Friends of the Mississippi River
360 North Robert • Suite 400 • Saint Paul, MN 55101 • 651/ 222-2193 • www.fmr.org

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

December 16, 2010

Jeff Berg
Minnesota Department of Natural Resources, Waters Division
500 Lafayette Road
St. Paul, MN 55155

Dear Mr. Berg,

Friends of the Mississippi River (FMR) is a local non-profit 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 1,600 active members and 3,000 volunteers who care deeply about the river's unique resources.

We always appreciate the opportunity to provide feedback, and want to share with you today our written comments on the most recent draft standards and zoning districts for the Mississippi River Corridor Critical Area. We appreciate the time that went into these changes, and find many areas of agreement with the proposal. For brevity's sake, we are not highlighting areas of agreement, or changes we are ambivalent about, but rather areas that we think deserve further consideration.

Top Level Concerns

While we will detail all of our concerns and comments below we'd like to summarize our most significant concerns with the latest draft of the preliminary draft standards.

1. **Approach to bluff definition and bluff mapping.** §116G calls for a bluff to be defined as land that rises over 10 feet with an average of at least a 18% slope. The draft standards ignore the bluff definition that was provided in the legislation which results in significantly weaker protections for bluffs. Furthermore, the DNR has failed to employ the bluff mapping process that was carefully developed with the League of Cities and other stakeholders during the legislative process. We urge the DNR to reconsider this paramount issue and revise the standards consistent with §116G.

2. **Approach to scenic protection.** The standards should use a better performance standard in tandem with dimensional standards for structures and vegetation. We appreciate the inclusion of a performance standard in the latest draft of the standards but the standard protects views only from the OHWL on the opposite side of the river. We believe scenic protections should protect views from the locations where the vast majority of people enjoy them — public land on the opposite bluff. We urge the DNR to revise the performance standard for structure height in districts CA-5

and CA-6 to read *"Structure design and placement must minimize interference with views such that in leaf-on conditions:*

a) *structures are not visible from the OHWL of the opposite shore; and*
b) *structures are not visible above the tree canopy from publicly-owned land on the opposite side of the river."*

In addition to revising the standard applied to the CA-5 and CA-6 district, this performance standard should also be applied to the CA-4 district.

3. **Height exemption for existing industrial expansions.** This new exception is overly broad and should be removed from the draft standards altogether. §116G requires that "the standards and guidelines must protect or enhance…scenic views and vistas". Providing a blanket exemption for one class of land use cannot possibly provide the required protection.

4. **Open Space requirements need key improvements.** We are pleased to see the open space protection requirements for new subdivisions and planned unit developments but we believe the standards need more specificity regarding the functions and terms required of private conservation easements to ensure that they meet their intended public purpose. Specifically, we believe the standards should provide that private conservation easements that are required for new subdivisions and PUDs:
    - Prohibit all new privately-owned structures in the easement.
    - Limit vegetative changes to those that maintain enhance, and restore the vegetation in its natural state and maximize habitat value.
    - Not in any way prohibit the future development of trails through the easement
    - Protect, where appropriate, the future right of public access to the land; and
    - Be subject to proactive public input, review, and a public hearing through the subdivision process.

Zoning District Issues

Approach to Park-Related Districts (CA-1). Every National Park is guided by a set of rules that protect the core assets of the Park. Usually these are written by the National Park Service (NPS) directly, and they could be here as well. But the Mississippi National River and Recreation Area (MNRRA) is a unique "partnership" park that includes a diverse array of public and private lands in over two dozen municipalities. And so, as the NPS has communicated to you previously, rather than develop their own rules for the park, the Mississippi River Corridor Critical Area regulations provide the core regulatory framework to guide development within the MNRRA.

Though the Critical Area and MNRRA comprise plenty of private land as well, it is by and large the amenities offered in the public lands which give the park its core identity and purpose – Fort Snelling, the parks around St. Anthony Falls, regional parkland like that at Coon Rapids Dam Regional Park, and others. So in general, we appreciate the creation of a zoning category tailored to the protection of park assets.

But we are concerned that the additional parkland protections afforded by the CA-1 district in the most recent draft have been reduced to areas designated rural and urban open space in Executive Order 79-19. In addition to consideration of the intent of the Executive Order districts as a baseline for resources in need of protection, Minnesota Statutes §116G.15 specifically requires that parkland added since then must also be protected. We believe relying solely on the designations found in a thirty-year-old Executive Order to guide the choices made in a rigorous and modern rulemaking process is too limiting because it

does not adequately protect parks that have been added to other parts of the corridor. Indeed, it was the limitations in Executive Order 79-19 that originally inspired the legislature to call for new rules.

Thus, we believe there is an urgent need for a more thoughtful standard for what portions of the corridor are zoned into a park-related district and what is not. That standard should tie back to the charge given in Minnesota Statutes §116G, and to the National Park Service's needs for protective rules within the corridor. Specifically, §116G.15 requires that,

[t]he commissioner shall consider the following when establishing the districts: …the protection of improvements such as parks, trails, natural areas, recreational areas, and interpretive centers…[and]… the protection of resources identified in the Mississippi National River and Recreation Area Comprehensive Management Plan.

§116G.15 goes on to require that,

[t]he guidelines and standards must protect or enhance the following key resources and features…publicly owned parks, trails and open spaces.

By failing to offer tailored park protections to parks outside of the existing urban and rural open space districts, we think the proposed zoning and standards do not appropriately respond to or fulfill their charge.

We do not suggest that every public park in the Critical Area should necessarily be part of the CA-1 category, or even some other park-related zoning district. But we do not believe that the filter of areas designated urban or rural open space adequately protects parks that do not fall into these areas. Such a standard leaves out too many key areas that provide core contributions to the Critical Area and National Park designations.

Here are a few key examples that illustrate the limitations of the current approach:

- **The Stone Arch Bridge, Father Hennepin Bluffs Park, BF Nelson Park, and Boom Island Park** are all included in the **Central Riverfront Regional Park**, and include some of the most significant public park spaces in the entire corridor. Without question, these are significant contributing parks to the National Park and should be protected under a park designation. As such, we don't see why they should be taken out of a parkland-focused zoning designation.

  In the October zoning revisions, these park areas went from CA-1 to CA-6 – a particularly dramatic reduction of protections in these areas. The CA-6 zoning category would allow buildings of 65 feet, or roughly six stories. We do not believe that buildings of this scope and scale fit within the context of sensitive scenic and historic parkland such as this.

  By crafting regulations that allow such development to occur in such a sensitive part of the corridor, the districting and regulations fail to fulfill the charge provided by Minnesota Statute §116G, nor do they fulfill the expectations MNRRA would have for protecting these park resources.

- The size, scope and significance of **Coon Rapids Dam Regional Park** seem very obviously to warrant the protections of CA-1 under any appropriate standard. This is a major regional park, recognized as such by the Metropolitan Council. It is the most expansive natural park in the northern part of the MNRRA corridor, and it has significant ecological resources. Yet it is

offered no unique park protections, because the area happens to have been included in the urban developed district in the 1979 Executive Order.

This park shares very similar characteristics to other parks that would be protected under CA-1, such as Mississippi West Regional Park in Ramsey, or Spring Lake Park in Nininger Township. It seems the only reason it is not included in the CA-1 district is because of the area's urban developed designation in the 1979 Executive Order. Thus the DNR is basing its proposal not on need or science, but a three-decades-old artificial political construct that has outlived much of its usefulness. We think the example of Coon Rapids Dam Regional Park highlights the inherent flaws in the DNR's approach to CA-1.

- **Manomin County Park** in Fridley is located at the confluence of Rice Creek with the Mississippi River. Rice Creek and its associated watershed drain a wide area of lakes that spread throughout the northern metropolitan area. In addition to calling specifically for protection for publicly owned parks, state statute §116G specifically calls out that, "the guidelines and standards must protect or enhance the following key resources and features…areas of confluence with key tributaries".

  And again, like Coon Rapids Dam Regional Park, Manomin County Park was unlucky enough to have been put into the urban diversified district in 1979. Given the guidance of state statute, this would surely seem an area that warrants special protection. And by moving this land from CA-1 to CA-3, we would allow not only a building of 35 feet instead of 25 feet, but also reduce by half the setback required from the river and tributaries. This loosening of standards is not in keeping with the requirement of §116G to protect areas of confluence with key tributaries.

- While **Kaposia Park** is not yet recognized as a regional park, Dakota County and South St. Paul have begun working to secure regional park status for the park. Given its location at the hub of multiple trail networks, the vast tract of reclaimed industrial riverfront land is sure to develop over time into a key regional amenity in the park system. This park was occupied by industrial uses in 1979, and as such was included in the urban diversified district. But just across the river is a vast tract of the urban open space district, and one would surmise that were the 1979 districts redrawn today, Kaposia Park would be included as an extension of this urban open space district.

  But the proposed definition for the CA-1 district instead relies on the decades-old Critical Area designations that, as this case illustrates, do not necessarily bear an accurate relationship to the conditions on the ground today. A set of tailored protections for this parkland would only help raise the status of the park in the eyes of the Metropolitan Council and other potential funders, and would much better reflect the reality on the ground today.

We think these four examples highlight the limitations of the proposed approach to zoning parkland in the draft critical area rules.

We do generally think the differentiation between more rural and natural parks, versus more urban, manicured, and "built up" parks is a worthy distinction in the regulatory framework. We would suggest that both types of parks should have their own zoning category, perhaps two flavors of the CA-1 designation. Likewise, particularly in the more urban parks, we think it would be appropriate to provide municipalities some flexibility on how they would like their parks to develop, as many of those municipalities have given significant thought to historic and design standards that provide a yet more refined approach to protecting vital park assets.

While we don't believe that every park in the Critical Area should necessarily be part of a park-related zoning district, we believe there is an urgent need for some consistent, defensible thresholds about what is included in a park-related zoning district. One such minimal standard we would offer is that any publicly-owned parkland inside the borders of a Met Council-recognized regional park should be made part of a park-related zoning district. Such parks have already been recognized for their contributions to the region, and thus seem especially deserving of heightened protection as part of the Mississippi River Corridor park framework in their own designated zoning category.

East Bank Mills and Above the Falls Area Rezoning. The newly-revised zoning districts shifted a vast swath of land through the core of Minneapolis from the CA-6 district to the CA-7. A key difference between these districts is restrictions on height limits.

We do not object to the rezoning of the East Bank Milling area across from downtown Minneapolis from CA-6 to CA-7, except that we think areas riverward of Main Street should be CA-1. We recognize that existing standards of the Minneapolis Heritage Preservation Commission (HPC) call for buildings to be built no taller than the existing silo-mills in the area, which is well above the height limit provided for in the CA-6 district. By the same token, we think that these height limits deserve to be buttressed by the weight of Critical Area standards as well, and ideally would like to see the height standard put forward by the HPC included by reference in the Critical Area standards as well. The exception to this is land that is on the riverward side of Main Street, which we think should be CA4 or CA6.

Perhaps more significantly, we firmly believe that additional consideration should be given to height limits in the areas covered by the Above the Falls Plan. There are two broad interrelated concerns at play in this area. One is that the City's Above the Falls Plan has long anticipated the creation of an expansive network of new riverfront park space in the Above the Falls area. Much of the land is privately owned right up to the river bank. To pay for a comprehensive build-out of parks will require higher density development in the park adjacent areas.

There is simultaneously some discussion about what would constitute an appropriate maximum height for the area. We agree with Minneapolis that a 65-foot height limit is too restrictive for areas included in the Above the Falls Plan. For example, Coloplast's headquarters is 94 feet tall, but this building does not feel inappropriately tall for this segment of the river. Still, there are residential areas nearby, along with a river that we would not want to see thoughtlessly dwarfed by out-of-scale development. This is an area of the river where we think thoughtful flexibility is in order – other than right at the river's edge, there are few significant scenic resources that concern us in this portion of the river corridor. We further concur that loosening some of the dimensional restrictions in this area might make open space protection more economically feasible – and open space protection is a key goal for this part of the river, as well as for MNRRA. Unlike other areas zoned CA-6, there are no significant view corridors that would be impeded by additional height.

It seems to us that use of a classic zoning technique in this portion of the riverfront is in order: density bonuses. We would suggest keeping this district zoned CA-6, which would retain the 65-foot height limit. Buildings would be allowed to exceed that height limit, provided they contribute to the enhancement of the public realm. We might suggest that for every 10 feet beyond the 65-foot height limit, the developer should dedicate an additional acre of green space for use by the public. Another analogous approach that would respond better to the impacts of massing is that for every additional square foot of gross floor area built above the 65-foot height limit, an additional three square feet of at-grade public green space be dedicated on or adjacent to the completed development.

While surely it is not desirable to clutter the zoning districts with geographic-specific refinements, the dual challenges of mitigating the impacts of height while providing for additional needed green space seem to us to warrant such an approach specifically in this portion of the corridor.

Splitting of Zoning Districts in Ramsey. In a few limited instances at the undeveloped far northern end of the Critical Area corridor, straddling the MnDOT-owned wayside rest/park, there are smaller areas of land that had been previously zoned CA-2. The current district revisions keep the CA-2 along the river, but make the non-river portion of the land CA-5.

These parcels are closely adjacent to the large and park-like rest area, and are quite close to the Oliver Kelley farm a short distance to the north, and the former site of the village of Itasca nearby. As such, we believe this rezoning is ill-advised, as keeping the land in CA-2 would encourage more lower-density development of the area, in the spirit of a riverfront park system that more fully ties together the natural and historic resources found between Mississippi West Regional Park to the south and the Kelley farm to the north.

Shifting the land from the CA-2 district to the CA-5 district complicates the protection of the land, as it dramatically lowers the requirements for density and open space protection.

Standards Generally

Gaps Between State versus Local Guidelines. The DNR has approached rulemaking by crafting standards with the intention of creating a baseline – a protective backstop – for local communities to draft their local ordinances. Indeed, as the draft administration section notes, nothing in these rules prohibits local communities from adopting more protective code.

But it would appear that the direction taken in some municipalities is stronger than the DNR's – creating potential gap between standards. St. Paul's draft Critical Area ordinance proposes height limits in several instances (the Ford site, the West Side Flats, for example) that are more protective than the DNR. In several instances, however, such as protections of setbacks from key topographic features, the DNR's approach would actually result in a substantial weakening over the existing protections that are on the books.

Philosophically, we understand the logic the DNR is using, but practically, we think it is fraught with challenges in implementation. We are concerned that the practical effect in places like St. Paul will be to make the less protective standards more appealing to public decisionmakers, and an easy "fallback position" for local municipalities that fail to reach consensus about an appropriate standard – an occurrence we expect would be quite common.

And so practically speaking, when it comes to implementation, the DNR should assume the standard it sets for minimum protection will be adopted roughly verbatim by municipalities. The hope that municipalities are likely to be more protective than the draft standards allow is only that – a hope. Alternately, more robust standards would provide local governments the cover they need to more fully protect the river-related resources.

Grounding standards in resource protection rather than historic or current land use patterns. We are concerned that in many cases within the draft the standards the DNR has chosen to follow existing zoning to avoid nonconformities rather than to identify what standard should be emploed to protect the resource. We do not believe that the mere fact that a code change creates nonconformities should be an argument against a code change. The key question at hand for the rulemaking process, and for the

administrative law judge who will oversee the formal rulemaking process, is whether the rules adequately achieve their desired goals of protecting the key resources in the corridor.

Views from OHWL of opposite shore. In several parts of the draft standards, one performance standard is applied repeatedly in an effort to help protect scenic integrity. Specifically, the standard that specifies that a structure not be visible (or to minimize visibility) from the ordinary high water level (OHWL) of the opposite shore of the river.

For example, heights in the CA-5 district are proposed to be governed by underlying zoning, "provided structure is not visible from the OHWL of the opposite shore." But most people interact with the river corridor from park space or parkways at elevations far higher than the river surface. In places like the Mississippi River Valley near Lilydale and Mendota Heights, new construction atop the bluffs might not be visible from the OHWL of the opposite shore, but could have a pronounced impact on the views the vast majority of visitors to the park enjoy. ,

We do not believe a standard focused on the OHWL is protective enough. Rather, in places such a standard is used, we would propose replacement verbiage akin to the following language be used instead:

"*structure design and placement must minimize interference with views:*

a) *from public parkland to the river and bluffs on the opposite side of the river; and*
b) *from the OHWL to the bluffs on the opposite side of the river. "*

A standard similar to this is applied in several parts of the draft rules. We suggest modifying our proposed standard as appropriate to fit the various contexts that visibility from the OHWL on the opposite bank is currently used as a standard in the draft rules.

Clarification of "Economic" considerations as a value to be protected. In several places both in Executive Order 79-19, and Minnesota Statutes §116G, there is reference to protecting the "economic" functions of the river. We want to make very certain that people understand the origin of this word's meaning. For example, Executive Order 79-19 called for the conservation of "the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor." Our understanding is that, the use of the word "economic" in this context was not intended to refer to private economic development on land, but rather the shipping and river-dependent industries closely tied to the river itself. As you weigh the new standards, we think it is important for the DNR to be clear about the origin and meaning of the purposes ascribed to the Critical Area.

Dimensional Standards

Dimensional and Performance Standards. FMR has previously requested that the standards include both a dimensional component for height and setback, as well as a performance standard. Projects would be required to meet both.

We are pleased you have included a performance standard in the latest draft for CA-5, CA-6 and CA-7 specifically that "Structure design and placement must minimize interference with views to the river from public parkland and to bluffs from the OHWL of the opposite shore. Tiering from the river and from blufflines is encouraged."

However, as mentioned above, this standard does not apply to views from bluffs, a significant issue within the corridor. Further, people do not only enjoy scenic views of the river from public parkland, but rather enjoy such views from all public land, which also includes roadways, bridges, trails and pedestrian

routes. Also, we don't believe that "minimiz[ing] interference" is a strong enough or clear enough performance standard. We appreciate the attempt at a blanket performance standard, but for CA-4, CA-5 and CA-6we suggest the following language be used instead:

> *"Structure design and placement must minimize interference with views such that in leaf-on conditions:*
>
> a) *structures are not visible from the OHWL of the opposite shore; and*
> b) *structures are not visible above the tree canopy from publicly-owned land on the opposite side of the river."*

For CA-7 we urge the DNR to amend the performance standard to read:

> *"Structure design and placement must minimize interference with views:*
>
> a) *from public parkland to the river and bluffs on the opposite side of the river; and*
> b) *from the OHWL to the bluffs on the opposite side of the river.*
>
> *Tiering from the river and from blufflines is encouraged."*

Modeling Requirements for Larger Development. We previously have requested that developments over a certain size – perhaps four living units or 10,000 square feet of space – be required to go through a site-plan review. One of the aspects of that review would be a required simulated three-dimensional rendering of how the built structure would fit in the surrounding environment, as viewed from several points on the river, and several points of key public (and private) viewing areas in the immediate vicinity. The impacts of proposed structures on the scenic environment are very difficult for people to visualize. By requiring modeling to be part of a site plan review neighbors, citizens and policy makers would be in a much more informed position from which to evaluate the project. Developers would also be in a better position if they could demonstrate through the model that their proposed project would not have a negative impact on the scenic resources of the river.

We are hopeful that such a rule will be incorporated into the administrative standards.

Massing standards. We previously requested the inclusion of standards for building massing. Several examples around the corridor – River West in downtown Minneapolis, and Eagle Point Condominiums – effectively create a wall between their respective historic city centers and the river valley. Simple standards that apply to all districts requiring buildings be no longer than, for example, 250 feet would seem to help minimize negative impacts on the riverfront character in the built environment.

Larger minimum lot size in the CA-2 district. We previously suggested requiring a minimum lot size of greater than 2 acres for the CA-2 district. In areas designated Rural Open Space, the current Executive Order guides development to be 1 unit per 5 acres. Thus, allowing for more density in these areas will diminish our ability to protect habitat and open space in the key undeveloped parts of the corridor – including the scenic and ecologically significant expanses of quality habitat in Washington and Dakota Counties.

Exceptions for Existing Industrial Complexes. As we previously suggested, state statute §116G.15 requires protection of scenic views along the river. We do not understand the rationale for exempting a specific class of property – industrial properties – from height standards. Most observers fully expect the 2011 legislature to make the variance available to allow municipalities to exempt industrial expansions for which the height requirements would prove to be a significant hardship. Providing, in essence, a blanket variance for industrial expansions regardless of circumstance is unnecessarily broad, unresponsive to unique conditions and circumstances, and not in keeping with the intent of §116G.

Exception for setback averaging. As stated previously, FMR disagrees with the allowance of setback averaging. We recognize that such a standard has existed in draft shoreland rules. But the Critical Area, and National Park status in particular point strongly toward a more robust standard for scenic and ecological protections than exists on the average Minnesota waterfront. The fact that structures on adjoining lots are not in conformance with the setback standards should not serve as a rationale for allowing further intrusion into the protected setback area.

Calculating development density. We previously raised the issue that instead of this calculation being "suitable area ÷ lot size," it should instead be "X units ÷ Y suitable acres." It is also unclear to us exactly what the standard for density is, as this simply specifies how to measure density, not what numerical density standard is expected onsite.

Height concerns in gorge. We are pleased with the use of 35-foot heights in the CA-3 districts through the gorge. However, we question the redistricting to CA-4 near bridgeheads in the gorge, and associated height increases.

At multiple locations in the Mississippi River Gorge area between Minneapolis and St. Paul, the draft zoning shows changes of parcels to the CA-4 district. Specifically, the change took place by Franklin Avenue and Lake Street in Minneapolis, Marshall Avenue and Ford Parkway in St. Paul and along I-35E in Lilydale.

The principal issue the change addresses is buildings to be built not to 35 feet but to 48 feet.

There is a vitally important distinction between heights of 35 feet and 48 feet: 48 feet is of a height that is visible above the tree canopy. Both Minneapolis and St. Paul recognized this and set their current code for height in the gorge at 35 feet and 40 feet, respectively. The cities already include appropriate height here in direct response to Executive Order 79-19, so why would the DNR weaken this standard?

A quick study of the conditions near the Lake Street-Marshall Avenue Bridge is illustrative. Below is a picture of buildings in St. Paul, just south of the Lake Street-Marshall Avenue Bridge. The Mississippi River Chapter of St. Paul's Comprehensive Plan, policy 7.27 calls for:

> In Upland areas, the general character of the existing silhouette of lower-profile buildings along the edge should be maintained. Development should also respect the mature tree canopy at the bluff edge of the Uplands with buildings forms that do not dominate the canopy's natural height. However, occasional, modest exceptions to the silhouette with medium-scaled landmark buildings are allowed.

The building shown is 50 feet, and you can see that it is clearly visible above the tree canopy, and thus is not in keeping with the City's Comprehensive Plan. St. Paul's current zoning in the gorge allows for buildings of only 40 feet tall.

The fundamental beauty of this part of the corridor is the fact that despite being at the core of the metropolitan area, you have only minimal indications that you are in an urban area. The river provides an incredibly unique and scenic space away from the rest of the City. Allowing for the further intrusion of the built environment into the river valley in this area in particular would fail to adequately protect this significant scenic resource.

The conditions shown at the Lake Street-Marshall Avenue Bridge are illustrative of the challenges the CA-4 designation poses to areas adjacent to the other key bridgeheads in the corridor. Indeed, we don’t think that the expanded height limits found in the CA-4 designation are appropriate at any of these locations.

Height limit at Fort Snelling Upper Bluff. We have noted previously that draft standards place the Upper Bluff at Fort Snelling in the CA5 category. Particularly now that the CA5 district has no height limit, we think a more appropriate designation for this historically-significant area is the CA4 designation.

Height limit at the Ford Motor Company in St. Paul. The CA6 designation of the portion of the Ford Motor Company site in the Critical Area (roughly half the overall site) provides a height limit of 65 feet at a critical point along the river corridor. The site is a uniquely scenic part of the gorge, and is prominently visible from Minnehaha Park, the Lake Street-Marshall Avenue Bridge, numerous locations in Mississippi River Gorge Regional Park, as well as from Fort Snelling’s Visitors Center overlook. Instead, we urge you to adopt a zoning standard that is in keeping with the existing Critical Area zoning on the Ford site – CA-3, which includes a height of 35 feet.

Height limit along West Seventh. Much of the blufftop in the West Seventh Street part of St. Paul is in the CA-6 zoning district, and thus subject to a 65-foot height limit. We think a lower limit would be appropriate in this area, such as CA-3 and/or CA-4, which would do a better (if still imperfect) job of keeping heights near or closer to the height of the tree canopy (35 to 48 feet).

Height limit on St. Paul’s West Side Flats. We believe the height limit for CA6 should be 60 feet, not 65 feet. This would reflect St. Paul’s draft threshold for heights in the West Side Flats of 60 feet, which protects iconic views of the river valley from downtown’s Kellogg Mall Park. The photo shown below was taken from Kellogg Mall Park opposite from City Hall, and annotated with photometric data provided by the City of St. Paul about the height of existing buildings. Clearly, a 52’ building preserves bluff views while a 74’ building does not. We think 60’ is the maximum to preserve bluff views.

Likewise, this is among the most important places to also protect with a key performance standard. St. Paul has a landmark performance standard incorporated into its comprehensive plan that requires the new development ensure that the high bluffs across the West Side Flats be visible from downtown’s Kellogg

Mall Park (high atop the bluff downtown). This performance standard was tested, upheld, and a central piece of the City's denial of the Bridges of St. Paul project in 2007. The CA6 performance standard does not specifically call out and protect views from Kellogg Mall Park, which we think is a major shortcoming of the draft standards in their current form.

Indeed, we continue to believe the optimum rules would use robust methods of analysis to identify key unique viewsheds along the river corridor, along with associated standards to protect the most significant characteristics of each viewshed.

Height exceptions. We think many of the exceptions to height requirements are quite defensible. However, we would like to take issue with one problematic exception that may seem minor but can significantly weaken the effectiveness of height protections: the allowance for mechanical equipment, ventilation service stacks, and the like. In the photo below, the mechanical equipment (and associated screening) add considerable height to the 52' and 74' foot building shown in the photo. It is the mechanical equipment, in fact, which causes the 74' building to poke above the bluff horizon in the distance. Even a few feet of added mechanicals can make a critical difference in perception of the surrounding environment.

As such, we think such mechanical equipment should not be made standard height exceptions. We recognize many municipal zoning codes do exempt them, but in this case, height limits are designed to protect key scenic resources in a National Park – a reality which we believe argues against allowing this exception within the Critical Area.

Bluff & Slope Standards

General approach to bluff definition and mapping. As we have noted repeatedly, bluff definitions completely ignore the very specific intent spelled out in legislation, in Minnesota Statutes §116G.15. The League of Minnesota Cities worked with FMR to find language that was acceptable to all parties, thus helping address an otherwise thorny issue. FMR helped secure a half-million dollar appropriation to the DNR to help address this issue, and rulemaking in general. Most every municipality we surveyed used

18% as the threshold slope to define a bluff. The draft rules define a bluff at a 30% slope. The DNR is asked by state statute to take into account existing ordinances, and this would seem to be an important area for such consideration. As such, we will reiterate that we are extremely disappointed in the DNR's approach here.

Setback from 18% slope. Again, we would call on setbacks from 18% slope to be at least 40 feet, in keeping with Executive Order 79-19, and what is in effect in almost every municipality already. All the municipal ordinances we reviewed except one in *River Resources & Rules* called for a minimum setback of 40 feet from the top of the bluff for slopes of 18% or greater. The draft regulations actually loosen this standard, and require only 20 feet. We think a setback of 40 feet must remain the minimum standard if the resource protection is to remain at the same level.

CA2 setbacks in southeastern part of the corridor. As suggested previously, we think the setbacks in the CA2 district from slopes of 18% or more should be at least 100 feet. Such a setback is needed to protect critical habitat, bluff and slope integrity, and scenic quality in an area where expansive views dominate. Such a setback would apply largely (by virtue of where the CA2 district is proposed) to the southeastern portion of the corridor, around Pine Bend, Grey Cloud Island and Spring Lake.

Slope Rise. Minnesota Statutes §116G calls for a bluff to be defined as land that rises over 10 feet with an average of at least a 18% slope. But the current definition for bluff assumes a rise of 25 feet. Adjustments to the proposed definition should be required to make this definition consistent with the guideline definitions provided in statute §116G.15.

Almost every local ordinance we evaluated in our previously submitted *River Resources & Rules* report designated bluffs as those areas with slopes that exceed 18% (rather than 30%). Executive Order 79-19 similarly defines bluff features using the 18% threshold both in the interim development regulations, but also in Appendix C of the Executive Order. Likewise, the Executive Order as well as the interim development regulations contained within gives status to bluffs of 12% to 18%, which is referred to as "steep slopes" in many local ordinances.

Water Quality

Impervious Surface Coverage Standards. In our previous communication, we requested that the 1" treatment standard apply to properties smaller than 3,000 square feet, and redeveloping properties. In fact, the new draft standards apply to all development requiring an LGU permit and/or requiring site plan review. We appreciate and support this change

The state has a policy that it should address impaired waters, which unfortunately include every mile of the Mississippi River within the MRCCA. Minnesota Statutes §116G.15 clearly requires the rules to protect water quality in the corridor. Indeed, several local governments have adopted a 2.8" standard, and they have successfully defended the higher standard as necessary to protect water quality and reasonable, given modern technologies in wide use today.

In the latest revision, the following language was added in the stormwater management section:
"Where site conditions do not allow for infiltration, filtration practices shall be given priority."
We would suggest that statement should be rewritten to read, "Stormwater volume shall be reduced *by onsite infiltration and/or low impact development (LID) practices* by the amount equal to the amount generated by one inch of rainfall over the new or reconstructed impervious surfaces of the development."

Linear Projects. The rules need to include runoff volume & rate control standards for public linear projects such as roadways, sidewalks and trails in the draft standards. Currently, the rules state that runoff needs to be controlled in projects, "requiring a LGU permit and/or requiring site plan review." We suggest adding the language, "and in all public projects, except as superseded elsewhere in state or federal law. Linear projects make up a significant percentage of impervious surfaces in the corridor and several watershed districts within the MRCCA are already requiring infiltration or treatment of runoff from linear projects.

The MRCCA standards should require treatment as follows:

Project Type	Roadway Classification	Standard
New Construction (≥ 1.0 acre impervious)	Arterial, County Road or Highway	Standard for non-linear projects applies to runoff from the new and reconstructed impervious surface
	Collector, Subcollector or Access	Standard for non-linear projects applies to runoff from the new and reconstructed impervious surface and the directly connected impervious surfaces within the project corridor
Reconstruction or New Construction (< 1.0 acre impervious)	Arterial, County Road or Highway	Infiltration of 1.0-inch of runoff from the new and reconstructed impervious surface
	Collector, Subcollector or Access	Infiltration of 0.8-inch of runoff from the new and reconstructed impervious surface and the directly connected impervious surfaces within the project corridor
Rehabilitation	All	No water quality/volume control requirement
Mill & Overlay	All	No Rule C permit required

Source: Rice Creek Watershed District Rules, 2007.

Wetland Protection. The proposed Draft MRCCA rules do not require wetland replacement within the MRCCA as they should. As you know, wetlands perform multiple ecosystem services such as flood storage, habitat, and water filtration. Requiring that wetlands be replaced somewhere else, potentially in another watershed, does not protect the MRCCA as Minnesota Statutes §116G.15 requires.

Compliance with Watershed District/Watershed Management Organizations. We had suggested that the standards require all projects and activities comply with Watershed District/Management Organization rules "and plan standards." The latest standards incorporated this suggestion, and we thank you.

Vegetation and Buffers

Vegetative Buffers - General. FMR supports the standard that requires LGUs to implement an incentive, marketing or education program to encourage property owners to protect or restore natural or vegetated buffers. We encouraged the DNR to retain these requirements from your previous draft of the standards, and you did. We thank you.

Vegetation Standards Throughout Corridor. We believe the standards need to address management of

vegetation throughout the corridor. The current draft of the rules manages vegetation only in the SIZ, SPZ, BIZ, and "other areas identified in MN Statutes, §116G.15, Subd. 4.(b) (floodplains, wetlands, gorges, and existing significant vegetative stands)".

First, on a technical note, we believe that it would be most helpful to spell out which other areas are identified in statute specifically, in addition to simply directing the reader to cross-reference that themselves.

But moreover, we believe that management and replacement of vegetation (particularly trees) throughout the corridor is needed. Much of the corridor is used for bird migration, and in order to support this ecological function, canopy trees and native species must be protected or enhanced in the entire corridor. St. Paul's draft ordinance provides an effective and well-considered model of how to achieve a meaningful but workable vegetation management ordinance. The ordinance provides an elegant mechanism to document pre-development vegetation conditions, and then respond to and mitigate construction impacts as appropriate.

Siting. One of the provisions St. Paul's draft ordinance also offers is the concept of maximizing protection of vegetation. Specifically we are thinking of a provision like, "existing native and non-native, non-invasive vegetation shall be protected and maintained to the greatest extent possible. Any new development shall be located on the site so as to maintain visual buffering and ecosystem function."

Screening from opposite part of the valley. The proposed draft rules require screening of structures only when viewed from the OHWL of the opposite shore. We would suggest that the rules should require screening when viewed from any public land on the opposite side of the river in addition to the opposite OHWL. Again, scenic views of the river should not be protected only when viewed from the OHWL on the opposite shore. ore people view river vistas from blufftops, roads and bridges than from the river's edge, and these important scenic views must be protected, according to §116G.

Shoreline buffers. We still feel that more clarity is needed on how shoreline buffers work in "shoreline recreational use areas" – what does "25 feet for every 100 feet" mean? We suggest that this section be reworded to read that shoreline buffers be allowed to expand "…with an extra 25' *in width along the shoreline for each 100' in lot width."*

Violations. The rules should contain a requirement that LGUs set a significant financial penalty (we suggest a minimum of $5,000, increasing according to the severity of the impact) for illegal cutting. A restoration plan and replanting does not provide an adequate deterrent for property owners who want an unobstructed view of the river and can cut mature trees and replace them with saplings.

We also believe that the rules should specify a minimum size for replacement vegetation. Removal of full-grown vegetation cannot be fully remedied in the short-term, but at least by requiring minimally-sized replacement, we increase the likelihood that new vegetation will take hold and begin to grow quickly. We would suggest a tiered approach to requiring replacement vegetation. For areas of 1/10th an acre and smaller, vegetation can be replaced according to this table:

Size of Tree Damaged or Destroyed	**Number of Replacement Trees**		
	A	B	C
	Deciduous trees at least 4 caliper inches; Coniferous trees at least 12 feet in height	**Deciduous trees at least 2.5 caliper inches; Coniferous trees at least 6 feet in height**	**Deciduous trees at least 1.5 caliper inches; Coniferous trees at least 4 feet in height**
Coniferous, 12 to 24 feet high	1	2	4
Coniferous, greater than 24 feet in height	2	4	8
Primary Deciduous, 6 to 20 inches diameter	1	2	4
Primary Deciduous, greater than 20 inches in diameter	2	4	8
Secondary Deciduous, 20 to 30 inches diameter	1	2	4
Secondary Deciduous, greater than 30 inches diameter	2	4	8

City of Scandia Code of Ordinances, Ordinance no. 98, 2010

For swaths of land larger than 1/10th acre that have been cleared, we suggest requiring that a qualified restoration ecologist prepare a restoration plan, and that the property owner be required to comply with the plan, or face significant penalty. We also suggest there be a system of financial incentives and/or penalties to ensure the restoration is successfully completed within a reasonable timeframe.

Uses and Facilities

Off-Premises Advertising Signs. We previously suggested banning advertising signs entirely. While this would be a valid approach, another approach might be to apply the same standard to signs that we suggest applying to other elements. No advertising signs should be constructed that are visible from public lands on the opposite side of the river. We believe this would adequately provide for opportunities for advertising signs in areas where there are not discernible negative impacts on the scenic qualities of the river corridor.

Mining Reclamation. We previously suggested several changes, and would like to revisit and refine our suggestions. We believe the standards should require a performance bond and associated Memorandum of Understanding with the mining submission; it is unclear to us why these items would not be required.

The rules should clearly delineate the difference between a new mining operation versus expansion of an existing one, and thus if both are subject to the requirements of this section. Would, for example, expansion of a previously-existing mine trigger the requirements of this section?

Prohibit Harvest of Trees and Biomass. We believe there are many places to engage in tree harvesting with far less potential for impact on the scenic and natural resources of a National Park and sensitive ecosystem. Clearcutting and/or forestry are prohibited in many of the river communities we studied, and there are few if any sustained sites where such harvesting occurs.

We wonder if anyone asked to allow tree harvesting (we don't recall any such requests). Why would we promote tree harvesting in the rules for a National Park? The one exemption that we would make is to

ensure we draw an exception for the appropriate harvest of exotic species and invasive species.

If tree harvesting is allowed, we suggest adding additional requirements, including that harvest take place at least 300 feet from the River or 200 feet from a tributary, and be required to follow state guidelines and best practices.

Restaurants as River-Dependent Uses. As in our previous letters, we suggested eliminating restaurants from possible consideration of being river-dependent uses. Currently, we think they could be interpreted to be river dependent under the "commercial facilities" heading. Many uses may benefit from a river adjacent location but that does not make them "river-dependent" This is overbroad and stretches the definition of "dependent" beyond credulity.

Barge Fleeting. One of the items we believe is missing from the uses section is language on barge fleeting. The rules can describe where fleeting should and should not occur. In particular, we believe that barge fleeting should not be allowed in the Gorge portion of the river – from the Franklin Avenue bridge in Minneapolis to around Rankin Street in St. Paul.

Executive Order 79-19 set forth areas where barge fleeting would and would not be allowed within its model ordinance; as a result, we don't believe that setting some thoughtful bounds through this rulemaking process is in any way overstepping the expectations of authority the legislature accorded the DNR.

Subdivisions and Planned Unit Developments

Open Space Dedication Map. In our previous communications, we argued for an open space dedication map. No such map was produced in the latest draft of the rules. However, what was produced was a fairly detailed list of priority areas to be protected through parkland dedication and open space protections. The identification of priority conservation areas that has taken shape in the rule seems a reasonable approach, if not our ideal solution.

Open Space Protection in Conventional Subdivisions. Many changes were made in response to previous comments we and others made. We think the open space protections are much improved over previous versions, and provide a more focused and intentional mechanism to help realize the goals of the Critical Area and MNRRA.

We think the open space and parkland dedication provisions outlined are well-considered. We believe in order to fulfill their potential, the rules ought to require specific provisions be included in all conservation easements created to fulfill the terms of the requirements of Critical Area rules. We recommend that the rules require these easements to:

- In both physical and legal design, be crafted in a way that maximizes the fulfillment of the purposes and objectives of the Mississippi River Corridor Critical Area and Mississippi National River and Recreation Area.
- Prohibit all new privately-owned structures in the easement.
- Limit vegetative changes to those that maintain enhance, and restore the vegetation in its natural state and maximize habitat value.
- Broadly maximize the potential for an off-road Mississippi River Trail and associated trail network. And on the level of individual easements, affirmatively pprovides for, where appropriate, the future right of public access to the land and river, including protecting the right to build a 20-foot-wide Mississippi River Trail through the easement.

- At a minimum, all easements created under this program should not prohibit the future development of trails on any easement.
- Be subject to proactive public input, review, and a public hearing through the subdivision process.

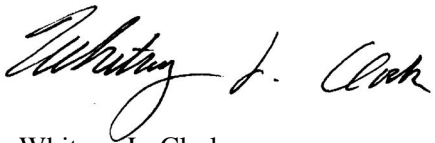
These provisions are not just improvements, but we believe they are essential to ensuring the open space provisions actually achieve the purposes for which they are designed. Without such requirements, we risk ending up with conservation easements that may not serve the intended public purpose and may not be tailored to the specific needs of the Mississippi River Critical Area.

We recognize the open space provisions are said to put additional demands on local governments. And while this may be true, we rarely get a second chance to do right by the protection of land in a developing area. We can maximize protection and access, as Minneapolis and St. Paul have done along much of their riverfront, or let a major one-time opportunity to protect key lands within our National Park pass us by.

Those are our comments on your most recent revisions to zoning and standards. Thanks again for your efforts and consideration of our comments.

Please call Irene Jones or myself at 651-222-2193 in the coming days if you have additional questions about these comments.

Sincerely,



Whitney L. Clark
Executive Director