



*Working to protect the Mississippi River  
and its watershed in the Twin Cities area.*

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Daniel Petrik  
MRCCA Rulemaking Project  
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Dear Mr. Petrik:

Friends of the Mississippi River (FMR) is a local non-profit community-based organization that works to protect and enhance the natural and cultural assets of the Mississippi River and its watershed in the Twin Cities. We have 1,700+ active members and 3,000 active volunteers who care deeply about the river's unique public values.

As you know, FMR has been engaged in the rulemaking process for the Mississippi River Corridor Critical Area for several years. We are very pleased to see that these rules are moving forward, and we look forward to their implementation at the state and local level. As you prepare the final draft rule for adoption, we appreciate the opportunity to provide these comments and sincerely hope you will give full consideration to our concerns and suggestions.

Our comments are organized into parts and subparts that follow the same order as the rules, with a section on the district maps and Table 1 at the end of the document. A brief overview summarizing our key issues is provided at the beginning of this document, followed by our detailed comments.

### **Summary**

The draft rules contain numerous provisions that will have a lasting and positive impact on the Mississippi River Corridor. We are especially pleased with the following aspects of the rules.

- Clarity and guidance for what is required in local plans and ordinances, project site plans and granting conditional use permits
- Focus on protection and enhancement of primary conservation areas, including public river corridor views
- Requiring structure setbacks for very steep slopes as well as bluffs
- Requiring a permitting process for land and vegetation alteration
- Open space dedication requirements that emphasize public access to the river and bluffs where feasible
- New tools for ecological restoration and management of native plant communities

The draft rules also contain numerous provisions that do not go far enough to protect the river's resources or provide loopholes to avoid following the rules. Our major concerns include the following:

- Flexible ordinance provision is too broad to provide adequate protection of the river's resources
- Notification to the public for plan and ordinance amendments, boundary change proposals and other discretionary items needs to be coordinated and consistent
- Scenic protections have been weakened too much through increases to maximum allowed height, removal of performance standards that prevent buildings from protruding above the treeline, decreases in screening provisions, and over-use of the CA-SR district
- Open space dedication requirements for new subdivisions has been reduced by applying a minimum acreage and reducing the percentage to be set aside

### **6106.0050 Definitions**

We are pleased by many of the changes and additions made in the definitions portion of the draft MRCCA rules. We support structure setbacks being changed to include very steep slopes as well as bluffs. We are pleased that the "Public river corridor views" has been added as a definition and included in the "Primary conservation areas" definition. We also like that performance standards are included in the corridor views definition, as this will strengthen protection for key river viewsheds. The new definitions for "Alternative design," "Ecological function," and "Selective vegetation removal," and the revised definition for "Natural vegetation" are positive additions that provide important clarification. Below, we address several definitions that we believe could be further improved and one definition to add.

#### *Subpart 10 - Bluffs*

While our concerns related to bluffs are somewhat relieved by the inclusion of the very steep slope and bluff setbacks, the bluff definition should be changed back to slopes greater than 18% instead of the proposed 30%. This definition is more protective of our sensitive river slopes, especially with climate change experts predicting more frequent and heavier rain events in the future. It will also be easier to advocate for protection of vulnerable slopes when the word "bluff" is attached to them.

#### *Subpart 32 – Impervious surface*

Retain hard armoring as part of the definition. Armoring is impervious and contributes to the reduction of natural water absorption. We agree that riprap can be pervious and should be struck from this definition.

#### *Subpart 42 – Native plant community*

In addition to including the Minnesota Biological Survey in this definition, we suggest that the definition specifically call out plant communities mapped and identified in Critical Area plans, MNRRA plans, Minnesota Land Cover & Classification System (MLCCS), and other scientifically based studies.

#### *Subpart 54 – Primary Conservation Areas*

Islands should be included in this definition as they provide important ecological functions.

#### *Subpart 58 – Public river corridor views*

This should be amended to include “views toward the river from public parkland, historic sites, public overlooks, bridges, and bridgeheads, as well as ~~and~~ views toward bluffs from the ordinary high water level of the opposite shore, as seen during the summer months.” This ensures all public river corridor views are covered by the rules.

#### *Subpart 63 – Readily visible*

This definition is good as it clarifies where a structure can be readily visible from. However, throughout the document, this term has often been changed to “minimize visibility” which is too vague and does not have a definition or reference where visibility is minimized from. We suggest this be rectified by consistently applying “readily visible” throughout the document and not “minimize visibility”. If this is not possible, “minimize visibility” should have a definition and it should include where visibility should be minimized from.

#### *Subpart 77 – Structure*

This definition should be consistent with the definition of structure in 116G.03.

#### *Subpart 78-79 – Substantial compliance*

We strongly object to the use of substantial compliance in these rules. However, if substantial compliance is retained in the rules, a definition is needed since it is not defined elsewhere in the rules. Without a definition, the minimum standards presented in this document will serve as guidelines instead of rules.

### **6106.0060 Administration of the Program**

#### *Subpart 3 – Substantial compliance*

This provision renders the entire rule vague and non-specific and will only serve to weaken protections for the river. As mentioned above, this concept does not have a definition or criteria associated with it. This is problematic as it opens the door for the rules to be abused in the future. This concept should be removed from the rules and replaced with the requirement that local plans and ordinances be consistent with the rules.

#### *Subpart 5 - Duties of commissioner*

The optional duties of the commissioner, Subpart 5F-5R, should be included in the rules as they provide specific guidance for how DNR may provide technical assistance to LGUs. City representatives asked for this assistance during the Critical Area Report stakeholder meetings in 2007.

Additionally, the following language should be added to this section: “If the Commissioner determines that the administration of the local plans and regulations are inadequate to protect

the state or regional interest, the Commissioner may institute appropriate judicial proceedings to compel proper enforcement of the plans and regulations.” This language is included in §116.09 Subpart 4. Enforcement; and in Executive Order 79-19, Standards and Guidelines for Preparing Plans and Regulations, H. Judicial Review. It is important to include this in the rules to ensure it is clear that these rules have the force of law and the DNR has recourse in the event that a local unit chooses to violate the rules in an egregious manner. Including judicial review in the rules could be an important tool in the future, even if the DNR has no intention of using it in the near-term.

#### *Subpart 7 - Duties of local governments*

To ensure that all stakeholders have ample time to review proposals and weigh in, we appreciate that the notification is proposed to be 30 days prior to taking action as opposed to 10 days. However, the actions requiring notice should be spelled out to include: plans and plan amendments, ordinances and ordinance amendments, boundary amendments, vegetation and land alteration permits, and development requiring discretionary action such as CUPs and variances. Although we strongly oppose the provision that allows for ordinance flexibility, if it ends up being included in the rules, this provision must be added to the list of actions for which notification is required.

FMR believes it is imperative that decisions regarding these actions be as transparent as possible to ensure that all stakeholders have the opportunity to review the proposed changes and weigh in. To facilitate this, we request that notification include some or all of the specific requirements that were struck from Subpart 7. D. (1). At a minimum, the “site plan as provided under Subpart 13” should be required. In addition, we want to see an improved system for notifying the public so they can weigh in. The EQB Monitor provides a great model for regular notification that could be sent out to all interested parties announcing pending LGU decisions for the MRCCA.

Lastly, we think notification to adjoining local governments should not be limited to height issues. Setbacks, water quality, surface water access/use and any major development can impact neighboring communities and should require notification.

### **6106.0070 Preparation, Review, and Approval of Plans and Ordinances**

FMR appreciates the DNR’s efforts to streamline the review process and clarify the roles of the DNR and the Met Council. We support the revised review timeline. This will give DNR and Met Council more flexibility for concurrent review, which is beneficial to all parties. That said, some of our biggest concerns are in this section as summarized below.

#### *Subpart 2 - Adoption schedule*

FMR understands the benefit of a plan and ordinance adoption schedule that aligns with the municipal comprehensive plan updates in 2018, but we are concerned that this could delay implementation of the rules. Waiting could be problematic because of the volume of work for city planners and it could delay ordinance adoption until 2020 or beyond. We see no reason plans

and ordinances cannot be adopted on a shorter time frame. In fact, for some key landscapes, the process should be expedited. We would strongly prefer to see a timeline included in the rule for all corridor cities to update their plans and ordinances. We suggest that the Mississippi Gorge cities and southern corridor cities should be notified, within the first six months of MRCCA rule adoption, that they must update their plans and ordinances. The northern part of the corridor should be notified within a year of MRCCA rule adoption.

#### *Subpart 3 – Plan and ordinance review*

We appreciate the additional language added to C that requires underlying zoning to be submitted with MRCCA ordinances where they are relevant. However, we are extremely concerned about the flexibility referred to in this section. Please see our comments under Subpart 6 below.

#### *Subpart 4 & 5 – Contents of plans and ordinances*

These requirements are generally positive and a good step towards ensuring that MRCCA plans are regularly updated and followed.

In 4.A., the purpose of the plans should remain in the rule text, as it ensures that municipal plans recognize and protect the river's sensitive areas. As is required by Minnesota Statutes 116G.15 Subpart 2, the purpose of municipal plans should include protection of sensitive scenic, cultural, historic and recreation areas in the corridor, in addition to environmental areas.

In 4.B., we like the required inclusion of maps as well as policies, and we appreciate the addition of identifying priority restoration areas. This will help significantly with managing vegetation and wildlife habitat in the corridor. Additionally, we prefer "maximize" the creation of open space in 4.B (6), instead of changing it to "provide for." Maximize is still a relative term, and it provides adequate flexibility.

#### *Subpart 6 - Flexibility requests for ordinances*

The flexibility provision is our greatest concern as it provides a loophole to get around some or all of the MRCCA rules. The criteria for approving these ordinance requests is extremely weak, and abuse of this provision could undermine the entire program. The condition that "the purposes of Minnesota Statutes, section 116G.15, are satisfied" is even more vague than Executive Order 79-19, and gives us no confidence that these flexible ordinances will adequately protect the river's resources. Most of the existing municipal ordinances for the Critical Area already meet these broad purposes, so what is to stop local units from requesting their current ordinances be approved with no modifications to reflect the new rules?

FMR strongly urges that this section be stricken from the rules. Local units already have the ability to grant CUPs and variances, and we think these provide more than enough flexibility. If this section is retained in the rules, we believe the DNR will be failing to fulfill its responsibility to administer this program. At the very least, the rules must include stronger and more specific criteria for submitting and approving ordinances that are inconsistent with the rules. The special circumstances that warrant this flexibility should be limited to specific situations (as opposed to

the language “may include the following situations.”) The current language allows the commissioner to grant prior approval to any requests, regardless of LGU circumstances. We trust the commissioner to make sound decisions, but we do not know what the future holds, and ensuring that rules are the only thing that guides those current and future decisions is in the long-term best interest of the resource.

Although our preference would be to remove the flexible ordinance provisions, below are some suggestions for improving the section.

A. Modify language to state “Local governments may...adopt ordinances that are not in strict conformity with these MRCCA rules, if the purposes of...116G.15, and the policies, purposes and scope of this chapter, are satisfied...” This language is used elsewhere in Subpart 6 and would provide better criteria than the statutory purpose alone. Additionally, we suggest strengthening the requirement that flexible ordinances be consistent with local plans by stating “...and the ordinance is consistent with the plan prepared by the local government, provided the local government has a MRCCA plan that was approved pursuant to these MRCCA rules.”

B. Add additional requirements that: (5) LGU’s submit detailed information about potential impacts to primary conservation areas and planned mitigation.

C. (1) Add to the evaluation criteria: d) comments from adjoining local governments and other stakeholders.

If retained, Subpart 6 should be further bolstered by referencing Part 6106.0060 Subpart 7. This would ensure LGUs are required to provide public notice when making a flexibility request. Additionally, an environmental review should be completed to fully understand the implications of the flexibility request. We recommend requiring an Environmental Assessment Worksheet to be completed for all flexibility requests.

Furthermore, if this section is retained, the rules should only reference substantial compliance in conjunction with a flexibility request. Substantial compliance should be replaced with strict conformance elsewhere in the rules.

## **6106.0080 Administrative Provisions for Ordinances**

### *Subpart 2 - Variances*

FMR appreciates clarification for local governments regarding variances, because variances for the MRCCA corridor have been wildly inconsistent in the past, and because variances can pose a major threat to resource protection. We also like that impacts to primary conservation areas must be considered. While we appreciate that mitigation is required, it is important to consider that many of the variances granted are to exceed height limits, and it is difficult, if not impossible, to mitigate for height impacts to scenic resources. When views are identified as primary conservation areas that will be impacted by a variance or CUP, a viewshed study should be required. Furthermore, this section should require that the local government’s

“Findings of Fact” include a finding that the variance is consistent with the policies, purposes and scope of these MRCCA rules.

#### *Subpart 5 - Mitigation*

There must be a nexus between mitigation and impact. Without such a nexus, it could be possible to destroy scenic views in exchange for rain gardens. We suggest 5.B say, “Mitigation must be proportional to and have a relationship to the impact on primary conservation areas.”

### **6106.0090 Incorporations by Reference**

FMR appreciates that these documents are grouped and listed. We especially like that they all provide the year of publication and specify “and as subsequently amended” to ensure the rules are always supporting current science and best management practices.

To better address protection of historic and cultural resources throughout the document, Minnesota Statutes Chapter 138 should be added to this section.

### **6106.0100 Districts**

#### *Subpart 1 - Establishment of districts*

Reducing the number of districts to six and the combining of CA-1 and CA-2 into CA-ROS are sensible changes that do not threaten the corridor resources, provided parks and open space are adequately protected by the CA-ROS standards.

#### *Subpart 2 - CA-ROS*

This district includes some of the most scenic portions of the MRCCA. We strongly encourage adding "scenic" to the district description in Subpart 2A. It should read, "...undeveloped tracts of high scenic and ecological value, floodplain, and undeveloped islands."

To ensure protection and expansion of open space and parks in the CA-ROS districts, we recommend changing Subpart 2B to say, "...to protect and enhance existing habitat, public river corridor views, open space and parks in accordance with regional park plans, and scenic, natural, and historic areas.”

#### *Subpart 4 - CA-RN*

In many of the areas that were changed from CA-2 to CA-RN, we would like to see the rural character be preserved. This can be accomplished by adding language to encourage vegetative screening or scenic protections within this district, especially along bluffs and shore land in the southern part of the corridor.

Also, this district should be used more broadly throughout the corridor. One suggestion for expanding the use of this district is to alter the language in Subpart 4A to say, “The CA-RN district is characterized by primarily residential neighborhoods, with some neighborhood commercial or industrial uses...” By allowing for other uses in CA-RN, it could be used in a

number of areas that are now in CA-RTC or CA-SR. We identify several areas in the maps section below where CA-RN could be used if the definition was broadened slightly.

#### *Subpart 5 - CA-RTC*

The height in this district should remain at 48 feet. The Town and Country Club located where Marshall Avenue meets the river in St. Paul is an example of a site where the maximum height should remain 48 feet or lower to maintain the natural character of the Mississippi River Gorge (see Figure 1). Within this district, vegetative screening should be maximized and buildings should be tiered



**Figure 1. View of the Town and Country Club in St. Paul from the Marshall Avenue Bridge.**

away from the river to minimize massing along the river and bluffs. Our concerns about height in this district apply in the gorge in Minneapolis and Saint Paul, but not in the areas designated CA-RTC in other communities. In the maps section below, we suggest changing the districts in the gorge to protect scenic views for public use and enjoyment of the river.

#### *Subpart 6 - CA-SR*

This district is far too widespread throughout the corridor. The over-use of this district in combination with its low standards for scenic protection effectively narrows the corridor. The performance standard that previously allowed “...underlying zoning, provided the structure’s height does not protrude above the treeline...as viewed from the OHWL of the opposite shore” should be maintained since the intent of CA-SR states that “land in this district is not readily visible from the river.”

The public's enjoyment of the river corridor and significant public spaces (i.e. SNAs, historic sites, and the Mississippi Gorge Regional Park) will be negatively impacted if Subpart 6A is not amended to read, “The land in this district is not readily visible from the river ~~but may be visible~~ or from public land across the river.”

In the maps section below, we provide examples of important scenic views that would be significantly degraded by future tall development within the corridor. Underlying zoning that is in place today may provide temporary protection, but these rules need to protect the resource for many decades to come.

#### *Subpart 7 - CA-UM*

The description in Subpart 7A should still include reference to parkland as the commercial, institutional and industrial areas are in addition to parks, not instead of parks. High-density residential development is also envisioned for many of these areas and should be included. We suggest revising the language to read, “...mixed use areas that are part of the urban fabric of the river corridor, including publicly owned existing and planned future parklands, residential, institutional, commercial and industrial areas.” If it is not possible to alter the definition of the



CA-UM district, we recommend decreasing the use of this district in specific places noted in our map comments below.

#### Subpart 8 - CA-UC

Subpart 7B should include the new language added to Subpart 8, but be slightly less restrictive. It should read, “The UC district shall be managed with the greatest flexibility, while minimizing negative impacts to public river corridor views, bluffs, very steep slopes, and floodplains, and, where feasible, enhancing bluff and shoreline habitat, minimizing erosion and flow of untreated stormwater into the river.”

#### *Subpart 9 - District boundaries*

We believe that amending district boundaries is a rule amendment, in addition to being an ordinance amendment, and therefore a DNR public hearing and comment period should be required. Local units of government should be required to notify parties in Subpart B2 a minimum of 30 days prior to the DNR hearing. Also, reference to Part 6106.0060 Subpart 7 should be included in this section to ensure that the public is aware of the proposal and has the opportunity to comment. We recommend that the public notice be posted on the DNR MRCCA webpage and sent out to a MRCCA listserve or e-newsletter list, similar to the EQB Monitor that we mentioned earlier in our comments in under 6106.0060 Subpart 7.

### **6106.0110 Uses**

#### *Subpart 4 – Forestry*

Biomass harvesting should not be allowed in the corridor except in cases of mass die off due to disease, impending infestation, or natural disasters. This will preserve the unique scenic and cultural resources of the National Park and sensitive ecosystem within the corridor.

Should forestry be allowed, FMR would like to see a conditional use permit requirement, similar to Subpart 5 Aggregate mining and extraction. This could read, “Where forestry is allowed by the local government, a conditional use permit is required for tree harvesting...” This addition would ensure the recommended practices in the Conserving Wooded Areas in Developing Communities, Best Management Practices in Minnesota are followed.

#### *Subpart 5 - Aggregate mining and extraction*

Part A indicates mining can occur up to 40 feet from a bluffline. Mining is an intensive and destructive use in a National Park and 40 feet is not a sufficient distance to ensure bluff stabilization and reduce impacts on recreation. We strongly recommend a mining setback from the bluffline and very steep slopes of at least 100 feet, in order to be consistent with the CA-ROS setback distance, where most mining exists in the corridor.

Within Part D, the language should remain “...mining and extraction operations must not be readily visible...” Additionally, to maintain more of a natural looking corridor, we would like to see the language changed to say “...must be screened by establishing and maintaining natural screening devices vegetation.” The term “screening devices” is too vague and could be

construed to mean fencing or other non-natural screens. Natural vegetation is the best way to screen mining operations, so the language should be specific.

#### *Subpart 7 - Cellular telephone towers*

To maintain the public use and enjoyment of the river, several changes are called for in this section. First, the order of the subpoints should be reorganized so that item C is first. The decision to collocate or locate a communications tower outside of the MRCCA (item C) must be considered before placement performance standards (items A & B) are considered. Second, to accommodate changes in technology and ensure the rules apply to all communications towers, we suggest this subpart be titled “Wireless communication facilities” instead of “Cellular telephone towers”. Third, there is precedent in Buncombe County, NC and Alleghany County, NC for ordinances limiting the height of these facilities to no more than 20 feet above the surrounding vegetative canopy. FMR requests this performance standard be implemented in this section of the MRCCA rules. Finally, “interference” in item B should be defined to ensure public river corridor views are protected from communications tower impediments for generations to come.

#### **6106.0120 Dimensional Standards**

In general, we are concerned that scenic protection of the corridor is being weakened too much in this version of the rules. Aesthetic values of the corridor are central to the purpose of the MRCCA designation, and these rules must do an adequate job of protecting the river’s scenic views and vistas.

Height limits have been increased for most districts, and huge portions of the corridor have been put into the CA-SR district that relies on underlying zoning for height standards. This approach will lead to far more scenic impacts to the corridor in the next 40 years, as opposed to the last 40 years, during which most of the corridor’s scenic qualities have been preserved through the requirements of Executive Order 79-19.

We have numerous specific comments that relate to building heights in this section and in the section below on the district maps.

#### *Subpart 2 - Structure height*

*Subpart 2A* The CA-RTC district have a maximum height of 48 feet. There are many places throughout the corridor, including in the Mississippi River Gorge where 50-foot buildings protrude above the tree line and disrupt the natural river bluff views (see Figure 2). Taller buildings are proposed in CA-RTC and CA-UM districts with a conditional use permit. We cannot support



**Figure 2. View of St. Paul from Marshall Avenue Bridge**  
The white building is approximately 50 feet

this, unless the criteria for CUPs is strengthened to include a performance standard that development cannot exceed the treeline. This must be proven through a visual assessment study.

The use of the CA-SR district was much more acceptable to us when it included the performance standard related to development not protruding above the tree line. We object to the new standard that building heights be consistent with the height of surrounding development. It is, in fact, inconsistent with the requirement that cities identify public river corridor views in their MRCCA plans and “identify and protect primary conservation areas” (6106.0070 Subpart 4B1). Maintaining a standard that requires development not protrude above treeline would serve to prevent conflict between communities that are on opposite sides of the river. If a city on the west side of the river is trying to protect views from the east side, it will be easier to achieve that if the city on the east side is held to a standard that adequately protect those views. FMR believes that the language for CA-SR should read, “height is determined by the local governments’ underlying zoning, provided the structure’s height does not protrude above the tree line.”

Tiering of structures is mentioned in districts CA-RTC, CA-UM, and CA-UC. In each case, we would like to see “provided tiering of structures away from the Mississippi River and bluff lines is considered” replaced with “provided structures are tiered away from the Mississippi River and bluff lines.”

*Subpart 2B* Language regarding height being measured from the riverside face is confusing because it is unclear whether or not the structure can be taller than the height limit on the landward side. We would like this section to state, “For the purposes of this subpart, height must be measured from the lowest grade adjacent to the structure (or planned structure) to the highest point of the structure.” The highest point of the structure should be determined by the underlying zoning.

*Subpart 2C* See comments below on Table 1 exemptions.

*Subpart 2D* It is important that criteria for CUPs are included in these rules to provide guidance to local governments when they vary from these rules. However, the language needs to be strengthened to ensure the criteria lead to implementation of identified techniques and opportunities, as opposed to identified solutions just being considered, assessed and identified.

In order to provide meaningful protection of scenic resources, this section should contain specific performance standards for assessing visual impacts, and what the local government’s findings must include when granting a CUP. We suggest the performance standard be that building height does not exceed the treeline and that a visual assessment be required to determine if that performance standard is met.

*Subpart 3 - Location of structures*

The change to District CA-UC, which removes the 50-foot setback from the OHWL and replaces it with underlying zoning, is too permissive. These areas would effectively have no SIZ, or the protections that the SIZ affords. A 50-foot setback will create space for the re-establishment of a natural shoreline and a consistent river trail through Minneapolis and St. Paul. This will improve water quality, shoreline habitat, and maximize public access to the river. We would prefer to see the 50-foot setback maintained, as it is already included in the local ordinances for both downtowns and should be reinforced in this rule.

Public parkland facilities could be exempt from the structure setback in CA-UC to allow for public access and potential redevelopment and/or reuse of structures such as the Upper St. Anthony Falls Lock or historic structures in the Minneapolis Mill District. There are some privately owned parcels along the river in both downtowns, and it is important to ensure that property owners cannot develop in a way that contributes to erosion or prevents public access, use and enjoyment of the river.

Our concerns about the setback exemption are amplified in areas away from the two downtowns that are included in CA-UC in the draft rules. We provide specific comments in the maps section regarding places that should not be included in CA-UC.

*Subpart 3A(2-5)* The setbacks from the Rum River are inconsistent with the maps, as the area around the Rum River confluence is no longer in CA-UM. We suggest the following changes:

- CA-RN - “~~75~~100 feet from the Rum River”
- CA-RTC - “75 feet from the Mississippi River ~~and 75 feet from the Crow River~~ and Rum River”
- CA-UM - “50 feet from the Mississippi ~~and Rum River~~”

*Subpart 3B* As stated earlier, we are very pleased that structure setbacks in this section apply to both bluffs and very steep slopes. These setbacks are more critical than ever now as climate change brings heavier storms that speed up erosion and cause bluff subsidence along steep areas of the corridor (see Figure 3).

*Subpart 3D* We support setback averaging from the street side, but not the river side. Development on the river side does not need to be in a line parallel to the river, as it should develop more organically and in response to needed resource protection. We do not support development infringing into the minimum bluff and river setbacks and we appreciate that, regardless, development will not be allowed to infringe on the BIZ, SPZ and SIZ.



Figure 3. Fairview slide, spring 2014

*Subpart 3E* The subsurface sewage treatment system text should be revised to read “...must be located at least 75 feet from the ordinary high water level of the Mississippi River and other public waters within the Mississippi River Corridor Critical Area, and at least 75 feet away from bluffs, floodplains, wetlands and unstable soils and bedrock”.

## **6106.0130 General Development Standards for Public Facilities**

### *Subpart 1 – Purpose and scope*

The last sentence in the purpose and scope is unnecessary. Emphasizing flexibility for public facilities is inconsistent with 6106.0060 Subpart 9. Duties of other agencies, which requires that they “must manage lands under the agency’s ownership consistent with these MRCCA rules.” The exceptions in Table 1 already provide flexibility for river-dependent uses.

### *Subpart 2D – General design standards*

To ensure that impacts to primary conservation areas that cannot be avoided are minimized, the text “to the greatest extent practicable” should be left in the rules. This will help protect our primary conservation areas for future generations.

### *Subpart 6 – Public transportation*

This subpart should be revised so the most restrictive standards apply if one of the intersecting or abutting districts is CA-ROS. For all other districts, we support the wording as it is.

### *Subpart 7C – Public recreational facilities*

In Part 1, FMR believes that screening is essential to maintaining the corridor’s rich scenic values. Screening should be maximized by keeping the screening language from the previous version of the rules “so as not to be readily visible...” See our comments in 6106.0050 Subpart 63.

In Part 2, we like the concept of minimizing fragmentation in primary conservation areas and would like to see it applied elsewhere throughout the rules, as applicable.

## **6106.0140 General Development Standards for Private Facilities**

### *Subpart 1 – Purpose*

The language in this purpose statement about LGU ordinances being consistent with the standards in this part is a good example of the type of language we would like to see throughout the rules, should the flexibility ordinance provision be retained in the rules. The language reads, “Local government ordinances must be consistent with the standards in this part unless the commissioner approves a flexibility request under part 6106.0070 subp. 6.”

### *Subpart 3 – Private roads, driveways and parking areas*

Screening should be maximized by maintaining the text “...to achieve maximum screening from view and are not readily visible.” See our comments in 6106.0050 Subpart 63.

#### *Subpart 4C1 – Private water access and viewing facilities*

Stairways and lifts for multi-housing and non-river related commercial property should have a maximum width. We suggest an 8-foot maximum because that is the regular width of a public walking trail and should be sufficient for all stairwell and lift widths.

#### *Subpart 4D – Shoreline recreational use areas*

Shoreline recreational use areas should be allowed to be constructed up to 1,000 square feet instead of 5,000 square feet. This will allow property owners to have a shoreline recreation area to use and enjoy but also have protect and enhance shoreline vegetation and ecological functions of land near the river.

#### *Subpart 5 – Landscaping, patios, and retaining walls in non-riparian residential yards in slope preservation zones*

Patios and retaining walls on non-riparian lots within the slope preservation zone should be allowed up to 250 square feet to allow for patio use and enjoyment while maintaining the slope's integrity.

#### *Subpart 6 – Private signs*

The language in Subpart 6B should read, "The local government may allow directional signs for patrons arriving at a river adjacent business by watercraft, provided the signs..." This will ensure signs are only allowed for river adjacent businesses.

### **6106.0150 Vegetation Management and Land Alteration Standards**

#### *Subpart 1 – Purpose*

The scenic character should be called out as a vegetation management goal. This could be done by altering Part B to say, "preserve the natural, scenic and aesthetic character and topography of the MRCCA; and..."

#### *Subpart 5 – Vegetation permit requirements*

*Subpart 5A1* As currently drafted, pruning can occur with the purpose of improving aesthetics without a permit. We are concerned that someone could use this text as justification for large-scale vegetation removal simply because they consider vegetation to be blocking their aesthetic view of the river. Therefore, we propose changing the language to read "Pruning of branches that pose a visual security or physical safety hazard, and to maintain plant health. ~~to improve aesthetics~~".

*Subpart 5A2* We recommend vegetation removal ranges of 5% for tree canopy or vegetation cover removal and an area of 1,000 square feet. This will ensure that no mature tree will be removed from the corridor without the local unit of government's approval through a permit.

#### *Subpart 7 – Land alteration permit requirements*

It makes sense for these MRCCA rules to be consistent with the area watershed districts minimum standards. Therefore, we would like to see the total land surface area of 5 cubic yards

and 1,000 square feet be used as the threshold for requiring a land alteration permit within the areas specified in Subpart 2A1.

*Subpart 10 – Compliance with other plans and programs*

Minnesota Statutes Chapter 138 should be added to this section to ensure all development projects consider the historic and cultural resources.

**6106.0160 Stormwater Management Standards**

*Subpart 2 – Performance Standards*

Draft MRCCA rules (6106.0160 Subpart 1) acknowledge the need to protect water quality, promote infiltration, and reduce runoff risks throughout the MRCCA. Runoff from adjacent land uses remains a major threat to Mississippi River water quality, and should be addressed in the MRCCA rulemaking process.

However, FMR has concerns about several provisions of the proposed rule that do not meet the DNR's stated goals for this section of the draft rule.

- The proposed draft standard applies only to developments that create new or fully reconstructed impervious surface of more than 10,000 square feet. FMR recommends that the standard apply to any parcel greater than 10,000 square feet, rather than simply projects with more than 10,000 square feet of impervious surface.
- The proposed draft standard applies only parcels that abut a public water body, wetland, or natural drainageway. Parcels in the MRCCA that discharge runoff directly or indirectly to the Mississippi River should meet the same water quality standards, regardless of their adjacency to the river, wetlands, or natural drainageway. The draft rule should be revised to apply the stormwater standard to all parcels in the MRCCA, regardless of their proximity to specified water resources.

*Subpart 2A, B, and C*

The State of Minnesota recently invested in the development of Minimal Impact Design Standards (MIDS). The recently completed MIDS approach was the result of multi-year stakeholder-driven development process that included cities, townships, counties, watersheds, developers, state agencies and conservation organizations.

MIDS was designed to provide a scientifically sound, protective, and flexible stormwater standards. MIDS provides for adequate stormwater volume and pollution reductions while providing unique flexibility for sites restrictions such as depth to bedrock, steep slopes, bluffs, tight soils, wetlands or natural drainage ways. MIDS is a recognized pathway for complying with pollution reduction goals set forth by state and local governments, and for compliance with the anti-degradation provisions of the Clean Water Act.

As a result, FMR strongly urges that MIDS be used in place of performance standards listed in Subpart 2. A, B, and C.

- MIDS provides strong volume and pollutant removal goals for projects in MS4 and non-MS4 cities sufficient to protect the Mississippi River.
- Given the unique features of the MRCCA, adherence to a single volume control standard would be inappropriate. MIDS provides the flexibility to provide adequate protection on sites with restrictions.
- Because of the linear nature of this corridor, MIDS performance goals for linear projects should be used instead of item C. The corridor is home to a variety of linear facilities, not just multipurpose trails and sidewalks, so it's important to address stormwater run-off from all of these sources. MIDS is designed with standards specifically for linear projects.
- MIDS will be periodically evaluated and updated to account for many factors including climate change, unlike the standards given in the draft rules.

MIDS is quickly becoming the go-to standard in Minnesota and a model that is being considered nationally. Since it was released in late spring 2014, the Valley Branch Watershed District is mandating use of MIDS for their permit process. MPCA staff indicate that the Capital Region, Ramsey-Washington Metro Watershed District and Mississippi Watershed Management Organization will be adopting MIDS. The DNR is even mandating that their boat launches are MIDS approved. It makes sense for the MRCCA to adopt these easy to follow and protective stormwater performance standards.

## **6106.0170 Subdivisions and Land Development Standards**

### *Subpart 1B – General provisions*

For subdivisions, planned unit developments and redevelopment of land, we would like the general provisions to apply to river adjacent properties that are a minimum of 5 acres and non-river adjacent properties that are minimum of 10 acres. Even smaller parcels of open space along the river are valuable as many MRCCA communities lack significant public access to the river. In addition, there should be no minimum acreage in the CA-UM and CA-UC districts because they are highly urbanized with many regional parks both planned for and existing. These parameters will ensure that we maximize opportunities to dedicate open space, which is an essential component to realizing the goals of our National Park on the river.

### *Subpart 2 – Lot standards for new lots*

We suggest making it very clear that conservation design and transfer of development density should move development/density away from the river, and there should be a mechanism for transferring density from one district to another when longitudinally divided districts are present.

### *Subpart 3 – Design standards*

*Subpart 3A* We would like “tract size” to be clarified. Does this refer to the entire lot, the portion of the property undergoing development, or the total area that makes up the primary conservation areas? Within all districts, we believe that the highest percentage in the ranges given should be required. Maximizing preservation of primary conservation areas must be a top priority of these MRCCA rules to protect our national treasure and maintain our National Park. If



hardships or special circumstances apply, local governments can grant variances to require a smaller percentage of open space dedication.

*Subpart 3B* Throughout these MRCCA rules, “shall” was consistently changed to “must” except for in this subpart. We would like to see the following change, “the local government ~~may~~ must determine which primary conservation areas are to be protected.”

*Subpart 3C* We appreciate this subpart because we believe that primary conservation areas should have natural vegetation. However, the reference made back to 6106.0150 Subpart 7 (Land alteration permit requirements) should actually be to subpart 6 (Vegetation restoration plan requirements) which refers to the Native Vegetation Establishment and Enhancement Guidelines, Minnesota Board of Water and Soil Resources document which is incorporated by reference in Part 6106.0090(H).

## **Maps**

### *Map 1*

The Kings Island area is proposed to be in the CA-RN district. However, the area is city-owned public open space and the city of Anoka spent over 300,000 dollars in the past year restoring the channel around the island. The area is not residential, rather it is heavily vegetated providing high quality habitat. This area much better fits within the CA-ROS district.

### *Map 2*

This map liberally uses the CA-RTC district, especially if developers are allowed to build up to 56 feet, take advantage of a conditional use permit to build higher, and have a setback of only 75 feet. One example of this is the use of CA-RTC at the confluence of the Rum River and Mississippi River. The area is currently a sparsely populated, wooded residential area with a nearby bridgehead. The existing land use and significance of the confluence indicate to us that a more appropriate district would be CA-RN. This district should require 100-foot setbacks and 35-foot structures to ensure ecological and scenic protections in the area.

In the Anoka-Ramsey Community College area, FMR supports the district change from CA-UM to CA-RTC. This district better fits the character of the campus and will ensure slightly greater setbacks are maintained.

### *Map 3*

We do not have any comments on this map.

### *Map 4*

FMR would like to see the west bank from the Northstar Railroad Bridge (between Hennepin Avenue and 4<sup>th</sup> Avenue N) to Lowry Avenue be changed from CA-UC to CA-UM mimicking the east bank district boundaries. This area of the river contains a mix of parks, housing, offices, and industrial development and better fits the character of the CA-UM district. This will become increasingly true in the coming years as river industry decreases with the closing of the Upper

St. Anthony Falls lock bringing an end to the barging era for this portion of the river. This area of north Minneapolis is not part of the downtown core and should not be exempt from height and OHWL setback requirements. There is significant private ownership north of Broadway within the Above the Falls Regional Park boundary and allowing private development with no structure setback could significantly deter the public's use and enjoyment of the river and implementation of the regional park, including a continuous riverside trail from Ole Olson Park to North Mississippi Regional Park.

Likewise, the land adjacent to the east side river (west of Main Street) between First Ave NE and the I-94 Bridge should also be changed from CA-UC to CA-UM, in order to ensure the public's use and enjoyment of the river is not negatively impacted by development that is too tall and/or too close to the river within the St. Anthony Falls Regional Park boundary.

Nicollet Island should be districted CA-RN. The nature of this space as an island means that it provides critical habitat for many species including migratory birds. The island also contains sites with historic designation and is completely within the St. Anthony Falls Historic District. With the restrictions that come with historic designation, the island's character is set long into the future and includes parkland, a low-density residential neighborhood, a school and an inn. Because of the critical habitat, historic nature, and set land use of this portion of downtown Minneapolis, this island should receive the protections afforded in CA-RN (100 foot setbacks and maximum development of 35 feet).

Moving downstream, the southern boundary of the CA-UM district should be moved northward from the Franklin Avenue Bridge to provide better protection of the Mississippi River Gorge. On the west side of the river, the existing CA-ROS and CA-RN districts should extend north to the Number 9 Bridge. On the east side of the river, the existing CA-ROS and CA-RN districts should extend north to the I-94 Bridge. These changes are warranted because these areas consist of parkland and low to medium density neighborhoods similar to the rest of the gorge and should be treated as such in their districting.

Further downstream, the CA-RTC districts at Lake Street should be changed to CA-RN. As is clearly demonstrated in Figure 4, it is important that buildings remain 35 feet or less to keep development below the tree canopy which will maintain the outstanding scenic character of the Mississippi River Gorge. An increase to 48-56 feet would mar the scenic integrity of this area. Additionally, CA-RN districting at the Lake Street crossing would be consistent with the existing districting at the Franklin Street Bridge crossing. Of particular concern is the Town & Country Golf Course property since there are no tall structures there presently and there is no future plan for them.



**Figure 4. View of the Town and Country Club on the east bank from the Lake Street/Marshall Avenue Bridge**

Finally, downstream to the Ford Bridge area, the CA-UM part that is north of Ford Parkway should be changed to CA-RN. Not only does CA-RN better fit the character of the area, but leaving it as CA-UM means parcel owners in the area may opt to apply for a conditional use permit to have tall buildings. This makes the area susceptible to additional buildings like 740 Mississippi River Boulevard, which we view as a major intrusion into the scenic quality of the corridor.

#### *Map 5*

FMR is concerned about the sliver of CA-UM directly across the river from Fort Snelling. We think this sliver should be RN since it is adjacent to the bridgehead and greatly impacts the landscape around the Mississippi and Minnesota river confluence. The height of development in this area is crucial to maintaining the integrity of the confluence of two major rivers.

Furthermore, we think the RTC district should extend from the east side of the Highway 5 Bridge on the north/east bank of the river up to Randolph Avenue landward of Shepard Road. This would replace the CA-UM district near the 35E Bridge. This area is visible from historic Fort Snelling and the confluence of the Minnesota and Mississippi Rivers. Buildings taller than 48 feet in this reach would significantly degrade from the scenic character of these important places. Additionally, St. Paul plans to continue to invest in the parkland riverward of Shepard Road. Development greater than permitted in the CA-RTC district would negatively impact the quality of parkland below.

Moving north to the downtown St. Paul area, we would like to see the blufftops all along the West Side Flats be districted CA-RN. The character of neighborhoods on the blufftop does not change and therefore there is no reason for a portion of the area to be CA-UM. The entire blufftop should be districted CA-RN as it was in the 2010 draft MRCCA rules.

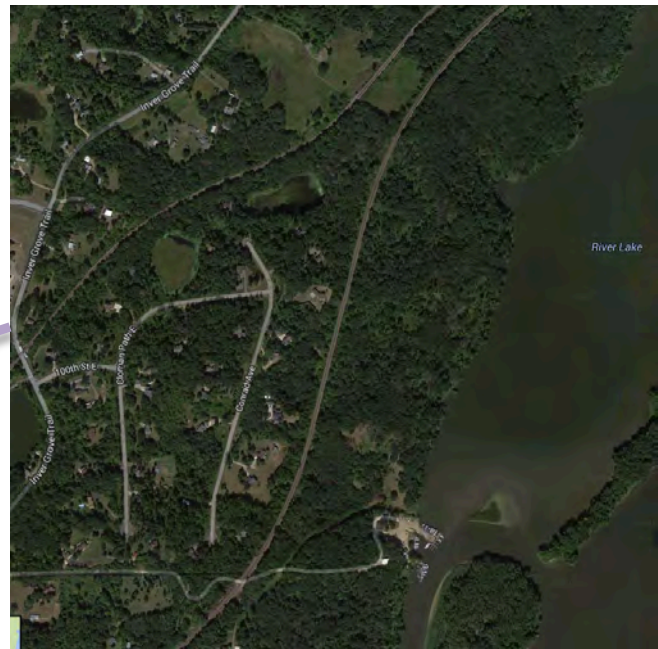
We are very pleased to see that the West Side Flats, one of the most scenic spots along the Mississippi River and a spot containing expansive scenic public views, has been placed in the CA-UM district. A 65-foot height limit will protect the significant public views of the St. Paul River Valley that have been recognized since 200BCE when the ancient Hopewell culture occupied this land. In addition, this district preserves the significant public investment that has been put into the overlooks at Kellogg Park, Mounds Park, and the West Side Bluffs to maximize public use and enjoyment of the river valley for people of all abilities.

#### *Map 6*

The CA-SR boundary in the vicinity of Pine Bend Bluffs and River Lake appears to be in the wrong place. The line appears to follow the area bike trail that cuts across the bluff face. The portion of land that feels truly separated from river follows the road in that location. The road is behind the blufftop and slightly lower in elevation. We would like to see the CA-SR boundary follow the road in this location or insert the CA-RN district in-between the trail and the road as the area is very residential, has unique scenic topography and high ecological value. These resources could be diminished in the future if governed by underlying zoning (see Figures 5 & 6).



**Figure 5. Inver Grove Heights District Map**



**Figure 6. Inver Grove Heights District Aerial Map of the Purple Selection**

There is a sliver of CA-RN located between two CA-ROS districts on the east bank of the river at the north end of the upper Grey Cloud Island. This area should be CA-ROS because there does not seem to be reason to make it CA-RN and there is good reason to have a consistent CA-ROS corridor along the main stem of the Mississippi in this scenic portion of the river.

We are concerned about changing the east half of upper Grey Cloud Island from CA-ROS to CA-RN, because there is a risk to the rural character from subdividing into smaller lots. If this area is to remain CA-RN, then it will be important to maintain the 25% open space dedication requirement for new subdivisions.

Moving inland past the channel area of Grey Cloud Island to mainland Cottage Grove, we do not see a need for CA-RN or CA-SR. There is no clear natural delineation for this area. In fact, a portion of the CA-SR district in this location is a golf course that is readily visible from the river channel and blue steel bridge to Grey Cloud Island (see Figure 7). The entire golf course and adjacent land should be CA-ROS. It is adjacent to the Grey Cloud Dunes SNA, likely contains a native prairie seed bank under the golf course turf, and has a significant impact on the river water quality.



**Figure 7. Mississippi Dunes Golf Course**

Moving down to Nininger Township, the current CA-SR area is not actually separated from the river. In fact, it is visible from miles up and down the river. A better district fit would be CA-RN to preserve the bluffs and river corridor views (see Figure 8).

*Map 7* - Within the 3M property, there should be a CA-ROS district along the river and tributary. This makes sense as 3M has already established natural buffers along the river and tributary.

We would also like to see the Kings Cove area changed to CA-ROS from CA-RN. The Kings Cove current land use and character is not compatible with a river neighborhood. The marina, bridge, and open space fit much better with the CA-ROS district.



**Figure 8. View of Inver Grove Heights from Grey Cloud Island**

### **Table 1**

#### *Industrial structures*

Industrial structures should not be automatically exempt from height limits. This exception is overly broad and should be removed from the draft standards altogether. §116G requires that “the guidelines and standards must protect or enhance...scenic views and vistas”. Providing a blanket exemption for one class of land use cannot possibly provide the required protection. We recommend the “E” become “(E)” so that height limits may be exceeded for industrial structures if no reasonable alternatives exist.

#### *Cellular telephone towers*

The draft rules do not specify the setback exemption for cellular telephone towers. We recommend that cellular telephone towers not be exempt from setback requirements to ensure the stability of riverbanks, bluffs, and slopes. Additionally, the towers height should be “(E)” to reinforce item C within the MRCCA rules text that no reasonable alternatives exist outside of the MRCCA.

#### *Historic sites and districts*

We would like “districts” taken out of this category name to read “Historic sites ~~and districts~~”. We understand exemptions for historic sites but believe that all standards should apply to historic districts (i.e. St. Anthony Falls Historic District).

*Public transportation facilities*

We understand that public transportation facilities need some exemptions. However, we recommend the setbacks change from "E" to "(E)" so that reasonable alternatives are considered.

*Structural reinforcement of bluffs in urban areas in CA-UC district*

We think that there should be reference to BMP guidelines at least in 6106.0150 Subpart 8. The existing document that is referred to does not contain bluff reinforcement BMPs.

Thank you for considering our recommendations. We appreciate the care you have given previous comments, and your diligent work on this important effort. Please call me at 651-222-2193 x13 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Whitney L. Clark". The signature is written in a cursive style with a large, looping initial 'W'.

Whitney L. Clark  
Executive Director