

Barry Sittlow  
City of St. Paul Park  
600 Portland Avenue  
St. Paul Park, MN 55071

**Re: Comments on Rivers Edge Draft AUAR**

Dear Mr. Sittlow,

Enclosed please find comments on the Rivers Edge Draft AUAR from Friends of the Mississippi River. Friends of the Mississippi River (FMR) is a leading citizen organization that works to protect and enhance the Mississippi River and its watershed in the Twin Cities metropolitan area.

As a regional organization specializing in protecting the unique resources of the Mississippi, FMR engages with a variety of riverfront communities on development issues that have potential impacts on the river. We have worked proactively and successfully with many communities to plan for a balanced approach to development that protects the river's natural resources, open spaces and important greenway connections to the Mississippi river corridor and flyway.

FMR played a key role working with citizens of Dakota County to develop the Mississippi River Greenway Strategic Plan, the Farmland and Natural Areas Protection Plan and the Open Space Referendum. These initiatives represent excellent examples of citizen-based planning that will lead to permanent protection of critical riverfront lands and natural resources. In fact, just a few months ago, 168 acres (located directly across the river from the Nesvig property) were put into permanent protection as the Pine Bend Scientific and Natural Area. It is discouraging to see a development of this magnitude proposed in such close proximity to the Pine Bend Bluffs which has benefited from restoration efforts on the property of Flint Hills Resources and the Katharine Ordway Natural History Study Area, as well as the new SNA.

Our primary concern about the proposed Rivers Edge Development is that it will cause serious and irreversible environmental damage to the river's natural systems. The bluffs, shoreline, islands, bay, natural areas and wildlife at this site, which are unique and extremely important ecologically, will be severely impacted by the planned development. The addition of impervious surfaces and the reduction of natural water infiltration will also compromise water quality—both surface and ground. These impacts are inadequately addressed in the AUAR, and the mitigation strategies presented are weak, vague or consist of simply amending the existing plans and ordinances. The environmental impacts of this development as proposed simply cannot be mitigated.

In some cases, the AUAR can be a useful environmental review tool. However, in the case of Rivers Edge, the substantial and imminent threats to the river's natural resources warrant a full Environmental Impact Statement. The level of detail in this AUAR falls far short of what it should be required for a project of this magnitude on a site that is so significant ecologically. In short, it appears the developer's use of the AUAR is not a genuine environmental review effort, but rather an attempt to get around dealing with the huge environmental impacts that cannot be avoided if this development goes forward as planned.

Particularly disturbing are the proposed amendments to the City and Township's recently completed Mississippi River Critical Area plans. These plans are designed to assist communities in protecting the river's natural resources while planning for development on or near the river, and it appears the developer expects the City and Township to completely disregard the thoughtful planning and citizen input that went into producing these plans.

Additionally, we are deeply concerned about the deceptive way some of the environmental benefits of this proposal are presented in the AUAR. For example, there are frequent references that claim 226 acres of "river open space" will be protected, when none of these acres actually occur in the developable area; 145 of these acres are open water and 81 acres are off-shore islands, shorelines and steep bluffs.

While we are submitting comments to the Draft AUAR, we believe that this is an inappropriate use of an AUAR, and we strongly recommend that a full Environmental Impact Statement be done for any development of this magnitude planned within the boundaries of the State Critical Area.

Thank you for considering our comments to the Draft Rivers Edge AUAR. If you have any questions regarding this letter or the attached comments, please feel free to contact me.

Sincerely,

Irene Jones  
Outreach Director  
Friends of the Mississippi River

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## **Comments on the Draft Rivers Edge AUAR**

Submitted by Friends of the Mississippi River

June 25, 2003

### **I. Loss of significant and unique habitat (pp. 21-25)**

#### **A. Native Plant Community Ranking is insufficient and improperly evaluated.**

1. Several natural areas at this site show up on the Minnesota Natural Heritage Program's County Biological Survey and are ranked using the program's ranking system. Since only the best habitat shows up in this ranking system in the first place (just 4% of natural areas in the metro area), all of these identified areas are by definition of regional significance, including those ranked as poor and fair. It is important to note that these natural areas have also been identified as ecologically significant on the DNR Natural Resource Assessment of Regionally Significant Ecological Areas, the Mississippi National River and Recreation Area /National Park Service Open Space Opportunities Map, the DNR Metro Wildlife Corridors Focus Areas Map, and the Metropolitan Council Mississippi Riverfront Initiative Plan.
2. Additionally, the restoration potential for these natural areas is under-estimated. Mesic Oak Savanna, for example, is one of the rarest native plant communities in Minnesota, and every effort should be made to protect and restore this important part of our natural heritage before it is lost forever.

#### **B. The AUAR does not properly identify or address higher quality natural areas where development is planned.**

1. Potential damage to the rare oak savanna on the bluff and the floodplain habitats in the bay will be severe and irreversible. The impacts of erosion, invasion of non-native species and unregulated foot traffic will be unavoidable with the proposed 40-foot setback and high densities of people living in the Critical Area. In order to prevent this damage, a much larger setback should be established for the development with permanent protection of these sensitive areas.
2. An area of Dry Oak Savanna was not identified in the AUAR, but was pointed out by a DNR ecologist during the May 29<sup>th</sup> visit. A variety of native trees and wildflowers were seen on the northern bluff of the bay in the exact spot where a five-story/57-foot condominium complex is planned. Development should be avoided altogether in this area.
3. The AUAR notes that floodplain forests were observed along the bank where the shoreline sloped gradually up from the waterline, but none of the floodplain forest was ranked or assessed.
4. The road, boat launch, 10 parking spaces and small commercial building planned for the bay area will cause major damage to the floodplain and seepage areas which include floodplain forest with a diverse native understory. A fishing dock and a canoe landing accessible by foot are the only appropriate uses for this area.

In summary, there is no real possibility of mitigation of the environmental impacts to these sensitive areas under the current development proposal. Only a dramatic change in the development plan will protect these critical resources. It is for this reason that the primary mitigation strategies offered are to amend the existing laws and plans that protect these resources.

## **II. Impacts on Wildlife (pp. 25-29)**

### **A. Proximity of development to bald eagle nesting sites is unacceptable.**

1. According to Table 11-1 in the AUAR, development activity should be a minimum of 660 feet away from eagle nesting areas and nowhere within the sight line of the nesting area. Yet the AUAR states that “Development activities will occur within the recommended 330-660 foot limited disturbance area, which is less intrusive than the existing mulching operation.” This statement is a gross misrepresentation of what is actually recommended in the 330-660 foot area—trail and vegetation maintenance and human visitation during the non-breeding season only. Additionally, the presence of eagle nests within 330-660 feet of an existing mulching operation does not imply that additional disturbances would be tolerated by the eagles. Cumulative impacts need to be taken into account.
2. The AUAR claims “limiting construction activities during the nesting season and removing mulching operation will help mitigate impacts to the nest,” but it ignores the fact that once construction is over, hundreds of people will be living in the “limited disturbance area” year-round.

### **B. AUAR neglects to mention the full significance of the backwater bay for waterfowl feeding during migration.**

1. The AUAR included a selectively edited version of the report on wetlands from the original Natural Resources Inventory prepared by Applied Ecological Services. Not included in the AUAR was the full number of birds observed, the number and diversity of species identified and the assessment that the bay was likely a preferred feeding area for waterfowl since no concentrations of waterfowl were observed in other parts of the backwaters with similar habitat. (See p. 29 in AUAR and P. 30 in NRI)
2. Additionally, due to the thermal effect of the springs and seeps in the area, hundreds of waterfowl visit the bay in winter to feed, because it is often the only place in the area with open water. (See impacts to springs in seeps in Hydrological Issues)

### **C. The full extent of potential impacts on wildlife displacement is not provided.**

1. The Mississippi River is used as a migration flyway by hundreds of species of birds, including 40% of North American waterfowl. The significance of this reach of the river has been documented in the Hastings-Prescott Bird Count, which was published by Karl J. Bardon in *The Loon* 73:231-235 (the Journal of the Minnesota Ornithologist’s Union). In this survey, a total of 100,332 migratory birds, including 75,584 waterfowl, were documented between March 11 and April 25, 2001 during 30 days and 176 hours of effort (which comes out to 570 migrants per hour!). The bird count included six species that are listed as “threatened” or of “special concern” in Minnesota. The study also stated that an unknown percentage of waterfowl migrate at night when no observations were possible. Tom and Elizabeth Bell have seen and documented 163 species of birds in Grey Cloud Island Township, including several species listed as of special concern. Clearly more than just hawks, owls, woodpeckers and eagles will be displaced.

In summary, more extensive studies need to be done on birds and other wildlife that rely upon the unique and critical habitat located on the site. As with the natural areas that support the birds and wildlife, a much larger setback must be provided to prevent ecological damage and displacement of rare and threatened species.

Note: The Applied Ecological Services report provided by DSU is a natural resources inventory only, and does not include land cover rankings or management recommendations. DSU denied our request for these documents. In order for the public to properly assess the AUAR as an effective environmental review tool, these documents should be made available.

### **III. Hydrological Issues**

#### **A. Springs and seepage areas are rare and important resources in need of protection.**

1. The AUAR mitigation strategy for preventing impacts to the springs and seeps states that “the preservation of 226 acres of reserved open space along the bluff and the [70-foot] buffer will minimize impacts on the seeps and springs...” Since most of this “open space” is actually open water and islands that are downstream from the springs and seeps, it will hardly provide any protection! Additionally the use of a 70-foot buffer around the springs appears to be a random number that is, at best, based on “beliefs” and “uncertainties” provided by Dr. E. Calvin Alexander. (pp. 32-33)
2. More extensive groundwater studies are needed to ascertain the importance of springs and seeps in the area, and the impacts on them from excavation, dewatering, increasing impervious surfaces in area, planned stormwater management practices, stormwater outfall placement and extraction of drinking water from the aquifer.

#### **B. Stormwater management plan does not adequately address surface runoff and groundwater recharge issues**

1. The Stormwater Management Plan described in the AUAR is a minimalist approach. Alternative strategies and best management practices (BMPs) such as infiltration swales need to be employed, not just considered as stated in the AUAR. Minimum design standards for new stormwater ponds is insufficient in an area this sensitive. (pp. 12, 46, 70)
2. The mitigation plan for surface water runoff states that “...water quality of stormwater discharging from the development will meet the requirements of the Minnesota Pollution Control Agency (MPCA) and National Urban Runoff Program (NURP) standards and all applicable local regulations. Consequently, the impact of runoff on the quality of the Mississippi River will be minimized.” These two sentences do not go together. Standards and regulations are usually the minimum that is expected of a stormwater plan. In order to “minimize” impacts to the river, much more than just meeting the standard should be employed. It may interest the developer to know that MPCA has published volumes of information on stormwater BMPs that are optional and go far beyond the standards and regulations in their ability to reduce impacts to the river and other water bodies. (p. 48)
3. The mitigation plan addresses reducing the amount of phosphorus runoff, but does not mention other pollutants and runoff issues. In particular, it does nothing to address the reduced level of infiltration into the ground. All the runoff from impervious surfaces will be directed to NURP ponds and ultimately the river, bypassing its normal path through the ground. (p. 48)
4. Stormwater outfalls in the bay and other areas along the bluff will be a major disturbance to aquatic species and have a negative visual impact. Construction of the outfalls will have an impact on the sensitive bluffs. The AUAR does not describe how these adverse effects will be mitigated. (p. 32)

In summary, far too little attention is paid to water quality impacts in the AUAR to properly address a development of this size. More studies are needed to determine the best plan of action, especially with regards to the springs, seepages and groundwater issues. All new development in unsewered areas should take the high road (i.e. use BMPs) when managing stormwater and groundwater, both during and after construction. The Mississippi River is a source of drinking water for thousands of people downstream and a popular recreational resource for boating and fishing. All efforts should be made to protect the resource for the sake of human as well as ecological health.

#### **IV. Mississippi River Critical Area Plan Amendments and other land use issues**

The proposed development completely disregards the intent of Critical Area Law. Four of the five purposes of the critical area stated in Executive Order 79-19 are violated, including: to protect and preserve a unique and valuable resource, to prevent and mitigate irreversible damage to this resource, to preserve and enhance its natural, aesthetic, cultural and historical value and to protect and preserve the biological and ecological functions of the corridor.

##### A. Non-Compliance with Critical Area District Restrictions is unacceptable.

The AUAR states “Incompatible elements of the Rivers Edge project and the adopted Critical Area Plan are related to building height limitations, development restrictions on slopes exceeding 12% and the boundary of the Urban Developed District” (p. 66).

1. Changing from Rural Open Space District to Urban Developed District an area with this much existing natural area and open space is inconsistent with the intent of Executive Order 79-19, which is to protect sensitive river resources. Appropriate density levels for the Critical Area have been determined by a community planning process. (p. 67)
2. Buildings in the village center are proposed to be 55 feet high (20 feet higher than allowed in either urban or rural critical area districts). The AUAR states that “floodplain forest on the river islands screens the developable portion of the River’s Edge site, including the Village Center from the main river channel.” This does not take into consideration the views from the backwaters and the bay itself, which are very much a part of the river. The height limitations for critical area are intended to prevent visual impacts for all recreational users on the river – not just those in the navigation channel. (p. 64)
3. Slopes greater than 12% should be protected without exception. In the mitigation plan for erosion and sedimentation, the AUAR states: “No development shall be permitted on slopes greater than 18%; (deviations to be sought in selected areas.)” The developer is proposing to amend the Critical Area Plan AND ask for additional deviations??? This is egregious in an area where most of the sloped areas are vegetated by rare native plant communities. Additionally, the AUAR suggests mitigation for steep slope alteration will involve a detailed erosion control and protection plan, but it does not address irreversible damage to the mesic oak savanna on the bluffs. (pp 40, 44)
4. Benefits to the Critical Area Corridor described in the AUAR are pure propaganda. Reading this section gives one the ridiculous impression that 19 landowners would wreak havoc on the bluffs, shorelines and islands, and a mixed use development with over 1,000 people on or near the river daily will provide ample protection of the Critical Area. (pp. 38-39)

B. Compliance with Shoreland District Restrictions are improperly stated and insufficient.

1. The City of St. Paul Park does not have a state approved Shoreland Ordinance, and therefore the proposal to adhere to its guideline of a 75-foot setback from the ordinary high water level (OHWL) is invalid. The County's Shoreland District must be adhered to in this case.
2. Washington County considers the entire pool 2 to be classified as a Natural Environment Lake with a 1,000-foot shoreland district. Everything within 1,000 feet of the OHWL requires a 150-foot setback, and building heights are restricted to 35 feet.

C. Scenarios offered are insufficient and do not provide useful alternatives to the proposed development

1. Scenario III does not offer a compromise. Given the magnitude of difference between scenarios I and II, and the numerous potential environmental impacts associated with Scenario II, it would be helpful to have a scenario that offers something in between for the purposes of comparing the level of environmental impact. Furthermore, both the City and Township Planning Commissions specifically requested a scenario for 1,000 units of housing. A scenario of this density with no development in the Critical Area would offer a true alternative that would protect the sensitive natural areas of the site. Scenarios II and III are simply too large and encroach on too much on the river's resources for mitigation of the environmental impacts to be possible. (p. 14)
2. The AUAR falsely and repeatedly portrays Scenario I as a situation that would potentially cause major damage to the bluffs, shoreline and islands. Scenario I calls for 57 housing units total, 19 of which would be private lots along the river, and it adheres to all current plans and ordinances. This portrayal of how current laws and protections would lead to major environmental impacts is followed up by comparisons that Scenario II (2200 housing units, over 600 of which will be on the river) will protect and preserve the integrity of these sensitive areas. This is disingenuous, misleading and inappropriate for an environmental review document. (pp. 38-39 under *Benefits*, also see p. 5)

D. Amending existing plans to meet the needs of the proposed development is not an acceptable mitigation strategy.

1. The disregard for the importance and value of existing laws and ordinances is very disconcerting. It appears the developer simply wants to make the standards they don't want to comply with go away. The City must not allow this level of abuse to occur to laws and ordinances that have been thoughtfully developed by our elected and public officials. These laws are designed to protect resources of local, regional and national significance. As the RGU on this AUAR, it is the responsibility of the City of St. Paul Park to uphold these laws—not to go along with any amendments the developer requests.

In summary, the dismissive approach to current laws and the disingenuous depiction of the impacts that will result from amending these laws is unacceptable. The impacts of the proposed development will be enormous, and the developer must present a mitigation plan that truly addresses the impacts, rather than getting around them through legal maneuvering. Our state laws will not allow this development to go forward as planned. The City should require a full Environmental Impact Statement in order to protect the significant resources that benefit the community as well as the region and the state.