



Central Region Headquarters  
1200 Warner Road  
Saint Paul, MN 55106

September 29, 2022

**Re: City Council Public Hearing on Pigs Eye Lake Habitat Restoration Project**

Dear Members of the City Council:

The DNR was recently notified of the upcoming public hearing on an application appealing the Board of Zoning Appeals (BZA) decision on the habitat restoration project underway in Pigs Eye Lake, Public Water #62-4P.

I have reviewed the appeal application dated September 14, 2022 that challenges DNR's determination of the ordinary high water level (OHWL) for Pigs Eye Lake. In response to this appeal, the DNR stands by the OHWL determination as explained in the letter to the BZA dated August 17, 2022. We have no further comment.

For information on DNR's public waters work permitting process for this project, please see the attached DNR letter to the BZA dated August 5, 2022. For information on the Mississippi River Corridor Critical Area (MRCCA) regulations as they relate to this project, please see the attached email correspondence from DNR Commissioner Sarah Strommen to Mr. Tom Dimond dated May 7, 2021.

Sincerely,

A handwritten signature in black ink that reads 'John M. Gleason'.

John M. (Jack) Gleason  
South District Hydrologist Supervisor | Central Region | Ecological and Water Resources  
Phone: 651-259-5753 | Email: [john.gleason@state.mn.us](mailto:john.gleason@state.mn.us)

Enclosures:

- DNR Letter to BZA dated August 17, 2022
- DNR Letter to BZA dated August 5, 2022
- Email from DNR Commissioner to Tom Dimond Dated May 7, 2021

CC. Andrew Hogg, City of St. Paul  
Aaron MacFarlane, USCOE  
Megan Moore, DNR South District Manager  
Dan Scollan, DNR East Metro Area Hydrologist  
Scott Yonke, Ramsey County



Central Region Headquarters  
1200 Warner Road  
Saint Paul, MN 55106

August 17, 2022

**Re: Board of Zoning Appeals (BZA) Public Hearing on Pigs Eye Lake Habitat Restoration Project**

Dear Members of the Board of Zoning Appeals:

I understand that the Board of Zoning Appeals, upon conclusion of the public hearing on August 8, 2022, asked City of Saint Paul staff to obtain additional information from the DNR. In an email sent August 11, 2022, DNR received three questions regarding the ordinary high water level (OHWL) of Pigs Eye Lake, Public Water #62-4P.

**Ordinary High Water Level of Public Waters**

The DNR has broad statutory authority to determine the OHWL of waters of the state ([Minn. Stat. § 103G.255 \(3\)](#)). [Minn. Stat. § 103G.005, Subd. 14](#) defines Ordinary High Water Level (OHWL) as the boundary of water basins, watercourses, public waters, and public waters wetlands. The OHWL is the landward extent of DNR jurisdiction over work in the bed of public waters. It is commonly used by DNR in Public Waters Work Permits and by local land use zoning authorities to determine lot size and structure setbacks. The OHWL is not a runout elevation, which is the elevation at which water leaves a water body. The OHWL is not an average water level. The average water level includes a wide range of water levels that contribute to the average and does not lend itself to long-term reliability. The OHWL is not an extreme high water level or an arbitrary elevation set by an individual, group, or agency.

**Question 1. What is DNR's specific classification for Pigs Eye Lake for determining its OHWL? Minn. Stat. Sec. 103G.005, Subd. 14 lists 3 ways the OHWL is determined: Which of the methods was used for Pigs Eye Lake?**

Pigs Eye Lake is a public water basin located within the floodplain of the Mississippi River. Pigs Eye Lake is directly connected to the Mississippi River via channels at the Red Rock Barge Terminal and at Hog Lake. Due to these hydraulic connections, the water level of Pigs Eye Lake directly fluctuates with the water level of the Mississippi River. The ordinary high water level of Pigs Eye Lake has therefore been determined to be the same as the ordinary high water level of the Mississippi River.

In accordance with the definition in [Minn. Stat. § 103G.005, Subd. 14](#), the ordinary high water level of the Mississippi River is the elevation of the top of the bank of the channel. Due to dredging, levee construction, riprap, and other river-altering activity, physical evidence of the top of the bank is very limited in the commercially navigable portion of the Mississippi River. Therefore, since 2005 the DNR has used top of bank elevations determined through hydrologic/hydraulic modeling of the 2-year return interval, or 50% annual exceedance flow, because this flow, known as the bankfull flow, has been demonstrated through scientific

studies to be closely associated with river channel formation. DNR's determination is based on the best available information. DNR has consistently used these OHWL determinations for DNR Public Waters Work Permitting on the Mississippi River for nearly 20 years.

Please note that the navigation lock and dams constructed on the Mississippi River, including Lock and Dam No. 1 in St. Paul and Lock and Dam No. 2 in Hastings, are not akin to flood control dams. A flood control dam is a solid structure designed to store extra water in a reservoir during a flood event while lowering water elevations downstream. Examples of flood control dams in Minnesota that create a reservoir include the Leech Lake Dam, Pokegama Lake Dam, and the Sandy Lake Dam. In the case of flood control dams, the OHWL is the highest normal summer pool operating elevation as described within the operating plan of the reservoir. The OHWL of a reservoir is not the highest operating level of a flood control dam because that level would correspond to a flood event, or **extreme high** water level, and not an **ordinary high** water level. Accordingly, the OHWL of a reservoir is defined as the highest normal summer pool operating elevation.

As opposed to flood control dams, the navigation dams on the commercially navigable portion of the Mississippi River, including Lock and Dam No. 2, do not provide any flood control function and do not store extra water in a reservoir. These navigation dams are designed and operated solely to maintain the **minimum water level** necessary for commercial navigation (barges and tows) in the 9-foot-deep navigation channel. Unlike a solid flood control dam, Lock and Dam No. 2 consists of a series of piers across the river with moveable gates between the piers. The gates at Lock and Dam No. 2 are operated during low (i.e., drought) and moderate flows to maintain water levels at the elevation required for navigation. During periods of high flow, the gates are raised completely out of the water allowing the river to flow freely.

The **minimum water level** maintained by Lock and Dam No. 2 at the Primary Control Point at South St. Paul between Lock and Dam No. 1 and Lock and Dam No. 2 is 686.8 feet in the NAVD88 vertical datum or 687.2 feet in the MSL 1912 vertical datum. The minimum water level maintained by Lock and Dam No. 2 at the dam is 686.1 feet in NAVD88. The U.S. Army Corps of Engineers defines these **minimum water levels** as the "project pool elevation."

The assertion that the "project pool elevation" of Lock and Dam No. 2 (686.8 feet, NAVD88 datum) is equivalent to the ordinary high water level of Pigs Eye Lake is **incorrect**. As explained above, the project pool elevation represents the **low** water level of Pigs Eye Lake. The ordinary high water level of any public water must be a **high** water level. It would be unreasonable to conclude that the **low** water level of Pigs Eye Lake is its ordinary **high** water level.

**Question 2. What is the OHWL elevation for Pigs Eye Lake as determined specifically by the DNR, how did the DNR reach that determination and when was the determination made?**

The OHWL of Pigs Eye Lake, due to the lake's direct hydraulic connection to the Mississippi River, is equivalent to the OHWL of the Mississippi River at Pigs Eye Lake, which is located at River Mile 834. The OHWL of the river at River Mile 834, and therefore the OHWL of Pigs Eye Lake, is 692.9 feet, NAVD88 datum.

In 1983, the Minnesota DNR and the U.S. Army Corps of Engineers entered into a Memorandum of Understanding (MOU) in which the Corps agreed to apply for state permits and coordinate on certain activities in the Corps' channel maintenance program for the federally-managed commercially navigable portion of the

Mississippi River. The original 1983 version of this MOU contained state permit elevations that were determined by the U.S. Army Corps of Engineers. Between Lock and Dam No. 2 in Hastings and Lock and Dam No. 1 in St. Paul, these permit elevations ranged from 687.2 feet to 695.4 feet (MSL 1912 datum).

In 1994, DNR began a multi-year effort to carefully re-evaluate the permit elevations in the MOU to meet Minnesota's statutory definition of the OHWL. The effort included evaluation of the navigation lock and dam system, hydrologic/hydraulic modeling, and field verification. In 2005, the DNR's primary Public Waters Work Permit governing the Corp's channel maintenance activities was amended to include the DNR-determined OHWL elevations. This permit and associated MOU must be reviewed and extended every 5 years in accordance with [Minn. Stat. § 103G.315, Subd. 13](#).

Since 2005, DNR has used these DNR-determined OHWLs for permitting all projects in the commercially navigable portion of the Mississippi River, including, for example, a 2008 permit authorization for several improvements below the OHWL at Harriet Island Park in St. Paul, and a 2015 permit authorization for installation of a new hopper barge mooring cell at CHS, Inc.'s facility located immediately east of the Lafayette Bridge in downtown St. Paul.

**Question 3. How often is the OHWL reviewed/reestablished and are there criterion used to evaluate whether an established OHWL must be reviewed, adjusted or redetermined?**

Re-examination of prior ordinary high water level determinations are completed by DNR on an as-needed basis when and where there is substantial supporting evidence to justify re-examination. At this time, DNR sees no reason for re-examination of the ordinary high water levels used on the Mississippi River, including at Pigs Eye Lake.

**Conclusion**

The OHWL of Pigs Eye Lake is 692.9 feet, NAVD88 vertical datum. This elevation is DNR's jurisdictional boundary for the basin. The ongoing habitat restoration project in Pigs Eye Lake is authorized by DNR Public Waters Work Permit #2020-1818 and consists of fill placed entirely below the ordinary high water level. The filling has been authorized by DNR for fish and wildlife habitat purposes only; these islands are not authorized for the purposes of creating upland for development subject to local land use regulations.

Sincerely,



Dan Scollan  
East Metro Area Hydrologist





Central Region Headquarters  
1200 Warner Road  
Saint Paul, MN 55106

August 5, 2022

**Re: Board of Zoning Appeals (BZA) Public Hearing on Pig's Eye Lake Habitat Restoration Project**

Dear Members of the Board of Zoning Appeals:

The DNR was recently made aware of the upcoming public hearing on a BZA appeal application regarding the ongoing habitat restoration project in Pigs Eye Lake, Public Water #62-4P.

This project is authorized by DNR Public Waters Work Permit #2020-1818. This permit was issued to the U.S. Army Corps of Engineers and the Ramsey County Parks & Recreation Department on August 26, 2020. The permit authorizes the following activity to be conducted entirely below the ordinary high water level of Pig's Eye Lake:

Create islands using dredge spoil material to restore habitat and reduce erosion and sedimentation; excavate lake bed as necessary for navigational access required to construct project; vegetate islands; and stabilize shoreline of islands; all in accordance with plans submitted June 4, 2020 and the conditions of this permit.

The permit application, submitted on June 4, 2020, included an environmental assessment worksheet (EAW) for the proposed project prepared by the U.S. Army Corps of Engineers in partnership with the Ramsey County Parks & Recreation Department. The EAW was prepared in accordance with the rules of the Minnesota Environmental Quality Board (EQB). Ramsey County, in a Record of Decision dated May 24, 2018, determined that the proposed project does not have the potential for significant environmental effects.

On June 22, 2020, DNR distributed the permit application for a 30-day review and comment period to federal, state, and local agencies including the U.S. Army Corps of Engineers, the Board of Water and Soil Resources, the Ramsey Conservation District, the Ramsey-Washington Metro Watershed District, and the City of Saint Paul. The permit application was also distributed to DNR specialists in Wildlife, Fisheries, Nongame Wildlife, and Ecology.

To address comments received, DNR issued the permit on August 26, 2020 with conditions including:

- a ban on construction activity during the spring fish spawning and migration period,
- a requirement to place in-water boundary markers to establish an exclusion zone to protect the Pigs Eye Island Heron Rookery Scientific and Natural Area and its sensitive species, and
- a requirement for a vegetation management plan to stabilize the islands, establish native vegetation, and maintain and monitor the vegetation.

The conditions placed on the permit addressed all comments received on the application. The application was issued pursuant to Minn. Rules 6115.0190 and 6115.0191 specifying the requirements for placement of fill in Public Waters. The placement of fill in Pig's Eye Lake was authorized for the specific purpose of restoring and improving fish and wildlife habitat in a Public Water as prescribed in Minn. Rules 6115.0191, Subpart 6. The islands under construction are entirely below the ordinary high water level and are authorized by DNR for fish and wildlife habitat purposes only; these islands are not authorized for the purposes of creating land for development subject to local land use regulations.

Please note that DNR does not administer water quality regulations such as the Clean Water Act in the State of Minnesota; water quality in Minnesota is regulated by the Minnesota Pollution Control Agency. The DNR Public Waters Work Permit contains a provision specifying that the permittee is not released from any other rules, regulations, requirements, or standards.

In an email sent May 7, 2021, DNR's Commissioner Sarah Strommen addressed the points contained in the appeal regarding the Mississippi River Corridor Critical Area (MRCCA) statutes and rules. Please see the enclosed copy of this email for details.

Sincerely,

A handwritten signature in cursive script that reads "Dan Scollan".

Dan Scollan  
East Metro Area Hydrologist

Enclosures:

DNR Permit No. 2020-1818

Email from DNR Commissioner to Tom Dimond Dated May 7, 2021

**Permit Number**  
**2020-1818**

## Public Waters Work Permit

**Expiration Date: 08/26/2025**

Pursuant to Minnesota Statutes, Chapter 103G, and on the basis of statements and information contained in the permit application, letters, maps, and plans submitted by the applicant and other supporting data, all of which are made part hereof by reference, **PERMISSION IS HEREBY GRANTED** to the applicant to perform actions as authorized below.

<b>Project Name:</b> Pigs Eye Habitat Restoration	<b>County:</b> Ramsey	<b>Watershed:</b> Mississippi River - Twin Cities	<b>Resource:</b> Lake: Pigs Eye (62000400)
<b>Purpose of Permit:</b> Waterward Navigation Channel Excavation, Erosion Control/Stabilization Fill & Grading, Bioengineering		<b>Authorized Action:</b> Create islands using dredge spoil material to restore habitat and reduce erosion and sedimentation; excavate lake bed as necessary for navigational access required to construct project; vegetate islands; and stabilize shoreline of islands; all in accordance with Plans submitted June 4, 2020 and the Conditions of this permit.	
<b>Permittees (2):</b>  U.S. ARMY CORPS OF ENGINEERS CONTACT: MCGUIRE, MEGAN, (651) 290-5990 180 FIFTH STREET EAST, SUITE 700 ST. PAUL, MN 55101 (651) 290-5252  RAMSEY COUNTY CONTACT: YONKE, SCOTT, (651) 748-2500 130 7TH ST. E SAINT PAUL, MN 55101 (651) 248-4106		<b>Authorized Agent:</b>  N/A	
<b>Property Description (land owned or leased or where work will be conducted):</b>  UTM zone 15N, 497941m east, 4973841m north (centroid), SENE of Section 15, T28N, R22W, NENE of Section 15, T28N, R22W, SWNW of Section 14, T28N, R22W, NWNW of Section 14, T28N, R22W, SWSW of Section 11, T28N, R22W, SESE of Section 10, T28N, R22W			
<b>Issued Date:</b> 08/26/2020		<b>Effective Date:</b> 08/26/2020	
<b>Expiration Date:</b> 08/26/2025			
<b>Authorized Issuer:</b> John Gleason	<b>Title:</b> Hydrologist Supervisor	<b>Email Address:</b> john.gleason@state.mn.us	<b>Phone Number:</b> 651-259-5753

This permit is granted **subject to** the following **CONDITIONS**:

**APPLICABLE FEDERAL, STATE, OR LOCAL REGULATIONS:** The permittee is not released from any rules, regulations, requirements, or standards of any applicable federal, state, or local agencies; including, but not limited to, the U.S. Army Corps of Engineers, Board of Water and Soil Resources, MN Pollution Control Agency, watershed districts, water management organizations, county, city and township zoning.

## **CONDITIONS** (Continued from previous page)

**NOT ASSIGNABLE:** This permit is not assignable by the permittee except with the written consent of the Commissioner of Natural Resources.

**NO CHANGES:** The permittee shall make no changes, without written permission or amendment previously obtained from the Commissioner of Natural Resources, in the dimensions, capacity or location of any items of work authorized hereunder.

**SITE ACCESS:** The permittee shall grant access to the site at all reasonable times during and after construction to authorized representatives of the Commissioner of Natural Resources for inspection of the work authorized hereunder.

**TERMINATION:** This permit may be terminated by the Commissioner of Natural Resources at any time deemed necessary for the conservation of water resources of the state, or in the interest of public health and welfare, or for violation of any of the conditions or applicable laws, unless otherwise provided in the permit.

**COMPLETION DATE:** Construction work authorized under this permit shall be completed on or before the date specified above. The permittee may request an extension of the time to complete the project by submitting a written request, stating the reason thereof, to the Commissioner of Natural Resources.

**WRITTEN CONSENT:** In all cases where the permittee by performing the work authorized by this permit shall involve the taking, using, or damaging of any property rights or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests therein, the permittee, before proceeding, shall obtain the written consent of all persons, agencies, or authorities concerned, and shall acquire all property, rights, and interests needed for the work.

**PERMISSIVE ONLY / NO LIABILITY:** This permit is permissive only. No liability shall be imposed by the State of Minnesota or any of its officers, agents or employees, officially or personally, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of the permittee or any of its agents, employees, or contractors. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person other than the state against the permittee, its agents, employees, or contractors, for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the state against the permittee, its agents, employees, or contractors for violation of or failure to comply with the permit or applicable conditions.

**EXTENSION OF PUBLIC WATERS:** Any extension of the surface of public waters from work authorized by this permit shall become public waters and left open and unobstructed for use by the public.

**WETLAND CONSERVATION ACT:** Where the work authorized by this permit involves the draining or filling of wetlands not subject to DNR regulations, the permittee shall not initiate any work under this permit until the permittee has obtained official approval from the responsible local government unit as required by the Minnesota Wetland Conservation Act.

**CONTRACTOR RESPONSIBILITY:** The permittee shall ensure the contractor has received and thoroughly understands all conditions of this permit. Contractors must obtain a signed statement from the property owner stating that permits required for work have been obtained or that a permit is not required, and mail a copy of the statement to the regional DNR Enforcement office where the proposed work is located. The Landowner Statement and Contractor Responsibility Form can be found at: [https://bwsr.state.mn.us/sites/default/files/2019-01/Wetland\\_WCA\\_Contractor\\_Responsibility\\_Form.doc](https://bwsr.state.mn.us/sites/default/files/2019-01/Wetland_WCA_Contractor_Responsibility_Form.doc)

**INVASIVE SPECIES - EQUIPMENT DECONTAMINATION:** All equipment intended for use at a project site must be free of prohibited invasive species and aquatic plants prior to being transported into or within the state and placed into state waters. All equipment used in designated infested waters, shall be inspected by the Permittee or their authorized agent and adequately decontaminated prior to being transported from the worksite. The DNR is available to train inspectors and/or assist in these inspections. For more information refer to the "Best Practices for Preventing the Spread of Aquatic Invasive Species" at [http://files.dnr.state.mn.us/publications/ewr/invasives/ais/best\\_practices\\_for\\_prevention\\_ais.pdf](http://files.dnr.state.mn.us/publications/ewr/invasives/ais/best_practices_for_prevention_ais.pdf). Contact your regional Invasive Species Specialist for assistance at [www.mndnr.gov/invasives/contacts.html](http://www.mndnr.gov/invasives/contacts.html). A list of designated infested waters is available at [www.mndnr.gov/invasives/ais/infested.html](http://www.mndnr.gov/invasives/ais/infested.html). A list of prohibited invasive species is available at [www.mndnr.gov/invasives/laws.html#prohibited](http://www.mndnr.gov/invasives/laws.html#prohibited).

**EROSION AND SEDIMENT CONTROL:** In all cases, methods that have been determined to be the most effective and practical means of preventing or reducing sediment from leaving the worksite shall be installed in areas that slope to the water and on worksite areas that have the potential for direct discharge due to pumping or draining of areas from within the worksite (e.g., coffer dams, temporary ponds, stormwater inlets). These methods, such as mulches, erosion control blankets, temporary coverings, silt fence, silt curtains or barriers, vegetation preservation, redundant methods, isolation of flow, or other engineering practices, shall be installed concurrently or within 24 hours after the start of the project, and will

## **CONDITIONS** (Continued from previous page)

be maintained for the duration of the project in order to prevent sediment from leaving the worksite. DNR requirements may be waived in writing by the authorized DNR staff based on site conditions, expected weather conditions, or project completion timelines.

**FISHERY PROTECTION - EXCLUSION DATES:** No activity affecting the bed of the protected water may be conducted between April 1 and June 30, to minimize impacts on fish spawning and migration. If work during this time is essential, it shall be done only upon written approval of the Area Fisheries Manager. See contact list at: [http://files.dnr.state.mn.us/fisheries/management/dnr\\_fisheries\\_managers.pdf](http://files.dnr.state.mn.us/fisheries/management/dnr_fisheries_managers.pdf). Should work begin elsewhere in the project area within these dates, all exposed soils that are within 200 feet of Public Waters and drain to those waters must complete erosion control measures within 24 hours of its disturbance to prevent sediment from entering Public Waters.

**AQUATIC PLANT MANAGEMENT:** For projects where vegetation is placed waterward of the ordinary high water level, a separate Aquatic Plant Management (APM) permit is needed from the DNR Regional APM Specialist. See contact list at: <http://www.dnr.state.mn.us/apm/index.html>. A permit shall be obtained (no fee required) for each site in order to monitor plant source, species, and planting location. Vegetation must be appropriate for the site and free of invasive species. This condition does not apply when only woody vegetation is used, such as willow and dogwood.

**SNA EXCLUSION ZONE BOUNDARY MARKERS REQUIRED:** : The Permittee or Agent are required to place floating in-water boundary markers to mark the Pigs Eye Island Heron Rookery Scientific and Natural Area (SNA) exclusion zone to ensure no traffic enters the area.

**VEGETATIVE PLANTINGS:** : Upon completion of island construction, the Permittee or Agent are required to vegetate the island, stabilize the shoreline and maintain and monitor the vegetation as described in an email from Megan McGuire, USACE, to the DNR on July 8, 2020. Before the end of the island construction, the USCOE shall submit a detailed vegetation plan to the DNR for review and comment.

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cc: John Gleason, EWR District Manager  
Christopher Tetrault, Conservation Officers, Maplewood  
Ben Meyer, BWSR Wetland Specialists, Ramsey  
Erica Hoaglund, DNR Regional Nongame Specialists, Region 3 - North  
Leslie Parris, DNR Regional Environmental Assessment Ecologist, Region 3  
Melissa Collins, DNR Regional Environmental Assessment Ecologist, Region 3  
Scott Noland, DNR Wildlife, Forest Lake  
TJ DeBates, DNR Fisheries, East Metro Area  
Molly Churchich, County, Ramsey  
Nicole Soderholm, Watershed District, RAMSEY-WASHINGTON METRO WD  
Corps of Engineers, Corps of Engineers, Ramsey  
Ann WhiteEagle, SWCD, Ramsey Conservation District  
Joe Lochner, SWCD, Ramsey Conservation District  
Shari Moore, City, Saint Paul

**From:** [Scollan, Daniel \(DNR\)](#)  
**To:** [Sorensen, Jenifer \(DNR\)](#)  
**Cc:** [Hovey, Tom E \(DNR\)](#); [Gleason, John \(DNR\)](#)  
**Subject:** FW: Can DNR Commissioner provide help and assistance to City of Saint Paul to administer and enforce Mississippi River Corridor plans and ordinances?  
**Date:** Wednesday, July 6, 2022 2:56:00 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

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**From:** Petrik, Daniel (DNR) <daniel.petrik@state.mn.us>  
**Sent:** Wednesday, July 6, 2022 2:50 PM  
**To:** Scollan, Daniel (DNR) <daniel.scollan@state.mn.us>  
**Subject:** FW: Can DNR Commissioner provide help and assistance to City of Saint Paul to administer and enforce Mississippi River Corridor plans and ordinances?

Hi Dan, here is the email the Commissioner sent to Tom Dimond back in May 2021.

**Dan Petrik**

Lake & River Shoreland Program Manager  
**Minnesota Department of Natural Resources**  
500 Lafayette Road  
St. Paul, MN, 55155-4032  
Phone: 651-259-5697  
Email: [daniel.petrik@state.mn.us](mailto:daniel.petrik@state.mn.us)



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**From:** MN\_Commissioner (DNR) <[commissioner.dnr@state.mn.us](mailto:commissioner.dnr@state.mn.us)>  
**Sent:** Friday, May 7, 2021 12:11 PM  
**To:** TOM DIMOND <[tdimond@q.com](mailto:tdimond@q.com)>  
**Cc:** Jane Prince (CI-StPaul) <[Jane.Prince@ci.stpaul.mn.us](mailto:Jane.Prince@ci.stpaul.mn.us)>; stephanie <[stephanie.harr@ci.stpaul.mn.us](mailto:stephanie.harr@ci.stpaul.mn.us)>; jxiong01 <[jxiong01@gmail.com](mailto:jxiong01@gmail.com)>; founghawj <[founghawj@yahoo.com](mailto:founghawj@yahoo.com)>; Don Arnosti <[donarnosti@gmail.com](mailto:donarnosti@gmail.com)>; Kiki Sonnen <[kikisonnen@gmail.com](mailto:kikisonnen@gmail.com)>; Peggy Lynch <[peggyalynch@gmail.com](mailto:peggyalynch@gmail.com)>; Sheldon Johnson <[sheldonjohnson3@gmail.com](mailto:sheldonjohnson3@gmail.com)>; Susan Vento <[Susan.Vento@metc.state.mn.us](mailto:Susan.Vento@metc.state.mn.us)>; chai lee <[chai.lee@metc.state.mn.us](mailto:chai.lee@metc.state.mn.us)>; Dave Durenberger <[durenbergerd@gmail.com](mailto:durenbergerd@gmail.com)>; Wilson, Grant (DNR) <[grant.wilson@state.mn.us](mailto:grant.wilson@state.mn.us)>; Lais, Dan R (DNR) <[dan.lais@state.mn.us](mailto:dan.lais@state.mn.us)>; Petrik, Daniel (DNR) <[daniel.petrik@state.mn.us](mailto:daniel.petrik@state.mn.us)>  
**Subject:** RE: Can DNR Commissioner provide help and assistance to City of Saint Paul to administer and enforce Mississippi River Corridor plans and ordinances?

Dear Mr. Dimond,

It's so nice to reconnect with you! Thank you for your ongoing efforts to protect the ecological and scenic qualities of the Mississippi River in St. Paul.

As you know, Minnesota DNR administers the Mississippi River Corridor Critical Area (MRCCA) regulations through local governments. Our role is to ensure that local governments adopt and administer MRCCA plans and ordinances that are consistent with the minimum standards in state rules. Once local governments adopt MRCCA plans and ordinances, they have the responsibility to administer them. While we encourage local governments to exceed state standards, we do not have the authority to require local governments to administer standards that go beyond the state minimum standards (such as requiring a site plan review for work in the Mississippi River). We are not familiar with any St. Paul requirements that may exceed the minimum standards in their existing ordinance.

The DNR has approved the City of St. Paul's MRCCA plan and has reviewed proposed drafts of their MRCCA ordinance. Based on reviews of the City's draft MRCCA ordinance, the city is on track for adopting a MRCCA ordinance that is consistent with the DNR's model ordinance. Until the City adopts a new ordinance, the existing MRCCA ordinance remains effective.

The purpose of MRCCA regulations is to regulate development on land above the ordinance high water level to protect the ecological and scenic values established in MS 116G.15. These regulations were developed recognizing that the Mississippi River is also used for transportation and commerce. As such, the rules do not regulate work in the river. The only regulation addressing work in the Mississippi River is 6106.00.0110 Subp. 6.C. This provision states that "dredging and placement of dredged material are subject to existing federal and state permit requirements and agreements." The U.S. Army Corps of Engineers has authority for the proposed project in Pigs Eye Lake, and has been working with Ramsey County on this project for many years. Ramsey County, as the responsible governmental unit (RGU), completed an EAW and made a negative declaration in May 2018. The DNR issued a public waters work permit on August 26, 2020 for creating islands using dredged spoil material to restore habitat and reduce erosion and sedimentation, as well as to improve navigation. The project has significant fish and wildlife habitat potential, as demonstrated by Minnesota's Outdoor Heritage Fund contributing funding to it.

I appreciate your ongoing concern with this project, and the importance of gathering input from all concerned citizens. The DNR stands ready to assist the city with any questions on how to administer its MRCCA plan and ordinance, and to answer questions from residents on the state requirements for the City's MRCCA plan and ordinance. If you have additional specific questions about state requirements and role in MRCCA, please feel free to contact Dan Petrik ([Daniel.Petrik@state.mn.us](mailto:Daniel.Petrik@state.mn.us)).

Thank you again for reaching out, and for your continued commitment to the Mississippi River!

Sincerely,



**Sarah Strommen**

Commissioner

**Minnesota Department of Natural Resources**

500 Lafayette Road

St. Paul, MN 55155

Phone: 651-259-5022

Email: [sarah.strommen@state.mn.us](mailto:sarah.strommen@state.mn.us)

[mndnr.gov](http://mndnr.gov)



Cc: Grant Wilson, Central Region Director  
Dan Lais, Ecological and Water Resources Regional Manager  
Dan Petrik, Lake and River Shoreland Program Manager

---

**From:** TOM DIMOND <[tdimond@g.com](mailto:tdimond@g.com)>

**Sent:** Friday, April 23, 2021 3:59 PM

**To:** MN\_Commissioner (DNR) <[commissioner.dnr@state.mn.us](mailto:commissioner.dnr@state.mn.us)>

**Cc:** Jane Prince (CI-StPaul) <[Jane.Prince@ci.stpaul.mn.us](mailto:Jane.Prince@ci.stpaul.mn.us)>; stephanie <[stephanie.harr@ci.stpaul.mn.us](mailto:stephanie.harr@ci.stpaul.mn.us)>; jxiong01 <[jxiong01@gmail.com](mailto:jxiong01@gmail.com)>; founghawj <[founghawj@yahoo.com](mailto:founghawj@yahoo.com)>; Don Arnosti <[donarnosti@gmail.com](mailto:donarnosti@gmail.com)>; Kiki Sonnen <[kikisonnen@gmail.com](mailto:kikisonnen@gmail.com)>; Peggy Lynch <[peggyalynch@gmail.com](mailto:peggyalynch@gmail.com)>; Sheldon Johnson <[sheldonjohnson3@gmail.com](mailto:sheldonjohnson3@gmail.com)>; Susan Vento <[Susan.Vento@metc.state.mn.us](mailto:Susan.Vento@metc.state.mn.us)>; chai lee <[chai.lee@metc.state.mn.us](mailto:chai.lee@metc.state.mn.us)>; Dave Durenberger <[durenbergerd@gmail.com](mailto:durenbergerd@gmail.com)>

**Subject:** Can DNR Commissioner provide help and assistance to City of Saint Paul to administer and enforce Mississippi River Corridor plans and ordinances?

**This message may be from an external email source.**

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

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**Tom Dimond**

2119 Skyway Drive  
Saint Paul, MN 55119

MN DNR Commissioner  
Sarah Strommen

Sarah,

I hope you can answer a question regarding administration of the State Critical Area within the City of Saint Paul. The Corps is planning to discharge 400,000 cubic yards of pollutant/waste into a Glacial Lake located in a Regional Park. Saint Paul's adopted plans and ordinances require a site plan review, and a Critical Area Development Permit be issued. Saint Paul's adopted plans and ordinances do not permit the discharge of pollutant/waste into the lake in the Critical Area zoning district where they are proposed.

The Corps and their project partner (Ramsey County) announced they have no intention of submitting their Critical Area proposal to the City of Saint Paul for the administration of Critical Area review and permit approval. Saint Paul has the authority and responsibility to administer the Mississippi River Corridor Critical Area and enforce plans and ordinances consistent with



this chapter. What can you do as the Commissioner to ensure this proposal is submitted for Planning and Zoning review and permit application so the City of Saint Paul can perform it's required administration and enforcement and the public can participate?

The State Critical Area Rules specify that the DNR Commissioner provide advice and assistance to local governments in the Mississippi River Corridor Critical Area for development, adoption, administration, and enforcement of plans and ordinances. Can you provide assistance to concerned Saint Paul residents and our City Councilmember Jane Prince (651) 308-4984 cell?

Greater restrictions. Nothing in this chapter shall be construed as prohibiting or discouraging a local government from adopting and enforcing plans and ordinances that are more restrictive than this chapter. The Glacial Lake had a lake depth over 100 feet and extensive wetlands surrounding it. Much of this was lost to unlicensed discharge into the lake and wetlands. When Saint Paul adopted the Critical Area Plan and Ordinances there was strong support to prevent further discharge within park waters. The MN DNR reviewed and approved the prohibition of discharge of pollutant/waste into the lake. Saint Paul also submitted a plan to the Corps to remove 6 to 8 feet of polluted unconsolidated muck from the lake bottom to enhance plant and fish habitat and reduce resuspension. This speaks to Saint Paul's intent. Saint Paul has supported restoring lake depths not reducing them. Saint Paul has supported removing pollutant/waste from the lake not adding more pollutant/waste.

There is much to discuss about this proposal that is of concern. The Corps failed to follow their own Section 204 requirements to include local residents as participants from the outset. The impacted neighborhoods are Majority BIPOC. The Corps Planning Manual calls for public engagement and inclusion of local residents and BIPOC community members as participants from the outset. Instead, they were excluded from the planning, in direct violation of the Corps own requirements.

As DNR Commissioner can you provide advice and assistance to the City of Saint Paul to administer and enforce plans and ordinances the DNR reviewed and approved for the Critical Area?

Having worked with you when we both served on our City Councils, I saw your passion for protecting and enhancing the Mississippi River Corridor Critical Area. As you know, I also was appointed by the U. S. Secretary of the Interior to serve as a National Park Commissioner during the Mississippi National River and Recreation Area master planning process. I think the last time we had a chance to work together was when I was able to join you and Governor Walz during the pre Covid River Corridor Clean Up at the DNR Headquarters.

I look forward to hearing from you and hope you have an opportunity to reach out to Jane Prince. I have included a few of those who are active on this issue in this communication.

All the best.

Tom Dimond

## **6106.0060 ADMINISTRATION OF PROGRAM.**

Subpart 1.

### **Purpose, terms, and time frames.**

This part establishes the roles, responsibilities, and authorities for administration of this chapter. For the purposes of this chapter:

A.

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

Subp. 2.

### **Responsibilities and authorities.**

The standards and criteria for the Mississippi River Corridor Critical Area established in this chapter apply to:

A.

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

B.

the Metropolitan Council for reviewing plans and ordinances;

C.

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

D.

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

Subp. 3.

### **Consistent plans and ordinances.**

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

Subp. 4.

### **Greater restrictions.**

Nothing in this chapter shall be construed as prohibiting or discouraging a local government from adopting and enforcing plans and ordinances that are more

restrictive than this chapter.

Subp. 5.

**Duties of commissioner.**

The commissioner must:

A.

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

B.

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

E.

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



**September 20, 2022**

**EARLY NOTIFICATION SYSTEM (ENS) PUBLIC HEARING NOTICE - CITY COUNCIL APPEAL**

File #: 22 - 097024

Purpose: An appeal of a decision by the Board of Zoning Appeals denying a request to issue a Stop Work Order on the Pigs Eye Lake Island Building Project, a project regulated and permitted by the Department of Natural Resources (DNR). The zoning administrator determined that the city has no jurisdiction over this work as it is a DNR Public Water body and accordingly, no action was to be taken against the project.

Property Address: Pigs Eye Lake

Appellant: Friends of Pigs Eye Lake Park – Tom Dimond  
2119 Skyway Drive  
Saint Paul, MN 55119

Date: Wednesday, October 5, 2022  
Time: 3:30 p.m.  
Location: 15 Kellogg Boulevard West (City Council Chambers – Courthouse)

**City Council Meetings**

City Council meetings are open for in-person attendance and live public testimony has resumed in Council Chambers, and by telephone. All City Council public hearings are held at 3:30 p.m.

Interested parties who wish to speak on a specific Council Agenda item live via telephone are required to pre-register with the City Clerk. You are asked to register by 12 noon on Tuesday to participate. The registration link is located on the City Council website at [www.stpaul.gov/council](http://www.stpaul.gov/council) or <https://forms.office.com/g/TD3xN7WHy5>.

The public may also comment on public hearing items in writing or via voicemail. Any comments and materials submitted by 12:00 pm of the day before the meeting will be attached to the public record and available for review by the City Council. Comments may be submitted as follows:

Written public comment on public hearing items can be submitted to [Contact-Council@ci.stpaul.mn.us](mailto:Contact-Council@ci.stpaul.mn.us), [CouncilHearing@ci.stpaul.mn.us](mailto:CouncilHearing@ci.stpaul.mn.us), or by voicemail at 651-266-6805. All information provided in the email or voicemail will be added to the public record. (For your information, e-mails will be attached as written, voicemails will be transcribed and attached in writing.)

SEP 15 2022



ZONING APPEAL APPLICATION

To/From Board of Zoning Appeals

Dept. of Safety & Inspections  
Zoning Section  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101-1806  
(651) 266-9008

To / From Planning Commission

Dept. of Planning & Econ. Devt.  
Zoning Section  
1400 City Hall Annex, 25 W 4<sup>th</sup> St.  
Saint Paul, MN 55102-1634  
(651) 266-6583

Zoning Office Use Only

File # 22-097024

Fee Paid \$ 462.00

Received By / Date 9/15/22

Tentative Hearing Date 10/5/2022

APPELLANT

Name(s) Friends of Pigs Eye Lake Park - Tom Dimond

Address 2119 Skyway Drive City Saint Paul State MN Zip 55119

Email tdimond@q.com Phone 952-207-6923

PROPERTY LOCATION

Project Name Discharge of PFAS pollutant from Chemolite Plant into Protected Critical Area and drinking water

Address / Location Pig's Eye Lake Regional Park

TYPE OF APPEAL: Application is hereby made for an appeal to the:

- Board of Zoning Appeals**, under provisions of Zoning Code § 61.701(c), of a decision made by the Zoning Administrator.
- Planning Commission**, under provisions of Zoning Code § 61.701(c), of a decision made by the Planning Administrator or Zoning Administrator.
- City Council**, under provisions of Zoning Code § 61.702(a), of a decision made by the Board of Zoning Appeals or the Planning Commission.

Date of decision September 6th, 20 22 File Number 22-072764

GROUND FOR APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Planning Commission or Board of Zoning Appeals. Attach additional sheets if necessary.

*see attached*

If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

Appellant's Signature Thomas B. Dimond Date September 14, 2022



**Friends of Pig's Eye Lake Park – Tom Dimond**  
2119 Skyway Drive  
Saint Paul, MN 55119

Appeal of BZA Decision

**Neighborhood residents pay a thousand dollars so the City Council can protect our environment and drinking water from pollution.**

7/8/2022 - Friends of Pig's Eye Lake filed the Appeal with the BZA.

8/8/2022 - BZA 1<sup>st</sup> meeting - vote was split 2-2

8/22/2022 – BZA 2<sup>nd</sup> meeting - remained split

9/6/2022 – BZA 3<sup>rd</sup> meeting - the attorney was out sick and BZA short of members - the BZA Chair announced the BZA remained split and would not act on the appeal. Facing another 2 week or indefinite delay in a 2 month long appeal process, we asked the BZA to take action – Dangerous PFAS pollution is being discharge while the City does nothing to protect residents and the water we drink – We suggested moving it forward without a recommendation – Staff said the BZA can't – BZA membership supporting the Appeal changed their vote, allowing the appeal to move forward to the City Council.

**Required reviews by Saint Paul to Protect and Enhance the Critical Area and Protect our Water Supply have not happened. The Friends of Pigs Eye Lake Park appeal seeks to ensure compliance with the required Planning Commission public hearing, site plan review and permit requirements for Critical Area grading and filling. Discharge of fill containing *any* pollutant or nutrients is prohibited by State Law.**

**Question 1. The BZA “BE IT RESOLVED” incorrectly states Friends of Pig's Eye Lake filed an appeal alleging that the Zoning Administrator erred in denying a request to issue a “stop work order”.**

**What the appeal really asked to have addressed is: “Discharge of 80 Million Gallons of Pollutant into Pig's Eye Lake**

July 8, 2022 Appeal of DSI decision – Grading 80-million-gallon discharge of fill/pollutant without Planning Commission site plan review and approval or issuance of a grading permit Friends appeals the DSI decision that asserts Saint Paul has no zoning, planning, or permitting authority when a developer fills, and grades land that is above the Ordinary High-Water Level (OHWL). The opposite is true. The City has the authority and responsibility to plan and regulate Development of land. There is an even greater responsibility in the floodplain, and Critical Area. The decision incorrectly claims Development is “entirely” within the basin” “No site plan review or Development permit, as required for work on land is the question. “

**It is the City's zoning code that calls for a hold on work until an appeal is decided.**

**Question 2. What is the Ordinary High Water Level (OHWL) of Pig's Eye Lake?**

Saint Paul has authority above the OHWL. MN DNR below the water. The long standing OHWL is 686.8 feet. The DNR Hydrologist agrees to this fact.

However, the Hydrologist wants to substitute *Mississippi River top of bank* measurement or 692.9 feet. The 692.9 feet applies to a Memorandum of Understanding (MOU) between the Corps and MN DNR. The MOU is specific to Mississippi River channel maintenance dredging. Pig's Eye Lake is not part of the agreements.

MN Statute requires a different measurement for lakes and reservoirs. MN Statute 103G.005 requires use of the operating elevation of the normal summer pool as the OHWL of reservoirs. The OHWL is 686.8 feet. The Mississippi River top of bank in the MOU is set at 6.1 feet higher than the Statutory OHWL of the reservoir. DNR records show the lake has maximum depth of 4 feet deep. If the 6.1 feet depth increase were actual, the lake would be 10.1 feet deep. *If this was the OHWL for the lake Saint Paul would lose authority over a lot of real estate along the river and in our parks. The DNR would gain sole authority over parkland 692.9 feet or lower. Much of the park is below this elevation.* Existing statutory authority includes land above 686.8 feet.

### **Question 3. When will the City hold the Planning Commission Public Hearing?**

**MN Statute 103G.005 Subd. 14 (3) for reservoirs and flowages, the OHWL is the operating elevation of the normal summer pool (686.8 feet)**

**Saint Paul has jurisdiction and is required to act when there is fill or grading above the OHWL**

#### **State Statute 103G.005.**

##### **Subd. 14. Ordinary high-water level.**

"Ordinary high-water level" means the boundary of water basins, watercourses, public waters, and public waters wetlands, and:

(3) for reservoirs and flowages, the ordinary high-water level is the operating elevation of the normal summer pool.

Pig's Eye Lake is part of Pool 2 that is a reservoir. The normal summer pool for Pig's Eye Lake is 686.8'. According to State Statute 686.8 feet is the OHWL.

This is the OHWL that has been used for Pig's Eye Lake.

This natural lake is part of the (Pool 2) reservoir created by Hastings Dam. The OHWL of a reservoir is the operating elevation of the normal summer pool of 686.8 feet. The 686.8 feet level is documented in the project Environmental Assessment.

Friends provided photo documentation that shows grading and fill work above the Ordinary High Water line (OHWL). Friends provided copies of MN Statute 103G.005 (see below) that sets the OHWL of a reservoir at the operating elevation of the summer pool. Friends provided a copy of the Corps operating elevation of the summer pool which is part of the project record. Friends provided hydrologic information for Pool 2 from 1935 to 2019. Photos show fill and grading 20 feet above the water and above 692.9 feet. **State Statutes give Saint Paul**



jurisdiction above the OHWL of 686.8 feet. The Critical Area Zoning, and Comprehensive Plan must be followed.

**Question 4.** The work including bulldozers grading large amounts of fill exceed both 686.8 feet and 692.9 feet by 20 feet based on photos. Fill and grading work is happening above the OHWL and outside the basin no matter which OHWL is used. When will action be taken by the City regarding grading permit application and compliance with the Critical Area zoning code? The permit from DNR applies to work below the water. Where is the fill and grading permit for work above the water?



**Question 5. Environmental Justice.** Saint Paul requires public review to ensure compliance with Critical Area, Floodplain, Comprehensive Plan, and Zoning that the City Council has approved for this area. It is essential for the public to have a voice in their neighborhood. Environmental Justice requires including the voices of BIPOC Majority neighborhoods that surround this discharge of PFAS and other pollutants. The discharge of fill with any pollutant into a lake is prohibited by State Law. When is the neighborhood going to have a voice at the Planning Commission?



The East Metro Area Hydrologist at DNR asserts the OHWL is 692.9' - **This is incorrect**  
The Hydrologist asserts fill is placed entirely below the high water level - **This is incorrect**  
**One of the straw man arguments is the assertion the reservoir behind Dam 2 is used for navigation purpose instead of flood control so it is not a reservoir**

There is no basis in MN Statute to exclude the OHWL standards based in law because of this specious claim. Many of the arguments against compliance with the zoning code, public review and permitting are based on similar attempts to divert attention from what is really going on. Work above the water requires review and permits period.

## **MN Statute 103G**

### **103G.005 DEFINITIONS.**

#### **Subdivision 1. Applicability.**

The definitions in this section apply to this chapter.

#### **Subd. 3. Altered natural watercourse.**

"Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.

#### **Subd. 14. Ordinary high-water level.**

"Ordinary high-water level" means the boundary of water basins, watercourses, public waters, and public waters wetlands, and:

(1) the ordinary high-water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;

(2) for watercourses, the ordinary high-water level is the elevation of the top of the bank of the channel; and

(3) for reservoirs and flowages, the ordinary high-water level is the operating elevation of the normal summer pool.

#### **Subd. 14d. Project.**

"Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

#### **Subd. 15e. Shallow lake.**

"Shallow lake" means a body of water, excluding a stream, that is greater than or equal to 50 acres in size and less than or equal to 15 feet in maximum depth.

#### **Subd. 16. Water basin.**

"Water basin" means an enclosed natural depression with definable banks, capable of containing water, that may be partly filled with waters of the state and is discernible on aerial photographs.

## Definitions

a reservoir is a manmade lake that is created when a dam is built on a river. River water backs up behind the dam creating a reservoir. USGS

Impoundments (also known as reservoirs) are artificially created standing waterbodies, produced by dams on streams or rivers. WI DNR

Reservoirs are typically created to serve specific municipal or water resource management needs, such as drinking water supply, agricultural irrigation, industrial cooling for a water supply, flood control, fisheries, recreation, or navigation. They are often created by damming rivers or streams and flooding the surrounding floodplain. US EPA

The navigation dams created a stairway of reservoirs or navigation pools from Minneapolis, Minnesota to St. Louis, Missouri. WI DNR

**Question 6. Does the City really have no authority to protect the public and environment from pollutant discharge? Why is prohibited fill from the most polluted section of the river including the outfall of the 3M Chemolite plant being shipped up river and dumped in our drinking water and park lake where we canoe and fish. See the more detailed concerns about discharge of pollutant include with the appeal. The pollutant discharge has higher PFAS levels than found in the lake. The supposedly protected birds in the State Scientific and Natural Area Rookery have been found to have some highest levels of pollution found in birds eggs in the world. How does adding more pollution benefit the public and wildlife?**

**Also see attached Page from the Project Environmental Assessment that establishes the OHWL at 686.8 feet.**

MPCA has sent notices to Highwood neighborhood families with wells polluted by PFAS/PFOS. As part of the 3M settlement, they are installing and maintaining special whole house water filtration systems. There seems to be a real disconnect between installing whole house filtration systems and expanded illegal dumping of highly polluted fill that threatens our aquifer. Dumping any pollutant is prohibited by State Law and City zoning.

MN Rules 6115.0190 Filling Into Public Waters and 6115-0215 Restoration Of Public Waters – a project must meet all the requirements: B. the fill consists of clean inorganic material that is free of pollutants and nutrients; Prohibited work. ...work is prohibited when the work: F. uses materials that are not clean and free of pollutants, nutrients, and exotic species sources;

(b) Compliance of uses or occupations required. No use or occupation of any lands, for any purpose whatsoever, shall hereafter be permitted within the River Corridor District without full compliance with the terms of this chapter and other applicable laws.

(c) Compliance of structures, fill, etc. No structure, fill, material or object shall hereafter be placed on or removed from lands within the River Corridor District, and no structures or other object shall hereafter be located, used, constructed **Sec. 68.103. - Compliance.**

Permit required. A permit issued by the zoning administrator in conformance with the provisions of this chapter shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure or land; prior to the change or extension of a nonconforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.

, extended, converted or altered within the district without full compliance with this chapter and other applicable laws.

(d) Submission of site plan. A site plan shall be submitted to and approved by the planning commission in accordance with [section 62.108](#) before a permit is issued for any development on property wholly or partially located within the River Corridor District. For any development in the RC1 and RC2 districts, the site plan shall include the regulatory flood protection elevation; the proposed elevation of fill; the proposed elevation of the lowest floor of new structures, altered structures and additions to existing structures; and the proposed elevation to which structures will be floodproofed.

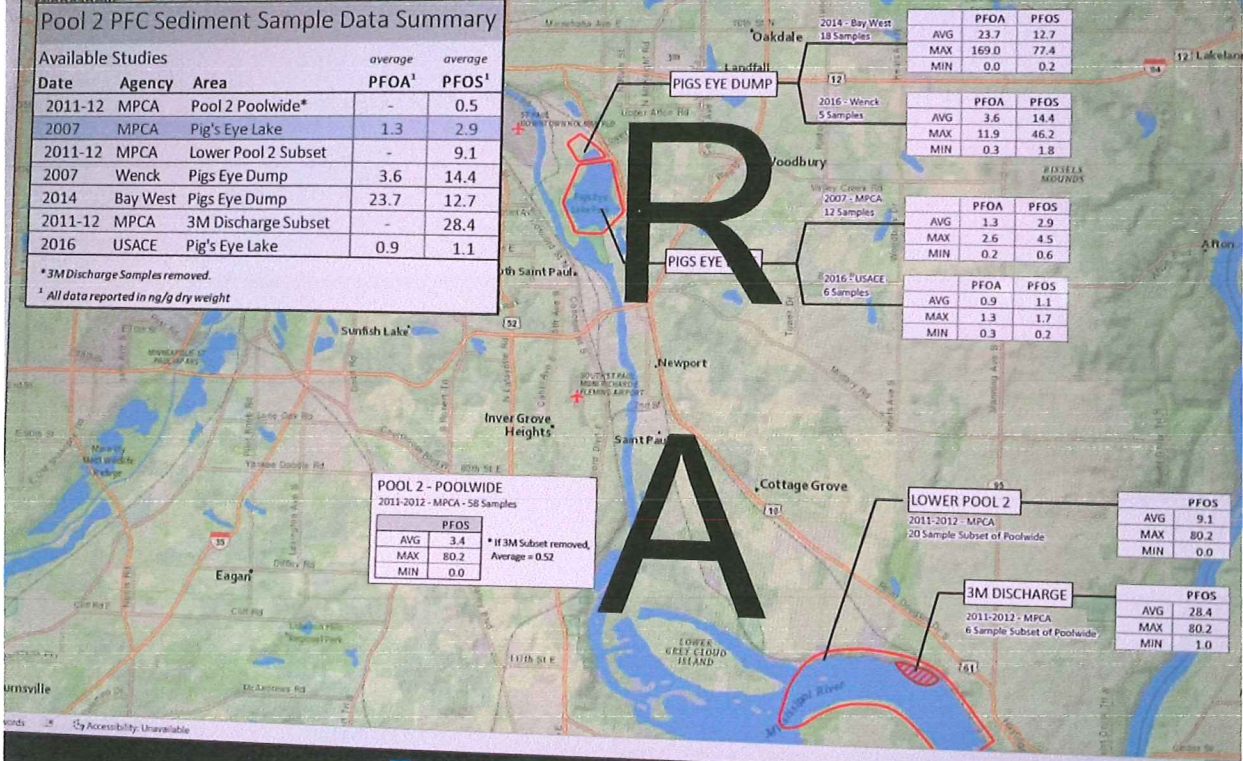




### Pool 2 PFC Sediment Sample Data Summary

Available Studies			average	average
Date	Agency	Area	PFOA <sup>1</sup>	PFOS <sup>1</sup>
2011-12	MPCA	Pool 2 Poolwide*	-	0.5
2007	MPCA	Pig's Eye Lake	1.3	2.9
2011-12	MPCA	Lower Pool 2 Subset	-	9.1
2007	Wenck	Pigs Eye Dump	3.6	14.4
2014	Bay West	Pigs Eye Dump	23.7	12.7
2011-12	MPCA	3M Discharge Subset	-	28.4
2016	USACE	Pig's Eye Lake	0.9	1.1

\* 3M Discharge Samples removed.  
<sup>1</sup> All data reported in ng/g dry weight



2014 - Bay West  
18 Samples

	PFOA	PFOS
AVG	23.7	12.7
MAX	169.0	77.4
MIN	0.0	0.2

2016 - Wenck  
5 Samples

	PFOA	PFOS
AVG	3.6	14.4
MAX	11.9	46.2
MIN	0.3	1.8

2007 - MPCA  
12 Samples

	PFOA	PFOS
AVG	1.3	2.9
MAX	2.6	4.5
MIN	0.2	0.6

2016 - USACE  
6 Samples

	PFOA	PFOS
AVG	0.9	1.1
MAX	1.3	1.7
MIN	0.3	0.2

POOL 2 - POOLWIDE  
2011-2012 - MPCA - 58 Samples

	PFOS
AVG	3.4
MAX	80.2
MIN	0.0

\* If 3M Subset removed, Average = 0.52

LOWER POOL 2  
2011-2012 - MPCA  
20 Sample Subset of Poolwide

	PFOS
AVG	9.1
MAX	80.2
MIN	0.0

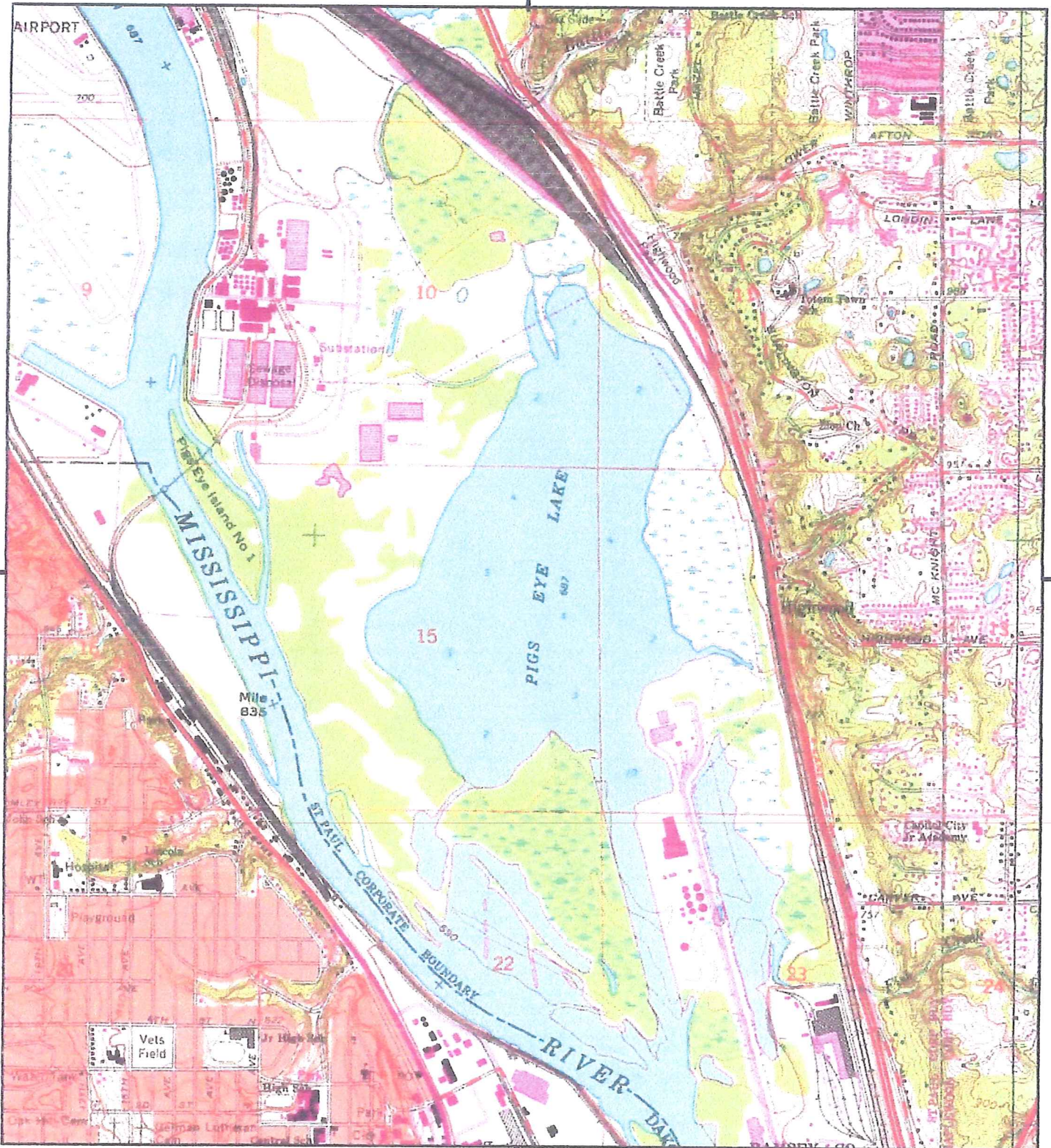
3M DISCHARGE  
2011-2012 - MPCA  
6 Sample Subset of Poolwide

	PFOS
AVG	28.4
MAX	80.2
MIN	1.0

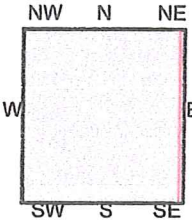
### 1.1.2 Mississippi River/Dam 2 Operation

The following figure shows the Operating Curve for Lock and Dam 2 on the Mississippi River. The green curve shows the Control Point in South Saint Paul. This control point is directly across the river from Pigs Eye Lake. The river stage at Pigs Eye Lake is held constant at 686.8 feet NAVD (687.2 (1912 datum) for discharges below 12,500 cfs. At a river discharge of 12,500 cfs, the river stages begin to rise with discharge.





This report includes information from the following map sheet(s).



TP, St Paul East, 1993, 7.5-minute  
E, Lake Elmo, 1993, 7.5-minute

**SITE NAME:** Pigs Eye Lake  
**ADDRESS:** Pigs Eye Lake Rd / Childs Rd  
 Saint Paul, MN 55119  
**CLIENT:** Army Corp of Engineers







# ZONING APPEAL APPLICATION

To/From Board of Zoning Appeals  
Dept. of Safety & Inspections  
Zoning Section  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101-1806  
(651) 266-9008

To / From Planning Commission  
Dept. of Planning & Econ. Devt.  
Zoning Section  
1400 City Hall Annex, 25 W 4<sup>th</sup> St.  
Saint Paul, MN 55102-1634  
(651) 266-6583

Zoning Office Use Only  
File # 22-072764  
Fee Paid \$ 547.00  
Received By / Date KE - 7/8/2022  
Tentative Hearing Date 8/8/2022

## APPELLANT

Name(s) Friends of Pig's Eye Lake Park - Tom Dimond  
Address 2119 Skyway Drive City St. Paul State MN Zip 55119  
Email tdimond@q.com Phone 952-207-6923

## PROPERTY LOCATION

Project Name Discharge of 80 Million Gallons of Pollutant into Pig's Eye Lake  
Address / Location Pig's Eye Lake Park - Pig's Eye Lake Road

### TYPE OF APPEAL: Application is hereby made for an appeal to the:

- Board of Zoning Appeals**, under provisions of Zoning Code § 61.701(c), of a decision made by the Zoning Administrator.
- Planning Commission**, under provisions of Zoning Code § 61.701(c), of a decision made by the Planning Administrator or Zoning Administrator.
- City Council**, under provisions of Zoning Code § 61.702(a), of a decision made by the Board of Zoning Appeals or the Planning Commission.

Date of decision June 30th, 20 22 File Number \_\_\_\_\_

**GROUNDS FOR APPEAL:** Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Planning Commission or Board of Zoning Appeals. Attach additional sheets if necessary.

*See attached*

RECEIVED  
JUL 09 2021  
BY: *Zemke KE*

If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

Appellant's Signature *Thomas R. Dimond* Date 7-8-2022



Tom Dimond  
2119 Skyway Drive  
Saint Paul, MN 55119

**City cites: No authority to protect the public and environment from pollutant discharge**

Protecting our health and environment depend on compliance with EPA's June 15, 2022 PFAS/PFOS pollutant advisory, St. Paul's comprehensive plan and zoning requirements. Discharge of 80-million-gallons of pollutant does not comply with EPA's health risk advisory for PFAS/PFOS. The pollutant discharge is prohibited by our zoning code, flood plain regulations, and Critical Area regulations. Site plan review and approval are required. A development permit application, review and approval are required. A Planning Commission public hearing is in order.

**At this time, our City has failed to take any required action to protect nature and the public. Does discharge of pollutant into a BIPOC majority neighborhood lake have any bearing? What is the chance of no action taken, if the pollutant discharge was filling Como Lake? No action has been taken to enforce adopted zoning requirements that apply to discharge of 80 million gallons/400 thousand cubic yards of pollutant into our park lake. State Critical Area designation is for protection and enhancement of exceptional natural and recreation areas.**

"Today's announcement should set off alarm bells for consumers and regulators." Said Melanie Benesh a legislative attorney at the Environmental Working Group. These proposed advisory levels demonstrate that we must move much faster to dramatically reduce exposures to these toxic chemicals."

The Minnesota Legislature just approved \$800,000 for the cleanup of the Pig's Eye Dump. The dump contains PFAS and other pollutants. We must stop dumping pollutant into the park.

We must protect the fish, birds, and public. We must ensure that toxic chemicals are not dumped into our public lands and waters.

The EPA health advisory limit is 0.004 parts per trillion of PFOA.

The EPA health advisory limit is 0.02 parts per trillion for PFOS.

Pig's Eye Lake tested at 1.1 parts per trillion of PFOS. 55 times higher than the EPA health advisory limit.

**The pollutant being discharged into our lake tested at averages of 9.1, and 28.4 with a 80.2 maximum.**

**28.4 is 25 times more toxic than existing PFOS pollution in Pig's Eye Lake**

Lower Pool 2 is where the pollutant/fill is being hauled up river from. 80 million gallons of pollutant from the most polluted section of the river in MN is being hauled up river and dumped into our park/nature preserve. limit. See PFAS/PFOS maps. They are discharging more toxic chemicals, that do not degrade. This endangers park visitors, recreational opportunities, fish, and birds. The Park has Federal and State designations to protect the Scientific and Natural Area Rookery, birds, wildlife, and recreational opportunities. Tests of bird eggs at the Pig's Eye Lake SNA have already shown some of the highest pollutant levels found in birds worldwide. Discharging more toxic pollutant undercuts efforts to protect and restore habitat for wildlife and recreation.

Testing of heron eggs in the SNA Heron Rookery found eggs with extremely high PFOS levels. Carp in the lake registered PFOS levels of 10.2. Discharge of toxic pollutant impacts the food chain. Higher PFOS levels in birds eating fish with high levels of PFOS demonstrates one of the cumulative effects of PFOS pollution.

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St. Paul is the Local Unit of Government assigned the responsibility to ensure required permits, public review, and compliance with plans and zoning. In the Mississippi River Critical Area, Mississippi National River and Recreational Area, and flood plain zoning a development permit must be applied for and approved before any work can start. Site Plan review and approval is required. **St Paul has not approved this development. Start of work is prohibited until the required site plan review, approval and permits are in place.**

**When an appeal is filed, the continued discharge of pollutant is prohibited until a determination has been made. An appeal was filed a month ago and pollution discharge into the environment has continued unabated.**



The MN DNR Permit is conditioned on compliance with City zoning. MN DNR Permit 2020-1818 – Public Waters Work Permit states: This permit is granted subject to the following **CONDITIONS:** (partial list)

**Applicable Federal, State, or Local Regulations:** The permittee is not released from any rules, regulations, requirements, or standards of any applicable federal, state, or local agencies; including, but not limited to , ...city and township zoning.

**Wetland Conservation Act:** Where the work authorized by this permit involves the draining or filling of wetlands not subject to DNR regulations, the permittee shall not initiate any work under this permit until the permittee has obtained official approval from the responsible local government unit as required by the Minnesota Wetland Conservation Act.

Discharging 80 million gallons of pollutant containing PFAS/PFOS that exceeds health advisory levels creates greater health risks for people, fish, and birds based on the latest EPA health advisory dated June 15, 2022. We must not repeat the mistakes of the Pig's Eye Dump.

It is criminal to allow discharge of 80 million gallons of pollutant into waters Minnesotans drink and enjoy for recreation. Our City must protect the public, birds, recreational opportunities, and the ability to safely eat fish from our lakes. The Environmental Protection Agency "Health Advisory" calls for a near zero level of PFAS pollutants in our environment. The Department of Safety and Inspections and our City Council must immediately stop the discharge of PFAS/PFOS. The area already exceeds EPA's Health Advisory without discharge of more toxic pollutant. Saint Paul is legally and morally bound to stop pollutant discharge before more harm is done. Federal Register 87 - June 21, 2022

The interim updated health advisories for PFOA and PFOS are based on human epidemiology studies in populations exposed to these chemicals. Human studies have found associations between PFOA and/or PFOS exposure and effects on the immune system, the cardiovascular system, human development (e.g., decreased birth weight), and cancer. The most sensitive non-cancer effect and the basis for the interim updated health advisories for PFOA and PFOS is suppression of vaccine response (decreased serum antibody concentrations) in children. While there is evidence that PFOA is likely to be carcinogenic to humans, EPA has not derived a cancer risk concentration in water for PFOA at this time. There is suggestive evidence of carcinogenic potential of PFOS in humans. Cancer analyses are ongoing for both PFOA and PFOS.

MN Rule 6115.0215 Restoration of Public Waters Sub.3 Prohibited Work. Public waters alteration, protection, or restoration work is prohibited when the work: D. violates the regulations of any local zoning authority or water management agency;

*It is hard to reconcile the idea local zoning authority has no authority when State Rules specify that the work is prohibited if it violates local zoning authority regulations.*

Prohibited work also includes: F. uses material that are not clean and free of pollutants, nutrients, and exotic species sources;

*It is hard to reconcile the known pollutant and nutrients in dredge spoils as clean and free of pollutants and nutrients.*

MN Rule 6115.0190 Filling Into Public Waters. Subp. 1. Goals. It is the goal of the department to limit the placement of any fill material into public waters in order to: C. maintain consistency with floodplain, shoreland, and wild and scenic rivers management standards and ordinances.

*It is hard to reconcile required consistency with floodplain, shoreland, and Critical Area ordinances if local government has no authority.*

Subp. 5. Permits Required. Permits are required for the placement of fill in public waters,....and a project must meet all of the following requirements: B. the fill consists of clean inorganic material that is free of pollutants and nutrients;

*It is hard to reconcile how the fill can meet the requirement to be free of pollutants and nutrients when dredge spoils are a defined pollutant*

H. The proposed filling is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

I. the proposed filling is consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.

*MN Rules require compliance with local government plans and programs.*

*It is hard to reconcile requirements for clean inorganic fill that is free of pollutant, consistency with local zoning, flood plain and shoreland ordinances, and local land management plans if local government has no authority.*