



Minnesota.
Department of Natural Resources.
Administrative Rules Proceedings Files:
Mississippi River Corridor Critical Area
(MRCCA).

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Carlson, Beth P (DNR)

From: Melekin, Merone (GOV)
Sent: Monday, December 19, 2016 2:59 PM
To: Carlson, Beth P (DNR)
Cc: Zawistowski, Stephanie (GOV); Blake, Cumah (GOV)
Subject: 4240

Hello Beth,

The Office of the Governor has received the Adopted Rule from the Office of the Secretary of State for 4240, relating to Mississippi River Corridor Critical Area.

Governor Dayton will not veto this rule. You may now proceed with the Notice of Adoption.

Best,

Merone

Merone Melekin | Policy Coordinator
Office of Governor Mark Dayton & Lt. Governor Tina Smith
116 Veterans Service Building
20 W 12th Street
Saint Paul, MN 55155
Office: 651-201-3420 | Fax: 651-797-1870

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Carlson, Beth P (DNR)

From: Dressel, Elizabeth (GOV)
Sent: Monday, January 11, 2016 1:55 PM
To: Carlson, Beth P (DNR); Shillcox, Jennifer (DNR)
Subject: 4240

Beth and Jennifer,

The Office of the Governor has reviewed and approved the SONAR form for 4240 relating to Mississippi River Corridor Critical Area.

You may now proceed with the Notice of Intent to Adopt Rules.

Thank you,

Elizabeth

Elizabeth Dressel | Policy Coordinator
Office of Governor Mark Dayton & Lt. Governor Tina Smith
116 Veterans Service Building
20 W 12th Street
Saint Paul, MN 55155
Office: 651-201-3420 | Fax: 651-797-1870

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Carlson, Beth P (DNR)

From: Carlson, Beth P (DNR)
Sent: Wednesday, December 09, 2015 12:35 PM
To: Dressel, Elizabeth (GOV)
Cc: Shillcox, Jennifer (DNR); Petrik, Daniel (DNR); Enzler, Sherry (DNR); Meier, Bob (DNR)
Subject: R-04240 rules for Mississippi River Corridor Critical Area (MRCCA)

Elizabeth,

RE: Proposed Permanent Rules Relating to Mississippi River Corridor Critical Area, Revisor's File No. R-04240

Bob Meier is going to hand-deliver the Proposed Rule and SONAR package for this rulemaking to the governor's office in the next day or two. I am not certain whether he will hand it off to you or to Molly, so please keep an eye out for it.

The package includes an extra informational memorandum and there are several exhibits that accompany the SONAR document. Please contact me if you have any questions.

We look forward to hearing back from your office about proceeding to the next step in this rulemaking process, which is review of the rules by the Office of Administrative Hearings. We intend to schedule two hearings in the Twin Cities metropolitan area.

Beth Carlson

*Elizabeth Carlson, DNR Rules Coordinator
OSD Office of Policy and Planning
Minnesota Department of Natural Resources
651-259-5531*

**2015 Administrative Rule
Proposed Rule and SONAR Form**

Revisor's File No. R-04240

Submitting Agency: Department of Natural Resources

Date: 12/01/2015

Rule Contact: Beth Carlson, DNR Rules Coordinator
Jennifer Shillcox, EWR Land Use Unit Supervisor

E-mail Address: beth.carlson@state.mn.us
jennifer.shillcox@state.mn.us

Phone #: 651-259-5531
651-259-5727

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|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title | Mississippi River Corridor Critical Area (MRCCA) |
| Chapter number(s) | 6106 |
| Comments received during Request for Comments | <p>The DNR published a Request for Comments on June 2, 2014. The focus of the Request for Comments was on working draft rules that were developed as part of an extensive public participation process. Local governments, business interests, environmental organizations, and property owners submitted over 500 comments. Key comments and issues raised include:</p> <ul style="list-style-type: none"> • Broad support among environmental groups and many property owners for stronger protections, especially in sensitive areas such as the river gorge in Minneapolis and St. Paul. • Local governments are concerned with costs for developing and administering local ordinances compliant with the rules. • Many found the term "substantial compliance" confusing and problematic. Environmental interests felt that it provided too much flexibility and would lead to approval of local ordinances that were not strictly consistent with the rules, while local governments felt it provided the DNR with too much discretion to not approve local ordinances. • Regional and county park agencies objected to requirements that they get vegetation and land alteration permits from cities and townships because it conflicts with common intergovernmental permitting relationships in these areas. • Park agencies requested greater flexibility to place structures and pervious pavement in the shore impact and bluff impact zones. • Many found the terms bluff, very steep slope, bluff impact zone and slope preservation zone confusing. It was not clear how these terms functionally differed or how to map them. • Environmental interests objected to defining a bluff as a slope greater than 30%. They preferred to keep bluffs defined as slopes over 18% consistent with EO 79-19, while local governments wanted a more narrow definition. • Some local government and business interests were concerned with the number of new nonconforming structures created by the bluff, very steep slope, bluff impact zone, and slope preservation definitions. • Many property owners were concerned with their ability to expand structures, especially homes, considered nonconforming under the rules. • Many generally supported the six proposed districts as defined in the working draft rules and felt they represented existing and future planned development; however, there were 80 requests to change specific boundaries of these districts on the map. Local governments strongly supported proposed administrative procedures for amending district boundaries. |

- Many commented on building height requirements. The proposed height in some districts was too high for environmental interests and many property owners, and too low for some local governments and business interests.
- Local governments generally supported allowing taller buildings through a conditional use permit in some districts. Environmental interests objected to this flexibility for districts located in the gorge. Environmental interests and local governments requested better criteria for evaluating a conditional use permit for height.
- Many generally supported the concept of “public river corridor views” for evaluating scenic impacts, but with a clearer definition.
- Many generally supported a proposed vegetation management permit as means for better local government administration and enforcement, but opposed the permit standards and procedures for being too complex, cumbersome, and costly to administer. Many generally supported a proposed land alteration permit; however, commenters expressed broad differences in the disturbance threshold triggering a permit.
- Riparian property owners broadly opposed the requirement to consider vegetative methods for controlling bank erosion before hard armoring methods.
- Some local governments and business interests opposed the thresholds for requiring stormwater treatment, preferring the use of existing MS4 standards. Some environmental interests supported requiring the treatment standards in PCA’s voluntary MIDS program.
- Comments on the acreage threshold for applying subdivision standards as well as the percent of land that should be set aside as primary conservation areas ranged broadly.
- Some local governments and business interests were confused about the dedication standard and whether it could count towards the set aside requirement.

Statement of Need and Reasonableness (SONAR) Executive Summary:

Overview
 The MRCCA is Minnesota’s only designated Critical Area. Established by executive orders in 1976 and 1979 and made permanent by the Legislature, the MRCCA is a 72-mile stretch of the Mississippi River through the Twin Cities Metropolitan Area, extending from Dayton and Ramsey in the north to Ravenna Township, just south of Hastings. Thirty communities (21 cities, 5 counties, and 4 townships) currently regulate land use in the corridor through local MRCCA plans and ordinances as provided in Executive Order 79-19, which established four land use districts and standards and guidelines to guide development within those districts. The corridor varies in width and includes 54,000 acres of public and private land and water, and shares the same boundary as the Mississippi National River Recreational Area (MNRRA), a unit of the National Park Service.

Legislative Direction
 The 2009 Legislature directed the DNR to develop rules to replace and update the districts, standards, and criteria in Executive Order 79-19. Rulemaking ended without final rules in 2011 when the time allowed for rulemaking ended. The 2013 Legislature directed the DNR to resume rulemaking after making changes to the statute guiding the rulemaking and eliminating the deadline. Minnesota Statutes, § 116G.15, provides DNR with the authority to conduct rulemaking for the MRCCA.

Need for the Proposed Rules

The MRCCA program has been administered under Executive Order 79-19 for the past 35+ years. The executive order has a variety of issues that this rulemaking effort seeks to resolve:

- Executive Order 79-19 cannot be readily changed or updated short of issuing a new executive order. Executive orders do not offer the transparency of rulemaking, which is especially important in developing land use regulations.
- Executive Order 79-19 provides insufficient guidance for approving local government plans and ordinances.
- Executive Order 79-19 limits redevelopment and reinvestment because the existing land use districts restrict development to those uses in existence in 1976.
- Executive Order 79-19 contains vague and outdated language that makes administration difficult and does not adequately protect MRCCA resources.
- Executive Order 79-19 does not prioritize among the wide range of resources it seeks to protect, thus providing little guidance for addressing conflicts among those objectives.

Purpose

The purpose of the proposed rules is to update and replace the districts and minimum standards and criteria in Executive Order 79-19, which have guided land use and development within the MRCCA for the past 35 years, consistent with the purpose of Minnesota Statutes, § 116G.15. The proposed rules cover a variety of topics currently covered under Executive Order 79-19, including:

- the administration of the MRCCA program
- the establishment of districts within the MRCCA
- the establishment of minimum standards and criteria, including:
 - select uses
 - structure height and setbacks
 - private and public infrastructure
 - protection of bluffs and very steep slopes
 - vegetation management
 - land alteration and stormwater management
 - lot size, subdivision, and design standards

Public Involvement

The level of public involvement in this rulemaking far exceeds what is required or typically done in rulemaking. Extensive public involvement has guided the development and revision of multiple rule drafts starting with the 2009 Legislature's direction to conduct rulemaking. Since 2009, the DNR has:

- met numerous times with local governments in the MRCCA (individually and in groups),
- convened geographically-based multi-interest and specific topic work groups,
- held numerous public information meetings,
- published two Requests for Comments with extended comment periods beyond the minimum required; and
- met with other federal and state agencies and interest groups to gain feedback and assistance on draft provisions.

The DNR also engaged other local governments and agencies in conducting analyses; for example, the DNR worked with the City of St. Paul and National Park Service to

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| | <p>develop and test a bluff mapping tool and to assess the impacts of multiple bluff definition.</p> <p><u>Affected Interests</u> The rules will likely affect the following persons and interests within the MRCCA: property owners, institutions, developers, businesses, real estate interests, recreational users, environmental interests, navigation interests on the Mississippi River, utility providers, all local governmental units, and agencies and institutions with facilities or other property interests.</p> <p>Once promulgated, local governments within the MRCCA will need to update local plans and ordinances to incorporate the new districts and standards in the rules. Local governments must establish a permit program for vegetation management and land alterations in specific environmentally sensitive areas. Local governments will bear these initial costs, particularly if existing plans and ordinances need substantial changes. Local governments may benefit in the long run, however, from the establishment of districts that are more consistent with community character and planned future development, consistency of terms and desired outcomes, and flexibility to meet multiple community objectives. As reported by affected local governments, the cost to update local plans and ordinances for consistency with these rules is generally estimated to be less than \$20,000 per local unit of government.</p> <p><u>Highlights of Proposed Rules</u></p> <ul style="list-style-type: none"> • Stronger standards to protect bluffs from development impacts including more precise bluff and bluff related definitions to improve corridor-wide consistency in administering the standards. • A vegetation management permit that protects vegetation in sensitive areas by prohibiting/limiting intensive vegetation removal in these areas. • Protection of existing nonconforming structures by allowing local governments to permit such structures to expand laterally or sideways (i.e. not closer to the water or bluff), and clarification on the regulation of nonconformities (uses, lots, structures). • Integration of DNR and local government approval of riprap and other measures to reduce bank erosion. • New design standards to limit the placement of stormwater treatment facilities in bluff impact areas and reduce risk of slope failure during and after rain events. • Stronger standards to protect high value resources during new development or major redevelopment projects. |
| <p>Supporters, opponents, and possible controversies:</p> | <p>Department staff have worked extensively with all major affected interests to resolve/address their concerns with provisions in earlier rule drafts. Most local governments and environmental interests recognize the balanced approach taken to achieve the current proposal and are generally supportive. Compared to Executive Order 79-19, the proposed rules provide better clarity for performance standards and administrative procedures, thus improving administration. Following are other positions:</p> <ul style="list-style-type: none"> • Business interests, mostly in St. Paul, are concerned about the ability of nonconforming buildings located in or near bluffs to maintain their facilities or expand. |

| | |
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| | <ul style="list-style-type: none"> • Development interests and some local governments oppose the requirement to set aside a percentage of land to protect conservation areas. Some are concerned that it is unclear what resources, in what locations, are to be protected. • Environmental interests oppose proposed districts that allow heights of 65 feet in the river gorge area of St. Paul because they are concerned that buildings of this height will negatively impact views in this area. • Some environmentally focused citizens in St. Paul oppose the bluff definition feeling that it too narrowly defines bluffs and does not protect all slopes over 18 percent; however, most environmental interests generally support the proposed bluff definition. • Local governments generally support the vegetation management permit, but property owners may oppose the permit and vegetation management standards as infringing on their rights to manage their property. • Some riparian property owners are still skeptical of how these regulations will affect the use of their land and their property rights. • Landowners in the southern corridor may still have concerns over the process and outcome of Dakota County's decision to build a trail through bluffs in Spring Lake Park and DNR's role in that process. |
| <p>List significant changes from preliminary proposal:</p> | <p>Key changes from the June 2, 2014 working draft rules published with the Request for Comments include:</p> <ul style="list-style-type: none"> • The vegetation management permit requirements were simplified. • The Very Steep Slope and Slope Preservation Zone concepts were eliminated and the bluff definition was revised to achieve a better balance between protection of bluff features and minimizing the creation of new nonconforming structures. • The rule now clearly allows lateral expansions of nonconforming structures. • Amending district boundaries now requires rulemaking instead of an administrative procedure. • A 48-foot height was selected for the River Towns and Crossings (CA-RTC) District. • A new standard was added prohibiting hard-surface trails on the face of bluffs with a slope over 30%. Natural surface trails are allowed if less than 8-feet wide. • Requirements to consider bioengineering techniques before hard armoring methods for bank stabilization were eliminated. • New standards for riprap and other erosion control structures condition local permit approval to DNR approval for projects below the OHWL. Local permits for projects above the OHWL include performance standards that limit the size of structures. • There is an allowance for decks meeting specified threshold to encroach within required setbacks. • Development size thresholds are established for applying subdivision standards. • Clarifying language was added to allow land dedicated as part of the subdivision process to count toward the required amount of land to be "set-aside" to protect key MRCCA features and resources. • The rule identifies the percentage of land that must be set aside as conservation areas in new development or major redevelopment. |
| <p>Other:</p> | |

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Fiscal Impact: Yes No

If the Fiscal Impact determination has changed, please explain above.

AGENCY: Attach draft rules and SONAR.

Commissioner's Signature

Date

THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE

I have reviewed the above information and have approved this administrative rule. The respective Agency may formally publish a Notice of Intent to Adopt Proposed Rules.

Governor's Policy Advisor

Date

Carlson, Beth P (DNR)

From: Carlson, Beth P (DNR)
Sent: Thursday, May 30, 2013 12:33 PM
To: Hang, Amy (GOV)
Cc: Shillcox, Jennifer (DNR); Petrik, Daniel (DNR)
Subject: Reference numbers for Miss River Corridor Critical Area

Amy,

DNR's rulemaking authority for the Mississippi River Corridor Critical Area has been restored retroactive to 7/01/2009.

The rulemaking authorities originated in Laws 2013, chap. 137, art. 2, sec. 18-22 (eff. 7/01/2013) and Laws 2009, chap. 172, art. 2, sec. 27 (effective 7/01/2009). The earlier version can be found in Minnesota Statutes, section 116G.15, and that will be updated as the revisor's office incorporates the 2013 session law changes.

The Revisor's number for this rulemaking is R-04014. The governor's office originally assigned AR# 527 in case you need that as a cross-reference to locate the file.

Current status: We have a preliminary draft from the revisor's office that needs to be reviewed and updated. The next time we contact you on this rulemaking will be to submit the proposed rules and SONAR, but it will be awhile before we reach that point.

Please contact me if you have any questions.

Beth Carlson, DNR Rules Coordinator
Management and Planning Services
DNR Division of Operations Services
651-259-5531



Please consider the environment before printing this e-mail

Carlson, Beth P (DNR)

From: Hang, Amy (GOV)
Sent: Tuesday, May 27, 2014 5:49 PM
To: Carlson, Beth P (DNR)
Cc: Shillcox, Jennifer (DNR); Meier, Bob (DNR); Petrik, Daniel (DNR)
Subject: Re: R-04240 MRCCA rules

Got it. Thanks. Helpful clarification.

On May 27, 2014, at 5:37 PM, "Carlson, Beth P (DNR)" <Beth.Carlson@state.mn.us> wrote:

Amy,

I caught up with Jenny Shillcox after your call and she confirmed and clarified the following:

- DNR resumed work on the MRCCA rules when the specific rulemaking authority was reinstated by the 2013 legislature. From DNR's perspective, it was not a start-over but builds on earlier efforts for the same rulemaking project as part of the natural ebb and flow and evolving quality of the rule development stage.
- It was the revisor's office who proposed closing out the original file number and starting a new one. The amount of changes DNR wants to make to its earlier draft are so extensive that it is more efficient for the revisor's office to start a completely new preliminary draft than to spend a great deal more time changing the old draft. The new file number does not signify a new rulemaking project – it only means the revisor's office has started a fresh new draft in its system for the same rulemaking project.
- The new Preliminary Proposal Form 2014 stands on its own as a description of the intended rulemaking and the present context. We felt that a fresh presentation would be more useful to your office, given the passage of time and dynamic circumstances.

I hope this is helpful but please do let us know if you have any follow-up questions.

Beth

<image001.png>

Elizabeth Carlson

Strategic Planning and Policy Administrator

Operations Services Division

651-259-5531

Carlson, Beth P (DNR)

From: Hang, Amy (GOV)
Sent: Thursday, May 22, 2014 1:39 PM
To: Carlson, Beth P (DNR)
Cc: cindy.maxwell@revisor.mn.gov; Shillcox, Jennifer (DNR); Petrik, Daniel (DNR); Rhees, Suzanne (DNR)
Subject: RE: Update on MRCCA revisor's file number

Thanks for letting me know, Beth.

Amy Hang | Policy Coordinator
Office of Governor Mark Dayton & Lt. Governor Yvonne Prettner Solon
130 State Capitol, St. Paul, MN 55155
Office: 651-201-3420 | Cell: 651-356-4038 | Fax: 651-797-1870

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From: Carlson, Beth P (DNR)
Sent: Thursday, May 22, 2014 11:00 AM
To: Hang, Amy (GOV)
Cc: cindy.maxwell@revisor.mn.gov; Shillcox, Jennifer (DNR); Petrik, Daniel (DNR); Rhees, Suzanne (DNR)
Subject: Update on MRCCA revisor's file number

Amy,

RE: Mississippi River Corridor Critical Area rules

I have confirmed that the DNR and the Revisor's office have agreed to close Revisor's File Number R-04014 and move forward under Revisor's File Number **R-04240** instead. I assume that choice was made because it is the easier route for rule drafting in this case, having stopped and then resumed rule development under a reinstated statutory authority.

Please update your records accordingly. Thank you.

Beth



*Elizabeth Carlson, DNR Rules Coordinator
Strategic Planning and Policy Administrator
Operations Services Division
651-259-5531*

Carlson, Beth P (DNR)

From: Carlson, Beth P (DNR)
Sent: Thursday, May 22, 2014 11:00 AM
To: Hang, Amy (GOV)
Cc: cindy.maxwell@revisor.mn.gov; Shillcox, Jennifer (DNR); Petrik, Daniel (DNR); Rhees, Suzanne (DNR)
Subject: Update on MRCCA revisor's file number

Amy,

RE: **Mississippi River Corridor Critical Area rules**

I have confirmed that the DNR and the Revisor's office have agreed to close Revisor's File Number R-04014 and move forward under Revisor's File Number **R-04240** instead. I assume that choice was made because it is the easier route for rule drafting in this case, having stopped and then resumed rule development under a reinstated statutory authority.

Please update your records accordingly. Thank you.

Beth



*Elizabeth Carlson, DNR Rules Coordinator
Strategic Planning and Policy Administrator
Operations Services Division
651-259-5531*

Carlson, Beth P (DNR)

From: Cindy Maxwell <cindy.maxwell@revisor.mn.gov>
Sent: Thursday, May 22, 2014 7:01 AM
To: Carlson, Beth P (DNR)
Subject: Re: Checking file number

Yes, 4014 will be closed and we'll start anew with 4240.

Cindy K. Maxwell
Senior Assistant Revisor
651-296-0955

On 5/20/2014 5:07 PM, Carlson, Beth P (DNR) wrote:

Cindy,

I heard today from DNR waters staff that you have assigned a new file number R-04240 for the Mississippi River Corridor Critical Area (MRCCA) rules – is that right? And does that mean the previous file number R-04014 was closed? I just want to make sure I have that right before I update my records and DNR's public rulemaking docket and notify the governor's office. Thank you.

Beth



*Elizabeth Carlson, DNR Rules Coordinator
Strategic Planning and Policy Administrator
Operations Services Division
651-259-5531*

Carlson, Beth P (DNR)

From: Hang, Amy (GOV)
Sent: Thursday, July 10, 2014 11:30 AM
To: Carlson, Beth P (DNR); Shillcox, Jennifer (DNR)
Subject: 4240

Beth and Jennifer,

The Office of the Governor has approved the preliminary form for the administrative rule relating to Mississippi River Corridor Critical Area.

Thank you,

Amy Hang | Policy Coordinator
Office of Governor Mark Dayton & Lt. Governor Yvonne Prettner Solon
116 Veterans Service Building
20 W 12 Street
Saint Paul, MN 55155
Office: 651-201-3420 | Cell: 651-356-4038 | Fax: 651-797-1870

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**2014 Administrative Rule
Preliminary Proposal Form
(UPDATE)**

Revisor's ID Number: R-04240

Submitting Agency: Department of Natural Resources Date: May 21, 2014

Rule Contact: Beth Carlson, DNR Rules Coordinator
Jennifer Shillcox, Div. of Ecological and Water Resources

E-mail Address: beth.carlson@state.mn.us Phone: 651-259-5531
jennifer.shillcox@state.mn.us 651-259-5727

Type of Rule (must be one of the following):

Exempt Expedited Permanent

| | |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title: | Mississippi River Corridor Critical Area (MRCCA) |
| Chapter Number(s): | Chapter 6106 (new language); possible revisions to Chapter 4410 |
| Supporters, opponents and possible controversies: | <p>The Mississippi River Corridor Critical Area (MRCCA) includes the Mississippi River and approximately 5,400 adjacent acres along the 72-mile reach from Dayton and Ramsey in the north downstream to the confluence with the St. Croix River near Hastings in the south. MRCCA rulemaking will be of significant interest for the 30 local government units (including 21 cities, 4 townships, and 5 counties) within the corridor area, as well as businesses, residents, property owners, development/real estate interests, environmental groups; and other interested parties. These rules will establish new districts within the MRCCA, and new guidelines and development standards for each district. State, regional, and local units of government must follow the standards and guidelines when updating community plans, and must revise their land use regulations and zoning maps to incorporate the new standards.</p> <p>The DNR recognizes that the rulemaking will be controversial, and has spent the past 10 months working with local governments to address their concerns in administering the rules. Some interests will advocate for greater restrictions (for example, on building heights, setbacks, and uses) to protect natural features such as bluffs, scenic views, and open space. Local governments will want the rules to provide enough flexibility to meet multiple community objectives such as historic preservation, development/redevelopment, recreation, and transportation. Local government units will also be concerned about the costs of updating plans and ordinances following rulemaking, as well as the costs of monitoring compliance with ordinances and related permits. Landowners, developers/real estate interests, and businesses within the MRCCA will be concerned about potential restrictions on their ability to develop and manage property and conduct business.</p> |
| Agency impact: | <p>The new rules also must be followed by state and regional agencies, and other quasi-governmental entities in developing their own capital improvement or facility plans and for permit regulation. Affected state or regional agencies include the DNR, MnDOT, St. Paul Port Authority, Metropolitan Council, Metropolitan Airports Commission, regional parks districts, the University of Minnesota, and the Minnesota Historical Society.</p> <p>The rulemaking will require approximately 1.4 FTEs from DNR over the next year, and participation and cooperation from other local, regional, and state agencies; as well as the National Park Service and US Army Corps of Engineers.</p> |

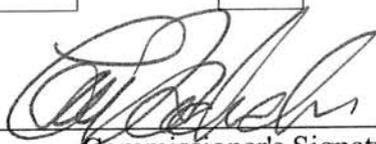
| | |
|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | The legislature has provided funding in FY14 -15 for this rulemaking. |
| If Exempt or Expedited rule process is used explain why: | Not applicable. |
| Describe the need for the rule and provide background information: | <p>The need for the rule was determined by the Legislature, which in 2009 directed the DNR to commence rulemaking for the MRCCA. The rulemaking process was put on hold in 2011 amidst growing local concerns about the rules and the DNR lost its authority to complete the rules. In 2013, the Legislature restored DNR's rulemaking authority and revised the statutory language guiding rule development to better address local concerns.</p> <p>Minnesota passed the Critical Areas Act in 1973, and Governor Wendell Anderson designated the Mississippi River corridor a state Critical Area by Executive Order in 1976. Governor Albert Quie continued the designation in 1979 (Executive Order 79-19). The designation was made permanent by the Metropolitan Council later in 1979. In 1988, the U. S. Congress established the Mississippi National River and Recreation Area (MNRRA), a unit of the National Park Service, with the same boundary as the MRCCA. In 1991, the Minnesota legislature codified the MNRRA as an area of critical concern under 116G. Management of the MRCCA was transferred from the Minnesota Environmental Quality Board to the DNR in 1995.</p> <p>Since its designation in 1976, planning and development in the corridor has been guided by the four land use districts and performance standards established in Executive Order 79-19. In 2007, the Legislature directed the DNR to complete a report on the status of MRCCA plans and regulations and to make recommendations for improved management. The DNR completed the report in 2008. While the DNR did not include rulemaking among its recommendations, the 2009 legislature directed the DNR to conduct rulemaking to establish definitions, new districts, and new development standards. By law, the rules must include minimum guidelines and standards for the new land use districts; these must recognize existing plans, policies, ordinances, and conditions, and must protect or enhance key identified resources and features. The DNR anticipates the new rules will incorporate many components of Executive Order 79-19, but also will include more specific guidelines and criteria, updated standards, and simplified administrative procedures.</p> |
| Rulemaking authority and other relevant statutes: | <i>Minnesota Statutes</i> , section 116G.15, as amended in Laws 2013, chapter 137, article 2, sections 18 to 21. |

Fiscal Impact:

Yes

No

Undetermined



Commissioner's Signature

5/21/14

Date

*** THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE ***

I have reviewed the above information and approved the concept of this administrative rule.

Governor's Policy Advisor

Date

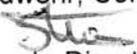
Department : NATURAL RESOURCES
Ecological and Water Resources

STATE OF MINNESOTA

Office Memorandum

Date : May 21, 2014

To : Tom Landwehr, Commissioner

From :  Steve Hirsch, Director - Division of Ecological & Water Resources

Phone : 651-259-5106

Subject : **Mississippi River Corridor Critical Area (MRCCA) – Request for Comments (RFC) Preliminary Proposal Form**

Attached for your signature is the preliminary proposal form to publish the RFC for the MRCCA Rulemaking in the State Register on June 2nd. The DNR intends to take comments through mid-August. In addition to the RFC and associated public comment period, the DNR plans to hold a number of public information meetings and open houses in the MRCCA over the summer. Background information about the direction and scope of the rules, rulemaking goals, and current status is provided below.

Legislative Direction & Scope

- In the 1970s, the MRCCA was designated by Executive Order. This Executive Order established districts and minimum guidelines and standards for development that have guided local land use within the MRCCA for the past 35+ years.
- In 2009, the Legislature directed the DNR to replace the 35+ year old Executive Order with rules that can be updated through a defined and transparent public process. As part of this directive, the DNR was charged with developing new districts within the MRCCA and establishing updated and more consistent minimum guidelines and standards for development in the districts. The minimum guidelines and standards address a number of key natural, scenic, cultural and economic resources and features, as specified in the authorizing statute.
- After a public process involving advisory committees, public information meetings, and other forums, the DNR developed draft rules in 2011, but the previous administration did not support the rules and local opposition to the rules was growing. As a result, the process halted and the agency's rulemaking authority lapsed.
- In 2013, the Legislature renewed the DNR's authority to complete the rules and made changes to the legislation to better address local concerns.

Rulemaking Goals

Since July 2013, the DNR has been working to revise the 2011 draft rules under the Legislature's directives, guided by these goals:

- Maintain and improve water quality and habitat.
- Better recognize existing and planned development.
- Increase flexibility for local governments.
- Focus on rules that best achieve resource protection.
- Simplify administration and clarify language.

Current Status of Rulemaking

Over the past ten months, DNR has:

- Met individually with all local governments in the MRCCA to get feedback on the 2011 draft rules and rule revision ideas.
- Met with the Metro Cities organization three times to summarize progress on rule revisions.
- Met several times with the National Park Service, Friends of the Mississippi River, and area realtors' and builders' associations.
- Met with Metropolitan Council staff, and consulted with staff from MPCA and local watershed districts/watershed management organizations.

As a result of these efforts, DNR has developed a "working draft" of the proposed rules and shared it with local governments and other interest groups. This working draft highlights possible revisions to the draft rules developed in 2011 and includes some of the ideas suggested by local governments, as well as some stronger resource protection provisions. We anticipate varying responses to the working draft, as outlined below:

- Many local governments have indicated that they are satisfied with the process thus far and are feeling "heard." The DNR has worked hard to understand and address their concerns, but has also made it clear that the rulemaking effort cannot completely satisfy all stakeholders and that they may not like some parts of the rules.
- Some environmental groups are feeling left out of the process and are concerned that visual quality is not being protected, particularly as it relates to building height. The National Park Service is also concerned about issues of building height and view protection. Their perception is that local governments were given preferential treatment.
- We anticipate some concern from individual landowners, as was the case during the 2009-2011 process, when they are notified that their properties fall within the MRCCA and may be affected. The greatest concern will likely revolve around vegetation management in limited highly sensitive areas (shore impact zones, bluff impact zones, slope preservation zones, and significant vegetative stands) and their ability to replace or expand nonconforming structures.

Beth Carlson - AR 527

From: Julian Plamann <Julian.Plamann@state.mn.us>
To: <Rebecca.Wooden@state.mn.us>, Beth Carlson <Beth.Carlson@state.mn.us>
Date: 12/11/2009 3:17 PM
Subject: AR 527

Rebecca and Beth,

The Office of the Governor has received the preliminary proposal titled "Mississippi River Corridor Critical Area (MRCCA) Rulemaking."

This rule has been assigned administrative rule tracking number AR 527.

Please use this number when corresponding with our office.

Have a great day,

Julian Plamann
Office of Governor Tim Pawlenty
130 State Capitol
Saint Paul, MN 55155
phone 651-296-0057
julian.plamann@state.mn.us

2009 Administrative Rule Preliminary Proposal Form

Administrative Rule Tracking #: _____
(To be assigned by the Legislative Coordinator)

Submitting Agency: Department of Natural Resources Date: 11/30/2009

Rule Contact: 1. Rebecca Wooden, Land Use Supervisor
2. Beth Carlson, DNR Rules Coordinator

E-mail Address: 1. rebecca.wooden@dnr.state.mn.us
2. beth.carlson@dnr.state.mn.us Phone: 1. 651-259-5717
2. 651-259-5531

Type of Rule (must be one of the following):

Exempt Expedited Permanent

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|------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title: brief description | Mississippi River Corridor Critical Area (MRCCA) Rulemaking |
| Chapter Number(s): | Chapter 6120 (new language); possible revisions to Chapter 4410 |
| Supporters, opponents and possible controversies: | <p>The Mississippi River Corridor Critical Area includes the Mississippi River and approximately 5400 adjacent acres along the 72-mile reach from Dayton and Ramsey in the north downstream to the confluence with the St. Croix River near Hastings in the south. MRCCA rulemaking will be of significant interest for the 30 local government units (including 21 cities, 4 townships, and 5 counties) within the corridor area, as well as businesses, residents, development/real estate interests, environmental groups and other interested parties. These rules will establish new districts within the MRCCA, and new guidelines and development standards for each district. State, regional, and local units of government must follow the standards and guidelines when updating community plans, and must revise their land use regulations and zoning maps to incorporate the new standards.</p> <p>The DNR expects the rulemaking to be controversial. Some interests will advocate for greater restrictions (for example, on building heights, development densities and uses) to protect natural features such as bluffs, scenic views, and open space. Local governments will want the rules to provide enough flexibility to meet multiple community objectives such as historic preservation, growth, recreation, and economic development. Landowners, developers/real estate interests, and businesses within the MRCCA will be concerned about restrictions on their ability to develop property and conduct business. Local government units also will be concerned about the requirement and associated costs to adopt new plans and ordinances following rulemaking, and will likely advocate for rules that do not require substantial changes to current plans and ordinances.</p> |
| Agency impact: | The new rules also must be followed by state and regional agencies, and other quasi-governmental entities for permit regulation and in developing their own capital improvement or facility plans. Affected state or regional agencies include the DNR, MN/DoT, St. Paul Port Authority, Metropolitan Council, Metropolitan Airports Commission, the University of Minnesota, and the Minnesota Historical Society. The |

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| | rulemaking will require 3 FTEs from DNR, and participation and cooperation from other state agencies, as well as the National Park Service and US Army Corps of Engineers. The legislature has provided FY 2010-2011 funding for the rulemaking. |
| If Exempt or Expedited rule process is being used please explain why: | N/A |
| Describe the need for the rule and provide background information: | <p>The need for the rule was determined by the legislature, which directed the DNR to commence rulemaking for the Mississippi River Corridor Critical Area (MRCCA) by January 15, 2010.</p> <p>Minnesota passed the Critical Areas Act in 1973, and Governor Wendell Anderson designated the Mississippi River corridor a state Critical Area by Executive Order in 1976. Governor Albert Quie continued the designation in 1979 (Executive Order 79-19). The designation was made permanent by the Metropolitan Council later in 1979. In 1988, the U. S. Congress established the Mississippi National River and Recreation Area (MNRRA), a unit of the National Park Service, with the same boundary as the MRCCA. In 1991, the Minnesota legislature codified the MNRRA as an area of critical concern under 116G. Management of the MRCCA was transferred from the Minnesota Environmental Quality Board to the DNR in 1995.</p> <p>Since its designation in 1976, planning and development in the corridor has been guided by the four land use districts and performance standards in Executive Order 79-19. In 2007, the legislature directed the DNR to complete a report on the status of critical area plans and regulations and to make recommendations for improved management. The DNR completed the report in 2008. While the DNR did not include rulemaking among its recommendations, the 2009 legislature directed the DNR to conduct rulemaking to establish definitions, new districts, and new development standards. By law, the rules must include minimum guidelines and standards for the new zoning districts and must consider existing plans, policies, and existing ordinances and conditions, and must protect or enhance key identified resources and features. The legislature also required the DNR to prepare preliminary and final bluff maps. The DNR anticipates the new rules will incorporate many components of Executive Order 79-19, but also will include more specific guidelines, standards, and administrative procedures.</p> |
| Rulemaking authority and other relevant statutes: | <p>Laws of Minnesota 2009, Chapter 172, Article 2, Section 5(e) requires the rulemaking as does Minnesota Statutes (2009) Section 116G.15, which authorizes the commissioner to adopt rules as necessary for administration of the MRCCA, and provides standards and guidelines for the rulemaking. The legislature directed the DNR to commence the rulemaking by January 15, 2010.</p> <p>Note: With July 1, 2009 as the effective date of Chapter 172 (the law requiring the rulemaking), there are issues relating to the deadlines in Chapter 14. Laws 2009 includes a "commence by" date of January 15, 2010. Rulemaking is routinely "commenced" by issuing the Request for Comments. However, Section 14.101 requires the Request for Comments to be published within 60 days of the effective date of the law (so by 08/31/09). Also; Section 14.125 revokes authority for rulemaking if the Notice of Intent is not issued within 18 months of the effective date of the law. Thus, the DNR must issue the Notice of Intent by January 1, 2011 (18 months after the effective date, but only 13 months from the date of this notice) or its authority to adopt the rule will expire.</p> |

Fiscal Impact:

Yes

No

Undetermined

Mh HLT

Commissioner's Signature

11/30/09

Date

*** THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE ***

I have reviewed the above information and approved the concept of this administrative rule.

Governor's Policy Advisor

Date

Beth Carlson - Possible Rules Governing the Mississippi River Corridor Critical Area

From: Beth Carlson
To: Julian.Plamann@state.mn.us
Date: 12/3/2009 11:04 AM
Subject: Possible Rules Governing the Mississippi River Corridor Critical Area
CC: Jeffrey Berg; Rebecca Wooden

Julian,

I am sending to you by interoffice mail the preliminary proposal package for a new permanent rulemaking file concerning the **Mississippi River Corridor Critical Area**; please keep an eye out for it. I look forward to receiving an Administrative Tracking Number for our records. Please contact me with any questions. Thank you!

Beth Carlson, Rules Coordinator
OMBS Policy, Research, & Planning Services
Minnesota Department of Natural Resources
651-259-5531