



Minneapolis
City of Lakes

August 7, 2014

**Community Planning &
Economic Development**

Division of Long Range Planning
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Minneapolis, MN 55401

Daniel Petrik
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Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4032

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

Dear Mr. Petrik,

The purpose of this letter is to provide comments from the City of Minneapolis on the Mississippi River Corridor Critical Area Draft Rules, in response to the June 2 Request for Comments published by the Minnesota Department of Natural Resources (DNR). We affirm that the current draft is responsive to many of the comments raised in the October 12, 2013, letter from City staff to the DNR, with many of the requested changes reflected in the current version. However there are a number of concerns that remain. This letter restates the values outlined in our prior comments, raises additional significant concerns, and responds to some additions to the plan that were not present in the previous draft.

We remain a committed partner to the DNR, and share the DNR's values and objectives with regard to the protection and enhancement of our river, a regional asset. We appreciate the effort in the rules to distinguish between the variety and diversity of places along the riverfront, from rural open space to urban downtowns. We have identified some inconsistencies in the rules with regard to how that diversity will be reflected in the application of the rules, which we will outline. We continue to support a flexible framework that allows us to work toward preserving and enhancing the river corridor, while sustainably accommodating growth and change.

The following pages include our summary of key themes as well as detailed comments referenced to the June 2014 Draft MRCCA Rules. We are available to provide additional clarification and details on our comments as needed. These comments were reviewed by the City Council at their Zoning and Planning Committee meeting on August 7, 2014.

Regards,

Kjersti Monson
Director, Long Range Planning
Community Planning and Economic Development
City of Minneapolis

Summary of Key Themes:

1. **Recognize the unique character and potential of the urban riverfront through rules that embrace and celebrate an active edge.** As stated in our October 2013 letter and in meetings since then, the City of Minneapolis supports the idea of a diversity of districts within the Critical Area. We are especially interested and supportive of the creation of the Urban Core district in order to continue to move forward on the vision outlined in the Downtown 2025 plan and our emerging Downtown Public Realm Framework. In our prior letter, we noted that “DNR rules have not viewed the central riverfront in downtown as substantially different from other, less urban, parts of the river with regard to regulated setbacks and height limits; the rules don’t acknowledge the central riverfront as a cultural resource and urban amenity with its own unique potential.” Since the submittal of that letter, we have seen substantial progress on this in the evolution of the maps and the creation of the “Urban Core” district. A definition of diverse districts now resides within the rules. However, we are disappointed to see that aside from the definition of districts, there is actually no meaningful variation from one district to the next with regard to how rules are applied. There is no district lens on exemptions, for instance, which would be one way to set the Urban Core district apart from others with regard to regulating certain edge conditions. We therefore seek much better integration of the concept of an urban core district with the actual rules guiding outcomes. In an urban district, setbacks, interaction with the edge, and relationship to slopes and bluffs should be substantially different from those same elements as they are guided in a rural district. If this is not possible, then we request that the Urban Core districts be exempted from the rules. We furthermore request that the Urban Core district as reflected in the map today, be expanded north along the west bank of the river from where it currently ends (at Lowry) up to Dowling, such that the Upper Harbor Terminal is included in the Urban Core district.
2. **Reflect the diversity of districts in the broader rules and exemptions.** The value of rules that are reflective of the district diversity goes beyond just the Urban Core district. There is no differentiation of districts evident in how Bluff Impact Zones, Slope Preservation Zones, Shore Impact Zones, natural vegetation, scenic views, and other guiding elements are considered through a district lens. This variation by district should be readily apparent in the section on Vegetation Management and Land Alteration Standards (6106.0150), the section on Subdivision and Land Development Standards (6106.0170), and in Table 1, which outlines exemptions. There is significant opportunity to achieve a finer grain of guidance by applying the lens of each unique character district to an interpretation of the rules and exemptions. As it stands, the rules applied in these sections supersede guidance specific to districts in ways that will undermine the spirit of the district designation, especially with regard to how land alteration, structures, or other development is handled near slopes, shorelines, and bluffs.
3. **Provide more rigorous definitions and maps where necessary in order to enable local government units to effectively evaluate the rules and prepare to implement them.** There are a number of important terms and conditions that will directly guide outcomes that are too vague, broad, or undefined to be useful. Among these are specific spatial definition of the ordinary high water line (as a line in GIS); the specific geospatial definition (through measured, qualitative maps, not LIDAR scans) of steep slopes, very steep slopes, and bluffs; a more specific definition of “visual impact” and a description of the methods cited in the rules by which it is assessed; a more specific definition of “public river corridor view,” a term which comes up again and again throughout the rules as an evaluative tool; a spatial map definition of native plant communities; a precise definition of “readily visible,” and “primary conservation area”; and a more performance based definition (rather than a literal description of plants in defining) “ecological function.” We would like terms defined in a way that they are easily interpreted and understandable, mappable, measureable, and enforceable. All of the terms above are present in the rules in ways that are impactful, and their definition is important to our ability to comprehend, communicate, implement, and enforce. It is currently impossible, for instance, to determine the real impact of the rules with regard to creating new nonconformities, or even engaging in meaningful site plan review, both of which will be a significant measure of how successful the rules actually are.
4. **Provide justification for the introduction of significant new areas of strongly worded restriction, effectively “no build, no alter, no vegetation removal” zones.** The introduction of Bluff Impact Zones and Slope Preservation Zones is hard to understand and seemingly difficult to justify within the

bounds of either the Executive Order or the current legislative guidance given in this rulemaking process. The regulations around “steep slopes” and “very steep slopes” also require additional justification and more accurate graphic representation. The amount of area restricted by these new zones should be studied to determine whether or not it is too burdensome. Language around natural vegetation, conservation, and ecological function needs to be clarified in order to understand better what is and is not allowed in these areas. We still seek language and policy that actively embraces an active edge in some parts of the riverfront. The DNR is directed to update the rules to reflect the river as a multipurpose resource, “consistent with its natural characteristics and its existing development, and in consideration of potential new commercial, industrial, and residential development and redevelopment,” in a way that “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.” However it seems that although the vision of an urban riverfront is described in one part of the rules that reference underlying zoning, that section becomes irrelevant in light of other sections of the rules (affecting setback and the location of structures) which “supersede underlying zoning” and apply even stricter controls.

Detailed Comments:

6106.0050 Subpart 10 – The maps inaccurately identify many artificial structures and material stores as “Bluff slopes.” These need to be verified and corrected.

6106.0050, Subpart 15 – From the text later in the document, it appears that the local government is responsible for producing certificates of compliance. More clarity is needed regarding exactly how this requirement is met and what forms of certification are acceptable.

6106.0050, Subpart 26 – It would be useful to include mitigation standards and full consideration of all acceptable and modern methods, practices, and conditions for meeting ecological function goals, including designed interventions.

6106.0050 Subpart 42 – The plan should include a link to the Minnesota Biological Survey, or other sources of information for determination of native plant communities. As these surveys are periodically updated, should reference the “most recent available version” of the survey, to minimize confusion.

6106.0050 Subpart 47 - A definition of *Ordinary high water level* is required, with graphic depiction in typical section as well as in GIS as a shapefile such that impacts of the rules can be properly evaluated.

6106.0050 Subpart 54 – Among other things, “primary conservation areas” are defined as including slope preservation zones and bluff impact zones. Without further study, this is questionable. The rules state that “The purpose of defining “primary conservation areas” is to clearly identify key resources and features to protect as land is developed or redeveloped.” It may not be a given that slope preservation zones, for instance, are a primary conservation area. Additionally, there is a need for a much more robust conversation to be had about what constitutes a bluff, how “bluffline” is defined, what constitutes “top of bluff” and “top of steep slope,” and how steep slopes are regulated in the rules, before universally defining bluff impact zones as primary conservation areas. Similarly, the reference to “public river corridor views” is too broad. This seems to imply that every “view” right along the river must be preserved. This is neither reasonable nor feasible in an urban area. The regulation of scenic views requires a purposeful study that is reflective of specific local context. As a regulatory measure, these terms as currently defined seem inappropriate and too subjective, difficult to interpret and burdensome to enforce.

6106.0050 Subpart 58 – As mentioned above, the reference to “public river corridor views” is too broad. This seems to imply that every “view” right along the river must be preserved. This is not reasonable. It is also not clear what would constitute an obstruction of these views.

6106.0050 Subpart 62 – The definition of “readily visible” is inconsistently used throughout the document. While the definition here speaks to views from the opposite shore, language later in the regulations refers to views from the river as well. Any guidance related to views and scenery needs to be much more robust, and requires a finer grain of place-specific study and clarification to define.

6106.0050 Subpart 70 – Defining the area of the Shore Impact Zone is dependent on where the ordinary high water level is located. Ordinary high water level requires better definition with graphic depiction of the line in order to evaluate impacts.

6106.0050, Subpart 73 – The graphic depiction of the Slope Preservation Zone should be to scale and should accurately reflect the grading of the slope. Better information is needed to determine the specific geographic location of these slopes and the potential impact of applying the Slope Preservation Zone. The SPZ is not consistent with prior guidance and seems too broad brush to be applied universally to all conditions. More information is needed to determine if this is a reasonable requirement.

6106.0050, Subpart 74. A 12% slope over 50 feet is equivalent to a rise of 6 feet. 6 feet of rise over 50 feet does not seem to constitute particular steepness. Perhaps definitions should include consideration of real-world conditions, existing practices, and therefore what constitutes reasonable guidance. A map depicting all areas that would be designated as “steep slope” and “very steep slope” under the rules, in which their typical use and condition is evident, would be very useful. Basic spatial guidelines of specifically defined areas would help us to evaluate the impacts of applying the SPZ and other rules. Certainly these slopes should be open to local guidance, as is indicated later in the rules.

6106.0060, Subpart 7, D – The notification time for local actions has been increased from 10 to 30 days. In the case of requirements for review and approval of applications, the 60-day rule required under state statute will pose challenges for accommodating 30-day notice. 20 days would be more manageable and consistent with city ordinances.

6106.0060, Subpart 7, D(3) – Could the notice requirement for a CUP related to height be limited to an adjoining government within a certain distance from the site in question? It seems odd to have to notify all adjacent jurisdictions if they are not anywhere near the proposed project. Also, is it adjoining on the river, or all local governments that adjoin Minneapolis?

6106.0070, Subpart 3, H – The rules need to clarify that not all plans and ordinances governing the area need Commissioner approval, just the ones that are related to critical area regulation.

6106.0070, Subpart 4, B – The recent federal decision to permanently close the Minneapolis lock and dam system effectively ends the viability of water-dependent industrial uses upstream, including the City’s Upper Harbor Terminal and a couple private industries with barging. It is assumed that this will be taken into account when reviewing Minneapolis plans for accommodation of such facilities.

6106.0070, Subpart 6 – We appreciate the provisions for flexibility in the regulations. The City of Minneapolis has extensive existing urban development in the critical area, as is appropriate in an urban core that grew up largely along the river. Flexibility in responding to this is needed, including for new development. Additionally, the urban park experience in Minneapolis requires active recreational space rather than passive conservation space in a number of locations. Finally, the City already has an extensive regulatory framework to address many of the overall goals of this rulemaking process, some of which differs on particulars from what is proposed here.

6106.0070, Subpart 6A - We presume that interim updates to the Comprehensive Plan (Comp Plan Amendments) will merit the same flexibility.

6106.0070, Subpart 6C – As stated elsewhere, a clear definition of “public river corridor views” is necessary. It is currently presented in a way as to be so broad that it is easily open to individual interpretation.

6106.0070, Subpart 7 – Again, a clear definition of “public river corridor views” is necessary if it is used here again in a rule applicable to state and regional agencies.

6106.0080, Subpart 3 – We also appreciate the additional recognition of the need to accommodate and address nonconformities. Minneapolis has many existing conditions in its critical area that are legal nonconformities, some of which are likely to change only over the long term.

6106.0080, Subpart 5 – We appreciate the flexibility regarding mitigation, including the ability for it to be largely determined by local governments. Minneapolis already has standards through site plan review to evaluate the various aspects of a project’s design and determine the best approach to offset any potential negative impacts.

6106.0120, Subpart 2, A(3) – In response to the annotation requesting input on this section, the City of Minneapolis supports increasing the allowed height from 48’ to 56’ and adding a CUP for taller buildings in the CA-RTC district. These locations in Minneapolis are planned for growth and development, including transit-supportive development, so taller buildings are appropriate.

6106.0120, Subpart 2, A(4) – In response to the annotation requesting input on this section, the City of Minneapolis supports the more general guidance for CA-SR height. The treeline is not a consistent standard, and since this district is not visible from the river anyway, it seems less relevant to screen buildings regardless.

6106.0120, Subpart 2, A(5) – In response to the annotation requesting input on this section, the City of Minneapolis supports the provision for taller buildings through CUP in CA-UM. This is a highly urbanized district already, and is planned for significant new growth and development. This can be done in a way that recognizes and supports the riverfront, while still accommodating density and height.

6106.0120, Subpart 2, A(5) Map – The West Bank area of the University of Minnesota is shown as CA-UM. However, it already has many tall buildings exceeding the height standard for this district, and will continue to do so. The CA-UM area on the West Bank between Interstate 35W and 26th Ave S should be changed to CA-UD/UC, which is consistent with the guidance for the University’s East Bank directly across the river. The neighborhoods along the river immediately south of the University campus on the West Bank have a different character and scale. This CA-UM area (between 26th Ave S and E Franklin Ave) should be changed to CA-RTC.

6106.0120, Subpart 2, A(6) – For a building in the urban core and a district that has no height limit, we don’t see why there should be a requirement that there be lower heights closer to the river and blufflines.

6106.0120, Subpart 2, D – In response to the annotation requesting input on the standards for conditional use permits for height, the City already has different standards for height CUPs, related to impacts on the surrounding area. It is unclear how the standards here are to be implemented and documented. Additionally, there are issues with the visual impact standards, as described below.

6106.0120, Subpart 2, D (also 6106.0090 D) – Recent investigation has indicated that the National Park Service’s *Mississippi National River and Recreation Area Visual Resources Protection Plan* is still in draft format and not readily available for public review. It also appears it will not be completed for a number of months. It is highly problematic to base the regulation’s inherently subjective evaluation of the assessment of visual impact on a document that is not available during the public review period for the regulations. From earlier discussion, it also sounds like some of the views represented were self-reported by individual community members, which is a very subjective methodology.

6106.0120, Subpart 2, D – Criteria for considering CUPs for height should also include existing massing in the area.

6106.0130, Subpart 2, E – How is the municipality supposed to determine the applicable nesting and spawning times for local species? Since many of these are during spring, which is also the start of Minnesota’s main construction season, this seems like it could be problematic.

6106.0130, Subpart 7, A (also Table 1) – Public recreational facility buildings are shown as not exempt from setbacks, height and other restrictions. Particularly with the large setback requirements in CA-ROS, this interferes with the public’s reasonable enjoyment and use of the river. The rules should allow for urban park development along the river’s edge that provides a range of recreational amenities and experiences: recreation on land and water, food service, habitat, stormwater management, etc. The current regulations (including the requirement to “minimize visibility from the river”) conflict with urban park-development goals which include providing visual access to the river from land-based recreation facilities.

6106.0130, Subpart 7, C – Recreational trails and viewing areas are guided to “minimize visibility from the river and interference with public river corridor views. This is counterintuitive, as the purpose of trails and viewing areas is in part to provide for public views of the river. While there may be some impacts on the views from the river itself, there are many more public users on the riverfront than on the river itself.

6106.0140, Subpart 5, A – It is confusing to suggest a square foot requirement for a retaining wall – is that for surface area, or the size of the area on top of the wall?

6106.0150 Subpart 1 – Discussion of ecological function requires a definition that includes designed as well as natural methods. As it is used in later in 6106.0170 to guide subdivision development, it stands to reason that preservation of natural conditions can be but one of many possible tools to protect and enhance ecological functions including recharge, stabilization, and others. Since it is applied to development areas, its definition should not inhibit appropriate land alterations but rather guide them to an ecologically functional conclusion. As written, it could be viewed as a preservation tool only.

6106.0150 Subpart 2 – Evaluating these standards as they apply to Shore Impact Zone, Bluff Impact Zone, and Slope Preservation Zone require a better definition of those zones as well as consideration of mitigation strategies using modern methods to preserve or enhance ecological function in cases where alteration is deemed appropriate. Again, it should not be interpretable as a tool to prevent alteration in all cases, but rather to guide it where appropriate. There are a multitude of possible scenarios in which an 18% slope, a bluff, or the shore area may be appropriately altered.

6104.0150, Subpart 3 – It is unclear if the permitting process outlined for vegetation removal can be accomplished as a requirement or condition attached to an existing permit (e.g. building permit), or if it is proposed that there is a new permit type. The former would be preferable, to ease the administrative burden.

6104.0150, Subpart 4 – The requirement to maintain dead and dying trees is counter to established practice in the City of Minneapolis to control the spread of emerald ash borer. Additionally, “grading that results in terrain that is not characteristic of the natural topography is problematic, as this has already been done extensively in the past. And restricting the height of ground cover may be necessary to maintain sight corridors along public right-of-way.

6104.0150, Subpart 5 – The vegetation removal threshold assumes an area with significant tree cover over a large area. Are there separate standards where existing vegetation is naturally more sparse? Should there not also be an exemption for removal of invasive/non-native plant and tree species? As written, it sounds like a permit would be needed to conduct this maintenance activity.

6104.0150, Subpart 6 – Who is responsible for developing, reviewing, and implementing a “vegetation restoration plan?” Is it just required in cases where the previous regulations are not adhered to?

6106.0120, Subpart 2 - The City wishes to review the proposed method of assessing visual impact of proposed buildings (this subpart references “methodology set forth in the *Mississippi National River and Recreation Area Visual Resources Protection Plan*,” which City of Minneapolis staff have not seen and are not able to locate in order to review. This subpart, as other previous to it, requires a clear definition of “public river corridor views.”

This subpart also outlines highly prescriptive building orientation and envelope requirements for conditional use permits for buildings exceeding the height limits in item A, including placing the axis of a building perpendicular to the river and narrowing the profile of upper floors. These prescriptive rules drift too far into the specifics of building design. Architecture is more fruitfully guided by generative rules that outline qualitative goals, not prescriptive rules that attempt to enforce a one size fits all building envelope. The City of Minneapolis would welcome further discussion of this item.

6106.0120, Subpart 3 - Although on the face of it there appears to be substantial deference given to underlying zoning in certain districts, the application of rules governing location of structures as outlined here, along with rules related to the Slope Preservation Zone, the Bluff Impact Zone, the Shore Impact Zone, and further rules outlined in 6106.0150 and 6106.0170, effectively erase distinctions that should be upheld in the Urban Core and Urban Mixed districts. This is a problem. See comment for 6106.0150.

6106.0130, Subpart 2, A - Why should public facilities be required to minimize their visibility?

6106.0130, Subpart 2, B – The dimensional standards referenced are problematic. See comment on 6106.0120.

6106.0130, Subpart 2, C - The land alteration requirements cited here in 6106.0150 and 6106.0160 should reflect district character. They are currently unreasonable for the Urban Core district.

6106.0130, Subpart 7, A - It is unreasonable to prevent public recreation buildings and structures from being placed within the Bluff Impact Zone, Shore Impact Zone, or Slope Preservation Zone. Responsible siting should be possible with appropriate mitigation, and this should be reflected in Table 1.

6106.0130, Subpart 7, C – Why should trails and access paths be universally guided to not be visible from the river? The relationship of access paths to the river should be more reflective of district character. Again, a definition of “public river corridor views” is relevant here.

6106.0140, Subpart 2 – Guidance for private facilities should be more reflective of district character. The rules as outlined in 6106.0150 and 6106.0160 water down distinctions between districts. Additionally, more categories of private commercial facilities may be necessary to define and exempt here and in Table 1, especially related to private facilities that provide a public amenity uses such as restaurants, concessions, or cafes. Note the overlap between this comment and comments below on 6106.0150.

6106.0140, Subpart 4, D – These rules seem limiting if applied universally across all districts, especially considering potential private commercial recreation uses.

6106.0150 - The sum of Subparts 1, 2, 3, 4, 7, and 9 [along with 6106.0170, Subpart 3C] seem to completely eradicate the potential for an interpretation of the rules that is reflective of the defined district characters. Are the districts meaningful? The conflicting guidance is especially apparent in the Urban Core district. It seems that regardless of the Urban Core district being ostensibly guided by underlying zoning, and, having no imposed setback from the water, the sum result of what is outlined in these subparts of 6106.0150 effectively impose an automatic 50 foot setback from the river, disallow the removal of vegetation regardless of how the district is guided for character, and generally create enormous hurdles to any proposal that would seek to interact with the river as an active urban edge. This section does not reflect the distinction that is described elsewhere between the different districts, and these subparts effectively erase prior input from the City of Minneapolis, the Minneapolis Park and Recreation Board, the Downtown Council, or our elected officials with regard to the goals we have set out for activating the central riverfront. It appears to be a series of rules specifically designed to impose universal rules that supersede underlying zoning, and render the differentiations in those districts meaningless in terms of how consistency is defined. The lack of differentiation between districts in how these rules are applied has brought the regulatory environment back to square one; we thought we had moved away from this. **We would therefore like to except Urban Core districts from 6104.0150, and would furthermore seek to extend the coverage of the current central riverfront Urban Core district north to Dowling Avenue, encompassing the Upper Harbor Terminal site (on the west side of the river). The Urban Core district on the west side of the central riverfront is currently bounded on the north by Lowry Avenue.**

6106.0150, Subpart 2 – *Bluff Impact Zone, Slope Preservation Zone, and Shore Impact Zone* require more specific definition both graphically and in relation to a clearly defined and delineated ordinary high water line. Additionally, specific and spatial definition is required for “areas of native plant communities”. All of these areas are subject to the rule in Subpart 4, in which “intensive vegetative clearing” (defined in 6106.0050, Subpart 33 as “removal of trees or shrubs in a contiguous patch, strip, row, or block”), is prohibited. Definitions of these zones and areas, as well as the scale of *patch, strip, row, and block* need to be clearer.

6106.0150, Subpart 7 – The City seeks more explanation of this rule, and consideration of possible exceptions.

6106.0150, Subpart 9 - As cited previously in the comment for 6106.0050, Subpart 74, a 12% slope over 50 feet is equivalent to a rise of 6 feet. The City appreciates allowance for conditional development on these not so steep slopes.

6106.0160, Subpart 2 – The City supports responsible stormwater management and water stewardship, but considering the substantially lower threshold, more information is desired about what this lower threshold would mean in real terms in order to evaluate impacts.

6106.0170, Subpart 1 - In response to the annotation requesting input on subdivision requirements, the City supports the idea that subdivisions under 10 acres (or 20 acres) are exempt from their subdivision rules. The rules need to clarify what is meant by “smaller individual sites.” We take it to mean the smaller individual sites that are part of the 10 acre overall development, but if it means something else then they should clarify.

6106.0170, Subpart 3 – It is not clear whether this section is intended to apply only if there’s a primary conservation area on a site that’s large enough to be covered by this part of the rules, in which case there would be a requirement to protect the identified percentage, or if the identified percentage needs to be set aside even if there’s nothing worth conserving on the site. It’s also unclear how this applies to all of the types of conservation areas, such as scenic views and historic sites. It discusses what to do if “primary conservation areas exist but do not have vegetation” – though that would not be integral to all types of conservation areas. The term “potential restoration areas” has not been defined. The prohibition on structures in (G) is not appropriate, as they are allowed in other locations in the regulations, and are an important component of recreational areas.

Table 1 – It would be helpful to see all the acronyms used in this table spelled out in a note (e.g. SIZ, BIZ, SPZ). Also, see comment above about requirements for buildings. This table should include distinctions in exempt or nonexempt status of regulations based on district designation. Something that is non-exempt in ROS may be appropriately exempt in UC. This may merit the addition of a few more categories of exemption.