



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

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OFFICIAL RULEMAKING RECORD

DEPARTMENT OF NATURAL RESOURCES

2016 Mississippi River Corridor Critical Area, *Minnesota Rules*, chapter 6106

27 December 2016.....NOTICE OF ADOPTION PUBLISHED

4 January 2017EFFECTIVE DATE

Under Minnesota Statutes, section 14.365, the Official Rulemaking Record contains:

- 1) Copies of all **publications** in the State Register pertaining to the rules including:
{See **Procedural Documents** file}
 - a) 1st Request for Comments published on 14 December 2009 (38 SR 1597)
2nd Request for Comments published on 2 June 2014 (34 SR 848) → *also Item 8A below*
 - b) Notice of Hearing with rules as proposed published on 11 April 2016 (40 SR 1359)
 - c) Notice of Adoption showing modifications published on 27 December 2016 (41 SR 799)
- 2) All written petitions, requests, submissions, or **comments** received by the Department or the Administrative Law Judge after publication of the Notice of Intent to Adopt Rules in the State Register pertaining to the rules.
{See **OAH Submission** file} → *also Item 8I below*
- 3) The **Statement of Need and Reasonableness**
{See **OAH Submission** file}

The SONAR was signed and dated on 1 December 2015. → *also Item 8D below*

- 4) The official transcripts of hearings held on the following dates and locations:
{See **OAH Submission** file}
 - 14 June 2016 at Schaar's Bluff Gathering Center in Hastings
 - 15 June 2016 at Greenhaven Golf Course Event Center in Anoka
 - 16 June 2016 at Mississippi Watershed Management Organization in Minneapolis
- 5) The report of the Administrative Law Judge:
{See **Procedural Documents** file}
 - Report of the Administrative Law Judge dated 10 August 2016
 - Order of the Chief Administrative Law Judge dated 11 August 2016
- 6) The rules in the form first submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.22 to 14.28. → *also Item 8C below*
{See **Rules Drafts** file}

The **Rules Draft** file contains:

- the rules as proposed dated 26 February 2016
 - the rules as adopted (showing modifications requested by the Department) and adopted rules approved as to form dated 22 September 2016
 - the rules as filed with the Secretary of State dated 19 December 2016
 - Notice of Adoption, dated 19 December 2016
 - stripped version of the rules, dated 27 December 2016
- 7) The Administrative Law Judge's written order approving the rules.
{See **Procedural Documents** file}

Chief Administrative Law Judge's order on review of rules dated 7 December 2016 giving final approval

- 8) Documents required by applicable rules of the Office of Administrative Hearings, submitted under Request for Rules Hearing letter dated 24 February 2016.
{See **OAH Submission file**}

Part 1400.2220 for rules adopted with a hearing

- A. the request for comments published in the State Register;
- B. the petition for rulemaking, if the rule was proposed in response to it;
- C. the proposed rule, including the revisor's approval;
- D. the statement of need and reasonableness;
- E. a copy of the transmittal letter or a certificate showing that the agency sent a copy of the statement of need and reasonableness to the Legislative Reference Library
- F. the notice of hearing or dual notice as mailed and as published in the State Register;
- G. the certificate of mailing the notice of hearing and certificate of accuracy of its mailing list. Part 1400.2550 is a recommended certificate form;
- H. a certificate of additional notice if given or a copy of the transmittal letter;
- I. any written comments on the proposed rule received by the agency during the comment period;
- J. if the chief judge has authorized the agency to omit from the notice of hearing published in the State Register the text of any proposed rule, a copy of the document authorizing the omission; and
- K. any other document or evidence to show compliance with any other law or rule which the agency is required to follow in adopting this rule. Examples include Minnesota Statutes, section 15.0145 (Minnesota Council on Latino Affairs), 14.111 (farming operations), or 14.116 (notice to legislators).

- 9) The Department's **Order Adopting Rules**
{See **Procedural Documents file**}

The Commissioner signed the Order Adopting Rules on 8 December 2016.

- 10) The **Revisor's certificate** approving the form of the rules
{See **Rule Drafts file**}

See the rules as filed with the Secretary of State dated 19 December 2016.

- 11) A copy of the **adopted rules** as filed with the Secretary of State
{See **Rules Drafts file**}

See the rules as filed with the Secretary of State dated 19 December 2016

This Official Rulemaking Record also contains these other documents to show compliance with rulemaking requirements and other procedures:

{See **Miscellaneous file**}

- Internal memo to division staff at the conclusion of the rulemaking
- Correspondence with the governor's office
- Materials related to Governor's Waiver
- Correspondence with Office of the Revisor of Statute, Office of Administrative Hearings and Office of the Secretary of State
- Other internal correspondence
- Materials related to earlier Request for Comments published 18 January 2000

Official Notices

Minnesota Comprehensive Health Association (MCHA)

Notice of Meeting of the Enrollee Appeal Committee on December 17, 2009

NOTICE IS HEREBY GIVEN that a meeting of the Minnesota Comprehensive Health Association's (MCHA), Enrollee Appeal Committee will be held at 9:00 a.m. on Thursday, December 17, 2009, at the MCHA executive office located at 5775 Wayzata Blvd., Suite 910, St. Louis Park, MN.

This meeting may be closed to the public, if so requested by the appellant(s), pursuant to *Minnesota Statutes* 62E.10, subd. 4.

For additional information, please call Lynn Gruber at (952) 593-9609.

Board of Nursing

Notice of Meetings of the Minnesota Board of Nursing

NOTICE IS HEREBY GIVEN that the 2010 meetings of the Minnesota Board of Nursing have been scheduled at 9:00 a.m., at 2829 University Avenue SE, 4th Floor, Conference Rooms A & B, Minneapolis, Minnesota on the following dates:

February	4,	2010
April	1,	2010
June	3,	2010
August	5,	2010
October	14,	2010
December	2,	2010

A portion of each meeting is review of disciplinary cases and is closed to the public. For details about time of the open meeting, the agenda or other information, please call: (612) 617-2297.

Minnesota Department of Natural Resources (DNR)

Division of Waters

Request for Comments on Possible Rules Governing the Mississippi River Corridor Critical Area, *Minnesota Rules*, Chapter 6120 and Chapter 4410

Subject of Rules. The Minnesota Department of Natural Resources requests comments on possible rules governing the Mississippi River Corridor Critical Area (MRCCA). The Department is considering rules that will establish districts within the MRCCA and establish minimum guidelines and minimum standards for development within the districts. The rulemaking will primarily develop new language in Chapter 6120, but also may modify existing language in Chapter 4410 (parts 4410.8100 to 4410.9100) if determined necessary to facilitate administration.

The rules will provide for management of the MRCCA as a multi-purpose resource in a way that: conserves scenic, environmental recreational, mineral, economic, cultural, and historic resources and functions; maintains the river channel for transportation including barging and fleeting areas; provides for continuation and development of a variety of urban uses, including industrial, commercial and residential; uses the river for water supply and receiving water for properly treated sewage, stormwater, and industrial waste effluents, and protects biological and ecological functions of the corridor.

Rulemaking will determine the appropriate number and constitution of districts; in establishing districts, the Department will consider existing plans and policies, existing ordinances and conditions, identified resources and features, and a number of additional factors identified in the law authorizing the rulemaking.

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The proposed rules will establish minimum guidelines and standards for development in the districts; and will clarify the intent of each district. The guidelines and standards will address a number of key resources and features specified in the authorizing statute: 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; publicly owned parks, trails, and open spaces; cultural and historic sites and structures, and water quality. The Department may provide exceptions for a number of developments, including but not limited to infrastructure, hydropower, and water access. The rulemaking may address additional items related to the overall authorized scope if the need is identified during rule development.

At the outset of rulemaking, the Department is directed to develop a preliminary map of bluffs and blufflines based on guidelines in the authorizing statute. Following the rulemaking, the Department will prepare a final map of bluff-related features as listed in statute and defined in rule.

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

Statutory Authority. *Minnesota Statutes*, section 116G.15 (2009), and *Laws 2009*, Chapter 172, Article 2, Section 5(e), require the Department to adopt rules for administration of the Mississippi River Corridor Critical Area. The Department must commence rulemaking by January 15, 2010.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until 4:30 p.m. on March 22, 2010. In addition to the 90-day public comment period announced in this notice, the Department plans to appoint one or more advisory committees to comment on the possible rules during rule development. The Department anticipates advisory committee(s) would meet 2-4 times over a 9-month period from March to December 2010. Advisory committee(s) will be selected from persons and parties known to the Department as potentially affected by or interested in the rulemaking, persons recommended by local governmental units, and persons who request to participate by contacting the agency contact person listed below. The Department will select advisory committee members to balance a variety of interests, viewpoints, and geographic perspectives.

Rules Drafts. The Department has not yet prepared a draft of the possible rules. When available, preliminary rule drafts and other information regarding the rulemaking will be available on the Division of Waters website <http://mndnr.gov/waters>, or can be obtained by contacting the agency contact person provided below.

Agency Contact Person. Written comments, questions, requests to receive a draft of the rules when it has been prepared, requests for more information on these possible rules, and requests to participate on a possible rulemaking advisory committee(s) should be directed to: Jeffrey Berg at Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155-4032; **phone:** (651) 259-5729; **facsimile:** (651) 296-0445; and **e-mail:** MRCCArulemaking@dnr.state.mn.us. **TTY** users may call the Department at (651) 296-5484, or toll-free at 1-800-657-3929.

Alternative Format. Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submit comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: 30 November 2009

Mark Holsten, Commissioner

Department of Natural Resources

Public Meeting #2
Date: Monday, June 23, 2014
Time: 1:00 p.m..
Location: DHS
Elmer L. Andersen Human Services Building, Room 2370
540 Cedar Street
St. Paul, MN 55164

Minnesota Department of Natural Resources (DNR)
Division of Ecological and Water Resources
REQUEST FOR COMMENTS on Possible Rules Governing the Mississippi River
Corridor Critical Area, *Minnesota Rules*, chapters 6106 and 4410

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

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

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

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

Rules Drafts. The DNR has developed a working draft of the possible rules and districts for public comment. The working draft of the possible rules, district maps, and other information regarding the rulemaking are available on the DNR website at:

www.dnr.state.mn.us/input/rules/mrcca/index.html

or can be obtained by contacting the agency contact person provided below.

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

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

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

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

Dated: May 21, 2014

Tom Landwehr, Commissioner
Department of Natural Resources

Minnesota Teachers Retirement Association (TRA) Notice of Meeting of the Board of Trustees on 18 June 2014

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, June 18, 2014 at 9:30 a.m. in Suite 400, 60 Empire Drive, St. Paul, MN to consider matters which may properly come before the Board. Board members may participate by telephone.

Minnesota Department of Transportation (Mn/DOT) Notice to Bidders: Suspensions/Debarments as of May 27, 2014

NOTICE OF SUSPENSION

NOTICE IS HEREBY GIVEN that MnDOT has ordered that the following vendors be suspended effective May 15, 2014, until July 14, 2016:

- GCC Alliance Concrete, Inc. and its affiliates, Minneapolis, MN

NOTICE OF DEBARMENT

NOTICE IS HEREBY GIVEN that MnDOT has ordered that the following vendors be debarred for a period of three (3) years, effective May 6, 2013 until May 6, 2016:

- Gary Francis Bauerly and his affiliates, Rice, MN
- Gary Bauerly, LLC and its affiliates, Rice, MN
- Watab Hauling Co. and its affiliates, Rice, MN

Minnesota Statute section 161.315 prohibits the Commissioner, counties, towns, or home rule or statutory cities from awarding or approving the award of a contract for goods or services to a person who is suspended or debarred, including:

- 1) any contract under which a debarred or suspended person will serve as a subcontractor or material supplier,
- 2) any business or affiliate which the debarred or suspended person exercises substantial influence or control, and
- 3) any business or entity, which is sold or transferred by a debarred person to a relative or any other party over whose actions the debarred person exercises substantial influence or control, remains ineligible during the duration of the seller's or transfer's debarment.

Proposed Rules

Comments on Planned Rules or Rule Amendments. An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing. After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing. Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules or Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.1414.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. **Strikeouts** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules - Underlining** indicates additions to proposed rule language. **Strikeout** indicates deletions from proposed rule language.

Minnesota Department of Natural Resources Notice Of Hearing On Proposed Rules Governing Mississippi River Corridor Critical Area

Minnesota Rules, Chapters 6106 And 4410; Revisor's Id Numbeerr-04240

Public Hearing. The Department of Natural Resources (Department) intends to adopt rules after a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20.

The Department will hold public hearings on the above-named rules starting at the time listed with each location and continuing until each hearing is completed at the following locations:

Tuesday, June 14, 2016, at 4:30 p.m., at Schaar's Bluff Gathering Center, 8395 127th Street East,
Hastings, Minnesota 55033

Wednesday, June 15, 2016, at 4:30 p.m., at Greenhaven Golf Course Event Center, 2800 Greenhaven Road,
Anoka, Minnesota 55303

Thursday, June 16, 2016, at 10:00 a.m., at Mississippi Watershed Management Organization, 2522 Marshall Street NE,
Minneapolis, Minnesota 55418

The Department will schedule additional days of hearing if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing.

Administrative Law Judge. Administrative Law Judge Eric L. Lipman will conduct the hearing. The judge can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O.Box64620, Saint Paul, Minnesota 55164-0620, telephone

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651-361-7875, and fax 651-539-0310. The rule hearing procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240. You should direct questions about the rule hearing procedure to the administrative law judge.

Subject of Rules, Statutory Authority, and Department Contact Person. The proposed rules will provide for management of the Mississippi River Corridor Critical Area (MRCCA) as a multi-purpose resource in a manner consistent with *Minnesota Statutes*, section 116G.15, subd. 2, that:

- conserves scenic, environmental recreational, mineral, economic, cultural, and historic resources and functions;
- maintains the river channel for transportation, including barging and fleeting areas;
- provides for continuation, development and redevelopment of a variety of urban uses;
- uses the river for water supply and as a receiving water for properly treated effluents; and
- protects the biological and ecological functions of the corridor.

The proposed rules are authorized by *Minnesota Statutes*, section 116G.15, as amended in Laws of Minnesota 2013, chapter 137, article 2, sections 18 to 21.

A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed, and is available at the Department's website at <http://www.dnr.state.mn.us/input/rules/mrcca>. A free copy of the rules is available upon request from the Department contact person.

The Department contact person is Dan Petrik, Land Use Specialist, at Department of Natural Resources, 500 Lafayette Road, Saint Paul, MN 55155-4025, telephone 651-259-5714.

Statement of Need and Reasonableness. The statement of need and reasonableness contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the Department contact person. You may review or obtain copies for the cost of reproduction by contacting the Department contact person.

Public Comment. You and all interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. The administrative law judge will accept your views either orally at the hearing or in writing at any time before the close of the hearing record. Submit written comments to the administrative law judge at the address above.

All evidence that you present should relate to the proposed rules. You may also submit written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearings end. At the hearing, the administrative law judge may order this five-day comment period extended for a longer period but for no more than 20 calendar days.

Following the comment period, there is a five-working-day rebuttal period during which the Department and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period.

All comments and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received are public and will be available for review at the Office of Administrative Hearings or online at that Office's e-Comments website: <https://minnesotaoah.granicusideas.com/>.

The Department requests that any person submitting written views or data to the administrative law judge before the hearing or during the comment or rebuttal period also send a copy of the written views or data to the agency contact person at the address stated above.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the Department contact person at the address or telephone number listed above.

Modifications. The Department may modify the proposed rules as a result of the rule hearing process. It must support modifications by data and views presented during the rule hearing process. The adopted rules may not be substantially different than these proposed rules, unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate.

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Adoption Procedure after the Hearing. After the close of the hearing record, the administrative law judge will issue a report on the proposed rules. You may ask to be notified of the date when the judge's report will become available, and can make this request at the hearing or in writing to the administrative law judge. You may also ask to be notified of the date that the Department adopts the rules and files them with the Secretary of State, or ask to register with the Department to receive notice of future rule proceedings. You may make these requests at the hearing or in writing to the Department contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-539-1180 or 1-800-657-3889.

Order. I order that the rule making hearing be held at the dates, times, and locations listed above.

April 1, 2016

Tom Landwehr, Commissioner of Natural Resources

Department of Natural Resources

Proposed Permanent Rules Relating to Mississippi River Corridor Critical Area

6106.0010 POLICY.

It is in the interest of present and future generations to preserve and enhance the natural, aesthetic, economic, recreational, cultural, and historical values of the Mississippi River corridor within the Twin Cities metropolitan area and protect its environmentally sensitive areas. In furtherance of the policies declared in Minnesota Statutes, chapters 116G, 394, 462, and 473, this chapter provides standards and criteria for the preservation, protection, and management of the Mississippi River Corridor Critical Area.

6106.0020 PURPOSE; DESIGNATION.

The minimum standards and criteria in this chapter are provided for the subdivision, use, and development of land within the Mississippi National River and Recreation Area, established pursuant to United States Code, title 16, section 460k, which is designated the Mississippi River Corridor Critical Area, according to the purposes described under Minnesota Statutes, section 116G.15, subdivision 1.

6106.0030 SCOPE; OTHER LAW.

Subpart 1. **Applicability.** The standards and criteria established in this chapter for the Mississippi River Corridor Critical Area pertain to public waters and to nonfederal public land and private lands within the river corridor boundary.

Subp. 2. **Government actions.** The state and all local governments, including councils, commissions, boards, districts, departments, and all other public authorities, must exercise their powers to further the purposes of this chapter.

Subp. 3. **State land.** Land owned by the state and its agencies and subdivisions must be administered according to this chapter.

Subp. 4. **Conflicting standards.** In case of a conflict between this chapter and any other rule or ordinance, the more protective provision applies.

Subp. 5. **Superseding standards.** Specific standards found in this chapter supersede parts 4410.8100 to 4410.9910 for management of the Mississippi River Corridor Critical Area.

6106.0050 DEFINITIONS.

Subpart 1. **Scope of terms and measurement of distances.** For the purposes of this chapter, the terms used have the meaning given in this part. All distances, unless otherwise specified, are measured horizontally.

Subp. 2. **Access path.** "Access path" means an area designated to provide ingress and egress to public waters.

Subp. 3. **Adjacent.** "Adjacent" means having a boundary that physically touches or adjoins.

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Subp. 4. **Agricultural use.** "Agricultural use" has the meaning given under Minnesota Statutes, section 40A.02.

Subp. 5. **Alternative design.** "Alternative design" means subdivision design methods such as conservation design, transfer of development density, or similar zoning and site design techniques that protect open space and natural areas.

Subp. 6. **Barge fleeting.** "Barge fleeting" means temporarily parking and securing barges on the river, on or off channel, while tows are assembled or broken up.

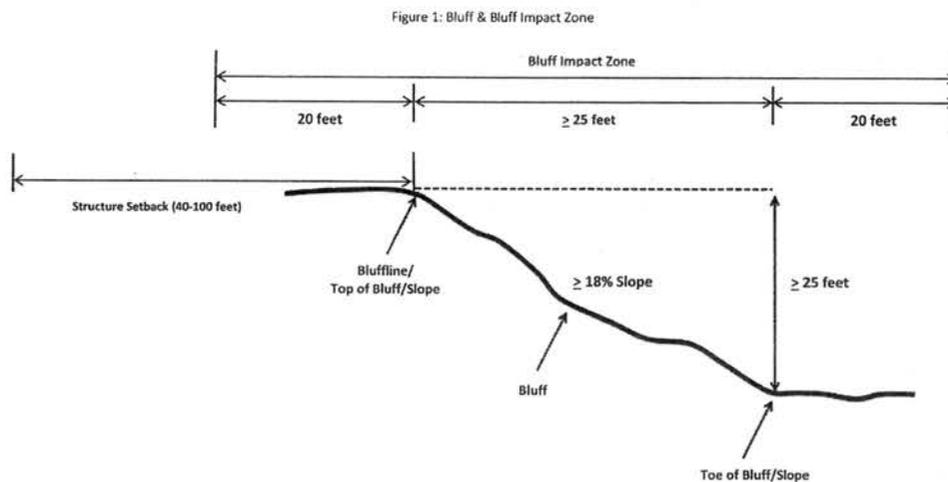
Subp. 7. **Biological and ecological functions.** "Biological and ecological functions" means the functions of vegetation in stabilizing soils and slopes, retaining and filtering runoff, providing habitat, and recharging groundwater.

Subp. 8. **Bluff.** "Bluff" means a natural topographic feature having:

A. a slope that rises at least 25 feet above the ordinary high water level or toe of the slope to the top of the slope and the grade of the slope from the ordinary high water level or toe of the slope to the top of the slope averages 18 percent or greater, measured over a horizontal distance of 25 feet. See Figure 1; or

B. a natural escarpment or cliff with a slope that rises at least ten feet above the ordinary high water level or toe of the slope to the top of the slope with an average slope of 100 percent or greater.

Subp. 9. **Bluff impact zone.** "Bluff impact zone" means the bluff and land within 20 feet of the bluff. See Figure 1.



Subp. 10. **Bluffline.** "Bluffline" means a line delineating the top of the bluff. More than one bluffline may be encountered proceeding landward from the river. See also subpart 9, Figure 1, and subpart 78, "top of the bluff."

Subp. 11. **Buildable area.** "Buildable area" means the area upon which structures may be placed on a lot or parcel of land and excludes land areas needed to meet requirements for setback, rights-of-way, bluff impact zones, historic properties, wetlands, designated floodways, land below the ordinary high water level of public waters, and other areas restricted from development by local ordinance.

Subp. 12. **Building.** A structure with two or more outside rigid walls and a fully secured roof and affixed to a permanent site.

Subp. 13. **Certificate of compliance.** "Certificate of compliance" means a document, written after a compliance inspection, certifying that the development is in compliance with applicable requirements at the time of the inspection.

Subp. 14. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subp. 15. **Conditional use.** "Conditional use" has the meaning given under Minnesota Statutes, section 394.22.

Subp. 16. **Conservation design.** "Conservation design" means a pattern of subdivision that is characterized by grouping lots

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within a portion of a parcel, where the remaining portion of the parcel is permanently protected as open space.

Subp. 17. **Conventional subdivision.** “Conventional subdivision” means a pattern of subdivision that is characterized by lots that are spread regularly throughout a parcel in a lot and block design.

Subp. 18. **Deck.** “Deck” means a horizontal, unenclosed, aboveground level structure open to the sky, with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site.

Subp. 19. **Developer.** “Developer” has the meaning given under Minnesota Statutes, section 116G.03.

Subp. 20. **Development.** “Development” has the meaning given under Minnesota Statutes, section 116G.03.

Subp. 21. **Discretionary action.** “Discretionary action” means an action under this chapter related to land use that requires a public hearing by local ordinance or statute, such as preliminary plats, final subdivision plats, planned unit developments, conditional use permits, interim use permits, variances, appeals, and rezonings.

Subp. 22. **Dock.** “Dock” has the meaning given under part 6115.0170.

Subp. 23. **Electric power facilities.** “Electric power facilities” means equipment and associated facilities for generating electric power as identified and defined under Minnesota Statutes, section 216E.01, and devices for converting wind energy to electrical energy.

Subp. 24. **Essential services.** “Essential services” means underground or overhead gas, electrical, communications, steam, or water distribution, collection, supply, or disposal systems, including storm water. Essential services includes poles, wires, mains, drains, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants, navigational structures, aviation safety facilities, or other similar equipment and accessories in conjunction with the systems. Essential services does not include buildings, treatment works as defined in Minnesota Statutes, section 115.01, electric power facilities, or transmission services.

Subp. 25. **Feedlot.** “Feedlot” has the meaning given for animal feedlot under part 7020.0300.

Subp. 26. **Floodplain.** “Floodplain” has the meaning given under part 6120.5000.

Subp. 27. **Hard-surface trail.** “Hard-surface trail” means a trail surfaced in asphalt, crushed aggregate, or other hard surface, for multipurpose use, as determined by local, regional, or state agency plans.

Subp. 28. **Historic property.** “Historic property” means an archaeological site, standing structure, site, district, or other property that is:

A. listed in the National Register of Historic Places or the State Register of Historic Places or locally designated as a historic site under Minnesota Statutes, chapter 471;

B. determined to meet the criteria for eligibility to the National Register of Historic Places or the State Register of Historic Places; or

C. an unplatted cemetery that falls under the provisions of Minnesota Statutes, chapter 307, in consultation with the Office of the State Archeologist.

Subp. 29. **Impervious surface.** “Impervious surface” means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples are rooftops, decks, sidewalks, patios, parking lots, storage areas, roads, and driveways, including those with concrete, asphalt, or gravel surfaces.

Subp. 30. **Intensive vegetation clearing.** “Intensive vegetation clearing” means removal of all or a majority of the trees or shrubs in a contiguous patch, strip, row, or block.

Subp. 31. **Interim use.** “Interim use” has the meaning given under Minnesota Statutes, sections 394.303 and 462.3597.

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Subp. 32. **Land alteration.** "Land alteration" means an activity that exposes the soil or changes the topography, drainage, or cross section of the land, excluding gardening or similar minor soil disturbances.

Subp. 33. **Local government.** "Local government" means counties, cities, and townships.

Subp. 34. **Local park agencies.** "Local park agencies" means the Minneapolis Park and Recreation Board and the Three Rivers Park District.

Subp. 35. **Lot.** "Lot" has the meaning given under part 6120.2500.

Subp. 36. **Lot width.** "Lot width" means the shortest distance between lot lines measured at both the ordinary high water level and at the required structure setback from the ordinary high water level.

Subp. 37. **Marina.** "Marina" has the meaning given under chapter 6115.

Subp. 38. **Mooring facility.** "Mooring facility" has the meaning given under part 6115.0170.

Subp. 39. **Native plant community.** "Native plant community" means a plant community that has been mapped as part of the Minnesota biological survey or other scientifically based studies.

Subp. 40. **Natural-surface trail.** "Natural-surface trail" means a trail composed of native soil and rock or compacted granular stone, primarily intended for hiking, equestrian, or mountain bike use, as determined by local, regional, or state agency plans.

Subp. 41. **Natural vegetation.** "Natural vegetation" means any combination of ground cover, understory, and tree canopy that, while it may have been altered by human activity, continues to stabilize soils, retain and filter runoff, provide habitat, and recharge groundwater.

Subp. 42. **Nonconformity.** "Nonconformity" has the meaning given under Minnesota Statutes, section 394.22.

Subp. 43. **Nonmetallic mining.** "Nonmetallic mining" means construction, reconstruction, repair, relocation, expansion, or removal of any facility for the extraction, stockpiling, storage, disposal, or reclamation of nonmetallic minerals such as stone, sand, and gravel. Nonmetallic mining does not include ancillary facilities such as access roads, bridges, culverts, and water level control structures. For purposes of this subpart, "facility" includes all mine pits, quarries, stockpiles, basins, processing structures and equipment, and any structures that drain or divert public waters to allow mining.

Subp. 44. **Off-premise advertising signs.** "Off-premise advertising signs" means those signs that direct attention to a product, service, business, or entertainment venue that is not exclusively related to the premises where the sign is located.

Subp. 45. **Ordinary high water level.** "Ordinary high water level" has the meaning given under Minnesota Statutes, section 103G.005.

Subp. 46. **Overlay district.** "Overlay district" means a zoning district that is applied over one or more previously established zoning districts, establishing additional or stricter standards and criteria for covered properties in addition to those of the underlying zoning district. Overlay districts are often used to protect historic features and natural resources such as shoreland or floodplain.

Subp. 47. **Parcel.** "Parcel" has the meaning given under Minnesota Statutes, section 116G.03.

Subp. 48. **Patio.** "Patio" means a constructed hard surface located at ground level with no railings and open to the sky.

Subp. 49. **Picnic shelter.** "Picnic shelter" is a roofed structure open on all sides, accessory to a recreational use.

Subp. 50. **Planned unit development.** "Planned unit development" means a method of land development that merges zoning and subdivision controls, allowing developers to plan and develop a large area as a single entity, characterized by a unified site design, a mix of structure types and land uses, and phasing of development over a number of years. Planned unit development includes any conversion of existing structures and land uses that use this method of development.

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Subp. 51. **Plat.** "Plat" has the meaning given under Minnesota Statutes, sections 505.01, subdivision 3, and 515B.2-110.

Subp. 52. **Port.** "Port" means a water transportation complex established and operated under the jurisdiction of a port authority according to Minnesota Statutes, chapter 458.

Subp. 53. **Primary conservation areas.** "Primary conservation areas" means key resources and features, including shore impact zones, bluff impact zones, floodplains, wetlands, gorges, areas of confluence with tributaries, natural drainage routes, unstable soils and bedrock, native plant communities, cultural and historic properties, significant existing vegetative stands, tree canopies, and other resources identified in local government plans.

Subp. 54. **Professional engineer.** "Professional engineer" means an engineer licensed to practice in Minnesota.

Subp. 55. **Public recreational facilities.** "Public recreational facilities" means recreational facilities provided by the state or a local government and dedicated to public use, including parks, scenic overlooks, observation platforms, trails, docks, fishing piers, picnic shelters, water access ramps, and other similar water-oriented public facilities used for recreation.

Subp. 56. **Public river corridor views.** "Public river corridor views" means views toward the river from public parkland, historic properties, and public overlooks, as well as views toward bluffs from the ordinary high water level of the opposite shore, as seen during the summer months.

Subp. 57. **Public transportation facilities.** "Public transportation facilities" means all transportation facilities provided by federal, state, or local government and dedicated to public use, such as roadways, transit facilities, railroads, and bikeways.

Subp. 58. **Public utilities.** "Public utilities" means electric power facilities, essential services, and transmission services.

Subp. 59. **Public waters.** "Public waters" has the meaning given under Minnesota Statutes, section 103G.005.

Subp. 60. **Readily visible.** "Readily visible" means land and development that are easily seen from the ordinary high water level of the opposite shore during summer months.

Subp. 61. **Resource agency.** "Resource agency" means a federal, state, regional, or local agency that engages in environmental, natural, or cultural resource protection or restoration activities, including planning, implementation, and monitoring.

Subp. 62. **Retaining wall.** "Retaining wall" means a vertical or nearly vertical structure constructed of mortar and rubble masonry, rock, or stone regardless of size, vertical timber pilings, horizontal timber planks with piling supports, sheet pilings, poured concrete, concrete blocks, or other durable material.

Subp. 63. **Riprap.** "Riprap" means coarse stones, boulders, cobbles, broken rock or concrete, or brick materials placed or constructed to armor shorelines, streambeds, bridge abutments, pilings, and other shoreline structures against scour or water or ice erosion.

Subp. 64. **River corridor boundary.** "River corridor boundary" means the boundary approved and adopted by the Metropolitan Council under Minnesota Statutes, section 116G.06, as approved and adopted by the legislature in Minnesota Statutes, section 116G.15, and as legally described in the State Register, volume 3, pages 1681 to 1691.

Subp. 65. **River-dependent use.** "River-dependent use" means the use of land for commercial, industrial, or utility purposes, where access to and use of a public water feature is an integral part of the normal conduct of business and where the use is dependent on shoreline facilities.

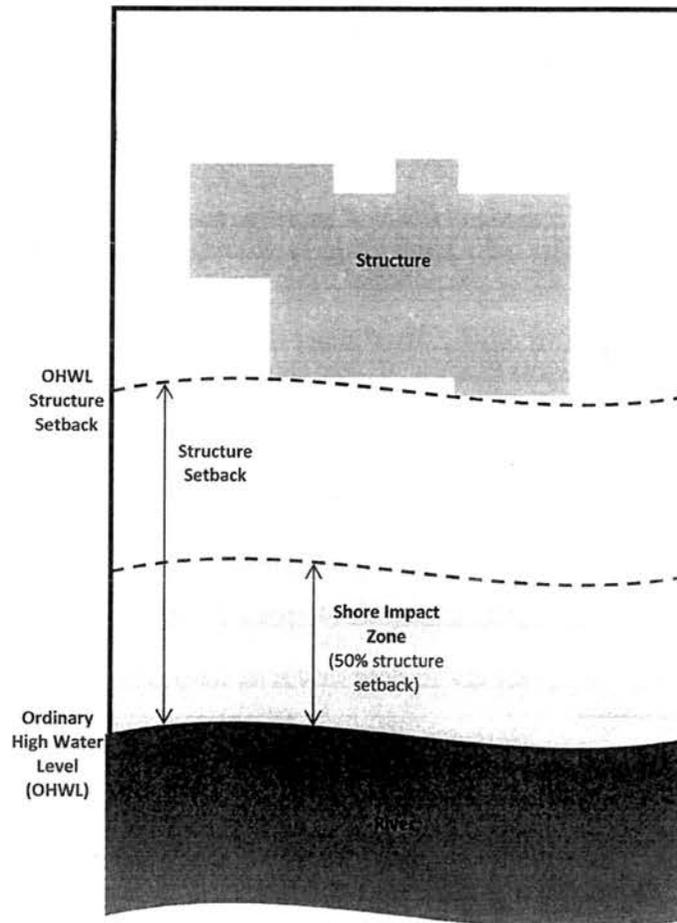
Subp. 66. **Selective vegetation removal.** "Selective vegetation removal" means removal of isolated individual trees or shrubs that are not in a contiguous patch, strip, row, or block and that does not substantially reduce the tree canopy or understory cover.

Subp. 67. **Setback.** "Setback" means a separation distance measured horizontally.

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Subp. 68. **Shore impact zone.** "Shore impact zone" means land located between the ordinary high water level of public waters and a line parallel to it at a setback of 50 percent of the required structure setback or 50 feet landward of the ordinary high water level in areas of agricultural use. See Figure 2.

Figure 2: Shore Impact Zone



Subp. 69. **Shoreline facilities.** "Shoreline facilities" means facilities that require a location adjoining public waters for ingress and egress, loading and unloading, and water intake and outflow, such as barge facilities, port facilities, commodity loading and unloading equipment, watercraft lifts, marinas, short-term watercraft mooring facilities for patrons, and water access ramps. Structures that would be enhanced by a shoreline location, but do not require a location adjoining public waters as part of their function, are not shoreline facilities, such as restaurants, bait shops, and boat dealerships.

Subp. 70. **Special purpose unit of government.** "Special purpose unit of government" means the University of Minnesota; the St. Paul Port Authority; watershed management organizations established under Minnesota Statutes, chapter 103B; watershed districts established under Minnesota Statutes, chapter 103D; and any other unit of government other than those listed in subparts 33 and 71.

Subp. 71. **State or regional agency.** "State or regional agency" means the Metropolitan Airports Commission, Minnesota Historical Society, Department of Natural Resources, Department of Transportation, and Metropolitan Council and other state agencies.

Subp. 72. **Steep slope.** "Steep slope" means a natural topographic feature with an average slope of 12 to 18 percent, measured over a horizontal distance equal to or greater than 50 feet.

Subp. 73. **Storm water.** "Storm water" has the meaning given under part 7090.0080.

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Subp. 74. **Structure.** "Structure" means a building, sign, or appurtenance thereto, except for aerial or underground utility lines, such as sewer, electric, telephone, telegraph, or gas lines, and utility line towers, poles, and other supporting appurtenances.

Subp. 75. **Subdivision.** "Subdivision" has the meaning given under Minnesota Statutes, section 462.352.

Subp. 76. **Subsurface sewage treatment system.** "Subsurface sewage treatment system" has the meaning given under part 7080.1100.

Subp. 77. **Toe of the bluff.** "Toe of the bluff" means a line along the bottom of a bluff, requiring field verification, such that the slope above the line exceeds 18 percent and the slope below the line is 18 percent or less, measured over a horizontal distance of 25 feet. See subpart 9, Figure 1.

Subp. 78. **Top of the bluff.** "Top of the bluff" means a line along the top of a bluff, requiring field verification, such that the slope below the line exceeds 18 percent and the slope above the line is 18 percent or less, measured over a horizontal distance of 25 feet. See subpart 9, Figure 1.

Subp. 79. **Transmission services.** "Transmission services" means:

A. electric power lines, cables, pipelines, or conduits that are:

(1) used to transport power between two points, as identified and defined under Minnesota Statutes, section 216E.01, subdivision 4; or

(2) for mains or pipelines for gas, liquids, or solids in suspension, used to transport gas, liquids, or solids in suspension between two points; and

B. telecommunication lines, cables, pipelines, or conduits.

Subp. 80. **Treeline.** "Treeline" means the more or less continuous line formed by the tops of trees in a wooded area when viewed from a particular point. The treeline is determined during all seasons as if under full foliage.

Subp. 81. **Twin Cities metropolitan area.** "Twin Cities metropolitan area" is the area over which the Metropolitan Council has jurisdiction according to Minnesota Statutes, section 473.121, subdivision 2.

Subp. 82. **Variance.** "Variance" has the meaning given under Minnesota Statutes, section 394.22.

Subp. 83. **Water access ramp.** "Water access ramp" means a boat ramp, carry-down site, boarding dock, and approach road, or other access that allows launching and removal of a boat, canoe, or other watercraft with or without a vehicle and trailer.

Subp. 84. **Water-oriented accessory structure.** "Water-oriented accessory structure" means a small building or other improvement, except stairways, fences, docks, and retaining walls, that, because of the relationship of its use to public waters, needs to be located closer to public waters than the normal structure setback. Examples include gazebos, screen houses, fish houses, pump houses, and detached decks and patios.

Subp. 85. **Wetlands.** "Wetlands" has the meaning given under Minnesota Statutes, section 103G.005.

Subp. 86. **Wharf.** "Wharf" has the meaning given under part 6115.0170.

6106.0060 ADMINISTRATION OF PROGRAM.

Subpart 1. **Purpose, terms, and time frames.** This part establishes the roles, responsibilities, and authorities for administration of this chapter. For the purposes of this chapter:

A. "plan," "ordinance," and "plan and ordinance" mean Mississippi River Corridor Critical Area plans and ordinances, and updates or amendments to the plans and ordinances, prepared to implement this chapter; and

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B. time frames are measured in calendar days.

Subp. 2. **Responsibilities and authorities.** The standards and criteria for the Mississippi River Corridor Critical Area established in this chapter apply to:

A. the commissioner for reviewing and approving plans and ordinances and reviewing discretionary actions;

B. the Metropolitan Council for reviewing plans and ordinances;

C. local governments when preparing, amending, and administering plans and ordinances and reviewing and approving discretionary actions and permits required under this chapter; and

D. state or regional agencies, local park agencies, and special purpose units of government for permit regulation, plan development, and management activities within their jurisdiction and to the extent they have jurisdiction.

Subp. 3. **Consistent plans and ordinances.** Local governments within the Mississippi River Corridor Critical Area must adopt, administer, and enforce plans and ordinances consistent with this chapter. Plans and ordinances must be submitted to the Metropolitan Council for review and must be approved by the commissioner before they are adopted as provided under part 6106.0070. For the purpose of this part, "consistent" means that each local plan and ordinance, while it may be structured or worded differently, meets the purpose, scope, and numeric thresholds and standards set forth in this chapter. Plans and ordinances that are not consistent with this chapter require approval of flexibility, according to part 6106.0070, subpart 6.

Subp. 4. **Greater restrictions.** Nothing in this chapter shall be construed as prohibiting or discouraging a local government from adopting and enforcing plans and ordinances that are more restrictive than this chapter.

Subp. 5. **Duties of commissioner.** The commissioner must:

A. consult with the United States Army Corps of Engineers, Minnesota Department of Transportation, National Park Service, and Metropolitan Council and other state or regional agencies, special purpose units of government, local governments, and local parks and recreation agencies to ensure that the Mississippi River Corridor Critical Area is managed as a multipurpose resource, according to Minnesota Statutes, section 116G.15, subdivision 2, paragraph (a);

B. provide advice and assistance to local governments in the Mississippi River Corridor Critical Area for development, adoption, administration, and enforcement of plans and ordinances, consistent with the purposes under part 6106.0020;

C. be the lead agency to coordinate preparation, submission, review, and modification of plans and ordinances that are prepared by local governments as provided under part 6106.0070;

D. review and approve final draft plans and ordinances before adoption by a local government as provided under part 6106.0070; and

E. consult with those government units identified in subpart 1 that own or manage land within the Mississippi River Corridor Critical Area to ensure that they administer lands and programs under their jurisdictions consistent with this chapter.

Subp. 6. **Duties of Metropolitan Council.** The Metropolitan Council must:

A. incorporate the standards and criteria in this chapter into the council's planning processes;

B. work with local governments and the commissioner to ensure that the standards and criteria in this chapter are adopted and implemented; and

C. provide written comments and recommendations to the commissioner on all proposed plans and ordinances submitted by local governments as provided under part 6106.0070.

Subp. 7. **Duties of cities.** Cities must:

A. prepare or amend plans and ordinances to meet or exceed the minimum standards and criteria in this chapter and as

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provided under part 6106.0070:

B. submit proposed plans and ordinances that affect lands within the river corridor boundary to the Metropolitan Council for review and subsequent review and approval by the commissioner, before adoption as provided under part 6106.0070, subpart 3;

C. adopt, administer, and enforce plans and ordinances as provided under part 6106.0070, subpart 3;

D. send notice of public hearings to consider plans and ordinances, and amendments thereto, and other development requiring discretionary action affecting lands within the river corridor boundary to the following parties so that the parties receive the notice at least ten days before the public hearing:

(1) the commissioner, in a format prescribed by the commissioner;

(2) the National Park Service; and

(3) adjoining local governments, including those with overlapping jurisdiction and those across the river, where buildings exceed the height limits specified in part 6106.0120, as part of the conditional use permit or variance process; and

E. send notice of final decisions for actions under item D, including findings of fact, within ten days following the final decision, to those parties listed under and in the manner prescribed by item D.

Subp. 8. Duties of counties and townships.

A. Counties must prepare or amend plans and may prepare ordinances consistent with this chapter under the authority of Minnesota Statutes, chapters 394 and 473, using the process set forth in subpart 7.

B. Townships must prepare or amend plans and ordinances consistent with this chapter under the authority of Minnesota Statutes, chapters 394, 462, and 473, using the process set forth in subpart 7. If a county has adopted ordinances under this part:

(1) a township's plan and ordinances must be consistent with and at least as restrictive as the plan and ordinances adopted by the county in which the township is located, as provided under Minnesota Statutes, section 394.33;

(2) a township must provide for administration and enforcement of Mississippi River Corridor Critical Area ordinances;
and

(3) a township may adopt a county's ordinances by reference.

Subp. 9. Duties of state or regional agencies and other government entities. Any state or regional agency, local park agency, or special purpose unit of government that owns or manages lands within the river corridor boundary must manage the lands under its authority in a manner consistent with this chapter.

6106.0070 PREPARATION, REVIEW, AND APPROVAL OF PLANS AND ORDINANCES.

Subpart 1. Purpose. The purpose of this part is to establish the process, responsibilities, time frames, content requirements, and evaluation criteria for preparation, review, and approval of plans and ordinances, in order to ensure an efficient process aligned with other regional and local planning processes.

Subp. 2. Adoption of plans and ordinances.

A. The commissioner, in consultation with the Metropolitan Council, shall notify local governments of the schedule for preparing or amending plans and ordinances consistent with this chapter. The schedule must align as closely as possible with the comprehensive plan update schedule under Minnesota Statutes, section 473.864.

B. All plans and ordinances adopted by local governments pursuant to Executive Order 79-19 that are in existence on the effective date of this chapter remain in effect and must be enforced until plans and ordinances are amended consistent with this chapter, approved by the commissioner, and adopted by the local government as provided under subpart 3.

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C. Where a local government has not adopted plans and ordinances pursuant to Executive Order 79-19, development must be governed by this chapter until such time as plans and ordinances consistent with this chapter are approved by the commissioner and adopted by the local government as provided under subpart 3.

D. The adoption of plans and ordinances consistent with this chapter does not limit or modify the rights of a person to complete a development that has previously been authorized as provided under Minnesota Statutes, section 116G.13.

Subp. 3. Plan and ordinance review.

A. Within one year of notification from the commissioner according to subpart 2, local governments must prepare or amend plans and ordinances consistent with this chapter. The commissioner shall grant extensions to local governments if requested in writing and if the local government demonstrates it has made a good-faith effort to meet the deadline specified in this subpart. The extension, if granted, must include a timetable and plan for completion of the ordinance.

B. Local governments must formally submit drafts of plans and ordinances to the Metropolitan Council and the commissioner for review, in a format prescribed by the commissioner.

C. If ordinances prepared under item B refer to standards in underlying zoning, then the underlying zoning documents must be submitted and considered in combination with the ordinance. Both the ordinance and underlying zoning standards must be consistent with this chapter. Ordinances not consistent with this chapter must be submitted as part of a flexibility request according to subpart 6.

D. The commissioner and the Metropolitan Council must review the plan or ordinance and communicate a decision to the local government as follows:

(1) within 45 days after receipt from the local government, the Metropolitan Council must review and comment on draft plans and ordinances for consistency with:

(a) this chapter;

(b) regional systems and policies, as specified in Minnesota Statutes, section 473.859; and

(c) the council's comprehensive development guide for the metropolitan area, as specified in Minnesota Statutes, section 473.145; and

(2) within 45 days after receipt of the plan and ordinance from the Metropolitan Council, the commissioner must review the draft plan and ordinance to determine their consistency with this chapter, with Minnesota Statutes, chapter 116G, and with the comprehensive plan adopted by a local government. The commissioner shall consider the comments submitted by the Metropolitan Council.

E. Upon completing the review, the commissioner must take an action under subitem (1) or (2) and provide a copy of the decision to the Metropolitan Council and the National Park Service:

(1) approve the draft plan and ordinance by written decision; or

(2) return the draft plan and ordinance to the local government for modifications, with a written explanation of the need for modification.

F. When the commissioner returns a draft plan and ordinance to the local government for modification, the local government must revise the draft plan and ordinance within 60 days after receipt of the commissioner's written explanation and must resubmit the revised draft plan and ordinance to the commissioner. Upon receiving the revised draft plan and ordinance from the local government, the Metropolitan Council and the commissioner must conduct the review as provided under item D.

(1) If a meeting is requested by the local government or the Metropolitan Council, a final revision need not be made until a formal meeting has been held with the commissioner on the draft plan and ordinance. The request extends the 60-day time limit specified in this item until after the meeting has been held.

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(2) The commissioner must grant extensions to local governments if the local government requests an extension in writing and if the local government is making a good-faith effort to meet the submittal deadline. The extension, if granted, must include a timetable and plan for completion of the plan and ordinance.

G. Within 60 days after receiving the commissioner's approval of a draft plan or ordinance, the local government must adopt the commissioner-approved draft plan and ordinance. The local government must submit a copy of the final adopted plan and ordinance, with evidence of adoption, to the commissioner, the Metropolitan Council, and the National Park Service, within ten days after the adoption.

H. Only those plans and ordinances approved by the commissioner have the force and effect of law.

I. Once in effect, the local government must implement and enforce the commissioner-approved plan and ordinance.

J. If a local government fails to prepare and submit a draft plan and ordinance within one year of notification as provided under item A, fails to incorporate necessary modifications as provided under item E, subitem (2), or fails to adopt the commissioner-approved plan or ordinance as provided under item G, the commissioner must:

(1) prepare a plan and ordinance consistent with this chapter within 90 days of the deadline for preparation or adoption of plans and ordinances as provided under items A to E or G or the end date of an extension of time approved by the commissioner as provided under item F;

(2) conduct a public hearing as provided by Minnesota Statutes, section 14.58, and other statutes as applicable;

(3) within 60 days after the conclusion of the public hearing, adopt by written order the plan and ordinance for the local government's portion of the Mississippi River Corridor Critical Area; and

(4) give notice of the adopted plan and ordinance to the affected local government, the Metropolitan Council, and the National Park Service.

K. Plans and ordinances that have been adopted by the commissioner under this subpart have the same effect as if adopted by the local government and must be administered and enforced by the local government.

L. Local governments may amend plans and ordinances at any time following the procedures under items C to I.

M. Plans must be updated regularly on the same schedule as other comprehensive plan elements according to Minnesota Statutes, section 473.864, and in a manner consistent with items C to I.

Subp. 4. Contents of plans.

A. The plan must be a component of the local government's comprehensive plan prepared according to Minnesota Statutes, section 473.859, and must be consistent with the purposes and scope of this chapter.

B. Plans must contain maps, policies, and implementation provisions to:

(1) identify and protect primary conservation areas;

(2) identify and protect those public river corridor views and other scenic views deemed important by the community;

(3) identify areas that are priorities for restoration of natural vegetation, erosion prevention, bank and slope stabilization, or other restoration activities;

(4) minimize potential conflict of water surface uses as authorized under Minnesota Statutes, chapter 86B;

(5) provide for commercial barge terminals, barge fleeting, and recreational marinas, if applicable;

(6) provide for future commercial and industrial uses that require water access;

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(7) provide for and encourage creation, connection, and maintenance of open space and recreation facilities, such as parks, scenic overlooks, natural areas, islands, and wildlife areas;

(8) identify potential public access points and trail locations; and

(9) provide for transportation and public utility development in a manner consistent with this chapter.

Subp. 5. Contents of ordinances.

A. Local ordinances must be consistent with the standards in this chapter and must include:

(1) definitions consistent with part 6106.0050;

(2) administrative provisions consistent with part 6106.0080;

(3) districts consistent with part 6106.0100;

(4) minimum standards and criteria consistent with parts 6106.0110 to 6106.0180; and

(5) alternative design methods consistent with part 6106.0170.

B. The local ordinance must be structured as an overlay district. If a conflict exists with underlying zoning, the provisions of the overlay district govern. Where specific numeric thresholds or standards are listed in this chapter, those numeric thresholds or standards must be included in the overlay district.

Subp. 6. Flexibility requests for ordinances.

A. Local governments may, under special circumstances and with the commissioner's prior approval, adopt ordinances that are not consistent with this chapter, provided that the purposes of Minnesota Statutes, section 116G.15, and the purposes and scope of this chapter are met and the ordinance is consistent with the plan prepared by the local government and approved according to this chapter. Special circumstances include the following situations:

(1) areas where existing urban, residential, commercial, or industrial development patterns have been in place since before the designation of the Mississippi River Corridor Critical Area and where the majority of the development does not meet the minimum state standards;

(2) areas managed under other water and related land resource management programs authorized by state or federal legislation with goals compatible with this chapter;

(3) existing or planned wastewater, storm water, water supply, or utility facilities and similar physical or infrastructural constraints make the use of particular minimum standards impractical; and

(4) areas where detailed modeling of visual, physical, or other resource impacts has been completed as part of a public planning process.

B. A local government requesting ordinance flexibility must submit a written request to the commissioner as part of the ordinance submittal required under subpart 3. The request must:

(1) be approved by the governing body with authority to approve the request;

(2) include the proposed ordinance and any associated maps;

(3) include a detailed description of the proposed alternative standards that are not consistent with this chapter, together with documentation that the alternative standards are consistent with the purposes and scope of this chapter;

(4) describe the special circumstances that justify the use of alternative standards;

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(5) describe the potential impacts to primary conservation areas and mitigation actions proposed to address the impacts;

(6) include documentation of any input from adjoining local governments, including those with overlapping jurisdiction and those across the river, and from other potentially affected interests, including community members; and

(7) include any other supporting information, maps, and documents that the local government considers necessary to explain the request to the commissioner.

C. Within 60 days after receiving a complete request for ordinance flexibility as provided in item B, the commissioner must:

(1) evaluate the request based on:

(a) the extent to which the proposed alternative standards satisfy the purposes of Minnesota Statutes, section 116G.15, subdivision 1, and the purposes and scope of this chapter;

(b) the likely impact of the proposed alternative standards on primary conservation areas and public river corridor views;

(c) comments from adjoining local governments and other potentially affected interests; and

(d) the local government's identification of mitigation measures and its commitment to mitigate any adverse impacts resulting from the proposed alternative standards; and

(2) approve or deny the request, state in writing to the local government the reasons for the approval or denial, and suggest any alternative solutions or regulatory approaches that would be granted ordinance flexibility.

Subp. 7. Plans and projects for parks and other public lands. State or regional agencies, local park agencies, special purpose units of government, and local governments with parks or other public lands within their jurisdiction must comply with the standards and criteria in this chapter. The agencies and government entities must include the following elements in plans and project designs for parks and other public lands they own or manage within the Mississippi River Corridor Critical Area:

A. documentation of the location of the park or other owned or managed land within the Mississippi River Corridor Critical Area and recognition of the purposes of the Mississippi River Corridor Critical Area designation and this chapter;

B. standards for public utilities and facilities consistent with those in part 6106.0130; and

C. provisions for protection of primary conservation areas and public river corridor views.

6106.0080 ADMINISTRATIVE PROVISIONS FOR ORDINANCES.

Subpart 1. Purpose. The purpose of this part is to identify administrative provisions that must be included in local ordinances to ensure that ordinances are administered consistent with the purposes of this chapter.

Subp. 2. Variances.

A. A local government must consider applications for variances in a manner consistent with Minnesota Statutes, sections 394.27, subdivision 7, and 462.357, subdivision 6. The local government's review must consider the potential impacts of a proposed variance on primary conservation areas, public river corridor views, and other resources identified in the local governments' plan.

B. If a local government determines that a variance would negatively affect primary conservation areas, public river corridor views, or other identified resources, mitigation is required. Mitigation must be proportional to, have a relationship to, and offset the impact on the affected resource as provided in subpart 5.

C. The local government's findings of fact accompanying the issuance of any variance must include a finding and evidence

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supporting a finding that the requested variance is consistent with the purposes and scope of this chapter.

Subp. 3. Nonconformities.

A. The purpose of this subpart is to allow uses and structures that came into existence legally prior to the effective date of this part and in conformance with then-applicable requirements to continue to exist and be put to productive use.

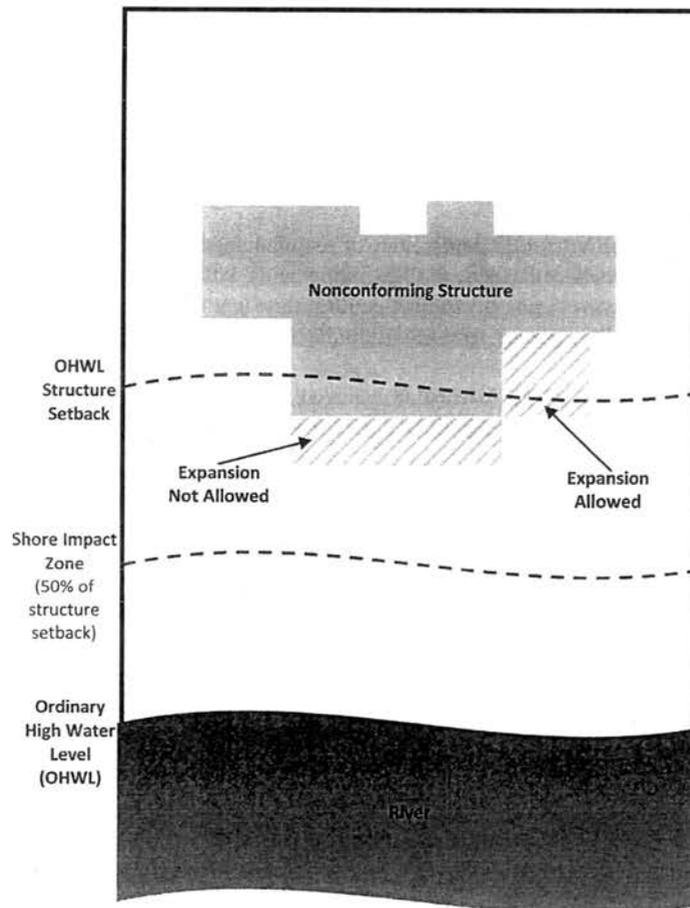
B. Nonconformities must be regulated by local governments in a manner consistent with Minnesota Statutes, sections 394.36 and 462.357, subdivision 1e.

C. Local governments may choose to allow lateral expansion of legally nonconforming principal structures that do not meet the setback requirements in part 6106.0120, provided that:

(1) the expansion does not extend into the shore impact zone or bluff impact zone or further into the required setback than the building line of the existing principal structure. See Figure 3; and

(2) the expanded structure's scale and bulk is consistent with that of the original structure and existing surrounding development.

Figure 3: Expansion of Nonconforming Structure within OHWL Setback



D. New structures erected in conformance with the setback averaging provisions of part 6106.0120, subpart 3, item D, are considered to be in conformance with local ordinance requirements.

E. Site alterations that were legally made prior to the effective date of local ordinances adopted under this chapter are considered conforming. Site alterations include vegetation, erosion control, storm water control measures, and other nonstructural

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site improvements. Expansion of site alterations must comply with this chapter.

Subp. 4. Conditional and interim use permits.

A. In addition to meeting the requirements of Minnesota Statutes, sections 394.301, 394.303, 462.3595, and 462.3597, a local government's review of conditional and interim uses must consider potential impacts of the conditional use on primary conservation areas, public river corridor views, and other resources identified in a local government's plan.

B. When evaluation and assessment identify a negative impact under item A, issuance of a conditional or interim use permit must include conditions for mitigation according to subpart 5.

Subp. 5. Mitigation.

A. In evaluating a request for a variance or conditional or interim use permit, if a local government identifies a potential negative impact to primary conservation areas, public river corridor views, or other resources identified in the local government's plan, the variance or conditional or interim use permit must require mitigation.

B. Mitigation must be directly related to and must bear a rough proportionality to the impact of the project on primary conservation areas, public river corridor views, and other resources identified in the local government's plan.

Subp. 6. Project information.

A. An applicant must submit relevant information to the responsible local government to evaluate how any development that requires discretionary action or a permit under this chapter complies with the plans and ordinances adopted under this chapter.

B. In addition to local government requirements, project information must include the following, unless the responsible local government determines that the information is not necessary:

- (1) a detailed description of the project; and
- (2) scaled maps and plans, dimensional renderings, maintenance agreements, and other materials that identify and describe:
 - (a) primary conservation areas;
 - (b) public river corridor views;
 - (c) buildable area;
 - (d) existing and proposed topography and drainage patterns;
 - (e) proposed storm water and erosion and sediment control practices;
 - (f) existing and proposed vegetation to be removed and established;
 - (g) ordinary high water level, blufflines, and all required setbacks;
 - (h) existing and proposed structures;
 - (i) existing and proposed impervious surfaces; and
 - (j) existing and proposed subsurface sewage treatment systems.

Subp. 7. Accommodating disabilities. Ramps or other facilities to provide persons with disabilities access to the persons' property, as required by the federal Americans with Disabilities Act and the federal Fair Housing Act and as provided by chapter 1341, are allowed by administrative permit, subject to the following standards:

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A. parts 6106.0120 to 6106.0180 must be complied with to the maximum extent practicable; and

B. upon expiration of the permit, the ramp or other facilities must be removed.

6106.0090 INCORPORATIONS BY REFERENCE.

The following documents are incorporated by reference as guidance for complying with the plans and ordinances adopted under this chapter. Unless specified otherwise, these documents are not subject to frequent change and are available through the Minitex interlibrary loan system:

A. The Minnesota Stormwater Manual, Minnesota Pollution Control Agency (2013 and as subsequently amended);

B. Conserving Wooded Areas in Developing Communities: Best Management Practices in Minnesota, Minnesota Department of Natural Resources (1999 and as subsequently amended);

C. Design Handbook for Recreational Boating and Fishing Facilities, States Organization for Boating Access (2006 and as subsequently amended);

D. Trail Planning, Design, and Development Guidelines, Minnesota Department of Natural Resources (2007 and as subsequently amended);

E. Native Vegetation Establishment and Enhancement Guidelines, Minnesota Board of Water and Soil Resources (2015 and as subsequently amended), available online at http://www.bwsr.state.mn.us/native_vegetation/;

F. Shoreline Alterations: Riprap, Minnesota Department of Natural Resources (2012 and as subsequently amended), available online at http://www.dnr.state.mn.us/publications/waters/shoreline_alteration.html; and

G. Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-0001, Minnesota Department of Natural Resources (2014 and as subsequently amended), available online at http://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/gp_2004_0001_manual.html.

6106.0100 DISTRICTS.

Subpart 1. **Establishment of districts.** For purposes of this chapter, six districts are established in the Mississippi River Corridor Critical Area, as described in this part, to protect and enhance the resources and features identified in Minnesota Statutes, section 116G.15, subdivision 3.

Subp. 2. **Purpose.** The six districts are established based on the natural and built character of different areas of the river corridor. All districts include diverse land uses, including parks and open space and scenic, natural, and historic areas.

Subp. 3. **Rural and open space district (CA-ROS).**

A. The rural and open space district (CA-ROS) is characterized by rural and low-density development patterns and land uses, and includes land that is riparian or visible from the river, as well as large, undeveloped tracts of high ecological and scenic value, floodplain, and undeveloped islands. Many primary conservation areas exist in the district.

B. The CA-ROS district must be managed to sustain and restore the rural and natural character of the corridor and to protect and enhance habitat, parks and open space, public river corridor views, and scenic, natural, and historic areas.

Subp. 4. **River neighborhood district (CA-RN).**

A. The river neighborhood district (CA-RN) is characterized by primarily residential neighborhoods that are riparian or readily visible from the river or that abut riparian parkland. The district includes parks and open space, limited commercial development, marinas, and related land uses.

B. The CA-RN district must be managed to maintain the character of the river corridor within the context of existing residential and related neighborhood development, and to protect and enhance habitat, parks and open space, public river corridor

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views, and scenic, natural, and historic areas. Minimizing erosion and the flow of untreated storm water into the river and enhancing shoreline habitat are priorities in the district.

Subp. 5. River towns and crossings district (CA-RTC).

A. The river towns and crossings district (CA-RTC) is characterized by historic downtown areas and limited nodes of intense development at specific river crossings, as well as institutional campuses that predate designation of the Mississippi River Critical Corridor Area and includes taller buildings.

B. The CA-RTC district must be managed in a manner that allows continued growth and redevelopment in historic downtowns and more intensive redevelopment in limited areas at river crossings to accommodate compact walkable development patterns and connections to the river. Minimizing erosion and the flow of untreated storm water into the river, providing public access to and public views of the river, and restoring natural vegetation in riparian areas and tree canopy are priorities in the district.

Subp. 6. Separated from river district (CA-SR).

A. The separated from river district (CA-SR) is characterized by its physical and visual distance from the Mississippi River. The district includes land separated from the river by distance, topography, development, or a transportation corridor. The land in this district is not readily visible from the Mississippi River.

B. The CA-SR district provides flexibility in managing development without negatively affecting the key resources and features of the river corridor. Minimizing negative impacts to primary conservation areas and minimizing erosion and flow of untreated storm water into the Mississippi River are priorities in the district.

Subp. 7. Urban mixed district (CA-UM).

A. The urban mixed district (CA-UM) includes large areas of highly urbanized mixed use that are a part of the urban fabric of the river corridor, including institutional, commercial, industrial and residential areas and parks and open space.

B. The CA-UM district must be managed in a manner that allows for future growth and potential transition of intensely developed areas that does not negatively affect public river corridor views and that protects bluffs and floodplains. Restoring and enhancing bluff and shoreline habitat, minimizing erosion and flow of untreated storm water into the river, and providing public access to and public views of the river are priorities in the district.

Subp. 8. Urban core district (CA-UC).

A. The urban core district (CA-UC) includes the urban cores of Minneapolis and St. Paul.

B. The CA-UC district must be managed with the greatest flexibility to protect commercial, industrial, and other high-intensity urban uses, while minimizing negative impacts to primary conservation areas and minimizing erosion and flow of untreated storm water into the river. Providing public access to and public views of the river are priorities in the district.

Subp. 9. District boundaries.

A. The physical boundaries of each district are delineated in the Mississippi River Corridor Critical Area District Map, Minnesota Department of Natural Resources (2015). The map is incorporated by reference, is not subject to frequent change, and is available on the department's Web site at www.dnr.state.mn.us/input/rules/mrcca/map-draft.html. The commissioner must maintain the map and must amend the map as provided in item C.

B. The district boundary lines on the Mississippi River Corridor Critical Area District Map are intended to follow the center lines of rivers and streams, highways, streets, lot lines, and municipal boundaries, unless a boundary line is otherwise indicated on the map. Where district boundaries cross unsubdivided property, the district boundary line is determined by use of dimensions or the scale appearing on the map.

C. The boundaries of a district established under this part must be amended according to subitems (1) to (3).

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(1) A local government or a state or regional agency must submit a written request to the commissioner requesting a district boundary amendment. The request must:

(a) be approved by the governing body with the legal authority to make the request for the state or regional agency or local government;

(b) specifically identify the proposed changes to plans and ordinances to address the proposed change;

(c) identify changes in land uses, infrastructure, or other conditions since the effective date of this chapter that justify the proposed changes;

(d) be consistent with local, regional, state, and federal plans;

(e) address potential negative impacts of the proposed change to primary conservation areas, public river corridor views, and other resources and features identified in local governments' plans; and

(f) contain a summary of feedback from affected parties as provided under subitem (2).

(2) The local government or state or regional agency requesting the district boundary amendment must give notice of the proposed district boundary amendment to adjoining or overlapping local governments, the Metropolitan Council, the commissioner, the National Park Service, and property owners in the area directly affected by the proposed district boundary amendments and must conduct a public hearing.

(3) Upon receiving a complete request for a district boundary amendment as provided under subitem (1), the commissioner must consider the request and determine whether to initiate rulemaking to amend the boundary according to Minnesota Statutes, chapter 14. The commissioner must communicate the determination, in writing, to the local government or state or regional agency requesting the district boundary amendment within 60 days after receiving the request.

D. This subpart does not apply to the defined river corridor boundary.

6106.0110 USES.

Subpart 1. **Underlying zoning.** Uses permissible within the Mississippi River Corridor Critical Area are generally determined by the local government's underlying zoning, with additional provisions for certain uses as specified by this part.

Subp. 2. **Agricultural use.** Where agricultural use is allowed by the local government, perennial ground cover is required within 50 feet of the ordinary high water level and within the bluff impact zone.

Subp. 3. **Feedlots.** New animal feedlots and manure storage areas are prohibited. Existing animal feedlots and manure storage areas must conform with chapter 7020.

Subp. 4. **Forestry.** Where forestry is allowed by the local government, tree harvesting and biomass harvesting within woodlands, and associated reforestation, must be consistent with recommended practices in Conserving Wooded Areas in Developing Communities: Best Management Practices in Minnesota, incorporated by reference under part 6106.0090.

Subp. 5. **Nonmetallic mining.** If allowed by the local government, nonmetallic mining requires a conditional use permit or interim use permit issued by the local government, subject to the following:

A. new nonmetallic mining is prohibited within the shore impact zone, bluff impact zone, and within the required structure setback from the bluffline;

B. processing machinery must be located consistent with setback standards for structures as provided in part 6106.0120;

C. only one barge loading area, which must be limited to the minimum size practicable, is permitted for each mining operation;

D. new and, where practicable, existing nonmetallic mining operations must not be readily visible and must be screened

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by establishing and maintaining natural vegetation. The unscreened boundaries of nonmetallic mining areas are limited to only the barge loading area;

E. a site management plan must be developed by the operator and approved by the local government before new nonmetallic mining commences. Operations must be consistent with the site plan throughout the duration of operations at the site. The site management plan must:

(1) describe how the site will be developed over time with an emphasis on minimizing environmental risk to public waters;

(2) explain where staged reclamation may occur at certain points during the life of the site;

(3) address dust, noise, storm water management, possible pollutant discharges, days and hours of operation, and duration of operation; and

(4) describe any anticipated vegetation and topographic alterations outside the pit, and reclamation plans consistent with the stated end use for the land; and

F. existing and new nonmetallic mining operations must submit land reclamation plans to the local government compatible with the purposes of this chapter.

Subp. 6. **River-dependent uses.** River-dependent uses must comply with items A to C.

A. Structures and parking areas, except shoreline facilities and private roads and conveyances serving river-dependent uses as provided in part 6106.0180, must meet the dimensional and performance standards in this chapter, must be designed so that they are not readily visible, and must be screened by establishing and maintaining natural vegetation.

B. Shoreline facilities must comply with chapter 6115 and must:

(1) be designed in a compact fashion so as to minimize the shoreline area affected; and

(2) minimize the surface area of land occupied in relation to the number of watercraft or barges to be served.

C. Dredging and placement of dredged material are subject to existing federal and state permit requirements and agreements.

Subp. 7. **Wireless communication facilities.** Wireless communication facilities require a conditional use permit or interim use permit issued by the local government. In addition to the conditional use permit or interim use permit requirements under part 6106.0080, the following conditions apply:

A. the applicant must demonstrate that functional coverage cannot be provided through co-location, a tower at a lower height, or a tower at a location outside the Mississippi River Corridor Critical Area;

B. the tower must not be located in the bluff impact zone or shore impact zone; and

C. placement of the tower must minimize impacts on public river corridor views.

6106.0120 DIMENSIONAL STANDARDS.

Subpart 1. **Purpose.** The purpose of this part is to establish dimensional standards that protect primary conservation areas from impacts of development and ensure that new development is sited in locations consistent with part 6106.0020.

Subp. 2. **Structure height.**

A. Structures, including accessory structures, as defined by local ordinance, must be no taller than the heights specified for each district:

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(1) CA-ROS: 35 feet;

(2) CA-RN: 35 feet;

(3) CA-RTC: 48 feet, provided that tiering of structures away from the Mississippi River and from blufflines is given priority, with lower structure heights closer to the river and blufflines, and that structure design and placement minimizes interference with public river corridor views. Taller buildings are allowed by conditional use permit, as provided under item D, with consideration of the relationship of building height to the mature treeline, where present, and existing surrounding development, as viewed from the ordinary high water level of the opposite shore and from public river corridor views;

(4) CA-SR: height is determined by the local government's underlying zoning requirements, provided the structure's height is 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;

(5) CA-UM: 65 feet, provided tiering of structures away from the Mississippi River and from blufflines is given priority, with lower structure heights closer to the river and blufflines, and that structure design and placement minimize interference with public river corridor views. Taller buildings are allowed by conditional use permit, as provided under item D; and

(6) CA-UC: height is determined by the local government's underlying zoning requirements, provided tiering of structures away from the Mississippi River and blufflines is given priority, with lower structure heights closer to the river and blufflines, and structure design and placement minimize interference with public river corridor views.

B. For the purposes of this subpart, height is determined by applicable local government zoning regulations, provided it is measured on the side of the structure facing the Mississippi River.

C. The height requirements in item A do not apply to those structures and facilities identified in part 6106.0180 as exempt from these requirements, but meeting the setback requirements of subpart 3.

D. In addition to the conditional use permit requirements in part 6106.0080, criteria for considering whether to grant a conditional use permit for buildings exceeding the height limits in item A must include:

(1) assessment of the visual impact of the proposed building on public river corridor views, including views from other communities;

(2) identification and application of techniques to minimize the perceived bulk of the proposed building, such as:

(a) placing the long axis of the building perpendicular to the river;

(b) stepping back of portions of the façade;

(c) narrowing the profile of upper floors of the building; or

(d) increasing the setbacks of the building from the Mississippi River or blufflines;

(3) identification of techniques for preservation of those view corridors identified in the local government's plan; and

(4) opportunities for creation or enhancement of public river corridor views.

Subp. 3. Location of structures.

A. Structures and impervious surfaces must not be located in the shore impact zone and must meet the following setback requirement from the ordinary high water level of the Mississippi River and other waters within the Mississippi River Corridor Critical Area, as specified for each district:

(1) CA-ROS: 200 feet from the Mississippi River and 150 feet from the Minnesota River and Vermillion River;

(2) CA-RN: 100 feet from the Mississippi River and 75 feet from the Rum River and Vermillion River;

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- (3) CA-RTC: 75 feet from the Mississippi River, Crow River, and Rum River;
- (4) CA-SR: 75 feet from the Vermillion River;
- (5) CA-UM: 50 feet from the Mississippi River;
- (6) CA-UC: as specified in underlying zoning; and
- (7) for all other public waters within the Mississippi River Corridor Critical Area, as specified in underlying zoning.

B. Structures and impervious surfaces must not be located in the bluff impact zone and must meet the following setback requirements from the bluffline as specified for each district:

- (1) CA-ROS: 100 feet;
- (2) CA-RN: 40 feet;
- (3) CA-RTC: 40 feet;
- (4) CA-SR: 40 feet;
- (5) CA-UM: 40 feet; and
- (6) CA-UC: 40 feet.

C. The requirements in items A and B do not apply to those structures and facilities listed in part 6106.0180 as exempt from these requirements.

D. Where principal structures exist on the adjoining lots on both sides of a proposed building site, the minimum setback may be altered to conform to the average of the adjoining setbacks, provided that the new structure's scale and bulk riverward or bluffward of the setbacks required under items A and B are consistent with adjoining development. No structures or impervious surfaces are allowed within the bluff impact zone or shore impact zone, except as specified under part 6106.0180.

E. Subsurface sewage treatment systems, including the septic tank and absorption area, must be located at least 75 feet from the ordinary high water level of the Mississippi River and all other public waters within the Mississippi River Corridor Critical Area.

Subp. 4. Standards for new lots.

A. Where lots are created after the effective date of this part, lot area and width standards must comply with the requirements of the underlying zoning, except the width of lots abutting the Mississippi River in the CA-ROS district must be at least 200 feet, unless alternative design methods are used that provide greater protection of the riparian areas.

B. New lots must have adequate buildable area to comply with the setback requirements in subpart 3.

6106.0130 GENERAL DEVELOPMENT STANDARDS FOR PUBLIC FACILITIES.

Subpart 1. **Purpose and scope.** The purpose of this part is to establish standards for public facilities that are consistent with best management practices and that protect primary conservation areas. Public facilities serve the public interest by providing public access to the Mississippi River corridor or require locations in or adjacent to the river corridor and therefore require some degree of flexibility.

Subp. 2. **Definition of terms.** For the purpose of this part, "public facilities" means public utilities, public transportation facilities, and public recreational facilities.

Subp. 3. **General design standards.** All public facilities must be designed and constructed to:

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A. minimize visibility of the facility to the extent consistent with the purpose of the facility;

B. comply with the dimensional standards in part 6106.0120, except as provided in part 6106.0180;

C. be consistent with the vegetation management standards in part 6106.0150, subpart 5, and the land alteration and storm water management standards in part 6106.0160, including use of practices identified in Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-001, incorporated by reference under part 6106.0090, where applicable. State or regional agencies, special purpose units of government, local park agencies, and local units of government with parks within their jurisdiction are not required to obtain a vegetation management or land alteration permit under part 6106.0150 or 6106.0160, but must apply the standards and criteria that would be applied by local government, were a permit required;

D. avoid primary conservation areas, unless no alternative exists. If no alternative exists, then disturbance to primary conservation areas must be avoided to the greatest extent practicable, and design and construction must minimize impacts; and

E. minimize disturbance of spawning and nesting times by scheduling construction at times when local fish and wildlife are not spawning or nesting.

Subp. 4. Right-of-way maintenance standards. Right-of-way maintenance for public facilities is subject to the following standards:

A. vegetation currently in a natural state must be maintained to the extent feasible;

B. where vegetation in a natural state has been removed, native plants must be planted and maintained on the right-of-way;
and

C. chemical control of vegetation must be avoided when practicable, but when chemical control is necessary, chemicals used must be in accordance with the rules, regulations, and other requirements of all state and federal agencies with authority over the chemical's use.

Subp. 5. Crossings of public water or public land. Crossings of public waters or land controlled by the commissioner are subject to approval by the commissioner according to Minnesota Statutes, sections 84.415 and 103G.245. The commissioner must give primary consideration to crossings that are proposed to be located within or adjoining existing rights-of-way for public transportation and public utilities.

Subp. 6. Public utilities. Public utilities must, at a minimum, comply with the following standards:

A. high-voltage transmission lines, wind energy conversion systems greater than five megawatts, and pipelines are regulated according to Minnesota Statutes, chapters 216E, 216F, and 216G, respectively; and

B. if overhead placement is necessary, utility crossings must be hidden from view as much as practicable. The appearance of structures must be as compatible as practicable with the surrounding area in a natural state with regard to height and width, materials used, and color.

Subp. 7. Public transportation facilities. Where public transportation facilities intersect or abut two or more of the districts established under part 6106.0100, the least restrictive standards apply. Public transportation facilities must be designed and constructed to give priority to:

A. providing scenic overlooks for motorists, bicyclists, and pedestrians;

B. providing safe pedestrian crossings and facilities along the river corridor;

C. providing access to the riverfront in public ownership; and

D. allowing for use of the land between the river and the transportation facility.

Subp. 8. Public recreational facilities.

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A. Buildings and parking associated with public recreational facilities, except as provided under part 6106.0180, must meet the dimensional standards in part 6106.0120 and must not be placed within the bluff impact zone or shore impact zone.

B. Roads and driveways associated with public recreational facilities must not be placed in the bluff impact zone or shore impact zone unless no other placement alternative exists. If no alternative exists, then design and construction must minimize impacts.

C. Trails, access paths, and viewing areas associated with public recreational facilities and providing access to or views of the Mississippi River are allowed within the bluff impact zone or shore impact zone if design, construction, and maintenance methods are consistent with the best management practice guidelines in Trail Planning, Design, and Development Guidelines, incorporated by reference under part 6106.0090.

(1) Hard-surface trails are not allowed on the face of bluffs with a slope exceeding 30 percent. Natural surface trails are allowed, provided they do not exceed eight feet in width.

(2) Trails, paths, and viewing areas must be designed and constructed to minimize:

(a) visibility from the river;

(b) visual impacts on public river corridor views; and

(c) disturbance to and fragmentation of primary conservation areas.

D. Public water access facilities are subject to the following requirements:

(1) watercraft access ramps must comply with parts 6115.0210 and 6280.0250; and

(2) facilities must be designed and constructed consistent with the standards in Design Handbook for Recreational Boating and Fishing Facilities, incorporated by reference under part 6106.0090.

E. Public signs and kiosks for interpretive or directional purposes are allowed in the bluff impact zone or shore impact zone, provided they minimize disturbance to these areas and avoid visual impacts on public river corridor views.

6106.0140 GENERAL DEVELOPMENT STANDARDS FOR PRIVATE FACILITIES.

Subpart 1. Purpose. The purpose of this part is to provide design standards for private facilities within the Mississippi River Corridor Critical Area that are consistent with best management practices and that minimize impacts to primary conservation areas and other identified resources.

Subp. 2. Definition. For the purpose of this part, "private facilities" means private roads, driveways, and parking areas; private water access and viewing facilities; decks and patios in setback areas; and private signs.

Subp. 3. General design standards. All private facilities must be developed in accordance with the land alteration, vegetation, and storm water management requirements in parts 6106.0150 and 6106.0160.

Subp. 4. Private roads, driveways, and parking areas. Except as provided in part 6106.0180, private roads, driveways, and parking areas must:

A. be designed and constructed to take advantage of natural vegetation and topography so that they are not readily visible;

B. comply with structure setback requirements according to part 6106.0120; and

C. not be placed within the bluff impact zone or shore impact zone, unless exempt under part 6106.0180 and designed consistent with part 6106.0130, subpart 3.

Subp. 5. Private water access and viewing facilities.

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A. Private access paths must be no more than:

- (1) eight feet wide, if placed within the shore impact zone; and
- (2) four feet wide, if placed within the bluff impact zone.

B. Private water access ramps must:

- (1) comply with parts 6115.0210 and 6280.0250; and
- (2) be designed and constructed consistent with the applicable standards in Design Handbook for Recreational Boating and Fishing Facilities, incorporated by reference under part 6106.0090.

C. Design and construction of private stairways, lifts, and landings are subject to the following standards:

- (1) stairways and lifts must not exceed four feet in width on residential lots. Wider stairways are allowed for commercial properties and residential facilities held in common, if approved by the local government;
- (2) landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet are allowed for commercial properties and residential facilities held in common, if approved by the local government;
- (3) canopies or roofs are prohibited on stairways, lifts, or landings;
- (4) stairways, lifts, and landings must be located in the least visible portion of the lot; and
- (5) ramps, lifts, mobility paths, or other facilities for persons with physical disabilities are allowed for achieving access to shore areas according to subitems (1) to (4) and as provided under part 6106.0080, subpart 7.

D. One water-oriented accessory structure is allowed for each riparian lot or parcel less than 300 feet in width at the ordinary high water level, with one additional water-oriented accessory structure allowed for each additional 300 feet of shoreline on the same lot or parcel. Water-oriented accessory structures are prohibited in the bluff impact zone and must:

- (1) not exceed 12 feet in height;
- (2) not exceed 120 square feet in area; and
- (3) be placed a minimum of ten feet from the ordinary high water level.

Subp. 6. **Decks and patios in setback areas.** Local governments may allow decks and at-grade patios to encroach into the required setbacks from the ordinary high water level and blufflines without a variance, in compliance with parts 6106.0150 and 6106.0160, provided that:

A. the encroachment of the deck or patio into the required setback area does not exceed 15 percent of the required structure setback;

B. the area of the deck or patio that extends into the required setback area occupies no more than 25 percent of the total area between the required setback and the 15 percent allowance, using the formula below:

[required setback depth (feet) x 0.15 x lot width (feet) x 0.25 = maximum total area]; and

C. the deck or patio does not extend into the bluff impact zone.

Subp. 7. **Private signs.** Placement of signs is guided by the local government's underlying zoning, with the additional provisions in items A and B.

A. If the local government allows off-premise advertising signs, the signs must:

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- (1) meet all required setbacks and height limits standards of this chapter; and
- (2) not be readily visible.

B. If the local government allows directional signs for patrons arriving at a business by watercraft, the signs:

- (1) must be consistent with Minnesota Statutes, section 86B.115;
- (2) if located within the shore impact zone, must convey only the location and name of the establishment and the general types of goods and services available;
- (3) must be no greater than ten feet in height and 32 square feet in surface area; and
- (4) if illuminated, must have lighting that is shielded to prevent illumination out across the river or to the sky.

6106.0150 VEGETATION MANAGEMENT STANDARDS.

Subpart 1. **Purpose.** The purpose of this part is to establish standards that:

- A. sustain and enhance the biological and ecological functions of vegetation;
- B. preserve the natural character and topography of the Mississippi River Critical Corridor Area; and
- C. maintain stability of bluffs and steep slopes and ensure stability of other areas prone to erosion.

Subp. 2. **Applicability.** This part applies to:

- A. shore impact zones;
- B. areas within 50 feet of a wetland or natural drainage way;
- C. bluff impact zones;
- D. areas of native plant communities; and
- E. significant vegetative stands identified in local governments' adopted plans.

Subp. 3. **General provisions.**

- A. Intensive vegetation clearing is prohibited, except for the following activities, which are allowed by local permit:
 - (1) clearing vegetation that is dead, diseased, dying, or hazardous;
 - (2) clearing to prevent the spread of diseases or insect pests;
 - (3) removal of invasive non-native species;
 - (4) restoration and erosion control management activities consistent with a plan approved by the local government or resource agency; and
 - (5) the minimum necessary for development that is allowed as an exception under part 6106.0180.
- B. The following activities are allowed without a permit:
 - (1) selective vegetation removal, including removal for those activities listed under item A, subitems (1) to (3), and removal for other purposes provided that vegetative cover remains consistent with the management purposes of districts under part 6106.0100;

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- (2) maintenance of existing lawns, landscaping, and gardens;
- (3) removal of vegetation in emergency situations as determined by the local government;
- (4) right-of-way maintenance for public facilities meeting the standards of part 6106.0130, subpart 4; and
- (5) agricultural and forestry activities meeting the standards of part 6106.0110.

C. Local governments must not restrict the height of ground cover vegetation in the areas listed under subpart 2, items A to E.

Subp. 4. Permit process.

A. Local governments must regulate intensive vegetation clearing activities identified in subpart 3, item A, through a permit process.

B. Local government may create a new administrative permit process or use an existing one for intensive vegetation clearing. Appeals of local government decisions on permits are subject to Minnesota Statutes, section 462.357, subdivision 6.

C. Local governments may delegate the permitting responsibilities described in this subpart to a resource agency or other qualified agent as determined by the local government.

D. Local governments must require permit applicants to submit information as needed to evaluate permits for consistency with the standards and requirements of this part and parts 6106.0080, subpart 6, and 6106.0160.

E. Local governments must grant the permit, deny the permit, or grant the permit with conditions necessary to achieve the purposes of this part, as provided under subpart 5.

Subp. 5. Permit conditions. In reviewing and approving permit applications, the local government must ensure through permit conditions that the following performance standards are met:

A. development is sited to minimize removal of or disturbance to natural vegetation;

B. soil, slope stability, and hydrologic conditions are suitable for the proposed work as determined by an engineer or resource agency;

C. clearing is the minimum necessary and designed to blend with the natural terrain and minimize visual impacts to public river corridor views;

D. any native plant communities removed are replaced with vegetation that provides equivalent biological and ecological functions. If replaced, priorities for restoration are stabilization of erodible soils, restoration or enhancement of shoreline vegetation, and revegetation of bluffs or steep slopes visible from the river;

E. all other vegetation removed is restored with natural vegetation to the greatest extent practicable. Priorities for replacement are the same as under item D;

F. any disturbance of highly erodible soils is replanted with deep-rooted vegetation with a high stem density;

G. vegetation removal activities are conducted so as to expose the smallest practical area of soil to erosion for the least possible time; and

H. other conditions as determined necessary by the local government to achieve the purpose of this part are met.

Subp. 6. Vegetation restoration plan requirements.

A. Reestablishment of natural vegetation is required:

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- (1) as a condition of permits under subpart 5, items D and E;
- (2) upon failure to comply with this part; or
- (3) as part of the planning process for subdivisions under part 6106.0170.

B. The vegetation restoration plan must:

- (1) include vegetation that provides suitable habitat and effective soil stability, runoff retention, and infiltration capability. Vegetation species, composition, density, and diversity must be guided by nearby patches of native plant communities;
- (2) be prepared by a qualified individual as defined by the local government; and
- (3) include a maintenance plan that includes management provisions for controlling invasive species and replacement of plant loss for three years.

C. The local government must issue a certificate of compliance after determining that the restoration requirements of item B have been satisfied.

D. Vegetation management and restoration activities must be guided by Native Vegetation Establishment and Enhancement Guidelines, incorporated by reference under part 6106.0090.

6106.0160 LAND ALTERATION AND STORM WATER MANAGEMENT STANDARDS.

Subpart 1. **Purpose.** The purpose of this part is to establish standards that:

- A. protect water quality from pollutant loadings of sediment, nutrients, bacteria, and other contaminants; and
- B. maintain stability of bluffs, shorelines, and other areas prone to erosion.

Subp. 2. **Definitions.** For the purpose of this part:

- A. “fully reconstructs” means the reconstruction of an existing impervious surface that involves site grading and subsurface excavation so that soil is exposed. Mill and overlay and other resurfacing activities are not considered fully reconstructed;
- B. “storm water management facilities” means facilities for the collection, conveyance, treatment, or disposal of storm water; and
- C. “water quality impact zone” means land within the shore impact zone or within 50 feet of the boundary of a public water, wetland, or natural drainage way, whichever is greater.

Subp. 3. **Land alteration.**

A. Within the bluff impact zone, land alteration is prohibited, except for the following which are allowed by local government permit:

- (1) erosion control consistent with subpart 6 and a plan approved by the local government or resource agency;
- (2) the minimum necessary for development that is allowed as an exception under part 6106.0180; and
- (3) repair and maintenance of existing buildings and facilities.

B. Within the water quality impact zone, land alteration that involves a volume of more than ten cubic yards of material or affects an area greater than 1,000 square feet requires a permit from the local government, meeting the standards in subparts 5 and 6.

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Subp. 4. Rock riprap, retaining walls, and other erosion control structures.

A. Construction or replacement of rock riprap, retaining walls, and other erosion control structures located at or below the ordinary high water level must comply with parts 6115.0215, subpart 4, item E, and 6115.0216, subpart 2. The work must not proceed unless approved by the commissioner as meeting all requirements for work in public waters.

B. Construction or replacement of rock riprap, retaining walls, and other erosion control structures within the bluff impact zone and the water quality impact zone are allowed by local government permit provided that:

(1) if the project includes work at or below the ordinary high water level, the local permit is not approved until the commissioner has approved or permitted the project according to item A;

(2) the structures are used only to correct an established erosion problem as determined by the local government or resource agency;

(3) the size and extent of the structures are the minimum necessary to correct the erosion problem and are not larger than the following, except as specified under subitem (4):

(a) retaining walls must not exceed five feet in height and must be placed a minimum horizontal distance of ten feet apart; and

(b) riprap must not exceed the height of the regulatory flood protection elevation; and

(4) structures may exceed the height limits in subitem (3) only if a professional engineer determines that a larger structure is needed to correct erosion problems.

C. Nothing in this subpart shall be construed to waive any other permit requirements that are required by law.

Subp. 5. **Permit process.** Local governments must regulate activities identified in subparts 3 and 4 through a permit process consistent with subpart 6 and part 6106.0150, subpart 4.

Subp. 6. **Permit conditions.** In reviewing and approving land alteration permit applications, the local government must ensure that:

A. temporary and permanent erosion and sediment control measures retain sediment onsite consistent with best management practices in the Minnesota Stormwater Manual, incorporated by reference under part 6106.0090;

B. natural site topography, soil, and vegetation conditions are used to control runoff and reduce erosion and sedimentation;

C. construction activity is phased when possible;

D. all erosion and sediment controls are installed before starting any land disturbance activity;

E. erosion and sediment controls are maintained to ensure effective operation;

F. the proposed work is consistent with the vegetation standards in part 6106.0150; and

G. best management practices for protecting and enhancing ecological and water resources identified in Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-001, incorporated by reference under part 6106.0090, are implemented where applicable, regardless of project type.

Subp. 7. Storm water management.

A. In the bluff impact zone, storm water management facilities are prohibited, except by local government permit if:

(1) there are no alternatives for storm water treatment outside the bluff impact zone on the site in question;

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(2) the site generating runoff is designed so that the amount of runoff reaching the bluff impact zone is reduced to the greatest extent practicable;

(3) the construction and operation of the facility does not affect slope stability on the subject property or adjacent properties; and

(4) mitigation based on the best available engineering and geological practices is required and applied to eliminate or minimize the risk of slope failure.

B. In the water quality impact zone, development that creates new impervious surface, as allowed by exemption in part 6106.0180, or fully reconstructs existing impervious surface of more than 10,000 square feet requires a postconstruction storm water management permit from the local government consistent with the following:

(1) if a local government is covered by a municipal separate storm sewer system (MS4) general or individual permit from the Minnesota Pollution Control Agency, then the treatment requirements of the MS4 permit for postconstruction storm water management for new development and redevelopment projects apply;

(2) if a local government is not covered by an MS4 permit, then runoff from the new or fully reconstructed impervious surface must comply with the treatment requirements in the current national pollution discharge and elimination system program permit for construction storm water;

(3) local governments may adopt other treatment requirements approved by the Minnesota Pollution Control Agency instead of those specified in subitems (1) and (2); and

(4) multipurpose trails and sidewalks are exempt from subitems (1) and (2) if there is down gradient vegetation or a filter strip that is at least five feet wide.

C. In all other areas of the Mississippi River Critical Corridor Area, storm water runoff must be directed away from the bluff impact zone or unstable areas.

Subp. 8. **Development on steep slopes.** A local government may allow structures, impervious surfaces, land alteration, vegetation removal, or construction activities on steep slopes if:

A. the applicant can demonstrate that the development can be accomplished without increasing erosion or storm water runoff;

B. the soil types and geology are suitable for the proposed development; and

C. vegetation is managed according to the requirements of this part.

Subp. 9. **Compliance with other plans and programs.** All development must:

A. be consistent with Minnesota Statutes, chapter 103B, and local water management plans completed under chapter 8410;

B. meet or exceed the wetland protection standards under chapter 8420; and

C. meet or exceed the floodplain management standards under chapter 6120.

6106.0170 SUBDIVISION AND LAND DEVELOPMENT STANDARDS.

Subpart 1. **Purpose.** The purposes of this part are to:

A. protect and enhance the natural and scenic values of the Mississippi River Critical Corridor Area during development or redevelopment of the remaining large sites within the corridor;

B. establish standards for protecting and restoring biological and ecological functions of primary conservation areas on large sites; and

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C. encourage restoration of natural vegetation during development or redevelopment of large sites, where restoration opportunities have been identified in local plans.

Subp. 2. Applicability.

A. Except as provided in item B, this part applies to the following developments involving ten or more acres for parcels that abut the Mississippi River and 20 or more acres for all other parcels within the river corridor boundary, including smaller individual sites within the following developments that are part of a common plan of development but may be constructed at different times:

- (1) subdivisions;
- (2) planned unit developments; and
- (3) master-planned development and redevelopment of land.

B. The following activities are exempt from this part:

- (1) minor subdivisions consisting of three or fewer lots;
- (2) minor boundary line corrections;
- (3) resolutions of encroachments;
- (4) additions to existing lots of record;
- (5) placement of essential services; and
- (6) activities involving river-dependent commercial and industrial uses.

Subp. 3. Project information. Local governments must require detailed project information and provide for preproject review of all proposed subdivisions, redevelopments, and planned unit developments as provided under part 6106.0080, subpart 6.

Subp. 4. Design standards.

A. Local government ordinances must contain provisions, including incentives, for alternative design methods such as conservation design, transfer of development density, or other zoning and site design techniques that achieve better protection or restoration of primary conservation areas.

B. Primary conservation areas, where they exist, must be set aside for protection as open areas as provided under item H. However, where primary conservation areas exceed the thresholds in subitems (1) to (4) as a percentage of a parcel, then only the percentage in subitems (1) to (4) must be set aside:

- (1) CA-ROS: 50 percent;
- (2) CA-RN: 20 percent;
- (3) CA-RTC, CA-UM, CA-UC: ten percent; and
- (4) CA-SR: ten percent, if the parcel includes native plant communities or provides feasible connections to a regional park or trail system, otherwise no requirement.

C. If the primary conservation areas exceed the maximum percentage established in item B, then the local government may determine which primary conservation areas are to be protected, with priority given to the protection of native plant communities and natural vegetation in riparian areas.

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D. If primary conservation areas exist but do not have natural vegetation, then a vegetation assessment must be completed for the areas to be protected to determine whether vegetation restoration is needed. If restoration is needed, vegetation must be restored according to part 6106.0150, subpart 6.

E. If primary conservation areas do not exist on the parcel in question, the local government must determine whether any portions of the site have been identified as potential restoration areas in local plans, according to part 6106.0070, subpart 4. When such areas have been identified, vegetation must be restored consistent with a restoration plan according to part 6106.0150, subpart 6, and the restored area must be set aside as specified in item B.

F. Storm water treatment areas or other green infrastructure may be used to meet the requirements of this subpart if the vegetation provides biological and ecological functions.

G. Any land dedicated for public access or public facilities according to subpart 5 may be counted toward the set-aside requirements of this subpart at the discretion of the local government.

H. Areas that have been set aside under item B must be protected through:

- (1) public acquisition by a government entity for conservation purposes;
- (2) a permanent conservation easement, as provided in Minnesota Statutes, chapter 84C;
- (3) a deed restriction; or
- (4) other arrangements that achieve an equivalent degree of protection as determined by the local government.

I. Permanent protection methods under item H must ensure, within the areas set aside, the long-term management of vegetation to meet its biological and ecological functions, prohibit structures, and prohibit land alteration, except as needed to provide public recreational facilities and access to the river.

J. Protected open areas must connect neighboring or abutting open space, natural areas, and recreational areas as much as possible to form an interconnected network.

Subp. 5. **Land dedication.** Local governments that require dedication of land or equivalent amounts of cash for parks and open space under Minnesota Statutes, section 394.25, subdivision 7, or 462.358, subdivision 2b, must encourage dedication of lands suitable for riverfront access, parks, open space, storm water management, or other public facilities within the Mississippi River Corridor Critical Area.

6106.0180 EXEMPTIONS FROM SETBACKS, HEIGHT LIMITS, AND OTHER REQUIREMENTS.

Uses and activities not specifically exempted under this part must comply with this chapter. All exemptions in the shore impact zone (SIZ) and bluff impact zone (BIZ) are also subject to the vegetation management standards in part 6106.0150 and the land alteration and storm water management standards in part 6106.0160. In the table, "E" means the use is exempt; "(E)" means that the use is allowed only if no alternatives exist, and "N" means that the use is not exempt and must meet the standards in this chapter.

	Set-backs	Height limits	SIZ	BIZ	Standard (the use must comply with standard or referenced parts)
<u>Industrial and utility structures requiring greater height for operational reasons (such as elevators, refineries, and railroad signaling towers)</u>	N	E	N	N	<u>Structure design and placement must minimize interference with public river corridor views</u>
<u>Barns, silos, and farm structures</u>	N	E	N	N	
<u>Bridges and bridge approach roadways</u>	E	E	E	(E)	<u>Part 6106.0130</u>
<u>Wireless communication facilities (towers)</u>	E	E	N	N	<u>Part 6106.0110, subpart 7</u>

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<u>Chimneys, church spires, flag poles, public monuments, and mechanical service stacks and similar mechanical equipment</u>	N	E	N	N	
<u>Historic properties and contributing properties in historic districts</u>	E	E	E	E	Exemptions do not apply to additions or site alterations to historic buildings or structures
<u>Buildings and structures on the face of or abutting the bluff in the CA-UC district of St. Paul, between Chestnut Street and Highway 52</u>	E	n/a	n/a	E	Height in the CA-UC district is governed by underlying zoning
<u>Public utilities</u>					
<u>Electrical power facilities</u>	E	E	E	(E)	Part 6106.0130
<u>Essential services (other than storm water facilities)</u>	E	E	E	(E)	Part 6106.0130
<u>Storm water facilities</u>	E	N	E	(E)	Part 6106.0160
<u>Wastewater treatment</u>	E	N	E	N	Part 6106.0130
<u>Public transportation facilities</u>	E	N	(E)	(E)	Part 6106.0130
<u>Public recreational facilities</u>					
<u>Accessory structures, such as monuments, flagpoles, light standards, and similar park features</u>	E	E	(E)	(E)	Part 6106.0130; within BIZ, only on slopes averaging less than 30 percent. Exemptions do not apply to principal buildings
<u>Picnic shelters and other open-sided structures</u>	E	N	(E)	N	Part 6106.0130
<u>Parking areas</u>	(E)	N	(E)	(E)	Part 6106.0130; within BIZ, only within 20 feet of toe of bluff; not on face of bluff; and must not affect stability of bluff
<u>Roads and driveways</u>	(E)	N	(E)	(E)	Part 6106.0130
<u>Natural-surfaced trails, access paths, and viewing areas</u>	E	N	E	E	Part 6106.0130
<u>Hard-surfaced trails and viewing platforms</u>	E	N	E	(E)	Part 6106.0130; within BIZ, only on slopes averaging less than 30 percent
<u>Water access ramps</u>	E	N	E	(E)	Part 6106.0130
<u>Public signs and kiosks for interpretive or directional purposes</u>	E	N	E	(E)	Part 6106.0130
<u>River-dependent uses</u>					
<u>Shoreline facilities</u>	E	N*	E	(E)	Part 6106.0110, subpart 6. Exemptions do not apply to buildings, structures, and parking areas that are not part of a shoreline facility
<u>Private roads and conveyance structures serving river-dependent uses</u>	E	N*	E	(E)	Part 6106.0110, subpart 6
<u>Private residential and commercial water access and use facilities</u>					
<u>Private roads serving 3 or more lots</u>	(E)	N	N	(E)	Part 6106.0140; in BIZ, only on slopes averaging less than 30 percent. Exemption does not apply to private roads serving fewer than 3 lots or to private driveways and parking areas

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<u>Access paths</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>E</u>	<u>Part 6106.0140</u>
<u>Water access ramps</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>Part 6106.0140</u>
<u>Stairways, lifts, and landings</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>E</u>	<u>Part 6106.0140</u>
<u>Water-oriented accessory structures</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>Part 6106.0140</u>
<u>Patios and decks</u>	<u>E</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Part 6106.0140, subpart 6</u>
<u>Directional signs for watercraft (private)</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>Part 6106.0140; exemption does not apply to off-premise advertising signs</u>
<u>Erosion control structures, such as rock riprap and retaining walls</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>(E)</u>	<u>Part 6106.0160, subpart 4</u>
<u>Flood control structures</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>(E)</u>	<u>Part 6106.0160</u>

* River-dependent commercial, industrial, and utility structures are exempt from height limits only if greater height is required for operational reasons.

Adopted Rules

A rule becomes effective after the requirements of *Minnesota Statutes* §§ 14.05-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule. If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed. If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Racing Commission

Adopted Permanent Rules Relating to Horse Racing; Class C Licenses, Harness Races, Horse Medication, Physical Examination and Medical Testing, and Prohibited Acts

The rules proposed and published at *State Register*, Volume 40, Number 30, pages 857-865, January 25, 2016 (40 SR 857), are adopted as proposed.

Minnesota Rules: Amendments and Additions

Nursing Board

6301.0100; 2300; 2310; 2320; 2330; 2340; 2350; 2360
(adopted) 239, 599

Board of Pharmacy

6800.2150; 2160 (proposed) 355

Pollution Control Agency

7005; 7007; 7008; 7009; 7011; 7017 (adopted) 763
7050.0190; 7052.0282; 7053.0195 (adopted) 463
7050.0250; .0260; .0265; .0270; .0285 (adopted) 545
7050; 7052 659
7081.0040 (adopted expedited) 312

Public Employment Relations Board

7325.0020; 0100; 0110; 0150; 0240; 0260; 0270; 0300; 0320; 0400;
0410 (adopted) 5

Racing Commission

7869.0100; 7877.0100; 0110; 0120; 0125; 0160; 7880.0010; 0020;
0030; 0040; 0050; 0060; 0070; 0080; 0090; 0100; 0110
(adopted) 272, 809

Adopted Rules

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Department of Agriculture

Adopted Permanent Rules Relating to the Repeal of Obsolete Rules Administered by the Department of Agriculture

The rules proposed and published at State Register, Volume 41, Number 8, pages 201-203, August 22, 2016 (41 SR 201), are adopted as proposed.

Department of Natural Resources

Adopted Permanent Rules Relating to Mississippi River Corridor Critical Area

The rules proposed and published at State Register, Volume 40, Number 41, pages 1359-1393, April 11, 2016 (40 SR 1359), are adopted with the following modifications:

6106.0050 DEFINITIONS.

Subp. 8. **Bluff**. "Bluff" means a natural topographic feature having:

A. a slope that rises at least 25 feet ~~above the ordinary high water level or toe of the slope to the top of the slope~~ and the grade of the slope averages 18 percent or greater, measured over a horizontal distance of 25 feet, as follows:

(1) where the slope begins above the ordinary high water level, from the toe of the slope to the top of the slope; or

(2) where the slope begins below the ordinary high water level, from the ordinary high water level or toe of the slope to the top of the slope averages 18 percent or greater, measured over a horizontal distance of 25 feet. See Figure 1; or

B. a natural escarpment or cliff with a slope that rises at least ten feet above the ordinary high water level or toe of the slope, whichever is applicable, to the top of the slope, with an average a slope of 75 degrees or greater.

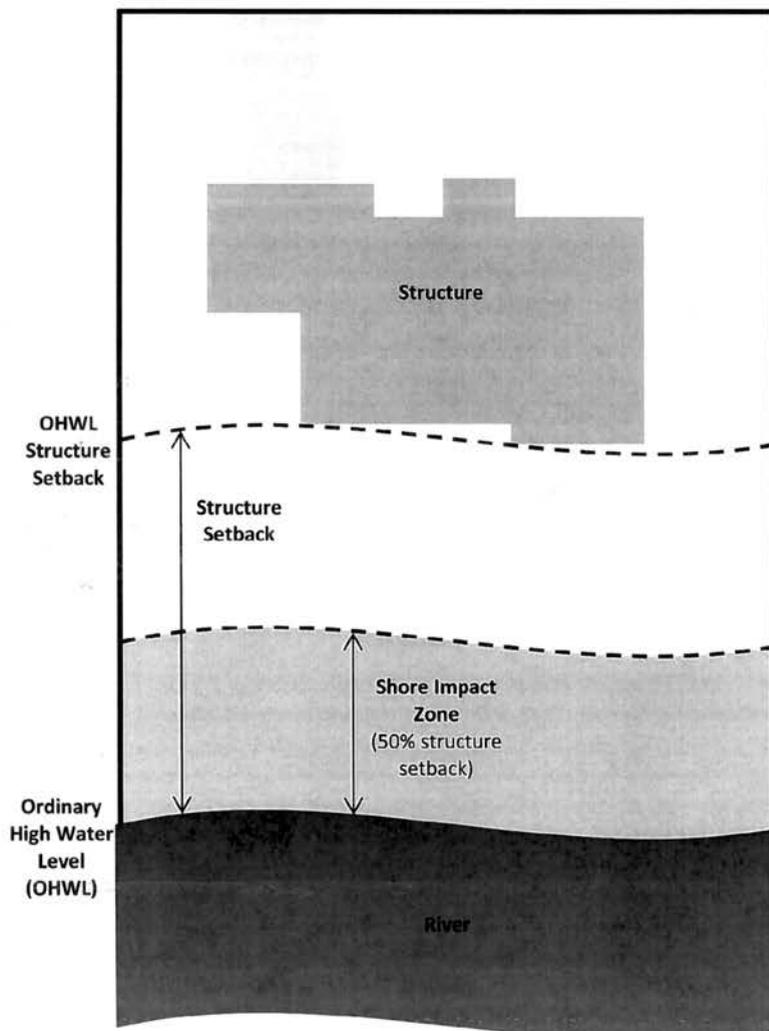
Subp. 39. **Native plant community**. "Native plant community" means a plant community that has been ~~mapped~~ identified as

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part of the Minnesota biological survey or other scientifically based studies biological survey issued or adopted by a local, state, or federal agency.

Subp. 68. **Shore impact zone.** "Shore impact zone" means land located between the ordinary high water level of public waters and a line parallel to it at a setback of 50 percent of the required structure setback or, for areas in agricultural use, 50 feet landward of the ordinary high water level in areas of agricultural use. See Figure 2.

Figure 2: Shore Impact Zone



Subp. 71. **State or regional agency.** "State or regional agency" means the Metropolitan Airports Commission, Minnesota Historical Society, University of Minnesota, Department of Natural Resources, Department of Transportation, and Metropolitan Council and other state agencies.

Subp. 72. **Steep slope.** "Steep slope" means a natural topographic feature with an average slope of 12 to 18 percent, measured over a horizontal distance equal to or greater than 50 feet, and any slopes greater than 18 percent that are not bluffs.

6106.0060 ADMINISTRATION OF PROGRAM.

Subp. 3. **Consistent plans and ordinances.** Local governments within the Mississippi River Corridor Critical Area must adopt, administer, and enforce plans and ordinances consistent with this chapter. Plans and ordinances must be submitted to the Metropolitan Council for review and must be approved by the commissioner before they are adopted as provided under part

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6106.0070. For the purpose of this part, "consistent" means that each local plan and ordinance, while it may be structured or worded differently, meets the purpose, scope, and numeric thresholds and standards set forth in this chapter. ~~Plans and Ordinances that are not consistent with this chapter require approval of flexibility from the commissioner,~~ according to part 6106.0070, subpart 6.

Subp. 5. **Duties of commissioner.** The commissioner must:

C. ~~be the lead agency~~ to coordinate preparation, submission, review, and modification of plans and ordinances that are prepared by local governments as provided under part 6106.0070;

Subp. 7. **Duties of cities.** Cities must:

D. send notice of public hearings to consider plans and ordinances, and amendments thereto, and other development requiring discretionary action affecting lands within the river corridor boundary to the following parties so that the parties receive the notice at least ten days before the public hearing:

(3) adjoining local governments within the Mississippi River Corridor Critical Area, including those with overlapping jurisdiction and those across the river, where buildings exceed the height limits specified in part 6106.0120, as part of the conditional use permit or variance process; and

6106.0070 PREPARATION, REVIEW, AND APPROVAL OF PLANS AND ORDINANCES.

Subp. 6. **Flexibility requests for ordinances.**

A. Local governments may, under special circumstances and with the commissioner's prior approval, adopt ordinances that are not consistent with this chapter, provided that the purposes of Minnesota Statutes, section 116G.15, ~~and the purposes and scope of this chapter~~ are met and the ordinance is consistent with the plan prepared by the local government and approved according to this chapter. Special circumstances include the following situations:

C. Within 60 days after receiving a complete request for ordinance flexibility as provided in item B, the commissioner must:

(1) make the request publicly available;

(+) ~~(2)~~ evaluate the request based on:

~~(2)~~ (3) approve or deny the request, state in writing to the local government the reasons for the approval or denial, and suggest any alternative solutions or regulatory approaches that would be granted ordinance flexibility.

6106.0080 ADMINISTRATIVE PROVISIONS FOR ORDINANCES.

Subp. 4. **Conditional and interim use permits.**

A. In addition to meeting the requirements of Minnesota Statutes, sections 394.301, 394.303, 462.3595, and 462.3597, a local government's review of conditional and interim uses must consider potential impacts of the conditional or interim use on primary conservation areas, public river corridor views, and other resources identified in a local government's plan.

Subp. 7. **Accommodating disabilities.** Ramps or other facilities to provide persons with disabilities access to the persons' property, as required by the federal Americans with Disabilities Act and the federal Fair Housing Act and as provided by chapter 1341, are allowed ~~by administrative permit~~, subject to the following standards:

A. parts 6106.0120 to 6106.0180 must be complied with ~~to the maximum extent practicable,~~ except as provided in item B; and

B. when parts 6106.0120 to 6106.0180 cannot be complied with, the local government may issue an interim use permit to allow ramps or other facilities that do not comply with those parts. Upon expiration of the interim use permit, the ramp or other facilities must be removed.

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6106.0100 DISTRICTS.

Subp. 4. River neighborhood district (CA-RN).

B. The CA-RN district must be managed to maintain the character of the river corridor within the context of existing residential and related neighborhood development, and to protect and enhance habitat, parks and open space, public river corridor views, and scenic, natural, and historic areas. Minimizing erosion and the flow of untreated storm water into the river and enhancing habitat and shoreline habitat vegetation are priorities in the district.

Subp. 5. River towns and crossings district (CA-RTC).

A. The river towns and crossings district (CA-RTC) is characterized by historic downtown areas and limited nodes of intense development at specific river crossings, as well as institutional campuses that predate designation of the Mississippi River Critical Corridor Area and ~~includes~~ that include taller buildings.

Subp. 9. District boundaries.

A. The physical boundaries of each district are delineated in the Mississippi River Corridor Critical Area District Map, Minnesota Department of Natural Resources (2015 2016 and as subsequently amended). The map is incorporated by reference, is not subject to frequent change, and is available on the department's Web site at www.dnr.state.mn.us/input/rules/mreca/map-draft.htm ~~http://www.dnr.state.mn.us/waters/watermgmt_section/critical_area/index.html~~. The commissioner must maintain the map and must amend the map as provided in item C.

C. The boundaries of a district established under this part must be amended according to subitems (1) to (3).

(1) A local government or a state or regional agency must submit a written request to the commissioner requesting a district boundary amendment. The request must:

(d) ~~be consistent with~~ identify those local comprehensive plans, regional system statements, state park and transportation master plans, and federal plans that apply to the area proposed for a district boundary amendment;

6106.0120 DIMENSIONAL STANDARDS.

Subpart 1. **Purpose.** The purpose of this part is to establish dimensional standards that protect primary conservation areas and public river corridor views from impacts of development and ensure that new development is sited in locations consistent with part 6106.0020.

Subp. 2. Structure height.

A. Structures, including accessory structures; as defined by local ordinance, must be no taller than the heights specified for each district:

(4) CA-SR: height is determined by the local government's underlying zoning requirements, provided the structure's structure height in the underlying zoning is 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;

6106.0130 GENERAL DEVELOPMENT STANDARDS FOR PUBLIC FACILITIES.

Subp. 8. Public recreational facilities.

B. Roads and driveways associated with public recreational facilities must not be placed in the bluff impact zone or shore impact zone unless no other placement alternative exists. If no alternative exists, then design and construction must minimize impacts to shoreline vegetation, erodible soils and slopes, and other sensitive resources.

E. Public signs and kiosks for interpretive or directional purposes are allowed in the bluff impact zone or shore impact zone, provided they are placed and constructed to minimize disturbance to these areas and avoid visual impacts on public river

Adopted Rules

corridor views.

F. Public stairways, lifts, and landings must be designed as provided in part 6106.0140, subpart 6, item C.

6106.0140 GENERAL DEVELOPMENT STANDARDS FOR PRIVATE FACILITIES.

Subp. 5. Private water access and viewing facilities.

C. Design and construction of private stairways, lifts, and landings are subject to the following standards:

(4) stairways, lifts, and landings must be located in the least visible portion of the lot whenever practical; and

6106.0150 VEGETATION MANAGEMENT STANDARDS.

Subp. 5. **Permit conditions.** In reviewing and approving permit applications, the local government must ensure through permit conditions that the following performance standards are met:

B. soil, slope stability, and hydrologic conditions are suitable for the proposed work as determined by an a professional engineer or resource agency;

6106.0160 LAND ALTERATION AND STORM WATER MANAGEMENT STANDARDS.

Subp. 4. Rock riprap, retaining walls, and other erosion control structures.

A. Construction, repair, or replacement of rock riprap, retaining walls, and other erosion control structures located at or below the ordinary high water level must comply with parts 6115.0215, subpart 4, item E, and 6115.0216, subpart 2. The work must not proceed unless approved by the commissioner as meeting all requirements for work in public waters.

C. Repair of existing rock riprap retaining walls and other erosion control structures above the ordinary high water level does not require a local government permit, provided it does not involve any land alteration.

~~E. D.~~ Nothing in this subpart shall be construed to waive any other permit requirements that are required by law.

6106.0170 SUBDIVISION AND LAND DEVELOPMENT STANDARDS.

Subp. 4. Design standards.

J. Protected open areas must connect ~~neighboring or abutting~~ open space, natural areas, and recreational areas, where present on adjacent parcels, as much as possible to form an interconnected network.

6106.0180 EXEMPTIONS FROM SETBACKS, HEIGHT LIMITS, AND OTHER REQUIREMENTS.

Uses and activities not specifically exempted under this part must comply with this chapter. All exemptions in the shore impact zone (SIZ) and bluff impact zone (BIZ) are also subject to the vegetation management standards in part 6106.0150 and the land alteration and storm water management standards in part 6106.0160. In the table, «E» means the use is exempt; «(E)» means that the use is allowed only if no alternatives exist, and «N» means that the use is not exempt and must meet the standards in this chapter.

Adopted Rules

	Set-backs	Height limits	SIZ	BIZ	Standard (the use must comply with standard or referenced parts)
Industrial and utility structures requiring greater height for operational reasons (such as elevators, refineries, and railroad signaling towers)	N	E	N	N	Structure design and placement must minimize interference with public river corridor views
Barns, silos, and farm structures	N	E	N	N	
Bridges and bridge approach roadways	E	E	E	(E)	Part 6106.0130
Wireless communication facilities (towers)	E	E	N	N	Part 6106.0110, subpart 7
Chimneys, church spires, flag poles, public monuments, and mechanical service stacks and similar mechanical equipment	N	E	N	N	
Historic properties and contributing properties in historic districts	E	E	E	E	Exemptions do not apply to additions or site alterations to historic buildings or structures
Buildings and structures on the face of or abutting the bluff in the CA-UC district of St. Paul, between Chestnut Street and Highway 52	E	n/a	n/a	E	Height in the CA-UC district is governed by underlying zoning
Public utilities					
Electrical power facilities	E	E	E	(E)	Part 6106.0130
Essential services (other than storm water facilities)	E	E	E	(E)	Part 6106.0130
Storm water facilities	E	N	E	(E)	Part 6106.0160
Wastewater treatment	E	N	E	N	Part 6106.0130
Public transportation facilities	E	N	(E)	(E)	Part 6106.0130
Public recreational facilities					
Accessory structures, such as monuments, flagpoles, light standards, and similar park features	E	E	(E)	(E)	Part 6106.0130; within BIZ, only on slopes averaging less than 30 percent. Exemptions do not apply to principal buildings
Picnic shelters and other open-sided structures	E	N	(E)	N	Part 6106.0130
Parking areas	(E)	N	(E)	(E)	Part 6106.0130; within BIZ, only within 20 feet of toe of bluff; not on face of bluff; and must not affect stability of bluff
Roads and driveways	(E)	N	(E)	(E)	Part 6106.0130
Natural-surfaced trails, access paths, and viewing areas	E	N	E	E	Part 6106.0130
Hard-surfaced trails and viewing platforms	E	N	E	(E)	Part 6106.0130; within BIZ, only on slopes averaging less than 30 percent
Water access ramps	E	N	E	(E)	Part 6106.0130
Public signs and kiosks for interpretive or directional purposes	E	N	E	(E)	Part 6106.0130

Adopted Rules

	Set-backs	Height limits	SIZ	BIZ	Standard (the use must comply with standard or referenced parts)
River-dependent uses					
Shoreline facilities	E	N*	E	(E)	Part 6106.0110, subpart 6. Exemptions do not apply to buildings, structures, and parking areas that are not part of a shoreline facility
Private roads and conveyance structures serving river-dependent uses	E	N*	E	(E)	Part 6106.0110, subpart 6
Private residential and commercial water access and use facilities					
Private roads serving 3 or more lots	(E)	N	N	(E)	Part 6106.0140; in BIZ, only on slopes averaging less than 30 percent. Exemption does not apply to private roads serving fewer than 3 lots or to private driveways and parking areas
Access paths	E	N	E	E	Part 6106.0140
Water access ramps	E	N	E	N	Part 6106.0140
Stairways, lifts, and landings	E	N	E	E	Part 6106.0140
Water-oriented accessory structures	E	N	E	N	Part 6106.0140
Patios and decks	E	N	N	N	Part 6106.0140, subpart 6
Directional signs for watercraft (private)	E	N	E	N	Part 6106.0140; exemption does not apply to off-premise advertising signs
<u>Temporary storage of docks, boats, and other equipment during the winter months</u>	E	N	E	N	
Erosion control structures, such as rock riprap and retaining walls	E	N	E	(E)	Part 6106.0160, subpart 4
Flood control structures	E	N	E	(E)	Part 6106.0160

* River-dependent commercial, industrial, and utility structures are exempt from height limits only if greater height is required for operational reasons.

December 7, 2016

VIA E-FILING ONLY

Elizabeth P. Carlson
500 Lafayette Rd Box 10
Saint Paul, MN 55155
Beth.Carlson@state.mn.us

**Re: *In the Matter of the Proposed Rules Relating to the Mississippi River
Corridor Critical Area***
OAH 8-9014-33236
Revisor 4240

Dear Ms. Carlson:

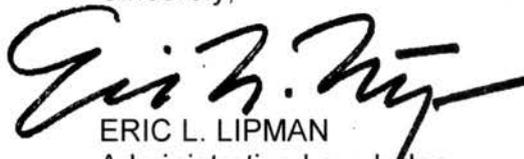
Enclosed herewith and served upon you please find the **CHIEF ADMINISTRATIVE LAW JUDGE'S ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.16, SUBD. 2 AND MINN. R. 1400.2240, SUBP. 4.** in the above-entitled matter. On November 30, 2016, the Office of Administrative Hearings received for review the submissions of the Minnesota Department of Natural Resources as modified pursuant to the August 10, 2016, Report of Administrative Law Judge Eric L. Lipman. The rules, Revisor's Draft 4240, are approved as to legality. If the Minnesota Department of Natural Resources has not already done so, please ensure that a signed order adopting the rules is filed with the Office of Administrative Hearings. The Office of Administrative Hearings will request copies of the finalized rules from the Revisor's office following receipt of that order. The Office of Administrative Hearings will file four copies of the adopted rules with the Secretary of State, who will forward one copy to the Revisor of Statutes, one copy to the Governor, and one to the Department for its rulemaking record.

The Department's next step is to arrange for publication of the Notice of Adoption in the State Register. Two copies of the Notice of Adoption provided by the Revisor's office should be submitted to the *State Register* for publication. A permanent rule without a hearing does not become effective until five working days after Notice of Adoption is published in the State Register in accordance with Minn. Stat. § 14.27.

Elizabeth P. Carlson
December 7, 2016
Page 2

If you have any questions regarding this matter, please contact Katie Lin at (651) 361-7911 or katie.lin@state.mn.us.

Sincerely,



ERIC L. LIPMAN
Administrative Law Judge

Enclosure

cc: Office of the Governor
Legislative Coordinating Commission
Paul Marinac
Representative Michael V. Nelson
Senator Sandra L. Pappas

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Proposed Rules Relating to the Mississippi River Corridor Critical Area	OAH Docket No. 8-9014-33236
--	--------------------------------

Sheena Denny certifies that on December 7, 2016, she served a true and correct copy of the attached CHIEF ADMINISTRATIVE LAW JUDGE'S ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.16, SUBD. 2 AND MINN. R. 1400.2240, SUBP. 4.; by placing it in the United States mail or by courier service with postage prepaid, addressed to the following individuals:

<u>VIA E-FILING ONLY</u> Elizabeth P. Carlson 500 Lafayette Rd Box 10 Saint Paul, MN 55155 Beth.Carlson@state.mn.us	Joanna Dornfeld Office of Governor Mark Dayton Joanna.Dornfeld@state.mn.us
Legislative Coordinating Commission lcc@lcc.leg.mn	Paul Marinac Office of the Revisor of Statutes paul.marinac@revisor.mn.gov
Representative Michael V. Nelson, Chair Committee on Government Operations 565 State Office Building 100 Rev. Dr. Martin Luther King Jr. Blvd. St. Paul, MN 55155	Senator Sandra L. Pappas, Chair State and Local Government Committee 120 State Capitol 75 Rev. Dr. Martin Luther King Jr. Blvd. St. Paul, MN 55155-1606

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Permanent
Rules Relating to Mississippi River Corridor
Critical Area, *Minnesota Rules* Part 6106

**CHIEF ADMINISTRATIVE LAW
JUDGE'S ORDER ON REVIEW OF
RULES UNDER MINN. STAT. §
14.16, SUBD. 2 AND MINN. R.
1400.2240, SUBP. 4.**

This matter came on for review by the Chief Administrative Law Judge pursuant to Minn. Stat. § 14.16 (2016) and Minn. R. 1400.2240, subp. 4 (2015).

The Minnesota Department of Natural Resources (Department) proposes to adopt the above-entitled rules pursuant to Minn. Stat. § 14.16. The proposed rules were reviewed during a series of public hearings held on June 14, 15 and 16, 2016.

The Administrative Law Judge disapproved one of the rules in a Report dated August 10, 2016. The Chief Administrative Law Judge, by way of an Order dated August 11, 2016, concurred with the determination of the Administrative Law Judge.

On November 30, 2016, the Department requested that the Chief Administrative Law Judge review modifications to the rule that had been disapproved as well as the revisions that were made as a result of the hearing process. The Chief Administrative Law Judge finds that the final proposed rules are not substantially different (as those terms are used in Minn. Stat. § 14.05, subd. 2 (2016)) from those published in the *State Register* on April 11, 2016.

Based upon a review of the modifications made by the Department as presented in its November 30, 2016 submissions, and the rulemaking record,

IT IS HEREBY ORDERED THAT: The proposed rules, dated September 22, 2016, revised by the Commissioner of Natural Resource's Order Adopting Rules, are approved as to legality.

Dated: December 7, 2016



TAMMY L. PUST
Chief Administrative Law Judge

August 11, 2016

VIA E-FILING ONLY

Elizabeth P. Carlson
500 Lafayette Rd Box 10
Saint Paul, MN 55155

**Re: *In the Matter of the Proposed Rules Relating to the Mississippi River
Corridor Critical Area*
OAH 8-9014-33236; Revisor R-4240**

Dear Ms. Carlson:

Enclosed please find the Report of the Chief Administrative Law Judge in the above-entitled matter and the Report of Administrative Law Judge Eric L. Lipman. The Department may resubmit the rule to the Chief Administrative Law Judge for review after changing it, or may request that the Chief Administrative Law Judge reconsider the disapproval.

If the Agency chooses to resubmit the rule to the Chief Administrative Law Judge for review after changing it, or request reconsideration, the Department must file the documents required by Minn. R. 1400.2240, subs. 4 and 5.

If you have any questions regarding this matter, please contact Katie Lin at (651) 361-7911 or katie.lin@state.mn.us.

Sincerely,


ERIC L. LIPMAN
Administrative Law Judge

Enclosure

cc: Office of the Governor
Office of the Revisor of Statutes (paul.marinac@revisor.mn.gov)
Legislative Coordinating Commission (lcc@lcc.leg.mn)

August 11, 2016

Representative Tim Sanders, Chair
Committee on Government Operations
553 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Senator Patricia Torres Ray, Chair
State and Local Government Committee
309 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1606

**Re: In the Matter of the Proposed Rules Relating to the Mississippi
River Corridor Critical Area
OAH 8-9014-33236; Revisor R-4240**

Dear Representative Sanders and Senator Torres Ray:

Pursuant to Minn. Stat. § 14.26, the Office of Administrative Hearings is required to send to the legislative policy committees with primary jurisdiction over state governmental operations a copy of the statement of reasons for disapproval of agency rules. Enclosed please find the Report of the Chief Administrative Law Judge and Administrative Law Judge Eric L. Lipman's Report on review of rules and memorandum for the above-referenced rules.

Under Minnesota law, the Department may resubmit the rule to the Chief Administrative Law Judge for review after changing it, or may request that the Chief Administrative Law Judge reconsider the disapproval. If the Department does not wish to follow the suggested actions of the Chief Administrative Law Judge to correct the defects found, the Department may follow the process outlined in Minn. Stat. § 14.26, subd. 3(c).

Sincerely,

/s/Katie Lin

KATIE J. LIN
State Program Administrator Intermediate
Telephone: (651) 361-7911

Enclosure

cc: Elizabeth P. Carlson

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Proposed Rules Relating to the Mississippi River Corridor Critical Area	OAH Docket No. 8-9014-33236 R-4240
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Katie Lin, certifies that on August 11, 2016, she served a true and correct copy of the attached **ORDER OF THE CHIEF ADMINISTRATIVE LAW JUDGE** and **REPORT OF THE ADMINISTRATIVE LAW JUDGE**; by courier service, by placing it in the United States mail with postage prepaid, or by electronic mail, as indicated below, addressed to the following individuals:

VIA E-FILING ONLY

Elizabeth P. Carlson
500 Lafayette Rd Box 10
Saint Paul, MN 55155

Elizabeth Dressel
Policy Coordinator
Office of Governor Mark Dayton
20 W Twelfth St Ste 116
St Paul, MN 55155

Legislative Coordinating Commission
(lcc@lcc.leg.mn)

Paul Marinac
Office of the Revisor of Statutes
paul.marinac@revisor.mn.gov

Representative Tim Sanders
Chair
Committee on Government Operations
553 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Senator Patricia Torres Ray
Chair
State and Local Government Committee
309 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1606

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Permanent
Rules Relating to Mississippi River Corridor
Critical Area, *Minnesota Rules* Part 6106

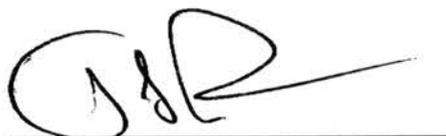
**ORDER OF THE CHIEF
ADMINISTRATIVE LAW JUDGE**

This matter came before the Chief Administrative Law Judge pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (2016). Based upon a review of the record in this proceeding, the Chief Administrative Law Judge hereby approves in all respects the findings in the Report of the Administrative Law Judge dated August 10, 2016.

In order to correct the defects enumerated by the Administrative Law Judge in the attached Report, the agency shall make changes to the rule to address the defects noted, or submit the rule to the Legislative Coordinating Commission and the House of Representatives and Senate policy committees with primary jurisdiction over state governmental operations, for review under Minn. Stat. § 14.15, subd. 4 (2016).

If the agency chooses to make changes to correct the defects, it shall submit to the Chief Administrative Law Judge a copy of the rules as originally published in the State Register, the agency's order adopting the rules, and the rule showing the agency's changes. The Chief Administrative Law Judge will then make a determination as to whether the defect has been corrected and whether the modifications to the rules make them substantially different than originally proposed.

Dated: August 11, 2016



TAMMY L. PUST
Chief Administrative Law Judge

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Permanent
Rules Relating to Mississippi River
Corridor Critical Area, *Minnesota Rules*
Part 6106

**REPORT OF THE
ADMINISTRATIVE LAW JUDGE**

This matter came before Administrative Law Judge Eric L. Lipman for a rulemaking hearing on three different occasions in June of 2016: at Schaar's Bluff Gathering Center in Hastings, Minnesota, on Tuesday, June 14; at Greenhaven Event Center in Anoka, Minnesota, on Wednesday, June 15; and at the offices of the Mississippi Watershed Management Organization in Minneapolis, Minnesota, on Thursday, June 16.

The Department of Natural Resources (Department or Agency) proposes a set of permanent rules that would replace the performance standards promulgated, in 1979, under Executive Order 79-19. The regulations would guide land use and planning for parcels within the Mississippi River Critical Corridor Area (MRCCA), a specially-designated, 72-mile portion of the Mississippi River that extends between Dayton and Ramsey Townships, at its northern edge, to Ravena Township, Minnesota in the south.¹

The hearing and this Report are part of a larger rulemaking process under the Minnesota Administrative Procedure Act.² The Minnesota Legislature designed this process so as to ensure that state agencies meet all of the requirements that the state has specified for adopting rules.

The hearing was conducted so as to permit agency representatives and the Administrative Law Judge to hear public comment regarding the impact of the proposed rules and what changes might be appropriate. Further, the hearing process provided the general public an opportunity to review, discuss and critique the proposed rules.

The Department must establish that the proposed rules are within the Department's statutory authority; necessary and reasonable; follow from compliance with the required procedures; and that any modifications that the Department made after the proposed rules were initially published in the *State Register* are within the scope of the matter that was originally announced.³

¹ Exhibit (Ex.) 3 at 1-2 (Statement of Need and Reasonableness or SONAR).

² See Minn. Stat. §§ 14.131-20 (2016).

³ Minn. Stat. §§ 14.05, 14.23, 14.25, 14.50 (2016).

The agency panel at the public hearings included Sherry A. Enzler, Jennifer Shillcox, Daniel Petrik, and Suzanne Rhees.⁴

One hundred and three people attended one or more of the three public hearings and signed the hearing register. The proceedings continued until all interested persons, groups or associations had an opportunity to be heard concerning the proposed rules. Forty-five members of the public made statements or asked questions during the hearings.⁵

After the close of the last of the three hearings, the Administrative Law Judge kept the rulemaking record open for another 20 calendar days - until Wednesday, July 6, 2016 - to permit interested persons and the Department to submit written comments. Following the initial comment period, the hearing record was open an additional five business days to permit interested parties and the Department an opportunity to reply to earlier-submitted comments.⁶ The hearing record closed on Wednesday, July 13, 2016.

SUMMARY OF CONCLUSIONS

The Department has established that it has the statutory authority to adopt the proposed rules, that it followed the legal requirements to promulgate those rules, and that, with one exception, the proposed rules are needed and reasonable.

The Department's revision of proposed Minn. R. 6106.0050, subp. 39, however, remains unduly vague and defective. While there are a number of possible cures to this defect, as it is drafted, this regulatory definition is improper.

Additionally, while the agency made the cost determination required by Minn. Stat. § 14.127 (2016), the Administrative Law Judge concludes that this determination is not adequately supported in the rulemaking record.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Regulatory Background to the Proposed Rules

1. On October 18, 1976, Governor Wendell R. Anderson designated the boundaries of the MRCCA through Executive Order 130. The purpose of the Executive Order was to block "unregulated development and uncoordinated planning . . . without adequate regard for protecting the regional interest in the regional resource." To that

⁴ See *Transcript Volume I* at 14-15.

⁵ See *Public Hearing Rosters*.

⁶ See Minn. Stat. § 14.15, subd. 1.

end, Executive Order 130 promulgated a set of standards and guidelines for development occurring within the MRCCA.⁷

2. On February 26, 1979, Governor Albert Quie renewed the earlier designation of the MRCCA and temporary rules through Executive Order 79-19.⁸

3. By the early 1980s, all local governments within the MRCCA had adopted MRCCA plans and most had adopted MRCCA-related development ordinances. Those communities without their own MRCCA ordinances were subject to the Interim Development Regulations under Executive Order 79-19.⁹

4. In 1988, the United States Congress designated the Mississippi National River and Recreation Area (MNRRA) as a unit within the National Park System. Not only does the MNRRA share the same boundaries as the MRCCA, but also the National Park Service determined that it would not separately acquire significant land holdings or establish land use regulations for the MNRRA; instead relying upon state and local administration of Executive Order 79-19 to protect the federally-designated resources.¹⁰

5. In this respect, Minnesota's regulatory program for the MRCCA forms part of a significant (and uncommon) example of "cooperative federalism" - the federal sovereign is forbearing from promulgating its own regulatory standards for areas within the river corridor, preferring instead, to play a supportive role in the development of "resource management standards" that are issued by Minnesota in the first instance.¹¹

6. Yet, Congress's continued forbearance in this respect is not assured. Going forward, it is dependent upon Congress's judgment as to the ability of Minnesota's regulatory programs to "protect, preserve and enhance the significant values of the waters and land of the Mississippi River Corridor"¹²

II. Rulemaking Authority

7. The Department cites Minn. Stat. § 116G.15 (2016) as its source of statutory authority for these proposed rules.

⁷ Executive Order 130 at 4 (October 18, 1976); Executive Order 130, Attachment A, *Standards and Guidelines for Preparing Plans and Regulations* at 1-2.

⁸ Executive Order 79-19 (February 26, 1979).

⁹ Ex. 3 at 3.

¹⁰ 16 U.S.C. § 460zz-1(a) (2012), Ex. 3 at 3.

¹¹ 16 U.S.C. § 460zz(b)(3) (2012); *See generally*, 54 U.S.C. § 100101(a) *et seq.* (2012).

¹² *See* 16 U.S.C. § 460zz(b)(1) (2012); *Transcript I* at 39 (Comments of United States Senator David Durenberger) ("What makes it unique public policy is simply this: By statute [the Congress] 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."); *Transcript III* at 191 (Comments of Superintendent John Anfinson) ("The agreement or compact between the State of Minnesota and the Department of the Interior is an experiment....We can demonstrate that this model, this partnership can work to protect places of national significance.").

8. Minn. Stat. § 116G.15, subd. 2(a), provides in part:

The commissioner of natural resources, after consultation with affected local units of government within the Mississippi River corridor critical area, may adopt rules under chapter 14 as are necessary for the administration of the Mississippi River corridor critical area program.¹³

Additionally, Minn. Stat. § 116G.15, subd. 7, directs that:

The commissioner shall adopt rules to ensure compliance with this section. By January 15, 2010, the commissioner shall begin the rulemaking required by this section under chapter 14. Notwithstanding sections 14.125 and 14.128, the authority to adopt these rules does not expire.¹⁴

9. The Administrative Law Judge concludes that the Department has the statutory authority to adopt rules governing uses, planning and the development of property within the MRCCA.

III. Procedural Requirements of Chapter 14

A. Publications

10. The Department published two Requests for Comments in the *State Register*. The first Request for Comments was published on December 14, 2009. A second, renewed Request was published on June 2, 2014.¹⁵

11. On February 24, 2016, the Department requested review and approval of its Notice of Hearing and Additional Notice Plan.¹⁶

12. By way of Orders dated March 1 and March 17, 2016, the Administrative Law Judge conditionally approved earlier draft Notices of Hearing in this matter, provided that the Department made a few necessary adjustments to that notice. Those adjustments were needed to reflect the public's opportunity to submit comments to the Office of Administrative Hearings in any of the ways that the Office receives those comments - by personal delivery, first class mail, facsimile and the Office's e-Comments system.¹⁷

13. In the second of the two Orders, issued on March 17, 2016, the Administrative Law Judge explained that the purpose of this directive was to make clear to stakeholders that they would have "the opportunity to submit post-hearing comments

¹³ Minn. Stat. § 116.15, subd. 2(a).

¹⁴ Minn. Stat. § 116.15, subd. 7.

¹⁵ 34 *State Register* 848 (December 14, 2009); 38 *State Register* 1597 (June 2, 2014).

¹⁶ Ex. 10 at 1.

¹⁷ See Minn. R. 1400.2080, subps. 1, 2(H), 4(D) (2015).

on the proposed rules and rebuttal through the Office of Administrative Hearings' e-Comment system."¹⁸

14. On March 23, 2016, the Department submitted a third proposed Notice. Upon review, the Chief Administrative Law Judge pointed out to Department officials that while the additions required by the March 17 Order were included in the third Notice, the contact information for the Administrative Law Judge did not list the e-Comments website alongside his office mailing address and facsimile number. In the view of the Chief Administrative Law Judge, this omission rendered the notice provisions inconsistent and ambiguous; because the notice implied, incorrectly, that post-hearing comments were only to be submitted by United States Mail or facsimile.¹⁹

15. On March 31, 2016, for reasons detailed in that Order, the Administrative Law Judge approved the third proposed Notice of Hearing, notwithstanding the imprecision regarding use of the e-Comment system during the post-hearing comment period.²⁰

16. On April 11, 2016, the Department published a Notice of Hearing stating its intention to adopt rules following the receipt of input from the public. In the Notice, it announced a series of three public hearings scheduled for June 14, 15 and 16, 2016.²¹

17. On April 11, 2016, the Department mailed a copy of the Notice of Hearing to all persons and associations who had registered their names with it for the purpose of receiving such notice and to all persons and associations identified in the Additional Notice Plan.²²

18. On April 28, 2016, The Department mailed a copy of the Notice of Hearing and the SONAR to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over environmental policy and finance.²³

19. On April 28, 2016, The Department mailed a copy of the SONAR to the Legislative Reference Library to meet the requirement set forth in Minn. Stat. §§ 14.131 and 14.23.²⁴

20. The Notice of Hearing identified the dates and locations of the hearing in this matter.²⁵

21. At the hearing on June 14, 2016, the Department filed copies of the following documents as required by Minn. R. 1400.2220 (2015):

¹⁸ See SECOND ORDER ON REVIEW OF NOTICE, OAH 8-9014-33236 at 3 (March 17, 2016).

¹⁹ See THIRD ORDER ON REVIEW OF NOTICE, OAH 8-9014-33236 at 1-2 (March 31, 2016).

²⁰ *Id.* at 1-3.

²¹ 40 *State Register* 1359 (April 11, 2009).

²² Ex. 6.

²³ Ex. 8.

²⁴ *Id.*

²⁵ Ex. 5.

- (a) the Department's Requests for Comments as published in the *State Register* on December 14, 2009 and June 2, 2014;²⁶
- (b) the proposed rules dated January 28, 2016, including the Revisor's approval;²⁷
- (c) the Department's Statement of Need and Reasonableness (SONAR);²⁸
- (d) the Certificate of Mailing the SONAR to the Legislative Reference Library on April 28, 2016;²⁹
- (e) the Notice of Hearing as mailed and as published in the *State Register* on April 11, 2016;³⁰
- (f) the Certificate of Mailing the Notice of Hearing to the rulemaking mailing list on April 11, 2016, and the Certificate of Accuracy of the Mailing List;³¹
- (g) the Certificate of Giving Additional Notice Pursuant to the Additional Notice Plan on several dates between April 11 and April 20, 2016;³²
- (h) the Certificate of Sending the Dual Notice and the Statement of Need and Reasonableness to Legislators on April 28, 2016;³³ and,
- (i) an February 23, 2016 memorandum from Minnesota Management and Budget.³⁴

B. Additional Notice Requirements

22. Minn. Stat. §§ 14.131 and 14.23 require that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule; or alternatively, the agency must detail why these notification efforts were not made.

²⁶ Ex. 1.

²⁷ Ex. 2.

²⁸ Ex. 3.

²⁹ Ex. 8.

³⁰ Ex. 5.

³¹ Ex. 6.

³² Ex. 7.

³³ Ex. 8.

³⁴ Ex. 9.

23. On April 11, 2016, the Department provided the Notice of Hearing in the following manner, according to the Additional Notice Plan approved by the Office of Administrative Hearings:

- (a) The Notice of Hearing was posted on its website and the Department has maintained these materials continuously since they were posted.³⁵
- (b) Notice of the rulemaking was sent by first class mail to 627 individuals - including property owners within the MRCCA; stakeholders who submitted comments in response to the Request for Comments; and attendees of the open houses hosted by the Department in 2010 and 2014.³⁶
- (c) A copy of the Notice of Hearing was sent by Electronic Mail to more than 6,000 subscribers to the GovDelivery system and 37 legislators whose legislative districts include some portion of the MRCCA.³⁷
- (d) Agency staff included notice of the rulemaking in a number of public presentations that they made to stakeholders.³⁸

C. Notice Practice

1. Notice to Stakeholders

24. Between April 11 and April 20, 2016, the Department provided a copy of the Notice of Hearing to its official rulemaking list (maintained under Minn. Stat. § 14.14), and to stakeholders identified in its Additional Notice Plan.³⁹

25. There are 55 days between April 20, 2016 and June 14, 2016.

26. The Administrative Law Judge concludes that the Department fulfilled its responsibilities under Minn. R. 1400.2080, subp. 6 (2015), to mail the Notice of Hearing "at least 33 days before ... the start of the hearing"

2. Notice to Legislators

27. On April 28, 2016, The Department sent a copy of the Notice of Hearing and the Statement of Need and Reasonableness to legislators as required by Minn. Stat. § 14.116 (2016).⁴⁰

³⁵ Ex. 7.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Exs. 5, 7.

⁴⁰ Ex. 8.

28. Minn. Stat. § 14.116 requires the Department to send a copy of the Notice of Intent to Adopt and the SONAR to certain legislators on the same date that it mails its Notice of Intent to Adopt to persons on its rulemaking list and pursuant to its Additional Notice Plan.⁴¹

29. The Administrative Law Judge concludes that the Department fulfilled its responsibilities, to mail the Notice of Hearing “at least 33 days before ... the start of the hearing”⁴²

3. Notice to the Legislative Reference Library

30. On April 28, 2016, the Department mailed a copy of the SONAR to the Legislative Reference Library.⁴³

31. Minn. Stat. § 14.23 requires the agency to send a copy of the SONAR to the Legislative Reference Library when the Notice of Hearing is mailed.

32. The Administrative Law Judge concludes that the Department fulfilled its responsibilities to mail the Notice of Hearing “at least 33 days before ... the start of the hearing”⁴⁴

D. Impact on Farming Operations

33. Minn. Stat. § 14.111 (2016) imposes additional notice requirements when the proposed rules affect farming operations. The statute requires that an agency provide a copy of any such changes to the Commissioner of Agriculture at least 30 days prior to publishing the proposed rules in the *State Register*.

34. While the proposed rules do not directly impose restrictions on farming operations, as opposed to other uses, the Department provided the Commissioner of Agriculture with a copy of the proposed rules and notice of its intention to adopt the same. This notice was provided on February 24, 2016, 47 days prior to the Department’s publication of the Notice of Hearing in the *State Register*.⁴⁵

35. The Administrative Law Judge concludes that the Department fulfilled its responsibilities under Minn. Stat. § 14.111.

E. Statutory Requirements for the SONAR

36. The Administrative Procedure Act obliges an agency adopting rules to address eight factors in its SONAR.⁴⁶ Those factors are:

⁴¹ Minn. Stat. § 14.116(b).

⁴² Minn. R. 1400.2080, subp. 6.

⁴³ Ex. 8.

⁴⁴ Minn. R. 1400.2080, subp. 6.

⁴⁵ Ex. 6.

⁴⁶ Minn. Stat. § 14.131.

- (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- (2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- (4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- (5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;
- (6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals;
- (7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and,
- (8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule and reasonableness of each difference.

1. The Agency's Regulatory Analysis

- (a) **A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

37. The Department asserts that the proposed rules will "establish standards to guide new development and redevelopment in the corridor," they "will directly affect all local governments having jurisdiction over or owning and managing land within the MRCCA," and "all persons who own, manage, or develop lands within the MRCCA" This regulation of uses and development is intended to conserve the "scenic,

environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor⁴⁷

38. Specifically, local governments within the boundaries of the MRCCA are obliged to "update their local plans and ordinances to incorporate the new standards" and "establish a permit program for vegetation management and land alterations in specific environmentally sensitive areas."⁴⁸

39. Additionally, within the MRCCA, use of certain reaches of the river for water supply and as a "receiving water" for treated sewage, stormwater and industrial waste effluents, is regulated for "protection and preservation of the biological and ecological functions of the MRCCA."⁴⁹

(b) The probable costs to the Agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

40. The Department maintains that the probable costs to administer the review of locally-developed "plans and ordinances," for conformance with the new performance and design standards, will be "no greater under the proposed rules than under the Executive Order [79-19] and, therefore, does not require an increase in DNR costs"⁵⁰

41. Moreover, the Department maintains that it will undertake a number of measures intended to mitigate the cost and budgetary impact of administering the review process; including: issuing "model plans and ordinances, model mitigation measures, maps, and other tools to aid local implementation"; providing "guidance, training and resources to local governments"; and implementing a staggered schedule of notification and plan adoption with local units of government.⁵¹

42. Further, the Department projects that state and regional agencies, such as the Minnesota Department of Transportation and the Metropolitan Airports Commission may incur nominal costs, in order to ensure that their site plans and projects comply with the new rules.⁵²

43. For these reasons, the Department does not project that the proposed rules will have an impact, either positively or negatively, on state revenues.⁵³

⁴⁷ Ex. 3 at 9-10.

⁴⁸ *Id.* at 9.

⁴⁹ *Id.* at 10.

⁵⁰ *Id.*

⁵¹ *Id.* at 10-11.

⁵² *Id.* at 11.

⁵³ *Id.*

- (c) **The determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

44. The Department asserts that the proposed rules represent significant regulatory relief, because the regulations better reflect the differing local conditions along the length of the river corridor than the regulations under Executive Order 79-19. Specifically, the Department maintains that the rules are less costly and less intrusive because they defer to "local governments' underlying zoning where local zoning meets the purposes of the rules, and by providing flexibility to local governments to address special circumstances and still meet the underlying the purpose of the MRCCA."⁵⁴

45. Additionally, the Department posits that "[f]or those issues not adequately addressed by Executive Order 79-19 or that were inadequately addressed by other existing regulations," a modified set of state regulations were necessary to meet the requirements in Minn. Stat. § 116G.15, while minimizing "costs and potential intrusion on local control and property rights"⁵⁵

- (d) **A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

46. During both the 2009 and 2013 legislative sessions, the Minnesota Legislature directed the Department to undertake rulemaking that would establish new districts within the MRCCA, standards and guidelines for development within each district, and rules for administration of the MRCCA program.⁵⁶

47. Because of these directives, the Department could not identify methods, other than rulemaking, to provide the required relief.⁵⁷

- (e) **The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

48. The Department estimates that because local units of government and other agencies "already expend resources to comply with the requirements of Executive Order 79-19," the compliance costs associated with the proposed rules will only result in "modest changes" to the amounts that are incurred now.⁵⁸

⁵⁴ *Id.* at 12.

⁵⁵ *Id.*

⁵⁶ *Id.* at 13.

⁵⁷ *Id.*

⁵⁸ *Id.*

49. It projects that among the activities that may result in added effort and costs for governmental units are: new permit requirements for vegetation management, land alteration, stormwater management, development of ADA-compliant facilities, aggregate mining and extraction, and wireless communication facilities. Further the additional costs may follow the requirements for notice of certain actions - such as proposed variances, conditional uses, MRCCA plans and new ordinances - to the National Park Service and adjoining communities.⁵⁹

(f) The probable costs or consequences of not adopting the proposed rule, including those costs borne by individual categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

50. The Department maintains preservation of water quality and natural landscapes within the MRCCA, through the proposed rules, will avoid costly consequences to parcels along the river corridor. The Department asserts:

These consequences may include poor water quality, erosion and sedimentation from improperly managed shorelines, less resilient fish and wildlife populations, alteration of scenic resources, limited recreational resources, and the loss of natural shorelines, bluffs, and native plant communities. These consequences, in many cases, translate to economic costs including increased costs of water purification for drinking water, invasive species control, and increased dredging costs to maintain transportation channels.

There may also be indirect costs to the public and property owners if the proposed rules are not adopted, including restoration and remediation expenses for degraded resources, fewer tourism and recreational dollars spent in local communities, and decreased economic development potential.⁶⁰

51. Moreover, the Department argues that continuing the regulatory practices of Executive Order 79-19, extends regulatory inconsistencies and uncertainty, which is costly to developers, stakeholders and regulated parties.⁶¹

(g) An assessment of any differences between the proposed rules and existing federal regulation and a specific analysis of the need for and reasonableness of each difference.

⁵⁹ *Id.*

⁶⁰ *Id.* at 15.

⁶¹ *Id.* at 15-16.

52. As noted above, Congress has refrained, for the time being, from regulating practices and uses within the MRCCA. Thus, the Department maintains that the "proposed rules do not conflict with federal regulations."⁶²

53. The Department notes further that as to other conditions, which occur in both the MRCCA and elsewhere, such as the regulation of floodplain practices, the applicable federal standards "would not be affected by the proposed rules."⁶³

(h) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

54. The Department maintains that as a result of its choice of law provision, in proposed rule 6106.0030, subpart 4, it is working to reduce conflicts with other regulatory provisions. This proposed rule provides: "[i]n case of a conflict between this chapter and any other rule or ordinance, the more protective provision applies." The Department notes:

For example, in some instances the proposed MRCCA rules have more restrictive standards for structure and bluff setbacks subdivisions, vegetation removal, and land alteration than the shoreland management program. Thus in the MRCCA these standards would take precedence over the shoreland requirements.⁶⁴

55. Moreover, the Department argues that on the occasions when both the proposed MRCCA rules and the shoreland management rules regulate the same subject, such as with stormwater management, it is possible "to fully comply with both rules"⁶⁵

56. The Administrative Law Judge finds that the Department satisfied the evaluation requirements of Minn. Stat. § 14.131.

2. Consultation with the Commissioner of Minnesota Management and Budget (MMB)

57. As required by Minn. Stat. § 14.131, by letter dated February 23, 2016, the Commissioner of MMB responded to a request by the Department to evaluate the fiscal impact and benefit of the proposed rules on local units of government.⁶⁶

58. MMB reviewed the Department's proposed rules and concluded that as a result of the Department's survey of local governments and assessments of the costs of

⁶² *Id.* at 16.

⁶³ *Id.*

⁶⁴ *Id.* at 16-17.

⁶⁵ *Id.* at 17.

⁶⁶ Ex. 9.

new requirements that it “adequately analyzed and presented the potential costs and benefits of the proposed rules on local units of government.”⁶⁷

3. Performance-Based Regulation

59. The Administrative Procedure Act also requires an agency to describe how it has considered and implemented the legislative policy supporting performance based regulatory systems. A performance-based rule is one that emphasizes superior achievement in meeting the Department’s regulatory objectives and maximum flexibility for the regulated party and the Department in meeting those goals.⁶⁸

60. The Department asserts that the proposed rules meet the state’s objectives for flexible, performance-based standards. It maintains that the proposed rules provide “additional flexibility for local governments and property owners” over Executive Order 79-19; include performance-based stormwater runoff reduction standards; and regulatory incentives “to create conservation subdivisions and developments that protect or enhance key features and resources.” The Department argues that the proposed rules will “ease implementation, increase efficiency, eliminate ambiguity, and simplify administrative procedures for local governments and agencies to administer.”⁶⁹

61. Likewise important, according to an analysis undertaken by the City of Saint Paul, there will be 310 fewer nonconforming structures within the MRCCA under the proposed rules than under the City’s current ordinance.⁷⁰

4. Summary

62. The Administrative Law Judge finds that the Department has met the requirements set forth in Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems, and the fiscal impact on units of local government.

F. Cost to Small Businesses and Cities under Minn. Stat. § 14.127

63. Minn. Stat. § 14.127, requires the Department to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.” The Department must make this determination before the close of the hearing record. The Administrative Law Judge must review the determination and approve or disapprove it.⁷¹

⁶⁷ *Id.* at 2.

⁶⁸ Minn. Stat. §§ 14.002, .131.

⁶⁹ Ex. 3 at 17.

⁷⁰ DEPARTMENT’S POST-HEARING COMMENTS at 7.

⁷¹ Minn. Stat. § 14.127, subds. 1, 2.

64. The Department determined that the cost of complying with the proposed rule changes will not exceed \$25,000 for any business or any statutory or home rule charter city.⁷²

65. It grounds this analysis on three key contentions, namely that: (a) under Minn. Stat. § 14.38 (2016) a rule is ordinarily effective “five working days after its notice of adoption is published in the State Register”; and (b) “[l]ocal governments within the Mississippi River Corridor Critical Area must adopt, administer, and enforce plans and ordinances consistent” with proposed Part 6106; and (c) “local governments across the MRCCA will not be required to begin work to amend and adopt MRCCA plans and ordinances to meet or exceed the standards set forth in these proposed MRCCA rules until the second year after adoption of these rules, at the earliest.”⁷³

66. Because of this regulatory lag between publication of the rules in the *State Register*, and the later effective dates of local ordinances that incorporate the new state standards, the Department contends that there will be no costs complying with a proposed rule in the first year after the rule takes effect for small cities or small businesses.⁷⁴

67. In its comments, however, the Department does not set forth all of the relevant features of Minn. Stat. § 14.38, subd. 1. The statute provides:

Every rule, regardless of whether it might be known as a substantive, procedural, or interpretive rule, which is filed in the Office of the Secretary of State as provided in sections 14.05 to 14.28 shall have the force and effect of law five working days after its notice of adoption is published in the State Register **unless** a different date is required by statute or **a later date is specified in the rule.**⁷⁵

68. In this particular case, the proposed rules do indeed provide for later effective dates of the standards that will regulate uses and development within the MRCCA. This is because the standards regulating uses and development of property come into being through local ordinances; ordinances which only “have the force and effect of law” once they are approved by the Department. As proposed Minn. R. 6106.0060, subp. 3 and Minn. R 6106.0070, subp. 3(H) state:

Local governments within the Mississippi River Corridor Critical Area **must adopt, administer, and enforce plans and ordinances consistent with this chapter.** Plans and ordinances must be submitted to the Metropolitan Council for review and must be approved by the commissioner before they are adopted as provided under part 6106.0070.... For the purpose of this part, “consistent” means that **each local plan and ordinance**, while it may be structured or worded differently, **meets the purpose, scope, and**

⁷² Ex. 3 at 20.

⁷³ Ex. 2 at 15; Ex. 3 at 19.

⁷⁴ DEPARTMENT’S POST-HEARING COMMENTS, Attachment 1 at 4.

⁷⁵ Minn. Stat. § 14.38, subd. 1 (emphasis added).

numeric thresholds and standards set forth in this chapter. Plans and ordinances that are not consistent with this chapter require approval of flexibility, according to part 6106.0070, subpart 6

....

Only those plans and ordinances approved by the commissioner have the force and effect of law.⁷⁶

69. Likewise important, one township - Grey Cloud Island - indicated that local compliance costs associated with the proposed rules will exceed \$25,000 within the first year.⁷⁷

1. Construing the Terms of Minn. Stat. § 14.131

70. In the view of the Administrative Law Judge, the Department does not read the provisions Minn. Stat. § 14.127 correctly and has not developed an accurate estimate of the costs that small businesses or small cities will incur in complying with the proposed rules.⁷⁸

71. The legislature's purpose when enacting Minn. Stat. § 14.127, was to better understand the impact of its regulatory delegations. For example, in its 1993 review of Minnesota's rulemaking process, the State Commission on Reform and Efficiency observed that the legislature is often "not aware of the specific costs of preparing and adopting the rules it authorizes or requires" and "lacks cost information when considering bills authorizing rulemaking."⁷⁹ In this context, the provisions of Minn. Stat. § 14.127 operate as a self-check against the legislature misjudging the cost of regulatory programs when it delegates rulemaking authority.

72. The structure and text of the exemptions in Minn. Stat. § 14.127, subd. 4, confirm this conclusion. Subdivision 4 provides that there is no safe-harbor from regulatory compliance for small cities and small businesses when:

- (a) the Legislature has appropriated sufficient funds for the costs of complying with the proposed rule;
- (b) the proposed rule follows from "a specific federal statutory or regulatory mandate";

⁷⁶ Ex. 2 at 15, 19; see also Ex. 2 at 16 (Proposed Minn. R 6106.0060, subp. 7(C)) ("Cities must ... adopt, administer, and enforce plans and ordinances as provided under part 6106.0070, subpart 3.")

⁷⁷ Ex. 3 at 20; see also Comments of the City of Newport at 4 (June 16, 2016) (Requesting a delay in implementation of the proposed regulations until an appropriation from the legislature for defraying local compliance costs.)

⁷⁸ See Minn. Stat. § 14.127.

⁷⁹ See Finding 6, *Reforming Minnesota's Administrative Rulemaking System* (State Commission on Reform and Efficiency, 1993.).

- (c) the rules were promulgated under the limited exemption of the "good cause exempt" rulemaking procedure;
- (d) the Legislature exempted the proposed rules from compliance with Chapter 14 rulemaking procedures;
- (e) the rules were promulgated by the Public Utilities Commission; or
- (f) the Governor waives the safe-harbor provisions by filing a notice with both houses of the Legislature and publishing the same in the *State Register*.

Individually, and collectively, these exemptions reflect a single underlying assumption: namely, the legislature assumes that when it makes a delegation of rulemaking authority, the newly-authorized rules will not result in compliance costs of more than \$25,000 for a small city or small business during the first year. If that cost assumption is not generally true for a particular agency (such as the Public Utilities Commission), or untrue with respect to a particular program (such that appropriation accompanies the rulemaking delegation), one of the listed exemptions will apply. In all other cases, the legislature evidences its desire to renew the discussion of compliance costs, after input from the agency and interested stakeholders.⁸⁰

73. Moreover, to accept the Department's view that the period for assessing compliance costs begins to run from shortly after publication of the rules in the *State Register*, even when the substantive requirements of those rules will not become effective for years later, does real violence to the statutory scheme. It cancels the provisions of Minn. Stat. § 14.38, subd. 1, which provides that substantive standards in administrative rules (such as those in this rulemaking) may become effective on dates different than "five working days after its notice of adoption is published in the State Register"⁸¹

74. Likewise, the Department's reading of the statute significantly narrows the protections for small businesses and small cities. Under Minn. Stat. § 14.127, qualifying small cities and small businesses may opt-out of costly regulatory programs until "the rules are approved by a law enacted after the agency determination or administrative law judge disapproval."⁸² By contrast, because the Department has structured the rules so that the substantive, cost-driving features of the regulations have "the force and effect of law" more than one calendar year after the rules have been published in *State Register*, the only protection small cities and small businesses have against high compliance costs (if the Department's view is accepted) is a one-year head start on lobbying the Legislature for relief. The difference between a present right to "opt-out" of a regulatory program, and the opportunity to request that those same small cities and

⁸⁰ Minn. Stat. § 14.127, subd. 4.

⁸¹ Minn. Stat. § 14.38, subd. 1.

⁸² Minn. Stat. § 14.127, subd. 4.

small businesses be exempted from that program in future, is the difference between something very significant and nearly nothing at all.

75. Lastly, if the Department's interpretation is accepted it would all but end the continuing, inter-branch dialogue on compliance costs that the legislature hoped for when it enacted Minn. Stat. § 14.127: Agencies would need only to place a calendar year in between the publication of rules, and imposition of very high regulatory costs, in order to avoid greater scrutiny. This is a very simple task for regulators with both patience and modest drafting skills.

76. The Department's reading of Minn. Stat. § 14.127 is too narrow.⁸³

77. The Administrative Law Judge finds that the agency has made the determination required by Minn. Stat. § 14.127, but that determination is not adequately supported in the rulemaking record. The hearing record does not establish that the total compliance costs for qualifying small city and small business will be less than \$25,000 in the first year following the efficacy of the minimum standards in Part 6106 "for use, and development of land within the Mississippi National River and Recreation Area."⁸⁴

78. The cost determination is disapproved under Minn. Stat. § 14.127.

2. The Effect of Disapproving the Cost Calculation

79. As provided in Minn. Stat. § 14.127, subd. 1, qualifying small businesses and small cities may be able to claim a temporary exemption from compliance of the proposed rules. The statute states:

any business that has less than 50 full-time employees or any statutory or home rule charter city that has less than ten full-time employees may file a written statement with the agency claiming a temporary exemption from the rules. Upon filing of such a statement with the agency, the rules do not apply to that business or that city until the rules are approved by a law enacted after the agency determination or administrative law judge disapproval.⁸⁵

80. Importantly, however, the "safe harbor" provisions will not apply if the Governor waives application of these provisions, sends notice of the waiver "to the

⁸³ See *Good Neighbor Care Centers, Inc. v. Minnesota Dep't of Human Servs.*, 428 N.W.2d 397, 401 (Minn. Ct. App. 1988) ("[S]tatutes are to be construed according to the legislative intent, as reflected in the statute's purpose, the consequences of any particular interpretation, and administrative interpretations. It is presumed that the legislature intends the entire statute to be effective, intends to favor the public interest over private interests, and does not intend to violate the constitution or produce an unreasonable result."); Minn. Stat. § 645.17 (1) (2016) ("In ascertaining the intention of the legislature the courts may be guided by the following presumptions ... the legislature does not intend a result that is absurd ... or unreasonable.").

⁸⁴ See *generally* Ex. 2 at 1 (Proposed Minn. R. 6106.0030).

⁸⁵ Minn. Stat. § 14.127, subd. 3.

speaker of the house and the president of the senate” and publishes “publish notice of this determination in the State Register.”⁸⁶

G. Adoption or Amendment of Local Ordinances

81. Under Minn. Stat. § 14.128 (2016), the Department must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. The Department must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.⁸⁷

82. Generally rules like these proposed rules, which require adoption or amendment of an ordinance, do not take effect upon publication in the *State Register* but require the Department to comply with a statutory waiting period set forth in Minn. Stat §14.128, subds. 1 and 2. In this instance, however, the rules are exempted from the statutory waiting period because the Department was directed by law to adopt rules “as are necessary for the administration of the Mississippi River corridor critical area program.”⁸⁸

83. The Department concluded that local governments will need to adopt or amend ordinances in order to comply with the proposed rules.⁸⁹

84. The Administrative Law Judge finds that the Department has made the determination required by Minn. Stat. § 14.128 and approves that determination.

IV. Rulemaking Legal Standards

85. The Administrative Law Judge must make the following inquiries: Whether the agency has statutory authority to adopt the rule; whether the rule is unconstitutional or otherwise illegal; whether the agency has complied with the rule adoption procedures; whether the proposed rule grants undue discretion to government officials; whether the rule constitutes an undue delegation of authority to another entity; and whether the proposed language meets the definition of a rule.⁹⁰

86. Under Minn. Stat. § 14.14, subd. 2; Minn. R. 1400.2100, the agency must establish the need for, and reasonableness of, a proposed rule by an affirmative presentation of facts. In support of a rule, the agency may rely upon materials developed for the hearing record,⁹¹ “legislative facts” (namely, general and well-established principles, that are not related to the specifics of a particular case, but which

⁸⁶ Minn. Stat. § 14.127, subd. 4.

⁸⁷ Minn. Stat. § 14.128, subd. 1.

⁸⁸ See Minn. Stat. § 14.128, subd. 3(2); Minn. Stat. § 116G.15, subds. 2(a), 3, 4, 7.

⁸⁹ Ex. 3 at 18.

⁹⁰ See Minn. R. 1400.2100.

⁹¹ See *Manufactured Housing Institute v. Petterson*, 347 N.W.2d 238, 240 (Minn. 1984); *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991).

guide the development of law and policy),⁹² and the agency's interpretation of related statutes.⁹³

87. A proposed rule is reasonable if the agency can "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."⁹⁴ By contrast, a proposed rule will be deemed arbitrary and capricious where the agency's choice is based upon whim, devoid of articulated reasons or "represents its will and not its judgment."⁹⁵

88. An important corollary to these standards is that when proposing new rules an agency is entitled to make choices between different possible regulatory approaches, so long as the alternative that is selected by the agency is a rational one.⁹⁶ Thus, while reasonable minds might differ as to whether one or another particular approach represents "the best alternative," the agency's selection will be approved if it is one that a rational person could have made.⁹⁷

89. Because both the Department and the Administrative Law Judge suggested changes to the proposed rule language after the date it was originally published in the *State Register*, it is also necessary for the Administrative Law Judge to determine if this new language is substantially different from that which was originally proposed.

90. The standards to determine whether any changes to proposed rules create a substantially different rule are found in Minn. Stat. § 14.05, subd. 2(b). The statute specifies that a modification does not make a proposed rule substantially different if:

- (1) "the differences are within the scope of the matter announced . . . in the notice of hearing and are in character with the issues raised in that notice";
- (2) the differences "are a logical outgrowth of the contents of the . . . notice of hearing, and the comments submitted in response to the notice"; and
- (3) the notice of hearing "provided fair warning that the outcome of that rulemaking proceeding could be the rule in question."

91. In reaching a determination regarding whether modifications result in a rule that is substantially different, the Administrative Law Judge is to consider whether:

⁹² Compare generally *United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976).

⁹³ See *Mammenga v. Agency of Human Services*, 442 N.W.2d 786, 789-92 (Minn. 1989); *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

⁹⁴ *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

⁹⁵ See *Mammenga*, 442 N.W.2d at 789; *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n*, 251 N.W.2d 350, 357-58 (Minn. 1977).

⁹⁶ *Peterson v. Minn. Dep't of Labor & Indus.*, 591 N.W.2d 76, 78 (Minn. Ct. App. 1999).

⁹⁷ *Minnesota Chamber of Commerce*, 469 N.W.2d at 103.

- (1) "persons who will be affected by the rule should have understood that the rulemaking proceeding . . . could affect their interests";
- (2) the "subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the . . . notice of hearing"; and
- (3) "the effects of the rule differ from the effects of the proposed rule contained in the . . . notice of hearing."⁹⁸

V. Rule by Rule Analysis

92. Several sections of the proposed rules were not opposed by any member of the public and were adequately supported by the SONAR. Accordingly, this Report will not necessarily address each comment or rule part. Rather, the discussion that follows below focuses on those portions of the proposed rules as to which commentators prompted a genuine dispute as to the reasonableness of the Department's regulatory choice or otherwise requires closer examination.

93. The Administrative Law Judge finds that the Department has demonstrated by an affirmative presentation of facts the need for and reasonableness of all rule provisions that are not specifically addressed in this Report.

94. Further, the Administrative Law Judge finds that all provisions that are not specifically addressed in this Report are authorized by statute and that there are no other defects that would bar the adoption of those rules.

A. Revisions by the Department to Remove Ambiguity and Uncertainty

95. In filings on July 6 and July 13, 2016, the Department submitted a number of revisions to the text of the proposed rules in response to the stakeholder feedback.

96. The Department submitted 19 proposed revisions in its post-hearing comments dated July 6, 2016.⁹⁹

97. The Department submitted seven additional revisions in its rebuttal comments dated July 13, 2016.¹⁰⁰

⁹⁸ See Minn. Stat. § 14.05, subd. 2.

⁹⁹ DEPARTMENT'S POST-HEARING COMMENTS at 3-7 (revising proposed Minn. R. 6105.0050, subp. 8(A) (Bluff Definition); 6105.0050, subp. 8(B) (Bluff Definition); 6105.0050, subp. 68 (Shore Impact Zone Definition); 6106.0050 subp. 39 (Native Plant Community Definition); 6106.0050, subp. 72 (Steep Slope Definition); 6106.0060, subp. 3 (Plans and Ordinances); 6106.0060, subp. 5(C) (Duties of Commissioner); 6106.0070, subp. 6(A) (Regulatory Flexibility); 6106.0070, subp. 6(C)(1)(a) (Regulatory Flexibility); 6106.0100, subp. 4 (River Neighborhood District); 6106.0100, subp. 9 (C)(1)(d) (District Boundaries); 6106.0120, subp. 2(A)(4) (Structure Height - SR District); 6106.0130, subp. 8(B) (Public Recreational Facilities); 6106.0130, subp. 8(E) (Public Signs & Kiosks); 6106.0130, subp. 8 (Public Recreational Facilities); 6105.0150 (Vegetation Management); 6106.0160, subp. 4 (Rock Riprap); 6106.0170, subp. 4(J) (Open Space); 6105.0180 (Exemption Table)).

98. None of the Department's 26 revisions would result in a substantial change from the rule as originally proposed, as those terms are used in Minn. Stat. § 14.05, subd. 2(b).

99. Twenty-five of the twenty-six proposed revisions are needed and reasonable. The sole exception, with respect to proposed Minn. R. 6106.0050, subp. 39, is addressed below.

B. Minn. R. 6106.0050, subp. 39

100. In its January 28, 2016 draft, RD 4240, the Department proposed to define the term "native plant community" as "a plant community that has been mapped as part of the Minnesota biological survey or other scientifically based studies."¹⁰¹

101. In a letter dated June 14, 2016, and introduced as an exhibit at the public hearing, the Administrative Law Judge expressed concern that the proposed definition was not sufficiently definite to inform officials and stakeholders which items qualify as native plant communities.¹⁰²

102. In its July 6, 2016 post-hearing comments, the Department proposed to revise proposed rule 6106.0050, subpart 39, as:

a plant community that has been mapped **identified** as part of the Minnesota biological survey or other scientifically based studies, **such as the USGS National Vegetation Classification or the USGS-NPS Vegetation Characterization Program.**¹⁰³

103. The Department explained the rationale and objectives of the proposed revision in this way:

The definition is intended to reference studies for use by local governments in identifying/mapping native plant communities, not to provide specifics of what "native plant communities" are.... As such, the DNR thought this phrase was sufficient, but could modify the proposed rules to include examples of the types of "other scientifically based studies," such as the USGS National Vegetation Classification or the USGS-NPS Vegetation Characterization Program.¹⁰⁴

104. The definition of what qualifies as a "native plant community" is significant because, from this definition a regulatory duty to maintain these plants follows -

¹⁰⁰ DEPARTMENT'S REBUTTAL COMMENTS at 6-8 (revising proposed Minn. R. 6106.0050, subp. 71 (State or Regional Agency Definition); 6106.0060, subp. 7(D)(3) (Duties of Cities); 6106.0080, subp. 4 (Conditional and Interim Use Permits); 6106.0080, subp. 7 (Accommodating Disabilities); 6106.0120 (Dimensional Standards); 6106.0140, subp. 5 (Stairways, Lifts and Landings); 6105.0160 subp. 3 (Land Alteration)).

¹⁰¹ Ex. 2 at 7 (Proposed Minn. R. 6106.0050, subp. 39).

¹⁰² PUBLIC HEARING EXHIBIT 20 at 2.

¹⁰³ DEPARTMENT'S POST-HEARING COMMENTS at 4.

¹⁰⁴ *Id.*, Attachment 2 at 1.

including a duty to replace any removed items with "vegetation that provides equivalent biological and ecological functions...."¹⁰⁵ Additionally, areas with qualifying native plant communities are slated to receive greater protection under the regulations, in the designation of "primary conservation areas."¹⁰⁶

105. In the view of the Administrative Law Judge, providing the examples of two "scientifically based studies," does not narrow the otherwise unduly broad definition. The term "scientifically based" presumably means a study that was undertaken according to the scientific method; which *Merriam-Webster's* dictionary defines as:

principles and procedures for the systematic pursuit of knowledge involving the recognition and formulation of a problem, the collection of data through observation and experiment, and the formulation and testing of hypotheses.¹⁰⁷

106. There is simply no way for a regulated party to know whether a particular specie of plant has ever been identified by someone else, using data and the empirical testing of hypotheses. In order to meet the regulatory standard, therefore, local landowners would need to guess as to which flora qualifies as a "native plant." Likewise, the standards that the Department might later use in assessing the scientific rigor of an earlier plant identification are neither stated elsewhere in the rule, nor a part of common understanding, so as to make the intended meaning clear.¹⁰⁸

107. Because the proposed rule fails to provide reasonable notice of when the regulatory standard applies, it is defective.¹⁰⁹

108. One possible cure to the ambiguity in subpart 39, would be to limit the regulatory definition to:

a plant community that has been **identified** as part of the Minnesota biological survey or **biological survey issued by a local, state or federal agency.**

Such a revision would be broad enough to include both the USGS National Vegetation Classification and the USGS-NPS Vegetation Characterization Program (each of which

¹⁰⁵ Ex. 2 at 51-52 (Proposed Minn. R. 6106.0150, subp. 5(D) and 6(B)(1)).

¹⁰⁶ Ex. 2 at 59 (Proposed Minn. R. 6106.0170, subp. 4(C)).

¹⁰⁷ *Merriam-Webster Online Dictionary* (Definition: Scientific Method) (last accessed August 1, 2016) (<http://www.merriam-webster.com/dictionary/scientific%20method>).

¹⁰⁸ See, e.g., *In the Matter of the Proposed Rules Governing the Licensure of Treatment Programs for Chemical Abuse and Dependency and Detoxification Programs, Minnesota Rules, Chapter 9530*, OAH Docket No. 3-1800-15509-1 (2004) ("The Administrative Law Judge finds the requirement that a program have a particular licensure, and 'any additional certifications required by the department,' to be impermissibly vague and a defect in the rule.").

¹⁰⁹ See *In the Matter of Proposed Amendments to Rules Governing Apprenticeship Wages*, OAH Docket No. 7-1900-17022-1, slip op. at 36 (2006).

are promulgated under the authority of Office of Management and Budget Circular A-16), and the surveys in use by local governments.¹¹⁰

109. Such a revision would not result in a substantial change from the rule as originally proposed, as those terms are used in Minn. Stat. § 14.05, subd. 2(b).

VI. Additional Actions Urged By Stakeholders

110. During the three public hearings, and thereafter during the public comment periods, there were five key critiques of the proposed land use standards. Each of these critiques is addressed below.

111. In each of these contexts, however, it bears emphasizing that the role of the Administrative Law Judge is not to fashion requirements that the Judge regards as "the best" for a particular regulatory purpose; but rather, to determine whether the Department has made a reasonable selection among the regulatory options it had. This is because the delegation of rulemaking authority is from the Minnesota Legislature to the Department; and not to the Judge.¹¹¹ In each of these instances below, the Department's regulatory choices were needed and reasonable.

A. Bluff Standards - Minn R. 6106.0050, subps. 8-9; and 6106.0120, subp. 3(B)

112. Several early commentators questioned the absence of regulatory standards for mapping of bluff lines and contours in proposed part 6106.¹¹²

113. The Department persuasively noted that while an earlier version of Minn. Stat. § 116G.15 obliged the Department to develop a series of bluff maps, this requirement was removed from the law in 2013.¹¹³ Instead, the regulatory definitions and materials separately developed by the Department will be used to guide local governments in mapping bluff areas within their respective jurisdictions.

114. Additionally, still other commentators asserted that a single grade standard for the entire MRCCA corridor, before bluff land protections were imposed, was unduly restrictive.¹¹⁴

¹¹⁰ See DEPARTMENT'S POST-HEARING COMMENTS, Attachment 2 at 1.

¹¹¹ See generally, *Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006) ("Our role when reviewing agency action is to determine whether the agency has taken a 'hard look' at the problems involved, and whether it has 'genuinely engaged in reasoned decision-making'") (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977)); *Manufactured Hous. Inst.*, 347 N.W.2d at 244 ("Agencies must at times make judgments and draw conclusions from suspected, but not completely substantiated, relationships between facts, from trends among facts, from theoretical projections from imperfect data, from probative preliminary data not yet certifiable as fact, and the like") (quoting *Ethyl Corp. v. EPA*, 541 F.2d 1, 28 (D.C. Cir.), cert. denied, 426 U.S. 941 (1976)).

¹¹² See generally Transcript (Tr.) Vol. I at 31-32 (Shillcox).

¹¹³ 2013 Laws of Minnesota, ch. 137, art. 2, §§ 18-21.

¹¹⁴ See, e.g., Tr. Vol. II at 107 (Tiedeken).

115. The Administrative Law Judge disagrees. The Department's selection of an 18 percent grade standard was adequately supported by its studies on earlier slope failures, Global Information System mapping of the corridor area and review of locally-developed bluff standards that are now in place.¹¹⁵

B. District Boundaries - Minn R. 6106.0100

116. There were a number of requests to adjust the designation of particular districts within the corridor - both to urge allowing greater building height or density within particular areas, and conversely, more stringent restrictions on building height and density within districts.¹¹⁶

117. The Administrative Law Judge concludes that the proposed districts, as modified by the Department,¹¹⁷ which are subject to still further adjustment as conditions change,¹¹⁸ are adequately supported by the rulemaking record.

C. Height Requirements and Tiering - Minn R. 6106.0120

118. Several commentators expressed the view that the Conditional Use Permit (CUP) process provides inadequate protections against harmful development and higher densities within the MRCCA corridor.¹¹⁹

119. The Administrative Law Judge concludes that the use of visual impact assessments and local CUP processes,¹²⁰ combined with oversight of local permitting decisions by the state courts,¹²¹ is adequately supported by the rulemaking record.

D. Recreational Facilities and Paved Trails - Minn R. 6106.0130, subp. 8

120. Several commentators expressed the view that the standards for recreational facilities, and paved areas within bluff zones, are unduly restrictive.¹²²

121. The Administrative Law Judge concludes that the restrictions are related to protection of the integrity of bluff faces, and that site-specific accommodations are

¹¹⁵ Ex. 3 at 22-28; Exs. 28, 29; DEPARTMENT'S POST-HEARING COMMENTS, Attachments 6, 8, 9 and 10.

¹¹⁶ See, e.g., Comments of Aggregate Industries (July 1, 2016); Comments of Building Owners and Managers Association (June 27, 2016); Comments of the City of St. Paul (July 6, 2016); Comments of Cordelia S.C. Pierson (July 6, 2016); Comments of Friends of Mississippi River (July 6 and July 13, 2016); Comments of Friends of the Parks and Trails (June 30, 2016); Comments of Minneapolis Park and Recreation Board (July 6, 2016); Comments of PAS Associates (June 15, 2016); Comments of St. Anthony's Falls Alliance (July 5, 2016).

¹¹⁷ See Ex. 3 at 42-44; DEPARTMENT'S POST-HEARING COMMENTS, Attachment 4.

¹¹⁸ Ex. 2 at 34-35 (Proposed Minn. R. 6106.0100, subp. 9(C)).

¹¹⁹ Comments of Dale Herron (July 5, 2016); Comments of Parks and Trails Council of Minnesota (July 1, 2016); Comments of Ronald Vantine (July 4, 2016); Tr. Vol. III at 182-83 (Erstad); Tr. Vol. III at 204-05 (Bernthal); Tr. Vol. III at 207 (Viske); Tr. Vol. III at 229 (Forney); Tr. Vol. III at 250 (Uzarek).

¹²⁰ See Ex. 3 at 45-47; DEPARTMENT'S POST-HEARING COMMENTS, Attachment 12.

¹²¹ See Minn. Stat. § 394.27, subd. 9; Minn. Stat. § 462.361, subd. 1 (2016).

¹²² See, e.g., Tr. Vol. II at 110-11 (Tiedeken).

available through requests for local ordinance flexibility and variances.¹²³ The proposed development limits are adequately supported by the rulemaking record.¹²⁴

E. Land Development Standards and Set-Asides - Minn R. 6106.0170

122. A number of commentators maintained that the set-aside requirements for conservation areas should apply to tracts of land smaller than ten acres to provide better protection of corridor resources.¹²⁵

123. The Administrative Law Judge concludes that the minimum acreage requirements adequately balance the need for such conservation areas with the burden that management of these areas places upon local units of government.¹²⁶ This is particularly true because there are alternatives to municipal or township management of conservation areas (through deed restrictions or private conservatories) for smaller parcels.¹²⁷

Based upon the Findings of Fact and the contents of the rulemaking record, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Department gave notice to interested persons in this matter.
2. The Department has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.
3. The Administrative Law Judge concludes that the Department has fulfilled its additional notice requirements.
4. Except as noted in Finding 107, the Department has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1; 14.15, subd. 3; and 14.50 (i), (ii).
5. The Notice of Hearing, the proposed rules and SONAR complied with Minn. R. 1400.2080, subp. 5 (2015).
6. Except as noted in Finding 107, the Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, 14.50.

¹²³ See Exs. 28, 29; DEPARTMENT'S RESPONSE TO COMMENTS, D.1. Attachment 1, Part F.

¹²⁴ See Ex. 3 at 45-47; DEPARTMENT'S POST-HEARING COMMENTS, Attachment 12.

¹²⁵ See, e.g., Comments of Friends of the Parks and Trails (June 30, 2016); Tr. Vol. II at 133 (Diamond); Tr. Vol. III at 253-54 (Clark).

¹²⁶ Ex. 3 at 62-66.

¹²⁷ *Id.* at 65.

7. The modifications to the proposed rules suggested by the Department after publication of the proposed rules in the *State Register* are not substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05, subd. 2; 14.15, subd. 3.

8. The modifications to the proposed rules suggested by the Administrative Law Judge after publication of the proposed rules in the *State Register* are not substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05, subd. 2; 14.15, subd. 3.

9. As part of the public comment process, a number of stakeholders urged the Department to adopt other revisions to Part 6106. In each instance, the Department's rationale in declining to make the requested revisions to its rules was well grounded in this record and reasonable.

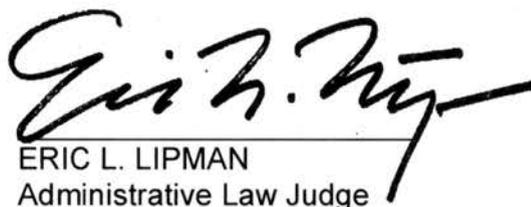
10. A Finding or Conclusion of need and reasonableness with regard to any particular rule subsection does not preclude, and should not discourage, the Department from further modification of the proposed rules - provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

Except as noted in Finding 107, **IT IS HEREBY RECOMMENDED** that the proposed amended rules be adopted.

Dated: August 10, 2016


ERIC L. LIPMAN
Administrative Law Judge

Reported: 3 Hearing Transcripts.

NOTICE

The Department must make this Report available for review by anyone who wishes to review it for at least five working days before it may take any further action to adopt final rules or to modify or withdraw the proposed rules. If the Department makes changes in the rules, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

Because the Administrative Law Judge has determined that the proposed rules are defective in certain respects, state law requires that this Report be submitted to the Chief Administrative Law Judge for her approval. If the Chief Administrative Law Judge approves the adverse findings contained in this Report, she will advise the Department of actions that will correct the defects, and the Department may not adopt the rules until the Chief Administrative Law Judge determines that the defects have been corrected.

However, if the Chief Administrative Law Judge identifies defects that relate to the issues of need or reasonableness, the Department may either adopt the actions suggested by the Chief Administrative Law Judge to cure the defects or, in the alternative, submit the proposed rules to the Legislative Coordinating Commission for the Commission's advice and comment. If the Department makes a submission to the Commission, it may not adopt the rules until it has received and considered the advice of the Commission. However, the Department is not required to wait for the Commission's advice for more than 60 days after the Commission has received the Board's submission.

If the Department elects to adopt the actions suggested by the Chief Administrative Law Judge and make no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, it may proceed to adopt the rules. If the Department makes changes in the rules other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, it must submit copies of the rules showing its changes, the rules as initially proposed, and the proposed order adopting the rules to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the Department must submit them to the Revisor of Statutes for a review of their form. If the Revisor of Statutes approves the form of the rules, the Revisor will submit certified copies to the Administrative Law Judge, who will then review them and file them with the Secretary of State. When they are filed with the Secretary of State, the Administrative Law Judge will notify the MPCA, and the MPCA will notify those persons who requested to be informed of their filing.

Minnesota Department of Natural Resources

ORDER ADOPTING RULES

Adoption of Rules Governing Mississippi River Corridor Critical Area, Minnesota Rules, chapters 6106 and 4410; Revisor's ID Number R-04240

BACKGROUND INFORMATION

1. The department has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law.
2. The department adopts the Administrative Law Judge's Report dated August 11, 2016, and incorporates the Report into this Order, except as follows.
3. The department made the following modification to the rule to cure the ambiguity identified in the Administrative Law Judge's Report:

6106.0050 Subp. 39 Definitions – Native plant community

“Native plant community” means a plant community that has been ~~mapped~~ identified as part of the Minnesota biological survey or biological survey issued or adopted by a local, state, or federal agency ~~other scientifically based studies~~.

4. The modification to the proposed rule does not make the rule substantially different because: the difference is within the scope of the matter announced and in character with the issues raised in the notice of intent to adopt rules; the modification is a logical outgrowth of the contents of the notice of intent to adopt rules and the comments submitted in response to the notice; and the modification does not diminish the fair warning that the outcome of that rulemaking proceeding could be the rule in question.
5. The rules are needed and reasonable.

ORDER

The above-named rules, in the form published in the State Register on April 11, 2016, with the modifications as indicated in the Revisor's draft, file number AR4240, dated 09/25/16, are adopted under my authority in Minnesota Statutes, section 116G.15.

Dec. 8, 2016
Date



Tom Landwehr
Commissioner of Natural Resources

CMO ROUTING SLIP — REQUEST FOR COMMISSIONER'S SIGNATURE

Subject: Rulemaking document Commissioner's Order
Division: ENF EWR FAW FOR LAM PAT OSD

Requestor/Contact: Beth Carlson, DNR Rules Coordinator
Item(s) to be signed: **Order Adopting Rules for MRCCA rules**
Signature needed by: ~~ASAP~~ *Thursday 12/8/2016*

Subject: Mississippi River Corridor Critical Area rulemaking

In this folder:

1. Order Adopting Rules (TO BE SIGNED)
2. Copies of the final Order on Review from Chief Administrative Law Judge Tammy Pust approving the rules as to legality, under a transmittal letter from Administrative Law Judge Eric Lipman.

Commissioner's office approvals:

<u>Initials</u>	<u>Date</u>		<u>NOTES:</u>
<i>BZN</i>	<i>12/9/16</i>	Asst Commissioner Naramore	
<i>JRS</i>	<i>12/13/16</i>	Deputy Commissioner Schad	
<input type="checkbox"/> Deputy requests a meeting with commissioner's office			
<i>12-8-2016 [Signature]</i>			

RETURN TO: Beth Carlson