

**Department of Community Planning and Economic Development**

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**MEMORANDUM**

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DATE: August 28, 2014

TO: Planning Commission Members

FROM: Haila Maze, Principal Planner

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

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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.)

The City Council's Zoning and Planning Committee reviewed an earlier draft of City comments on the rulemaking at their meeting on August 7, 2014, and full City Council reviewed it on August 15, 2014. At the point these were scheduled, original comment period deadline was in place for August 15, 2014. However, this has since been extended to September 30, 2014, allowing for more time to review and comment. The staff direction at City Council was to go ahead and submit the assembled comments (attached), but also to consider follow-up comments if further discussion merits.

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 In 2009, the Minnesota Legislature directed the DNR to establish rules to replace the outdated standards in the Executive Order.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 September 30, 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

	<b>CA-ROS</b>	<b>CA-RN</b>	<b>CA-RTC</b>	<b>CA-SR</b>	<b>CA-UM</b>	<b>CA-UC</b>
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.

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. This will certainly involve the Planning Commission in its role of reviewing and approving plans and zoning code amendments.

### **Attachments**

- Draft Minneapolis comment letter
- DNR Request for Comments
- Map of proposed districts



**Minneapolis**  
*City of Lakes*

August 15, 2014

**Community Planning &  
Economic Development**

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Daniel Petrik  
Land Use Specialist  
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 and by the full City Council at their meeting on August 15, 2014.

As the comment period has recently been extended, we may be submitting additional follow up comments at a later date, once we've had the opportunity to discuss some issues further with other local stakeholders.

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 CAUD/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-RN. An exception to this change will be to guide four parcels along the Franklin Ave corridor (2910 E Franklin, 925 30th Ave S, 3020 E Franklin, and 940 Franklin Terrace) as CA-RTC. This differentiation is needed to better reflect existing land use and zoning patterns, which include a higher density corridor extending to the river through a lower density area.

**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.

# Minnesota Department of Natural Resources

## Division of Ecological and Water Resources

### REQUEST FOR COMMENTS

#### **Possible Rules Governing the Mississippi River Corridor Critical Area, *Minnesota Rules*, chapters 6106 and 4410**

**Subject of Rules.** The Minnesota Department of Natural Resources (DNR) requests comments on possible rules governing the Mississippi River Corridor Critical Area (MRCCA). The MRCCA includes the Mississippi River and 5,400 acres of adjacent land along a 72-mile stretch through the Twin Cities metropolitan area. Development in the corridor is currently guided by locally-adopted and enforced MRCCA plans and ordinances that must comply with existing districts and standards and guidelines established in Executive Order 79-19, the order designating the MRCCA. The Minnesota Department of Natural Resources (DNR) is engaged in rulemaking to update these districts and standards. The rulemaking will primarily develop new language in Chapter 6106, but also may modify existing language in Chapter 4410 if determined necessary to facilitate administration.

This rulemaking will provide for management of the MRCCA as a multi-purpose resource in a manner consistent with Minnesota Statutes 116G.15, subd. 2, that: conserves scenic, environmental recreational, mineral, economic, cultural, and historic resources and functions; maintains the river channel for transportation, including barging and fleeting areas; provides for continuation, development and redevelopment of a variety of urban uses; uses the river for water supply and as a receiving water for properly treated effluents; and protects the biological and ecological functions of the corridor.

**Persons Affected.** The rules would likely affect the following persons and organizations within the MRCCA: all local governmental units with jurisdiction in the MRCCA (21 cities, 4 townships, and 5 counties); property owners, institutions, developers, and businesses; recreational facility users; water-oriented businesses, facilities, and navigation interests on the Mississippi River; utility providers; state and regional agencies and institutions with facilities, property interests, and/or regulatory authority in the MRCCA (such as the Metropolitan Council, Department of Natural Resources, Department of Transportation, Metropolitan Airports Commission, University of Minnesota, Saint Paul Port Authority, Minnesota Historical Society, and federal agencies such as the National Park Service and U.S. Army Corps of Engineers).

**Statutory Authority.** Minnesota Statutes, section 116G.15, as amended in Laws 2013, chapter 137, article 2, sections 18 to 21, requires the DNR to adopt rules for administration of the Mississippi River Corridor Critical Area.

**Rules Drafts.** The DNR has developed a working draft of the possible rules and districts for public comment. The working draft of the possible rules, district maps, and other information regarding the rulemaking are available on the DNR website at: [www.dnr.state.mn.us/input/rules/mrcca/index.html](http://www.dnr.state.mn.us/input/rules/mrcca/index.html), or can be obtained by contacting the agency contact person provided below.

**Public Comment.** Interested persons or groups may submit comments or information on the working draft of possible rules in writing until 4:30 p.m. on August 15, 2014. The DNR will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The DNR does not plan to appoint an advisory committee to comment on the possible rules, but will be convening public information meetings and open houses throughout the summer of 2014 to gain additional input. This process is the continuation of a process that began in 2009. As part of that process, the DNR consulted closely with advisory committees; local governments; federal, state, and regional agencies; and other interest groups in developing the working draft of the proposed rules and districts. The DNR will continue to consult with these interest groups throughout the public comment phase.

**Agency Contact Person.** Written comments, questions, and requests to receive a copy of the working draft of proposed rules should be directed to: Daniel Petrik at Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155-4025, 651-259-5714 (phone), 651-296-1811 (facsimile), and [mrcca.rulemaking@state.mn.us](mailto:mrcca.rulemaking@state.mn.us).

**Alternative Format.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

**NOTE:** This rulemaking phase is intended to provide informal feedback on the working draft rules before they are finalized for the last phase. The last phase is a formal process that begins with a Notice of Intent/Hearing to adopt the rules, with a public hearing presided over by an Administrative Law Judge. Therefore, comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge. The agency is required to submit to the judge only those written comments received after the rules are formally proposed in the second phase. If you submit comments in response to this notice and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Date: May 21, 2014

/s/ Tom Landwehr, Commissioner  
Department of Natural Resources

# MRCCA Rulemaking DNR Working Draft-Districts

