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HEARINGS

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June 30, 2016

RE: MRCCA Comments - R-4240

MN Statute 116G.15 - MUST PROTECT OR ENHANCE KEY RESOURCES AND FEATURES - BLUFFS, VERY STEEP SLOPES, SHORELINES AND RIVER BANKS, SCENIC VIEWS AND VISTAS

BLUFFS

The Sonar Regulatory Analysis Item 3. on page 14 - Statutory Framework for Rule Development in MRCCA. 1. The DNR looked at those provisions in the Executive Order 79-19 that have historically worked well in protecting the MRCCA. 2. The DNR looked at other land use roles and regulations in other programs that have historically been successful at protecting similar resources as those sought to be protected in the MRCCA. 3. The DNR identified those provisions in Executive Order 79-19 that have not historically worked well and modified them to make them functional. 4. The DNR identified key issues not addressed in Executive Order 79-19 but identified in MN Stat. 116G.15 as requiring protection and developed rules to provide the required protection.

This approach enabled the DNR to determine less costly or less intrusive methods for achieving the purpose of the proposed rules as identified by the Legislature. Using those provisions of Executive Order 79-19 that have historically worked well as a baseline for the rules will reduce the scope and cost of the changes imposed on communities within the MRCCA and is less intrusive than imposing completely new standards.

Comment

When it comes to protection and enhancement of the Bluffs and Very Steep Slopes the DNR has not met the standards stated above. The proposed rules significantly reduce existing protections.

1. The Statutory Framework calls for *retention* of provisions that work well in protecting the MRCCA. Executive Order 79-19 protects or enhances *all* 18% or greater slopes whether including bluffs and very steep slopes. Prohibiting development and requiring that all 18% and greater slopes be retained in a natural state *works well* for the protection and enhancement of this key resource and should be retained.

2. The Statutory Framework calls for the DNR to look at other regulations that have been successful protecting similar resources. The State Shoreland Statutes and Rules apply to much of the Critical Area. *Using the same definitions as State Shoreland Regulations and the largest City in MN use with the inclusion of the higher protection standards of the MRCCA provides the*

least costly to implement regulations. This provides the greatest consistency between programs and retains the most common format currently used by communities in the MRCCA.

3. Prohibiting development and requiring all 18% and greater slopes be retained in a natural state works well for their protection and enhancement as required by State Statute and should be retained. It is important to differentiate between regulations that work well compared to a specific local or state government agency whose implementation may not work well. A LGU is prohibited from adopting MRCCA or Shoreland regulations unless the DNR has granted prior approval. E.O. 79-19 also requires the LGU to resubmit their River Corridor regulations to the DNR for their review and approval for consistency with 79-19 after they have been in effect for two years. *When the DNR states that not all communities have adopted consistent MRCCA regulations they are actually saying the DNR or its predecessor failed to properly implement their statutory responsibilities to ensure consistent regulation and protection.* The DNR also has the authority to ensure protections are put in place or the DNR can adopted those protections and require they be followed for both programs. The DNR also has authority to take legal action. Protection of 18% slopes along with protection and restoration of native vegetation, habitat, and plant communities are not only consistent with shoreland protections they are at the heart of the primary responsibilities of the DNR. Changing the Rules does nothing to address the real issue of ensuring that DNR ensures LGU regulations are consistent with MRCCA protections before adoption and day to day LGU application of their adopted rules is consistent with MRCCA protections.

4. E.O. 79-19 contains clear and well defined requirements for the protection of all 18% and greater slopes. *The creation of new less protective definitions and new exemptions does not meet the statutory requirements to protect and enhance these key resources.* Existing regulations provide greater protection of bluffs than the proposed Rules and the DNR already has the regulatory authority to ensure all communities adopt plans and ordinances and ensure that communities are in compliance before adoption of any changes to the MRCCA plans and regulations.

Bluffs are defined in Executive Order 79-19.

The SONAR on page 23 Current Regulatory Status *incorrectly* states that "bluff" is not defined in Executive Order 79-19.

Executive Order 79-19 and 130 define bluffs as 12% and greater slopes. It further defines that plans and regulations must protect bluffs 18% and greater from development, and provide conditions for development on slopes 12% to 18%.. Plans and regulations must identify and inventory slopes from 12% to 18% and over 18%. Plans and regulations shall regulate structure site and location to protect and preserve the aesthetic qualities of the river quality and ensure that riverbanks, bluffs and scenic overlooks remain in their natural state. (E.O. 79-19 pages 1693-1694 Specific standards and guidelines for preparing plans and regulations)

The Metropolitan Council recommendation for Critical Area Designation submitted to the Governor defines Bluff on page 43 as those steep slopes lying between the normal highwater mark and the River Corridor boundary having an angle of ascent, proceeding landward from the river, of more than 12 percent from the horizontal.

Some of us, myself included, often use the shorthand of referring to 18% and greater slopes as bluffs. In fact, there was strong interest in fully protecting 12% and greater slopes as bluffs in conformity with the recently adopted protection for the Saint Croix River. The compromise provided full protection from development of 18% and greater slopes as bluffs and limit development on 12% to 18% slopes as bluffs. Since the prohibition of development is on 18% and greater slopes and these slopes are required to be maintained in their natural state the bluff line definition establishes the bluffline at 18% because this line is used to establish the development setback requirement from those slopes that prohibit development.

It must also be noted that the drafting of Critical Area Designation was a lengthy process including the Governor, Legislature, Environmental Quality Council, Metropolitan Council, Citizens League and public hearings. As noted in the reports and Designations Order the review included a review of State Shoreland and other programs and determined that for a variety of reasons they did not adequately protect the historic, natural, scientific or cultural resources of statewide significance. The northernmost 8 miles of the Critical Area were originally Scenic and Natural but with Critical Area Standards and Guidelines.

"Unregulated development and uncoordinated planning threatens the public interest in the Mississippi River Corridor; many decisions affecting the use of the River Corridor are made by local governmental units without adequate regard for protecting the regional interest in the regional resource" (MRCCA Designation Order 130)

The DNR has proposed a bluff protection definition for the Critical Area that is less protective than is required throughout the rest of the State of Minnesota.

Setting a bluff protection standard that is weaker than protections required for the rest of the State clearly does not meet the statutory requirements to protect this State Designated Critical Area and Federally designated National Park. Use of the Shoreland Protections for the Critical Area were considered and rejected as not adequate when the Critical Area was established.

Existing State Shoreland Bluff definitions
The slope rises at least 25 feet
A 25 foot high segment must average 30%
An area with an average slope of less than 18% over a horizontal distance of 50 feet or more is not bluff

Toe of the Bluff means the lower point of a 50 foot segment with an average slope exceeding 18 percent
Top of Bluff means the higher point of a 50 foot segment with an average slope exceeding 18 percent

Proposed Rules Critical Area Bluff definitions
The slope rises at least 25 feet
A 25 foot segment must average 100%
An area with an average slope of less than 18% over a horizontal distance of 25 feet is not bluff

Toe of the Bluff means the lower point of a 25 foot segment with an average slope exceeding 18 percent
Top of Bluff means the higher point of a 25 foot segment with an average slope exceeding 18 percent

Recommend MRCCA Bluff commonality with other DNR definitions

Different programs have different levels of protection that must be accommodated in definitions however measurement and the format of definitions should to the greatest extent possible be consistent between programs. In the proposed rules the commonality with other State programs has been reduced in order to reduce existing protections. Much of the Critical Area must adopt Shoreland Protections within the Critical Area so a bluff definition that uses adopted Shoreland definitions when it provides the same or greater protections as the MRCCA would provide efficiencies, savings, and better protection.

Proposed Definition of Bluffs for MRCCA based on existing State Shoreland Rules 6120.2500

Bluff. "Bluff" means a topographic feature such as a hill, cliff. or embankment having all of the following characteristics:
A. part or all of the feature is located in ~~a shoreland area~~ the MRCCA.;
B. part or all of the slope rises at least 25 feet above the ordinary high water level ~~of the waterbody~~ or toe of the bluff;
~~C. the grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary highwater level averages 30 percent or greater; and~~
~~D. the slope must drain toward the waterbody~~
An area with an average slope ~~of less than~~ 18 percent or greater over a horizontal distance ~~for~~ of 50 feet or more shall ~~not~~ be considered part of the bluff

Toe of the bluff. "Toe of the bluff" means the lower point of a 50-foot segment with an average slope exceeding 18 percent.
Top of bluff. "Top of bluff" means the higher point of a 50-foot segment with an average slope exceeding 18 percent.

The SONAR states on page 26 that the proposed bluff definition retains the 18% percent slope criterion in Executive Order 79-19. This is factual incorrect. The SONAR states on page 25 that it was determined a bluff defined as a feature with an 18% slope rising 25 feet over a 25 foot width would provide the best balance between resource protection and minimizing the creation of new nonconforming structures. **The definition requires a 100% slope for the first segment of the bluff. This is a significantly weaker bluff standard than Shoreland Rules.**

The Sonar claims it is retaining the definition of 18% slopes when in fact the definition requires a 100% slope. It is an un-debatable fact that a 25 foot rise over a 25 foot horizontal distance is a 100% slope and not an 18% slope.

The SONAR contends the reduction in bluff protections would provide the best balance between resource protection and the creation of new nonconforming structures. What balance is the DNR talking about? The MRCCA protections have been in place for 40 years. Any nonconforming structures have been so for 40 years. Ironically the pictures on page 25 and 26 support retention of the existing protections. All of the homes shown either have either existed for 40 forty years with the regulations in place or been able to be constructed with the protections in place. **There is nowhere in the SONAR that explains how retaining the existing bluff protections increases nonconformities. It is simply impossible to do.**

The claim on page 25 that the proposed definition eliminated most minor topographic variations such as grading for driveways, yet encompassed the iconic bluffs that characterize the river corridor, as well as natural vegetation and habitat systems is not based in fact. There are no maps or information showing the basis for claims regarding vegetation or habitat. Figure 4 on page 4 does not show what the DNR claims are minor topographic variations such as grading for driveways. Figure 4 *does* show portions of the contiguous bluff have been eliminated from bluff protections. Attached are other examples that illustrate that more than minor topographic variations such as grading for driveways are being removed from bluff protection.

Iconic bluff is not a term used in the current regulations and serves no useful purpose because without a definition and a corresponding regulation it is irrelevant.

The SONAR states that communities define bluffs as 12% to 40% slopes. It would be more accurate to point out that communities generally protect 12% to 18% slopes. One community protects 18% slopes but established a bluffline definition using 40%. It should be noted again that the only way this could happen is if the DNR or EQB/EQC agreed to it and has never taken action to correct it. This again highlights the question how changing the definition will address the issue of a community adopting 40% instead of the 18% or less that is required in the existing regulations. I stated 18% or less because the regulations permit and encourage communities to adopt more protective standards as some have done. This belies another claim in the SONAR that new rules will create a uniform set of definitions across the MRCCA. The MRCCA Rules were never intended to be a uniform standard. They are designed as a minimum threshold of protection.

The Proposed Rules eliminate any shoreland setback requirement in sections of the Critical Area. This is in direct conflict with the State Shoreland Statutes. Regulations require all public waters in the state to have at least a 50 foot setback. This is a good example of how the DNR has exceeded their authority and failed to meet their legislative mandate to protect the resource. In an earlier draft the DNR had a provision to exempt LGU's from the Shoreland Protection Statute. When the DNR was challenged that they do not have authority to change State Statutes the DNR removed the provision while publicly assuring LGU's they would not enforce Shoreland Protections. The DNR then removed shoreland setback requirements in

sections of the Critical Area. This exceeds the DNR's authority and fails to meet the DNR's responsibility to protect the resource under both Critical Area and Shoreland Protection Statutes.

Protection of Scenic Views and Vistas is called for. Placement of utilities overhead can negatively impact scenic views and vistas. Existing River Corridor regulations require that primary consideration shall be given to underground placement in order to minimize visual impact. When considering overhead placement, the proposers shall explain the economic, technological or land characteristic factors which make underground placement infeasible. Economic consideration alone shall not justify overhead placement. This valuable existing protection to help minimize visual pollution has been eliminated. It should be retained.

defined slope percentage is measured. Many local government definitions do not address the difference between natural and man-made slopes. Because of vague definitions and variations in the administration of local ordinances, the placement of buildings along bluffs, land alterations on bluffs, and vegetation management practices on bluffs are all inconsistent across the MRCCA. These inconsistencies coupled with the potential catastrophic impacts of unsafe bluff development support the need to redefine and reestablish development guidelines for those areas of the MRCCA with bluffs.

Determining New Bluff Definitions

The development of the bluff definition in the proposed MRCCA rules was premised on the dual goal of protecting sensitive bluff features while minimizing the creation of new nonconforming structures within areas of significant existing development. In an effort to achieve the latter goal, the 18 percent slope parameter was retained from Executive Order 79-19 because it was a standard widely adopted by local governments and accepted by environmental organizations. The DNR in consultation with local governments and other stakeholders then used GIS imaging to evaluate six combinations of bluff height and width parameters within the MRCCA. The purpose of this analysis was to determine which height and width parameters would meet the dual goals of minimizing nonconformities while protecting bluff systems.

The analysis began with a preliminary bluff map that had been prepared by the DNR in 2009 in response to a legislative directive that defined bluffs as having a slope of 18 percent or greater with a vertical rise of at least 10 feet. Minn. Laws 2009, ch. 172, art. 2, § 27, subd. 4 (pages 2484 - 2485) codified at Minn. Stat. § 116G.15 (2010). During the 2009/2010 rulemaking process local governments pointed out that this definition would create many nonconforming structures. While the 2013 Legislature repealed this bluff definition, the 2009 map was used as baseline for comparing other alternatives. *Cf. Id.* and Minn. Stat. § 116G.15 (2015).

Figure 4 compares the 2009 baseline definition and the proposed bluff definition. It shows that many existing structures (building footprints outlined in red) are captured by the 2009 bluff definition (shown in purple) and would thus be nonconforming structures under that definition, creating problems for property owners and local governments.

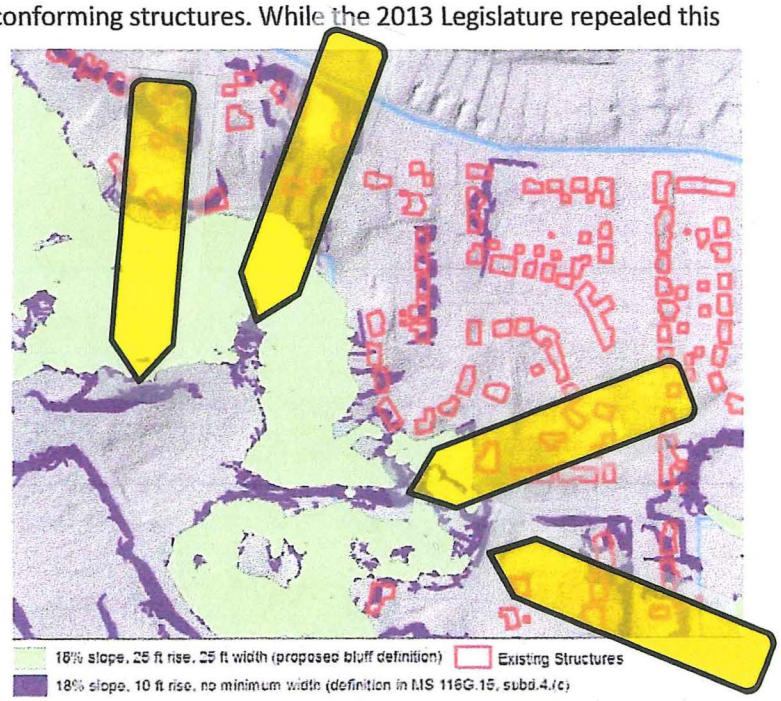
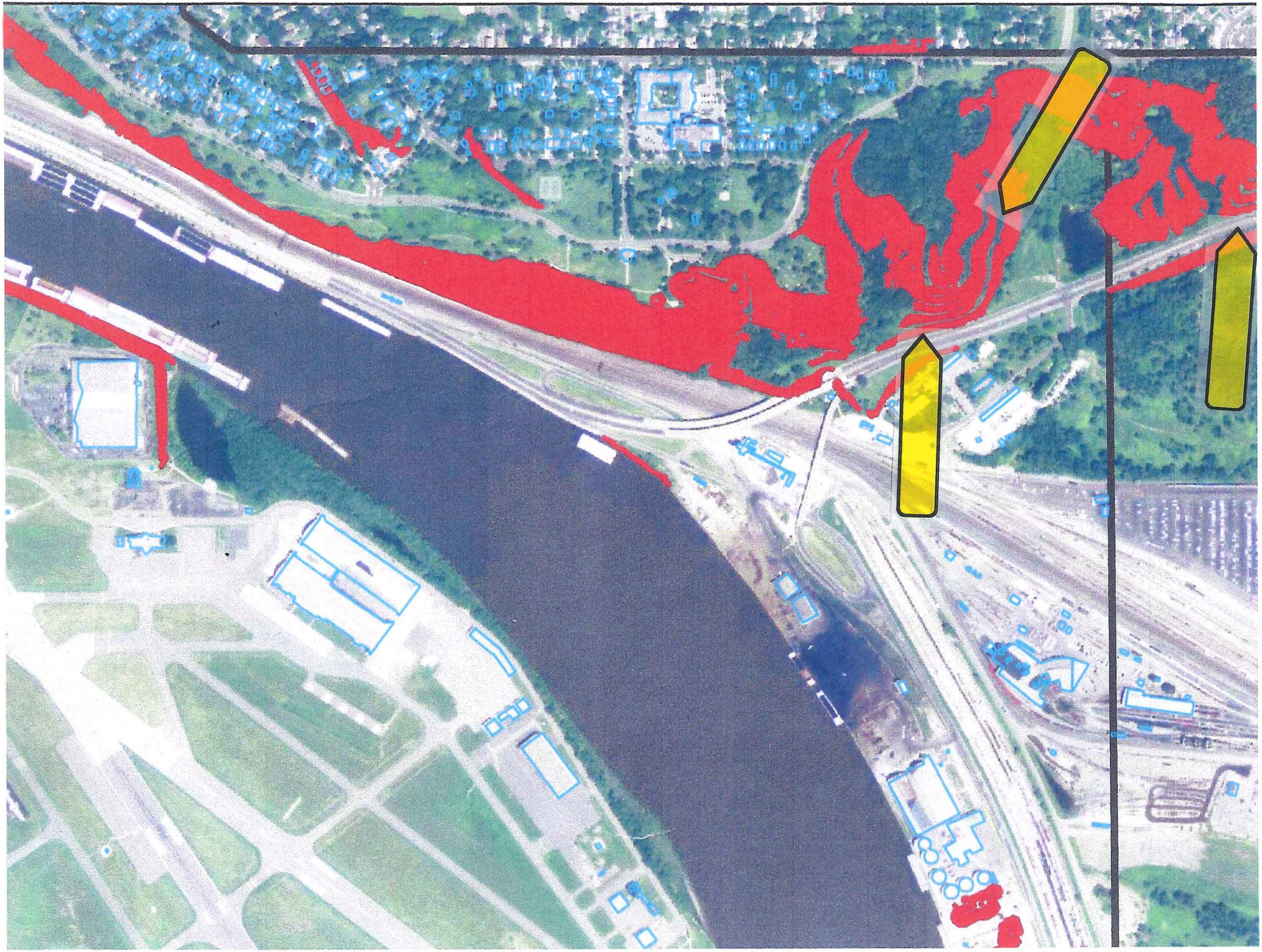
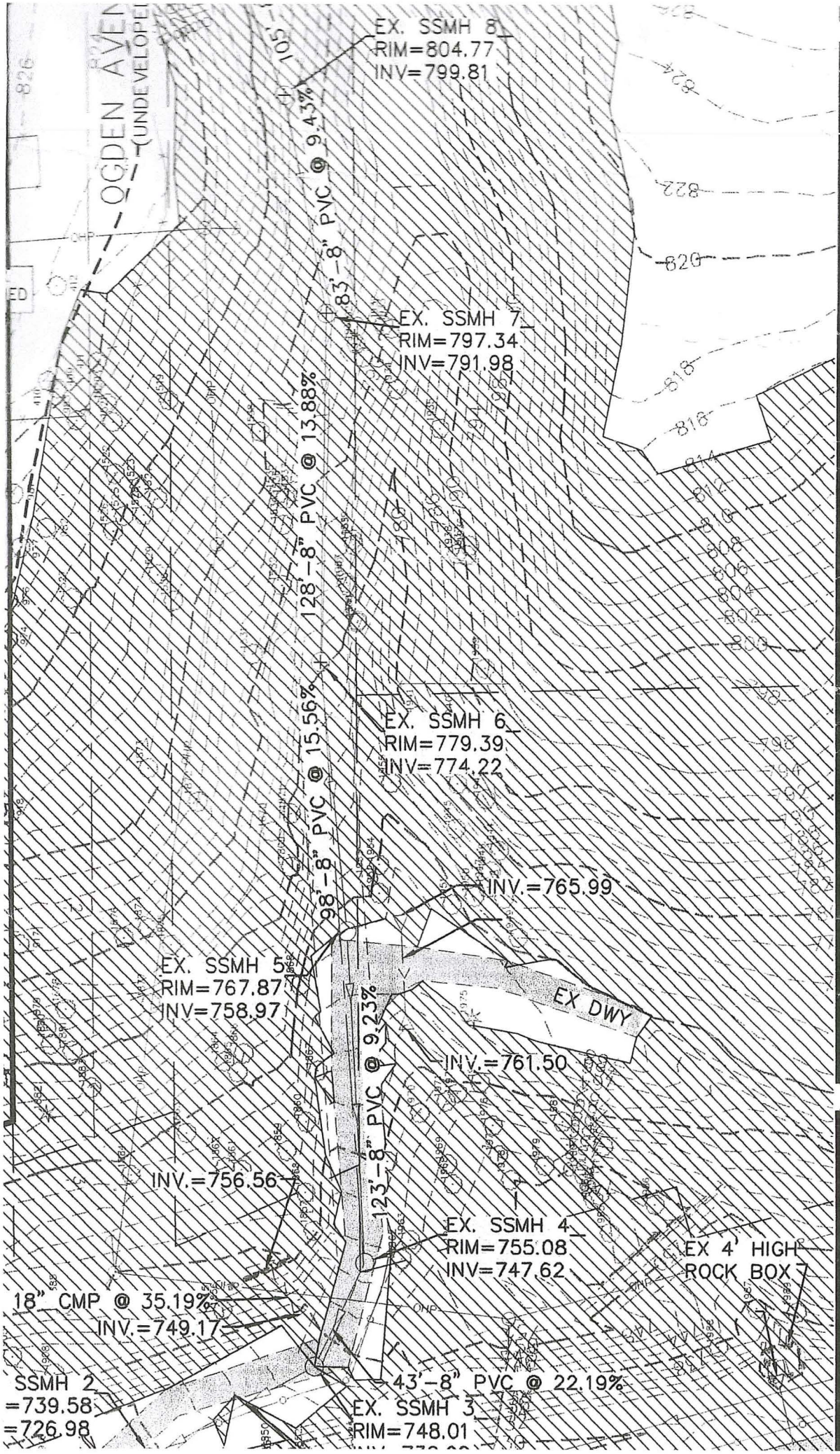


Figure 4: Comparison of bluff definitions. The areas shown in purple would be covered under the 2009 (baseline) definition; the areas in green are covered by the proposed definition.

Alternatively, significantly fewer structures were captured by the proposed bluff definition (shown in green), but the definition still





WINDWOOD ADDITION

ST. PAUL, MINNESOTA

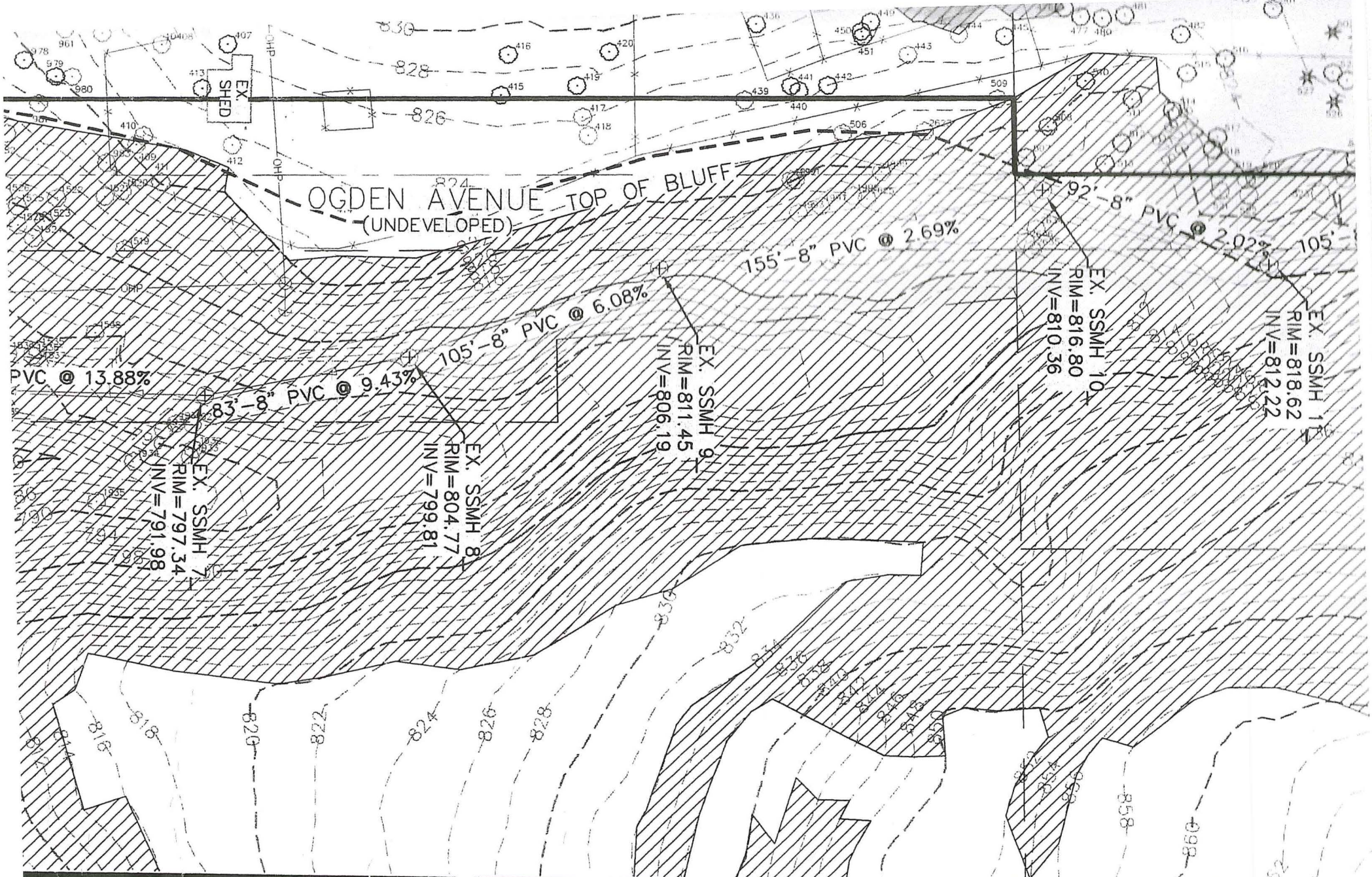
EXISTING CONDITIONS

FOR

LYMAN DEVELOPMENT COMPANY

300 MORSE AVENUE, EXCELSIOR, MINNESOTA 55331

DRAWN BY
JPC
DATE
06/16/04
REVISIONS
Rev. 6-30-04 Watershed review comments
Rev. 7-7-04 city review comments

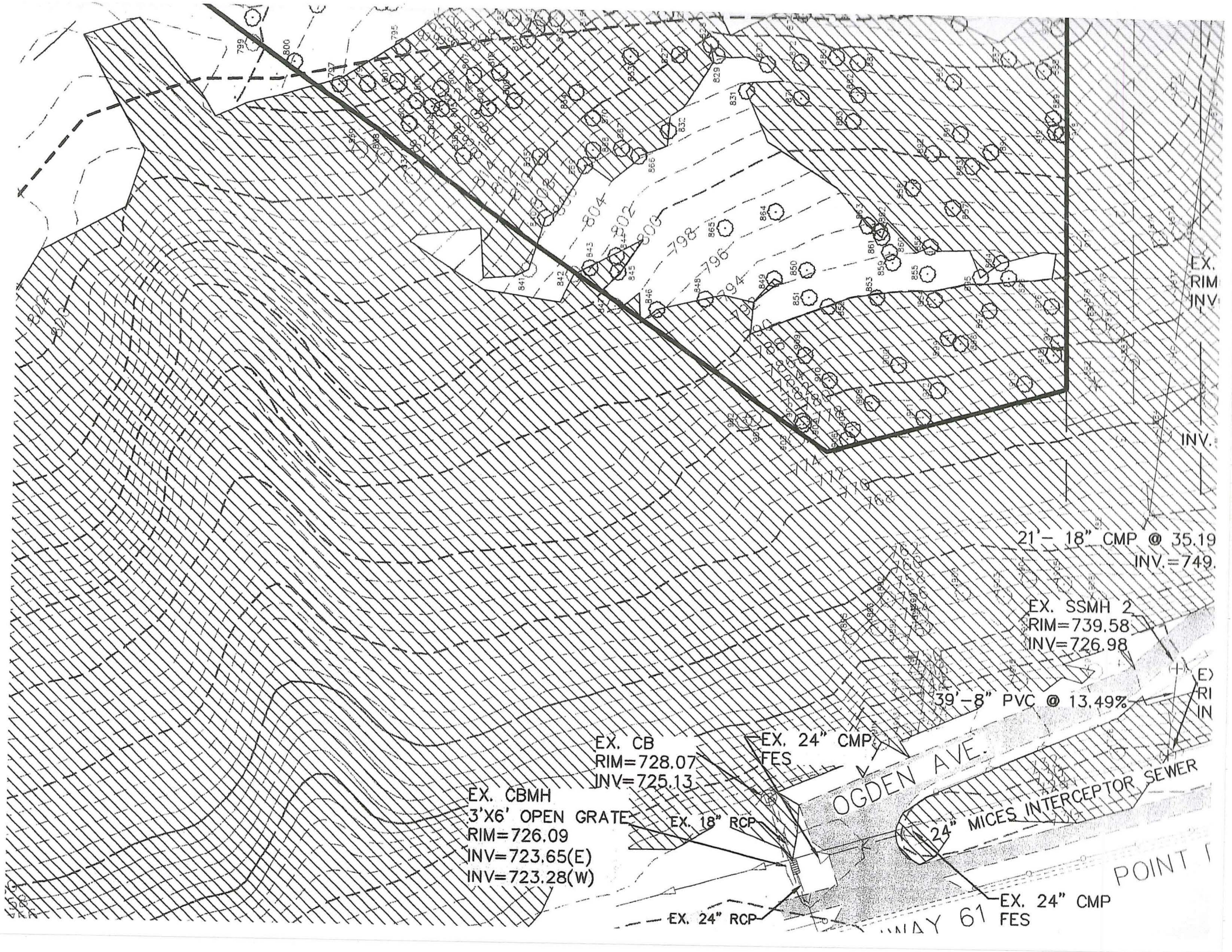


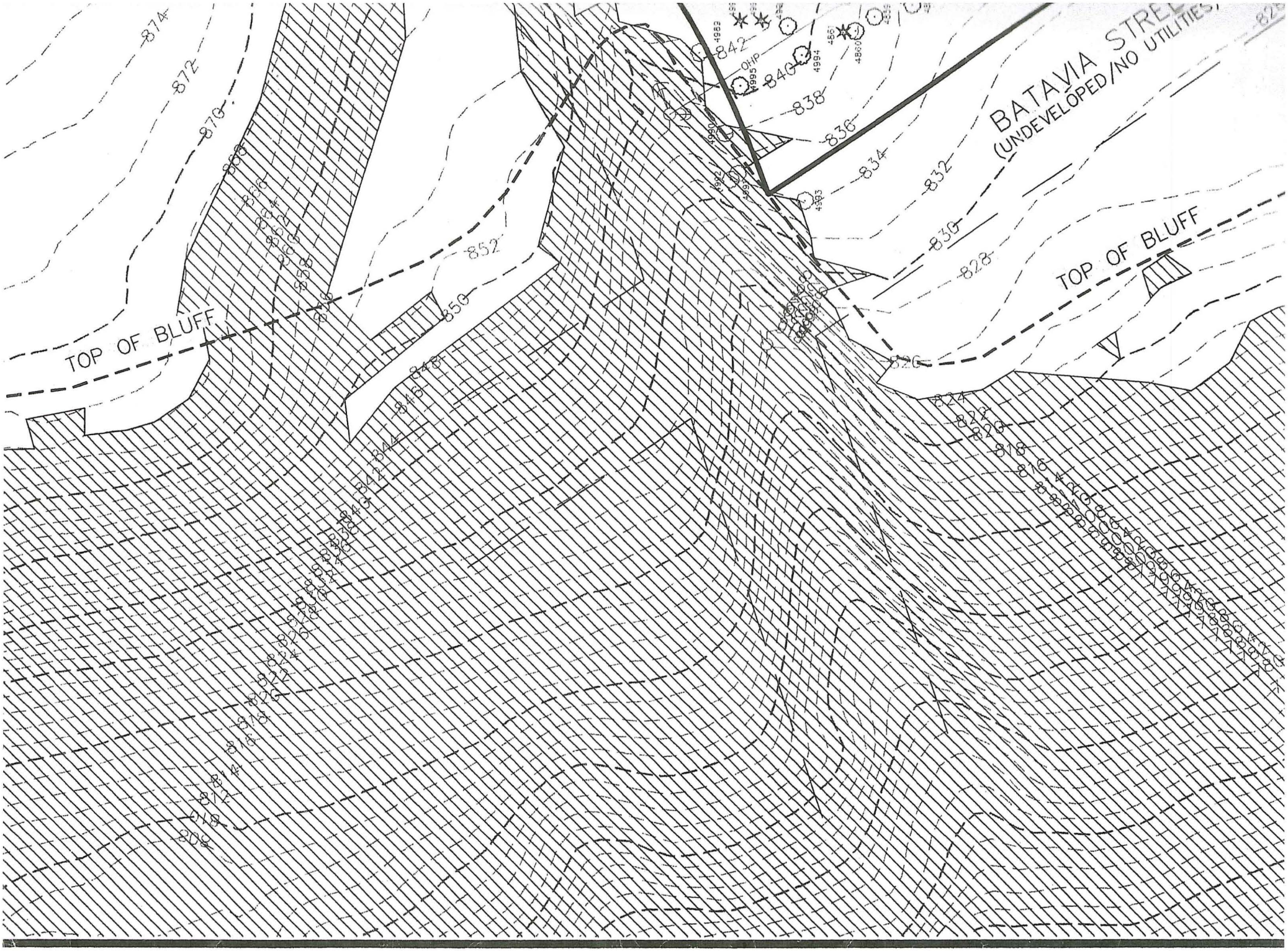
DDITION
ESOTA
IDITIONS
INT COMPANY

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

JOHN P. WINGARD, P.E.

James R. H
PLANNERS / ENGINEERS /

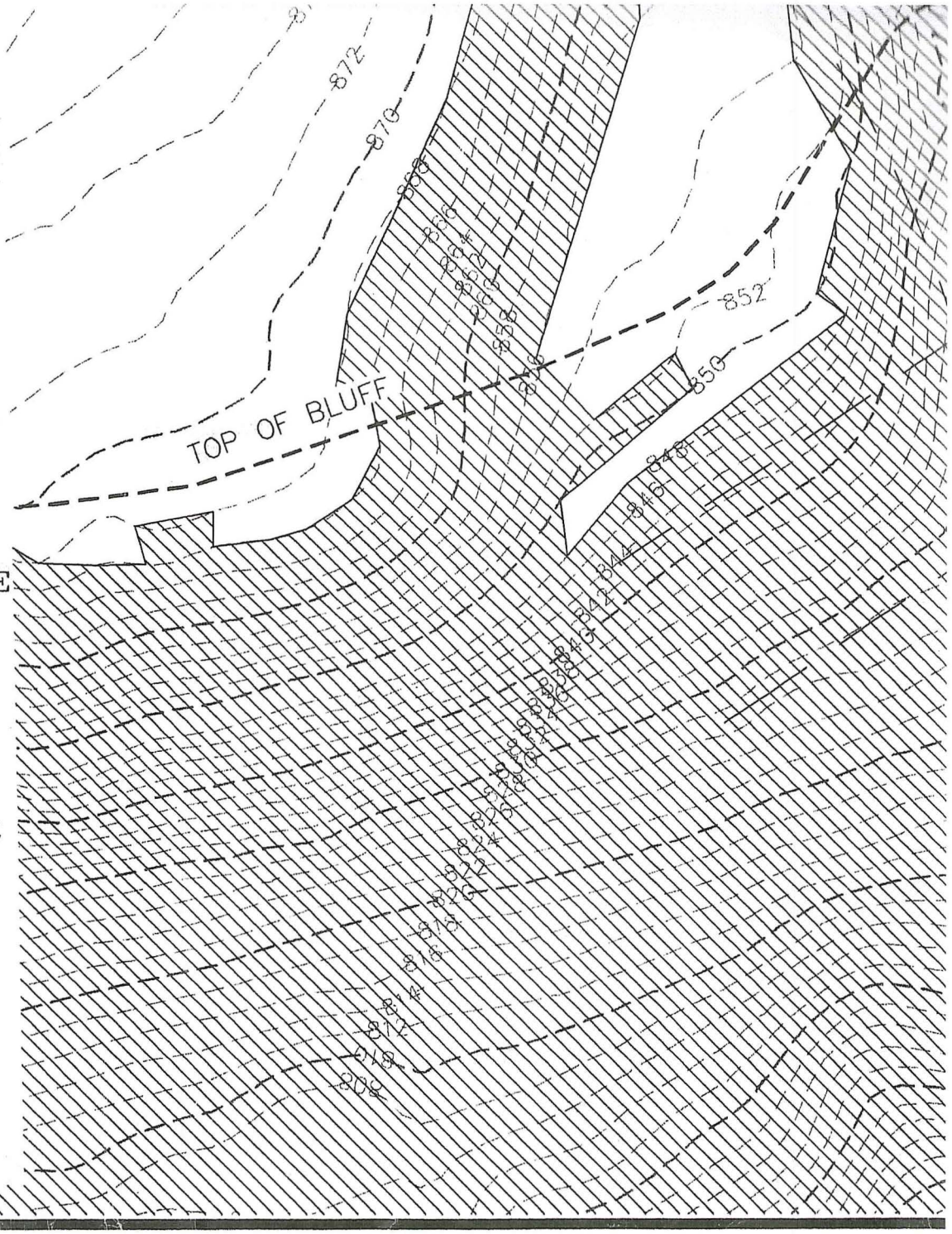

EX. CB
RIM=728.07
INV=725.13
EX. 24" CMP
FES
EX. CBMH
3'X6' OPEN GRATE
RIM=726.09
INV=723.65(E)
INV=723.28(W)
EX. 18" RCP
EX. 24" RCP
OGDEN AVE.
24" MICES INTERCEPTOR SEWER
EX. 24" CMP
FES
39'-8" PVC @ 13.49%
EX. SSMH 2
RIM=739.58
INV=726.98
21'- 18" CMP @ 35.19
INV.=749.
EX.
RIM
INV
INV.
POINT
WAY 61

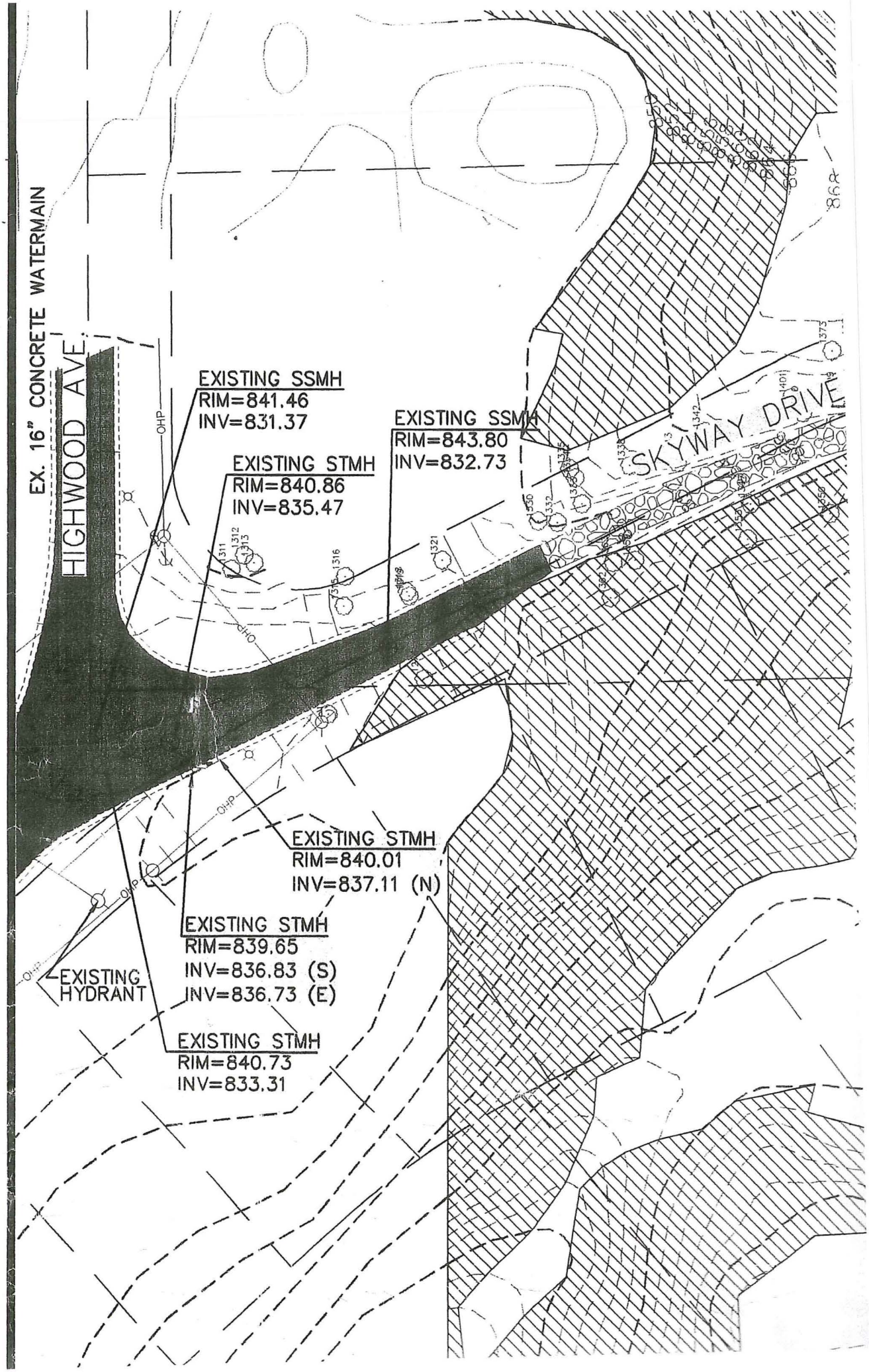

BATAVIA STREET
(UNDEVELOPED/NO UTILITIES)
TOP OF BLUFF
TOP OF BLUFF
OHP
874
872
870
868
852
850
848
846
844
842
840
838
836
834
832
830
828
826
824
822
820
818
816
814
812
810
808

LIGHT POLE
POWER BOX
SANITARY MANHOLE
FLARED END SECTION
CATCH BASIN
STORM SEWER MANHOLE
CATCH BASIN MANHOLE
HYDRANT
SOIL BORING
GATE VALVE
DECIDUOUS TREE
CONIFEROUS TREE
ASPHALT SURFACE
EXISTING DIRT SURFACE
EXISTING GRAVEL SURFACE
18% SLOPES AREA
TOP OF BLUFF
1000 EXISTING CONTOURS
OHU OVERHEAD POWER LINE
EXISTING SANITARY SEWER
EXISTING STORM SEWER
EXISTING WATER MAIN
EXISTING FENCE

N

SCALE IN FEET
0 50 100 150
1 inch = 50 feet




EX. 16" CONCRETE WATERMAIN
HIGHWOOD AVE.
SKYWAY DRIVE
EXISTING SSMH
RIM=841.46
INV=831.37
EXISTING SSMH
RIM=843.80
INV=832.73
EXISTING STMH
RIM=840.86
INV=835.47
EXISTING STMH
RIM=840.01
INV=837.11 (N)
EXISTING STMH
RIM=839.65
INV=836.83 (S)
INV=836.73 (E)
EXISTING HYDRANT
EXISTING STMH
RIM=840.73
INV=833.31
OHP

6120.2500 DEFINITIONS.

Subpart 1. **Scope of terms; mandatory; distances.** For the purpose of parts 6120.2500 to 6120.3900, certain terms or words used shall be interpreted as follows: the word "shall" is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.

Subp. 1a. **Accessory structure or facility.** "Accessory structure" or "facility" means any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.

§ Subp. 1b. **Bluff.** "Bluff" means a topographic feature such as a hill, cliff, or embankment having all of the following characteristics:

A. part or all of the feature is located in a shoreland area;

B. the slope rises at least 25 feet above the ordinary high water level of the waterbody;

C. the grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and

D. the slope must drain toward the waterbody.

An area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff.

Subp. 1c. **Bluff impact zone.** "Bluff impact zone" means a bluff and land located within 20 feet from the top of a bluff.

Subp. 18b. **Toe of the bluff.** "Toe of the bluff" means the lower point of a 50-foot segment with an average slope exceeding 18 percent.

Subp. 18c. **Top of the bluff.** "Top of the bluff" means the higher point of a 50-foot segment with an average slope exceeding 18 percent.

116G.03 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 116G.01 to 116G.14, the terms defined in this section have the meanings ascribed to them.

Subd. 2. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subd. 3. **Local unit of government.** "Local unit of government" means any political subdivision of the state, including but not limited to counties, municipalities, townships, together with all agencies and boards thereof.

Subd. 4. **Government development.** "Government development" means any development financed in whole or in substantial part, directly or indirectly, by the United States, the state of Minnesota, or agency or political subdivision thereof.

Subd. 5. **Regional development commission.** "Regional development commission" means any regional development commission created pursuant to sections 462.381 to 462.396 and the Metropolitan Council created by chapter 473.

Subd. 6. **Development permit.** A "development permit" includes any building permit, zoning permit, water use permit, discharge permit, permit for dredging, filling or altering any portion of a watercourse, plat approval, rezoning, certification, variance or other action having the effect of permitting any development as defined in sections 116G.01 to 116G.14.

Subd. 7. **Development.** "Development" means the making of any material change in the use or appearance of any structure or land including but not limited to:

(1) a reconstruction, alteration of the size, or material change in the external appearance of a structure on the land;

(2) a change in the intensity of use of the land;

(3) alteration of a shore or bank of a river, stream, lake or pond;

(4) commencement of drilling (except to obtain soil samples), mining or excavation;

(5) demolition of a structure;

(6) clearing of land as an adjunct to construction;

(7) deposit of refuse, solid or liquid waste, or fill on a parcel of land;

(8) the dividing of land into three or more parcels.

Subd. 8. **Land.** "Land" means the earth, water, and air, above, below or on the surface, and includes any improvements or structures customarily regarded as land.

Subd. 9. **Parcel.** "Parcel" of land means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit, or which has been used or developed as a unit.

Subd. 10. **Developer.** "Developer" means any person, including a governmental agency, undertaking any development as defined in sections 116G.01 to 116G.14.

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Subd. 11. **Structure.** "Structure" means anything constructed or installed or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. Structure also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.

History: *1973 c 752 s 3; 1975 c 271 s 6; 1983 c 216 art 1 s 22*

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(b) wetlands,

(c) slopes from 12% to 18% and over 18%,

(d) soils not suitable for urban development on-site waste disposal,

(e) significant vegetative stands, and

(f) natural drainage routes.

(2) Prepare a floodplain ordinance if it does not have a floodplain ordinance in effect;

(3) Prepare plans and regulations to protect wetlands;

(4) Prepare plans and regulations to protect bluffs greater than 18% and to provide conditions for the development of bluffs between 18% and 12% slopes;

(5). Prepare plans and regulations to minimize direct overland runoff and improve the quality of runoff onto adjoining streets and watercourses;

(6) Prepare plans and regulations to minimize site alteration and for beach and riverbank erosion control;

(7) Prepare regulations for management of vegetative cutting; and

(8) Prepare criteria for control of noise in open space and recreational areas with assistance of the PCA.

2. Each local unit of government and state agency shall prepare plans and regulations to protect and preserve the aesthetic qualities of the river corridor, which provide for the following considerations:

a. Site Plans. Site plans shall be required to meet the following guidelines:

(1) New development and expansion shall be permitted only after the approval of site plans which adequately assess and minimize adverse effects and maximize beneficial effects.

(2) Site plans shall be required for all developments for which a development permit is required, except for the modification of an existing single-family residential structure or the construction of one single-family residence.

(3) Site plans shall include, but not be limited to, the submission of an adequate and detailed description of the project, including activities undertaken to ensure consistency with the objectives of the Designation Order; maps which specify soil types, topography, and the expected physical changes in the site as the result of the development; the measures which address adverse environmental effects.

(4) Site plans shall include standards to ensure that structure, road, screening, landscaping, construction placement, maintenance, and storm water runoff are compatible with the character and use of the river corridor in that district.

(5) Site plans shall provide opportunities for open space establishment and for public viewing of the river corridor whenever applicable, and shall contain specific conditions with regard to buffering, landscaping, and re-vegetation.

b. Structures. Structure site and location shall be regulated to ensure that riverbanks, bluffs and scenic overlooks remain in their natural state, and to minimize interference with views of and from the river, except for specific uses requiring river access.

c. Clustering. The clustering of structures and the use of designs which will reduce public facility costs and improve scenic quality shall be encouraged. The location of clustered high-rise structures may be proposed where public services are available and adequate and compatible with adjacent land uses.

d. Access Routes. Commercial and industrial developments adjacent to roadways shall be required to provide off-street parking, service roads and limited controlled access points to highways. (Except in cases of extreme hardship, highway access for any development within 250 feet of a bridge or bridge ramp shall be prohibited.)

e. Existing Development. Local plans and regulations shall include provisions to:

(1) Retain existing vegetation and landscaping;

(2) Amortize non-conforming uses;

(3) Prohibit the reconstruction of non-conforming uses which are 50% market value destroyed;

(4) Provide for the screening of existing development which constitutes visual intrusion, wherever appropriate.

f. Signs. Local units of government shall adopt ordinances for the amortization and removal of non-conforming general advertising signs, and to prohibit the visibility of advertising signs from the river, except in Urban Diversified Districts.

3. Local units of government shall develop plans and regulations to ensure that developments shall not be undertaken prior to the provision of Metropolitan public facilities

adjacent to existing right-of-ways for public facilities, such as railroads, roadways, bridges, and existing transmission services.

b. Transmission services of under 200 kilovolts, which cross lands within the River corridor shall require a special use permit from the local unit of government. Local units of government shall apply the standards set forth in sections D.1.c. through h when processing applications for a special use permit.

c. When routing transmission services of under 200 kilovolts, the following shall be avoided where practicable:

(1) steep slopes;

(2) scenic intrusions into streams, valleys, and open exposures of water;

(3) scenic intrusions into areas such as ridge crests and high points;

(4) creating tunnel vistas by, for example, building deflections into the route;

(5) wetlands;

(6) forests by running along fringe rather than through them. If necessary to route through forests, utilize open areas in order to minimize cutting;

(7) soils susceptible to erosion, which would create sedimentation and pollution problems;

(8) areas of unstable soils which would be subject to extensive slippages;

(9) areas with highwater tables, especially if construction requires excavation;

(10) open space recreation areas.

d. Transmission services shall be subject to the dimensional standards and criteria in section F, except at crossing points.

e. Structure design of transmission services.

With regard to locating the utility, overhead or underground:

(1) primary considerations shall be given to underground placement in order to minimize visual impact. When considering overhead placement, the proposers shall explain the economic, technological or land characteristic factors which make underground placement infeasible. Economic considerations alone shall not justify overhead placement.

(2) if overhead placement is necessary, the crossing should be hidden from view as much as practicable;

(3) with regard to the appearance of the structures, they shall be made as compatible as practicable with the natural area with regard to: height and width, materials used, and color;

(4) with regard to the width of the right-of-way, the cleared portion of the right-of-way should be kept to a minimum.

f. In the construction of transmission services, the following guidelines shall be applied whenever practicable:

(1) construction in wetlands shall minimize damage to vegetation, prevent erosion and sedimentation;

(2) construction shall be undertaken at times when local fish and wildlife are not spawning or nesting;

(3) effective erosion and sedimentation control programs shall be conducted during all clearing, construction, or reconstruction operations in order to prevent the degradation of the river and adjacent lands.

g. Safety considerations

Developers must adhere to applicable Federal and State safety regulations, both with regard to prevention (such as safety valves and circuit breakers) and with regard to emergency procedures in the event of failure (fire suppression, oil spill clean-up).

h. Right-of-way maintenance

(1) If possible, natural vegetation of value to fish or wildlife, which does not pose a hazard to or restrict reasonable use of the utility, shall be allowed to grow in the right-of-way;

(2) Where vegetation has been removed, new vegetation consisting of native grasses, herbs, shrubs, and low growing trees, shall be planted and maintained on the right-of-way;

(3) Chemical control of vegetation should be avoided when practicable, but where such methods are necessary, chemicals used and the manner of their use must be in accordance with rules, regulations, and other requirements of all state and federal agencies with authority over the use.

2. Sewage treatment plants — sewage outfalls, water intake facilities

a. In rural open space, urban developed and urban

Recommendations For Critical Area Designation Of The Mississippi River Corridor

February, 1975

APPENDIX B

Definitions

AGRICULTURE – means the utilization of land and structures thereon for production of farm crops, including but not limited to vegetables, fruit trees, grain, poultry and domestic farm animals and uses necessary or customarily incidental thereto.

BACKWATER – means a tranquil piece of water connected with but little affected by the main stream.

BARGE FLEETING AREA – means those water areas designated for the temporary storage of empty or loaded barges before they are delivered to their final destination.

BARGE SLIP – means an area adjacent to a wharf or jetty provided for barges, usually for loading or unloading cargo.

BLUFF – means those steep slopes lying between the normal highwater mark and the River Corridor boundary having an angle of ascent, proceeding landward from the river, of more than 12 percent from the horizontal.

BLUFFLINE – means a line delineating the top of a slope connecting the points at which the slope becomes less than 18 per cent. More than one bluffline may be encountered proceeding landward from the river. All setbacks required herein shall be applicable to each bluffline.

CLEAR-CUTTING – means the removal of an entire stand of vegetation.

CLUSTER DEVELOPMENT – means a pattern of subdivision development which places housing units into compact groupings while providing a network of commonly owned or dedicated open space.

DEVELOPMENT – means the making of any material change in the use or appearance of any structure or land including but not limited to: a reconstruction, alteration of the size, or material change in the external appearance of a structure on the land; a change in the intensity of use of the land; alteration of a shore or bank of a river, stream, lake or pond; a commencement of drilling (except to obtain soil samples), mining or excavation; demolition of a structure; clearing of land as an adjunct to construction; deposit of refuse, solid or liquid waste, or fill on a parcel of land; the dividing of land into three or more parcels.

DEVELOPMENT PERMIT – means a building permit; zoning permit; water use permit; discharge permit; permit for dredging, filling, or altering any portion of a water course; plot approval; re-zoning; certification; variance or other action having the effect of permitting any development as defined in the Act or these regulations.

ESSENTIAL SERVICES – means underground or overhead gas, electrical, steam or water distribution systems including poles, wires, mains, drains, sewers, pipes, conduits, cables, and other similar equipment and accessories in conjunction therewith but not including buildings or transmission services.

FEEDLOTS – means a confined area for the feeding, breeding, raising, or holding of livestock. This does not include areas normally used for pasture or crops.

FLOODWAY – means the river channel and the portions of the adjoining floodplain which are reasonably required to carry and discharge the regional flood.

GENERAL ADVERTISING SIGNS – means those signs which direct attention to a product, service, business or entertainment not exclusively related to the premises where such sign is located.

HISTORIC PRESERVATION – means the protection by various means of buildings or other structures, land areas, or districts which are identified by the Minnesota Historical Society or the National Register of Historic Places.

METROPOLITAN DEVELOPMENT FRAMEWORK – means that chapter of the Metropolitan Development Guide which deals primarily with the physical development of the metropolitan area.

METROPOLITAN PLANS, GUIDES, AND STANDARDS – means and refers to all such documents, reports, and materials which have been adopted by the Metropolitan Council and includes but is not limited to Metropolitan Development Guide Sections including the proposed Development Framework Chapter and policy plans for Development Programs of all Metropolitan Commissions.

Tom Dimond
2119 Skyway Drive
Saint Paul, MN 55119

May 5, 2016

RE: MRCCA Draft Rules Comments

The shared goal of rulemaking should be development of clear, concise and consistent rules that retain and enhance the protections that have been in place for almost four decades. The Rulemaking should clarify and enhance protections, it should not be used as a vehicle to reduce or eliminate protections that have been in place for nearly 40 years. We are the current custodians of a priceless national asset. Protecting this resource for current and future generations is a huge responsibility that should not be taken lightly.

The DNR must ensure that this incredible resource is not exploited for short term personal gain at the expense of diminished natural resources and loss of recreation opportunities for current and future generations. The DNR Draft Rules fail to do this. The Draft Rules are a significant reduction of current protections. The Draft Rules fail to protect this incredible resource and will reduce the DNR's legal authority, ability, and responsibility to ensure the protection and enhancement of natural resources and recreational opportunities in the National Park and State Critical Area.

The DNR's ability to oversee the protection and enhancement of natural resources and recreational opportunities is controlled by the rules. Elimination or reduction of current protections correspondingly limits the DNR's authority to ensure the protection and enhancement of the River Corridor. The Draft Rules undo much of the hard work done by previous Governors and Members of Congress to protect and enhance this incredible resource.

The Statutory requirements have largely been ignored. The DNR has generally not included protections established by LGU's that provide greater protection and has largely ignored public input to retain and enhance current protections. The DNR appears content pursuing the lowest common denominator.

The authorizing statute for rulemaking requires the DNR to consult with Local Government Units regarding *adopted policies and ordinances*. The DNR has not met this requirement. The DNR has not compiled a comparison of Draft Rules and adopted LGU policies (Comprehensive Plan) and ordinances (Zoning Code). The DNR and public do not have this important comparison to evaluate the potential benefits and impacts.

Instead of following the statutory requirement to consult on *adopted policies and ordinances* the DNR solicited recommendations to reduce or eliminate protections. **The DNR's stated position is River Corridor protections have to be reduced or eliminated to create buy in.** This position is in direct conflict with the Statutory requirements for rulemaking in the MRCCA.

The DNR has consistently failed to serve as an advocate of natural resources protection and recreational opportunities. I have attended the meetings open to the public. Unfortunately, I have not heard the DNR acting as a natural and historic resource and recreation advocate. The DNR did not make presentations about the environmental and economic benefits of protecting and enhancing the natural and historic resources and recreational opportunities of the State Critical Area and National Park. This is essential to responsible management of those resources. The DNR has been particularly reticent to advocate on behalf of enhancement and restoration including restoration of habitat.

The DNR who is in charge of our State Parks has refused to advocate on behalf of parkland dedication. The current protections require parkland dedication or equivalent cash in lieu of land. The DNR has removed the parkland dedication requirement from the River Corridor protections and removed the requirement to maximize parkland in the River Corridor. The DNR itself is an impediment to retaining strong resource protections in the River Corridor.

Existing River Corridor Protections require we maximize creation of open space and recreational opportunities and require parkland dedication. The DNR has eliminated these protections. The removal of these protections will negatively impact the public's ability to advocate for resource protection and enhancement and recreational opportunities in the River Corridor.

The establishing Executive Order 130 states: Whereas, unregulated development and uncoordinated planning threatens the public interest in the Mississippi River Corridor; many decisions affecting the use of the River Corridor are made by local government units without adequate regard for protecting the regional resource. The next whereas states that coordinated planning will resolve the conflicts of use of land and water, preserve and enhance its natural, aesthetic, cultural, and historical value for the public use, and protect its environmentally sensitive areas. The Draft Rules do not adequately protect the regional resource because they reduce or eliminate the safeguards put in place to protect the regional interest. The Draft Rules are not adequate to resolve the conflicts of use of land and water, preserve and enhance its natural, aesthetic, cultural, and historical values for the public use, and protect its environmentally sensitive areas.

<u>The Rules must retain the existing protections that have allowed the public to take back our riverfront and create an environmental and economic renaissance. The River Corridor protections have given the public a greater say in what happens in the River Corridor and this is having a positive impact. The protection and enhancement of natural and historic resources and enhance recreational opportunities have played a significant role in riverfront revitalization.</u>

RECEIVED
By: OAH on 7/5/16 6:11 a.m.

110 Bank Street SE
#1505
Minneapolis, MN 55414

Phone: 612-623-3321
Email: folwell@aol.com

FAX TO: Office of Administrative Hearings
ATTN: Judge Eric L. Lipman
DATE: 4/5/16
PAGES: 5

REFERENCE: Mississippi River Critical Area rules

Please find attached comments on the proposed rules.

A hard copy has also been mailed today.

Dale Herron

Dale Herron

110 bank Street SE, #1505
Minneapolis, MN 55414
folwell@aol.com 612-623-3321

July 5, 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

Reference: Mississippi River Critical Area Rules- Comments

Dear Judge Lipman,

I am writing as a Minneapolis resident who just learned of the effort to update Mississippi Critical Rules.

I cannot comment from a legal perspective but I understand the proposed rules establish height limitations for different zones, except the areas within the cities of Minneapolis and St. Paul (Urban Core), where the rules defer to existing zoning "*provided tiering of structures away from the Mississippi River and bluff lines is given priority, with lower structure heights closer to the river and bluff lines, and structure design and placement minimize interference with public river corridor views.*" (Page 39)

Based on what has been happening in Minneapolis, I believe the DNR will find there are no zoning rules that are being applied to current development in the districts where the rule making applies, particularly in what is referred to as the Historic East Bank of Minneapolis.

The most current example of this can be described with the attached City Planning Commission notes. Within a block of the river variances being requested include increasing allowed height from 56' to 485' and floor/area ratio from 2.38 to 14.7.

The City Council has already overridden its Historical Preservation Commission and has openly ignored historical guidelines and zoning regulation. In fact it is evident from public statements that the Council no longer restricts height in any way near the river.

110 bank Street SE, #1505
Minneapolis, MN 55414
folwell@aol.com 612-623-3321

It is in the interest of present and future generations to preserve and enhance the natural, aesthetic, economic, recreational, cultural, and historical values of the Mississippi River corridor within the Twin Cities metropolitan area and protect its environmentally sensitive areas.

Not having a legal background, I can only make a couple suggestions:

-Is it feasible to have the rules state explicitly that heights in the zone of interest are limited to existing zoning/guideline rules? I appreciate that City Council members need flexibility for different sites or conditions so the rule could even state 'within 20% of zoning limits' for example.

-Could buildings requiring variances always be required to provide an EAW so citizens have a better understanding of what the development will mean in terms of the policy statement noted above?

Please take these comments into consideration as you review the proposed rules.

Thank you for your work with the Mississippi River Corridor Critical Area. It is a tremendous resource and I appreciate all being done to keep it so.

Sincerely,

Dale Herron

Dale Herron

Minneapolis
City of Lakes

Department of Community Planning & Economic Development
250 South 4th Street, Room 300
Minneapolis, MN 55415-1385

MEMORANDUM

TO: City Planning Commission, Committee of the Whole

FROM: Janelle Widmeier, Senior City Planner, (612) 673-3156

DATE: June 30, 2016

SUBJECT: 200 Central Avenue Residential Tower, 200 Central Ave SE and 113 2nd St SE

SITE DATA

Existing Zoning	C2 Neighborhood Corridor Commercial District PO Pedestrian Oriented Overlay District MR Mississippi River Critical Area Overlay District UA University Area Overlay District
Lot Area	34,600 square feet / 0.8 acres
Ward(s)	3
Neighborhood(s)	Marcy Holmes; adjacent to Nicollet Island-East Bank
Designated Future Land Use	Mixed Use
Land Use Features	Activity Center (East Hennepin) Community Corridor (Central Avenue)
Small Area Plan(s)	Marcy-Holmes Neighborhood Master Plan (2014)

SITE DESCRIPTION, HISTORY, AND PRESENT USE

The subject properties, 200 Central Ave SE and 113 2nd St SE, are located at the intersection of Central Avenue and 2nd Ave SE just over one block from the Mississippi River. The site is also in the St. Anthony Falls Historic District. The existing structures would be demolished to allow for the new development.

PROJECT DESCRIPTION

A new 40-story tower with 214 dwelling units and approximately 6,700 square feet of ground floor commercial is proposed for the properties located at 200 Central Ave SE and 113 2nd St SE. The overall height would be approximately 485 feet. The height includes the 40 stories plus a mechanical penthouse and a decorative cap (the additional structure above the 40th level will likely be considered 2 stories by definition of the zoning code). The proposed density is 269 dwelling units per acre. A total of 389 on-site parking spaces would be provided in 3 below-grade and 3 above-grade parking levels. Of those spaces, 69 would be tandem. The building mass would be divided into two components: the

podium and the tower. The primary exterior materials of the four-story podium would be a storefront system, stone, brick, and metal. The tower would primarily be clad in a curtain wall.

This project was last reviewed by the Committee of the Whole in October of 2015. Since then, the project has completed the Heritage Preservation application process. On June 17, 2016, the City Council took the following actions:

- Approved an appeal of the Heritage Preservation Commission decision to deny a certificate of appropriateness to allow the proposed building.
- Approved an appeal of a condition of approval of the Heritage Preservation Commission decision on the certificate of appropriateness application to allow the demolition of the existing structures.
- Denied an appeal of the Heritage Preservation Commission decision to approve the certificate of appropriateness application to allow the demolition of the existing structures.

APPLICATIONS

Based on staff's preliminary review, the following land use applications have been identified:

- Conditional use permit to increase the maximum allowed height of a building from 4-stories, 56 feet to approximately 42 stories, 485 feet.
- Variance to increase the maximum floor area ratio from 2.38 to 14.7.
- Variance of the PO Overlay District standards to allow the ground floor to be set back more than 8 feet from lot lines adjacent to a street and to allow parking between the building and the street.
- Variance to reduce the minimum interior side yard requirement adjacent to the north lot line from 15 feet to 10 feet.
- Site plan review.

Additional applications may be required, depending on the plans that the applicant formally submits. The applicant expects to submit their land use application within the next month.

APPLICABLE POLICIES

In the small area plan, the site falls in the Riverfront Character Area. The goal of the plan for this area is to "Expand and improve riverfront parks, improve connectivity, balance local and regional access and use, create bike- and walk-friendly environments on 2nd Street SE, and embrace diversity of building uses and eras." The plan does not contain specific guidance for height, but indicates that higher density residential development is appropriate at this location because it is along a transit and transportation corridor and near a commercial center. Additional analysis of the comprehensive plan policies can be found in the findings of the CPED staff report for the certificate of appropriateness to allow the new building on pages 25-30.

RECEIVED
By: OAH on 7/5/16 8:37 a.m.

4138 41st Ave So
Minneapolis, MN 55406
July 4, 2016

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

Re: Mississippi River Critical Area Rules

Dear Judge Lipman:

I'm writing as an educator in support of clear and strong rules governing the State of Minnesota's Mississippi River Critical Area. For more than twenty years I have used this area as a classroom for school children to learn science, history, and land and water stewardship. In my experience there is not a better classroom. The reasons behind the original establishment of the critical area and the subsequent establishment of the Mississippi National River and Recreation Area (MNRRA), a national park, are testament to the high value of the resources of this area. Accordingly, students should (and do) use this important river corridor as a place to learn about these nationally significant resources and values, which include natural, cultural, recreational and scenic resources.

When I bring students to the Mississippi River they are captivated and engaged by a place that is alive with wildlife and history. They have a visceral connection with the river and nature. Often the city disappears when their focus is on eagles or otters, or a historical site like Fort Snelling. A key reason students find this place compelling relates to the degree of naturalness and views that are protected from overly dominant development close to the river. Each time a variance is allowed or rules are relaxed, a cut is made into these nationally significant resources, and the specialness of these places is demeaned. The sense of place that makes this river corridor great is diminished.

Students learn that riparian areas of rivers support 80-90% of all wildlife. And they understand that when we protect water quality and the river corridor we help both ourselves (since the river is our source of drinking water) and other animals that we value. They learn, too, that the river is the reason for our cities to be where they are. And so, we should give deference to preserving this historical landscape, this icon of America.

After a river field trip, I often ask children an open ended question: "If you could change something, what would you change for the river's future?" Far and away the most frequent answer is: "We want a cleaner river, and less pollution." They add that they want the river more natural, with more fish and birds, and they want to be able to swim in it. They see that the river isn't what it could or should be.

School children are our future. They deserve our highest consideration when we make decisions governing the world they and their children will inherit. More than anything they need hope. They need to see adults leaving them a better environment, not worse. Policy is where the rubber meets the road. When we protect resources, we show we care, we role model stewardship, and we provide young people with hope for a positive future. Please show them that people can protect and improve our world. Please rule in favor of clear and strong critical area protections.

Thank you.

Sincerely,

Lyndon Torstenson

Lyndon Torstenson

RECEIVED
By: OAH on 7/5/16 9:53 a.m.

Ronald G. Vantine
45 University Ave SE #606• Minneapolis, MN 55414
Phone: 612-926-7990 •Cell: 612-202-7389 • E-Mail: ronaldgvantine@gmail.com

July 4, 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

Reference: Mississippi River Critical Area Rules (MRCCRA)-comments

Dear Judge Lipman,

I am a resident of Minneapolis and live in the St Anthony Historic District along the Mississippi river. This area is also known as the East Bank neighborhood. Under the proposed rules, our neighborhood is included in the "Urban Core" category in the city of Minneapolis.

I am concerned about the ability of the City of Minneapolis, and other cities along the Mississippi river, to alter the character of the river's corridor without regard to the historic character of the corridor or the natural characteristics of the corridor.

The MRCCA rules pertaining to an Urban Core defer to existing zoning rules of the city involved "*provided tiering of structures away from the Mississippi River and bluff lines is given priority, with lower structure heights closer to the river and bluff lines, and structure design and placement minimize interference with public river corridor views.*" (Page 39)

At present, the City of Minneapolis is not adhering to its own zoning rules in regard to projects in the Urban Core if a given project will significantly increase the City's tax revenues. As a result, there are no zoning rules that apply in a meaningful manner in the Urban Core for the city of Minneapolis and the "tiering" concept described in the preceding paragraph is of no importance based on the City' own actions.

For example, within the past two weeks, the City's Planning and Zoning Committee has approved a residential skyscraper of 42 stories to be built one block from the Mississippi river and one block from the city's oldest historic buildings along the river. This is the Alatus project proposed for 200 Central Ave SE. The City has made it clear that it will grant the necessary zoning variances and Conditional Use Permits to enable this project to be built even though doing so will allow a building of 42 stories and 485 ft where the existing zoning code calls for a maximum of 4 stories and 56 feet in height. In it's process, the City has overruled the recommendation of its own Heritage Preservation Commission that a building of such extraordinary height should not be built in this historic district, where the recommended maximum height under the St Anthony Falls Historic District Guidelines is eight stories.

In short, public statements by Minneapolis City Council members make it clear that the City of Minneapolis no longer restricts building height in any meaningful manner near the Mississippi river.

The purpose of the MRCCA rules is based upon the policy statement that: "*It is in the interest of present and future generations to preserve and enhance the natural, aesthetic, economic, recreational, cultural, and historical values of the Mississippi River corridor within the Twin Cities metropolitan area and protect its environmentally sensitive areas*".

I suggest that the proposed rules for an Urban Core allow too much leeway for a city to ignore the policy behind the MRCCA rules where it has its own agenda, and that some reasonable limitation should be placed upon a City's actions in the Urban Core, particularly in regard to height.

I appreciate the efforts being made to preserve the beauty and unique character of the Mississippi river corridor for future generations and hope that my observations may be useful in that regard.

Respectfully,

Ronald G. Vantine

RECEIVED
by OAH on 7/5/16 @ 11:23am

R. GORDON NESVIG
ATTORNEY AT LAW

7501 80TH STREET
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BOX 255
COTTAGE GROVE, MN 55016-0255

(651) 459-7000
FAX 458-8439

July 5, 2016

VIA FAX: 651-539-0310 and
VIA E-mail: mn.gov/oah/forms-and-filing/e-comments

The Honorable Eric L. Lipman
Administrative Law Judge
Office of Administrative Hearings

Re: Proposed rule changes for Mississippi Critical Area
Docket No.: 8-9014-33236 R-4240

Dear Judge Lipman:

You may recall that I attended the Hearing over which you presided on June 17, 2016 at Hastings, Minnesota, and that I indicated I would be sending written comments.

Attached is a copy of part of the St. Paul to Nininger District Map from the DNR Website, with my property outlined in black. (The Subject Property)

The subject property consists of approximately 150 acres of high, flat, and dry land at elevation of 730 feet. This is 43 feet above the river elevation of 687 feet in Pool 2.

This property is currently designated on the map as Rural and Open Space District (CA-ROS).

The subject property is similar in features and character to adjacent property located to the South and East, which is designated as River Neighborhood District. (CA-RN)

My residence is located at the south end of the subject property, directly across the mouth of Grey Cloud Channel from another residence located in the RN District.

A new County Highway 75 bridge across Grey Cloud Channel, approximately 1000 feet east of the mouth, is scheduled for construction in the spring of 2017.

Both the City of St. Paul Park and I feel that the Rural and Open Space District (CA-ROS) designation for the subject property is not right. This property has been planned and approved for development since 2004, and should have been designated as River Neighborhood District. (CA-RN)

In 2003, home builder DR Horton paid over a million dollars to produce an Alternative Urban Areawide Review (AUAR) covering the

subject property. The City of St. Paul Park approved and zoned the property for development, and in 2004 the Metropolitan Council and the DNR signed off on the development.

The City extended the AUAR in 2009 and 2014 with Metropolitan Council approval.

The only thing that delayed development was the collapse of the housing market, starting in 2007.

Developers are currently showing interest in going forward with development.

There is no development currently scheduled or approved for the RN property to the South and East, as a major portion of that property is under plans for aggregate mining.

I am sorry that I did not realize that meetings were being held earlier, or I would have had input then, but I had no notice.

It appears from the Exhibits and from information obtained from DNR staff, that property owners received one postcard in May of 2014, which apparently indicated that a response was needed in order for them to receive further information. There was no meeting date given on that postcard. It is submitted that this was not a sufficient notice, or service of process when property rights are affected.

In my case, I do not recall receiving this postcard. If I did receive it, I certainly would not have realized the significance of that card, or that this would be the only notice I would ever receive regarding this project. This is a much different procedure than was used during previous attempts to amend the Critical Area Rules.

Overall, the proposed changes seem reasonable to me, with the exception of the district designation for my property.

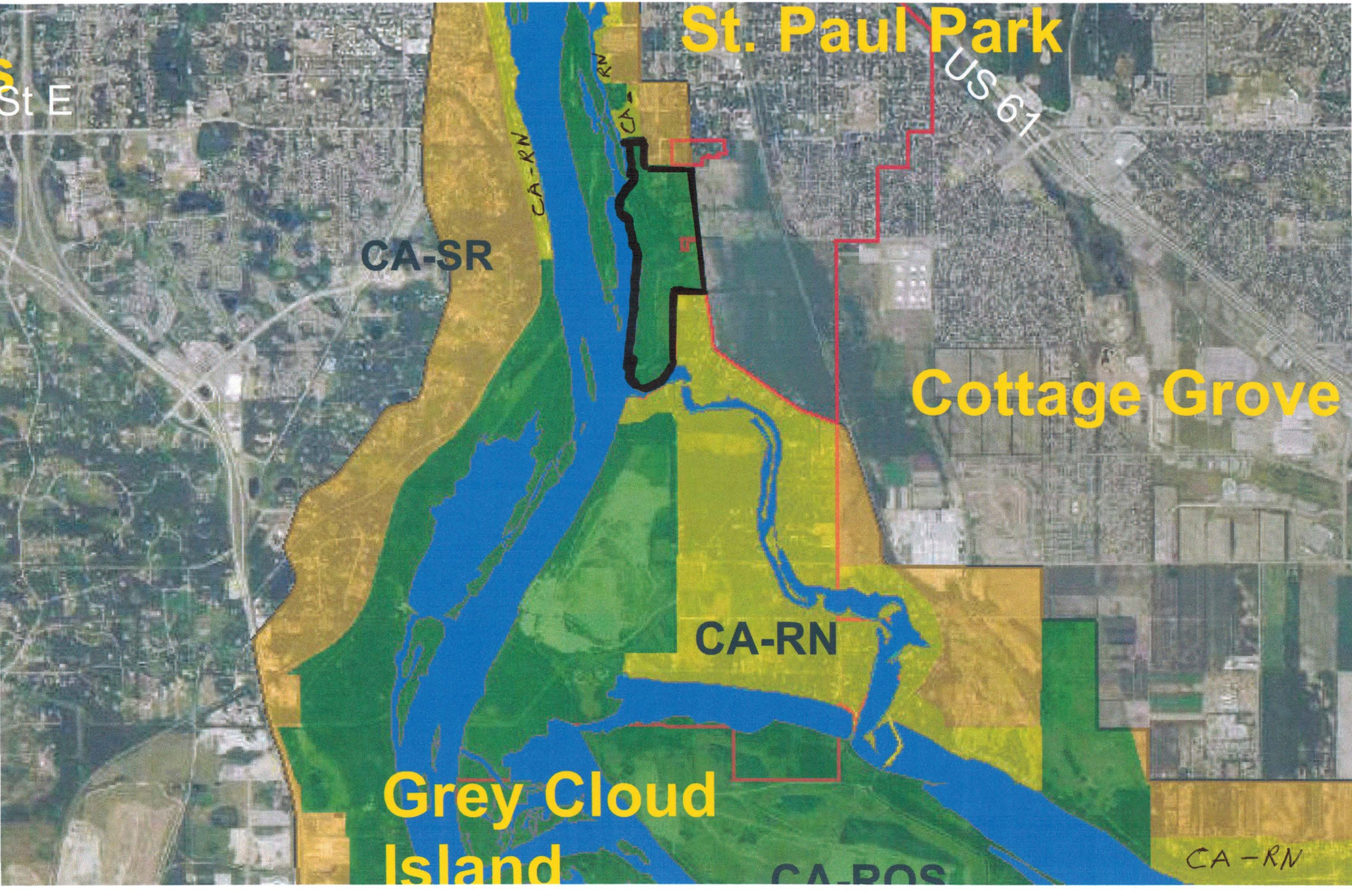
Therefore, I would respectfully request that the District designation for my property be changed from Rural and Open Space District (CA-ROS) to River Neighborhood District (CA-RN).

Thank you very much for your consideration.

Sincerely yours,

R. Gordon Nesvig

RGN/lfe
Encl.
cc: Kevin Walsh, St. Paul Park City Administrator


St. Paul Park
US 67
St E
CA-RN
CA-SR
Cottage Grove
CA-RN
Grey Cloud Island
CA-ROS
CA-RN

Fax Cover sheet

To

RECEIVED
By: OAH on 7/5/16 11:12 a.m.

Judge Eric L. Lipman

Fax # 651-539-0310

From John A. Freeburg

Phone + Fax 763-427-1528

Containing 13 pages including
This page as No. 1

Please acknowledge receipt of This Fax
by faxing a copy of This page to the
above number.

John A. Freeburg

6356 Riverdale Dr.

Ramsey, MN 55303

July 5, 2016

Administrative Law Judge Eric L. Lipman

600 North Robert St.

St. Paul, MN 55164

Fax 651-539-0310

Dear Judge Lipman

Thank you very much for the chance to testify before you on June 15th at Greenhaven Event Center in Anoka regarding the proposed MRCCA rules. At that meeting I did submit to you a copy of the City of Ramsey City Council work session –special meeting notes of Nov. 10th 2015 which was conducted on my property and several neighboring properties. Please find the attached as further written comments from me regarding the rule making process.

As noted in the city council report I made several comments regarding the connection between the two upstream power plants and the erosion that I see occurring along the river banks in the City of Ramsey. In early Jan. of 2016 the outside temperature dropped to about -20F. The river began to freeze as it has for about the last forty years, first forming floating ice sheets and then a full coverage of ice over the entire river. This covering is very rough on the surface and shows signs of open water at times. As soon as this occurred the level of the water in the river rose about four feet overnight. I checked on my neighbor's property where we had previously measured the six foot undercut. The undercut area had been flooded by the rising water which had subsequently frozen. When the temperature rose to near zero or slightly above the flood level water suddenly receded and the ice layer on top collapsed taking with it soil, rocks and other shoreline material. This material then became part of the 5148 tons of sediment that goes into the river along the 5.8 miles of Mississippi River shoreline in the City of Ramsey. This loss was reported in the "City of Ramsey River Bank Condition Inventory" as prepared by the Anoka Conservation District for the City of Ramsey February 2016. I have included a summary of that report in this FAX to you. I also have many photographs of this event as it was occurring and would be happy to share them with any interested parties.

The landowners along the Mississippi River from the Coon Rapids Dam up to the city of Monticello have become the default flood control program for the river! I have pictures of my shoreline going back twenty or more years. These photos show that back some twenty years ago there was some vegetation growing along my river bank and near to the waterline. Over the past years that vegetation has been

ripped or washed away by the continuous and unnatural ice- up- and ice- out conditions we are now experiencing. This damage was slow at first and very hard to detect from year to year. But when viewed from the vantage point of before and after pictures spanning twenty years the huge amount of damage is clearly evident. This is backed up by the attached River Bank Condition Inventory report.

Please remember that this report shows that the City of Ramsey is losing 5148 tons of sediment per year into the flowing water. The report does not say how much this is costing landowners (both public and private) nor who is paying or not paying for this loss in shoreline material. I can tell you that the cost is very high and has been carried mostly by private landowners. Public landowners such as the city and county have suffered great loss but have for the most part not paid for repair. We riverbank landowners have a common neighbor known as the Federal Government. If you had a neighbor who was taking thousands of tons of soil, trees and other vegetation from your land every year I'll bet you would not be happy about it and would seek some kind of remedy. I have attached a copy of an article from the Anoka County Union Herald from Jan. 8th 2016 regarding the City of Ramsey support for a shoreline study. I have also included a larger image of the photo in that article. The Trees that you see along the shoreline did not grow there nor are they protecting the shoreline from erosion! Those trees were in the recent past at the top of the bluff but because of erosion they made the forty foot slide down into the river and will soon never be seen again. They will become part of the ever increasing silt deposit in Lake Pepin or part of the dead zone in the Gulf of Mexico. The trees and soil currently on the top of the bluff will soon be joining them. If you only see this scene only once a year, or maybe never, then you might assume that this is a perfectly natural scene. However if you see this scene many times a year from early spring to late fall then you begin to realize that this is a picture of a dynamic process and has been ongoing for the last several decades. This happens to be the shoreline of the Anoka County Mississippi River West Regional Park, or rather what's left of it.

One of my upstream neighbors was recently contemplating selling his house. When he moved in about twenty years ago he had a stairway put in from the top of his bluff to the shoreline. At that time you could come off the last step of the stairs and put your foot on the shoreline eight inches below. When my neighbor had a real-estate person examine his property he was told that he should fix the now nearly two foot vertical gap between the last step and the shoreline in order to make the property more salable. My neighbor did this but only this. He did not try to fix the overall shoreline erosion problem. This minimal repair cost nearly $20,000 and involved the placement of only about 20 tons of riprap. Again this was a stopgap repair not a shoreline reconstruction. Due to the very steep slope of my neighbors bluff further repairs would have done more damage to the bluff than would be acceptable. This event does however raise the question of could future water front property values and or assessments be affected by the condition of the shoreline or access to it.

This brings up another point that was mentioned by another upstream neighbor at the Greenhaven meeting. In order to repair the current level of damage to many of the existing properties the only feasible approach would be to mine rocks from the river and place them on the affected properties. This environmentally friendly approach could be paid for by contributions from those involved in the situation. I believe that this would include the US Government, Xcel Energy, The State of Minnesota, Anoka County, The City of Ramsey and private landowners. All of these parties have a responsibility and

a duty to offer up an immediate solution to the erosion problem before we lose another hundred thousand tons of shoreline material. Many private landowners do not have the financial resources necessary (several hundred thousand dollars) to properly repair the damage that has occurred over the last thirty to forty years. Cost sharing among involved parties is the only feasible approach.

Over the past several years the Minnesota DNR has been in the process of updating and refining the rules and regulations regarding the use and care of the upper Mississippi River. Their first attempt several years ago drew considerable concern from property owners along this part of the river, both public and private. I have attended many meetings and discussions on this topic hosted by many organizations, both public and private. What I learned from these meetings was that the people living close to or on the river were somewhat aghast at the proposals put forward by the DNR to refine the then current rules and regulation governing the river. One of the most common thoughts I heard expressed regarding erosion control was "what are these people thinking". It finally occurred to me that the DNR staff does most of their river survey work during the summer months when most of the erosion damage is covered by overhanging vegetation as opposed to imbedded shoreline vegetation leaving the impression that erosion is not a real problem. This is why I asked the Ramsey city people to view my neighborhood shoreline in the late fall when most of the obscuring vegetation is gone. Most of those who attended said that they learned something about the local erosion problem. This happened to be a cool but sunny day and most of the people attending were happy to get back indoors.

After that visit I decided to pay more attention to the action on the river during the winter months. I have bird feeders along my bluff and fill them daily. Sure enough in early January of 2016 we had a cold snap that reached minus 20F. As the river has done for the last 26 years that I have lived here the ice sheets started forming one day and on the next day the river was for the most part frozen over and the water level had risen about four feet from the day before. A few days later when the warmup arrived the water level suddenly dropped and the ice shelf that had formed on top of the flood level suddenly collapsed taking with it much soil, rocks and vegetation. At this point in time the shoreline is almost impossible to view because of the large sheets of ice covering the shoreline area. I have on my property a set of steps going down to the river which are slightly above the ice shelf are allowing me to view the scene at close hand. Several of my neighbors have the same situation, and I observed their shorelines as well. This is when I realized the extent and magnitude of the damage to the area. I did not encounter any DNR staff making any similar observations.

In many conversations with my neighbors and others in the area that have lived on or have observed the river for the past forty years or more, the above events are not considered to be "normal or natural". Most everyone I spoke with can remember when the river froze over nearly smooth and allowed for snowmobiling and ice fishing or spearing shacks. The flooding did not occur. In my comments in the city council minutes I thought that the flooding was the result of a rock ridge line about a half a mile down- stream from me. During this past winters events I checked downstream all the way to where Third Ave So. in Anoka meets the river, the water level there had also been up about four feet and had a similar collapsed ice shelf along the shoreline which prevented close observation of the event. This makes me believe that the flooding starts at the Coon Rapids Dam, due to ice sheet build up on the

Page 1 July 06

FAX Cover Sheet

To

Judge Eric L. Lipman
in care of Carrey FAX #651-539-0310

From John A. Freeburg
Phone + FAX 763-427-1528

This FAX contains 2 page
including This page
and page 4-A To be inserted
in FAX I sent yesterday
Carrey Please call me at
763-360-9783 + confirm that
you have received all my FAX's
Thanks John A. Freeburg

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By: OAH on 7/6/16 8:24 a.m.

upstream side, and not at the local rock ridge line. I did however photograph most of my observations and will gladly share them with any interested party.

I am writing this at this time because I now have the hindsight of several years of observations that were prompted by my own thoughts of "what are these people thinking". More than likely I would not have made all these observations and gone to all those meetings and talked with so many people had it not been for the actions that the DNR undertook several years that appeared to me and many others to be ill- informed and ill- advised.

I am now asking for the DNR to become more a part of the solution to the problem and soon, and to look more closely at not just erosion control such as "restoration of native vegetation and cedar tree revetment" which are doomed to failure on most steep bluffs due to the changed nature of the ice-in ice- out cycle. I would like to ask them to consider true erosion prevention other than shutting down the upstream power plants. I googled the phrase "river bank erosion and power plants" and got 442,000 hits. Maybe this would be a good place to start research on this subject. To accomplish this task would mean rip rap on as much of the affected shorelines as possible. And providing assistance in securing the permissions, equipment and financing deemed necessary to accomplish this task. Telling people to plant grass and trees on these affected shorelines is simply wrong and is a waste of precious time and money. The affected areas had natural vegetation on them before the power plants came in but that is now long gone and it will not be returning no matter how much the DNR hopes that it will. Most of the landowners whose properties are affected would like to see a permanent remedy, but lack either the financial resources or the access to the area or both in order to save their land from winding up in Lake Pepin or the Gulf of Mexico.

I will be distributing copies of this information to those referenced and other concerned parties.

Sincerely

John A. Freeburg

home 763-427-1528

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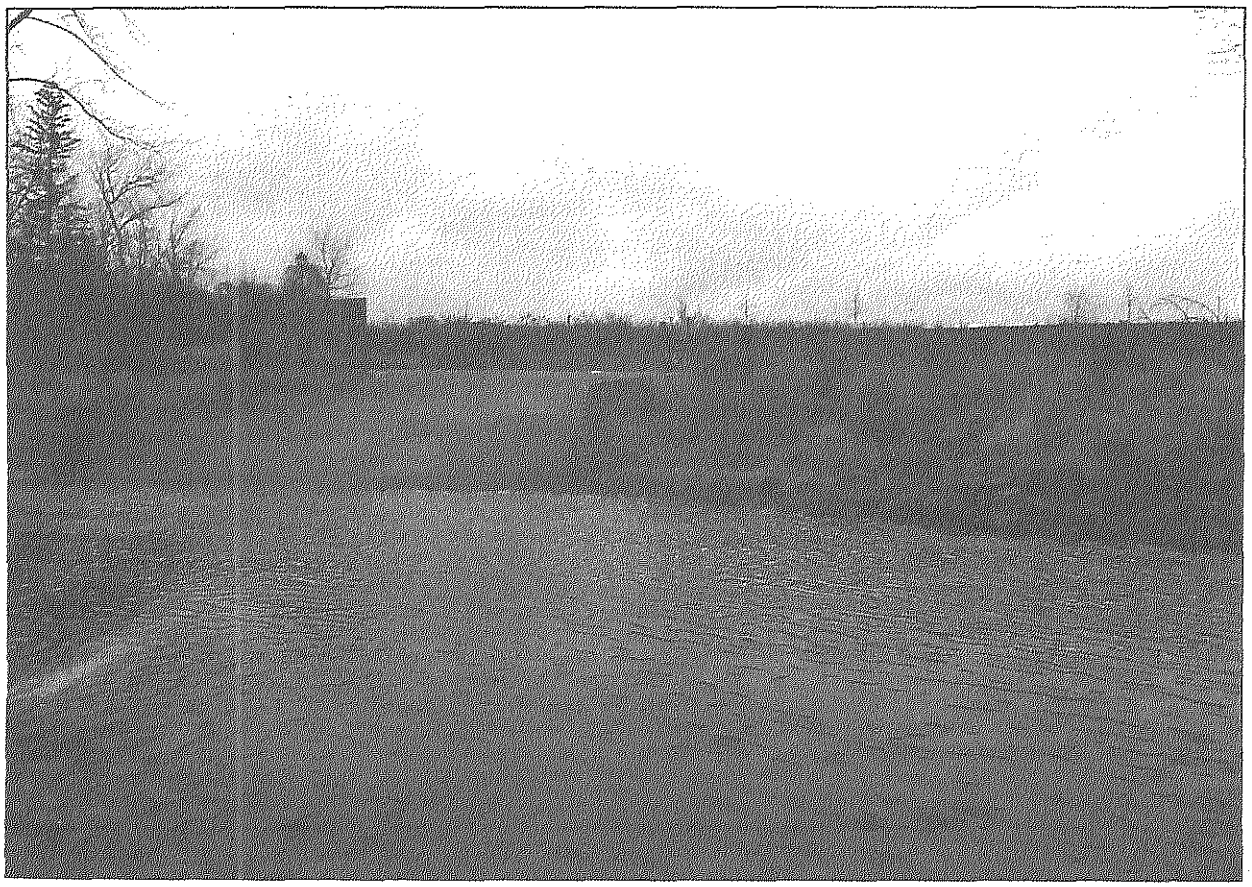
email jsfreeburg@comcast.net



City of Ramsey Mississippi River Bank Condition Inventory

Prepared by the

ANOKA CONSERVATION DISTRICT

for
the City of Ramsey
February 2016

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Executive Summary

The City of Ramsey contracted the Anoka Conservation District to complete an inventory of riverbank condition along the entire 5.8 miles of City that border the Mississippi River. The inventory provides the City with a comprehensive record of bank condition. Ten stretches of riverbank with severe or very severe erosion were identified, which if stabilized, would reduce sediment loading to the river by 5,148 tons per year.

The inventory is structured as this report as well as an atlas. The report provides details on the methodology used to estimate bank erosion severity and potential benefits provided by stabilizing the most severely eroding sections of riverbank. The 10 most severely eroding sections of riverbank are also detailed in the report with individual site profiles to highlight additional information and potential solutions. The atlas is presented in Appendix A and provides a complete record of aerial photographs with the corresponding erosion severity categorizations and key pictures collected during the field work portion of this effort. As not all pictures are presented in the atlas, the final deliverables also include the complete picture inventory collected in early December 2015.

Methods

Field Work

The project scope was determined to be the entire 5.8 miles of City that border the Mississippi River. An atlas of the target area was printed prior to conducting the field work to serve as a navigation tool on the river and ensure complete coverage of the riverbank.

The inventory was conducted on December 10th and 11th, 2015. The timing was optimal because the river level was relatively low, bank vegetation was dormant, and snow had not yet fallen to obscure the bank. Other times of the year were considered for the inventory, but frequent high water levels in the spring, dense bank vegetation in the summer, and river ice and snow on the bank in the winter all prevented the collection of a useful picture inventory.

The inventory crew consisted of two Anoka Conservation District (ACD) staff members. A small boat was used to navigate the river and take geotagged pictures using a handheld GPS. These pictures can be viewed similar to pictures taken on a standard camera, but they also contain spatial information (i.e. X and Y coordinates). This feature allows them to be accurately mapped in GIS software. In order to take high quality photos, the boat navigated at idle speed typically between 50 and 100 feet from shore depending on water depth.

Wisconsin NRCS Direct Volume Method – Bank Recession Rate Categorizations

The picture inventory was used to digitize a polyline in GIS along the entire riverbank. Using the Wisconsin NRCS Direct Volume Method, the polyline was classified as slight, moderate, severe, or very severe with respect to erosion severity (Table 1). These erosion categorizations were then converted to lateral recession rates using the table below for use in soil loss calculations.

Table 1: Erosion severity categories.

Symbol	Category	Lateral Recession Rate (ft/yr)	Description
	Slight	0.01—0.05	Some bare bank but active erosion not readily apparent. Some rills but no vegetative overhang. No exposed tree roots.
	Moderate	0.06—0.2	Bank is predominantly bare with some rills and vegetative overhang. Some exposed tree roots but no slumps or slips.
	Severe	0.3—0.5	Bank is bare with rills and severe vegetative overhang. Many exposed tree roots and some fallen trees and slumps or slips. Some changes in cultural features such as fence corners missing and realignment of roads or trails. Channel cross section becomes U-shaped as opposed to V-shaped.
	Very Severe	>0.5	Bank is bare with gullies and severe vegetative overhang. Many fallen trees, drains, and culverts eroding out and changes in cultural features as above. Massive slips and washouts common. Channel cross section is U-shaped and stream course may be meandering.

Soil Loss Estimation

Any section of riverbank identified as either severe or very severe was included in a site profile for more detailed analysis. The analysis consisted of calculating the following variables for every section of severe or very severe erosion (Appendix B).

- ***Depth (D)***: horizontal distance from the toe to the top of the bank; calculated using GIS
- ***Height (H)***: vertical height; measured with November 2011 LiDAR elevation data using GIS
- ***Slope Length (SL)***: length of diagonal slope; calculated using depth and height measurements
- ***Recession Rate (RR)***: annual lateral recession of bank (0.4 ft/yr for severe erosion and 0.75 ft/yr for very severe erosion)
- ***Length (L)***: length of the erosion along the river; calculated using GIS

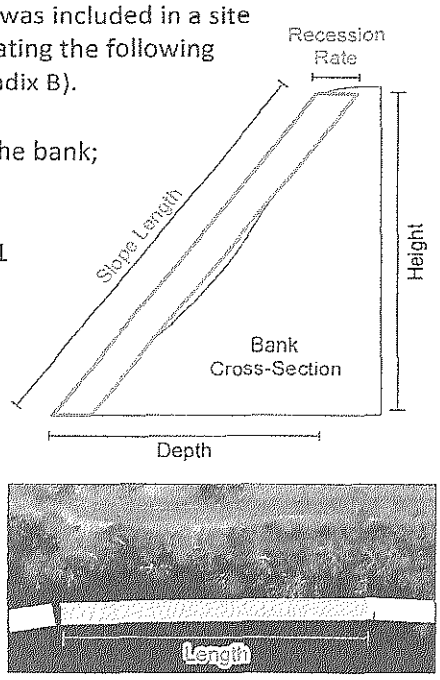


Figure 1: Diagrams of variables used for soil loss estimation.

These variables (Figure 1) were used in the equation below to estimate the annual soil loss. Sandy soil weighs approximately 100 pounds per cubic foot.

$$\frac{SL(ft)*RR(ft/yr)*L(ft)*100(lb/ft^3)}{2000(lb/ton)} = \textbf{Estimated Soil Loss (tons/year)} \qquad \text{Equation 1}$$

Atlas Generation

All of this information was used to create an inventory atlas of the pool which can be found in Appendix A. The atlas contains erosion severity and photos of the shoreline.

Results

Erosion Severity

Most of the riverbank inventoried had limited erosion (Table 2). Approximately 78% of the riverbank was categorized as either slight (40%) or moderate (38%) erosion severity. This corresponds to a lateral recession rate of 0.0 – 0.2 ft/yr.

Table 2: Summary of erosion severity.

Erosion Severity	Length (miles)	%
Slight	2.32	40%
Moderate	2.21	38%
Severe	0.64	11%
Very Severe	0.60	10%
Total	5.78	100%

In contrast, 11% of the shoreline was categorized as severe and 10% as very severe (Table 2). These categories have lateral recession rates of 0.3 – >0.5 ft/yr.

Overall, shoreline categorized as either severe or very severe is distributed relatively evenly between public and private ownership (51% and 49%, respectively). However, when looking at the severe and very severe categories individually, the breakdown is not as evenly balanced (Table 3). Public land has a lower percentage of the total severe sections (42%) and a higher percentage of the total very severe sections (61%).

Table 3: Severe and very severe erosion on public and private lands.

	Severe		Very Severe	
Ownership	Length (ft)	%	Length (ft)	%
Public	0.27	42%	0.37	61%
Private	0.37	58%	0.24	39%
Total	0.64	100%	0.60	100%

Estimated Soil Loss

The total length of riverbank categorized with severe or very severe erosion is relatively equal between the two categories (Table 4). However, because of the higher lateral recession rate in the very severe sections (i.e. 0.75 ft/yr), those sections represent the majority (77%) of the estimated soil loss.

Table 4: Estimated soil loss by erosion severity.

Erosion Severity	Length (ft)	Estimated Soil Loss (tons/yr)	%
Severe	0.64	1174	23%
Very Severe	0.60	3974	77%
Total	1.24	5148	100%

Stabilization Considerations

The goal of most riverbank projects is to correct or prevent excessive erosion or undercutting through bank stabilization. Stabilization of eroding riverbanks is highly site-specific; there is not a simple solution that can be applied across all sites. For example, factors such as position along the river (e.g. outside bend), river dynamics (e.g. flow and flood elevations), and site accessibility must be considered individually for each project. That being said, stabilization approaches generally fall into two categories: hard armoring and bioengineering.

Hard armoring uses physical structures to protect the riverbank; riprap is used commonly for hard armoring. Riprap does not necessarily need to extend to the top of the slope to be effective and can be inter-planted with native species to soften its appearance. Often times, hard armoring the toe of the slope (i.e. the very bottom) up to a moderate height (e.g. the 2-year flood elevation) is sufficient for stabilizing the rest of the bank.

Bioengineering approaches combine engineering techniques with ecological principles to stabilize the bank. They rely heavily on deep-rooted native plants along with a variety of other natural materials to reinforce and stabilize eroding riverbanks. Bioengineering also incorporates the goals of fish and wildlife habitat restoration, maintenance of water quality, and aesthetic considerations. In addition to bank stabilization, many benefits are achieved through bioengineering:

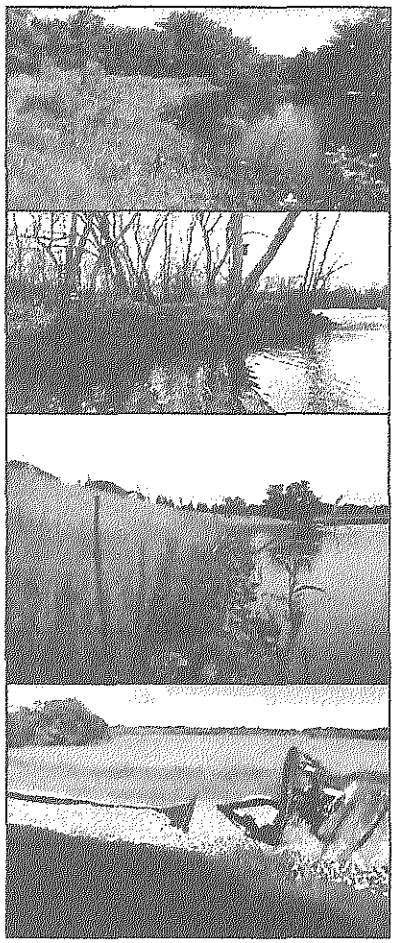
- Improved aquatic and terrestrial habitat,
- Increased connectivity among habitats along the riverbank,
- Decreased water temperatures through shading, and
- Improved soil and water quality.

The stabilization solution for an eroding riverbank could certainly use a combination of hard armoring and bioengineering. In fact, ACD often recommends this combination on large river systems such as the Mississippi River because of the benefits provided by both approaches.

Possible Stabilization Approaches

Stabilization of riverbanks can be achieved through many different approaches. Below is a list of some common stabilization approaches (both bioengineering and hard armoring) to correct erosion issues. Again, a combination of approaches is often specified as the most effective solution.

- Restoration of Native Vegetation – Deep-rooted, native vegetation creates a buffer along the riverbank that can provide stabilization and minimize erosion. Furthermore, if the bank is damaged, the vegetation has the ability to self-heal with additional growth.
- Cedar Tree Revetment – Anchoring Eastern Red Cedar trees to the toe of the slope reduces water velocities near the bank to protect against erosion. Furthermore, the reduced water velocities promote sedimentation and can actually help rebuild the bank. This provides a cost-effective bioengineering option for moderate to severely eroding riverbanks.
- Live Staking – Dormant, live stakes of native species (e.g. Sandbar Willow) can be installed to establish a dense plant community with high stem density that will stabilize the riverbank.
- Hard Armoring – Hard armoring of the bank may be necessary along riverbanks on large systems that experience the greatest erosive forces (e.g. outside bends). However, it is often not necessary to hard armor the entire bank from the toe of the slope to the top of the bank. Rather, the hard armoring can extend to a predetermined elevation (e.g. 2-year or 5-year flood elevation), above which could be stabilized using the establishment of native vegetation. Furthermore, the sections that are hard armored can often be live staked to provide additional stabilization value, wildlife habitat, and improved shoreline aesthetics.



- Bank Reshaping – Reshaping a severely eroding riverbank may be necessary in order to stabilize vertical, bare banks. This approach must be coupled with other stabilization techniques because in and of itself it does not provide any stabilization benefits. It only creates a bank with suitable slopes for other stabilization approaches.

Favorable Practices for Riverbank Property Owners

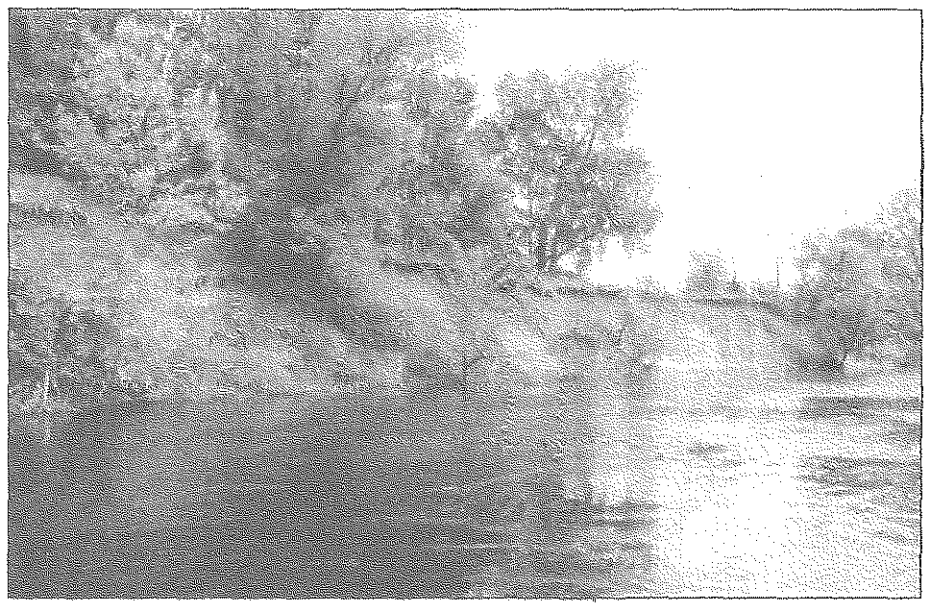
Managing a riverbank can present a difficult challenge for property owners. Often times, a misunderstanding of factors that contribute to erosion can actually exacerbate the issue. Below is a list of practices that should be followed by property owners adjacent to rivers in order to minimize erosion and protect their property.

- Avoid mowing near the edge of the bluff or riverbank. Turf grasses have very shallow root systems, providing little soil stability. Deeper rooted species are also better at filtering out excess nutrients and sediments in runoff.
- Control runoff from downspouts and other hard surfaces at the top of the slope to prevent it from flowing over the riverbank. Promote infiltration of rain water into the soil but away from the riverbank where possible, or provide a pipe conduit down to the water's edge to transport water if necessary.
- Dispose of yard waste properly to avoid smothering riverbank vegetation and contributing nutrients to the river, which commonly occurs when leaves and grass clippings are thrown over the riverbank.
- Plant desirable species with preference for multi-stemmed plants with deep, dense, fibrous root systems. However, ensure the species are well suited to the soil type, moisture level, and available sunlight or they will not thrive.
- Prune lower branches on trees to increase the amount of light that penetrates to the ground. This will increase plant growth at ground level where the stems, roots, and foliage will help keep soil in place.
- Remove buckthorn, which is an invasive plant that is believed to release a natural herbicide that suppresses nearby plant growth.
- Remove fallen trees because they can redirect water toward the bank and exacerbate erosive river forces.
- Remove grapevines, which smother trees, shade out understory species, and provide little soil stabilization benefits.

Anoka County Union Jan 8 2016

Ramsey supports study of erosion along Mississippi River's banks

By Eric Hagen
Staff Writer



The Ramsey City Council approved an erosion study for its side of the Mississippi River.
Courtesy of city of Ramsey

The city of Ramsey is working on a project to research shoreland erosion issues along the north bank of the Mississippi River.

The Ramsey City Council Dec. 8 unanimously approved a plan for the city to work with the Anoka Conservation District to survey all Ramsey properties along the Mississippi River to look for erosion problems and identify solutions through erosion stabilization projects.

The study will cost $5,000.. Community Development Director Tim Gladhill said Anoka County Parks expressed willingness to be a partner since it wants to better understand erosion issues at Mississippi West Regional Park. But how much the county contributes financially to this study has not been settled.

City Administrator Kurt Ulrich said this study would be helpful when the city is seeking grants to help pay for shoreland stabilization projects.

Council Member Chris Riley asked if the city owns any land along the river. Gladhill said he is not sure if the city holds any fee titles on properties along the Mississippi River, but noted the city does have easement for the trail and has some areas designated for future parks.

"So if we pay for this, it's a service for individual residents?" Riley asked.

Gladhill responded, "Yes, this would fall under that category of trying to provide a service for our residents to respond to some concerns that were brought to our attention."

Mayor Sarah Strommen added that more than these homeowners along the river will ultimately benefit. When she was on a tour of several properties, she saw "significant bank erosion" and said in some cases the erosion was caused by geography and the landowner was not at fault.

"There is a public cost that gets paid when those banks are falling into the river, so I think this is a small contribution to leverage all of the funds that are available to try to address this problem that in one way shape or form we all pay for at the end of the day," Strommen said.

Gladhill said when there is shoreland erosion, there are issues with water quality from sediments falling in the river, so he agreed there is a broader public benefit to fixing shoreland erosion.

eric.hagen@ecm-inc.com

Page 12

Friends of the Parks and Trails
30th Anniversary 2015
1985
St. Paul and Ramsey County

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St. Paul, MN 55104
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June 30, 2016

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ADMINISTRATIVE HEARINGS

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 MRCCA Revisor Rules

Dear Judge Lipman,

Friends of the Parks and Trails of Saint Paul and Ramsey County was established as a non-profit organization 31 years ago. In 1985, when a condominium project was proposed for Crosby Farm Regional Park in St. Paul and within the Mississippi River Corridor Critical Area (MRCCA), a group of citizens banded together to point out that type of development was inappropriate. Thus, Friends of the Parks was born.

Our organization continues to be a vehicle for folks to educate themselves on environmental considerations within our city and county, to promote equitable access to parks, trails, and open space for all citizens, and to provide a medium for their voices to be heard.

We appreciate the opportunity to comment during the public hearings. Our comments were heard and received by you on June 16 and marked as Exhibit 24.

The Metropolitan Council's Thrive MSP 2040 Regional Parks Policy Plan quotes Horace Cleveland, a founding father of area park systems and prominent landscape architect in the 1880s, "Look forward for a century, to the time when the city has a population of a million, and think what will be their wants. They will have wealth enough to purchase all that money can buy, but all their wealth cannot purchase a lost opportunity, or restore natural features of grandeur and beauty, which would then possess priceless value..."

We support efforts to protect and enhance the natural resources and recreational opportunities in the MRCCA. Following are the many reasons we believe new rules and regulations should retain strong protections of this shared natural resource as well as our suggestions on the revisor rules.

The Mississippi River Corridor Critical Area is a migratory corridor for 40% of North America's waterfowl and shorebirds. It is home to one of the largest urban heron and egret rookeries in the Midwest and habitat for much wildlife, including the Blandings Turtle, a threatened species.

In order to *protect and enhance* this unique and valuable state, regional, and national resource for the benefit, health and welfare of the citizens of the state, region and nation it is incumbent upon new rules and regulations to be *as protective or more*

protective than those currently in place. By definition, anything less would not meet the statutory purpose to *protect and enhance* the resource. For each revisor rule, the first consideration should be: Does this rule provide the same or better protection?

Minnesota Statute 116G.02 reads: "The legislature finds that the development of certain areas of the state possessing important historic, cultural, or aesthetic 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."

We urge you to keep in mind that the MRCCA is a shared resource for all of us, linking past, present, and future generations. Local government units (LGUs) implement the rules and regulations but the effects and consequences are not limited to a specific area, thus the establishment of the "Mississippi River Corridor Critical Area."

The statutory purpose of Executive Order 79-19 is "to protect and preserve 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." Additionally, "to prevent and mitigate irreversible damage..." and "to protect and preserve...". This language appears repeatedly throughout E.O. 79-19 and is quite clear that this is a "Critical Area" that must be *protected and preserved* if the statute is to be followed. Minnesota Statute 116G.15 Subdivision 1 repeatedly states the same "protect and preserve" and "protect and enhance" language.

<u>Page 2. 6106.0050 Subp. 8. Bluff.</u>
Protection of bluffs of 18% slope or greater in their natural state is a key provision of the River Corridor Critical Area protections. They provide crucial habitat for plants and wildlife, including use as an international migratory flyway and as corridors for wildlife to move around. Bluffs are subject to erosion which can lead to poor water quality and danger to human life and property. The current definition of bluffs should be retained as 18% and greater slopes. Such definition is reasonable because that is the percentage used in existing regulations and many local ordinances.

<u>Page 7. 6106.0050 Subp. 39. Native plant community.</u>
Replace "mapped" with "identified". This allows for protection of locally significant natural resources. Biological surveys or study maps may be outdated and some areas within the MRCAA may not have been mapped through biological surveys or studies at all.

<u>Page 9. 6106.0050 Subp. 53 Primary conservation areas.</u>
Include: islands, wildlife preservation areas, and waterfalls. Retain: publicly-owned parks, trails, and open space.

<u>Page 11. 6106.0050 Subp. 68 Shore impact zone.</u>

Include: but not less than 50 feet. The shore impact zone serves as all or part of the shoreline buffer. This is required in the draft Shoreland Rules and applies to the entire state.

Page 58. 6106.0170 Subp. 2. Applicability.
Delete from A. -involving ten or more acres for parcels that abut the Mississippi River and 20 or more acres for all other parcels- Add A. (4) the division of any parcel of land into two or more lots, including subdivision. Delete from B. (1).

Page 61. 6106.0170 Subp. 5. Land dedication.
Replace "that" with "shall". Current parkland dedication regulations require developments to dedicate land for parks and open space or an equivalent amount of cash to be used only for acquisition in the river corridor. This provision, which has been in existence since the Mississippi River Corridor was declared a Critical Area, opens up areas along the corridor for habitat protection, recreational opportunities, scenic views, and enhancement of public access to the river.

Page 61. 6106.0180. Exemptions from setbacks, height limits and other requirements.
—Flood control structures should not be exempt from setback requirements. The floodwall at Holman Field in St. Paul demonstrates the value of protecting and restoring shoreland vegetation to enhance the natural and aesthetic values of the river corridor and provide a wildlife corridor along the shore. Structure setback also allows for public access and trails along the shore of the river. Mitigation requirements resulted in wetland mitigation, habitat restoration, parkland improvements, and a scenic overlook.

Regarding district maps, we are concerned about the change of lands along the top of the bluff of the gorge and confluence that have been changed from the RC3 Urban Open Space district to less protective districts. These are highly visible areas that are valued for their aesthetic and scenic views. Additionally, the rules need to prioritize strong *protections and enhancements* of these areas because of their historic and cultural significance. St. Paul's existing plans and ordinances provide greater protections than are proposed.

In the district proposals for St. Paul, the UM District has been overused. It is inappropriate for such broad areas of development within the Critical Area. The revisor rules will forever decide the look, feel, health, and experience of the river corridor, for both humans and wildlife, and overusing UM would substantially weaken natural resource protections.

Large swaths of the corridor within St. Paul have been removed from protections accorded them in RC3 Urban Open Space, with 40′ height restrictions, and placed into UM which sets the minimum standard for height restrictions of 65′ but allows for additional heights with a CUP.

Sections around Marshall Avenue and near Shadow Falls at Summit Avenue have been removed from 40′ height restrictions and placed into RTC District which sets the minimum standard for height at 48′ but goes upward with a CUP. The city's underlying zoning in those two areas is 30′. These are substantial changes.

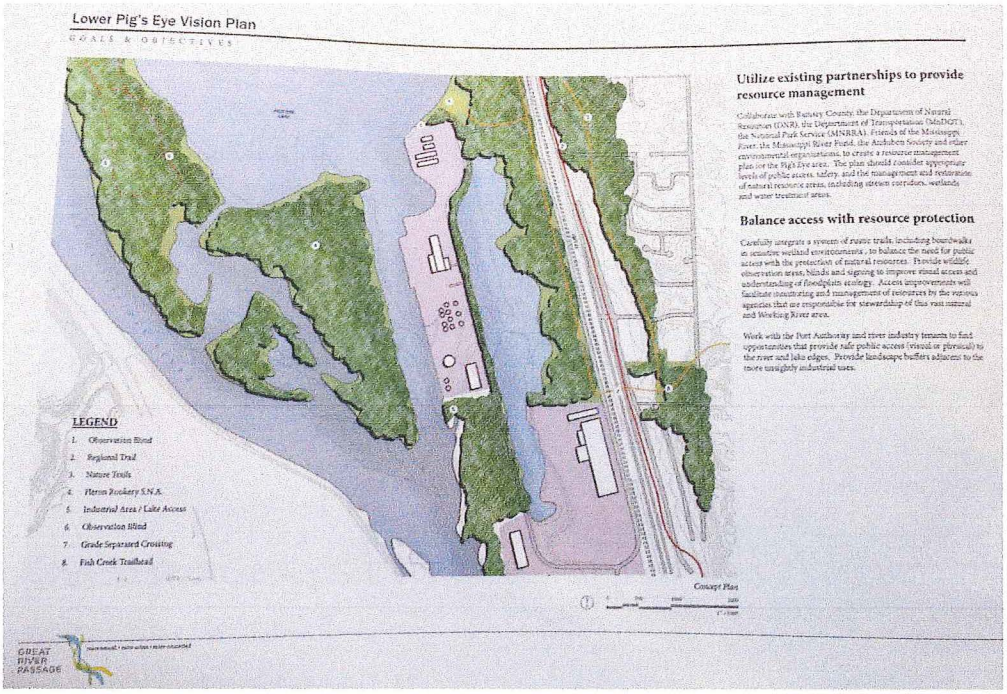
The section from Ford Parkway south that contains part of the Ford Site has been removed from RC3 and placed into RTC and UM. Again, this equates to substantial weakening of protections. We understand the desire to redevelop the Ford Site, but the MRCCA portion should be in the RTC. This area is visible for miles up and down the river corridor. The entire redevelopment site is not in the MRCCA, allowing for other sorts of development not covered in these rules.

Lower Landing Park, from Lafayette to Childs Road, and between the Mississippi River and rail road tracks, should be included in the ROS district. It is adjacent to Bruce Vento Nature Sanctuary and Indian Mounds Park and is public parkland. It consists of open space, trails, picnic areas, and wetlands.

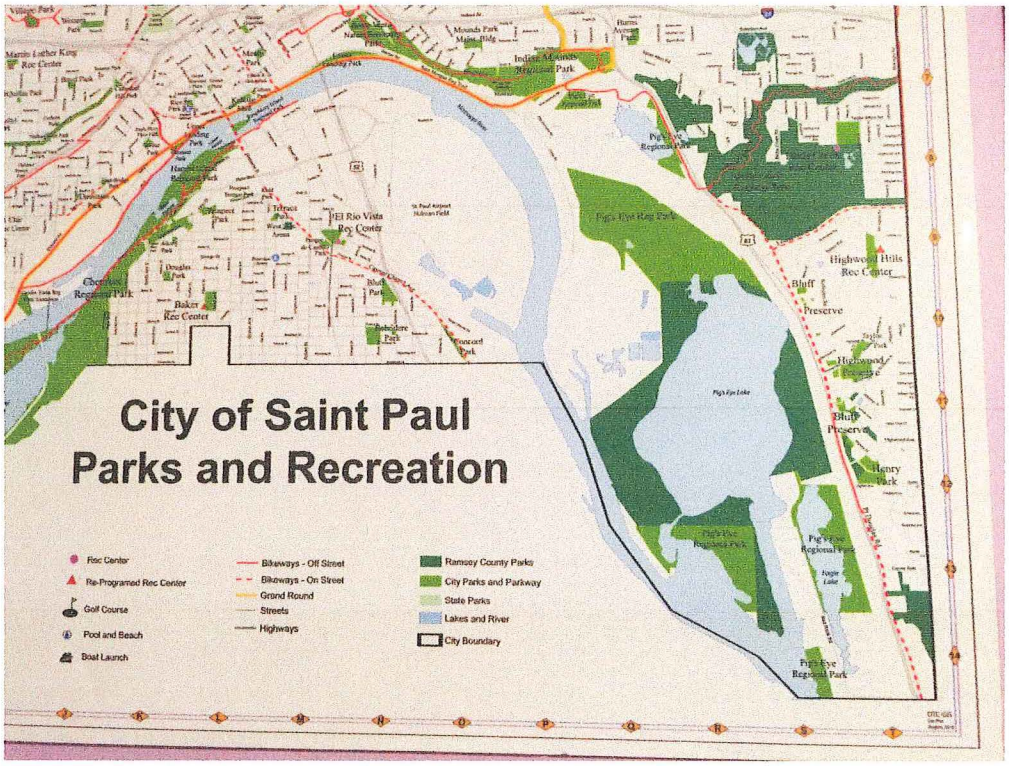
As seen in this photo, taken from the Great River Passage Master Plan, adopted by the City of St. Paul in 2013, planning for this site does not include 65′ and higher buildings but does include a bridge. Construction of this bridge would be allowed in ROS because bridges are addressed with exemptions. Placing the park in UM would set the minimum standard for setback requirements from the river at the least protective designation, 50′, rather than the 200′ setback in ROS and would set the minimum standard for buildings at 65′.

The UM district along the top of the bluffs on the West Side of St. Paul should be RN. 65′+ buildings at the top of the bluff will detract from the expansive views down river from downtown St. Paul.

We appreciate that Pig's Eye Regional Park is generally designated Rural and Open Space. However, there is a portion of the park on the east shore of the Mississippi River, north of Newport, that is not. As parkland, it should be included in the ROS district and not UM. Historically, there has been much pressure to develop this area and we need to continue efforts to protect it.



As illustrated in the above photo, also taken from the Great River Passage Master Plan, this section just south of the industrial area is parkland and not appropriate for development. In the proposed district map, this area has been removed from RC2/ FF and put in the UM district. This should be changed. One of the Great River Passage Master Plan goals for this area is to allow public access to the river and open space. With parkland intact, this remains an option. Putting this area in the UM district is contrary to the stated goals of the City of St. Paul.



This photo is another illustration of the same area. As you can see, it is a map for the City of St. Paul Parks and Recreation. The area referenced is the smallest light green area of Pig's Eye Regional Park on the eastern bank of the river, in the bottom right corner. (Lower Landing Park, mentioned previously, can also be seen near the top of the map.)

Thank you for taking our comments into consideration. The Mississippi River is Saint Paul's greatest natural resource. Now is the time to strengthen, not diminish, its protection.

Sincerely,

Shirley Erstad

Shirley Erstad
Executive Director

RECEIVED
2016 JUL -5 AM 8:54
ADMINISTRATIVE
HEARINGS

July 1, 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:

As legislators who represent communities within the Mississippi River Corridor Critical Area (MRCCA), we write to you today to share our support for the DNR's proposed rules.

The Mississippi River is one of our state's premier natural, cultural and water resources. This unique scenic, historical and recreational asset improves Minnesota's economy and quality of life. The Mississippi River is known across the country, even the world, for its stunning scenery. We are fortunate to have some of the most dramatic landscapes right here in our backyards. We also have a responsibility to help ensure these views are available for future generations.

Minnesotans have a strong tradition of conservation; our predecessors in the legislature recognized the need to protect the Mississippi River through the Twin Cities by designating the 72-mile corridor as a State Critical Area in 1976. 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.

The issue was revisited in 2008 when the DNR conducted a study to examine the efficacy of the program and recommend changes. The study results led to a working group and proposed legislation. The working group meetings and committee hearings provided an inclusive forum for broad stakeholder involvement. This thorough process paid off, resulting in bipartisan legislation that was signed into law by then Governor Pawlenty in 2009.

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 to our region, state and nation. Here in the Twin Cities it is a tremendous asset to the communities through which it flows. State rulemaking is the best way to modernize standards for protection and enhancement of the MRCCA.

The proposed rules represent the culmination of years of work. The DNR has engaged hundreds of stakeholders. They have hosted public meetings and open houses to bring opposing interests together. The resulting rules establish clear guidelines for corridor development and ensure protection of the river for current and future generations. We urge their adoption.

Thank you for considering our comments.

Sincerely,

Katie Sieben
Senator Katie Sieben

Rick Hansen
Representative Rick Hansen

Sandra L. Pappas
Senator Sandra Pappas

Chris Eaton
Senator Chris Eaton

Greg Clausen
Senator Greg Clausen

Phyllis Kahn
Representative Phyllis Kahn

Jim
Representative Jim Davnie

Dan Schoen
Representative Dan Schoen

Barbara J. Goodwin
Senator Barb Goodwin

Richard Cohen
Senator Richard Cohen

Joe Mullery

Representative Joe Mullery

Patricia T Ray

Senator Patricia Torres Ray

Alice Johnson

Senator Alice Johnson

Parks & Trails
COUNCIL OF MINNESOTA

RECEIVED
2016 JUL -5 AM 8:40
ADMINISTRATIVE HEARINGS

July 1, 2016

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

RE: Comments on Proposed Mississippi River Critical Corridor Area Rules

Dear Judge Lipman,

The Parks & Trails Council of Minnesota is a statewide, non-profit organization that exists to acquire, protect, and enhance critical land for the public's use and benefit. Thanks to our 3,400 members and 62-year history, we have acquired nearly 11,000 acres that have been added to Minnesota's parks and trails.

We appreciate the opportunity to provide comments on the proposed rules for the Mississippi River Corridor Critical Area (MRCCA). Although the proposed rules are not as protective in a few areas as Parks & Trails Council would prefer, in sum we believe the proposed rules are needed, reasonable, and keep with the MRCCA's long-established management goals and principles.

The root of Parks & Trails Council's interest in the MRCCA is the park and trail system it helps protect, enhance, and expand. The Mississippi River is today the backbone of what is truly a world-class urban park system. Within the boundaries of the MRCCA there are 89 state, regional, and local parks, which host nearly 8 million visitors every year. The Parks & Trails Council is proud to be a small part of this heritage, having acquired key parcels of land that are now a part of Fort Snelling State Park, Harriet Island Regional Park, and Grey Cloud Island Park Reserve, all of which lie within the MRCCA boundary.

As you know, the United States Congress affirmed the MRCCA as a *regional, state, and national resource* when it designated the Mississippi National River and Recreation Area as a unit of the National Park Service in 1988. Uniquely, however, Congress did not mandate new rules or regulations with the establishment of the national park. Rather, the State of Minnesota promised to ensure protection of the Mississippi River corridor. Honoring this promise requires a set of strong, consistent rules that guide planning and development within the MRCCA that are coordinated, reviewed, and approved at the state level. Despite their best intentions, the job of local government officials is to focus specifically on the needs and interests of their local community; they cannot be expected to allow their impacts occurring in communities upstream or downstream affect their

-over-

275 East 4th Street, Suite #250 • St. Paul, Minnesota 55101-1651
Phone 651-726-2457 or 1-800-944-0707 • Fax 651-726-2458 • www.parksandtrails.org

decision-making. This is the reason the MRCCA was created in the first place. These goals are best accomplished through state rulemaking.

After nearly 40 years, it is time for Minnesota to renew its promise to the MRCCA and replace Executive Order (E.O.) 79-19, which currently serves as the Area's management framework. The E.O. has served well, but it is outdated and poses several challenges. The E.O. language is vague – many key terms are left undefined – which has resulted in inconsistent, insufficient, confusing, and costly management at the local level. The E.O. is also not designed to be updated or amended, and therefore cannot respond to evolving management challenges and environmental concerns. And because the E.O. doesn't carry the legal weight of rules, its credibility has eroded over time.

In contrast to Executive Order 79-19, the new set of rules for MRCCA proposed by the Minnesota Department of Natural Resources (DNR) will provide a set of clear, consistent, defined, and effective standards to ensure the Mississippi River is protected and preserved as intended. The DNR has done a commendable job of balancing flexibility for local governments with environmental protection; The rules will help protect steep slopes prone to erosion, preserve scenic values by limiting building height, yet still allow for development where appropriate and prudent. Further, the rulemaking process has been robust, thorough and fair. The proposed rules are a culmination of years of work by hundreds of stakeholders ranging from concerned citizens, landowners, environmental advocacy groups, local governments, and state staff.

In several places, we do believe the proposed rules should be more protective, such as on restrictions on storm water management and building height limits along key river viewsheds. In particular, we are concerned that the height of structures are too high in proposed districts at the confluence of the Mississippi and Minnesota rivers, the Spring Lake Park area near Hastings, and Grey Cloud Island. Overall, however, the DNR has been thoughtful and fair as they have worked to balance the many competing interests for the Mississippi River.

Thank you for considering our comments. We appreciate the care and diligence that has gone into the MRCCA rulemaking process, and look forward to the finalized rules that will protect, preserve, and enhance the Mississippi River Critical Corridor Area. Please contact me if you have any questions.

Sincerely,

Brett Feldman

Brett Feldman
Executive Director

RECEIVED
By: OAH on 7/5/16 4:01 p.m.

Protect it. Pass it on.

MISSISSIPPI WATERSHED MANAGEMENT ORGANIZATION

2522 Marshall Street NE
Minneapolis, MN 55418-3329

(612) 465-8780
(612) 465-8785 fax

www.mwmo.org

July 5, 2014

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

RE: MWMO Staff Comments – Revisor # RD4240 MRCCA Proposed Permanent Rules

Dear Judge Lipman:

Thank you for providing the Mississippi Watershed Management Organization (MWMO) with the opportunity to comment on the Mississippi River Corridor Critical Area (MRCCA) Proposed Permanent Rules. The rulemaking process has been inclusive, thorough and responsive to comments submitted. With an outcome that goes further to manage future land use towards establishing a protected and improved Critical Area Corridor along the Mississippi River that balances natural character with commercial industrial, and residential land uses.

The proposed permanent rules align with the MWMO's goals to improve vegetation management and erosion control efforts within the critical area corridor. However, they fall short by not establishing a consistent Minimal Impact Design Standard for stormwater throughout the corridor and in the percentages of primary conservation area to be set aside within each district.

Observation of changes in the corridor's look and feel over the next 10 to 20 years and the restored natural function it provides to residents and wildlife will be the true test if these rules carry out the intention of Executive Order 79-19.

Our comments are listed below. Please feel free to contact me 612-746-4977 with any clarifications or questions you may have regarding these comments.

1. 6106.0160 Land Alteration and Storm Water Management Standards: Subpart 7.B.1 and Subpart 9.A

   Clarification: In cases where two subparts of the Rules could conflict does the most restrictive apply within the critical area? If a conflict occurs would the DNR carry out enforcement of the rule? For example: If city stormwater regulations (Subpart 7.B.1) and watershed standards established in a Watershed Management Plan in accordance with 103B (Subpart 9.A) are in conflict which standards would be applied in the Critical Area?

2. 6106.0070 Preparation, Review, and Approval of Plans and Ordinances Subpart 6 Flexibility Requests for Ordinances
   Request: This section should allow other affected jurisdictions to comment on flexibility requests submitted to the Commissioner. Please include a requirement for the city to provide information and notification to its watershed organizations on flexibility requests being made to the Commissioner.

Sincerely,

Daniel Kalmon
Principal Planner

The UPS Store 1979®
3109 W 50th ST
Minneapolis, MN 55410
612.925.0607 fax
612.925.0555 tel

RECEIVED
By: OAH on 7/5/16 3:47 p.m.

FAX

To ALJ Eric. L. Lipman

Company Office of Admin Hearings

Fax number 651-539-0310

Date 07/05/16

Job number

From Barbara Glaser

Phone number 612-999-8600

Fax number

Total pages (including this sheet) 4

Barbara Glaser, EdD
110 Bank Street S.E.
Minneapolis, MN 55414

July 5, 2016

VIA FASCIMILE AND USPS

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

RE: Comments on Proposed Rules for Mississippi River Corridor Critical Area

Dear Mr. Lipman,

I write to express my support for the DNR's proposed rules to preserve critical areas along the Mississippi River corridor, and to add some perspective to the application of these rules within the St. Anthony Falls Historic District in Minneapolis. To ensure adherence to the spirit and letter of these rules, this comment letter urges DNR to bolster the characterization of this area as a unique historical district and incorporate the St. Anthony Falls Historic District Guidelines into the proposed rules.

The Mississippi River Corridor Critical Area ("MRCCA") was created to, among other things, "preserve and enhance the . . . cultural, and historical values of the Mississippi River corridor within the Twin Cities metropolitan area." *See, e.g.*, Minn. Stat. 116G.15 Subd. 1(3). Nearly 20 years ago Congress designated the area part of the National Park System, making a specific finding that "the Mississippi River Corridor within the Saint Paul-Minneapolis Metropolitan Area **represents a nationally significant historical**, recreational, scenic, **cultural**, natural, economic, and scientific resource," and declared that "there is a national interest in the preservation, protection and enhancement of these resources for the benefit of the people of the United States." *See* 16 U.S.C. 460zz(a) (emphasis added). For decades, governments at all levels have made clear that the preservation of the historic and cultural heritage of the Mississippi River corridor within the Twin Cities metropolitan area is of utmost importance.

The St. Anthony Falls Historic District is arguably the single most important cultural and historic area in the MRCCA. The core of the district, St. Anthony Falls, represents the genesis of the state's largest city. The falls are the first major cataract on the Mississippi River, and became the natural location of sawmills, and then flour mills, from where goods could be shipped down the Mississippi and around the world. It is not an exaggeration to say that Minneapolis exists because of St. Anthony Falls. The historical importance of the district has been repeatedly recognized by the city and the state, and it can be found on the National Register of Historic Places. The district is considered a primary conservation area under the MRCCA proposed rules.

The proposed rules laudably seek to maintain the character of the MRCCA, and the DNR should be commended for its extensive work over the last several years to balance the interests of all stakeholders while continuing to seek input from the public. Most of the MRCCA will see new protections, and the efforts of the DNR will inure to the grateful benefit of future generations.

Unfortunately, the section of the rules governing the St. Anthony Falls Historic District does not fulfill the promise of the MRCCA. In that most crucial section, the rules simply defer to the municipality, authorizing the subversion of the spirit and function of the MRCCA at its most historically important juncture.

Most districts within the MRCCA contain a height and location limitation. The purpose of that section "is to establish dimensional standards that protect primary conservation areas from impacts of development." (page 38). Yet, the "Urban Core District (CA-UC)", which includes the St. Anthony Falls Historic District, contains no such dimensional standards. For that area, the rules simply defer to "the local government's underlying zoning requirements." (page 39-41). While this description suggests that the integrity of the MRCCA is ensured by operation of local zoning, recent experience suggests that this is not the case.

In the past few months, a 42-story building was proposed in the portion of the MRCCA that includes the St. Anthony Falls Historic District (the "Alatus project"). The Alatus project towers over the historic district, dominating the skyline and the view of the Mississippi, and contravening the design guidelines for the historic district, the City's Comprehensive Plan and the local zoning regulations. For example, the project is five (5x) times higher than the design guidelines allow, and over 400 feet higher than the tallest height restriction in the proposed MRCCA rules. It is wildly out of scale with the surrounding neighborhood and threatens to undermine the integrity of the historic district that MRCCA seeks to preserve.

When presented with the proposal, the Minneapolis Heritage Preservation Commission voted to deny approval to build the Alatus project. The Minneapolis City Council has shown no such concern for the preservation of the historic and cultural resources of the MRCCA, however, overruling the Heritage Preservation Commission and now appearing poised to approve every extraordinary variance sought by the Alatus project.

This is not how these public processes should proceed, and certainly not for areas within the most sensitive areas of the MRCCA. More respect must be paid to the extraordinary effort, coordination, and public-private participation that went into developing the guidelines for these historic districts. The MRCCA rules should, in theory, establish such a baseline. In practice, however, they provide no more projection in sensitive areas like the St. Anthony Falls Historic District.

By deferring to the existing zoning, without any meaningful district-specific requirements, the MRCCA rules do little to require further consideration of the Alatus Project. Even more concerning, the MRCCA rules do not require additional consideration of any future projects in the St. Anthony Falls Historic District. As currently composed, the Minneapolis City Council can unilaterally approve another 40 story project in the historic district, or three 50 story projects,

and so on. Notwithstanding the fact that their purpose is to preserve the historical character of the St. Anthony Falls Historic District, the proposed MRCCA rules authorize its ruin.

The proposed MRCCA rules are a good start, but they must set forth additional protections if they are to achieve their goals of preserving and enhancing the cultural and historical values of the Mississippi River corridor within the Twin Cities metropolitan area. They must ensure that local municipalities cannot simply ignore them and other public processes. To do this the rules should be modified to recognize the unique historical value of districts included in the National Register of Historic places, including specifically the St. Anthony Falls Historic District. Such areas should receive their own designation, requiring considerations unique to those districts before projects can proceed.

The rules should also incorporate by reference the St. Anthony Falls Historic District Design Guidelines, which were created for the very purpose and function of the DNR's proposed rules. The design guidelines were developed and adopted by the Minneapolis Heritage Preservation Commission in 2012, in connection with community groups and the City of Minneapolis. These guidelines establish standards for determining the appropriateness of work that is planned in the St. Anthony Falls Historic District. Like the proposed MRCCA rules, the design guidelines seek to preserve and enhance the cultural and historical values of that portion of the MRCCA that surrounds St. Anthony Falls. Like the proposed rules, the design guidelines are an extensive effort by myriad stakeholders to establish minimum standards for work planned in culturally and historically important areas. By incorporating them into the MRCCA rules, the DNR can take a meaningful step to ensure that the goals of the MRCCA rules are achieved in the areas they were most designed to protect.

Sincerely,

Barbara Glaser, EdD
110 Bank Street S.E.
Minneapolis, MN 55414

ANOKA REAL. CLASSIC.

RECEIVED
By: OAH on 7/5/16 2:13 p.m.

FACSIMILE COVER SHEET FOR:

☐ Building Permits & Inspections Department

☐ Community Development Department

☒ Planning & Zoning Department

FAX NUMBER 763-576-2727

TO: Administrative Law Judge Eric L. Lipman

COMPANY: Office of Administrative Hearings

FAX NUMBER: 651-539-0310

NUMBER OF PAGES: 6 **(INCLUDING COVER SHEET)**

DATE: 7/5/16 **TIME:** 2:10 PM

NOTES: Comment letter on proposed MRCCA rules from north metro city planning staff. A hard copy of the comment letter will also be mailed, but the faxed copy is the official written submission.

FROM: Carolyn Braun

City of Anoka
2015 First Avenue
Anoka, MN 55304
Phone: 763-576-2720
www.ci.anoka.mn.us

ANOKA
REAL. CLASSIC.

July 5, 2016

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

Re: In the Matter of the Proposed Rules of the Department of Natural Resources Governing Governing Mississippi River Corridor Critical Area, Minnesota Rules, chapters 6106 and 4410; Revisor's ID Number R-04240

Dear Judge Lipman,

This letter contains a joint response from several of the planners from the north metro cities affected by administration and implementation of the MRCCA rules. Our comments relate to the provision that the proposed rules are needed, reasonable and serve a rationale purpose. More specifically, however, the comments are seeking clarification in a number of areas in order to more effectively administer and enforce the proposed regulations.

For purposes of our comments, the regular text is the language of the proposed rules; comments are in italics.

Definitions

6106.0050 Subp. 8. Bluff. "Bluff" means a natural topographic feature having:

A. A slope that rises at least 25 feet above the ordinary high water level or toe of the slope to the top of the slope and the grade of the slope from the ordinary high water level or toe of the slope to the top of the slope averages 18 percent or greater, measured over a horizontal distance of 25 feet. Or

Comment: Unlike the current definition of bluff found in the shoreland rules (6120.2500, Subp. 1B), the proposed definition does not require a bluff to be located in a shoreland area. As a result, bluffs – as defined by the proposed definition – can be located in an area that is not readily visible and is distant from the river yet be regulated as strictly as bluffs that are in the shoreland area and readily visible from the river.

B. A natural escarpment or cliff with a slope that rises ten feet above the ordinary high water level or toe of the slope to the top of the slope with an average slope of 100 percent or greater.

Comment: This part of the proposed definition was added toward the end of the process. At a recent meeting of the north area planners, about half of them interpreted this requirement as a cliff that rises straight into the air while the other half interpreted it to be a natural topographic features that rises at a 45 degree angle. The second interpretation is correct; however, it is easy to see why it was interpreted

*the first way since the definition includes the phrase '**cliff**' and **100 percent***, which seemingly is a cliff that rises straight up.

6106.0050 Subpart 75. Subdivision. "Subdivision" has the meaning given under Minnesota Statutes, section 762.352. (Note: 462.352 reads as follows: Subd. 12. **Subdivision.** "Subdivision" means the separation of an area, parcel, or tract of land under single ownership into two or more parcels, tracts, lots, or long-term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads, or alleys ...)

Comment: Based on this definition, a property that is separated into two or more parcels with frontage on an existing public road would not fall under the definition of a subdivision and would seemingly not fall under the proposed requirements of 6106.0170, including the set aside provisions of Subp. 4 of that section. Is this correct?

Administrative Provisions for Ordinances

6106.0080 Subp. 3 E states that site alterations that were legally made prior to the effective date of local ordinances adopted under this chapter are considered conforming. Site alterations include vegetation, erosion control, storm water control measures, and other nonstructural site improvements. Expansion of site improvements must comply with this section.

Comment: Does vegetation include manicured lawns, and if so, does this prevent the expansion of a manicured law after adoption of the rules? Also, 6106.0150 Subp. 3 B (2), as proposed, allows 'maintenance of existing lawns, landscaping and gardens'. Does this allow for expansion of an existing lawn?

Height Requirements

6106.0120 Dimensional Standards Subp. 2 Structure height.

Comment: Many of the standards in this section require a structure to be of a height generally consistent with the height of the mature treeline and existing development, where present, as viewed from the ordinary high water level of the opposite shore. This raises two questions: How do we access the local shore if it is in private ownership? How do we process applications that are made during leaf-off conditions?

Standards for Private Facilities

6106.0140 Subp. 5 C (4) states that stairways, lifts and landings must be located in the least visible portion of the lot.

Comment. This standard requires the stairway, etc., to be in the least visible portion of the lot. The least visible area may be inappropriate for construction due to physical conditions or construction in the least visible area may result in the loss of vegetation, making the area more visible. How is this addressed?

Comment: Is storage of mechanical boat lifts allowed within the setback area/shore impact zone?

Land Alteration and Storm Water Management

6106.0160 Subp. 4 Rock Riprap, retaining walls, and other erosion control structures.

Comment: This section requires a local permit for all erosion control measures. It is desired that the DNR support a simplified local permit process that allows for minor erosion control maintenance.

Open Space Dedication

6106.0170 Subp. 4 requires a permanent set aside of all primary conservation areas up to a percentage of 50% in the CA-ROS district, 20% in the CA-RN district, 10% in the CA-RTC, CA-UM, CA-UC, and 10% in the CA-SR district. If no primary conservation area exists, one must be created. (Rule language is summarized.)

Comment: Given the other provisions of the proposed rules that protect the primary conservation areas, the shoreland, the bluffs and slopes, the vegetation requirements and local impervious surface and local park/open space dedication requirements, it would seem this additional requirement to set aside a percentage of the primary conservation areas is over-reaching. If challenged, it will be the local units of government that have to defend this additional requirement.

At the hearing held in Anoka, there was discussion regarding the impact of the discharge of water from the two upstream power plants on the temperature of the river water and subsequent changes to the river due to the increased temperature. While not something that can be addressed with the MRCCA rules, it is hoped that the DNR will further investigate this issue.

Thank you for the opportunity to comment on the proposed MRCCA rules. Our group appreciates the thoroughness of the public participation process.

The responses and comments above have also been reviewed by two members of the Anoka City Council, including Councilmember Jeff Weaver and Councilmember Steve Schmidt, and both are in support of the comments provided by the north metro planners.

Respectfully submitted,

Carolyn Braun
Planning Director
City of Anoka

Scott Harlicker
Planner
City of Coon Rapids

Cindy Sherman
Planning Director
City of Brooklyn Park

Scott Schulte
City Planner
City of Champlin

Tim Gladhill
Community Development Director
City of Ramsey

Tina Goodroad
Planning and Development Director
City of Dayton

Chuck Darnell

From: Scott Harlicker <sharlicker@coonrapidsmn.gov>
Sent: Wednesday, June 29, 2016 1:12 PM
To: Cindy Sherman; Carolyn Braun; Scott Schulte; tgladhill@ci.ramsey.mn.us; tgoodroad@cityofdaytonmn.com
Cc: Chuck Darnell; Doug Borglund
Subject: Re: MRCCA draft leeter
Attachments: Modified copy of Lipman letter draft.docx

Hi all

Carolyn,
Thanks for drafting the letter it looks good to me.
I have added my name and title to the modified copy.
I do not need to sign it as I will be out of town tomorrow through next Wednesday.

Everyone have a great 4th

Scott

Scott Harlicker
Planner
City of Coon Rapids
11155 Robinson Drive
Coon Rapids, MN. 55433-3761
Direct: 763.767.6452
Fax: 763.767.6573
Email: sharlicker@coonrapidsmn.gov

>>> Carolyn Braun <CBraun@ci.anoka.mn.us> 6/29/2016 11:52 AM >>>
All --

Attached is the draft letter (which needs some polishing). Please review and make comments, suggestions, etc.
Also, please include your name and title to add to the document.

If at all possible, please get me comments in the next day or two so I have time to edit and fax to the Judge by Tuesday.

Also, do you want to physically sign the letter? If so, we will need a day or two for folks to stop by and sign.

Thanks much and thanks for coming to the meeting!!

Carolyn

Chuck Darnell

From: Carolyn Braun
Sent: Friday, July 01, 2016 9:54 AM
To: Chuck Darnell
Subject: FW: MRCCA draft leeter

Hi Chuck -
Please add Tina's name.
Thanks
Carolyn

From: Tina Goodroad [TGoodroad@cityofdaytonmn.com]
Sent: Thursday, June 30, 2016 4:51 PM
To: Carolyn Braun
Subject: RE: MRCCA draft leeter

Hi. Thanks for taking this on. I do not have any changes and I support the letter as prepared. I do not need to sign. Please add my name to the final list. Thanks. Tina

Tina Goodroad, AICP
Planning and Development Director
City of Dayton
12260 S. Diamond Lake Road
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-----Original Message-----
From: Carolyn Braun [mailto:CBraun@ci.anoka.mn.us]
Sent: Wednesday, June 29, 2016 11:52 AM
To: Scott Schulte <schulte@ci.champlin.mn.us>; Scott Harlicker <sharlicker@coonrapidsmn.gov>; Tina Goodroad <TGoodroad@cityofdaytonmn.com>; Cindy Sherman <Cindy.Sherman@brooklynpark.org>; tgladhill@ci.ramsey.mn.us
Cc: Chuck Darnell <CDarnell@ci.anoka.mn.us>; Doug Borglund <DBorglund@ci.anoka.mn.us>
Subject: MRCCA draft leeter
Importance: High

All --

Attached is the draft letter (which needs some polishing). Please review and make comments, suggestions, etc.
Also, please include your name and title to add to the document.

If at all possible, please get me comments in the next day or two so I have time to edit and fax to the Judge by Tuesday.

Also, do you want to physically sign the letter? If so, we will need a day or two for folks to stop by and sign.

Thanks much and thanks for coming to the meeting!!

Legislative Coordinating Commission

Central Accounting Office □ 45 State Office Building □ St. Paul, MN 55155 □ (651) 296-8890 □ Fax: (651) 296-4372

FAX TRANSMITTAL COVER SHEET

Date: 7/5/2016

Attention: Administrative Law Judge Eric L. Lipman, Office of Administrative Hearings

Fax: 651-539-0310

Re: Comments submitted from the Mississippi River Parking Commission of Minnesota regarding proposed rules for the Mississippi River Corridor Critical Area

# of Pages: 11 (Including Cover)

RECEIVED
By: OAH on 7/5/16 2:15 p.m.

Mississippi River Parkway Commission of Minnesota

300 33rd Avenue South, Suite 101 • Waite Park, Minnesota 56387
Phone: 651-341-4196 • E-Mail: Info@MnMississippiRiver.com

Members of the House: Sheldon Johnson (DFL – 67B) – Chair *Members of the Senate:* David Senjem (R – 25); Patricia Torres Ray (DFL – 63) *State Agency Appointees:* Paul Hugunin – Agriculture, Scott Bradley – Transportation, Adam Johnson – Explore Minnesota Tourism, Keith Parker – Natural Resources, Andrea Kajer – Historical Society *Regional Appointees:* Nancy Salminen – Lake Itasca to Grand Rapids, Anne Lewis – Grand Rapids to Brainerd, Kari Samp –Brainerd to Elk River, Cordella Pierson – Elk River to Hastings, Sheronne Mulry – Hastings to Iowa Border *Member at Large:* Mark Anderson

July 5, 2016

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

Re: Mississippi River Corridor Critical Area Proposed Rules

Dear Judge Lipman,

The Mississippi River Parkway Commission of Minnesota (MN-MRPC) would like to submit comments on the proposed rules for the Mississippi River Corridor Critical Area (MRCCA). The mission of the MN-MRPC, established under Minnesota Statute 161.1419, is to promote, preserve and enhance the resources of the Mississippi River Valley and to develop the highways and amenities of the Great River Road. The MRCCA rules play an important role in protecting these critical resources of the Mississippi River's Great River Road and surrounding corridor.

In fall of 2014, the MN-MRPC provided detailed comments on the draft MRCCA draft rules as related to the Federal Highway Administration's National Scenic Byway intrinsic qualities and the Commission's mission. These comments were provided by the MN-MRPC with the exception of the Department of Natural Resources, since they are the agency developing the rules.

We support and are grateful for the efforts of our partners at the DNR in developing these proposed rules, including a comprehensive public outreach process. We have reviewed the proposed rules and appreciate the incorporation of several of the Commission's original comments. However the MN-MRPC encourages reconsideration of all comments in order to more fully preserve and enhance the intrinsic resources of the Mississippi River Valley. A copy of the 2014 transmittal letter and current comments are attached.

If you have questions or would like additional information, please contact the Commission office at 651-341-4196. Thank you for the opportunity to comment.

Sincerely,

Sheldon Johnson | Chair

Rep. Sheldon Johnson, Chair

Mississippi River Parkway Commission of Minnesota

300 33rd Avenue South, Suite 101 • Waite Park, Minnesota 56387
Phone: 651-341-4196 • E-Mail: Info@MnMississippiRiver.com

Members of the House: Sheldon Johnson (DFL – 67B) – Chair; Mike Benson (R – 26B) *Members of the Senate:* David Senjem (R – 29); Patricia Torres Ray (DFL – 62) *State Agency Appointees:* Paul Hugunin – Agriculture, Scott Bradley – Transportation, Adam Johnson – Explore Minnesota Tourism, Keith Parker – Natural Resources, Andrea Kajer – Historical Society *Regional Appointees:* Nancy Salminen – Lake Itasca to Grand Rapids, Anne Lewis – Grand Rapids to Brainerd, Karl Samp – Brainerd to Elk River, Cordella Pierson – Elk River to Hastings, Sheronne Mulry – Hastings to Iowa Border *Member at Large:* Mark Anderson

September 29, 2014

Daniel Petrick
Minnesota Department of Natural Resources
500 Lafayette Road
Saint Paul, MN 55155-4032

Dear Mr. Petrick:

Thank you for the opportunity to comment on the draft working rules for the Mississippi River Corridor Critical Area (MRCCA). The mission of the Mississippi River Parkway Commission (MN-MRPC) is to promote, preserve and enhance the resources of the Mississippi River Valley and to develop the highways and amenities of the Great River Road; and this mission is complementary to the corridor management directive for the MRCCA.

The statutory role of the MN-MRPC, established under Minnesota Statute 161.1419 is to work toward the planning, construction, maintenance, and improvement of the Great River Road National Scenic Byway. The Commission includes representatives of the Minnesota House and Senate, the Minnesota Departments of Transportation, Natural Resources and Agriculture, the Historical Society, Explore Minnesota Tourism, and also includes five regionally appointed citizens and an at-large member. The National Park Service serves as a non-voting member. The MN-MRPC promotes, supports, and advances actions, responsibilities, procedures, controls, operational practices, and strategies to maintain the intrinsic archaeological; cultural; natural; historic; recreational and scenic qualities that support National Scenic Byway Designation.

Our review of the draft rules for the Mississippi River Corridor Critical Area (MRCCA) is based on National Scenic Byway intrinsic qualities and our mission.

The attached comments are provided by the MN-MRPC with the exception of our member and technical advisor from the Department of Natural Resources, since they represent the agency developing the rules. In addition, our member agencies, the Minnesota Historical Society and Department of Transportation, as well as the National Park Service, have provided comments related to their specific missions and we encourage you to consider their input as well.

If you have questions or would like additional information about the MN-MRPC, its mission, members or comments, please contact the Commission office at 651-341-4196.

Sincerely,

Sheldon Johnson/cm

Rep. Sheldon Johnson Chair

MN-MRPC Comments *July 2016 update – comments appearing partially incorporated or not incorporated are noted in boxes below the comment.*

Background & Summary of Themes

The concept of the National Great River Road was launched in 1938 highlighting the nearly 3,000 mile, ten state journey of the Mississippi River. Minnesota's Great River Road spans 575 miles, 60 communities and 21 counties and is packaged into six unique destination areas. One of those destination areas is the "Metro Mississippi," from Elk River to Hastings.

The Great River Road holds the esteemed designation of National Scenic Byway based on six categories of intrinsic qualities – archaeological; cultural; natural; historic; recreational; and scenic. The comments below are organized under these categories, primarily scenic, recreational and natural, as well as overall byway management.

The Department of Natural Resources' leadership in protecting our nationally significant Mississippi River is essential to achieving our National Scenic Byway goals. We welcome the DNR's thorough approach and the rigor of these draft rules, providing essential consistency in riverfront preservation and enhancement while serving National Scenic Byway and development goals in the metropolitan region. A strong state role and natural resource expertise vitally complement local governments' expertise in land use regulation and development and help to safeguard the critical area from cumulative impacts of individual community decisions not otherwise required to consider the corridor.

The Mississippi River provides outstanding opportunities to encourage investment in the region's urban core, increasing our competitiveness on the national stage. The DNR's Critical Area regulations will help us protect the "goose that laid the golden egg," leaving for future generations a legacy of a healthy riverfront for a sustainable, vibrant region; quality of life for residents; and an international draw for Mississippi River-based tourism. Critical area protections are essential to protect state and national interest, and long-term, can attract the kind of private and public investment that will strengthen our region for generations to come.

Byway Scenic Qualities

Our priorities related to scenic qualities of the byway include sight lines **from and to** the byway, as well as **from and to** the Mississippi River Trail state bikeway; building heights; and billboard requirements.

Part 6106.0050 Definitions:
Subpart 54: Primary Conservation Areas
We support the inclusion of public river corridor views, and other scenic views and vistas as primary conservation areas. Publicly owned parks, trails and open spaces were deleted from the primary conservation area definition, yet these types of property serve as primary hosts to some of the Critical Area's best views with the important benefit of being accessible to people of all means and abilities. We urge you to consider restoring these features to this definition.

July 2016 - This comment does not appear to be incorporated. Now defined in Subp. 53. Publicly owned parks, trails and open spaces should be added to the definition here, or added to specific mentions within the rules such as on page 34, CA-UC district, line 34.8 (add – "including public recreational facilities.)

Subpart 58: Definition: Public River Corridor Views
This new definition is a welcome addition, acknowledging that key views deserve protection. The Great River Road's current management plan, the Great River Road Development Study (2000), stressed the critical importance of scenic river views for sustainable development of the area. In addition to views from public parkland, this definition should include views from public overlooks, bridgeheads, bridge crossings, and historic sites, so that views from those sites are also identified and protected.

July 2016 - Now subpart 56, overlooks and historic properties are added, but bridgeheads and bridge crossings are not.

Part 6106.0080 Administrative Provisions for Ordinances
Subpart 3: Nonconformities
Nonconforming structures that lie between or are visible from the Great River Road and the Mississippi River and that affect public views of the river should be subject to greater controls than nonconforming structures that less directly impact the intrinsic qualities of the National Scenic Byway. For example, expanding a nonconforming billboard in the river corridor should not be allowed, while restoring a designated historic building would be welcome.

July 2016 - This comment does not appear to be addressed related to non-conforming structures which remains a concern.

The "averaging" provision for new structures raises concerns about incremental decline in the scenic and natural assets of the river corridor, based on the presence of nonconforming uses.

July 2016 - This comment does not appear to be incorporated.

A view and impact assessment should be required in the review of proposed nonconformities.

July 2016 - This comment does not appear to be incorporated in the Nonconformities section. But could be by using language from 6106.0120 DIMENSIONAL STANDARDS. Subp.3.D. (1) assessment of the visual impact of the proposed building on public river corridor views, including views from other communities;

Subpart 5: Mitigation
At a minimum, if a new structure is allowed based on "averaging," mitigation should be required, as it is for variances and conditional use permits. The mitigation should have a relationship to the impact.

Part 6106.0100 Districts:
Subpart 2: Rural and Open Space Districts - CA-ROS
Add: Add reference to the scenic value of large undeveloped tracts: "... large, undeveloped tracts of high scenic or ecological value; floodplain; and undeveloped islands."

Part 6106.0120 Dimensional Standards
Subpart 2: Structure Height:
Outside of the Urban Core and Urban Mixed areas, limiting building height based on the mature tree line would address scenic values and limit building visibility. People who visit the Great River Road as tourists value the vistas from the Great River Road, even if the river itself is not visible (Great River Road Development Plan, 2000). Using the mature tree line as a performance standard for corridor development outside of urban core areas will help protect these scenic resources, particularly where different local jurisdictions govern each side of the river corridor. This comment applies in CA-RTC and CA-SR; in CA-ROS and CA-RN, the height maximum is lower than the average tree line already.

July 2016 – Structure height comment is incorporated, with the exception of CA-RTC which exceeds the height of the mature tree line by allowing 48 foot heights.

CA-SR: Consistent with Other Buildings:
This requirement poses two challenges. Some CA-SR areas are visible from the other side of the river, even if they are not visible from the other river shoreline. The presence of other buildings does not warrant allowing more buildings above tree line. This provision is not sufficiently protective of primary conservation areas, including public river view corridors. The tree line is a better measure for height. Suggested language: "provided the structure's heights does not protrude above the mature tree line and is generally consistent with the height of surrounding development as viewed from public river view corridors on either side of the river and does not interfere with public river corridor views."

CA-UM and CA-UC:
Minimizing interference with public river corridor views is important, particularly where historic sites/areas are included in the view corridors, as may be in the urban core areas of Minneapolis and Saint Paul. Tiering of structures away from the Mississippi River and bluff line should be an expectation and standard, not only a consideration. Suggested language: "provided tiering ... is required, with lower structure heights ..."

July 2016 - This comment (CA-UM and CA-UC) does not appear to be incorporated.

D. Standards for Conditional Use Permit (CUP):
Describing the information required for a CUP is helpful. The language should also include required application, not just identification, of techniques to mitigate visual and other impacts.

The draft rules can be strengthened in the following ways:

- Allow local governments to develop performance standards or include performance based criteria as part of this rulemaking process. These performance-based criteria should include elements that focus on protecting views and access, creating friendly environments for people walking or bicycling, and protecting natural areas.

July 2016 - The public access comment does not appear to be incorporated.

- Particularly with conditional use permits and scenic resource protection along the Great River Road, the rules should clearly state performance standards for assessing visual impacts, and the requirements for local government findings in granting a conditional use permit.

July 2016 - This comment does not appear to be incorporated.

Include vegetation screening requirements to maintain and improve views.

July 2016 - This comment does not appear to be incorporated.

Part 6106.0130 General Development Standards for Public Facilities
Subpart 7C: Trails, access paths, viewing areas:
Screening to protect scenic values is very important. Add the following to requirements in this subpart as clause (3):
" (3) To achieve maximum screening from view so that they are not readily visible"
This language addition will help protect scenic values.

July 2016 - This comment appears partially incorporated but specific mention of a screening requirement is still encouraged to protect scenic values.

Part 6106.0140 General Development Standards for Private Facilities
Subpart 6: Private Signs
Signs close to the river for private businesses should relate only to access to river-related businesses. This would help prevent proliferation of non-river related commercial signage along the river itself.

The rules should also address signs in the corridor that are not on the river itself, but are along the Great River Road. The Highway Beautification Act and 23 U.S. Code § 131 prohibits new billboards on National Scenic Byways, and provides guidelines for signs and billboards. Those guidelines should be incorporated by reference in the rules.

C. The local government must follow the Highway Beautification Act and 23 U.S. Code § 131, prohibiting new billboards on the Great River Road, a National Scenic Byway.

July 2016 - Now Subp. 7, these comments do not appear to be addressed. Concern that A (2) *not be readily visible*, may not be practical and thus eligible for variance. Coordination with MnDOT on proposed rules defining standard maintenance and non-conformance is recommended.

Byway Natural Qualities

Our priorities for natural qualities include protection of bluff and sloped areas; management of storm water flow; and categories of districts.

Part 6106.0100 Districts:
Urban Core District: CA-UC
To protect bluffs and slopes from collapse near the Great River Road, and to promote a healthy river experience, add: Minimizing erosion and flow of untreated stormwater into the river are priorities in this district as well, in addition to providing access and public views.

Part 6106.0150 Vegetation Management and Land Alteration Standards
Subpart 1: Scenic character can serve as a vegetation management goal, in addition to natural values protection.
ADD: D. protect the public river corridor views and other scenic assets of the critical area.

July 2016 – This comment does not appear to be incorporated.

Subpart 2: Vegetation management standards should apply in the Urban Core area. This should be clarified.

July 2016 - This comment does not appear to be incorporated.

Subpart 10: Compliance with other plans and program
Adding reference to historic and cultural resource protection is important to ensure these values are reinforced. Minn. Stat. Chapter 138 should be added.
ADD: "D. protect historic and cultural resources as required in Minnesota Statutes Chapter 138.

July 2016 - This comment does not appear to be incorporated. *Compliance with other plans and programs* is described in 6106.0160 subpart 9 which also does not incorporate this comment.

Part 6106.0160 Stormwater Management Standards
Subpart 2: Water quality in the Mississippi River affects overall river health and National Scenic Byways intrinsic values. Guidance for all surface and stormwater in the critical area, not just in river-adjacent parcels, should reference best practices for protecting water quality in urban areas.
Amend: "... impervious surface of more than 10,000 square feet on parcels in the critical area."

July 2016 - This comment does not appear to be incorporated.

Part 6106.0110 Uses
Subpart 5: Aggregate mining and extraction
Aggregate mining and extraction needs to be properly screened and set back to protect the intrinsic qualities of the Mississippi River corridor. A setback of 100 feet instead of 40 feet from the top of steep slopes over 18% would help prevent negative impacts. We agree with the goal of making mining and extraction operations "not readily visible" (2010 draft rules) from the Great River Road and the Mississippi River, instead of the new proposed language "be managed to minimize visibility." Specifying native vegetation for screening mining operations would make it easier to achieve.

July 2016 - The setback comment does not appear to be incorporated.

Part 6106.0120 Dimensional Standards
Subpart 3: Location of Structures:
We support the setbacks from slopes, not just defined bluffs, to help prevent mudslides and other slope erosion. Today part of the Great River Road in Minneapolis remains closed because of slope failure.

July 2016 - This comment does not appear to be incorporated.

In the CA-UC, the fifty-foot setback remains reasonable instead of relying only on local zoning. It would be helpful to describe the reason that 40 feet is the setback for slopes, while 50 feet is the setback for the ordinary high water mark.

July 2016 - This comment does not appear to be incorporated.

Byway Recreational Qualities

Our priorities for recreational qualities include preservation of parkland/green space and public access to the river and its intrinsic resources.

Part 6106.0070 Preparation, Review, and Approval of Plans and Ordinances
Subpart 4: Contents of Plan
We strongly support the local plans including conservation areas, restoration areas, public access points, open space and recreation facilities. We encourage stronger language; "maximize" creation and maintenance of open space and recreation facilities is more appropriate than "provide," as it is more likely to advance the long-term goals of protecting and enhancing the Mississippi River corridor.

July 2016 - This comment appears to be somewhat but not fully incorporated.

Part 6106.0100 Districts:
Residential Neighborhood: CA-RN
Add: This district should include the language in other districts about scenic values and public access to the riverfront, especially since this district includes public lands: "... and providing public access to and public views of the river are priorities in the district."

Reinstate an Urban River Park district and support public park creation in all districts:
In the urban areas of Minneapolis and Saint Paul, the Great River Road helps create a clear defining edge between non-public developed areas and scenic areas with public access. This development pattern helps protect and enhance many of the six intrinsic qualities, particularly scenic, recreational, and natural, and creates measurable economic value. Visitors rely on this continuity of experience and access to commercial areas adjacent to but not at the river's edge. Conserving land near and along the riverfront helps protect water quality and enhance natural habitat along this internationally significant corridor.

July 2016 – This comment (Urban River Park district) does not appear to be incorporated.

To increase the value of the Great River Road as a tourism asset and advance the six intrinsic qualities of this National Scenic Byway, this development pattern should be encouraged throughout the MRCCA.

- Each of the districts can allow public parkland.
- In the urban core, a new Urban River Park district can follow boundaries of existing and planned regional parks along the Mississippi River. DNR can work with agencies that own and operate land within this proposed Urban River Park district to craft development and dimensional standards.

July 2016 - This comment does not appear to be incorporated.

Urban Mixed District:
If the rules do not create a distinct Urban River Park district, the new Urban Mixed District should specifically address creation and management of riverfront parks in this district. The success of the Great River Road and urban development near the river relies on maintaining and completing a publicly accessible riverfront with continuous trails following the river.

July 2016 – Creation and management of riverfront parks do not appear to be incorporated.

In the current draft, the riverfront near St. Anthony Falls is treated in the same way as Minneapolis's downtown developed area. While the designated St. Anthony Falls Historic District has new design guidelines that advance National Scenic Byway intrinsic qualities, other parts of the riverfront fall outside the district and are not guided in that way. At a minimum, the riverfront areas between Main Street SE and the Mississippi, and between West River Road and the Mississippi, should be designated Urban Mixed instead of Urban Core. Portions that are primarily residential are more clearly CA-RN – residential neighborhood – and not Urban Mixed: the northern end of Nicollet Island, and property adjacent to Boom Island Park.

Part 6106.0120 Dimensional Standards
Subpart 1: Purpose:
Dimensional standards protect recreational values in public parks and trails, in addition to the values listed in the definition of "primary conservation areas." This can be corrected either by including "publicly owned parks, trails and open spaces" in the definition of primary conservation areas, or adding that reference in this purpose statement.

July 2016 - This comment does not appear to be incorporated in this section, nor in 6106.0050 DEFINITIONS. Subp. 53. Primary conservation areas.

Byway Corridor Management

Our comments below focus on assisting us in managing the byway corridor including receiving notice of planned development and potential changes that would impact the experience of the byway traveler. This section also includes comments that involve several byway intrinsic qualities.

Part 6106.0050 Definitions:
Subpart 64: Resource agency
It would be helpful to clarify what defines a resource agency, and whether this list should include the Mississippi River Parkway Commission.

July 2016 - While the definition comment has been incorporated, a list of such agencies could be developed and maintained as a resource available to rule implementing agencies, if not directly incorporated into the rules.

Part 6106.0060 Administration of Program
Subpart 7: Duties of Local Governments
D: Send notice of public hearings about discretionary actions...
Comment: Requiring communication about public hearings on discretionary actions will help the MN-MRPC and local governments work together efficiently and effectively to implement the Great River Road Corridor plan within the Critical Area. The MN-MRPC is organized and guided under Minnesota Statutes 161.1419.

ADD "(4) Mississippi River Parkway Commission of Minnesota"

July 2016 - This comment does not appear to be incorporated.

Part 6106.0090 Incorporations by Reference
ADD the current Great River Road Corridor Management Plan as incorporated by reference
"I. The current Great River Road Corridor Management Plan"

July 2016 - This comment does not appear to be incorporated.

Part 6106.0070 Preparation, Review, and Approval of Plans and Ordinances
Subpart 6: Flexibility Requests for Ordinances
This new flexibility provision seems unduly broad. If this new flexibility section is retained, the burden should be on the local government to demonstrate genuine need and impact both by detailing the impact on public river corridor views and primary conservation areas, as well as intrinsic scenic byway values: archaeological, cultural, natural, historic, recreational and scenic.

If this new flexibility section is retained, then the standard of review for the ordinances should be "consistent" with the Critical Area rules, and not just demonstrating "substantial compliance."

July 2016 - This comment does not appear to be incorporated.

Part 6106.0080 Administrative Provisions for Ordinances
Subpart 2: Variances
The local government's findings should include a demonstration that granting the variance still furthers the goals of the MRCCA rules.

Part 6106.0100 Districts:
Maps: The maps should include the Great River Road National Scenic Byway, a Mississippi River Corridor Critical Area asset with national significance; that provides a clear context and reference point for scenic views. This would also help inform comments on the districts.

July 2016 - This comment does not appear to be incorporated.

Urban Core District:
This district appropriately provides flexibility for urban development, but should not compromise the integrity of the riverfront that draws this development. The definition can add conditions: providing flexibility, "while minimizing negative impacts to river corridor views, historic and cultural assets, public access to and along the river access, bluffs, very steep slopes, and floodplains, and where feasible, enhancing bluff and shoreline habitat, minimizing erosion, and minimizing flow of untreated sewage into the Mississippi."

Subpart 9: District Boundary changes:
B (2): Amending the boundaries
Add: Local government must provide notice to the MN-MRPC as it would for zoning amendments.

July 2016 - This comment does not appear to be incorporated.

Part 6106.0170 Subdivision and Land Development Standards
Subpart 3: Design standards (conservation standards)
Encouraging protection of conservation areas nearest the river or that provide river access should be the priority. This advances the natural and scenic values of the Mississippi River. This section does not specifically mention the scenic values included in the definition of "primary conservation areas."
Add:

I. Protecting or enhancing a public river view corridor, cultural site or historic resource may warrant additional protection above the minimum for the designated river district.

July 2016 - Now Subp. 4, this comment does not appear to be incorporated.

Subpart D: Land Dedication

Add language such as, "Park dedication should be implemented for developments in the critical area, to the maximum extent possible."

July 2016 - This comment does not appear to be incorporated.

Hennepin County
Public Works

Planning Department
701 Fourth Avenue South, Suite 700
Minneapolis, Minnesota 55415-1842

612-348-8532 Fax
www.hennepin.us

RECEIVED
By: OAH on 7/5/16 5:05 p.m.

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

RE: Department of Natural Resources Proposed Rules Governing Mississippi River Corridor Critical Area
Office of Administrative Hearings Docket No. 8-9014-33236

Dear Judge Lipman:

Hennepin County staff support the efforts of the Minnesota Department of Natural Resources to protect the natural resources of the Mississippi River Corridor Critical Area. We appreciate the steps the MnDNR has taken to resolve previous comments on the proposed rules and have seen improvement from earlier versions.

The proposed rules are an improvement for the corridor, particularly the addition of districts to better respond to the land use and context in the corridor. Still, the rules are imperfect.

Cities and rivers are not incompatible; indeed most of the world's great inland cities exist because of rivers — the same is true of Minneapolis and St. Paul. Development can complement river corridors, lead to greater enjoyment of them and protection of their natural resources. The Mississippi River is a center of activity and a focal point of the metropolitan area; it cannot be a wilderness with no perceivable civilization. The MnDNR's rulemaking site itself features an attractive photograph of the river with the prominent Minneapolis skyline.

Hennepin County supports our cities' efforts to develop at greater densities where infrastructure and resources such as the Mississippi River are in place. Greater density, including taller structures in already impacted areas, can be a net benefit to a river corridor by reducing development pressure in other, more ecologically valuable parts of the corridor.

Building height does not necessarily have a negative impact on the natural resources or aesthetics of a corridor. Of note, the dimensional standards proposed appear arbitrary and unrelated to what the rules are attempting to achieve. Greater height in the developed metropolitan area is a benefit for ecological function and any negative visual impacts of a building can be addressed through building design.

The height standards in particular may have the unintended consequence of reducing the availability of affordable housing in the corridor and creating a high-amenity corridor inaccessible to people who cannot afford the higher rents required to make lower density development work.

In addition to the above general comments, we have the following specific comments:

- Lines 9.15-9.18 —The definition of "public river corridor views" includes "views toward the river" from selected public places. This definition includes any and all views *in the direction of* the river and does not require that the river corridor be visible whatsoever while also not including important views within the corridor that are not in the direction of the river. As a result, the rules relating to public river corridor views become overly restrictive and depart from the presumed intent to protect views of the river corridor itself. The definition should be clarified for intent and applicability.
- Lines 12.13-12.15 — The definitions and proposed rules do not account for very steep slopes, defining a "steep slope" as an average slope of 12 percent to 18 percent and not addressing anything with a greater slope. The definition should be revised to include anything greater than 12 percent or additional guidance created for slopes greater than 18 percent.
- Lines 39.1-39.20 — Tiering of a building is an inappropriately specific strategy to lessen negative visual impact. It can be undesirable and result in greater negative visual impacts by creating eye-catching angular forms in a natural environment.
- Lines 45.12-45.14 — The rules are more restrictive of facilities serving bicycling and walking than those controlling facilities for driving motor vehicles, which is a more obtrusive and impactful activity. The rules as written allow hard-surface roads on the face of bluffs with a slope exceeding 30 percent where no alternative exists, but do not allow hard-surface trails in the same situation. Paved trails provide access to more people and are less impactful to natural resources, as they are not as susceptible to erosion. The proposed rules could result in a 30-foot paved road on the 30 percent slope bluff face adjacent an eroding dirt trail that could not be paved. This inequitable treatment of people based on their chosen transportation mode despite their lighter footprint should be corrected to benefit people and the corridor's natural resources by allowing the same exceptions for paved trails as proposed for roads and driveways.
- Line 64.13 — Exemptions provided for private facilities ought to be extended to public facilities. For example, the stairways, lifts and landings exemption should apply to public recreational facilities. They can serve important public purposes, particularly access to the river corridor and impact the natural resources no more than a private facility would.
- A map of delineated bluffs in the corridor would be immensely helpful to reduce inconsistencies among agencies.
- "Visual impact" is undefined and ambiguous. Visual impacts could be positive, negative, blocking views or simply being visible from a particular vantage point. Please provide greater clarity or remove the undefined term.

Although the improvements are not listed here, on the whole rules proposed by MnDNR would be beneficial to the corridor and its natural resources. Thank you for considering our comments.

Sincerely,

Dan Patterson
Comprehensive Planner, Public Works Planning

Janet Lenius
Jalen Enterprises
612-378-1904
910 Main Street Northeast Minneapolis, Minnesota 55413
www.jalenenterprises.com janet@jalenenterprises.com

RECEIVED
By: OAH on 7/5/16 5:21 p.m.

July 6, 2016

Administrative Law Judge Eric R. Lipman
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164

RE: Rezoning the St. Anthony West Neighborhood

Dear Judge Lipman:

My name is Janet Lenius, and I live in the St. Anthony West neighborhood with my husband and three kids. This neighborhood has been great for raising kids, as we are able to grow vegetables and fruit in the yard, we have a double lot with plenty of space for pets, and our Little Free Library. But imagine if hi rises were built on three sides of our house. Sunlight would be blocked out, and we would no longer be able to grow anything in the yard. We would not have a view of our neighborhood, but would only see walls of the adjoining buildings. Noise levels would be greater from higher density, and trash accumulation would become an issue. In the 1980s I lived in a basement flat in London on a busy street. Each morning I discovered accumulated trash by my front door, as passersby had tossed rubbish while walking or driving past. With the tall buildings I am imagining higher crime levels. At night, especially, we would need to be more careful, as we may not know our neighbors as well, and even if I did, I may not know their friends and other visitors.

Please change the zoning back to R2 to reduce density and keep it as a single family neighborhood, rather than R5, which it was erroneously changed to, It is very important that we preserve the character and value of single-family housing in St. Anthony West!

Thank you.

Sincerely,

Janet Lenius

Janet Lenius

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

Senate

State of Minnesota

July 6, 2016

RECEIVED
By: OAH on 7/6/16 8:37 a.m.

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 proposed rules for the Mississippi River Corridor Critical Area (MRCCA). In addition to the more general comments of support I have made in other letters, I wanted to also share my thoughts on the management of the MRCCA in the Senate District I represent.

Responsible development is critical to the long term protection of the river. Dedicated open space within the corridor is needed to conserve the river's biological and ecological features and preserve its natural and scenic character. Providing for open space will help keep wildlife habitats intact and allow for recreation.

Open space dedication has long been a part of protecting this portion of the river. The 1976 Executive Order requires that local units of government, "maximize the creation and maintenance of open space." But like much of the Executive Order, the direction is vague; the proposed rules would establish more clear and precise guidelines.

The six new proposed districts are another good step forward to allow for more specificity for stakeholders. The communities I represent are shown on Map 6: St. Paul to Nininger. This area has some of the highest quality native plant communities in the metro area and much of the riverfront land has been set aside for natural areas and parks. So it is concerning that so much of this area has been slated for the Separated from River (SR) District. By definition, these areas should not be visible from the river, but some of the areas certainly are visible. And, while other parts of the proposed SR are not visible now, this designation would allow development that could negatively impact this section of the corridor.

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One good example highlighting my concern is the Mississippi Dunes Golf Course in Cottage Grove. This site is visible from the river and portions of Grey Cloud Island and so, should not be in the SR district.

I support the placement of Lower Grey Cloud Island in the Rural and Open Space (ROS) District. Lower Grey Cloud Island is the largest in a system of dozens of islands that provide remarkable wildlife habitat. The area is largely rural and the ROS classification allows for some flexibility for future development, while still protecting the river.

The Mississippi River is not only a vital resource for the environment and economy of our state and nation, it is a personal part of the everyday lives of many of my constituents. The communities I represent enjoy having this natural, scenic treasure in their backyards. It is our responsibility to ensure it can be enjoyed for generations to come.

Again, thank you for considering my comments.

Sincerely,

Katie Sieben

Katie Sieben
State Senator
District 54

Minnesota Historical Society

Using the Power of History to Transform Lives
PRESERVING • SHARING • CONNECTING

RECEIVED
By: OAH on 7/6/16 11:21 a.m.

July 6, 2016

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

RE: Mississippi River Corridor Critical Area Proposed Rules

Dear Judge Lipman:

The Minnesota Historical Society (MNHS) appreciates the opportunity to comment on proposed rules for the Mississippi River Corridor Critical Area (MRCCA). In September of 2014, MNHS provided comments on the previous draft rules, as then proposed by the Department of Natural Resources (DNR). A copy of our comment letter is attached. That letter also outlines the statutory basis for protection of historic and cultural resources, in general, as well as specifically in the creation of Critical Corridors in Chapter 116G, as well as via the 1979 Executive Order.

Many of the suggestions in this letter were included in the current proposed rules, for which we are grateful. However, a number of additional suggestions, outlined here, would strengthen the rules and protect historical and cultural resources.

Thank you for your consideration of these suggestions. We are prepared to answer any questions that you may have on these comments.

Sincerely,

David Kelliher
Director of Public Policy

Enclosures:
MNHS July, 2016 Comments on proposed MRCCA rules
Copy of September, 2014 MNHS letter

Minnesota Historical Society
Comments on Proposed Permanent Rules Relating to Mississippi River Corridor Critical Area,
2/26/16 Version (RD4240)
July, 2016

Part 6106.0010 POLICY *(page 1)*

Change: Add "138" to this list of chapters of Minnesota Statutes cited in the policy.

Comment: Since the original Executive Order 79-19 and the statute governing Critical Corridors, 116G, reference protection of historic resources, it makes sense to include Chapter 138, which governs the state's role in history, to this list.

Part 6106.0070 PREPARATION, REVIEW, AND APPROVAL OF PLANS AND ORDINANCES *(pages 22-23)*

Change: Under Subpart 4. Contents of Plans, Items B, "Plans must contain maps, policies and implementation provisions to:" (pages 22-23)

Add: on page 23 after clause (6), add: "(7) provide for the identification and protection of historic properties" and renumber remaining items.

Comment: Minnesota Statutes, Section 473.859, Subdivision 2 (b) Comprehensive Plan Content, requires that land use plans "shall contain a protection element, as appropriate, for historic sites..." so this addition would be consistent with the existing law.

Part 6106.0090 INCORPORATIONS BY REFERENCE *(pages 30-31)*

Change: Add new item (could be H) to read:

(H) Secretary of the Interior's Standards for Archaeology and Historic Preservation

Comment: This part adds resources that are suggested as reference documents to provide current best practices. The Secretary of the Interior's Standards for Archaeology and Historic Preservation are the standards/guidelines used by all federal and state historic preservation programs.

Part 6106.0100 DISTRICTS *(Pages 31-34)*

Change in CA-RTC District: Add one of two options to include historic resources in the directive of how this district is managed:

on line 33.6, after "river" insert: ", while protecting historic properties."

OR on line 33.3, after "that" insert: "protects historic properties and"

***Comment*:** The proposed River Towns and Crossings District description acknowledges the important characteristic of the CA-RTC district, historic downtown areas, but does not carry this forward into the clause that describes how the district is to be managed. Also, including this specific management directive would make this district's management directive parallel with those of the other districts.

Change in CA-UM District: On line 33.24, after "views" add: "or historic properties,"

Comment: Urban areas are rich with historic and cultural resources which merit protection, particularly under state and federal law. Adding a specific reference to these important properties would recognize these important features, and clarify how this district should be managed.

Part 6106.0150 VEGETATION MANAGEMENT STANDARDS *(Pages 49-53)*

Change: under Subpart 1, ***Purpose*** add a clause that would clarify that public river corridor views are important features of the Critical Corridor.

Add: page 49, line 13, after clause C, add: "D. Protect public river corridor views and other scenic assets of the critical area."

Comment: MNHS agrees with comments made by the MN Mississippi River Parkway Commission that scenic views should be protected and referenced in this section.

Minnesota Historical Society

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September 30, 2014

Mr. Dan Petrik
MRCCA Rulemaking Project
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, Minnesota 55155-4032

Via Email: mrcca.rulemaking@state.mn.us

Dear Mr. Petrik:

Thank you for the opportunity to provide comments on the Department of Natural Resources' draft working rules for the Mississippi River Corridor Critical Area.

The Minnesota Historical Society, created by the Territorial Legislature in 1849, works to preserve and interpret evidence of our state's past. We conduct these activities under various state and federal laws, including Chapter 138 of Minnesota Statutes. We share a broader responsibility, along with the DNR and others, to preserve our state's natural resources, which are defined to include historic resources in various places in state law, including Chapters 116B, 116D, and 116G, and others, as outlined at the end of the comments.

The original 1979 Executive Order which designated the Mississippi River Critical Area called on state and local units of government to:

> *"...preserve and enhance its natural, aesthetic, cultural, and historical value for the public use..."*

Specifically, Chapter 116G of Minnesota Statutes expresses the importance of historic and cultural resources in the creation of Critical Corridors:

> ***"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..."*

With this background in mind, the Minnesota Historical Society strongly urges the MN DNR, in its drafting of rules, as well as in implementation activities by state and local units of government, to identify and preserve historic resources within the Mississippi River Corridor Critical Area.

Attached as a separate document are comments that are specific to the each section of draft working rules. The Minnesota Historical Society's two main areas of interest are in preservation of elements of the statutorily defined Historic Sites Network, as outlined in the Minnesota Historic Sites Act (MS 138.662-669) as well as our responsibilities for protection of historic properties (M.S. 138.081, 138.665, 138.666 and 138.40) and education related to historic preservation activities.

Finally, as a member agency of the Minnesota Mississippi River Parkway Commission (Great River Road), the Minnesota Historical Society supports comments on the draft working rules submitted by both the Parkway Commission and the National Park Service / Mississippi National River Recreation Area, in regard to preserving scenic view sheds, as the comments relate to views to and from historic places such as Historic Fort Snelling and other important historic places.

Thank you for your consideration of these comments. Should you have any questions on these comments, please contact David Kelliher, Director of Public Policy, at david.kelliher@mnhs.org.

Sincerely,

D. Stephen Elliott
Director and Chief Executive Officer

Minnesota Historical Society
Comments on Draft Working Rules – Mississippi River Corridor Critical Area
(Comments drafted to "MRCCA Working Draft Rules, June 2, 2014, Clean Version")

Part 6106.0010 POLICY

Change: Add "138" to this list of chapters of Minnesota Statutes cited in the policy.

Comment: Since the original Executive Order 79-19 and the statute governing Critical Corridors, 116G, reference protection of historic resources, it makes sense to include Chapter 138, which governs the state's role in history, to this list.

Part 6106.0050 DEFINITIONS

Changes:

- In Subp. 31:
  - Change "Historic site" to "Historic property"
  - Under item A, change, "State Register of Historic Sites" to "State Register of Historic Places;" and before final semi-colon, insert: ", under MS 471.193"
  - Change item B to read: "Meets the criteria for eligibility to the National Register of Historic Places or the State Register of Historic Places, as determined by the Director of the Minnesota Historical Society."
  - Under item C, before the period, insert: "in consultation with the Office of the State Archaeologist."

Comment: These changes would make the language consistent with terminology and practices commonly used in the field. Specifically, the term "historic property" is a general term, while other terms typically have a more defined meaning under specific laws and standards.

Part 6106.0060 ADMINISTRATION OF PROGRAM

Change: Under subpart 9, (list of agencies) add: "Minnesota Historical Society" in appropriate location

Comment: While the Minnesota Historical Society would be covered under the language in the draft of this subpart, specifically adding MNHS would help to identify us as a resource managing organization within the Corridor.

Part 6106.0070 PREPARATION, REVIEW, AND APPROVAL OF PLANS AND ORDINANCES

Change: Under Subpart 4. Contents of Plans, Items B, "Plans must contain maps, policies and implementation provisions to:"

Add: after clause (6), add: "(7) provide for the identification and protection of historic properties" and renumber remaining items.

Comment: Minnesota Statutes, Section 473.859, Subdivision 2 (b) Comprehensive Plan Content, requires that land use plans "shall contain a protection element, as appropriate, for historic sites..." so this addition would be consistent with the existing law.

Part 6106.0090 INCORPORATIONS BY REFERENCE

Change: Add new item (could be H) to read:
(H) Secretary of the Interior's Standards for Archaeology and Historic Preservation

Comment: This part adds resources that are suggested as reference documents to provide information on current best practices. The Secretary of the Interior's Standards for Archaeology and Historic Preservation are the standards/guidelines used by all federal and state historic preservation programs.

Table 1. Exemptions from Setbacks, Height Limits and Other Requirements in parts 6106.120 through 6106.170

Change: Change "Historic sites and districts" to "Historic properties and districts"

Comment: This change would make this term consistent with common usage as well as usage in the rest of this document.

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[1] Minnesota Statutes Chapters 116B, 116D and 116G each reference historic resources within definitions of natural resources and state responsibilities for protection of these irreplaceable resources:

116B.02 Subd. 4.Natural resources. "Natural resources" shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.

116D.02 Subdivision 2 State Responsibilities (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever practicable, an environment that supports diversity, and variety of individual choice;

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.

171 Island Ave East, Minneapolis, MN 55401

From: Lisa Hondros (cell) (612) 812-7677
lhondros@gmail.com

To: Administrative Law Judge Eric J. Lipman
Office of Administrative Hearings
600 North Robert St
St. Paul, MN 64620

Fax 1 (651) 539-0310

RECEIVED
By: OAH on 7/6/16 12:54 p.m.

Mississippi River Corridor Critical Area Comments

OAH Docket No. 8-9014-33236
R-4240 (Revisor's Number)

13 Page including Cover Sheet

171 Island Ave East, Minneapolis, MN 55401

July 5, 2016

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

RE: Mississippi River Corridor Critical Area Comments
OAH Docket No. 8-9014-33236
R-4240 (Revisor's Number)

Dear Judge Lipman:

The St Anthony Falls Alliance (SAFA) advocates for implementation of the updated Master Plan ("Master Plan") for the Central Mississippi Riverfront Regional Park ("Riverfront Regional Park") adopted by the independent Minneapolis Park and Recreation Board on April 1, 2015 [1]. SAFA consists of representatives appointed by the neighborhood organizations along the Minneapolis central riverfront: North Loop Neighborhood Association, Downtown Minneapolis Neighborhood Association, Marcy-Holmes Neighborhood Association, Nicollet Island East Bank Neighborhood Association and the St. Anthony West Neighborhood Association.

SAFA requests that the Minneapolis District Map be changed to:

Classify as ROS instead of Urban Core, the environmentally sensitive regional parkland below Father Hennepin Bluff on the East channel of the river containing the last remaining limestone escarpment of St. Anthony Falls, a floodplain, a hibernaculum for a bat species of special concern, and undeveloped Williams Island. This classification would correctly put this area in the same classification as the lower River Gorge Regional Park and Minnehaha Falls Regional Park. See Exhibit A - Father Hennepin

Classify as River Neighborhood, the other areas within the boundary of the Riverfront Regional Park, including the Bald Eagle aerie on the East Bank. This will clarify that

[1] Planning for the Riverfront Regional Park started in the 1970's. The Master Plan was adopted in 1981. The updated Plan is currently in the Metropolitan Council's review process. The updated plan expands the boundary slightly. As this boundary expansion has not yet been formally adopted, this document refers to the adopted 1981 boundary.

the handful of primarily energy oriented "in-holdings" within the boundary of the park that are slated for eventual park acquisition are not to be intensely developed. See Exhibit B - Park Boundary

If necessary to allow inclusion of these inholdings in RN, SAFA requests that the definition of River Neighborhood (6106.0100 Subd. 4 A) be modified to read: The district includes parks, open space and properties within the boundary of a regional park slated for public acquisition, limited commercial development, marinas, and related land uses. (Added language is underlined.)

Protection of Park Resources should Control District and Standards Designation

By statute the Riverfront Regional Park should be placed in a District that reflects the Master Plan and contains standards that best protect the resources and features. The Commissioner should not arbitrarily place parts of the Riverfront Regional Park in Urban Core because of a desire by the City of Minneapolis to provide it with ultimate flexibility. The Riverfront Regional Park should be treated consistently with the River Gorge Regional Park where the Districts are finely drawn to carve out and protect the park resource.

Pertinent parts of the statute are as follows:

116G.15 Subd. 3. Districts....The commissioner must seek to determine an appropriate number of districts within any one municipality and take into account municipal plans...The commissioner shall consider the following when establishing the districts:

(1) the protection of improvements such as parks, trails, natural areas, recreational areas, and interpretive centers;....

(3) the protection of resources identified in the Mississippi National River and Recreation Area Comprehensive Management Plan;...[2]

(6) identified scenic, geologic, and ecological resources.

116G.15 Subd. 4. Standards... (b).The guidelines and standards must protect or enhance the following key resources and features:

(12) publicly owned parks, trails, and open spaces;

(13) cultural and historic sites and structures;

[2] The St Anthony Falls Historic District is specifically called out as a "Cultural Resource" in the MNRRA Management Plan. See Exhibit C

The Master Plan is the Controlling "Municipal" Plan

"The governance of the parks and recreational areas in Minneapolis is unlike most other municipalities in the United States. The Minneapolis Park and Recreation Board is legally separate from the City. " Minneapolis Comprehensive Plan for Sustainable Growth pg 7-2

The unadopted Draft Downtown Public Realm Framework Policy[3] that the City cites to support its comments specifically defers to the Master Plan.

> "3.6.3 Parks and Open Space
> The DPRF [Downtown Public Realm Framework] embraces the recommendations and planning guidance contained in the Central Mississippi Riverfront Regional Park Master Plan and defers to that plan with regard to all land currently held by the Minneapolis Park and Recreation Board."

Metropolitan Regional Parks are High Quality Natural Resources

The Metropolitan Regional Park System was established by the state legislature in the 1970's to protect as open space for public recreation, high quality natural resources pressured by development.[4] These regional parks were to be the equivalent of state parks, but located in the metro area. As regional parks were viewed as a state resource, their acquisition, development and management are funded by the State of Minnesota. The seven county regional park system is guided and administered by the Metropolitan Council. "Natural resource restoration and protection is a key objective in the Regional Parks System."[5]

The Riverfront Regional Park while started in 1981 is not yet complete.

The Minneapolis Park Board's long held goal is for continuous regional parks and trails along the entire length of the Mississippi riverfront in Minneapolis, thus protecting hundreds of acres of the Mississippi riverfront. This continuous riverfront regional park is meant to seamlessly connect with the regional parks in Hennepin, Ramsey and Anoka counties, forming part of the National Mississippi River Trail.

Minneapolis park design calls for a parkway to border the park with no private development allowed on the water side of the parkway. This standard Minneapolis park design was incorporated in the 1981 Riverfront Regional Park Master Plan that guided park acquisition and development.

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[3] Draft Downtown Public Realm Framework Policy, pg 65

[4] MINN. STAT. 473.302

[5] 2040 Regional Parks Policy Plan, pg 31

The Met Council requires that all property included within the boundary of a regional park master plan be acquired for park purposes. The Park Board acquired all of the property within the 1981 park boundaries on both banks of the river except a handful of mainly low profile energy oriented properties owned by public utilities or the University of Minnesota, and a privately owned surface parking lot[6]. All these "in-holdings" in the 1981 Master Plan are required to be acquired for park purposes by the Park Board in the updated master plan. see Exhibit D. Master Plan pg 8-3

The "in-holdings" on the river banks are:

East Bank

1910 era Xcel Main street plant, historic structure, electric facility, low profile
1903 Twin City Rapid Transit Steam Plant, U of M, historic structure
1930's era Hydro/Stream Lab, U of M, historic structure, low profile
Surface parking lot, 600 Main Street, private ownership
SAF hydroelectric excess property[7] (facility on federal land on W. Bank)

West Bank

Centerpoint Energy - gas distribution facility, low profile

While there are no plans to ask these legacy energy operations to move, it must be noted that energy technology, production and distribution have changed and will continue to change. Xcel does not use one of its Main Street buildings. The conversion of Xcel's upriver Riverside Plant from coal to gas has changed the function of the Xcel Main street plant which had been used as a "pilot light" to start the upstream coal plant. The University has built another heating plant closer to campus and converted the Twin City Rapid Transit Steam Plant from coal to other fuel sources. The SAF hydro facility was built on West Bank federal land and does not need the East Bank property. These and other business changes may free up the property for park acquisition in the future[8].

The importance of acquiring these properties for park use is stressed in the Master Plan. For example, "A key inholding is located at 600 Main on the other side of the park from 6th Avenue SE. This land, if acquired in the future, could provide an extension of the programming of Father Hennepin Bluffs Park and would help frame the park entry experience along 6th

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[6] All of the East Bank structures are exempt from dimension standards as historic structures or electric power generation facilities. With exception of the Steam Plant which is on the other side of the Stone Arch Bridge, all structures are very low profile.

[7] SAF located their hydro facility on Federal land on the West Bank. The East bank property is excess property and they have approached FERC on allowing them to release the property.

[8] Indicative of the fact that these properties are slatted for transition to non industrial uses, they are subject to an Industrial Living Overlay which allows residential uses (including parks) in land zoned industrial.

Avenue to the Stone Arch Bridge. This parcel is on the terminus for the axial view from the east end of the Stone Arch Bridge." Master Plan pg 7-22

The Master Plan also calls for the unused Xcel Main Street building to be integrated "...as a visitor amenity." Master Plan pg 7-24.

These legacy inholdings are concentrated at the connection with the River Gorge regional park. Inappropriate development on these parcels instead of acquisition as parkland can break the connection with the other riverfront regional parks and damage an important state and national resource.

Districts RN and ROS best fit the Management for the Resources

The Minneapolis Park Board requested the DNR to create a separate district for its current and planned large regional parks. This is in-line with the Metropolitan Council's desire to have regional parks in their own zoning classification.[9] The DNR declined that request stating that parks can be in any District. In doing so, the DNR did not take into account that some of these parks are not complete and that there are a handful of private "in-holdings" within the acquisition boundary of the Riverfront Regional Park. Placing the majority of the Riverfront Regional Park in Urban Core, an inappropriate district slated for intense development, may frustrate the park's completion and use by encouraging inappropriate private development on these important inholding parcels when they become available for purchase by the Park Board.

As regional parks do not fit perfectly in any of the draft districts, it is important to look at the resources and planned management contained in the Master Plan and attempt to fit it in the district where it best fits and protects the resources.

The RTC, UM, and UC districts contemplate that the land in the District will be managed in a more intense manner than it currently is. These districts do not contemplate that the land may be reclaimed from a previous industrial use and restored to a more natural state.

The draft rules inappropriately place much of the Riverfront Regional Park in CA-UC. The UC district "... must be managed with the greatest flexibility to protect commercial, industrial, and other high-intensity urban uses," 6106.0100 Subp. 8.B. This is opposite from the restoration and protection of high quality natural, historic and cultural resources that is called for by the Master Plan and the Regional Park Policy Plan.

SAFA believes that the River Neighborhood District would better protect the resources, and better guide resource management than CA-UC, CA-UM, or CA-RTC.

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[9] The Met Council has urged that Regional Parks be placed in their own park zoning classification. They object to Minneapolis's practice of stating that regional parks can be in zoning classification as it can lead to confusion and possible inappropriate development. This is the same problem that could be encountered with the DNR's commingled category.

The rules for CA-RN state:

> "The CA-RN district must be managed to maintain the character of the river corridor within the context of existing residential and related neighborhood development, and to protect and enhance habitat, parks and open space, public river corridor views, and scenic, natural, and historic areas. Minimizing erosion and the flow of untreated storm water into the river and enhancing shoreline habitat are priorities in the district." 6106.0100 Subp. 4 B

The Riverfront Regional Park contains crucial habitat for migrating birds and supports a variety of animal life, including a nesting pair of bald eagles slightly downriver from the 600 Main inholding. Master Plan, pg 5-13

While Bald Eagles are no longer listed as a federally endangered species, they are protected by the The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) and are the subject of NFW management guidelines[10] that guide protection of nesting birds from nearby development.

This particular pair of nesting eagles have special cultural significance to the Dakota people. Spirit Island, a rocky island inhabited by eagles just below the Falls, was a sacred place to the Dakota people and was thoughtlessly desecrated and destroyed by Europeans. This loss of a sacred site had been greatly mourned.

When the St. Anthony Heritage Board consulted with Dakota nation about how to honor the loss of Spirit Island, the Board was advised that nothing needed to be done as the return of the nesting eagle to the Falls was seen as a sign that all had been put right.

As such this particular pair of nesting eagle takes on even more importance, as does the preservation of trees that could grow to potentially support eagle nests.

All of the Riverfront Regional Park is in the St Anthony Falls Heritage Zone and most of it is in the St Anthony Historic District. Many of the contributing historic features in the Riverfront Regional Park are archeological or geologic and can be destroyed by construction.

SAFA is concerned that inclusion of the Riverfront Regional Park in any district other than RN or ROS may suggest that inappropriate intense development on "inholdings" is the desired outcome and will make it more difficult for the Minneapolis Park Board to acquire the property when the time comes[11]. This will not only interfere with the use and enjoyment of the Riverfront Regional Park; but also the use and enjoyment of the other regional parks that it is connected to.

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[10] National Bald Eagle Management Guidelines. https://www.fws.gov/northeast/ecologicalservices/pdf/NationalBaldEagleManagementGuidelines.pdf

[11] The Park Board acquired much of the private land in the Riverfront Regional Park through eminent domain. That tool is not as easily available and the current policy is to attempt to buy property from willing sellers.

East side channel below Father Hennepin Bluff should be ROS

SAFA requests that the area circled on Exhibit A be placed in the ROS district due to its unique natural and geologic features including the last vestige of the of natural St Anthony limestone falls.

The goal for this portion of the park are "... to preserve the character of the wild river floor while improving accessibility to this unique place. This area would stay programmed for passive recreation, wildlife viewing, and interpretation." Master Plan, pg 7-24

Specific actions include: "Stabilize eroded slopes; restore native vegetation on bluff and shorelines to improve wildlife habitat." Master Plan, pg 7-24 and "Restoring the natural gravity flow of water over the original limestone escarpment. " Master Plan, pg 7-24

The remaining limestone escarpment is a national historic landscape site as a contributing feature of the St. Anthony Falls National Historic District. "This limestone ledge is the only visible section of the falls scarp remaining at the Falls of St. Anthony....During the 1850's the ledge formed part of the East Channel of the Falls of St Anthony." [12]

The Park Board under the guidance of the St. Anthony Falls Heritage Board has successfully completed a feasibility study that found that the flow of water can be restored over this portion of the original East side falls.

In addition to the other rich wildlife in this natural area, Chute's cave is home to a bat species of special concern.

The DNR stated in 2003 that "The cave and the associated man-made tunnels support the largest number of hibernating Eastern Pipistrelles (Pipistrellus subflavus), a Special Concern bat species, in this state. As the cave is the single most important hibernaculum for this species in Minnesota, it is priority site for protection." [13]

Based on a current search of the natural resource database regarding this bat species, also known as a tri-colored bat and by its current scientific name Perimyotis subflavus, the Master Plan states:

"Tricolored Bats (Perimyotis subflavus) has been observed hibernating in the area. Tricolored bats are vulnerable to extinction in Minnesota due to their small population in the state, its susceptibility to disturbance during hibernation, and potential for persecution. Listed as a special concern species, protection of bat hibernation sites from human disturbance is a top priority for DNR management." Master Plan, pg 5-13

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[12] National Register of Historic Places, Continuation Sheet,St Anthony Falls Waterpower Area, pg 38

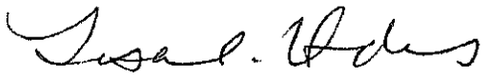
[13] Letter from Sarah D Hoffman, Endangered Species Environment Review Coordinator, Minnesota DNR, dated 24 Jun 2003.

Given that the Father Hennepin area contains an abundance of important natural and cultural resources, it should be placed in the ROS district to manage the resources in the most protective manner.

Conclusion

As called for in the Statute, SAFA requests that Father Hennepin be placed in the ROS district and the remainder of the land in the Riverfront Regional Park be placed in the River Neighborhood District in order to best manage and protect the resources.

Thank you for your consideration,



Lisa C. Hondros, Secretary
St. Anthony Falls Alliance, representing the North Loop Neighborhood Association, Downtown Minneapolis Neighborhood Association, Marcy-Holmes Neighborhood Association, Nicollet Island East Bank Neighborhood Association and St. Anthony West Neighborhood Association

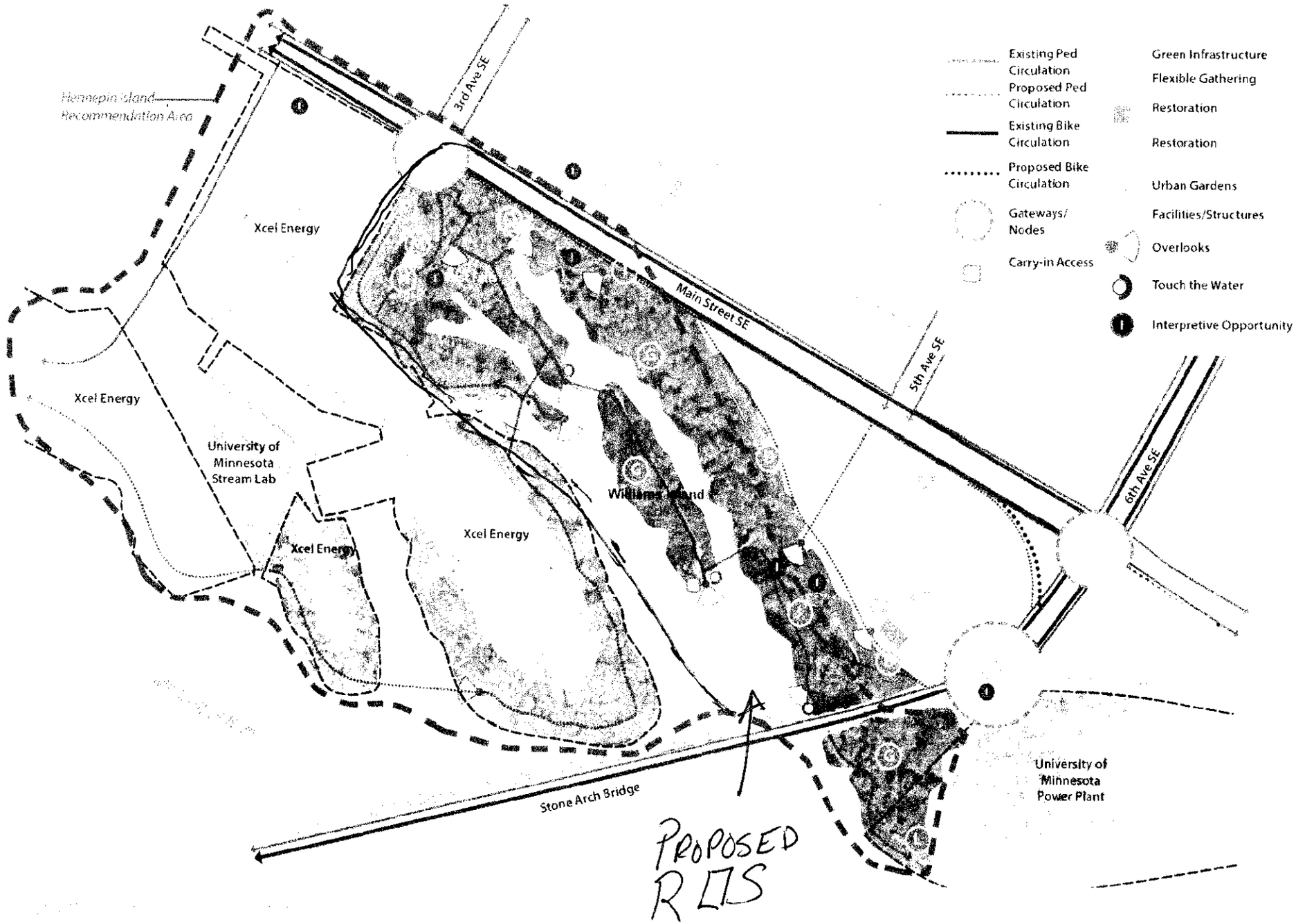

Hennepin Island Recommendation Area
3rd Ave SE
Main Street SE
5th Ave SE
6th Ave SE
Xcel Energy
Xcel Energy
University of Minnesota Stream Lab
Xcel Energy
Xcel Energy
Williams Island
Stone Arch Bridge
University of Minnesota Power Plant
Existing Ped Circulation
Proposed Ped Circulation
Existing Bike Circulation
Proposed Bike Circulation
Gateways/ Nodes
Carry-in Access
Green Infrastructure
Flexible Gathering
Restoration
Restoration
Urban Gardens
Facilities/Structures
Overlooks
Touch the Water
Interpretive Opportunity
PROPOSED RLS

EXHIBIT A

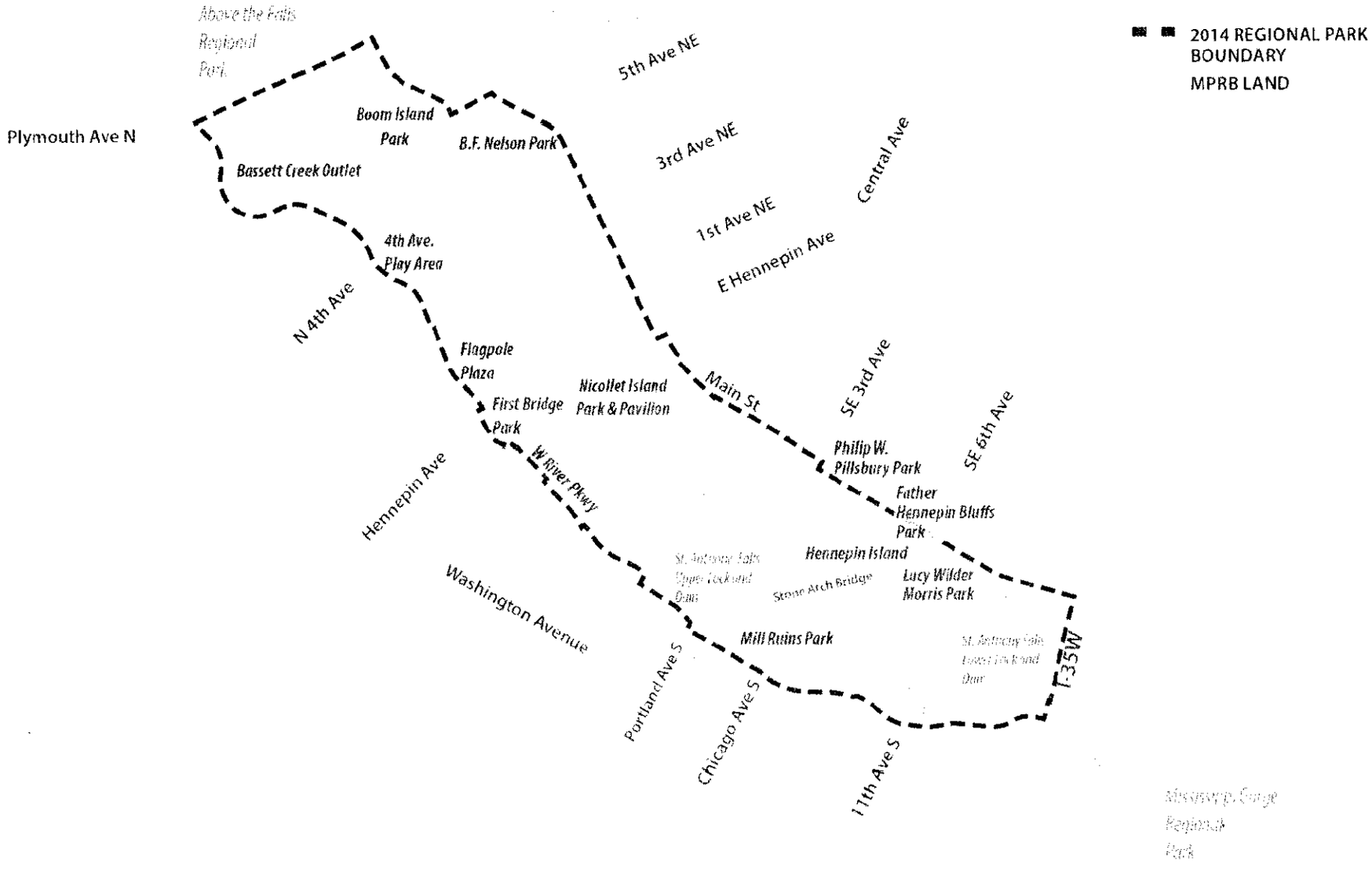

2014 REGIONAL PARK BOUNDARY
MPRB LAND
Above the Falls Regional Park
Plymouth Ave N
Boom Island Park
B.F. Nelson Park
Bassett Creek Outlet
5th Ave NE
3rd Ave NE
1st Ave NE
E Hennepin Ave
Central Ave
4th Ave. Play Area
N 4th Ave
Flagpole Plaza
First Bridge Park
Nicollet Island Park & Pavilion
Main St
SE 3rd Ave
SE 6th Ave
Philip W. Pillsbury Park
Father Hennepin Bluffs Park
W River Pkwy
Hennepin Ave
Hennepin Island
Lucy Wilder Morris Park
Stone Arch Bridge
Washington Avenue
Mill Ruins Park
Portland Ave S
Chicago Ave S
11th Ave S
I-35W
Mississippi Gorge Regional Park

EXHIBIT B

Cultural Resources

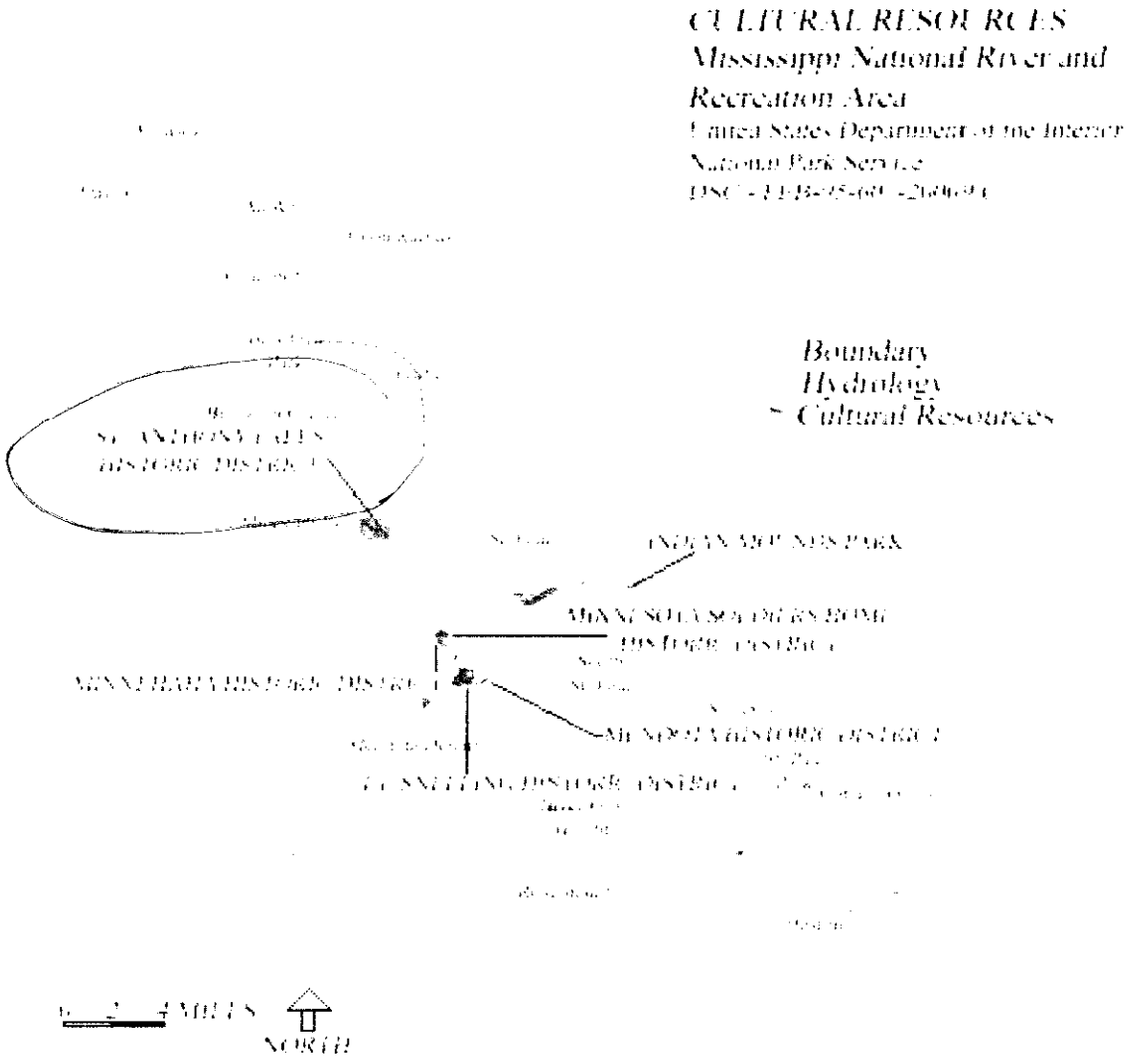
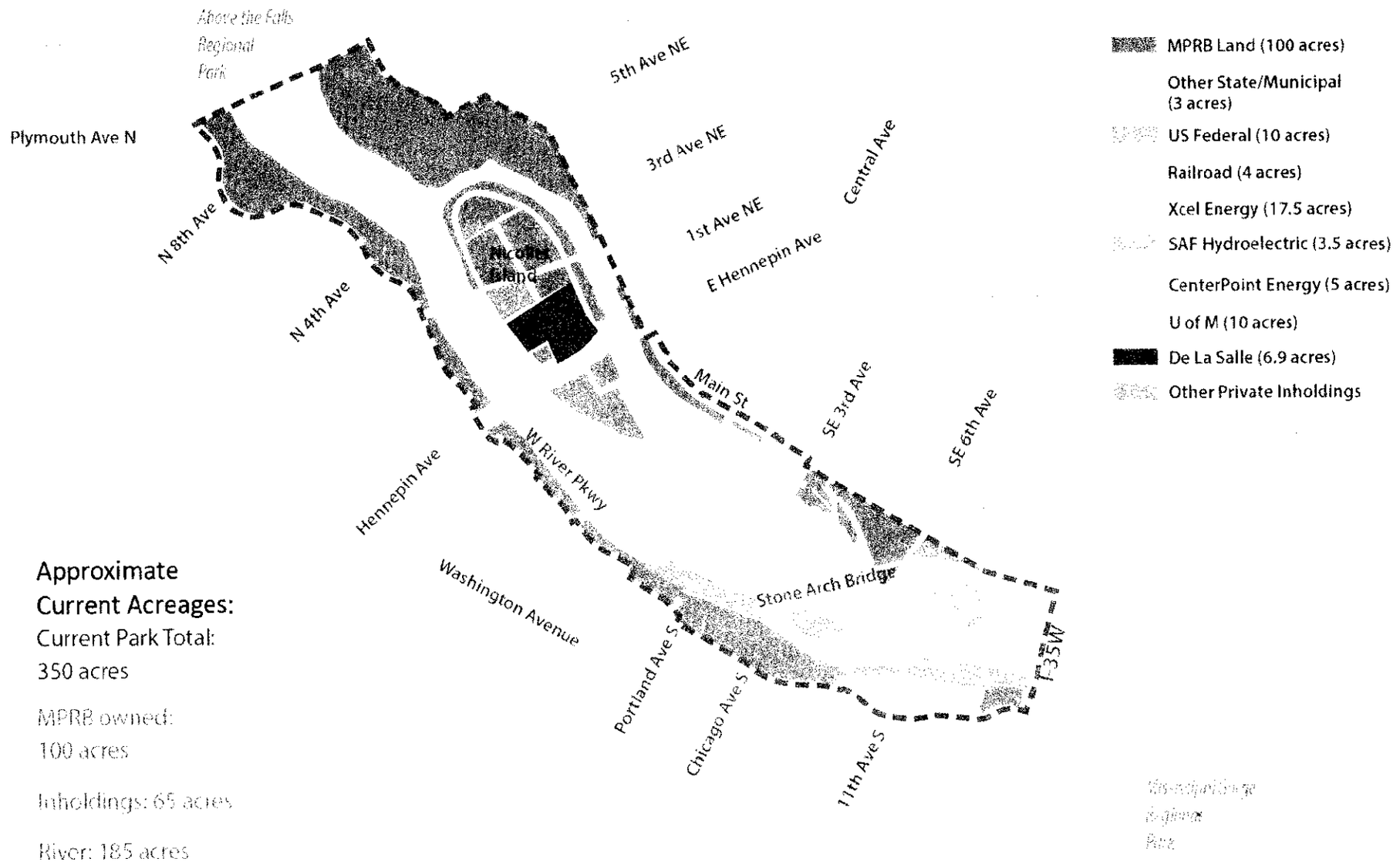


EXHIBIT C



Approximate Current Acreages:

Current Park Total: 350 acres

MPRB owned: 100 acres

Inholdings: 65 acres

River: 185 acres

EXHIBIT D

RECEIVED
by OAH on 7/6/16 @ 1:16pm

July 6th, 2016

Honorable Eric L. Lipman
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
Saint Paul, Minnesota 55101

Your Honor, Thanks for allowing me to make a few comments in regards to the Mississippi River Corridor Critical Area Propose Rules and how they pertain to public utilities services. Currently, the rules regarding public utilities, specifically their transmission lines (aka. Visual Pollution), are regulated under Executive Order 79-19, pgs. 1699-1700. Whereas under Part D, Permitted Public Facilities, Subp. 1, Transmission Services, Sect. E, Structure design of transmission services, I quote, "primary considerations shall be given to underground placement in order to minimize visual impact." Also, "economic consideration alone shall not justify overhead placement." The key element of the original executive order was to limit the impact of obstructing views along the shoreline and preventing access to the river itself. The executive order also implies that the public utilities cannot use the excuse that economic cost of placing the transmission lines underground is a burden.

I'm afraid that if the lines continue to exist, the riverfront would be ripe for development which would lead to barriers that would at the same time reduce the surrounding establish neighborhoods that exist above the falls, notably East Bank, St. Anthony West, Sheridan, Bottineau, Marshall Terrace, North Minneapolis, and their residences a direct access to the river. These communities have been denied access to the river for over a hundred years due to the city leader's designation of Northeast and North Minneapolis as the perfect location to place heavy industry, so they can grow in proximity of the river. This might be rational back when the falls where upriver and that locks allowed barges beyond the current falls. As one knows, the locks by the Stone Arch Bridge are closed. Because of the closure, many businesses have closed or moved from the community, not to mentioned that the Minneapolis Harbor has also closed, and that Minneapolis Park & Rec Board have been purchasing land up and down the river for the purpose of allowing those who live above falls the same access that their neighbors south of the Stone Arch bridge have been enjoying since the inception of Minneapolis.

Bottom line, the new rules have only two paragraphs that regulate the public utilities services, Subp. 6, Sect. A & B, pg. 44. Only, Sect. B mentions exactly what was stipulated in the Executive Order 79-19, part e, sect. 2 & 3, pg. 1700. That is all what the new rules have to offer for protection against the transmission lines and the "Visual Pollution" that it causes. This is woefully inadequate. The propose rules eliminate the requirement for underground placement and protections when there is overhead placement. Your Honor, I encourage you to keep the original Executive Order79-19 in regards to the public utilities and their transmission lines intact and disregard the abbreviated version of the propose rules.

Sincerely yours,
Dan Brady

Great River Coalition Member

620 4th st Ne
Minneapolis, Mn 55413

July 6, 2016

RECEIVED
by OAH on 7/6/16 @ 1:52pm

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
via fax 651-539-0310

Dear Judge Lipman:

I write in support of the comments you have received from the Mississippi National River and Recreation Area (dated June 28), a unit of the National Park Service (NPS), and Friends of the Mississippi River (dated July 6) in support of the Mississippi River Corridor Critical Area (MRCCA) Rules.

I believe my background and perspective on the Mississippi River Critical Area designation, legislative history of MNRRA and the development of its general management plan, and the process the past several years to adopt rules for this 72-mile segment of the protected Mississippi River, is relevant to your review of these proposed rules.

As Governor Wendell Anderson's environmental advisor when the Minnesota Legislature passed the Critical Areas Act with bipartisan support in May 1973, I was present at the signing of this new Minnesota law. I was a founding member of the Minnesota Environmental Quality Council (now Board) created by the Minnesota Environmental Policy Act and voted in 1976, representing the Minnesota Pollution Control Agency, to recommend to Governor Anderson that the Mississippi River Critical Area be designated by executive order. In the ensuing years, both Govs. Quie and Carlson affirmed that executive order.

As National Park Service assistant director in late 1979, I was at the meeting with NPS Director Whalen when Senator Dave Durenberger and Congressman Bruce Vento (representing Cong. Erdahl, Hagedorn and Sabo) requested the Park Service evaluate the rivers in the Twin Cities metropolitan area. The NPS reconnaissance study that followed led to P.L. 96-607 in 1980 that concluded that those rivers were of national significance and created the Mississippi River Corridors Study Committee (MRCSC) to make specific recommendations to the Congress. I was a citizen member of that Committee that proposed Congress designate the Mississippi River in the Twin Cities as a National River, given its national historic, recreational, cultural and economic significance, and, adopt the Mississippi River Critical Area boundary for the new national river.

Based on legislation sponsored by Sen. Durenberger and Cong. Vento, P.L. 100-696 was signed by President Reagan in November 1988 establishing the 72 mile Mississippi National River and Recreation Area (MNRRA) as a unit of the National Park System - the only designated national river segment in the entire 2350 mile Mississippi River. The MNRRA boundary was based on the 1976 Critical Area executive order boundary. A key understanding in this legislation, as affirmed in the legislative history, was the State of Minnesota would act in good faith in terms of regulating land use and development in this new national park. In 1991 the State revised the original Mississippi River Corridor Critical Area standards in support of that understanding.

The MNRRA statute also established the Mississippi River Coordinating Committee, composed of representatives of government agencies along with several citizens, to develop with the NPS an integrated resource management plan for the new National River and recreation area. I was appointed by the Secretary of the Interior to chair that Committee. The MNRRA general management Plan developed by the Committee and Park Service was signed by Department of the Interior Secretary Babbitt in 1995.

During the MNRRA plan process, with the assistance of the McKnight Foundation, a small group of us founded Friends of the Mississippi River (FMR) that works to protect the Mississippi River and its watershed in the Twin Cities area. I was the first chair of the FMR board in 1994 and have continued as a FMR board member to date.

The process to establish DNR rules for the MNRRA corridor began decades ago. Through the leadership and diligence of FMR and the National Park Service, and, bipartisan support of previous Governors and legislators these rules, once promulgated by the DNR, will guide local development in the MNRRA corridor for decades to come.

Based on my 40 plus year history as a public official, citizen advocate and nonprofit board member working to protect and restore the Mississippi River and its watershed in the Twin Cities, I urge you to support the final draft rules and forward them to the Minnesota DNR for approval.

Sincerely,

Peter L. Gove
14 Pearson Place
St. Paul, MN 55127

RECEIVED
by OAH on 7/6/16 @ 2:24pm

July 6, 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

I have two comments:

First: The band of properties on both sides of Highway 13 starting with the houses on the top of the bluff above Pickerel Lake, that are in the cities of Mendota Heights, Lilydale, and ending with the very large, newer houses in Mendota, should be in a River Neighborhood District and not in a Separated from River District. The existing properties are either in the middle of two erosive bluffs or on top of a highly erosive bluff. They are visible from many points along the Mississippi River and are very much part of what I would consider the river neighborhood. The bluffs along this stretch of Highway 13 have collapsed in various places in the past few years, more than noted in the paper on bluff failures.

The rules will be in place a long time. When this property gets developed or redeveloped it should be subject to the more stringent height and other requirements proposed for River Neighborhood Districts. This strip of land is very beautiful and fragile. We don't know what kind of pressure will exist in the future for types of development. This land should be protected now and in the future.

Second: Lilydale's current ordinance prohibits development on 18 percent slopes and has certain restrictions for building on 12 percent slopes as is required under the existing Critical Area requirements. These requirements should remain in the new rules.

Submitted by:

Marilyn Lundberg
1077 Sibley Memorial Hwy. #504
Lilydale, MN 55118

RECEIVED
By: OAH on 7/6/16 2:51 p.m.

Saint Anthony West Neighborhood Organization

909 Main St. NE, Lower Level
Minneapolis, MN 55413
(612) 378-8886
neighbors@stawno.org
www.stawno.org

July 6, 2016

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

Attachments (3)
FAX: 651.539.0310

The St. Anthony West Neighborhood Organization Executive Committee appreciates the opportunity to provide further comment on the proposed rule changes for the DNR's Mississippi River Corridor Critical Area.

We recognize the Mississippi River as one of STAWNO's most important assets – for the recreational opportunities and access to nature it provides to our region, as well as for its historical, cultural and environmental significance. Through the recent development of our Small Area Plan, we have found that the designation of River Neighborhood District does not fit with the desires of our community. A designation of Urban Mixed District would be more appropriate.

Throughout 2015 we engaged St. Anthony West through three community meetings, a neighborhood survey and conversations with business and religious leaders. The Small Area Plan developed in this process resulted in land use and built form plans that are inconsistent with the proposed MRCCA district. In particular, the proposed changes impact the development of:

- medium and high density housing on Main and Second in the southern portion of the neighborhood;
- mixed use and transitional industrial on the northern portion of the neighborhood;
- Parcel D of Scherer Brother's/Halls Island park, which the Minneapolis Park and Recreation Board intends to use to support ongoing maintenance of the park.

The Small Area Plan process has led us to believe that development consistent with an Urban Mixed District would enable the protection and preservation of the river while providing opportunity for more people to live, work, shop and play by the Mississippi.

Thank you for your consideration. Please contact me with any questions.

For the St. Anthony West Neighborhood Organization

Margaret Egan
Chair, St Anthony West Neighborhood Organization

cc: Councilmember Jacob Frey, Park Board President Liz Wielinski, Senator Kari Dziedzic, Representative Diane Loeffler

Saint Anthony West Neighborhood Small Area Plan: Volume 2

Acknowledgements

Board of Directors
David Pascoe, *Chair*
Pete Gamades, *Vice Chair*
Phil Cross, *Treasurer*
Alisa Mulhair, *Secretary*
David Blomquist
Dan Brady
Tony Farah
Diane Hofstede
Chris Linde
Bob Margl
Michael Rainville Sr.

Board Alternates
John Sticha
Suzanne Begin
Tony Hofstede
Linda Koutsky and Charlie Maguire
Girman Hassen

Student Board Member
Kayla Cross

Plan Steering Committee
Margaret Egan, Co-Chair
Diane Hofstede, Co-Chair
David Blomquist
Dan Brady
Girma Hassen
Tony Hofstede
Luba Lewytzkyj
Chris Linde
Janet Lobberecht
Bob Margl
Bob Morris
Michael Rainville Sr.
Gayle Bonneville, STAWNO Project Coordinator

Planning Consultants
Biko Associates, Inc.
Weber Community Planning, Inc.
PETER MUSTY, LLC
BFreshProductions, LLC

Special thanks are extended to Elsie's Restaurant: Bar and Bowling Center, Catholic Eldercare, Saint Maron's Catholic Church, and the Ukrainian.Center for providing meeting rooms and other support.

Saint Anthony West Neighborhood Organization
909 Main St NE, Minneapolis, MN 55413
612-378-8886
neighbors@stawno.org

Future Land Use Plan

As indicated by Figure 1, Future Land Use Plan, the neighborhood reaffirms most of the city's Land Use Plan map, but notes community-supported changes and/or important provisions.

Urban Neighborhood Land Use Category with Housing Densities

- **Low-Density Housing** 8 to 20 du / acre
- **Medium-Density Housing** 20 to 50 du / net acre
- **High-Density Housing** 50 to 100 du / net acre

Other Land Use Categories

- **Mixed Use** 50 to 80 du / net acre
- **Transitional Industrial**
- **Park**
- **House of Worship**

Land Use Features

- **Activity Center Boundary**
- **Community Corridor**
- **Neighborhood Commercial Node**

Figure 1
Future Land Use Plan

- Protect strong blocks, street character and neighborhood institutions
- Focus the most intense investment along transit lines
- Encourage small, neighborhood-serving shop fronts at key intersections
- Strengthen the walking experience in the neighborhood

Up to 2.5 Stories | Up to 2.5 (+1) Stories | Up to 3 (+1) Stories | Up to 4 (+1) Stories

Shopfronts Encouraged | Protection / Preservation | Parks | Future Plan

Figure 2:
Future Built Form Plan

Cottage Grove

Where Pride and Prosperity Meet

RECEIVED
By: OAH on 7/6/16 3:19 p.m.

July 6, 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 Corridor Critical Area (Critical Area).

The City of Cottage Grove is encouraged by the latest revisions of the rules related to the Critical Area. The proposed rules appear to be more reasonable and easier to govern the Critical Area than the existing criteria, and the creation of multiple regulation districts within the corridor and in Cottage Grove is sound regulation. The concern that the City of Cottage Grove (City) has with the proposed rules is the inclusion of the entirety of Lower Grey Cloud Island (Island) and surrounding open space islands in the CA-ROS District. The CA-ROS District has limited use and/or development opportunities, and the City is requesting a change to the district designation from CA-ROS, to River Neighborhood district (CA-RN) due to the following:

- The City of Cottage Grove has over 39 miles of shoreline and bluffs along the Mississippi River, and its associated backwaters have limited development opportunities to bring the River to the citizens of Cottage Grove and the region.
- There is existing residential development on the Island.
- There are existing approved plans to service the Island with public utilities.
- There is an existing concept master plan that has been reviewed before the City.
- Currently, all State, Regional, and County plans have the entire 1,400 acres of the Island guided for the development of a Regional or State park.
- The Cottage Grove Ravine Regional Park and the Grey Cloud Dunes Scientific and Natural Area (total of 741 acres) are untaxable. The inclusion of the 1,400 acres of additional untaxed land on Grey Cloud Island is impractical given that this total is 9 percent of the lands within the boundaries of Cottage Grove.

The City has identified the need for a major planning study for the Island that would involve all stakeholders interested in the future of the Island. The study would establish a comprehensive development/preservation plan that is representative of the needs of the Island's current property owner(s), the City, Region, and State. The study would also look at the missing information related to the logistics and costs needed to provide infrastructure in order to support a potential Regional park or site-sensitive mixed use development. There are many successful examples along the river of communities that have developed and preserved areas along the river, and Cottage Grove does not want to hinder that opportunity for our community. Many communities along the River have had the opportunity to develop and preserve potential development areas along the River; the City would like the same opportunity for the community of Cottage Grove.

The City of Cottage Grove has currently begun the 2040 update to the City's Comprehensive Plan. Discussion of the Island's future potential development will be a major component of the comprehensive plan update planning process. Based on the review of the criteria for the CA-ROS District, it is believed that the criteria would hinder current and anticipated land use scenarios for the Island if the criteria were to be put in place before the community has thoroughly vetted future Island land use through the planning process.

Given the limited use and/or development opportunities within the CA-ROS District, Cottage Grove is requesting a change to the district designation from CA-ROS to River Neighborhood District (CA-RN) that would allow for a mixed-use master planned development to be approved under the Ordinance Flexibility section identified in the Administrative Procedures Section 6106.0070 Sub part 6.

If you have any questions or concerns please do not hesitate to contact me. I can be reached at 651-458-2824 or via email at cstevens@cottage-grove.org.

Sincerely,

Charlene Stevens
City Administrator

OFFICE OF THE CITY ATTORNEY
Samuel Clark, City Attorney

CITY OF SAINT PAUL
Mayor Christopher B. Coleman

Civil Division
400 City Hall
15 West Kellogg Blvd
Saint Paul, Minnesota 55102

Telephone: 651 266-8710
Facsimile: 651 298-5619

RECEIVED
By: OAH on 7/6/16 3:45 p.m.

FAX TRANSMITTAL COVER SHEET

DATE: 7-6-16

TO:	Office of Administrative	FAX:	651-539-0310
TO:	Hearings: Katie Lin	FAX:	
TO:		FAX:	
TO:		FAX:	
TO:		FAX:	
TO:		FAX:	
TO:		FAX:	
TO:		FAX:	

FROM: _____ PHONE: _____

NUMBER OF PAGES (including cover sheet): _____

COMMENTS: Attached please find three documents for filing
RE: OAH Docket No. 8-9014-33236
(1) Certificate of Service by Facsimile Transmission
(2) St. Paul City Council Resolution 16-47
(3) City of St. Paul Comments on Proposed Mississippi River Corridor Critical Area Rule making

Confidentiality Notice: The document(s) accompanying this fax contain information which is legally privileged. The information is intended only for the recipient named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distributing, or taking of any action in reliance on the contents of this telecopied information except its direct delivery to the intended recipient named above is strictly prohibited. If you have received this fax in error, please notify us immediately to arrange return of the original document to us.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATION LAW SECTION
PO BOX 64620
SAINT PAUL, MINNESOTA 55164-0620

CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION

Case Title: Department of Natural Resources Proposed Rules Governing Mississippi River Corridor Critical Area

OAH Docket No.: VIII-9014-33236

Shari Moore, City Clerk of the City of Saint Paul, verifies by affirmation that on the 6th day of July, 2016, in the City of Saint Paul, Ramsey County, State of Minnesota, she served true and correct copies of the following documents by facsimile transmission:

1. Saint Paul City Council Resolution No. 16-47 dated July 6, 2016 approving and adopting by reference: Comments on Proposed Mississippi River Corridor Critical Area Rulemaking dated June 17, 2016; and

2. Comments on Proposed Mississippi River Corridor Critical Area Rulemaking dated June 17, 2016 from the Honorable Christopher B. Coleman, Mayor of the City of Saint Paul and City Councilmembers Russ Stark, Rebecca Noecker, Jane Prince, Chris Tolbert, Dan Bostrom, and Amy Brendmoen.

These documents are hereby submitted into the hearing record of the above entitled case as the Initial Comments of the City of Saint Paul to the Department of Natural Resources proposal to replace the provisions of Executive Order 79-19 and adopt new rules to regulate the Mississippi River Corridor Critical Area Critical Area which, if adopted, will be codified as Minn. R. 6106.0010 - 6106.0180.

This matter is set on for review before Administrative Law Judge Eric L. Lipman.

Shari Moore

Shari Moore, City Clerk

City of Saint Paul

City Hall and Court House
15 West Kellogg Boulevard
Phone: 651-266-8560

Signature Copy

Resolution-Public Hearing: RES PH 16-147

File Number: RES PH 16-147

Adopting official City comments on the proposed Mississippi River Corridor Critical Area (MRCCA) Rules. (Public hearing held May 18; laid over from June 22)

WHEREAS, the Mississippi River Corridor Critical Area ("MRCCA") was created in 1979 by Governor Al Quie with Executive Order 79-19; and
WHEREAS, the City of Saint Paul in 1982 duly adopted a MRCCA zoning ordinance pursuant to and consistent with Executive Order 79-19; and
WHEREAS, the Minnesota State Legislature in 2013 authorized and directed the Minnesota Department of Natural Resources ("DNR") to develop and adopt state rules ("Rules") to govern the management of the MRCCA; and
WHEREAS, the DNR has solicited informal comment on draft Rules from a variety of stakeholders, including the City of Saint Paul; and
WHEREAS, the Saint Paul Planning Commission on October 31, 2014 held a public hearing on the draft Rules; and
WHEREAS, the Saint Paul Planning Commission on August 21, 2015 provided to the City Council and Mayor a set of recommendations for comments on the draft Rules based on comments received at the Planning Commission public hearing and on analysis of the potential impacts of the Rules on Saint Paul residents and businesses; and
WHEREAS, on April 11, 2016, the MNDNR published a Notice of Hearing, signaling intent to adopt the ~~draft~~ proposed rules, initiating the formal rulemaking process, and opening the rulemaking record for public comment; and

WHEREAS, on May 18, 2016, the Saint Paul City Council held a public hearing to gather additional public comments on the Rules and inform official City comments on the Rules to be submitted during the formal DNR rulemaking process; and
WHEREAS, the Saint Paul City Council recognizes the importance of the Rules to conserve the scenic, environmental, recreational, minerals, economic, cultural, and historic resources and functions of the river corridor, and further recognizes the need to achieve a balance between these objectives ~~while minimizing the impacts to for residents and businesses.~~
NOW, THEREFORE, BE IT RESOLVED by the Saint Paul City Council that the ~~recommended~~ comments on the Rules from the Honorable Mayor Coleman and the Saint Paul City Council dated June 17, 2016, ~~provided by the Planning Commission on August 21, 2015, amended as to form and to reflect comments received at the May 18, 2016 public hearing on the Rules before the Saint Paul City Council~~, which reflect the input received from all stakeholders throughout the process memorialized herein, are hereby adopted as official City comments to be submitted ~~during the formal DNR~~ to the assigned Administrative Law Judge during the formal rulemaking process.

At a meeting of the City Council on 7/6/2016, this Resolution-Public Hearing was Passed.

Yea: 6 Councilmember Bostrom, Councilmember Brendmoen, Councilmember Tolbert, City Council President Stark, Councilmember Noecker, and Councilmember Prince

Nay: 0

Absent: 1 Councilmember Thao

Vote Attested by Council Secretary Trudy Moloney **Date** 7/6/2016

Approved by the Mayor Chris Coleman **Date** 7/6/2016

CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

25 West Fourth Street
Saint Paul, MN 55102

Telephone: 651-266-6565
Facsimile: 651-266-6549

June 17, 2016

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

From: The Honorable Christopher B. Coleman, Mayor
The Honorable Russ Stark, Council President
The Honorable Rebecca Noecker, Councilmember
The Honorable Jane L. Prince, Councilmember
The Honorable Chris Tolbert, Councilmember
The Honorable Dan Bostrom, Councilmember
The Honorable Amy Brendmoen, Councilmember

CC: Tom Landwehr, Commissioner, Minnesota Department of Natural Resources

Re: Comments on proposed Mississippi River Corridor Critical Area (MRCCA) Rulemaking

The City of Saint Paul has worked closely with the Minnesota Department of Natural Resources throughout the informal phase of the MRCCA rulemaking process, and we are appreciative of the opportunity to submit comments during the final, formal phase of this process. The City of Saint Paul, as memorialized in the attached resolution, has conducted its own internal process, including two separate public hearings, to gather input on the proposed rules. With this background, the City offers these comments on the proposed rules.

The City of Saint Paul strongly supports the rulemaking process and proposed rules to provide protection of the river corridor for future generations while accommodating economic activity and urban redevelopment where appropriate. Adoption of new state rules to replace Executive Order 79-19 in providing minimum standards to guide local planning and ordinances for the MRCCA is an important step forward.

The City of Saint Paul acknowledges the substantial efforts by DNR staff to understand the unintended potential impacts of some aspects of the proposed rules on redevelopment within the corridor, and the corresponding changes to the rules made as part of the informal rulemaking process. The City also acknowledges the important contributions of our partners and all stakeholders to the informal rulemaking process and the development of these City comments.

The City of Saint Paul supports building height limits necessary for the purpose stated in the Statement of Need and Reasonableness (SONAR) to protect river corridor views, the standard proposed in the rules for evaluating impact on river corridor views based on views toward bluffs from the opposite shore, and the mandate to implementing units of local government to identify additional important public river corridor views as part of development of local river corridor plans.

The City of Saint Paul strongly supports the inclusion in the rules of language providing for flexibility in development of ordinances pursuant to the rules (Sec. 6106.0070, Subp. 6, beginning

line 23.22). While the rules help to establish corridor-wide standards, the broad districts by which dimensional standards are applied are an inherently blunt tool for an area as large as the MRCCA where both landform and historical development patterns vary widely. Through the flexibility provision, local planning efforts can take a finer-grained look at issues such as visual impact, setting height standards that can better protect resources and avoid undue regulation and discretionary permitting processes where not needed to achieve resource protection.

Throughout the informal rulemaking process, the City of Saint Paul has suggested the inclusion of an urban parks district in addition to the 6 districts included in the proposed rules. While the City still believes the creation of a new urban parks district would be a good addition to the proposed rules, the City recognizes that most existing and potential future parks facilities are or would be permissible under the rules, provided that:

- The area around the Watergate Marina (a Saint Paul Parks and Recreation facility located in Crosby Farm Regional Park) is included in the CA-RN (River Neighborhood) district. This change makes treatment of the Watergate Marina consistent with treatment of other marinas in the MRCCA.
- The exemptions from setbacks, height limits, and other requirements included in the proposed rules (Sec. 6106.0180, beginning line 61.8) to provide for elements common to urban parks remain in the adopted/final rules. The City acknowledges and appreciates that some of these exemptions were added to the proposed rules based on comments from the City and other parties to the DNR during the informal portion of the rulemaking process.

The City of Saint Paul supports and appreciates changes incorporated into the proposed rules in Sec. 6106.0070 Subp. 7 (lines 25.24-26.2) that ensure uniform administrative requirements for all agencies responsible for developing and managing parks within the MRCCA, regardless of governmental unit.

The City of Saint Paul supports bluff impact zones and setbacks necessary for the purposes stated in the SONAR to protect steep, unstable, natural bluff features from failure and erosion; to protect public safety and property investments; and to limit the visual impact of structures on scenic resources. The City understands the difficulty of defining bluffs for these purposes using relatively simple height and slope criteria that can be applied uniformly across the MRCCA corridor. The City also appreciates the substantial effort by DNR staff in trying to do this, responding to many comments they received as part of the informal rulemaking process by simplifying and combining "bluff" and "very steep slope" definitions and regulations into bluff and bluff impact zone definitions and regulations, and in so doing changing the draft bluff definition from a slope at least 25 feet high with an average slope of at least 30% to a 25 ft. high 18% slope or a 10 ft. high 100% slope (Sec. 6106.0050 Subp. 8, lines 2.24-3.7). To avoid any gap between this new definition of "bluff" and the definition of "steep slope," the definition of "steep slope" (Sec. 6106.0050 Subp. 72, lines 12.13-12.15) should be *a natural topographic feature with an average slope of more than 12 percent, measured over a horizontal distance of at least 50 feet, that is not a bluff.*

The City generally supports the definition of "bluff" in the proposed rules with a caveat. This bluff definition would continue to pick up relatively low, gentle, stable slopes that can be protected from erosion and failure by less intrusive means than prohibiting development on and near them; little slopes that are not part of primary bluff complexes facing the river and that do not affect river corridor views; and slopes in fully developed areas, with development on and near them, that have little or no original natural vegetation. The City of Saint Paul requests clarification in the rules that the flexibility provision in the rules (Sec. 6106.0070, Subp. 6, beginning line 23.22) would allow for exemption of such slopes from the bluff definition and/or bluff impact zone and setback requirements where regulation of them as bluffs is not necessary for the purposes of the critical area.

VIA FAX 651 539-0310 --- 5 pages

RECEIVED
By: OAH on 7/6/16 3:49 p.m.

Edna C. Brazaitis
4 Grove Street, Apt 4A
Nicollet Island
Minneapolis, MN 55401

Administrative Law Judge Eric J. Lipman
Office of Administrative Hearings
600 North Robert St
St. Paul, MN 64620

OAH Docket No. 8-9014-33236
Rev # R-4240

Dear Judge Lipman:

As I testified, I request that all of Nicollet Island be placed in the River Neighborhood District.

After the meeting, I had discussions with the City of Minneapolis about why the island was divided in two. They failed to identify any reason why half of the Island belongs in the River Towns and Crossing (RTC) rather than River Neighborhood (RN). The City said height of the current buildings is not an issue preventing inclusion in RN and that no development or redevelopment is anticipated.[1]

The difference between the two districts is that the RN puts more of an emphasis on natural resource management, preservation of views, while RTC is to be managed to allow growth and of historic downtowns, like Hastings and "intensive redevelopment" of land adjacent to river crossings.

The guiding plans for the area such as the Nicollet Island and East Bank Small Area Plan which was made part of the Minneapolis Comprehensive Plan in 2015 states: "The Plan envisions no changes to zoning or other land use controls on Nicollet Island during the next 20 years....with multiple overlapping special districts applicable to this part of the neighborhood there is little possibility of material change in the pattern of

[1] Staff also did a rough look at set-backs under RN. While it was a rough estimate of the Ordinary High Water line with an oblique map, the only buildings currently in RTC that may be possibly slightly within the set back were 2 historic buildings and possibly a third. These historic buildings are exempt from the dimensional requirements. In addition, while it is hard to tell from the map, the front steps of a non-historic townhouse may be within the setback. The rules allow for lateral additions if that was possible. Expanding toward the river is made impossible by property boundary lines, restrictions on modifying buildings in a historic district, and in one case the flood plain. The DNR has explained that existing structures such as the front steps could be repaired and replaced even if in a set-back. Therefore the set-back requirements under RN is not a problem.

development."[2] Thus the kind of intense development that is a characteristic of RTC is not possible.

District placement is important because the RTC District allows for a increase in height with a Conditional Use Permit (CUP), while the RN District would require a variance for an increase in height.

There is a vast difference between the legal standard between a CUP and a variance. A CUP is for something that is generally permitted, while a variance is an exception for something that is forbidden under the zoning ordinance.

The League of Cities has provided guidance on this issue in their Information Memo, Zoning Decisions, June 11, 2011. Please note that the League states that variances are "...generally used for dimensional standards such (such as setbacks or height limits)".

> Conditional and Interim Use Permits...
>
> City councils sometimes misunderstand the level and the nature of discretion they have when reviewing applications for conditional use permits. If a proposed conditional use satisfies the conditional use standards set forth in the zoning ordinance, then generally the landowner is entitled to the conditional use permit.
>
> pg 4
>
> Variances
>
> Variances are an exception to rules laid out in a zoning ordinance. They are permitted departures from strict enforcement of an ordinance provision as applied to a particular piece of property if enforcement would cause "practical difficulties." Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan. Variances are generally for dimensional standards (such as setbacks or height limits) and may not be used to allow a use that is prohibited in the particular zoning district. Essentially, variances allow the landowner to break the dimensional rules that would otherwise apply. pg 2

Minneapolis's zoning ordinance specifies maximum heights. However those maximums can be increased in residence districts with a CUP. Minneapolis Ordinance 546.110. There is no limit to the amount that the building height can be increased.

Therefore, the City routinely increases height with a CUP. For example, the proposed Alatus project in the Critical Area and the Historic District is asking the City for a CUP to

---

[2] NIEBNA small area plan, pg 2.8.

increase the height from the underlying zoning which is 4 stories, 56 feet to 42 stories, 485 feet.

As the charts below show, all of Nicollet Island is better placed in RN than RTC. It is "unreasonable" to place half of Nicollet Island in RN and half in RTC.

Character of RN	Fits	Rationale
primarily residential neighborhoods	Yes	All zoned residential. Historic buildings in one of the oldest neighborhoods in Minneapolis. Historic buildings exempt from dimensional requirements
riparian or readily visible from the river or that abut riparian parkland	Yes	Island with parkland on water side. Readily and easily visible.
includes parks and open space	Yes	2/3's of the Island is owned by the Minneapolis Park Board
limited commercial development	Yes	Only one commercial property. Small Inn and restaurant, legacy use owned and leased by the Park Board
marinas	Yes	One small boat dock and landing
related land uses	Yes	A school and a park pavilion. Schools are permitted uses in a residential neighborhood.

Management for RN	Fits	Rationale
maintain the character of the river corridor within the context of the existing residential and related neighborhood development	Yes	Called for in adopted Small Area Plan, Regional Park Master Plan, St Anthony Falls Historic District Guidelines
and to protect and enhance habitat, parks and open space	Yes	Called for in adopted Small Area Plan, Regional Park Master Plan, St Anthony Falls Historic District Guidelines

Management for RN	Fits	Rationale
public river corridor views	Yes	Views to and from the Island called out in Regional Park Master Plan, National Register for St Anthony Falls Historic District; Minneapolis Critical Area Plan
scenic, natural, and historic areas.	Yes	Called for in adopted Small Area Plan, Regional Park Master Plan, Entire Island is in St Anthony. Covered by Historic District Guidelines
Minimizing erosion and the flow of untreated storm water into the river and enhancing shoreline habitat are priorities in the district	Yes	All island stormwater goes to the river. Called out by Park Plan. Working on grant for Vegetative management plan and habitat restoration.

Character of RTC	Fits	Rational
historic downtown areas	No	Island is not part of a "historic downtown" like Hastings. It is a historic residential neighborhood, historic school and 2 repurposed historic industrial buildings.
limited nodes of intense development at specific river crossings	No	None. bridge zoned R1A, single family. At bridge parking for park and school.
as well as institutional campuses that predate designation of the Mississippi River Critical Corridor Area and includes taller buildings	No	N/A. I understand that this was to allow some college campuses.

Management of RTC	Fits	Rationale
managed in a manner that allows continued growth and redevelopment in historic downtowns	No	Not a "historic downtown". Small area plan states no change predicted for next 20 years. Bridge area is zoning R1A, single family, the most restrictive zoning in Minneapolis. Much of the land has restrictive covenants that restrict use only to regional park open space.
and more intensive redevelopment in limited areas at river crossings to accommodate compact walkable development patterns and connections to the rivers	No	Bridge area is zoning R1A, single family, the most restrictive zoning in Minneapolis. Much of the land has restrictive covenants that restrict use only to regional park open space.
Minimizing erosion and the flow of untreated storm water into the river	Yes	Same as RN
providing public access to and public views of the river	Yes	Same as RN
restoring natural vegetation in riparian areas and tree canopy are priorities in the district	Yes	Basically RN but RN is focused on habitat.

Given that clearly the characteristic of entire Island fits in RN but not RTC, I ask that all of Nicollet Island be placed in the RN District.

Sincerely,

Edna C. Brazaitis

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St. Paul Park MN 55071
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City of St. Paul Park

Fax

To:	KATIE LIN, OFFICE OF ADMIN HEARINGS	**From:**	NATE SPARKS, CITY PLANNER
Fax:		**Pages:**	2
Phone:		**Date:**	7-6-16
Re:	MISSISSIPPI RIVER CRITICAL AREA RULEMAKING	**cc:**	

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• **Comments:**

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City of St. Paul Park

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July 6, 2016

To: Office of Administrative Hearings
Attn: Katie Lin
PO Box 64620
Saint Paul, MN 55164-0620
Fax (651) 539-0310

Re: Mississippi River Critical Area Rulemaking
Docket #8-9014-33236 R-4240

The City of St. Paul Park would like to offer the following comments in regards to the proposed Mississippi River Critical Corridor Area rulemaking:

1. There is land identified as CA-ROS on the south end of the City. This designation is identified as "Rural-Open Space". Much of this land borders County Road 75. There are utilities adjacent to this area. This property is one of the few limited areas available for the growth of the City, and was annexed to the City in order to allow for future urban development. The City would like to have this property reclassified as CA-RN to allow for urban development in this area. If that's not possible, partial consideration for the non-riparian parcels in the area would be appreciated.

2. The City's marina is located in the CA-RN District. It is understood that this designation permits "limited commercial" and "marinas" per Section 6106.0100 Subp. 4. The City developed a mixed use zoning district to take advantage of the key community asset of the marina. Therefore, the City developed a zoning district that allows for a mixture of commercial and residential uses, which was reviewed and accepted by the DNR, for this area. It is unclear in the draft rules what "limited commercial" means but the City assumes that the previously accepted mixed use designation remains acceptable.

Thank you,

Nate Sparks
City Planner
City of St. Paul Park

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SAINT PAUL PORT AUTHORITY

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FAX COVER SHEET

Date: 7/6/16

To: Judge Lipman

Fax No: 651-539-0310

From: Lee Krueger

Number of pages, including cover sheet: 6

Message:

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July 6, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
Saint Paul, MN 55165-0620

RE: Revisor #R-4240 Mississippi River Corridor Critical Area Rulemaking

Dear Judge Lipman:

Thank you for your time on June 16, 2016 to hear testimony from Lorrie Louder, the Port's Senior Vice President of Business & Intergovernmental Affairs, on the Draft Rules provided by the DNR. We appreciate the opportunity to provide comments about these proposed rules.

We concur with the comments provided to you by the Saint Paul Area Chamber of Commerce and Saint Paul City Planning Commission, as well as those that will be forwarded to you by the City of Saint Paul.

We have been working with the DNR—Jennifer Shillcox and her staff—for the past six or so years, and we have been impressed with their cordial demeanor throughout these lengthy processes. This undoubtedly has not been a simple task, and their willingness to have conversations with us throughout this process is noteworthy. We commend Jennifer and her staff for this consistent and amiable responsiveness. The draft rules evidence a lot of hard, dutiful work, but as set forth below, the Port Authority believes there are fundamental flaws that should be corrected.

The Saint Paul Port Authority is an 87 year old redevelopment agency which was formed by the Legislature. The Port Authority's priorities are to manage the Saint Paul Harbor; to take blighted and fallow properties, with complex environmental and other serious issues, and bring them into marketable condition; and to assist expanding companies that pay taxes and provide jobs with good wages to grow in Saint Paul and the East Metro area.

Port Authority Staff Expertise in Land, Development, Private Property Rights

The Port Authority has specific high level staff expertise and a successful real estate transaction track record in economic development and environmental stewardship. This expertise includes the areas of industrial and commercial land use, development and redevelopment, private sector property rights, and real estate and financing transactions with private sector businesses.

The Law

The Port Authority believes that it is vitally important that the DNR draft rules reflect the language and intent of the authorizing statute (MS 116G.15). The law requires a balance of interests 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" (Minn. Stat. Sec. 116G.15(2)(a)(3)). The law therefore requires business and economic uses continue without undue regulatory burdens.

Statement of Need and Reasonableness of the Rules (SONAR)

The DNR SONAR, page 12, indicates 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 identified in the law. Also included on the same page is the following: "DNR was mindful of costs and potential intrusion on local control and property rights when developing these necessary provisions."

Saint Paul Port Authority Comments and Concerns

In certain areas in the draft rules the Port Authority does not see evidence of DNR mindfulness of intrusion, or necessity and reasonableness of the draft rules.

The failures of the DNR to prove that these proposed rules are needed and reasonable equates to DNR failing to meet some of the required factors necessary for a full regulatory analysis.

We believe that the DNR has not fully followed state law regarding the requirement that industrial and commercial properties be allowed to be developed and redeveloped.

These failures pertain to the areas of negative impact on local governments; negative impact on businesses attempting to expand their operations; absence of DNR-generated data on intrusive rules that will lead to business nonconformities; inappropriate and undue requirements of private property owners in the Saint Paul Harbor and elsewhere regarding conservation land set-asides. The proposed draft rules include:

1. The elimination of local planning and regulatory control, except in certain exceptional circumstances;
2. Likely significant administrative cost burden to local governments;
3. The significant stigma on private sector operating businesses that will occur as they are prevented from expanding and labeled as nonconforming;
4. The lack of DNR analysis regarding the number of privately-owned properties that will be negatively affected by definitions and requirements that will cause nonconformities;
5. The DNR requirement in Sec. 6106.0170 (Subdivision and Land Development Standards), Subp. 2 pertains to Conservation Area Set-asides for Habitat.

6. The lack of addressing the nonconformity issues by suggesting other ways to achieve critical area goals while minimizing the negative impact on businesses.

These draft rules:

A. Inappropriately Take Away Local Government Land Use and Zoning Controls
Elements of these draft rules are inconsistent with existing development and growth and expansion opportunities, and we believe they will create non-conforming buildings.

Therefore, this draft language is inconsistent with the expressed guidelines of:
1. Continued development
2. Protection of industrial, commercial, and residential resources
3. Redevelopment of a variety of urban uses

Broad brush regulations in the draft rules take over both the thoughtful, finer-grained area and site-specific planning and zoning functions and regulations promulgated by the City of Saint Paul over many decades.

B. Create Non-Conformities/Concerns About Private Property Rights
We believe that the law does not allow the DNR to stigmatize properties, lower property values, create negative messages to businesses, cause added expense to public and private sector entities, or put an investment chill in the marketplace.

The way in which bluffs are defined in the proposed rules, along with restrictions on slopes, creates many non-conforming structures. There are slopes that are commonly and safely built on, for which large setbacks are unnecessary.

The DNR has not undertaken any analysis of the number of properties that would likely be negatively affected. We therefore relied on another party's analysis. We wish to clarify that in testimony to you on June 16, 2016, we referred to this information, but subsequent to that testimony, we received an updated analysis. We therefore wish to retract our statement that over one thousand properties will be impacted; the updated analysis estimates several hundred properties will likely be affected in Saint Paul alone.

Our concern still stands that negative impacts of this magnitude on private properties run counter to the law and to the established guidelines in the SONAR.

The creation of nonconformities sends the wrong message to property owners, developers, and the overall marketplace. Nonconformities stigmatize businesses in several ways, including:

- Structures cannot be expanded. Many improvements will need to go through a time-consuming non-conforming use permit process.
- Business growth, job creation, and tax base enhancement will be negatively affected.

- Property devaluation will occur, and property owners will have difficulty selling their property.

This creates the risks of takings, inverse condemnation suits, and damages awarded against the public sector, for which no budget exists. Presumably the State will hold local government harmless against any and all such claims, but if this presumption is in any way in error, then this situation merely underscores the rules overreach.[1]

The Port Authority is very concerned about the stigma of being nonconforming, and that DNR development restrictions will undermine important investments already made, and inhibit future investment and reinvestment in these non-conforming structures.

The DNR has not adequately addressed these issues; has not analyzed the impacts; and has not proven that the rules represent the least cost, least intrusive, and least financially risky strategy for achieving the purpose of the critical area.

The Port Authority recommends that the DNR minimize the negative impact on businesses. We request that the rules do not over-regulate. It is not necessary for the DNR to cause so many nonconformities.

While the DNR's most recent proposed bluff definition has been refined to reduce the number of nonconformities, it would continue to include some relatively low, gentle, stable slopes that can be protected from erosion and failure by less intrusive means than prohibiting development on and near them. It would include some small slopes that are not part of the primary bluff complexes facing the river and that do not affect river corridor views. It would also include some slopes in fully developed areas, with development on and near them that have little or no original natural vegetation.

The Port Authority requests that you require the DNR to provide clarification in the rules that the Flexibility Provision (Sec. 6106.0070, Subp. 6, beginning line 23.22) allows for exemption of such slopes from the bluff definition and/or bluff impact zone and setback requirements, where regulation of them as bluffs is not necessary for the purposes of the critical area.

C. Require Set-Asides of Privately-Owned Land by Property Owners for Habitat and Public Conservation

We question the very burdensome rules requiring that private property owners must undertake a vegetation analysis and provide Conservation Easement Set-Asides for habitat without just compensation for the 10-50% set aside. These activities are the responsibility of the public sector. This creates, we believe, further inverse condemnation exposure.

[1] The Port Authority makes no opinion as to the merits of such claims but merely notes the reality of such claim exposure.

This section of the rules will negatively affect the Port Authority's Red Rock Shipping Terminal and the Southport Shipping Terminal, as well as some properties in the Port Authority's land-based Business Centers. We request that rules which will impair shipping in the Saint Paul Harbor be stricken. The shipping activity in our Harbor, which is undertaken by private sector businesses, provides vital services for Minnesota agriculture and other sectors, and is a substantial contributor to the state's economic health.

D. Create Undue Administrative Burden on Local Governments and Businesses
The proposed rules in the areas cited above will generate unnecessary and intrusive impacts on local governments and businesses, especially in time and cost.

The variance process and the lack of clarity in the rules regarding development and administration of ordinance requirements will cause an administrative burden for local governments and businesses. Development restrictions that negatively affect private property owners and additional permit and variance processes will negatively affect businesses with an undue amount of time and cost to maintain their property rights that were in place before the enactment of these rules.

Judge Lipman, given the information provided above, we request that you find that the DNR has not proven the necessity and reasonableness of the sections of the rules noted above.

Thank you for your consideration of the Port Authority's concerns.

Sincerely,

Lee Krueger
President

cc: Lorrie Louder, Senior Vice President of Business & Intergovernmental Affairs
Eric Larson, General Counsel
Kathryn Sarnecki, Vice President of Redevelopment & Harbor Management
Jennifer Shillcox, Manager of Waters Division & MRCCA Rulemaking, MN DNR
Donna Drummond, Manager, Planning, City of Saint Paul, PED
Matt Kramer, President, Saint Paul Area Chamber of Commerce
Marie Ellis, Director of Public Affairs & General Counsel, Saint Paul Area Chamber of Commerce