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Date: August 4, 2015

To: The Saint Paul Planning Commission

From: The Comprehensive Planning Committee

RE: **Mississippi River Corridor Critical Area Rules - Public Hearing Testimony and Recommendations**

Introduction and Summary of Issues

The Minnesota Department of Natural Resources (DNR) is currently conducting rulemaking 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.

The Mississippi River flows through the heart of Saint Paul and is an integral part of the City's history and identity, and the river is an asset which the City strives to embrace and protect. The MRCCA is also a large piece of Saint Paul—the MRCCA includes approximately 7150 acres of land in Saint Paul, 21% of the City's total land area. Perhaps more importantly, some of Saint Paul's biggest opportunity sites—the Ford site, the West Side Flats, the former US Bank site in the Shepard-Davern area, and the site of the Ramsey County Jail and Ramsey County Government Center West—are all located in the Critical Area.

For all these reasons, 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 successfully achieve said balance.

On October 31, 2014, the Planning Commission held a public hearing regarding the draft rules. This memorandum summarizes the comments received, provides analysis of potential impacts, and makes recommendations for formal City comments to the DNR. The discussion is organized to highlight the key features and potential impacts of the rules. The longer discussion following this summary provides a thorough analysis of these, and lays out the reasoning behind the recommendations contained herein. The key findings of this analysis:

- 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.

- 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.
- 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 a smaller number of nonconforming structures than under Saint Paul's current MRCCA rules, but it would be a different set of buildings.
- 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.

Background

The Minnesota Department of Natural Resources (DNR), on June 2, 2014, published a Request for Comments on draft rules for the Mississippi River Corridor Critical Area (MRCCA). The rulemaking process was required by the Minnesota Legislature in 2009 amendments to Minnesota Statutes section 116G.15. 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.

Executive Order 79-19 Standards and Guidelines for Preparing Plans and Regulations, Section B, *General guidelines for preparing plans and regulations*, lays out general guidelines for management of the river corridor as a multiple-purpose resource consistent with its natural characteristics and its existing development using four river corridor districts as follows:

1. The Mississippi River Corridor shall be managed as a multiple-purpose resource by:
   a. Maintaining the river channel for transportation and providing and maintaining barging and fleeting areas in appropriate locations consistent with the character of the river and riverfront.

b. Conserving the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor.

c. Providing for the continuation and the development of a variety of urban uses, including industrial and commercial uses, and residential, where appropriate, within the river corridor.

d. Utilizing certain reaches of the river as a source of water supply and as a receiving stream for properly treated sewage and industrial waste effluents.

2. In order to manage the river corridor consistent with its natural characteristics and its existing development, different guidelines were established to fit the natural characteristics and existing development for the following four different districts within the corridor:

   a. Rural open space district.

   b. Urban open space district.

   c. Urban developed district.

   d. Urban diversified district.

DNR staff made a presentation to the Planning Commission on the draft rules and rulemaking process on October 17, with a focus on the impact of the draft rules in Saint Paul and alternatives for achieving Critical Area goals while supporting its multiple purposes and minimizing negative impact on property owners and businesses. In their presentation they noted a number of potential changes to the rules as currently proposed. Minnesota statutes that govern the rulemaking process require that the purposes of the rules be achieved through the least costly and least intrusive methods, and that the DNR demonstrate that the rules are needed and reasonable.

In December of 2014, the DNR convened a meeting of stakeholders to introduce changes to the language in the draft rules (some of which were previewed in their presentation to the Planning Commission in October) based on input from stakeholders. The DNR designated this latest iteration of the draft rules the "Pre-Revisor's Draft", and forwarded the draft to the Office of the Revisor of Statutes at the Legislature in late January 2015. DNR staff have indicated that they expect to provide a Notice of Intent to Publish, which initiates the formal 45-day public comment period, the Fall of this year.

Public Hearing Testimony, Analysis, and Recommendations

On October 31, 2014, the Planning Commission held a public hearing regarding the DNR's draft rules for the MRCCA. 21 people spoke at the public hearing and 17 letters were received. This memorandum provides a brief summary of the comments received, followed by a more detailed discussion of the key features of the proposed rules, including summary of comments received, more detailed analysis of the potential impacts of the rules, and recommendations for Planning Commission consideration to forward to the Mayor, the City Council, and the DNR. While the hearing used the DNR's working draft rules released in June 2014 as a basis for discussion, this memorandum also refers to language from the Pre-Revisor's Draft of the rules dated December 11, 2014.

A number of comments, representing a variety of viewpoints, expressed the need for a balance in the rules between natural resource protection and providing for development and economic activity. Several people cited language from Minnesota Statute 116G, which authorizes the

rulemaking and (using language from the general guidelines in Executive Order 79-19 for preparing plans and regulations) directs the DNR to ensure that the river corridor is managed as a multipurpose resource in a way that "conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor, [and] . . . provides for the continuation, development, and redevelopment of a variety of urban uses." It goes on to require that the DNR " take into account municipal plans and policies, and existing ordinances and conditions" in establishing districts for "management of the river corridor consistent with its natural characteristics and its existing development, and in consideration of potential new commercial, industrial, and residential development and redevelopment." The general thrust of the comments citing MN Stat. 116G was that the draft rules do not meet these requirements.

Several people said that City comments on the rules should reflect the Great River Passage Master Plan for Saint Paul's Mississippi River Parklands and other elements of Saint Paul's Comprehensive Plan.

A number of people, including representatives of groups such as Friends of the Mississippi River (FMR), and Friends of Parks and Trails of Saint Paul and Ramsey County, the National Park Service, and several private citizensfocused on the importance of natural resource protection in the river corridor, citing the river as a City asset and stating the need for setbacks and building height limitations to prevent soil erosion and limit visual blight. Several commenters called for the strongest possible protection of natural resources and limitations on development and said that the rules should be more restrictive than currently proposed by the DNR in terms bluff and slope protection, building heights, and development prohibitions. FMR suggested that City staff comments did not reflect the views of the residents of Saint Paul and that concerns over nonconforming structures were overblown.

A number of people, including representatives of the Saint Paul Area Chamber of Commerce, the Saint Paul Area Association of Realtors, the Saint Paul Port Authority, the Neighborhood Development Alliance, and the West Side Community Organization, and the District 1 Community Council raised concerns about specific provisions in the draft rules that they viewed as problematic, and the impact of these provisions on existing and new development. Specific concerns included that the proposed district designations did not accurately reflect existing urban development, and that the DNR had not performed sufficient analysis of the number of nonconforming structures that would be created or of the resulting administrative cost implications and potential financing difficulties for individuals and communities. There were comments that the proposed rules would send a message to the business community that they are not welcome and would lead to disinvestment and an erosion of the community over time. Speakers also raised concerns about provisions in the rules, particularly the requirement for private property to be permanently set aside and restored for habitat and conservation purposes, which could lead to regulatory takings.

A more detailed discussion of comments the received, analysis of rules, and recommendations follows below, organized into eight major topic areas.

1. Proposed new MRCCA Zoning Overlay Districts and Use of the Districts in St. Paul

1.1 Draft Rule and Purpose

The draft rules establish six new districts to manage the river corridor as a multiple-purpose resource consistent with the variation in both its natural characteristics and types of urban development in the corridor.

1.2 Testimony

The Chamber of Commerce, the Department of Parks and Recreation, the District 1 Community Council, and the Port Authority all noted areas where proposed district designations and the characteristics described in the draft rules for them are not consistent with natural characteristics or existing and planned development in the area.

Area east of Highway 61. The District 1 Community Council said the area east of Highway 61 does not meet any of the characteristics described in the draft rules for the ROS Rural & Open Space District. District 1 and the Chamber both expressed concern about the high level of nonconformities the greater setbacks requirements of the ROS district would create in this area. District 1 recommended that the RN River Neighborhood and SR Separated from River Districts should be used instead.

Regional Parks. The Department of Parks and Recreation said the ROS Rural & Open Space District and its much more restrictive dimensional standards generally don't fit the constraints and more intensive use of urban parks that are part of the Regional Park system, and recommended keeping them in an Urban Open Space District. The ten implementing agencies of the regional parks have recommended that the Urban Open Space District have performance-based guidelines instead of prescriptive regulations. The regional parks in the river corridor are already publicly managed for the purposes of the Critical Area under Metropolitan Council requirements, and prescriptive rules may be a redundant layer of management.

Ford Site. The Chamber and the Port Authority said the districts proposed for the Ford site may unnecessarily restrict appropriate development of the site, don't appear necessary to protect critical views of and from the river, and recommended use of the SR Separated from River District instead.

West Side Flats. The Chamber said the UC Urban Core District would be more consistent with the community's redevelopment vision for the area directly across the river from downtown.

1.3 Analysis

Area east of Highway 61. The SR Separated from River District, described in the draft rules as "characterized by its physical and visual distance from the river, . . . [including] land separated from the river by distance, development, or a transportation corridor," best describes this area that is separated from the river by distance, industrial areas, railroad yards and tracks, and Highway 61. The maps accompanying the Pre-Revisor's Draft designate all land east of Highway 61 and south of Battle Creek Regional Park as RN River Neighborhood, described in the draft rules as "residential neighborhoods that are riparian or readily visible from the river or that abut riparian parkland." While the SR Separated from River District more accurately describes the characteristics of the area, the only practical implication of the RN District for this area might be the 35 foot height limit, and the underlying one-family zoning of the area generally keeps buildings lower than this.

Regional Parks. An excellent way to manage open space for the purposes of the Critical Area is to make it part of the regional park system. Regional parks are managed to protect unique and valuable natural, aesthetic, cultural, historical, biological, and ecological functions of the river corridor, and to conserve and provide for the scenic and recreational resources and functions of the river corridor for the use and enjoyment of the region. ROS Rural & Open Space District bluff and river setback requirements would be inconsistent with almost all existing and proposed development in the urban regional parks in the Critical Area (such as Mississippi River Boulevard, Indian Mounds Park, Cherokee Park, Lilydale Park, Hidden Falls Park, and Crosby Farm Park) and make a lot of the existing development nonconforming. That's why the Interim Regulations in Exec. Order 79-19 had a separate Urban Open Space District with smaller setback requirements for the more compact and developed urban open space areas. Keeping them in an Urban Open Space District, with performance-based guidelines instead of prescriptive regulations, would effectively and efficiently manage them for the purposes of the Critical Area and help to avoid the complications of a redundant layer of management.

In December, DNR staff said they intend to change their proposed designation of the Watergate Marina site from ROS to RN River Neighborhood. This would reduce required river setbacks from 200 feet to 50 feet, similar to requirements for most private marinas in the MRCCA, and thereby provide for implementation of the vision for the site in the Great River Passage Master Plan.

Ford Site. RTC River Towns & Crossings District, described in the draft rules as including limited nodes of intense development at river crossings, would be a better fit than ROS for the part of the Ford site west of Mississippi River Boulevard including historic hydro and power plant buildings that are the kind of historic and economic resources MN Stat. 166G.15 and Exec. Order 79-19 call for continuing. This is not rural or open space. The RTC District is designed for use right up to the river edge, and has a 75 foot river setback requirement. Use of the RTC District for this site would be consistent with its use directly across the river from this site. Urban Open Space designation may be appropriate for the southern part of the Ford site west of Mississippi River Boulevard, which may become urban open space, but not for the hydro and power plant buildings that will not become open space. The RPS district would be nonconforming with the existing road, buildings and development in this area.

CA Urban Mixed District, described in the draft rules as urbanized mixed-use areas that are part of the urban fabric, is a good description and fit for the part of the Ford site immediately east of Mississippi River Boulevard. SR Separated from River District, which is used directly across the river from the Ford site, would be a better fit for the part of the Ford site further east, which is more separated from the river by physical and visual distance and development.

West Side Flats. Use of the UC Urban Core District for a relatively small (< 1 mile) stretch of riverfront directly across the river from downtown as suggested by the Chamber would be consistent with the community's redevelopment vision for the area, more consistent with the current River Corridor Urban Diversified District that has no height limit, and more consistent with how the UC Urban Core District is proposed to be used for a much larger portion of the Minneapolis urban core on both sides of a the 3½ mile stretch of the river. Another way to address the concern raised by the Chamber would be to allow a little more height (such as 75 feet) without a CUP in the UM Urban Mixed District. Such a change

would also make height restrictions under the MRCCA consistent with maximum building heights under the West Side Flats Master Plan.

1.4 Recommendation

Area east of Highway 61. The RN River Neighborhood designation is acceptable.

Regional Parks. Use a UOS Urban Open Space District, with performance-based guidelines instead of prescriptive regulations, for urban regional parks. Support the change to the designations of the Watergate Marina site to RN River Neighborhood.

Ford Site. Use the RTC River Towns & Crossings District for the northern part of the Ford site west of Mississippi River Boulevard and an Urban Open Space designation for the southern part of the Ford site west of Mississippi River Boulevard. Use the CA Urban Mixed District for the part of the Ford site immediately east of Mississippi River Boulevard, and the SR Separated from River District for the part of the Ford site further east.

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.

2. Bluffs, Steep Slopes, Setbacks and Nonconformities

2.1 Draft Rule and Purpose

The Pre-Revisor's Draft of the MRCCA rules has different definitions for bluffs and related features than were found in the previous iteration, the Working Draft Rules. The Pre-Revisor's Draft defines *bluff* as a natural topographic feature with either of the following characteristics:

A. a slope that rises at least 25 feet with an average slope of 18% (8°) or greater measured over 25 horizontal feet (this was changed from an average slope of at least 30% under the Working Draft Rules); or

B. a "*cliff*" (a new definition) defined as any feature with an average slope of 75% (34°) or greater. Since release of the Pre-Revisor's Draft, DNR staff have indicated that they will be changing the definition of *cliff* to features at least 10 feet tall with a slope of 100% (45°) or greater.

Very steep slopes have been eliminated as a defined feature from the Pre-Revisor's Draft (they were defined as features with at least a 10 foot total rise and an average slope of 18% or greater in the Working Draft Rules), as has the slope protection zone.

The bluff impact zone (BIZ, a 20-foot buffer zone around bluffs) and bluff setback requirements remain unchanged in the current Pre-Revisor's Draft. In bluff impact zones, structures and impervious surfaces would be prohibited, and a new permit process would be required for land alteration and vegetation removal. The rules would prohibit expansion of existing structures and uses where it would result in further encroachment into a BIZ.

The purpose of regulations pertaining to bluffs and steep slopes is two-fold: to protect slope integrity and prevent soil erosion, and to (particularly for bluffs) to protect river corridor views and to preserve their natural character.

2.2 Testimony

A number of people, including representatives of Friends of the Mississippi River and Friends of Parks and Trails of Saint Paul and Ramsey County, expressed the need for more restrictive rules and prohibition of development, asserting they are needed to protect bluffs and slopes. Several individuals stated that they felt the draft rules under review at the hearing represented a step backwards. Others, including representatives of the Saint Paul Area Chamber of Commerce and the Port Authority, testified that the Working Draft Rules are so restrictive in this regard that they do not meet the intent of the rules to also protect existing urban development and allow for new development and redevelopment, noting the large number of structures and developed lots that would be nonconforming and that the DNR had not sufficiently analyzed this impact. Commenters also noted the potential administrative cost implications and financing difficulties for individuals and communities, and stated that the proposed rules would send a message to the business community that they are not welcome and would lead to disinvestment and an erosion of the community over time.

2.3 Analysis and Key Questions

Protection of bluffs to prevent soil erosion and protection water quality and river corridor views are important, key MRCCA goals. The way bluffs are defined and dimensional standards such as setbacks and the BIZ are written determines not only the approach of the rules in achieving these goals, but also how many structures and properties will become nonconforming under the MRCCA rules. As City staff have worked with DNR staff to evaluate impacts of various options for defining bluffs and steep slopes, it has become clear that relatively minor changes can have a substantial impact on the number of nonconformities created.

In early January 2015, staff performed GIS analysis of the number of nonconforming structures under Saint Paul's existing MRCCA zoning and under the Pre-Revisor's Draft definition of bluff (including cliffs), bluff impact zone, and required bluff setback.

	Bluff/Very Steep Slope/BIZ	Bluff Setbacks
Current Saint Paul MRCCA Rules	1015	180
DNR Pre-Revisor's Draft	493	392

The proposed bluff definition in the Pre-Revisor's Draft would result in fewer nonconforming structures for structures located on or within 20 feet of bluff features. Under the current Saint Paul MRCCA ordinance, steep slopes are defined as 18% slopes of at least 10 feet in height, which captures many features that are not part of the main bluff complex and are located within existing neighborhoods. Required bluff setbacks are based on a bluffline defined on a map, generally delineating the transition between slopes of greater than 18% to those less than 18% on the top edge of bluff features facing the river. By contrast, the proposed rules use 18% or greater slope with a minimum height of 25 feet to define a bluff. The net result of the change is that nonconformities for buildings located on or near smaller features away from the main bluff complex—many of which are within existing neighborhoods—would be reduced. At the same time, the proposed rules would expand the

locations where bluff setback requirements apply and actually increase the required setback in the CA-ROS district. As a result, more existing structures would become nonconforming.

Contrary to the above analysis, testimony suggested that impacts to property owners and local governments from the creation of new nonconforming structures, including increased costs and administrative burden, might be substantial. This issue is discussed in more detail in section 6 of this analysis. Testimony also suggested that such impacts, and the failure to adequately analyze these impacts, may make it difficult for the DNR to develop a satisfactory Statement of Needs and Reasonableness (SONAR)—a key piece of final approval—for the rules. However, it should be noted that the testimony was submitted based on an earlier version of the draft rules, which included definitions of bluffs, very steep slopes, and a slope protection zone provision which would have resulted in substantially more nonconforming structures.

2.4 Recommendations

While the overall number of nonconformities that would result under the proposed rules is more limited than other previous drafts, it may be possible to meet the intent of the rules with even fewer through the use of . bluff- and slope-related performance standards that achieve Critical Area goals while minimizing negative impact on property owners and businesses.

Definitions and standards should ensure effective protection of natural resources while reasonably minimizing negative impact on existing developed neighborhoods and providing for reasonable expansion of urban development where appropriate. To help achieve this goal, the rules might also provide for their reasonable application, either through defined exemptions or via the flexibility provision for ordinances (discussed in section 7 of this memorandum).

Locational requirements and development restrictions related to bluffs should be written so as to most efficiently address their intent in regard to erosion, slope stability, and view impacts. Slope integrity can be effectively protected and erosion prevented by requiring that development be done according to plans and best management practices specified by qualified professionals, rather than prohibition of structures and impervious surfaces that otherwise do not negatively impact the river corridor.

For the purpose of protecting public river corridor views, regulations related to this might be more focused on locations and structure types that affect public river corridor views, and not on slopes, locations, low structures and impervious surfaces that do not affect public river corridor views. One criteria in the definition of bluffs might be that they face the river.

For the purpose of preserving natural character, the regulations for this should be more focused on currently undeveloped bluff areas and not on fully developed areas (such as downtown, commercial and industrial areas, and fully developed residential neighborhoods) where there is no significant natural character to preserve.

3. Building Heights

3.1 Draft Rule and Purpose

The Pre-Revisor's Draft MRCCA rules propose to regulate building height by district. Map 1 shows the proposed district boundaries and applicable height limits. Height limits are

generally intended to limit interference with views of and from the river, and to limit the visual impact of buildings so that currently undeveloped areas will continue to appear open from the river and the opposite river bank (with exceptions for existing commercial and industrial areas).

The principal source for the purposes of the Critical Area, and for standards and guidelines for regulations to achieve them, is the *Standards and Guidelines for Preparing Plans and Regulation* in Executive Order 79-19. It doesn't provide specific standards for building height, but rather a general standard for structures (in C.2.b) that "structure site and location shall be regulated … to minimize interference with views of and from the river, except for specific uses requiring river access." This suggests that minimizing interference with views may be as much an issue of building location as it is of building height.

Another key source for policies and standards for River Corridor regulations is *the Mississippi National River and Recreation Area (MNRRA) Comprehensive Management Plan* adopted in 1995. The general land use and protection policy in the *MNRRA Comprehensive Management Plan* that pertains to height (page 15) is:

> "Except in existing commercial and industrial areas, downtowns, and historic districts, currently undeveloped land areas in the corridor will continue to appear open from the river and its shoreline areas (as observed from the opposite bank), although there may be intensive development away from the shoreline. This open appearance does not mean all undeveloped land must remain undeveloped. In most cases this general policy could be achieved through setback, height limit, and vegetation screening policies and design guidelines while allowing for extensive use of the site."

Site development policies in the *MNRRA Comprehensive Management Plan* include the following specific policy that pertains to height (page 19):

> "Reduce visual impacts and protect views of the river and from the river and its shoreline areas by establishing maximum building heights for the bluffline and riverfront preservation areas:
>
> within 100 feet of the bluff line – 30 feet
>
> within 200 feet of river – 30 feet
>
> within 300 feet of river – 45 feet
>
> beyond the areas above – no restrictions except those in local zoning codes
>
> It is understood that building height limits will be … higher in downtown areas"

Saint Paul's Mississippi River Corridor Plan discusses river views and vistas generally, as well as for redevelopment sites in the Critical Area. The plan generally calls for preserving public views to the river through street alignments and protection of open spaces that provide overlooks. The plan also calls for buildings whose scale responds to the natural topography and maintains public views both to and from the river.

3.2 Testimony

A number of individuals and groups testified to the importance of limiting building heights in order to prevent visual impacts. Several individuals and groups stated that the eventual MRCCA rules need to be more protective than current regulations, with two individuals believing that the draft rules reviewed at the hearing were a step backwards.

Other testimony raised concern that the proposed height limits are inconsistent with appropriate development, that they may be unnecessarily restrictive for some key redevelopment sites, and that the provisions in the rules for greater height with a conditional use permit in some cases may too often be unnecessarily onerous. The Chamber of Commerce recommended that height limits be more generally left to underlying zoning, and that the rules provide more local flexibility in crafting conditional use permit requirements for allowing greater height.

3.3 Analysis

The Pre-Revisor's Draft MRCCA rules would provide less deference to local underlying zoning on structure height than current regulations. The RC3 Urban Open Space District is the only River Corridor overlay district currently used in St. Paul that includes a height limit. Under the proposed new districts, almost all parcels would be covered by a River Corridor overlay district height limit. For the 3948 parcels of land in St. Paul that are in the MRCCA, the River Corridor district height limits would stay the same for 267 parcels (7%), would be less restrictive for 74 parcels (2%), and would be more restrictive for 3607 parcels (91%).

The *MNRRA Comprehensive Management Plan* calls for undeveloped land areas in the corridor to continue to appear open when viewed from the river or the opposite bank. But it also suggests that minimal interference with views of and from the river does not mean no structures can be seen. The urban setting of the MRCCA, in a major city located here because of the river, is key to its significance and importance. Well-designed buildings can enhance the MRCCA experience. Some of the most beautiful and significant views in the Critical Area, views highlighted in MRCCA and Mississippi National River and Recreation Area documents, involve the juxtaposition of the natural and urban built environment.

Blanket restrictions on the height of structures in developed urban areas are not the only way fulfill the purpose of the critical area based on direction and guidelines in MN Stat. 116G.15, Executive Order 79-19, and the *MNRRA Comprehensive Management Plan*. For example, the Interim Development Regulations in Executive Order 79-19 (in effect in St. Paul between 1979 and 1982) did not have a height limit for the urban diversified district that was for areas where there was a diversity of commercial, industrial, residential, and public land use along the river. Similarly, the height policy in the *MNRRA Comprehensive Management Plan* limits building heights only within 100 feet of blufflines and within 300 feet of the river, and exempts downtown areas (along with exempting some commercial, industrial, utility and transportation structures that need greater height for operational reasons).Such an approach in the new MRCCA rules would be a reasonable least-intrusive standard for the Critical Area purpose of reducing visual impacts and protecting views of the river and from the river and its shoreline areas.

The rules, as noted by at least one commenter, would also benefit greatly from inclusion of a clear standard for evaluating visual impact. Many who feel new buildings should not be visible on some stretches of the river would support new buildings being visible on other stretches of the river. Moreover, in some locations, buildings of almost any height are going to be visible from the river and/or it's banks. Clearly articulated standards forwhat constitutes acceptable and unacceptable visual impacts would reduce conflict, protect the River Corridor, and allow the type of urban development needed for sustainable, efficient cities where appropriate. Walkable, transit-supportive cities are on the whole much more sustainable and

vibrant than auto-oriented, low-rise sprawl. They are by definition denser, and unnecessarily restrictive height limits might make achieving that type of density more difficult.

3.4 Recommendation

Rules on building heights should allow for, where appropriate, the type of urban growth our comprehensive and areas plans call for, particularly at key redevelopment sites in the River Corridor. Building heights also should not be limited by the MRCCA rules in areas away from the river where they will not be visible from the river or its shoreland areas. This could best be accomplished through inclusion in the rules of clearly articulated standards for what constitutes acceptable and unacceptable visual impacts within the MRCCA. The standards would need to provide for evaluation of a range of factors, including—but not necessarily limited to—distance from river, existing character of the portion of the corridor being evaluated, primary bluff height and distance from river, presence of terrace and secondary bluff, screening provided by vegetation (leaf-on and leaf-off), orientation to river, and building design, height and exterior materials. Application of the standards for evaluation of potential visual impacts would most efficiently be done as part of municipal planning for rule implementation. The rules should provide that such an analysis be completed before height restrictions are adopted by implementing local governments (more discussion on this in Section 7 of this memorandum).

As an alternative, the MRCCA rules on height regulation could be based on the more nuanced *MNRRA Comprehensive Management Plan* policy of limiting the river corridor height limits to areas within 100 feet of blufflines and within 300 feet of the river, stepping up the height limits moving away from the river. The MNRRA plan also calls forexempting downtown areas between Lafayette Road/Hwy. 52 and Smith Avenue, and exempting some commercial, industrial, utility and transportation structures that need greater height for operational reasons; the Pre-Revisor's Draft incorporates those policies.

4. Vegetation Management, Land Alteration, and Stormwater Management

4.1 Draft Rule and Purpose

The draft rules would restrict removal of vegetation and landscaping through a combination of prohibitions and permit requirements. The stated purpose of these standards is to sustain and enhance ecological functions, preserve the natural character and topography of the MRCCA, and maintain stability of bluffs and very steep slopes. Stormwater management requirements are included in the draft rules for the stated purpose of protecting property from damage cause by runoff and erosion, protecting surface water quality, and promoting infiltration and groundwater recharge.

A permit would be required for any land alteration above a minimum threshold (Part 6106.0150 Subp. 7 proposes a range for the minimum threshold of between 250 and 3,000 square feet) within the shoreland impact zone (SIZ) and land alterations are prohibited in the BIZ. Intensive vegetation removal within the SIZ, BIZ, areas of native plant communities, and other areas of significant vegetation as identified in local government plans would be generally prohibited. Selective pruning for tree health or safety reasons is allowed without a permit, as is removal of up to 1,000-5,000 square feet of vegetation or 5-15% of a vegetated area, whichever is less. Any removal of vegetation above these thresholds would require a permit. Replanting with native species would be required only where native species have been removed.

Stormwater management provisions of the rules (Part 6106.0160) would apply MS4 stormwater permit requirements—which currently apply only for developments disturbing more than an acre—to any project resulting in new or redeveloped impervious areas of 10,000 square feet or more on parcels that abut a public water body, wetland, or natural drainageway.

4.2 Testimony

A number of commenters noted the importance of preventing erosion and protecting water quality. Several said the working draft rules are not strong enough in this regard. The District 1 Community Council expressed general support for rules on vegetation management, but noted concerns over invasive species and potential for soil/slope instability.

4.3 Analysis and Key Questions

As with many aspects of the draft working rules, the challenge regarding provisions that address vegetation removal and land alteration is to adequately meet the intent of the rules for a large and diverse area in terms of the existing land use and natural characteristics. The rules seem to focus on preventing mass vegetation removal and land disturbance in primary conservation areas (the catchall term in the draft rules for bluffs, the BIZ, floodplains, tree canopies, native vegetation, etc.) where future development may occur in previously undeveloped areas.

In Saint Paul, many of these areas are in publicly owned parklands where the land alternation and vegetation management restrictions may be unnecessary, or are already subdivided into low density residential lots. The proposed rules include an exemption for state and regional agencies from municipal permitting under ordinances adopted pursuant to the rules. However, DNR staff have indicated that although the exemption would not extend to the Saint Paul Department of Parks and Recreation even in its role as manager of regional parks such as Crosby Farm and Lilydale, the DNR would leave it up to municipalities to determine how to handle "intra-agency" administration of ordinances adopted pursuant to the rules.

For owners of developed residential lots, the draft working rules do provide exemptions from vegetation management and land alteration requirements for projects of a limited size—such as the installation of a small retaining wall or patio, and limited vegetation removal. The exemptions are likely sufficient to prevent an undue burden on homeowners or others by requiring permits for these types of projects—Saint Paul does not currently have an equivalent permit type or requirement, although the current River Corridor ordinance development standards do generally restrict vegetation removal—in most parts of the City. In developing a plan and ordinances pursuant to the rules, the City will need to evaluate areas within the MRCCA with larger lots and privately-owned, undeveloped property to determine whether or not they should be designated "primary conservation areas" and if so, whether the proposed exemptions are sufficient and/or if a permit process needs to be developed.

For stormwater, the City already requires rate control for projects which impact 10,000 square feet. The additional requirements proposed by the working draft rules would likely not result in significant increased costs or administrative difficulty.

4.4 Recommendations

The proposed rules should include a new district designation for public parklands, with separate requirements for vegetation management that reflect the fact that public parklands

are managed for unique purposes, and that any significant changes to public parklands are vetted through substantial public review and comment processes.

5. Set-asides / Takings

5.1 Draft Rule and Purpose

The draft rules would create a new requirement that applies to subdivisions and redevelopment of land involving at least 10-20 acres, requiring that areas defined as "*primary conservation areas*," to a maximum of 10-50% of the tract land, must be permanently set aside and restored for habitat and conservation purposes through public acquisition, a permanent conservation easement, or deed restriction. The draft rules state that the purpose of this requirement is to protect primary conservation areas and to preserve or restore the ecological function of those areas.

5.2 Testimony

Friends of the Mississippi River (FMR) wrote that the set-aside requirement is important, particularly for the protection of large undeveloped areas outside of the urban core. FMR's letter also noted that the requirement only applies to primary conservation areas, and asserted that the set-aside provisions only applied at the time of initial development, both factors lessening the impact of the provisions in Saint Paul. FMR's comments also noted Saint Paul's Mississippi River Corridor Plan calls for ongoing efforts by the City to acquire, for purposes of permanent protection, additional land in the Critical Area. Several other comments noted support for the provisions as well.

The Chamber of Commerce and the Port Authority raised concern that if cities are forced to implement rules that require a large percentage of private property to be set aside as a condition of development approval they will be subject to takings and inverse condemnation law suits which will cost significant amounts of money. The Saint Paul Area Association of Realtors said that the set aside requirement may result in a significant reduction in the value of the property, and that a fairer approach may to provide for clustering and transfer of development rights, with flexibility to achieve permanent protection of open space while maintaining development rights based on the full area of the parcel.

5.3 Analysis

The language of the set-aside provisions expressly state that they would apply in cases of redevelopment, and DNR staff have confirmed that is the intent of the rules.

The term "*primary conservation areas*" is broadly defined. It includes, among other things:

- Shore impact zones
- Bluff impact zones
- Wetlands
- Floodplains
- Bedrock
- Natural drainage routes
- Public river corridor views and vistas
- Cultural and historic properties
- Significant existing vegetative stands

Most of the resources and features included in the definition of "*primary conservation areas*," such as shore impact zones, bluff impact zones, and wetlands, are already well

protected by other provisions in the draft rules. The set aside requirements don't seem necessary for this purpose.

Floodplains are protected by floodplain regulations mandated by the state and Federal Emergency Management Agency, so set aside requirements don't seem necessary for this purpose, either.

There are large commercial and industrial areas in the "flood fringe" portion of the floodplain, where development is allowed subject to flood protection requirements. Many of these tracts are large enough that the set aside requirements would apply to building permits as well as to subdivision of land. The commercial and industrial uses are typically one story buildings or use of the land itself, so clustering and transfer of development rights would not help to maintain development rights based on the full area of the parcel.

Some of the terms used to define "*primary conservation areas*" are not well defined, and the extent of what might be considered a primary conservation area is quite large. The phrase "public river corridor views and other scenic views and vistas" does not define areas of land, doesn't fit in the list of land features that define the term "*primary conservation areas*", and therefore DNR staff have indicated they will remove "*views and vistas*" from the definition of "*primary conservation areas.*"

It is unclear why a portion of sites containing historic structures should be permanently set aside and restored for habitat and conservation purposes through public acquisition, a permanent conservation easement, or deed restriction.

In the Pre-Revisor's Draft Rules, the purpose and applicability language that applies to the set aside requirement was revised to make it clear that they only apply subdivision and development of large sites involving at least 10 – 20 acres. This addressed a City concern about the time and money it would take to set aside small pieces of small sites through public acquisition, permanent conservation easement, or deed restriction, and what the conservation value of the resulting protected land would be. The City's Mississippi River Corridor Plan does call for the City to acquire land for open space protection as opportunities arise. However, the plan contemplates doing so on a voluntary basis. The ability to take private property for public purpose without payment of just compensation is limited to cases where the public purpose is directly related and proportionate to needs specifically created by the development. Without this, as noted in the testimony, cities may be subject to takings and inverse condemnation law suits. Restoring land for habitat and conservation is generally not a private land use purpose or a need created by development of the property, and is therefore a public purpose for which just compensation would have to be paid. Setting up the City to be financially responsible for significant land acquisitions based on the decisions made by private property owners would put the City in an untenable position.

To provide for open space for the general public purposes of the MRCCA, a better approach might be to require that the MRCCA Plan element of local comprehensive plans identify areas that need to be maintained and protected as public open space and public access for the broad public purposes of the MRCCA, that these areas then be identified and protected for public open space purposes on an official map under the provisions of MN Stat. 462.359, and that a program for acquisition of these areas (including payment of just compensation) be established. Perhaps the state could set up such a program and provide funding for this public purpose.

The draft rules include a separate rule pertaining to requiring dedication of land for parks and open space under MN Statutes 462.358 and 394.25. These statutes are written to avoid takings and inverse condemnation law suits.

5.4 Recommendation

In Part 6106.0170 Subdivisions & Development Standards of the draft rules, delete Subpart 3 pertaining to the set-aside requirements, and revise Subpart 4, Land dedication, to say that "local governments shall require dedication of land or a fee in lieu of land for parks and open space under Minnesota Statutes 462.358 or 394.25."

6. Administrative Burden/Disincentive to Development

6.1 Comments

The Port Authority, SPAAC, SPAAR, and several others commented on the potential for the draft working rules to result in an administrative burden for local governments and additional costs, a disincentive to development, and potential financing difficulties for property owners. The primary cause of such impacts would be bluff/VSS setback requirements, and potentially shoreland setback requirements, which would make a number of existing buildings nonconforming. Building height restrictions and other restrictions, such as on impervious surfaces including roads and parking lots, could also be problematic for commercial properties. Small residential property owners could also be impacted, although the draft working rules specify that lots where past vegetation clearance and landscaping activities have occurred should not be considered nonconforming.

6.2 Analysis/Key Questions

The draft working rules provide for matching of setbacks on new structures and expansions in areas where there are existing structures. However, the draft working rules specifically state that expansion of structures further into the setback areas is not allowed. Variances are possible, but the draft working rules would require that local governments evaluate any proposed variances for impacts on primary conservations areas and require proportional mitigation. In cases where any sizable impacts would occur on a small site, it is not clear how this requirement would be practically applied.

The draft working rules also require a site plan for any projects requiring discretionary approval or requiring a permit under the MRCCA rules, such as land alteration or vegetation removal permits. It is possible that this requirement would lead to a site plan being required for projects in the MRCCA which would not otherwise trigger a site plan requirement in Saint Paul. This would result in an increased administrative burden for the City and increased costs for property owners. For some projects, it is not clear what additional benefit a site plan requirement would yield. The extent of the increased burden and cost would depend to some extent on the content requirements for the site plan, a topic on which the draft rules are silent.

The fact that a structure is considered nonconforming generally may make getting financing for the purchase or expansion of that property more complicated, as lender's may require additional documentation or that granting of any additional required permits/approvals (from the local government) be obtained before finalizing financing. In the case of investment in commercial properties, the latter may create a disincentive to investment, particularly where locational considerations are of a lower priority. In all cases, adding additional permitting

requirements adds time and cost to transactions, burdening both the City and property owners/purchasers.

6.3 Recommendations

As noted in section 2 of this analysis, the Pre-Revisor's Draft rules would result in a smaller, different set of nonconforming structures (in comparison to current Saint Paul MRCCA regulations). This, in general, would mean less regulatory burden on the City and property owners as compared to the version of the draft rules on which comments were made. However, the recommendations made in section 2 of this analysis suggested several ways in which the rules could be altered to reduce nonconformities (and this regulatory burden) while still achieving the natural resource protection goals of the rules. As noted in the preceding analysis, the rules could also reduce unnecessary burden on property owners by reducing permitting and site plan requirements, and providing exemptions to variance requirements for proportional mitigation where meeting such a requirement is not practical, such as on a very small site. As noted in the introduction to this memorandum, Minnesota rulemaking statutes require that the purposes of rules be achieved through the least intrusive and least costly means possible.

7. Ordinance Adoption and the Flexibility Provision

7.1 Draft Rule and Purpose

Part 6106.0070 of the draft working rules contains provisions for the preparation of plans and ordinances by local governments and their review by the Metropolitan Council and the Department of Natural Resources (DNR). Upon adoption of the MRCCA rules, the DNR will provide a schedule for local adoption of plans and ordinances consistent with the rules. Once notified, a local government will have one year to submit a plan and ordinance for review by the Metropolitan Council and DNR. The DNR may extend the period for plan and ordinance development upon written request and subject to certain provisions. Once a plan and ordinance have been submitted for review, the DNR must provide a written response within 60 days to the local government either approving the ordinance or returning the draft plan and ordinance with a written explanation of needed modifications. If the DNR determines that the plan and/or ordinance need modification, the local government must resubmit the revised plan and/or ordinance within 60 days. Again, the local government can request an extension. If the local government fails to meet deadlines for plan and/or ordinance adoption, the DNR must develop a plan and/or ordinance within 90 days, hold a public hearing, and adopt a plan and/or ordinance on behalf of the local government within a further 60 days.

Subpart 6 of 6106.0070 of the draft working rules provides for, with prior approval of the DNR, the adoption by local government of ordinances not in strict conformity with the MRCCA rules. This provision applies to "special circumstances", including the presence of "areas where existing residential, commercial or industrial development patterns have been in place for many years and much of the development does not meet the minimum state standards."

Subpart 2, 3, and 4 of 6106.0070 of the draft working rules provide for conditional use permits and nonconforming uses.

7.2 Comments

Although not all directly related to the ordinance adoption provisions of the draft working rules, a number of comments received are relevant for consideration in regard to how the MRCCA rules will impact planning, land use regulation, and zoning in Saint Paul.

The Port Authority highlighted Saint Paul's long history of effective planning for and management of the river corridor, including working with the Port Authority to protect over 1,800 acres in the river corridor for open space and recreation in perpetuity. Port Authority and SPACC comments also highlighted the effectiveness of local, fine-grained planning and regulation in managing the river corridor over what they characterized as the broad-brush regulation of the draft working rules. Both the Port Authority and SPACC also suggested in their comments that the draft working rules are not consistent with the authorizing legislation (MN Statute 116G), which requires that the MRCCA rules provide for "the continuation, development, and redevelopment of a variety or urban uses…where appropriate."

7.3 Analysis and Recommendations

Despite the authorizing language specifically requiring the rules to provide for urban uses in the MRCCA, proposed standards in the draft rules are inconsistent with many areas in Saint Paul, including both residential neighborhoods and commercial and industrial areas. To meet the intent of the authorizing legislation, the MRCCA rules should include districts and development standards that are consistent with already developed urban areas such as those in Saint Paul. The rules should not put the onus on local governments to demonstrate to the DNR's satisfaction that large areas of the MRCCA constitute special circumstances in order to justify ordinance provisions that reflect long-standing development patterns.

Similarly, the conditional use permit provision allows for additional building height in some districts and where an analysis of visual impacts of the additional height has been performed. If the purpose of the height restriction is to prevent visual impact, and the additional building height can be accommodated without visual impact, then the rules are overly restrictive. More careful and finer-grained analysis of allowable building heights should either be conducted as part of the rulemaking, or the rule should be written so as to base any height restrictions on a detailed analysis without the requirement that local governments demonstrate that "special circumstances" exist.

The timelines for plan and ordinance development by local governments may not be sufficient. In particular, the 60-day period for revising ordinances and plans at the direction of the DNR is likely unworkable. The issues the local ordinances and plans need to address are complex and in some cases controversial. Development of local plans and ordinances should be an open process, and often involves consensus building; these processes take time. Public hearings and related notification and agenda deadlines also come into play. If upon review the DNR requires any changes of substance to draft local plans and/or ordinances, the 60-day timeline for a revised ordinance would be extremely difficult, if not impossible, to meet. A minimum 180-day timeline is more reasonable. Although the draft working rules do allow for extension of ordinance and plan development and review periods at the request of the local government unit and at the discretion of the DNR, the DNR should consider an automatic extension provision for the timelines for actions contained in the rules.

8. Key River Corridor Redevelopment Sites

The former Ford plant site, the former U.S. Bank site in the Shepard-Davern area, the Ramsey County jail and Government Center West site, and the West Side Flats are some of the most important redevelopment sites in Saint Paul and are all located within the MRCCA. Long-range planning for all of these sites envisions higher-density, residential and mixed-use development. Height limitations and other development restrictions proposed in the draft working rules would reduce the development potential for these sites.

8.1 Comments

Ramsey County Government Center West and Jail. These buildings are built into the bluff face, as are Kellogg Park, 2nd Street, and a number of other buildings in Downtown. Comments from SPACC, the Port Authority, and Ramsey County noted that the ability to redevelop this site would be seriously impacted by the MRCCA rules as proposed. The Port Authority's comments also noted that the ability under the rules to create the river balcony called for in the Great River Passage is not clear. Both organizations noted that the Planning Commission taskforce which convened to update the City's river corridor ordinance several years ago recommended exempting Downtown Saint Paul between Chestnut Street and Lafayette/Highway 52 from locational requirements, and proposed that the MRCCA rules should include a similar exemption. As discussed below, the Pre-Revisor's Draft of the rules does include this exemption.

Ford site. Both SPACC and the Port Authority expressed concern over the potential impacts of height restrictions on redevelopment at the Ford site. Both parties also noted that a thoughtful planning effort for redevelopment of the site is ongoing; SPACC noted that this process will include significant community engagement and could address building height concerns, and the Port Authority said the DNR has not demonstrated that the proposed height restrictions are needed to protect critical views to and from the river.

West Side Flats. SPACC and the Port Authority both stated that at least a portion of the West Side Flats should be changed to the UC Urban Core designation. Under this designation, building height is determined by underlying zoning. The SPACC comments noted that this designation would better align with the West Side Flats Master Plan, and that the rules as proposed don't seem to take this planning process or its results into consideration.

8.2 Analysis, Key Questions, and Recommendations

Ramsey County Government Center West and Jail.

The Pre-Revisor's Draft rules exempt buildings and structures on the face of or abutting the bluff in the CA-UC Urban Core District of Saint Paul (Downtown) between Chestnut Street and Highway 52 from setback and Bluff Impact Zone (BIZ) requirements. This addresses concerns identified in comments that the setback and BIZ requirements would not make sense here, and is consistent with the Planning Commission taskforce recommendations from several years ago.

West Side Flats and Ford site. Careful, fine-grain planning work has been done and is underway for both sites. This planning work has and will include substantial public involvement, and in each case has or will address specifically the issue of building height.

Building heights need to be sufficient to allow transit-supportive density and make redevelopment economically feasible. This kind of density is also a key part of long-term urban sustainability. For this reason, building heights should not be limited any more than necessary to achieve the purposes of the MRCCA rules.

Protection of important view corridors is a key principle of theThe West Side Flats Master Plan, and the planning process included a view study to determine how to minimize impacts to views to and from the west side bluffs. The plan generally recommends increasing allowed building heights as distance from the river increases, with a maximum height of 50 feet along the river to a maximum height of 90 feet for a small area at the intersection of Robert Street and Plato Boulevard. By contrast, the draft working rules would limit buildings to a maximum of 65 feet throughout the redevelopment area. In recognition of the a thorough, community-based planning process based on principles consistent with the intent of the rules in regard to building heights, the final rules should set a district designation and height limits for the West Side Flats consistent with the Master Plan.

The Ford site is scheduled to begin being actively marketed by Ford to developers sometime in 2015. With that timeline in mind, the City will continue to work through public processes to refine the vision for the site and to put in place zoning and development standards that will guide future redevelopment of the site. This guidance is needed to ensure that the character and scale of redevelopment on the site is beneficial to Saint Paul, and to give certainty to potential developers regarding the value of the site. Analysis by City staff has shown that the height limits for the site as proposed in the working draft rules are more restrictive than necessary. Executive Order 79-19 stated that "structure site and location and height shall be regulated… to minimize interference with views of and from the river." Buildings even taller than those allowed on the site under the proposed rules would not even be visible from the opposite shore of the river. The final rules, through a change in district designation or other means, should restrict building heights on the Ford Site only as needed to reduce visual impact and minimize interference with views to and from the river.

city of saint paul
planning commission resolution
file number
date

WHEREAS, the Saint Paul Planning Commission recognizes the vital importance of the Mississippi River and of protecting this asset; and

WHEREAS, the Saint Paul Planning Commission, on October 31, 2014, held a public hearing on the Minnesota Department of Natural Resources' "working draft" version of state rules for the Mississippi River Corridor Critical Area ("MRCCA"); and

WHEREAS, the Planning Commission has reviewed the testimony received and has analyzed the potential impacts of the rules on the natural resources and residential and commercial development within the MRCCA; and

WHEREAS, the Planning Commission, based on information provided by the Minnesota Department of Natural Resources ("DNR"), anticipates the announcement by the DNR of Intent to Publish the MRCCA rules sometime in the Fall of 2015, thereby initiating formal public review of the rules; and

WHEREAS, the Planning Commission understands that official City of Saint Paul comments on the MRCCA rules will be submitted to the DNR by the Mayor and City Council;

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission that the findings and recommendations of the memorandum from the Comprehensive Planning Committee to the Saint Paul Planning Commission regarding the MRCCA rules and dated August 4, 2015 (ATTACHMENT A) be forwarded on to the Mayor and City Council of the City of Saint Paul for consideration.

moved by _____
seconded by _____
in favor _____
against _____

ATTACHMENT A