



Comments received in Response to December 14, 2009 Request for Comments

Minnesota Statutes § 14.101 requires the agency to solicit comments from the public on the subject matter of a possible rulemaking by publishing a notice in the State Register. The notice must include a description of the subject matter of the proposal and the types of groups and individuals likely to be affected, and must indicate where, when, and how persons may comment on the proposal.

Overview

The DNR published the request for comments on the possible Mississippi River Corridor Critical Area rulemaking in the December 14, 2009 State Register. The comment period extended for 14 weeks, concluding March 22, 2010. Comment letters or emails were received from sixteen (16) individuals and organizations, and were summarized into nearly 100 separate comments. Comments received varied from a single comment to many. Comments offered suggestions on a wide variety of topics from very general to specific.

Comments covered a broad array of subjects including: overall suggestions for rulemaking, definitions, uses & activities, bluffs and steep slopes, vegetation, recreation, parks and open space, wildlife habitat, scenic resources, water quality and erosion control, setbacks, districts, development and subdivisions, specific geographic areas, and administration and ordinances.

The majority of comments were supportive of the rulemaking and provided input on rule content or considerations. Some of the most common issues raised include:

- The need for the rules to provide clear, consistent and comprehensive definitions. Several provided feedback for definitions from other statute/rules, as well as providing suggested definitions or features in need of a definition.
- A desire that the new rule be at least as protective as the current executive order, with several suggestions on specific regulations to achieve this.
- Concerns regarding protection of private property rights.
- Suggestions on specific natural resources in need of protection, and proposals on when and how to provide natural resources protection.
- Several provided process or administrative comments related to rulemaking or how the resulting rules should be administered.

Natural resource issue related comments were the most common. These comments included feedback on: protection of bluffs and steep slopes, recreation, parks and open space protection and enhancement, vegetation protection, wildlife habitat protection and enhancement, water quality and erosion control standards, and identification and protection of scenic resources. The most common individual comments related to bluffs and steep slopes, recreation, parks & open space, scenic quality, and water quality and erosion control.

A few comments suggested the rules were unnecessary, or were concerned the new rules would not adequately address property rights.

Comments received are condensed below. Duplicative comments were combined, and some comments were paraphrased or abbreviated. DNR staff also sorted comments into categories. Comments not related to the rulemaking were omitted.

Comments Received

General comments on rules:

- There should not be a common rule overall, but rules should promote the diversity of land use and ownership.
- New rules should be based on the spirit and requirements of EO 79-19, include EO 79-19 protections at a minimum but should generally be more protective than EO 79-19.
- The new rules should reflect that the MRCCA has been designated as the Mississippi National River Recreation Area, and protect MNRRA designation values: natural, scenic, historical, cultural, scientific, recreational and economic.
- A healthy river is essential for the physical and economic health of the Twin Cities region, and the MRCCA rules need to look at the long view.
- The rules should not only focus on protecting and enhancing natural resources and features, but should also recognize the positive contributions of human created conditions such as: structures, bank reinforcement, landscaping, wildlife habitat, and scenic quality.
- MRCCA rules should not impinge on private property rights.
- The rules need to be clear.
- The rules must protect and coordinate the public interest in the MRCCA.
- There should be consistent protections along similar reaches and between adjoining cities.
- The rulemaking process should be broad and inclusive, and provide details of definitions, standards, and guidelines to protect corridor resources.
- Rules should follow guidance in §116G.15.
- Minnesota Statutes 116G offers a specific and detailed outline of scope of work, therefore rulemaking should focus on substance.
- New MRCCA rules are unnecessary; federal & state government should stay out of local issues.
- Establish a tiered approach to regulation in the MRCCA relating to proximity to the river; simplification of the bluff line determination; creating buffering and sightline criteria that are realistic and easy to explain, monitor, and regulate.
- “Connecting with Minnesota’s Urban Rivers” (MN Planning, March 2002) should be considered to guide rule development and implementation.
- Rule needs to recognize and maintain present use, and not create nonconformities, such as changes to setbacks.
- The rulemaking should result in a strong and enforced MRCCA program and resist short term economic and political pressures.
- The rules should not override local control and authority.
- Scenic resource identification, evaluation, and prioritization processes are needed.
- Rulemaking should use LiDAR and GIS for bluff mapping.

Definitions

- Definitions contained in the law (Ch 116G) and EO 79-19 should be used.
- Definitions for key resources and features listed in MS §116.15 subd.4(b) 1-14 are needed.
- Use definitions from Wild and Scenic and/or Shoreland rules where applicable, if they provide adequate protection per: MS §116.15.
- Define §116.15, subd. 2 language: “conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor.”
- Bluff definitions provided in MS §116.15, subd. 4, part (d) should be used.
- Public access should be defined.

Uses & activities

- Mining should be regulated.
- The rules should resolve use conflicts of land and water.
- Incorporate restricted speed zones for boats on the river.
- Rules should protect commercial facilities such as marinas.
- Rules should require removal of non-conforming advertising signs through amortization.
- Rules should address conflicting uses.
- Rules should not include restrictions on dockage, motorized boating, or fishing.

Water quality & erosion control

- New rules should protect water quality.
- Suggested measures to protect water quality: shoreland setbacks, infiltration requirements, protection of wellhead and groundwater recharge areas, prohibit or regulate new septic systems, BMPs for parks & open space.
- Rules should require permits for grading, filling and excavating, and site plans to minimize adverse impacts and maximize beneficial effects.
- Rules should have standards for soil disturbance during development.
- Eliminate regulatory redundancy by recognizing the current grading and erosion control measures and protections that are in place in communities in the MRCCA.

Setbacks

- There should be 200-300 foot setbacks from the OHW and blufflines.
- Establish Ordinary High Water setbacks (100 feet in more developed districts, 200 feet in less developed districts).

Districts

- Use overlay districts instead of new districts.
- Rural areas should have strong protection standards.
- New districts should reflect bluff mapping, unique geographic features, ecology, cultural features, and land use, including rationale.
- Establish additional land use districts with the MRCCA in Cottage Grove including commercial, industrial, and urban density residential.

Development & subdivisions

- Subdivisions should include requirements or incentives (bonuses) for clustering away from the river.

- Detailed site plans should be required for new development & redevelopment (letter gave specific information to be required).

Specific areas in the MRCCA

- Resources to be protected include: upper and lower Grey Cloud Island, Robinson's Rock, Crystal Cove, bluffs and ravines, backwater lakes, southern area of St. Paul Park.
- The development of MRCCA rules should not compromise the implementation of the “Above the Falls: A Master Plan for the Upper River in Minneapolis”.

Administration & ordinances

- The rules must contain an enforcement mechanism by a state or metropolitan agency.
- Rules should have a user friendly implementation process for cities, developer and citizens.
- Unique places may need to be purchased or protected by easements.
- Clarify standards for variances, reasonable use and what constitutes “unique.”
- Variances should be certified by DNR as (formerly) in the rules for the St. Croix Wild and Scenic River.
- DNR web repository should be established for administering rules and filing zoning changes and actions.
- Communities should be required to notify DNR 10 days after an official action in addition to 10 days prior notification; include reference to requirements in Ch. 116G.
- Clarification of the roles of DNR and Metropolitan Council should be provided.
- A draft ordinance commenter had suggested for the City of St. Paul could be an example of recommended ordinance provisions.

Specific resources rulemaking should address

Bluffs & steep slopes

- New rules should protect bluffs and slopes from 12 to 18%; some bluffs may need additional protection.
- High retaining walls on bluffs should be prohibited.
- Rules should require setbacks for development on steep slopes, bluffs and the toe of bluffs.
- Bluff map should identify areas for protection.
- The rules should include education about why bluffs and other fragile lands should be protected.
- Development on 12%-18% slopes should be limited to single family residential.
- No structures should be permitted on slopes over 18%.
- Establish bluff setbacks (40 feet in some districts, 100 feet in less developed districts).

Vegetation

- New rules should require vegetation management and vegetative replacement.
- There should be stricter standards for ecologically important tree species for trees 15 inches or greater in diameter.
- Rules should prohibit clearcutting to enhance views.
- New rules should protect significant vegetative stands and canopies.
- Require screening of existing development.
- Rules should not include planting requirements.

Recreation, parks and open space

- The rule should include standards and guidelines that encourage or require protection of open space along the river, including trails, parks, and natural areas.
- Rules should provide strong open space protection.
- Rules should protect recreation facilities such as boat launching facilities, public access.
- If private land is within regional park boundaries or adjacent public open space, there should be site specific standards for that land.
- Riverfront parkland should be highest priority for dedication, and open space dedication requirements should be as strong as in EO 79-19, and stronger than elsewhere in the metro area.
- Rules should allow NPS to administer parkland dedicated within the MRCCA.
- Public access should be identified.
- Rules should recognize that Parks and Open space are crucial for quality of life, not just as wildlife habitat.
- Include a trail plan for the corridor.
- Require programs for land acquisition and island restoration.
- MRCCA rules should permit development that would restore rapids and/or facilitate recreation, particularly including whitewater recreation.
- New rules should protect trails, parks and potential parks, open space and natural areas, and beaches, and undeveloped river frontage.
- Maximize open space.

Wildlife habitat

- Rules should include standards for protection and acquisition of important habitat areas and aquatic and wildlife management areas.
- DNR should use the County Biological Survey and the Minnesota Land Cover Classification System in rulemaking.

Scenic resources

- Rules should protect exceptional scenery in the southern MRCCA and Dakota County.
- Rules should not create a "green tunnel" which will prohibit view and access to the river.
- Protection of scenic resources is needed and standards that will protect the outstanding scenery (scenic views) of the river corridor should be developed.
- New rules should protect scenery, overlooks, observation platforms, scenic views, and gorges.
- Heights should be regulated; there should be corridor-wide height limits which could be tied to bluff setbacks; utility and transportation crossing locations and standards.
- Heights and building "mass" should decrease closer to the river.

Other resources:

- New rules should protect wetlands, water, riverbanks and environmentally sensitive areas.
- New rules should protect natural drainage routes.
- Rules should protect historic sites and historic districts.
- Rules should include noise control criteria.