



Request for City Council Committee Action from the Department of Community Planning and Economic Development

Date: July 30, 2014

To: Council Member Lisa Bender, Chair, Zoning and Planning Committee

Referral to: None

Subject: Response to DNR Request for Comments on Mississippi River Corridor Critical Area (MRCCA) Draft Rules

Recommendation:

1. Request the Committee Receive and File the draft letter in response to the Minneapolis Department of Natural Resources' (DNR) request for comments on Mississippi River Corridor Critical Area (MRCCA) Draft Rules.
2. Direct staff to continue to work with the DNR on the rulemaking process to ensure that City interests are addressed.
3. Direct that future Council actions in response to changes to the critical area rules, including ordinance amendments, will continue to occur in the regular reporting committees of responsible departments.

Previous Directives: None

Department Information

Prepared by: Haila Maze, Principal Planner
Approved by: Kjersti Monson, Long Range Planning Director
Presenters in Committee: Haila Maze

Financial Impact

No financial impact

Supporting Information

The Minnesota Department of Natural Resources (DNR) currently is soliciting public comments on potential new rules for the Mississippi River Corridor Critical Area (MRCCA). The purpose of this memo is to provide background on this action, its implications for the City of Minneapolis, and next steps in responding to the rules.

This is intended to be just a summary of the issues. More information, including the full text of the draft rules, is available on the MRCCA website:

<http://www.dnr.state.mn.us/input/rules/mrcca/index.html>. (For brevity, rule document not included as part of this packet.)

Background

The MRCCA is a land corridor along the Mississippi River within the seven-county metropolitan area. In Minneapolis, this includes land within roughly 1,000 feet of the Mississippi River on both banks throughout the city. Land development in the corridor is currently guided by state regulations that are implemented through local plans and zoning ordinances. The general intent of this designation and its regulations is to protect and preserve the river corridor, including aspects of its natural, aesthetic, cultural, and historic value.

The MRCCA was established in the 1970s by Executive Order, a type of state regulation that cannot be readily changed or updated. In 2009, the Minnesota Legislature directed the DNR to establish rules to replace the outdated standards in the Executive Order. The rulemaking process was put on hold in 2011 and the DNR's authority expired. In 2013, the Legislature restored DNR's rulemaking authority and made changes to the statutory language guiding rule development to better address local government concerns.

The current rulemaking process has been underway since mid-2013, during which time the DNR has developed a working draft of the rules following consultation with local governments and other interested parties. These are now available broadly for public review and comment. A Request for Comments was published in the June 2, 2014 State Register, and the DNR will accept comments through August 15, 2014.

Current Regulations

The current regulations, dating back to the 1970's, are reflected in the Minneapolis Zoning Code and Minneapolis' Critical Area Plan. The City's Mississippi River Critical Area Overlay District covers the entire critical area, and regulates growth within that area. As stated in the regulations, these are "established to prevent and mitigate damage to the Mississippi River, to preserve and enhance the Mississippi River's natural, aesthetic, cultural and historic value for public use, to protect and preserve the biological and ecological functions of the Mississippi River corridor, to comply with the requirements regarding the management of critical areas, and to protect the public health, safety and welfare."

Regulatory guidance for the MRCCA, based on a 1979 Executive Order, was incorporated into the City ordinances, most specifically through the Critical Area Overlay District.

Highlights include:

- Uniform 40 foot setback from top of bluffs
- Height restrictions within 300 feet of the river or floodplain, or 100 feet from bluff, limiting buildings to 35 feet or 2.5 stories
- Some height exemptions in Downtown riverfront area
- Restrictions on off-site signs

- Application of Shoreland Overlay District regulations – there is significant overlap between these two districts
- Ability to apply for variances to these standards, requiring notification of the DNR

The City also is guided by its Critical Area Plan, adopted by the City Council in 2006, which includes a description of the features in the critical area, and details policies and implementation strategies to ensure that City actions in the MRCCA are consistent with the state guidance.

Changes in New Draft Regulations

There have been a number of changes to the MRCCA since its existing regulations were adopted over 30 years ago. One of the most significant has been the continued development of communities along the entire corridor, and the creation of local comprehensive plans and zoning ordinances, where in some cases there were none before.

There also has been the recognition that the very general development guidance for the corridor needs to be customized more specifically to reflect the wide diversity of conditions along the corridor – from rural agricultural areas to urban downtowns.

This contributes to some distinctive differences between old and new, which are briefly described below. For more information, references to the draft rules are included.

- **Newly defined character districts.** While there was some reference in the existing regulations to differing areas, the new regulations take it much further in terms of varying setbacks, height, and other development guidance based the existing character of the area. This includes allowing taller buildings and reduced setbacks in more urban districts, reflecting existing character and development potential. A map showing these districts is attached. Part 6106.0120 (page 26 of the draft) describes the new districts and their standards. These new standards show more deference to existing zoning, as demonstrated in the table below.

Proposed Working Draft Rules – Dimensional Standards

	CA-ROS	CA-RN	CA-RTC	CA-SR	CA-UM	CA-UC
Height	35'	35'	48-56' TBD CUP > 56'	Underlying zoning	65' CUP > 65'	Underlying zoning
River Setback	200'	100'	75'	NA	50'	Underlying zoning
18% Slope Setback	100'	40'	40'	40'	40'	40'

- **Fewer nonconformities.** By taking into account local context more directly, the new rules are more accommodating of existing conditions and expansion of nonconforming uses. Part 6106.0080, subpart 3 (page 18 of the draft) provides more details on the proposed standards.

- **Stronger rules on vegetation and land alteration.** DNR's observation of practices of clearing vegetation and modifying shoreland has led to stronger guidance on what is allowed, particularly near bluffs and steep slopes. Part 6106.0150 (page 32 of the draft) has more information.
- **Incorporation of new guidance on visual impacts.** As described in section 6106.0120, Subpart 2 (page 27 of the draft), visual impacts on the river will now be assessed based on the Mississippi National River and Recreation Area Visual Resources Protection Plan, developed by the National Park Service.
- **Specific guidance for public recreation facilities.** As a significant portion of the riverfront in Minneapolis is publicly owned parkland, it is notable that specific guidelines apply to public recreation facilities, as described in Part 6106.0130 (page 28 of the draft)
- **Updated responsibilities of involved jurisdictions.** The rules clarify the various roles of the DNR, municipalities, the Metropolitan Council and others in the development of and adoption of plans and regulations, and in the subsequent administration and enforcement actions. More information in Part 6106.0060 (page 10 of the draft)

Implications for Minneapolis Properties

All land owners, residents, and tenants within the designated Critical Area are affected by this rulemaking process. Indeed, all property owners are now receiving a mailed notification of the rulemaking and their opportunity to comment. To help people understand the implications of this process to them, the DNR has put together a Homeowner's Guide to the MRCCA Working Draft Rules (attached). Some highlights:

- Critical area rules already apply to all properties in the Critical Area, and have since the 1970's. This is reflected in the existing Minneapolis zoning ordinance.
- Height and setback regulations are likely to be the same or less restrictive for most property owners, particularly homeowners.
- There is now more clarity on the ability to expand nonconforming uses.
- There are potentially more restrictions on vegetation removal and land alteration. This applies mostly to areas near bluffs, steep slopes, or very close to the river.
- Additional restrictions apply to direct water access to lots. This is applicable to relatively few Minneapolis land owners, as most residential properties do not front directly on the river.

Similar guidance applies to other land uses in the critical area. The major exception is the Downtown area, which has more flexibility with regards to the standards. The Upper Riverfront is likely to be most directly impacted in terms of redevelopment, as it is more likely to transition than other areas.

Summary of Minneapolis Comments

The current draft reflects staff-level input from the City of Minneapolis and the Minneapolis Park and Recreation Board, responding to an earlier working draft released late 2013. Attached is a letter to be submitted to the DNR in response to the current comment period. Highlights of the current position:

- Minneapolis is committed partner to DNR, and shares DNR's values and objectives regarding the protection and enhancement of the river corridor.
- As an urban center, Minneapolis' riverfront – particularly its Central Riverfront – is a unique asset with a different role than in more rural or natural areas of the corridor.
- In appropriate locations, an active urban riverfront edge can be as consistent with the DNR's mission as is a more passive natural edge elsewhere.
- The rules should be designed to be clearly written and seek to minimize the administrative burden on all parties involved, to ensure they can be effectively implemented.
- Flexibility is desirable in the regulatory requirements, to allow for a variety of local conditions and to accommodate other effective regulations and approaches already in place.
- Some clarity is still needed on certain points in the rules, including but not limited to:
 - How bluffs are mapped and defined – the draft defines bluff (Part 6106.0050, page 2) but does not precisely map the bluff line throughout the corridor
 - How primary conservation areas are defined and used – the draft broadly defines primary conservation areas, noting the intent is to protect them (Part 6106.0050, page 6). However, the definition is broad and could include a wide range of features and conditions along the corridor.
 - Additional clarity on the points raised in the Changes in New Draft Regulations section, including vegetation and land alteration controls.

As the current comment period ends August 15, 2014, it is staff's recommendation that this comment letter be submitted on behalf of the City prior to that time. Once the rulemaking process is finalized, there likely will be a need to be a follow-up action to update City regulations and policies to ensure consistency with the new state regulatory guidance. Discussion of this will follow at a later date.

Attachments

- Draft Minneapolis comment letter
- DNR Request for Comments