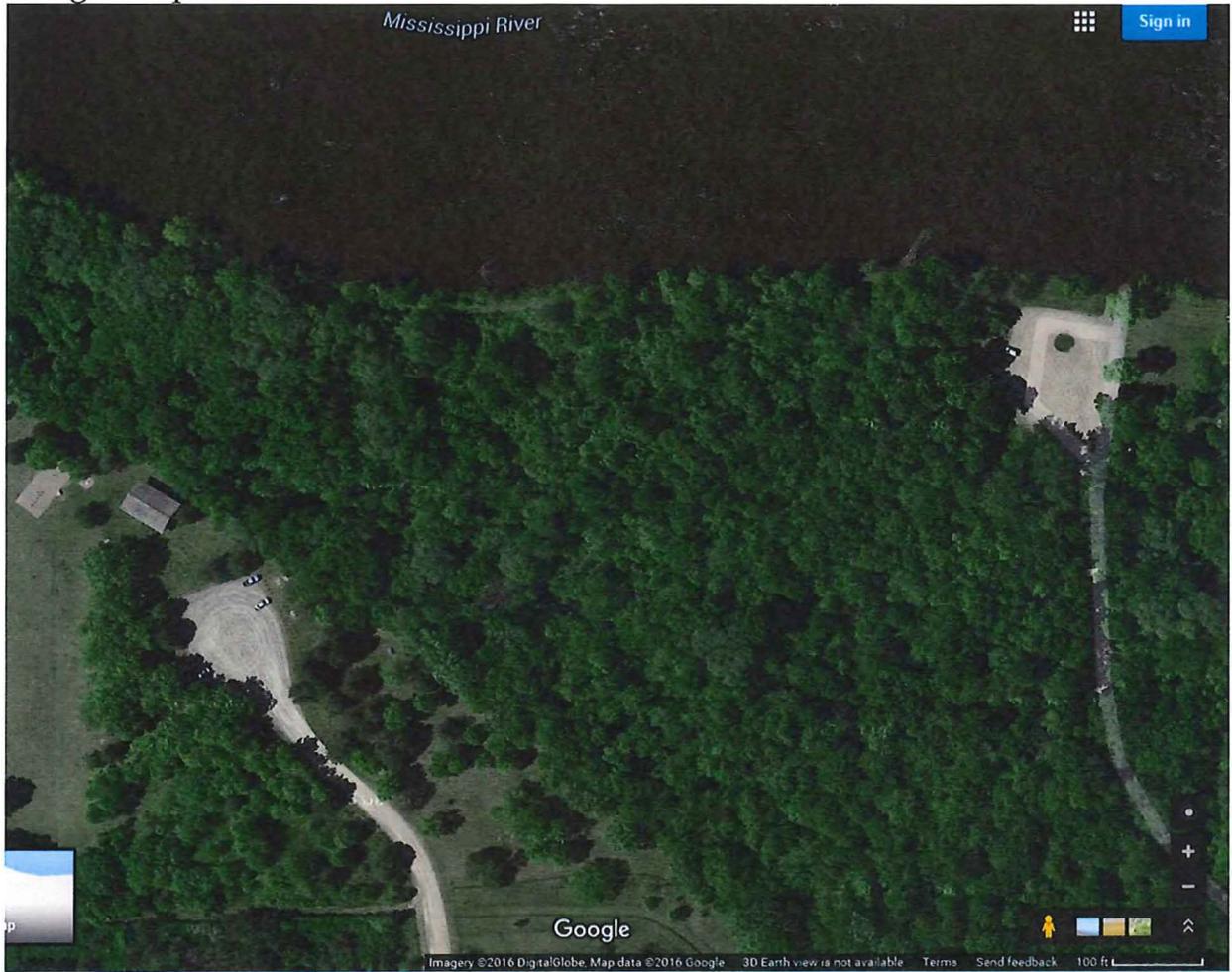
Source:

<http://www.co.stearns.mn.us/Recreation/CountyParks/MississippiCountyPark>

k



Google Maps:



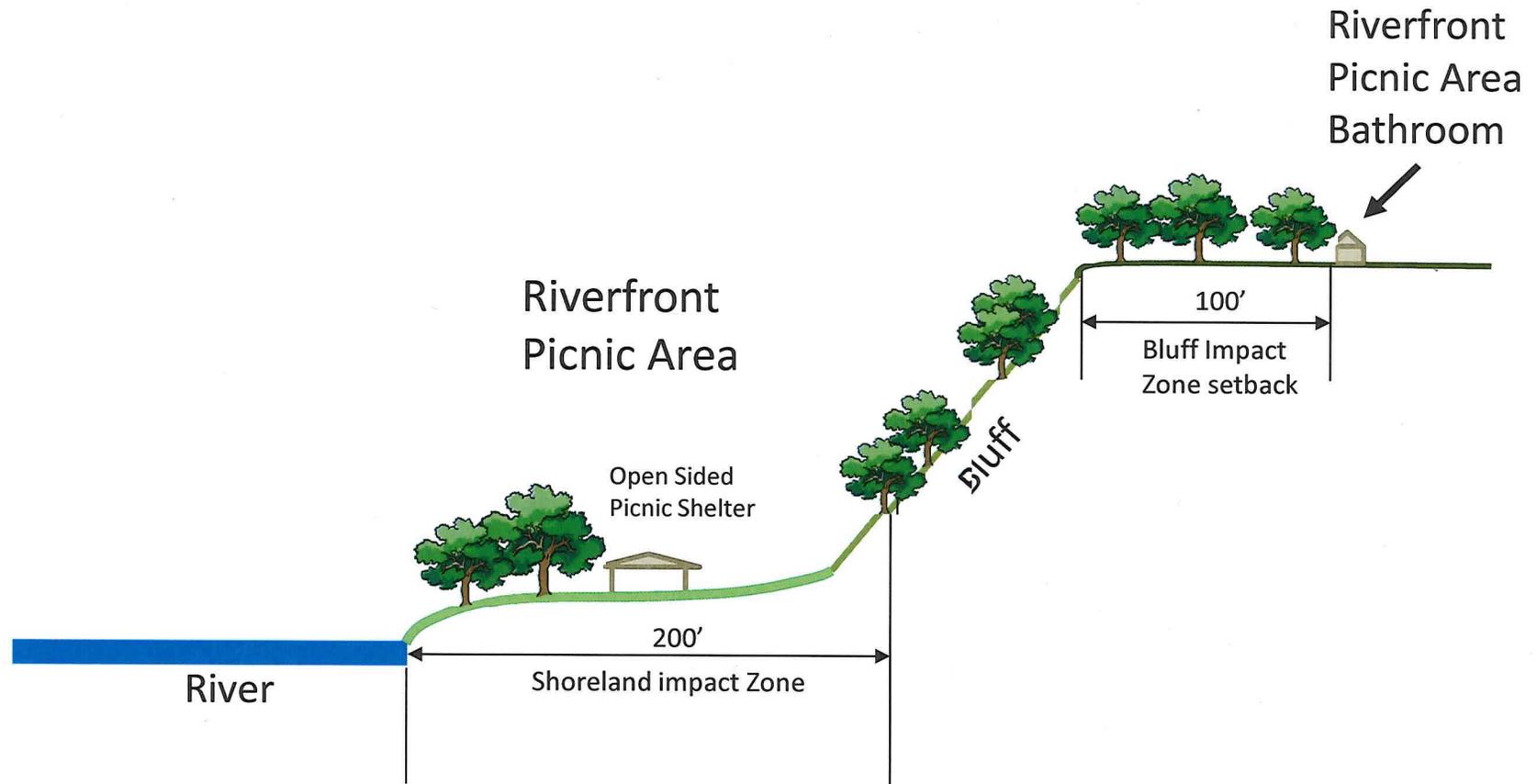
Spring Lake Park Reserve Master Plan Riverfront Public Use Areas



Legend

-  Riverfront Public Use Areas (existing & planned)
-  Shoreland Impact Zone Building Setback (200 ft)
-  Bluff Impact Zone > 30% Slope
-  Bluff Impact Zone < 30% Slope
-  Private Property
-  Park Boundary

Appendix C



Appendix D

- 9.10 Subp. 55. **Public recreational facilities.** "Public recreational facilities" means
- 9.11 recreational facilities provided by the state or a local government and dedicated to public
- 9.12 use, including parks, scenic overlooks, observation platforms, trails, docks, fishing piers,
- 9.13 picnic shelters, water access ramps, and other similar water-oriented public facilities
- 9.14 and other small structures for riverfront uses, including support facilities such as bathrooms,
used for recreation.

- 10.17 Subp. 65. **River-dependent use.** "River-dependent use" means the use of land
- 10.18 for commercial, industrial, public recreational or utility purposes, where access to and use of a
public
- 10.19 water feature is an integral part of the normal conduct of business and where the use is
- 10.20 dependent on shoreline facilities.

Comment [DC1]: Local government's decision to locate a park on the river is dependent on the ability to allow the public to enjoy the river – thus it is a river-dependent use.

- 11.5 Subp. 69. **Shoreline facilities.** "Shoreline facilities" means facilities that require
- 11.6 a location adjoining public waters for ingress and egress, loading and unloading, and
- 11.7 water intake and outflow, such as barge facilities, port facilities, commodity loading and
- 11.8 unloading equipment, watercraft lifts, marinas, short-term watercraft mooring facilities
- 12.1 for patrons, public recreation facilities and water access ramps. Structures that would be
enhanced by a shoreline
- 12.2 location, but do not require a location adjoining public waters as part of their function, are
- 12.3 not shoreline facilities, such as restaurants, bait shops, and boat dealerships.

Comment [DC2]: The function of a park along the river is to bring people to the river and its shore. Park users have an expectation of certain park facilities/amenities at use areas, including shoreline use areas. These facilities are part of the park's function.

45.1 A. Buildings and parking associated with public recreational facilities, except for shoreline facilities or

45.2 as provided under part 6106.0180, must meet the dimensional standards in part 6106.0120

45.3 and must not be placed within the bluff impact zone or shore impact zone.

45.7 C. Trails, access paths, and viewing areas associated with public recreational

45.8 facilities and providing access to or views of the Mississippi River are allowed within the

45.9 bluff impact zone or shore impact zone if design, construction, and maintenance methods

45.10 are consistent with the best management practice guidelines in Trail Planning, Design, and

45.11 Development Guidelines, incorporated by reference under part 6106.0090.

45.12 (1) Hard-surface trails are not allowed on the face of bluffs with a slope

45.13 exceeding 30 percent, except to provide persons with disabilities access to public recreation use facilities and areas, as required by the federal Americans with Disabilities Act. Natural surface trails are allowed, provided they do not exceed

45.14 eight feet in width.

46.1 E. Public signs and kiosks for interpretive or directional purposes are allowed in

46.2 the bluff impact zone or shore impact zone, provided they minimize disturbance to these

46.3 areas and avoid visual impacts on public river corridor views.

46.4 F. Design and construction of private stairways, lifts, and landings are subject

46.5 to the following standards:

46.6 (1) stairways and lifts must not exceed eight feet in width;

46.9 (2) landings for stairways and lifts on residential lots must not exceed

46.10 100 square feet in area;

46.12 (3) canopies or roofs are prohibited on stairways, lifts, or landings;

Comment [dc3]: The 100 square foot landing area is necessary to accommodate a resting bench on stairways with a total vertical elevation change of 120 feet.

Appendix D

46.13 (4) stairways, lifts, and landings must be located in the least visible portion

46.14 of the lot; and

46.15 (5) ramps, lifts, mobility paths, or other facilities for persons with physical

46.16 disabilities are allowed for achieving access to Public Recreation Facilities and use areas.

02/26/16

REVISOR

CKM/IL

RD4240

62.1	<u>Chimneys, church spires, flag poles,</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>N</u>	
62.2	<u>public monuments, and mechanical</u>					
62.3	<u>service stacks and similar mechanical</u>					
62.4	<u>equipment</u>					
62.5	<u>Historic properties and contributing</u>	<u>E</u>	<u>E</u>	<u>E</u>	<u>E</u>	<u>Exemptions do not</u>
62.6	<u>properties in historic districts</u>					<u>apply to additions</u>
62.7						<u>or site alterations to</u>
62.8						<u>historic buildings or</u>
62.9						<u>structures</u>
62.10	<u>Buildings and structures on the face of or</u>	<u>E</u>	<u>n/a</u>	<u>n/a</u>	<u>E</u>	<u>Height in the</u>
62.11	<u>abutting the bluff in the CA-UC district</u>					<u>CA-UC district</u>
62.12	<u>of St. Paul, between Chestnut Street and</u>					<u>is governed by</u>
62.13	<u>Highway 52</u>					<u>underlying zoning</u>
62.14	<u>Public utilities</u>					
62.15	<u>Electrical power facilities</u>	<u>E</u>	<u>E</u>	<u>E</u>	<u>(E)</u>	<u>Part 6106.0130</u>
62.16	<u>Essential services (other than storm</u>	<u>E</u>	<u>E</u>	<u>E</u>	<u>(E)</u>	<u>Part 6106.0130</u>
62.17	<u>water facilities)</u>					
62.18	<u>Storm water facilities</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>(E)</u>	<u>Part 6106.0160</u>
62.19	<u>Wastewater treatment</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>Part 6106.0130</u>
62.20	<u>Public transportation facilities</u>	<u>E</u>	<u>N</u>	<u>(E)</u>	<u>(E)</u>	<u>Part 6106.0130</u>
62.21	<u>Public recreational facilities</u>					
62.22	<u>Accessory structures, such as</u>	<u>E</u>	<u>E</u>	<u>(E)</u>	<u>(E)</u>	<u>Part 6106.0130;</u>
62.23	<u>monuments, flagpoles, light standards,</u>					<u>within BIZ, only</u>
62.24	<u>and similar park features</u>					<u>on slopes averaging</u>
62.25						<u>less than 30 percent.</u>
62.26						<u>Exemptions do not</u>
62.27						<u>apply to principal</u>
62.28						<u>buildings</u>
62.29	<u>Picnic shelters and other open-sided</u>	<u>E</u>	<u>N</u>	<u>(E)</u>	<u>N</u>	<u>Part 6106.0130</u>
62.30	<u>structures</u>					

Small structures for river front uses, including support facilities,

02/26/16

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63.1	<u>Parking areas</u>	(E)	<u>N</u>	(E)	(E)	<u>Part 6106.0130;</u>
63.2						<u>within BIZ, only</u>
63.3						<u>within 20 feet of toe</u>
63.4						<u>of bluff; not on face</u>
63.5						<u>of bluff; and must</u>
63.6						<u>not affect stability</u>
63.7	<u>Stairways, lifts, and landings</u>	E	<u>N</u>	E	E	<u>of bluff</u>
						<u>Part 6106.0140</u>
63.8	<u>Roads and driveways</u>	(E)	<u>N</u>	(E)	(E)	<u>Part 6106.0130</u>
63.9	<u>Natural-surfaced trails, access paths, and</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>E</u>	<u>Part 6106.0130</u>
63.10	<u>viewing areas</u>					
63.11	<u>Hard-surfaced trails and viewing</u>	<u>E</u>	<u>N</u>	<u>E</u>	(E)	<u>Part 6106.0130;</u>
63.12	<u>platforms</u>					<u>within BIZ, only</u>
63.13						<u>on slopes averaging</u>
63.14						<u>less than 30 percent</u>
63.15	<u>Water access ramps</u>	<u>E</u>	<u>N</u>	<u>E</u>	(E)	<u>Part 6106.0130</u>
63.16	<u>Public signs and kiosks for interpretive</u>	<u>E</u>	<u>N</u>	<u>E</u>	(E)	<u>Part 6106.0130</u>
63.17	<u>or directional purposes</u>					
63.18	<u>River-dependent uses</u>					
63.19	<u>Shoreline facilities</u>	<u>E</u>	<u>N*</u>	<u>E</u>	(E)	<u>Part 6106.0110,</u>
63.20						<u>subpart 6.</u>
63.21						<u>Exemptions do not</u>
63.22						<u>apply to buildings,</u>
63.23						<u>structures, and</u>
63.24						<u>parking areas that</u>
63.25						<u>are not part of a</u>
63.26						<u>shoreline facility</u>
63.27	<u>Private roads and conveyance structures</u>	<u>E</u>	<u>N*</u>	<u>E</u>	(E)	<u>Part 6106.0110,</u>
63.28	<u>serving river-dependent uses</u>					<u>subpart 6</u>
63.29	<u>Private residential and commercial</u>					
63.30	<u>water access and use facilities</u>					

, except as required for ADA compliance.

**BOARD OF COUNTY COMMISSIONERS
DAKOTA COUNTY, MINNESOTA**

June 21, 2016

Resolution No. 16-339

Motion by Commissioner Workman

Second by Commissioner Holberg

Review And Comment On Mississippi River Corridor Final Critical Area Rules

WHEREAS, the Mississippi River Corridor Critical Area (MRCCA) is a 54,000-acre corridor along the Mississippi River established in the 1970s by Executive Order; and

WHEREAS, the purpose of the MRCCA is to protect and preserve the Mississippi River as a resource and its value for public use; and

WHEREAS, in 2013, the Legislature restored the Department of Natural Resources (DNR) rulemaking authority and made changes to the statutory language guiding rule development to better address local government concerns; and

WHEREAS, the DNR is soliciting public comments on final rules for the MRCCA; and

WHEREAS, a request for comments was published on April 11, 2016, and the DNR will accept comments through July 6, 2016; and

WHEREAS, the DNR is scheduled to host a public hearing on June 14, 2016 at Schaar's Bluff Gathering Center to collect public comment; and

WHEREAS, the proposed rules would limit accessibility to public use areas along the riverfront by prohibiting American's with Disabilities Act (ADA) accessible hard surface trails in bluff zones exceeding 30 percent slope, public bathroom facilities at public riverfront use areas in the Shoreland Impact Zone, and lifts and stairs in the Bluff Impact Zone at public recreation facilities; and

WHEREAS, once adopted, the state Critical Area regulations will be implemented through local plans and zoning ordinances.

NOW, THEREFORE, BE IT RESOLVED, That the Dakota County Board of Commissioners hereby authorizes the County Board Chair to submit a letter to the Administrative Law Judge requesting an amendment of the proposed Critical Area Rules that would allow ADA accessible hard surface trails to be located within Bluff Impact Zones exceeding 30 percent slope, allow bathroom facilities to be located in Shoreland Impact Zones to serve riverfront public use areas, and allow for lifts and stairs to be located in Bluff Impact Zones.

STATE OF MINNESOTA
County of Dakota

	YES		NO
Slavik	<u> X </u>	Slavik	_____
Gaylord	<u> X </u>	Gaylord	_____
Egan	<u> X </u>	Egan	_____
Schouweiler	<u> X </u>	Schouweiler	_____
Workman	<u> X </u>	Workman	_____
Holberg	<u> X </u>	Holberg	_____
Gerlach	<u> X </u>	Gerlach	_____

I, Jeni Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 21st day of June, 2016, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 21st day of June, 2016.



Clerk to the Board

- Fax Transmission

RECEIVED

By: OAH on 6/28/2016 at 4:49 PM

To: 16515390310 **From:** Russell Eichman, Executive Director
Fax: 16515390310 **Date:** 6/28/2016
RE: Mississippi River Corridor Critical Area **Pages:** 3
Comments

Comments:

Russell Eichman
Executive Director
Upper Mississippi Waterway Association
P. O. Box 7006
St. Paul, MN 55107
651-776-3108
umwa@umwa.net
umwa@presenter.com
<http://www.umwa.net>



Phone: 651.776.3108 **E-mail:** umwa@umwa.net
P.O. Box 7006 St. Paul, Minnesota 55107
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By: OAH on 6/28/2016 at 4:49 PM

June 28, 2016

Administrative Law Judge Eric Lipman
Office of Administrative Hearings
600 North Robert St.
P.O. Box 64620
St. Paul, MN 55164-0620
FAX: 651-539-0310

Cc: Dan Petrik, Land Use Specialist
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4025
Daniel.Petrik@state.mn.us

RE: Mississippi River Corridor Critical Area Comments

Dear Judge Lipman:

The Upper Mississippi Waterway Association (UMWA) is an association of waterway vessel operators, shippers and other waterway interests working together to promote the economic and environmental benefits of water transportation in the Upper Midwest. Incorporated in 1932, the UMWA works with members and other stakeholders to ensure that the Upper Mississippi River navigation system, including the 72-mile Mississippi River Corridor Critical Area, is used and maintained in a safe and environmentally responsible manner. Some UMWA members have filed individual comments on this rulemaking project, however all members are aware of its economic and environmental impact, some imminent, others extensive.

With that brief introduction of the Association's interest in this matter, our members offer the following comments to the proposed permanent rules relating to the MRCCA.

Proposed Rules Conflict With Current Minnesota Law

Minnesota Laws, Chapter 137 article 2 §18 states that the commissioner of natural resources shall work with the Corps of Engineers, National Park Service and the Metropolitan Council to ensure that the Mississippi River corridor critical area is managed as a multipurpose resource in a way that provides for the continuation, development and redevelopment of a variety of urban uses, including industrial and commercial uses . . . where appropriate within the Mississippi River corridor.

While Minnesota Statutes 2012, § 116G.15 provides for the continuation, development and redevelopment of commercial and industrial property when establishing districts, Part 6106.0080 restricts expansion within the shore impact zone. It does so by proposing rules (Subp. 3, Nonconformities) that create legally nonconforming structures where businesses would not be allowed to expand without additional permitting from the local unit of government.

Yet, the proposed rules do not reflect the intent of Chapter 137 passed by the Minnesota Legislature in 2013, specifically § 18 which states that the corridor critical area is to be managed as a multipurpose resource in a way that provides for the continuation, development and redevelopment of a variety of urban uses, including industrial and commercial uses.

Minnesota Laws, Chapter 137, article 2 § 19 states that when establishing districts, the commissioner of natural resources shall consider the protection of resources identified in the Minnesota National River and Recreation Area Comprehensive Management Plan, one of which recognizes the importance of economic activities on and along the river. MNRRA's CMP also provides for the commercial use of the corridor consistent with MNRRA legislation.

To correct these departures from current laws, the DNR should revise the proposed rules to reflect Minnesota Law Chapter 137, article 2 § 18 & 19 and Minnesota Statutes 2012, § 116G.15 which support continuation, development and redevelopment within the MRCCA.

Districts

- Please consider adjusting the proposed standards in the CA-UM district to grant **existing** industrial uses the same exemptions as are proposed for River Dependent Uses. The impact on the river of this provision would be minimal, since this exemption would only apply to **existing** industrial uses.
- Minnesota DNR needs to change its proposed district designation for Lower Grey Cloud Island to an Urban mixed district (CA-UM); it is not Rural and Open Space (CA-ROS) as now described.
- The proposed river district designation (CA-ROS) for the west portion of Grey Cloud Island Township and for the entire Lower Island in Cottage Grove imposes standards that are incompatible and overly restrictive of the historic and current permitted uses for planned, post mining uses. The best designation, at least for the duration of the mining use would be CA-UM.

It is imperative that the proposed rules reflect historic Minnesota laws that support commercial development and redevelopment within the MRCCA. While this Mississippi River project is a Minnesota effort, its environmental and commercial components have regional impact, facilitating the movement of 8.63 million tons of freight annually valued at \$14.5 billion (2014) with minimum impact on the environment.

Thank you for your consideration.

Sincerely,



Greg Genz
Chair, Board of Directors

C:\UMWA\Umwa8_23_07\Minn Legislature\201606 final DNR CriticalAreaRulemaking.doc

RECEIVED

By: OAH on 6/29/2016 at 2:53 PM

Aggregate Industries

2815 Dodd Road Suite 101 Eagan MN 55121

Telephone (651) 683-0600 Fax (651) 683-8108



FACSIMILE

651-539-0310

TO

Judge Eric L. Lipman

COMPANY

Office of Administrative Hearings

FACSIMILE NUMBER

FROM

DATE

6-29-16

NO OF PAGES (INCLUDING COVER SHEET)

5

MESSAGE

*Please consider these comments to
 the Mississippi Corridor Rule Making*

Ph...



Aggregate Industries US
2815 Dodd Road, Suite 101
Eagan, MN 55121

Tel 651-683-0600
Fax 651-683-8108
www.aggregate-us.com

June 29, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

RE: Proposed Rules Governing Mississippi River Corridor Critical Area, Minnesota Rules, Chapters 6106 and 4410; Revisor's ID Number R-04240

Dear Judge Lipman:

Please consider the following comments as you finalize the rules for the Mississippi River Critical Corridor.

Aggregate Industries is the successor to the JL Shiely Company. Joseph Leo Shiely began mining limestone and sand and gravel from upper and lower Grey Cloud Islands in the mid 1950's. Since then the Company has pushed in excess of 50 million tons of aggregate into the Twin Cities of Minneapolis and St Paul via our fleet of tow boats and barges. We have four properties that will be impacted by the new rules; (1) the Distribution Yard on Child's Road in St Paul; (2) the Distribution Yard at 26th Avenue in Minneapolis; (3) the Larson Limestone Quarry in Grey Cloud Island Township; approximately 550 acres and (4) the Nelson Sand and Gravel Mine in Cottage Grove; approximately 1200 acres;

Our two distribution yards are located in the proposed CA-UM, Urban Mixed District. As such, the current operations are not impacted, but future improvements at these important sites may be impacted. The proposed rules exempt river dependent uses from much of the increased regulation, so our St Paul Distribution Yard which still takes delivery by barge is little impacted. Our Minneapolis Distribution Yard, however, since lock closure, is no longer a river dependent use, so improvements to that business will be more difficult. The setbacks, Shore Impact Zone and Bluff Impact Zone standards would preclude our recent improvement and similar future adjustments.

Administrative Law Judge Eric L. Lipman
June 29, 2016



The language of RD4240 (2/26/16), 6106.0010 POLICY, states... "It is in the interest of present and future generations to preserve and enhance the natural, aesthetic, *economic*, recreational, cultural and historic values of the Mississippi River corridor within the Twin Cities metropolitan area and protect its environmentally sensitive areas." This current version of the policy statement includes the word "economic" which was not in the original policy statement. This important inclusion recognizes that it is, in-fact, critical to preserve and enhance the economic vitality of the river corridor.

Please consider adjusting the proposed standards in the CA-UM district to "preserve .. the economic .. values" of **existing** industrial uses by extending the same exemptions as are proposed for River Dependent Uses. The impact on the river of this provision would be minimal, since this exemption would only apply to **existing** industrial uses in the existing heavily developed CA-UM district.

Our greatest concern is for the impact of the proposed rules on the current operations and on future uses on our two island mine properties.

1. 6106.0150 Vegetation Management Standards, Subp. 3. A. prohibits intensive vegetation clearing. This section does not establish a clear approval process for vegetative clearing associated with existing permitted mining operations. Is clearing for mining permitted by 6106.0070, Subp. 6, (4)? We have significant clearing to do as we mine the two island mines.

Please amend the proposed standards to make clear our ability to continue, unhindered our existing, planned and permitted important business.

2. The proposed regulations will make the expansion of mining into the backwaters at our Nelson Sand and Gravel Mine more difficult and more costly. Except for the components of our mining operations that would be considered "river dependent," no activity would be allowed in the Shore Impact Zone or the Bluff Impact Zone. New or existing operations must not be "readily visible" (6106.0110, Sub 5). River dependent uses must be "designed in a compact fashion" (6106.0110, Sub 6). Our concern here is for the interpretation of "readily visible" and "designed in a compact fashion" and any



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June 29, 2016



other subjective terms in the proposed regulations. In the proposed district, CA-ROS, the dimensional standards are the most restrictive.

Please consider changing the district designation from CA-ROS to CA-UM for land that is currently planned and used for mining in Grey Cloud Island Township and in Cottage Grove. This designation is the most appropriate for the continuation of the existing mining uses on both islands. The proposed rules should provide for a district designation which is fitting for existing permitted, long standing uses and for uses that are projected to have long future durations.

3. The proposed river district designation (CA-ROS) for the west portion of Grey Cloud Island Township and for the entire Lower Island in Cottage Grove imposes standards that are incompatible and overly restrictive of the historic and current permitted uses and for the planned, post mining uses. The best designation, at least for the duration of the mining uses would be CA-UM. That designation would also best accommodate the existing plans for the islands. Given the land transformative activities of the past and future mining, imposing the setback and Primary Conservation Areas (PCA) standards of CA-ROS would be severely limiting of the envisioned developments. The CA-ROS district would require structure setbacks of 200 feet and would require that 50% of the Primary Conservation Areas (PCA) be set aside with permanent protection. PCAs include: Shore Impact Zones which in CA-ROS would be 100 feet; Bluff Impact Zones; Floodplains; Wetlands, ... Unstable soils; Bedrock; Native Plant Communities; Cultural & Historic properties; Significant Vegetative Stands, Tree Canopies and Other Resources Identified by the locals (6106.0050, Sub 53). That definition of PCAs would include virtually all of the un-mined shoreline on both islands. In our opinion, that is overly burdensome and would preclude the creative, valuable and beautiful, long planned future development of the islands.

Please consider revising the proposed rules by changing the district designation for the west half of the "upper island" in Grey Cloud Island Township and the entire "lower island" in Cottage Grove to CA-UM. That designation would be most fitting for the foreseeable future (15 – 20 years while mining continues on the



Administrative Law Judge Eric L. Lipman
June 29, 2016



islands) and would provide the greatest flexibility for the future development of the islands.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert H Bieraugel", written over a large, light-colored scribble.

Robert H Bieraugel
Director, Environment and Land Services
Aggregate Industries – NCR, Inc.

C: Richard Adams, Chairman, Grey Cloud Island Township
Cliff Rodahl; Chairman, Grey Cloud island Township Planning Commission
Jennifer Levitt, Director, Cottage Grove Community Development
John McCool, Senior Planner, Cottage Grove
John Burbank, Senior Planner, Cottage Grove
Hugh Schilling, Managing Partner, PAS Associates, Inc.
Russ Eichman, Upper Mississippi Waterway Association



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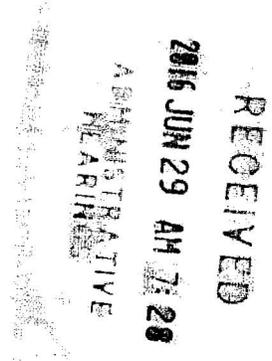
**Greater Saint Paul
Building Owners &
Managers Association**

W-2950 FIRST NATIONAL BANK BUILDING • 332 MINNESOTA STREET
SAINT PAUL, MINNESOTA 55101-1379 • PHONE: 651.291.8888 • FAX: 651.291.1031

June 27, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, MN 55164-0620

cc: Dan Petrik, Land Use Specialist
Minnesota Department of Natural Resources
500 Lafayette Road, Saint Paul, MN 55155-4025
RE: Mississippi River Corridor Critical Area Comments



Dear Judge Lipman:

Greater St. Paul Building Owners and Managers Association (BOMA) is the primary commercial real estate trade group in the East Metro. St. Paul BOMA is submitting comments regarding the proposed rules governing the MRCCA. Our comments will be focused to those areas adjoining downtown St. Paul and the Ford Plant site.

The Mississippi River and the surrounding parkland in the river corridor provide a tremendous resource to the Twin Cities. Building owners and commercial property professionals agree on the value of maintaining sufficient "green space" in an urban setting, and the many miles of undeveloped shoreline along the Mississippi River, as it flows through the Metro area, gives our community a special amenity that adds to our quality of life. Updating the rules that govern this special environment is a worthwhile exercise, and we support the effort. In doing so, however, it's essential to remember we're discussing a river running through an urban setting. Thus, drafting rules that intend to create an experience that replicates the river in a more rural setting are not only unrealistic, but are punitive to local municipalities.

Most of the shoreline of the Mississippi River as it flows through the Twin Cities is forested. As a community, we are fortunate to have been able to keep such a high percentage in a natural growth state. Maintaining what we have is a worthy goal. But this doesn't mean that each inch of the river must replicate this forested appearance. This is especially true of the very urban cores.

2016-2017 OFFICERS

Julie A. Bauch, Chairperson • Gerald M. Hersman, *Vice Chairperson* • David B. Ketcham, *Secretary/Treasurer*

DIRECTORS

Bruce T. Thompson • Shawn E. Wiski • Brett K. Greenfield • Sandra J. Schadegg • Tim J. Yohnk
Joe A. Spartz, *President*

Downtown St. Paul, from a river perspective, is a very busy area. It has a heavily trafficked road (Sheppard), railway tracks, an airport, four bridges, many commercial and residential buildings, and parking structures. This inventory doesn't include what takes place on the river. The port terminal handles an extensive amount of barge traffic from spring through fall. Finally, dozens of large boats are docked along the river near the Wabasha Street Bridge as part of the Minnesota Boat Club. Their presence increases the amount traffic and activity on the river. Overall, taken as a whole, it's not at all inconsistent from what one would expect from a downtown that borders a major river.

This current reality contrasts with the objectives of the proposed rules governing the MRCCA. Given the arbitrary nature by which the West Side Flats and other areas adjoining the downtown have been categorized under these proposed rules, it appears the DNR is trying to "reclaim" the area. To what end is unclear. If the intent is the limit development near the river in downtown St. Paul, then these rules will be successful in meeting this goal. It won't change the experience of any individuals on the river. A trip by boat through this area will still remain a very urban experience, with all of the associated noise, river traffic, and other human activity one would expect being near downtown St. Paul. And if the goal is to reduce the tax base enrichment for the community by limiting development, the proposed rules will also meet this criterion. St. Paul needs to increase its overall density. Doing so provides many benefits to the community. Increasing density along the river is very viable since the location is able to attract investment more so than other areas. So by placing restrictions on development in the river corridor near downtown, the DNR is taking from St. Paul a critical resource for economic development.

To a lesser degree, the same is true of the former Ford Plant site. High density development is essential to fully develop this site to its maxim tax base potential. Setting arbitrary rules, rather than allowing the market to determine the outcome, will hinder investment and ensure a lower density project. This will be unfortunate for all the residents of St. Paul who will shoulder the burden of higher taxes due to this missed opportunity.

By limiting development near downtown along the river and at the Ford site, the proposed rules will constrain growth and vitality for St. Paul with no measureable improvement to the experience of the river user. While the proposed districts for much of the draft rules are sensible, their adoption in the two instances cited above are unnecessary and counter-productive for the community. BOMA asks the DNR to not adopt rules that restrict the City of St. Paul from determining its future and prevents it from realizing its latent growth potential. Let the City and market decide how development will occur in those selected areas that hold great potential, and realistically, won't change the current experience of river travelers.

Best regards,



Joe Spartz
President
Greater Saint Paul BOMA
651-291-2521

33236



United States Department of the Interior

NATIONAL PARK SERVICE
Mississippi National River and Recreation Area
111 E. Kellogg Blvd., Ste. 105
St. Paul, Minnesota 55101-1256

IN REPLY REFER TO:

L3033

Date: June 28, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, MN 55164-0620

RECEIVED
2016 JUN 30 AM 7:26
ADMINISTRATIVE
HEARINGS

Dear Judge Lipman:

Please find attached the National Park Service (NPS) comments on the proposed rules for the Mississippi River Corridor Critical Area (MRCCA). The Mississippi National River and Recreation Area (Mississippi National River) is one of 411 units of the NPS, and the outcome of the Mississippi River Corridor Critical Area (MRCCA) rulemaking process will fundamentally affect this unit.

We appreciated the opportunity to testify before you during the public meetings held on June 14 and 16. While these meetings offered the opportunity to introduce you to our interests and concerns, the attached comments provide a detailed examination. Although the proposed rules are not as strong in some areas as the NPS would like, we believe they are in keeping with the Act that established the Mississippi National River and the Comprehensive Management Plan for the park. In our detailed comments we address those issues that still concern us.

If you have any questions, you can contact me at john_anfinson@nps.gov or 651-293-8432.

Sincerely,

John O. Anfinson, PhD
Superintendent

1. INTRODUCTION

The Mississippi National River and Recreation Area (Mississippi National River) is one of 411 units of the National Park Service (NPS), and the outcome of the Mississippi River Corridor Critical Area (MRCCA) rulemaking process will fundamentally affect this unit. The reason is that the preservation, protection and enhancement of the Mississippi National River and the MRCCA are closely entwined.

The MRCCA predates the Mississippi National River. This is important because it shows that the effort to protect the corridor's exceptional resources began at the local level. As important as the Critical Area recognition was, many wanted more for a river and resources of such significance. They wanted to add this reach to the National Park system, and they succeeded in 1988. Their success took the MRCCA to a level of national importance, and that imposed a much higher degree of trust and responsibility on the State and the local governments within the corridor.

The NPS is entrusted with America's most treasured places, which inherently requires stronger mechanisms than generally found at the State or local levels. Congress, however, relied on the MRCCA to protect the corridor's resources, rather than instituting a separate set of federal regulations.

Two actions solidified this arrangement. The first came in 1991, when the State designated the Mississippi National River the Mississippi River Corridor Critical Area. The second came in 1995, when the Secretary of the Interior signed the Mississippi National River and Recreation Area Comprehensive Management Plan or CMP.

The CMP constitutes the formal agreement between the Secretary of the Interior and the State. The CMP was developed by the 22-member, Mississippi River Coordinating Commission (Commission) established by the Act that created the Mississippi National River. The Commission held many meetings, with extensive public input. The Commission signed the agreement and sent it to Governor Arne H. Carson, who then signed it and forwarded it to Secretary of the Interior Bruce Babbitt. Secretary Babbitt signed the CMP on May 22, 1995.

The NPS must look at the proposed rules to determine whether they comply with our authorizing legislation and the CMP. The CMP repeatedly states that plans and actions reviewed under it must conform to the Purposes and Findings for which Congress created the Mississippi National River. The Purposes and Findings are:

Sec. 701. (a) FINDINGS. – The Congress finds that:

- (1) The Mississippi River Corridor within the Saint Paul Minneapolis Metropolitan Area represents a nationally significant historical, recreational, scenic, cultural, natural, economic, and scientific resource.
- (2) There is a national interest in the preservation, protection and enhancement of these resources for the benefit of the people of the United States.
- (3) *State and local planning efforts along the River Corridor provide a unique foundation for coordinating Federal, State, and local planning and management processes. (Emphasis added.)*
- (4) Existing Federal agency programs lack sufficient coordination and financial participation with State and local planning and regulatory authorities to provide for adequate and comprehensive resource management and

economic development consistent with the protection of the Mississippi River Corridor's nationally significant resources, and the public use and enjoyment of the area.

(5) *The preservation, enhancement, enjoyment, and utilization of the nationally significant resources of the Mississippi River Corridor can be accomplished by a cooperative Federal, State, and local comprehensive planning and management effort. (Emphasis added.)*

(b) PURPOSES. – The purposes of this subtitle are:

- (1) To protect, preserve and enhance the significant values of the waters and land of the Mississippi River Corridor within the Saint Paul-Minneapolis Metropolitan Area.
- (2) To encourage adequate coordination of all governmental programs affecting the land and water resources of the Mississippi River Corridor.
- (3) To provide a management framework to assist the State of Minnesota and its units of local government in the development and implementation of integrated resource management programs for the Mississippi River Corridor in order to assure orderly public and private development in the area consistent with findings of this subtitle. (PUBLIC LAW 100-696 – NOV. 18, 1988, TITLE VII – MISSISSIPPI NATIONAL RIVER AND RECREATION AREA.)

As the Findings and Purposes show, the Act relied on a Federal, State and local partnership to protect the corridor's significant resources, while helping guide orderly development. They also show that there is a national interest in doing so.

Although the proposed rules are not as strong in some areas as the NPS would like, we believe they are in keeping with the Act that established the Mississippi National River and the CMP. In our detailed comments we address those issues that still concern us.

Proposed Rules and Executive Order 79-19

The Executive Order has not worked as well as we had hoped. The proposed rules offer a better solution. For most units of the National Park system, we have a set of regulations and policies that apply across the whole park. That is not happening here. There are important disparities between how the communities throughout the corridor implement or fail to implement Executive Order 79-19. The cumulative impacts of these disparities are mounting. For the many additional reasons Executive Order 79-19 is not working well, see pages six and seven of the Statement of Need and Reasonableness (SONAR) as well as our detailed comments below.

Still, we believe the premise behind our agreement, or "Compact," as former Senator Durenberger referred to it as in his testimony, can work. If the final rules match the proposed rules or are stronger, they will better fulfill the agreement between the Federal government and the State and better demonstrate that the idea of local and State leadership in partnership with the NPS can work to protect nationally significant resources.

Reasonableness

We also agree with the SONAR that the rules are reasonable. They may seem overly demanding to some. They serve, however, as a substitute to the normal National Park Service regulations and guidance that protect resources of national significance, and this must be considered.

Timing and Observations

The agreement or compact between the State and the Department of the Interior is an experiment that has special relevancy for the 21st Century. The rulemaking process is coming to a close as the NPS is celebrating its centennial year. We know that our second century is going to be much different.

- Our visitors, supporters and advocates will be more diverse and more urban. More than 80% of Americans live in urban areas today.
- Here is where we can engage new generations of Americans. Here is where we can introduce them to the idea that parks are more than remote, natural places.
- Last year the Director of the National Park Service announced the Urban Agenda, recognizing this shift.¹
- There is a brilliant new spotlight on urban parks and this one in particular.

We can demonstrate that this model, this partnership, can work to protect places of national significance. We can show that a NPS-worthy level of protection can lead to substantial economic benefits to the communities here.

Last year the Minneapolis and Saint Paul visitor and convention bureaus attended the U.S. Travel Associations IPW meeting in Orlando, Florida. This is the travel industry's premier international marketplace and the largest generator of travel to the U.S. The two cities chose to highlight the Mississippi National River and the NPS centennial as their principal message to attract foreign visitors. On their banners they used the NPS centennial logo and carried the following statement: "Mississippi National River and Recreation Area. This national river park offers tranquil stretches for fishing, boating, canoeing, birdwatching, bicycling and hiking." The Twin Cities are beginning to understand the power of this NPS unit and the value of protecting, preserving and enhancing the Mississippi River's resources.

The following are some key points to know about MNRRA:

- We are the only unit of the National Park Service whose mission is to protect, preserve and enhance the Mississippi River.
- We are the only national park unit that runs continuously through a major metropolitan area.
- We own approximately 64 of the 54,000 acres within our boundary, which is the same boundary as the MRCCA.
- We are necessarily a partnership park. Everything we do throughout the National Park corridor we do in partnership.
- And because of how we are tied to the MRCCA, we are a very different model within the National Park system.

To close this introduction, the NPS wants to commend the Minnesota Department of Natural Resources (DNR) for all the work they have put into the rulemaking process. Over the past six years, they have engaged all the communities within the corridor and many other stakeholders and interests. While being rigorous and thorough, they have taken a balanced approach to defining minimum standards.

¹ NPS Urban Agenda, <https://www.nps.gov/subjects/urban/Urban-Agenda.htm>

2. THE PROPOSED RULES ARE NEEDED AND REASONABLE

The DNR provided arguments and evidence that exhibit the need and reasonableness of the proposed rules for the MRCCA. This was done in accordance with the nine factor regulatory analysis laid out in Minn. Stat., §14.131.

Understanding the purpose of the MRCCA and the context of the existing regulatory framework is necessary to accurately assess the need and reasonableness of the proposed rules

MRCCA Purpose

The purpose of the MRCCA is to protect and preserve the natural, cultural, historic, and aesthetic resources of the Mississippi River corridor in the Twin Cities metropolitan area while allowing for development that does not impair these resources. This is exhibited by the Critical Areas Act of 1973.

Critical Areas Act of 1973

Minn. Stat., §116G.02 Policy

“The legislature finds that the development of certain areas of the state possessing important historic, cultural, or esthetic values, or natural systems which perform functions of greater than local significance, could result in irreversible damage to these resources, decrease their value and utility for public purposes, or unreasonably endanger life and property. The legislature therefore determines that the state should identify these areas of critical concern and assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas.”

The legislature identified poorly planned and coordinated development as a threat to areas with important historic, cultural, esthetic, and natural resources and passed a law to protect these areas and establish state and local partnerships to effectively plan for them.

In reviewing the five purpose statements found in Minn. Stat., §116G.15 subdivision 1, it is clear that the intent of the program is to protect the Mississippi River corridor’s natural, cultural, historical, and aesthetic resources and values. Minn. Stat., §116g.15 lists many key resources and features to protect in achieving the purposes of the law, but protection of these resources and features must be done consistent with the purposes of the law.²

Minn. Stat., §116G.15 MISSISSIPPI RIVER CORRIDOR CRITICAL AREA.

“Subdivision 1. **Establishment; purpose.** The federal Mississippi National River and Recreation Area established pursuant to United States Code, title 16, section 460zz-2(k), is designated an area of critical concern in accordance with this chapter. The purpose of the designation is to:

- (1) protect and preserve the Mississippi River and adjacent lands that the legislature finds to be unique and valuable state and regional resources for the benefit of the health, safety, and welfare of the citizens of the state, region, and nation;
- (2) prevent and mitigate irreversible damages to these state, regional, and natural resources;

² Minn. Stat., §116g.15 subd. 4

- (3) preserve and enhance the natural, aesthetic, cultural, and historical values of the Mississippi River and adjacent lands for public use and benefit;
- (4) protect and preserve the Mississippi River as an essential element in the national, state, and regional transportation, sewer and water, and recreational systems; and
- (5) protect and preserve the biological and ecological functions of the Mississippi River corridor.”

Minn. Stat., §116G.15 also designates the Mississippi National River the MRCCA. This designation signifies a promise from the State to the Federal government to protect the Mississippi River corridor in the Twin Cities metropolitan area consistent with the CMP.

Minn. Stat., §116G.15 (1991)

“The federal Mississippi National River and Recreation Area established pursuant to United States Code, title 16, section 460zz-2(k), is designated an area of critical concern in accordance with this chapter. The governor shall review the existing Mississippi river critical area plan and specify any additional standards and guidelines to affected communities in accordance with section 116G.06, subdivision 2, paragraph (b), clauses (3) and (4), needed to insure preservation of the area pending the completion of the federal plan.”³

The CMP “adopts and incorporates by reference the state critical area program.” It “does not create another layer of government, but rather stresses the use of existing authorities and agencies to accomplish the policies and actions developed for the area”⁴

Existing Management Framework

The regulatory framework for the MRCCA is currently contained in Executive Order 79-19. Executive Order 79-19 established standards and guidelines that local, regional, and state governments must follow. All local governments within the MRCCA have adopted MRCCA plans, and all but a few have adopted MRCCA ordinances.⁵ Those without adopted ordinances are subject to the Interim Development Regulations of Executive Order 79-19.

The proposed rules will replace and update the administrative provisions, districts, and standards currently contained in Executive Order 79-19.⁶ The proposed rules do not establish a new program for local governments to administer but rather update a 37-year-old existing program.

Executive Order 79-19 has served as protection for the river corridor for 37 years, and while the program has had some success, it is outdated, and issues with it continue to mount. As with any regulatory framework, regular updates are necessary to assess and resolve issues. The SONAR identifies many issues with Executive Order 79-19 that the proposed rules seek to resolve.⁷ By resolving these issues, updating the MRCCA program will benefit everyone with an interest in the Mississippi River.

³ Minn. Stat., §116g.15 (1991)

⁴ CMP p.iv

⁵ SONAR p.3

⁶ SONAR p.1

⁷ SONAR p.6-7

3. NINE FACTOR REGULATORY ANALYSIS

1. A description of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

If the State adopts the proposed rules or a variation thereof, those rules will directly affect the NPS's ability to protect, preserve and enhance the Mississippi River and its resources. The Mississippi National River is designated as the MRCCA.⁸ The MRCCA program is the management framework agreed upon by the local, State, and Federal governments to protect, preserve and enhance the significant values of the Mississippi River corridor through the Twin Cities metropolitan area.⁹ Our CMP "does not create another layer of government but rather stresses the use of existing authorities and agencies to accomplish the policies and actions developed for the corridor."¹⁰ The Mississippi National River has a direct connection to the MRCCA, shares the same administrative boundary, and relies on it for resource protection.

We agree with the DNR that those who own, manage, or develop lands within the MRCCA, as well as members of the public, will benefit from the rules as proposed or from a stronger variation thereof that provides even better protection for the river and its resources. The benefit is achieved through the balance between resource protection and development interests and by addressing many of the issues with Executive Order 79-19 as noted in the SONAR.¹¹

2. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

We agree with the DNR that the primary cost of rule adoption will be incurred during the effort to update local plans and ordinances. These costs are detailed in factor five of the regulatory analysis.

The cost of enforcing the proposed rules will not increase, and we argue those costs will decrease compared to the existing framework under Executive Order 79-19. In developing the CMP, the Commission found that local plans, ordinances and implementation efforts are varied and the inconsistent application of a broad range of standards has created confusion during approval and implementation processes resulting in unnecessary administrative burden.¹² This remains true.

We often provide assistance and input to local governments regarding proposed developments and planning processes. This assistance can be time intensive and costly for all parties because the standards in Executive Order 79-19 are vague and inconsistently applied between communities. The proposed rules will replace and clarify the standards from Executive Order 79-19, resulting in an increase in efficiency, less ambiguity, and simplification of administrative procedures. The proposed rules offer a set of minimum standards that are easier to implement and provide predictability and consistency for all stakeholders.

⁸ Minn. Stat., §116G.15 subd. 1.

⁹ CMP p.iv

¹⁰ MNRRCA CMP p.12

¹¹ SONAR p.6-7

¹² CMP p.4

3. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The costs associated with the proposed rules must be considered in context with the existing standards in Executive Order 79-19. The DNR identified many issues with Executive Order 79-19 in the SONAR.¹³ In developing the CMP, the Commission found that local plans, ordinances and implementation efforts are varied and the inconsistent application of a broad range of standards has created confusion during approval and implementation processes resulting in unnecessary administrative burden.¹⁴ This remains true.

There is a need for a consistent and comprehensive management strategy for the corridor.¹⁵ Rulemaking is necessary to provide a consistent approach in guiding land use and development within the MRCCA. The proposed rules offer a consistent set of minimum standards for the MRCCA that provide predictability for developers and stakeholders. The proposed rules include modernized standards, clearer provisions, and more detailed and responsive districts.¹⁶

4. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

We have no comment on factor four.

5. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

In accordance with Minnesota law, "the statement of need and reasonableness must be prepared under rules adopted by the chief administrative law judge and must include the following to the extent the agency, through reasonable effort, can ascertain this information."¹⁷ The DNR sent a cost survey to all local governments to estimate the cost of updating MRCCA plans and ordinances. The majority of communities estimated the cost to be less than \$20,000. The DNR has estimated the costs to local governments to the best of their ability.

When estimating costs, it is important to consider the age of existing MRCCA plans and ordinances and their existing update framework. MRCCA plans are incorporated into local comprehensive plans. Comprehensive plan updates are required by the Metropolitan Council every ten years.¹⁸

The purposes of the MRCCA program remain consistent in the proposed rules. This means that communities with high quality MRCCA plans should incur minimal costs and communities with low quality plans should be looking to update their plans.

¹³ SONAR p.6-7

¹⁴ CMP p.4

¹⁵ CMP p.5

¹⁶ SONAR p.12

¹⁷ Minn. Stat., §14.131

¹⁸ Metropolitan Council Comprehensive Plan Updates, <http://www.metrocouncil.org/Handbook/Review-Process/Comprehensive-Plan-Updates.aspx>

Most local MRCCA ordinances are outdated and have not been updated since they were created in the 1980s. Communities should be reviewing and updating them irrespective of the proposed rules.

6. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

If the proposed rules are not adopted, Executive Order 79-19 would continue to be the management framework for the corridor. This is costly to all stakeholders because of the many issues identified in our comments and the SONAR.¹⁹

There are many consequences of not protecting the resources of the Mississippi River corridor. Unrestricted development near shorelines and bluffs can cause soil erosion, damage habitat, present a public safety risk, and diminish the quality of the view from the river or opposing overlooks.²⁰ Resource protection and enhancement has value both environmentally and economically. "The river corridor is characterized by a mosaic of urban development and natural areas."²¹ There are extensive natural vegetated shorelines and bluffs that are unusual for an urban area. Natural vegetation along the shoreline and bluffs is important to the visual character of the corridor and to support the corridor's natural systems. "Many Twin Cities area residents feel that this natural appearance contributes to the quality of their lives."²² The Mississippi River corridor's resources and place-making characteristics attract residents, visitors, and businesses to the Twin Cities, and enhances property values and local tax bases.²³

The proposed rules balance economic development interests and resource protection. Economic development activities and resource protection measures can coexist. Economic vitality is dependent on environmental health. "Preservation and economic development are not mutually exclusive, and MNRRRA presents a significant economic development opportunity for the metropolitan area."²⁴

7. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

We have no comment on factor seven.

8. An assessment of the cumulative effect of the rule with other state regulations related to the specific purpose of the rule.

We have no comment on factor eight.

¹⁹ SONAR p.6-7

²⁰ CMP p.5

²¹ CMP p.15

²² CMP p.84

²³ SONAR p.15

²⁴ CMP p.13

4. BLUFF AND SHORLINE PROTECTION STANDARDS

Bluff and shoreline protections are needed within the MRCCA. Bluffs, steep slopes, and shorelines are some of the most sensitive and significant resources of the MRCCA. The corridor has extensive natural vegetated shorelines and bluffs that are unusual for an urban area.²⁵ Unrestricted development near shorelines and bluffs can cause soil erosion, damage habitat, present a public safety risk, and diminish the quality of the view from the river or opposing overlooks.²⁶

Our CMP calls for “more uniform approaches to protecting bluffs, shorelines, wetlands, historic buildings, and other sensitive areas in the corridor.”²⁷ The proposed rules achieve this through a unified bluff definition and associated protections.

Recent landslides near West River Parkway in Minneapolis, along Highway 13 in Mendota Heights and in Lilydale Regional Park in Saint Paul demonstrate the need for proper bluff protections and setbacks in the MRCCA. According to a study completed by the DNR in 2016, all identified bluff failures had human modifications that contributed to bluff failure.²⁸ These bluff failures resulted in significant damages to built infrastructure. Bluffs naturally erode over time, but there is a clear correlation that connects human modification on or near bluffs to an increased risk of bluff failure.

The bluff definition was highly debated during the rulemaking process. A 2016 study by the DNR found that slopes of 20% or greater are much more likely to fail.²⁹ The final definition was a compromise that retains the 18 percent slope criterion found within Executive Order 79-19, our CMP, and many local ordinances, but added parameters to limit the inclusion of isolated slopes and man-made features. We have reservations regarding the new parameters, given the importance of bluffs in the corridor, but we feel the bluff definition is a compromise that provides a consistent minimum standard of protection. Whether vegetated or exposed outcroppings, bluffs are an important visual resource that sets the Twin Cities apart from other areas.³⁰ The proposed bluff definition is reasonable.

Executive Order 79-19 provides a definition for bluffline, but not for bluffs or other features. This has created confusion for local governments and stakeholders and inconsistency in bluff and slope protection. According to the City of Saint Paul, the proposed definition will result in a reduction of nonconforming structures.³¹ The bluff definition, therefore, could reduce administrative burden.

The proposed rules include bluff and shoreline impact zones and setbacks.³² Many of the standards that protect vegetation and land alteration refer to these sensitive area impact zones that provide targeted protection instead of broad corridor-wide restrictions. Our CMP places special emphasis on shoreline areas. Shoreline areas often have significant natural, cultural, and economic resources and

²⁵ CMP p.4

²⁶ CMP p.5

²⁷ CMP p.84

²⁸ SONAR p.23, A limited inventory of the location and style of June 2014 slope failures; towards better prediction and management, Jennings, DNR, 2016, p.1

²⁹ Historical Landslide Inventory for the Twin Cities Metropolitan Area, Jennings, DNR, 2016, p.14

³⁰ CMP p.86

³¹ Staff Report RES PH 16-147 re MRCCA Rulemaking,

<https://stpaul.legistar.com/View.ashx?M=F&ID=4454924&GUID=CCE17A19-7A32-43D2-849F-F6C60568D098>

³² MRCCA Proposed Rules Part 616.0180, subp 9, subp.68

provide the greatest recreational use potential.³³ Our CMP calls for uninterrupted vegetated shorelines where practical and the use of vegetation to screen development. We support these protection zones, and they are consistent with the suggested policies within our CMP.³⁴

³³ CMP p.16

³⁴ CMP p.17, 19, 85-86

5. RULE-BY-RULE ANALYSIS

We reviewed the rules for consistency with the policies in our CMP. We have included statements from our CMP to support the need and reasonableness of the rules or changes we request.

6106.0020 Purpose - We would like to reemphasize that the Mississippi National River is designated the MRCCA. The rules must be consistent with the purpose statements which focus on natural, aesthetic, historic and cultural resource protection.

6106.0050 Subpart 53. Primary Conservation Areas – We appreciate the development of a definition that captures the primary natural and cultural resources. It provides for a cleaner set of rules and ensures the purposes of the rules are carried out.

We still feel that Scenic and Natural Areas and islands should be included in the definition.

6106.0050 Subpart 56. Public River Corridor Views – Scenic and aesthetic resources can be subjective. When placed in the context of the MRCCA, however, policy has clearly indicated that the natural character of the corridor created by the vast vegetated bluffs and shorelines are the primary scenic and aesthetic resources.³⁵ Providing a definition of public river corridor views will help clarify and guide planning and decision making processes.

This approach is reasonable because it requires local cities to identify and protect specific river corridor views, as opposed to the current regulations that require blanket scenic protections for large areas of the corridor. Local governments, with community input and engagement, will have the ability to identify and define their public river corridor views in their comprehensive plans.

6106.0050 Subpart 60. Readily Visible – We appreciate the definition of readily visible and, while it is intended to create performance based standards, feel that it provides a basis for meaningful discussions. It will help facilitate decision making regarding the size and placement of structures. This is especially true for developments that will seek a conditional use permit or variance from the rules.

The definition of readily visible is needed and reasonable because it replaces the vague term “visual intrusion” from Executive Order 79-19 and establishes a basis for discussion which currently doesn’t exist.

6106.0050 Subpart 68. Shore Impact Zone – Our CMP places special emphasis on shoreline areas. Shoreline areas often have significant natural, cultural, and economic resources and provide the greatest recreational use potential.³⁶ The CMP advises that “providing at least a minimum narrow vegetative strip along the shoreline will aid in slope stabilization, help improve water quality, and maintain the natural appearance of the river.”³⁷

6106.0050 Subpart 72. Steep Slope – Steep slope areas and bluffs are the most common locations for natural vegetation within the MRCCA. These areas provide important wildlife habitat and identifying and protecting these areas is consistent with the purposes of the MRCCA.

³⁵ CMP p.2, 5-6, 85-86, Minn. Stat., §116g.15 subd. 1.

³⁶ CMP p.16

³⁷ CMP p.85

6106.0060 Subpart 7. Duties of Cities – We appreciate the inclusion to notify the NPS of discretionary actions within the corridor. We have a vested interest and are designated the MRCCA.

6106.0070 Subpart 3. Plan and ordinance review – Again, we appreciate including the NPS in the review of plans and ordinances. We are designated the MRCCA, and rely upon it to protect the resources Congress directed us to in our enabling legislation.

6106.0070 Subpart 6. Flexibility requests for ordinances – We are still concerned about the ability of local governments to request flexibility from the proposed rules. “Consistency is a fundamental element of the MRCCA program” and a key theme in the proposed rules.³⁸

6106.0080 Subpart 2. Variances – The granting of variances historically within the MRCCA has resulted in cumulative degradation of resources. The inclusion of mitigation for resource impacts when granting a variance is both needed and reasonable and consistent with the purposes of the proposed rules.

6106.0080 Subpart 3. Nonconformities – The creation of nonconformities were a major concern during the development of the rules. So much so, the DNR created a fact sheet addressing the issue.³⁹

Much of the discussion regarding nonconformities related to the definition of bluffs and their associated protections. The final definition of bluffs within the proposed rules addressed most of the concerns. In fact, the City of Saint Paul will have fewer nonconforming structures with the proposed rules than under their existing ordinance.⁴⁰ The proposed rules will reduce burden on local governments and property owners.

6106.0080 Subpart 4. Conditional and interim use permits – Conditional use permits in the proposed rules are used when enforcing maximum structure heights in the CA-RTC and CA-UM districts. This is an additional level of flexibility for local governments and will allow for additional building heights provided appropriate planning is conducted. Establishing a process for evaluating the impacts to scenic views and defining the steps needed to mitigate those impacts are needed in order to prevent degradation of the river’s unique scenic character.

We support the standards for granting a CUP for height in the proposed rules, as they will ensure that exceptions for height are reviewed within the context of the MRCCA.

We still would like additional language requiring the implementation of techniques identified to minimize impacts to public river corridor views.

6106.0100 Districts - The proposed rules outline six districts that are more responsive and more accurately reflect the current and planned land uses in the corridor than the four districts in Executive Order 79-19. Each of the proposed districts have maximum height limits and minimum bluff and

³⁸ SONAR p.35

³⁹ Nonconformities and MRCCA Rules, : What You Need to Know,
http://files.dnr.state.mn.us/input/rules/rulemaking/mrcca/nonconformities_2016.pdf

⁴⁰ Staff Report RES PH 16-147 re MRCCA Rulemaking,
<https://stpaul.legistar.com/View.ashx?M=F&ID=4454924&GUID=CCE17A19-7A32-43D2-849F-F6C60568D098>

shoreline setbacks that are intended to allow flexibility for development while preserving and enhancing the significant resources in the corridor.

In section 6 of our comments we detail district change requests.

6106.0120 Subpart. 2 Structure height - It is common practice to establish maximum structure heights to preserve the health, safety, welfare, and character of a community. Our CMP suggests limiting building heights near bluff and riverfront areas to “reduce visual impacts and protect views of the river and its shoreline”⁴¹ Limiting building heights near the river and at key locations near bluffs has, in many places, preserved views of and from the river and the character of a natural river corridor.

The proposed rules reasonably apply structure height limits. Two districts have strict height limits (CA-ROS and CA-RN), two districts have height limits with flexibility for taller buildings with a CUP (CA-RTC and CA-UM), and two districts defer to underlying zoning (CA-SR and CA-UC). This framework allows for strict protection in sensitive areas and dense development set back from the river.

6106.0120 Subpart 3. Location of structures - Structure setbacks from the river and bluffs are essential resource protection tools. Unrestricted development near shorelines and bluffs can cause soil erosion, damage habitat, present a public safety risk, and diminish the quality of the view from the river or opposing overlooks.⁴² Recent landslides near West River Parkway in Minneapolis, along Highway 13 in Mendota Heights, and in Lilydale Regional Park in Saint Paul demonstrate the need for proper bluff protections and setbacks in the MRCCA.

Our detailed comments regarding bluff and shoreline setback can be found in section 4: Bluff and Shoreline Protection Standards.

6106.0130 General Development Standards for Public Facilities – Public facilities have the same potential resource impacts as private facilities, but they also can provide public benefit through enhanced river access and providing interpretive and recreational opportunities. Given the potential public benefits, greater flexibility should be afforded to public facilities provided resource impacts are avoided or mitigated.

6106.0150 Vegetation Management - Vegetation is a significant resource, and steep slope areas, bluffs, and shorelines are the most common locations to find existing vegetation within the MRCCA. The Mississippi River corridor has extensive naturally vegetated shorelines that are unusual for an urban area.⁴³ Our CMP calls for uninterrupted vegetated shorelines where practical and the use of vegetation to screen development.⁴⁴ Vegetation in the corridor provides habitat, slows storm water runoff, prevents erosion, maintains slope and bluff stability, and contributes to the character of a natural river corridor.

The vegetation management standards and guidelines in EO 79-79 are unclear and unnecessarily broad, making it difficult to develop vegetation management policies.

⁴¹ CMP p.19, 85

⁴² CMP p.5

⁴³ CMP p.4

⁴⁴ CMP p.19, 85

The proposed rules establish a vegetation permit system that is implemented in the bluff impact zone and shore impact zone. The permit system will enable local governments to guide vegetation removal in a targeted manner that protects the natural and scenic integrity of the corridor.

6106.0160 Land Alteration and Storm Water Management Standards - The proposed rules establish a permit process to regulate both land disturbance and storm water runoff. The regulations are targeted toward protecting the corridor's most sensitive bluff and shoreline areas. This targeted approach provides the necessary resource protection through the least intrusive means.

6106.0170 Subdivision and Land Development Standards - A policy in our CMP recommends clustering "new uses near similar ones" or "replacing existing uses rather than develop isolated, unrelated sites that promote sprawl and reduce open space in the corridor."⁴⁵ The SONAR explains how the rules carry this idea forward through conservation design.⁴⁶ Conservation design is a good strategy for ensuring that wildlife habitat and other important ecological functions along the river are preserved. This is especially important in undeveloped areas of the corridor.

Dedication of open space within the corridor is needed to ensure protection of the river's biological and ecological functions, preservation of its natural and scenic character, and enhancement of public river access, trails, and recreational opportunities.

We conducted an inventory of the parcels within the river corridor and found that the average parcel size is approximately 2.2 acres. Only 2.1% of the parcels within the corridor are greater than 20 acres- the proposed threshold - and only 3.6% are greater than 10 acres. Six percent of the parcels are greater than six acres. We feel a threshold of six acres would more reasonably meet the purposes of the proposed rules, balance existing ordinances, and maximize the protection of primary conservation areas within the river corridor.

The threshold for design standards for subdivisions, planned unit developments, and redevelopments of land should be six acres.

⁴⁵ CMP p.18

⁴⁶ SONAR p.62-63

6. DISTRICT CHANGES

1 - Anoka - Kings Island

Change from CA-RN to CA-ROS

Kings Island in Anoka is undeveloped and a rare natural area that is nearly fully vegetated. The island provides recreational and scenic opportunities and habitat for wildlife. It is a tract of high ecological and scenic value and is in the floodplain. The characteristics and resources of Kings Island match the description of the CA-ROS district almost exactly.⁴⁷



2 – Minneapolis – Riverward of Main Street

Change from CA-UC to CA-UM

The land riverward of Main Street from Hennepin Ave to I-35W should be changed from CA-UC to CA-UM. The majority of this area consists of parkland and river dependent industry. It is within the Saint Anthony Falls Heritage Zone and includes the Stone Arch Bridge.⁴⁸ Tall buildings in this area could wall off the river and the Stone Arch Bridge from area residents and would not be in keeping with the surrounding open space or the many historic structures on Main Street.

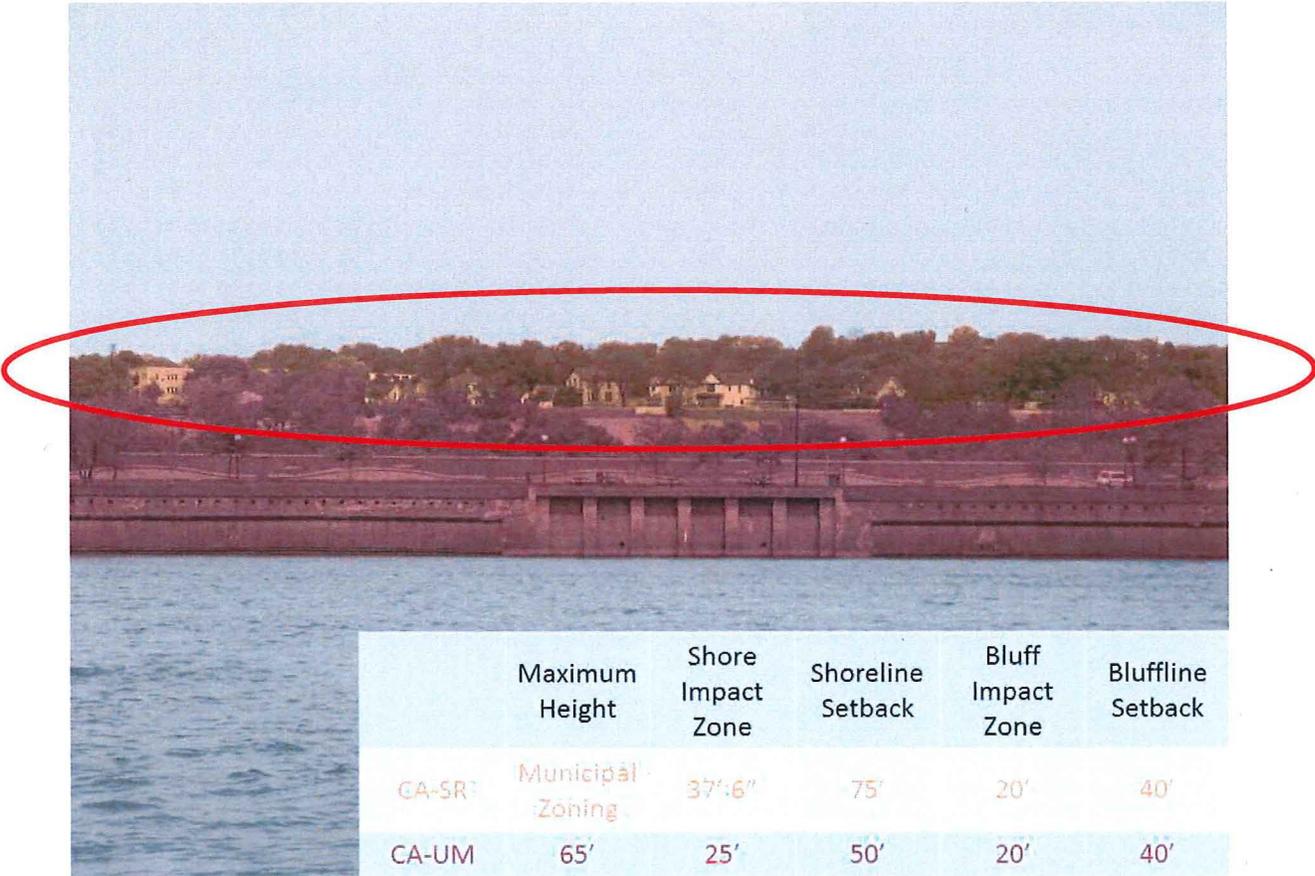


⁴⁷ MRCCA Proposed Rules Part 6106.0100 Subp.3. P.32

⁴⁸ Saint Anthony Falls Heritage Zone, <http://www.mnhs.org/places/safhb/about.php>

3 - Saint Paul - West 7th
 Change from CA-SR to CA-RTC

As shown by the photo below, the West 7th neighborhood is visible from the river. According to the intent of the CA-SR district, it should not be readily visible from the river. The area should not be CA-SR and we suggest changing it to CA-RTC.



	Maximum Height	Shore Impact Zone	Shoreline Setback	Bluff Impact Zone	Bluffline Setback
CA-SR Municipal Zoning		37'-6"	75'	20'	40'
CA-UM	65'	25'	50'	20'	40'

4 - Saint Paul - Shepard Road
 Change from CA-UM to CA-RTC

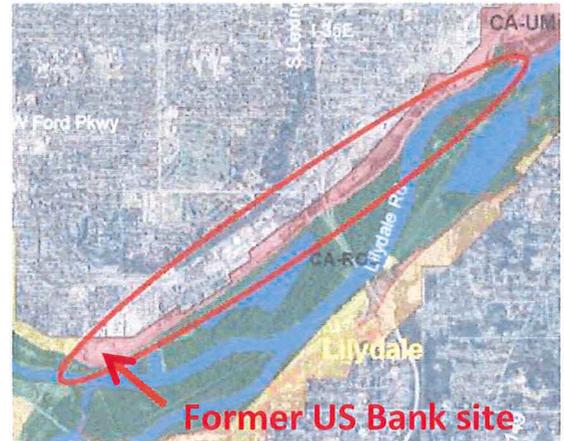
The use of CA-UM along Shepard Road is not appropriate. The area is identified as "The Valley Reach" in Saint Paul's Great River Passage Plan and the upland areas overlook vast floodplains, the confluence of the Minnesota and Mississippi Rivers, and historic Fort Snelling.⁴⁹ If the narrow band of CA-UM was fully built out with 65ft (or greater) structures, many buildings would protrude above the

⁴⁹ Saint Paul Great River Passage Plan p.105,
<http://www.stallionpublishers.com/publication.aspx?pid=1343&pkey=rizdeplqz>

treeline and incrementally damage the natural character and aesthetic of the river valley and historic landscape.

In the past few years, the City of Saint Paul rezoned a portion of this area resulting in a 55ft height limit and passed a small area plan recommending 4-5 story buildings.⁵⁰

In June of 2015 the City of Saint Paul, in consideration of a proposed variance, agreed that a building of 73.5ft was too tall for the former US Bank site.⁵¹ Below is a picture that assisted in making that decision. It shows an existing parking structure of 44ft as viewed from the shoreline of Pike Island.



We conducted three dimensional modeling of structures on the former US Bank site to assess visibility and impact on views from the river. We utilized the Google Earth⁵² and Sketchup⁵³ software programs to accomplish this.

⁵⁰ Shepard Davern Area Planning and Zoning Study, <https://www.stpaul.gov/departments/planning-economic-development/planning/shepard-davern-area-planning-and-zoning-study>

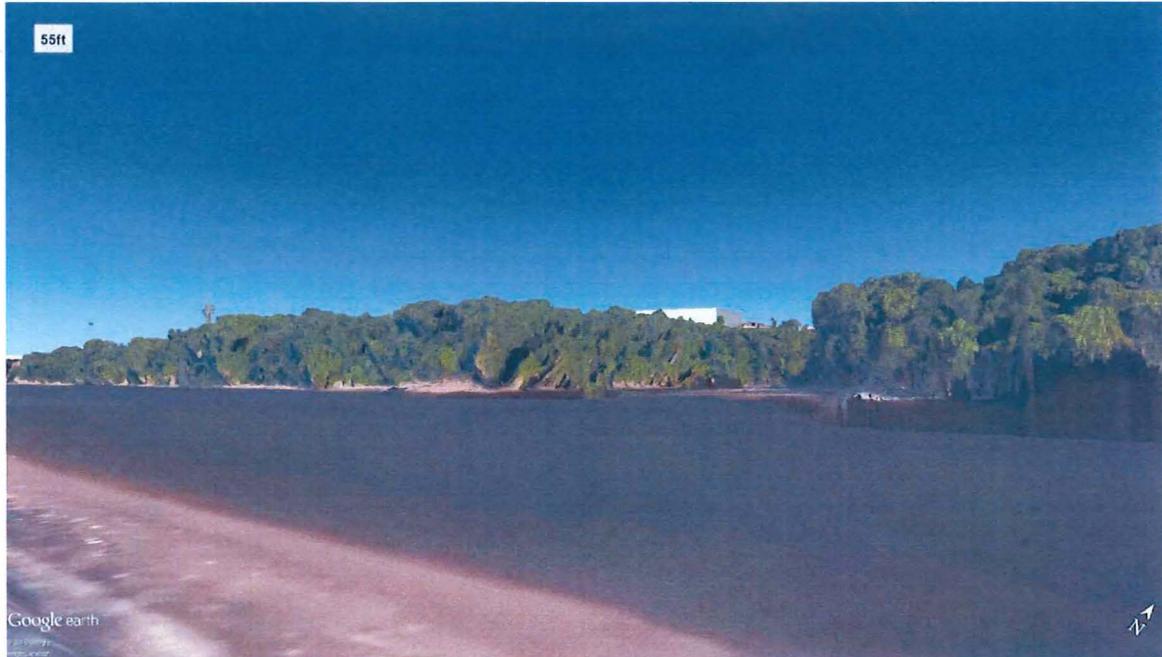
⁵¹ Saint Paul City Council, June 3, 2015

<https://stpaul.legistar.com/LegislationDetail.aspx?ID=2324566&GUID=634661E1-9B77-4F27-8265-8E97444F32D7>

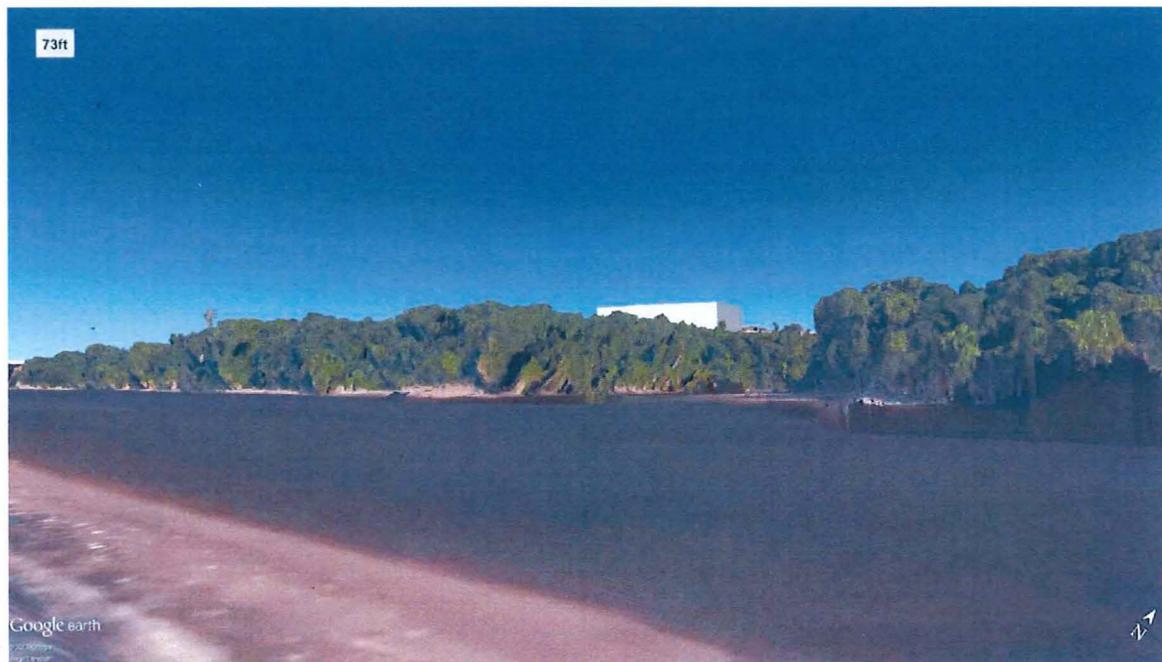
⁵² Google Earth, <https://www.google.com/earth/>

⁵³ Sketchup, <http://www.sketchup.com/>

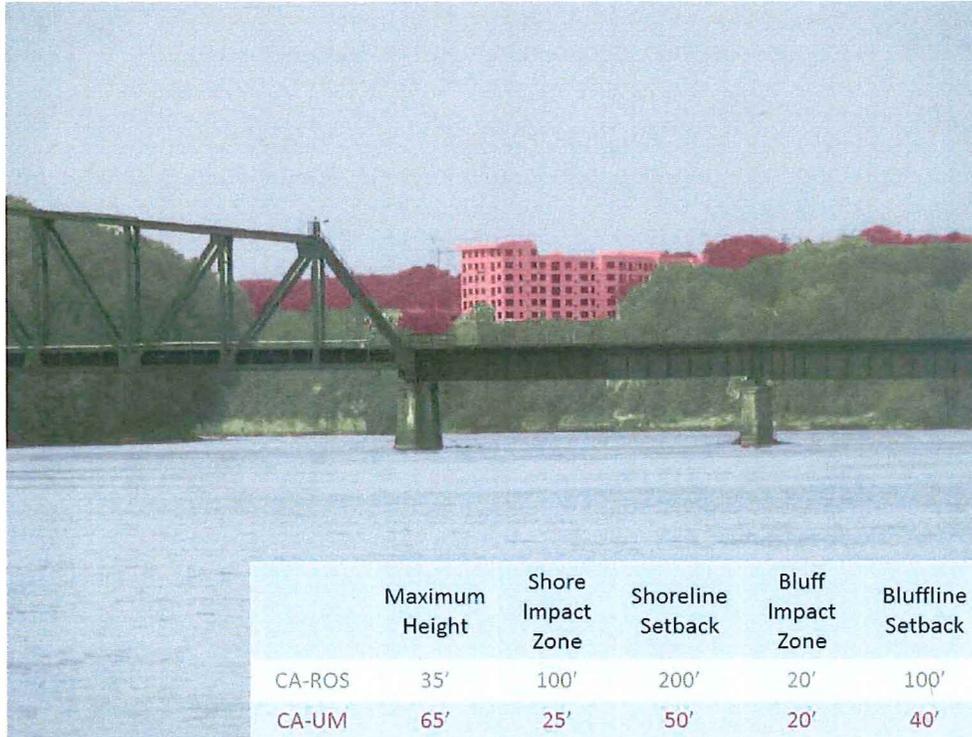
The image below exhibits a modeled 55ft building in the same shape and location as the proposed 73.5ft development. The structure is set in front of the 44ft parking ramp. The 55ft modeled structure is visible from the river.



The next image shows a modeled 73.5ft building. The building is in the same shape and location and is clearly visible from the river. All corners of the building protrude above the treeline creating a looming effect.



The following picture is of a new development along Shepard Road near Victoria Park in Saint Paul. The building is 70+ft tall, clearly visible from the river, lacks essential vegetative screening, and stands out amongst the natural shorelines that surround it.



Changing the narrow ribbon along Shepard Road from CA-UM to CA-RTC would reduce the structure heights to 48ft. Structures would not protrude above the treeline as viewed from the opposite shoreline protecting the natural appearance of the corridor. If studies show that additional structure height would not be visible, a conditional use permit could be issued for additional height.

5 - Saint Paul - Watergate Marina

Change from CA-ROS to CA-RN

Every other marina within the corridor is designated CA-RN. The CA-RN district provides the necessary setbacks and height limits to preserve the natural character of the area while providing consistency amongst marinas.

6 - Saint Paul - Ford Site

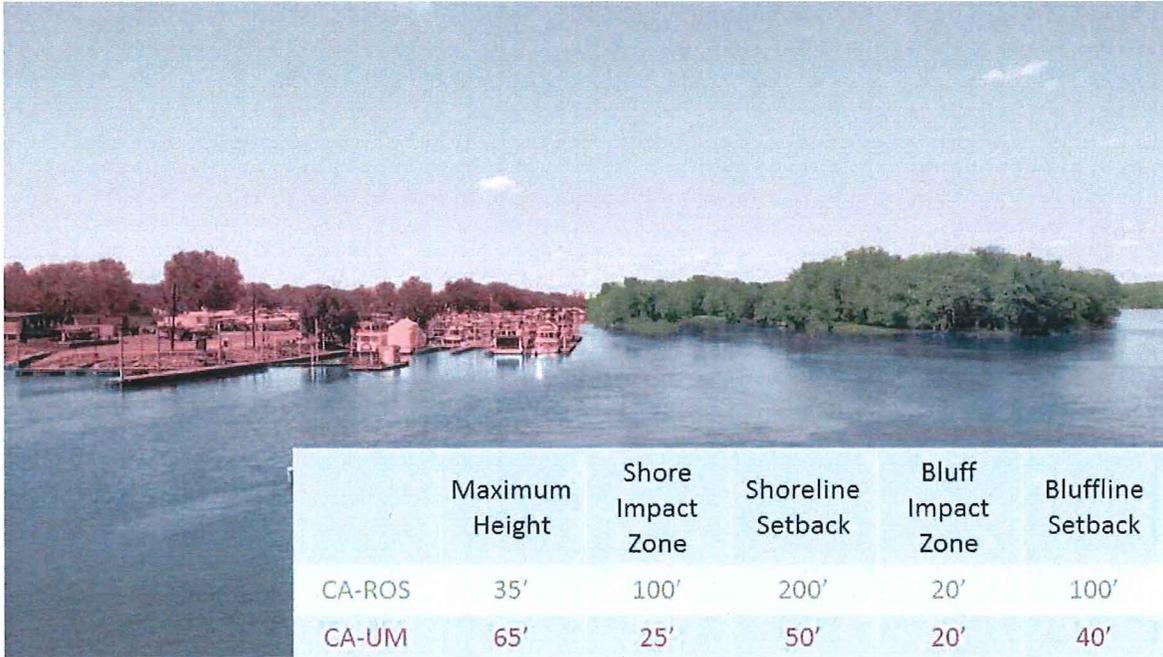
Support use of CA-RTC and CA-UM

The use of the CA-RTC district along Mississippi River Boulevard and CA-UM east of that is appropriate. The City of St. Paul has undertaken planning for the site which includes visibility studies. If sufficient visual analysis shows that buildings will not be readily visible from the river, we would support adjusting the boundary which separates the CA-RTC and CA-UM district allowing for taller heights on a larger portion of the Ford site.

7 - Inver Grove Heights - Twin Cities Marina

Change from CA-UM to CA-RN

Since the intention is to apply the CA-RN district to all marinas in the corridor, the Twin Cities Marina in Inver Grove Heights should be changed to CA-RN. The CA-RN district provides the necessary setbacks and height limits to preserve the natural character of the area while providing consistency amongst marinas.



View to the Northwest from the Rock Island Swing Bridge in Inver Grove Heights of the Twin Cities Marina

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By: OAH on 6/30/2016 at 4:24 PM



June 30, 2016

From: Christine Goepfert
 Phone: 612-270-8564
 Fax: 651-290-0167
 Company Name: National Parks Conservation Association

To: Katie Lin
 Phone:
 Fax: (651) 539-0310
 Company Name: Office of Administrative Hearings

Comments:

Please see NPCA's Comments on the Proposed Rules for the Mississippi River Corridor Critical Area (MRCCA) in regard to **OAH Docket No. 8-9014-33236**.

Number of pages, including coversheet: 3 pages

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By: OAH on 6/30/2016 at 4:24 PM

June 30, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

Re: Comments on the Proposed Rules for the Mississippi River Corridor Critical Area (MRCCA)

Dear Judge Lipman:

On behalf of the National Parks Conservation Association (NPCA), we appreciate the opportunity to provide comments on the proposed rules for the Mississippi River Corridor Critical Area (MRCCA).

Since 1919, NPCA has been the leading voice of the American people in protecting and enhancing our National Park System, working together with our nearly one million members and supporters nationwide, including more than 15,000 members and supporters in Minnesota, to preserve our nation's natural, cultural and historic heritage for future generations. NPCA has a longstanding interest in protecting our national parks and their resources, and the proposed MRCCA Rules will help protect the Mississippi National River and Recreation Area.

The Proposed Rules Are Needed and Reasonable

The MRCCA rules will guide development along the 54,000 acre state corridor, which was established by Congress in 1988 as the Mississippi National River and Recreation Area (MNRRA), a unit of our National Park System. The National Park Service (NPS) owns very little land within the park boundaries, so it cooperates closely with the 30 local units of government (LGUs) within the corridor to protect the 72-miles of river within the park. However, a consistent approach is needed throughout the corridor to manage the river resources across these LGUs. The current framework under Executive Order 79-19 is deficient for several reasons as stated in the Statement of Need and Reasonableness (SONAR), and the rules seek to resolve these issues. Once final, the MRCCA rules will be an important tool for NPS to ensure the river and its resources are protected.

The MRCCA rules are reasonable in that they offer a consistent set of minimum standards for the MRCCA that provide predictability for developers and stakeholders. For example, the rules ensure scenic views and bluffs and shorelines are protected while providing clear standards and definitions.

Minnesota Field Office

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The Mississippi River provides some of the best scenery in the Twin Cities, and these iconic views are public resources that must be protected for current and future generations. The draft rules require local cities to identify and protect specific river corridor views, as opposed to the current regulations that require blanket scenic protections for large areas of the corridor. The bluffs and shorelines of the Mississippi River are highly significant and sensitive resources. The draft rules provide clear definitions of bluff, bluffline and other associated features as opposed to the current regulations that do not.

NPS is entrusted to protect America's most treasured places. Given the challenges of managing a national park that is stretched across 72 miles of a river, it is important that there are rules in place that provide consistency and clear guidance. We urge you to recommend that these rules are adopted as written or strengthened per the comments submitted by the National Park Service.

We thank you for the opportunity to submit comments on the proposed rules for the Mississippi River Corridor Critical Area.

Kindest regards,



Christine R. Goepfert
Senior Program Manager, Midwest Region

Minnesota Field Office

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By: OAH on 7/1/2016 at 10:08 AM

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July 1, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620
Via Fax: 651-539-0310

RECEIVED

By: OAH on 7/1/2016 at 10:08 AM

Dear Judge Lipman,

The University of Minnesota (University) hereby submits comments on the "Proposed Permanent Rules Relating to Mississippi River Corridor Critical Area" dated February 26, 2016.

The University was established as a public research university in 1851 -- before Minnesota became a state. Since then, the University has been situated at the head of one of the few gorges on the Mississippi River and has had an integral relationship with the river. The University's Minneapolis campus comprises the largest contiguous block of single-owner, publicly-held developed space in the Mississippi National River and Recreation Area (MNRRA) and the Mississippi River Corridor Critical Area (MRCCA). For those reasons, the University has been and will remain a committed partner of the National Park Service (NPS) and the Minnesota Department of Natural Resources (DNR) in meeting the shared goal to protect and enhance the river, an asset of local and global importance. Several of the guidelines articulated by the University's Twin Cities Campus Master Plan (2009) affirm this commitment:

Support the intent and spirit of the Critical Area Act and MNRRA guidelines by:

- *protecting and preserving the River as a unique and valuable state and regional resource for the benefit of the health, safety, and welfare of the citizens for the state, region, and nation;*
- *preventing and mitigating irreversible damage to this resource;*
- *preserving and enhancing its natural, aesthetic, cultural, and historical value for public use;*
- *protecting and preserving the River as an essential element in the national, state, and regional transportation, sewer and water, and recreational systems; and*
- *protecting and preserving the biological and ecological functions of the corridor.*

Avoid disturbing topography and natural features or restore to natural conditions in the Mississippi River corridor wherever possible.

Protect river water quality from negative impacts of development and campus activities through stormwater management, energy development and use, or other ecologically significant development initiatives.

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As noted throughout the specific comments below, many items in the draft rules are vague, broad, or need further definition to fulfil their purpose. Nevertheless, the stated purpose of the proposed rules is consistent with what has been and will continue to be the University's practice. The University's role as a public institution in developing and maintaining its Twin Cities campus and achieving its threefold mission of education, research and public outreach is one of stewardship and balance. Even as the University continues to build world-class education and research facilities, it conserves significant natural and cultural resources. Decades of inquiry about urban ecology, much of it conducted here at the University, has enabled campus design, construction and maintenance to attain high levels of environmental performance. Informed by these ideas and in the spirit of collaboration, the University welcomes the opportunity to comment on the draft rules.

RULES SECTION	UNIVERSITY OF MINNESOTA COMMENT
6106.0050 Subp. 7	The definition of "biological and ecological function" is overly broad and should cite standards by which the criteria can be evaluated and weighted in various contexts.
6106.0050 Subp. 8; 6106.0050 Subp 56; and throughout	<p>The rules should articulate a process to achieve a specific geospatially mapped and locally-validated identification of steep slopes, very steep slopes, and bluffs using measured, quantitative and qualitative maps, not simply automatically-generated maps based on LIDAR scans.</p> <p>The rules should clarify whether -- as the University understands based on communication with DNR staff -- local governments, agencies and special purpose units of government, etc. shall be responsible for mapping bluff areas within their respective jurisdictions. Furthermore, the rules should explicate acceptable data and methods for local delineation of bluff areas. While such mapping may utilize a GIS tool similar to that offered by DNR staff during this comment period, bluff delineation within each jurisdiction also will rely on current and historical data and, critically, on local validation or "ground truthing" for accuracy.</p>
6106.0050 Subp. 24	The University requests that the definition of "Essential services" be amended to include "at-grade" (in addition to underground or overhead) distribution facilities and "chilled water" utilities (in addition to steam and water distribution systems).
6106.0050, Subp. 30	"Intensive vegetation clearing" is defined as "removal of all or a majority of the trees or shrubs in a contiguous patch, strip, row, or block." The University assumes that "majority" should be construed as a simple majority by site area. If not, the percent removal or condition to avoid should be clearly stated.
6106.0050, Subp. 56	"Public river corridor views" is defined as "views toward the river from public parkland, historic properties, and public overlooks, as well as views toward bluffs from the ordinary high water level of the opposite shore, as seen during the summer months." The term "public overlook" is not defined. This term may be construed to be an overlook that is used by the public, but which is not owned by a public entity or intended by the entity to be used for that purpose.

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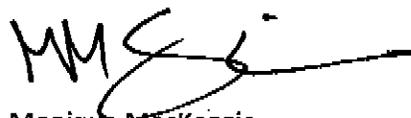
RULES SECTION	UNIVERSITY OF MINNESOTA COMMENT
6106.0050, Subp. 70 and Subp. 71	<p>The University is included in the definition of a "special purpose unit of government" under 6106.0050, Subpart 70. The University submits that it may be more appropriately included in the definition of a State or Regional agency under Subpart 71. The University has been recognized in case law as an instrumentality or constitutional arm of the state. <i>Treleven v. Univ. of Minn.</i>, 73 F.3d 816, 818-19 (8th Cir. 1996); <i>Hoeffner v. Univ. of Minnesota</i>, 948 F. Supp. 1380, 1388 (D. Minn. 1996); <i>Winberg v. Univ. of Minnesota</i>, 499 N.W.2d 799, 802 (Minn. 1993); <i>Bailey v. Univ. of Minnesota</i>, 187 N.W.2d 702 (Minn. 1971). The University has been defined in statutes as the state or an agency for numerous other purposes. <i>E.g.</i>, Minn. Stat. §§ 3.732, 13.02, 16D.02, 114D.15, 604B.04. This reading would be consistent with Minn. Stat. § 116.15, which says that the standards shall be used by state and regional agencies for permit regulation and in developing plans within its jurisdiction. (Special purpose units of government are not mentioned in Minn. Stat. § 116.15.) The University issues its own building permits (<i>see</i> Minn. Stat. § 326B) and develops its own plans for University properties and has and will continue to do so in a manner consistent with the purpose of the proposed rules. Making this change would also address the University's concern with 6106.0100, Subp. 9C below.</p>
6106.0100 Subp 9B	<p>The DNR should provide a more precise geospatial map delineation of District boundaries that adheres to roadway centerlines, parcel lines, etc. as articulated in this Subpart. Specifically, more precise District boundary mapping is needed in the vicinity of the University of Minnesota, as in these examples:</p> <ol style="list-style-type: none"> 1) Along East River Road, between Fulton Street Southeast and the Washington Avenue Bridge, the district boundaries should be re-drawn to follow the road centerline of East River Road. 2) Along the west bank in Minneapolis between I-35W and 26th Avenue South the boundary between districts should align with centerlines and parcel lines. As shown in the draft rules, for example, the boundary runs through several parcel lines and even Ted Mann Concert Hall.
6106.0100, Subp. 9C	<p>The rules should allow the University to submit to the Commissioner a written request for district boundary amendment. This could be accomplished by allowing all special purpose units of government to petition to request a change, or (as indicated in the comments above) by removing the University of Minnesota from the definition of special purpose unit of government and adding it instead to the definition of state or regional agency.</p>
6106.0110 Subp. 7	<p>"Wireless communication facilities" is not defined. Does it include more than free-standing wireless communication towers? Also it is unclear how this provision applies to state or regional agencies and/or special purpose units of government. Such entities are not required to obtain a permit from the local government, but instead under these proposed rules will consider the standards and criteria that would be applied by a local government, were a permit required. If so, could that be stated explicitly as in 6106.0130, Subp. 3(C)? Or can Subpart 7 be reworded so that the conditions that should apply to state or regional agencies and special purpose units of government are more explicit?</p>

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RULES SECTION	UNIVERSITY OF MINNESOTA COMMENT
6106.0120 Subp. 2 D1; 6106.0130 Subp. 8 C2b; etc.	The rules should provide a much more specific and defensible definition of "visual impact" and a description of the methods cited in the rules by which it is to be assessed. Especially in Districts CA_UM and CA-UC, this "visual impact" is likely to be the focus of any dispute among interested parties.
6106.0130 Subp. 3C	Though the draft rules state that agencies and special purpose units of government are not required to obtain permits from Local Government, this clause states that such entities "must apply the standards and criteria that would be applied by a local government, were a permit required." This inconsistency should be corrected to apply the standards and criteria of the respective agency or special purpose unit of government.
6106.0150 Subp. 3A	Intensive vegetation clearing should be allowed in certain conditions, for example when preparing an area to establish native vegetation communities such as prairie or oak savannas which rely on eradication of non-native vegetation for establishment, and on ecological disturbance regimes for ongoing health and integrity.
6106.0160 Subp 4A	This section refers to work that currently requires a DNR Public Waters Work permit. Does the second sentence refer to that permit or to a separate approval? The rules should provide clarity by naming the specific governing permit process and directing readers to it.
6106.0160 Subp 4B2	The way Subpart 4(B)(2) reads, erosion must occur first before a stabilizing method is employed. There are some examples, like an existing storm sewer pipe outlet above the OHWL, where riprap should always be present and maintained to protect water quality in the river.
6106.0160 Subp. 4B3b	"Regulatory Flood Protection Elevation" is not defined. Sometimes riprap will need to be installed above a high water elevation to prevent erosion at an existing storm pipe outlet.

The University is grateful for the opportunity to provide these comments on the draft rules.

Sincerely,



Monique MacKenzie
 Director, Planning and Space

CC: Daniel Piper, Senior Associate General Counsel



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ADMINISTRATIVE
HEARINGS

June 29, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

RE: Proposed Rules Governing Mississippi River Corridor Critical Area, Minnesota Rules, Chapters 6106 and 4410; Revisor's ID Number R-04240

Dear Judge Lipman:

Please consider the following comments as you finalize the rules for the Mississippi River Critical Corridor.

Aggregate Industries is the successor to the JL Shiely Company. Joseph Leo Shiely began mining limestone and sand and gravel from upper and lower Grey Cloud Islands in the mid 1950's. Since then the Company has pushed in excess of 50 million tons of aggregate into the Twin Cities of Minneapolis and St Paul via our fleet of tow boats and barges. We have four properties that will be impacted by the new rules; (1) the Distribution Yard on Child's Road in St Paul; (2) the Distribution Yard at 26th Avenue in Minneapolis; (3) the Larson Limestone Quarry in Grey Cloud Island Township; approximately 550 acres and (4) the Nelson Sand and Gravel Mine in Cottage Grove; approximately 1200 acres;

Our two distribution yards are located in the proposed CA-UM, Urban Mixed District. As such, the current operations are not impacted, but future improvements at these important sites may be impacted. The proposed rules exempt river dependent uses from much of the increased regulation, so our St Paul Distribution Yard which still takes delivery by barge is little impacted. Our Minneapolis Distribution Yard, however, since lock closure, is no longer a river dependent use, so improvements to that business will be more difficult. The setbacks, Shore Impact Zone and Bluff Impact Zone standards would preclude our recent improvement and similar future adjustments.



The language of RD4240 (2/26/16), 6106.0010 POLICY, states... "It is in the interest of present and future generations to preserve and enhance the natural, aesthetic, *economic*, recreational, cultural and historic values of the Mississippi River corridor within the Twin Cities metropolitan area and protect its environmentally sensitive areas." This current version of the policy statement includes the word "economic" which was not in the original policy statement. This important inclusion recognizes that it is, in-fact, critical to preserve and enhance the economic vitality of the river corridor.

Please consider adjusting the proposed standards in the CA-UM district to "preserve .. the economic .. values" of **existing** industrial uses by extending the same exemptions as are proposed for River Dependent Uses. The impact on the river of this provision would be minimal, since this exemption would only apply to **existing** industrial uses in the existing heavily developed CA-UM district.

Our greatest concern is for the impact of the proposed rules on the current operations and on future uses on our two island mine properties.

1. 6106.0150 Vegetation Management Standards, Subp. 3. A. prohibits intensive vegetation clearing. This section does not establish a clear approval process for vegetative clearing associated with existing permitted mining operations. Is clearing for mining permitted by 6106.0070, Subp. 6, (4)? We have significant clearing to do as we mine the two island mines.

Please amend the proposed standards to make clear our ability to continue, unhindered our existing, planned and permitted important business.

2. The proposed regulations will make the expansion of mining into the backwaters at our Nelson Sand and Gravel Mine more difficult and more costly. Except for the components of our mining operations that would be considered "river dependent," no activity would be allowed in the Shore Impact Zone or the Bluff Impact Zone. New or existing operations must not be "readily visible" (6106.0110, Sub 5). River dependent uses must be "designed in a compact fashion" (6106.0110, Sub 6). Our concern here is for the interpretation of "readily visible" and "designed in a compact fashion" and any





other subjective terms in the proposed regulations. In the proposed district, CA-ROS, the dimensional standards are the most restrictive.

Please consider changing the district designation from CA-ROS to CA-UM for land that is currently planned and used for mining in Grey Cloud Island Township and in Cottage Grove. This designation is the most appropriate for the continuation of the existing mining uses on both islands. The proposed rules should provide for a district designation which is fitting for existing permitted, long standing uses and for uses that are projected to have long future durations.

3. The proposed river district designation (CA-ROS) for the west portion of Grey Cloud Island Township and for the entire Lower Island in Cottage Grove imposes standards that are incompatible and overly restrictive of the historic and current permitted uses and for the planned, post mining uses. The best designation, at least for the duration of the mining uses would be CA-UM. That designation would also best accommodate the existing plans for the islands. Given the land transformative activities of the past and future mining, imposing the setback and Primary Conservation Areas (PCA) standards of CA-ROS would be severely limiting of the envisioned developments. The CA-ROS district would require structure setbacks of 200 feet and would require that 50% of the Primary Conservation Areas (PCA) be set aside with permanent protection. PCAs include: Shore Impact Zones which in CA-ROS would be 100 feet; Bluff Impact Zones; Floodplains; Wetlands, ... Unstable soils; Bedrock; Native Plant Communities; Cultural & Historic properties; Significant Vegetative Stands, Tree Canopies and Other Resources Identified by the locals (6106.0050, Sub 53). That definition of PCAs would include virtually all of the un-mined shoreline on both islands. In our opinion, that is overly burdensome and would preclude the creative, valuable and beautiful, long planned future development of the islands.

Please consider revising the proposed rules by changing the district designation for the west half of the "upper island" in Grey Cloud Island Township and the entire "lower island" in Cottage Grove to CA-UM. That designation would be most fitting for the foreseeable future (15 – 20 years while mining continues on the





islands) and would provide the greatest flexibility for the future development of the islands.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Bieraugel", written over a large, loopy blue scribble.

Robert H Bieraugel
Director, Environment and Land Services
Aggregate Industries – NCR, Inc.

- C: Richard Adams, Chairman, Grey Cloud Island Township
Cliff Rodahl; Chairman, Grey Cloud island Township Planning Commission
Jennifer Levitt, Director, Cottage Grove Community Development
John McCool, Senior Planner, Cottage Grove
John Burbank, Senior Planner, Cottage Grove
Hugh Schilling, Managing Partner, PAS Associates, Inc.
Russ Eichman, Upper Mississippi Waterway Association



RECEIVED

By: OAH on 7/1/16 4:00 p.m.



Department of Community Planning & Economic Development
 105 5th Avenue South, Suite 200
 Minneapolis, MN 55401
 Fax 612-673-2728

MEMORANDUM – VIA FAX
(6 PAGES INCLUDING THIS SHEET)

TO: Administrative Law Judge Eric L. Lipman
FROM: Haila Maze, CPED Long Range Planning, (612) 673-2098
DATE: July 1, 2016
SUBJECT: City of Minneapolis Comments in Response to DNR Notice of Hearing on Mississippi River Corridor Critical Area (MRCCA) Proposed Rules

Attached is the comment letter from the City of Minneapolis on the Mississippi River Corridor Critical Area (MRCCA) Proposed Rules.



Community Planning and Economic Development
105 Fifth Ave. S. - Room 200
Minneapolis, MN 55401
TEL 612.673.5095
www.minneapolismn.gov

June 27, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

RE: City of Minneapolis Comments in Response to DNR Notice of Hearing on Mississippi River Corridor Critical Area (MRCCA) Proposed Rules

Dear Mr. Lipman,

The purpose of this letter is to provide comments from the City of Minneapolis on the Mississippi River Corridor Critical Area Proposed Rules, in response to the April 11, 2016, publication of the Notice of Hearing to adopt proposed rules by the Minnesota Department of Natural Resources (DNR). We affirm that the current version is responsive to many of the comments raised in the August 15, 2014, letter from the City to the DNR, with many of the requested changes reflected in the current version. However there are a number of concerns that remain. This letter restates the values outlined in our prior comments, raises additional significant concerns, and responds to some additions to the plan that were not present in the previous draft.

We remain a committed partner to the DNR, and share the DNR's values and objectives with regard to the protection and enhancement of our river, a regional and national asset. We appreciate the effort in the rules to distinguish between the variety and diversity of places along the riverfront, from rural open space to urban downtowns. We continue to support a flexible framework that allows us to work toward preserving and enhancing the river corridor, while sustainably accommodating growth and change. However, we still think there are aspects of the rules that need additional clarity and some changes.

The following pages include our key themes and detailed comments in reference to the February 2016 Proposed Permanent MRCCA Rules. We are available to provide additional clarification and details on our comments as needed. These comments were reviewed by the City Council at their Zoning and Planning Committee meeting on June 9, 2016, and by the full City Council at their meeting on June 17, 2016.

We urge the consideration of the additional changes outlined in this letter. While it is late in the process, establishing clarity with regards to the rules will serve those of us interpreting and implementing them for many years to come.

Regards,

A handwritten signature in black ink that reads "D. Craig Taylor".

D. Craig Taylor
Executive Director
Community Planning and Economic Development
City of Minneapolis

Key Themes:

1. **Recognize the unique character and potential of the urban riverfront through rules that embrace and celebrate an active edge.** The City of Minneapolis supports the idea of a diversity of districts within the Critical Area. We are especially interested and supportive of the creation of the Urban Core district in order to continue to move forward on the vision outlined in the *Downtown 2025* plan and our new *Downtown Public Realm Framework*. We reiterate our support for maximum flexibility for this important area, which both embodies the corridor's cultural and historic past, as well as being the central hub for future growth and development. This includes acknowledgement that views of buildings and other aspects of the built environment are attractive and important aspects of river views, as opposed to something that must be covered up with vegetation.
2. **Provide more rigorous definitions and maps where necessary in order to enable local government units to effectively evaluate the rules and prepare to implement them.** There are a number of important terms and conditions that will directly guide outcomes that are too vague, broad, or undefined to be useful. Among these are specific spatial definition of the ordinary high water line (as a line in GIS); the specific geospatial definition (through measured, qualitative maps, not LIDAR scans) of bluffs; a more specific definition of "visual impact" and a description of the methods cited in the rules by which it is assessed; a more specific definition of "public river corridor view," a term which comes up again and again throughout the rules as an evaluative tool; a spatial map definition of native plant communities; a precise definition of "readily visible," and "primary conservation area"; and a more performance based definition (rather than a literal description of plants in defining) "ecological function." While we understand that the cities along the corridor will play a key role in defining these elements for their own jurisdictions, more clarity is needed regarding what criteria DNR will use to evaluate whether locally-generated definitions are acceptable.
3. **Provide justification for the introduction of significant new areas of strongly worded restriction, effectively "no build, no alter, no vegetation removal" zones.** The introduction of Bluff Impact Zones and Slope Preservation Zones is hard to understand and seemingly difficult to justify within the bounds of either the Executive Order or the current legislative guidance given in this rulemaking process. The amount of area restricted by these new zones should be studied to determine whether or not it is too burdensome. Language around natural vegetation, conservation, and ecological function needs to be clarified in order to understand better what is and is not allowed in these areas. We still seek language and policy that actively embraces an active edge in some parts of the riverfront.

Detailed Comments:

District Map - The CA-RN segment on the east bank directly across the river from Downtown should be modified to be a higher level district (CA-RTC, CA-UM, or CA-UC) – particularly the inland non-park portion. A significant portion of this area is zoned R5 (high density residential), and is guided for medium to high density residential in a draft neighborhood small area plan now under development. The portion that is zoned R1A (low density residential) is already protected permanently as a public park so needs no further protection from development. Furthermore, there are also a number of multifamily buildings located in this area that are taller than the CA-RN height limit, and which would be made nonconforming by this new district designation. Finally, this is located very close to the city's and region's urban core, and within the purview of the City's Downtown Growth Center designation and guidance. While it is not the intent to displace the single family homes in this area in the near term, it would be short-sighted to designate this area long term as low density residential.

This recommendation does not include a change to the districts on Nicollet Island, where the currently proposed districts are likely sufficient for the proposed future use of the island. We also affirm support for all the other changes made in response to previous comment rounds on other portions of the Minneapolis riverfront, which provide a reasonable mix of flexibility and guidance for the range of uses along the river. Additionally, we would like to affirm that it is the City's intent (as reflected in adopted City policy) to continue the development of continuous parks and trails along the upper riverfront. While it is not advisable to have a separate MRCCA urban park district in this area due to uncertainty about where the district boundary will be, this does not lessen the City's commitment to this goal.

Part 6106.0030 - A clause that was in the draft rules regarding local determination has been dropped. It read, "Local governments may determine whether to administer the Minnesota statewide shoreland management standards in part 6120.2500 to 6120.3900 within the Mississippi River Corridor Critical Area." The purpose according to the annotation was "to reduce complexity and confusion of overlapping regulations..." We would appreciate some explanation why it was dropped, and what should be done in the case the rules are in conflict. If the Critical Area regulations make the shoreland regulations unnecessary it would be good to be able to not have to administer both.

Part 6106.0050 Subpart 2 – The definition of access path should clarify whether access path refers to public or private access to public waters, or both.

Part 6106.0050 Subpart 8 – There are currently no official bluff maps for the full MRCCA. This creates challenges for consistent implementation and enforcement, and should be remedied.

Part 6106.0050 Subpart 24 – It appears that the "essential services" definition includes transmission poles for electrical service. In Part 6106.0170 Subpart 2, placement of essential services are identified as exempt from development standards. However, Part 6106.0130 Subpart 6 requires that transmission lines be concealed to the extent practical. This seems inconsistent.

Part 6106.0050 Subpart 53 – The definition of primary conservation areas is extremely broad and encompasses a very wide range of existing conditions. This may provide some challenges regarding consistent interpretation and implementation.

Part 6106.0050 Subpart 56 – The definition of primary conservation areas is extremely broad. It is not clear if the intent in the rules is to protect specific locations with scenic views, or the continuity of views along the corridor. This may provide some challenges regarding consistent interpretation and implementation.

Part 6106.0050 Subpart 72 – The definition of Steep Slope seems to be expanding: it now captures everything between 12-18%. Is this an intentional change? Also, are all slopes greater than 18% to be considered Bluffs? This is likely to trigger significantly more variances.

Part 6106.0060 Subpart 7 – We appreciate the reduction in notice requirement from 30 days to 10 days, and request that you keep it at this level. However, requiring noticing of all adjacent jurisdictions (around 30 locations for the City of Minneapolis, if this is consistent with noticing required by Metropolitan Council) is an unnecessary administrative burden – particularly since many of these adjacent jurisdictions do not border on the Mississippi River. In general, we need clarity on the noticing requirements for adjoining jurisdictions – when specifically are these required?

Part 6106.0070 Subpart 2 – It should be noted that the timing of this rules adoption process, and DNR's subsequent phase-in plan to provide additional support around implementation through 2021, makes it challenging to fully synchronize the in-depth work required to comply with these rules with the comprehensive plan update process which is already underway. It is our understanding that the requirements will be phased in with jurisdictions notified at various times regarding when they are required to comply. We request being notified in a timeframe that allows us to complete critical area work in a way that allows us to do as much as possible of it as part of our comprehensive plan update process.

Part 6106.0100 Subpart 4 – The CA-RN height limit may routinely need to be varied for some uses typical of a residential neighborhood, such as schools and religious places of assembly.

Part 6106.0100 Subpart 9 – We would strongly urge the development of an expedited rulemaking process for district boundary amendments. These highly specific boundaries may change over time as cities grow and develop, and requiring the full rulemaking process for needed amendments could become extremely burdensome, even with changes which are universally supported.

Part 6106.0120 Subpart 2 – The focus on heights being tiered away from the river is a purely aesthetic guideline that has nothing specific to do with river preservation. It is unnecessarily limiting and may actually result in less attractive

buildings. Views of buildings from the river are a defining and often attractive feature in much of Minneapolis, providing visual interest and preserving the City's historic and cultural heritage. The history of the river is not just as a natural feature.

Part 6106.0120 Subpart 2 – Tying building height to mature tree height is a vague and arbitrary limit. It would be far preferable to have heights reflect standards for stories. Most zoning codes are based on building stories, and the heights limits required here will not all match up to standard story heights, creating confusion in how to enforce. For instance, a height limit of 56 feet would be preferable to 48 feet in CA-RTC.

Part 6106.0120 Subpart 7 – We are concerned that this portion of the rules regarding telecommunications is in the form of a mandate to the city and other local governments on how they will handle their local land use permits. Simultaneously, the federal government is increasingly issuing mandates to local governments on what they can and cannot do when it comes to wireless communication facility permitting. This subpart does not mention and does not seem to take into account some of the recent federal mandates in this area. For example, Congress passed wireless communications provisions as part of the Middle Class Tax Relief and Job Creation Act of 2012. In §6409 of that act, encoded as 46 U.S.C §1455, Congress has told us that: "...a state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." The Federal Communications Commission has expanded on the definitions in this legislation when they issued FCC Order 14-153, which was adopted on October 17, 2014. This Order is now encoded in Title 47 of the Code of Federal Regulations. See, for example, the provisions regarding environmental review in 47 CFR 1.1306. See also 47 CFR § 1.40001 which contains the broad co-location provisions. The proposed rule in the draft language for Part 6106.0120, Subpart 7 does not appear to account for this new federal rule. Also, when dealing with wireless communications, local governments must account for the provisions of 47 U.S.C. §332 and 47 U.S.C. §253. The proposed rule does not seem to account for federal action in this area of the law. To the extent that the area covered by the proposed Part 6106.0120, Subpart 7 includes areas with existing wireless facilities or which includes areas where the proposed regulation may "have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service", the draft Critical Area rule could be setting up a possible conflict for local governments trying to abide by federal rules and statutes.

Part 6106.0130 Subpart 3 – We are confused by Subpart 3(C) where it states "State or regional agencies, special purpose units of government, local park agencies, and local units of government with parks within their jurisdiction are not required to obtain a vegetation management or land alteration permit under Part 6106.0150 or 6106.0160, but must apply the standards and criteria that would be applied by local government were a permit required." It is unclear what that means particularly in our context where we have a park board, a university, and various other agencies in the Critical Area. Do we always know what standards "would be applied"?

Part 6106.0130 Subpart 4 – Native plants are listed as a requirement in right-of-way plantings, but this term is not defined. Is this consistent with standard planting practices in right-of-way?

Part 6106.0130 Subpart 6 – The rules say that overhead utilities must be "hidden from view as much as practicable". There are large high voltage transmission lines along the much of the Minneapolis riverfront on both banks; in most cases their size is a function of the need to carry wires across the river and adjacent lands. What would be a practical response by local governments or utility companies to the requirement to disguise them, and who is responsible for the enforcement of this requirement?

Part 6106.0160 Subpart 3 – Limits on land alteration and disturbance here and elsewhere in the rules should allow for an exemption for work necessary to remove contaminated soils and other pollutants. There are a number of brownfield sites in the MRCCA, and some may require extensive cleanup to make them suitable for redevelopment and/or restoration.

Part 6106.0170 Subpart 4 – What are considered acceptable ways to incentivize alternative design methods for conservation areas, as required by this section? Also, it is unclear what is meant by "better protection". Additionally, do these requirements apply only to parcels of 10 or more acres? It needs to be made clearer, so we know when we have to do the percentages.

Part 6106.0170, Subpart 5 – Land dedication requirements should be clearer than the statement “must encourage” dedication of lands. Does that mean consider, or that we have to do a dedication? “Must” under state statute is a word of mandate or regulatory command (See Minn.Stat. §645.44, Subd. 15a). It is paired here with “encourage,” which is not a word of mandate or regulatory command and, in any event, has a fuzzy and uncertain meaning. Therefore we are not sure what it means, and question its appropriateness for inclusion in state regulation.