



CITY OF SAINT PAUL
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Date: April 19, 2016
To: City Council
From: Director Jonathan Sage-Martinson (PED) and Director Mike Hahm (Parks)
RE: **Mississippi River Corridor Critical Area Rules**

The Minnesota Department of Natural Resources (DNR) is about to initiate the formal review and adoption process for new rules for the Mississippi River Corridor Critical Area (MRCCA). If rules are adopted, the City of Saint Paul will be required to conduct a planning process and adopt new zoning and regulations for the MRCCA. This memorandum summarizes the rulemaking process and schedule, what the proposed rules cover, and potential impacts for the City of Saint Paul.

Rulemaking Process

In 2013, when the current rulemaking process began, DNR proposed a three-phase process. Phase I was review by local governments, using the 2011 draft rules (which were never adopted) as a starting point. Phase II began in 2014, and involved a request for comments from stakeholders, notification to potentially affected property owners, and several rounds of revisions to the draft rules based on comments received. The DNR entered the formal rule adoption process required under state law sometime in December of 2015.

The formal rule adoption process involves several components, outlined below:

- Review by the Office of the Revisor at the Legislature (completed) and by the Governor's Office (completed).
- Publication of Notice of Hearing, and release of final draft rules and required Statement of Need and Reasonableness (SONAR) (**April 11, 2016**)
- Notification of all parties and beginning of an approximately 90-day comment period (upon publication of Notice of Intent to Adopt)
- Three public hearings during the comment period, tentatively scheduled for June 14, 15, and 16.
- DNR has requested that the Administrative Law Judge (ALJ) assigned to the rulemaking hold the record open for comment for 20 business days following the public hearings (through late July).
- Immediately upon the conclusion of the comment period, the DNR will issue a general summary of and responses to comments received. After an additional 5 business days (end of July or early August), the DNR will issue a rebuttal to comments.

- A report from the assigned ALJ regarding the rules and SONAR is due no more than 30 days after end of response/rebuttal period (late August or early September).
- In response to ALJ report, DNR will amend rules as needed (any substantial changes required by the ALJ would add an unknown amount of time to the process) and submit the rules to the Secretary of State for certification. The Governor has the option of vetoing the rules.

DNR staff have indicated that the agency will take about one year from the time the rules are certified (i.e., adopted) to prepare for implementation. During this time, DNR will develop model ordinances, guidance for comprehensive plan content, mapping assistance tools, and a system for reviewing and tracking ordinances, and will seek financial resources to help cover local implementation costs.

About one year after the rules are certified, the DNR will begin notifying the first wave of communities of the need to adopt new MRCCA ordinances consistent with the new rules. From the time of notification, communities will have one year to adopt new ordinances, with a provision for extension upon request and at the discretion of the DNR. It is expected that Saint Paul will be in the first wave of communities tapped for ordinance adoption.

Content and Intent of MRCCA Rules

The proposed rules would replace the Standards and Guidelines for Preparing Plans and Regulations for the MRCCA in Executive Order 79-19 by Governor Quie in 1979, and would mandate that the City develop new MRCCA zoning overlay districts and regulations to replace the districts and regulations that were adopted by the City and approved by the state pursuant to Exec. Order 79-19 in 1982. It is likely that the City would also have to engage in substantial planning work prior to and as part of the development of new MRCCA zoning and regulations.

The rules would set minimum standards for new development, land disturbance and vegetation management in the MRCCA. This includes dimensional standards (setbacks and building heights), permit requirements, and other regulatory requirements. The rules would also allocate land within the MRCCA into one of six districts, which are based on existing land use patterns and are the basis for application of the development standards in the rules, which vary by district.

The purpose and intent of the rules is laid out by Executive Order 79-19 (issued by Governor Al Quie in 1979) and in the 2013 legislation authorizing the rulemaking process, Sec. 116G.15. That law directs the DNR Commissioner to adopt rules to ensure that the MRCCA is

“managed as a multipurpose resource in a way that:

- (1) conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor;*
- (2) maintains the river channel for transportation by providing and maintaining barging and fleeting areas in appropriate locations consistent with the character of the Mississippi River and riverfront;*
- (3) provides for the continuation, development, and redevelopment of a variety of urban uses, including industrial and commercial uses, and recreational and residential uses, where appropriate, within the Mississippi River corridor;*
- (4) utilizes certain reaches of the river as a source of water supply and as a receiving water for properly treated sewage, storm water, and industrial waste effluents; and*

(5) protects and preserves the biological and ecological functions of the corridor.”

Potential Impacts of Rules

In analyzing the potential impacts of the rules, City staff had extensive conversations with the DNR and with other stakeholder groups representing a diverse array of views, including the Saint Paul Area Chamber of Commerce, the Port Authority, Friends of the Mississippi River, and the National Park Service. The Planning Commission also held a public hearing on the draft rules, at which substantial written and oral testimony was received.

On this basis, the Planning Commission issued comments (attached) that acknowledge the importance of the river to Saint Paul, and generally support the adoption of new rules. However, the comments also note that the potential impact of the proposed rules on the City of Saint Paul is significant. The proposed rules are complex, and seek to balance protection of the natural resources of the MRCCA with preservation of existing development and, where appropriate, allowing for new development. However, as proposed, some aspects of the rules would not fully achieve said balance. Among the key conclusions of the Planning Commission:

- The proposed rules would assign all land within the MRCCA to one of six districts, based on existing land-use patterns. Bluff and river setbacks, as well as maximum building heights, would be defined based on the districts. However, a number of designations in Saint Paul are not consistent with the intent of and definitions in the rules. Notably absent from the rules is an urban parkland district; the rural and open space district applied to Saint Paul’s river parklands results in unnecessary restrictions that are inconsistent with park management needs. The rules do provide for signs and kiosks in parks where structures would otherwise be prohibited.
- As noted, the rules would limit building heights by broad districts. The intent of limiting building heights is to reduce visual impacts and protect views of and from the river. However, although the rules will require communities to identify “public river corridor views” for protection, they do not define what constitutes a visual impact, nor do they adequately spell out a protocol for evaluation of these impacts. The lack of clear criteria for understanding and regulating building height to achieve the purposes of the rules will likely lead to avoidable conflict between stakeholders during development and subsequent administration of new local MRCCA regulations. Moreover, unnecessarily limiting building heights may hamper appropriate development in the MRCCA and make it more difficult to achieve vibrant urban neighborhoods in Saint Paul.
- The proposed rules would restrict almost all development within 20’ of any side of a bluff, and require setbacks for structures and impervious surfaces of 40’ from bluff tops (100’ in the rural and open space district). The intent of these development restrictions is two-fold: to protect slope stability, and to prevent interference with views to and from the river. However, it is possible to protect slope stability without outright prohibitions on development on or near them. In addition, the way bluffs are defined in the proposed rules would result in creation of nonconforming structures which, because they are located near bluff features that do not directly face the river, are unlikely to actually impact views. The proposed rules would result in a smaller number of nonconforming

structures than under Saint Paul's current MRCCA rules, but it would be a different set of buildings (ie., include buildings that are not currently non-conforming). Downtown between Chestnut Street and Hwy 52 would be exempt from bluff setbacks. Exemptions are also included for roads, trails, and overlooks.

- The creation of nonconformities, as well as administration of other aspects of the rules, would combine to create an administrative burden for property owners and densely developed municipalities such as Saint Paul, and may act as a disincentive to investment for businesses located in the river corridor. As required by law, the purposes of the rules should be achieved by the least costly and least intrusive means possible.

As noted above, the potential impact of the proposed rules on the City of Saint Paul is significant, and some aspects of the rules as proposed would not fully achieve the balance of interests called for by both the 1979 executive order and the 2013 legislation authorizing the rulemaking. On August 21, 2015, the Planning Commission recommended extensive comments on the rules for consideration by the Mayor and City Council, and those comments include a number of proposals for ways in which the rules could be improved.

Although most of the comments—including potential rule amendments—that the Planning Commission has recommended for consideration have already been shared with DNR staff, comments must be submitted once the formal comment period begins to become part of the official record. Only comments submitted during the formal comment period will be provided to the Administrative Law Judge that will be assigned to the rulemaking. During the formal comment period, the City may also wish to review and comment on the Statement of Need and Reasonableness (SONAR) for the rules.

Next Steps

We recommend that the City Council hold a public hearing to determine what the City's official comments should be. The draft rules and the Planning Commission's detailed comments on the draft rules will be the subject of the hearing. We are recommending a public hearing be held either May 18th or June 1st, 2016.