



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

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.

Project Name: Pigs Eye Habitat Restoration	County: Ramsey	Watershed: Mississippi River - Twin Cities	Resource: Lake: Pigs Eye (62000400)
Purpose of Permit: Waterward Navigation Channel Excavation, Erosion Control/Stabilization Fill & Grading, Bioengineering		Authorized Action: 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.	
Permittees (2): 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		Authorized Agent: N/A	
Property Description (<i>land owned or leased or where work will be conducted</i>): 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			
Issued Date: 08/26/2020	Effective Date: 08/26/2020	Expiration Date: 08/26/2025	
Authorized Issuer: John Gleason	Title: Hydrologist Supervisor	Email Address: john.gleason@state.mn.us	Phone Number: 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

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. Contact your regional Invasive Species Specialist for assistance at www.mndnr.gov/invasives/contacts.html. A list of designated infested waters is available at www.mndnr.gov/invasives/ais/infested.html. A list of prohibited invasive species is available at 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. 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.

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](#)

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



From: MN_Commissioner (DNR) <commissioner.dnr@state.mn.us>
Sent: Friday, May 7, 2021 12:11 PM
To: TOM DIMOND <tdimond@q.com>
Cc: Jane Prince (CI-StPaul) <Jane.Prince@ci.stpaul.mn.us>; stephanie <stephanie.harr@ci.stpaul.mn.us>; jxiong01 <jxiong01@gmail.com>; founghawj <founghawj@yahoo.com>; Don Arnosti <donarnosti@gmail.com>; Kiki Sonnen <kikisonnen@gmail.com>; Peggy Lynch <peggyvalynch@gmail.com>; Sheldon Johnson <sheldonjohnson3@gmail.com>; Susan Vento <Susan.Vento@metc.state.mn.us>; chai lee <chai.lee@metc.state.mn.us>; Dave Durenberger <durenbergerd@gmail.com>; Wilson, Grant (DNR) <grant.wilson@state.mn.us>; Lais, Dan R (DNR) <dan.lais@state.mn.us>; Petrik, Daniel (DNR) <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).

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

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>

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

To: MN_Commissioner (DNR) <commissioner.dnr@state.mn.us>

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

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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.