

Received

Tom Dimond
2119 Skyway Drive
Saint Paul, MN 55119
952-207-6923

JUN 10 2022

City of Saint Paul - DSI

Stop the Pipeline – Stop the Discharge of pollutant into Glacial Lake

Saint Paul has not approved construction of a pipeline, discharge of 80 million gallons of pollutant into protected wetland, or the required no net loss wetland replacement at Pig's Eye Lake Regional Park.

This Glacial Lake that precedes the existence of the Mississippi River in Saint Paul should not be used as a waste dump. Saint Paul's Critical Area Zoning, Flood Plain Zoning, and Great River Passage Plan do not support the use of Saint Paul's largest lake as a pollutant/waste dump. Saint Paul requires no net loss of wetlands. Wetlands as defined in U.S.D.I. Fish and Wildlife Service Circular 39.

Critical Area Review and Permit Approval is required by Saint Paul before work can start. However, a large pipeline is being constructed in Pig's Eye Lake. The intent is to discharge more than 80 million gallons of pollutant into Pig's Eye Lake Regional Park. The plan is to start discharging pollutant into our Glacial Lake on June 15th. As far as I know, the City has not held a public hearing about the proposed pollution discharge, site plan, or development permit.

A stop work order must be issued.

State Law requires: the City Council "must exercise their power to further the purpose of" Critical Area protections which support public health, environmental protection and recreational opportunities through permit and site plan.

Conflicting standards. In case of a conflict between this and any other law, regulation, rule or ordinance, the more protective provision applies.

The City of St. Paul is required to administer natural resource protections and enhancement within Minnesota's Mississippi River Corridor Critical Area and National Park's Mississippi National River and Recreation Area. Minnesota and St. Paul have adopted special protections and enhancement for natural resources and recreational opportunities within the Mississippi River Critical Area. The National Park is protected by the same enhanced protections as the State Critical Area.

Protection and enhancement of natural resources and recreational opportunities depends on local government's authority to adopt comprehensive plans and ordinances, review plans for conformance and administer the permitting process to protect and enhance natural resources and recreational opportunities.

Local government “must exercise their powers to further the purposes of this chapter” (MN Rule 6106.0030) and are responsible for adopting plans and ordinances in conformance with the regulations. “In case of a conflict between this chapter and any other rule or ordinance, the more protective provision applies.” (MN Rule 6106.0030) “The standards and criteria established in this chapter for the Mississippi River Corridor Critical Area pertain to public waters and to nonfederal public land and private lands within the river corridor boundary.” (MN Rule 6106.0030) Saint Paul and other local government are responsible for and required to administer the protection and enhancement of natural resources and recreational opportunities within the National Park and State Critical Area. As stated in 6106.0030 the more protective provision applies; be it Clean Water Act or Critical Area plans and ordinances.

MN Statute 116G.15 MISSISSIPPI RIVER CORRIDOR CRITICAL AREA
Subdivision 1. Establishment; purpose.

The federal Mississippi National River and Recreation Area established pursuant to United States Code, title 16, section 460zz-2(k), is designated an area of critical concern in accordance with this chapter. The purpose of the designation is to:

- (1) protect and preserve the Mississippi River and adjacent lands that the legislature finds to be unique and valuable state and regional resources for the benefit of the health, safety, and welfare of the citizens of the state, region, and nation;
- (2) prevent and mitigate irreversible damages to these state, regional, and natural resources;
- (3) preserve and enhance the natural, aesthetic, cultural, and historical values of the Mississippi River and adjacent lands for public use and benefit;
- (4) protect and preserve the Mississippi River as an essential element in the national, state, and regional transportation, sewer and water, and recreational systems; and
- (5) protect and preserve the biological and ecological functions of the Mississippi River corridor.

MN Rule 6106.0030 SCOPE; OTHER LAW.

Subpart 1. Applicability.

The standards and criteria established in this chapter for the Mississippi River Corridor Critical Area pertain to public waters and to nonfederal public land and private lands within the river corridor boundary.

Subp. 2. Government actions.

The state and all local governments, including councils, commissions, boards, districts, departments, and all other public authorities, must exercise their powers to further the purposes of this chapter.

Subp. 3. State land.

Land owned by the state and its agencies and subdivisions must be administered according to this chapter.

Subp. 4. Conflicting standards.

In case of a conflict between this chapter and any other rule or ordinance, the more protective provision applies.

Supreme Court of the United States Decision Rapanos v. United States Decided June 19, 2006. "Congress passed the Clean Water Act (CWA or Act) in 1972. The Act's stated objective is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 86 Stat. 816, 33 U. S. C. 1251(a). The Act also states that "it is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation and enhancement) of land and water resources, and to consult with the Administration in the exercise of his authority under this chapter." 1251(b)

The Supreme Court states, "One of the statute's principal provisions is 33 U. S. C. 1311(a) which provides that the discharge of any pollutant by any person shall be unlawful." "The discharge of a pollutant" is defined broadly to include "any addition of any pollutant to navigable waters from any point source," 1362(12), and "pollutant" is defined broadly to include not only traditional contaminants but also solids such as "dredged spoil,...rock, sand, (and) cellar dirt," 1362(6).

Justice Kennedy's concurring opinion points out that Congress enacted the law to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," 33 U. S. C. 1251(a), and it pursued that objective by restricting dumping and filling in "waters of the United States," 1311(a), 1362(12).

Section 1344 authorizes the Secretary of the Army, acting through the Corps, to " issue permits...for the discharge of dredged or fill material into the navigable waters at specified disposal sites." 1344(a), (d).

In Saint Paul, MN, the Corps proposes the discharge of 400,000 cubic yards/80,789,610 gallons of dredge spoils into a Glacial Lake in a National Park and State Critical Area. This lake precedes the existence of the Minnesota and Mississippi River in St. Paul. The Corps states this is not a disposal site and has nothing to do with disposal of dredge spoils. However, it is part of the Corps 2040 Dredge Spoils Disposal Plan.

Congress and the State of Minnesota have designated local government (St. Paul) as the administrator of more protective provisions adopted by the State and local government. The adopted protections prohibit discharge of dredged spoils/waste into the lake. The adopted

protections require a State Critical Area development permit. The protections require no net loss of wetland.

The Corps has not applied for or received St. Paul's required Critical Area development permits or site plan review for development in the State Critical Area/National Park. Saint Paul also administers no net loss wetland replacement requirements. The law calls for replacement before wetlands are impacted. The Corps has not applied for permits or submitted plans to the City for replacement of wetland.

Sec. 61.402. - Site plan review by the planning commission.

Plan to be submitted. A site plan shall be submitted to and approved by the planning commission before a permit is issued for grading or the erection or enlargement of any building except one- and two-family dwellings, and including the following:

Any development in the river corridor critical area or in the floodplain district except one- and two-family dwellings which do not affect slopes of twelve (12) percent or greater.

Site plan review and approval. In order to approve the site plan, the planning commission shall consider and find that the site plan is consistent with:

The city's adopted comprehensive plan and development or project plans for sub-areas of the city.

Applicable ordinances of the city.

Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas.

Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.

Sec. 60.205. - D.

Development (river corridor district only). The making of any material change in the use or appearance of any structure or land including, but not limited to: a reconstruction, alteration of the size, or material change in the external appearance, of a structure or the land; a change in the intensity of use of the land; alteration of a shore or bank of a river, stream, lake or pond; a commencement of drilling (except to obtain soil samples); mining or excavation; demolition of a structure; clearing of land as an adjunct to construction; deposit of refuse, solid or liquid waste, or fill on a parcel of land; or the dividing of land into two (2) or more parcels.

Sec. 60.224. - W.

Wetlands. Low-lying areas which may be covered with shallow water. They are frequently associated with a highwater table. Swamps, bogs, marshes, potholes, wet meadows and sloughs are wetlands. They may occur adjacent to or within natural drainageways or as freestanding low areas. Wetland shall consist of Types 1—8 as defined in U.S.D.I. Fish and Wildlife Circular 39.

Sec. 63.607. - Replacement plans.

No draining or filling of wetlands shall take place until plans to replace the drained or filled wetlands have been approved by the planning commission. Replacement plans shall conform to all the requirements of Minn. Rules Parts 8420.0530—.0550.

Plans to drain or fill wetlands and to replace the drained or filled wetlands shall be acted on by the planning commission in accordance with section 61.500, Conditional use permits, of the zoning code and with the additional notice and time requirements of Minn. Rules Part 8420.0230.

Sec. 68.402. - Protection of shorelands, floodplains, wetlands and bluffs.

Grading and filling.

A minimum amount of filling shall be allowed when necessary, but in no case shall the following restrictions on filling be exceeded.

Fill shall be stabilized.

Only fill free of chemical pollutants and organic wastes shall be used.

Total filling shall not cause the total natural flood storage capacity of the wetland to fall below the natural volume of runoff from the wetland and watershed generated by a 100-year storm, as defined by the National Weather Service.

Solid waste disposal and landfill shall not be permitted in the River Corridor District.

Development shall fit existing topography and vegetation with a minimum of clearing and grading.

Deposit of dredged material shall not result in a change in the current flow, or in destruction of vegetation or fish spawning areas, or in water pollution.

Sec. 68.403. - Protection of wildlife and vegetation.

Development shall be conducted so as to avoid intrusion into animal and plant habitats.

No alteration of the natural environment or removal of vegetation shall be permitted when such alteration or removal would diminish the ability of dependent wildlife to survive in the River Corridor.

No wetland or bluffline vegetation shall be removed or altered except that required for the placement of structures.

Development shall not cause extreme fluctuations of water levels or unnatural changes in water temperature, water quality, water currents or movements which may have an adverse impact on endangered or unique species of birds or wildlife.

Sec. 68.404. - Protection of water quality.

Generally. Development shall occur so that surface and subsurface water is not adversely affected by contaminants. Water quality should meet or exceed state standards

St. Paul has not issued a permit and site plan approval for discharge of 80,000,000 gallons of pollutant into Pig's Eye Lake Park. The City Council is required by State Law to exercise their powers to protect the park and lake from pollution discharge. The City Council must take action to comply with State Law.