



## Summary of Changes to Working Draft Rules – December 11, 2014 (draft)

### Introduction and Background

Since publishing the Request for Comments (RFC) in June 2014, the DNR has received written comments from over 500 individuals and organizations and has held 27 meetings with local governments, interest groups, and individuals to gather feedback on the Working Draft Rules. We have worked to address and balance the many concerns raised in the written comments as well as in meetings held with interest groups. We have done this mindful of the legislature's directive in MS 116G.15 and the DNR's rulemaking goals for this project. The following summary highlights the key changes made to the Working Draft Rules in response to concerns raised and are included in the "Pre-Revisor's Draft Rules" dated December, 2014.

### Substantial Compliance, Consistency and Ordinance Flexibility

"Consistent plans and ordinances" replaces "substantial compliance" which was confusing to interpret. "Consistent" is defined to mean that each local ordinance must meet the purpose, scope, and numeric thresholds and standards of the MRCCA rules. Proposed ordinances that are not consistent may be considered for approval by the DNR under special circumstances and through specific procedures defined in the "flexibility" provisions of the rules. The specified circumstances and procedures for reviewing and approving inconsistent ordinances have been clarified. Of note is a new provision for considering inconsistent ordinances when an "area has been the subject of detailed visual, physical and/or other resource modeling and impact assessment completed through a public planning process." Documentation needed to support a request for ordinance flexibility has been expanded and clarified. Plans and ordinances that are inconsistent with the rules must still serve the purpose of MS 116G.15 and satisfy the purpose and scope of the MRCCA rules. Requests for ordinance "flexibility" require a resolution by the governing body.

### State and Regional Agencies (Including Regional Park Agencies)

Plans and projects of state and regional agencies no longer need to comply with local government ordinances, including their permitting requirements established under the MRCCA rules. However; agencies must still comply with the MRCCA rules. This change reduces administrative procedures and costs, recognizes agency competency in managing resources like vegetation and land alteration, yet still holds agencies accountable for complying with the MRCCA rules.

Key changes of interest to regional park agencies concerning facility placement include:

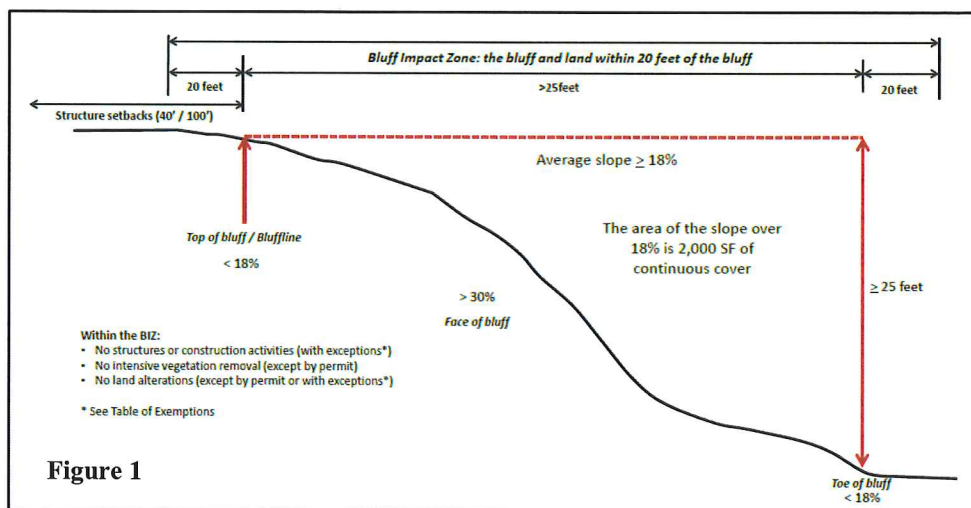
- No hard surface trails on face of bluffs with slopes  $\geq 30\%$
- Public signs and kiosks are allowed in the BIZ and shore impact zone (SIZ)
- Parking lots are allowed within 20 feet of the toe of bluffs with  $< 30\%$  slopes if no other reasonable alternative exists

## Bluffs & the Bluff Impact Zone (BIZ)

The bluff definition was revised to include slopes  $\geq 18\%$  instead of slopes  $\geq 30\%$ . This more encompassing definition aligns with the approach used in EO 79-19 and in many communities. The bluff impact zone (BIZ) concept remains as the 20 foot buffer around bluffs. This change in bluff definition allows for the elimination of the very steep slope (VSS-slopes  $\geq 18\%$ ) and slope preservation zone (SPZ-20 foot buffer around very steep slopes) concepts, thus simplifying the rules. A bluff is now defined as a slope  $\geq 18\%$  that rises at least 25 feet measured over a horizontal distance of 25 feet. The 25 foot horizontal distance criterion is new. Additionally, any feature with a slope  $\geq 75\%$  is also considered a bluff. With the addition of these new criteria and the elimination of the VSS and SPZ concepts, essential bluff protections remain while significantly reducing the creation of new nonconforming structures. Figure 1 illustrates the bluff and BIZ definitions as proposed in the pre-revisor's draft rules.

The DNR created and used a GIS bluff mapping tool to map and assess the impact of various bluff definitions on bluff protection and structures. Maps created using this tool are useful for MRCCA plan development and communicating the approximate location of bluff features. There are no regulatory bluff maps; local governments will

administer the bluff protection standards (i.e. structure locations, vegetation management, land alterations, etc.) according to the written definitions. Field surveys will be needed to verify bluff features as determined by each local government.

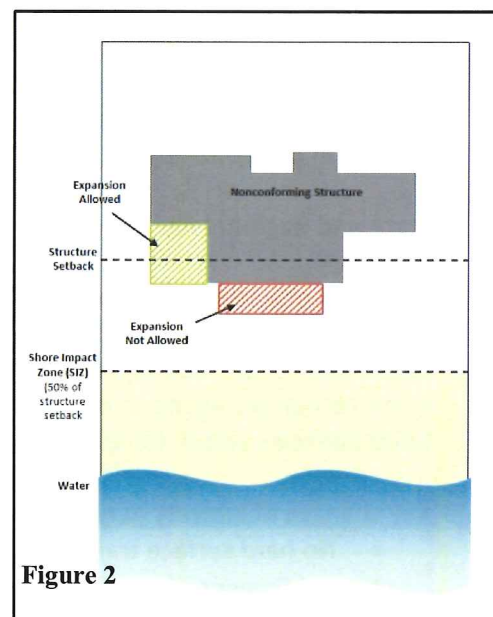


## Nonconformities

Expansion of existing nonconforming principal structures remains. Language and a figure (Figure 2) have been added to clarify the intent to allow "lateral" expansions. Additional language was added to limit the scale and bulk of expansions to nonconforming structures due to water or bluff setback.

## Districts & Maps

District definitions have been clarified to better describe their unique character, management objectives, and to recognize that each district includes parks and open space. In response to comments received since publishing the RFC, the DNR has made a number of district boundary changes. Please refer to the district maps dated 12/11/14 for these changes.



Proposed administrative procedures for changing district boundaries (after initial rule adoption) may need to be done through "expedited rulemaking" in order to conform to statutory and regulatory requirements. Legislative changes will be required to implement this change. Procedures have also been updated to allow state and regional agencies to request boundary changes in addition to local governments. The local government or agency must now conduct a public hearing as part of their request to change a district boundary. These changes enhance transparency in making decisions.

## **Height**

The maximum height for the River Towns and Crossings (RTC) district has been set at 48 feet (up to 56 feet was considered during the RFC). Taller buildings in the RTC district will continue to be allowed through a CUP process but with additional consideration of the treeline, existing surround development, and views from the opposite shore and public river corridor views. These changes are intended to provide better criteria for decision making.

## **Vegetation Management**

A local vegetation management permit is still required; however, the focus is now on permitting where and how "intensive vegetation clearing" is conducted and not on permitting "selective vegetation removal," a more difficult activity to define and administer. The rules generally prohibit intensive clearing in sensitive areas (SIZ, BIZ, native plant communities and other significant vegetation mapped by the local government and near wetlands & drainageways) but they list specific situations where intensive clearing is allowed with a permit along with specific permit conditions. There are no longer any "area" thresholds that trigger a permit (i.e. "shoreland recreational use area"), which caused a lot of confusion. This approach focuses on the primary problem - unauthorized clear cutting of sensitive areas - and not on routine yard maintenance.

## **Land Alteration**

A local land alteration permit is still required; however, the activity and locations of the activity have been clarified with a greater focus on the most sensitive areas. Land alteration continues to be prohibited in the bluff impact zone with exceptions allowed through a permit. Land alteration in the water quality impact zone (WQIZ) involving more than 10 cubic yards or more than 1,000 square feet requires a local permit. The WQIZ zone is a new term to define areas close to water and means land within the SIZ or 50 feet, whichever is greater, abutting a public water, wetland, or natural drainage way. A 1,000 square foot threshold was chosen to be consistent with two watershed districts in the MRCCA with the lowest permit threshold for erosion and sediment control requirements.

Standards for riprap, retaining walls, and other erosion control structures better recognize the existing erosion control problems riparian property owners face and better integrate DNR authority and local control for constructing these structures at or near the water. Local governments may permit these structures if needed to correct an erosion problem subject to size limitations. Retaining walls cannot exceed five feet in height and riprap must not exceed the height of the regulatory flood protection elevation. Structures may be taller than these limits if an engineer determines that greater height is needed to correct an erosion problem. For structures located at the water, the DNR must approve the project before the local government can issue their permit. Previous language requiring that erosion problems be explored first through bioengineering methods has been eliminated.

New standards for stormwater management facilities in bluffs have been added. Management facilities are generally prohibited in bluff areas but may be allowed by local permit under specified conditions. A



new provision was added that allows local governments to adopt MPCA approved treatment requirements instead of the NPDES MS4 and construction treatment requirements. MIDS is an example of an MPCA approved treatment standard.

### **Subdivision and Land Development**

The development thresholds at which the set-aside standards apply have been set at 10 acres for riparian parcels and 20 acres for non-riparian parcels. A lower threshold was chosen for riparian parcels due to their greater habitat, ecological, and scenic value. Language protecting primary conservation areas has been clarified. The standards specify that primary conservation areas should be set aside, where they exist, up to a maximum percentage of the parcel, as specified below:

- CA-ROS: 50%
- CA-RN: 20%
- CA-SR, CA-RTC, CA-UM, CA-UC: 10%

If primary conservation areas are less than the percentage specified, only those areas must be set aside. If the primary conservation areas exceed these percentages, then local governments may determine which primary conservation areas are to be protected with priority given to native plant communities and natural vegetation in riparian areas. On development sites with no primary conservation areas, local governments may require restoration, if restoration areas have previously been identified in their MRCCA plan. Set-asides may be used to meet dedication requirements.

### **Other Changes:**

- The purpose statement has been updated to include those statements from MS 116G, Subd. 2. These statements recognize the economic interests and existing uses as well as the environmental, recreational, and scenic uses of the corridor.
- The definition “Public River Corridor Views” has been expanded. New terms are underlined. “Public River Corridor Views” means views toward the river from public parkland, historic properties, and public overlooks, as well as views toward bluffs from the ordinary high water level of the opposite shore, as seen during the summer months.
- Facilities to accommodate persons with disabilities may now be approved through an administrative permit instead of an interim use permit.
- The document “Mississippi National River and Recreation Area Visual Resources Protection Plan” has been removed from the section listing documents incorporated by reference.
- The shoreline recreational use area concept has been eliminated.
- Patios and decks are allowed to encroach into the structure setback from the water as long as they do not exceed 15% of the existing shoreline setback of the structure from the water and do not encroach into the SIZ or BIZ. This change provides flexibility from the general prohibition on impervious surfaces within the structure setback from the water.
- Buildings and structures on the face of or abutting the bluff in the CA-UC district of Saint Paul, between Chestnut Street and Highway 52 are exempt from setbacks from the bluff or placement in the bluff impact zone.