



# United States Department of the Interior

NATIONAL PARK SERVICE  
Mississippi National River and Recreation Area  
111 E. Kellogg Blvd., Ste 105  
St. Paul, Minnesota 55101-1256

IN REPLY REFER TO:

L3033

May 18, 2016

Saint Paul City Council  
400 City Hall Annex  
Saint Paul, MN 55102

RE: RES PH 16-147 – Adopting official City comments on the proposed Mississippi River Corridor Critical Area (MRCCA) Rules

Dear Members of the Saint Paul City Council:

The Mississippi National River and Recreation Area (MNRRA), a unit of the National Park Service, would like to thank you for the opportunity to provide comments at the Saint Paul City Council meeting on May 18, 2016 regarding the draft Mississippi River Corridor Critical Area rules (Draft Rules). Our comments are in regard to the two memos about the Draft Rules dated April 19, 2016 and August 21, 2015 that are attached to the RES PH 16-147 public hearing notice. We refer to these memos as the "City's comments."

The Mississippi River is one Saint Paul's greatest resources. From the Mississippi River Corridor Plan (2002) to the Great River Passage (2011), the City of Saint Paul has a great history of adopting plans that protect, enhance, and utilize the river as a community asset. The City has an opportunity to continue that legacy by supporting the Draft Rules through comments that reflect the values of your adopted plans.

In reviewing the City's comments regarding the Draft Rules, we are concerned that some comments are not consistent with adopted plans and policies and often call for the reduction or removal of important standards that protect key MRCCA resources. We ask that the City consider our attached comments, and revise the City's comments to be consistent with its adopted plans and policies.

Sincerely,

John O. Anfinson  
Superintendent

**EXECUTIVE SUMMARY OF COMMENTS**

The City's comments are very critical of the Draft Rules. They highlight concerns regarding building heights, district locations, bluff protections, and nonconformities. Often, we find the comments to be inconsistent with adopted plans and policies. The Draft Rules establish a minimum set of standards and criteria for land use and development within the MRCCA that will protect the river corridor for generations. In many cases, the minimum set of standards in the Draft Rules are less restrictive and more flexible than existing standards.

*Building Heights*

The Draft Rules are less restrictive and more flexible than existing building height standards. The rules will be more flexible at Saint Paul's biggest opportunity sites including the West Side Flats, the Ford Site, and the US Bank Site. This is because the Draft Rules prescribe the least restrictive standards to achieve the purposes of resource protection.

*Districts*

The districts in the draft rules are more responsive and better represent existing use and resource conditions than existing standards. Much of Saint Paul's floodplain and parkland are in the CA-ROS district which has the most protective standards. These areas are often beautiful, undeveloped and deserve to be protected. The existing Zoning Code already limits building heights and implements river setbacks which are elements of the Draft Rules the City's comments criticize. The Draft Rules include flexibility for public facilities that allow for facilities and amenities to be developed.

*Bluff Protections*

The protection of bluff and steep slopes in the MRCCA maintains slope stability, protects habitat corridors, and enhances the scenic character of the river corridor. The Draft Rules place protections on features with an 18% slope rising 25 feet over a 25 foot width. The Zoning Code doesn't permit commercial or industrial development on slopes greater than 12%, residential development and new lots on slopes greater than 18%, and has a setback of 40' from all blufflines. The Zoning Code is less descriptive and more restrictive than the Draft Rules.

*Nonconformities and Administrative Burden*

The Draft Rules reduce the number of nonconformities in Saint Paul. The Draft Rules provide a minimum set of standards that provide clear understanding of what is allowed in the MRCCA. This reduces confusion and conflict between developers, stakeholders, and the City. We understand the burden of updating plans and policies, but the City already has the Mississippi River Corridor Plan (2002) and River Corridor Overlay, so beyond updating, the administrative burden should decrease.

**BACKGROUND ON MRCCA AND MISSISSIPPI NATIONAL RIVER**

The Draft Rules will replace and update the administrative provisions, districts, and standards currently contained in Executive Order 79-19 (EO 79-19) which, in Saint Paul, is implemented through the Mississippi River Corridor Plan (2002) and the River Corridor Overlay Districts in the Zoning Code. The purpose of the Draft Rules is "to establish districts and minimum standards and criteria to guide land use and development within the MRCCA, consistent with the purposes of Minn. Stat 116G.15 (2015)."

***The Mississippi National River is designated the MRCCA.*** The MRCCA is of the upmost importance to the Mississippi National River. We share the same boundary, and we rely upon it to protect the key resources within our corridor. Supporting the MRCCA is supporting the Mississippi National River, a unit of the National

Park Service. Below are citations from Minnesota Statutes and the Draft Rules demonstrating the MRCCA designation of the Mississippi National River.

Minn. Stat. 116G.15 Subd. 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.”

Draft Rules 6106.0020 Purpose: Designation.

“The minimum standards and criteria in this chapter are provided for the subdivision, use, and development of lands within the Mississippi National River and Recreation Area, establishment pursuant to United States Code, title 16, section 460k, which is designated the Mississippi River Corridor Critical Area, according to the purposes described under Minnesota Statutes, section 116G.15 subdivision 1.”

### **DETAILED REVIEW OF CITY’S COMMENTS**

The following are detailed comments to the issues raised regarding the Draft rules by the City of Saint Paul. Our comments relate to the 2 memos about the Draft Rules dated April 19, 2016 and August 21, 2015 that are attached to the RES PH 16-147 public hearing notice. We refer to these memos as the “City’s comments.” The comments focus on the four bullet points highlighted in the “**Introduction and Summary of Issues**” section and pull in related recommendations from the City’s comments.

#### **Bullet Point #1 – Building Heights (3)**

“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, the rules 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 will hamper appropriate development in the MRCCA and make it more difficult to achieve vibrant urban neighborhoods in Saint Paul.”

Maximum building heights have been integral to the MRCCA program. Limiting building heights near the river and at key locations near bluffs has, in many places, preserved views of and from the river and the character of a natural river corridor.

Maximum building heights currently exist in Saint Paul’s Zoning Code (Zoning Code) across the entire city, including in the MRCCA, and are defined by districts similarly to the Draft rules. The current Zoning Code uses four districts for the MRCCA and the Draft Rules use six.

Saint Paul Zoning Code		Draft MRCCA Rules	
District	Building Height	District	Building Height
RC1 – Floodway	Underlying Zoning	CA-ROS	35’
RC2 – Flood Fringe	Underlying Zoning	CA-RN	35’

RC3 – Urban Open Space	40'	CA-SR	Underlying Zoning
RC4 – Urban Diversified	Underlying Zoning	CA-RTC	48' (> with CUP)
		CA-UM	65' (> with CUP)
		CA-UC	Underlying Zoning

As indicated in the City's comments, the RC3 district is the only River Corridor overlay district that has a building height limit, which led to the statement that the Draft Rules would be more restrictive in regard to building heights for 91% of parcels in Saint Paul. While that is technically correct, the analysis did not include the underlying zoning districts which have maximum building heights. Both the River Corridor overlay districts and the underlying zoning districts were utilized in determining the district locations and maximum structure heights in the Draft Rules.

#### Zoning Code (Chapter 66 and Sec. 68.402)

	Residential	Traditional Neighborhood	Business	Industrial	River Corridor – RC3
Building Height Limits	30-50ft	35ft-55ft	30ft	50-75ft	40ft

On the following page are maps of the (1) Draft Rule districts, (2) Saint Paul River Corridor Overlay Districts, and (3) Approximate maximum building heights based on underlying zoning. The following are observations that may be made relating to "some of Saint Paul's biggest opportunity sites" (City's comments).

#### Ford Site

- Currently - River Corridor Overlay RC3 district – 40' building height limit
- Draft Rules - CA-RTC and CA-UM districts - 45'-65' building height limits with the ability to go higher with a CUP.
- The Draft Rules allow taller building heights and greater flexibility with a CUP.

#### US Bank Site

- Currently - River Corridor Overlay RC3 district – 40' building height limit
- Draft Rules - CA-UM district - 65' building height limit with the ability to go higher with a CUP.
- The Draft Rules allow taller building heights and greater flexibility with a CUP.

#### West Side Flats

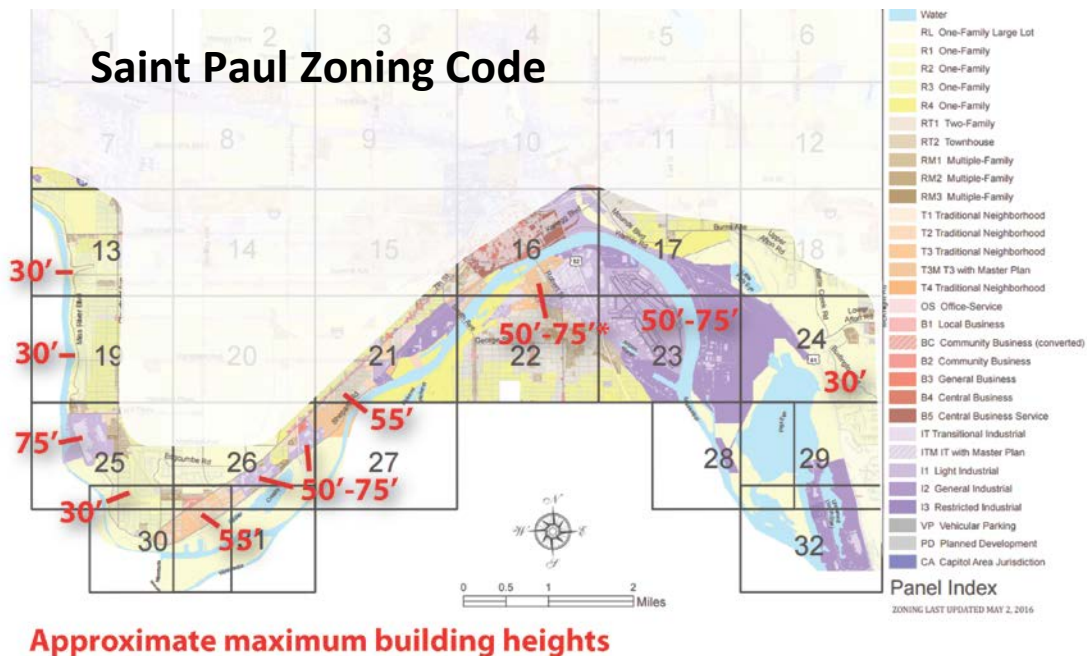
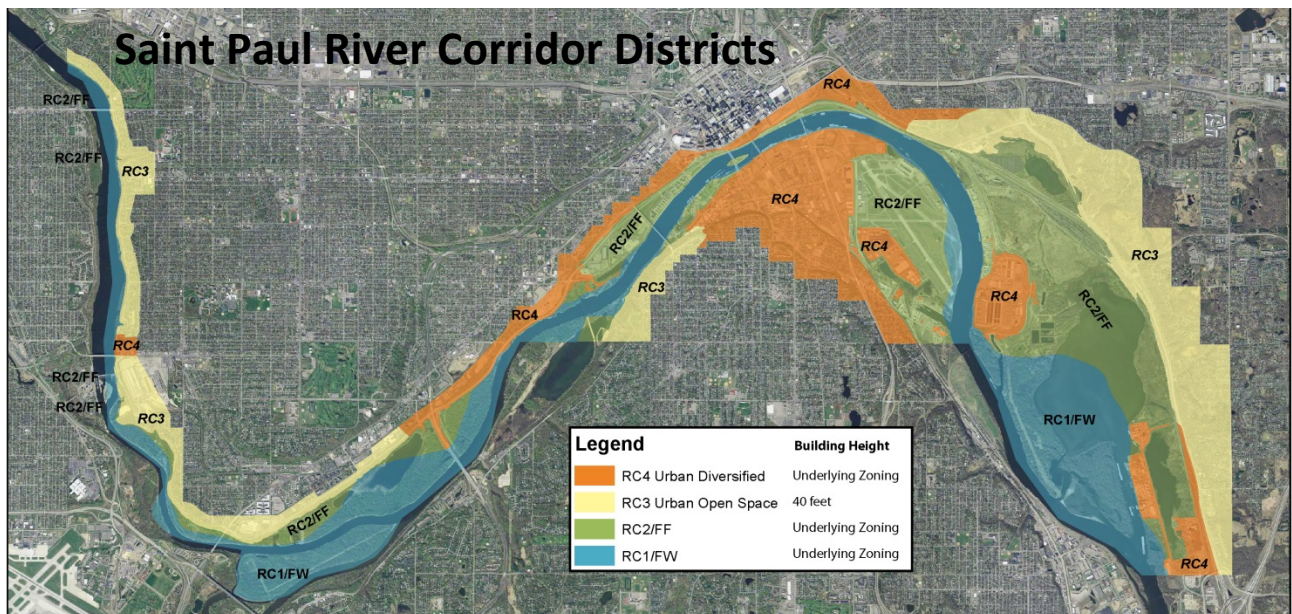
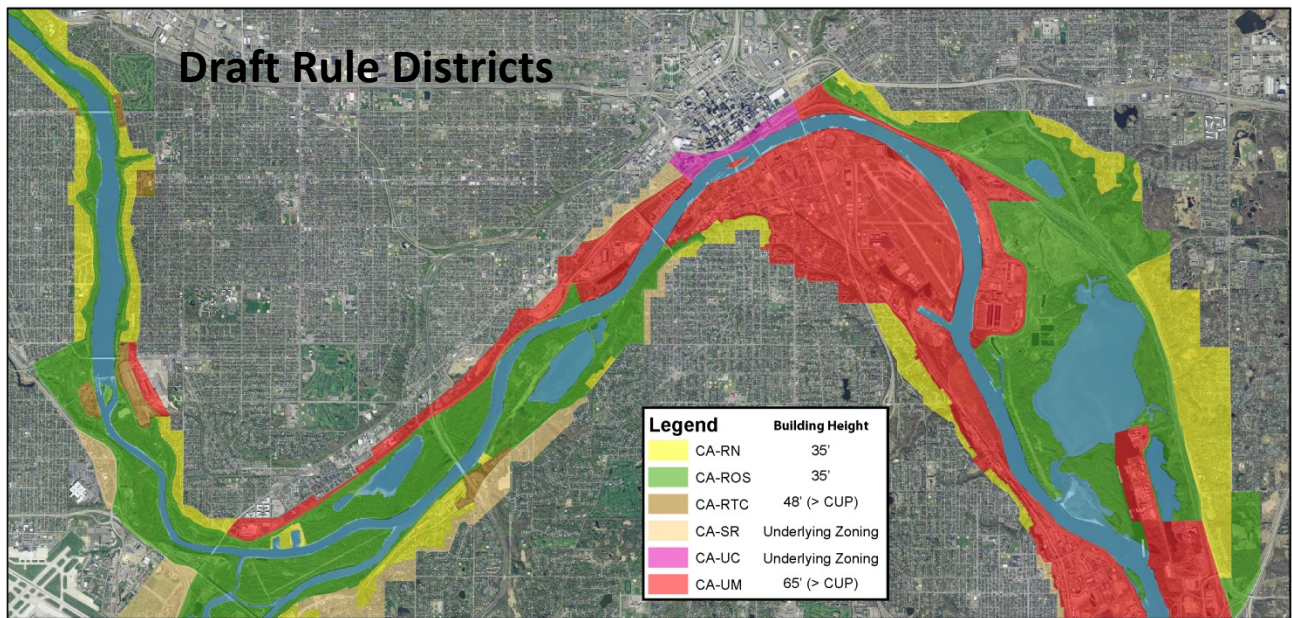
- Currently - River Corridor Overlay RC4 district - building height limits defer to underlying zoning.
- Draft Rules - CA-UM district - 65' building height limit with the ability to go higher with a CUP.
- The West Side Flats Master Plan and Development Guidelines include maximum building heights of 50'-75' stepped back from the river and a 2 block area of building heights up to 90' with a CUP.
- The CA-UM district matches the West Side Flats Master Plan and Development Guidelines very well and provides flexibility through the use of a CUP.

#### City-wide

- In nearly every case, the maximum structure height in the Draft Rules is greater than in the RC3 district or underlying zoning.
- Where the Draft Rules maximum building height is lower, often flexibility is provided through the use of a Conditional Use Permit (CUP).

To reiterate, the purpose of the rules is to establish districts and minimum standards and criteria to guide land use and development consistently throughout the MRCCA. This explains why the existing maximum building heights are often lower or more restrictive than the Draft Rules.





The City's comments state, "...the rules do not define what constitutes a visual impact, nor do they adequately spell out a protocol for evaluation of these impacts."

- The Draft Rules provide definitions of "Public river corridor views" and "Readily visible" which provide LGUs discretion in identifying the views that the Draft Rules will protect and offers a performance based standard to clarify visual standards.

The City's comments state, "...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."

- Conflict has and continues to exist regarding maximum building heights in the MRCCA. In the past, we have testified before the City regarding building heights on the West Side Flats and at the US Bank Site.
- The current MRCCA standards (EO 79-19) are vague and outdated which make them difficult to understand and enforce. The Draft Rules offer a consistent set of minimum standards that are easier to implement than vague performance standards, and provide consistent application and protection throughout the entire MRCCA which provides clarity for developers and stakeholders.

The City's comments state: "...unnecessarily limiting building heights will hamper appropriate development in the MRCCA and make it more difficult to achieve vibrant urban neighborhoods in Saint Paul."

- Building heights are not limited in the Draft Rules more than the current Zoning Code. We detailed this earlier. Vibrant urban neighborhoods and dense development are perfectly viable under the Draft Rules, and resource protection will only serve to enhance the City of Saint Paul.

#### **Bullet Point #2 – Districts (1)**

"The proposed rules would create six new districts within the MRCCA. The proposed districts for several locations in Saint Paul are not consistent with the expressed intent of the rules. In addition, the lack of a district for urban parkland results in unnecessary restrictions that are inconsistent with the management needs of Saint Paul's extensive river corridor parklands."

**Regional Parks.** The City's comments propose the creation of an "Urban Open Space District, with performance-based guidelines instead of prescriptive regulations, for urban regional parks." (1.4)

- One of the primary purposes of the Draft Rules is to establish consistent minimum standards instead of vague performance based standards.
- In the Draft Rules dimensional standards are implemented through the districts, and much of Saint Paul's parkland is within the CA-ROS district which has the greatest levels of protection regarding building height and setbacks. We understand the City's concern about restrictions on public park facilities, but we feel the rules provide enough exceptions and flexibility to provide amenities and access.
- Building height limits and river setbacks are already in the Zoning Code.

#### **Draft Rules (6106.0120)**

	CA-ROS	CA-RN	CA-RTC	CA-UM
Building Height Limits	35ft	35ft	48ft (> CUP)	65ft (> CUP)
River Setbacks	200ft	100ft	75ft	50ft

#### **Zoning Code (Chapter 66 and Sec. 68.402)**

	Residential	Traditional Neighborhood	Business	Industrial	River Corridor – RC3
Building Height Limits	30-50ft	35ft-55ft	30ft	50-75ft	40ft



Zoning Code (Chapter 66 and Sec. 68.402)

	Natural Environment Waters	General Development Waters
River Setbacks	200ft	75ft

- Regulating private and public facilities differently creates inequity. Public facilities must comply with the rules in order to avoid or minimize negative impacts to the resources that the MRCCA designation is intended to protect.
- The Draft Rules are designed to provide some flexibility for public recreational facilities given the amenities and community benefits they provide. There are many exemptions to the height limits and setbacks for public recreational facilities including accessory structures, picnic shelters and other open sided structures, parking areas, roads and driveways, natural and hard-surfaced trails, water access ramps, and public signs and kiosks (6106.0180).
- Section 6106.0080 of the Draft Rules provides a process of mitigating impacts when granting a variance. Provided a park project is sensitive to the resources and able to mitigate any potential impacts to the key resources of the MRCCA, the process of granting a variance should not be cumbersome.

**Ford Site. (1.4)**

- Currently - River Corridor Overlay RC3 district – 40’ building height limit
- Draft Rules - CA-RTC and CA-UM districts - 45’-65’ building height limits with the ability to go higher with a CUP.
- The Draft Rules allow taller building heights and greater flexibility with a CUP.

**West Side Flats.** “Use the UC Urban Core District for the portion of the West Side Flats bounded by Lafayette Road/Hwy. 52, Plato Boulevard, Wabasha Street, and Fillmore Street.” (1.4)

- River Corridor Overlay RC4 district - building height limits defer to underlying zoning.
- Draft Rules - CA-UM district - 65’ building height limit with the ability to go higher with a CUP.
- The West Side Flats Master Plan and Development Guidelines include maximum building heights of 50’-75’ stepped back from the river and a 2 block area of building heights up to 90’ with a CUP.
- The CA-UM district matches the West Side Flats Master Plan and Development Guidelines very well and provides flexibility through the use of a CUP.

**Bullet Point #3 - Bluffs (2)**

“The intent of development restrictions on and near bluffs and steep slopes in the river corridor 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 that, 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 smaller number of nonconforming structures than under Saint Paul’s current MRCCA rules, but it would be a different set of buildings.”

Some of the recommendations regarding bluff protections from the City’s comments include asking for vague performance standards, suggesting language that may address one of the purposes such as requiring a bluff to face the river, and to ignore currently developed areas. We find the recommendation conflicting and difficult to interpret considering the Zoning Code already contains many of the protections that are being criticized.

Bluff setbacks and development restrictions on slopes greater than 18% exist within the Zoning Code. Sec 68.402 (b) of the Zoning Code states that:

1. No commercial or industrial development shall be permitted on slopes greater than twelve percent

2. No residential development shall be permitted on slopes greater than eighteen percent
3. Bluff development shall take place at least forty feet landward of all bluff lines

Sec. 69.508 of the Zoning Code states that “Newly created lots must allow for a minimum setback for development of forty feet from the top of the bluff lines as defined by the comprehensive plan. Lot arrangement shall avoid, wherever possible, the placement of structures on eighteen percent slope or steeper, or the necessity to alter such slopes for purposes of construction.”

The following are the bluff protections in the Draft Rules (6106.0120 Subp.3(b)).

	CA-ROS	CA-RN	CA-RTC	CA-UM
Bluff line Setbacks	100ft	40ft	40ft	40ft
Bluff impact zone	20ft	20ft	20ft	20ft

*\*Bluff impact zone – structures may not be located on or within 20ft of a bluff*

The Draft Rules and Zoning Code align very closely regarding bluff setbacks and restrictions on slopes greater than 18%. In many instances the Zoning Code is more restrictive.

The City’s comments state, “The intent of development restrictions on and near bluffs and steep slopes in the river corridor is two-fold: to protect slope stability, and to prevent interference with views to and from the river.”

- Bluff protection was a major focus of the Draft Rules. The purpose of bluff protection is actually three fold: (1) to protect slope stability, (2) to maintain the MRCCA’s natural character and scenic views, and (3) to maintain critical habitat corridors.

The City’s comments states, “...it is possible to protect slope stability without outright prohibitions on development on or near them.”

- While this may be true, it does not make it right. As mentioned above, bluff protection has three purposes, (1) slope stability, (2) protection of views and natural character, and (3) maintain habitat corridors. This statement only addresses slope stability, is inconsistent with the Zoning Code, and promotes irresponsible development.

#### **Bullet Point #4 – Nonconformities (2)**

“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.”

The Draft Rules would reduce the number of nonconformities in the City of Saint Paul as compared to existing regulations while providing the necessary protections for the key resources of the MRCCA. We believe this accomplishes the purposes of the rules through the least costly and least intrusive means possible.

The Draft Rules will replace and update the administrative provisions, districts, and standards currently contained in EO 79-19 which, in Saint Paul, is implemented through the Mississippi River Corridor Plan (2002) and the River Corridor Overlay Districts in the Zoning Code. The MRCCA program already exists in Saint Paul and should not create any new burden on staff or property owners.

The current MRCCA standards (EO 79-19) are vague and outdated which make them difficult to understand and enforce. The Draft Rules offer a consistent set of minimum standards that are easier to implement than vague



performance standards, and provide consistent application and protection throughout the entire MRCCA which provides clarity for developers and stakeholders.

The Draft Rules protect and enhance the key resources of the MRCCA. These resources attract investment and provide community benefits.