



Working to protect the Mississippi River
and its watershed in the Twin Cities area.

360 North Robert Street p: 651-222-2193
Suite 400 f: 651-222-6005
St. Paul, MN 55101 w: www.fmr.org

Mayor Chris Coleman
St. Paul City Council
St. Paul Planning Commission
City of Saint Paul
15 Kellogg Blvd., West
Saint Paul, MN 55102

October 13, 2014

Dear Mayor Coleman, St. Paul City Council and Planning Commission Members:

Friends of the Mississippi River (FMR) would like to thank city staff, council members, and planning commission members for your interest and attention to the Mississippi River Corridor Critical Area (MRCCA) rulemaking process that is currently underway by the DNR. The City of St. Paul has long been a good steward of the Mississippi River through its community planning, park development, policy and restoration efforts. Now the City has an opportunity to lead the way to ensuring strong MRCCA rules are put in place to protect the many unique resources of the river corridor throughout the Twin Cities for generations to come.

We understand that the city council and planning commission will be discussing the draft MRCCA rules with the DNR at the October 17 Planning Commission meeting and with the public at the October 31 Planning Commission meeting. We are writing in advance of these meetings to inform you about several serious concerns FMR has with the comment letter submitted to the DNR by city staff in August 2014, as well as provide further context around some of the key issues mentioned in the staff's comment letter.

MISSISSIPPI RIVER CORRIDOR PLAN, 2002

The staff comment letter refers the city's history of planning for the river corridor, yet it fails to include any mention of the 2002 Mississippi River Corridor Plan, a portion of St. Paul's Comprehensive Plan. St. Paul's Mississippi River Corridor Plan was prepared with extensive stakeholder involvement and was praised by the National Park Service as an exemplary critical area plan. In fact, it calls for many of the same policies and regulations that are included in the draft MRCCA rules. Despite the fact that the 2002 Corridor Plan contains the City's current strategies, objectives, and policies related to river development, it was never referenced in the city staff comment letter to the DNR. We consider the omission of the city's own approved corridor policy from the staff comment letter to be a serious oversight which raises the question whether it is adopted City policy or staff opinion that guides the City's engagement with the DNR on these rules.

NONCONFORMITIES

The staff comment letter focuses a great deal on how the MRCCA rules are broadly inconsistent with existing development, creating hundreds of nonconforming uses and lots. Staff argues that the creation of these nonconforming uses do not allow for continuation, development, and redevelopment of a variety of urban uses in the corridor. This issue is greatly exaggerated in the staff letter, as it fails to acknowledge that several exceptions and allowances are built into the rules to ensure that existing development patterns can be maintained.

In addition to basic protections already provided by Minnesota Statutes chapters 394 and 462, the draft MRCCA rules include a provision to specifically provide flexibility for continuation, development, and redevelopment of non-conforming uses and lots. Part 6101.0080, Subpart 3 "Nonconformities" was added to the rules to provide an additional layer of protection for local cities and property owners, and it includes the following:

- Unit A describes that the purpose of Subpart 3 is to "allow uses and structures that came into existence legally... to continue to exist and be put into productive use."
- Unit B reaffirms that local governments will retain control over and be responsible for regulating nonconformities.
- Unit C explains that local governments may choose to allow expansion of legally nonconforming principal structures as long as they do not extend further into setbacks required by the rules (i.e. A home located within a bluff setback could still put an addition onto the home, just not on the bluffward side).
- Unit D explains that any new structures erected in conformance with the proposed setback averaging provisions would be considered conforming (i.e. A new home is erected on a bluff in-between two existing homes that are located within the bluff setback zone. As long as the new home is constructed at a distance equal to or greater than the average of the other two home's bluff setbacks, the new home will be in conformance with the local ordinance requirements.) Finally,
- Unit E ensures that site alterations made before the effective date of local MRCCA ordinance adoption, will be considered conforming.

In addition to Part 6101.0080, Subpart 3 Nonconformities, the draft MRCCA rules also address continuation of nonconformities in Table 1 Exemptions. This table includes numerous exemptions from setback, shore impact zone, and slope preservation zone requirements, for property features and improvement such as patios, landscaping, retaining walls, stairways and access paths,

The DNR has thoughtfully considered nonconformities and created rules that do not diminish the property values with nonconforming uses, while protecting the significant natural, geologic and water resources of the Mississippi River corridor.

SUBDIVISIONS & LAND DEVELOPMENT STANDARDS

The St. Paul staff comment letter criticizes the land dedication component of the draft MRCCA rules stating it would be "unnecessarily costly and intrusive for property owners, and create unnecessary costs and administrative burden for municipalities; these include ...

c) requirements for permanent set aside and restoration of private land for public conservation and habitat purposes through public acquisition, conservation easements and deed restrictions, which are subject to regulatory takings law."

This statement directly contradicts several city policies from Chapter 4 of St. Paul's Mississippi River Corridor Plan:

- 4.1.1 The City will continue its program to acquire lots on the bluff face as funding opportunities arise, extending the program to include lots south of Highwood Avenue. Private efforts to acquire lots for open space dedication are encouraged, as are actions by Ramsey County to convert lots acquired through tax forfeiture to permanent public park ownership.
- 4.1.5 The City will continue to preserve the bluff impact area (forty feet landward of the bluff line) in a natural state.
- 4.2.4 The City will continue to enforce the 50-foot shoreline setback for structures. In addition, the City will support efforts to restore the shoreline to more natural character within 100 feet of the river to facilitate wildlife movement, and to improve the aesthetic appearance of the floodwall. ...
- 4.2.5 In all new developments, threatened and endangered wildlife habitats shall be protected from alterations, which would endanger their survival.

Not only does the letter contradict existing policy, it exaggerates the impact this section of the draft MRCCA rules will have on St. Paul. Because much of the land in the MRCCA in St. Paul is already developed or dedicated parkland, the impact of this portion of the rules in St. Paul will be minimal. The open space dedication standards are important for the entire corridor, especially in the exurban parts of the corridor where large tracts of undeveloped land still exist along the river.

ST. PAUL STAFF COMMENTS vs. PUBLIC INPUT

Finally, we would like to note that the DNR held a public meeting on the draft MRCCA rules at Nova Classical Academy in St. Paul on July 22, 2014. An estimated 125 people attended; most heard about the meeting because of a DNR postcard that was mailed to all homeowners in the corridor with meeting information. After a presentation about the rules, there was an open forum dedicated to getting input from area stakeholders. Approximately 20 people testified from St. Paul, most of whom were homeowners or business owners within the MRCCA. All who testified supported the rulemaking process and urged the DNR to create even stronger rules.

There appears to be a significant difference between the views of local citizens and city staff. As elected and appointed officials, we ask that you give careful consideration to the many opinions on this issue, and that you submit thoughtful comments that are in keeping with the City's current policies for riverfront development.

We urge you to thoughtfully consider the rules as an important tool that St. Paul, and other corridor cities, will use to maintain and enhance the attractive, healthy river we all love for generations to come. If you have any questions or would like to discuss this further, please

do not hesitate to contact me (wclark@fmr.org, x13) or my colleague Irene Jones (ijones@fmr.org, x11).

Thank you for your thoughtful review of the MRCCA rulemaking process.

Sincerely,

A handwritten signature in black ink that reads "Whitney L. Clark". The signature is written in a cursive style with a large, looping initial 'W'.

Whitney L. Clark
Executive Director

Cc: Daniel Petrik, Minnesota DNR
John Anfinson, National Park Service