

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

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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Rules
Relating to the Mississippi River
Corridor Critical Area

ORIGINAL

OAH DOCKET NO. 8-9014-33236

REVISOR NO. R-04240

VOLUME I

The above-entitled matter came on for public hearing before Eric L. Lipman, Administrative Law Judge, taken before Marcia L. Menth, a Notary Public in and for the County of Wright, State of Minnesota, taken on the 14th day of June, 2016, at Schaar's Bluff Gathering Center, 8395 127th Street East, Hastings, Minnesota, commencing at approximately 4:30 p.m.

A P P E A R A N C E S

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ALSO PRESENT:

Daniel Petrik - Land Use Specialist

Jennifer Shillcox - Land Use Unit Supervisor

*The Original is in the possession of Administrative Law Judge Eric L. Lipman.

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P R O C E E D I N G S

THE COURT: Good afternoon, my name is Eric Lipman, I'm an administrative law judge with the Minnesota Office of Administrative Hearings. It's precisely 4:30 on Tuesday, June 14, 2016.

And we've convened in the Gathering Center of Schaar's Bluff at the Spring Lake Park Reserve for a public hearing in the matter of the proposed rules of the Minnesota Department of Natural Resources relating to Mississippi River Corridor Critical Areas.

It's otherwise known as OAH Docket Number 8-9014-33236. It's also been denominated as Revisor Number R-4240. And we'll talk again about the importance of those numbers in a little bit.

The OAH is an independent agency in state government, we are independent of the Department of Natural Resources and of the various groups and stakeholders who've joined us here for the public hearing this evening.

Our office's purpose is to provide hearing services in rulemaking hearings and contested cases between the citizens and the government agencies hopefully in a way that's fair to all concerned.

Among the other directives that the Minnesota state legislature has given our office and the

state agencies are that rulemaking hearings are to be conducted so that members of the public are treated fairly and courteously and impartially.

I'm here as part of a larger set of procedural protections to make sure that we include members of the public who would like to contribute to solid administrative rules, are heard from and are able to engage in meaningful dialogues with members of the state agencies on those proposals. And that, they get all of the procedural due process to which they're legally entitled.

There's a handout on the table as you walk in, the registration table, entitled, "State of Minnesota Office of Administrative Hearings Rule Hearing Procedures." If you don't have a copy of that, it's a very handy handout to have. It describes the procedures that the legislature has set out for hearings just like this.

And while I'm going to touch upon a few of the highlights in these remarks, this introduction right now, there's much more useful detail in that handout. And I commend you to not only grab a copy, but likewise to read it at your leisure.

As I suggested earlier, this hearing is part of a process by which agency rules are adopted

under the Minnesota Administrative Procedures Act.

The purpose of this hearing is to develop and receive information on three key issues outlined in that act.

Namely, the legal authority of the agency to adopt these rules, if any; whether the agency has fulfilled all of the legal and procedural requirements in order to issue a set of new rules; and three, whether it's demonstrated that among the possible alternatives that it had before it, whether the ones that it has selected and is proposing are needed and reasonable.

So, it's statutory authority, it's compliance with the procedures for issuing rules, and whether among the choices that it's made, whether the one it settled upon are needed and reasonable.

So, I'm glad to give folks a chance who will share comments today a little leeway in developing the larger context for their presentations.

But I'll simply point out that the purpose of this hearing and this process is to really drill down on those essential questions, namely, the statutory authority, the agency's compliance with the procedural rules, and whether the ones it selected are needed and reasonable.

That comments directed on those topics are really the most helpful and also the ones that will have the most impact in this particular process because that's what we're here by statute to do.

The agenda for today's hearing is I'm going to continue to outline a little bit here the hearing procedure, then I'm going to introduce members of the agency panel that are here to testify.

They're going to make a presentation about their support of why they think not only that they have authority to issue these rules, that they've complied with all the various steps that are required for public notice and comment, and also, that the ones they've selected are needed and reasonable. So, they're going to make their presentation on why they think that is, in fact, true.

After that we're going to take a short standing break. Literally, I'm not going to move from this spot. We're going to go off the record for a second to allow folks to look at the public copies that we have here in the binders to familiarize themselves with the exhibits.

Mindful, and this is really the important point, that all of the materials that are over there on the tables are online, available on your home

computer in your pajamas 24 by 7 for you to spend time with as long as you want.

And it would be much better for us to talk about the substance you would like to share about those particular rules and to look at those exhibits at your leisure.

But we do want to make sure that you do have a chance if there's something that you haven't heard of or haven't seen or talked about that you have a chance to at least briefly look at those materials.

All of those things are available in your public library, are available online, anywhere there's an Internet connection 24 by 7. So, it's much better for us to spend time talking about the rules.

Finally, most of the hearing time is that we set aside for the key event, which is to hear from members of the public, not only to have them have a chance to ask questions of the agencies, but also to share their own views about these important topics.

So, to make sure that we have an accurate record this evening, and we do have Ms. Menth who is a certified court reporter here, we'd like to ask folks to come to this table down here and to use the microphone, not only so that Ms. Menth can understand and hear what you have to say, but also so that everyone

else in the room can benefit from the things that you're raising and the points that you're making.

If you're going to read a little bit -- well, one, you don't have to because we can mark whatever you have as far as your testimony. And you can feel free to hit the highlights. We set the room up deliberately so as to appear like Thanksgiving tables. We can talk neighbor to neighbor as if we were at the cafe and having a cup of coffee.

Or if you were at the local library board or planning commission or city council meeting talking neighbor to neighbor about things that matter. So, you can feel tree to hit the highlights.

Mindful, that you can have any written marks that you have marked as a hearing exhibit. And we're going to go through all of those materials line by line. You get full credit by submitting something in writing.

You don't have to give a dramatic reading here of something that we can certainly read as well. Much better to say here are my three key issues, I've detailed in greater information in my accompanied written attachment.

Even better still, you have 20 calendar days after the end of the hearing process,

which runs -- the 20 calendar days runs until Wednesday, July 6th, the Wednesday following the 4th of July holiday, to submit any additional written comments.

Even better than that, you don't have to have been in this room or any of the rooms that we're having this week as far as public hearings in order to write in. We're eager to draw upon the wisdom of the group in a serious way.

And so, anyone who has any good thinking to contribute to this process, we're very eager for the wisdom of the group. And you can send it in from wherever you are on the globe provided it reaches us by 4:30 p.m., 4:30 p.m. is important, on Wednesday, the 6th of July, 2016.

So, there's lots of other time to flush out and to further develop your remark. And there's no page limit, you can go on as best as you see fit through Wednesday, the 6th of July, 2016.

I'm going to try to limit folks, just at least in the first round, to about five minutes or so. Mindful, that we can have subsequent rounds and I'm glad to allow people to talk longer in subsequent rounds. Again, only because I want to give everyone who hasn't had a chance to at least speak once an opportunity to speak.

We'll go through the roster, we'll do an ollie ollie in come free like we did when I was seven and wanted folks to come back and touch the tree to see if they want to come in and make remarks.

Again, we're eager to hear from as many voices as possible. That's the point and the best leveraging of this particular process.

Our plan because of the international convention on the fair and humane treatment of court reporters is to only go in 90-minute slots. So, we'll go from about 4:30 to roughly 6:00 and we'll take a short break so Ms. Menth can rest her hands and maybe get a soft drink and maybe a bathroom break that folks might benefit from.

But because they are a state resource as valuable as many other state resources we'll be talking about tonight, we don't burn out the court reporter.

If you do make written remarks either by fax or by mail as described in the handout or through the Office of Administrative Hearings online 24 by 7 rule comment site, which again is detailed in the handout, it's very handy, particularly for the letter submissions, that you use both of the numbers that I talked about this evening.

So, for those folks who have pencils handy, I'm going to repeat them. The docket number is 8-9014-33236. Also, it's very handy to use the Revisor Number R-4240. One innovation from Governor Dayton is that all state agencies, including the governor's office, use the revisor's number to refer to these rules.

So, in any platform when you're talking about this from our office to the agency's office to the governor's office to any legislators, we're all using the revisor's number, it's a uniform system of number, notwithstanding the fact that our agency still has its own docket number internally and may use other things. But the revisor number really matters.

After the July 6th deadline passes, folks, and all these materials will be posted and available online for your inspection, there will be a five business day rebuttal period, not for new matter, but for you to have an opportunity to comment on something another stakeholder or an agency person said.

The comment from X group is not, in fact, true, it's some other way. And you're allowed a five business day opportunity to reply, again, through 4:30 on Wednesday the 13th of July, 2016, whether it's

by a fax or mail or, again, through the OAH's electronic comment system through 4:30 p.m. on Wednesday, July 13, 2016.

And after that, I'll take all of the material that has been gathered here today, I'll be making a set of findings and conclusions and a report about, again, the three key questions in this case.

Mainly, whether the agency has the statutory authority to promulgate these rules, whether they have the powers from the legislature, whether they complied with all of the detailed procedural requirements from Chapter 14 and Part 1400, and there's a number of rules, we make them turn square corners in this process.

And given those powers and the procedures have they made needed and reasonable choices among the very wide range of things that they could choose.

Delegations of rulemaking authority don't go from the legislature to me, I'm not picking the right rule, they run from the legislature to the agency, but the agency has to act reasonably, they have to act in a way that's needed.

So, that's what this process is about, to make sure ultimately that you have public

confidence in the results, you have a good reason to trust. And also that we clear out the defects.

Minnesotans have good reason to believe that they're above average because we clean up folks' work. They're trying hard, but through the wisdom of the group and multiple hands and multiple eyes and everyone's best thinking, we're cleaning up their drafts.

And, frankly, it's fairly rare that there are defective rules because of this process. So, it seems long and involved and complicated, but the legislature's expectation that better substantive results will follow has been achieved time and again. And we hope so in this process. Okay?

And so, with that, I'm going to turn it over to Ms. Enzler for an introduction and she's going to give the agency's presentation. Ms. Enzler.

MS. ENZLER: Thank you, Your Honor. I will start tonight and then I'll turn it over to Ms. Shillcox to make a formal substantive opening statement.

To start with I do want to identify Ms. Shillcox here, who is the director of supervisor from land use unit. She supervises the shoreland program. She supervises the critical area programs and

the critical area rules in this case. She's been intimately involved in the rulemaking process.

And she comes to the DNR with a long history of land use experience, having represented both Wisconsin and Minnesota communities and in particular Wisconsin communities on the St. Croix. So, she has extensive experience in dealing with shoreland ordinances and the protection of important resources to the individual states.

Also with me tonight is Mr. Daniel Petrik. Mr. Petrik is in our shoreland program. He was charged with managing the development of the critical area rules. He's been in that position since 2012.

Prior to coming to the DNR he too worked for a number of local units of government particularly in the area of zoning and planning. And he has a particular expertise which we used in this process around civic engagement.

Suzanne Rhees, who cannot be here with us tonight, was also involved in the rulemaking. And I believe I'll save her introduction until tomorrow, but suffice to say she too has extensive experience doing land use.

At the outset I would direct your attention to Minnesota Statute 116G.15, Subdivisions 2

and 3. These are the critical area statutes as they relate to the Mississippi River Critical Area. And I'm going to be referring to them by -- to the Mississippi River Corridor Critical Area as just the critical area tonight.

Minnesota Statute 116G.15, Subdivision 2 directs the commissioner of the Department of Natural Resources to consult with local units of government to determine whether and then to determine -- if they determine it is reasonable to adopt rules necessary to protect and conserve the critical area would go toward maintaining the channels of the river for transportation, providing for economic development, assuring ongoing clean water supply for the state of Minnesota, protecting those important attributes which make the Mississippi River critical in both -- or important to both culturally, but also biologically and ecologically.

Minnesota Statute 116G.15, Subdivision 3 mandates that the commissioner adopt rules to establish districts within the critical area. And for those districts craft them in such a way that they protect the river, protect our drinking water source, protect important resources for which the critical area was designated, protect those resources identified by

the National Park Services, important in designating the Mississippi River as the -- as a national known river and recreation area and to manage the river corridor and protect the environmental and recreational attributes of the river.

In addition, as the judge -- Your Honor has mentioned, we also have a number of requirements under Chapter 14 and Minnesota Rules 1400 to fulfill in adopting these rules.

Many of those requirements have been fulfilled through the exhibits, which I will introduce at this point in time for acceptance into the administrative record.

THE COURT: So, Ms. Enzler, you're moving 1 through 19, is that it?

MS. ENZLER: I'm going to move at this point, Your Honor, 1 through 11.

THE COURT: Okay. So, 1 through 11 are received.

MS. ENZLER: And Exhibit 1 through 11 together document our compliance with the procedural requirements of Chapter 14 and Chapter 1400. Exhibit 1 relates to -- or is our first and second request for comments published during the development of the rules.

Exhibit 2 is the proposed rules

themselves. Exhibit 3 is probably the core exhibit outside of the rules themselves. Exhibits 2 and 3 are the most important exhibits here. Exhibit 3 is the statement of need and reasonableness.

In the statement of need and reasonableness, Your Honor, we have documented the steps that we have undertaken to comply with the specific procedural requirements of Chapter 14. We have also documented the need for the rules and the reasonableness of the rules.

We have also gone through a rule-by-rule evaluation, examining the need for each individual rule, the purpose the rule serves and identifying those steps that we undertook to assure that the rule was reasonable.

Exhibit 4 is certification of that we have delivered the statement of the need and reasonableness to the Minnesota legislature. Exhibit 5 is the notice of hearing as it was mailed in the state register.

Exhibit 6 certifies that the DNR notified the Department -- notified the Department or provides -- that we notify the folks on the rule notification as required by statute. Exhibit 7 certifies that the Department carried out the additional

notice plan approved in the order by yourself.

Exhibit 8 served as the Department's required notification to legislature, the legislators. Exhibit 9 is correspondence between the Department and the Office of Management and Budget related to further discussions around the local fiscal impacts.

Exhibit 10 is correspondence between the Department of Natural Resources and your office relating to approval of the proposed notice plan and proposed notice of hearing.

And, finally, Exhibit 11 is Ms. Shillcox's opening statement. So, I would move those for admission at this time.

THE COURT: Mindful, Ms. Shillcox, you can feel free to hit the highlights. And if you are going to read, be mindful that people read a lot faster than they talk in ordinary conversation, again, in regards to the record and also Ms. Menth's ability to follow along.

So, if you could -- well, like I say, feel free to hit the highlights and also be mindful of the practice of people reading. Ms. Shillcox.

MS. ENZLER: Before we get there, Your Honor, we do have some additional exhibits we would like to introduce at this time that we want to separate

out from those necessary to meet --

THE COURT: 12 through 19?

MS. ENZLER: Yes, those would be Exhibits 12 through 19. These are exhibits that will be referred to by Ms. Shillcox and they relate to both the bluff impact zone, the shore impact zone, and delineating them, as well as the area that might be impacted by nonconforming structures, the vegetation, management or clearing issues, deck and repairing access and land alteration.

Exhibit 18 Ms. Shillcox will be referring to and that is a timeline of the efforts to address the critical concerns along the corridor.

But finally I want to draw your attention, Your Honor, to Exhibit 19. Exhibit 19 is a -- one of the individual maps for the critical area. And Exhibit 19 became necessary because during the course of preparing for this hearing, it came to our attention that we made an inadvertent area pertaining to a marina.

It is our intent that all marinas be treated the same along the river. We had included them incorrectly in a proposed district map.

So, we have in Exhibit 19 the current map that is in the notice and then the proposed revised

map, which would treat the marina at issue in the same way as other marinas along the river.

THE COURT: Great. 12 through 19 are received.

MS. ENZLER: With that, I turn it over to Ms. Shillcox for an opening statement.

THE COURT: Ms. Shillcox.

MS. SHILLCOX: I'll spell my name for the record, it's J-e-n-n-i-f-e-r, S-h-i-l-l-c-o-x. As Sherry mentioned, I'm the land use program supervisor for the DNR division of ecological and water resources. And I am very proud to be representing the DNR here today.

We're here to listen to your comments about proposed rules for the Mississippi River Critical Area -- Mississippi River Corridor Critical Area. It's a long name and I'm sure to mess it up if I try to say that throughout. So, I'm going to refer to it as the critical area or the corridor from hereon out.

It's been a long road, I've been involved from the very beginning. It had some bumps along the way, but also learned a lot and it's been very rewarding. And we're very happy to be at this point in the process.

So, part of our opening statement I

will be covering the importance and history of the critical area, the scope and effect of the proposed rules, public engagement to develop the rules, goals and principals that we use to guide us through the rulemaking, and also, key highlights to the proposed rules.

We did not prepare a PowerPoint presentation, but as Ms. Enzler indicated, we do have some slides that we'll be pointing to that have also been introduced as exhibits.

So, I'll start with the important history of the critical area. The Mississippi is one of the most famous rivers in the world, arguably. It inspires us, we are drawn to it.

It's a cultural symbol of our country and it's the reason that the Twin Cities exist. It's essential to our economy and it's a place where thousands make their homes and also recreate.

Because of its importance the Minnesota legislature has taken measures over time to protect various segments of the river.

For example, establishment of the Mississippi Headwaters Board, creation of Itasca State Park, and designation of a portion of the river from St. Cloud to the Twin Cities as a state wild and scenic

river.

So, the designation of the segment of the river that encompasses the Twin Cities metropolitan area as a critical area and the legislative directives to do this rulemaking are another example of the legislature taking measures to protect our great river.

So, the corridor covers a 72-mile swath of land through the Twin Cities, starting up north in Dayton and Ramsey and running downstream to Ravenna Township just south of Hastings near the confluence of the St. Croix River.

It contains 54,000 acres of water and public and private land and water. It also shares the same boundary as the Mississippi River National Recreational Area, or MNRRA, which is a unit of the National Park Service.

A total of 30 communities have land within the critical area. It is 21 cities, four townships, and five counties. It's home to a full range of residential neighborhoods and business districts, including downtown St. Paul and downtown Minneapolis.

It has very well-established commerce, industry, transportation corridors. It also has been extensively developed, but it still contains many natural and scenic amenities. All you have to do

is look out the window to see what I'm talking about, it's beautiful.

In 1973 -- here's where I'm going to switch to one of our exhibits, it's a timeline, it's Exhibit 18. And all of this is in the SONAR as well and it's on our website if you haven't seen it. I'm not going to talk through all of this, but I'm going to hit some highlights.

In 1973 Governor Wendell Anderson recognized that this segment of the river or corridor was under intense pressure from many competing interests. So, in an effort to balance those interests and protect the many different values of the river, he designated it a state critical area.

Since then the designation has been reaffirmed by Governor Albert Quie and the legislature. And all local governments in the critical area have regulated land use and development in their jurisdiction in accordance with the original designation order that is Executive Order 7919.

So, in the mid 2000s citizens and interest groups began raising concerns that development in the corridor was not being regulated consistently and that all the resources weren't being adequately protected.

So, in response to that, in about 2007 or 2008 the legislature directed the DNR to do a report on the critical area. So, the report -- as part of that report the DNR evaluated the critical area program and made a number of recommendations, including some nonrule and rule alternatives to address the issues in the corridor.

In 2009 and again in 2013 the legislature responded to the report by directing the DNR to develop rules to replace Executive Order 7919. And thus the rulemaking and thus why we're here tonight.

So, I'm going to transition to the scope and effect of the proposed rules. The proposed rules cover three broad areas. One is the administration of the program, the rules, responsibilities, and procedures.

Second is the establishment of six districts that will replace the four currently in the executive order. And within those districts there are standards that regulate things like height and setbacks from the river and bluffs.

And, finally, the third area of the rules are minimum standards and criteria for development of private and public land throughout the corridor, regardless of district. And those standards include

things like vegetation management, storm water management, subdivision of land.

Once adopted the proposed rules will replace Executive Order 7919, which as I mentioned has governed land use in the corridor for the past 35-plus years. And all the local governments will need to amend their plans and ordinances to be consistent with the rules.

One big key element of our rulemaking was the level of public involvement that we had. So, this rulemaking was one of the DNR's most extensive public involvement efforts, more than is typical for a rulemaking and the proposed rules are better because of it.

People expressed a lot of concerns and a lot of passion throughout this rulemaking. So, it was very important for us to understand those concerns and then be able to address them appropriately.

So, we relied heavily on the experience and knowledge of all the people affected by the rules, the local government, interest groups, property owners. And we really valued and paid attention to their knowledge and perspective.

We incorporated a lot of their ideas into the rules. And, actually, it was a pretty

iterative process where we had many drafts throughout the rulemaking and we checked back with a lot of the parties to make sure we got it right, that we adequately addressed their issues.

So, for those of you who are interested in all of the details of the process, we do have a handout in the back that looks like this (indicating) and it details there's different phases of the rulemaking.

That first phase that we spent a lot of time on over five years was the rule development and public involvement phase. And there's a lot of detail in there.

I'm not going to go through all of what we did, but I do want to hit some of the major highlights. We published two requests for comments, that's not typical. One was at the outset of the rulemaking and it was on the general scope of the rules.

And second was midway through and we actually published a set of working draft rules and gave people an opportunity to react to them. We posed different options to get feedback. So, they had a chance to directly influence what went into the rules.

We also engaged local governments right from the get-go. We met with each local

government at least twice throughout the process individually. And for some of them we met many more times.

We also met in a number of large group meetings convened by metro cities. And we had a lot of meetings, phone conversations and collaborations with a number of the cities just to evaluate specific provisions that most affected them.

It's the local government that have been implementing this program for the past 35 years, so they know what works, what doesn't. And they have a lot of useful insights that helped us through this process.

We also had a number of geographically focused work groups early on that represented a variety of interests in the critical area; five public information meetings; we attended many other meetings with groups as requested.

And then, finally, after evaluating comments from our second request for comments, we identified a number of sticky issues. These were really tough issues that had no clear path forward. So, we convened all the groups that provided input and said let's figure this out.

So, those are some of the issues around nonconformities, bluffs, vegetation, storm water,

and subdivisions. So, the resulting rule package really reflects the input we received from all these people. And we believe the rules are balanced and fair and are an improvement over the existing regulations.

I will now switch gears to our goals and principals that guide us through this rulemaking. So, the statutes guiding this rulemaking contain many goals that speak to a variety of interests and values. And some of them are competing.

So, I want you to all just take a minute and think about what the Mississippi River means to you. And we all feel connected to the river in different ways and we value it differently. So, it's a balancing act.

These rules are a compromise because they have to be, it balances a lot of different values and interests. So, it requires us as an agency to balance interests. And we're not new to the balancing act.

As an agency it's really inherent in our mission as we regulate and manage land that we balance economic, recreational, and ecological and natural functions. So, that worked well for us.

But to help guide us in our role of balancing interests in this rulemaking we followed some

principals that were actually embedded right in the statute that guided the rulemaking.

First off is to maintain and improve water and natural resource protection. Secondly, better recognize existing and planned future development. Thirdly, increase flexibility for local government. Fourth, focus rules on those measures that can realistically achieve resource protection.

And, finally, simplify administration, clarify language, and improve organization of the rules that is currently contained in the executive order.

So, I'm to the point where I'll just cover some of the key highlights of the proposed rules. The statement of need and reasonableness, or SONAR, which is Exhibit 3 in these binders or online if you look, lays out the rationale for the specific rule parts. So, I'm not going to do that.

But I do want to touch on the big changes that we made from Executive Order 7919 to address issues that came about as part of the rulemaking.

So, first off is in the area of plans and ordinances. The proposed rules clarify the contents of local plans and ordinances. It also clarifies the

responsibilities of local governments and other agencies in meeting the requirements of the critical area.

Flexibility was very important, as I mentioned before. Not -- the conditions aren't the same in all communities and there needs to be flexibility for local governments to address those special situations.

But the flexibility allows local governments to adopt ordinances that don't exactly meet the rules to address special circumstances. They still have to meet the intent of the rules.

Bluffs was a very big issue, there's a whole section in the SONAR on bluffs. We also have an exhibit. So, all bluffs are defined and regulated. The proposed rules clarify the definition of bluffs using three parameters, providing more consistent identification and mapping of bluffs throughout the corridor.

This is very important to local government because oftentimes property owners wanted to know if they could do something on their bluff. And there wasn't a clear way to measure it. So, you go out on sites and not agreeing with the property owner's surveyor and that sort of thing.

So, it's important that we tightened up the definition. And the executive order does not

define bluffs, it defines blufflines. So, there was always some confusion and ambiguity there. So, that was one important thing that we wanted to clarify.

As part of the rule development process we did really look at how governments are currently defining and regulating bluffs. And we tried to get the definition to match that.

We developed both a mapping tool that we used to engage select communities in evaluating different bluff definition. And our goal was to get a definition that meets how most communities are already regulating bluffs and minimize its nonconformities. And I think we did that.

Districts, currently in Executive Order 7919 there are four districts, they were identified in the mid '70s. Things have changed since then. So, we have proposed six districts that better reflect existing as well as planned future development in the corridor. We've also provided a mechanism for changing districts, which does not currently exist in the executive order.

Building height was also a very important concern, especially in some areas of the corridor. The heights are regulated based on the six districts. And this allows for more variation.

Taller buildings are allowed in two of the districts through a conditional use process that would be held by the local government and would allow for public input for where buildings are proposed to be higher.

Vegetation management was also identified to us, especially by local governments, in being very difficult provisions to enforce currently. So, we really tried to strengthen those standards, more clearly define what vegetation is to be managed and where. So, really what the rules focus on is intensive vegetation clearing in the most sensitive areas.

Land alteration was also of importance. And again, we just strengthened and more clearly defined what could be done, especially in the areas of riprap, that was very important to the northern part of the corridor, as well as other disturbance activities in sensitive areas.

Subdivision and land development were of concern as well. So, the proposed rules establish thresholds and percentages for sensitive corridor resources, which are referred to in the rules as primary conservation areas.

And the rules establish those thresholds for those areas to be set aside and

protected. And that applies to new subdivisions, planned unit developments, and large master plan developments.

These set-asides are not required for river-dependent uses and may be included in land that local governments may already be requiring dedication for.

And, finally, nonconformities was a really big issue, especially early on in the process. And we will refer to existing statute which establishes protections for nonconformities. And clearly laid out what expansion can occur consistent with what local governments are already doing.

So, that concludes our opening statement. Sorry if it went a little long. We look forward to hearing your comments. I want to thank you all for coming today. We're really glad you're here.

THE COURT: Thank you so much. Ms. Enzler, are we concluded?

MS. ENZLER: Yes, Your Honor, we are concluded, that is the State's presentation.

THE COURT: So, under the earlier order what I'm going to do is take a few moments off the record to give folks a chance to look at the binders.

As soon as people are concluded

looking at the binders we'll start right away. Don't move, you won't want to miss it. Don't go far, we're in a short, short recess.

(At this time a brief recess was taken from 5:15 p.m. until 5:20 p.m.)

THE COURT: So, we're back on the record after a short recess. Our plan is to at least until -- our next court reporter break would be at 6:00. So, we're going to try to conduct as much business as is reasonable.

With us first is Senator David Durenberger. And following him and his remarks would be Rory, I think it's Stierler, of the National Park Service. So, you'll be following the senator.

With that, Senator Durenberger, if you wouldn't mind stating and spelling your name for our record.

MR. DURENBERGER: My name is David Durenberger, D-a-v-i-d, D-u-r-e-n-b-e-r-g-e-r.

THE COURT: Thank you so much. Senator Durenberger, what should we know?

MR. DURENBERGER: I was born and raised in Minnesota and currently reside with my wife Susan Foote at 9 Crocus Hill in St. Paul. Retired from a variety of private and public service positions

including three terms in the United States Senate representing the people of Minnesota.

This afternoon I'm asking you to support the draft of MRCCA rules proposed by the State of Minnesota and its Department of Natural Resources.

Because I happen to be in a unique position to know why the proposal and your approval of the proposal is essential to affect an important national policy precedent, which I helped create and have followed.

THE COURT: Just a little slower, Senator, for Ms. Menth. Thank you, Senator.

MS. ENZLER: Your Honor, I'm not sure the microphone is on.

THE COURT: Maybe we can get staff to -- excellent. Thank you, Senator. And again, just so that Ms. Menth can hear. And mindful that you're Exhibit 21.

MR. DURENBERGER: The Mississippi River is known worldwide as the Father of Waters. About 160 miles from its origin it flows through the city of St. Cloud and right past the hospital in which I was born. 60 miles later it reaches the Twin Cities and for the next 72 miles provides a natural resource unique enough to have been granted protection as a part of our

national park system.

The Mississippi River is Minnesota. It was critical to building the economy of the Northwest Territory and the territory of the state of Minnesota and of cities that grew up because it was an economic resource, connecting us with the rest of the world.

We built a great research and education university on the Father of Waters to help expand our capacity to use both the minerals and vast natural renewable resources of our state to build global corporate enterprises. In recent years our economy does not depend anywhere near as much on the river, as does our quality of life.

So, it's important to recognize that even while the river provided important transportation and energy infrastructure, the people of this state became adept at using public policy to enact environmental standards that protect our health while advancing our enterprise.

It is the quality of our lives in Minnesota which help make our state and our metropolitan communities attractive places to live. It is this quality of life here that will be critical to our economy in the next decades when the normal inmigration of job seekers will not keep up with the retirement of

the boomers and the outmigration of Minnesota.

I was the Senate author of the legislation creating the Mississippi National River and Recreation Area. I authored the Corps of Engineers study of the Upper Mississippi River Basin, which preceded it.

I also authored much of the appropriations legislation, which has provided for National Park Service and U.S. Forest Service lands acquisition and development in Minnesota, including the Minnesota River National Wildlife Refuge starting in Bloomington, the BWCA, and the Voyageurs National Park.

From 1972 to 1974 I served by appointment of Metropolitan Council chairman, Al Hofstede, as the first Chair of the Metropolitan Parks and Open Space Commission.

Our citizens' commission recommended to the Council, and the Council adopted, a master plan for the development of regional parks and open space in the seven county metro area to guide the investment of federal and state funding in the regional system.

This, Your Honor, is the unique inter-governmental policy innovation I spoke of earlier and which we are eager to protect. The master plan proposed the State of Minnesota act to protect both the

use of the Mississippi River and the protection of natural resources on land adjacent to the river.

Subsequently the State legislature appropriated an initial 40 million dollars for regional parks and open space and the authority in DNR to provide rules for critical area resource protection.

What you find before you today is essentially an update to the governor's executive order implementing the statute, not a whole new regulatory scheme. It is solid, deliberate, and well-thought-out work with which not everyone will be in unanimous agreement, but from which every one of us will benefit.

What makes it unique public policy is simply this: By statute we created a state and local government compact, a compact by which Minnesota guarantees to protect national resources, which happen to be in our 72-mile course of the Mississippi River, for the enjoyment of everyone and every future generation.

As a consequence, like any shared system, but particularly this one, the Mississippi River resources, natural and economic, must be governed at a higher level than the purely local interests that make up its parts.

This is the essence of the critical

area designation and it was the essence of the National Park Service designation as well.

I believe the State of Minnesota and the DNR has done its very best to honor that tradition and that obligation. And recommend it to you for your approval.

THE COURT: Thank you kindly, Senator, I appreciate your time and contributions to our record. Mr. Stierler. And following him will be Whitney Clark, executive director of the Friends of the Mississippi River Corridor, I think.

If you wouldn't mind stating and spelling your name for our record.

MR. STIERLER: My name is Rory Stierler, R-o-r-y, S-t-i-e-r-l-e-r.

THE COURT: Thank you so much, Mr. Stierler. What should we know?

MR. STIERLER: Thank you, Judge. I represent the Mississippi National River and Recreation Area. David just provided a wonderful explanation behind the why we were created and our connection with the corridor.

And in my comments now I would like to establish the need for the rules, given the connection to the National Park Service, and emphasize

the purpose.

Our park is a 72-mile corridor along the Mississippi River, we share the same boundary as the Mississippi Corridor Critical Area. I'll refer to that as the critical area from hereon out.

And so, we share the same boundary and we have a lot in common. We share the same fundamental purposes and values which revolve around the resource protection through guided land use and development.

In 1991 the state designated the MNRRA the critical area. And we are a true partnership park, a new kind of national park. We don't own much land, but instead we protect our key resources and features through partnerships and management frameworks.

Here in the Twin Cities the management framework is the Mississippi River Corridor Critical Area. And this agreement is promised from the State to the national government.

It wasn't a mistake, it's not a coincidence, it's not a convenient chance, it was a deliberate decision among stakeholders along the river that included citizens, local, regional, state, and federal governments and businesses and nonprofits.

The decision is signified in

Minnesota State Statute 116G.15, beginning in 1991 where the State agreed to ensure protection of the river corridor and update the existing program upon the completion of our comprehensive management plan, which was completed in 1995.

And now, Minnesota Statute 116G.15 has since been updated. And that update has given the DNR the authority to proceed with drafting rules for the critical area. We feel this is acting upon that promise from 1991. I'll focus on the fundamental purpose of the critical area.

THE COURT: Just a tad slower, Officer Stierler. Thank you so much.

MR. STIERLER: So, the State's critical area of the program is laid out in Minnesota Statute 116G in Section 2 titled "Policy" says that the legislature finds that the development of certain areas of the state possessing important historic and cultural esthetic values or natural systems which functions of greater than local significance could result in irreversible damages to these resources, decrease their value and utility for purposes or unreasonably endanger life and property.

I want to repeat that it identified that the development could result in irreversible

damages to these resources, historic, cultural, esthetic or natural systems.

This is a large reason why the National Park Service, the federal government, agreed to entrust the State of Minnesota to protect the resources that were identified.

The MRCCA established under the State act and has five additional purposes within 116G.15. I won't read all of those now. You'll find that is consistent that the purpose of the program is to protect natural, esthetic, cultural, and historic resources while allowing for appropriate development.

The legislature has directed the DNR to create rules that protect these resources. And we feel the DNR has largely accomplished this.

We ask when you review the rules and oral and written comments on the need and reasonableness of the rules that you refer back to these purposes and ensure that when considering the comments and the reasonableness of the rules, the river's corridor key features and resources are protected. And the rules must be consistent with those purposed statements.

And we're kind of short on time, but I want to make a philosophical statement here. I'm reading a book called "Wild Ones" by Jon Mooallem. In

it he describes a concept known as the Shifting Baseline Syndrome.

Each passing generation accepts the world they've been given as normal as a status quo. This is a world that they have inherited. And in the context of the critical area can include the abundance and condition of wildlife, bluffs, shorelines, trees, natural vegetation, trails, streets, roads, buildings, the massive buildings, the visibility of buildings from the river.

And I feel blessed that previous generations prior to me identified the river corridor as significant. They created a State of Minnesota critical area program, the Mississippi Corridor Critical Area, the National River and Recreation Act, and the National Park Service.

So, without previous generations having identified this, we wouldn't be here having this conversation right now. We've seen each generation since the 1970s, whether policy, plan or legislation, identify the importance of protecting the natural characteristics of the Mississippi River Corridor.

We have not, however, seen action in updating the nearly 40-year-old standard which protect it, which brings us here today. The proposed rules have

the opportunity to do this and provide future generations a predictable and consistent management framework for the river corridor.

THE COURT: Thank you so much, Officer Stierler, I appreciate your time and contributions to our record. Mr. Clark, is Ms. Jones going to come with you?

MR. CLARK: Yes.

THE COURT: So, if both of you wouldn't mind -- as Ms. Jones makes her way if you wouldn't mind stating and spelling your name for our record.

MR. CLARK: Thank you, Your Honor. My name is Whitney Clark, W-h-i-t-n-e-y, C-l-a-r-K. I'm the executive director of Friends of the Mississippi River or FMR.

I'm going to begin my organization's testimony tonight by discussing the significance of the Mississippi River, the purpose of the critical area, and the unique relationship between the critical area and our national park, Mississippi National River and Recreation Area, or MNRRA.

My colleague, Irene Jones, will then present our testimony regarding why we believe these proposed rules are needed and reasonable.

Friends of the Mississippi River is a citizen based nonprofit organization that works with community stakeholders to protect, restore, and enhance the Mississippi River and its watershed in the Twin Cities region.

Our work focuses on protecting and restoring river front land, improving water quality, advocating for land use along the river that enhance and celebrate our national park, engaging youth and adults in river protection and restoration.

We have the support of 2,600 members. And last year we engaged more than 7,000 volunteers and participants in education and hands-on stewardship activities to connect to and restore the health of the river.

Since we were established in 1993 FMR has worked in partnership with the Department of Natural Resources and MNRRA and many other stakeholders to play a constructive role in issues of river corridor land use, economic development, park planning, and natural area protection and restoration.

In 2007 the DNR was charged by the legislature to do a study of the critical area program, which you heard about from the DNR tonight. FMR was actually contracted to conduct a series of stakeholder

meetings for that study.

After the DNR's report came out in 2008, we were asked to participate in a legislative study group with other stakeholders. The outcome of that process was the decision to pursue ruling authority during the 2009 legislative session.

Once rulemaking commenced Friends of the Mississippi River played an active role in that process. We've attended all the stakeholder meetings, I think, open houses. We've submitted extensive written comments on each of the drafts.

And because of our long-standing involvement in the critical area, FMR staff are recognized as experts on the critical area rules and regulations at the state and local level.

This river is our shared treasure. It is so special to our communities. And yet, it can't protect itself, which is why these rules are so important and so essential.

The river is one of the great rivers of the world. It's one of the most complex eco systems on the planet. It's one of the defining features of the North American continent. And it's home to a diversed assemblage of plant and animal communities.

The river is a source of drinking

water for more than 18 million people, including about a million Twin Cities residents. The river is an international migration flyway used by 60 percent of all North American birds and about 40 percent of its waterfowl and wading birds.

The river is home to several hundred other species, including muscles, amphibians, reptiles, mammals, and 25 percent of North America's fish species.

The geomorphology of the river here in the Twin Cities changes more than anywhere else along its length, providing a dramatic landscape feature, such as waterfalls, bluffs, ravines, flood plains, and islands.

Many of the rare and remaining native plant communities in the Twin Cities found along the river are part of Minnesota's natural heritage that should be preserved for current and future generations.

As the birthplace of the Twin Cities the Mississippi River has enormous historical, cultural and economic significance. Many sites along the river were and continue to be significant to Native Americans. And much of Minnesota's rich agricultural and industrial paths ties directly to the Mississippi River.

Today the river is still a key transportation artery, busy with commercial navigation.

Because of its unique natural, scenic, cultural, historical, and recreational resources, which are shared community assets that improve Minnesota's economy and quantity of life, this 72-mile corridor was designated as a state critical area in 1976 and made permanent in 1979.

When the critical area was established it provided a framework to allow for economic development in the corridor while ensuring protection of the river's unique resources.

Core to the Critical Area Act's framework was this partnership between state and local government to plan for and manage the river's resources.

The goal has always been twofold, to allow for growth and development within the corridor and to protect the unique and valuable resources.

Very importantly, the critical area is also a national park established by Congress in 1988 to protect, preserve and enhance the significant values of the waters and the land of the Mississippi River corridor within the metropolitan area. MNRRA has the exact same boundary as the critical area.

As you heard from Mr. Stierler, MNRRA is an unusual unit of the National Park Service, as there's very little land owned by the federal government

and there's no federal regulations.

Instead, MNRRA operates as a partnership park working with state and local governments to collaboratively manage the river's unique and significant resources.

So, for MNRRA, this unusual management structure to be effective, a strong state and federal partnership is needed. Rather than creating its own regulatory tools the National Park Service explicitly relies on state and local controls through the critical area.

The comprehensive management plan from MNRRA does not create another layer of government that was seen as a value and MNRRA was created, but rather it stresses the use of existing authority and agencies to accomplish the policies and actions in the plan.

So, for MNRRA's unusual management structure to be effective, we have to have this partnership. Thank you.

THE COURT: Thank you so much, Mr. Clark. Ms. Jones, if you wouldn't mind stating and spelling your name for our record.

MS. JONES: My name is Irene Jones, I-r-e-n-e, J-o-n-e-s.

THE COURT: Thank you so much, Ms. Jones. What should we know?

MS. JONES: I am the river program director at the Friends of the Mississippi River and I'm going to talk about why we need the rules and why they are reasonable.

The existing framework of the 1979 executive order is problematic for a number of reasons, several of those were actually laid out in the SONAR, but I'm going to lay out a couple others.

The language is vague and outdated, leading to inconsistent application and in some instances, poor resource protection.

The districts that are in the existing executive order are based on land uses in 1979 and they're unnecessarily broad. And this has created a problem in cities that want to redevelop or invest in some of these areas.

As noted in the SONAR the executive order fails to define many terms, making implementations difficult for local government and causing confusion, which could be costly and cause delay for affected interests.

Because the executive order does not carry the weight of rules, over time its credibility as

an effective model has eroded. And some public officials have chosen to ignore it or not necessarily follow it as strongly as they might have when it first came out.

It's difficult to change any of the existing standards when updates are needed because the executive order cannot be amended and there's no provision to require periodic updates to the local critical area ordinances.

In fact, many of the local critical area ordinances haven't been updated in over 30 years. So, rules will enable and sort of force those updates to happen.

The intractable nature of the executive order has lead to inconsistencies between local plans and local ordinances.

And as a result of that, decisions about resource protection can often get protracted and land use development decisions can actually become political or arbitrary. And that was going on a lot in the early 2000s when folks started expressing concerns about the executive order.

So, I'm going to talk a little bit about why state rules are needed to protect the Mississippi River and the national park. We talked

about the critical area being a shared resource, it's got regional, statewide and national significance with many community benefits.

But with 30 local units of government with land use authority along the river, soft overarching guidelines and minimum standards are really necessary to avoid a death by a thousand cuts, the stemming degradation of the very qualities that make the river such a treasure.

Although the executive order is problematic, the overarching approach of working in partnership that has been established should continue. The proposed rules are a revision and a refinement, but they do not alter the basic framework for protection that has existed since 1979.

Local plan ordinances that are consistent with state standards will continue to be required just as they have for nearly 40 years.

State rulemaking, we believe, is the best way to modernize the standards for guidelines and protection and enhancement of the critical area and national park.

And these proposed rules would provide a management framework that is more consistent, predictable, and effective than the executive order.

So, just a couple more points about why we believe the rules are needed and reasonable. The new state rules for the critical area are needed because they will provide a set of clear, consistent, and effective standards and guidelines to ensure the most valuable resources in the corridor are protected.

This includes protecting steep slopes to prevent erosion and protects scenic values, limiting structure heights in areas where scenic values can be affected and protecting the natural functions and values that makes this one of the world's great rivers.

The draft rules do a good job protecting these resources while allowing for development where appropriate. The proposed rules are considerably more nuance and flexible that the executive order standards.

In many locations the proposed rules relax restrictions on development in ways that we believe will not degrade the river's resources.

We feel the DNR has done a commendable job of including flexibility provisions that would not needlessly restrict development when the resources would not be threatened.

The old framework was dated, confusing and vague, and in some cases, it was ignored

or limited influence. The new rules will provide for a more defendable framework.

And just a couple points also about the process because it's been an extensive process. Both Whitney Clark and myself have been involved from the beginning.

In the 2009 law directing the DNR to write the rules was a culmination of many years work by many citizens and environmental groups and other stakeholders. It passed bipartisan support in the legislature and was signed by Governor Pawlenty.

In some places FMR believes the rules should be more protective. And there are a number of things we asked for in previous comments that were not included, such as more stringent requirement for storm water management.

We feel the DNR was thoughtful and fair in their approach to balancing the many different interests and finding compromises. That said, we will have additional comments on those things.

The partnership between MNRRA and the critical area has created a workable framework for protection of the natural and cultural resources of the Mississippi and the metro area, while enabling commercial, residential and industrial development

consistent with those protections.

The executive order has served well, but after almost 40 years, adjustments are needed. And the rulemaking directed by the state legislature is the right approach.

In general we are very supportive of the rules. On Thursday we will present our testimony on the specific aspects of the rules. We didn't want to take up too much time out of one hearing. And that will include recommendations for minor changes to the draft. That's it, thank you.

THE COURT: Thank you so much, Ms. Jones and Mr. Clark. We're grateful for your time and contributions.

I'll just make one note that to the extent that folks have suggested changes, language changes to the rules, I think it's very important that every stakeholder realize that the earlier you send them in to the DNR for their review, mindful that we'll have a 20-day comment period after the conclusions of the hearings, Mr. Petrik and his staff, Ms. Shillcox, the other folks who are providing support behind them will have a longer opportunity to look at your language changes the earlier they receive them.

You could indeed wait until the 20th

day, but you've lost 20 days of review in that process. So, a neutral suggestion, wherever you are on the policy issues that are raised, the more time that they have to look at your drafts, the more likely you are to persuade and to have an impact.

So, with that, the next person who will have impact this evening is Mr. Tom Dimond. Mr. Dimond, if you wouldn't mind joining us here. And following him will be Kathy Stack, you're going to follow Mr. Dimond.

Mr. Dimond, if you wouldn't mind stating and spelling your name for our record.

MR. DIMOND: Tom Dimond, T-o-m, D-i-m-o-n-d.

THE COURT: Mr. Dimond, what should we know?

MR. DIMOND: What we should know about this is that these regulations that are proposed, these rules, will significantly reduce the existing protections that are in place. They do not meet the requirements to protect the resource and they do not follow the statutory authority.

What was designed was for them to look at how to consider what local government had in place, adopted ordinances and plans were supposed to be

considered. They were not considered in this process and the existing protections.

The reductions in protection are only worse because they compound upon each other. And I will give you an example. What was talked about earlier were mentioned is the importance of protecting the bluffs, that bluffs is a very big issue. I couldn't agree more strongly.

I have great respect for the staff of the DNR and the work that they have to do, but I believe that this, because of pressures and how the process was handled, the public was largely excluded in this redraft of the process.

The earlier draft the public had more participation in, but then it was almost exclusively city municipalities staff with closed doors outside of the public process until there was great protest by the public and the public was allowed. But most of the redrafting had been done at that time.

I'll use the bluff as an example of how these issues compound upon each other and make effect. Current regulations protect all 18 percent and greater slopes, not just bluffs, all 18 percent greater slopes.

When the critical area was being

considered in the first place it was strong impetus for it to be 12 percent and greater slopes that are protected, similar to the St. Croix, which had just been adopted. And you can see it in the records, if you look at the records, what is going on.

The compromise was that all 18 percent and greater slopes would be protected and some development would be allowed on slopes 12 to 18 percent. What is done in this is 18 percent slopes would no longer be protected.

And I can explain why that is. And the protections that are in place today would not be the same. The protections in place are that there's no development on 18 percent greater slopes.

And the proposal changes it to -- limited to structure limitations, and there are some other provisions, but structure limitations instead of development. Development is a much broader definition of what is not allowed on this.

Then, while both development and structure are defined in the statute, they only use in these new rules the development definition that is in statute, but they choose to redefine what structures are.

So, now it's switched from

development to structures and then structures is redefined to be even less, even though statute requires -- specifies what it is for the critical area.

Then what they do with bluff -- or bluff is, first of all, take up to 18 percent, now we protect all of it. Bluffs have also a setback requirement. So, that's really the difference between our protections on the bluff and the rest of the 18 percent.

They separate out all the rest of the 18 percent that is not defined as bluff and there's no protection, that's all lost, it's gone.

Then on the part that's bluff, they redefine it and they do a couple things. One, they give a height requirement, but they also do a measurement. And I'll put this down just to show you.

What happens is, if this is an 18 percent slope (indicating) and if you measure the horizontal distance in a hundred-foot run, it would be a 18-foot rise or 50-foot run, which is the standard that's used, it would be a 90-foot rise.

If you take it and make it a -- if this is a 50-foot run (indicating), if you take and look at bluffs and the way they really are, they're up and down.

So, if you measure it on a 25-foot horizontal distance, this would no longer be bluff because of the undulation, this short section (indicating), because of undulation, would not be part of the bluff.

And so, what is done in practice and what is in most statutes and regulations is a 50-foot measured over a 50-foot average. So, you average out those modulations and you use the average.

Because what they've done is they put a height requirement, a 25-foot height requirement, and then they did a 25-foot height requirement on a 25-foot horizontal measurement distance, it requires now that you actually have a 100 percent, not 18 percent, but that segment has to be a 100 percent slope.

The additional ones that are now measured over a 25-foot horizontal distance rather than a 50-foot horizontal distance, those all have to be at least 18 percent.

The catch is, when you do that with that measuring program, you take, for example, a horizontal run of a hundred feet and it's got to be at least 38 and a half percent slope. Because you can't average out, you can't get down there.

If you've got a 200-foot run, it's

still got to be 28-and-a-quarter percent slope. Now you're no longer protecting them because of this measurement standard that you set that is not in place today.

So, you have to get rid of the 25-foot horizontal distance with a 25-foot rise. You can have a 25-foot rise, but as a total over the total distance or part of it.

And another thing that they've done is also they established a 25-foot distance to establish the top of the bluff and the toe of the bluff. What this does is because it's such a short distance, again, the modulation of it, you drop off in the bluff.

It stops and then you have to start again, even though this is a continuous bluff, if you measure it over 50 foot. You now have to have that 100 percent piece in there again.

So, what would be considered bluffs anymore would be significantly greater slopes than in many cases than what is currently proposed.

THE COURT: Some final thoughts, Mr. Dimond? There's some brilliant ideas in line behind you.

MR. DIMOND: Sure. To go with that, now besides changing what the definition of structure

and what it can be, on the setback from it, they have done grandfathering that you can build into the setbacks where you previously could not do it before and you can expand on conforming in the areas that are prohibited.

So, that's how these problems compound themselves and have much weaker protections than what are there today.

THE COURT: I'm so grateful, Mr. Dimond. Mindful, that you can write in and detail some more calculations. We're grateful for your contributions. You're going to mark an exhibit?

MR. DIMOND: Yes.

THE COURT: Excellent. You are Number 22. Thank you kindly, Mr. Dimond, very grateful. Ms. Stack, if you wouldn't mind stating and spelling your name for our record.

MS. STACK: I'm Kathy Stack, Kathy with a K, last name is S-t-a-c-k. And I'm really happy to have this opportunity and just a couple of minutes to make comments as an ordinary citizen.

And I wanted to say, Ms. Shillcox, I think your question, what does the river mean to us, is an ideal framework within which the rest of us who are not experts like my good friends here can speak to the need for these rules.

First of all, I wanted to say that I am privileged to live on the gorge, as you know, the only gorge on the Mississippi River.

In addition to having lived on the gorge and having the river be my front yard, I lived almost ten years on a houseboat where from May through October, we went up and down the river, have seen every aspect of MNRRA that you can and have come to believe that we are in a pretty good place which can only be made better by having stronger rules.

I think it is important, especially if you don't see other parts of the Mississippi and get into the deep south as I have and drift by Memphis and drift by New Orleans to realize just how precious and amazing what we have here is.

And as I've looked at the rules, I see that, with the exception of perhaps some concern about height, which I'm going to allude to in a minute, I think we're on a really good path and have done a good job.

One of the things that has really been powerful for me is having lived on this little houseboat. We've over a period of years had people from literally all over the world come on our boat, come up from Hastings, up to the north, back again, and to be

simply awestruck and this metropolitan area we have managed and so much of the river protected and green, undisturbed by tall buildings.

And obviously a very, very special place. Whether they were from Brazil or Mexico, Japan, Singapore, Germany, all of these people have said, "You have something truly amazing on this great river."

My concluding point is that I hope that the rules, as they come out of this process, will be even stronger because I think we're all aware of the pressures, the concerns.

I happen to live in the city of St. Paul, I am acutely aware of this living on the gorge, the opportunities that are ahead of us.

But the importance for us is to continue to think in terms of what we have gained to date and what our tremendous responsibility is for future generations. And your rules will help tremendously. Thank you.

THE COURT: Thank you so much, Ms. Stack. We're just about at the end of our first 90-minute segment. So, we're going to take a short standing recess until ten after the hour in just a moment.

Before we adjourn I just want to let

people know that as far as the folks who indicated in the column wanting to speak at the hearing, we've exhausted that list.

If there are folks who are inspired and would like to be recognized as soon as we reconvene here, I'd like to take folks who haven't had an opportunity to speak to share their views.

Otherwise, I'm going to allow stakeholders who had more to say and felt a little cramped by my moving them along to give a longer extended remarks, provided that everyone who hasn't yet had an opportunity to speak once at least had a chance to be recognized.

So, with that, we will start precisely at 6:10. We're in recess.

(At this time a brief recess was taken from 6:00 p.m. until 6:10 p.m.)

THE COURT: We're back on the record after a short recess. Mr. Nesvig, if you wouldn't mind stating and spelling your name for our record.

MR. NESVIG: Thank you, Your Honor. My name is Gordon Nesvig, N-e-s-v-i-g.

THE COURT: What should we know?

MR. NESVIG: Well, Your Honor, I just wanted you to know, I wasn't planning on speaking

tonight, but the previous speakers, I think it's important to know that not everybody is as enthusiastic about the proposed rules as the speakers we've heard so far.

I agree with Mr. Dimond, it seems like the public was pretty much excluded from input on this. I'm a private landowner and I own a mile and a half of shoreline on the Mississippi River in St. Paul Park.

The notice of this hearing was the first I knew about the current rules. The DNR made several previous runs, which had failed. So, it's not that they haven't tried to change these rules over the last four years because they have. Like a cancer, they keep coming back.

All the speakers that we've heard tonight are, in my opinion, overidealistic. They do not consider landowner's rights or the needs of the cities and municipalities along the way and the deep tax base.

My land has been slated for development for years. From what I scanned on this, these rules would restrict that, cost me money, cost the cities money because of the setback proposals.

They don't pay any attention to how land is visible from the river, whether it is or it

isn't. I've scanned these rules briefly when I got the notice and I've looked at them online.

It appears that most of them are not necessary changes to the existing city and county ordinances. I will study them in more detail and I will make some written comments for you, but I just wanted you to have this preliminary thought. That's all, thank you.

THE COURT: Thank you so much, Mr. Nesvig. Thank you for your time and contributions to our record. Mr. Don Arnosti. Mr. Arnosti, if you wouldn't mind stating and spelling your name for our record.

MR. ARNOSTI: Thank you, Your Honor. My name is Don Arnosti, A-r-n-o-s-t-i, I represent the Izaak Walton League here in Minnesota, I'm the conservation program director and I work with our membership statewide.

The Izaak Walton League is supportive of these rules. We think they should be implemented, they've been many years in coming.

We are river front landowners in the northern part of the critical corridor where our Breckenridge Chapter has a clubhouse and we own both bluff property as well as an island in the middle of the

river at that area.

We've had discussions about these rules with our policy folks and our various committees. And while we wish the compromises that were made were a little bit more in favor of conservation, and I'll point one thing out specifically, we do support these rules and we think they're reasonable and reflect compromises that have been made between multiple perspectives.

Separated from the river category of zoning that is proposed, the standards for that is if a structure would not be visible or that area would not be visible from the opposite bank rather than the opposite bluff.

And in some parts of the river corridor there are a substantial difference between the bank and the bluff. And that would mean some of the areas that are designated for lesser zoning should, in our view, have a stricter standard applied to it.

That said, we recognize that it is a process of compromise. And our organization is strongly in favor of moving ahead with implementing these rules.

I'd like to mention just one or two things before I end. The Izaak Walton League is a national conservation organization, which has its roots right here in the Midwest.

And the founding cause for our organization, which was organized in 1922, was protection of the Upper Mississippi River. And the area that we particularly focused on at that time is what is now called the Upper Mississippi River Wildlife and Fish Refuge.

So, just downstream of this critical corridor is the founding cause that caused our national organization to get started. And it was hunters and fisherpeople who were very concerned about the manner in which the river was being treated and the protection of these resources for future generations.

We're very proud to have had a key role in the establishment of that national wildlife refuge that starts just downstream of this critical corridor.

And we believe the rules to protect this critical corridor is just an extension of that long-standing conservation interest of our organization. So, thank you very much for your time and attention.

THE COURT: Mr. Arnosti, thank you so much. Very grateful for your time and contribution to our records. Is there anyone who hasn't yet had an opportunity to speak once who would like an opportunity to be recognized? Okay.

Is there anyone who has had a chance to give remarks who would like to revise or extend an earlier contribution? Mr. Dimond, please.

MR. DIMOND: Thank you. Tom Dimond.

THE COURT: Thank you so much, Mr. Dimond. What should we know?

MR. DIMOND: Two quick points I would like to talk about. One is on the district for what is called island station is actually an island in the river which partially fills a back channel on it.

Earlier when this work was being done it actually had an old power plant on it. It no longer has it on there, it's been removed. It's actually an undeveloped island and river.

And the critical area calls for undeveloped islands and rivers to be protected. So, it seemed inappropriate before, but it certainly seems inappropriate now to have the UM. I would suggest that RN or something similar to that.

I would say that's not a good analogy, but probably closest analogy is the Lilydale Yacht Club and how that is zoned.

The other thing that I think is worth noting at this meeting is that the context of these rules are not the ready adopted regulations, but there's

also other state regulations, the shoreland being a really important one.

So, in that context, the critical area being a higher protection or it's more specific, it's a higher standard, shoreland wasn't looked at for the critical area, but for a number of factors did not meet the standards of what needed to be done.

So, when the critical area has standards that are lower than are being applied everywhere else, it seems inappropriate.

I'll use one example is the shoreland setback requirement. In the current rules for the shoreland, the minimum setback requirement is 50-foot. In the draft rules that never were adopted, but at least the intent of thinking of the DNR at the time in 2010, was 75-foot as a minimum.

In the critical area it's zero in some areas, particularly downtown. So, it's contradictory to what everywhere else in the state is required to do. And it's not being applied here.

And I said this is particularly important because St. Paul is one of the communities who does not have a shoreline ordinance, even though it is required by State statute to have it.

And the DNR is required by State

statute to ensure that the city of St. Paul has had it. We've raised this in the meetings with the DNR and the DNR and DNR individuals have said on repeated occasions, "We aren't going to enforce that statute."

So, I think it's really important that the protections that apply to everywhere else in the state of Minnesota ought to apply to the current rules. Thank you.

THE COURT: Thank you so much, Mr. Dimond, appreciate your time and contributions. Any additional remarks or testimony this evening? Any additional remarks or testimony this evening?

I have a few advertisements, I don't want you to go just yet. Tomorrow afternoon beginning at 4:30 p.m. we'll be hearing from stakeholders at the Greenhaven Event Center in Anoka.

If there are folks in your Outlook calendar or Christmas card list or Boy Scout troop, Forestry group, would like to join us at the Greenhaven Event Center, please let them know about that opportunity.

Likewise, on Thursday beginning at 10:00 a.m., so a daytime hearing, we're going to be at the Mississippi Watershed Management Organization's offices in Minneapolis.

Again, the same sort of cricket rules will apply, we'll be running in 90-minute slots and try to get as far along in the roster as we did -- like we did this evening.

I think we did a number of great bits of work this evening by folks being courteous to the folks in line behind them. So, I want to thank everybody who participated in that way.

Likewise, there are two important dates to remember. The first among them is Wednesday the 6th of July, 2016, that's 20 days from the end of the public hearing process for our first round of substantive comments. People can revise, extend their remarks, raise new questions and new suggestions.

I'll repeat the earlier suggestion that I had, which is, if you are engaged in active drafting and suggestions to the agency, the earlier in time -- you don't have to wait until the 20th day.

The earlier time you can get that to agency staff I think the more likelihood that they will be able to share and circulate and reflect upon your good work. So, I encourage stakeholders who are involved in rewriting portions of our 4240 to get those items to agency staff.

And after the submission date on

Wednesday, July 6th, check the Internet sites for this rulemaking. And if you haven't seen the comments, they will all be available there. And they're all available in real time on our rulemaking comment site.

There will be a five working day rebuttal period that extends through 4:30 p.m. on Wednesday, July 13, 2016, that's 4:30 p.m. on Wednesday, July 13, 2016.

After that I'll take the rulemaking record as we have it and write a report which will be due 30 days thereafter, except, and I don't know because we're just at the beginning of this process, if there's a defect in the process, if there's a defect that I find, the rules get sent to the chief administrative law judge.

So, it might not be exactly 30 days. The chief judge has another five working days to look and review and either sign or overturn a finding of a legal defect by me.

So, if there's a statutory problem or a rule is unconstitutionally vague or some other legal problem that I identify with the rules, there's another brief period for the Chief to review that.

Now, Ms. Enzler, I haven't found any such defect, that's not a prediction, it's a discussion

of possible outcomes. Okay? And so, people should just as far as timing understand that on or around the 30th day, depending upon what happens, a report will be available.

We're eager for you to keep in touch. So, everybody has been remarkably courtesy to me and to each other. I think it's been a great start for a process that continues tomorrow in Anoka and on Thursday in Minneapolis and then for 25-ish calendar days thereafter.

Lots still to do. We're grateful for the start. And we're adjourned.

(Hearing adjourned at 6:25 p.m.)

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REPORTER'S CERTIFICATE

I, MARCIA L. MENTH, do hereby certify that I recorded in stenotype the hearing on the foregoing matter on the 14th day of June, 2016 at Hastings, Minnesota;

That I was then and there a Notary Public in and for the County of Wright, State of Minnesota;

I further certify that thereafter and on that same date I transcribed into typewriting under my direction the foregoing transcript of said recorded hearing, which transcript consists of the typewritten pages 1 through 77;

I further certify that said hearing transcript is true and correct to the best of my ability.

WITNESS MY HAND AND SEAL this the 20th day of June, 2016.

MARCIA L MENTH
NOTARY PUBLIC
MINNESOTA
My Commission Expires 1/31/2020

Marcia L Menth

MARCIA L. MENTH
Court Reporter

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Rules
Relating to the Mississippi River
Corridor Critical Area

OAH DOCKET NO. 8-9014-33236
REVISOR NO. R-04240

VOLUME I

The above-entitled matter came on for public hearing before Eric L. Lipman, Administrative Law Judge, taken before Marcia L. Menth, a Notary Public in and for the County of Wright, State of Minnesota, taken on the 14th day of June, 2016, at Schaar's Bluff Gathering Center, 8395 127th Street East, Hastings, Minnesota, commencing at approximately 4:30 p.m.

A P P E A R A N C E S

APPEARING AS THE HEARING OFFICER:

ERIC L. LIPMAN
ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE HEARINGS
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APPEARING ON BEHALF OF DNR:

SHERRY A. ENZLER, JD, PhD
General Counsel
MINNESOTA DEPARTMENT OF NATURAL RESOURCES
500 Lafayette Road
St. Paul, Minnesota 55155

ALSO PRESENT:
Daniel Petrik - Land Use Specialist
Jennifer Shillcox - Land Use Unit Supervisor

*The Original is in the possession of Administrative Law Judge Eric L. Lipman.

E X H I B I T S

	Offered	PAGE Rec'd
Exhibit 1 through 11	17	17
Exhibit 12 through 19	19	21
Exhibit 20 - Judge Lipman letter		premarked
Exhibit 21 - Durenburger exhibit		premarked
Exhibit 22 - Dimond exhibit		63

P R O C E E D I N G S

THE COURT: Good afternoon, my name is Eric Lipman, I'm an administrative law judge with the Minnesota Office of Administrative Hearings. It's precisely 4:30 on Tuesday, June 14, 2016.

And we've convened in the Gathering Center of Schaar's Bluff at the Spring Lake Park Reserve for a public hearing in the matter of the proposed rules of the Minnesota Department of Natural Resources relating to Mississippi River Corridor Critical Areas.

It's otherwise known as OAH Docket Number 8-9014-33236. It's also been denominated as Revisor Number R-4240. And we'll talk again about the importance of those numbers in a little bit.

The OAH is an independent agency in state government, we are independent of the Department of Natural Resources and of the various groups and stakeholders who've joined us here for the public hearing this evening.

Our office's purpose is to provide hearing services in rulemaking hearings and contested cases between the citizens and the government agencies hopefully in a way that's fair to all concerned.

Among the other directives that the Minnesota state legislature has given our office and the

state agencies are that rulemaking hearings are to be conducted so that members of the public are treated fairly and courteously and impartially.

I'm here as part of a larger set of procedural protections to make sure that we include members of the public who would like to contribute to solid administrative rules, are heard from and are able to engage in meaningful dialogues with members of the state agencies on those proposals. And that, they get all of the procedural due process to which they're legally entitled.

There's a handout on the table as you walk in, the registration table, entitled, "State of Minnesota Office of Administrative Hearings Rule Hearing Procedures." If you don't have a copy of that, it's a very handy handout to have. It describes the procedures that the legislature has set out for hearings just like this.

And while I'm going to touch upon a few of the highlights in these remarks, this introduction right now, there's much more useful detail in that handout. And I commend you to not only grab a copy, but likewise to read it at your leisure.

As I suggested earlier, this hearing is part of a process by which agency rules are adopted

under the Minnesota Administrative Procedures Act.

The purpose of this hearing is to develop and receive information on three key issues outlined in that act.

Namely, the legal authority of the agency to adopt these rules, if any; whether the agency has fulfilled all of the legal and procedural requirements in order to issue a set of new rules; and three, whether it's demonstrated that among the possible alternatives that it had before it, whether the ones that it has selected and is proposing are needed and reasonable.

So, it's statutory authority, it's compliance with the procedures for issuing rules, and whether among the choices that it's made, whether the one it settled upon are needed and reasonable.

So, I'm glad to give folks a chance who will share comments today a little leeway in developing the larger context for their presentations.

But I'll simply point out that the purpose of this hearing and this process is to really drill down on those essential questions, namely, the statutory authority, the agency's compliance with the procedural rules, and whether the ones it selected are needed and reasonable.

That comments directed on those topics are really the most helpful and also the ones that will have the most impact in this particular process because that's what we're here by statute to do.

The agenda for today's hearing is I'm going to continue to outline a little bit here the hearing procedure, then I'm going to introduce members of the agency panel that are here to testify.

They're going to make a presentation about their support of why they think not only that they have authority to issue these rules, that they've complied with all the various steps that are required for public notice and comment, and also, that the ones they've selected are needed and reasonable. So, they're going to make their presentation on why they think that is, in fact, true.

After that we're going to take a short standing break. Literally, I'm not going to move from this spot. We're going to go off the record for a second to allow folks to look at the public copies that we have here in the binders to familiarize themselves with the exhibits.

Mindful, and this is really the important point, that all of the materials that are over there on the tables are online, available on your home

computer in your pajamas 24 by 7 for you to spend time with as long as you want.

And it would be much better for us to talk about the substance you would like to share about those particular rules and to look at those exhibits at your leisure.

But we do want to make sure that you do have a chance if there's something that you haven't heard of or haven't seen or talked about that you have a chance to at least briefly look at those materials.

All of those things are available in your public library, are available online, anywhere there's an Internet connection 24 by 7. So, it's much better for us to spend time talking about the rules.

Finally, most of the hearing time is that we set aside for the key event, which is to hear from members of the public, not only to have them have a chance to ask questions of the agencies, but also to share their own views about these important topics.

So, to make sure that we have an accurate record this evening, and we do have Ms. Menth who is a certified court reporter here, we'd like to ask folks to come to this table down here and to use the microphone, not only so that Ms. Menth can understand and hear what you have to say, but also so that everyone

else in the room can benefit from the things that you're raising and the points that you're making.

If you're going to read a little bit -- well, one, you don't have to because we can mark whatever you have as far as your testimony. And you can feel free to hit the highlights. We set the room up deliberately so as to appear like Thanksgiving tables. We can talk neighbor to neighbor as if we were at the cafe and having a cup of coffee.

Or if you were at the local library board or planning commission or city council meeting talking neighbor to neighbor about things that matter. So, you can feel tree to hit the highlights.

Mindful, that you can have any written marks that you have marked as a hearing exhibit. And we're going to go through all of those materials line by line. You get full credit by submitting something in writing.

You don't have to give a dramatic reading here of something that we can certainly read as well. Much better to say here are my three key issues, I've detailed in greater information in my accompanied written attachment.

Even better still, you have 20 calendar days after the end of the hearing process,

which runs -- the 20 calendar days runs until Wednesday, July 6th, the Wednesday following the 4th of July holiday, to submit any additional written comments.

Even better than that, you don't have to have been in this room or any of the rooms that we're having this week as far as public hearings in order to write in. We're eager to draw upon the wisdom of the group in a serious way.

And so, anyone who has any good thinking to contribute to this process, we're very eager for the wisdom of the group. And you can send it in from wherever you are on the globe provided it reaches us by 4:30 p.m., 4:30 p.m. is important, on Wednesday, the 6th of July, 2016.

So, there's lots of other time to flush out and to further develop your remark. And there's no page limit, you can go on as best as you see fit through Wednesday, the 6th of July, 2016.

I'm going to try to limit folks, just at least in the first round, to about five minutes or so. Mindful, that we can have subsequent rounds and I'm glad to allow people to talk longer in subsequent rounds. Again, only because I want to give everyone who hasn't had a chance to at least speak once an opportunity to speak.

We'll go through the roster, we'll do an ollie ollie in come free like we did when I was seven and wanted folks to come back and touch the tree to see if they want to come in and make remarks.

Again, we're eager to hear from as many voices as possible. That's the point and the best leveraging of this particular process.

Our plan because of the international convention on the fair and humane treatment of court reporters is to only go in 90-minute slots. So, we'll go from about 4:30 to roughly 6:00 and we'll take a short break so Ms. Menth can rest her hands and maybe get a soft drink and maybe a bathroom break that folks might benefit from.

But because they are a state resource as valuable as many other state resources we'll be talking about tonight, we don't burn out the court reporter.

If you do make written remarks either by fax or by mail as described in the handout or through the Office of Administrative Hearings online 24 by 7 rule comment site, which again is detailed in the handout, it's very handy, particularly for the letter submissions, that you use both of the numbers that I talked about this evening.

So, for those folks who have pencils handy, I'm going to repeat them. The docket number is 8-9014-33236. Also, it's very handy to use the Revisor Number R-4240. One innovation from Governor Dayton is that all state agencies, including the governor's office, use the revisor's number to refer to these rules.

So, in any platform when you're talking about this from our office to the agency's office to the governor's office to any legislators, we're all using the revisor's number, it's a uniform system of number, notwithstanding the fact that our agency still has its own docket number internally and may use other things. But the revisor number really matters.

After the July 6th deadline passes, folks, and all these materials will be posted and available online for your inspection, there will be a five business day rebuttal period, not for new matter, but for you to have an opportunity to comment on something another stakeholder or an agency person said.

The comment from X group is not, in fact, true, it's some other way. And you're allowed a five business day opportunity to reply, again, through 4:30 on Wednesday the 13th of July, 2016, whether it's

by a fax or mail or, again, through the OAH's electronic comment system through 4:30 p.m. on Wednesday, July 13, 2016.

And after that, I'll take all of the material that has been gathered here today, I'll be making a set of findings and conclusions and a report about, again, the three key questions in this case.

Mainly, whether the agency has the statutory authority to promulgate these rules, whether they have the powers from the legislature, whether they complied with all of the detailed procedural requirements from Chapter 14 and Part 1400, and there's a number of rules, we make them turn square corners in this process.

And given those powers and the procedures have they made needed and reasonable choices among the very wide range of things that they could choose.

Delegations of rulemaking authority don't go from the legislature to me, I'm not picking the right rule, they run from the legislature to the agency, but the agency has to act reasonably, they have to act in a way that's needed.

So, that's what this process is about, to make sure ultimately that you have public

confidence in the results, you have a good reason to trust. And also that we clear out the defects.

Minnesotans have good reason to believe that they're above average because we clean up folks' work. They're trying hard, but through the wisdom of the group and multiple hands and multiple eyes and everyone's best thinking, we're cleaning up their drafts.

And, frankly, it's fairly rare that there are defective rules because of this process. So, it seems long and involved and complicated, but the legislature's expectation that better substantive results will follow has been achieved time and again. And we hope so in this process. Okay?

And so, with that, I'm going to turn it over to Ms. Enzler for an introduction and she's going to give the agency's presentation. Ms. Enzler.

MS. ENZLER: Thank you, Your Honor. I will start tonight and then I'll turn it over to Ms. Shillcox to make a formal substantive opening statement.

To start with I do want to identify Ms. Shillcox here, who is the director of supervisor from land use unit. She supervises the shoreland program. She supervises the critical area programs and

the critical area rules in this case. She's been intimately involved in the rulemaking process.

And she comes to the DNR with a long history of land use experience, having represented both Wisconsin and Minnesota communities and in particular Wisconsin communities on the St. Croix. So, she has extensive experience in dealing with shoreland ordinances and the protection of important resources to the individual states.

Also with me tonight is Mr. Daniel Petrik. Mr. Petrik is in our shoreland program. He was charged with managing the development of the critical area rules. He's been in that position since 2012.

Prior to coming to the DNR he too worked for a number of local units of government particularly in the area of zoning and planning. And he has a particular expertise which we used in this process around civic engagement.

Suzanne Rhees, who cannot be here with us tonight, was also involved in the rulemaking. And I believe I'll save her introduction until tomorrow, but suffice to say she too has extensive experience doing land use.

At the outset I would direct your attention to Minnesota Statute 116G.15, Subdivisions 2

and 3. These are the critical area statutes as they relate to the Mississippi River Critical Area. And I'm going to be referring to them by -- to the Mississippi River Corridor Critical Area as just the critical area tonight.

Minnesota Statute 116G.15, Subdivision 2 directs the commissioner of the Department of Natural Resources to consult with local units of government to determine whether and then to determine -- if they determine it is reasonable to adopt rules necessary to protect and conserve the critical area would go toward maintaining the channels of the river for transportation, providing for economic development, assuring ongoing clean water supply for the state of Minnesota, protecting those important attributes which make the Mississippi River critical in both -- or important to both culturally, but also biologically and ecologically.

Minnesota Statute 116G.15, Subdivision 3 mandates that the commissioner adopt rules to establish districts within the critical area. And for those districts craft them in such a way that they protect the river, protect our drinking water source, protect important resources for which the critical area was designated, protect those resources identified by

the National Park Services, important in designating the Mississippi River as the -- as a national known river and recreation area and to manage the river corridor and protect the environmental and recreational attributes of the river.

In addition, as the judge -- Your Honor has mentioned, we also have a number of requirements under Chapter 14 and Minnesota Rules 1400 to fulfill in adopting these rules.

Many of those requirements have been fulfilled through the exhibits, which I will introduce at this point in time for acceptance into the administrative record.

THE COURT: So, Ms. Enzler, you're moving 1 through 19, is that it?

MS. ENZLER: I'm going to move at this point, Your Honor, 1 through 11.

THE COURT: Okay. So, 1 through 11 are received.

MS. ENZLER: And Exhibit 1 through 11 together document our compliance with the procedural requirements of Chapter 14 and Chapter 1400. Exhibit 1 relates to -- or is our first and second request for comments published during the development of the rules.

Exhibit 2 is the proposed rules

themselves. Exhibit 3 is probably the core exhibit outside of the rules themselves. Exhibits 2 and 3 are the most important exhibits here. Exhibit 3 is the statement of need and reasonableness.

In the statement of need and reasonableness, Your Honor, we have documented the steps that we have undertaken to comply with the specific procedural requirements of Chapter 14. We have also documented the need for the rules and the reasonableness of the rules.

We have also gone through a rule-by-rule evaluation, examining the need for each individual rule, the purpose the rule serves and identifying those steps that we undertook to assure that the rule was reasonable.

Exhibit 4 is certification of that we have delivered the statement of the need and reasonableness to the Minnesota legislature. Exhibit 5 is the notice of hearing as it was mailed in the state register.

Exhibit 6 certifies that the DNR notified the Department -- notified the Department or provides -- that we notify the folks on the rule notification as required by statute. Exhibit 7 certifies that the Department carried out the additional

notice plan approved in the order by yourself.

Exhibit 8 served as the Department's required notification to legislature, the legislators. Exhibit 9 is correspondence between the Department and the Office of Management and Budget related to further discussions around the local fiscal impacts.

Exhibit 10 is correspondence between the Department of Natural Resources and your office relating to approval of the proposed notice plan and proposed notice of hearing.

And, finally, Exhibit 11 is Ms. Shillcox's opening statement. So, I would move those for admission at this time.

THE COURT: Mindful, Ms. Shillcox, you can feel free to hit the highlights. And if you are going to read, be mindful that people read a lot faster than they talk in ordinary conversation, again, in regards to the record and also Ms. Menth's ability to follow along.

So, if you could -- well, like I say, feel free to hit the highlights and also be mindful of the practice of people reading. Ms. Shillcox.

MS. ENZLER: Before we get there, Your Honor, we do have some additional exhibits we would like to introduce at this time that we want to separate

out from those necessary to meet --

THE COURT: 12 through 19?

MS. ENZLER: Yes, those would be Exhibits 12 through 19. These are exhibits that will be referred to by Ms. Shillcox and they relate to both the bluff impact zone, the shore impact zone, and delineating them, as well as the area that might be impacted by nonconforming structures, the vegetation, management or clearing issues, deck and repairing access and land alteration.

Exhibit 18 Ms. Shillcox will be referring to and that is a timeline of the efforts to address the critical concerns along the corridor.

But finally I want to draw your attention, Your Honor, to Exhibit 19. Exhibit 19 is a -- one of the individual maps for the critical area. And Exhibit 19 became necessary because during the course of preparing for this hearing, it came to our attention that we made an inadvertent area pertaining to a marina.

It is our intent that all marinas be treated the same along the river. We had included them incorrectly in a proposed district map.

So, we have in Exhibit 19 the current map that is in the notice and then the proposed revised

map, which would treat the marina at issue in the same way as other marinas along the river.

THE COURT: Great. 12 through 19 are received.

MS. ENZLER: With that, I turn it over to Ms. Shillcox for an opening statement.

THE COURT: Ms. Shillcox.

MS. SHILLCOX: I'll spell my name for the record, it's J-e-n-n-i-f-e-r, S-h-i-l-l-c-o-x. As Sherry mentioned, I'm the land use program supervisor for the DNR division of ecological and water resources. And I am very proud to be representing the DNR here today.

We're here to listen to your comments about proposed rules for the Mississippi River Critical Area -- Mississippi River Corridor Critical Area. It's a long name and I'm sure to mess it up if I try to say that throughout. So, I'm going to refer to it as the critical area or the corridor from hereon out.

It's been a long road, I've been involved from the very beginning. It had some bumps along the way, but also learned a lot and it's been very rewarding. And we're very happy to be at this point in the process.

So, part of our opening statement I

will be covering the importance and history of the critical area, the scope and effect of the proposed rules, public engagement to develop the rules, goals and principals that we use to guide us through the rulemaking, and also, key highlights to the proposed rules.

We did not prepare a PowerPoint presentation, but as Ms. Enzler indicated, we do have some slides that we'll be pointing to that have also been introduced as exhibits.

So, I'll start with the important history of the critical area. The Mississippi is one of the most famous rivers in the world, arguably. It inspires us, we are drawn to it.

It's a cultural symbol of our country and it's the reason that the Twin Cities exist. It's essential to our economy and it's a place where thousands make their homes and also recreate.

Because of its importance the Minnesota legislature has taken measures over time to protect various segments of the river.

For example, establishment of the Mississippi Headwaters Board, creation of Itasca State Park, and designation of a portion of the river from St. Cloud to the Twin Cities as a state wild and scenic

river.

So, the designation of the segment of the river that encompasses the Twin Cities metropolitan area as a critical area and the legislative directives to do this rulemaking are another example of the legislature taking measures to protect our great river.

So, the corridor covers a 72-mile swath of land through the Twin Cities, starting up north in Dayton and Ramsey and running downstream to Ravenna Township just south of Hastings near the confluence of the St. Croix River.

It contains 54,000 acres of water and public and private land and water. It also shares the same boundary as the Mississippi River National Recreational Area, or MNRRA, which is a unit of the National Park Service.

A total of 30 communities have land within the critical area. It is 21 cities, four townships, and five counties. It's home to a full range of residential neighborhoods and business districts, including downtown St. Paul and downtown Minneapolis.

It has very well-established commerce, industry, transportation corridors. It also has been extensively developed, but it still contains many natural and scenic amenities. All you have to do

is look out the window to see what I'm talking about, it's beautiful.

In 1973 -- here's where I'm going to switch to one of our exhibits, it's a timeline, it's Exhibit 18. And all of this is in the SONAR as well and it's on our website if you haven't seen it. I'm not going to talk through all of this, but I'm going to hit some highlights.

In 1973 Governor Wendell Anderson recognized that this segment of the river or corridor was under intense pressure from many competing interests. So, in an effort to balance those interests and protect the many different values of the river, he designated it a state critical area.

Since then the designation has been reaffirmed by Governor Albert Quie and the legislature. And all local governments in the critical area have regulated land use and development in their jurisdiction in accordance with the original designation order that is Executive Order 7919.

So, in the mid 2000s citizens and interest groups began raising concerns that development in the corridor was not being regulated consistently and that all the resources weren't being adequately protected.

So, in response to that, in about 2007 or 2008 the legislature directed the DNR to do a report on the critical area. So, the report -- as part of that report the DNR evaluated the critical area program and made a number of recommendations, including some nonrule and rule alternatives to address the issues in the corridor.

In 2009 and again in 2013 the legislature responded to the report by directing the DNR to develop rules to replace Executive Order 7919. And thus the rulemaking and thus why we're here tonight.

So, I'm going to transition to the scope and effect of the proposed rules. The proposed rules cover three broad areas. One is the administration of the program, the rules, responsibilities, and procedures.

Second is the establishment of six districts that will replace the four currently in the executive order. And within those districts there are standards that regulate things like height and setbacks from the river and bluffs.

And, finally, the third area of the rules are minimum standards and criteria for development of private and public land throughout the corridor, regardless of district. And those standards include

things like vegetation management, storm water management, subdivision of land.

Once adopted the proposed rules will replace Executive Order 7919, which as I mentioned has governed land use in the corridor for the past 35-plus years. And all the local governments will need to amend their plans and ordinances to be consistent with the rules.

One big key element of our rulemaking was the level of public involvement that we had. So, this rulemaking was one of the DNR's most extensive public involvement efforts, more than is typical for a rulemaking and the proposed rules are better because of it.

People expressed a lot of concerns and a lot of passion throughout this rulemaking. So, it was very important for us to understand those concerns and then be able to address them appropriately.

So, we relied heavily on the experience and knowledge of all the people affected by the rules, the local government, interest groups, property owners. And we really valued and paid attention to their knowledge and perspective.

We incorporated a lot of their ideas into the rules. And, actually, it was a pretty

iterative process where we had many drafts throughout the rulemaking and we checked back with a lot of the parties to make sure we got it right, that we adequately addressed their issues.

So, for those of you who are interested in all of the details of the process, we do have a handout in the back that looks like this (indicating) and it details there's different phases of the rulemaking.

That first phase that we spent a lot of time on over five years was the rule development and public involvement phase. And there's a lot of detail in there.

I'm not going to go through all of what we did, but I do want to hit some of the major highlights. We published two requests for comments, that's not typical. One was at the outset of the rulemaking and it was on the general scope of the rules.

And second was midway through and we actually published a set of working draft rules and gave people an opportunity to react to them. We posed different options to get feedback. So, they had a chance to directly influence what went into the rules.

We also engaged local governments right from the get-go. We met with each local

government at least twice throughout the process individually. And for some of them we met many more times.

We also met in a number of large group meetings convened by metro cities. And we had a lot of meetings, phone conversations and collaborations with a number of the cities just to evaluate specific provisions that most affected them.

It's the local government that have been implementing this program for the past 35 years, so they know what works, what doesn't. And they have a lot of useful insights that helped us through this process.

We also had a number of geographically focused work groups early on that represented a variety of interests in the critical area; five public information meetings; we attended many other meetings with groups as requested.

And then, finally, after evaluating comments from our second request for comments, we identified a number of sticky issues. These were really tough issues that had no clear path forward. So, we convened all the groups that provided input and said let's figure this out.

So, those are some of the issues around nonconformities, bluffs, vegetation, storm water,

and subdivisions. So, the resulting rule package really reflects the input we received from all these people. And we believe the rules are balanced and fair and are an improvement over the existing regulations.

I will now switch gears to our goals and principals that guide us through this rulemaking. So, the statutes guiding this rulemaking contain many goals that speak to a variety of interests and values. And some of them are competing.

So, I want you to all just take a minute and think about what the Mississippi River means to you. And we all feel connected to the river in different ways and we value it differently. So, it's a balancing act.

These rules are a compromise because they have to be, it balances a lot of different values and interests. So, it requires us as an agency to balance interests. And we're not new to the balancing act.

As an agency it's really inherent in our mission as we regulate and manage land that we balance economic, recreational, and ecological and natural functions. So, that worked well for us.

But to help guide us in our role of balancing interests in this rulemaking we followed some

principals that were actually embedded right in the statute that guided the rulemaking.

First off is to maintain and improve water and natural resource protection. Secondly, better recognize existing and planned future development. Thirdly, increase flexibility for local government. Fourth, focus rules on those measures that can realistically achieve resource protection.

And, finally, simplify administration, clarify language, and improve organization of the rules that is currently contained in the executive order.

So, I'm to the point where I'll just cover some of the key highlights of the proposed rules. The statement of need and reasonableness, or SONAR, which is Exhibit 3 in these binders or online if you look, lays out the rationale for the specific rule parts. So, I'm not going to do that.

But I do want to touch on the big changes that we made from Executive Order 7919 to address issues that came about as part of the rulemaking.

So, first off is in the area of plans and ordinances. The proposed rules clarify the contents of local plans and ordinances. It also clarifies the

responsibilities of local governments and other agencies in meeting the requirements of the critical area.

Flexibility was very important, as I mentioned before. Not -- the conditions aren't the same in all communities and there needs to be flexibility for local governments to address those special situations.

But the flexibility allows local governments to adopt ordinances that don't exactly meet the rules to address special circumstances. They still have to meet the intent of the rules.

Bluffs was a very big issue, there's a whole section in the SONAR on bluffs. We also have an exhibit. So, all bluffs are defined and regulated. The proposed rules clarify the definition of bluffs using three parameters, providing more consistent identification and mapping of bluffs throughout the corridor.

This is very important to local government because oftentimes property owners wanted to know if they could do something on their bluff. And there wasn't a clear way to measure it. So, you go out on sites and not agreeing with the property owner's surveyor and that sort of thing.

So, it's important that we tightened up the definition. And the executive order does not

define bluffs, it defines blufflines. So, there was always some confusion and ambiguity there. So, that was one important thing that we wanted to clarify.

As part of the rule development process we did really look at how governments are currently defining and regulating bluffs. And we tried to get the definition to match that.

We developed both a mapping tool that we used to engage select communities in evaluating different bluff definition. And our goal was to get a definition that meets how most communities are already regulating bluffs and minimize its nonconformities. And I think we did that.

Districts, currently in Executive Order 7919 there are four districts, they were identified in the mid '70s. Things have changed since then. So, we have proposed six districts that better reflect existing as well as planned future development in the corridor. We've also provided a mechanism for changing districts, which does not currently exist in the executive order.

Building height was also a very important concern, especially in some areas of the corridor. The heights are regulated based on the six districts. And this allows for more variation.

Taller buildings are allowed in two of the districts through a conditional use process that would be held by the local government and would allow for public input for where buildings are proposed to be higher.

Vegetation management was also identified to us, especially by local governments, in being very difficult provisions to enforce currently. So, we really tried to strengthen those standards, more clearly define what vegetation is to be managed and where. So, really what the rules focus on is intensive vegetation clearing in the most sensitive areas.

Land alteration was also of importance. And again, we just strengthened and more clearly defined what could be done, especially in the areas of riprap, that was very important to the northern part of the corridor, as well as other disturbance activities in sensitive areas.

Subdivision and land development were of concern as well. So, the proposed rules establish thresholds and percentages for sensitive corridor resources, which are referred to in the rules as primary conservation areas.

And the rules establish those thresholds for those areas to be set aside and

protected. And that applies to new subdivisions, planned unit developments, and large master plan developments.

These set-asides are not required for river-dependent uses and may be included in land that local governments may already be requiring dedication for.

And, finally, nonconformities was a really big issue, especially early on in the process. And we will refer to existing statute which establishes protections for nonconformities. And clearly laid out what expansion can occur consistent with what local governments are already doing.

So, that concludes our opening statement. Sorry if it went a little long. We look forward to hearing your comments. I want to thank you all for coming today. We're really glad you're here.

THE COURT: Thank you so much. Ms. Enzler, are we concluded?

MS. ENZLER: Yes, Your Honor, we are concluded, that is the State's presentation.

THE COURT: So, under the earlier order what I'm going to do is take a few moments off the record to give folks a chance to look at the binders.

As soon as people are concluded

looking at the binders we'll start right away. Don't move, you won't want to miss it. Don't go far, we're in a short, short recess.

(At this time a brief recess was taken from 5:15 p.m. until 5:20 p.m.)

THE COURT: So, we're back on the record after a short recess. Our plan is to at least until -- our next court reporter break would be at 6:00. So, we're going to try to conduct as much business as is reasonable.

With us first is Senator David Durenberger. And following him and his remarks would be Rory, I think it's Stierler, of the National Park Service. So, you'll be following the senator.

With that, Senator Durenberger, if you wouldn't mind stating and spelling your name for our record.

MR. DURENBERGER: My name is David Durenberger, D-a-v-i-d, D-u-r-e-n-b-e-r-g-e-r.

THE COURT: Thank you so much. Senator Durenberger, what should we know?

MR. DURENBERGER: I was born and raised in Minnesota and currently reside with my wife Susan Foote at 9 Crocus Hill in St. Paul. Retired from a variety of private and public service positions

including three terms in the United States Senate representing the people of Minnesota.

This afternoon I'm asking you to support the draft of MRCCA rules proposed by the State of Minnesota and its Department of Natural Resources.

Because I happen to be in a unique position to know why the proposal and your approval of the proposal is essential to affect an important national policy precedent, which I helped create and have followed.

THE COURT: Just a little slower, Senator, for Ms. Menth. Thank you, Senator.

MS. ENZLER: Your Honor, I'm not sure the microphone is on.

THE COURT: Maybe we can get staff to -- excellent. Thank you, Senator. And again, just so that Ms. Menth can hear. And mindful that you're Exhibit 21.

MR. DURENBERGER: The Mississippi River is known worldwide as the Father of Waters. About 160 miles from its origin it flows through the city of St. Cloud and right past the hospital in which I was born. 60 miles later it reaches the Twin Cities and for the next 72 miles provides a natural resource unique enough to have been granted protection as a part of our

national park system.

The Mississippi River is Minnesota. It was critical to building the economy of the Northwest Territory and the territory of the state of Minnesota and of cities that grew up because it was an economic resource, connecting us with the rest of the world.

We built a great research and education university on the Father of Waters to help expand our capacity to use both the minerals and vast natural renewable resources of our state to build global corporate enterprises. In recent years our economy does not depend anywhere near as much on the river, as does our quality of life.

So, it's important to recognize that even while the river provided important transportation and energy infrastructure, the people of this state became adept at using public policy to enact environmental standards that protect our health while advancing our enterprise.

It is the quality of our lives in Minnesota which help make our state and our metropolitan communities attractive places to live. It is this quality of life here that will be critical to our economy in the next decades when the normal inmigration of job seekers will not keep up with the retirement of

the boomers and the outmigration of Minnesota.

I was the Senate author of the legislation creating the Mississippi National River and Recreation Area. I authored the Corps of Engineers study of the Upper Mississippi River Basin, which preceded it.

I also authored much of the appropriations legislation, which has provided for National Park Service and U.S. Forest Service lands acquisition and development in Minnesota, including the Minnesota River National Wildlife Refuge starting in Bloomington, the BWCA, and the Voyageurs National Park.

From 1972 to 1974 I served by appointment of Metropolitan Council chairman, Al Hofstede, as the first Chair of the Metropolitan Parks and Open Space Commission.

Our citizens' commission recommended to the Council, and the Council adopted, a master plan for the development of regional parks and open space in the seven county metro area to guide the investment of federal and state funding in the regional system.

This, Your Honor, is the unique inter-governmental policy innovation I spoke of earlier and which we are eager to protect. The master plan proposed the State of Minnesota act to protect both the

use of the Mississippi River and the protection of natural resources on land adjacent to the river.

Subsequently the State legislature appropriated an initial 40 million dollars for regional parks and open space and the authority in DNR to provide rules for critical area resource protection.

What you find before you today is essentially an update to the governor's executive order implementing the statute, not a whole new regulatory scheme. It is solid, deliberate, and well-thought-out work with which not everyone will be in unanimous agreement, but from which every one of us will benefit.

What makes it unique public policy is simply this: By statute we created a state and local government compact, a compact by which Minnesota guarantees to protect national resources, which happen to be in our 72-mile course of the Mississippi River, for the enjoyment of everyone and every future generation.

As a consequence, like any shared system, but particularly this one, the Mississippi River resources, natural and economic, must be governed at a higher level than the purely local interests that make up its parts.

This is the essence of the critical

area designation and it was the essence of the National Park Service designation as well.

I believe the State of Minnesota and the DNR has done its very best to honor that tradition and that obligation. And recommend it to you for your approval.

THE COURT: Thank you kindly, Senator, I appreciate your time and contributions to our record. Mr. Stierler. And following him will be Whitney Clark, executive director of the Friends of the Mississippi River Corridor, I think.

If you wouldn't mind stating and spelling your name for our record.

MR. STIERLER: My name is Rory Stierler, R-o-r-y, S-t-i-e-r-l-e-r.

THE COURT: Thank you so much, Mr. Stierler. What should we know?

MR. STIERLER: Thank you, Judge. I represent the Mississippi National River and Recreation Area. David just provided a wonderful explanation behind the why we were created and our connection with the corridor.

And in my comments now I would like to establish the need for the rules, given the connection to the National Park Service, and emphasize

the purpose.

Our park is a 72-mile corridor along the Mississippi River, we share the same boundary as the Mississippi Corridor Critical Area. I'll refer to that as the critical area from hereon out.

And so, we share the same boundary and we have a lot in common. We share the same fundamental purposes and values which revolve around the resource protection through guided land use and development.

In 1991 the state designated the MNRRA the critical area. And we are a true partnership park, a new kind of national park. We don't own much land, but instead we protect our key resources and features through partnerships and management frameworks.

Here in the Twin Cities the management framework is the Mississippi River Corridor Critical Area. And this agreement is promised from the State to the national government.

It wasn't a mistake, it's not a coincidence, it's not a convenient chance, it was a deliberate decision among stakeholders along the river that included citizens, local, regional, state, and federal governments and businesses and nonprofits.

The decision is signified in

Minnesota State Statute 116G.15, beginning in 1991 where the State agreed to ensure protection of the river corridor and update the existing program upon the completion of our comprehensive management plan, which was completed in 1995.

And now, Minnesota Statute 116G.15 has since been updated. And that update has given the DNR the authority to proceed with drafting rules for the critical area. We feel this is acting upon that promise from 1991. I'll focus on the fundamental purpose of the critical area.

THE COURT: Just a tad slower, Officer Stierler. Thank you so much.

MR. STIERLER: So, the State's critical area of the program is laid out in Minnesota Statute 116G in Section 2 titled "Policy" says that the legislature finds that the development of certain areas of the state possessing important historic and cultural esthetic values or natural systems which functions of greater than local significance could result in irreversible damages to these resources, decrease their value and utility for purposes or unreasonably endanger life and property.

I want to repeat that it identified that the development could result in irreversible

damages to these resources, historic, cultural, esthetic or natural systems.

This is a large reason why the National Park Service, the federal government, agreed to entrust the State of Minnesota to protect the resources that were identified.

The MRCCA established under the State act and has five additional purposes within 116G.15. I won't read all of those now. You'll find that is consistent that the purpose of the program is to protect natural, esthetic, cultural, and historic resources while allowing for appropriate development.

The legislature has directed the DNR to create rules that protect these resources. And we feel the DNR has largely accomplished this.

We ask when you review the rules and oral and written comments on the need and reasonableness of the rules that you refer back to these purposes and ensure that when considering the comments and the reasonableness of the rules, the river's corridor key features and resources are protected. And the rules must be consistent with those purposed statements.

And we're kind of short on time, but I want to make a philosophical statement here. I'm reading a book called "Wild Ones" by Jon Mooallem. In

it he describes a concept known as the Shifting Baseline Syndrome.

Each passing generation accepts the world they've been given as normal as a status quo. This is a world that they have inherited. And in the context of the critical area can include the abundance and condition of wildlife, bluffs, shorelines, trees, natural vegetation, trails, streets, roads, buildings, the massive buildings, the visibility of buildings from the river.

And I feel blessed that previous generations prior to me identified the river corridor as significant. They created a State of Minnesota critical area program, the Mississippi Corridor Critical Area, the National River and Recreation Act, and the National Park Service.

So, without previous generations having identified this, we wouldn't be here having this conversation right now. We've seen each generation since the 1970s, whether policy, plan or legislation, identify the importance of protecting the natural characteristics of the Mississippi River Corridor.

We have not, however, seen action in updating the nearly 40-year-old standard which protect it, which brings us here today. The proposed rules have

the opportunity to do this and provide future generations a predictable and consistent management framework for the river corridor.

THE COURT: Thank you so much, Officer Stierler, I appreciate your time and contributions to our record. Mr. Clark, is Ms. Jones going to come with you?

MR. CLARK: Yes.

THE COURT: So, if both of you wouldn't mind -- as Ms. Jones makes her way if you wouldn't mind stating and spelling your name for our record.

MR. CLARK: Thank you, Your Honor. My name is Whitney Clark, W-h-i-t-n-e-y, C-l-a-r-K. I'm the executive director of Friends of the Mississippi River or FMR.

I'm going to begin my organization's testimony tonight by discussing the significance of the Mississippi River, the purpose of the critical area, and the unique relationship between the critical area and our national park, Mississippi National River and Recreation Area, or MNRRA.

My colleague, Irene Jones, will then present our testimony regarding why we believe these proposed rules are needed and reasonable.

Friends of the Mississippi River is a citizen based nonprofit organization that works with community stakeholders to protect, restore, and enhance the Mississippi River and its watershed in the Twin Cities region.

Our work focuses on protecting and restoring river front land, improving water quality, advocating for land use along the river that enhance and celebrate our national park, engaging youth and adults in river protection and restoration.

We have the support of 2,600 members. And last year we engaged more than 7,000 volunteers and participants in education and hands-on stewardship activities to connect to and restore the health of the river.

Since we were established in 1993 FMR has worked in partnership with the Department of Natural Resources and MNRRA and many other stakeholders to play a constructive role in issues of river corridor land use, economic development, park planning, and natural area protection and restoration.

In 2007 the DNR was charged by the legislature to do a study of the critical area program, which you heard about from the DNR tonight. FMR was actually contracted to conduct a series of stakeholder

meetings for that study.

After the DNR's report came out in 2008, we were asked to participate in a legislative study group with other stakeholders. The outcome of that process was the decision to pursue ruling authority during the 2009 legislative session.

Once rulemaking commenced Friends of the Mississippi River played an active role in that process. We've attended all the stakeholder meetings, I think, open houses. We've submitted extensive written comments on each of the drafts.

And because of our long-standing involvement in the critical area, FMR staff are recognized as experts on the critical area rules and regulations at the state and local level.

This river is our shared treasure. It is so special to our communities. And yet, it can't protect itself, which is why these rules are so important and so essential.

The river is one of the great rivers of the world. It's one of the most complex eco systems on the planet. It's one of the defining features of the North American continent. And it's home to a diversed assemblage of plant and animal communities.

The river is a source of drinking

water for more than 18 million people, including about a million Twin Cities residents. The river is an international migration flyway used by 60 percent of all North American birds and about 40 percent of its waterfowl and wading birds.

The river is home to several hundred other species, including muscles, amphibians, reptiles, mammals, and 25 percent of North America's fish species.

The geomorphology of the river here in the Twin Cities changes more than anywhere else along its length, providing a dramatic landscape feature, such as waterfalls, bluffs, ravines, flood plains, and islands.

Many of the rare and remaining native plant communities in the Twin Cities found along the river are part of Minnesota's natural heritage that should be preserved for current and future generations.

As the birthplace of the Twin Cities the Mississippi River has enormous historical, cultural and economic significance. Many sites along the river were and continue to be significant to Native Americans. And much of Minnesota's rich agricultural and industrial paths ties directly to the Mississippi River.

Today the river is still a key transportation artery, busy with commercial navigation.

Because of its unique natural, scenic, cultural, historical, and recreational resources, which are shared community assets that improve Minnesota's economy and quantity of life, this 72-mile corridor was designated as a state critical area in 1976 and made permanent in 1979.

When the critical area was established it provided a framework to allow for economic development in the corridor while ensuring protection of the river's unique resources.

Core to the Critical Area Act's framework was this partnership between state and local government to plan for and manage the river's resources.

The goal has always been twofold, to allow for growth and development within the corridor and to protect the unique and valuable resources.

Very importantly, the critical area is also a national park established by Congress in 1988 to protect, preserve and enhance the significant values of the waters and the land of the Mississippi River corridor within the metropolitan area. MNRRA has the exact same boundary as the critical area.

As you heard from Mr. Stierler, MNRRA is an unusual unit of the National Park Service, as there's very little land owned by the federal government

and there's no federal regulations.

Instead, MNRRA operates as a partnership park working with state and local governments to collaboratively manage the river's unique and significant resources.

So, for MNRRA, this unusual management structure to be effective, a strong state and federal partnership is needed. Rather than creating its own regulatory tools the National Park Service explicitly relies on state and local controls through the critical area.

The comprehensive management plan from MNRRA does not create another layer of government that was seen as a value and MNRRA was created, but rather it stresses the use of existing authority and agencies to accomplish the policies and actions in the plan.

So, for MNRRA's unusual management structure to be effective, we have to have this partnership. Thank you.

THE COURT: Thank you so much, Mr. Clark. Ms. Jones, if you wouldn't mind stating and spelling your name for our record.

MS. JONES: My name is Irene Jones, I-r-e-n-e, J-o-n-e-s.

THE COURT: Thank you so much, Ms. Jones. What should we know?

MS. JONES: I am the river program director at the Friends of the Mississippi River and I'm going to talk about why we need the rules and why they are reasonable.

The existing framework of the 1979 executive order is problematic for a number of reasons, several of those were actually laid out in the SONAR, but I'm going to lay out a couple others.

The language is vague and outdated, leading to inconsistent application and in some instances, poor resource protection.

The districts that are in the existing executive order are based on land uses in 1979 and they're unnecessarily broad. And this has created a problem in cities that want to redevelop or invest in some of these areas.

As noted in the SONAR the executive order fails to define many terms, making implementations difficult for local government and causing confusion, which could be costly and cause delay for affected interests.

Because the executive order does not carry the weight of rules, over time its credibility as

an effective model has eroded. And some public officials have chosen to ignore it or not necessarily follow it as strongly as they might have when it first came out.

It's difficult to change any of the existing standards when updates are needed because the executive order cannot be amended and there's no provision to require periodic updates to the local critical area ordinances.

In fact, many of the local critical area ordinances haven't been updated in over 30 years. So, rules will enable and sort of force those updates to happen.

The intractable nature of the executive order has lead to inconsistencies between local plans and local ordinances.

And as a result of that, decisions about resource protection can often get protracted and land use development decisions can actually become political or arbitrary. And that was going on a lot in the early 2000s when folks started expressing concerns about the executive order.

So, I'm going to talk a little bit about why state rules are needed to protect the Mississippi River and the national park. We talked

about the critical area being a shared resource, it's got regional, statewide and national significance with many community benefits.

But with 30 local units of government with land use authority along the river, soft overarching guidelines and minimum standards are really necessary to avoid a death by a thousand cuts, the stemming degradation of the very qualities that make the river such a treasure.

Although the executive order is problematic, the overarching approach of working in partnership that has been established should continue. The proposed rules are a revision and a refinement, but they do not alter the basic framework for protection that has existed since 1979.

Local plan ordinances that are consistent with state standards will continue to be required just as they have for nearly 40 years.

State rulemaking, we believe, is the best way to modernize the standards for guidelines and protection and enhancement of the critical area and national park.

And these proposed rules would provide a management framework that is more consistent, predictable, and effective than the executive order.

So, just a couple more points about why we believe the rules are needed and reasonable. The new state rules for the critical area are needed because they will provide a set of clear, consistent, and effective standards and guidelines to ensure the most valuable resources in the corridor are protected.

This includes protecting steep slopes to prevent erosion and protects scenic values, limiting structure heights in areas where scenic values can be affected and protecting the natural functions and values that makes this one of the world's great rivers.

The draft rules do a good job protecting these resources while allowing for development where appropriate. The proposed rules are considerably more nuance and flexible that the executive order standards.

In many locations the proposed rules relax restrictions on development in ways that we believe will not degrade the river's resources.

We feel the DNR has done a commendable job of including flexibility provisions that would not needlessly restrict development when the resources would not be threatened.

The old framework was dated, confusing and vague, and in some cases, it was ignored

or limited influence. The new rules will provide for a more defendable framework.

And just a couple points also about the process because it's been an extensive process. Both Whitney Clark and myself have been involved from the beginning.

In the 2009 law directing the DNR to write the rules was a culmination of many years work by many citizens and environmental groups and other stakeholders. It passed bipartisan support in the legislature and was signed by Governor Pawlenty.

In some places FMR believes the rules should be more protective. And there are a number of things we asked for in previous comments that were not included, such as more stringent requirement for storm water management.

We feel the DNR was thoughtful and fair in their approach to balancing the many different interests and finding compromises. That said, we will have additional comments on those things.

The partnership between MNRRA and the critical area has created a workable framework for protection of the natural and cultural resources of the Mississippi and the metro area, while enabling commercial, residential and industrial development

consistent with those protections.

The executive order has served well, but after almost 40 years, adjustments are needed. And the rulemaking directed by the state legislature is the right approach.

In general we are very supportive of the rules. On Thursday we will present our testimony on the specific aspects of the rules. We didn't want to take up too much time out of one hearing. And that will include recommendations for minor changes to the draft. That's it, thank you.

THE COURT: Thank you so much, Ms. Jones and Mr. Clark. We're grateful for your time and contributions.

I'll just make one note that to the extent that folks have suggested changes, language changes to the rules, I think it's very important that every stakeholder realize that the earlier you send them in to the DNR for their review, mindful that we'll have a 20-day comment period after the conclusions of the hearings, Mr. Petrik and his staff, Ms. Shillcox, the other folks who are providing support behind them will have a longer opportunity to look at your language changes the earlier they receive them.

You could indeed wait until the 20th

day, but you've lost 20 days of review in that process. So, a neutral suggestion, wherever you are on the policy issues that are raised, the more time that they have to look at your drafts, the more likely you are to persuade and to have an impact.

So, with that, the next person who will have impact this evening is Mr. Tom Dimond. Mr. Dimond, if you wouldn't mind joining us here. And following him will be Kathy Stack, you're going to follow Mr. Dimond.

Mr. Dimond, if you wouldn't mind stating and spelling your name for our record.

MR. DIMOND: Tom Dimond, T-o-m, D-i-m-o-n-d.

THE COURT: Mr. Dimond, what should we know?

MR. DIMOND: What we should know about this is that these regulations that are proposed, these rules, will significantly reduce the existing protections that are in place. They do not meet the requirements to protect the resource and they do not follow the statutory authority.

What was designed was for them to look at how to consider what local government had in place, adopted ordinances and plans were supposed to be

considered. They were not considered in this process and the existing protections.

The reductions in protection are only worse because they compound upon each other. And I will give you an example. What was talked about earlier were mentioned is the importance of protecting the bluffs, that bluffs is a very big issue. I couldn't agree more strongly.

I have great respect for the staff of the DNR and the work that they have to do, but I believe that this, because of pressures and how the process was handled, the public was largely excluded in this redraft of the process.

The earlier draft the public had more participation in, but then it was almost exclusively city municipalities staff with closed doors outside of the public process until there was great protest by the public and the public was allowed. But most of the redrafting had been done at that time.

I'll use the bluff as an example of how these issues compound upon each other and make effect. Current regulations protect all 18 percent and greater slopes, not just bluffs, all 18 percent greater slopes.

When the critical area was being

considered in the first place it was strong impetus for it to be 12 percent and greater slopes that are protected, similar to the St. Croix, which had just been adopted. And you can see it in the records, if you look at the records, what is going on.

The compromise was that all 18 percent and greater slopes would be protected and some development would be allowed on slopes 12 to 18 percent. What is done in this is 18 percent slopes would no longer be protected.

And I can explain why that is. And the protections that are in place today would not be the same. The protections in place are that there's no development on 18 percent greater slopes.

And the proposal changes it to -- limited to structure limitations, and there are some other provisions, but structure limitations instead of development. Development is a much broader definition of what is not allowed on this.

Then, while both development and structure are defined in the statute, they only use in these new rules the development definition that is in statute, but they choose to redefine what structures are.

So, now it's switched from

development to structures and then structures is redefined to be even less, even though statute requires -- specifies what it is for the critical area.

Then what they do with bluff -- or bluff is, first of all, take up to 18 percent, now we protect all of it. Bluffs have also a setback requirement. So, that's really the difference between our protections on the bluff and the rest of the 18 percent.

They separate out all the rest of the 18 percent that is not defined as bluff and there's no protection, that's all lost, it's gone.

Then on the part that's bluff, they redefine it and they do a couple things. One, they give a height requirement, but they also do a measurement. And I'll put this down just to show you.

What happens is, if this is an 18 percent slope (indicating) and if you measure the horizontal distance in a hundred-foot run, it would be a 18-foot rise or 50-foot run, which is the standard that's used, it would be a 90-foot rise.

If you take it and make it a -- if this is a 50-foot run (indicating), if you take and look at bluffs and the way they really are, they're up and down.

So, if you measure it on a 25-foot horizontal distance, this would no longer be bluff because of the undulation, this short section (indicating), because of undulation, would not be part of the bluff.

And so, what is done in practice and what is in most statutes and regulations is a 50-foot measured over a 50-foot average. So, you average out those modulations and you use the average.

Because what they've done is they put a height requirement, a 25-foot height requirement, and then they did a 25-foot height requirement on a 25-foot horizontal measurement distance, it requires now that you actually have a 100 percent, not 18 percent, but that segment has to be a 100 percent slope.

The additional ones that are now measured over a 25-foot horizontal distance rather than a 50-foot horizontal distance, those all have to be at least 18 percent.

The catch is, when you do that with that measuring program, you take, for example, a horizontal run of a hundred feet and it's got to be at least 38 and a half percent slope. Because you can't average out, you can't get down there.

If you've got a 200-foot run, it's

still got to be 28-and-a-quarter percent slope. Now you're no longer protecting them because of this measurement standard that you set that is not in place today.

So, you have to get rid of the 25-foot horizontal distance with a 25-foot rise. You can have a 25-foot rise, but as a total over the total distance or part of it.

And another thing that they've done is also they established a 25-foot distance to establish the top of the bluff and the toe of the bluff. What this does is because it's such a short distance, again, the modulation of it, you drop off in the bluff.

It stops and then you have to start again, even though this is a continuous bluff, if you measure it over 50 foot. You now have to have that 100 percent piece in there again.

So, what would be considered bluffs anymore would be significantly greater slopes than in many cases than what is currently proposed.

THE COURT: Some final thoughts, Mr. Dimond? There's some brilliant ideas in line behind you.

MR. DIMOND: Sure. To go with that, now besides changing what the definition of structure

and what it can be, on the setback from it, they have done grandfathering that you can build into the setbacks where you previously could not do it before and you can expand on conforming in the areas that are prohibited.

So, that's how these problems compound themselves and have much weaker protections than what are there today.

THE COURT: I'm so grateful, Mr. Dimond. Mindful, that you can write in and detail some more calculations. We're grateful for your contributions. You're going to mark an exhibit?

MR. DIMOND: Yes.

THE COURT: Excellent. You are Number 22. Thank you kindly, Mr. Dimond, very grateful. Ms. Stack, if you wouldn't mind stating and spelling your name for our record.

MS. STACK: I'm Kathy Stack, Kathy with a K, last name is S-t-a-c-k. And I'm really happy to have this opportunity and just a couple of minutes to make comments as an ordinary citizen.

And I wanted to say, Ms. Shillcox, I think your question, what does the river mean to us, is an ideal framework within which the rest of us who are not experts like my good friends here can speak to the need for these rules.

First of all, I wanted to say that I am privileged to live on the gorge, as you know, the only gorge on the Mississippi River.

In addition to having lived on the gorge and having the river be my front yard, I lived almost ten years on a houseboat where from May through October, we went up and down the river, have seen every aspect of MNRRA that you can and have come to believe that we are in a pretty good place which can only be made better by having stronger rules.

I think it is important, especially if you don't see other parts of the Mississippi and get into the deep south as I have and drift by Memphis and drift by New Orleans to realize just how precious and amazing what we have here is.

And as I've looked at the rules, I see that, with the exception of perhaps some concern about height, which I'm going to allude to in a minute, I think we're on a really good path and have done a good job.

One of the things that has really been powerful for me is having lived on this little houseboat. We've over a period of years had people from literally all over the world come on our boat, come up from Hastings, up to the north, back again, and to be

simply awestruck and this metropolitan area we have managed and so much of the river protected and green, undisturbed by tall buildings.

And obviously a very, very special place. Whether they were from Brazil or Mexico, Japan, Singapore, Germany, all of these people have said, "You have something truly amazing on this great river."

My concluding point is that I hope that the rules, as they come out of this process, will be even stronger because I think we're all aware of the pressures, the concerns.

I happen to live in the city of St. Paul, I am acutely aware of this living on the gorge, the opportunities that are ahead of us.

But the importance for us is to continue to think in terms of what we have gained to date and what our tremendous responsibility is for future generations. And your rules will help tremendously. Thank you.

THE COURT: Thank you so much, Ms. Stack. We're just about at the end of our first 90-minute segment. So, we're going to take a short standing recess until ten after the hour in just a moment.

Before we adjourn I just want to let

people know that as far as the folks who indicated in the column wanting to speak at the hearing, we've exhausted that list.

If there are folks who are inspired and would like to be recognized as soon as we reconvene here, I'd like to take folks who haven't had an opportunity to speak to share their views.

Otherwise, I'm going to allow stakeholders who had more to say and felt a little cramped by my moving them along to give a longer extended remarks, provided that everyone who hasn't yet had an opportunity to speak once at least had a chance to be recognized.

So, with that, we will start precisely at 6:10. We're in recess.

(At this time a brief recess was taken from 6:00 p.m. until 6:10 p.m.)

THE COURT: We're back on the record after a short recess. Mr. Nesvig, if you wouldn't mind stating and spelling your name for our record.

MR. NESVIG: Thank you, Your Honor. My name is Gordon Nesvig, N-e-s-v-i-g.

THE COURT: What should we know?

MR. NESVIG: Well, Your Honor, I just wanted you to know, I wasn't planning on speaking

tonight, but the previous speakers, I think it's important to know that not everybody is as enthusiastic about the proposed rules as the speakers we've heard so far.

I agree with Mr. Dimond, it seems like the public was pretty much excluded from input on this. I'm a private landowner and I own a mile and a half of shoreline on the Mississippi River in St. Paul Park.

The notice of this hearing was the first I knew about the current rules. The DNR made several previous runs, which had failed. So, it's not that they haven't tried to change these rules over the last four years because they have. Like a cancer, they keep coming back.

All the speakers that we've heard tonight are, in my opinion, overidealistic. They do not consider landowner's rights or the needs of the cities and municipalities along the way and the deep tax base.

My land has been slated for development for years. From what I scanned on this, these rules would restrict that, cost me money, cost the cities money because of the setback proposals.

They don't pay any attention to how land is visible from the river, whether it is or it

isn't. I've scanned these rules briefly when I got the notice and I've looked at them online.

It appears that most of them are not necessary changes to the existing city and county ordinances. I will study them in more detail and I will make some written comments for you, but I just wanted you to have this preliminary thought. That's all, thank you.

THE COURT: Thank you so much, Mr. Nesvig. Thank you for your time and contributions to our record. Mr. Don Arnosti. Mr. Arnosti, if you wouldn't mind stating and spelling your name for our record.

MR. ARNOSTI: Thank you, Your Honor. My name is Don Arnosti, A-r-n-o-s-t-i, I represent the Izaak Walton League here in Minnesota, I'm the conservation program director and I work with our membership statewide.

The Izaak Walton League is supportive of these rules. We think they should be implemented, they've been many years in coming.

We are river front landowners in the northern part of the critical corridor where our Breckenridge Chapter has a clubhouse and we own both bluff property as well as an island in the middle of the

river at that area.

We've had discussions about these rules with our policy folks and our various committees. And while we wish the compromises that were made were a little bit more in favor of conservation, and I'll point one thing out specifically, we do support these rules and we think they're reasonable and reflect compromises that have been made between multiple perspectives.

Separated from the river category of zoning that is proposed, the standards for that is if a structure would not be visible or that area would not be visible from the opposite bank rather than the opposite bluff.

And in some parts of the river corridor there are a substantial difference between the bank and the bluff. And that would mean some of the areas that are designated for lesser zoning should, in our view, have a stricter standard applied to it.

That said, we recognize that it is a process of compromise. And our organization is strongly in favor of moving ahead with implementing these rules.

I'd like to mention just one or two things before I end. The Izaak Walton League is a national conservation organization, which has its roots right here in the Midwest.

And the founding cause for our organization, which was organized in 1922, was protection of the Upper Mississippi River. And the area that we particularly focused on at that time is what is now called the Upper Mississippi River Wildlife and Fish Refuge.

So, just downstream of this critical corridor is the founding cause that caused our national organization to get started. And it was hunters and fisherpeople who were very concerned about the manner in which the river was being treated and the protection of these resources for future generations.

We're very proud to have had a key role in the establishment of that national wildlife refuge that starts just downstream of this critical corridor.

And we believe the rules to protect this critical corridor is just an extension of that long-standing conservation interest of our organization. So, thank you very much for your time and attention.

THE COURT: Mr. Arnosti, thank you so much. Very grateful for your time and contribution to our records. Is there anyone who hasn't yet had an opportunity to speak once who would like an opportunity to be recognized? Okay.

Is there anyone who has had a chance to give remarks who would like to revise or extend an earlier contribution? Mr. Dimond, please.

MR. DIMOND: Thank you. Tom Dimond.

THE COURT: Thank you so much, Mr. Dimond. What should we know?

MR. DIMOND: Two quick points I would like to talk about. One is on the district for what is called island station is actually an island in the river which partially fills a back channel on it.

Earlier when this work was being done it actually had an old power plant on it. It no longer has it on there, it's been removed. It's actually an undeveloped island and river.

And the critical area calls for undeveloped islands and rivers to be protected. So, it seemed inappropriate before, but it certainly seems inappropriate now to have the UM. I would suggest that RN or something similar to that.

I would say that's not a good analogy, but probably closest analogy is the Lilydale Yacht Club and how that is zoned.

The other thing that I think is worth noting at this meeting is that the context of these rules are not the ready adopted regulations, but there's

also other state regulations, the shoreland being a really important one.

So, in that context, the critical area being a higher protection or it's more specific, it's a higher standard, shoreland wasn't looked at for the critical area, but for a number of factors did not meet the standards of what needed to be done.

So, when the critical area has standards that are lower than are being applied everywhere else, it seems inappropriate.

I'll use one example is the shoreland setback requirement. In the current rules for the shoreland, the minimum setback requirement is 50-foot. In the draft rules that never were adopted, but at least the intent of thinking of the DNR at the time in 2010, was 75-foot as a minimum.

In the critical area it's zero in some areas, particularly downtown. So, it's contradictory to what everywhere else in the state is required to do. And it's not being applied here.

And I said this is particularly important because St. Paul is one of the communities who does not have a shoreline ordinance, even though it is required by State statute to have it.

And the DNR is required by State

statute to ensure that the city of St. Paul has had it. We've raised this in the meetings with the DNR and the DNR and DNR individuals have said on repeated occasions, "We aren't going to enforce that statute."

So, I think it's really important that the protections that apply to everywhere else in the state of Minnesota ought to apply to the current rules. Thank you.

THE COURT: Thank you so much, Mr. Dimond, appreciate your time and contributions. Any additional remarks or testimony this evening? Any additional remarks or testimony this evening?

I have a few advertisements, I don't want you to go just yet. Tomorrow afternoon beginning at 4:30 p.m. we'll be hearing from stakeholders at the Greenhaven Event Center in Anoka.

If there are folks in your Outlook calendar or Christmas card list or Boy Scout troop, Forestry group, would like to join us at the Greenhaven Event Center, please let them know about that opportunity.

Likewise, on Thursday beginning at 10:00 a.m., so a daytime hearing, we're going to be at the Mississippi Watershed Management Organization's offices in Minneapolis.

Again, the same sort of cricket rules will apply, we'll be running in 90-minute slots and try to get as far along in the roster as we did -- like we did this evening.

I think we did a number of great bits of work this evening by folks being courteous to the folks in line behind them. So, I want to thank everybody who participated in that way.

Likewise, there are two important dates to remember. The first among them is Wednesday the 6th of July, 2016, that's 20 days from the end of the public hearing process for our first round of substantive comments. People can revise, extend their remarks, raise new questions and new suggestions.

I'll repeat the earlier suggestion that I had, which is, if you are engaged in active drafting and suggestions to the agency, the earlier in time -- you don't have to wait until the 20th day.

The earlier time you can get that to agency staff I think the more likelihood that they will be able to share and circulate and reflect upon your good work. So, I encourage stakeholders who are involved in rewriting portions of our 4240 to get those items to agency staff.

And after the submission date on

Wednesday, July 6th, check the Internet sites for this rulemaking. And if you haven't seen the comments, they will all be available there. And they're all available in real time on our rulemaking comment site.

There will be a five working day rebuttal period that extends through 4:30 p.m. on Wednesday, July 13, 2016, that's 4:30 p.m. on Wednesday, July 13, 2016.

After that I'll take the rulemaking record as we have it and write a report which will be due 30 days thereafter, except, and I don't know because we're just at the beginning of this process, if there's a defect in the process, if there's a defect that I find, the rules get sent to the chief administrative law judge.

So, it might not be exactly 30 days. The chief judge has another five working days to look and review and either sign or overturn a finding of a legal defect by me.

So, if there's a statutory problem or a rule is unconstitutionally vague or some other legal problem that I identify with the rules, there's another brief period for the Chief to review that.

Now, Ms. Enzler, I haven't found any such defect, that's not a prediction, it's a discussion

of possible outcomes. Okay? And so, people should just as far as timing understand that on or around the 30th day, depending upon what happens, a report will be available.

We're eager for you to keep in touch. So, everybody has been remarkably courtesy to me and to each other. I think it's been a great start for a process that continues tomorrow in Anoka and on Thursday in Minneapolis and then for 25-ish calendar days thereafter.

Lots still to do. We're grateful for the start. And we're adjourned.

(Hearing adjourned at 6:25 p.m.)

REPORTER'S CERTIFICATE

I, MARCIA L. MENTH, do hereby certify that I recorded in stenotype the hearing on the foregoing matter on the 14th day of June, 2016 at Hastings, Minnesota;

That I was then and there a Notary Public in and for the County of Wright, State of Minnesota;

I further certify that thereafter and on that same date I transcribed into typewriting under my direction the foregoing transcript of said recorded hearing, which transcript consists of the typewritten pages 1 through 77;

I further certify that said hearing transcript is true and correct to the best of my ability.

WITNESS MY HAND AND SEAL this the 20th day of June, 2016.

_____

MARCIA L. MENTH
Court Reporter

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STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Rules
Relating to the Mississippi River
Corridor Critical Area

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VOLUME II

The above-entitled matter came on for public hearing before Eric L. Lipman, Administrative Law Judge, taken before Marcia L. Menth, a Notary Public in and for the County of Wright, State of Minnesota, taken on the 15th day of June, 2016, at Greenhaven Golf Course Event Center, 2800 Greenhaven Road, Anoka, Minnesota, commencing at approximately 4:30 p.m.

A P P E A R A N C E S

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Jennifer Shillcox - Land Use Unit Supervisor

Suzanne Rhees - Water Policy Consultant

*The Original is in the possession of Administrative Law Judge Eric L. Lipman.

E X H I B I T S

PAGE
Rec'd

Exhibit 23 - Freeburg exhibit 146

P R O C E E D I N G S

THE COURT: Good afternoon, my name is Eric Lipman, I'm an administrative law judge with the Minnesota Office of Administrative Hearings. I'd like to welcome everyone to the second of three public hearings in the matter of the proposed rules of the Minnesota Department of Natural Resources relating to Mississippi River Corridor Critical Areas.

It's otherwise known as OAH Docket Number 8-9014-33236. And it's also been denominated as Revisor Number R-4240. I'll talk more about the importance of those numbers in a little bit.

The OAH is independent of the Minnesota Department of Natural Resources and the various stakeholder groups that are going to be testifying today.

The role of our office is to provide hearing services in cases just like this, rulemaking hearing, and also contested cases where there are disputes between citizens and their government. The function of our office is hopefully to provide hearing services in ways that are fair and transparent to all of the parties.

Among the directions that the Minnesota legislature has given to the agency and our

office about this kind of process, specifically in Minnesota Statutes 14.14 and 14.15, are that rulemaking hearings are to be conducted in a way that's fair and open and accessible to members of the public.

It's part of a series of regulatory controls. The reason we have a judge in this process is to ensure that there's procedural fairness, that there is open access, and that there's genuine and fair opportunity for public participation in the development of administrative rules.

In fact, if you turn to the statute books, in the very first words of the Minnesota Administrative Procedures Act talks about providing greater public access, greater public accountability, greater opportunities for members of the public to participate in the development of the rules that govern their lives.

Indeed it's a great expression of self-government by, for and of the people and consent of the governed to do the things in the way that we do them in this particular process and in this state.

The statute goes on to explain that even though it's a complicated series of procedures that we undertake, it's the legislature's expectation that the substantive results at the end of this process will

be improved because of the procedural steps that we're taking tonight and throughout the next 20 calendar days. And actually, more like 26 calendar days.

So, again, all of these procedures are designed with drawing upon the wisdom of the group. So, for the people who are in this room, people who were in the room last night, the people who will come and join us and participate in the daytime hearing tomorrow in Minneapolis. And more about that in a little bit.

And for folks who never came to any of those rooms, wherever they might be on the face of the great green globe, they can participate in this process and contribute to the wisdom of the group.

Again, the legislature's expectation is that if we have many eyes and many hands working on this, not only is it consent of the governed, but it's also a better substantive result.

As a matter of fact, I want to thank Senator Abeler who just joined us who was key in making many of the laws that govern this kind of procedure and contribute to consent of the governed.

There's a handout at the front table entitled, "State of Minnesota, Office Of Administrative Hearings, Rule Hearing Procedures." If you don't have a copy of that item I'd ask you at either a break or

convenient time to pick one up.

It describes in greater detail the procedures that the legislature has set for hearings just like this. And while I'm going to touch upon some of the highlights in my introduction this afternoon, there's greater detail and information in that handout for full participation in the process and encourage folk to have a copy handy and to read it at their leisure.

As I said, the hearing is part of a larger series of procedural protections under the Minnesota Administrative Procedures Act. The key purpose of this hearing is to develop and receive information on three key questions.

Stakeholders will oftentimes make remarks about a wide variety of topics. Sometimes they are talking to the administrative law judge, sometimes they're talking to the agency, sometimes they're talking to the legislature, sometimes to history, but if we're interested in what the Administrative Procedures Act is focused on, it's three key questions.

Namely, whether the agency has the legal authority to adopt the rules that they have fashioned. With some agencies that's not always the case. Sometimes they exceed their legal delegated authority from the legislature and that's a legal

problem.

Whether the agency has fulfilled all of the relevant legal and procedural requirements necessary in order to promulgate rules, both in Chapter 14 and in the administrative rules under the Act, Part 1400, there's a series of steps that the agency has to abide by; public notice, engaging certain stakeholders, publishing a statement of need and reasonableness.

These kinds of things are all set out in the statutes and rules. And it's important -- and indeed, the agency has assembled a binder that we received yesterday into the record detailing all of the steps that they've undertaken to show compliance with the rules, or at least that's the argument that they're making.

The third of the things that we're focused on this evening is whether among the range of choices that the agency has to promulgate rules, whether the ones they've actually selected are needed and reasonable, whether a rational person would pick those choices.

So, again, the three key questions are do they have the authority from the legislature to issue these rules, have they followed all of the

procedural requirements necessary to promulgate these rules, and three, among the choices that they had did they pick ones that were needed and reasonable. Okay?

And those are the things that I'll be summarizing in my report that will be due after -- 30 days after the close of the commentary. So, those are the three key questions that at least this process is focused on.

Again, stakeholders sometimes have other comments and other audiences in mind, but what we're doing here today is about those questions.

The agenda for today's hearing, I'm going to finish my short introduction. I'm going to introduce or at least turn it over for introductions themselves to members of the agency panel.

They have key senior staff people and subject matter experts here. We're going to hear from Ms. Shillcox, she's going to have a few slides and a general overview of what the agency has in mind.

And then we're going to take a short standing break to allow folks who want to look at the binder that I received last night, there's five or six copies over on this table to my right.

And if folks quietly want to look over there, if you haven't seen them, feel free to look

at those binders. I want to make sure everybody has an opportunity if there's something that Ms. Shillcox or others talk about, that you have a chance to look.

Before you rush over to look at the binders, I just want to say all of this material has been posted online. You can sit in the comfort of your pajamas with a cup of coffee at your house or maybe at the public library, perhaps not wearing your pajamas, you can look at these items at your leisure because all of these things are available on the Internet.

And if possible, I would much rather move from the agency presentation right into hearing from you because that's the key reason that we're here this evening is to hear from stakeholders.

What I'd like to do is for the first round of testimony, limit everybody to about five minutes or so, I have a stop watch, just to get the key overview so that we can go through the roster once.

Again, because the process is structured around the wisdom of the group, I'd like to try to hear from as many voices as possible.

If everyone who wants to speak has had an opportunity to speak once, I'm glad to allow folks to be recognized a second, third, fourth, fifth time and revise and extend their remarks.

My personal record in these kinds of hearings is seven rounds. And so, I promise you, I'll be the last one to leave the room. I'm not headed off to anything else this evening. I'm eager to hear from you. But we do, in fact, want to hear from as many voices as possible of those folks who are inspired to speak.

I'll also put into context that if you're not a public speaker and you do, in fact, have your remarks written out, we can mark them as a hearing exhibit and it's entirely full credit. We will read every single word that you write.

And so, if you're not all that comfortable in speaking, we can have all of your thoughts and your best thinking as a hearing exhibit, likewise, the agency, and all of the other stakeholders because we'll post that online, will have access to those materials.

Also, if you are a public speaker and you do have your remarks written out, we'll mark those too and you can feel free just to hit the highlights.

We've set up the room sort of neighbor to neighbor as if you were at the local planning commission or the library board or across the Thanksgiving table with people that you care about

because hopefully that's the way that we feel about each other in this important dialogue. We're here to hear from folks.

So, if you have more detailed written comments, you can, like I said, mark those as a hearing exhibit and just hit the three or four key points. Mindful, that there is an unbelievably brilliant and insightful comment right behind you in line.

So, if any one stakeholder runs down the clock, we're not going to truly get the wisdom of the group. So, if there's something really very important that needs to be said and heard, but it's behind you in line.

To the extent that the people can state their points briefly, it's really very helpful. And again, I'm glad to allow folks to expand orally on those ideas if everyone has had a chance to speak just once.

Even better still, following the conclusion, starting 20 calendar days from tomorrow, because tomorrow is our last public hearing, until Wednesday the 6th of July, 2016, so, 20 calendar days, there will be a chance for a written comment period.

So, for everyone and anyone who's been here in the hearings, for those folks who haven't

attended the hearings, they can write in provided those comments are received by the Office of Administrative Hearings by 4:30 p.m. on Wednesday, July 6, 2016.

If it's 4:35, it's late. If it's 4:31, it's late. Don't be late. We're eager to hear from you, send it early. Click at least by 4:20 if you're sending it electronically.

We have a great new E-comment system that our office has developed, a very iterative dialogue system. You can find it online going to the website. Again, the handout will have all those details.

Also, we're glad to receive materials in writing or hand delivery or by fax. The only thing with the E-comment system is you can't post attachments. If you have attachments, those have to come in another way. Again, make sure that they're in by 4:30 p.m. on Wednesday the 6th of July, 2016.

And then, for all of those things which are in by that period of time, there will be a five calendar -- I'm sorry, five business day rebuttal period where you can comment on the things that have been said before. X stakeholder said Y thing and that's wrong, here's the truth.

We're not raising new topics because we'd never get done. So, anything that has been said

before Wednesday, July 6, 2016 can be replied to, made a response to by 4:30 p.m. on Wednesday, July 13, 2016, that's five business days later.

And from that date at 4:31 we're going to seal up all the best thinking that we've received in all the various forms that we've had it and then I'm going to make a report detailing, again, my findings on the key questions in this case.

Namely, is there statutory authority, is there compliance with all of the procedural rules, and has the agency demonstrated a need and reasonableness of the regulations that they've selected. Okay?

If you want to obtain a copy of the report, and it will be posted online, but if you want to receive notice, just make sure you check that box next to your name on the roster and provide us either an e-mail or some other contact address and the staff will get that to you. The handout goes into other details about the hearing process, which you can read at your leisure.

Generally what we're going to do this evening, because of the international convention on the fair, decent, and humane treatment of court reporters that we break every 90 minutes for the benefit of

Ms. Menth and her hands, which are a state treasure. So, we want to the preserve those vital state resources.

So, we're going to run this until about 6:00 and take a standing break. You can feel free to get more cookies and go to the bathroom, make a telephone call, whatever you wish. And then we'll have another 90 minutes.

And while we do still have the room after that second 90-minute slot we're going to make an assessment about where we are in the evening and how late we'll go. We're not likely to go fully through a third 90-minute slot.

I hope we can draw out what wisdom it is. And there's also limits of human endurance. So, we want to be fair to stakeholders and not overstay our welcome at Greenhaven, but we do want to hear from you.

So, with that, that's the overall procedure guidelines, at least the description of what we're going to be doing tonight. I'm going to turn it over to Ms. Enzler.

Before we adjourn tonight I'll repeat the dates for the comment period, but I appreciate all of you coming out on a beautiful summer afternoon to contribute to our best thinking.

With that, Ms. Enzler, if you

wouldn't mind introducing yourself for our record.

MS. ENZLER: Thank you, Your Honor. My name is Sherry Enzler, that's S-h-e-r-r-y, E-n-z-l-e-r. I'm general counsel for the Department of Natural Resources and representing the Department in this matter.

I'm going to just briefly introduce the three panel members here tonight and then I'm going to turn it over to Ms. Shillcox, who's going to give a much abbreviated opening statement since her opening statement was given last night and we have a written copy in the record.

With me tonight is Ms. Jennifer Shillcox, she is the supervisor of our land unit program -- or our land use program unit. She oversees the shoreland programs. She has been involved in the critical area and the development of the critical area rules since 2009.

And prior to that she has extensive experience in land use planning, particularly in shorelands and in critical waterways, including the St. Croix.

Daniel Petrik is to my right. Mr. Petrik heads the critical area program for the DNR. He has managed the development of the rules. Prior to

coming to DNR he too has had extensive experience with local units of government in zoning and planning.

And finally, Suzanne Rhees, who is at my right at the very end. Ms. Rhees is currently working in our water permitting unit, but has worked and did work in our planning unit as the rules were developed and played a crucial role in developing the rules.

And she too has a very extensive background in land use planning. And both Mr. Petrik and Ms. Rhees are available for questions here tonight.

So, with that, I'm going to turn it over to Ms. Shillcox.

THE COURT: Thank you so much. Ms. Shillcox, if you could introduce yourself.

MS. SHILLCOX: Thank you. My name is Jennifer Shillcox, J-e-n-n-i-f-e-r, S-h-i-l-l-c-o-x. I'm very proud to be here today. As Sherry mentioned, I'm the land use program supervisor and I've been involved with this rulemaking since it began in 2009.

We're here to listen to your comments on the proposed rules for the Mississippi Corridor Critical Area, which I will refer to as either the critical area or the corridor. I don't want to mess it up.

It's been a long road getting here today, it's been a little rocky at times, but we've learned a lot along the way. And we're really happy to be here at this point here today in Anoka. And I do want to thank the City of Anoka for providing the refreshments at this hearing today. Thank you very much.

As Sherry mentioned, I'll be providing an abbreviated version of our opening statement, the full version is in Exhibit 11 of the binders. And it's also online if you're interested in reading the whole thing.

I'll just be highlighting our public process today and then also highlighting key changes from Executive Order 7919, which has been guiding land use in the corridor since the mid '70s and is currently in place.

So, I'll start on the public process in developing the rules. We've been spending quite a bit of time over the last four, five years developing the rules. And it's been one of the DNR's most extensive public involvement processes, more than is typical for a rulemaking.

And the proposed rules are better because of that. People expressed a lot of concerns and

were very passionate about issues throughout this rulemaking. And we wanted to really understand what those concerns were so that we could address them appropriately.

So, we engaged local governments, interest groups and property owners along the way. We relied very heavily on their experience and perspectives, that's what we needed to manage all of the expectations.

We valued and paid attention to all the ideas. And a lot of those ideas made it into the rules. And we have a very iterative process. We heard a lot of ideas, we incorporated them into various drafts. We had a number of drafts that we made available to the public.

So, we would hear things, put them into drafts, share them back out, and then tweak as we went. We were trying to refine things as we went. So, we wanted to make sure we addressed people's concerns.

Not everyone is going to be happy with every provision in the rules. We had to balance a lot of different perspectives, values, and interests. So, it was a compromise.

But we do think the resulting rule package reflects the input of the people who will be

most affected by the rules. And we believe the proposed rules are balanced, fair, and improve on existing regulations.

Now I'm going to provide some highlights of key changes from the current regulations that are placed in Executive Order 7919. And these are changes that we made to address issues or ideas that came about through the rulemaking process.

So, the first thing we did was we clarified some of the administrative provisions, in particular the contents of local plans and ordinances. And also, we clarified rules and responsibilities of the various agencies and local governments who are involved, as well as the procedures.

Flexibility was a very important provision that we worked on. Conditions and development patterns vary widely across the corridor and we knew that we had to account for that.

So, there's a flexibility provision that's added in that allows local ordinances to vary from the standards and the rules as long as they're still meeting the intent of the program.

Bluffs was a very big issue. The proposed rules -- let me see if I can get to the slide here. So, the proposed rules clarify the definition of

bluffs. And we use three parameters to try for a more consistent identification and mapping of bluffs.

What we heard from local governments was that there is no definition in the executive order of bluffs, it just says the bluffline is the top of an 18 percent slope.

So, local governments often had a hard time when they hear from property owners, is there a bluff on my property or where does the bluff end. And it was really difficult to measure.

So, we identified parameters, height, width, and then percent slope. And we developed a mapping tool that you put those parameters in and we used that tool to evaluate different definitions.

And we worked with a number of local government units just to evaluate different parameters, see if it captured the slopes that they are currently defining and regulating and minimizing nonconformities.

And this is what we ended up with (indicating). We do plan to make the mapping tool available to local governments when the rules are adopted. So, that should hopefully help with administration.

Districts were also a big deal. Currently there are four districts outlined in Executive

Order 7919. They were set out in the mid '70s. They reflected land use at that time. They were pretty broad.

The proposed rules proposes six districts that better reflect existing development, residential, commercial, industrial development, as well as existing resources and also planned future development.

Another important feature with districts is that we provided a mechanism for changing the district and the district boundaries, which is not currently contained in Executive Order 7919.

Building height was another big issue in particular parts of the corridor. So, within the districts there are different height limitations that better reflect what is currently there or, again, what's planned for the future.

In two of the districts there are actually provisions that allow for taller height through a local conditional use process. And that process would allow for more public involvement in making a final decision on whether exceeding the height is appropriate.

Vegetation management was an issue that a lot of local governments were concerned about. The current vegetation standards are very difficult to

enforce, they're pretty vague. Property owners don't even know what they're supposed to do on their property, what they can cut, what they can't.

So, we tried to clarify what vegetation -- how vegetation can be managed. What we did was we identified the locations or the areas in the corridor that are most sensitive where vegetation is beneficial to have in place.

And those include areas like the shore impact zone, steep slopes or bluff impact zone or needed plant communities or vegetation that's mapped by the local government as being significant. So, it's just within those areas that vegetation is managed.

And, basically, intensive vegetation clearing is prohibited. That is clear cutting an entire swath or block of all vegetation, but is allowed in some instances with a local government permit.

Land alteration, including things like disturbance for riprap, storm water management, erosion control, that sort of thing were not very clearly laid out in the executive order. So, clearer standards have been put in place.

Again, the focus is on those sensitive areas that are most sensitive to disturbance. And measures have been put in place to make sure if that

happens, those areas are protected.

Subdivision and land development is another area where we provided some more clarity. The proposed rules establish thresholds and percentages for sensitive corridor resources, which are referred to as primary conservation areas in the proposed rules to be set aside and protected.

And that applies to any new subdivision, planning developments or large master plan developments. The set-asides are not required for river dependent uses. And they can include land that the local government may already be requiring for dedication.

And then, finally, nonconformities was a very big concern. There's a lot of existing development in the corridor, a lot of it that doesn't meet the regulations that are currently in place. And there's concern that we would be creating more nonconformities.

So, we took that very seriously. We basically referred to existing statutes that lay out protections for nonconformities and we also clarified expansions that can happen consistent with how many local governments, particularly in the northern part of the corridor, are regulating nonconformities.

So, that concludes my opening statement. I want to thank everybody for coming. We really look forward to hearing your comments and we're glad you're here.

THE COURT: Thank you so much, Ms. Shillcox. Mindful, that about 30 feet that way we have five or six of the agency binders. Ordinarily we would take a short recess to make sure that people had a chance to look at those.

Any concern about us proceeding with the public hearing and allowing folks sort of 30 feet that way to spend time with the books? You're concerned about that?

MS. SHEY: About how long did it take you to read the book?

THE COURT: I'm still going through it.

MS. SHEY: So, for us to page through it in three to five minutes is not really going to help.

THE COURT: I think the question that was raised was three to five minutes to go through a large binder of materials, it's more if the things were actually new to you. And I realize that many of the documents are going to be new to you.

I think the concept is that because

they've been posted online that during this process and the 20 calendar days that will follow it is an opportunity to look in some detail with genuine study of those materials.

MS. SHEY: Even the posting online was not made available. The mailing that I received didn't indicate that all of this was available online at all.

THE COURT: Okay. What I'm telling you is that as far as the notice to the public, the agency is legally entitled to come to the hearing and make its presentation in the hearing process and present exhibits in defense. And then, the statute contemplates that there is this 20-day comment period on that.

As a best practice so as to build public confidence, I like to give people an opportunity to familiarize themselves with the binder. But it's not, I don't think, at least contemplated we would have to adjourn maybe for a while to go through the binder and then come back.

And I don't think the current statute, at least the way it's set up, or the rules contemplate that. I just want to make sure that to the extent possible we can try to inspire public confidence and get to the hearing.

Like I say, you can certainly listen to what we're doing and I think have your own binder, actually. Is that fair enough? You have deep concerns about that?

MS. SHEY: Fine.

THE COURT: How wonderful. I'm so very grateful. Senator, would you like to be our first witness? Mindful that you have the press of other business going on, so I wanted to recognize you.

And I'm going to be asking everyone to come down, we have a microphone here, to join us family style at this table.

The reason why we do that, Senator and others, is so that Ms. Menth can hear you, and we do have a microphone so that everyone can hear you, and also if she doesn't hear clearly something that you've said because she's making a transcript, that she can ask questions and you're nearby.

And again, we're trying to simulate coffee at your place as best as we can. I guess it's been awhile since Herr Schmidt -- is Herr Schmidt still a -- it's long since gone? That shows how old Anoka I am. But we're trying to have that same kind of feeling that we're neighbor to neighbor.

So, with that, Senator, if you

wouldn't mind introducing yourself for our record.

MR. ABELER: Thank you, Judge Lipman, and thank you for your work on this. I'm Senator Jim Abeler, privileged to be from this town. I live on the Mississippi and I live on the Rum. I mostly came to listen.

And I wanted to commend Commissioner Landwehr, along with his staff. In this very room two years ago it was a bit of a different tone. And before that it was very much a different tone. And he committed at that meeting that he would listen. And he did and his staff did.

And this iterative process, I think, has been very good. I'm interested to hear the concerns that people yet have. I have not gotten a call, which is a contrast to how it was two years and prior ago.

And I think that the intent of the governor -- Governor Quie's order from time back in preserving what we can of this amazing resource, along with the innervating practicality of development and people enjoying the use of the river in so many ways has been -- apparently has been accomplished.

And so, I just wanted to commend Judge Lipman, who I know to be a thorough person. And I'm glad I can talk early because I want to encourage

people who have a concern about any part of the rules to bring them up because the judge will listen and take them into consideration.

The quite frankly, the Department will listen as well because maybe they missed something. So, do not be shy to comment, this is as friendly a place as you can get to be in with this dedicated group of listeners as you could imagine.

And so, I'll leave it at that. I do want to notice Counselor Weaver is here, Mayor Koch, and Brooks Ann Whelan is here as well.

So, if you're shy to navigate the process, any of those and the rest of your elected officials are very excited and willing to look at them, including myself. So, I'll stop there. Thank you.

THE COURT: Thank you so much, Senator, I appreciate your time and your contributions to our record. Following Senator Abeler will be Nick Tiedeken of Brooklyn Park. And following Mr. Tiedeken will be Dick Brown of IWLA.

So, Mr. Tiedeken, if you wouldn't mind stating and spelling your name as soon as you get settled. And we're hoping generally that folks can go about five minutes or so, just until we get to a second round.

With that, Mr. Tiedeken, if you could state and spell your name for our record.

MR. TIEDEKEN: My name is Nick, N-i-c-k, Tiedeken, T-i-e-d-e-k-e-n.

THE COURT: Thank you so much, Mr. Tiedeken. What should we know?

MR. TIEDEKEN: Today I'm going to talk about bluffs, focus on bluffs, there's some issues with bluffs. Bluff issues have been a problem in our city of Brooklyn Park for quite some time.

The 18 percent slope is the same slope that you see in front of you here (indicating). It's not tremendous by any means. And so, everything that is on this slope or 20 feet back from the top or 20 feet below the bottom is now being severely restricted or even prohibited, can't do much of anything in this area.

And that's a challenge for some of us, especially if you live on such a shallow slope. Years ago the DNR came into Brooklyn Park and wanted us to upgrade our standards. And we said pretty much no.

But what we did in that process was that we worked to develop -- let me back up. In Brooklyn Park a lot of the homes are built into the top of the bluff. So, they would never meet the setback

standard by any means.

What we did with the DNR at the time, it was in the late '90s, we worked with them to develop this concept that you can laterally expand your structure as long as you don't get closer to the bluff or the river.

And that was something that we thought was a really big improvement because we were able to do that and it was specifically designed for the bluff areas. And the DNR apparently has picked up on that idea and they have it in here. And I'll send in the letter with the specifics.

They put that in here, but the irony is they excluded use of that provision in these bluff impact zones. That's a terrible irony for Brooklyn Park who developed this explicitly for that purpose.

There are other things that we worked on in Brooklyn Park with the DNR. For instance, when FEMA came in, Federal Emergency Management Agency, in the early 2000s and wanted the City to update its flood plain ordinance, we had a fight with them.

But with the DNR assistance what we were able to get was a small tidbit. That small tidbit was the ability to at the base of the bluff build a doghouse or a small tool shed.

The DNR now proposes to not allow those because they would be within this bluff impact zone at the base of the slope. So, how close am I getting to five minutes?

THE COURT: You've got some time yet.

MR. TIEDEKEN: One of the things that we think would help since the DNR has made this effort to try and get as many nonconforming situations removed from this area is to maybe go with the definition that you used in the shoreland rules.

Because I think that would help quite a bit because that's a little steeper slope, 30 degrees over a 50-foot length. I think that would eliminate a lot of these bluff situations in Brooklyn Park anyway.

Another aspect that recently came up that I wasn't really aware of before, and this is a little troubling, is that in order to protect, I think you said, rocks and cliffs, you put in this new standard with respect to a 100 percent slope over a ten-foot length.

Now, a 100 percent slope is not a vertical cliff, by any means. A 100 percent slope is about a 45-degree angle. It doesn't necessarily fit my definition or perception of what a cliff or rock is.

And I think that if you include that

in the definition, that's going to bring a lot of these homes that you've tried to get out of this nonconforming situation, I think it's going to draw them right back in because there's probably a lot of homes that have some sort of steeper area over this shorter period of time. And I think that's something I would like you to work on.

There are a lot of the prohibitions in these zones that hopefully we can work around if we make some adjustments. But for somebody to be absolutely prohibited from doing anything along this slope is going to be very, very challenging.

I do appreciate that the DNR has built in some flexibility in here and provided some wiggle room for some situations, but a lot of those wiggle rooms don't apply in this bluff impact zone. For instance, as I mentioned, the lateral expansion.

There was a provision I proposed a couple years ago with respect to this halo effect. Around each home you get a little wiggle room. The DNR ran with that and said you can build a deck only so many feet and so big. And that sounded really good until you read the last line that said except in bluff impact zones.

And I'm not sure why there's this

tremendous bias against this bluff impact zone with respect to just about everything in here. Every bit of flexibility that's built into the rules is not available in the bluff impact zone.

THE COURT: Mr. Tiedeken, some final thoughts?

MR. TIEDEKEN: Thank you. I will be submitting written comments in a more structured format with rule citations and the whole bit, so you'll have an opportunity to read those over. I do appreciate your time.

THE COURT: We're so grateful for your thoughtful and insightful contributions and appreciate your contributions to our record. Mr. Brown, if you wouldn't mind joining us. And as he makes his way, Mr. Dimond, you're going to follow Mr. Brown.

Mr. Brown, if you wouldn't mind stating and spelling your name for our record.

MR. BROWN: Yes, Your Honor. My name is Richard P. Brown, I live at 701 East Hayden Lake Road in Champlin. And I am within the protected corridor, even though I'm not on the river.

THE COURT: What should we know?

MR. BROWN: Well, I have a brief statement from the Walter J. Breckenridge Chapter of the

Izaak Walton League located at 8816 West River Road.

We own four and a half acres on the bluff on the highland and we own a 20-acre highland in the middle of the river, half of which is in Fridley and half of which is in Brooklyn Park.

And our statement is, this is the third time we've attended meetings on this critical issue. There has always been a mix of interests between environmental conservationist concerns and some business developments and local control interests.

After researching this last draft, it seems to us it is a fairly reasonable compromise -- it's a fairly reasonable compromise to most concerns. It is probable that someone will not be satisfied unless it is all their way or completely dropped.

But the Mississippi River, a national treasure, belongs to everyone in the nation and needs a certain amount of protection. To such a valuable resource local control must be subservient to federal and state control.

To us, some of the most important things in the document are building heights and setbacks, vegetation standards, and the fact that our rules for necessary exemptions -- there are rules for necessary exceptions.

For the benefit of water quality, scenic views, wildlife, and the people locally and of this nation, it's time to quit squabbling. The DNR should implement these rules immediately without another round of hesitation.

Thank you. This is from the Board of Directors of the Walter J. Breckenridge Chapter of the Izaak Walton League.

THE COURT: Thank you so much, Mr. Brown, we're very grateful for your time and contributions to our record.

And so, following Mr. Dimond as he makes his way to the podium will be -- I'll check the roster. I think we've gone through at least the ones who've checked in.

Mr. Dimond, if you wouldn't mind stating and spelling your name for our record.

MR. DIMOND: Tom Dimond, T-o-m, D-i-m-o-n-d.

THE COURT: Mr. Dimond, what should we know?

MR. DIMOND: I'd like to talk about heights. In particular, I'd like to speak about how much heights have been increased, the proposed, and particularly use in St. Paul and particularly the

confluence of the Mississippi and the Minnesota River.

The confluence of the Mississippi and the Minnesota River have even more significance in the critical area because of the historical context and because of the context of the confluences.

In St. Paul much of the area along the river is currently what they call urban open space. And it has a 35-foot height limit on it. St. Paul was granted an exception to go to 40-foot height.

The proposal in many of these areas moves the height up to 65 feet, but then it could be added to that conditional use permit. These heights seem totally inappropriate for these areas.

These areas are very visible because of the confluence of the two rivers. The historic Fort Snelling, there's Camp Coldwater, there's Fur Trading Post at Mendota, there's the historic veterans home and there's also the -- I forgot the name, Pilot Knob, all in this location.

These buildings would all become very visible in this historic and environmental context. It does not seem at all appropriate that these should be allowed there. It's also important to keep in mind that largely the area that we're talking about is a block wide strip that's behind the Mississippi River Boulevard

or behind Shepherd Road.

So, development from a context of additional development, both St. Paul's planning comprehensive plan calls for there not to be tall buildings on these sites.

But also from the context of impact on development of keeping within the 40-foot that's currently allowed, certainly allows development of heights and also allows views from the upper bluff to the river. There's a two-tier bluff in much of this area.

So, it's very important that we look at these height impacts here. And as a veteran, I particularly would like to point out the potential impacts of this area, but also the area where the Ford Plant currently is, that these heights -- there's two steps in heights involved here, would impact the historic veterans home.

But also if you take a look from the historic fort or from the historic home, you can see these distances throughout this. And then, it also impacts the gorge. You look along that gorge now with one exception, 740 River Drive, this is a green band of bluffs across there. And this would dramatically alter the visual along there.

In context with the structure height I would like to mention that there was a height definition in the discussion early on, but now there's not a definition in there. It seems incongruous to have a height requirement and not a definition on how to do height.

For example, different communities do different things, but you can now alter the height by changing where the starting point in the measurement and where the upper point, whether it's the eve, the midpoint or the highest point.

So, there seems that there needs to be if you're going to have a height definition -- have a height requirement, you need a height definition so it's consistent throughout the corridor. Thank you.

THE COURT: Thank you so much, Mr. Dimond. Mindful that we've gone through the folks who signified that they wanted to be recognized. I want to turn to some of the folks who were perhaps a little bashful and who put a question mark down.

Namely, Ms. Braun from the City of Anoka, Mr. Harris, Mr. Freeburg, Mr. Baumann or Mr. Shey, any of you want to be recognized, raise your hand.

MS. BRAUN: Not at this point.

THE COURT: Okay. Sir, your name?

MR. FREEBURG: John Freeburg.

THE COURT: Mr. Freeburg, if you wouldn't mind joining us. Mr. Freeburg, if you wouldn't mind stating and spelling your name for our record.

MR. FREEBURG: John, J-o-h-n, Freeburg, F-r-e-e-b-u-r-g.

THE COURT: Thank you so much, Mr. Freeburg. What should we know?

MR. FREEBURG: I'm a resident of Ramsey, been living on or near the Mississippi River for all of my life. So, I have done a lot of observations. I moved into my house here, we built it in 1989.

Shortly thereafter my neighbor and I figured out that we had an erosion problem. And just a couple years ago we finished up the project by putting 500 tons of riprap down on about 150 feet of river bank. We didn't realize when we went and moved in there how big of an issue this was going to be.

I'm very concerned about how the DNR wants to handle the riprap situation. But I did have the city council come to my house here last fall, they did an inspection.

The City of Ramsey then commissioned a report and it's now called the "City of Ramsey

Mississippi River Bank Condition Inventory" prepared by the Anoka Conservation District dated February, 2016.

The executive summary states that in the city of Ramsey, which has 5.8 miles of shoreline on the Mississippi River, that the city of Ramsey is losing 5,148 tons per year of shoreline. That's a lot. That works out to approximately 336.2 pounds per foot.

Now, if you go to the store to buy 336 pounds worth of dirt, it's about a hundred dollars. I, as a person who have repaired a shoreline, have figured out that it costs about three to $5,000 per running foot to repair that.

So, this is a very expensive process. And many of my neighbors simply cannot afford that because the bluff that they're living on is so high that trying to roll rocks down there would do more damage than it would save the river bank.

So, we're at a conundrum here, but we don't need more restrictive rules about how we're going to save our property. Because I've talked to a number of people who have been on the river a long time and what they tell me is, "Oh, yeah, I've been here 30 or 40 years and it looks to me like we've lost about ten feet of shoreline."

And if we figure that the river is

ten thousand years old, if that rate had gone on for 10,000 years, we'd be under water here and a long way over. So, this is a new phenomenon. Over the last 30 or 40 years we have seen erosion increase.

So, the question is, why is erosion increasing over the last 30 or 40 years? So, that's what I would like to have the DNR have a look at as to, Your Honor, your Point Number 3, is have we done everything to look at this.

And I'm saying over the last 30 or 40 years something has changed to cause this level of erosion. So, I will concede right now, but I would like to return again with more data.

THE COURT: That's great. This evening or during the comment period? I just want to understand.

MR. FREEBURG: After other people speak I'd be more than happy to return.

THE COURT: That would be wonderful. Thank you so much, Mr. Freeburg. Is there anyone who hasn't had an opportunity to speak once who otherwise was inspired?

Anyone who hasn't yet been recognized that would like an opportunity to speak? Please, sir, if you wouldn't mind. And then, sir, you'll follow

directly.

If you wouldn't mind stating and spelling your name for our record.

MR. SHEY: James Shey, S-h-e-y.

THE COURT: Mr. Shey, what should we know?

MR. SHEY: Looking through some of the information I have here, two things I would like to say, there was no indication on flowage rights and flowage.

Under this system of bluff and impact zones, the flowage rights, I don't have flowage across my property, that bluff tends to be further down because they're flowing water across that property.

And if it goes back to the normal pool level or normal river level, which when the lots were surveyed it was there, it would be significantly different on those areas.

Right now they're flowing about 150 feet across our property vertically -- or horizontally across the property. So, that's one thing that has not been taken into consideration, and nothing in this document that I read.

The second thing was it's about 1,300 pages, I've been told, that I would like to have read,

but yet, I just found out about it's not in a public library, it has to be online, you have to know about it. And I didn't even know where the website is.

If you know anything about looking on websites, you can get -- can't find things forever. Finally I found the website, but I don't think the community even knows about it, where these things are found and that they're published and ready to go.

And with that, I think it's a travesty because people cannot really speak to the problems here and know exactly what's in that document. The document is too large to be considered in one or two or three, in this case, three hearings at 1,300 pages, it's not there. Thank you so much.

THE COURT: Thank you so much, Mr. Shey, appreciate your time and contributions. If you wouldn't mind joining us, please, and stating and spelling your name for our record.

MR. DAHLHEIMER: Dan Dahlheimer, D-a-h-l-h-e-i-m-e-r.

THE COURT: Mr. Dahlheimer, what should we know?

MR. DAHLHEIMER: I would like something added to the regulation rule that would indicate permitted use of the shore impact zone. I

brought this comment up at the last meeting that was held here and I don't see it addressed in anything.

I still have a question, can I store my boat, my dock, my boat lift and those types of things in the shore impact zone? Is that going to be a permitted use? I don't see anything in the homeowner's guide that addresses that. So, that's my comment on that particular subject.

THE COURT: Ms. Shillcox, is that Mr. Petrik or do you have any comment now on shore impact zones?

MR. PETRIK: Those sorts of --

THE COURT: If you could hand him the mic. Thank you. Mr. Petrik.

MR. PETRIK: Yes, I remember your question on this from two years ago and I apologize if we didn't follow up with you on that.

At that time I did check with some of our management on that and there aren't any restrictions on those sorts of activity in the shore impact zone, those are temporary uses for storage and things like that.

So, what we were talking about in the rules are more like permanent structures permeating pervious surfaces within the shore impact zone.

MR. DAHLHEIMER: Is it possible to have something that would clarify that for people so that it isn't ambiguous? Or is it referenced in some other standard that is referenced in the rule? But we don't have that text in front of us.

MR. PETRIK: I don't know anyplace where that is defined, so I understand your concern about the ambiguity of it. And it's a comment that we'll consider for this next --

MR. DAHLHEIMER: Appreciate it.

THE COURT: Mr. Dahlheimer.

MR. DAHLHEIMER: The other question I have, is a permit going to be required to repair an existing area of riprap? It sounds like to put in new riprap a permit would be required or to replace the riprap. How about repair?

I'm thinking a condition where I might have ice damage over the winter and I've got to roll a few rocks back in. Is that something I need to get a permit to do and go through the permitting process with the City?

THE COURT: Mr. Petrik?

MR. PETRIK: That's a good question. We write the rules from the standpoint of new installations. So, let's see here if I've overlooked

anything that would give us some clarity on that. Thank you, Suzanne. So, I think it depends on the size here.

THE COURT: Mr. Petrik, just for Mr. Dahlheimer's benefit, where are you reading from?

MR. PETRIK: It's on Page 54 of the rules, the proposed rules. I think it would be a local permit probably required, but I think it's fairly vague. If it's a small repair, it's hard to imagine -- that's a thing that lacks clarity. I'm not sure what to say on it.

MS. ENZLER: If I might, Your Honor, in the absence of clarity, here the Department's general rule on work in public waters would apply. And under that standard minor repairs do not require work in public waters permit.

Whether or not a local unit of government might also require a permit, I do not know. But in the absence of some specificity here, our general work in public waters rules would apply. In that case minor repairs do not require --

MR. DAHLHEIMER: Is that included in a rule by reference, that particular document?

MS. ENZLER: Yes.

MR. DAHLHEIMER: Thank you.

THE COURT: Thank you so much,

Mr. Dahlheimer, I appreciate your time and contributions to our record. Ma'am, if you wouldn't mind joining us. If you wouldn't mind stating and spelling your name for our record.

MS. SHEY: My name is Karen Shey, K-a-r-e-n, S-h-e-y.

THE COURT: Ms. Shey, what should we know?

MS. SHEY: I look at this as the seat belt law in Minnesota. I'm an old lady, cars didn't use to have seat belts and they put them in for safety. You didn't have to use them. You didn't have to use a seat belt, it was there for your safety if you wanted to.

And then it became kind of a requirement, but don't worry, we'll never stop a car if someone is not seat belted in. We might give you a little ticket if they aren't.

But eventually it got to the point where seat belts were required. You could get a fine for not using them and you must use them. It's a lot of rules and regulations that change over time.

And this is what I see this as. You're putting in a bunch of little rules that aren't really clarified and you're changing over time and forcing this down our throat.

Originally the DNR was very happy to issue my husband and I a permit to put in a retaining wall for our small piece of property, which is a hundred feet. It's not thousands of feet, it's a hundred feet. So, is that small to you today? I know you're referring to a small repair. What's a small repair?

You have no definition of it. You are just throwing these things out there and saying this is what it is, just a little minor, it wouldn't take a requirement or anything like that.

The Corps of Engineers does not touch ours as far as where we're located on the Mississippi River because we're on a flood plain and we're under special laws because part of our property is under water on the Mississippi, it's above the Coon Rapids Dam.

But you're putting in all these rules and regulations that are not hard and fast, that have no real guidelines, that have no explanation.

To this day you can't tell us -- and that was a bugaboo of mine in that last report, can we keep our boat there. And no one could answer. And you didn't really answer it today. What's a small repair? We don't know. You'll come out with a repair later on.

The DNR originally gave permits for retaining walls and was very happy to do so as long as

they saw the specifications first. Now you have no specifications for any kind of retaining wall. Are you going to put the specifications in later as far as what you can and can't do?

Are you going to require us to change our shoreline? And what becomes a shoreline? Is it above water or under water? These are all things that have not truly been thought out. There's kind of some generalities and they sound wonderful because we're going to have this corridor.

And all of the sudden everybody is required to do is under the same way, but you haven't really figured out the rules yet. What is St. Paul compared to Minneapolis? What is Coon Rapids or Ramsey or something else different? What was required in 1970 as opposed to what's required in 2025?

Nobody knows and nobody has really thought it out. These are just generalities. And that's what I see this as. And I see them changing. And I don't really think at this point we can put in something like this to cover this whole area and cover all the existing things that are there without either tearing them down.

Are we going to tear down Fort Snelling because it's in the view of the critical

corridor? I don't know. This needs to be much more defined.

Either the land needs to be taken by eminent domain so it can be done as everybody wants and all the rules and regulations are set and standardized or it needs to be just plain swapped out and left at the local level.

I can't see this as having been thought out well enough, even though it's 1,300-plus pages in exhibits. I still don't see the definitions that are needed really to be there. They're still generalities. Thank you.

THE COURT: Thank you so much, Ms. Shey, I appreciate your time and contributions. Is there anyone who hasn't yet had an opportunity to share their remarks? Sir. If you wouldn't mind stating and spelling your name for our record.

MR. HARRIS: My name is Richard Harris, H-a-r-r-i-s. I live at 6200 Riverview Terrace, Fridley, Minnesota.

THE COURT: What should we know, Mr. Harris?

MR. HARRIS: I worked on the original setback ordinances some 30-odd years ago. Back then the Department of Waters came out with profiled drawings

showing bluff lines, structures. And I think if we did that, that would really help. A picture is worth a thousand words.

And trying to describe all of these regulations verbally gets to be cumbersome. And one of the problems that we ran into with Fridley was patios, decks, and so forth.

And I always felt that it would have been very helpful if we would have had some guidance with something in profile showing exactly what they recommended. Thank you.

THE COURT: Thank you so much, Mr. Harris, appreciate your time and your earlier service on the ordinances, very helpful. Anyone who hasn't yet been recognized that would like to give a set of remarks?

Mr. Tiedeken, I gave you the bum's rush a little while ago. I'm just wondering if you wanted to expand on your earlier thoughts, I wanted to recognize you first.

MR. TIEDEKEN: You might not want to give me the opportunity.

THE COURT: I do indeed, that's why I get paid the little bucks. So, if you wouldn't mind reintroducing yourself. You don't have to spell your

name, we have that.

MR. TIEDEKEN: Thank you. My name is Nick Tiedeken. I'd love to sit up here and go through the rule page by page, detail by detail, but I'm not going to do that.

THE COURT: And you have an opportunity in your written remarks to do just that.

MR. TIEDEKEN: I'll do that in the written remarks. One thing I did want to say was that support my recommendation to use the shoreland version of bluff, total bluff, top of bluff definitions was because the SONAR talks about the iconic bluffs that we have in Minnesota.

When I think of the iconic bluffs I think of the bluffs in Red Wing, the bluffs in Winona, the bluffs in the south metro. I do not think of the iconic bluffs of Brooklyn Park or the iconic bluffs of Anoka. So, I think in order to get more at what the real bluffs are, to go towards that definition would be a step for that.

And by the way, the bluffs in Winona and the bluffs in Red Wing are subject to that shoreland standard of 30 percent slope over a 50-foot distance. So, if it's good enough for them, why wouldn't it be good enough for the bluffs in Brooklyn Park?

In January an article came out in the Star Tribune, January 3, 2015, front page article on the National Park Service and John Anfinson who was the director of the Park Service in the Mississippi River area here.

And he made some remarks on bluffs, which I thought were most interesting. He said, "The Mississippi changes more here than at any other place along its course," Anfinson said.

It's a prairie river with banks and not bluffs until it drops 210 feet at St. Anthony Falls and becomes a tight canyon. So, I find it interesting that even the National Park Service doesn't recognize the bluffs in Brooklyn Park.

So, I'm hoping for some movement towards some relief for some of the severe restrictions for people who live on or near these bluffs. And you can do that through working on the definition, you can do that through allowing some wiggle room for homes in these areas.

You can do that through a number of other ways, too, with a little relaxation on the vegetation management criteria and the land disturbance criteria.

The shoreland ordinance actually

allows specifically in bluff impact zones up to ten cubic yards of grading and filling. If you can do that on the big bluffs in Red Wing and Winona, why can't we do that here? Why can't he get a little wiggle room for things like this? With that, I'll end it tonight. Thank you.

THE COURT: Thank you so much, Mr. Tiedeken, I appreciate your time and contributions to our record. Anyone else who hasn't had an opportunity to either speak once or twice and would like an opportunity to give additional remarks? Mr. Dimond.

MR. DIMOND: Thank you.

THE COURT: Mr. Dimond, what should we know?

MR. DIMOND: Thanks for the opportunity to speak again. There's a few more things I'd like to talk about. One is the current critical area regulations provide that you have park land dedication requirement or an equivalent cash in lieu of.

That dedication provision has been removed from these rules. It seems in a national park and an area of state, regional, and national significance we ought to retain that provision.

There's some discussion we can take it out because many of the communities have put in place

a dedication requirement. But I can speak, St. Paul, as an example, that much of the impetus to get that was because there was the requirement. And if you remove it, you'll have a pressure to reduce or eliminate it.

Also, I want to speak on the conservation protection area, the ten acres with shoreland parcels or 20 acres of -- that implies to 20 acres and larger, ten acres and larger of parcels. That's a fine provision and I think the intent is very good and all that, but it really doesn't provide dedication.

And in urban areas it really has very limited impact. In some areas it will be beneficial. In particular, if there is going to be that provision, I think that it should not just deal with areas of that scale that have the protected areas, but ones that can have the protected areas restored.

And I'll use the Ford site as an example. That site certainly would meet the size requirement, but there's been degradation of the streams and wetlands on there, so it wouldn't qualify for that. But those are areas where you certainly could restore those.

So, the principal is to set those sites -- in the critical area it's to protect and

enhance the resources throughout.

Structure setbacks, there's a requirement for setbacks, we talked a little bit about this the other day, but one of the things I'd like to highlight here is there's provisions, there's exemptions that are put into this setback provision that were not there in a critical area.

One of the prime examples of that is flood walls, that the exemption -- establishing an exemption means that you could put a flood wall right up to the river's edge.

This was hotly debated with the airport in St. Paul and the City agreed and the DNR agreed that it should be set back, that you need to maintain that green corridor for wildlife protection of the river, erosion, all those factors. If you put this provision in you would eliminate that protection that's been established and has been held up.

Some other things I'd like to touch on is the primary conservation areas. I think that list kind of got cut short. On that list there should also be islands. The critical areas specifically singles out islands for additional protection, wildlife preservation areas, because the critical areas talks about wildlife preservation and habitat.

Waterfalls, one of the unique features, we have the only waterfall on the Mississippi River, plus we also have the waterfalls along and they should be preserved.

And with that -- and then the other provision is the publicly owned parks, trails, and open space. It has a park and those are important areas to be preserving.

On the waterfall and the river, one of the things that is very sparse work on the actual resources themselves, for example, the river and lakes and streams, day line breaks ought to be a priority, ought to be included in here.

One of the things that haven't been discussed in planning for the river is the withdrawal of water from the river itself and the impacts of it. We're not to the Colorado stage, but also, Minnesota does not have quite the luxury we've had in the past about the volumes of water that we have in our reserve.

And that, the draw-downs from affecting -- just using the esthetics and the scenic beauty and the natural characteristics of the waterfall, it literally gets drawn down to a trickle at times. And we need to be looking at how we protect those resources.

I won't get into the explanation on

what I think, but it's also important in the definition that we include the native plant definition in there and that the native plant communities, and I've got it in writing so I won't go into it, but I think there's needs to be a broader definition of what's native plant communities.

Because the way it's drafted now, you could actually go there and know that there's resources that are being protected, but they wouldn't count because they don't fit in the specific categorization that's in there.

So, we need to be able to provide a broader identification of those plant communities. So, with that, I thank you for the opportunity to speak.

THE COURT: Thank you so much, Mr. Dimond, I appreciate your time and contributions. Anyone who would like to be recognized for remarks? Sir, if you wouldn't mind joining us here. If you can state and spell your name for our record.

MR. WOLENS: My name is Richard Wolens, W-o-l-e-n-s. I live in the city of Ramsey.

THE COURT: Mr. Wolens, what should we know?

MR. WOLENS: There's two issues that have some concerns and I don't know if they've been

addressed. First of all, can we mine rocks out of the river to stabilize our shore lines?

I live in the hourglass effect on the Mississippi River. And I put large boulders to stabilize my shoreline. I lost about ten feet in the first five, six years I lived on the river. I've lived on the river for approximately 30 years.

And by putting these huge boulders in there I stabilized my shoreline pretty well. Now, these are not riprap, these are large boulders.

I also noticed when the river is extremely low there's a lot of large boulders out there. Can we mine those to put those back onto the river bank?

The other issue is, I've noticed going on the lower river below Memphis and down in that area, the Army Corps of Engineers have used extensive amount of river control. And what they've done is they've used wing dams.

Wing dams are small little areas of rock below the water line that actually control and divert the river to the center of the normal path of the river. At that point you stabilize the river bank and you create a deeper V within the Mississippi River itself.

It's used extensively on the lower

river for tugboats and so on and commercial applications. I was wondering if anyone had looked at that in order to try to control the river flow and to stabilize the river banks and also to stabilize flooding.

When flooding does occur, which it will, there's ways to control this. And I think that's an issue that has never been addressed, I've never heard it before. And maybe we can learn something from our friends in the lower river. Thank you very much, Your Honor.

THE COURT: Thank you so much, Mr. Wolens. Counselor, did you want to make a reply about mining rocks from the river?

MS. ENZLER: Yes, Your Honor. So, what actually occurs within the bed of the Mississippi River is not intended to be governed by these rules, that activity is governed -- so, mining or taking something out of the bed of the water is governed, first of all, by our statute and law regarding work in public waters.

So, you would need to request a permit from the Department of Natural Resources. So, that's the first issue. Secondly, because this is a federally navigable water, there can be no change in the

river bed, including the removal of major materials without a Corps of Engineers permit.

Likewise, we cannot -- even the State cannot even put dams or materials into the river bed without consultation with the Corps of Engineers.

I know we work very closely with the Corps in terms of our flood control projects to assure or to manage what happens in the river to manage both flooding and for navigation.

Finally, there are additional restrictions in terms of what occurs within the river itself and the river bed that are imposed because this is a national park.

And so, there are federal regulations that restrict what actually happens within the river itself and the river bed outside these rules. So, these rules were not intended to address those particular issues.

They do address the riprap and where the shoreline intersects with the river, but beyond that there is not an intent on the part of these rules to address those issues, they're governed by separate state and federal laws.

THE COURT: Mr. Wolens, any further thoughts or inquiries on that?

MR. WOLENS: The only issue that I have, I guess, is that everybody has rules and regulations and jurisdiction over my property. And where does it stop? Am I grandfathered in with my existing properties?

Do I have to tear my building down? Do I have to not mow my grass down to the river? Do I have to chop trees down? Am I grandfathered in? What rights do I have?

THE COURT: Ms. Enzler?

MS. ENZLER: So, I would just say, Mr. Wolens, that these proposed rules govern activity on the property. But the actual riverbed and the waters of the river are public property and public assets belonging both to the citizens of the state of Minnesota as well as the citizens of the nation. So, I would just note that distinction.

Otherwise, these rules are governed by the state land use or fall within the land use categories of rules and statutes adopted by both the legislature and by rules upon a proper delegation from the legislature.

MR. WOLENS: Wow.

MR. PETRIK: Mr. Wolens, you asked about your property and are things grandfathered in or

how do you maintain the vegetation. The rules do allow for you to maintain your property as it is right now in terms of the types of vegetation you have, whether it's all lawn or something other than that.

That's under our nonconforming component, but it does talk to sort of a whole slew of other sort of site characteristics, including vegetations and the yard and that sort of thing. So, those sorts of things you can continue to use those as you have.

MR. WOLENS: Thank you very much. Thank you, Your Honor, I appreciate the opportunity.

THE COURT: We've benefited from your time and contributions to our record. Thank you. Any additional remarks or testimony? Sir, if you wouldn't mind joining us and stating and spelling your name for our record.

MR. BAINES: My name is Doug Baines, B-a-i-n-e-s, I live in Dayton, Minnesota.

THE COURT: Mr. Baines, what should we know?

MR. BAINES: I was just hoping that we still had -- we worked many years ago on making sure that the old town of Dayton was properly protected to allow us to develop that area downtown with some taller

buildings.

And I was under the impression that we were successful in doing that. And I just wanted to make sure that we still have that provision and that we can build taller structures very, very close to the old town area.

THE COURT: I think that they're deciding who to phone when they phone a friend. Ms. Shillcox.

MS. SHILLCOX: I get to answer, unless they wrestle the microphone away from me. You're talking about right at the confluence of the north fork of the old historic --

MR. BAINES: That's the old town, yes.

MS. SHILLCOX: All right. So, I can't recall right off the top of my head, but I would suggest that we do have these two exhibits right behind me. And that's right at the very top end. The property you're talking about, if I remember correctly, is right at the top end of the corridor.

MR. BAINES: Correct.

MS. SHILLCOX: So, I do believe we assigned that as a river towns and crossings district to allow for those taller heights. But what I recommend is

that we take a look at the maps during recess and make sure.

MR. BAINES: That's all I needed.

THE COURT: Thank you so much, Mr. Baines. Any further comments? Is it Mr. Freeburg?

MR. FREEBURG: Mr. Freeburg.

THE COURT: As Mr. Freeburg is making his way is there anybody else? We're getting close to our Ms. Menth break and I'm wondering whether we should go a little longer on her hands or if there's a reason to take a break.

Can I just get a show of hands? Councilman Weaver. Anyone else? And you, sir, so the two gentlemen here, so we have three. So, what I'm going to do is we're going to hear from Mr. Freeburg and then we'll take a short recess.

With Councilman Weaver talking, you won't want to miss it. So, we're going to have a short recess and then have everyone come back because that will be something worth hearing.

Mr. Freeburg, if you wouldn't mind introducing yourself again.

MR. FREEBURG: Yes, John Freeburg, resident of Ramsey.

THE COURT: What should we know?

MR. FREEBURG: I had mentioned to you in my first presentation here that over the last 30 or 40 years something has changed on the river that wasn't happening before.

And again, I've talked to a number of residents who say, "I've lost all kinds of land here and it's been recent." What is this about? So, I have taken it upon myself to do a little research.

Living on the river I have access, I can go down there. And this year it got cold early in January, got to about 20 below zero. That's when the ice forms. And the ice forms in chunks.

And after the ice forms, the next day I went down to the river and the river level was up four feet from what it was the day before. And it didn't snow that much. So, I'm assuming that somewhere downstream there was a plug. And I believe it was at the Coon Rapids Dam where these ice chunks had built up. And again, overnight the level of the river came up four feet.

Once it comes up at 20 below zero, now it freezes solid. And, of course, anybody who lives on the river knows that there is an undercut on the bank up about four feet. So, I went down on my land and on my neighbor's land and looked.

And sure enough, the water had gone into that undercut, froze. And then a few days later it warms up. For whatever reason, again, I believe it's now the plug at the dam down there, melts and the river level drops.

So, what you have then is you've got this chunk of ice, this shelf of ice stuck to the shoreline, now no support. It levers up and rips up everything that's underneath it. I've got, again, a fairly well-established riprap shoreline.

And when that chunk of ice came up, it was pulling up 50-pound rocks. And I've seen it where then it will come up again, it will float that ice and haul away the rocks.

So, this talks to what the gentleman talked about, we need repair abilities. Because once you put in riprap doesn't mean it's going to stay there.

Also, I had the DNR recommend to my neighbors that they put in some kind of dead trees and grow willow trees down there. The effect is going to be that that ice chunk is going to grab onto those trees, rip them out and we're going to start all over again.

The only effective method to hold that shoreline in place is the riprap. Again, we're talking about 5,000 tons that Ramsey is contributing as

silt. Now, that's pollution. We're polluting the people's water. Why don't we do something about stopping that level of pollution?

I did also mention that I had the city council come and hold a special session at my house. I have the minutes from that meeting and my comments and whatnot that are on here.

I have prepared five copies, I would like to give them to the panel here so they can have them for their record. And that will be my contribution to the written record.

THE COURT: I would like at least one of them, but the panel can certainly grab any remaining ones, but I would like to mark that as an exhibit, if you wouldn't mind.

MR. FREEBURG: Would you like one, Your Honor?

THE COURT: Very much so. So, we're at Exhibit 23. And, Mr. Freeburg, what should we know?

MR. FREEBURG: One other thing, Your Honor, what I have observed, again, from living on the river for as long as I have that, again, during the last 30 or 40 years something has changed.

And I'm proposing that the thing that's changed is we have two power plants dumping in

coolant water into the river that we didn't have 40 years ago. And I'm somewhat familiar with nuclear power. And believe you me, a lot of waste water comes out at a high temperature.

And I believe that has changed the standard or the average temperature of the river water, so that, what was normal 40 years ago is not normal now. That's why we're having this flooding problem, the clumping of the ice, the plugging up of the dam. And so, something has changed here.

I would like the DNR to investigate this to see if my proposal here is worthy of further study. But again, something -- and everybody I talk to basically says the same thing, something has changed over the last 30 or 40 years.

I'm proposing it's the average temperature of the river has gone up and that has changed the way the river normally operates.

THE COURT: Thank you so much, Mr. Freeburg. Mindful that we're at our 90-minute point. Councilman, if you wouldn't mind being in this seat at 6:15. We're going to take a short recess. You won't want to miss it, don't go far. We're in recess.

(At this time a brief recess was taken from 6:00 p.m. until 6:15 p.m.)

THE COURT: We're back on the record after a short recess. Councilman, if you wouldn't mind introducing yourself for our record.

MR. WEAVER: My name is Jeff Weaver, W-e-a-v-e-r, Anoka, Minnesota, Anoka City Council.

THE COURT: What should we know?

MR. WEAVER: First of all, I want to just follow up on John Freeburg's comments about the change of river and the different types of ice. And without question he's absolutely correct. I've been on the river 55 years.

There was a time before the power plants when we could ice skate, we could do all kinds of snowmobiling, all kinds of winter activities. The river pool froze over like a lake would and would stay frozen all winter and would melt in the spring.

Now you get these snow cone effects, frazzled ice that coagulate in the severe cold weather, they bunch up, they form ice dams and the water rising rapidly and causes a lot of shoreline erosion.

I wish you would look at it. I do believe the power plants have changed the ambient temperature of the river during those winter months. Because you can have solid ice when it's 20 below, but if it gets up to zero, it will open up in a day. That's

not normal.

And there's an influence, an outside influence that's influencing that river, the ice and the damage that it is creating. And they should be held responsible for the damage they're doing downstream to all these property owners, period.

The second thing I'd like to say is two years ago when we sat in this room, this place was packed to the rafters. And we didn't need a judge, we needed a referee and a cop, it was very contentious.

The DNR was more like dam near Russia and people did not trust the DNR. They still don't, but you've listened. Jennifer, you've listened. Dan, you've listened.

When the commissioner was here we challenged the commissioner to come out to Anoka and go for a boat ride. He accepted and he did and he came out.

And we spent a half a day with the commissioner and some legislators and we boated the river and we looked at people's concerns from Brooklyn Park and Coon Rapids and Ramsey. We were all over the water. I think, Dan, you were with us. Jennifer, did you come that day?

MS. SHILLCOX: I wasn't able to,

unfortunately.

MR. WEAVER: There was a great representation. And people saw the concerns. When we first started this process, they were talking about doing bank stabilization with roots. That doesn't work. Rocks work. We need to armor the bank, not roots.

So, they listened, they actually did listen. But when you listen to people like Nick Tiedeken, his points are spot on. There are no iconic bluffs in Brooklyn Center, Anoka or Champlin.

When you listen to Mr. Dahlheimer, Dan, you said that you can have that temporary storage, but that's your interpretation. What happens when you're not there and the next guy comes to interpret it? All these rules are open to interpretation. So, clarifying them the best we can is what we really want.

But I want to thank you for listening because it's been a very contentious, it's been a long process. It failed once. And it's been through two governors and through two commissioners. And where we are today is a long way from where we started, what, seven, eight years ago.

MS. SHILLCOX: 2009.

MR. WEAVER: It's been a long time. So, I want to thank you for listening. We've got some

more refining to do and I know Judge Lipman will make sure that we come out with a really good product. Thank you very much.

THE COURT: Thank you kindly, Councilman, appreciate your time and contributions to our record. Mr. Baumann. And is there anyone who would like to follow Mr. Baumann? I'll ask again. Ma'am, you'll be following directly Mr. Baumann.

Mr. Baumann, if you could state and spell your name for our record.

MR. BAUMANN: Jeff Baumann, B-a-u-m-a-n-n, first name J-e-f-f. I live in Coon Rapids on the river. And just some thoughts I had here as I'm listening to people.

The nuclear power plant certainly is making a difference, so please do look into that. I have a proposed definition of minor repairs. My definition would include explicitly any repair that doesn't require you to hire somebody or use power equipment.

If you're doing it with your own physical labor hauling rock, that should be okay, there should be no restriction on that at all.

I think a lot of homeowners are concerned about the possibility of penalties if they do

something wrong, either financial penalties or the risk of having to tear out something they've done. So, I would like some reassurance that that will not happen.

I will say, my observation, I'm two miles above the dam. The weights from the boats, I think, are probably as much as anything responsible for erosion. Rocks do protect, roots don't protect, clearly.

And also, the change in the winter height, they used to drop the river to keep the invasion carp out, they have now kept it the same height winter and summer. I think that's had a lot to do with it as well.

One other final thought, in the last three or four years there has been a flurry of new armor plating retaining walls being put up.

And I think that is people basically saying we don't trust what's going to happen, we're going to get this stuff in now, get it grandfathered, which I think is basically saying that they don't necessarily have the consent of the government. So, please keep that in mind. That's all.

THE COURT: Thank you so much, Mr. Baumann, appreciate your time and contribution. Ma'am? If you wouldn't mind stating and spelling your

name for our record.

MS. SHERMAN: My name is Cindy, C-i-n-d-y, last name Sherman, S-h-e-r-m-a-n.

THE COURT: What should we know, Ms. Sherman?

MS. SHERMAN: I'm the planning director of the City of Brooklyn Park and I wanted to first start by dating back to the original working group I've been involved in the process. And it did start out rather rocky, but I think it's come a long way.

I want to thank the DNR for all their hard work and commitment to work with the communities and residents and the landowners along the river. I'm sure we will be able to develop ordinance language that meets the intent of the rules and honors the concerns of our property owners. Thank you.

THE COURT: Thank you so much, Ms. Sherman, appreciate your time and contributions. Any additional comments? Any additional comments? Seeing none, I have a number of advertisements, I don't want you to leave just yet.

The important advertisements are, we're having a 20 calendar day comment period that closes precisely at 4:30, as measured by the clock on my computer in St. Paul, 4:30 p.m. on Wednesday, July 6,

2016. 4:30 p.m. on Wednesday, July 6, 2016 by fax, by mail delivery, but obviously it has to reach us by that date by delivery to the front desk in St. Paul on Robert Street or 24 by 7 on our E-comment system.

But at 4:31 the staff are going to swoop in and change that and then it becomes the rebuttal period for five working days, which ends precisely at 4:30 p.m. on Wednesday, July 13, 2016.

Whether you've been a part of the public hearing process tonight, and we've heard from a number of very thoughtful and insightful witnesses who contributed greatly to our record, you don't necessarily have to have been here in this room or in any of the hearings to participate, as I mentioned before.

If there's folks in your church group or neighbors on the river, folks involved in any of your civic organizations, encourage them to write in, obviously. We have this comment period going and we would benefit from their help in sorting out these very important issues.

Also, tomorrow for folks who can participate and/or folks who might be in or around Minneapolis, we're going to be having a meeting tomorrow, public hearing just like this that starts at 10:00 a.m. at the Mississippi Watershed Management

Organization on Marshall Avenue Northeast in the city of Minneapolis.

And we have details -- direct details and it's also in the notice, if you are able to attend in that. I appreciate, again, everyone's thoughtful contributions, courtesies to each other, the witnesses that were behind you, the courtesies to me, you have my very grateful thanks. And we're adjourned.

(Hearing adjourned at 6:30 p.m.)

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ADMINISTRATIVE HEARINGS

REPORTER'S CERTIFICATE

I, MARCIA L. MENTH, do hereby certify that I recorded in stenotype the hearing on the foregoing matter on the 15th day of June, 2016 at Anoka, Minnesota;

That I was then and there a Notary Public in and for the County of Wright, State of Minnesota;

I further certify that thereafter and on that same date I transcribed into typewriting under my direction the foregoing transcript of said recorded hearing, which transcript consists of the typewritten pages 78 through 156;

I further certify that said hearing transcript is true and correct to the best of my ability.

WITNESS MY HAND AND SEAL this the 22nd day of June, 2016.

MARCIA L MENTH
NOTARY PUBLIC
MINNESOTA
My Commission Expires 1/31/2020

Marcia L Menth

MARCIA L. MENTH
Court Reporter

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Rules
Relating to the Mississippi River
Corridor Critical Area

OAH DOCKET NO. 8-9014-33236
REVISOR NO. R-04240

VOLUME II

The above-entitled matter came on for public hearing before Eric L. Lipman, Administrative Law Judge, taken before Marcia L. Menth, a Notary Public in and for the County of Wright, State of Minnesota, taken on the 15th day of June, 2016, at Greenhaven Golf Course Event Center, 2800 Greenhaven Road, Anoka, Minnesota, commencing at approximately 4:30 p.m.

A P P E A R A N C E S

APPEARING AS THE HEARING OFFICER:

ERIC L. LIPMAN
ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE HEARINGS
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Post Office Box 64620
St. Paul, Minnesota 55164-0620
E-mail: eric.lipman@state.mn.us

APPEARING ON BEHALF OF DNR:

SHERRY A. ENZLER, JD, PhD
General Counsel
MINNESOTA DEPARTMENT OF NATURAL RESOURCES
500 Lafayette Road
St. Paul, Minnesota 55155

ALSO PRESENT:
Daniel Petrik - Land Use Specialist
Jennifer Shillcox - Land Use Unit Supervisor
Suzanne Rhees - Water Policy Consultant

*The Original is in the possession of Administrative Law Judge Eric L. Lipman.

E X H I B I T S

PAGE
Rec'd
Exhibit 23 - Freeburg exhibit 146

P R O C E E D I N G S

THE COURT: Good afternoon, my name is Eric Lipman, I'm an administrative law judge with the Minnesota Office of Administrative Hearings. I'd like to welcome everyone to the second of three public hearings in the matter of the proposed rules of the Minnesota Department of Natural Resources relating to Mississippi River Corridor Critical Areas.

It's otherwise known as OAH Docket Number 8-9014-33236. And it's also been denominated as Revisor Number R-4240. I'll talk more about the importance of those numbers in a little bit.

The OAH is independent of the Minnesota Department of Natural Resources and the various stakeholder groups that are going to be testifying today.

The role of our office is to provide hearing services in cases just like this, rulemaking hearing, and also contested cases where there are disputes between citizens and their government. The function of our office is hopefully to provide hearing services in ways that are fair and transparent to all of the parties.

Among the directions that the Minnesota legislature has given to the agency and our

office about this kind of process, specifically in Minnesota Statutes 14.14 and 14.15, are that rulemaking hearings are to be conducted in a way that's fair and open and accessible to members of the public.

It's part of a series of regulatory controls. The reason we have a judge in this process is to ensure that there's procedural fairness, that there is open access, and that there's genuine and fair opportunity for public participation in the development of administrative rules.

In fact, if you turn to the statute books, in the very first words of the Minnesota Administrative Procedures Act talks about providing greater public access, greater public accountability, greater opportunities for members of the public to participate in the development of the rules that govern their lives.

Indeed it's a great expression of self-government by, for and of the people and consent of the governed to do the things in the way that we do them in this particular process and in this state.

The statute goes on to explain that even though it's a complicated series of procedures that we undertake, it's the legislature's expectation that the substantive results at the end of this process will

be improved because of the procedural steps that we're taking tonight and throughout the next 20 calendar days. And actually, more like 26 calendar days.

So, again, all of these procedures are designed with drawing upon the wisdom of the group. So, for the people who are in this room, people who were in the room last night, the people who will come and join us and participate in the daytime hearing tomorrow in Minneapolis. And more about that in a little bit.

And for folks who never came to any of those rooms, wherever they might be on the face of the great green globe, they can participate in this process and contribute to the wisdom of the group.

Again, the legislature's expectation is that if we have many eyes and many hands working on this, not only is it consent of the governed, but it's also a better substantive result.

As a matter of fact, I want to thank Senator Abeler who just joined us who was key in making many of the laws that govern this kind of procedure and contribute to consent of the governed.

There's a handout at the front table entitled, "State of Minnesota, Office Of Administrative Hearings, Rule Hearing Procedures." If you don't have a copy of that item I'd ask you at either a break or

convenient time to pick one up.

It describes in greater detail the procedures that the legislature has set for hearings just like this. And while I'm going to touch upon some of the highlights in my introduction this afternoon, there's greater detail and information in that handout for full participation in the process and encourage folk to have a copy handy and to read it at their leisure.

As I said, the hearing is part of a larger series of procedural protections under the Minnesota Administrative Procedures Act. The key purpose of this hearing is to develop and receive information on three key questions.

Stakeholders will oftentimes make remarks about a wide variety of topics. Sometimes they are talking to the administrative law judge, sometimes they're talking to the agency, sometimes they're talking to the legislature, sometimes to history, but if we're interested in what the Administrative Procedures Act is focused on, it's three key questions.

Namely, whether the agency has the legal authority to adopt the rules that they have fashioned. With some agencies that's not always the case. Sometimes they exceed their legal delegated authority from the legislature and that's a legal

problem.

Whether the agency has fulfilled all of the relevant legal and procedural requirements necessary in order to promulgate rules, both in Chapter 14 and in the administrative rules under the Act, Part 1400, there's a series of steps that the agency has to abide by; public notice, engaging certain stakeholders, publishing a statement of need and reasonableness.

These kinds of things are all set out in the statutes and rules. And it's important -- and indeed, the agency has assembled a binder that we received yesterday into the record detailing all of the steps that they've undertaken to show compliance with the rules, or at least that's the argument that they're making.

The third of the things that we're focused on this evening is whether among the range of choices that the agency has to promulgate rules, whether the ones they've actually selected are needed and reasonable, whether a rational person would pick those choices.

So, again, the three key questions are do they have the authority from the legislature to issue these rules, have they followed all of the

procedural requirements necessary to promulgate these rules, and three, among the choices that they had did they pick ones that were needed and reasonable. Okay?

And those are the things that I'll be summarizing in my report that will be due after -- 30 days after the close of the commentary. So, those are the three key questions that at least this process is focused on.

Again, stakeholders sometimes have other comments and other audiences in mind, but what we're doing here today is about those questions.

The agenda for today's hearing, I'm going to finish my short introduction. I'm going to introduce or at least turn it over for introductions themselves to members of the agency panel.

They have key senior staff people and subject matter experts here. We're going to hear from Ms. Shillcox, she's going to have a few slides and a general overview of what the agency has in mind.

And then we're going to take a short standing break to allow folks who want to look at the binder that I received last night, there's five or six copies over on this table to my right.

And if folks quietly want to look over there, if you haven't seen them, feel free to look

at those binders. I want to make sure everybody has an opportunity if there's something that Ms. Shillcox or others talk about, that you have a chance to look.

Before you rush over to look at the binders, I just want to say all of this material has been posted online. You can sit in the comfort of your pajamas with a cup of coffee at your house or maybe at the public library, perhaps not wearing your pajamas, you can look at these items at your leisure because all of these things are available on the Internet.

And if possible, I would much rather move from the agency presentation right into hearing from you because that's the key reason that we're here this evening is to hear from stakeholders.

What I'd like to do is for the first round of testimony, limit everybody to about five minutes or so, I have a stop watch, just to get the key overview so that we can go through the roster once.

Again, because the process is structured around the wisdom of the group, I'd like to try to hear from as many voices as possible.

If everyone who wants to speak has had an opportunity to speak once, I'm glad to allow folks to be recognized a second, third, fourth, fifth time and revise and extend their remarks.

My personal record in these kinds of hearings is seven rounds. And so, I promise you, I'll be the last one to leave the room. I'm not headed off to anything else this evening. I'm eager to hear from you. But we do, in fact, want to hear from as many voices as possible of those folks who are inspired to speak.

I'll also put into context that if you're not a public speaker and you do, in fact, have your remarks written out, we can mark them as a hearing exhibit and it's entirely full credit. We will read every single word that you write.

And so, if you're not all that comfortable in speaking, we can have all of your thoughts and your best thinking as a hearing exhibit, likewise, the agency, and all of the other stakeholders because we'll post that online, will have access to those materials.

Also, if you are a public speaker and you do have your remarks written out, we'll mark those too and you can feel free just to hit the highlights.

We've set up the room sort of neighbor to neighbor as if you were at the local planning commission or the library board or across the Thanksgiving table with people that you care about

because hopefully that's the way that we feel about each other in this important dialogue. We're here to hear from folks.

So, if you have more detailed written comments, you can, like I said, mark those as a hearing exhibit and just hit the three or four key points. Mindful, that there is an unbelievably brilliant and insightful comment right behind you in line.

So, if any one stakeholder runs down the clock, we're not going to truly get the wisdom of the group. So, if there's something really very important that needs to be said and heard, but it's behind you in line.

To the extent that the people can state their points briefly, it's really very helpful. And again, I'm glad to allow folks to expand orally on those ideas if everyone has had a chance to speak just once.

Even better still, following the conclusion, starting 20 calendar days from tomorrow, because tomorrow is our last public hearing, until Wednesday the 6th of July, 2016, so, 20 calendar days, there will be a chance for a written comment period.

So, for everyone and anyone who's been here in the hearings, for those folks who haven't

attended the hearings, they can write in provided those comments are received by the Office of Administrative Hearings by 4:30 p.m. on Wednesday, July 6, 2016.

If it's 4:35, it's late. If it's 4:31, it's late. Don't be late. We're eager to hear from you, send it early. Click at least by 4:20 if you're sending it electronically.

We have a great new E-comment system that our office has developed, a very iterative dialogue system. You can find it online going to the website. Again, the handout will have all those details.

Also, we're glad to receive materials in writing or hand delivery or by fax. The only thing with the E-comment system is you can't post attachments. If you have attachments, those have to come in another way. Again, make sure that they're in by 4:30 p.m. on Wednesday the 6th of July, 2016.

And then, for all of those things which are in by that period of time, there will be a five calendar -- I'm sorry, five business day rebuttal period where you can comment on the things that have been said before. X stakeholder said Y thing and that's wrong, here's the truth.

We're not raising new topics because we'd never get done. So, anything that has been said

before Wednesday, July 6, 2016 can be replied to, made a response to by 4:30 p.m. on Wednesday, July 13, 2016, that's five business days later.

And from that date at 4:31 we're going to seal up all the best thinking that we've received in all the various forms that we've had it and then I'm going to make a report detailing, again, my findings on the key questions in this case.

Namely, is there statutory authority, is there compliance with all of the procedural rules, and has the agency demonstrated a need and reasonableness of the regulations that they've selected. Okay?

If you want to obtain a copy of the report, and it will be posted online, but if you want to receive notice, just make sure you check that box next to your name on the roster and provide us either an e-mail or some other contact address and the staff will get that to you. The handout goes into other details about the hearing process, which you can read at your leisure.

Generally what we're going to do this evening, because of the international convention on the fair, decent, and humane treatment of court reporters that we break every 90 minutes for the benefit of

Ms. Menth and her hands, which are a state treasure. So, we want to the preserve those vital state resources.

So, we're going to run this until about 6:00 and take a standing break. You can feel free to get more cookies and go to the bathroom, make a telephone call, whatever you wish. And then we'll have another 90 minutes.

And while we do still have the room after that second 90-minute slot we're going to make an assessment about where we are in the evening and how late we'll go. We're not likely to go fully through a third 90-minute slot.

I hope we can draw out what wisdom it is. And there's also limits of human endurance. So, we want to be fair to stakeholders and not overstay our welcome at Greenhaven, but we do want to hear from you.

So, with that, that's the overall procedure guidelines, at least the description of what we're going to be doing tonight. I'm going to turn it over to Ms. Enzler.

Before we adjourn tonight I'll repeat the dates for the comment period, but I appreciate all of you coming out on a beautiful summer afternoon to contribute to our best thinking.

With that, Ms. Enzler, if you

wouldn't mind introducing yourself for our record.

MS. ENZLER: Thank you, Your Honor. My name is Sherry Enzler, that's S-h-e-r-r-y, E-n-z-l-e-r. I'm general counsel for the Department of Natural Resources and representing the Department in this matter.

I'm going to just briefly introduce the three panel members here tonight and then I'm going to turn it over to Ms. Shillcox, who's going to give a much abbreviated opening statement since her opening statement was given last night and we have a written copy in the record.

With me tonight is Ms. Jennifer Shillcox, she is the supervisor of our land unit program -- or our land use program unit. She oversees the shoreland programs. She has been involved in the critical area and the development of the critical area rules since 2009.

And prior to that she has extensive experience in land use planning, particularly in shorelands and in critical waterways, including the St. Croix.

Daniel Petrik is to my right. Mr. Petrik heads the critical area program for the DNR. He has managed the development of the rules. Prior to

coming to DNR he too has had extensive experience with local units of government in zoning and planning.

And finally, Suzanne Rhees, who is at my right at the very end. Ms. Rhees is currently working in our water permitting unit, but has worked and did work in our planning unit as the rules were developed and played a crucial role in developing the rules.

And she too has a very extensive background in land use planning. And both Mr. Petrik and Ms. Rhees are available for questions here tonight.

So, with that, I'm going to turn it over to Ms. Shillcox.

THE COURT: Thank you so much. Ms. Shillcox, if you could introduce yourself.

MS. SHILLCOX: Thank you. My name is Jennifer Shillcox, J-e-n-n-i-f-e-r, S-h-i-l-l-c-o-x. I'm very proud to be here today. As Sherry mentioned, I'm the land use program supervisor and I've been involved with this rulemaking since it began in 2009.

We're here to listen to your comments on the proposed rules for the Mississippi Corridor Critical Area, which I will refer to as either the critical area or the corridor. I don't want to mess it up.

It's been a long road getting here today, it's been a little rocky at times, but we've learned a lot along the way. And we're really happy to be here at this point here today in Anoka. And I do want to thank the City of Anoka for providing the refreshments at this hearing today. Thank you very much.

As Sherry mentioned, I'll be providing an abbreviated version of our opening statement, the full version is in Exhibit 11 of the binders. And it's also online if you're interested in reading the whole thing.

I'll just be highlighting our public process today and then also highlighting key changes from Executive Order 7919, which has been guiding land use in the corridor since the mid '70s and is currently in place.

So, I'll start on the public process in developing the rules. We've been spending quite a bit of time over the last four, five years developing the rules. And it's been one of the DNR's most extensive public involvement processes, more than is typical for a rulemaking.

And the proposed rules are better because of that. People expressed a lot of concerns and

were very passionate about issues throughout this rulemaking. And we wanted to really understand what those concerns were so that we could address them appropriately.

So, we engaged local governments, interest groups and property owners along the way. We relied very heavily on their experience and perspectives, that's what we needed to manage all of the expectations.

We valued and paid attention to all the ideas. And a lot of those ideas made it into the rules. And we have a very iterative process. We heard a lot of ideas, we incorporated them into various drafts. We had a number of drafts that we made available to the public.

So, we would hear things, put them into drafts, share them back out, and then tweak as we went. We were trying to refine things as we went. So, we wanted to make sure we addressed people's concerns.

Not everyone is going to be happy with every provision in the rules. We had to balance a lot of different perspectives, values, and interests. So, it was a compromise.

But we do think the resulting rule package reflects the input of the people who will be

most affected by the rules. And we believe the proposed rules are balanced, fair, and improve on existing regulations.

Now I'm going to provide some highlights of key changes from the current regulations that are placed in Executive Order 7919. And these are changes that we made to address issues or ideas that came about through the rulemaking process.

So, the first thing we did was we clarified some of the administrative provisions, in particular the contents of local plans and ordinances. And also, we clarified rules and responsibilities of the various agencies and local governments who are involved, as well as the procedures.

Flexibility was a very important provision that we worked on. Conditions and development patterns vary widely across the corridor and we knew that we had to account for that.

So, there's a flexibility provision that's added in that allows local ordinances to vary from the standards and the rules as long as they're still meeting the intent of the program.

Bluffs was a very big issue. The proposed rules -- let me see if I can get to the slide here. So, the proposed rules clarify the definition of

bluffs. And we use three parameters to try for a more consistent identification and mapping of bluffs.

What we heard from local governments was that there is no definition in the executive order of bluffs, it just says the bluffline is the top of an 18 percent slope.

So, local governments often had a hard time when they hear from property owners, is there a bluff on my property or where does the bluff end. And it was really difficult to measure.

So, we identified parameters, height, width, and then percent slope. And we developed a mapping tool that you put those parameters in and we used that tool to evaluate different definitions.

And we worked with a number of local government units just to evaluate different parameters, see if it captured the slopes that they are currently defining and regulating and minimizing nonconformities.

And this is what we ended up with (indicating). We do plan to make the mapping tool available to local governments when the rules are adopted. So, that should hopefully help with administration.

Districts were also a big deal. Currently there are four districts outlined in Executive

Order 7919. They were set out in the mid '70s. They reflected land use at that time. They were pretty broad.

The proposed rules proposes six districts that better reflect existing development, residential, commercial, industrial development, as well as existing resources and also planned future development.

Another important feature with districts is that we provided a mechanism for changing the district and the district boundaries, which is not currently contained in Executive Order 7919.

Building height was another big issue in particular parts of the corridor. So, within the districts there are different height limitations that better reflect what is currently there or, again, what's planned for the future.

In two of the districts there are actually provisions that allow for taller height through a local conditional use process. And that process would allow for more public involvement in making a final decision on whether exceeding the height is appropriate.

Vegetation management was an issue that a lot of local governments were concerned about. The current vegetation standards are very difficult to

enforce, they're pretty vague. Property owners don't even know what they're supposed to do on their property, what they can cut, what they can't.

So, we tried to clarify what vegetation -- how vegetation can be managed. What we did was we identified the locations or the areas in the corridor that are most sensitive where vegetation is beneficial to have in place.

And those include areas like the shore impact zone, steep slopes or bluff impact zone or needed plant communities or vegetation that's mapped by the local government as being significant. So, it's just within those areas that vegetation is managed.

And, basically, intensive vegetation clearing is prohibited. That is clear cutting an entire swath or block of all vegetation, but is allowed in some instances with a local government permit.

Land alteration, including things like disturbance for riprap, storm water management, erosion control, that sort of thing were not very clearly laid out in the executive order. So, clearer standards have been put in place.

Again, the focus is on those sensitive areas that are most sensitive to disturbance. And measures have been put in place to make sure if that

happens, those areas are protected.

Subdivision and land development is another area where we provided some more clarity. The proposed rules establish thresholds and percentages for sensitive corridor resources, which are referred to as primary conservation areas in the proposed rules to be set aside and protected.

And that applies to any new subdivision, planning developments or large master plan developments. The set-asides are not required for river dependent uses. And they can include land that the local government may already be requiring for dedication.

And then, finally, nonconformities was a very big concern. There's a lot of existing development in the corridor, a lot of it that doesn't meet the regulations that are currently in place. And there's concern that we would be creating more nonconformities.

So, we took that very seriously. We basically referred to existing statutes that lay out protections for nonconformities and we also clarified expansions that can happen consistent with how many local governments, particularly in the northern part of the corridor, are regulating nonconformities.

So, that concludes my opening statement. I want to thank everybody for coming. We really look forward to hearing your comments and we're glad you're here.

THE COURT: Thank you so much, Ms. Shillcox. Mindful, that about 30 feet that way we have five or six of the agency binders. Ordinarily we would take a short recess to make sure that people had a chance to look at those.

Any concern about us proceeding with the public hearing and allowing folks sort of 30 feet that way to spend time with the books? You're concerned about that?

MS. SHEY: About how long did it take you to read the book?

THE COURT: I'm still going through it.

MS. SHEY: So, for us to page through it in three to five minutes is not really going to help.

THE COURT: I think the question that was raised was three to five minutes to go through a large binder of materials, it's more if the things were actually new to you. And I realize that many of the documents are going to be new to you.

I think the concept is that because

they've been posted online that during this process and the 20 calendar days that will follow it is an opportunity to look in some detail with genuine study of those materials.

MS. SHEY: Even the posting online was not made available. The mailing that I received didn't indicate that all of this was available online at all.

THE COURT: Okay. What I'm telling you is that as far as the notice to the public, the agency is legally entitled to come to the hearing and make its presentation in the hearing process and present exhibits in defense. And then, the statute contemplates that there is this 20-day comment period on that.

As a best practice so as to build public confidence, I like to give people an opportunity to familiarize themselves with the binder. But it's not, I don't think, at least contemplated we would have to adjourn maybe for a while to go through the binder and then come back.

And I don't think the current statute, at least the way it's set up, or the rules contemplate that. I just want to make sure that to the extent possible we can try to inspire public confidence and get to the hearing.

Like I say, you can certainly listen to what we're doing and I think have your own binder, actually. Is that fair enough? You have deep concerns about that?

MS. SHEY: Fine.

THE COURT: How wonderful. I'm so very grateful. Senator, would you like to be our first witness? Mindful that you have the press of other business going on, so I wanted to recognize you.

And I'm going to be asking everyone to come down, we have a microphone here, to join us family style at this table.

The reason why we do that, Senator and others, is so that Ms. Menth can hear you, and we do have a microphone so that everyone can hear you, and also if she doesn't hear clearly something that you've said because she's making a transcript, that she can ask questions and you're nearby.

And again, we're trying to simulate coffee at your place as best as we can. I guess it's been awhile since Herr Schmidt -- is Herr Schmidt still a -- it's long since gone? That shows how old Anoka I am. But we're trying to have that same kind of feeling that we're neighbor to neighbor.

So, with that, Senator, if you

wouldn't mind introducing yourself for our record.

MR. ABELER: Thank you, Judge Lipman, and thank you for your work on this. I'm Senator Jim Abeler, privileged to be from this town. I live on the Mississippi and I live on the Rum. I mostly came to listen.

And I wanted to commend Commissioner Landwehr, along with his staff. In this very room two years ago it was a bit of a different tone. And before that it was very much a different tone. And he committed at that meeting that he would listen. And he did and his staff did.

And this iterative process, I think, has been very good. I'm interested to hear the concerns that people yet have. I have not gotten a call, which is a contrast to how it was two years and prior ago.

And I think that the intent of the governor -- Governor Quie's order from time back in preserving what we can of this amazing resource, along with the innervating practicality of development and people enjoying the use of the river in so many ways has been -- apparently has been accomplished.

And so, I just wanted to commend Judge Lipman, who I know to be a thorough person. And I'm glad I can talk early because I want to encourage

people who have a concern about any part of the rules to bring them up because the judge will listen and take them into consideration.

The quite frankly, the Department will listen as well because maybe they missed something. So, do not be shy to comment, this is as friendly a place as you can get to be in with this dedicated group of listeners as you could imagine.

And so, I'll leave it at that. I do want to notice Counselor Weaver is here, Mayor Koch, and Brooks Ann Whelan is here as well.

So, if you're shy to navigate the process, any of those and the rest of your elected officials are very excited and willing to look at them, including myself. So, I'll stop there. Thank you.

THE COURT: Thank you so much, Senator, I appreciate your time and your contributions to our record. Following Senator Abeler will be Nick Tiedeken of Brooklyn Park. And following Mr. Tiedeken will be Dick Brown of IWLA.

So, Mr. Tiedeken, if you wouldn't mind stating and spelling your name as soon as you get settled. And we're hoping generally that folks can go about five minutes or so, just until we get to a second round.

With that, Mr. Tiedeken, if you could state and spell your name for our record.

MR. TIEDEKEN: My name is Nick, N-i-c-k, Tiedeken, T-i-e-d-e-k-e-n.

THE COURT: Thank you so much, Mr. Tiedeken. What should we know?

MR. TIEDEKEN: Today I'm going to talk about bluffs, focus on bluffs, there's some issues with bluffs. Bluff issues have been a problem in our city of Brooklyn Park for quite some time.

The 18 percent slope is the same slope that you see in front of you here (indicating). It's not tremendous by any means. And so, everything that is on this slope or 20 feet back from the top or 20 feet below the bottom is now being severely restricted or even prohibited, can't do much of anything in this area.

And that's a challenge for some of us, especially if you live on such a shallow slope. Years ago the DNR came into Brooklyn Park and wanted us to upgrade our standards. And we said pretty much no.

But what we did in that process was that we worked to develop -- let me back up. In Brooklyn Park a lot of the homes are built into the top of the bluff. So, they would never meet the setback

standard by any means.

What we did with the DNR at the time, it was in the late '90s, we worked with them to develop this concept that you can laterally expand your structure as long as you don't get closer to the bluff or the river.

And that was something that we thought was a really big improvement because we were able to do that and it was specifically designed for the bluff areas. And the DNR apparently has picked up on that idea and they have it in here. And I'll send in the letter with the specifics.

They put that in here, but the irony is they excluded use of that provision in these bluff impact zones. That's a terrible irony for Brooklyn Park who developed this explicitly for that purpose.

There are other things that we worked on in Brooklyn Park with the DNR. For instance, when FEMA came in, Federal Emergency Management Agency, in the early 2000s and wanted the City to update its flood plain ordinance, we had a fight with them.

But with the DNR assistance what we were able to get was a small tidbit. That small tidbit was the ability to at the base of the bluff build a doghouse or a small tool shed.

The DNR now proposes to not allow those because they would be within this bluff impact zone at the base of the slope. So, how close am I getting to five minutes?

THE COURT: You've got some time yet.

MR. TIEDEKEN: One of the things that we think would help since the DNR has made this effort to try and get as many nonconforming situations removed from this area is to maybe go with the definition that you used in the shoreland rules.

Because I think that would help quite a bit because that's a little steeper slope, 30 degrees over a 50-foot length. I think that would eliminate a lot of these bluff situations in Brooklyn Park anyway.

Another aspect that recently came up that I wasn't really aware of before, and this is a little troubling, is that in order to protect, I think you said, rocks and cliffs, you put in this new standard with respect to a 100 percent slope over a ten-foot length.

Now, a 100 percent slope is not a vertical cliff, by any means. A 100 percent slope is about a 45-degree angle. It doesn't necessarily fit my definition or perception of what a cliff or rock is.

And I think that if you include that

in the definition, that's going to bring a lot of these homes that you've tried to get out of this nonconforming situation, I think it's going to draw them right back in because there's probably a lot of homes that have some sort of steeper area over this shorter period of time. And I think that's something I would like you to work on.

There are a lot of the prohibitions in these zones that hopefully we can work around if we make some adjustments. But for somebody to be absolutely prohibited from doing anything along this slope is going to be very, very challenging.

I do appreciate that the DNR has built in some flexibility in here and provided some wiggle room for some situations, but a lot of those wiggle rooms don't apply in this bluff impact zone. For instance, as I mentioned, the lateral expansion.

There was a provision I proposed a couple years ago with respect to this halo effect. Around each home you get a little wiggle room. The DNR ran with that and said you can build a deck only so many feet and so big. And that sounded really good until you read the last line that said except in bluff impact zones.

And I'm not sure why there's this

tremendous bias against this bluff impact zone with respect to just about everything in here. Every bit of flexibility that's built into the rules is not available in the bluff impact zone.

THE COURT: Mr. Tiedeken, some final thoughts?

MR. TIEDEKEN: Thank you. I will be submitting written comments in a more structured format with rule citations and the whole bit, so you'll have an opportunity to read those over. I do appreciate your time.

THE COURT: We're so grateful for your thoughtful and insightful contributions and appreciate your contributions to our record. Mr. Brown, if you wouldn't mind joining us. And as he makes his way, Mr. Dimond, you're going to follow Mr. Brown.

Mr. Brown, if you wouldn't mind stating and spelling your name for our record.

MR. BROWN: Yes, Your Honor. My name is Richard P. Brown, I live at 701 East Hayden Lake Road in Champlin. And I am within the protected corridor, even though I'm not on the river.

THE COURT: What should we know?

MR. BROWN: Well, I have a brief statement from the Walter J. Breckenridge Chapter of the

Izaak Walton League located at 8816 West River Road.

We own four and a half acres on the bluff on the highland and we own a 20-acre highland in the middle of the river, half of which is in Fridley and half of which is in Brooklyn Park.

And our statement is, this is the third time we've attended meetings on this critical issue. There has always been a mix of interests between environmental conservationist concerns and some business developments and local control interests.

After researching this last draft, it seems to us it is a fairly reasonable compromise -- it's a fairly reasonable compromise to most concerns. It is probable that someone will not be satisfied unless it is all their way or completely dropped.

But the Mississippi River, a national treasure, belongs to everyone in the nation and needs a certain amount of protection. To such a valuable resource local control must be subservient to federal and state control.

To us, some of the most important things in the document are building heights and setbacks, vegetation standards, and the fact that our rules for necessary exemptions -- there are rules for necessary exceptions.

For the benefit of water quality, scenic views, wildlife, and the people locally and of this nation, it's time to quit squabbling. The DNR should implement these rules immediately without another round of hesitation.

Thank you. This is from the Board of Directors of the Walter J. Breckenridge Chapter of the Izaak Walton League.

THE COURT: Thank you so much, Mr. Brown, we're very grateful for your time and contributions to our record.

And so, following Mr. Dimond as he makes his way to the podium will be -- I'll check the roster. I think we've gone through at least the ones who've checked in.

Mr. Dimond, if you wouldn't mind stating and spelling your name for our record.

MR. DIMOND: Tom Dimond, T-o-m, D-i-m-o-n-d.

THE COURT: Mr. Dimond, what should we know?

MR. DIMOND: I'd like to talk about heights. In particular, I'd like to speak about how much heights have been increased, the proposed, and particularly use in St. Paul and particularly the

confluence of the Mississippi and the Minnesota River.

The confluence of the Mississippi and the Minnesota River have even more significance in the critical area because of the historical context and because of the context of the confluences.

In St. Paul much of the area along the river is currently what they call urban open space. And it has a 35-foot height limit on it. St. Paul was granted an exception to go to 40-foot height.

The proposal in many of these areas moves the height up to 65 feet, but then it could be added to that conditional use permit. These heights seem totally inappropriate for these areas.

These areas are very visible because of the confluence of the two rivers. The historic Fort Snelling, there's Camp Coldwater, there's Fur Trading Post at Mendota, there's the historic veterans home and there's also the -- I forgot the name, Pilot Knob, all in this location.

These buildings would all become very visible in this historic and environmental context. It does not seem at all appropriate that these should be allowed there. It's also important to keep in mind that largely the area that we're talking about is a block wide strip that's behind the Mississippi River Boulevard

or behind Shepherd Road.

So, development from a context of additional development, both St. Paul's planning comprehensive plan calls for there not to be tall buildings on these sites.

But also from the context of impact on development of keeping within the 40-foot that's currently allowed, certainly allows development of heights and also allows views from the upper bluff to the river. There's a two-tier bluff in much of this area.

So, it's very important that we look at these height impacts here. And as a veteran, I particularly would like to point out the potential impacts of this area, but also the area where the Ford Plant currently is, that these heights -- there's two steps in heights involved here, would impact the historic veterans home.

But also if you take a look from the historic fort or from the historic home, you can see these distances throughout this. And then, it also impacts the gorge. You look along that gorge now with one exception, 740 River Drive, this is a green band of bluffs across there. And this would dramatically alter the visual along there.

In context with the structure height I would like to mention that there was a height definition in the discussion early on, but now there's not a definition in there. It seems incongruous to have a height requirement and not a definition on how to do height.

For example, different communities do different things, but you can now alter the height by changing where the starting point in the measurement and where the upper point, whether it's the eve, the midpoint or the highest point.

So, there seems that there needs to be if you're going to have a height definition -- have a height requirement, you need a height definition so it's consistent throughout the corridor. Thank you.

THE COURT: Thank you so much, Mr. Dimond. Mindful that we've gone through the folks who signified that they wanted to be recognized. I want to turn to some of the folks who were perhaps a little bashful and who put a question mark down.

Namely, Ms. Braun from the City of Anoka, Mr. Harris, Mr. Freeburg, Mr. Baumann or Mr. Shey, any of you want to be recognized, raise your hand.

MS. BRAUN: Not at this point.

THE COURT: Okay. Sir, your name?

MR. FREEBURG: John Freeburg.

THE COURT: Mr. Freeburg, if you wouldn't mind joining us. Mr. Freeburg, if you wouldn't mind stating and spelling your name for our record.

MR. FREEBURG: John, J-o-h-n, Freeburg, F-r-e-e-b-u-r-g.

THE COURT: Thank you so much, Mr. Freeburg. What should we know?

MR. FREEBURG: I'm a resident of Ramsey, been living on or near the Mississippi River for all of my life. So, I have done a lot of observations. I moved into my house here, we built it in 1989.

Shortly thereafter my neighbor and I figured out that we had an erosion problem. And just a couple years ago we finished up the project by putting 500 tons of riprap down on about 150 feet of river bank. We didn't realize when we went and moved in there how big of an issue this was going to be.

I'm very concerned about how the DNR wants to handle the riprap situation. But I did have the city council come to my house here last fall, they did an inspection.

The City of Ramsey then commissioned a report and it's now called the "City of Ramsey

Mississippi River Bank Condition Inventory" prepared by the Anoka Conservation District dated February, 2016.

The executive summary states that in the city of Ramsey, which has 5.8 miles of shoreline on the Mississippi River, that the city of Ramsey is losing 5,148 tons per year of shoreline. That's a lot. That works out to approximately 336.2 pounds per foot.

Now, if you go to the store to buy 336 pounds worth of dirt, it's about a hundred dollars. I, as a person who have repaired a shoreline, have figured out that it costs about three to $5,000 per running foot to repair that.

So, this is a very expensive process. And many of my neighbors simply cannot afford that because the bluff that they're living on is so high that trying to roll rocks down there would do more damage than it would save the river bank.

So, we're at a conundrum here, but we don't need more restrictive rules about how we're going to save our property. Because I've talked to a number of people who have been on the river a long time and what they tell me is, "Oh, yeah, I've been here 30 or 40 years and it looks to me like we've lost about ten feet of shoreline."

And if we figure that the river is

ten thousand years old, if that rate had gone on for 10,000 years, we'd be under water here and a long way over. So, this is a new phenomenon. Over the last 30 or 40 years we have seen erosion increase.

So, the question is, why is erosion increasing over the last 30 or 40 years? So, that's what I would like to have the DNR have a look at as to, Your Honor, your Point Number 3, is have we done everything to look at this.

And I'm saying over the last 30 or 40 years something has changed to cause this level of erosion. So, I will concede right now, but I would like to return again with more data.

THE COURT: That's great. This evening or during the comment period? I just want to understand.

MR. FREEBURG: After other people speak I'd be more than happy to return.

THE COURT: That would be wonderful. Thank you so much, Mr. Freeburg. Is there anyone who hasn't had an opportunity to speak once who otherwise was inspired?

Anyone who hasn't yet been recognized that would like an opportunity to speak? Please, sir, if you wouldn't mind. And then, sir, you'll follow

directly.

If you wouldn't mind stating and spelling your name for our record.

MR. SHEY: James Shey, S-h-e-y.

THE COURT: Mr. Shey, what should we know?

MR. SHEY: Looking through some of the information I have here, two things I would like to say, there was no indication on flowage rights and flowage.

Under this system of bluff and impact zones, the flowage rights, I don't have flowage across my property, that bluff tends to be further down because they're flowing water across that property.

And if it goes back to the normal pool level or normal river level, which when the lots were surveyed it was there, it would be significantly different on those areas.

Right now they're flowing about 150 feet across our property vertically -- or horizontally across the property. So, that's one thing that has not been taken into consideration, and nothing in this document that I read.

The second thing was it's about 1,300 pages, I've been told, that I would like to have read,

but yet, I just found out about it's not in a public library, it has to be online, you have to know about it. And I didn't even know where the website is.

If you know anything about looking on websites, you can get -- can't find things forever. Finally I found the website, but I don't think the community even knows about it, where these things are found and that they're published and ready to go.

And with that, I think it's a travesty because people cannot really speak to the problems here and know exactly what's in that document. The document is too large to be considered in one or two or three, in this case, three hearings at 1,300 pages, it's not there. Thank you so much.

THE COURT: Thank you so much, Mr. Shey, appreciate your time and contributions. If you wouldn't mind joining us, please, and stating and spelling your name for our record.

MR. DAHLHEIMER: Dan Dahlheimer, D-a-h-l-h-e-i-m-e-r.

THE COURT: Mr. Dahlheimer, what should we know?

MR. DAHLHEIMER: I would like something added to the regulation rule that would indicate permitted use of the shore impact zone. I

brought this comment up at the last meeting that was held here and I don't see it addressed in anything.

I still have a question, can I store my boat, my dock, my boat lift and those types of things in the shore impact zone? Is that going to be a permitted use? I don't see anything in the homeowner's guide that addresses that. So, that's my comment on that particular subject.

THE COURT: Ms. Shillcox, is that Mr. Petrik or do you have any comment now on shore impact zones?

MR. PETRIK: Those sorts of --

THE COURT: If you could hand him the mic. Thank you. Mr. Petrik.

MR. PETRIK: Yes, I remember your question on this from two years ago and I apologize if we didn't follow up with you on that.

At that time I did check with some of our management on that and there aren't any restrictions on those sorts of activity in the shore impact zone, those are temporary uses for storage and things like that.

So, what we were talking about in the rules are more like permanent structures permeating pervious surfaces within the shore impact zone.

MR. DAHLHEIMER: Is it possible to have something that would clarify that for people so that it isn't ambiguous? Or is it referenced in some other standard that is referenced in the rule? But we don't have that text in front of us.

MR. PETRIK: I don't know anyplace where that is defined, so I understand your concern about the ambiguity of it. And it's a comment that we'll consider for this next --

MR. DAHLHEIMER: Appreciate it.

THE COURT: Mr. Dahlheimer.

MR. DAHLHEIMER: The other question I have, is a permit going to be required to repair an existing area of riprap? It sounds like to put in new riprap a permit would be required or to replace the riprap. How about repair?

I'm thinking a condition where I might have ice damage over the winter and I've got to roll a few rocks back in. Is that something I need to get a permit to do and go through the permitting process with the City?

THE COURT: Mr. Petrik?

MR. PETRIK: That's a good question. We write the rules from the standpoint of new installations. So, let's see here if I've overlooked

anything that would give us some clarity on that. Thank you, Suzanne. So, I think it depends on the size here.

THE COURT: Mr. Petrik, just for Mr. Dahlheimer's benefit, where are you reading from?

MR. PETRIK: It's on Page 54 of the rules, the proposed rules. I think it would be a local permit probably required, but I think it's fairly vague. If it's a small repair, it's hard to imagine -- that's a thing that lacks clarity. I'm not sure what to say on it.

MS. ENZLER: If I might, Your Honor, in the absence of clarity, here the Department's general rule on work in public waters would apply. And under that standard minor repairs do not require work in public waters permit.

Whether or not a local unit of government might also require a permit, I do not know. But in the absence of some specificity here, our general work in public waters rules would apply. In that case minor repairs do not require --

MR. DAHLHEIMER: Is that included in a rule by reference, that particular document?

MS. ENZLER: Yes.

MR. DAHLHEIMER: Thank you.

THE COURT: Thank you so much,

Mr. Dahlheimer, I appreciate your time and contributions to our record. Ma'am, if you wouldn't mind joining us. If you wouldn't mind stating and spelling your name for our record.

MS. SHEY: My name is Karen Shey, K-a-r-e-n, S-h-e-y.

THE COURT: Ms. Shey, what should we know?

MS. SHEY: I look at this as the seat belt law in Minnesota. I'm an old lady, cars didn't use to have seat belts and they put them in for safety. You didn't have to use them. You didn't have to use a seat belt, it was there for your safety if you wanted to.

And then it became kind of a requirement, but don't worry, we'll never stop a car if someone is not seat belted in. We might give you a little ticket if they aren't.

But eventually it got to the point where seat belts were required. You could get a fine for not using them and you must use them. It's a lot of rules and regulations that change over time.

And this is what I see this as. You're putting in a bunch of little rules that aren't really clarified and you're changing over time and forcing this down our throat.

Originally the DNR was very happy to issue my husband and I a permit to put in a retaining wall for our small piece of property, which is a hundred feet. It's not thousands of feet, it's a hundred feet. So, is that small to you today? I know you're referring to a small repair. What's a small repair?

You have no definition of it. You are just throwing these things out there and saying this is what it is, just a little minor, it wouldn't take a requirement or anything like that.

The Corps of Engineers does not touch ours as far as where we're located on the Mississippi River because we're on a flood plain and we're under special laws because part of our property is under water on the Mississippi, it's above the Coon Rapids Dam.

But you're putting in all these rules and regulations that are not hard and fast, that have no real guidelines, that have no explanation.

To this day you can't tell us -- and that was a bugaboo of mine in that last report, can we keep our boat there. And no one could answer. And you didn't really answer it today. What's a small repair? We don't know. You'll come out with a repair later on.

The DNR originally gave permits for retaining walls and was very happy to do so as long as

they saw the specifications first. Now you have no specifications for any kind of retaining wall. Are you going to put the specifications in later as far as what you can and can't do?

Are you going to require us to change our shoreline? And what becomes a shoreline? Is it above water or under water? These are all things that have not truly been thought out. There's kind of some generalities and they sound wonderful because we're going to have this corridor.

And all of the sudden everybody is required to do is under the same way, but you haven't really figured out the rules yet. What is St. Paul compared to Minneapolis? What is Coon Rapids or Ramsey or something else different? What was required in 1970 as opposed to what's required in 2025?

Nobody knows and nobody has really thought it out. These are just generalities. And that's what I see this as. And I see them changing. And I don't really think at this point we can put in something like this to cover this whole area and cover all the existing things that are there without either tearing them down.

Are we going to tear down Fort Snelling because it's in the view of the critical

corridor? I don't know. This needs to be much more defined.

Either the land needs to be taken by eminent domain so it can be done as everybody wants and all the rules and regulations are set and standardized or it needs to be just plain swapped out and left at the local level.

I can't see this as having been thought out well enough, even though it's 1,300-plus pages in exhibits. I still don't see the definitions that are needed really to be there. They're still generalities. Thank you.

THE COURT: Thank you so much, Ms. Shey, I appreciate your time and contributions. Is there anyone who hasn't yet had an opportunity to share their remarks? Sir. If you wouldn't mind stating and spelling your name for our record.

MR. HARRIS: My name is Richard Harris, H-a-r-r-i-s. I live at 6200 Riverview Terrace, Fridley, Minnesota.

THE COURT: What should we know, Mr. Harris?

MR. HARRIS: I worked on the original setback ordinances some 30-odd years ago. Back then the Department of Waters came out with profiled drawings

showing bluff lines, structures. And I think if we did that, that would really help. A picture is worth a thousand words.

And trying to describe all of these regulations verbally gets to be cumbersome. And one of the problems that we ran into with Fridley was patios, decks, and so forth.

And I always felt that it would have been very helpful if we would have had some guidance with something in profile showing exactly what they recommended. Thank you.

THE COURT: Thank you so much, Mr. Harris, appreciate your time and your earlier service on the ordinances, very helpful. Anyone who hasn't yet been recognized that would like to give a set of remarks?

Mr. Tiedeken, I gave you the bum's rush a little while ago. I'm just wondering if you wanted to expand on your earlier thoughts, I wanted to recognize you first.

MR. TIEDEKEN: You might not want to give me the opportunity.

THE COURT: I do indeed, that's why I get paid the little bucks. So, if you wouldn't mind reintroducing yourself. You don't have to spell your

name, we have that.

MR. TIEDEKEN: Thank you. My name is Nick Tiedeken. I'd love to sit up here and go through the rule page by page, detail by detail, but I'm not going to do that.

THE COURT: And you have an opportunity in your written remarks to do just that.

MR. TIEDEKEN: I'll do that in the written remarks. One thing I did want to say was that support my recommendation to use the shoreland version of bluff, total bluff, top of bluff definitions was because the SONAR talks about the iconic bluffs that we have in Minnesota.

When I think of the iconic bluffs I think of the bluffs in Red Wing, the bluffs in Winona, the bluffs in the south metro. I do not think of the iconic bluffs of Brooklyn Park or the iconic bluffs of Anoka. So, I think in order to get more at what the real bluffs are, to go towards that definition would be a step for that.

And by the way, the bluffs in Winona and the bluffs in Red Wing are subject to that shoreland standard of 30 percent slope over a 50-foot distance. So, if it's good enough for them, why wouldn't it be good enough for the bluffs in Brooklyn Park?

In January an article came out in the Star Tribune, January 3, 2015, front page article on the National Park Service and John Anfinson who was the director of the Park Service in the Mississippi River area here.

And he made some remarks on bluffs, which I thought were most interesting. He said, "The Mississippi changes more here than at any other place along its course," Anfinson said.

It's a prairie river with banks and not bluffs until it drops 210 feet at St. Anthony Falls and becomes a tight canyon. So, I find it interesting that even the National Park Service doesn't recognize the bluffs in Brooklyn Park.

So, I'm hoping for some movement towards some relief for some of the severe restrictions for people who live on or near these bluffs. And you can do that through working on the definition, you can do that through allowing some wiggle room for homes in these areas.

You can do that through a number of other ways, too, with a little relaxation on the vegetation management criteria and the land disturbance criteria.

The shoreland ordinance actually

allows specifically in bluff impact zones up to ten cubic yards of grading and filling. If you can do that on the big bluffs in Red Wing and Winona, why can't we do that here? Why can't he get a little wiggle room for things like this? With that, I'll end it tonight. Thank you.

THE COURT: Thank you so much, Mr. Tiedeken, I appreciate your time and contributions to our record. Anyone else who hasn't had an opportunity to either speak once or twice and would like an opportunity to give additional remarks? Mr. Dimond.

MR. DIMOND: Thank you.

THE COURT: Mr. Dimond, what should we know?

MR. DIMOND: Thanks for the opportunity to speak again. There's a few more things I'd like to talk about. One is the current critical area regulations provide that you have park land dedication requirement or an equivalent cash in lieu of.

That dedication provision has been removed from these rules. It seems in a national park and an area of state, regional, and national significance we ought to retain that provision.

There's some discussion we can take it out because many of the communities have put in place

a dedication requirement. But I can speak, St. Paul, as an example, that much of the impetus to get that was because there was the requirement. And if you remove it, you'll have a pressure to reduce or eliminate it.

Also, I want to speak on the conservation protection area, the ten acres with shoreland parcels or 20 acres of -- that implies to 20 acres and larger, ten acres and larger of parcels. That's a fine provision and I think the intent is very good and all that, but it really doesn't provide dedication.

And in urban areas it really has very limited impact. In some areas it will be beneficial. In particular, if there is going to be that provision, I think that it should not just deal with areas of that scale that have the protected areas, but ones that can have the protected areas restored.

And I'll use the Ford site as an example. That site certainly would meet the size requirement, but there's been degradation of the streams and wetlands on there, so it wouldn't qualify for that. But those are areas where you certainly could restore those.

So, the principal is to set those sites -- in the critical area it's to protect and

enhance the resources throughout.

Structure setbacks, there's a requirement for setbacks, we talked a little bit about this the other day, but one of the things I'd like to highlight here is there's provisions, there's exemptions that are put into this setback provision that were not there in a critical area.

One of the prime examples of that is flood walls, that the exemption -- establishing an exemption means that you could put a flood wall right up to the river's edge.

This was hotly debated with the airport in St. Paul and the City agreed and the DNR agreed that it should be set back, that you need to maintain that green corridor for wildlife protection of the river, erosion, all those factors. If you put this provision in you would eliminate that protection that's been established and has been held up.

Some other things I'd like to touch on is the primary conservation areas. I think that list kind of got cut short. On that list there should also be islands. The critical areas specifically singles out islands for additional protection, wildlife preservation areas, because the critical areas talks about wildlife preservation and habitat.

Waterfalls, one of the unique features, we have the only waterfall on the Mississippi River, plus we also have the waterfalls along and they should be preserved.

And with that -- and then the other provision is the publicly owned parks, trails, and open space. It has a park and those are important areas to be preserving.

On the waterfall and the river, one of the things that is very sparse work on the actual resources themselves, for example, the river and lakes and streams, day line breaks ought to be a priority, ought to be included in here.

One of the things that haven't been discussed in planning for the river is the withdrawal of water from the river itself and the impacts of it. We're not to the Colorado stage, but also, Minnesota does not have quite the luxury we've had in the past about the volumes of water that we have in our reserve.

And that, the draw-downs from affecting -- just using the esthetics and the scenic beauty and the natural characteristics of the waterfall, it literally gets drawn down to a trickle at times. And we need to be looking at how we protect those resources.

I won't get into the explanation on

what I think, but it's also important in the definition that we include the native plant definition in there and that the native plant communities, and I've got it in writing so I won't go into it, but I think there's needs to be a broader definition of what's native plant communities.

Because the way it's drafted now, you could actually go there and know that there's resources that are being protected, but they wouldn't count because they don't fit in the specific categorization that's in there.

So, we need to be able to provide a broader identification of those plant communities. So, with that, I thank you for the opportunity to speak.

THE COURT: Thank you so much, Mr. Dimond, I appreciate your time and contributions. Anyone who would like to be recognized for remarks? Sir, if you wouldn't mind joining us here. If you can state and spell your name for our record.

MR. WOLENS: My name is Richard Wolens, W-o-l-e-n-s. I live in the city of Ramsey.

THE COURT: Mr. Wolens, what should we know?

MR. WOLENS: There's two issues that have some concerns and I don't know if they've been

addressed. First of all, can we mine rocks out of the river to stabilize our shore lines?

I live in the hourglass effect on the Mississippi River. And I put large boulders to stabilize my shoreline. I lost about ten feet in the first five, six years I lived on the river. I've lived on the river for approximately 30 years.

And by putting these huge boulders in there I stabilized my shoreline pretty well. Now, these are not riprap, these are large boulders.

I also noticed when the river is extremely low there's a lot of large boulders out there. Can we mine those to put those back onto the river bank?

The other issue is, I've noticed going on the lower river below Memphis and down in that area, the Army Corps of Engineers have used extensive amount of river control. And what they've done is they've used wing dams.

Wing dams are small little areas of rock below the water line that actually control and divert the river to the center of the normal path of the river. At that point you stabilize the river bank and you create a deeper V within the Mississippi River itself.

It's used extensively on the lower

river for tugboats and so on and commercial applications. I was wondering if anyone had looked at that in order to try to control the river flow and to stabilize the river banks and also to stabilize flooding.

When flooding does occur, which it will, there's ways to control this. And I think that's an issue that has never been addressed, I've never heard it before. And maybe we can learn something from our friends in the lower river. Thank you very much, Your Honor.

THE COURT: Thank you so much, Mr. Wolens. Counselor, did you want to make a reply about mining rocks from the river?

MS. ENZLER: Yes, Your Honor. So, what actually occurs within the bed of the Mississippi River is not intended to be governed by these rules, that activity is governed -- so, mining or taking something out of the bed of the water is governed, first of all, by our statute and law regarding work in public waters.

So, you would need to request a permit from the Department of Natural Resources. So, that's the first issue. Secondly, because this is a federally navigable water, there can be no change in the

river bed, including the removal of major materials without a Corps of Engineers permit.

Likewise, we cannot -- even the State cannot even put dams or materials into the river bed without consultation with the Corps of Engineers.

I know we work very closely with the Corps in terms of our flood control projects to assure or to manage what happens in the river to manage both flooding and for navigation.

Finally, there are additional restrictions in terms of what occurs within the river itself and the river bed that are imposed because this is a national park.

And so, there are federal regulations that restrict what actually happens within the river itself and the river bed outside these rules. So, these rules were not intended to address those particular issues.

They do address the riprap and where the shoreline intersects with the river, but beyond that there is not an intent on the part of these rules to address those issues, they're governed by separate state and federal laws.

THE COURT: Mr. Wolens, any further thoughts or inquiries on that?

MR. WOLENS: The only issue that I have, I guess, is that everybody has rules and regulations and jurisdiction over my property. And where does it stop? Am I grandfathered in with my existing properties?

Do I have to tear my building down? Do I have to not mow my grass down to the river? Do I have to chop trees down? Am I grandfathered in? What rights do I have?

THE COURT: Ms. Enzler?

MS. ENZLER: So, I would just say, Mr. Wolens, that these proposed rules govern activity on the property. But the actual riverbed and the waters of the river are public property and public assets belonging both to the citizens of the state of Minnesota as well as the citizens of the nation. So, I would just note that distinction.

Otherwise, these rules are governed by the state land use or fall within the land use categories of rules and statutes adopted by both the legislature and by rules upon a proper delegation from the legislature.

MR. WOLENS: Wow.

MR. PETRIK: Mr. Wolens, you asked about your property and are things grandfathered in or

how do you maintain the vegetation. The rules do allow for you to maintain your property as it is right now in terms of the types of vegetation you have, whether it's all lawn or something other than that.

That's under our nonconforming component, but it does talk to sort of a whole slew of other sort of site characteristics, including vegetations and the yard and that sort of thing. So, those sorts of things you can continue to use those as you have.

MR. WOLENS: Thank you very much. Thank you, Your Honor, I appreciate the opportunity.

THE COURT: We've benefited from your time and contributions to our record. Thank you. Any additional remarks or testimony? Sir, if you wouldn't mind joining us and stating and spelling your name for our record.

MR. BAINES: My name is Doug Baines, B-a-i-n-e-s, I live in Dayton, Minnesota.

THE COURT: Mr. Baines, what should we know?

MR. BAINES: I was just hoping that we still had -- we worked many years ago on making sure that the old town of Dayton was properly protected to allow us to develop that area downtown with some taller

buildings.

And I was under the impression that we were successful in doing that. And I just wanted to make sure that we still have that provision and that we can build taller structures very, very close to the old town area.

THE COURT: I think that they're deciding who to phone when they phone a friend. Ms. Shillcox.

MS. SHILLCOX: I get to answer, unless they wrestle the microphone away from me. You're talking about right at the confluence of the north fork of the old historic --

MR. BAINES: That's the old town, yes.

MS. SHILLCOX: All right. So, I can't recall right off the top of my head, but I would suggest that we do have these two exhibits right behind me. And that's right at the very top end. The property you're talking about, if I remember correctly, is right at the top end of the corridor.

MR. BAINES: Correct.

MS. SHILLCOX: So, I do believe we assigned that as a river towns and crossings district to allow for those taller heights. But what I recommend is

that we take a look at the maps during recess and make sure.

MR. BAINES: That's all I needed.

THE COURT: Thank you so much, Mr. Baines. Any further comments? Is it Mr. Freeburg?

MR. FREEBURG: Mr. Freeburg.

THE COURT: As Mr. Freeburg is making his way is there anybody else? We're getting close to our Ms. Menth break and I'm wondering whether we should go a little longer on her hands or if there's a reason to take a break.

Can I just get a show of hands? Councilman Weaver. Anyone else? And you, sir, so the two gentlemen here, so we have three. So, what I'm going to do is we're going to hear from Mr. Freeburg and then we'll take a short recess.

With Councilman Weaver talking, you won't want to miss it. So, we're going to have a short recess and then have everyone come back because that will be something worth hearing.

Mr. Freeburg, if you wouldn't mind introducing yourself again.

MR. FREEBURG: Yes, John Freeburg, resident of Ramsey.

THE COURT: What should we know?

MR. FREEBURG: I had mentioned to you in my first presentation here that over the last 30 or 40 years something has changed on the river that wasn't happening before.

And again, I've talked to a number of residents who say, "I've lost all kinds of land here and it's been recent." What is this about? So, I have taken it upon myself to do a little research.

Living on the river I have access, I can go down there. And this year it got cold early in January, got to about 20 below zero. That's when the ice forms. And the ice forms in chunks.

And after the ice forms, the next day I went down to the river and the river level was up four feet from what it was the day before. And it didn't snow that much. So, I'm assuming that somewhere downstream there was a plug. And I believe it was at the Coon Rapids Dam where these ice chunks had built up. And again, overnight the level of the river came up four feet.

Once it comes up at 20 below zero, now it freezes solid. And, of course, anybody who lives on the river knows that there is an undercut on the bank up about four feet. So, I went down on my land and on my neighbor's land and looked.

And sure enough, the water had gone into that undercut, froze. And then a few days later it warms up. For whatever reason, again, I believe it's now the plug at the dam down there, melts and the river level drops.

So, what you have then is you've got this chunk of ice, this shelf of ice stuck to the shoreline, now no support. It levers up and rips up everything that's underneath it. I've got, again, a fairly well-established riprap shoreline.

And when that chunk of ice came up, it was pulling up 50-pound rocks. And I've seen it where then it will come up again, it will float that ice and haul away the rocks.

So, this talks to what the gentleman talked about, we need repair abilities. Because once you put in riprap doesn't mean it's going to stay there.

Also, I had the DNR recommend to my neighbors that they put in some kind of dead trees and grow willow trees down there. The effect is going to be that that ice chunk is going to grab onto those trees, rip them out and we're going to start all over again.

The only effective method to hold that shoreline in place is the riprap. Again, we're talking about 5,000 tons that Ramsey is contributing as

silt. Now, that's pollution. We're polluting the people's water. Why don't we do something about stopping that level of pollution?

I did also mention that I had the city council come and hold a special session at my house. I have the minutes from that meeting and my comments and whatnot that are on here.

I have prepared five copies, I would like to give them to the panel here so they can have them for their record. And that will be my contribution to the written record.

THE COURT: I would like at least one of them, but the panel can certainly grab any remaining ones, but I would like to mark that as an exhibit, if you wouldn't mind.

MR. FREEBURG: Would you like one, Your Honor?

THE COURT: Very much so. So, we're at Exhibit 23. And, Mr. Freeburg, what should we know?

MR. FREEBURG: One other thing, Your Honor, what I have observed, again, from living on the river for as long as I have that, again, during the last 30 or 40 years something has changed.

And I'm proposing that the thing that's changed is we have two power plants dumping in

coolant water into the river that we didn't have 40 years ago. And I'm somewhat familiar with nuclear power. And believe you me, a lot of waste water comes out at a high temperature.

And I believe that has changed the standard or the average temperature of the river water, so that, what was normal 40 years ago is not normal now. That's why we're having this flooding problem, the clumping of the ice, the plugging up of the dam. And so, something has changed here.

I would like the DNR to investigate this to see if my proposal here is worthy of further study. But again, something -- and everybody I talk to basically says the same thing, something has changed over the last 30 or 40 years.

I'm proposing it's the average temperature of the river has gone up and that has changed the way the river normally operates.

THE COURT: Thank you so much, Mr. Freeburg. Mindful that we're at our 90-minute point. Councilman, if you wouldn't mind being in this seat at 6:15. We're going to take a short recess. You won't want to miss it, don't go far. We're in recess.

(At this time a brief recess was taken from 6:00 p.m. until 6:15 p.m.)

THE COURT: We're back on the record after a short recess. Councilman, if you wouldn't mind introducing yourself for our record.

MR. WEAVER: My name is Jeff Weaver, W-e-a-v-e-r, Anoka, Minnesota, Anoka City Council.

THE COURT: What should we know?

MR. WEAVER: First of all, I want to just follow up on John Freeburg's comments about the change of river and the different types of ice. And without question he's absolutely correct. I've been on the river 55 years.

There was a time before the power plants when we could ice skate, we could do all kinds of snowmobiling, all kinds of winter activities. The river pool froze over like a lake would and would stay frozen all winter and would melt in the spring.

Now you get these snow cone effects, frazzled ice that coagulate in the severe cold weather, they bunch up, they form ice dams and the water rising rapidly and causes a lot of shoreline erosion.

I wish you would look at it. I do believe the power plants have changed the ambient temperature of the river during those winter months. Because you can have solid ice when it's 20 below, but if it gets up to zero, it will open up in a day. That's

not normal.

And there's an influence, an outside influence that's influencing that river, the ice and the damage that it is creating. And they should be held responsible for the damage they're doing downstream to all these property owners, period.

The second thing I'd like to say is two years ago when we sat in this room, this place was packed to the rafters. And we didn't need a judge, we needed a referee and a cop, it was very contentious.

The DNR was more like dam near Russia and people did not trust the DNR. They still don't, but you've listened. Jennifer, you've listened. Dan, you've listened.

When the commissioner was here we challenged the commissioner to come out to Anoka and go for a boat ride. He accepted and he did and he came out.

And we spent a half a day with the commissioner and some legislators and we boated the river and we looked at people's concerns from Brooklyn Park and Coon Rapids and Ramsey. We were all over the water. I think, Dan, you were with us. Jennifer, did you come that day?

MS. SHILLCOX: I wasn't able to,

unfortunately.

MR. WEAVER: There was a great representation. And people saw the concerns. When we first started this process, they were talking about doing bank stabilization with roots. That doesn't work. Rocks work. We need to armor the bank, not roots.

So, they listened, they actually did listen. But when you listen to people like Nick Tiedeken, his points are spot on. There are no iconic bluffs in Brooklyn Center, Anoka or Champlin.

When you listen to Mr. Dahlheimer, Dan, you said that you can have that temporary storage, but that's your interpretation. What happens when you're not there and the next guy comes to interpret it? All these rules are open to interpretation. So, clarifying them the best we can is what we really want.

But I want to thank you for listening because it's been a very contentious, it's been a long process. It failed once. And it's been through two governors and through two commissioners. And where we are today is a long way from where we started, what, seven, eight years ago.

MS. SHILLCOX: 2009.

MR. WEAVER: It's been a long time. So, I want to thank you for listening. We've got some

more refining to do and I know Judge Lipman will make sure that we come out with a really good product. Thank you very much.

THE COURT: Thank you kindly, Councilman, appreciate your time and contributions to our record. Mr. Baumann. And is there anyone who would like to follow Mr. Baumann? I'll ask again. Ma'am, you'll be following directly Mr. Baumann.

Mr. Baumann, if you could state and spell your name for our record.

MR. BAUMANN: Jeff Baumann, B-a-u-m-a-n-n, first name J-e-f-f. I live in Coon Rapids on the river. And just some thoughts I had here as I'm listening to people.

The nuclear power plant certainly is making a difference, so please do look into that. I have a proposed definition of minor repairs. My definition would include explicitly any repair that doesn't require you to hire somebody or use power equipment.

If you're doing it with your own physical labor hauling rock, that should be okay, there should be no restriction on that at all.

I think a lot of homeowners are concerned about the possibility of penalties if they do

something wrong, either financial penalties or the risk of having to tear out something they've done. So, I would like some reassurance that that will not happen.

I will say, my observation, I'm two miles above the dam. The weights from the boats, I think, are probably as much as anything responsible for erosion. Rocks do protect, roots don't protect, clearly.

And also, the change in the winter height, they used to drop the river to keep the invasion carp out, they have now kept it the same height winter and summer. I think that's had a lot to do with it as well.

One other final thought, in the last three or four years there has been a flurry of new armor plating retaining walls being put up.

And I think that is people basically saying we don't trust what's going to happen, we're going to get this stuff in now, get it grandfathered, which I think is basically saying that they don't necessarily have the consent of the government. So, please keep that in mind. That's all.

THE COURT: Thank you so much, Mr. Baumann, appreciate your time and contribution. Ma'am? If you wouldn't mind stating and spelling your

name for our record.

MS. SHERMAN: My name is Cindy, C-i-n-d-y, last name Sherman, S-h-e-r-m-a-n.

THE COURT: What should we know, Ms. Sherman?

MS. SHERMAN: I'm the planning director of the City of Brooklyn Park and I wanted to first start by dating back to the original working group I've been involved in the process. And it did start out rather rocky, but I think it's come a long way.

I want to thank the DNR for all their hard work and commitment to work with the communities and residents and the landowners along the river. I'm sure we will be able to develop ordinance language that meets the intent of the rules and honors the concerns of our property owners. Thank you.

THE COURT: Thank you so much, Ms. Sherman, appreciate your time and contributions. Any additional comments? Any additional comments? Seeing none, I have a number of advertisements, I don't want you to leave just yet.

The important advertisements are, we're having a 20 calendar day comment period that closes precisely at 4:30, as measured by the clock on my computer in St. Paul, 4:30 p.m. on Wednesday, July 6,

2016. 4:30 p.m. on Wednesday, July 6, 2016 by fax, by mail delivery, but obviously it has to reach us by that date by delivery to the front desk in St. Paul on Robert Street or 24 by 7 on our E-comment system.

But at 4:31 the staff are going to swoop in and change that and then it becomes the rebuttal period for five working days, which ends precisely at 4:30 p.m. on Wednesday, July 13, 2016.

Whether you've been a part of the public hearing process tonight, and we've heard from a number of very thoughtful and insightful witnesses who contributed greatly to our record, you don't necessarily have to have been here in this room or in any of the hearings to participate, as I mentioned before.

If there's folks in your church group or neighbors on the river, folks involved in any of your civic organizations, encourage them to write in, obviously. We have this comment period going and we would benefit from their help in sorting out these very important issues.

Also, tomorrow for folks who can participate and/or folks who might be in or around Minneapolis, we're going to be having a meeting tomorrow, public hearing just like this that starts at 10:00 a.m. at the Mississippi Watershed Management

Organization on Marshall Avenue Northeast in the city of Minneapolis.

And we have details -- direct details and it's also in the notice, if you are able to attend in that. I appreciate, again, everyone's thoughtful contributions, courtesies to each other, the witnesses that were behind you, the courtesies to me, you have my very grateful thanks. And we're adjourned.

(Hearing adjourned at 6:30 p.m.)

REPORTER'S CERTIFICATE

I, MARCIA L. MENTH, do hereby certify that I recorded in stenotype the hearing on the foregoing matter on the 15th day of June, 2016 at Anoka, Minnesota;

That I was then and there a Notary Public in and for the County of Wright, State of Minnesota;

I further certify that thereafter and on that same date I transcribed into typewriting under my direction the foregoing transcript of said recorded hearing, which transcript consists of the typewritten pages 78 through 156;

I further certify that said hearing transcript is true and correct to the best of my ability.

WITNESS MY HAND AND SEAL this the 22nd day of June, 2016.

_____

MARCIA L. MENTH
Court Reporter

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STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Rules Relating to the Mississippi River Corridor Critical Area

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VOLUME III

The above-entitled matter came on for Public Hearing before Eric L. Lipman, Administrative Law Judge, taken before Susan M. Strom, a Notary Public in and for the County of Dakota, State of Minnesota, taken on the 16th day of June, 2016, at the Mississippi Watershed Management Organization, 2522 Marshall Street NE, Minneapolis, Minnesota, commencing at approximately 10:00 a.m.

A P P E A R A N C E S

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The Original is in the possession of Administrative Law Judge Eric L. Lipman

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P R O C E E D I N G S

THE JUDGE: Good morning. My name is Eric Lipman. I'm an Administrative Law Judge with the Minnesota Office of Administrative Hearings. We are here for a public hearing In the Matter of the Proposed Rules of the Minnesota Department of Natural Resources Relating to Mississippi River Corridor Critical Areas. It's otherwise known as OAH Docket No. 8-9014-33236. It has also been denominated as Revisor No. R-4240. And I will talk a little bit more about the significance of those numbers in a few moments.

The Office of Administrative Hearings is independent of the Minnesota Department of Natural Resources and the stakeholder groups that are going to be participating in today's hearing. Our Office's purpose is to provide hearing services in rulemaking cases and in other contested cases between citizens and government agencies hopefully in a way that's fair to all the parties.

My presence here, my role here this morning is part of a series of larger regulatory controls under the Administrative Procedures Act; among them, Minnesota Statutes 14.14 and 14.15. The Legislature wanted to guarantee that rulemaking hearings, the development of administrative rules is done in a way that's fair and open and transparent and accessible to members of the public for reasons detailed at

the very beginning of the Administrative Procedures Act. The Legislature's expectation is is that if we are open and accessible we access the wisdom of the group, the best thinking. It's not just a few folks either in state agencies or elites in St. Paul who's developing these procedures, but rather there are many eyes and many hands that take part in this work, and with the expectation that the substantive results of that process will actually be, in fact, better than if there were a small number of people participating in the process.

From the feedback that we have had in the two prior hearings, apparently there has been some success in that regard. Not only in this case, but I think it's certainly true as a more general proposition and notwithstanding the complexity or the many procedural steps that we take in order to promulgate rules in the way that we do that the substantive results are, in fact, better when we have many hands, many eyes, many sets of expertise contributing to the development of the rules.

There is a handout at the table, the registration table near the door which details the procedures under the Minnesota Procedures Act and very helpful sets of detail about how you can effectively participate in the process. I'm going to be talking about a few of those in my introduction this morning, but there is much more detail in

the handout. And so I encourage folks if you haven't gotten one of these to make sure that you have one and you can, of course, read that at your leisure. But it also has vital contact information with respect to the commentary. So, that's especially important.

This hearing is part of a set of regulatory processes under the Minnesota Administrative Procedures Act. And while many times stakeholders have lots of different kinds of purposes and audiences that they are speaking to when they make remarks here, not only to the administrative law judge, but sometimes to the agency, sometimes to legislators, sometimes to the governor, sometimes to history and the ages, but this process is designed around three key points. And I will make reference to them.

This process is part of an exploration of three key ideas: Whether the agency has the statutory authority to promulgate the proposed rules. Whether the legislature has given them the authority to make administrative rules on these topics. second, whether the agency has fulfilled all of the legal and procedural requirements in chapter 14 and in Minnesota Rules part 1400. And there are a number of steps that are involved in that in promulgating these rules. And, thirdly, whether of the possible choices that the agency might have if it had the statutory authority and followed all the procedural rules to promulgate the rules whether the ones

selected by the DNR are needed and reasonable. Okay. So, the question is whether they have the statutory authority, whether they followed all of the procedural steps to promulgate the rules, and whether their particular choices that are in Revisor draft 4240 are needed and reasonable.

The agenda for today's hearing after I complete the overview, introduction about our process today, we will have a presentation from the Agency panel. It has already submitted into the record its key exhibits. We are going to have some excerpts from that in a PowerPoint or a slide presentation from the Agency. But copies of these exhibits, and I think there are five or six of these binders, are on a table near the registration table, if anyone wants to spend some additional time paging through them. Like I say, there is a table, we have chairs, we are glad for folks to access these exhibits, and you are still within earshot, but here we are going to go and do what is the main event which is to undertake testimony on those items.

The good news is is that all of these items have been posted online. They are available through the Internet either at your house, if you have an Internet connection, if you are lucky enough to do that, or at the public library. And so 24 by 7, or at least until library hours close, you can have access and spend as much time as you would like with these materials. And that will be important for the 20-day

comment period which will follow the conclusion of today's hearing. So let me talk about that.

Following this hearing, there will be a 20 calendar day comment period that closes at precisely 4:30, precisely 4:30 on Wednesday, July 6, 2016. That is the Wednesday following the Independence Day holiday. Then all of those materials will be available online and commentators who contributed or didn't contribute to the first round of submissions can make any kind of rebuttal. It's not a time for introducing new items, but it's for an opportunity for stakeholders to comment on what's already been said. And that will go for five business days following Wednesday, July 6th and will close at precisely 4:30 on Wednesday the 13th of July, 2016. Wednesday, July 13, 2016.

We have our electronic rulemaking comment system, so if you are adept at typing and prefer to do these materials online at OAH, and the handout details how you can access the rulemaking comment item, there are just a few of the items there, it's easily identifiable, you can put in your comments and even have iterative discussions with other stakeholders. And all of those materials that are generated through the first deadline, July 6, 2016, will be assessed during the first round and they will be open for comment in a slightly different docket but on the same website for the rebuttal period which will be through Wednesday, July 13, 2016.

If you are sending in materials by fax or by hand delivery or by first class mail, again, for arrival before July 6, it's very handy if you use the two numbers that I mentioned earlier. For OAH the Docket number is 8-9014-33236. And everyone in state government is using the Revisor number, not only from the agency to legislators to our office to the Governor's office, if you are in communication with them. They are all using the Revisor No. R-4240. So, that's a unique identifier for this set of proposals and is very handy if you include that on there.

After the passage of the second deadline, I will prepare a report examining those three questions that I mentioned earlier: The statutory authority, the compliance by the agency with the various procedural rules, and also whether the specific rules that they have proposed are needed and reasonable. And that report will be available roughly 30 days, depending upon what happens in the report, after July 13th. So, on or around August 12th. Okay. For reasons which are particular to the Administrative Procedure Act, it might not be exactly 30 days because of some requirements there, but you should be in touch with us. If you marked on the hearing register that you want to receive notice of the ALJ's report, and you can always annotate the register later, we will be in touch with you about the availability of the report.

With respect to today what I would like to do, again, because the entire process is oriented around hearing from as many voices as possible and drawing upon as much and as wide a diaspora of expertise as we can, is to have a first round of testimony that's roughly where stakeholders are testifying roughly for five minutes. Okay? And that is particularly because there is a brilliant, insightful, needed important comment. The bad news is in line behind you. Okay? And so we don't want any one stakeholder to sort of run down the clock on these presentations. So, what I would like to do is have folks testify for about five minutes during the first round. And then because there are actually stakeholders who wanted to speak longer than that, both the Friends of the Mississippi River and Mr. Dimond have asked for -- they are glad to yield to other stakeholders, have asked for additional time after we have at least completed a first round. And I'm open to that. Because, again, I don't want to hem anyone in unnecessarily. But if there hasn't been a person who has had an opportunity to speak at least once, and both Mr. Dimond and Friends of the Mississippi have made presentations at the other hearings we have had, I certainly want to put those folks up earlier in the line.

So, I think -- actually, I did forget one important point. Because we are here with Ms. Strom and we have set up the tables so as really to have a conversation that's

neighbor to neighbor much like we were at the local cafe or at the library board or the city council meeting. So, we are asking folks so that they can be heard and understood is to come down and join us at one of the tables here to make remarks. Also, because it's close to Ms. Strom our Court Reporter, she can communicate easily with whoever is testifying if she has missed something or if somebody is moving too fast she can intervene and interrupt. And, also, because we are bound by the strict requirements of the international convention on the humane and decent treatment of court reporters, we break every 90 minutes. So as not to burn out her hands or her resources, we make sure that we do that. And so, roughly, we will be going until about 11:30 and have a standing break and then as necessary we will proceed through the day in 90-minute slots.

And so with that, all of you have my grateful thanks for coming out this morning. And I'm going to recognize you, Ms. Enzler, to begin the Agency's presentation. Ms. Enzler.

MS. ENZLER: Thank you, Your Honor. My name is Sherry Enzler, S-h-e-r-r-y E-n-z-l-e-r. I'm the general counsel for the Department of Natural Resources and I'm representing the Department here today. I want to introduce the Agency panel today. On my right, we have Jennifer Shillcox. Ms. Shillcox is the supervisor of our land use program unit. She oversees the shoreland programs.

She oversees the critical area program. She has been involved with the Critical Area rule since 2009. Prior to coming to DNR, she has had very extensive land use planning experience both with communities in Minnesota and in Wisconsin and has been intimately involved with shoreland issues particularly in sensitive areas such as the lower St. Croix.

Daniel Petrik, who is on my left, heads the State's shoreland program. He works with Ms. Shillcox. And this includes the Critical Area. He has been involved with the Critical Area Rule since 2012. He has lead the Critical Rule team. He, like Ms. Shillcox, has extensive experience before coming to the Department of Natural Resources working with local units of government on zoning and planning and he has extensive experience in civic engagement.

Ms. Suzanne Rhees, who is at the end of the table here, she currently works in our water permitting unit, but before going there, she left there very recently, was a critical player on our Critical Area rules. She has headed up the floodplain program. And prior to coming to DNR she, too, had extensive experience working with local units of government doing both land use and land use planning and zoning.

So, with that, I'm going to turn the mike over to Ms. Jennifer Shillcox. She will make a much abbreviated

opening statement. The opening statement is -- the full opening statement is in writing and has been entered into the administrative record as Exhibit 11, and so to get to the comments we are going to just ask Ms. Shillcox to do a very high-level overview for you.

MS. SHILLCOX: Hi, my name is Jennifer Shillcox. That's spelled J-e-n-n-i-f-e-r S-h-i-l-l-c-o-x. I'm very proud to be here today talking about the rules for the Mississippi River Critical Area. As Sherry mentioned, I've been supervising the land use programs unit for a while at the DNR and have been involved with the Critical Area program and this rulemaking since the -- well, I have been involved with the program since I first came to the DNR in 2008 and involved with this rulemaking since it first began in 2009. And it's been a long road to get here. We have had some bumps along the way, but we have learned a lot and we are really happy to be at this point in the process.

As Sherry mentioned, our full opening statement is in Exhibit 11 of the binders in the back and also online. What I'm going to focus on today is the public participation in developing the rules and then key highlights of the rules, particularly what's changed from the regulations that are currently in place and that have been in place for the last 35 years that are contained in Executive Order 79-19 which designated the Critical Area. I will not be referring to the

full name of the Mississippi River Corridor Critical Area. So, I will be referring to it as the Corridor or Critical Area.

So, it took a lot of input from many different people to get at the proposed rules that we are hearing today. And the proposed rules are better for it. We had a very, very extensive public involvement process. One of the DNR's most intensive processes and one that is not very typical for our rulemaking. So, we are pretty proud of that. This rule affects a lot of people and a lot of interests, so we heavily relied on the experience and knowledge of local governments, interest groups and the property owners who live on the river, who own businesses on the river. We valued and paid attention to their knowledge and perspectives and we knew that people had a lot of concerns and were very passionate going into this rulemaking and throughout the rulemaking and it was very important for us to understand what those concerns were and make sure that we address them appropriately.

So, what we did was somewhat of an iterative process where we shared multiple drafts of the rules and we got input along the way, we tweaked the rules and we put different drafts and put them back out. So, we wanted to make sure again that as we were putting the rule language together we were addressing the main issues and concerns. And we felt

that we did a pretty good job of that. It doesn't mean that everybody is going to be happy with every provision in the rules, because there are a lot of diverse interests and values and perspectives along the river. We really had to balance those and there was a lot of compromise. But the resulting rule package does reflect the input of all the folks who are going to be affected by the rules. And we believe that the resulting package is balanced, fair and improves on existing regulations.

So, the Statement of Need and Reasonableness which is also referred to as the SONAR, it's I believe Exhibit 3 in the binders. It's been on our website for a long time if you haven't seen it. That explains our rationale for each provision of the rules. And I'm not going to go into those in detail. So, if you are interested in knowing or haven't looked already, that's where you look to see what were we thinking when we decided on various provisions. What I'm going to touch on are just the highlights of key changes from Executive Order 79-19. And that was really to address issues that came up through the rulemaking process.

So, first off was clarity on contents of local plans and ordinances. So, currently the Critical Area program is implemented through local government plans and ordinances. But there is a lot of variation in those and it's not always clear what needs to be contained, so we clarified the

contents of plans and ordinances and we also clarified rules and responsibilities of all agencies and local governments as well as the procedures.

Flexibility was a concept that really came out strongly with this program. There is a lot of development in place in the corridor, conditions vary from community to community and just along different stretches of the corridor there are different development patterns, different resources, different characteristics. So, we built in a mechanism for flexibility whereby a local government could propose an ordinance that varies from standards in the rules, provided that they are still offering the same level of protection of the resources that are at stake.

Bluffs was a very big issue in the corridor. Currently under Executive Order 79-19 18 percent slopes are regulated, but bluffs are not clearly defined. The term "bluffline" is defined, but bluffs are not clearly defined. And what we heard from a lot of local governments was that it was often confusing. They would get calls from property owners or get development requests wanting to know where is the bluff on the property or where do we need to place our setbacks or what are the restrictions and it wasn't always clear. So, we clarified the definition. And -- Dan already beat me to it. Or Sherry did. Thanks. This Exhibit 12 is actually contained in the rules, but what we did was we

defined three parameters for defining bluffs. So it's basically height, width and percent slope. And those parameters we are able to plug into a mapping tool that we developed using LiDAR. Which is fancy talk for some really good topo. And we were able to map areas to evaluate different definitions or parameters to see if we were capturing what local governments are already defining and regulating as bluffs and what people commonly think of as bluffs. And we kept the 18 percent as the main factor. So, the bluff mapping tool is something that we actually used to engage local governments that were really concerned and have a lot of bluff land just to evaluate all the different definitions. And this is the one that we landed on that made sense. It captured those features that are most sensitive to development while also minimizing non-conformities. That was another big issue.

Currently in the rule -- or in the Executive Order 79-19 there are four land use districts. And those were established in the mid '70s when the Corridor was first designated and they reflect land use at that time. But a lot has changed in the last 35 years. And so in the proposed rules we proposed six districts to replace the existing four. And those six districts better reflect existing as well as planned future development which was very -- which was laid out to be clearly in the statutes guiding this rulemaking.

One other thing to mention about the districts is that there are certain standards that vary by district. And those are setbacks from the river and bluffs and height. So, height was also a very big issue in the Corridor in some areas more than others. Particularly, we are talking about building heights.

So, in those four districts we were better able to assign heights that matched the development that was there as well as plan future development. And in two of the districts we have provided for additional height through a local conditional use permit process which would allow the public engagement in making final decisions on which height is appropriate.

Vegetation management was another issue that emerged particularly for local governments. There are some vegetation requirements in the Executive Order and in local ordinances currently but they are very vague. Property owners don't often know what they can or can't do on their property in terms of vegetation. So, we really tried to clarify that and clarify where the vegetation requirements apply. It's really just in very sensitive areas. Actually, we can pull up that figure, too.

So, it's in sensitive areas along the water known as the shore impact zone. It's in the bluff impact zone, the sensitive area around bluffs. And, also, where there are

existing plant communities that have been identified by the local government in their Critical Area plan.

And how that vegetation is regulated is that basically intensive vegetation clearing, the clearing of all vegetation in a contiguous strip, row or block is prohibited except for some circumstances where it can be allowed with a local permit. And that was some feedback we got from local governments that permitting would at least give property owners an opportunity to come in and talk to local governments about what they can and can't do and the right way to do it so they are not putting those sensitive areas at risk.

Land alteration was another issue that we tried to clarify in the proposed rules. So, land alterations that -- really any disturbance and movement of land. It encompasses erosion and sediment control, storm water management and also riprap. That was a big issue for property owners particularly in the northern part of the Corridor where erosion is a very big issue on private property. So, we did clarify those standards. Again, they apply in the most sensitive areas and generally involve a local permit for many of the activities.

And subdivisions and land development were another issue that we tried to clarify in the proposed rules. The rules established thresholds and percentages for protecting

sensitive Corridor resources. Which are referred to in the rules as primary conservation areas. And the percentages are to be set aside for protection for all new subdivisions, planned unit developments or large master plan developments.

The set-asides, one thing to just make sure everyone is aware of, is that they are not required for river dependent uses and that local governments can include land that they would already require for dedication as part of that set-aside area.

And, finally, the other very big issue was nonconformities. There is a lot of existing development in the Corridor and people were very concerned that if their development, their homes or businesses didn't conform to any provisions in the rules, that they would be able to continue and in some cases expand. And so we clarified provisions that apply to nonconforming structures and lots and essentially reflect what's in statute. We also provided for expansion in some circumstances that's consistent with how many local governments particularly in the northern part of the Corridor are currently regulating nonconforming structures.

So, that concludes the DNR's opening statement. We really look forward to hearing your comments today and thank you all for coming. We are glad you are here.

THE JUDGE: Thank you so much,

Ms. Shillcox. Appreciate your time and contributions.

Our first witness will be Senator Sieben of District 54. And following her will be Shirley Erstad of the Friends of the Parks.

So, Senator, welcome. If you wouldn't mind stating and spelling your name for our record.

SENATOR SIEBEN: My pleasure. Thank you, Judge Lipman, very much. My name is Katie, K-a-t-i-e, Sieben, S-i-e-b-e-n. As the Judge stated, I am a state senator. I represent the southern most area of the Critical Area which includes the communities of Cottage Grove, Hastings, Newport, St. Paul Park and Grey Cloud Island Township in the Minnesota Senate.

Thank you for considering my comments on the DNR's proposed rules for the Mississippi River Corridor Critical Area. As I mentioned, I represent the southern most communities in the Critical Area. Thank you for allowing me the opportunity to speak today. I appreciate the thoughtful and thorough approach taken in drafting these rules. My comments will focus on how we got to this point and why adopting the rules is an important tool to help protect the Mississippi River both now and in the future.

As you know, the Mississippi River and Corridor is one of the state's premier natural, cultural and water resources. And, fittingly, there is a long history of

conservation. In 1976, the State recognized the need to protect the Mississippi River through the Twin Cities by designating the 72-mile corridor as a state Critical Area. Legislation and the Executive Order of the governor established the MRCCA to ensure the river be managed in a way that does not damage this vital statewide resource.

As much has changed in the 30 years that followed, the existing Executive Order has been at times too vague and inconsistently interpreted and adopted by the 30 local units of government with land use authority along the river. As development pressures increased, it became clear the framework should be revisited.

In 2008, the DNR conducted a study to examine the efficacy of the program and recommended potential changes. Representative Rick Hansen of South St. Paul and I convened a study group in the fall of 2008 to work through the many management options that resulted from the study and to draft legislation for the 2009 session. The study group included representatives from the League of Minnesota Cities, developers, the DNR, the National Park Service and Friends of the Mississippi River among others. The study group met several times leading up to the 2009 session. During these meetings and throughout the committee hearings, it was our intention that a broad and inclusive process was needed to sort out the details of definitions, standards and guidelines

to protect identified Corridor resources.

In directing the rulemaking process, the law gives clear and specific guidance for what resources the new rules must protect, including floodplains, wetlands, gorges, areas of confluence with key tributaries, natural drainage routes, shorelines and riverbanks, bluffs, steep slopes and very steep slopes, unstable soils and bedrock, significant existing vegetative stands, tree canopies and native plant communities, scenic views and vistas, publically owned parks, trails and open spaces, cultural and historic sites and structures and water quality.

This inclusive and comprehensive process resulted in bipartisan legislation that was signed into law by then Governor Tim Pawlenty. The proposed rules being considered today honor the work of the 2009 legislation by balancing the shared goals of flexibility, local control and conservation. The new rules will provide clear and consistent guidelines that are easy for stakeholders to understand.

The Mississippi River is a resource of great significance for our region, state and nation. Here in the Twin Cities it is a tremendous asset to the communities through which it flows. The proposed rules I believe represent the culmination of years of work and broad stakeholder involvement. They establish clear guidelines for Corridor development and ensure protection of the river for

future and current generations.

Thank you, again, Judge for considering my comments.

THE JUDGE: Indeed. Thank you so much for your time and contributions to our record, Senator.

So, Ms. Erstad. As she makes her way, following her will be Anne Noel. So, Ms. Erstad, if you wouldn't mind stating and spelling your name for our record.

MS. ERSTAD: Sure. I'm Shirley Erstad. It's S-h-i-r-l-e-y E-r-s-t-a-d.

THE JUDGE: Ms. Erstad, what should we know?

MS. ERSTAD: Thank you for this opportunity to speak today. I'm executive director of Friends of the Parks and Trails of St. Paul and Ramsey County. A nonprofit organization established 31 years ago.

In 1985, when a condominium project was proposed for Crosby Farm Regional Park in St. Paul and within the Mississippi River Corridor Critical Area, a group of citizens banded together to point out that type of development was inappropriate for that area.

THE JUDGE: And, Ms. Erstad, everyone reads a little faster than they ordinarily talk, so for Ms. Strom's benefit just a little slower. Thank you. It will seem unnaturally slow to you, but it will seem just right for Ms. Strom.

MS. ERSTAD: I will try harder.

THE JUDGE: Great.

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

The Friends support efforts to protect and enhance the natural resources in the Critical Area. We believe rules and regulations should retain strong protections of this shared natural resource.

Regarding native plant communities, please replace "mapped" with "identified" in the definitions. This allows for protections of significant natural resources that may not have been mapped.

Regarding the district maps, the two sections around Marshall Avenue and near Shadow Falls at Summit Avenue have been removed from 40 foot height restrictions and placed into the RTC district which sets the minimum standard for height at 48 feet but goes upward with a CUP. The city's underlying zoning in these two areas is 30 feet. With the ability to go upward with the CUP, this could result in substantial height changes for these areas.

In the district proposals for St. Paul, the UM

district has been overused. It is inappropriate for such broad areas of development within the Critical Area. These rules will forever decide the look, feel, health, and experience of the river corridor for both humans and wildlife, and overusing UM would substantially weaken natural resource protections. Large swaths of the corridor within St. Paul have been removed from protection accorded them in RC3 Urban Open Space with 40 foot height restrictions and placed into UM which sets the minimum standard for height restrictions of 65 feet but allows for increasing heights with the CUP.

The section from Ford Parkway south that contains part of the Ford site has been removed from RC3 and placed into RTC and UM. Again, this equates to substantial weakening of protections. We understand the necessity and the desire to redevelop the Ford site. But keep in mind, this area is visible for miles up and down the river corridor. The entire redevelopment site is not within the Critical Area, allowing for other sorts of development on portions of that parcel that are not covered in these rules.

We are concerned about the area along the bluff of the gorge and confluence that have been changed from the Urban Open Space district to less protective districts. These are highly visible areas that are valued for their esthetic and scenic views and should be prioritized for

strong protections because of their historic and cultural significance.

Lower Landing Park from Lafayette to Childs Road and between the river and railroad tracks is mapped as UM in this proposal but should be included in the ROS district. It is adjacent to Bruce Vento Nature Sanctuary and Indian Mounds Park and is public parkland. It consists of open space, trails, picnic areas and wetlands.

The UM district along the top of the bluff on the West Side of St. Paul should be RN. Sixty-five feet and higher buildings at the top of the bluff will detract from the views down river from downtown St. Paul.

We appreciate that Pig's Eye Lake and Highwood are designated Rural and Open Space. However, there is parkland on the east shore of the Mississippi River north of New Port. As parkland, it should be included in the ROS district and not UM.

As you can tell, there are multiple places where the UM district has been broadly used, going so far as to put parkland into that district. We ask that these districts' designations be revised.

Thank you again for your time and attention.

THE JUDGE: Ms. Erstad, thank you so much for your time and your contribution to our record. Very grateful.

So, Ms. Noel, if you wouldn't mind joining us. And then following her will be Mr. John Anfinson of the National Park Service.

MS. ENZLER: Your Honor?

THE JUDGE: Yes. Please, Ms. Enzler.

MS. ENZLER: Thank you, Your Honor. It would be helpful if Ms. Erstad's comments were in writing if she could leave them with us, because she had a lot of detailed information and we want to be sure that we address all of those in the context of addressing comments.

THE JUDGE: Thank you so much, Ms. Enzler. And, Ms. Erstad, you are now in the ages. You are Exhibit 24. I appreciate your kindness in sharing your remarks with us.

Just give me moment, Ms. Noel. Ms. Noel, if you wouldn't mind stating and spelling your name for our record.

MS. NOEL: Anne Noel, A-n-n-e N-o-e-l.

THE JUDGE: Thank you so much, Ms. Noel What should we know?

MS. NOEL: Good morning. I have had the privilege to set out on a bicycling adventure that has followed the Mississippi River. This journey started May 10th when my friend Mattie and I arrived in New Orleans. We have since then pedaled roughly 1500 miles through the many communities that reside along the riverfront, and we

will continue this journey to the headwaters of Lake Itasca.

Traveling by bicycle has allowed us to travel at a slower pace, in order to experience these places in a more profound and enriching way. Although the communities' ways of life, geography and ecosystems vary, it became evident that through interacting with the people and organizations tied to the Mississippi there is a strong sense of identity and connection to the river. This unity creates a collective understanding of the importance of protecting the river.

Mattie and I have had the unique opportunity to experience the Mississippi in its entirety. We have witnessed the great diversity from climate to culture and the types of development that has enhanced or devastated the river's bounty.

It is important to be aware of how these development decisions have affected individuals' relationships with the landscape. Many people only have the means to access the river within their own neighborhood. Creating equal access to visit and view the natural landscape is just one way for the communities to help build a positive relationship with the river. This positive relationship encourages individuals to continue to help preserve the culture, heritage and environmental diversity of the Mississippi River. Therefore, it is essential for communities to think critically about how development decisions will impact the future of the river.

Thank you.

THE JUDGE: Thank you, Ms. Noel. And we are so grateful that you have stopped to rest with us.

MS. NOEL: Five days of rest.

THE JUDGE: Wonderful. Appreciate your contributions to our record.

MS. NOEL: Thank you.

THE JUDGE: Mr. Anfinson. It would be Ranger Anfinson, yes?

MR. ANFINSON: Close, yes. Power Rangers.

THE JUDGE: And following you will be Nicky Leingang of Congressman Ellison's office.

Mr. Anfinson, if you wouldn't mind stating and spelling your name for our record.

MR. ANFINSON: My name is John Anfinson. It's spelled J-o-h-n. Last name, A-n-f-i-n-s-o-n.

THE JUDGE: Thank you so much. What should we know?

MR. ANFINSON: And I have a copy of my comments right here.

THE JUDGE: Excellent. If you wouldn't mind just giving me that so I can mark it. You're Exhibit 25. Mindful that we have Exhibit 25, you can feel free just to hit the highlights that we should know.

MR. ANFINSON: And, Your Honor, I'm going

to read it through so I stay on time and on track and on task.

THE JUDGE: Okay. And mindful, as we discussed with Ms. Erstad, that folks read a little faster than they ordinarily talk, so what seems unnaturally slow to you will be just right for her. What should we know?

MR. ANFINSON: I wrote "slow down."

THE JUDGE: Wonderful.

MR. ANFINSON: I am the superintendent of the Mississippi National River and Recreation Area, Your Honor. I'm here to provide the National Park Service's comments on the proposed rules for the Mississippi River Corridor Critical Area. The National River and Recreation Area is one of 411 units of the National Park system, and the outcome of this process will fundamentally affect that unit.

The following are some key points about this National Park: We are the only unit of the National Park Service whose mission is to protect, preserve and enhance the Mississippi River. We are the only National Park unit that runs continuously through a major metropolitan area. We own approximately 64 of the 54,000 acres within our boundary, which is the same boundary of the Critical Area, so we are necessarily a partnership park. Everything we do throughout the corridor we do in partnership. And we are a very different model within the National Park system overall.

So, I would like to emphasize two points. First, as you know, the Critical Area predates the National River and Recreation Area. Yet today the two are undeniably connected. This is important because it shows that the idea that the 72-mile corridor here had exceptional resources and those resources that needed protection began at the local level.

As important as the Critical Area recognition was, many wanted something more for a river and resources of such significance. They wanted the gold star of designations. They wanted to add this reach to the National Park system. And they succeeded in 1988. Their success took the Critical Area to a level of national importance. And, yes, that imposed a much higher degree of trust and responsibility on the state and on local governments in the corridor. The National Park Service is entrusted with America's most treasured places and that inherently requires stronger mechanisms than generally found at the state or local levels.

So, second, despite the National Park designation, Congress relied on the Critical Area Executive Order 79-19 to protect the corridor's resources rather than instituting a level of federal regulations. We need to make sure this agreement is being fulfilled and this experiment, if you will, is working. I believe Senator David Durenberger's comments he made on Tuesday night were right on the mark.

As we have learned over time, the Executive Order has

not worked well. The proposed rules offer a better solution. We need the rules for a variety of reasons. For most units of the National Park System, we have a set of regulations and policies that apply across the entire unit. This is not happening here. There are important disparities between how the communities throughout the corridor implement or fail to implement the Executive Order. For the many additional reasons, I will simply reference pages 6 and 7 of the SONAR that address the need.

Still, we believe the premise behind our agreement, or "Compact," as former Senator Durenberger called it, can work, and we believe the proposed rules will better fulfill the agreement and better demonstrate the idea of local and state leadership and partnership with the National Park Service and that that can protect the resources here.

Our comments on the draft rules must have their basis in our Comprehensive Management Plan or CMP, as this plan constitutes the formal agreement between the Secretary of the Interior and the State of Minnesota. CMP repeatedly states that the plan and actions reviewed under it must conform to the purposes and the findings for which the National River and Recreation Area was created. I don't have to go into all of these, but just as an overview, the findings and purposes of the Act rely on federal, state and local partnership to protect the corridor's significant resources while helping

guide orderly development.

Although we did not get everything we would have liked, we believe the proposed rules are in keeping with the Act that established us in the Comprehensive Management Plan.

We also agree that the SONAR -- with the SONAR that the rules are reasonable. They may seem overly demanding to some, but the fact that they serve as a substitute for normal National Park Service regulations for protecting resources of national significance must be considered.

The agreement or compact between the State of Minnesota and the Department of the Interior is an experiment I think that has special relevancy in the 21st Century. The rulemaking process is coming to a close as the National Park Service is celebrating its Centennial Year. We know the 2nd Century is going to be dramatically different than the first. Our visitors, supporters and advocates will be more diverse and more urban. More than 80 percent of Americans live in urban areas already. It is here we can engage new generations of Americans. Last year the director of the National Park Service announced the Urban Agenda, recognizing this shift. There is a brilliant new spotlight on urban parks and on this land in particular at the national and regional level.

We can demonstrate that this model, this partnership can work to protect places of national significance. And we

can show the National Park Service's worthy level of protection can lead to substantial economic benefits to the communities here.

Finally, I want to commend the DNR for all the work they have put into the rulemaking process. They were rigorous and they were thorough. I won't say we agree with everything, but the draft rules live up to our legislation and the Comprehensive Management Plan.

Thank you, Your Honor.

THE JUDGE: Thank you, Superintendent. Very grateful for your time and contributions to our record. Enormously helpful.

Mr. Leingang, if you wouldn't mind joining us. And then following him will be David Suchy of the Superior North Outdoor Center. Mr. Leingang, if you wouldn't mind stating and spelling your name for our record.

MR. LEINGANG: Good morning, Judge Lipman. Thank you for the time. My name is Nicky Leingang. Spelled N-i-c-k-y. Last name, L-e-i-n-g-a-n-g.

THE JUDGE: Thank you so much, Mr. Leingang. What should we know?

MR. LEINGANG: I am a community representative for Congressman Keith Ellison who represents the 5th Congressional District of Minnesota. His district stretches from Spring Lake Park all the way down to Fort

Snelling and includes a substantial portion of the Mississippi National River and Recreation Area. It's very fitting that the letter that I'm about to read from Congressman Ellison follows the comments from Mr. Anfinson from the National Park Service.

Dear Judge Lipman, I am writing to express my strong support of the Minnesota Department of Natural Resources' proposed rules for the Mississippi River Corridor Critical Area or MRCCA.

The Mississippi River is central to Minnesota's history and vital to our future and we must ensure that we protect this critical corridor. The significance of the Mississippi River is profound for all forms of life. Hundreds of species of plants and animals call this corridor home. Over 60 percent of North America's birds and waterfowl use it as an international migration flyway. More than 50 cities, 18 million people, rely on it for drinking water. Preservation for historical, natural and cultural purposes is especially important, considering the projected growth of the Twin Cities metro in coming decades.

The Mississippi National River and Recreation Area, or MNRRA, a federal designation that incorporated the 72-mile MRCCA as part of the National Park Service relies on the Critical Area program to protect, preserve and enhance this corridor. The current patchwork of regulations for the

partnership park is spread among 30 local governments and some guidelines have not been updated in decades. And an ecosystem as complex and diverse as the MRCCA all stakeholders must work together using proactive management.

The proposed rules would provide significant, though reasonable, standards for riverside development, alterations to vegetation and land, public access and more. They would safeguard the value of the MRCCA and the federal MNRRA for future generations of humans, animals and plants alike.

The National Park designation is meaningful only as long as it encourages a deep commitment to sustainable management, and the proposed rules are a significant step in that direction.

Sincerely, Keith Ellison, Member of Congress.

THE JUDGE: Thank you so much, Mr. Leingang. And, please, send our thanks to the Congressman for the testimony.

Mr. Suchy. And as Mr. Suchy makes his way, following him will be Representative Barbara Haake. You will be following Mr. Suchy.

Mr. Suchy, if you wouldn't mind stating and spelling your name for our record.

MR. SUCHY: David Suchy. D-a-v-i-d S-u-c-h-y.

THE JUDGE: And, actually, if you can get

a little closer to the microphone so that you can be heard. Mr. Suchy, what should we know?

MR. SUCHY: Well, I didn't have a lot of time to review the rules, but the document does seem to be well formed. Never seeing anything quite like it after studying environmental policy for roughly 10 years, a lot of need for documents and EIS stuff has crossed my path. I think whoever was involved in putting the document together did it justice.

The Bluff Protection Standards Investigation the DNR did, Jennings 2015 -- it was a -- I don't know if it was a study or just a document that was labeled as Jennings 2015. So, the structural geologist that the DNR worked with to create that study or document, I'm not exactly sure which, there's a quote, "All failed bluffs within the MRCCA had slopes modified for development, and these modifications contributed to bluff failure." So, I think that perhaps as we move forward maybe a little bit more stringent rules and designations are in order. We are looking at possible development in places that are, you know, geologically soft, we could say. But the preservation of the river corridor I think is what's really paramount here. And the term "river dependent uses" has been -- was used in the document, in the rule, and I think if we focus toward river dependent uses and preservation, as this is a natural resource, I think the

ethic of preservation should follow because it is the National Park.

I just want to say that in 1988 the MNRRA was formed and so was I. We have come a long way. It is quite refreshing to see updated rules. I think that we are only doing ourselves justice as we move into the future by taking these projects on. It's not easy, but we do need to update. We need to become the future.

So, my only qualm is the 20-foot bluff setback seems a little ridiculous. A failing bluff could easily destroy a structure that was that close to it.

The other note that I made for myself while I was reading the document, and, again, I didn't get a chance to get ahold of the rule until today, so I just did a little perusal, how do we maintain accountability for vegetation management? This is something that on public land is relatively easy. We have parks and different agencies that are overseeing that, but not all of the land in this corridor is public land and veg management could go a long ways towards restoring a functional ecosystem and providing ecosystem services to all of the parties involved, right down to nematodes and, you know, soil forming organisms and right back up to us.

The major issue that I have seen with the rule is maybe to follow the structural geologist's advice, "All

failed bluffs within the MRCCA had slopes modified for development, and these modifications contributed to failure." That's a direct quote from the rule. From the document.

THE JUDGE: Thank you so much, Mr. Suchy. I appreciate your time and contributions.

MS. ENZLER: Your Honor?

THE JUDGE: Yes, Representative Haake, please.

MS. ENZLER: Your Honor?

THE JUDGE: Oh, forgive me. Ms. Enzler. I thought it was -- go ahead.

MS. ENZLER: Thank you, Your Honor. Ms. Shillcox would just like to clarify for the record what the Jennings study is that the last testifier referred to.

THE JUDGE: Please. We would be grateful.

MS. SHILLCOX: I can help fill in the blanks a bit. So, following the big storm events in 2014 when there were many bluff failures in the Twin Cities, in Mendota, Minneapolis, a lot in Hennepin County in general, FEMA, the Federal Emergency Management Agency, actually gave the DNR a little bit of money to go out and look at the characteristics of those failures and collect data; what was the slope, what were the development characteristics, what other factors were at play that contributed to that failure. And then we got additional money from -- the DNR got

additional money again from FEMA to work with Hennepin County. And Hennepin County's interest was really in trying to predict where failures would occur so that they could mitigate appropriately. They could put regulations in place to stop failures and could also enact emergency management plans accordingly.

But what the study did find was that there is different geology along the corridor. And Carrie Jennings, the geologist at the DNR at the time who did all of these studies and participated in the Hennepin County study recently, found that 20 percent seems to be a trigger around here and that development does -- and alterations to hydrology or the way water moves across the land does contribute and that that 20 percent really does aline very closely with the 18 percent that's currently protected in the Critical Area in the proposed rule.

So, I hope that helps to clarify. That was a study that came out in 2015 by Carrie Jennings representing the DNR, but it was funded through FEMA.

THE JUDGE: Thank you so much.

MS. RHEES: Could I mention that that --

THE JUDGE: Ms. Rhees, if you wouldn't mind introducing yourself.

MS. RHEES: I'm sorry. Suzanne Rhees. S-u-z-a-n-n-e R-h-e-e-s. I know you have my card. I just

wanted to mention that that document is referenced in our SONAR and referred to in the discussion of the bluff definitions.

THE JUDGE: Excellent. Very helpful. Thank you so much, Ms. Rhees.

So, before you begin, Representative Haake, following you will be Dan Brady of GRC.

MR. BRADY: Yes. Great River Coalition.

THE JUDGE: Okay. Mr. Brady, you are following Representative Haake.

Representative, if you wouldn't mind stating and spelling your name for our record.

MS. HAAKE: I am Barbara Haake. B-a-r-b-a-r-a. Haake is H-a-a-k-e.

THE JUDGE: What should we know?

MS. HAAKE: What should we know? Well, excuse me, you don't need to record this.

(Brief discussion off the record.)

THE JUDGE: So, what should we know?

MS HAAKE: I am also on the Rice Creek Watershed District and I'm on the board of managers and I'm on the board of managers for the Minnesota Association of Watershed Districts. I'm not speaking for them, but I'm speaking for myself and all the experience I have had with the Mississippi River.

First of all, I want to thank very much the DNR for undertaking this. It's a vast, vast problem or situation of what you had to go through to try and get this done and you bringing in all of these people.

I just want to endorse what Shirley Erstad from St. Paul had said. I appreciate what she was mentioning about the river that mainly deals with the City of St. Paul. I happen to have a boat there, a boat we brought back from Michigan, been to St. Louis and came all the way back up the Mississippi River. So, I didn't bike it, but I have been on it and I have seen it and I think we have done a wonderful job and I hope it continues. I like what the Friends of the Mississippi River is doing also. So, I haven't heard from him yet, but I really do respect their work.

This is the only little comment I am making. I wish there was something that was going to be done on the Minnesota River because of the sediment coming in at mile marker 844 that is filling in our Mississippi River that really is a lot cleaner than what it looks like.

So, all I'm saying is I endorse -- I'm going to read all the other things that are in the products. If I need to make any other comment, I will write it in before the deadline. Thank you very much.

THE JUDGE: Thank you so much, Representative Haake. And, again, the deadline she was

referring to is Wednesday, July 6, 2016.

Mr. Brady, if you wouldn't mind joining us here. As you are making your way, you will be followed by Karen Bernthal of SNO. Mr. Brady, if you wouldn't mind stating and spelling your name for our record.

MR. BRADY: Dan Brady, B-r-a-d-y, like in Bunch.

THE JUDGE: Thank you so much. What should we know?

MR. BRADY: Thank you. I'm a member of the Great River Coalition and I've spoken a couple times regarding a certain issue that, unfortunately, I don't think the DNR has truly addressed. It's regards to something I call visual pollution, obstructions along the river that as the proposed rules has stated regards to the viewing, the public viewing of the river. And these obstructions are the transmission lines.

I realize that the rules do not advocate removal of them, but they surely lack the ability to, I don't know, mitigate the development or enhancement of them in the sense that it doesn't say that maybe eventually to improve the view maybe these lines should be buried.

Whenever they come to -- and I'm talking about the public utilities, especially Xcel, when they come to the city or state or whatever government body and they propose the

change on it, that the government body should dictate, because the rules will indicate that hopefully, that they should put the line underground.

I'm not advocating that we should go back to the late 1600s when Pére Hennepin or Pére Marquette came to our shoreline and saw the beautiful river and all. I just think it's time for us to realize whenever we walk down to the park system or the shoreline that we don't see these power lines that are interrupting the tranquility and the beauty that what Mother Earth has given us. So, I believe that's what the proposed rules should probably look at further down the road. Thank you.

THE JUDGE: Thank you so much, Mr. Brady. I appreciate your time and your contribution.

Ms. Bernthal, if you wouldn't mind joining us. Following you, will be Susan Vikse of AFCAC.

MS. BERNTHAL: Before I -- I have a couple of questions that is not a part of my testimony.

THE JUDGE: Please. But if you could first state and spell your name for our record.

MS. BERNTHAL: My name is Karen Bernthal, K-a-r-e-n B-e-r-n-t-h-a-l.

THE JUDGE: Thank you so much, Ms. Bernthal. What should we know?

MS. BERNTHAL: I'm from SNO. Which is the

Sheridan Neighborhood Organization, which is the neighborhood just directly south from here.

THE JUDGE: Great. Feel free to talk with the Agency panel if you wish.

MS. BERNTHAL: So SNO wrote a letter during this process. Is that part of this public -- because what I'm trying to do is reiterate some of those things and explain some of them that were in our letter.

MS. ENZLER: If I may inquire, when was the letter submitted?

MS. BERNTHAL: Before the deadline for --

MS. ENZLER: So it was a comment received in the comment period?

MS. BERNTHAL: Yes.

MS. ENZLER: Okay. Then that will be included as part of the record.

MS. SHILLCOX: Just to clarify, was that in response to the request for comment in 2014?

MS. BERNTHAL: Yes.

MS. SHILLCOX: That is not part of this record. That was something that we took into consideration when drafting the rules that are here now, but that will not be part of the record.

THE JUDGE: It's not part of this binder, but it certainly informed the Agency's thinking and proposal.

How the process generally works is after a statutory delegation of authority, then 60 days after the effective date of the -- they have to go out and ask generally what do you think about these ideas. And so that's probably the letter that the Association received just to inform their general thinking. When they commit to a firm proposal, then there is another round of comments of which this process is about.

MS. BERNTHAL: Okay. So, we probably will be writing another letter for public comment.

THE JUDGE: Okay. Great.

MS. BERNTHAL: So, in that first letter we commented that the Sheridan Neighborhood Organization has some land right along the Mississippi River. However, many people do not know that we are that close to the river because we don't have a lot of access to it. And we really liked whole-heartedly that this is a National Park area and we support the National Park area. Our concerns were that, at least in our neighborhood, the rules were being relaxed for building heights and we were against that. And we also thought that this was an issue of equity in terms of access to the river.

The City of Minneapolis has some beautiful biking trails along the Mississippi River and in part Minneapolis is known for some of those beautiful trails. We would like

those trails in our neighborhood and to have the same kind of amenity that the neighborhoods that are designated River Neighborhoods have. River Neighborhoods appear to have a 100-foot setback and have more access to a beautiful river and parkland and we would like that in our neighborhood. And so to be designated Urban Core or Mixed Urban allows for heights that are 65 feet tall, whereas, currently the height is 54. And a note to the DNR is that in the process where developers come and want to develop land that is in the Mississippi River Critical Area they can do something called alternative compliance or get a conditional use permit which allows them to even build higher than what the designated maximum height is. Which doesn't make sense to us as a neighborhood organization. And it seems to us that the rules are being relaxed at the pressure of developers or possibly City officials. And we look to the DNR to be strict in the rulemaking, especially in the Urban Core because that makes it more equitable for everyone.

Some of this was informed by looking at the City of New York and the idea of the Central Park. And I hear in these rules that there should be transition zones. And I think to myself if there were transition zones from the tall buildings in New York City that line Central Park and they got slowly lower as you got into the park, you would have a small area of park that was a park. And, so, we also believe

that the larger the natural area can be and the further back the buildings are that can be built that are tall that allows more people real access to the river or the idea that they are close to the river.

And, so, our input is to become a River Neighborhood, because that seems to offer the most protection, a 100 feet and maybe 40 foot heights that can be built. That's our comment, but we will be writing more.

THE JUDGE: Ms. Bernthal, thank you so much for your time and contributions to our record.

Ms. Vikse, if you wouldn't mind joining us. And as you are making your way, following you will be Lorrie Louder of the St. Paul Port Authority. Ms. Vikse, if you wouldn't mind stating and spelling your name for our record.

MS. VIKSE: Susan Vikse. S-u-s-a-n V-i-k-s-e.

THE JUDGE: Ms. Vikse, what should we know?

MS. VIKSE: Okay. Ditto to what the speaker in front of me said. But I'm one of the few North Minneapolis riverfront homeowners. I live pretty much right across from Ole Olson Park. And I think the goals of the rules to preserve and enhance the natural, esthetic, cultural values of the river and adjacent lands and to protect and preserve the biological and ecological resources and

functions of the corridor are critical to preserve the beauty and viability of the third largest river and locally our most valuable resources. These are good goals. But what I'm concerned about is that these goals may not hold true for the upper riverfront on the west side of the river.

Now, my understanding, that has been designated either Mixed Urban or Urban Core. And so that, again, goes to a 65-foot height, which is more relaxed than the current 40-foot minimum.

North Minneapolis is really a long underserved area of the city that deserves the same access to environmental protected areas that those south of us enjoy. And I would hope that at a minimum these guidelines could at least go back, especially for height, to what they were.

As we know, the upper harbor is now being developed and one of my fears without strict guidelines is that we are going to be looking at monolithic structures, the higher the building the larger the surface area for parking, and that involves, you know, pollution to the river and it also is a deterrent to an access for people to enjoy the park and the riverfront.

So, these spaces are important not only for the people but for the migratory corridor, development of natural habitat, and especially with the closing of the St. Anthony lock and dam I think we have a real opportunity here to

develop a beautiful parkland with also other development, but monolithic structures really don't belong along our riverfront. Thank you.

THE JUDGE: Thank you so much Ms. Vikse. I appreciate your time and contributions.

Ms. Lauder, as you make your way, following you will be Bob Margl of the Great River Coalition. Thank you so much. Please, Ms. Louder, if you wouldn't mind stating and spelling your name for our record.

MS. LOUDER: Thank you, Your Honor. My name is Lorrie, L-o-r-r-i-e, Louder, L-o-u-d-e-r.

THE JUDGE: Thank you so much, Ms. Louder. What should we know?

MS. LOUDER: Thank you so much, Judge. I am senior vice president for business and intergovernmental relations at the St. Paul Port Authority.

And just a word about the Port Authority. We are an 87-year-old redevelopment agency established by the legislature. The Port Authority's job, in a few words, is to manage and grow the St. Paul Harbor and to take fallow properties with complex environmental and other serious issues and bring them back to life with expanding companies that pay taxes, provide jobs and those jobs are at good wages.

Judge, before I go on further, I would like to just

mention, the DNR staff have been incredibly helpful, incredibly professional, responsive. And I think Jenny and I and her staff have worked since 2009 together, so we are very impressed with the DNR's help in all of this.

We, at the Port Authority, do concur with the comments that have been sent in by the St. Paul Area Chamber of Commerce and also we concur with the City of St. Paul's Planning Commission comments that have been provided to DNR staff previously.

The law, as we all know, is vitally important to -- that the rules reflect the language and intent of the authorizing statute. So, we really have looked a lot at the statutory language. And, of course, the law speaks to a balance of interests and provides for the continuation, development and redevelopment of a variety of urban uses. And the law also indicates that the guidelines and standards must protect a variety of key features, and that includes commercial, industrial and residential resources and, therefore, ensures that the business, economic uses continue without undo regulatory burdens.

The Statement of Reasonableness and Need, the SONAR, cites on page 12 a primary goal of the rules is to reduce complexity and to be less intrusive for property owners, developers and local governments wherever possible by focusing on the specific development impacts on those key

resources that I mentioned above and features identified in the law. And, also, further along on the same page, it states that the DNR was mindful of costs and potential intrusion on local control and property rights when developing these necessary provisions, quote, unquote.

Here are a few Port Authority concerns. And my comments are also reflective of quite a few businesses in the corridor that have expressed concerns as well, and through the process there were a couple dozen or so businesses and the Port Authority that issued a statement particularly relative to concern about nonconforming uses.

We believe, bottom line, that the DNR has not quite gotten there as far as proving the need for certain of these rules and, therefore, is not in compliance with the law. And one of the items is that the rules take away some of the local government land use and zoning controls. And elements of these draft rules are inconsistent actually with existing development and their growth and expansion opportunities on these properties and will create over 1000 nonconforming buildings. They, therefore, in our opinion, are inconsistent with the expressed guidelines, which, I will mention three: continued development; protection of commercial, industrial, residential resources; and, lastly, redevelopment of a variety of urban uses.

So, the broad-brush regulations in part of these

proposed rules supersede the thoughtful and fine-grain area and site specific, both area and site-specific planning and zoning regulations that have been promulgated over decades, if not a couple centuries, by the City of St. Paul.

The second, the creation of nonconformities deserves I think a little more finer point on it. We believe, anyway, that the way that the DNR has defined bluffs would create nonconforming structures. I think we might all agree with that. However, we believe that it is possible to maintain the integrity of slopes, to maintain slope stability without generating these type of restrictions.

DNR's creation of over 1000 nonconforming structures does not comply with the tenets expressed of reducing complexity and being less intrusive, as referenced in my earlier comments. We question DNR's authority to restrict property owners' rights under the enabling statute. This clearly sends a wrong message to property owners, developers and the overall marketplace. It stigmatizes businesses.

A few points on that. Structures cannot be expanded. Business growth, job creation and tax base enhancement will be thwarted. And I think we all know, of course, that St. Paul is a fully developed city and as such has struggled from time to time as other similar sized cities have with redeveloping some blighted an defective properties and also struggling, in fact, with their very fiscal status on an

annual basis. So, this is extremely important to us and to our business customers.

Additionally, we believe that devaluation of properties will occur. And coming along with that, of course, is difficulty in selling the properties that can't be expanded. The wrong message here is, among other points, is telling businesses you just can't do certain things that are normal in our society as far as business growth. It also takes risks from a financial standpoint. There could be costly litigation. So that means the State and possibly those of us at the local level have to defend ourselves, and there are likely inverse condemnation cases that would be lost, and, of course, that's costly in terms of cash damages that would be awarded under that scenario.

THE JUDGE: Ms. Louder, just some concluding thoughts just for this round, mindful that we will have a second round where you can expand on some of these important ideas.

MS. LOUDER: Will do, Judge. Thank you. The Port Authority and businesses are concerned that the DNR restrictions will undermine important investments already made as well as inhibit future investment and reinvestment in the corridor.

So, we would just -- I would say in closing for this part, Your Honor, we believe that the law does not allow the

DNR to stigmatize properties, to cause lower property values, to create negative messages to the business community and to cause added expense to the public and private sector entities or to put an investment chill in the marketplace. Thank you so much.

THE JUDGE: Thank you so much, Ms. Louder. I appreciate your time and contributions.

MS. LOUDER: And, Your Honor, I am going to -- my CEO actually is going to sign a letter, so I would be happy to defer to other speakers and just put the rest of my comments in the letter if that would be acceptable.

THE JUDGE: You can certainly do either way. We want to give you both opportunities.

MS. LOUDER: It's just one more page, so I think it will be okay to add in there.

THE JUDGE: Excellent. Thank you so much. Mr. Margl, if you wouldn't mind stating and spelling your name for our record.

MR. MARGL: Good morning, Judge and Agency Comm -- I don't know, what is your designation?

MS. RHEES: We are staff.

MR. MARGL: Just staff. Okay. Thank you. Glad to be here and thank you for the opportunity. My name is Bob Margl. Last name is spelled M-a-r-g-l. I am on the executive board of the Great River Coalition and a board

member with the STAWNO Neighborhood Group. I'm here as a resident. I live at 610 4th Street Northeast. And this serves as a follow-up to a letter that I had sent in September of 2014 making comments. The letter was addressed to the Department of Natural Resources.

So, my concern today is I guess comments that were made from the director of long-range planning, community planning and economic development with the City of Minneapolis where our neighborhood, the STAWNO neighborhood would look to change from a CA-RN directly -- we are directly across from downtown Minneapolis to a CA-UC or a CA-UM district. And, again, that's looking at the urban development district.

I would like to I guess state my letter, and it would -- I guess if you want me to read that and then maybe just a short comment.

My wife and I are residents of Northeast Minneapolis, living at 610 4th Street within the boundaries of the St. Anthony West community. I would note that our home is well over 100 years old and has been in my family since 1926.

At this time, I would like to comment on the proposed Critical Area Mississippi National River and Recreation Area Program under which the Department of Natural Resources would classify our Northeast neighborhood as an Urban Community and subject to intense high-density property development.

THE JUDGE: Just a little slower, Mr. Margl.

MR. MARGL: I will do that. We would like to take issue with these plans that would condemn our historically unique neighborhood to big dollar developers whose ultimate goal would be to destroy or Northeast community in the name of so-called progress and profit.

I guess I'm going to close with let's keep our St. Anthony West neighborhood historic district designation as it is, a mecca of tranquility, set in a hectic and fast-paced intercity environment. Let's hold on to that little bit of neighborhood that we have close to our urban segment. I know that there is not much room for the city to grow, but, again, I would hope that we could hold on to that small bit of intercity housing and individual homeowner groupings that we have. So, I thank you. And I'll make it short. Thank you.

THE JUDGE: Thank you so much, Mr. Margl. I appreciate your time and contributions. Jake Hamlin of CHS.

Mr. Hamlin, welcome. If you wouldn't mind stating and spelling your name for our record.

MR. HAMLIN: Good morning. Thank you, Judge Lipman and staff. Jake Hamlin, J-a-k-e H-a-m-l-i-n.

THE JUDGE: What should we know?

MR. HAMLIN: Thank you, Your Honor. I would like to make some reference to comments developed by one of our CHS executive vice presidents, Shirley Koderick.

Your Honor and staff, I have been with CHS myself for a couple of years now as a director of state government relations, and so relatively new to this issue, and so grateful for the time and appreciate the time the staff has put in to the development of the proposed rule, recognizing their significant history here. I do want to give a brief introduction of CHS as well as to the relevancy of the proposed rule to our organization, to our cooperative.

CHS is a global agribusiness cooperative owned by farmers, ranchers --

THE JUDGE: Just a little slower, but go ahead, farmers and ranchers.

MR. HAMLIN: Thank you. CHS is a global agribusiness and cooperative made up of farmers and ranchers and other cooperatives throughout the nation. We are diversified in energy, grains and foods, and we are committed to helping customers and our farmer owners grow their businesses through domestic and global operations.

We operate refineries, pipelines and we manufacture and market and distribute Cenex branded refined fuels and other products, renewable energy products, and we also have a significant agricultural business. And that is the relevancy

here to the proposed rule.

St. Paul has a very rich heritage dating back to the '20s as a port city. They recognize the competitive advantage of river transportation. And CHS was part of that history back in the 1920s and to this day has a very vested interest in the proposed rules for the Corridor Area as a property owner in the proposed St. Paul Urban Mixed district and as a customer in another Urban Mixed district all in the Corridor. So, we support, CHS supports existing mixed use regulatory framework that was alluded to earlier and from Ms. Louder from the St. Paul Port Authority that was developed by businesses, residents and local units of government in terms of zoning within those local jurisdictions.

We feel the proposed rules do not fully reflect the intent of the law that was passed in 2013 by the legislature that reinforces the river and the corridor as a multipurpose resource. And specifically the recognition and the protection and enhancement of redevelopment of the commercial and industrial properties through the promulgation of these rules.

We feel that the rules do fail to demonstrate the need and reasonableness because that there were not less intrusive means or methods identified to achieve the purpose of the proposed rules. And specifically that pertains to the

creation of the nonconforming properties, but then also additional costs in the administration of these nonconforming properties.

So, specifically, as proposed, the creation of these nonconforming structures would result in significant complexity for current and future business development. That business, including CHS, would be allowed to conduct repairs, replacements and maintain our existing operations. That said, existing businesses would not be allowed to expand without additional permitting from local units of government. So, proposing rules that create these legally nonconforming structures becomes an administrative burden, lowers property value and does limit the potential for expansion. So, we feel the rules should enable the development and redevelopment of industrial and commercial uses for the economic vitality of St. Paul and some of the Mississippi River communities.

Furthermore, we do not believe the true cost of the proposed rules are accounted for in the Statement of Need and Reasonableness. Specifically the administrative requirements to proposed rules by local units of government do require time and funding and, ultimately, feel these costs would get passed on to property owners and these costs are not necessarily assessed.

Finally, just to reiterate, too, that as referenced

in law as well as in the development of the proposed rules is that the desire again for development and redevelopment of industrial and commercial properties do need to be provided within the proposed rules and, therefore, we do feel that the Department should modify the proposed rules to really reflect the ability for businesses to be able to expand and align with some of the existing administrative framework of those local units of government.

With that, I will submit my comments as well.

THE JUDGE: Excellent. Thank you so much Mr. Hamlin. I appreciate your time and contributions.

We are just about at our Ms. Strom break, and so I just wanted to conduct a little housekeeping business.

MR. HAMLIN: (Indicating).

THE JUDGE: Excellent. So, Mr. Hamlin, your remarks are Exhibit 26.

We have gone through the list of those folks who were firm about their desire to share remarks during the first round, and so I just want to do a brief check in with the folks who were not as certain. Ms. Bierbrauer of Above the Falls.

MS. BIERBRAUER: I will not be speaking.

THE JUDGE: Ms. Bierbrauer passes. Ms. Maze of the City of Minneapolis CPED.

MS. MAZE: Right here.

THE JUDGE: Yes.

MS. MAZE: I will say something.

THE JUDGE: So, what we are going to do is take a 15-minute break until just a quarter of the hour. Ms. Maze is going to give riveting remarks. You won't want to miss it. So, we are going to take a short recess, but we are going to start precisely at 11:45. Please be sure to come back. We are in recess.

(A recess was taken from 11:33 a.m. until 11:46 a.m.)

THE JUDGE: So we are back on the record after a short recess. Ms. Maze, if you wouldn't mind stating and spelling your name for our record.

MS. MAZE: Certainly. My name is Haila Maze. That's H-a-i-l-a. Last name Maze, M-a-z-e. I'm with the City of Minneapolis Community Planning and Economic Development. I'm a planner there.

The City of Minneapolis has not yet taken formal action on the comments we will be submitting. We are in the midst of a period where our counsel is considering that and we will be submitting for the record a series of detailed comments.

As such, I'm going to confine my comments at this point to some general principles that have been affirmed in past submittals during the draft comment period. Because we have commented on every opportunity that was available. And

I also do want to thank the DNR for their inclusive and thoughtful and very careful process to date.

This is some general principles that the City has been committed to. Again, we will have detailed comments that follow up on those. One, we are a partner with DNR and many other stakeholders here in the health of the river and river corridor and adjacent areas, and including that, commitment to continuous riverfront parks and trails in places where they exist and places where they do not yet exist.

We are committed to sustainable growth, and as an Urban Core city sort of have the lead on that, ensuring it's done in a way that is supportive of environmental health and restores areas that have been damaged by past efforts.

We are also committed as an entity that is charged with enforcing many of these regulations as a city along the corridor minimizing the administrative burden attached to enforcement. This has to do for us -- and our comments will touch on making sure that the definitions in the comments are clear, concise and not subject to confusion and ensuring, to the extent possible, there is consistency with other regulations and requirements that are already adopted and in place. As in the City of St. Paul, we already do have fairly robust regulatory framework and we want to minimize the trouble with enforcement for all parties involved by ensuring

that there is reducing complexity and being less intrusive whenever possible.

I also wanted to note that we are here to listen to the other folks speaking today. Many of them are also our constituents, and we have intentionally delayed our comments to allow -- to take into account those who are here and elsewhere from the folks for our area and care about our area as we do. That concludes my comments.

THE JUDGE: Thank you so much, Ms. Maze. I appreciate your time and contributions.

Ms. Hofstede, I'm mindful that you had three sets of comments that you wanted to give. I'm just wondering whether that could conveniently fit into a five-minute segment or whether you want to wait until the second round where you would have a wider opportunity? What makes the most sense?

MS. HOFSTEDE: I think I could probably finish it in five minutes.

THE JUDGE: Thanks. So, if you wouldn't mind joining us. You are next.

MS. HOFSTEDE: Thank you.

THE JUDGE: Ms. Hofstede, if you wouldn't mind stating and spelling your name for our record.

MS. HOFSTEDE: Absolutely. My name is Diane, D-i-a-n-e. Last name is spelled H as in Henry, O as in Owen, F as in Frank, S as in Sam, T as in Tom, E as in

Edward, D as in dog and E as in Edward.

THE JUDGE: What should we know?

MS. HOFSTEDE: Well, I'm here representing the Great River Coalition as the president of the organization. I bring with me a great deal of experience not only as a community activist but as a former 3rd ward city council member very engaged in writing and evaluating the critical rules before us.

I want to thank all of you for making this opportunity available to you and come with a very strong recommendation that the Great River Coalition opposes the City of Minneapolis recommendation that the area in Northeast Minneapolis, the St. Anthony resident area be designated as an Urban Mixed neighborhood. They define the Urban Mixed neighborhood which would include large areas of highly urbanized mixed use that are part of the urban fabric of the river, allows for future growth and potential transition of intensely developed areas that does not negatively affect public river corridor views --

THE JUDGE: A little slower, Ms. Hofstede.

MS. HOFSTEDE: A little slower probably.

THE JUDGE: So that Ms. Strom can keep up.

MS. HOFSTEDE: Thank you. Includes large areas of highly urbanized mixed use that are part of the urban fabric of the river, allows for future growth and

potential transition of intensely developed areas that does not negatively affect public river corridor views and protects bluffs and floodplains.

We support the designation of the community from Hennepin Avenue going north as a River Neighborhood and being designated as the most protected area of the riverfront in the downtown core area.

I would like to refer to a letter that is presented to the City of Minneapolis Zoning and Planning Committee and make a statement that we are really appalled by the lack of outreach by the City of Minneapolis to its residents regarding the change of the recommendation to an Urban Mixed area for the Northeast community.

Ms. Monson, a city planner for the City Community Development Agency sites in her comments: An unapproved small area plan in St. Anthony West is one of the reasons to expand high density into a predominantly single-family home area. The community has not endorsed more density.

Ms. Monson incorrectly states the vision of the community. Never has Ms. Monson attended a St. Anthony neighborhood meeting to discuss her recommendation. Never has an elected City official attended the St. Anthony West neighborhood meeting to discuss the designation recommended by Ms. Monson.

The Great River Coalition opposes the recommendation

of Ms. Monson and if approved by the City of Minneapolis and the Mayor. We oppose the actions.

The St. Anthony West Mission Statement in the Small Area Plan reads: The Small Area Plan will focus our attention to the riverfront as our most important asset. It will examine means to embellish it in order to improve our designated historic neighborhood, attract home ownership, strengthen the diversity of the ecology, improve river quality, and create St. Anthony West as the City of Minneapolis' most desirable, diverse, safe and sustainable river community in which to live, to work, and to recreate.

Please note that increased density, confirming to the downtown core, supporting high-density development is not a principle the community supports. Ms. Monson, a member of the community development staff, and the community development department and the City of Minneapolis we believe has a conflict of interest. The community and community development department in the City of Minneapolis receives income to support the community development department from development fees. The fees are not a matter of consideration of the Ways & Means budget committee. It is a fee assessed to each development project in the City of Minneapolis.

Clearly Ms. Monson in her advocacy of density is exposing her bias and that of her department, therefore, Ms. Monson's statement should be disregard from the Critical

Area Plan changes under consideration.

Ms. Monson states that the segment CA-RN, the segment directly across the river from downtown should be modified to match either the adjacent CA-UC or CA-UM district. A significant portion of this area she cites is zoned high density and is guided for medium to high-density residential in a draft plan under development. The portion that is zoned low density is already protected permanently as a public park so needs no further protection from development. That comment regarding is already permanently protected only relates to the public park and not to the current residences that are in place.

Furthermore, there is also a number of multiple-family buildings that would be nonconforming. Nonconforming rights are not serious issues when considering the development of a city. But what it does it allows interaction of those members of the community who own and operate within the community.

Finally, Ms. Monson states that this area is located very close to the city's and region's urban core and within the purview of the city's downtown growth area. These are solely Ms. Monson's comments. They are not supported by the neighborhood or the Great River Coalition.

She further states that while it is not the intent to displace single-family homes in this area in the near term,

it would be short-sighted to designate this area long term as low density. We see no reason why this would be short-sighted to maintain this as low density and, therefore, request that this area be designated as a river community.

The title of the rulemaking under consideration by the DNR is a Mississippi River Critical Area rulemaking. The area is the most Critical Area in the national flyover zone, with over 500,000 migratory birds passing through the area and deserves consideration in the rules. The lack of consideration of birds will cause violation of the Migratory Bird Treaty Act and, therefore, the suggested changes by the City of Minneapolis to increase density in a highly sensitive ecological area critical to the Mississippi River corridor must be disallowed, in addition to the transition of a residential neighborhood to a high density.

THE JUDGE: Some final thoughts, Ms. Hofstede?

MS. HOFSTEDE: Pardon me?

THE JUDGE: Some final thoughts?

MS. HOFSTEDE: Yes, I have a comment from the Minneapolis Audubon. If I can read a short statement regarding that?

THE JUDGE: Okay. Very briefly, if you wouldn't mind.

MS. HOFSTEDE: In recognition of the

importance of the Mississippi flyover to the protection and sustainability of migratory birds, the Audubon chapter of Minneapolis supports the mission of the Great River Coalition to preserve and protect the environmental significance of the Mississippi River.

The City of Minneapolis is currently proposing high-density development in the Mississippi River Corridor Critical Area. Such high density development along the major migratory flyover zone is a recognized hazard to the safety and welfare of birds and may result in a liability under the Migratory Bird Treaty Act.

The Audubon chapter of Minneapolis strongly recommends that all measures be taken to mitigate any and all hazards to birds in the Mississippi corridor.

THE JUDGE: Ms. Hofstede, is that something that you can share with us as an exhibit?

MS. HOFSTEDE: Absolutely.

THE JUDGE: So, I would like to mark that as Exhibit 27.

MS. HOFSTEDE: Thank you.

THE JUDGE: Thank you so much. And appreciate your time and contributions.

Ms. Forney, if you wouldn't mind joining us. And following you, Edna Brazaitis.

MS. BRAZAITIS: Brazaitis.

THE JUDGE: Brazaitis. Excellent. You will be following Ms. Forney. Ms. Forney, if you wouldn't mind stating and spelling your name for our record.

MS. FORNEY: Meg Forney, M-e-g F-o-r-n-e-y.

THE JUDGE: Ms. Forney, what should we know?

MS. FORNEY: First of all, I am a Minneapolis Park and Recreation board commissioner as well as I am a sculler of our mighty Mississippi River. I just came off the river. So I have an intimate understanding of this river.

I would like to address the use of the conditional use permitting, better known as CUP, in allowing for additional height. CUP's use will not protect the river front from inappropriately tall buildings. In Minneapolis, the park board has an appointed seat on the City's planning commission, and I was that appointee last year for the park board.

Serving that body, I was particularly interested in ensuring the development close to our parks, lakes and other bodies of water were appropriate. In Minneapolis, the maximum building height adjacent to shoreland is 2 1/2 stories or 35 feet, whichever is less. This height limitation could be increased by a CUP. Minneapolis

ordinance has language similar to the proposed Critical Area regarding preserving views. It states: Preservation of views of landmark buildings, significant open spaces or water bodies. Yet in my two-year term on the planning commission no project was ever denied a CUP in the shoreland overlay for height. One of my colleagues said that in his decade long service on the planning commission he could not recall any time that the City of Minneapolis had denied a CUP for height in the shoreland overlay. Thus, I am concerned that a CUP offers little protection against inappropriately tall buildings. The DNR has indicated the CUP process has the public involved in making decisions. Yet, if CUPs are always granted, the public gets frustrated and angry because the rules are not represented and transparent.

I just enjoyed a row this morning on the shores with an unencumbered view of our shores of the Mississippi. To ensure generations that will follow us, please reconsider the use of conditional use permitting.

THE JUDGE: Thank you so much, Ms. Forney. I appreciate your time and contributions.

MS. FORNEY: Thank you, Your Honor.

THE JUDGE: Ms. Brazaitis. If you wouldn't --

MS. BRAZAITIS: Yes. And I bet you want me to spell my name.

THE JUDGE: I do.

MS. BRAZAITIS: It's Edna Brazaitis, B-r-a-z-a-i-t-i-s. And I am here because I believe we have a legal and moral obligation to protect and enhance Nicollet Island, which is a unique cultural and historic asset in the middle of the Mississippi River. The proposed classification of half of it as River Town and Crossing is to use what Judge Lipman wanted to know unreasonable not a reasonable protection, and failed to protect the resources mandated by law. I ask that the entire island be put in River Neighborhood.

In 1965, long before the Critical Area Act was established, Minnesota by statute designated Nicollet Island as a state historic resource, declaring that it was in the public interest to protect such places. Long regarded as a special place by native peoples who called it Wita Waste, Beautiful Island, it has been a long-held vision to make what was called before statehood the Gem of the Mississippi into a public park.

Starting in the 1970s with the funding that Senator Durenberger mentioned, the Park Board and the City worked to create a unique park that would preserve the historic resources. This has resulted in the park that's now known as the Central Mississippi Riverfront Regional Park which like the River Corridor is almost impossible to say right. And

currently -- and Nicollet Island is a part of that park. Currently the Park Board owns two-thirds of the island with one-third in private ownership. Because it is a regional park the Park Board can purchase the remaining property when it becomes available.

Part of the island which is north of railroad tracks which is all owned by the Minneapolis Park Board has got historic structures, residences that date from the Civil War era to 1890. This has been classified as a River Neighborhood. And I really applaud that. The other part of the island has been classified River Towns and Crossings. In the past, I have been trying to figure out what is the rationale for making this decision. And I have talked to DNR staff Daniel Petrik and he said it was the height of the buildings that are on the other side of the railroad tracks. This never made sense to me, since the height of the current buildings were only slightly over the 38-foot limit. And as most of them, such as the historic grocery flats, were historic buildings and exempt from height requirements, why is height relevant to making decisions as to how to protect the resources.

Yesterday I did ask the Daniel again if there was anything else besides height. And he said two years ago City staff mentioned wanting commercial development on Hennepin Avenue. I advised him that none of the officially adopted

plans, including the small area plan that guide development for this area that was adopted by the Met Council only a year ago and made part of the City's comprehensive plan nor the Regional Park master plan adopted in the same timeframe allows commercial development on Hennepin Avenue.

Further, this possible desire to have commercial is practically impossible because of zoning, which is R1, single-family homes, restrictive covenants, long-term agreements and need for part of the property for the uses of a school. So, even if it were possible to develop commercial on the island, the River Neighborhood allows commercial. So that can't be a reason.

I believe that the DNR should be willing to reclassify the whole island as River Neighborhood. Why do I care? Because there is one parcel that is vulnerable, at risk. The historic guidelines call for only a three-story building on that particular parcel. But it is 121 percent the size of the Alatus parcel in the Critical Area where the city council is poised tomorrow to approve a 42-story, 483-foot building where the maximum height is only 8 stories. This approval I think likely will be on the CUP. This property is owned by my neighbor and I know that he would never want a 50-story building on his property. But he has had a heart attack and, as I understand, his closest relative is a niece in Australia, so this property is at risk. I'm

sorry.

Dan asked why I care. I said because in Minneapolis there is no -- I care because in Minneapolis there is no limit to the height that can be granted with a CUP. They are viewed as permissive. Otherwise permitted. We have heard that in a decade there has never been one turned down for the shoreline ordinance. By contrast, development in the River Neighborhood would require a variance because the use is not permitted. I realize in Minneapolis variances are also easily granted, but at least give the public and the city council something to base their objections on.

I want to thank you. I have been at every hearing and I am very appreciative of your willingness to listen to ordinary folk and to listen to our wisdom. And because I think sometimes people who are looking at it from 50 stories above don't realize the practical of difficulties. And unless we give the City tools to deny inappropriate buildings we will suffer the consequences. And all I can say is I don't know of anybody who wants to see a 50-story luxury high-rise building on Nicollet Island, but unless there is some tools to protect it and nothing to stop it, then people will ask who was the dummy who allowed this to happen.

THE JUDGE: Thank you, Ms. Brazaitis. I appreciate your time and contributions to our record.

Is there anyone who hasn't yet spoken who would like

to be recognized for one of the five minutes left?

MR. KALMON: (Indicating).

THE JUDGE: Sir, if you wouldn't mind joining us. If you could state and spell your name for our record.

MR. KALMON: Dan Kalmon. It's D-a-n K-a-l-m-o-n.

THE JUDGE: Mr. Kalmon, what should we know?

MR. KALMON: I am a principal planner here with the Mississippi Watershed Management Organization. And I just -- we are preparing comments which will happen prior to --

THE JUDGE: Thank you for hosting us today.

MR. KALMON: You are welcome. And thank you toward the DNR, and good to see you again. Folks have been working on this and we have been working with them since 2009 as well.

I just want to say a few things in general about our mission, which is to improve and protect water quality and habitat and also to reduce flooding. In this case, the Critical Area Corridor is a very important part of our watershed. And as heard here today with residents and others, we believe the habitat protection element and

providing as much opportunity for that along the riverway with the flyway is very -- is essential.

The sort of, I guess, measure we are going to be looking at as we go through these comments or as I have looked through some of the rules so far is, you know, in 25, 50, 100 years from now, sort of the range planning we are looking at, and how we look at urban core and habitat in the urban center, are we going to see and are these rules really going to lead to someone driving up to Lowry, roughly two blocks prior and two blocks on the other side of the river and feeling like they have entered a different area. Are they experiencing something that is of change and place that is significant and represents really what the statute set out to do for this 76-mile stretch along the river. That is, you know, the height, the density questions, the vegetation management, all those elements of the rule are critical of making this happen and be fulfilled in the long term. And in our urban setting like this with the hundreds of thousands people that we have it's very important to have a place for residents of the city to go that's local and basically have that connection with the river and the natural settings. And it's long, I guess, farsighted, too, that we don't jump in our cars and run north every weekend because we live here. So, we support that and we would like to see as we are going through that again these different elements within the rule

can support something that does create a unique sense of place long term. Thank you.

THE JUDGE: Thank you, Mr. Kalmon. I appreciate your time and contributions.

Is there anyone who hasn't yet been recognized?

MS. MAGUIRE: (Indicating).

THE JUDGE: Please, ma'am, if you wouldn't mind joining us. If you could state and spell your name for our record.

MS. MAGUIRE: My name is Mary Jamin Maguire, M-a-r-y J-a-m-i-n M-a-g-u-i-r-e. I'm just going to make some brief comments. I'm a resident of this neighborhood, Marshall Terrace. Welcome to my neighborhood. And I'm concerned that -- and I have to look at my notes because of all these titles -- that we are currently designated as an Urban Mixed neighborhood rather than a River Neighborhood. And I'm echoing the comments of the other people from the neighborhoods in this area.

This is clearly a River Neighborhood. As in the plan it says the River Neighborhood district is characterized by primarily residential neighborhoods that are riparian or readily visible from the river or that abut parkland. This district includes parks, open space, limited commercial development and related land uses.

This area is stated to be part of the Above the Falls

Plan, so it will be next to parkland. And Marshall Street Northeast which runs next to this building is the original Red River Ox Cart Trail. So this has been a River Neighborhood and a river area for over 100 years. You can't see the neighborhood from the river, but I don't think that should be a reason not to designate it a River Neighborhood. We know the neighborhood is here and the neighborhood knows that the river is here. And we have been working in the last 15 or 20 years to increase those connections because we are primarily blocked from the river by industrial development that is gradually being bought out by the Park Board to develop the Above the Falls Plan which is part of the Mississippi National River and Reaction Area. And for reasons already articulated by other neighborhoods in this area we strongly recommend that this be designated as a River Neighborhood. And a letter from the neighborhood group as well as from the Above the Falls Citizens Advisory Committee will follow my comments.

THE JUDGE: Thank you so much, Ms. Maguire. I appreciate your time and contributions.

Anyone else who hasn't yet had an opportunity to share comments who would like an opportunity to do so. Anyone else?

(No responses.)

THE JUDGE: So under the previous

arrangement, we are going to have a presentation from the Friends of the Mississippi River. Mr. Clark, if you want to bring your team up. And the current segment will run for about another hour. Maybe not all Mr. Clark, but we are going from Ms. Strom's standpoint.

So is it Ms. Jones?

MS. JONES: It's all three of us, yes. So it would be me and then Alicia Uzarek and Whitney Clark.

THE JUDGE: If you could state and spell your name for our record.

MS. JONES: Irene Jones, I-r-e-n-e J-o-n-e-s.

THE JUDGE: Ms. Jones, what should we know?

MS. JONES: I'm with Friends of the Mississippi River. I'm the River Corridor program director. I'm going to -- as you know, we spoke about the significance of the National Park and the Critical Area at the last meeting, in case anyone is wondering why we are not giving our usual spiel. And so today we want to just give our fairly extensive comments on the specifics in the rules. And we will be submitting written comments as well. I'm going to be talking about bluffs and shorelines and then we are actually going to come back to me at the end to talk about some of the maps and districts.

And another thing about the slides, some of them we will point -- oh, I forgot my laser pointer. Some of the slides we will point some specific things out and others are a little bit more just to illustrate what we are talking about in general.

So, the bluff protection and shoreland protection is very important to this process and to Friends of the Mississippi River. The bluffs and shorelands of the river are significant and natural features that are highly sensitive to erosion which can lead to poor water quality, property damage and potentially danger to human life. In addition to providing critical habitat that supports the diversity of plants and wildlife, these natural features also add to the scenic quality and integrity of the corridor.

During the rule development process, defining and protecting bluffs was discussed at great length. Coincidentally, several landslides occurred in the river corridor around the same time, including near the Washington Avenue bridge in Minneapolis, along Highway 13 in Mendota Heights, and at Lilydale Regional Park. Next slide.

So, this is an example of what I like to call bluff sluff at Indian Mounds Park. And so you can see that there is some natural element to that feature, but with all the rain and other issues that we have been having as well as development, we are having more of these landslides. So, I'm

going to talk a little bit about that study that was also referred to. And I actually brought copies of both studies to enter into the record, the Jennings reports. But according to the study that the DNR conducted, the same quote was already mentioned so I'm just going to summarize it. But the structural geologist basically found that all of the slopes that had damage also had development that was related to them. And in these particular instances the bluff failures also resulted in significant damages to built infrastructure. Next slide.

These are from a few years ago. This is Lilydale. This is an area where again you had this bluff sluff. And this particular condominium had to spend over $1,000,000 I think to do some repairs. There are a lot of buildings in Lilydale along the bluff that were built before the Critical Area, so they are really, really close and, of course, it's having an impact.

So, when bluffs undergo erosion, over time it's part of a natural process, but there is a clear correlation that connects development on or near bluffs to an increased risk of bluff failure such as landslides. And changes in the rainfall amounts and intensity due to climate change will only serve to exacerbate these issues in the future.

The information contained in the DNR report provides a solid basis for both the need and reasonableness of

including strong and protective standards in the MRCCA rules to ensure that bluff integrity is protected to the greatest extent possible. Next slide.

So, this is -- we are submitting as evidence -- it's linked in the SONAR, but we thought it was important and we just wanted to give you a hard copy in support of the proposed definitions and standards providing the DNR Division of Ecological and Water Resources report from 2015, A Limited Inventory of the location and style of 2014 slope failures towards better prediction and management. And then I think this more recent one that was done on the Historical Landslide Inventory for the Twin Cities Metropolitan Area also done by Carrie Jennings along with a number of other folks who are listed on here. So, we are submitting those into the record just so you have them. To really have the science behind the need for the bluffs, it's really -- really appreciate that that study was done and it's very informative.

THE JUDGE: So, if I can take a moment here, Ms. Jones. I'm designating the DNR inventory as Exhibit 28 and the Jennings study that was referred to earlier as Exhibit 29. Ms. Jones.

MS. JONES: Next slide. So, specifically we agree with the definitions of bluff, bluffline and other associated features and they are needed and reasonable. The

Executive Order only provided a definition for bluffline but not other features, which has lead to confusion by cities and other stakeholders and inconsistency around how bluff protection is achieved in the corridor. This is from the second Jennings report and this graph really shows how the failures increase at 20 percent slope. So that number 18 percent really provides a little bit of a safety, a little buffer, no pun intended, to those kinds of slope failures. So, defining 18 percent slopes or greater is needed. And, you know, it's also -- most of the existing city ordinances already use 18 percent threshold and so it's not going to be a major change for them.

Defining bluffs as a 25-foot height was something we originally had tried to not have that be quite so tall, but I think that that demonstrates that it is reasonable and would ensure that the small slope features commonly found on residential lots will not cause an undue burden on cities and property owners. So, next slide.

We are going to talk a little bit about the bluff and shoreland setbacks. Which we also are supportive of. They are almost identical to the ones that are in the Executive Order. Those are also -- you know, other than the fact that districts have changed around a little bit, they are really very similar and reasonable. They will prevent erosion, degradation of water quality and habitat. And they are also

consistent with State shoreland law, floodplain regulations and most of the city ordinances, as I said. So, we think those setbacks are important. This is an example where you don't have a setback what happens to the bluff and how much infrastructure had to be added to support that. The one on the bottom is in Lilydale. The one on the top is Mississippi River Boulevard along the gorge in St. Paul. So you can really see the difference there. Next slide.

So, another thing that we also are happy about with the bluff protections is the bluff impact zone and the shore impact zone. And I think there are -- there probably will be some negative comments about those two things as being an imposition, but the BIZ and the SIZ, as they are called, provide significant improvements over the current standards. They are needed because they ensure better protection of bluffs and shorelines and they are reasonable because most of the proposed standards for managing vegetation and land alteration only apply to the sensitive areas as opposed to applying everywhere in the corridor. And that leaves other nonsensitive land in the corridor with fewer restrictions. So, yeah, you can see the difference up there. I don't think I have to explain it.

One of the weaknesses of the Executive Order was that the vegetation management standards and guidelines are unclear and unnecessarily broad making it difficult to

develop vegetation management policies that can easily be translated into local ordinances. You can put the next slide up.

For example, the interim development regulations included the following: The selective cutting of trees greater than 4 inches in diameter may be permitted by local government units when the cutting is appropriately spaced and staged so that continuous natural cover is maintained.

This is problematic for a few reasons. It does not define continuous natural cover or provide clear guidance on how to space trees. And, more importantly, it does not incorporate how to manage other types of vegetation which are really important for habitat and water quality such as shrubs, herbaceous plants and those things. You know, in addition, they also support fish along the shorelines. But, most importantly, it requires that tree removal be regulated for all land in the corridor. And that created an undue burden in the cities and was rarely enforced.

This is an example of a place where there was a lack of enforcement and there wasn't actually a good mechanism in the City of Mendota's ordinance to hold this person accountable for taking all these old oak trees out. But by incorporating the bluff impact zone and the slope impact zone the restrictions on development and land alteration and vegetation management are focused in the most sensitive areas

in need of the greatest protection. And I think I have already said this, but it represents a prime example of the DNR listening to all the perspectives and identifying compromise that meets the needs of cities as well as ensuring protection of the River's most important resources. That's it for bluffs.

THE JUDGE: If you wouldn't mind stating and spelling your name for our record.

MS. UZAREK: Sure. My name is Alicia Uzarek. I also work for Friends of the Mississippi. My name is spelled A-l-i-c-i-a U-z-a-r-e-k. I will be talking today about protecting scenic views.

The Mississippi River provides some of the most sweeping scenic views in Minnesota. As you can see, here is a view from Mounds Park over downtown St. Paul and the Westside Flats. And these iconic views and viewsheds are public resources that should be protected for current and future generations. Scenic views provide a sense of place for local residents, attract new residents and businesses to the Twin Cities and inspire tourism in the region.

Protection of scenic views by limiting building heights in the Critical Area was also discussed extensively by stakeholders during the rule development process. There was significant disagreement about building heights with local residents and environmental groups favoring lower

heights and local city staff and developer interests often favoring taller heights and more flexibility. This is an area for which many City staff requested performance standards for building heights, and the final draft did include that in addition to minimum dimensional standards.

I would like to speak briefly about defining scenic views. And I will be referencing part 6106.0050 titled Definitions and subpart 56 as well as part 6106.0070, Preparation Review and Approval of Plans and Ordinances which is subpart 4.B. So, next slide, please.

This is a view from Schaar's Bluff in Nininger Township. A similar view to what we had at the first public hearing. Specifically this is one of the public river corridor views. The definition of Public River Corridor View provides a basic framework for cities to work with that will ensure a consistent approach to protecting views throughout the corridor. The term Public River Corridor Views appears throughout the rules and numerous standards require that the identified views be protected. Next slide, please.

This consistent approach is reasonable because it allows cities, local cities to identify specific river corridor views to protect as opposed to the current regulations that require blanket scenic protections for large areas of the corridor. As part of their comprehensive plan, each municipality will, quote, "Identify and protect those

public river corridor views and other scenic views deemed important by the community." This provision offers each community an opportunity to engage its residents and stakeholders including neighboring communities to take stock of existing views, viewsheds, identifying esthetic preferences and discerning which land forms and viewsheds have the most value.

So, up here, you can see an image from the St. Paul River Corridor Plan, the current one, and they decided that with the various blufflines in their community they are not going to build and obstruct those blufflines. So, here, you can see development on top of the bluff and below the bluff with the bluffline still visible. Next slide, please.

And here you can see how that has shaped development today. This is the view looking from Kellogg Park in St. Paul over to the Westside Flats of St. Paul. And you can see that the far bluffline up here is unobstructed and the development is below that bluffline giving visitors to the science museum in downtown a sense of place as they look out over the vast views.

So, next, I would like to talk about structure height. Part 6106.0120, Dimensional Standards, subpart 2.A. We support the height limits listed in subpart 2.A 1 through 6 and the inclusion of a performance standard in the River Towns and Crossings, Urban Mixed and Urban Core districts

that require or encourage buildings to tier way from the river and to minimize interference with river corridor views. Likewise, we support the performance standard included in the Separated from River district requiring a structure's height to be, quote, "Generally consistent with the height of the mature treeline where present and existing surrounding development as viewed from the ordinary high water level of the opposite shore." As these areas get developed and our local population grows, the preservation of scenic views on the river will become even more needed than it is today. Next slide, please.

Here you will see the poster building of the Critical Area right here people referred to in the past hearings, and the address is 740 Mississippi Boulevard. And this is exactly what we are looking to prevent, especially in areas with lots of public river corridor views and the Mississippi River gorge here.

So, my final comments today are on conditional use permits for height. And that's part 6106.0120, Dimensional Standards, subpart 2.D. Height limits in the Critical Area tend to be somewhat controversial. And even with new rules local developers and cities will invariably want to make exceptions to allow some buildings to be taller. Under the existing regulations, city planning commissions often do grant conditional use permits and variances to allow a

structure to exceed the height permitted. However, it's quite rare for the findings of fact associated with those official actions to directly address the potential impacts to the river. Establishing a process for evaluating the impacts to scenic views and taking steps to mitigate those impacts is needed in order to prevent degradation of the river's unique scenic character. We support the standards for granting a CUP for height in the proposed rules, as they will ensure that exceptions for height are reviewed within the context of the Critical Area. Although we support the proposed heights for each district, the placement of some of the proposed districts in the maps will not provide adequate protection of scenic views. Especially in the gorge around Grey Cloud Island and along the bluffland surrounding Spring Lake.

Our comments on the maps will be summarized in a few minutes again by Irene.

THE JUDGE: Thank you so much. Mr. Clark, if you wouldn't mind introducing yourself.

MR. CLARK: Thank you, Judge. My name is Whitney Clark, W-h-i-t-n-e-y C-l-a-r-k. I'm the executive director of Friends of the Mississippi River. And my comments today will be with respect to subdivision and land development standards, subparts 1 through 5.

Obviously, the open space dedication requirements of the rules we think are excellent and needed. The river is,

of course, more than just the water flowing between the banks. The ecological river includes the land on the shorelines and the bluffs and we think as development occurs these rules have to protect a certain amount of open space, especially in the as yet undeveloped or developing portions of the corridor.

About 100 years ago when the area that we are in today was not yet developed and the city fathers and mothers were thinking about what kind of a city they wanted and how to take advantage of the river, the great landscape architect who actually planned the Grand Rounds in both Minneapolis and St. Paul said this. "The Mississippi River is not only the grand natural feature which gives character to your city and constitutes and main spring to its prosperity, but it is the object of vital interest and the center of attraction to intelligent visitors from every quarter of the globe, who associates such ideas of grandeur with its name as no human creation can excite. It should be placed in a setting worthy of so precious a jewel."

So, that was 100 years ago. And the generations that have followed have benefitted immeasurably from that setting, putting the river in that setting. And what we are doing today and as the cities come online with their plans and ordinances is the next round of planning, providing that setting for this precious jewel, the Mississippi River.

Dedication of open space within the corridor is needed to ensure the protection of the river's biological and ecological functions, preservation of its natural and scenic character and enhancement of the public river access and trails.

Conservation design which is included in the rules or clustering away from the river is we think an excellent strategy for ensuring that wildlife habitat and other important ecological functions along the river can be preserved. This is especially important in the undeveloped areas of the corridor and areas that we know will be developed in the next generation. Next slide. Thank you.

The requirement for open space dedication in the Critical Area is not new. Executive Order 79-19 includes this requirement in the standards and guidelines for preparing plans and regulations, although it is very vague compared with the proposed Critical Area rules. So, the Executive Order requires that local units of government and regional and state agencies shall develop plans and regulations to maximize the creation and maintenance of open space and recreational potential of the corridor. It requires that plans and programs to acquire sites for public access to the river and to protect open space areas shall be adopted. And it requires that in the development of residential, commercial and industrial development a

developer shall be required to dedicate the public reasonable portions of appropriate riverfront access lands, other lands and interest therein or cash in lieu. So, we have this standard that already exists in the Executive Order. The rules improve upon that.

My next comments will be with respect to the open space dedication requirements in the rural open space district. Next slide. Requiring 50 percent dedication of open space in the rural and open space district is needed to protect, as the statute requires, the specified scenic, geologic and ecological resources. And we believe it's reasonable because most of these areas are already zoned for rural, low-density development now. The rural open space district contains lands with the highest ecological integrity and function in the Critical Area. Open space dedication in the ROS district will preserve quality habitat along the river and maintain the potential for public access to the river in the future.

Then with respect to the Urban Mixed and River Towns and Crossings district, we agree with the 10 percent requirement in the UM and RTC districts, but we believe that the 10-acre threshold for applying open space dedication requirements to river adjacent land is too high for the urban areas of the corridor in the Urban Mixed and River Towns and Crossings districts. Because most of the parcels that we

have in the urban areas are smaller than 10 acres. So for them to effectively protect open space in these districts we would need to have a lower acreage threshold. We believe the thresholds should be changed to five acres. Much of the land within the Urban Mixed district will undergo redevelopment in the next 20 years and public access to the river will be needed to support growing numbers of urban residents and visitors. Some cities may argue that it's overly burdensome to monitor and enforce open space requirements of small acreages between 5 and 10 acres, but we believe the statute requires these resources to be protected and we also think that the benefits that will accrue in terms of property values, scenic enhancement and ecological health will last for generations and be easily worth that additional effort.

Other than riverbanks, bluffs and shorelines, these areas slated for redevelopment generally have very few primary conservation areas as they are defined in the proposed rules. So, open space dedication for smaller parcels is needed to ensure that keeping the riverfront in a natural state or restoring vegetation when necessary is given priority. This is especially true here in the core cities of Minneapolis and St. Paul where both cities already have existing policies that wherever feasible land along the river should be public parkland.

Finally, my last comments are regarding ordinance

flexibility. While my organization was previously opposed to provisions for ordinance flexibility, we are pleased that the DNR in the latest draft of the proposed rules has added criteria to ensure that resource protection and/or mitigation will be adequate. The criteria for ordinance flexibility are strong we think and must not be weakened. So we support it as long as they are not weakened. It's reasonable to provide cities with some provisions for adopting and approving an ordinance that are not in strict conformance with the rules provided that cities can show that significant Critical Area resources will not be impacted by the development. That's the purpose of the rules. If they can show that that won't be the case, we have no objection. We particularly appreciate the addition of the requirement that to obtain approval for a flexibility request cities must document their proposed mitigation. So that's a nice change and we support it. That concludes by comments.

THE JUDGE: Thank you so much, Mr. Clark. Ms. Jones.

MS. JONES: Do you want my name again?

THE JUDGE: No, we are good. Thanks.

MS. JONES: I'm going to talk a little bit about the district maps. We support the intent of the districts, but in a few cases we disagree with how the districts were mapped and we think that some adjustments to

districts are needed in order to meet the statutory requirement to protect the ecological, scenic and geological resources of the gorge. I'm sorry. Of the river. That's a Freudian slip because I live near the gorge.

So, this first map is map 1 from Dayton to Anoka. So, this area right here is a floodplain area called Kings Island. It's not that easy to see in the map but there is like a channel that goes all the way around it. And there is no development there. And we think this should be in the ROS instead of the RN. We put this in our previous comments.

This area should be in the district with the highest protection such as the 200-foot structure setback from the river. It has the same qualities as the natural areas and parks in Minneapolis and St. Paul and we think it should be in the ROS district to maintain consistency with it really being a natural park area. As like, for example, Mississippi West Regional Park up here is ROS, and this is not a regional park, but it has some sensitive areas there that I think would be good to protect. Next slide.

So, this is the map for Minneapolis. This is to sort of give you the orientation. And this close-up here I just wanted to comment that this area from Plymouth up to Lowry was previously in the Urban Core. Which we were very concerned that there would be no restrictions on height. And we appreciate that that got changed to Urban Mixed. I know

some folks are interested in seeing neighborhood designations up here. I think this is appropriate here. There is a lot of light industry -- there is some residence, but there is a lot of light industry through there as well as parks. So we appreciate that that got changed.

In general in Minneapolis we are still concerned about heights in the gorge. However, the River Towns and Crossings height standard was set at 48 feet, providing some protection of the scenic views and bridge crossings. I don't have a picture for that. I apologize.

So, the next slide is Nicollet Island. Here, I think we requested the whole of Nicollet Island be in the Residential Neighborhood. And the northern half was changed to River Neighborhood, the southern half was changed to RTC. We are comfortable with this change as long as the height limit for the RTC district remains at 48 feet. And we understand that there are people at the city council that would like this to go back to UM. They spoke about it at their meeting. And we strongly disagree. Most of Nicollet Island is owned by the Minneapolis Park and Recreation Board which is an independent entity from the City. They recently approved a new regional park master plan for the area which calls for maintaining the existing uses but adding more natural features to the island such as restoring land along the east channel and replacing the paved road with a woonerf.

Which is spelled w-o-o-n-e-r-f. It's a new catchy planning word. Which can be used by bikes and pedestrians and limits automobile traffic. So, there is not a plan to make this more urban. And we would support it all being residential neighborhood. We would be okay with the way it is now, but we don't want it to go back to the Urban Mixed. Next slide.

This one is going to be a little harder to point out. There is an area here, this is over on Main Street Southeast across the river from downtown. So, it's this area right here blown up (indicating). I didn't have a chance to draw a line around it, but there is a lot of natural park area. I mean, there is islands here. This is Hennepin Island, Father Hennepin Bluffs Park. And it does not make sense for those areas that are quite natural and sensitive and really at the beginning of the gorge to be in the Urban Core. There is also some private property that's owned in here. And with Urban Core as the district potentially some of those property owners could build things that would have significant impacts on the river and in particular, because it's within the Central Riverfront Regional Park boundary, it would potentially prevent some areas from becoming par for, you know, block people off from the Stone Arch bridge and block people so that they wouldn't necessarily see where the park is or feel as comfortable going there. So, we think it would not be in keeping with the surrounding open space or the many

historic structures on Main Street to have Urban Core on the Riverside of Main Street. Next slide.

Moving down to St. Paul. So, we continue to have concerns that some of the most scenic parts of St. Paul will end up with weaker standards for structure height than the existing MRCCA ordinance that they have at the City. In particular, the Mississippi River gorge on the east side of the river from Highland Parkway to Elway Street. At the center of this area is one of the most historically and geographically significant places in Minnesota, the confluence of the Mississippi and Minnesota Rivers. You can see the Minnesota River coming in here (indicating). That's the Mendota bridge (indicating). Up here is Pilot Knob (indicating). You really can't see a whole lot. I mean, church steeples are the one thing that you -- it makes sense for those kinds of things to stick up a little. Of course, we have cell towers, too, now. I think we are stuck with them. A lot of this area has been maintained as quite scenic. The confluence has a unique geography that connects our community with 10,000 years of history. One of the largest waterfalls in the history of planet earth existed here before receding to the present day location of St. Anthony Falls. Native Americans considered this area highly spiritual and important calling it Mendota which means the Meeting of the Waters. And it's no coincidence that this

location is the birthplace of Minnesota. Fort Snelling was built high on the bluff where soldiers and early settlers of the territory had a commanding view of both rivers and the surrounding landscape. In addition to its historical significance the scenic qualities of this area are dramatic, unusual and worth preserving.

Under the City's existing Critical Area ordinance, the area landward of Mississippi River Boulevard and Shepard Road for quite a distance, all the way from Marshall to Rankin has a 40-foot height limit. But in the draft rules height limits -- you can go to the next slide. So, you can see in this basically from even further north of here but all along the river all the way along up to here right now it's a 40-foot height limit (indicating). So, that's part of why you are hearing from some people from the City, you know, residents that are concerned, I think the West 7th neighborhood, Fort Road neighborhood sent in a letter they don't like those taller heights and they think it's kind of extreme to increase by 25 feet.

So, we are also concerned that especially at the confluence taller heights in this area could diminish the scenic character of this important area. And right now there is not that many buildings that are taller than the trees, as I showed.

So, I'm just going to talk a little bit about the

Ford site. In general, you know, if the confluence is not going to be River Neighborhood, we feel like RTC makes sense for some of these areas. There are a lot of crossings. You have got the Ford bridge and Highway 5, the Mendota. And so RTC might be acceptable for some of these areas over here instead of UM (indicating). But in the case of the Ford site, we have been kind of studying that a little closer. We are aware that the City would like the Ford site to be most or all Urban Mixed. Because they want to be able to have dense development there. We would prefer to see the RTC along the Parkway there as it is. However, if the City, you know, if they provide some kind of a visual analysis, which they have been working a little bit on trying to predict where you would be able to see buildings from the opposite side of the river, and so if they are able to provide some sort of a visual analysis that shows that you won't be able to see buildings at 65 feet, we would potentially support moving that line further this way (indicating). So, I think we are trying to be open to the possibility of what they might be asking for. At the same time, we were relatively happy when we saw this designation. There is a portion of the Ford site that's also outside the Critical Area where they can zone it however they like. Next slide.

So, this is another one that at least in the draft letter that the City did they were suggesting that this area

between the Mississippi River Boulevard and the river, which is now privately owned by the Ford Company, this is a big huge dump called Area C, if you don't know about that (indicating). It's all fill and pollution that goes all the way down. This was flat before that (Indicating). That's just an aside. But we think that all this land it makes sense for it to be parkland. You have got the Mississippi Gorge Regional Park up here, you have got Hidden Falls Regional Park starts right below here and then Crosby (indicating). The whole area along here has regional parks and state parks. This should also be in the -- or just stay in the ROS. That's the district that it's in right now. So, we want that to stay that way. Next slide.

So, here this Shepard/Davern area, I think if we had to pick one area that we would want to see the map change it would be in the Shepard/Davern area. It's River Neighborhood right up to Highway 5 and then it changes to Urban Mixed. So, it's around the bend from Ford and just east of Highway 5. We strongly believe that this area should if not River Neighborhood be RTC and not UM. The existing height limit here is 40 feet and the city council recently approved new underlying zoning for this area including portions back here as well. They have a small area plan that sets the height limit at 55 feet. So, the 65-foot height limit in this most special and scenic location is demonstrably not protective of

the scenic values here as required by statute. We see no reason for this site to have a 65-foot height limit. And many of the local residents agree. Next slide.

So, during a recent variance request to build a 73 1/2 foot luxury condominium complex at this site, we used this photo of the site taken from Pike Island showing this parking structure which is 40 feet high -- 44 feet high. And obviously you can see it from the river. So, anything that was 73 feet high was really going to show up. We did convince the city council to reduce the height and right now that developer is back to the drawing board revising their building to be shorter.

So, the last map that I want to look at, next slide, is St. Paul to Nininger. So, we have been talking a lot about this area, including some very significant resources including the Pine Bend Bluff Scientific and Natural Area which is over here, Schaar's Bluff which is where we were the other night for the hearing, Grey Cloud Dunes which is over here, also a scientific and natural area, and then also Grey Cloud Island and lots of other small islands (indicating). So, considerable investment has been made to set aside riverfront land for natural areas, regional parks and trails and spectacular scenic overlooks. So, we are concerned and surprised that so much of this special area is in the SR district. I mean, it's kind of rampant. This is

Separated River district, which, you know, for all intents and purposes where height is concerned it's like a narrowing of the corridor. We think that after going through this for seven years we hope this isn't going to get updated again for maybe 40 years.

So, these rules are going to be with us for a while, and as development starts to come into some of these areas if tall buildings with no limit on height were built in some of these areas it would have huge impacts to the corridor. So, we are very concerned. We are surprised because most of this land is in Nininger Township, Denmark Township and rural sections of Cottage Grove and these municipalities do not have plans to develop or urbanize these areas in the foreseeable future. So, by definition, Separated from River should not be visible from the river. I am going to show you a photo in a few minutes of a place where it clearly is visible. There are areas that maybe right now if you took a picture over here you wouldn't see anything but it's because it's farmland. And when it's farmland there is nothing on there and it's understandable that you wouldn't be able to see taller buildings. So, that could change the rural open space character of these areas as well as the views could be negatively impacted. So, we really would like to see that change as much as possible. You know, in a lot of these areas you can see it seems like it's just following the

bluffline and then right behind there you have got whatever height people might want to do in the future.

So, the next slide is a close-up. So, this is where we were the other night, at Schaar's Bluff. I mean, some of these areas it's just extremely close. There is a spot along here where the bike path is actually it looks like it's the boundary. And so we would like these areas to be RN if possible instead of SR if they can't be ROS. They are rural and open. And in the previous Critical Area they were all considered the Rural Open Space. I think that's probably more appropriate for these areas.

And so the next slide. This is my last one. This is the spot where we have actually got -- it's a little hard to see it in this bright room, but here's Grey Cloud Dunes right here (indicating). And when Grey Cloud Dunes was preserved, prior to it being preserved, the scientific and natural area, I think there was a big fight to try to preserve this part when it got turned into a golf course.

So, this was another one that's very surprising that you have got a golf course here, and apparently someone is planning to build a bunch of houses and tall buildings some day. So, it doesn't really make sense why this area next to such a sensitive area and also visible, that's the golf course viewed from Grey Cloud Island, so you can see it, and we would prefer to not have the RS there. And so we really

think ROS would be the best district for the golf course but RN would be acceptable. We just don't think this should be Separated from River.

And that concludes my comments on the maps.

THE JUDGE: Thank you so much, Ms. Jones.

MS. JONES: Thank you for letting us have the time.

THE JUDGE: Let me take a brief moment off the record just to talk about scheduling.

(At this time a discussion was held off the record.)

THE JUDGE: We are back on the record. Mr. Dimond, if you wouldn't mind stating and spelling your name for our record.

MR. DIMOND: Certainly. Tom Dimond, T-o-m D-i-m-o-n-d. Before I get into this, I would just like to pick up on a couple of things that were discussed before. One of them that a gentleman spoke about how it would be good to deal with the issue of visual pollution with power lines. The catch is that we had that provision in the current regulations. The current protections call for the utility lines to be buried. The proposed rules eliminate that protection.

Our current rules require parkland dedication. Which seems to be a commonsense thing in a national park and in an area where you are trying to protect the resources and

accommodate more recreational use. The proposed park regulations eliminate parkland dedication from the rules.

Which gets me to thinking about at this meeting and some of the previous meetings it reminds me of the childhood story of the emperor who had no clothes. I keep hearing this about how these are enhanced protections, these are improved, they are better of protecting the resource. When, in fact, these rules are less protective. They remove protections that are there today and which will have a significant negative impact on growth.

The rules require that -- I can hand you a copy of this (indicating). I will have a copy for the DNR.

THE JUDGE: And if you can tell us what it is. It's now Exhibit 30.

MR. DIMOND: Yes. It's not just the case that sometimes people, well, I feel this way or this way. It's factual and quantifiable that these rules are a reduction in protection of the existing. The regulations, the statute drafting these rules requires the protection of bluffs, very steep slopes, shoreline, gorge, scenic views, historic sites and a number of other provisions.

Let me take bluffs just to illustrate this issue. Everyone, as I say, should be aware that the DNR proposed rules for the Critical Area significantly reduce existing protections. Individual provisions create negative impacts,

but the compounding effect of the proposed change is what really makes the difference. It is not unreasonable to assume that if the proposed rules are adopted without extensive restoration of existing protections that St. Paul, Minneapolis and other cities will be pressured to reduce existing protections in their comprehensive plans and ordinances. This would be a terrible loss for the region, the state, the nation. The real question is whether the DNR will reverse course and at least ensure proposed regulations are as protective as existing ones.

Existing Critical Area regulation prohibit development on all 18 percent and greater slopes. Sometimes people get confused with bluffs and what aren't bluffs. All 18 percent and greater slopes are protected. In the requirements for the statute about these rules, it requires that very steep slopes be protected. Very steep slopes are eliminated in the proposed rule. This is no protection of them. And there are currently protections for them.

The DNR will also eliminate, as I say, the existing prohibition on development on 18 percent and greater slopes and the requirement that they remain in a natural state. And in this document -- I won't go over it, but there is a letter from the DNR on regulations for the City of St. Paul where the DNR specifically and on multiple occasions iterates that you have to protect the 18 percent and greater slopes and you

have to keep them in a natural state. That's the DNR's decision and the rules.

The proposed rules would eliminate existing protection, as I say, for all 18 percent and greater slopes, that do not meet the new height requirement and the 100 percent slope segment requirement. Only 38.5 percent and steeper slopes would be protected with a 100 foot horizontal run. Only 28.25 percent or greater slopes would be protected with a 200 foot horizontal run. They further reduce protections when they chose not to use the statutory, the statutory Critical Area definition of development to define what is prohibited. They further reduce protections when they chose not to use the statutory Critical Area definition of structure to define what is prohibited. They created a new one that is not what the statute requires. The statute definition includes anything constructed, installed or the use of which requires a location on a parcel of land including a movable structure on the land used for housing, commercial or office purposes, swimming pools, advertising signs and others. These are some of the items that would no longer be part of the list of structures prohibited on 18 percent and greater slopes or the required setback. People do not generally realize how dramatically these protections are being reduced.

They further reduce protections when they choose to

allow expansion of nonconformities. Existing protections allow expansion of nonconforming structures as long as expansion is not in the protected area. The proposed rules would allow structure expansion in the protected areas.

They further reduce protections when they chose to allow setback averaging. Existing protections prohibit development in the protected areas. The proposed rules would allow new development in the protected areas if development on abutting property is grandfathered in.

Let me just compare the shoreland bluff definition to the proposed Critical Area definition in these rules. The shoreland definition is supposed to apply to the Critical Area also, but the DNR has repeatedly said they will not enforce the shoreland provision in St. Paul and elsewhere even though statutorily they are required to do so. And the Critical Area when it was being considered designated shoreland was considered as a way to protect it, but the decision when they looked at it is that for a number of factors it not did adequately protect the Critical Area. And the Critical Area is a higher standard.

The existing State shoreland definition, the slopes rise at least 25 feet. The slopes rise at least 25 feet. A 25 foot high segment must average 30 feet. One section. And an area with an average slope of less than 18 percent over a horizontal distance of 50 feet or more is not bluff.

The proposed Critical Area of bluff definition. The slope rises at least 25 feet. A 25 foot section must average 100 percent, not 30 percent. And an area with an average slope of less than 18 percent over a horizontal distance of 25 feet. So, it cuts out because of undulations of land, which it talks about, it cuts out more of that. So, in fact, the proposed Critical Area definition of bluffs is less protected than the shoreland. Add to that toe bluff definition in shoreland, and this is in the rules, means the lower point of a 50 foot segment with an average slope exceeding 18 percent. Top of bluff means the highest point of a 50 foot segment with an average slope exceeding 18 percent. For the Critical Area, the toe of the bluff means the lower point of a 25 foot segment with an average slope exceeding 18 percent and the top of the bluff means the higher point of the 25 foot segment with an average slope exceeding it. Again, because of undulation in the land and the short distance, it shrinks the protected area compared to the shoreland.

So, Critical Area proposed bluff protections, which are tied to the definition, are weaker, dramatically weaker than what is in place today and what even shoreland, what is required every else in the state we in the Critical Area would have a weaker standard. It's mind boggling.

The DNR has proposed a bluff protection definition

for the Critical Area that's less protected. Add to that, proposed rules eliminate any shoreland setback requirement in sections of the Critical Area. This is in direct conflict and State shoreland statutes. Regulations require all public waters in the state to have at least a 50 foot setback and the DNR in rules that were never adopted, but rules they recommended, a 75 foot. So DNR even believes it should be stronger, but they have omitted it. And, again, this would be on the Mississippi River where everywhere else on the Mississippi River has to have a setback requirement there would be zero in sections of the Critical Area, in the heart of the Critical Area. Even though the statutory requirement is to protect these shorelands it does not meet the requirements.

Add to that and what I'm saying about it's quantifiable. This is not just an opinion. This is -- I can show you an example. You don't have to look at it, but I will just show it to you. This is a survey that was actually done (indicating). A real life survey in the Critical Area in Highwood. The City of St. Paul reviewed this, approved it, inspectors looked at it, identified what the bluff is, what the bluff areas are. This is a computer run picture. And, again, you don't have to look at it. It's a computer run picture from these proposed rules (indicating). This protects less area than what is actually protected today and

quantified to be protected today by a surveyor, by our City inspectors, by our review. And what they are saying is these rules, computer rules would protect the same areas. In fact, documented, they do not protect those same rules. So, again, they do not provide the protections that are required of by the statute but also that are deserved of the area.

I will just quickly mention what these are, go through them. But essentially there is letters from Sandy Fecht from DNR, there is multiple pages, I appreciate the stuff that Friends showed, but where the City's plans specifically oppose what is or in opposition to what is in regulations. Also, the City of Minneapolis' regulations as to what definition -- they have a definition of bluff on the books.

I should also mention that it's been stated that bluff is not defined in the Critical Area. It actually is defined in the Critical Area. It's not in the definitions, but it's defined. And it's also pointed out that, well, there is bluffline, but there is no bluff. It's an oddity. I will readily admit that. But what it is is when the Critical Area was being decided on, the St. Croix had recently been adopted and provided protection for 12 percent and greater slopes. That was the desire of many in the discussion for the Critical Area.

In the give and take of that, the bluffs actually in

the Critical Area -- in shorthand, we oftentimes refer to bluffs as 18 percent or greater slopes. That's actually not correct. That's shorthand. What really is bluffs in the Critical Area are 12 percent and greater slopes. And it's written in the Executive Order and in the draft. But what they did as a compromise is they said that 18 percent and greater slopes would be protected as natural areas and no development allowed on them at all. The 12 to 18 percent would be protected but would have a limited protection of them. And so when they decided where the bluffline would be they only applied the bluffline to the 18 percent and greater slopes and that's why -- how it lays out. It's actually laid out in it so they are all bluffs. In these rules it lays out and it lays out the statutes, the revising the rules for the shoreland. It also lays out, I have read some of this information before, of communities and counties in close proximity on the river, for example, Wabasha County, Lake City, who actually have in place better bluff protections than is proposed for the Critical Area and for the same Mississippi River that we live on.

Having said that, I will let you go over that. But I would like to -- one other -- quick mention this. My background, I have some familiarity with the river because I actually lived in the Critical Area, I own property, lived in the Critical Area, own a business in the Critical Area. I

worked as staff for the State Senate drafting legislation to protect the Critical Area, served on the planning commission of the City of St. Paul and served as a council member in the City of St. Paul. And I just say that as background that it's very important to actually look at what the details are and what the actual impacts of these rules are. Not just statements, oh, this is more protective or it is not more protective, but what does it actually do.

And with that in mind I will just mention another one, a background. I'm a veteran and I've spent a fair amount of time out at Fort Snelling, and there is certainly historical value to that and there is certainly scenic values that should be protected. But for those who aren't vets you may not appreciate the significance to the veterans of the state of that area, not only the historic, but that is the home to the federal building where veterans get their services, it is home to the veterans medical facility, the VA medical facility, it's home to the historic veterans home which is home to the state care for veterans, it provides homeless housing for veterans. Veterans go there and spend a lot of time there and the adjoining properties. PTSD is a big issue with veterans. Paralyzed veterans have a large facility there. There is a large traumatic brain injury facility there. And being able to go out on the Fort grounds and the adjoining park properties, to be able to enjoy those

views and vistas is an important part of the healing process for veterans. Thank you.

THE JUDGE: Thank you, Councilman Dimond. I appreciate your time and contributions.

MR. DIMOND: Thank you.

THE JUDGE: With that, we have concluded our public hearing. Before folks take their leave of me, I wanted to make a number of important advertisements. The written comment period will start right at this moment and extend for 20 calendar days through Wednesday, July 6, 2016. Those materials need to be in to our office by 4:30 p.m. or they are late and they not part of the comment period. Don't be late. If you are going to take the time to develop thoughtful incites and contributions to this record, we want you to be timely. Make sure that they are in by 4:30 p.m. on Wednesday the 6th of July 2016.

After that, there will be a five-day business day rebuttal period for folks to comment on all of the materials that we have developed, 30 hearing exhibits, the current testimony that's been received, the other written comments that will come in over the course of that 20 day period, and that rebuttal period will close precisely at 4:30 p.m. on Wednesday the 13th of July, 2016.

I appreciate everyone's courtesies to each other and to me. We have developed a very robust and insightful and

important record, none of which could have been possible without you, so, you have my thanks. We are adjourned.

(The Hearing concluded at 1:18 p.m.)

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ADMINISTRATIVE
HEARINGS

REPORTER'S CERTIFICATE

I, SUSAN M. STROM, do hereby certify that I recorded in stenotype the Hearing on the foregoing matter on the 16th day of June, 2016, at the Mississippi Watershed Management Organization, 2522 Marshall Street NE, Minneapolis, Minnesota;

That I was then and there a Notary Public in and for the County of Dakota, State of Minnesota;

I further certify that thereafter and on that same date I transcribed into typewriting under my direction the foregoing transcript of said recorded hearing, which transcript consists of the typewritten pages 157 through 278.

I further certify that said hearing transcript is true and correct to the best of my ability.

WITNESS MY HAND AND SEAL THIS 22nd DAY OF JUNE, 2016.

Susan M. Strom

SUSAN M. STROM
Court Reporter

SUSAN M. STROM
NOTARY PUBLIC - MINNESOTA
MY COMMISSION
EXPIRES 01/31/2020

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Rules
Relating to the Mississippi River
Corridor Critical Area

OAH DOCKET NO. 8-9014-33236
REVISOR ID NO. R-04240

VOLUME III

The above-entitled matter came on for Public Hearing before Eric L. Lipman, Administrative Law Judge, taken before Susan M. Strom, a Notary Public in and for the County of Dakota, State of Minnesota, taken on the 16th day of June, 2016, at the Mississippi Watershed Management Organization, 2522 Marshall Street NE, Minneapolis, Minnesota, commencing at approximately 10:00 a.m.

A P P E A R A N C E S

APPEARING AS THE HEARING OFFICER:

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APPEARING ON BEHALF OF DNR:

SHERRY ENZLER, ESQUIRE, JD, Phd
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ALSO PRESENT:

DAN PETRIK - Land Use Specialist

JENNIFER SHILLCOX - Land Use Unit Supervisor

SUZANNE RHEES - Water Policy Consultant

The Original is in the possession of Administrative Law Judge Eric L. Lipman

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PROCEEDINGS

THE JUDGE: Good morning. My name is Eric Lipman. I'm an Administrative Law Judge with the Minnesota Office of Administrative Hearings. We are here for a public hearing In the Matter of the Proposed Rules of the Minnesota Department of Natural Resources Relating to Mississippi River Corridor Critical Areas. It's otherwise known as OAH Docket No. 8-9014-33236. It has also been denominated as Revisor No. R-4240. And I will talk a little bit more about the significance of those numbers in a few moments.

The Office of Administrative Hearings is independent of the Minnesota Department of Natural Resources and the stakeholder groups that are going to be participating in today's hearing. Our Office's purpose is to provide hearing services in rulemaking cases and in other contested cases between citizens and government agencies hopefully in a way that's fair to all the parties.

My presence here, my role here this morning is part of a series of larger regulatory controls under the Administrative Procedures Act; among them, Minnesota Statutes 14.14 and 14.15. The Legislature wanted to guarantee that rulemaking hearings, the development of administrative rules is done in a way that's fair and open and transparent and accessible to members of the public for reasons detailed at

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the very beginning of the Administrative Procedures Act. The Legislature's expectation is is that if we are open and accessible we access the wisdom of the group, the best thinking. It's not just a few folks either in state agencies or elites in St. Paul who's developing these procedures, but rather there are many eyes and many hands that take part in this work, and with the expectation that the substantive results of that process will actually be, in fact, better than if there were a small number of people participating in the process.

From the feedback that we have had in the two prior hearings, apparently there has been some success in that regard. Not only in this case, but I think it's certainly true as a more general proposition and notwithstanding the complexity or the many procedural steps that we take in order to promulgate rules in the way that we do that the substantive results are, in fact, better when we have many hands, many eyes, many sets of expertise contributing to the development of the rules.

There is a handout at the table, the registration table near the door which details the procedures under the Minnesota Procedures Act and very helpful sets of detail about how you can effectively participate in the process. I'm going to be talking about a few of those in my introduction this morning, but there is much more detail in

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the handout. And so I encourage folks if you haven't gotten one of these to make sure that you have one and you can, of course, read that at your leisure. But it also has vital contact information with respect to the commentary. So, that's especially important.

This hearing is part of a set of regulatory processes under the Minnesota Administrative Procedures Act. And while many times stakeholders have lots of different kinds of purposes and audiences that they are speaking to when they make remarks here, not only to the administrative law judge, but sometimes to the agency, sometimes to legislators, sometimes to the governor, sometimes to history and the ages, but this process is designed around three key points. And I will make reference to them.

This process is part of an exploration of three key ideas: Whether the agency has the statutory authority to promulgate the proposed rules. Whether the legislature has given them the authority to make administrative rules on these topics. second, whether the agency has fulfilled all of the legal and procedural requirements in chapter 14 and in Minnesota Rules part 1400. And there are a number of steps that are involved in that in promulgating these rules. And, thirdly, whether of the possible choices that the agency might have if it had the statutory authority and followed all the procedural rules to promulgate the rules whether the ones

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selected by the DNR are needed and reasonable. Okay. So, the question is whether they have the statutory authority, whether they followed all of the procedural steps to promulgate the rules, and whether their particular choices that are in Revisor draft 4240 are needed and reasonable.

The agenda for today's hearing after I complete the overview, introduction about our process today, we will have a presentation from the Agency panel. It has already submitted into the record its key exhibits. We are going to have some excerpts from that in a PowerPoint or a slide presentation from the Agency. But copies of these exhibits, and I think there are five or six of these binders, are on a table near the registration table, if anyone wants to spend some additional time paging through them. Like I say, there is a table, we have chairs, we are glad for folks to access these exhibits, and you are still within earshot, but here we are going to go and do what is the main event which is to undertake testimony on those items.

The good news is is that all of these items have been posted online. They are available through the Internet either at your house, if you have an Internet connection, if you are lucky enough to do that, or at the public library. And so 24 by 7, or at least until library hours close, you can have access and spend as much time as you would like with these materials. And that will be important for the 20-day

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comment period which will follow the conclusion of today's hearing. So let me talk about that.

Following this hearing, there will be a 20 calendar day comment period that closes at precisely 4:30, precisely 4:30 on Wednesday, July 6, 2016. That is the Wednesday following the Independence Day holiday. Then all of those materials will be available online and commentators who contributed or didn't contribute to the first round of submissions can make any kind of rebuttal. It's not a time for introducing new items, but it's for an opportunity for stakeholders to comment on what's already been said. And that will go for five business days following Wednesday, July 6th and will close at precisely 4:30 on Wednesday the 13th of July, 2016. Wednesday, July 13, 2016.

We have our electronic rulemaking comment system, so if you are adept at typing and prefer to do these materials online at OAH, and the handout details how you can access the rulemaking comment item, there are just a few of the items there, it's easily identifiable, you can put in your comments and even have iterative discussions with other stakeholders. And all of those materials that are generated through the first deadline, July 6, 2016, will be assessed during the first round and they will be open for comment in a slightly different docket but on the same website for the rebuttal period which will be through Wednesday, July 13, 2016.

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If you are sending in materials by fax or by hand delivery or by first class mail, again, for arrival before July 6, it's very handy if you use the two numbers that I mentioned earlier. For OAH the Docket number is 8-9014-33236. And everyone in state government is using the Revisor number, not only from the agency to legislators to our office to the Governor's office, if you are in communication with them. They are all using the Revisor No. R-4240. So, that's a unique identifier for this set of proposals and is very handy if you include that on there.

After the passage of the second deadline, I will prepare a report examining those three questions that I mentioned earlier: The statutory authority, the compliance by the agency with the various procedural rules, and also whether the specific rules that they have proposed are needed and reasonable. And that report will be available roughly 30 days, depending upon what happens in the report, after July 13th. So, on or around August 12th. Okay. For reasons which are particular to the Administrative Procedure Act, it might not be exactly 30 days because of some requirements there, but you should be in touch with us. If you marked on the hearing register that you want to receive notice of the ALJ's report, and you can always annotate the register later, we will be in touch with you about the availability of the report.

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With respect to today what I would like to do, again, because the entire process is oriented around hearing from as many voices as possible and drawing upon as much and as wide a diaspora of expertise as we can, is to have a first round of testimony that's roughly where stakeholders are testifying roughly for five minutes. Okay? And that is particularly because there is a brilliant, insightful, needed important comment. The bad news is in line behind you. Okay? And so we don't want any one stakeholder to sort of run down the clock on these presentations. So, what I would like to do is have folks testify for about five minutes during the first round. And then because there are actually stakeholders who wanted to speak longer than that, both the Friends of the Mississippi River and Mr. Dimond have asked for -- they are glad to yield to other stakeholders, have asked for additional time after we have at least completed a first round. And I'm open to that. Because, again, I don't want to hem anyone in unnecessarily. But if there hasn't been a person who has had an opportunity to speak at least once, and both Mr. Dimond and Friends of the Mississippi have made presentations at the other hearings we have had, I certainly want to put those folks up earlier in the line.

So, I think -- actually, I did forget one important point. Because we are here with Ms. Strom and we have set up the tables so as really to have a conversation that's

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neighbor to neighbor much like we were at the local cafe or at the library board or the city council meeting. So, we are asking folks so that they can be heard and understood is to come down and join us at one of the tables here to make remarks. Also, because it's close to Ms. Strom our Court Reporter, she can communicate easily with whoever is testifying if she has missed something or if somebody is moving too fast she can intervene and interrupt. And, also, because we are bound by the strict requirements of the international convention on the humane and decent treatment of court reporters, we break every 90 minutes. So as not to burn out her hands or her resources, we make sure that we do that. And so, roughly, we will be going until about 11:30 and have a standing break and then as necessary we will proceed through the day in 90-minute slots.

And so with that, all of you have my grateful thanks for coming out this morning. And I'm going to recognize you, Ms. Enzler, to begin the Agency's presentation. Ms. Enzler.

MS. ENZLER: Thank you, Your Honor. My name is Sherry Enzler, S-h-e-r-r-y E-n-z-l-e-r. I'm the general counsel for the Department of Natural Resources and I'm representing the Department here today. I want to introduce the Agency panel today. On my right, we have Jennifer Shillcox. Ms. Shillcox is the supervisor of our land use program unit. She oversees the shoreland programs.

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She oversees the critical area program. She has been involved with the Critical Area rule since 2009. Prior to coming to DNR, she has had very extensive land use planning experience both with communities in Minnesota and in Wisconsin and has been intimately involved with shoreland issues particularly in sensitive areas such as the lower St. Croix.

Daniel Petrik, who is on my left, heads the State's shoreland program. He works with Ms. Shillcox. And this includes the Critical Area. He has been involved with the Critical Area Rule since 2012. He has lead the Critical Rule team. He, like Ms. Shillcox, has extensive experience before coming to the Department of Natural Resources working with local units of government on zoning and planning and he has extensive experience in civic engagement.

Ms. Suzanne Rhees, who is at the end of the table here, she currently works in our water permitting unit, but before going there, she left there very recently, was a critical player on our Critical Area rules. She has headed up the floodplain program. And prior to coming to DNR she, too, had extensive experience working with local units of government doing both land use and land use planning and zoning.

So, with that, I'm going to turn the mike over to Ms. Jennifer Shillcox. She will make a much abbreviated

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opening statement. The opening statement is -- the full opening statement is in writing and has been entered into the administrative record as Exhibit 11, and so to get to the comments we are going to just ask Ms. Shillcox to do a very high-level overview for you.

MS. SHILLCOX: Hi, my name is Jennifer Shillcox. That's spelled J-e-n-n-i-f-e-r S-h-i-l-l-c-o-x. I'm very proud to be here today talking about the rules for the Mississippi River Critical Area. As Sherry mentioned, I've been supervising the land use programs unit for a while at the DNR and have been involved with the Critical Area program and this rulemaking since the -- well, I have been involved with the program since I first came to the DNR in 2008 and involved with this rulemaking since it first began in 2009. And it's been a long road to get here. We have had some bumps along the way, but we have learned a lot and we are really happy to be at this point in the process.

As Sherry mentioned, our full opening statement is in Exhibit 11 of the binders in the back and also online. What I'm going to focus on today is the public participation in developing the rules and then key highlights of the rules, particularly what's changed from the regulations that are currently in place and that have been in place for the last 35 years that are contained in Executive Order 79-19 which designated the Critical Area. I will not be referring to the

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full name of the Mississippi River Corridor Critical Area. So, I will be referring to it as the Corridor or Critical Area.

So, it took a lot of input from many different people to get at the proposed rules that we are hearing today. And the proposed rules are better for it. We had a very, very extensive public involvement process. One of the DNR's most intensive processes and one that is not very typical for our rulemaking. So, we are pretty proud of that. This rule affects a lot of people and a lot of interests, so we heavily relied on the experience and knowledge of local governments, interest groups and the property owners who live on the river, who own businesses on the river. We valued and paid attention to their knowledge and perspectives and we knew that people had a lot of concerns and were very passionate going into this rulemaking and throughout the rulemaking and it was very important for us to understand what those concerns were and make sure that we address them appropriately.

So, what we did was somewhat of an iterative process where we shared multiple drafts of the rules and we got input along the way, we tweaked the rules and we put different drafts and put them back out. So, we wanted to make sure again that as we were putting the rule language together we were addressing the main issues and concerns. And we felt

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that we did a pretty good job of that. It doesn't mean that everybody is going to be happy with every provision in the rules, because there are a lot of diverse interests and values and perspectives along the river. We really had to balance those and there was a lot of compromise. But the resulting rule package does reflect the input of all the folks who are going to be affected by the rules. And we believe that the resulting package is balanced, fair and improves on existing regulations.

So, the Statement of Need and Reasonableness which is also referred to as the SONAR, it's I believe Exhibit 3 in the binders. It's been on our website for a long time if you haven't seen it. That explains our rationale for each provision of the rules. And I'm not going to go into those in detail. So, if you are interested in knowing or haven't looked already, that's where you look to see what were we thinking when we decided on various provisions. What I'm going to touch on are just the highlights of key changes from Executive Order 79-19. And that was really to address issues that came up through the rulemaking process.

So, first off was clarity on contents of local plans and ordinances. So, currently the Critical Area program is implemented through local government plans and ordinances. But there is a lot of variation in those and it's not always clear what needs to be contained, so we clarified the

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contents of plans and ordinances and we also clarified rules and responsibilities of all agencies and local governments as well as the procedures.

Flexibility was a concept that really came out strongly with this program. There is a lot of development in place in the corridor, conditions vary from community to community and just along different stretches of the corridor there are different development patterns, different resources, different characteristics. So, we built in a mechanism for flexibility whereby a local government could propose an ordinance that varies from standards in the rules, provided that they are still offering the same level of protection of the resources that are at stake.

Bluffs was a very big issue in the corridor. Currently under Executive Order 79-19 18 percent slopes are regulated, but bluffs are not clearly defined. The term "bluffline" is defined, but bluffs are not clearly defined. And what we heard from a lot of local governments was that it was often confusing. They would get calls from property owners or get development requests wanting to know where is the bluff on the property or where do we need to place our setbacks or what are the restrictions and it wasn't always clear. So, we clarified the definition. And -- Dan already beat me to it. Or Sherry did. Thanks. This Exhibit 12 is actually contained in the rules, but what we did was we

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defined three parameters for defining bluffs. So it's basically height, width and percent slope. And those parameters we are able to plug into a mapping tool that we developed using LiDAR. Which is fancy talk for some really good topo. And we were able to map areas to evaluate different definitions or parameters to see if we were capturing what local governments are already defining and regulating as bluffs and what people commonly think of as bluffs. And we kept the 18 percent as the main factor. So, the bluff mapping tool is something that we actually used to engage local governments that were really concerned and have a lot of bluff land just to evaluate all the different definitions. And this is the one that we landed on that made sense. It captured those features that are most sensitive to development while also minimizing non-conformities. That was another big issue.

Currently in the rule -- or in the Executive Order 79-19 there are four land use districts. And those were established in the mid '70s when the Corridor was first designated and they reflect land use at that time. But a lot has changed in the last 35 years. And so in the proposed rules we proposed six districts to replace the existing four. And those six districts better reflect existing as well as planned future development which was very -- which was laid out to be clearly in the statutes guiding this rulemaking.

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One other thing to mention about the districts is that there are certain standards that vary by district. And those are setbacks from the river and bluffs and height. So, height was also a very big issue in the Corridor in some areas more than others. Particularly, we are talking about building heights.

So, in those four districts we were better able to assign heights that matched the development that was there as well as plan future development. And in two of the districts we have provided for additional height through a local conditional use permit process which would allow the public engagement in making final decisions on which height is appropriate.

Vegetation management was another issue that emerged particularly for local governments. There are some vegetation requirements in the Executive Order and in local ordinances currently but they are very vague. Property owners don't often know what they can or can't do on their property in terms of vegetation. So, we really tried to clarify that and clarify where the vegetation requirements apply. It's really just in very sensitive areas. Actually, we can pull up that figure, too.

So, it's in sensitive areas along the water known as the shore impact zone. It's in the bluff impact zone, the sensitive area around bluffs. And, also, where there are

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existing plant communities that have been identified by the local government in their Critical Area plan.

And how that vegetation is regulated is that basically intensive vegetation clearing, the clearing of all vegetation in a contiguous strip, row or block is prohibited except for some circumstances where it can be allowed with a local permit. And that was some feedback we got from local governments that permitting would at least give property owners an opportunity to come in and talk to local governments about what they can and can't do and the right way to do it so they are not putting those sensitive areas at risk.

Land alteration was another issue that we tried to clarify in the proposed rules. So, land alterations that -- really any disturbance and movement of land. It encompasses erosion and sediment control, storm water management and also riprap. That was a big issue for property owners particularly in the northern part of the Corridor where erosion is a very big issue on private property. So, we did clarify those standards. Again, they apply in the most sensitive areas and generally involve a local permit for many of the activities.

And subdivisions and land development were another issue that we tried to clarify in the proposed rules. The rules established thresholds and percentages for protecting

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sensitive Corridor resources. Which are referred to in the rules as primary conservation areas. And the percentages are to be set aside for protection for all new subdivisions, planned unit developments or large master plan developments.

The set-asides, one thing to just make sure everyone is aware of, is that they are not required for river dependent uses and that local governments can include land that they would already require for dedication as part of that set-aside area.

And, finally, the other very big issue was nonconformities. There is a lot of existing development in the Corridor and people were very concerned that if their development, their homes or businesses didn't conform to any provisions in the rules, that they would be able to continue and in some cases expand. And so we clarified provisions that apply to nonconforming structures and lots and essentially reflect what's in statute. We also provided for expansion in some circumstances that's consistent with how many local governments particularly in the northern part of the Corridor are currently regulating nonconforming structures.

So, that concludes the DNR's opening statement. We really look forward to hearing your comments today and thank you all for coming. We are glad you are here.

THE JUDGE: Thank you so much,

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Ms. Shillcox. Appreciate your time and contributions.

Our first witness will be Senator Sieben of District 54. And following her will be Shirley Erstad of the Friends of the Parks.

So, Senator, welcome. If you wouldn't mind stating and spelling your name for our record.

SENATOR SIEBEN: My pleasure. Thank you, Judge Lipman, very much. My name is Katie, K-a-t-i-e, Sieben, S-i-e-b-e-n. As the Judge stated, I am a state senator. I represent the southern most area of the Critical Area which includes the communities of Cottage Grove, Hastings, Newport, St. Paul Park and Grey Cloud Island Township in the Minnesota Senate.

Thank you for considering my comments on the DNR's proposed rules for the Mississippi River Corridor Critical Area. As I mentioned, I represent the southern most communities in the Critical Area. Thank you for allowing me the opportunity to speak today. I appreciate the thoughtful and thorough approach taken in drafting these rules. My comments will focus on how we got to this point and why adopting the rules is an important tool to help protect the Mississippi River both now and in the future.

As you know, the Mississippi River and Corridor is one of the state's premier natural, cultural and water resources. And, fittingly, there is a long history of

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conservation. In 1976, the State recognized the need to protect the Mississippi River through the Twin Cities by designating the 72-mile corridor as a state Critical Area. Legislation and the Executive Order of the governor established the MRCCA to ensure the river be managed in a way that does not damage this vital statewide resource.

As much has changed in the 30 years that followed, the existing Executive Order has been at times too vague and inconsistently interpreted and adopted by the 30 local units of government with land use authority along the river. As development pressures increased, it became clear the framework should be revisited.

In 2008, the DNR conducted a study to examine the efficacy of the program and recommended potential changes. Representative Rick Hansen of South St. Paul and I convened a study group in the fall of 2008 to work through the many management options that resulted from the study and to draft legislation for the 2009 session. The study group included representatives from the League of Minnesota Cities, developers, the DNR, the National Park Service and Friends of the Mississippi River among others. The study group met several times leading up to the 2009 session. During these meetings and throughout the committee hearings, it was our intention that a broad and inclusive process was needed to sort out the details of definitions, standards and guidelines

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to protect identified Corridor resources.

In directing the rulemaking process, the law gives clear and specific guidance for what resources the new rules must protect, including floodplains, wetlands, gorges, areas of confluence with key tributaries, natural drainage routes, shorelines and riverbanks, bluffs, steep slopes and very steep slopes, unstable soils and bedrock, significant existing vegetative stands, tree canopies and native plant communities, scenic views and vistas, publically owned parks, trails and open spaces, cultural and historic sites and structures and water quality.

This inclusive and comprehensive process resulted in bipartisan legislation that was signed into law by then Governor Tim Pawlenty. The proposed rules being considered today honor the work of the 2009 legislation by balancing the shared goals of flexibility, local control and conservation. The new rules will provide clear and consistent guidelines that are easy for stakeholders to understand.

The Mississippi River is a resource of great significance for our region, state and nation. Here in the Twin Cities it is a tremendous asset to the communities through which it flows. The proposed rules I believe represent the culmination of years of work and broad stakeholder involvement. They establish clear guidelines for Corridor development and ensure protection of the river for

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future and current generations.
Thank you, again, Judge for considering my comments.
THE JUDGE: Indeed. Thank you so much for your time and contributions to our record, Senator.
So, Ms. Erstad. As she makes her way, following her will be Anne Noel. So, Ms. Erstad, if you wouldn't mind stating and spelling your name for our record.
MS. ERSTAD: Sure. I'm Shirley Erstad. It's S-h-i-r-l-e-y E-r-s-t-a-d.
THE JUDGE: Ms. Erstad, what should we know?
MS. ERSTAD: Thank you for this opportunity to speak today. I'm executive director of Friends of the Parks and Trails of St. Paul and Ramsey County. A nonprofit organization established 31 years ago.
In 1985, when a condominium project was proposed for Crosby Farm Regional Park in St. Paul and within the Mississippi River Corridor Critical Area, a group of citizens banded together to point out that type of development was inappropriate for that area.
THE JUDGE: And, Ms. Erstad, everyone reads a little faster than they ordinarily talk, so for Ms. Strom's benefit just a little slower. Thank you. It will seem unnaturally slow to you, but it will seem just right for Ms. Strom.

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MS. ERSTAD: I will try harder.
THE JUDGE: Great.
MS. ERSTAD: Our organization continues to be a vehicle for folks to educate themselves on environmental considerations within our city and county, to promote equitable access to parks, trails and open space for all citizens, and to provide a medium for their voices to be heard.
The Friends support efforts to protect and enhance the natural resources in the Critical Area. We believe rules and regulations should retain strong protections of this shared natural resource.
Regarding native plant communities, please replace "mapped" with "identified" in the definitions. This allows for protections of significant natural resources that may not have been mapped.
Regarding the district maps, the two sections around Marshall Avenue and near Shadow Falls at Summit Avenue have been removed from 40 foot height restrictions and placed into the RTC district which sets the minimum standard for height at 48 feet but goes upward with a CUP. The city's underlying zoning in these two areas is 30 feet. With the ability to go upward with the CUP, this could result in substantial height changes for these areas.
In the district proposals for St. Paul, the UM

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district has been overused. It is inappropriate for such broad areas of development within the Critical Area. These rules will forever decide the look, feel, health, and experience of the river corridor for both humans and wildlife, and overusing UM would substantially weaken natural resource protections. Large swaths of the corridor within St. Paul have been removed from protection accorded them in RC3 Urban Open Space with 40 foot height restrictions and placed into UM which sets the minimum standard for height restrictions of 65 feet but allows for increasing heights with the CUP.
The section from Ford Parkway south that contains part of the Ford site has been removed from RC3 and placed into RTC and UM. Again, this equates to substantial weakening of protections. We understand the necessity and the desire to redevelop the Ford site. But keep in mind, this area is visible for miles up and down the river corridor. The entire redevelopment site is not within the Critical Area, allowing for other sorts of development on portions of that parcel that are not covered in these rules.
We are concerned about the area along the bluff of the gorge and confluence that have been changed from the Urban Open Space district to less protective districts. These are highly visible areas that are valued for their esthetic and scenic views and should be prioritized for

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strong protections because of their historic and cultural significance.
Lower Landing Park from Lafayette to Childs Road and between the river and railroad tracks is mapped as UM in this proposal but should be included in the ROS district. It is adjacent to Bruce Vento Nature Sanctuary and Indian Mounds Park and is public parkland. It consists of open space, trails, picnic areas and wetlands.
The UM district along the top of the bluff on the West Side of St. Paul should be RN. Sixty-five feet and higher buildings at the top of the bluff will detract from the views down river from downtown St. Paul.
We appreciate that Pig's Eye Lake and Highwood are designated Rural and Open Space. However, there is parkland on the east shore of the Mississippi River north of New Port. As parkland, it should be included in the ROS district and not UM.
As you can tell, there are multiple places where the UM district has been broadly used, going so far as to put parkland into that district. We ask that these districts' designations be revised.
Thank you again for your time and attention.
THE JUDGE: Ms. Erstad, thank you so much for your time and your contribution to our record. Very grateful.

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So, Ms. Noel, if you wouldn't mind joining us. And then following her will be Mr. John Anfinson of the National Park Service.

MS. ENZLER: Your Honor?

THE JUDGE: Yes. Please, Ms. Enzler.

MS. ENZLER: Thank you, Your Honor. It would be helpful if Ms. Erstad's comments were in writing if she could leave them with us, because she had a lot of detailed information and we want to be sure that we address all of those in the context of addressing comments.

THE JUDGE: Thank you so much, Ms. Enzler. And, Ms. Erstad, you are now in the ages. You are Exhibit 24. I appreciate your kindness in sharing your remarks with us.

Just give me moment, Ms. Noel. Ms. Noel, if you wouldn't mind stating and spelling your name for our record.

MS. NOEL: Anne Noel, A-n-n-e N-o-e-l.

THE JUDGE: Thank you so much, Ms. Noel What should we know?

MS. NOEL: Good morning. I have had the privilege to set out on a bicycling adventure that has followed the Mississippi River. This journey started May 10th when my friend Mattie and I arrived in New Orleans. We have since then pedaled roughly 1500 miles through the many communities that reside along the riverfront, and we

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will continue this journey to the headwaters of Lake Itasca.

Traveling by bicycle has allowed us to travel at a slower pace, in order to experience these places in a more profound and enriching way. Although the communities' ways of life, geography and ecosystems vary, it became evident that through interacting with the people and organizations tied to the Mississippi there is a strong sense of identity and connection to the river. This unity creates a collective understanding of the importance of protecting the river.

Mattie and I have had the unique opportunity to experience the Mississippi in its entirety. We have witnessed the great diversity from climate to culture and the types of development that has enhanced or devastated the river's bounty.

It is important to be aware of how these development decisions have affected individuals' relationships with the landscape. Many people only have the means to access the river within their own neighborhood. Creating equal access to visit and view the natural landscape is just one way for the communities to help build a positive relationship with the river. This positive relationship encourages individuals to continue to help preserve the culture, heritage and environmental diversity of the Mississippi River. Therefore, it is essential for communities to think critically about how development decisions will impact the future of the river.

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Thank you.

THE JUDGE: Thank you, Ms. Noel. And we are so grateful that you have stopped to rest with us.

MS. NOEL: Five days of rest.

THE JUDGE: Wonderful. Appreciate your contributions to our record.

MS. NOEL: Thank you.

THE JUDGE: Mr. Anfinson. It would be Ranger Anfinson, yes?

MR. ANFINSON: Close, yes. Power Rangers.

THE JUDGE: And following you will be Nicky Leingang of Congressman Ellison's office.

Mr. Anfinson, if you wouldn't mind stating and spelling your name for our record.

MR. ANFINSON: My name is John Anfinson. It's spelled J-o-h-n. Last name, A-n-f-i-n-s-o-n.

THE JUDGE: Thank you so much. What should we know?

MR. ANFINSON: And I have a copy of my comments right here.

THE JUDGE: Excellent. If you wouldn't mind just giving me that so I can mark it. You're Exhibit 25. Mindful that we have Exhibit 25, you can feel free just to hit the highlights that we should know.

MR. ANFINSON: And, Your Honor, I'm going

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to read it through so I stay on time and on track and on task.

THE JUDGE: Okay. And mindful, as we discussed with Ms. Erstad, that folks read a little faster than they ordinarily talk, so what seems unnaturally slow to you will be just right for her. What should we know?

MR. ANFINSON: I wrote "slow down."

THE JUDGE: Wonderful.

MR. ANFINSON: I am the superintendent of the Mississippi National River and Recreation Area, Your Honor. I'm here to provide the National Park Service's comments on the proposed rules for the Mississippi River Corridor Critical Area. The National River and Recreation Area is one of 411 units of the National Park system, and the outcome of this process will fundamentally affect that unit.

The following are some key points about this National Park: We are the only unit of the National Park Service whose mission is to protect, preserve and enhance the Mississippi River. We are the only National Park unit that runs continuously through a major metropolitan area. We own approximately 64 of the 54,000 acres within our boundary, which is the same boundary of the Critical Area, so we are necessarily a partnership park. Everything we do throughout the corridor we do in partnership. And we are a very different model within the National Park system overall.

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So, I would like to emphasize two points. First, as you know, the Critical Area predates the National River and Recreation Area. Yet today the two are undeniably connected. This is important because it shows that the idea that the 72-mile corridor here had exceptional resources and those resources that needed protection began at the local level.

As important as the Critical Area recognition was, many wanted something more for a river and resources of such significance. They wanted the gold star of designations. They wanted to add this reach to the National Park system. And they succeeded in 1988. Their success took the Critical Area to a level of national importance. And, yes, that imposed a much higher degree of trust and responsibility on the state and on local governments in the corridor. The National Park Service is entrusted with America's most treasured places and that inherently requires stronger mechanisms than generally found at the state or local levels.

So, second, despite the National Park designation, Congress relied on the Critical Area Executive Order 79-19 to protect the corridor's resources rather than instituting a level of federal regulations. We need to make sure this agreement is being fulfilled and this experiment, if you will, is working. I believe Senator David Durenberger's comments he made on Tuesday night were right on the mark.

As we have learned over time, the Executive Order has

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not worked well. The proposed rules offer a better solution. We need the rules for a variety of reasons. For most units of the National Park System, we have a set of regulations and policies that apply across the entire unit. This is not happening here. There are important disparities between how the communities throughout the corridor implement or fail to implement the Executive Order. For the many additional reasons, I will simply reference pages 6 and 7 of the SONAR that address the need.

Still, we believe the premise behind our agreement, or "Compact," as former Senator Durenberger called it, can work, and we believe the proposed rules will better fulfill the agreement and better demonstrate the idea of local and state leadership and partnership with the National Park Service and that that can protect the resources here.

Our comments on the draft rules must have their basis in our Comprehensive Management Plan or CMP, as this plan constitutes the formal agreement between the Secretary of the Interior and the State of Minnesota. CMP repeatedly states that the plan and actions reviewed under it must conform to the purposes and the findings for which the National River and Recreation Area was created. I don't have to go into all of these, but just as an overview, the findings and purposes of the Act rely on federal, state and local partnership to protect the corridor's significant resources while helping

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guide orderly development.

Although we did not get everything we would have liked, we believe the proposed rules are in keeping with the Act that established us in the Comprehensive Management Plan.

We also agree that the SONAR -- with the SONAR that the rules are reasonable. They may seem overly demanding to some, but the fact that they serve as a substitute for normal National Park Service regulations for protecting resources of national significance must be considered.

The agreement or compact between the State of Minnesota and the Department of the Interior is an experiment I think that has special relevancy in the 21st Century. The rulemaking process is coming to a close as the National Park Service is celebrating its Centennial Year. We know the 2nd Century is going to be dramatically different than the first. Our visitors, supporters and advocates will be more diverse and more urban. More than 80 percent of Americans live in urban areas already. It is here we can engage new generations of Americans. Last year the director of the National Park Service announced the Urban Agenda, recognizing this shift. There is a brilliant new spotlight on urban parks and on this land in particular at the national and regional level.

We can demonstrate that this model, this partnership can work to protect places of national significance. And we

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can show the National Park Service's worthy level of protection can lead to substantial economic benefits to the communities here.

Finally, I want to commend the DNR for all the work they have put into the rulemaking process. They were rigorous and they were thorough. I won't say we agree with everything, but the draft rules live up to our legislation and the Comprehensive Management Plan.

Thank you, Your Honor.

THE JUDGE: Thank you, Superintendent. Very grateful for your time and contributions to our record. Enormously helpful.

Mr. Leingang, if you wouldn't mind joining us. And then following him will be David Suchy of the Superior North Outdoor Center. Mr. Leingang, if you wouldn't mind stating and spelling your name for our record.

MR. LEINGANG: Good morning, Judge Lipman. Thank you for the time. My name is Nicky Leingang. Spelled N-i-c-k-y. Last name, L-e-i-n-g-a-n-g.

THE JUDGE: Thank you so much, Mr. Leingang. What should we know?

MR. LEINGANG: I am a community representative for Congressman Keith Ellison who represents the 5th Congressional District of Minnesota. His district stretches from Spring Lake Park all the way down to Fort

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Snelling and includes a substantial portion of the Mississippi National River and Recreation Area. It's very fitting that the letter that I'm about to read from Congressman Ellison follows the comments from Mr. Anfinson from the National Park Service.

Dear Judge Lipman, I am writing to express my strong support of the Minnesota Department of Natural Resources' proposed rules for the Mississippi River Corridor Critical Area or MRCCA.

The Mississippi River is central to Minnesota's history and vital to our future and we must ensure that we protect this critical corridor. The significance of the Mississippi River is profound for all forms of life. Hundreds of species of plants and animals call this corridor home. Over 60 percent of North America's birds and waterfowl use it as an international migration flyway. More than 50 cities, 18 million people, rely on it for drinking water. Preservation for historical, natural and cultural purposes is especially important, considering the projected growth of the Twin Cities metro in coming decades.

The Mississippi National River and Recreation Area, or MNRRA, a federal designation that incorporated the 72-mile MRCCA as part of the National Park Service relies on the Critical Area program to protect, preserve and enhance this corridor. The current patchwork of regulations for the

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partnership park is spread among 30 local governments and some guidelines have not been updated in decades. And an ecosystem as complex and diverse as the MRCCA all stakeholders must work together using proactive management.

The proposed rules would provide significant, though reasonable, standards for riverside development, alterations to vegetation and land, public access and more. They would safeguard the value of the MRCCA and the federal MNRRA for future generations of humans, animals and plants alike.

The National Park designation is meaningful only as long as it encourages a deep commitment to sustainable management, and the proposed rules are a significant step in that direction.

Sincerely, Keith Ellison, Member of Congress.

THE JUDGE: Thank you so much, Mr. Leingang. And, please, send our thanks to the Congressman for the testimony.

Mr. Suchy. And as Mr. Suchy makes his way, following him will be Representative Barbara Haake. You will be following Mr. Suchy.

Mr. Suchy, if you wouldn't mind stating and spelling your name for our record.

MR. SUCHY: David Suchy. D-a-v-i-d S-u-c-h-y.

THE JUDGE: And, actually, if you can get

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a little closer to the microphone so that you can be heard. Mr. Suchy, what should we know?

MR. SUCHY: Well, I didn't have a lot of time to review the rules, but the document does seem to be well formed. Never seeing anything quite like it after studying environmental policy for roughly 10 years, a lot of need for documents and EIS stuff has crossed my path. I think whoever was involved in putting the document together did it justice.

The Bluff Protection Standards Investigation the DNR did, Jennings 2015 -- it was a -- I don't know if it was a study or just a document that was labeled as Jennings 2015. So, the structural geologist that the DNR worked with to create that study or document, I'm not exactly sure which, there's a quote, "All failed bluffs within the MRCCA had slopes modified for development, and these modifications contributed to bluff failure." So, I think that perhaps as we move forward maybe a little bit more stringent rules and designations are in order. We are looking at possible development in places that are, you know, geologically soft, we could say. But the preservation of the river corridor I think is what's really paramount here. And the term "river dependent uses" has been -- was used in the document, in the rule, and I think if we focus toward river dependent uses and preservation, as this is a natural resource, I think the

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ethic of preservation should follow because it is the National Park.

I just want to say that in 1988 the MNRRA was formed and so was I. We have come a long way. It is quite refreshing to see updated rules. I think that we are only doing ourselves justice as we move into the future by taking these projects on. It's not easy, but we do need to update. We need to become the future.

So, my only qualm is the 20-foot bluff setback seems a little ridiculous. A failing bluff could easily destroy a structure that was that close to it.

The other note that I made for myself while I was reading the document, and, again, I didn't get a chance to get ahold of the rule until today, so I just did a little perusal, how do we maintain accountability for vegetation management? This is something that on public land is relatively easy. We have parks and different agencies that are overseeing that, but not all of the land in this corridor is public land and veg management could go a long ways towards restoring a functional ecosystem and providing ecosystem services to all of the parties involved, right down to nematodes and, you know, soil forming organisms and right back up to us.

The major issue that I have seen with the rule is maybe to follow the structural geologist's advice, "All

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failed bluffs within the MRCCA had slopes modified for development, and these modifications contributed to failure." That's a direct quote from the rule. From the document.

THE JUDGE: Thank you so much, Mr. Suchy. I appreciate your time and contributions.

MS. ENZLER: Your Honor?

THE JUDGE: Yes, Representative Haake, please.

MS. ENZLER: Your Honor?

THE JUDGE: Oh, forgive me. Ms. Enzler. I thought it was -- go ahead.

MS. ENZLER: Thank you, Your Honor. Ms. Shillcox would just like to clarify for the record what the Jennings study is that the last testifier referred to.

THE JUDGE: Please. We would be grateful.

MS. SHILLCOX: I can help fill in the blanks a bit. So, following the big storm events in 2014 when there were many bluff failures in the Twin Cities, in Mendota, Minneapolis, a lot in Hennepin County in general, FEMA, the Federal Emergency Management Agency, actually gave the DNR a little bit of money to go out and look at the characteristics of those failures and collect data; what was the slope, what were the development characteristics, what other factors were at play that contributed to that failure. And then we got additional money from -- the DNR got

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additional money again from FEMA to work with Hennepin County. And Hennepin County's interest was really in trying to predict where failures would occur so that they could mitigate appropriately. They could put regulations in place to stop failures and could also enact emergency management plans accordingly.

But what the study did find was that there is different geology along the corridor. And Carrie Jennings, the geologist at the DNR at the time who did all of these studies and participated in the Hennepin County study recently, found that 20 percent seems to be a trigger around here and that development does -- and alterations to hydrology or the way water moves across the land does contribute and that that 20 percent really does aline very closely with the 18 percent that's currently protected in the Critical Area in the proposed rule.

So, I hope that helps to clarify. That was a study that came out in 2015 by Carrie Jennings representing the DNR, but it was funded through FEMA.

THE JUDGE: Thank you so much.

MS. RHEES: Could I mention that that --

THE JUDGE: Ms. Rhees, if you wouldn't mind introducing yourself.

MS. RHEES: I'm sorry. Suzanne Rhees. S-u-z-a-n-n-e R-h-e-e-s. I know you have my card. I just

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wanted to mention that that document is referenced in our SONAR and referred to in the discussion of the bluff definitions.

THE JUDGE: Excellent. Very helpful. Thank you so much, Ms. Rhees.

So, before you begin, Representative Haake, following you will be Dan Brady of GRC.

MR. BRADY: Yes. Great River Coalition.

THE JUDGE: Okay. Mr. Brady, you are following Representative Haake.

Representative, if you wouldn't mind stating and spelling your name for our record.

MS. HAAKE: I am Barbara Haake. B-a-r-b-a-r-a. Haake is H-a-a-k-e.

THE JUDGE: What should we know?

MS. HAAKE: What should we know? Well, excuse me, you don't need to record this.

(Brief discussion off the record.)

THE JUDGE: So, what should we know?

MS HAAKE: I am also on the Rice Creek Watershed District and I'm on the board of managers and I'm on the board of managers for the Minnesota Association of Watershed Districts. I'm not speaking for them, but I'm speaking for myself and all the experience I have had with the Mississippi River.

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First of all, I want to thank very much the DNR for undertaking this. It's a vast, vast problem or situation of what you had to go through to try and get this done and you bringing in all of these people.

I just want to endorse what Shirley Erstad from St. Paul had said. I appreciate what she was mentioning about the river that mainly deals with the City of St. Paul. I happen to have a boat there, a boat we brought back from Michigan, been to St. Louis and came all the way back up the Mississippi River. So, I didn't bike it, but I have been on it and I have seen it and I think we have done a wonderful job and I hope it continues. I like what the Friends of the Mississippi River is doing also. So, I haven't heard from him yet, but I really do respect their work.

This is the only little comment I am making. I wish there was something that was going to be done on the Minnesota River because of the sediment coming in at mile marker 844 that is filling in our Mississippi River that really is a lot cleaner than what it looks like.

So, all I'm saying is I endorse -- I'm going to read all the other things that are in the products. If I need to make any other comment, I will write it in before the deadline. Thank you very much.

THE JUDGE: Thank you so much, Representative Haake. And, again, the deadline she was

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referring to is Wednesday, July 6, 2016.
Mr. Brady, if you wouldn't mind joining us here. As you are making your way, you will be followed by Karen Bernthal of SNO. Mr. Brady, if you wouldn't mind stating and spelling your name for our record.
MR. BRADY: Dan Brady, B-r-a-d-y, like in Bunch.
THE JUDGE: Thank you so much. What should we know?
MR. BRADY: Thank you. I'm a member of the Great River Coalition and I've spoken a couple times regarding a certain issue that, unfortunately, I don't think the DNR has truly addressed. It's regards to something I call visual pollution, obstructions along the river that as the proposed rules has stated regards to the viewing, the public viewing of the river. And these obstructions are the transmission lines.
I realize that the rules do not advocate removal of them, but they surely lack the ability to, I don't know, mitigate the development or enhancement of them in the sense that it doesn't say that maybe eventually to improve the view maybe these lines should be buried.
Whenever they come to -- and I'm talking about the public utilities, especially Xcel, when they come to the city or state or whatever government body and they propose the

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change on it, that the government body should dictate, because the rules will indicate that hopefully, that they should put the line underground.
I'm not advocating that we should go back to the late 1600s when Pére Hennepin or Pére Marquette came to our shoreline and saw the beautiful river and all. I just think it's time for us to realize whenever we walk down to the park system or the shoreline that we don't see these power lines that are interrupting the tranquility and the beauty that what Mother Earth has given us. So, I believe that's what the proposed rules should probably look at further down the road. Thank you.
THE JUDGE: Thank you so much, Mr. Brady. I appreciate your time and your contribution.
Ms. Bernthal, if you wouldn't mind joining us. Following you, will be Susan Vikse of AFCAC.
MS. BERNTHAL: Before I -- I have a couple of questions that is not a part of my testimony.
THE JUDGE: Please. But if you could first state and spell your name for our record.
MS. BERNTHAL: My name is Karen Bernthal, K-a-r-e-n B-e-r-n-t-h-a-l.
THE JUDGE: Thank you so much, Ms. Bernthal. What should we know?
MS. BERNTHAL: I'm from SNO. Which is the

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Sheridan Neighborhood Organization, which is the neighborhood just directly south from here.
THE JUDGE: Great. Feel free to talk with the Agency panel if you wish.
MS. BERNTHAL: So SNO wrote a letter during this process. Is that part of this public -- because what I'm trying to do is reiterate some of those things and explain some of them that were in our letter.
MS. ENZLER: If I may inquire, when was the letter submitted?
MS. BERNTHAL: Before the deadline for --
MS. ENZLER: So it was a comment received in the comment period?
MS. BERNTHAL: Yes.
MS. ENZLER: Okay. Then that will be included as part of the record.
MS. SHILLCOX: Just to clarify, was that in response to the request for comment in 2014?
MS. BERNTHAL: Yes.
MS. SHILLCOX: That is not part of this record. That was something that we took into consideration when drafting the rules that are here now, but that will not be part of the record.
THE JUDGE: It's not part of this binder, but it certainly informed the Agency's thinking and proposal.

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How the process generally works is after a statutory delegation of authority, then 60 days after the effective date of the -- they have to go out and ask generally what do you think about these ideas. And so that's probably the letter that the Association received just to inform their general thinking. When they commit to a firm proposal, then there is another round of comments of which this process is about.
MS. BERNTHAL: Okay. So, we probably will be writing another letter for public comment.
THE JUDGE: Okay. Great.
MS. BERNTHAL: So, in that first letter we commented that the Sheridan Neighborhood Organization has some land right along the Mississippi River. However, many people do not know that we are that close to the river because we don't have a lot of access to it. And we really liked whole-heartedly that this is a National Park area and we support the National Park area. Our concerns were that, at least in our neighborhood, the rules were being relaxed for building heights and we were against that. And we also thought that this was an issue of equity in terms of access to the river.
The City of Minneapolis has some beautiful biking trails along the Mississippi River and in part Minneapolis is known for some of those beautiful trails. We would like

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those trails in our neighborhood and to have the same kind of amenity that the neighborhoods that are designated River Neighborhoods have. River Neighborhoods appear to have a 100-foot setback and have more access to a beautiful river and parkland and we would like that in our neighborhood. And so to be designated Urban Core or Mixed Urban allows for heights that are 65 feet tall, whereas, currently the height is 54. And a note to the DNR is that in the process where developers come and want to develop land that is in the Mississippi River Critical Area they can do something called alternative compliance or get a conditional use permit which allows them to even build higher than what the designated maximum height is. Which doesn't make sense to us as a neighborhood organization. And it seems to us that the rules are being relaxed at the pressure of developers or possibly City officials. And we look to the DNR to be strict in the rulemaking, especially in the Urban Core because that makes it more equitable for everyone.

Some of this was informed by looking at the City of New York and the idea of the Central Park. And I hear in these rules that there should be transition zones. And I think to myself if there were transition zones from the tall buildings in New York City that line Central Park and they got slowly lower as you got into the park, you would have a small area of park that was a park. And, so, we also believe

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that the larger the natural area can be and the further back the buildings are that can be built that are tall that allows more people real access to the river or the idea that they are close to the river.

And, so, our input is to become a River Neighborhood, because that seems to offer the most protection, a 100 feet and maybe 40 foot heights that can be built. That's our comment, but we will be writing more.

THE JUDGE: Ms. Bernthal, thank you so much for your time and contributions to our record.

Ms. Vikse, if you wouldn't mind joining us. And as you are making your way, following you will be Lorrie Louder of the St. Paul Port Authority. Ms. Vikse, if you wouldn't mind stating and spelling your name for our record.

MS. VIKSE: Susan Vikse. S-u-s-a-n V-i-k-s-e.

THE JUDGE: Ms. Vikse, what should we know?

MS. VIKSE: Okay. Ditto to what the speaker in front of me said. But I'm one of the few North Minneapolis riverfront homeowners. I live pretty much right across from Ole Olson Park. And I think the goals of the rules to preserve and enhance the natural, esthetic, cultural values of the river and adjacent lands and to protect and preserve the biological and ecological resources and

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functions of the corridor are critical to preserve the beauty and viability of the third largest river and locally our most valuable resources. These are good goals. But what I'm concerned about is that these goals may not hold true for the upper riverfront on the west side of the river.

Now, my understanding, that has been designated either Mixed Urban or Urban Core. And so that, again, goes to a 65-foot height, which is more relaxed than the current 40-foot minimum.

North Minneapolis is really a long underserved area of the city that deserves the same access to environmental protected areas that those south of us enjoy. And I would hope that at a minimum these guidelines could at least go back, especially for height, to what they were.

As we know, the upper harbor is now being developed and one of my fears without strict guidelines is that we are going to be looking at monolithic structures, the higher the building the larger the surface area for parking, and that involves, you know, pollution to the river and it also is a deterrent to an access for people to enjoy the park and the riverfront.

So, these spaces are important not only for the people but for the migratory corridor, development of natural habitat, and especially with the closing of the St. Anthony lock and dam I think we have a real opportunity here to

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develop a beautiful parkland with also other development, but monolithic structures really don't belong along our riverfront. Thank you.

THE JUDGE: Thank you so much Ms. Vikse. I appreciate your time and contributions.

Ms. Lauder, as you make your way, following you will be Bob Margl of the Great River Coalition. Thank you so much. Please, Ms. Louder, if you wouldn't mind stating and spelling your name for our record.

MS. LOUDER: Thank you, Your Honor. My name is Lorrie, L-o-r-r-i-e, Louder, L-o-u-d-e-r.

THE JUDGE: Thank you so much, Ms. Louder. What should we know?

MS. LOUDER: Thank you so much, Judge. I am senior vice president for business and intergovernmental relations at the St. Paul Port Authority.

And just a word about the Port Authority. We are an 87-year-old redevelopment agency established by the legislature. The Port Authority's job, in a few words, is to manage and grow the St. Paul Harbor and to take fallow properties with complex environmental and other serious issues and bring them back to life with expanding companies that pay taxes, provide jobs and those jobs are at good wages.

Judge, before I go on further, I would like to just

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mention, the DNR staff have been incredibly helpful, incredibly professional, responsive. And I think Jenny and I and her staff have worked since 2009 together, so we are very impressed with the DNR's help in all of this.

We, at the Port Authority, do concur with the comments that have been sent in by the St. Paul Area Chamber of Commerce and also we concur with the City of St. Paul's Planning Commission comments that have been provided to DNR staff previously.

The law, as we all know, is vitally important to -- that the rules reflect the language and intent of the authorizing statute. So, we really have looked a lot at the statutory language. And, of course, the law speaks to a balance of interests and provides for the continuation, development and redevelopment of a variety of urban uses. And the law also indicates that the guidelines and standards must protect a variety of key features, and that includes commercial, industrial and residential resources and, therefore, ensures that the business, economic uses continue without undo regulatory burdens.

The Statement of Reasonableness and Need, the SONAR, cites on page 12 a primary goal of the rules is to reduce complexity and to be less intrusive for property owners, developers and local governments wherever possible by focusing on the specific development impacts on those key

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resources that I mentioned above and features identified in the law. And, also, further along on the same page, it states that the DNR was mindful of costs and potential intrusion on local control and property rights when developing these necessary provisions, quote, unquote.

Here are a few Port Authority concerns. And my comments are also reflective of quite a few businesses in the corridor that have expressed concerns as well, and through the process there were a couple dozen or so businesses and the Port Authority that issued a statement particularly relative to concern about nonconforming uses.

We believe, bottom line, that the DNR has not quite gotten there as far as proving the need for certain of these rules and, therefore, is not in compliance with the law. And one of the items is that the rules take away some of the local government land use and zoning controls. And elements of these draft rules are inconsistent actually with existing development and their growth and expansion opportunities on these properties and will create over 1000 nonconforming buildings. They, therefore, in our opinion, are inconsistent with the expressed guidelines, which, I will mention three: continued development; protection of commercial, industrial, residential resources; and, lastly, redevelopment of a variety of urban uses.

So, the broad-brush regulations in part of these

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proposed rules supersede the thoughtful and fine-grain area and site specific, both area and site-specific planning and zoning regulations that have been promulgated over decades, if not a couple centuries, by the City of St. Paul.

The second, the creation of nonconformities deserves I think a little more finer point on it. We believe, anyway, that the way that the DNR has defined bluffs would create nonconforming structures. I think we might all agree with that. However, we believe that it is possible to maintain the integrity of slopes, to maintain slope stability without generating these type of restrictions.

DNR's creation of over 1000 nonconforming structures does not comply with the tenets expressed of reducing complexity and being less intrusive, as referenced in my earlier comments. We question DNR's authority to restrict property owners' rights under the enabling statute. This clearly sends a wrong message to property owners, developers and the overall marketplace. It stigmatizes businesses.

A few points on that. Structures cannot be expanded. Business growth, job creation and tax base enhancement will be thwarted. And I think we all know, of course, that St. Paul is a fully developed city and as such has struggled from time to time as other similar sized cities have with redeveloping some blighted an defective properties and also struggling, in fact, with their very fiscal status on an

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annual basis. So, this is extremely important to us and to our business customers.

Additionally, we believe that devaluation of properties will occur. And coming along with that, of course, is difficulty in selling the properties that can't be expanded. The wrong message here is, among other points, is telling businesses you just can't do certain things that are normal in our society as far as business growth. It also takes risks from a financial standpoint. There could be costly litigation. So that means the State and possibly those of us at the local level have to defend ourselves, and there are likely inverse condemnation cases that would be lost, and, of course, that's costly in terms of cash damages that would be awarded under that scenario.

THE JUDGE: Ms. Louder, just some concluding thoughts just for this round, mindful that we will have a second round where you can expand on some of these important ideas.

MS. LOUDER: Will do, Judge. Thank you. The Port Authority and businesses are concerned that the DNR restrictions will undermine important investments already made as well as inhibit future investment and reinvestment in the corridor.

So, we would just -- I would say in closing for this part, Your Honor, we believe that the law does not allow the

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DNR to stigmatize properties, to cause lower property values, to create negative messages to the business community and to cause added expense to the public and private sector entities or to put an investment chill in the marketplace. Thank you so much.

THE JUDGE: Thank you so much, Ms. Louder. I appreciate your time and contributions.

MS. LOUDER: And, Your Honor, I am going to -- my CEO actually is going to sign a letter, so I would be happy to defer to other speakers and just put the rest of my comments in the letter if that would be acceptable.

THE JUDGE: You can certainly do either way. We want to give you both opportunities.

MS. LOUDER: It's just one more page, so I think it will be okay to add in there.

THE JUDGE: Excellent. Thank you so much. Mr. Margl, if you wouldn't mind stating and spelling your name for our record.

MR. MARGL: Good morning, Judge and Agency Comm -- I don't know, what is your designation?

MS. RHEES: We are staff.

MR. MARGL: Just staff. Okay. Thank you. Glad to be here and thank you for the opportunity. My name is Bob Margl. Last name is spelled M-a-r-g-l. I am on the executive board of the Great River Coalition and a board

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member with the STAWNO Neighborhood Group. I'm here as a resident. I live at 610 4th Street Northeast. And this serves as a follow-up to a letter that I had sent in September of 2014 making comments. The letter was addressed to the Department of Natural Resources.

So, my concern today is I guess comments that were made from the director of long-range planning, community planning and economic development with the City of Minneapolis where our neighborhood, the STAWNO neighborhood would look to change from a CA-RN directly -- we are directly across from downtown Minneapolis to a CA-UC or a CA-UM district. And, again, that's looking at the urban development district.

I would like to I guess state my letter, and it would -- I guess if you want me to read that and then maybe just a short comment.

My wife and I are residents of Northeast Minneapolis, living at 610 4th Street within the boundaries of the St. Anthony West community. I would note that our home is well over 100 years old and has been in my family since 1926.

At this time, I would like to comment on the proposed Critical Area Mississippi National River and Recreation Area Program under which the Department of Natural Resources would classify our Northeast neighborhood as an Urban Community and subject to intense high-density property development.

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THE JUDGE: Just a little slower, Mr. Margl.

MR. MARGL: I will do that. We would like to take issue with these plans that would condemn our historically unique neighborhood to big dollar developers whose ultimate goal would be to destroy or Northeast community in the name of so-called progress and profit.

I guess I'm going to close with let's keep our St. Anthony West neighborhood historic district designation as it is, a mecca of tranquility, set in a hectic and fast-paced intercity environment. Let's hold on to that little bit of neighborhood that we have close to our urban segment. I know that there is not much room for the city to grow, but, again, I would hope that we could hold on to that small bit of intercity housing and individual homeowner groupings that we have. So, I thank you. And I'll make it short. Thank you.

THE JUDGE: Thank you so much, Mr. Margl. I appreciate your time and contributions. Jake Hamlin of CHS.

Mr. Hamlin, welcome. If you wouldn't mind stating and spelling your name for our record.

MR. HAMLIN: Good morning. Thank you, Judge Lipman and staff. Jake Hamlin, J-a-k-e H-a-m-l-i-n.

THE JUDGE: What should we know?

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MR. HAMLIN: Thank you, Your Honor. I would like to make some reference to comments developed by one of our CHS executive vice presidents, Shirley Koderick.

Your Honor and staff, I have been with CHS myself for a couple of years now as a director of state government relations, and so relatively new to this issue, and so grateful for the time and appreciate the time the staff has put in to the development of the proposed rule, recognizing their significant history here. I do want to give a brief introduction of CHS as well as to the relevancy of the proposed rule to our organization, to our cooperative.

CHS is a global agribusiness cooperative owned by farmers, ranchers --

THE JUDGE: Just a little slower, but go ahead, farmers and ranchers.

MR. HAMLIN: Thank you. CHS is a global agribusiness and cooperative made up of farmers and ranchers and other cooperatives throughout the nation. We are diversified in energy, grains and foods, and we are committed to helping customers and our farmer owners grow their businesses through domestic and global operations.

We operate refineries, pipelines and we manufacture and market and distribute Cenex branded refined fuels and other products, renewable energy products, and we also have a significant agricultural business. And that is the relevancy

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here to the proposed rule.
St. Paul has a very rich heritage dating back to the '20s as a port city. They recognize the competitive advantage of river transportation. And CHS was part of that history back in the 1920s and to this day has a very vested interest in the proposed rules for the Corridor Area as a property owner in the proposed St. Paul Urban Mixed district and as a customer in another Urban Mixed district all in the Corridor. So, we support, CHS supports existing mixed use regulatory framework that was alluded to earlier and from Ms. Louder from the St. Paul Port Authority that was developed by businesses, residents and local units of government in terms of zoning within those local jurisdictions.
We feel the proposed rules do not fully reflect the intent of the law that was passed in 2013 by the legislature that reinforces the river and the corridor as a multipurpose resource. And specifically the recognition and the protection and enhancement of redevelopment of the commercial and industrial properties through the promulgation of these rules.
We feel that the rules do fail to demonstrate the need and reasonableness because that there were not less intrusive means or methods identified to achieve the purpose of the proposed rules. And specifically that pertains to the

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creation of the nonconforming properties, but then also additional costs in the administration of these nonconforming properties.
So, specifically, as proposed, the creation of these nonconforming structures would result in significant complexity for current and future business development. That business, including CHS, would be allowed to conduct repairs, replacements and maintain our existing operations. That said, existing businesses would not be allowed to expand without additional permitting from local units of government. So, proposing rules that create these legally nonconforming structures becomes an administrative burden, lowers property value and does limit the potential for expansion. So, we feel the rules should enable the development and redevelopment of industrial and commercial uses for the economic vitality of St. Paul and some of the Mississippi River communities.
Furthermore, we do not believe the true cost of the proposed rules are accounted for in the Statement of Need and Reasonableness. Specifically the administrative requirements to proposed rules by local units of government do require time and funding and, ultimately, feel these costs would get passed on to property owners and these costs are not necessarily assessed.
Finally, just to reiterate, too, that as referenced

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in law as well as in the development of the proposed rules is that the desire again for development and redevelopment of industrial and commercial properties do need to be provided within the proposed rules and, therefore, we do feel that the Department should modify the proposed rules to really reflect the ability for businesses to be able to expand and align with some of the existing administrative framework of those local units of government.
With that, I will submit my comments as well.
THE JUDGE: Excellent. Thank you so much Mr. Hamlin. I appreciate your time and contributions.
We are just about at our Ms. Strom break, and so I just wanted to conduct a little housekeeping business.
MR. HAMLIN: (Indicating).
THE JUDGE: Excellent. So, Mr. Hamlin, your remarks are Exhibit 26.
We have gone through the list of those folks who were firm about their desire to share remarks during the first round, and so I just want to do a brief check in with the folks who were not as certain. Ms. Bierbrauer of Above the Falls.
MS. BIERBRAUER: I will not be speaking.
THE JUDGE: Ms. Bierbrauer passes. Ms. Maze of the City of Minneapolis CPED.
MS. MAZE: Right here.

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THE JUDGE: Yes.
MS. MAZE: I will say something.
THE JUDGE: So, what we are going to do is take a 15-minute break until just a quarter of the hour. Ms. Maze is going to give riveting remarks. You won't want to miss it. So, we are going to take a short recess, but we are going to start precisely at 11:45. Please be sure to come back. We are in recess.
(A recess was taken from 11:33 a.m. until 11:46 a.m.)
THE JUDGE: So we are back on the record after a short recess. Ms. Maze, if you wouldn't mind stating and spelling your name for our record.
MS. MAZE: Certainly. My name is Haila Maze. That's H-a-i-l-a. Last name Maze, M-a-z-e. I'm with the City of Minneapolis Community Planning and Economic Development. I'm a planner there.
The City of Minneapolis has not yet taken formal action on the comments we will be submitting. We are in the midst of a period where our counsel is considering that and we will be submitting for the record a series of detailed comments.
As such, I'm going to confine my comments at this point to some general principles that have been affirmed in past submittals during the draft comment period. Because we have commented on every opportunity that was available. And

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I also do want to thank the DNR for their inclusive and thoughtful and very careful process to date.

This is some general principles that the City has been committed to. Again, we will have detailed comments that follow up on those. One, we are a partner with DNR and many other stakeholders here in the health of the river and river corridor and adjacent areas, and including that, commitment to continuous riverfront parks and trails in places where they exist and places where they do not yet exist.

We are committed to sustainable growth, and as an Urban Core city sort of have the lead on that, ensuring it's done in a way that is supportive of environmental health and restores areas that have been damaged by past efforts.

We are also committed as an entity that is charged with enforcing many of these regulations as a city along the corridor minimizing the administrative burden attached to enforcement. This has to do for us -- and our comments will touch on making sure that the definitions in the comments are clear, concise and not subject to confusion and ensuring, to the extent possible, there is consistency with other regulations and requirements that are already adopted and in place. As in the City of St. Paul, we already do have fairly robust regulatory framework and we want to minimize the trouble with enforcement for all parties involved by ensuring

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that there is reducing complexity and being less intrusive whenever possible.

I also wanted to note that we are here to listen to the other folks speaking today. Many of them are also our constituents, and we have intentionally delayed our comments to allow -- to take into account those who are here and elsewhere from the folks for our area and care about our area as we do. That concludes my comments.

THE JUDGE: Thank you so much, Ms. Maze. I appreciate your time and contributions.

Ms. Hofstede, I'm mindful that you had three sets of comments that you wanted to give. I'm just wondering whether that could conveniently fit into a five-minute segment or whether you want to wait until the second round where you would have a wider opportunity? What makes the most sense?

MS. HOFSTEDE: I think I could probably finish it in five minutes.

THE JUDGE: Thanks. So, if you wouldn't mind joining us. You are next.

MS. HOFSTEDE: Thank you.

THE JUDGE: Ms. Hofstede, if you wouldn't mind stating and spelling your name for our record.

MS. HOFSTEDE: Absolutely. My name is Diane, D-i-a-n-e. Last name is spelled H as in Henry, O as in Owen, F as in Frank, S as in Sam, T as in Tom, E as in

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Edward, D as in dog and E as in Edward.

THE JUDGE: What should we know?

MS. HOFSTEDE: Well, I'm here representing the Great River Coalition as the president of the organization. I bring with me a great deal of experience not only as a community activist but as a former 3rd ward city council member very engaged in writing and evaluating the critical rules before us.

I want to thank all of you for making this opportunity available to you and come with a very strong recommendation that the Great River Coalition opposes the City of Minneapolis recommendation that the area in Northeast Minneapolis, the St. Anthony resident area be designated as an Urban Mixed neighborhood. They define the Urban Mixed neighborhood which would include large areas of highly urbanized mixed use that are part of the urban fabric of the river, allows for future growth and potential transition of intensely developed areas that does not negatively affect public river corridor views --

THE JUDGE: A little slower, Ms. Hofstede.

MS. HOFSTEDE: A little slower probably.

THE JUDGE: So that Ms. Strom can keep up.

MS. HOFSTEDE: Thank you. Includes large areas of highly urbanized mixed use that are part of the urban fabric of the river, allows for future growth and

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potential transition of intensely developed areas that does not negatively affect public river corridor views and protects bluffs and floodplains.

We support the designation of the community from Hennepin Avenue going north as a River Neighborhood and being designated as the most protected area of the riverfront in the downtown core area.

I would like to refer to a letter that is presented to the City of Minneapolis Zoning and Planning Committee and make a statement that we are really appalled by the lack of outreach by the City of Minneapolis to its residents regarding the change of the recommendation to an Urban Mixed area for the Northeast community.

Ms. Monson, a city planner for the City Community Development Agency sites in her comments: An unapproved small area plan in St. Anthony West is one of the reasons to expand high density into a predominantly single-family home area. The community has not endorsed more density.

Ms. Monson incorrectly states the vision of the community. Never has Ms. Monson attended a St. Anthony neighborhood meeting to discuss her recommendation. Never has an elected City official attended the St. Anthony West neighborhood meeting to discuss the designation recommended by Ms. Monson.

The Great River Coalition opposes the recommendation

of Ms. Monson and if approved by the City of Minneapolis and the Mayor. We oppose the actions.

The St. Anthony West Mission Statement in the Small Area Plan reads: The Small Area Plan will focus our attention to the riverfront as our most important asset. It will examine means to embellish it in order to improve our designated historic neighborhood, attract home ownership, strengthen the diversity of the ecology, improve river quality, and create St. Anthony West as the City of Minneapolis' most desirable, diverse, safe and sustainable river community in which to live, to work, and to recreate.

Please note that increased density, confirming to the downtown core, supporting high-density development is not a principle the community supports. Ms. Monson, a member of the community development staff, and the community development department and the City of Minneapolis we believe has a conflict of interest. The community and community development department in the City of Minneapolis receives income to support the community development department from development fees. The fees are not a matter of consideration of the Ways & Means budget committee. It is a fee assessed to each development project in the City of Minneapolis.

Clearly Ms. Monson in her advocacy of density is exposing her bias and that of her department, therefore, Ms. Monson's statement should be disregard from the Critical

Area Plan changes under consideration.

Ms. Monson states that the segment CA-RN, the segment directly across the river from downtown should be modified to match either the adjacent CA-UC or CA-UM district. A significant portion of this area she cites is zoned high density and is guided for medium to high-density residential in a draft plan under development. The portion that is zoned low density is already protected permanently as a public park so needs no further protection from development. That comment regarding is already permanently protected only relates to the public park and not to the current residences that are in place.

Furthermore, there is also a number of multiple-family buildings that would be nonconforming. Nonconforming rights are not serious issues when considering the development of a city. But what it does it allows interaction of those members of the community who own and operate within the community.

Finally, Ms. Monson states that this area is located very close to the city's and region's urban core and within the purview of the city's downtown growth area. These are solely Ms. Monson's comments. They are not supported by the neighborhood or the Great River Coalition.

She further states that while it is not the intent to displace single-family homes in this area in the near term,

it would be short-sighted to designate this area long term as low density. We see no reason why this would be short-sighted to maintain this as low density and, therefore, request that this area be designated as a river community.

The title of the rulemaking under consideration by the DNR is a Mississippi River Critical Area rulemaking. The area is the most Critical Area in the national flyover zone, with over 500,000 migratory birds passing through the area and deserves consideration in the rules. The lack of consideration of birds will cause violation of the Migratory Bird Treaty Act and, therefore, the suggested changes by the City of Minneapolis to increase density in a highly sensitive ecological area critical to the Mississippi River corridor must be disallowed, in addition to the transition of a residential neighborhood to a high density.

THE JUDGE: Some final thoughts, Ms. Hofstede?

MS. HOFSTEDE: Pardon me?

THE JUDGE: Some final thoughts?

MS. HOFSTEDE: Yes, I have a comment from the Minneapolis Audubon. If I can read a short statement regarding that?

THE JUDGE: Okay. Very briefly, if you wouldn't mind.

MS. HOFSTEDE: In recognition of the

importance of the Mississippi flyover to the protection and sustainability of migratory birds, the Audubon chapter of Minneapolis supports the mission of the Great River Coalition to preserve and protect the environmental significance of the Mississippi River.

The City of Minneapolis is currently proposing high-density development in the Mississippi River Corridor Critical Area. Such high density development along the major migratory flyover zone is a recognized hazard to the safety and welfare of birds and may result in a liability under the Migratory Bird Treaty Act.

The Audubon chapter of Minneapolis strongly recommends that all measures be taken to mitigate any and all hazards to birds in the Mississippi corridor.

THE JUDGE: Ms. Hofstede, is that something that you can share with us as an exhibit?

MS. HOFSTEDE: Absolutely.

THE JUDGE: So, I would like to mark that as Exhibit 27.

MS. HOFSTEDE: Thank you.

THE JUDGE: Thank you so much. And appreciate your time and contributions.

Ms. Forney, if you wouldn't mind joining us. And following you, Edna Brazaitis.

MS. BRAZAITIS: Brazaitis.

THE JUDGE: Brazaitis. Excellent. You will be following Ms. Forney. Ms. Forney, if you wouldn't mind stating and spelling your name for our record.

MS. FORNEY: Meg Forney, M-e-g F-o-r-n-e-y.

THE JUDGE: Ms. Forney, what should we know?

MS. FORNEY: First of all, I am a Minneapolis Park and Recreation board commissioner as well as I am a sculler of our mighty Mississippi River. I just came off the river. So I have an intimate understanding of this river.

I would like to address the use of the conditional use permitting, better known as CUP, in allowing for additional height. CUP's use will not protect the river front from inappropriately tall buildings. In Minneapolis, the park board has an appointed seat on the City's planning commission, and I was that appointee last year for the park board.

Serving that body, I was particularly interested in ensuring the development close to our parks, lakes and other bodies of water were appropriate. In Minneapolis, the maximum building height adjacent to shoreland is 2 1/2 stories or 35 feet, whichever is less. This height limitation could be increased by a CUP. Minneapolis

ordinance has language similar to the proposed Critical Area regarding preserving views. It states: Preservation of views of landmark buildings, significant open spaces or water bodies. Yet in my two-year term on the planning commission no project was ever denied a CUP in the shoreland overlay for height. One of my colleagues said that in his decade long service on the planning commission he could not recall any time that the City of Minneapolis had denied a CUP for height in the shoreland overlay. Thus, I am concerned that a CUP offers little protection against inappropriately tall buildings. The DNR has indicated the CUP process has the public involved in making decisions. Yet, if CUPs are always granted, the public gets frustrated and angry because the rules are not represented and transparent.

I just enjoyed a row this morning on the shores with an unencumbered view of our shores of the Mississippi. To ensure generations that will follow us, please reconsider the use of conditional use permitting.

THE JUDGE: Thank you so much, Ms. Forney. I appreciate your time and contributions.

MS. FORNEY: Thank you, Your Honor.

THE JUDGE: Ms. Brazaitis. If you wouldn't --

MS. BRAZAITIS: Yes. And I bet you want me to spell my name.

THE JUDGE: I do.

MS. BRAZAITIS: It's Edna Brazaitis, B-r-a-z-a-i-t-i-s. And I am here because I believe we have a legal and moral obligation to protect and enhance Nicollet Island, which is a unique cultural and historic asset in the middle of the Mississippi River. The proposed classification of half of it as River Town and Crossing is to use what Judge Lipman wanted to know unreasonable not a reasonable protection, and failed to protect the resources mandated by law. I ask that the entire island be put in River Neighborhood.

In 1965, long before the Critical Area Act was established, Minnesota by statute designated Nicollet Island as a state historic resource, declaring that it was in the public interest to protect such places. Long regarded as a special place by native peoples who called it Wita Waste, Beautiful Island, it has been a long-held vision to make what was called before statehood the Gem of the Mississippi into a public park.

Starting in the 1970s with the funding that Senator Durenberger mentioned, the Park Board and the City worked to create a unique park that would preserve the historic resources. This has resulted in the park that's now known as the Central Mississippi Riverfront Regional Park which like the River Corridor is almost impossible to say right. And

currently -- and Nicollet Island is a part of that park. Currently the Park Board owns two-thirds of the island with one-third in private ownership. Because it is a regional park the Park Board can purchase the remaining property when it becomes available.

Part of the island which is north of railroad tracks which is all owned by the Minneapolis Park Board has got historic structures, residences that date from the Civil War era to 1890. This has been classified as a River Neighborhood. And I really applaud that. The other part of the island has been classified River Towns and Crossings. In the past, I have been trying to figure out what is the rationale for making this decision. And I have talked to DNR staff Daniel Petrik and he said it was the height of the buildings that are on the other side of the railroad tracks. This never made sense to me, since the height of the current buildings were only slightly over the 38-foot limit. And as most of them, such as the historic grocery flats, were historic buildings and exempt from height requirements, why is height relevant to making decisions as to how to protect the resources.

Yesterday I did ask the Daniel again if there was anything else besides height. And he said two years ago City staff mentioned wanting commercial development on Hennepin Avenue. I advised him that none of the officially adopted

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plans, including the small area plan that guide development for this area that was adopted by the Met Council only a year ago and made part of the City's comprehensive plan nor the Regional Park master plan adopted in the same timeframe allows commercial development on Hennepin Avenue.

Further, this possible desire to have commercial is practically impossible because of zoning, which is R1, single-family homes, restrictive covenants, long-term agreements and need for part of the property for the uses of a school. So, even if it were possible to develop commercial on the island, the River Neighborhood allows commercial. So that can't be a reason.

I believe that the DNR should be willing to reclassify the whole island as River Neighborhood. Why do I care? Because there is one parcel that is vulnerable, at risk. The historic guidelines call for only a three-story building on that particular parcel. But it is 121 percent the size of the Alatus parcel in the Critical Area where the city council is poised tomorrow to approve a 42-story, 483-foot building where the maximum height is only 8 stories. This approval I think likely will be on the CUP. This property is owned by my neighbor and I know that he would never want a 50-story building on his property. But he has had a heart attack and, as I understand, his closest relative is a niece in Australia, so this property is at risk. I'm

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sorry.

Dan asked why I care. I said because in Minneapolis there is no -- I care because in Minneapolis there is no limit to the height that can be granted with a CUP. They are viewed as permissive. Otherwise permitted. We have heard that in a decade there has never been one turned down for the shoreline ordinance. By contrast, development in the River Neighborhood would require a variance because the use is not permitted. I realize in Minneapolis variances are also easily granted, but at least give the public and the city council something to base their objections on.

I want to thank you. I have been at every hearing and I am very appreciative of your willingness to listen to ordinary folk and to listen to our wisdom. And because I think sometimes people who are looking at it from 50 stories above don't realize the practical of difficulties. And unless we give the City tools to deny inappropriate buildings we will suffer the consequences. And all I can say is I don't know of anybody who wants to see a 50-story luxury high-rise building on Nicollet Island, but unless there is some tools to protect it and nothing to stop it, then people will ask who was the dummy who allowed this to happen.

THE JUDGE: Thank you, Ms. Brazaitis. I appreciate your time and contributions to our record.

Is there anyone who hasn't yet spoken who would like

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to be recognized for one of the five minutes left?

MR. KALMON: (Indicating).

THE JUDGE: Sir, if you wouldn't mind joining us. If you could state and spell your name for our record.

MR. KALMON: Dan Kalmon. It's D-a-n K-a-l-m-o-n.

THE JUDGE: Mr. Kalmon, what should we know?

MR. KALMON: I am a principal planner here with the Mississippi Watershed Management Organization. And I just -- we are preparing comments which will happen prior to --

THE JUDGE: Thank you for hosting us today.

MR. KALMON: You are welcome. And thank you toward the DNR, and good to see you again. Folks have been working on this and we have been working with them since 2009 as well.

I just want to say a few things in general about our mission, which is to improve and protect water quality and habitat and also to reduce flooding. In this case, the Critical Area Corridor is a very important part of our watershed. And as heard here today with residents and others, we believe the habitat protection element and

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providing as much opportunity for that along the riverway with the flyway is very -- is essential.

The sort of, I guess, measure we are going to be looking at as we go through these comments or as I have looked through some of the rules so far is, you know, in 25, 50, 100 years from now, sort of the range planning we are looking at, and how we look at urban core and habitat in the urban center, are we going to see and are these rules really going to lead to someone driving up to Lowry, roughly two blocks prior and two blocks on the other side of the river and feeling like they have entered a different area. Are they experiencing something that is of change and place that is significant and represents really what the statute set out to do for this 76-mile stretch along the river. That is, you know, the height, the density questions, the vegetation management, all those elements of the rule are critical of making this happen and be fulfilled in the long term. And in our urban setting like this with the hundreds of thousands people that we have it's very important to have a place for residents of the city to go that's local and basically have that connection with the river and the natural settings. And it's long, I guess, farsighted, too, that we don't jump in our cars and run north every weekend because we live here. So, we support that and we would like to see as we are going through that again these different elements within the rule

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can support something that does create a unique sense of place long term. Thank you.

THE JUDGE: Thank you, Mr. Kalmon. I appreciate your time and contributions.

Is there anyone who hasn't yet been recognized?

MS. MAGUIRE: (Indicating).

THE JUDGE: Please, ma'am, if you wouldn't mind joining us. If you could state and spell your name for our record.

MS. MAGUIRE: My name is Mary Jamin Maguire, M-a-r-y J-a-m-i-n M-a-g-u-i-r-e. I'm just going to make some brief comments. I'm a resident of this neighborhood, Marshall Terrace. Welcome to my neighborhood. And I'm concerned that -- and I have to look at my notes because of all these titles -- that we are currently designated as an Urban Mixed neighborhood rather than a River Neighborhood. And I'm echoing the comments of the other people from the neighborhoods in this area.

This is clearly a River Neighborhood. As in the plan it says the River Neighborhood district is characterized by primarily residential neighborhoods that are riparian or readily visible from the river or that abut parkland. This district includes parks, open space, limited commercial development and related land uses.

This area is stated to be part of the Above the Falls

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Plan, so it will be next to parkland. And Marshall Street Northeast which runs next to this building is the original Red River Ox Cart Trail. So this has been a River Neighborhood and a river area for over 100 years. You can't see the neighborhood from the river, but I don't think that should be a reason not to designate it a River Neighborhood. We know the neighborhood is here and the neighborhood knows that the river is here. And we have been working in the last 15 or 20 years to increase those connections because we are primarily blocked from the river by industrial development that is gradually being bought out by the Park Board to develop the Above the Falls Plan which is part of the Mississippi National River and Reaction Area. And for reasons already articulated by other neighborhoods in this area we strongly recommend that this be designated as a River Neighborhood. And a letter from the neighborhood group as well as from the Above the Falls Citizens Advisory Committee will follow my comments.

THE JUDGE: Thank you so much, Ms. Maguire. I appreciate your time and contributions.

Anyone else who hasn't yet had an opportunity to share comments who would like an opportunity to do so. Anyone else?

(No responses.)

THE JUDGE: So under the previous

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arrangement, we are going to have a presentation from the Friends of the Mississippi River. Mr. Clark, if you want to bring your team up. And the current segment will run for about another hour. Maybe not all Mr. Clark, but we are going from Ms. Strom's standpoint.

So is it Ms. Jones?

MS. JONES: It's all three of us, yes. So it would be me and then Alicia Uzarek and Whitney Clark.

THE JUDGE: If you could state and spell your name for our record.

MS. JONES: Irene Jones, I-r-e-n-e J-o-n-e-s.

THE JUDGE: Ms. Jones, what should we know?

MS. JONES: I'm with Friends of the Mississippi River. I'm the River Corridor program director. I'm going to -- as you know, we spoke about the significance of the National Park and the Critical Area at the last meeting, in case anyone is wondering why we are not giving our usual spiel. And so today we want to just give our fairly extensive comments on the specifics in the rules. And we will be submitting written comments as well. I'm going to be talking about bluffs and shorelines and then we are actually going to come back to me at the end to talk about some of the maps and districts.

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And another thing about the slides, some of them we will point -- oh, I forgot my laser pointer. Some of the slides we will point some specific things out and others are a little bit more just to illustrate what we are talking about in general.

So, the bluff protection and shoreland protection is very important to this process and to Friends of the Mississippi River. The bluffs and shorelands of the river are significant and natural features that are highly sensitive to erosion which can lead to poor water quality, property damage and potentially danger to human life. In addition to providing critical habitat that supports the diversity of plants and wildlife, these natural features also add to the scenic quality and integrity of the corridor.

During the rule development process, defining and protecting bluffs was discussed at great length. Coincidentally, several landslides occurred in the river corridor around the same time, including near the Washington Avenue bridge in Minneapolis, along Highway 13 in Mendota Heights, and at Lilydale Regional Park. Next slide.

So, this is an example of what I like to call bluff sluff at Indian Mounds Park. And so you can see that there is some natural element to that feature, but with all the rain and other issues that we have been having as well as development, we are having more of these landslides. So, I'm

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going to talk a little bit about that study that was also referred to. And I actually brought copies of both studies to enter into the record, the Jennings reports. But according to the study that the DNR conducted, the same quote was already mentioned so I'm just going to summarize it. But the structural geologist basically found that all of the slopes that had damage also had development that was related to them. And in these particular instances the bluff failures also resulted in significant damages to built infrastructure. Next slide.

These are from a few years ago. This is Lilydale. This is an area where again you had this bluff sluff. And this particular condominium had to spend over $1,000,000 I think to do some repairs. There are a lot of buildings in Lilydale along the bluff that were built before the Critical Area, so they are really, really close and, of course, it's having an impact.

So, when bluffs undergo erosion, over time it's part of a natural process, but there is a clear correlation that connects development on or near bluffs to an increased risk of bluff failure such as landslides. And changes in the rainfall amounts and intensity due to climate change will only serve to exacerbate these issues in the future.

The information contained in the DNR report provides a solid basis for both the need and reasonableness of

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including strong and protective standards in the MRCCA rules to ensure that bluff integrity is protected to the greatest extent possible. Next slide.

So, this is -- we are submitting as evidence -- it's linked in the SONAR, but we thought it was important and we just wanted to give you a hard copy in support of the proposed definitions and standards providing the DNR Division of Ecological and Water Resources report from 2015, A Limited Inventory of the location and style of 2014 slope failures towards better prediction and management. And then I think this more recent one that was done on the Historical Landslide Inventory for the Twin Cities Metropolitan Area also done by Carrie Jennings along with a number of other folks who are listed on here. So, we are submitting those into the record just so you have them. To really have the science behind the need for the bluffs, it's really -- really appreciate that that study was done and it's very informative.

THE JUDGE: So, if I can take a moment here, Ms. Jones. I'm designating the DNR inventory as Exhibit 28 and the Jennings study that was referred to earlier as Exhibit 29. Ms. Jones.

MS. JONES: Next slide. So, specifically we agree with the definitions of bluff, bluffline and other associated features and they are needed and reasonable. The

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Executive Order only provided a definition for bluffline but not other features, which has lead to confusion by cities and other stakeholders and inconsistency around how bluff protection is achieved in the corridor. This is from the second Jennings report and this graph really shows how the failures increase at 20 percent slope. So that number 18 percent really provides a little bit of a safety, a little buffer, no pun intended, to those kinds of slope failures. So, defining 18 percent slopes or greater is needed. And, you know, it's also -- most of the existing city ordinances already use 18 percent threshold and so it's not going to be a major change for them.

Defining bluffs as a 25-foot height was something we originally had tried to not have that be quite so tall, but I think that that demonstrates that it is reasonable and would ensure that the small slope features commonly found on residential lots will not cause an undue burden on cities and property owners. So, next slide.

We are going to talk a little bit about the bluff and shoreland setbacks. Which we also are supportive of. They are almost identical to the ones that are in the Executive Order. Those are also -- you know, other than the fact that districts have changed around a little bit, they are really very similar and reasonable. They will prevent erosion, degradation of water quality and habitat. And they are also

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consistent with State shoreland law, floodplain regulations and most of the city ordinances, as I said. So, we think those setbacks are important. This is an example where you don't have a setback what happens to the bluff and how much infrastructure had to be added to support that. The one on the bottom is in Lilydale. The one on the top is Mississippi River Boulevard along the gorge in St. Paul. So you can really see the difference there. Next slide.

So, another thing that we also are happy about with the bluff protections is the bluff impact zone and the shore impact zone. And I think there are -- there probably will be some negative comments about those two things as being an imposition, but the BIZ and the SIZ, as they are called, provide significant improvements over the current standards. They are needed because they ensure better protection of bluffs and shorelines and they are reasonable because most of the proposed standards for managing vegetation and land alteration only apply to the sensitive areas as opposed to applying everywhere in the corridor. And that leaves other nonsensitive land in the corridor with fewer restrictions. So, yeah, you can see the difference up there. I don't think I have to explain it.

One of the weaknesses of the Executive Order was that the vegetation management standards and guidelines are unclear and unnecessarily broad making it difficult to

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develop vegetation management policies that can easily be translated into local ordinances. You can put the next slide up.

For example, the interim development regulations included the following: The selective cutting of trees greater than 4 inches in diameter may be permitted by local government units when the cutting is appropriately spaced and staged so that continuous natural cover is maintained.

This is problematic for a few reasons. It does not define continuous natural cover or provide clear guidance on how to space trees. And, more importantly, it does not incorporate how to manage other types of vegetation which are really important for habitat and water quality such as shrubs, herbaceous plants and those things. You know, in addition, they also support fish along the shorelines. But, most importantly, it requires that tree removal be regulated for all land in the corridor. And that created an undue burden in the cities and was rarely enforced.

This is an example of a place where there was a lack of enforcement and there wasn't actually a good mechanism in the City of Mendota's ordinance to hold this person accountable for taking all these old oak trees out. But by incorporating the bluff impact zone and the slope impact zone the restrictions on development and land alteration and vegetation management are focused in the most sensitive areas

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in need of the greatest protection. And I think I have already said this, but it represents a prime example of the DNR listening to all the perspectives and identifying compromise that meets the needs of cities as well as ensuring protection of the River's most important resources. That's it for bluffs.

THE JUDGE: If you wouldn't mind stating and spelling your name for our record.

MS. UZAREK: Sure. My name is Alicia Uzarek. I also work for Friends of the Mississippi. My name is spelled A-l-i-c-i-a U-z-a-r-e-k. I will be talking today about protecting scenic views.

The Mississippi River provides some of the most sweeping scenic views in Minnesota. As you can see, here is a view from Mounds Park over downtown St. Paul and the Westside Flats. And these iconic views and viewsheds are public resources that should be protected for current and future generations. Scenic views provide a sense of place for local residents, attract new residents and businesses to the Twin Cities and inspire tourism in the region.

Protection of scenic views by limiting building heights in the Critical Area was also discussed extensively by stakeholders during the rule development process. There was significant disagreement about building heights with local residents and environmental groups favoring lower

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heights and local city staff and developer interests often favoring taller heights and more flexibility. This is an area for which many City staff requested performance standards for building heights, and the final draft did include that in addition to minimum dimensional standards.

I would like to speak briefly about defining scenic views. And I will be referencing part 6106.0050 titled Definitions and subpart 56 as well as part 6106.0070, Preparation Review and Approval of Plans and Ordinances which is subpart 4.B. So, next slide, please.

This is a view from Schaar's Bluff in Nininger Township. A similar view to what we had at the first public hearing. Specifically this is one of the public river corridor views. The definition of Public River Corridor View provides a basic framework for cities to work with that will ensure a consistent approach to protecting views throughout the corridor. The term Public River Corridor Views appears throughout the rules and numerous standards require that the identified views be protected. Next slide, please.

This consistent approach is reasonable because it allows cities, local cities to identify specific river corridor views to protect as opposed to the current regulations that require blanket scenic protections for large areas of the corridor. As part of their comprehensive plan, each municipality will, quote, "Identify and protect those

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public river corridor views and other scenic views deemed important by the community." This provision offers each community an opportunity to engage its residents and stakeholders including neighboring communities to take stock of existing views, viewsheds, identifying esthetic preferences and discerning which land forms and viewsheds have the most value.

So, up here, you can see an image from the St. Paul River Corridor Plan, the current one, and they decided that with the various blufflines in their community they are not going to build and obstruct those blufflines. So, here, you can see development on top of the bluff and below the bluff with the bluffline still visible. Next slide, please.

And here you can see how that has shaped development today. This is the view looking from Kellogg Park in St. Paul over to the Westside Flats of St. Paul. And you can see that the far bluffline up here is unobstructed and the development is below that bluffline giving visitors to the science museum in downtown a sense of place as they look out over the vast views.

So, next, I would like to talk about structure height. Part 6106.0120, Dimensional Standards, subpart 2.A. We support the height limits listed in subpart 2.A 1 through 6 and the inclusion of a performance standard in the River Towns and Crossings, Urban Mixed and Urban Core districts

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that require or encourage buildings to tier way from the river and to minimize interference with river corridor views. Likewise, we support the performance standard included in the Separated from River district requiring a structure's height to be, quote, "Generally consistent with the height of the mature treeline where present and existing surrounding development as viewed from the ordinary high water level of the opposite shore." As these areas get developed and our local population grows, the preservation of scenic views on the river will become even more needed than it is today. Next slide, please.

Here you will see the poster building of the Critical Area right here people referred to in the past hearings, and the address is 740 Mississippi Boulevard. And this is exactly what we are looking to prevent, especially in areas with lots of public river corridor views and the Mississippi River gorge here.

So, my final comments today are on conditional use permits for height. And that's part 6106.0120, Dimensional Standards, subpart 2.D. Height limits in the Critical Area tend to be somewhat controversial. And even with new rules local developers and cities will invariably want to make exceptions to allow some buildings to be taller. Under the existing regulations, city planning commissions often do grant conditional use permits and variances to allow a

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structure to exceed the height permitted. However, it's quite rare for the findings of fact associated with those official actions to directly address the potential impacts to the river. Establishing a process for evaluating the impacts to scenic views and taking steps to mitigate those impacts is needed in order to prevent degradation of the river's unique scenic character. We support the standards for granting a CUP for height in the proposed rules, as they will ensure that exceptions for height are reviewed within the context of the Critical Area. Although we support the proposed heights for each district, the placement of some of the proposed districts in the maps will not provide adequate protection of scenic views. Especially in the gorge around Grey Cloud Island and along the bluffland surrounding Spring Lake.

Our comments on the maps will be summarized in a few minutes again by Irene.

THE JUDGE: Thank you so much. Mr. Clark, if you wouldn't mind introducing yourself.

MR. CLARK: Thank you, Judge. My name is Whitney Clark, W-h-i-t-n-e-y C-l-a-r-k. I'm the executive director of Friends of the Mississippi River. And my comments today will be with respect to subdivision and land development standards, subparts 1 through 5.

Obviously, the open space dedication requirements of the rules we think are excellent and needed. The river is,

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of course, more than just the water flowing between the banks. The ecological river includes the land on the shorelines and the bluffs and we think as development occurs these rules have to protect a certain amount of open space, especially in the as yet undeveloped or developing portions of the corridor.

About 100 years ago when the area that we are in today was not yet developed and the city fathers and mothers were thinking about what kind of a city they wanted and how to take advantage of the river, the great landscape architect who actually planned the Grand Rounds in both Minneapolis and St. Paul said this. "The Mississippi River is not only the grand natural feature which gives character to your city and constitutes and main spring to its prosperity, but it is the object of vital interest and the center of attraction to intelligent visitors from every quarter of the globe, who associates such ideas of grandeur with its name as no human creation can excite. It should be placed in a setting worthy of so precious a jewel."

So, that was 100 years ago. And the generations that have followed have benefitted immeasurably from that setting, putting the river in that setting. And what we are doing today and as the cities come online with their plans and ordinances is the next round of planning, providing that setting for this precious jewel, the Mississippi River.

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Dedication of open space within the corridor is needed to ensure the protection of the river's biological and ecological functions, preservation of its natural and scenic character and enhancement of the public river access and trails.

Conservation design which is included in the rules or clustering away from the river is we think an excellent strategy for ensuring that wildlife habitat and other important ecological functions along the river can be preserved. This is especially important in the undeveloped areas of the corridor and areas that we know will be developed in the next generation. Next slide. Thank you.

The requirement for open space dedication in the Critical Area is not new. Executive Order 79-19 includes this requirement in the standards and guidelines for preparing plans and regulations, although it is very vague compared with the proposed Critical Area rules. So, the Executive Order requires that local units of government and regional and state agencies shall develop plans and regulations to maximize the creation and maintenance of open space and recreational potential of the corridor. It requires that plans and programs to acquire sites for public access to the river and to protect open space areas shall be adopted. And it requires that in the development of residential, commercial and industrial development a

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developer shall be required to dedicate the public reasonable portions of appropriate riverfront access lands, other lands and interest therein or cash in lieu. So, we have this standard that already exists in the Executive Order. The rules improve upon that.

My next comments will be with respect to the open space dedication requirements in the rural open space district. Next slide. Requiring 50 percent dedication of open space in the rural and open space district is needed to protect, as the statute requires, the specified scenic, geologic and ecological resources. And we believe it's reasonable because most of these areas are already zoned for rural, low-density development now. The rural open space district contains lands with the highest ecological integrity and function in the Critical Area. Open space dedication in the ROS district will preserve quality habitat along the river and maintain the potential for public access to the river in the future.

Then with respect to the Urban Mixed and River Towns and Crossings district, we agree with the 10 percent requirement in the UM and RTC districts, but we believe that the 10-acre threshold for applying open space dedication requirements to river adjacent land is too high for the urban areas of the corridor in the Urban Mixed and River Towns and Crossings districts. Because most of the parcels that we

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have in the urban areas are smaller than 10 acres. So for them to effectively protect open space in these districts we would need to have a lower acreage threshold. We believe the thresholds should be changed to five acres. Much of the land within the Urban Mixed district will undergo redevelopment in the next 20 years and public access to the river will be needed to support growing numbers of urban residents and visitors. Some cities may argue that it's overly burdensome to monitor and enforce open space requirements of small acreages between 5 and 10 acres, but we believe the statute requires these resources to be protected and we also think that the benefits that will accrue in terms of property values, scenic enhancement and ecological health will last for generations and be easily worth that additional effort.

Other than riverbanks, bluffs and shorelines, these areas slated for redevelopment generally have very few primary conservation areas as they are defined in the proposed rules. So, open space dedication for smaller parcels is needed to ensure that keeping the riverfront in a natural state or restoring vegetation when necessary is given priority. This is especially true here in the core cities of Minneapolis and St. Paul where both cities already have existing policies that wherever feasible land along the river should be public parkland.

Finally, my last comments are regarding ordinance

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flexibility. While my organization was previously opposed to provisions for ordinance flexibility, we are pleased that the DNR in the latest draft of the proposed rules has added criteria to ensure that resource protection and/or mitigation will be adequate. The criteria for ordinance flexibility are strong we think and must not be weakened. So we support it as long as they are not weakened. It's reasonable to provide cities with some provisions for adopting and approving an ordinance that are not in strict conformance with the rules provided that cities can show that significant Critical Area resources will not be impacted by the development. That's the purpose of the rules. If they can show that that won't be the case, we have no objection. We particularly appreciate the addition of the requirement that to obtain approval for a flexibility request cities must document their proposed mitigation. So that's a nice change and we support it. That concludes by comments.

THE JUDGE: Thank you so much, Mr. Clark. Ms. Jones.

MS. JONES: Do you want my name again?

THE JUDGE: No, we are good. Thanks.

MS. JONES: I'm going to talk a little bit about the district maps. We support the intent of the districts, but in a few cases we disagree with how the districts were mapped and we think that some adjustments to

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districts are needed in order to meet the statutory requirement to protect the ecological, scenic and geological resources of the gorge. I'm sorry. Of the river. That's a Freudian slip because I live near the gorge.

So, this first map is map 1 from Dayton to Anoka. So, this area right here is a floodplain area called Kings Island. It's not that easy to see in the map but there is like a channel that goes all the way around it. And there is no development there. And we think this should be in the ROS instead of the RN. We put this in our previous comments.

This area should be in the district with the highest protection such as the 200-foot structure setback from the river. It has the same qualities as the natural areas and parks in Minneapolis and St. Paul and we think it should be in the ROS district to maintain consistency with it really being a natural park area. As like, for example, Mississippi West Regional Park up here is ROS, and this is not a regional park, but it has some sensitive areas there that I think would be good to protect. Next slide.

So, this is the map for Minneapolis. This is to sort of give you the orientation. And this close-up here I just wanted to comment that this area from Plymouth up to Lowry was previously in the Urban Core. Which we were very concerned that there would be no restrictions on height. And we appreciate that that got changed to Urban Mixed. I know

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some folks are interested in seeing neighborhood designations up here. I think this is appropriate here. There is a lot of light industry -- there is some residence, but there is a lot of light industry through there as well as parks. So we appreciate that that got changed.

In general in Minneapolis we are still concerned about heights in the gorge. However, the River Towns and Crossings height standard was set at 48 feet, providing some protection of the scenic views and bridge crossings. I don't have a picture for that. I apologize.

So, the next slide is Nicollet Island. Here, I think we requested the whole of Nicollet Island be in the Residential Neighborhood. And the northern half was changed to River Neighborhood, the southern half was changed to RTC. We are comfortable with this change as long as the height limit for the RTC district remains at 48 feet. And we understand that there are people at the city council that would like this to go back to UM. They spoke about it at their meeting. And we strongly disagree. Most of Nicollet Island is owned by the Minneapolis Park and Recreation Board which is an independent entity from the City. They recently approved a new regional park master plan for the area which calls for maintaining the existing uses but adding more natural features to the island such as restoring land along the east channel and replacing the paved road with a woonerf.

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Which is spelled w-o-o-n-e-r-f. It's a new catchy planning word. Which can be used by bikes and pedestrians and limits automobile traffic. So, there is not a plan to make this more urban. And we would support it all being residential neighborhood. We would be okay with the way it is now, but we don't want it to go back to the Urban Mixed. Next slide.

This one is going to be a little harder to point out. There is an area here, this is over on Main Street Southeast across the river from downtown. So, it's this area right here blown up (indicating). I didn't have a chance to draw a line around it, but there is a lot of natural park area. I mean, there is islands here. This is Hennepin Island, Father Hennepin Bluffs Park. And it does not make sense for those areas that are quite natural and sensitive and really at the beginning of the gorge to be in the Urban Core. There is also some private property that's owned in here. And with Urban Core as the district potentially some of those property owners could build things that would have significant impacts on the river and in particular, because it's within the Central Riverfront Regional Park boundary, it would potentially prevent some areas from becoming par for, you know, block people off from the Stone Arch bridge and block people so that they wouldn't necessarily see where the park is or feel as comfortable going there. So, we think it would not be in keeping with the surrounding open space or the many

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historic structures on Main Street to have Urban Core on the Riverside of Main Street. Next slide.

Moving down to St. Paul. So, we continue to have concerns that some of the most scenic parts of St. Paul will end up with weaker standards for structure height than the existing MRCCA ordinance that they have at the City. In particular, the Mississippi River gorge on the east side of the river from Highland Parkway to Elway Street. At the center of this area is one of the most historically and geographically significant places in Minnesota, the confluence of the Mississippi and Minnesota Rivers. You can see the Minnesota River coming in here (indicating). That's the Mendota bridge (indicating). Up here is Pilot Knob (indicating). You really can't see a whole lot. I mean, church steeples are the one thing that you -- it makes sense for those kinds of things to stick up a little. Of course, we have cell towers, too, now. I think we are stuck with them. A lot of this area has been maintained as quite scenic. The confluence has a unique geography that connects our community with 10,000 years of history. One of the largest waterfalls in the history of planet earth existed here before receding to the present day location of St. Anthony Falls. Native Americans considered this area highly spiritual and important calling it Mendota which means the Meeting of the Waters. And it's no coincidence that this

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location is the birthplace of Minnesota. Fort Snelling was built high on the bluff where soldiers and early settlers of the territory had a commanding view of both rivers and the surrounding landscape. In addition to its historical significance the scenic qualities of this area are dramatic, unusual and worth preserving.

Under the City's existing Critical Area ordinance, the area landward of Mississippi River Boulevard and Shepard Road for quite a distance, all the way from Marshall to Rankin has a 40-foot height limit. But in the draft rules height limits -- you can go to the next slide. So, you can see in this basically from even further north of here but all along the river all the way along up to here right now it's a 40-foot height limit (indicating). So, that's part of why you are hearing from some people from the City, you know, residents that are concerned, I think the West 7th neighborhood, Fort Road neighborhood sent in a letter they don't like those taller heights and they think it's kind of extreme to increase by 25 feet.

So, we are also concerned that especially at the confluence taller heights in this area could diminish the scenic character of this important area. And right now there is not that many buildings that are taller than the trees, as I showed.

So, I'm just going to talk a little bit about the

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Ford site. In general, you know, if the confluence is not going to be River Neighborhood, we feel like RTC makes sense for some of these areas. There are a lot of crossings. You have got the Ford bridge and Highway 5, the Mendota. And so RTC might be acceptable for some of these areas over here instead of UM (indicating). But in the case of the Ford site, we have been kind of studying that a little closer. We are aware that the City would like the Ford site to be most or all Urban Mixed. Because they want to be able to have dense development there. We would prefer to see the RTC along the Parkway there as it is. However, if the City, you know, if they provide some kind of a visual analysis, which they have been working a little bit on trying to predict where you would be able to see buildings from the opposite side of the river, and so if they are able to provide some sort of a visual analysis that shows that you won't be able to see buildings at 65 feet, we would potentially support moving that line further this way (indicating). So, I think we are trying to be open to the possibility of what they might be asking for. At the same time, we were relatively happy when we saw this designation. There is a portion of the Ford site that's also outside the Critical Area where they can zone it however they like. Next slide.

So, this is another one that at least in the draft letter that the City did they were suggesting that this area

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between the Mississippi River Boulevard and the river, which is now privately owned by the Ford Company, this is a big huge dump called Area C, if you don't know about that (indicating). It's all fill and pollution that goes all the way down. This was flat before that (Indicating). That's just an aside. But we think that all this land it makes sense for it to be parkland. You have got the Mississippi Gorge Regional Park up here, you have got Hidden Falls Regional Park starts right below here and then Crosby (indicating). The whole area along here has regional parks and state parks. This should also be in the -- or just stay in the ROS. That's the district that it's in right now. So, we want that to stay that way. Next slide.

So, here this Shepard/Davern area, I think if we had to pick one area that we would want to see the map change it would be in the Shepard/Davern area. It's River Neighborhood right up to Highway 5 and then it changes to Urban Mixed. So, it's around the bend from Ford and just east of Highway 5. We strongly believe that this area should if not River Neighborhood be RTC and not UM. The existing height limit here is 40 feet and the city council recently approved new underlying zoning for this area including portions back here as well. They have a small area plan that sets the height limit at 55 feet. So, the 65-foot height limit in this most special and scenic location is demonstrably not protective of

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the scenic values here as required by statute. We see no reason for this site to have a 65-foot height limit. And many of the local residents agree. Next slide.

So, during a recent variance request to build a 73 1/2 foot luxury condominium complex at this site, we used this photo of the site taken from Pike Island showing this parking structure which is 40 feet high -- 44 feet high. And obviously you can see it from the river. So, anything that was 73 feet high was really going to show up. We did convince the city council to reduce the height and right now that developer is back to the drawing board revising their building to be shorter.

So, the last map that I want to look at, next slide, is St. Paul to Nininger. So, we have been talking a lot about this area, including some very significant resources including the Pine Bend Bluff Scientific and Natural Area which is over here, Schaar's Bluff which is where we were the other night for the hearing, Grey Cloud Dunes which is over here, also a scientific and natural area, and then also Grey Cloud Island and lots of other small islands (indicating). So, considerable investment has been made to set aside riverfront land for natural areas, regional parks and trails and spectacular scenic overlooks. So, we are concerned and surprised that so much of this special area is in the SR district. I mean, it's kind of rampant. This is

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Separated River district, which, you know, for all intents and purposes where height is concerned it's like a narrowing of the corridor. We think that after going through this for seven years we hope this isn't going to get updated again for maybe 40 years.

So, these rules are going to be with us for a while, and as development starts to come into some of these areas if tall buildings with no limit on height were built in some of these areas it would have huge impacts to the corridor. So, we are very concerned. We are surprised because most of this land is in Nininger Township, Denmark Township and rural sections of Cottage Grove and these municipalities do not have plans to develop or urbanize these areas in the foreseeable future. So, by definition, Separated from River should not be visible from the river. I am going to show you a photo in a few minutes of a place where it clearly is visible. There are areas that maybe right now if you took a picture over here you wouldn't see anything but it's because it's farmland. And when it's farmland there is nothing on there and it's understandable that you wouldn't be able to see taller buildings. So, that could change the rural open space character of these areas as well as the views could be negatively impacted. So, we really would like to see that change as much as possible. You know, in a lot of these areas you can see it seems like it's just following the

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bluffline and then right behind there you have got whatever height people might want to do in the future.

So, the next slide is a close-up. So, this is where we were the other night, at Schaar's Bluff. I mean, some of these areas it's just extremely close. There is a spot along here where the bike path is actually it looks like it's the boundary. And so we would like these areas to be RN if possible instead of SR if they can't be ROS. They are rural and open. And in the previous Critical Area they were all considered the Rural Open Space. I think that's probably more appropriate for these areas.

And so the next slide. This is my last one. This is the spot where we have actually got -- it's a little hard to see it in this bright room, but here's Grey Cloud Dunes right here (indicating). And when Grey Cloud Dunes was preserved, prior to it being preserved, the scientific and natural area, I think there was a big fight to try to preserve this part when it got turned into a golf course.

So, this was another one that's very surprising that you have got a golf course here, and apparently someone is planning to build a bunch of houses and tall buildings some day. So, it doesn't really make sense why this area next to such a sensitive area and also visible, that's the golf course viewed from Grey Cloud Island, so you can see it, and we would prefer to not have the RS there. And so we really

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think ROS would be the best district for the golf course but RN would be acceptable. We just don't think this should be Separated from River.

And that concludes my comments on the maps.

THE JUDGE: Thank you so much, Ms. Jones.

MS. JONES: Thank you for letting us have the time.

THE JUDGE: Let me take a brief moment off the record just to talk about scheduling.

(At this time a discussion was held off the record.)

THE JUDGE: We are back on the record. Mr. Dimond, if you wouldn't mind stating and spelling your name for our record.

MR. DIMOND: Certainly. Tom Dimond, T-o-m D-i-m-o-n-d. Before I get into this, I would just like to pick up on a couple of things that were discussed before. One of them that a gentleman spoke about how it would be good to deal with the issue of visual pollution with power lines. The catch is that we had that provision in the current regulations. The current protections call for the utility lines to be buried. The proposed rules eliminate that protection.

Our current rules require parkland dedication. Which seems to be a commonsense thing in a national park and in an area where you are trying to protect the resources and

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accommodate more recreational use. The proposed park regulations eliminate parkland dedication from the rules.

Which gets me to thinking about at this meeting and some of the previous meetings it reminds me of the childhood story of the emperor who had no clothes. I keep hearing this about how these are enhanced protections, these are improved, they are better of protecting the resource. When, in fact, these rules are less protective. They remove protections that are there today and which will have a significant negative impact on growth.

The rules require that -- I can hand you a copy of this (indicating). I will have a copy for the DNR.

THE JUDGE: And if you can tell us what it is. It's now Exhibit 30.

MR. DIMOND: Yes. It's not just the case that sometimes people, well, I feel this way or this way. It's factual and quantifiable that these rules are a reduction in protection of the existing. The regulations, the statute drafting these rules requires the protection of bluffs, very steep slopes, shoreline, gorge, scenic views, historic sites and a number of other provisions.

Let me take bluffs just to illustrate this issue. Everyone, as I say, should be aware that the DNR proposed rules for the Critical Area significantly reduce existing protections. Individual provisions create negative impacts,

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but the compounding effect of the proposed change is what really makes the difference. It is not unreasonable to assume that if the proposed rules are adopted without extensive restoration of existing protections that St. Paul, Minneapolis and other cities will be pressured to reduce existing protections in their comprehensive plans and ordinances. This would be a terrible loss for the region, the state, the nation. The real question is whether the DNR will reverse course and at least ensure proposed regulations are as protective as existing ones.

Existing Critical Area regulation prohibit development on all 18 percent and greater slopes. Sometimes people get confused with bluffs and what aren't bluffs. All 18 percent and greater slopes are protected. In the requirements for the statute about these rules, it requires that very steep slopes be protected. Very steep slopes are eliminated in the proposed rule. This is no protection of them. And there are currently protections for them.

The DNR will also eliminate, as I say, the existing prohibition on development on 18 percent and greater slopes and the requirement that they remain in a natural state. And in this document -- I won't go over it, but there is a letter from the DNR on regulations for the City of St. Paul where the DNR specifically and on multiple occasions iterates that you have to protect the 18 percent and greater slopes and you

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have to keep them in a natural state. That's the DNR's decision and the rules.

The proposed rules would eliminate existing protection, as I say, for all 18 percent and greater slopes, that do not meet the new height requirement and the 100 percent slope segment requirement. Only 38.5 percent and steeper slopes would be protected with a 100 foot horizontal run. Only 28.25 percent or greater slopes would be protected with a 200 foot horizontal run. They further reduce protections when they chose not to use the statutory, the statutory Critical Area definition of development to define what is prohibited. They further reduce protections when they chose not to use the statutory Critical Area definition of structure to define what is prohibited. They created a new one that is not what the statute requires. The statute definition includes anything constructed, installed or the use of which requires a location on a parcel of land including a movable structure on the land used for housing, commercial or office purposes, swimming pools, advertising signs and others. These are some of the items that would no longer be part of the list of structures prohibited on 18 percent and greater slopes or the required setback. People do not generally realize how dramatically these protections are being reduced.

They further reduce protections when they choose to

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allow expansion of nonconformities. Existing protections allow expansion of nonconforming structures as long as expansion is not in the protected area. The proposed rules would allow structure expansion in the protected areas.

They further reduce protections when they chose to allow setback averaging. Existing protections prohibit development in the protected areas. The proposed rules would allow new development in the protected areas if development on abutting property is grandfathered in.

Let me just compare the shoreland bluff definition to the proposed Critical Area definition in these rules. The shoreland definition is supposed to apply to the Critical Area also, but the DNR has repeatedly said they will not enforce the shoreland provision in St. Paul and elsewhere even though statutorily they are required to do so. And the Critical Area when it was being considered designated shoreland was considered as a way to protect it, but the decision when they looked at it is that for a number of factors it not did adequately protect the Critical Area. And the Critical Area is a higher standard.

The existing State shoreland definition, the slopes rise at least 25 feet. The slopes rise at least 25 feet. A 25 foot high segment must average 30 feet. One section. And an area with an average slope of less than 18 percent over a horizontal distance of 50 feet or more is not bluff.

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The proposed Critical Area of bluff definition. The slope rises at least 25 feet. A 25 foot section must average 100 percent, not 30 percent. And an area with an average slope of less than 18 percent over a horizontal distance of 25 feet. So, it cuts out because of undulations of land, which it talks about, it cuts out more of that. So, in fact, the proposed Critical Area definition of bluffs is less protected than the shoreland. Add to that toe bluff definition in shoreland, and this is in the rules, means the lower point of a 50 foot segment with an average slope exceeding 18 percent. Top of bluff means the highest point of a 50 foot segment with an average slope exceeding 18 percent. For the Critical Area, the toe of the bluff means the lower point of a 25 foot segment with an average slope exceeding 18 percent and the top of the bluff means the higher point of the 25 foot segment with an average slope exceeding it. Again, because of undulation in the land and the short distance, it shrinks the protected area compared to the shoreland.

So, Critical Area proposed bluff protections, which are tied to the definition, are weaker, dramatically weaker than what is in place today and what even shoreland, what is required every else in the state we in the Critical Area would have a weaker standard. It's mind boggling.

The DNR has proposed a bluff protection definition

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for the Critical Area that's less protected. Add to that, proposed rules eliminate any shoreland setback requirement in sections of the Critical Area. This is in direct conflict and State shoreland statutes. Regulations require all public waters in the state to have at least a 50 foot setback and the DNR in rules that were never adopted, but rules they recommended, a 75 foot. So DNR even believes it should be stronger, but they have omitted it. And, again, this would be on the Mississippi River where everywhere else on the Mississippi River has to have a setback requirement there would be zero in sections of the Critical Area, in the heart of the Critical Area. Even though the statutory requirement is to protect these shorelands it does not meet the requirements.

Add to that and what I'm saying about it's quantifiable. This is not just an opinion. This is -- I can show you an example. You don't have to look at it, but I will just show it to you. This is a survey that was actually done (indicating). A real life survey in the Critical Area in Highwood. The City of St. Paul reviewed this, approved it, inspectors looked at it, identified what the bluff is, what the bluff areas are. This is a computer run picture. And, again, you don't have to look at it. It's a computer run picture from these proposed rules (indicating). This protects less area than what is actually protected today and

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quantified to be protected today by a surveyor, by our City inspectors, by our review. And what they are saying is these rules, computer rules would protect the same areas. In fact, documented, they do not protect those same rules. So, again, they do not provide the protections that are required of by the statute but also that are deserved of the area.

I will just quickly mention what these are, go through them. But essentially there is letters from Sandy Fecht from DNR, there is multiple pages, I appreciate the stuff that Friends showed, but where the City's plans specifically oppose what is or in opposition to what is in regulations. Also, the City of Minneapolis' regulations as to what definition -- they have a definition of bluff on the books.

I should also mention that it's been stated that bluff is not defined in the Critical Area. It actually is defined in the Critical Area. It's not in the definitions, but it's defined. And it's also pointed out that, well, there is bluffline, but there is no bluff. It's an oddity. I will readily admit that. But what it is is when the Critical Area was being decided on, the St. Croix had recently been adopted and provided protection for 12 percent and greater slopes. That was the desire of many in the discussion for the Critical Area.

In the give and take of that, the bluffs actually in

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the Critical Area -- in shorthand, we oftentimes refer to bluffs as 18 percent or greater slopes. That's actually not correct. That's shorthand. What really is bluffs in the Critical Area are 12 percent and greater slopes. And it's written in the Executive Order and in the draft. But what they did as a compromise is they said that 18 percent and greater slopes would be protected as natural areas and no development allowed on them at all. The 12 to 18 percent would be protected but would have a limited protection of them. And so when they decided where the bluffline would be they only applied the bluffline to the 18 percent and greater slopes and that's why -- how it lays out. It's actually laid out in it so they are all bluffs. In these rules it lays out and it lays out the statutes, the revising the rules for the shoreland. It also lays out, I have read some of this information before, of communities and counties in close proximity on the river, for example, Wabasha County, Lake City, who actually have in place better bluff protections than is proposed for the Critical Area and for the same Mississippi River that we live on.

Having said that, I will let you go over that. But I would like to -- one other -- quick mention this. My background, I have some familiarity with the river because I actually lived in the Critical Area, I own property, lived in the Critical Area, own a business in the Critical Area. I

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worked as staff for the State Senate drafting legislation to protect the Critical Area, served on the planning commission of the City of St. Paul and served as a council member in the City of St. Paul. And I just say that as background that it's very important to actually look at what the details are and what the actual impacts of these rules are. Not just statements, oh, this is more protective or it is not more protective, but what does it actually do.

And with that in mind I will just mention another one, a background. I'm a veteran and I've spent a fair amount of time out at Fort Snelling, and there is certainly historical value to that and there is certainly scenic values that should be protected. But for those who aren't vets you may not appreciate the significance to the veterans of the state of that area, not only the historic, but that is the home to the federal building where veterans get their services, it is home to the veterans medical facility, the VA medical facility, it's home to the historic veterans home which is home to the state care for veterans, it provides homeless housing for veterans. Veterans go there and spend a lot of time there and the adjoining properties. PTSD is a big issue with veterans. Paralyzed veterans have a large facility there. There is a large traumatic brain injury facility there. And being able to go out on the Fort grounds and the adjoining park properties, to be able to enjoy those

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views and vistas is an important part of the healing process for veterans. Thank you.

THE JUDGE: Thank you, Councilman Dimond. I appreciate your time and contributions.

MR. DIMOND: Thank you.

THE JUDGE: With that, we have concluded our public hearing. Before folks take their leave of me, I wanted to make a number of important advertisements. The written comment period will start right at this moment and extend for 20 calendar days through Wednesday, July 6, 2016. Those materials need to be in to our office by 4:30 p.m. or they are late and they not part of the comment period. Don't be late. If you are going to take the time to develop thoughtful incites and contributions to this record, we want you to be timely. Make sure that they are in by 4:30 p.m. on Wednesday the 6th of July 2016.

After that, there will be a five-day business day rebuttal period for folks to comment on all of the materials that we have developed, 30 hearing exhibits, the current testimony that's been received, the other written comments that will come in over the course of that 20 day period, and that rebuttal period will close precisely at 4:30 p.m. on Wednesday the 13th of July, 2016.

I appreciate everyone's courtesies to each other and to me. We have developed a very robust and insightful and

important record, none of which could have been possible without you, so, you have my thanks. We are adjourned.

(The Hearing concluded at 1:18 p.m.)

REPORTER'S CERTIFICATE

I, SUSAN M. STROM, do hereby certify that I recorded in stenotype the Hearing on the foregoing matter on the 16th day of June, 2016, at the Mississippi Watershed Management Organization, 2522 Marshall Street NE, Minneapolis, Minnesota;

That I was then and there a Notary Public in and for the County of Dakota, State of Minnesota;

I further certify that thereafter and on that same date I transcribed into typewriting under my direction the foregoing transcript of said recorded hearing, which transcript consists of the typewritten pages 157 through 278.

I further certify that said hearing transcript is true and correct to the best of my ability.

WITNESS MY HAND AND SEAL THIS 22nd DAY OF JUNE, 2016.

_____

SUSAN M. STROM
Court Reporter

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