

## Proposed Rules Relating to Mississippi River Corridor Critical Area

Working Draft Rules	Commentary/Rationale for Changes	
<p><b>PART 6106.0010 POLICY</b></p> <p>It is in the interest of present and future generations to <u>develop, protect, preserve and enhance the natural, aesthetic, cultural, <u>transportation, industrial, commercial, residential, recreational,</u> and historical values of the Mississippi River corridor within the Twin Cities metropolitan area and protect its environmentally sensitive areas.</u> In furtherance of the policies declared in Minnesota Statutes, chapters <u>116G, 394, 462, and 473,</u> and by <u>Executive Order 79-19,</u> the commissioner does hereby provide standards and criteria <u>to enhance</u> for the preservation, protection, <u>use, development</u> and management of the Mississippi River Corridor Critical Area</p>	<p><i>The policy statement establishes the overall goal of the proposed rules as authorized by state statute.</i></p>	<p><b>Comment [EDL1]:</b> The most effective rule is one that is clear and succinct. Like all good writing, good material will and should be on the cutting room floor. Therefore, the Port Authority has recommended many substantial deletions.</p>
<p><b>PART 6106.0020 PURPOSE</b></p> <p>The following minimum standards and criteria are provided for the subdivision, use, and development of land within the Mississippi National River and Recreation Area, which is designated the Mississippi River Corridor Critical Area. The purposes of the minimum standards and criteria are to:</p> <ul style="list-style-type: none"> <li>A. <u>protect and preserve the Mississippi River and adjacent lands that the legislature finds to be unique and valuable state and regional resources for the benefit of the health, safety, and welfare of the citizens of the state, region, and nation; conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor;</u></li> <li>B. <u>prevent and mitigate irreversible damages to these state, regional, and national resources; maintains the river channel for transportation by providing and maintaining barging and fleeting areas in appropriate locations consistent with the character of the Mississippi River and riverfront;</u></li> <li>C. <u>preserve and enhance the natural, aesthetic, cultural, and historical values of the Mississippi River and adjacent lands for public use and benefit; provides for the continuation, development, and redevelopment of a variety of urban uses, including industrial and commercial uses, and recreational and residential uses, where appropriate, within the Mississippi River corridor;</u></li> <li>D. <u>protect and preserve the Mississippi River as an essential element in the national, state, and regional transportation, sewer and water, and recreational systems; utilizes certain reaches of the river as a source of water supply and as a receiving water for properly treated sewage, storm water, and industrial waste effluents; and</u></li> <li>E. <u>protects and preserves</u> the biological and ecological functions of the <u>Mississippi River</u> corridor.</li> </ul>	<p><i>This part lays out the goals of the rules. MS 116G.15 designates the Mississippi National River Recreation Area (MNRRA) as a state critical area per the Critical Areas Act and identifies these five purpose statements, which come directly from EO 79-19 and MS 116G.15.</i></p>	<p><b>Comment [EDL2]:</b> This sentence could be deleted, but if it is not deleted here are couple of wording changes. The changes are here in order to be consistent with the statutory language.</p> <p><b>Comment [EDL3]:</b> The River Corridor has many uses. Also, the River Corridor is not static; in other words there is development. The Development can be wetlands restoration, habitat or nature preserves, parks and recreation facilities, commercial, industrial, transportation, residential, or anything else not delineated above. I recommend that these inherent facts be expressed in the policy statement.</p>
		<p><b>Comment [EDL4]:</b> Draft Rule 6106.0020 had the former statutory language. I replaced it with the current statutory language in 116G.15(2).</p>

Working Draft Rules	Commentary/Rationale for Changes
<p><b>PART 6106.0030 SCOPE</b></p> <p>Subpart 1. <b>Applicability.</b> The standards and criteria for the Mississippi River Corridor Critical Area, defined for the purpose of these parts as the "MRCCA rules," established in parts 6106.0010 to 6106.0170 pertain to public waters and to public and private lands within the river corridor boundary established by Executive Order 79-19.</p> <p>Subp. 2. <b>Government actions.</b> The state and all local governments, including councils, commissions, boards, districts, departments, and other public authorities, must exercise their powers so as to further the purposes of the MRCCA rules.</p> <p>Subp. 3. <b>State land.</b> Land owned by the state and its agencies and subdivisions must be administered according to the MRCCA rules.</p> <p>Subp. 4. <b>Conflicting standards.</b> In case of a conflict between this chapter and any other rule, the more protective provision applies.</p> <p>Subp. 5. <b>Local determination.</b> Local governments may determine whether to administer the Minnesota statewide shoreland management standards in parts 6120.2500 to 6120.3900 within the Mississippi River Corridor Critical Area.</p> <p>Subp. 6. <b>Superseding standards.</b> Specific standards found in this chapter supersede Executive Order 79-19 and parts 4410.8100 to 4410.9910 for management of the Mississippi River Corridor Critical Area.</p> <p>Subd. 7. <b>Existing Conformities.</b> <u>This Chapter is not intended to create nonconformities. Rather, this Chapter is intended to ensure that new construction or expansions or substantial alterations comply with the Rules and the interplay of the Rules with the existing (deemed conforming) development, tract of land, uses, and structures.</u></p>	<p><i>This part describes the physical land area covered by the rules, the general roles and responsibilities of agencies in furthering the purpose of the rules, and the applicability of other regulations within the MRCCA. Using the terminology of "MRCCA rules" enables us to refer to the rules in a simpler manner than "parts 6106.0010 to 6106.0150"</i></p> <p><i>This subpart requires all state and local units of government with jurisdiction in the MRCCA to act in accordance with these rules.</i></p> <p><i>Subpart 5 was added at the request of local governments to reduce complexity and confusion on overlapping regulations. It gives local governments the option of discontinuing administration of statewide Shoreland Management within the MRCCA.</i></p>
<p><b>PART 6106.0040 SEVERABILITY</b></p> <p>Minnesota Statutes, section 645.20, applies to this chapter.</p>	<p><i>Severability means that if particular elements of these rules are found to be unconstitutional, the remaining provisions will continue in force as law. This is a standard clause of all rules and ordinances.</i></p>
<p><b>PART 6106.0050 DEFINITIONS</b></p> <p>Subpart 1. <b>Scope of terms and measurement of distances.</b> For the purposes of parts 6106.0010 to 6106.0150, the terms used have the meaning given in this part. All distances, unless otherwise specified, are measured horizontally.</p> <p>Subp. 2. <b>Access path.</b> "Access path" means an area designated to provide ingress and egress to public waters.</p> <p>Subp. 3. <b>Adjacent.</b> "Adjacent" means having a boundary that physically touches or adjoins.</p> <p>Subp. 4. <b>Agency.</b> "Agency" means the Metropolitan Airports</p>	<p><i>Of these terms and definitions:</i></p> <p><i>▲16 refer to or are derived from Minnesota Statutes, section 116G and/or Executive Order 79-19, including: adjacent; barge; fleeting area; bluffline; developer; development; discretionary action; essential services; local government; MUSA; off-premise advertising signs; parcel; public transportation facilities; public safety facilities; setback; steep slope; and transmission services.</i></p> <p><i>▲22 refer to existing terms and definitions in other state statutes or another chapter of</i></p>

**Comment [EDL5]:** As a result of this provision's strong force and effect (and it is essential), I recommend some substantial cuts below. Basically, what I added was that all governmental entities must enact rules and procedures that comply with and further these rules, but may also enact "more protective provisions. I have eliminated multi-party oversight of local government rulemaking oversight and review. Rather, local government must provide notice to DNR, Army Corp, and Met Council of proposed rule/zoning/ordinances that impact Mississippi River Corridor Critical Area. DNR, Army Corp, and Met Council may then engage if they deem it necessary. And, regardless of whether they do or not and regardless of their input, at the end of the day to the extent that the local government's adopted rule/zoning/ordinance conflicts with these rules, then the local government rule/zoning/ordinance is superseded by these rules.

In addition, unclear discretionary review authority is contradictory to this rule and, furthermore, probably violates rulemaking procedures. Unclear discretionary review also places others in a morass of uncertainty, which is rarely a desired result. Notably, uncertainty leads to paralysis, inconsistent enforcement, and frankly disregard for the enforcement. The most effective rules are the most well thought out rules, the clearest rules, and rules that work with the circumstances confronted by those that much comply with the rules and enforce the rules.

**Comment [EDL6]:** Alternatively, if Nonconformities are intended to be created, then they should be clearly identified and known, and each person(s) affected should be informed and have a decent and respectful opportunity to understand the rules, its impact, prepare and submit input and be heard about these proposed rules.



## Working Draft Rules

Commission, University of Minnesota, Department of Natural Resources, Metropolitan Council, Minneapolis Park and Recreation Board, Three Rivers Park District, Department of Transportation, Anoka-Ramsey Community College, watershed management organizations as established under Minnesota Statutes, chapter 103B, watershed districts as established under Minnesota Statutes, chapter 103D, Port Authority, or any other state or local general or special purpose unit of government.

Subp. 4. **Aggregate extraction.** "Aggregate extraction" means removal of stone, sand, gravel, or other material from the land for commercial, industrial, or governmental purposes.

Subp. 5. **Aggregate mining.** "Aggregate mining" means construction, reconstruction, repair, relocation, expansion, or removal of any facility for the extraction, stockpiling, storage, disposal, or reclamation of nonmetallic minerals. Aggregate mining does not include ancillary facilities such as access roads, bridges, culverts, and water level control structures. For purposes of this subpart, "facility" includes all mine pits, quarries, stockpiles, basins, and any structures that drain or divert public waters to allow mining.

Subp. 6. **Agricultural use.** "Agricultural use" has the meaning given under Minnesota Statutes, chapter 40A.

Subp. 7. **Alternative design.** "Alternative design" means subdivision design methods such as conservation design, transfer of development density, or similar zoning and site design techniques that protect open space and natural areas.

Subp. 8. **Barge fleeting.** "Barge fleeting" means temporarily parking and securing barges on the river, on or off channel, while tows are assembled or broken up.

Subp. 9. **Bioengineering.** "Bioengineering" means use of living and nonliving plant materials, in combination with natural and synthetic support materials, for slope stabilization, erosion reduction, and vegetative establishment.

Subp. 10. **Bluff.** "Bluff" means a natural topographic feature having all of the following characteristics:

- A. a slope that rises at least 25 feet above the ordinary high water level or toe of the bluff. For the purposes of this subpart, "toe of the bluff" means the lower point of a horizontal ten-foot segment with an average slope exceeding 18 percent; and
- B. the grade of the slope from the ordinary high water level or toe of the bluff to the top of the bluff averages 30 percent or greater. For the purposes of this subpart, "top of the bluff" means the higher point of the highest horizontal ten-foot segment with an average slope exceeding 18 percent.

## Commentary/Rationale for Changes

*rule, including: agricultural use; conditional use; conservation easement; dock; feedlot; floodplain; interim use; lot; marina; mooring facility; nonconformity; ordinary high water level; plat; port; public waters; storm water; subdivision; subsurface sewage treatment system; variance; wetland; and wharf.*

*the remaining definitions are new and clarify concepts useful in administering the rules.*

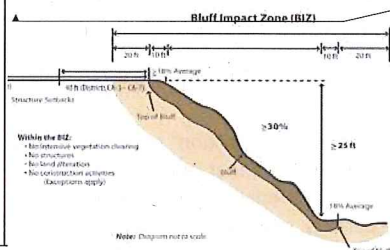
*The bluff definition is consistent with that in the statewide Shoreland Management rules.*

*A bluff is a natural feature in contrast to man-made features such as highway embankments and road ditches.*

*Bluff impact zone is the same definition used in the state shoreland rules.*

*"Toe" and "top" are incorporated here for ease of reference and understanding.*

*Bluffline is used for measuring structure setbacks.*



Formatted: Font: 10 pt, Italic

Working Draft Rules	Commentary/Rationale for Changes
<p>Subp. 11. <b>Bluff impact zone.</b> "Bluff impact zone" means the bluff and land within 20 feet of the bluff.</p> <p>Subp. 12. <b>Bluffline.</b> "Bluffline" means a line delineating the top of the bluff. More than one bluffline may be encountered proceeding landward from the river. See also "Top of Bluff."</p> <p>Subp. 13. <b>Buildable area.</b> "Buildable area" means the area upon which structures may be placed on a lot or parcel of land and excludes areas needed to meet setback requirements, rights-of-way, bluff impact zones, slope preservation zones, historic sites, wetlands, designated floodways, land below the ordinary high water level of public waters, and other unbuildable areas.</p> <p>Subp. 14. <b>Building.</b> A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site.</p> <p>Subp. 15. <b>Certificate of compliance.</b> "Certificate of compliance" means a document, written after a compliance inspection, certifying that development is in compliance with applicable requirements at the time of the inspection.</p> <p>Subp. 16. <b>Commissioner.</b> "Commissioner" means the commissioner of natural resources or his or her designee.</p> <p>Subp. 17. <b>Conditional use.</b> "Conditional use" has the meaning given under Minnesota Statutes, chapters 394 and 462</p> <p>Subp. 18. <b>Conservation easement.</b> "Conservation easement" has the meaning given under Minnesota Statutes, chapter 84C.</p> <p>Subp. 19. <b>Conservation design.</b> "Conservation design" means a pattern of subdivision that is characterized by the grouping of lots within a portion of a parcel, where the remaining portion of the parcel is permanently protected as open space.</p> <p>Subp. 20. <b>Conventional subdivision.</b> "Conventional subdivision" means a pattern of subdivision that is characterized by lots that are spread regularly throughout a parcel in a lot and block design.</p> <p>Subp. 21. <b>Deck.</b> "Deck" means a horizontal, unenclosed, aboveground level structure, with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site.</p> <p>Subp. 22. <b>Developer.</b> "Developer" has the meaning given under Minnesota Statutes, section 116G.03.</p> <p>Subp. 23. <b>Development.</b> "Development" has the meaning given under Minnesota Statutes, section 116G.03</p> <p>Subp. 24. <b>Discretionary action.</b> "Discretionary action" means an action under these MRCCA rules related to land use that requires a public hearing, such as preliminary plats, final subdivision plats, planned unit developments, conditional use permits, interim use permits, variances,</p>	<p><i>"Building"—New definition is based on FEMA NFIP Standard Flood Insurance Policy definition—to distinguish "building" from "picnic shelter."</i></p> <p><i>Local governments asked for clarification on which actions fall under "discretionary actions." This definition has been clarified: only land use actions that pertain to the MRCCA rules are covered.</i></p>



Working Draft Rules	Commentary/Rationale for Changes
<p>appeals, and rezonings.</p> <p>Subp. 25. <b>Dock.</b> "Dock" has the meaning given under chapter 6115.</p> <p>Subp. 26. <b>Ecological functions.</b> "Ecological functions" means the functions of vegetation in stabilizing soils, retaining and filtering runoff, providing habitat and recharging groundwater.</p> <p>Subp. 27. <b>Electric power facilities.</b> "Electric power facilities" means equipment and associated facilities for generating electric power or devices for converting wind energy to electrical energy as identified and defined under Minnesota Statutes, chapter 216E.</p> <p>Subp. 28. <b>Essential services.</b> "Essential services" means underground or overhead gas, electrical, communications, steam, or water distribution, collection, supply, or disposal systems, including stormwater. Essential services include poles, wires, mains, drains, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants, navigational structures, aviation safety facilities or other similar equipment and accessories in conjunction with the systems. Essential services do not include buildings, wastewater treatment works as defined in Minnesota Statutes, chapter 115, or electrical generation and transmission services.</p> <p>Subp. 29. <b>Feedlot.</b> "Feedlot" has the meaning given for animal feedlots under chapter 7020.</p> <p>Subp. 30. <b>Floodplain.</b> "Floodplain" has the meaning given under chapter 6120.</p> <p>Subp. 31. <b>Historic site.</b> "Historic site" means an archaeological site, standing structure, site, district, or other property that is:</p> <ul style="list-style-type: none"> <li>A. listed in the National Register of Historic Places or the State Register of Historic Sites or locally designated as a historic site;</li> <li>B. determined to meet the criteria for eligibility to the National Register of Historic Places or the State Register of Historic Sites after review by the state archeologist or the director of the Minnesota Historical Society; or</li> <li>C. an unplatted cemetery that falls under the provisions of Minnesota Statutes, chapter 307.</li> </ul> <p>Subp. 32. <b>Impervious surface.</b> "Impervious surface" means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, decks, sidewalks, patios, parking lots, storage areas, and driveways, including those with concrete, asphalt, or gravel surfaces..</p> <p>Subp. 33. <b>Intensive vegetation clearing.</b> "Intensive vegetation clearing" means removal of trees or shrubs in a contiguous patch, strip, row, or block.</p>	<p><i>Local governments asked for clarification on what surfaces were considered "impervious".</i></p>

Working Draft Rules	Commentary/Rationale for Changes
<p>Subp. 34. <b>Interim use.</b> "Interim use" has the meaning given under Minnesota Statutes, chapters 394 and 462.</p> <p>Subp. 35. <b>Land alteration.</b> "Land alteration" means an activity that exposes the soil or changes the topography, drainage, or cross section of the land, excluding gardening or similar minor soil disturbances.</p> <p>Subp. 36. <b>Local government.</b> "Local government" means counties, municipalities, and townships and all agencies, boards, commissions, councils, and departments thereof.</p> <p>Subp. 37. <b>Lot.</b> "Lot" has the meaning given under chapter 6120.</p> <p>Subp. 38. <b>Lot width.</b> "Lot width" means the shortest distance between lot lines measured at both the ordinary high water level and at the required structure setback from the ordinary high water level for riparian lots. For nonriparian lots, the lot width is the shortest distance between side lot lines as measured at the midpoint of the longest axis of the lot.</p> <p>Subp. 39. <b>Marina.</b> "Marina" has the meaning given under chapter 6115.</p> <p>Subp. 40. <b>Metropolitan urban service area.</b> "Metropolitan urban service area" means the area in which the Metropolitan Council ensures that regional services and facilities under the council's jurisdiction are provided.</p> <p>Subp. 41. <b>Mooring facility.</b> "Mooring facility" has the meaning given under chapter 6115.</p> <p>Subp. 42. <b>Native plant community.</b> "Native plant community" means a plant community that has been mapped as part of the Minnesota Biological Survey or equivalent survey.</p> <p>Subp. 43. <b>Natural vegetation.</b> "Natural vegetation" means any combination of ground cover, understory, and tree canopy that, while it may have been altered by human activity, continues to stabilize soils, retain and filter runoff, provide habitat and recharge groundwater.</p> <p>Subp. 44. <b>Nonconformity.</b> "Nonconformity" has the meaning given under Minnesota Statutes, chapters 394 and 462.</p>	<p><i>"Natural vegetation" is used in the vegetation and land alteration standards.</i></p>
<p>Subp. 45. <b>Nonriparian lot.</b> "Nonriparian lot" means a lot that does not abut public waters.</p> <p>Subp. 46. <b>Off-premise advertising signs.</b> "Off-premise advertising signs" means those signs that direct attention to a product, service, business, or entertainment venue that is not exclusively related to the premises where the sign is located.</p> <p><u>Subp. 47. <b>Ordinance.</b> "Ordinance" mean local government zoning, administrative, charter, or comprehensive plan codes, rules, or regulations whose scope includes or governs in any manner the Mississippi River Corridor Critical Area or is prepared by the local governmental unit in compliance with or pursuant to the MRCCA rules.</u></p>	<p><i>Picnic shelter is defined to distinguish it from "building." Picnic shelters may be placed within setbacks, but not in SIZ, BIZ or SPZ.</i></p> <div data-bbox="1214 1350 1580 1738" style="border: 1px solid black; padding: 5px;"> <p><b>Comment [EDL7]:</b> The Rules probably should avoid creating nonconformities wherever possible. By definition and plain meaning, the designation of "nonconformity" is that you are not wanted, you do not belong. If this is the message the Rules intends to send, then each and every instance of nonconformity should be knowingly and clearly understood.</p> <p>One possible way of avoiding nonconformity is to expressly provide in the Rules that current development, tracts of land, uses, and structures that do not comply with the specific provisions of the Rule are deemed to be and are declared conforming. Then the Rules should address is how best to ensure new construction or expansions or substantial alterations comply with the Rules and its interplay with the existing (deemed conforming) development, tract of land, uses, and structures.</p> </div>



Working Draft Rules	Commentary/Rationale for Changes
<p>Subp. 47. <b>Ordinary high water level.</b> "Ordinary high water level" has the meaning given under Minnesota Statutes, section <a href="#">103G.005</a>.</p> <p>Subp. 48. <b>Parcel.</b> "Parcel" means a quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit.</p> <p>Subp. 49. <b>Patio.</b> "Patio" means a constructed hard surface located at ground level.</p> <p>Subp. 50. <b>Picnic shelter.</b> "Picnic shelter" is a roofed structure open on all sides, accessory to a recreational use.</p> <p>Subp. 51. <b>Planned unit development.</b> "Planned unit development" means a method of land development that merges zoning and subdivision controls, allowing developers to plan and develop a large area as a single entity, characterized by a unified site design, a mix of structure types and land uses, and phasing of development over a number of years. Planned unit development includes any conversion of existing structures and land uses that utilize this method of development.</p> <p>Subp. 52. <b>Plat.</b> "Plat" has the meaning given under Minnesota Statutes, chapters <a href="#">505</a> and <a href="#">515B</a>.</p> <p>Subp. 53. <b>Port.</b> "Port" means a water transportation complex established and operated under the jurisdiction of a port authority.</p> <p><u>Subp. 54. <b>Port Authority.</b> Port Authority is a local governmental unit, political or governmental subdivision, established and operating in accordance</u> <del>according</del> to Minnesota Statutes, chapter <a href="#">469.58</a>.</p> <p><u>Subp. 55. <b>Port Authority of the City of Saint Paul.</b> The Saint Paul Port Authority is a port authority established by Minnesota Statutes section <a href="#">469.049(1)</a>. Pursuant to Minnesota Statutes section <a href="#">469.084(1)</a>, within its Port District, the Saint Paul Port Authority shall establish rules on the use of the Mississippi River, lakes, parks and recreation facilities either alone or in cooperation with the federal government or its agencies, the city of St. Paul, the state, or an agency or political subdivision of the state.</u></p> <p>Subp. <del>56</del><b>54. Primary conservation areas.</b> "Primary conservation areas" means key resources and features, including shore impact zones, bluff impact zones, slope preservation zones, floodplains, wetlands, gorges, areas of confluence with key tributaries, natural drainage routes, unstable soils and bedrock, significant existing vegetative stands, tree canopies, native plant communities, public river corridor views, other scenic views and vistas, and cultural and historic sites and structures.</p> <p>Subp. <del>57</del><b>5. Professional engineer.</b> "Professional engineer" means an engineer licensed to practice in Minnesota.</p>	<p><i>The purpose of defining "primary conservation areas" is to clearly identify key resources and features to protect as land is developed or redeveloped. The term is used in several parts of the rules, including the standards for subdivision and open space, to ensure that key resources and features are given priority consideration for protection as open space.</i></p> <p><i>"Public river corridor views" is a new definition used in standards that encourage identification and protection of key views of the corridor.</i></p> <p><i>"Readily visible" provides a performance standard in response to requests by local</i></p>

**Comment [EDL8]:** The proposed rule is not clear about the status of port authorities, so I thought it should be clear.

## Working Draft Rules

## Commentary/Rationale for Changes

Subp. 586. **Project area.** "Project area" means a parcel in its entirety as proposed for development.

*governments and other stakeholders to clarify visual standards.*

Subp. 597. **Public recreational facilities.** "Public recreational facilities" means recreational facilities provided by the state or a local government or dedicated to public use, including scenic overlooks, observation platforms, trails, docks, fishing piers, picnic shelters, water access ramps, and other similar water-oriented public facilities used for recreation.

*"Resource agency" is a new definition—the term is used in the text.*

Subp. 6058. **Public river corridor views.** "Public river corridor views" means views toward the river from public parkland and views toward bluffs from the ordinary high water level of the opposite shore, as seen during the summer months.

Subp. 6159. **Public transportation facilities.** "Public transportation facilities" means all transportation facilities provided by the federal, state or a local government or dedicated to public use, such as roadways, transit facilities, railroads, retaining or dock walls, ramps, and bikeways.

Subp. 620. **Public utilities.** "Public utilities" means electric power facilities, essential services, and transmission services.

Subp. 631. **Public waters.** "Public waters" has the meaning given under Minnesota Statutes, section 103G.005.

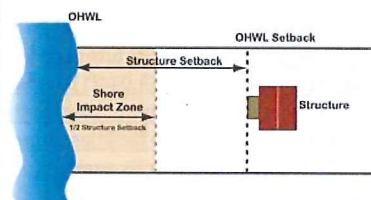
Subp. 642. **Readily visible.** "Readily visible" means land and development that is easily seen from the ordinary high water level of the opposite shore during summer months.

*"Selective vegetation removal"—new term used in the vegetation management standards.*

Subp. 653. **Resource agency.** "Resource agency" means any federal, state, regional or local agency that engages in natural, development, transportation, or cultural resource protection or restoration activities, including planning, implementation and monitoring.

Subp. 664. **Retaining walls.** "Retaining walls" means vertical or nearly vertical structures constructed of mortar and rubble masonry, rock, or stone regardless of size, vertical timber pilings, horizontal timber planks with piling supports, sheet pilings, poured concrete, concrete blocks, or other durable materials.

Shore Impact Zone (SIZ)



Subp. 675. **Riparian lot.** "Riparian lot" means a lot that abuts public waters.

Subp. 686. **Riprap.** "Riprap" means coarse stones, boulders, cobbles, broken rock or concrete, or brick materials placed or constructed to armor shorelines, streambeds, bridge abutments, pilings and other shoreline structures against scour, water or ice erosion.

*Shoreline facilities are river-dependent and need a riverfront location, consistent with the economic purposes of the river corridor as described in EQ-79-19. The term is used in several parts of the draft rules, including the design standards for river-dependent commercial and industrial uses, and the list of exceptions to OHWL setbacks.*

Subp. 697. **River-dependent commercial and industrial use.** "River-dependent commercial and industrial use" means use of land for commercial or industrial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business,



## Working Draft Rules

such as barge facilities, ports, and marinas.

Subp. **7068. Selective vegetation removal.** "Selective vegetative removal" means the removal of individual trees or shrubs that are not in a contiguous patch, strip, row, or block and that does not substantially reduce the tree canopy or understory cover.

Subp. **7169. Setback.** "Setback" means a separation distance measured horizontally.

Subp. **729. Shore impact zone.** "Shore impact zone" means land located between the ordinary high water level of public waters and a line parallel to it at a setback of 50 percent of the required structure setback or 50 feet landward of the ordinary high water level in areas of agricultural use.

Subp. **731. Shoreline facilities.** "Shoreline facilities" means facilities that require a location adjoining public waters for ingress and egress, loading and unloading, and public water intake and outflow, such as barge facilities, port facilities, commodity loading and unloading equipment, watercraft lifts, marinas, short-term watercraft mooring facilities for patrons, and water access ramps. Structures that would be enhanced by a shoreline location, but do not require a location adjoining public waters as part of their function, are not shoreline facilities, such as restaurants, bait shops, and boat dealerships.

Subp. **742. Shoreline recreational use area.** "Shoreline recreational use area" means the area within the shore impact where natural vegetation may be cleared for recreational purposes.

Subp. **753. Slope preservation zone.** "Slope preservation zone" means land on and within 20 feet of a very steep slope.

Subp. **764. Steep slope.** "Steep slope" means a natural topographic feature with an average slope of 12 to 18 percent, measured over a horizontal distance equal to or greater than 50 feet.

Subp. **775. Storm water.** "Storm water" has the meaning given under chapter 7090.

Subp. **786. Structure.** "Structure" means a building, sign, or appurtenance thereto, except for aerial or underground utility lines, such as sewer, electric, telephone, telegraph, or gas lines, including towers, poles, and other supporting appurtenances.

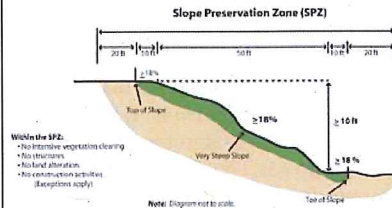
Subp. **797. Subdivision.** "Subdivision" has the meaning given under Minnesota Statutes, chapter 462.

Subp. **8078. Subsurface sewage treatment system.** "Subsurface sewage treatment system" has the meaning given under chapter 7080.

Subp. **8179. Toe of the bluff.** See under "Bluff".

Subp. **829. Toe of the slope.** See under "Slope".

## Commentary/Rationale for Changes



*Protection of slopes over 18% was required by EO 79-19.*

Working Draft Rules	Commentary/Rationale for Changes
<p>Subp. 8<del>3</del><b>4</b>. <b>Top of the bluff</b>. See under "Bluff".</p> <p>Subp. 8<del>4</del><b>2</b>. <b>Top of the slope</b>. See under "Slope"</p> <p>Subp. 8<del>5</del><b>3</b>. <b>Transmission services</b>. "Transmission services" means:</p> <ul style="list-style-type: none"> <li>A. electric power lines, cables, pipelines, or conduits that are: (1) used to transport large blocks of power between two points, as identified and defined under Minnesota Statutes, chapter 216; and (2) for mains or pipelines for gas, liquids, or solids in suspension, used to transport large amounts of gas, liquids, or solids in suspension between two points; and</li> <li>B. telecommunication lines, cables, pipelines, or conduits.</li> </ul> <p>Subp. 8<del>6</del><b>4</b>. <b>Variance</b>. "Variance" has the meaning given under Minnesota Statutes, chapters 394 and 462.</p> <p>Subp. 8<del>7</del><b>5</b>. <b>Very steep slope</b>. "Very steep slope" means a natural topographic feature having all of the following characteristics:</p> <ul style="list-style-type: none"> <li>A. the slope rises at least ten feet above the ordinary high water level or toe of the slope. For the purposes of this subpart, "toe of the slope" means the lower point of the lowest horizontal ten-foot segment with an average slope exceeding 18 percent; and</li> <li>B. the grade of the slope from the ordinary high water level or toe of the slope to the top of the slope averages 18 percent or greater. For the purposes of this subpart, "Top of the slope" means the higher point of the highest horizontal ten-foot segment with an average slope exceeding 18 percent</li> </ul> <p>Subp. 8<del>8</del><b>6</b>. <b>Water access ramp</b>. "Water access ramp" means a boat ramp, carry-down site, boarding dock, and approach road, or other access that allows launching and removal of a boat, canoe or other watercraft with or without a vehicle and trailer.</p> <p>Subp. 8<del>9</del><b>7</b>. <b>Water-oriented accessory structure</b>. "Water-oriented accessory structure" means a small building or other improvement, except stairways, fences, docks, and retaining walls that, because of the relationship of its use to public waters, reasonably needs to be located closer to public waters than the normal structure setback. Examples include gazebos, screen houses, fish houses, pump houses, and detached decks and patios.</p> <p>Subp. 9<del>0</del><b>8</b>. <b>Wetlands</b>. "Wetlands" has the meaning given under Minnesota Statutes, section 103G.005.</p> <p>Subp. 9<del>1</del><b>9</b>. <b>Wharf</b>. "Wharf" has the meaning given under chapter 6115.</p>	<p><i>"Water-oriented accessory structures" identifies structures that are commonly constructed closer to the river than most structures. These types of accessory structures are listed as an exception to OHWL setbacks in the dimensional standards.</i></p>
<p><b>PART 6106.0060 ADMINISTRATION OF PROGRAM</b></p>	<p><i>This part lays out the specific roles, responsibilities, and procedures for administering the rules. Many provisions are</i></p>



Working Draft Rules	Commentary/Rationale for Changes	
<p>Subpart 1. <b>Purpose, terms, and time frames.</b> This part establishes the roles, responsibilities, and authorities for administration of these MRCCA rules. For the purposes of this part and part 6106.0070:</p> <p><del>A. the terms "plan," "ordinance," and "plan and ordinance" mean Mississippi River Corridor Critical Area plans and ordinances, and updates or amendments to plans and ordinances, prepared to implement the MRCCA rules; and</del></p> <p><del>B. A</del> time frames are measured in calendar days.</p>	<p><i>relatively unchanged from MS 116G.15, EO 79-19 and/or MR 4410.</i></p> <p><i>This subpart clarifies which plans and ordinances are affected by these rules, the role that underlying zoning plays, and the timeframes for specific actions.</i></p> <p><i>"Plans" refer to only those elements of each city's comprehensive plan (or stand-alone plan) that deal with land use in the MRCCA.</i></p> <p><i>"Ordinances" are those ordinances that specifically regulate land use activity within the MRCCA.</i></p> <p><i>This clarification in timeframes was requested by local governments.</i></p>	<p><b>Comment [EDL9]:</b> Not necessary. Section 6106.0030 already imposes this requirement.</p> <p><b>Comment [EDL10]:</b> I would strike most if not all language requiring rule review by others. This is just an example. Maybe I will have time to strike and change all such provisions. Rather, what I propose is that the rules be concise and precise such that the limits and constraints imposed on local governments and the Met Council are clear. The rule is self-governing and any Met Council or local government action or ordinance is clearly unlawful or equally clearly subject to the limited interpretation imposed by these concise and precise rules.</p> <p>By statute, the Mississippi River Corridor Critical Area rules govern. What is important is to ensure that the rules therefore are clear, restrictive where they need to be, and provide sufficient guidance and flexibility where they need to be.</p>
<p><del>Subp. 2. <b>Responsibilities and authorities.</b> The standards and criteria for the Mississippi River Corridor Critical Area established in these MRCCA rules must be adhered to by:</del></p> <p><del>the commissioner for reviewing and approving plans and ordinances and reviewing discretionary actions;</del></p> <p><del>the Metropolitan Council for reviewing plans and commenting on ordinances;</del></p> <p><del>local governments when preparing, updating, or amending plans and ordinances and reviewing and approving discretionary actions; and</del></p> <p><del>state and regional agencies for permit regulation and plan development within an agency's jurisdiction, and compliance with zoning regulations of local governments.</del></p>	<p><i>This subpart explains the roles and responsibilities of the DNR, the Metropolitan Council, and local units of government. These three bodies have distinct responsibilities related to plans, ordinances and discretionary actions. (Discretionary actions refer to actions requiring a public hearing.) This is unchanged from EO 79-19.</i></p> <p><i>Metro Council preference is to focus on plans, not ordinances. This draft includes some changes intended to simplify the review process and reduce the time required. Change to MS 116G will be needed to implement these.</i></p>	<p>Residents of local governmental units are disenfranchised if their local rules for which they and their elected and appointed representatives must further submit their local ordinances to other governmental units for review, especially review by those that are not elected or appointed.</p> <p>Relatedly, rule review invites unnecessary tension both legally and politically. Rule review by its very nature has an element of discretion. Local government units traditionally have broad discretion respecting their local ordinance, unless very clearly limited or circumscribed by state law. Rule review here establishes a dynamic where local discretion is interfacing and competing with non-local government discretion. And, unless the statute clearly authorizes such second-guessing creates a legal issue about the extent the non-local governments can impose its requirements on the local government unit.</p>
<p>Subp. <del>2</del><b>3. Substantial compliance.</b> Local governments within the Mississippi River Corridor Critical Area must adopt, administer, and enforce <u>their own</u> plans and ordinances in <u>substantial</u> compliance with these MRCCA rules. <del>Plans and ordinances must be submitted to the Metropolitan Council and the commissioner for review and must be approved by the commissioner before they are adopted as provided under subpart 11.</del></p>	<p><i>This subpart states that local governments are responsible for implementing these rules on the ground. This is unchanged from EO 79-19.</i></p> <p><i>The concept of "substantial compliance" is new to the MRCCA and provides local governments with flexibility to negotiate methods that satisfy the purpose of the rules without being in strict conformance with the rules. The method for pursuing flexibility is covered in part 6106.0070, Subp 6.</i></p> <p><i>The flexibility approach is used in the shoreland rules.</i></p>	<p>In addition, rule review by the DNR or others, frankly, promotes sloppy rule work on the front end. Because rather than ensuring the language is clear and precise, meeting a clearly understood and defined objective, rule review postpones such thorough and thoughtful analysis to a later date. This also creates much uncertainty for local government units and their constituents. There is uncertainty about what ordinance language or objectives will be acceptable and when final approval will occur.</p> <p>Uncertainty also provides poor compliance. The owners of property along the River Corridor will look to the rules for guidance. If the rules are not clear, then the owner's decision making and actions that will cover the full spectrum of very possible and reasonable responses: accidental achievement, paralysis, flight, rebellion, passive or active resistance,</p>
<p><del>Subp. 4. <b>Greater restrictions.</b></del></p> <p><del>Nothing in these MRCCA rules shall be construed as prohibiting or discouraging a local government from adopting and enforcing plans and ordinances that are more restrictive than the rules.</del></p>	<p><i>This subpart clarifies that local governments may adopt regulations that are stricter than the rules. This clarification was sought by local governments and other stakeholders.</i></p>	<p><b>Comment [EDL11]:</b> Not necessary to repeat what was stated in 6106.0030(4).</p>

Working Draft Rules	Commentary/Rationale for Changes
<p>Subp. <del>3</del><b>5</b>. <b>Duties of commissioner.</b> The commissioner must:</p> <p>A. consult with the United States Army Corps of Engineers, National Park Service, Metropolitan Council, and other agencies and local governments to ensure that the Mississippi River Corridor Critical Area is managed as a multipurpose resource consistent with the purposes of these MRCCA rules as stated in part 6106.0020 and Minnesota Statutes chapter 116G.15, subd. 2;</p> <p><del>B.</del> provide advice and assistance to local governments and agencies in the Mississippi River Corridor Critical Area during the development, adoption, administration, and enforcement of plans and ordinances, consistent with the purposes in part 6106.0020;</p> <p><del>C. be the lead agency to coordinate the preparation, submission, review, and modification of plans and ordinances that are prepared by local governments as provided under 6106.0070. review and approve final draft plans and ordinances before adoption by a local government as provided under part 6106.0070; and</del></p> <p><del>D.B. consult with agencies identified in subpart 9 to ensure that the agencies administer lands and programs under the agencies' jurisdictions consistent with these MRCCA rules.</del></p>	<p><i>This subpart details the specific duties of the DNR in administering the rules.</i></p> <p><i>This item states that the DNR must consult with other agencies and LGUs to ensure the corridor is managed as a multipurpose resource.</i></p> <p><i>Item B outlines how the DNR will assist local governments in complying with the rules.</i></p> <p><i>The ordinance review process is now covered under part 6106.0070.</i></p> <p><i>The optional activities in this subpart have been deleted because these need not be included in rule.</i></p>
<p><del>Subp. 6. <b>Duties of Metropolitan Council.</b> The Metropolitan Council must:</del></p> <p><del>incorporate the standards and criteria in parts 6106.0010 to 6106.0150 into the council's planning processes;</del></p> <p><del>work with local governments and the commissioner to ensure that the standards and criteria in these MRCCA rules are being adopted and implemented; and</del></p> <p><del>coordinate with the commissioner on review of plans and commenting on ordinances that are prepared by local governments as provided under subpart 7</del></p>	<p><i>Duties of the Metropolitan Council are described in this subpart. The Met Council is responsible for reviewing plans and ordinances and providing recommendations to the DNR for approval of plans and ordinances. The Met Council prefers to focus on plan review rather than ordinance review.</i></p>
<p>Subp. <del>4</del><b>7</b>. <b>Duties of local governments.</b> Local governments must:</p> <p>A. prepare or amend <del>plans and</del> ordinances to meet or exceed the minimum standards and criteria in these MRCCA rules and as provided under part 6106.0070;</p> <p>B. submit proposed <del>plans and</del> ordinances that affect lands within the boundaries of the Mississippi River Corridor Critical Area to the Metropolitan Council and the commissioner for review <del>and approval by the commissioner</del>, before adoption as provided under part 6106.0070, subp. 3;</p> <p>C. adopt, administer, and enforce <del>plans and</del> ordinances as</p>	<p><i>This subpart outlines LGU responsibilities:</i></p> <ul style="list-style-type: none"> <li>• <i>Updating plans and policies for consistency with the rules.</i></li> <li>• <i>Updating ordinances for consistency with the rules</i></li> <li>• <i>Reviewing and approving discretionary actions consistent with their ordinance and plans.</i></li> </ul>



Working Draft Rules	Commentary/Rationale for Changes
<p>provided underpart 6106.0070, subp. 3;</p> <p>D. send notice of public hearings to consider <del>plans and</del> ordinances and development requiring discretionary action affecting lands within the boundaries of the Mississippi River Corridor Critical Area to the following parties so that the parties receive the notice at least 30 days before the public hearing:</p> <p>(1) <del>the commissioner, in a format prescribed by the commissioner, and;</del></p> <p>(2) <u>the National Park Service;</u></p> <p>(3) <u>the U.S Army Corps. of Engineers; and</u></p> <p><del>(2)(4) Local governments whose jurisdictions the rules will affect in any manner; and</del></p> <p><del>(3) for buildings exceeding height limits specified in part 6106.0120, as part of the conditional use permit or variance process, adjoining local governments, including those with overlapping jurisdiction and those across the river; and</del></p> <p>E. send notice of final decisions for actions under item D, <del>including findings of fact, within ten days following the final decision, to those parties listed under and in the manner prescribed by item D.</del></p>	<p><i>Item D details the specific notification requirements.</i></p> <p><i>Statutory change would be needed to change notice requirement to 30 days.</i></p> <p><i>DNR only needs the notice, and will ask for extra documents as needed.</i></p> <p><i>Notification of adjoining local governments will only be required for conditional use processes and variances for buildings exceeding height limits, not for all development requiring discretionary action.</i></p> <p><i>Notification within 10 days of action is required by MS 116G.15.</i></p>
<p>Subp. <u>58. Duties of townships and counties.</u></p> <p>A. According to subpart 7, townships must prepare or amend <del>plans and</del> ordinances in substantial compliance with these MRCCA rules, under the authority of Minnesota Statutes, chapters 394, 462, and 473.</p> <p>B. According to subpart 7, counties must prepare or amend <del>plans, and may prepare</del> ordinances in substantial compliance with these MRCCA rules under the authority of Minnesota Statutes, chapters 394 and 473. If a county has adopted ordinances under this part:</p> <p>(1) a township's <del>plan and</del> ordinances must be consistent with and at least as restrictive as the plan and ordinances adopted by the county in which the township is located as provided under Minnesota Statutes, chapter 394;</p> <p>(2) a township must provide for administration and enforcement of Mississippi River Corridor Critical Area ordinances; and</p> <p>(3) a township may adopt a county's ordinances by reference.</p>	<p><i>This subpart applies to four townships (Denmark, Grey Cloud Island, Nininger, and Ravenna) and two counties (Washington and Dakota) that have land use authority within the MRCCA. It describes the responsibilities and notification requirements of townships and counties.</i></p> <p><i>Township regulations must be at least as restrictive as the counties they are in.</i></p> <p><i>Since a county and township may have concurrent or overlapping jurisdiction, a township could adopt a county's ordinance by reference.</i></p>
<p>Subp. <u>69. Duties of other agencies.</u></p> <p>An agency owning and managing lands within the Mississippi River Corridor Critical Area must manage the lands under the agency's ownership consistent with these MRCCA rules. <del>For purposes of this subpart, "agency" means the Metropolitan Airports Commission, University of Minnesota, Department of Natural Resources, Metropolitan Council, Minneapolis Park and Recreation Board, Three</del></p>	<p><i>This subpart describes the duties for all special units of government or government agencies. This is unchanged from EO 79-19, which states that agencies will comply with MRCCA requirements.</i></p> <p><i>Does not include federal agencies and institutions over which the state has no</i></p>

**Comment [EDL12]:** I placed the definition of "agency" in the definition section.

Working Draft Rules	Commentary/Rationale for Changes
<del>Rivers Park District, Department of Transportation, Anoka-Ramsey Community College, watershed management organizations as established under Minnesota Statutes, chapter 103B, watershed districts as established under Minnesota Statutes, chapter 103D, or any other state or local general or special purpose unit of government.</del>	authority.
<b>PART 6106.0070 PREPARATION, REVIEW, AND APPROVAL OF PLANS AND ORDINANCES</b>	
Subpart. 1. <b>Purpose.</b> The purpose of this part is to establish the process, responsibilities, timeframes, content requirements, and evaluation criteria for the preparation, <del>review, and approval of plans</del> and ordinances, in order to ensure an efficient process aligned with other regional and local planning processes.	
Subp. 2. <b>Adoption schedule.</b> A. The commissioner and the Metropolitan Council will jointly develop a notification schedule for local governments to prepare or amend <del>plans and</del> ordinances to substantially comply with these MRCCA rules. The schedule will align as closely as possible with the comprehensive plan update process scheduled under Minnesota Statutes, section 473.851 to 473.871. B. All <del>plans and</del> ordinances adopted by local governments pursuant to Executive Order 79-19 and chapters 6105 and 6120 that are in existence on the effective date of these MRCCA rules remain in effect and must be enforced until plans and ordinances are amended in substantial compliance with these MRCCA rules, <del>approved by the commissioner,</del> and adopted by the local government as provided under subpart 3. C. Where a local government has not adopted <del>plans and</del> ordinances, development must continue to be governed by the interim development regulations in Executive Order 79-19, until such time as plans and ordinances that substantially comply with these MRCCA rules are <del>approved by the commissioner and</del> adopted by the local government as provided under subpart 3. D. The adoption of <del>plans and</del> ordinances in substantial compliance with these MRCCA rules does not in any way limit or modify the rights of a person to complete a development that is authorized as provided under Minnesota Statutes, section 116G.13.	<p><i>This subpart clarifies that, once promulgated, these rules won't take effect immediately; local governments won't be required to prepare or amend plans and ordinances until notified by DNR, and will be given a reasonable amount of time to do so. Existing local plans and ordinances remain in effect until new plans and ordinances are approved by the DNR.</i></p> <p><i>Item C pertains to the cities of Brooklyn Center and Hastings, which currently do not have approved MRCCA ordinances in place and are subject to the interim development regulations in EO-79-19.</i></p> <p><i>Item D clarifies that land use applications and projects approved by a local government prior to the adoption of ordinances for compliance with this rule may be completed as approved.</i></p>
Subp. 3. <del>Plan and ordinance review.</del> A. Within one year of notification from the commissioner under subpart 1, local governments must prepare or amend <del>plans and</del> ordinances to substantially comply with these MRCCA rules. The commissioner may grant extensions to local governments if requested in writing and if the local government is making a	<p><b>Comment [EDL13]:</b> Here is the problem. Met Council and DNR may enforce their rules on local government ordinances, not their discretion.</p> <p><b>Comment [EDL14]:</b> What is meant by "plans"?</p>



Working Draft Rules	Commentary/Rationale for Changes
<p>good faith effort to meet the submittal deadline. The extension, if granted, must include a timetable and plan for completion of the ordinance.</p> <p>B. Local governments must formally submit drafts of <del>plans and</del> ordinances to the commissioner and the Metropolitan Council for <del>the commissioner and the Metropolitan Council's</del> concurrent review, <del>for review in a format prescribed by the commissioner.</del></p> <p>C. Local governments may propose ordinance standards that are not in strict conformity with these MRCCA rules, as provided under subpart 6. If ordinances prepared under item B refer to standards in underlying zoning, then the underlying zoning documents must be submitted and considered in combination with the ordinance, and together must substantially comply with these MRCCA rules.</p> <p>D. Within 60 days of receiving <u>initial</u> draft <del>plans and</del> ordinances from local governments as provided under items <u>A and B</u>, the commissioner and the Metropolitan Council must review the plan or ordinance <u>and by the 60<sup>th</sup> day may, but is not required to, provide the local government written comment and communicate a decision to the local government.</u></p> <p><del>The Metropolitan Council must submit its comments to the commissioner within (30) days. The commissioner will have (30) days to complete the review, taking into account the comments submitted by the Metropolitan Council.</del></p> <p><u>(1) The commissioner and the Met Council must review the draft ordinances. Plans must be reviewed for consistency with these MRCCA rules and regional systems and policies as specified in MS 473.859 as well as with comprehensive plans adopted by local governments.</u></p> <p><del>The Metropolitan Council must review and comment on the plan regarding consistency with the council's comprehensive development guide for the metropolitan area.</del></p> <p><del>Ordinances must be reviewed for consistency with these MRCCA rules and with comprehensive plans adopted by local governments.</del></p> <p><u>(1) Local governments must provide the commissioner and the Met Council 60 days from the date the local government provided the draft ordinances before proceeding with further review and adoption of ordinances.</u></p> <p><del>(2) Upon completing the review, the commissioner must take one of the following two actions and provide a copy of the decision to the Metropolitan Council and the National Park Service:</del></p>	<p><i>Metropolitan Council staff suggests concurrent submittals (currently submitted first to Met Council). This would require a change to MS 116G to take effect.</i></p> <p><i>See cross-reference to flexibility procedures (subpart 6).</i></p> <p><i>To adequately review ordinances, underlying zoning needs to be documented</i></p> <p><i>The 60-day and 30-day time frames are suggested for coordinated review. 60-day period is consistent with requirements for LGUs under MS 15.99.</i></p> <p><i>Metro Council roles are adjusted per their input in order to clarify time frames and coordination.</i></p>

Working Draft Rules	Commentary/Rationale for Changes
<p><del>(3) approve the draft plans and ordinances by written decision and notify the local government; or</del></p> <p><del>(4) return the draft plans and ordinances to the local government for modification, with a written explanation of the need for modification.</del></p> <p><del>(5) When the commissioner returns a draft plan and ordinances to the local government for modification, the local government must revise the draft plan and ordinances within 60 days of receipt of the commissioner's written explanation, and must resubmit the revised draft plan and ordinances to the commissioner. Upon receiving the revised draft plan and ordinances from the local government, the commissioner and the Metropolitan Council must conduct the review as provided under item D.</del></p> <p><del>(6) The commissioner may grant extensions to local governments if requested in writing and if the local government is making a good faith effort to meet the submittal deadline. The extension, if granted, must include a timetable and plan for completion of the ordinance.</del></p> <p><del>(7) Within 60 days of receiving the commissioner's approval of a draft plan or ordinance, the local government must adopt the commissioner approved draft plan and ordinances and submit a copy of the final adopted plan and ordinances, with evidence of adoption, to the commissioner, the Metropolitan Council, and the National Park Service.</del></p> <p><del>(8) Only those plans and ordinances approved by the commissioner shall have the force and effect of law.</del></p> <p><del>(9)(2) Once in effect, the local government must implement and enforce the commissioner approved plans and ordinances.</del></p> <p><del>D.E. If a local government fails to prepare and submit a draft plan and ordinances within one year of notification as provided under item A, fails to incorporate modifications that are acceptable to the commissioner as provided under item E(2), or fails to adopt commissioner approved plans or ordinances as provided under item H, the commissioner must:</del></p> <p>(1) prepare <u>local plans and ordinances</u> in substantial compliance with these MRCCA rules within 90 days of the deadline for preparation or adoption of plans and ordinances as provided under items A to <u>D</u> <del>or the end date of an extension of time approved by the commissioner as provided under item D</del>;</p> <p>(2) conduct a public hearing as provided by Minnesota</p>	<p></p>



Working Draft Rules	Commentary/Rationale for Changes
<p>Statutes, chapter 14, and other statutes as applicable;</p> <p>(3) within 60 days of the conclusion of the public hearing, adopt the <del>plans and</del> ordinances for the local government's portion of the Mississippi River Corridor Critical Area by written order; and</p> <p>(4) give notice of the adopted <del>plans and</del> ordinances to the affected local government, the Metropolitan Council, and the National Park Service.</p> <p><del>E.F.</del> <u>O</u> <del>Plans and</del> ordinances that have been adopted by the commissioner apply and have the same effect as if adopted by the local government and must be administered and enforced by the local government.</p> <p><del>F.G.</del> Local governments may amend <del>plans and</del> ordinances at any time following the procedures detailed in items C through <del>F</del> above.</p> <p><del>G.H.</del> <u>O</u> <del>Ordinances</del> <u>Plans</u> must be updated regularly on the same schedule as other comprehensive plan elements according to Minnesota Statutes, chapter 473.</p>	<p>Item M was added to ensure that MRCCA plans are updated regularly and are considered and better integrated with other comprehensive plan elements that are being updated every 10 years (i.e. land use, transportation, etc.).</p>
<p><del>Subp. 4. Contents of plans.</del></p> <p><del>A. The plan must be a component of the local government's comprehensive plan prepared according to Minnesota Statutes, chapter 473.</del></p> <p><del>B. Plans must contain maps, policies, and implementation provisions to:</del></p> <ul style="list-style-type: none"> <li><del>(1) identify and protect primary conservation areas;</del></li> <li><del>(2) identify areas that are priorities for restoration of natural vegetation, erosion prevention, bank stabilization, or other restoration activities;</del></li> <li><del>(3) minimize potential conflict of water surface uses as provided under Minnesota Statutes, chapter 86B;</del></li> <li><del>(4) provide for commercial barge terminals, barge fleetings, and recreational marinas, where appropriate and if applicable;</del></li> <li><del>(5) provide for future commercial and industrial uses that require water access;</del></li> <li><del>(6) provide for the creation and maintenance of open space and recreation facilities, including parks, scenic overlooks, natural areas, islands, and wildlife areas;</del></li> <li><del>(7) identify potential public access points and trail locations; and</del></li> <li><del>(8) provide for transportation and public utility development in a manner consistent with these MRCCA rules.</del></li> </ul>	<p>This subpart identifies the specific elements to be included in each LGU MRCCA Plan.</p> <p>Requirement to prepare the plan is in Subp. 3.A above.</p> <p>Priorities for restoration will be considered as part of the subdivision, PUD, and redevelopment process as outlined in part 6106.0170.</p>
<p><del>Subp. 4.5. Contents of ordinances.</del></p> <p>A. Local ordinances must substantially comply with the standards</p>	<p>This section outlines what must be included in local ordinances. Requirements on how the ordinance is structured as an overlay district</p>

**Comment [EDL15]:** This restates the purpose in 6106.0020 with a bit more definition. They are goals that leave much room for interpretation and application. 6106.0020 is a restatement of section 116G.15(1). Thus, it is arguably unnecessary surplusage. If this section is deemed important, then this language could be inserted in 6106.0020 replacing the existing language in 6106.0020. This language would have to be tweaked, such as opening phrase along these lines: "In furtherance of the purpose set forth in Minnesota Statutes section 116G.15, subd. 1, ..."

Working Draft Rules	Commentary/Rationale for Changes
<p>in these MRCCA rules and must include:</p> <ol style="list-style-type: none"> <li>(1) definitions consistent with those in part 6106.0050;</li> <li>(2) administrative provisions consistent with those in part 6106.0080;</li> <li>(3) minimum standards and criteria consistent with those in part 6106.0110 through 6106.0170;</li> </ol> <p>B. The local ordinance must be structured as an overlay district. If a conflict exists with underlying zoning, the provisions of the overlay district shall govern. Where the underlying zoning standards apply (e.g., height in some districts) those standards must be referenced in the overlay district. Where specific dimensions are listed in part 6106.0120, those dimensions must be included in the overlay district.</p>	<p><i>means that enough information will be provided for assessment of changes in underlying zoning.</i></p>
<p>Subpart 6. <b>Flexibility requests for ordinances.</b></p> <p>A. Local governments may, under special circumstances and with the commissioner's prior approval, adopt ordinances that are <del>not in strict conformity</del> <u>in conflict</u> with these MRCCA rules, if the purposes of Minnesota Statutes, section 116G.15, are satisfied, and the ordinance is consistent with the plan prepared by the local government. Special circumstances may include the following situations:</p> <ol style="list-style-type: none"> <li>(1) areas where existing urban, 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;</li> <li>(2) designation of areas where standards are more restrictive than minimum state standards as trade-offs for other areas where they are less restrictive;</li> <li>(3) the requirements of development, redevelopment, stormwater, parks and other specific plans that are part of an approved comprehensive plan; and</li> <li>(4) existing or planned wastewater, stormwater, water supply and/or utility facilities and similar physical or infrastructural constraints.</li> </ol> <p>B. A local government requesting ordinance flexibility must submit the following items to the commissioner as part of the ordinance submittal required under subpart 2:</p> <ol style="list-style-type: none"> <li>(1) a detailed description of the proposed alternative standards that are not in strict conformity with a demonstration that the alternative standards are consistent with the policies, purposes, and scope of this chapter according to these MRCCA rules;</li> <li>(2) a description of the special circumstances that justify the use of alternative standards;</li> <li>(3) input from adjoining local governments, including those with overlapping jurisdiction and those across the river, and</li> </ol>	<p><i>This provision, along with subpart 3, provides flexibility to local governments to adopt ordinances that deviate from the rules for special circumstances. Flexibility was requested by local governments to propose their own ordinances to meet the intent of the MRCCA</i></p>

**Comment [EDL16]:** "Not in strict conformity" is imprecise.



Working Draft Rules	Commentary/Rationale for Changes
<p>the public potentially affected by the alternative standards; and</p> <p>(4) supporting information, maps, and documents, as appropriate, to explain the request to the commissioner.</p> <p>C. Within 60 days of receiving a complete request for ordinance flexibility as provided in item B, the commissioner must:</p> <p>(1) evaluate the request based on:</p> <ul style="list-style-type: none"> <li>a) the extent to which alternative standards satisfy the purposes of Minnesota Statutes, Chapter 116G, and the policies, purposes and scope of this chapter;</li> <li>b) the likely impact on primary conservation areas and ; and public river corridor views; and</li> <li>c) the opportunities for mitigation techniques that address any adverse impacts.</li> </ul> <p>(2) Approve or deny the request, state in writing to the local government the reasons for the approval or denial, and, as appropriate, suggest alternative solutions or regulatory approaches that would be acceptable to the commissioner.</p>	<p><i>Draft</i></p> <p><b>Comment [EDL17]:</b> What happens if the 60 day time period is exceeded?</p>
<p>Subpart 7. <b>Plans and projects of state and regional agencies.</b> State and regional agencies owning and managing lands within the Mississippi River Corridor Critical Area must comply with the standards in these MRCCA rules and with local government ordinances. Agencies must include the following elements in their plans and project designs for parks and other protected lands:</p> <ul style="list-style-type: none"> <li>A. standards for public utilities and facilities consistent with the standards in part 6106.0130; and</li> <li>B. provisions for protection of primary conservation areas and public river corridor views.</li> </ul>	<p><i>This subpart was added to clarify that state agencies must comply with these rules.</i></p>
<p><b>PART 6106.0080 ADMINISTRATIVE PROVISIONS FOR ORDINANCES</b></p> <p>Subpart 1. <b>Purpose.</b> The purpose of this part is to identify administrative provisions that must be included in local ordinances to ensure that ordinances are administered consistent with the purpose of these MRCCA rules.</p>	<p><i>This part was added to improve rule organization and provide a logical sequence of requirements for local ordinances.</i></p>
<p>Subp. 2. <b>Variances.</b></p> <ul style="list-style-type: none"> <li>A. A local government must consider applications for variances consistent with Minnesota Statutes, chapters 394 and 462. In addition, the local government's review must consider potential impacts on primary conservation areas and other resources identified in local governments' plans.</li> <li>B. If a local government determines that a variance would affect primary conservation areas or other identified resources, it must require mitigation proportional to the effect of the requested variance on the affected resource as provided in</li> </ul>	<p><i>Requiring mitigation is an option for local government where warranted; however, if an impact is determined, mitigation must be required.</i></p>

Working Draft Rules	Commentary/Rationale for Changes
subpart 5.	
<p>Subp. 3. <b>Nonconformities.</b></p> <p><del>A. The purpose of this subpart is to allow uses and structures that came into existence legally, in conformance with then-applicable requirements, to continue to exist and be put to productive use.</del></p> <p><b>AB.</b> Nonconformities are regulated by local governments consistent with Minnesota Statutes, chapters 394 and 462.</p> <p><b>BC.</b> Local governments may choose to allow expansion of legally nonconforming principal structures that do not meet the setback requirements in part 6106.0120, provided that such expansion does not extend further into setbacks required by these MRCCA rules.</p> <p><b>CD.</b> New structures erected in conformance with the setback averaging provisions of part 6106.0120, subp. 3.D are considered to be in conformance with local ordinance requirements.</p> <p><b>DE.</b> Site alterations that were made legally prior to the effective date of local ordinances adopted under this rule are not considered nonconformities.</p>	<p><b>Comment [EDL18]:</b> Creating "nonconformities" sends the message that you are not wanted. Accordingly, I have reworded this provision.</p> <p><b>Comment [EDL19]:</b> What does this mean?</p>
<p>Subp. 4. <b>Conditional and interim use permits.</b></p> <p>A. In addition to meeting the requirements of Minnesota Statutes, chapters 394 and 462, a local government's review of conditional and interim uses must consider potential impacts on primary conservation areas and other resources identified in local governments' plans.</p> <p>B. When evaluation and assessment identify an impact under item A, then the issuance of a conditional or interim use permit include conditions for mitigation according to subpart 5.</p> <p>C. Interim use permits must require compliance with <del>plans and</del> ordinances adopted under this part.</p>	<p><i>The rules require a CUP or IUP for mining, cellular towers, facilities to accommodate disabilities, and buildings exceeding height limits in some districts. This subpart also applies to activities that LGUs regulate through their required CUPs and IUPs.</i></p>
<p>Subp. 5. <b>Mitigation.</b></p> <p>A. When a local government identifies a potential negative impact to primary conservation areas and other resources identified in the local government's plan, it must require mitigation for:</p> <ol style="list-style-type: none"> <li>(1) a variance granted to ordinances adopted under these MRCCA rules; and</li> <li>(2) a conditional or interim use permit granted pursuant to ordinances adopted under these MRCCA rules.</li> </ol> <p>B. Mitigation must be <u>reasonably</u> proportional to the impact of the project on primary conservation areas and other resources identified in local governments' plans.</p>	<p><i>This subpart clarifies when mitigation is required.</i></p> <p><i>Local government may determine appropriate mitigation.</i></p>



Working Draft Rules	Commentary/Rationale for Changes
<p>Subp. 6. <b>Site plans.</b></p> <p>A. Site plans are required for development within the Mississippi River Corridor Critical Area that requires discretionary action or that requires a permit under these MRCCA rules.</p> <p>B. In addition to local requirements, site plans must include, at a minimum:</p> <ol style="list-style-type: none"> <li>(1) a detailed description of the project, including how the project complies with the plans and ordinances adopted under this part; and</li> <li>(2) scaled mapping, dimensional renderings, plans, maintenance agreements, and other materials that identify and describe the following and demonstrate compliance with plans and ordinances, as applicable: <ol style="list-style-type: none"> <li>a) primary conservation areas; including native plant communities;</li> <li>b) buildable area;</li> <li>c) existing and proposed topography and drainage patterns;</li> <li>d) proposed storm water and erosion and sediment control practices;</li> <li>e) existing and proposed vegetation to be removed and established;</li> <li>f) ordinary high water level, bluff lines, and all required setbacks;</li> <li>g) existing and proposed structures;</li> <li>h) existing and proposed impervious surfaces; and</li> <li>i) existing and proposed subsurface sewage treatment systems.</li> </ol> </li> </ol>	<p><i>This subpart lists what should be included in plan sets to support decision-making on discretionary actions such as subdivisions, PUDs, CUPs, IUPs and for specific permits required by these rules – for vegetative removal, land disturbance, or work in the BLZ, SLZ, or SPZ</i></p>
<p>Subp. 7. <b>Accommodating disabilities.</b> Ramps or other facilities to provide persons with disabilities reasonable access to their property, as required by the federal Americans with Disabilities Act and the federal Fair Housing Act and as provided by chapter 1341, are allowed by interim use permit, subject to the following standards:</p> <p>A. parts 6106.0120 to 6106. 0170 must be complied with to the maximum extent practicable; and</p> <p>B. the interim use permit expires and the ramp or other facilities must be removed once the property is no longer primarily used by persons with disabilities.</p>	<p><i>This subpart outlines exceptions to the standards to accommodate people with disabilities through an IUP to allow for ADA compliance without needing to go through the variance process.</i></p>
<p><b>PART 6106.0090 INCORPORATIONS BY REFERENCE</b></p> <p>For informational purposes providing some context for -of these MRCCA rules, the following documents are <del>incorporated by referenced</del>, <del>are subject to frequent change</del>, and are available through the Minitex interlibrary loan system:</p>	<p><i>These resources are included in this part to help local governments comply with the rules using current best practice guidance.</i></p>

**Comment [EDL20]:** For what purpose are these documents being incorporated by reference? I presumed informational only. But if this presumption is inaccurate, then this provision must be more clearly worded and its impact clearly understood.

Working Draft Rules	Commentary/Rationale for Changes
<p>A. The Minnesota Stormwater Manual, Minnesota Pollution Control Agency (2013) and as subsequently amended);</p> <p>B. Protecting Water Quality in Urban Areas; Stormwater Best Management Practices Manual, Minnesota Pollution Control Agency (2000 and as subsequently amended);</p> <p>C. Conserving Wooded Areas in Developing Communities: Best Management Practices in Minnesota; Minnesota Department of Natural Resources (2000 and as subsequently amended);</p> <p>D. Design Handbook for Recreational Boating and Fishing Facilities, State Organization for Boating Access (2006 and as subsequently amended);</p> <p>E. Trail Planning, Design, and Development Guidelines, Minnesota Department of Natural Resources (2007 and as subsequently amended);</p> <p>F. Mississippi River Corridor Critical Area District Map, Minnesota Department of Natural Resources (2014 and as subsequently amended);</p> <p>G. Mississippi National River and Recreation Area Visual Resources Protection Plan, National Park Service (2014 and as amended); and</p> <p>H. Native Vegetation Establishment and Enhancement Guidelines, Minnesota Board of Water and Soil Resources (2012 and as subsequently amended); and</p> <p><u>H.I. Letter from Public Works Commissioner Milton Rosen, dated May 22, 1939, along with report attached entitled "Property of the Port Authority, City of St. Paul, Minnesota, 1938".</u></p>	<p><b>Comment [EDL21]:</b> This list while good, may be incomplete and not balanced. For instance, the U.S. Army Corp and MN DOT may have some excellent documents respecting the use of the Mississippi River and adjoining properties.</p>
<p><b>PART 6106.0100 DISTRICTS</b></p> <p>Subpart 1. <b>Establishment of districts.</b> For purposes of these MRCCA rules, six districts are established, as described in this part. It is intended that all districts protect and enhance the resources and features identified in Minnesota Statutes, section 116G.15.</p>	<p><i>This part establishes new districts as required by MS, chapter 116G.15. Six districts are provided in this part. These districts have been revised to incorporate feedback from LGUs and other stakeholders. The dimensional standards covered in Part 6106.0120 vary by district. Subparts 2-8 below describe each district.</i></p>
<p>Subp. 2. <b>Rural &amp; Open Space District (CA-ROS)</b></p> <p>A. The CA-ROS district is characterized by rural low density development patterns and land uses, and includes land that is riparian or visible from the river, as well as large, undeveloped tracts of high ecological value, floodplain, and undeveloped islands. Many primary conservation areas exist in this district.</p> <p>B. The CA-ROS district must be managed to sustain and restore the rural and natural character of the corridor, and to protect and enhance existing habitat, public river corridor views, and scenic,</p>	<p><i>The most rural portions of the corridor and public parkland in those areas are included in the CA-ROS district.</i></p>



Working Draft Rules	Commentary/Rationale for Changes
natural, and historic areas.	
<p>Subp. 4. <b>River Neighborhood District (CA-RN)</b></p> <p>A. The CA-RN district is characterized by residential neighborhoods that are riparian or readily visible from the river or that abut riparian parkland.</p> <p>B. The CA-RN district must be managed to maintain the character of the river corridor within the context of existing residential development. Minimizing erosion and the flow of untreated stormwater into the river and enhancing shoreline habitat are priorities.</p>	<p><i>CA-RN District: Developed residential lands and existing/planned parkland that are visible from the river, or that abut riparian parkland, for example, within the Mississippi Gorge. These areas generally have consistent building heights below 35 feet.</i></p>
<p>Subp. 5. <b>River Towns &amp; Crossings District (CA-RTC)</b></p> <p>A. The CA-RTC district is characterized by historic downtown areas and limited nodes of intense development at river crossings, as well as institutional campuses that predate designation of the MRCCA and include taller buildings.</p> <p>B. The CA-RTC district must be managed in a manner that allows continued growth and redevelopment in historic downtowns and more intensive redevelopment in limited areas at river crossings to accommodate compact walkable development patterns and connections to the river. Minimizing erosion and the flow of untreated stormwater into the river, and providing public access to and public views of the river are priorities in the district.</p>	<p><i>CA-RTC District: Historic downtown and river crossing commercial areas, as well as existing institutional campuses.</i></p>
<p>Subp. 6. <b>Separated from River District (CA-SR)</b></p> <p>A. The CA-SR district is characterized by its physical and visual distance from the river. It includes land separated from the river by distance, development, or a transportation corridor. The land in this district is not readily visible from the river but may be visible from public land across the river.</p> <p>B. The CA-SR district provides flexibility in managing development without negatively affecting the key resources and features of the river corridor.</p>	<p><i>CA-SR District: Land that is separated and not visible from the river.</i></p>
<p>Subp. 7. <b>Urban Mixed District (CA-UM)</b></p> <p>A. The CA-UM district includes large areas of highly urbanized, mixed-use areas that are a part of the urban fabric of the river corridor, including institutional, commercial, and industrial areas.</p> <p>B. The CA-UM district must be managed in a manner that allows for future growth and potential transition of intensely developed areas without negatively affecting public river corridor views, and that protects bluffs, very steep slopes, and floodplains. Restoring and enhancing bluff and shoreline</p>	<p><i>CA-UM District: Commercial, institutional, and industrial mixed-use areas as well as existing/planned parklands.</i></p>

Working Draft Rules	Commentary/Rationale for Changes
<p>habitat, minimizing erosion and flow of untreated stormwater into the river, <del>while at the same time along with promoting, developing, protecting, preserving and enhancing commercial, industrial, residential, transportation, natural habitat, parks and recreation, and public and private use and access to and views of the river, and providing public access to and public views of the river are priorities in this district.</del></p>	
<p>Subp. 8. <b>Urban Core District (CA-UC)</b></p> <p>A. The CA-UC district includes the urban cores of Minneapolis and St. Paul.</p> <p>B. The CA-UC district shall be managed with the greatest flexibility. <u>As a working river the Mississippi River played and continues to play a significant role in the economic vitality of the City, the County, the State, and the Region. Accordingly, commercial/industrial use, in-land, along, and of, the River should be a priority with the understanding that while these priorities are being promoted and enhanced they should be done so in a manner that furthers the protection of the River, including but not limited to its biological and ecological functions and its natural, aesthetic, cultural, and historical values.</u></p> <p>C. <u>The CA-UC district must be managed in a manner that promotes future growth and at the same time, to the extent practicable, advances the protection of bluffs, very steep slopes, and floodplains. Minimizing erosion and flow of untreated storm water into the river are priorities along with promoting, developing, protecting, preserving and enhancing commercial, industrial, residential, transportation, natural habitat, parks and recreation, and public and private use and access to and views of the river.</u></p> <p><del>Providing public access to and public views of the river is a priority in the district.</del></p>	<p>CA-UC District: Urban cores of Minneapolis and St. Paul.</p>
<p>Subp. 9. <b>District boundaries.</b></p> <p>A. The physical boundaries of each district are laid out in the Mississippi River Corridor Critical Area District Map, incorporated by reference under part 6106.0090. The commissioner must maintain the map and may amend the map as provided in item B.</p> <p>B. The boundaries of a district established under item A may be amended according to subitems (1) to (4).</p> <p>(1) A local government or the Metropolitan Council must submit a formal written request to the commissioner requesting a district boundary amendment. The request must:</p>	<p><i>This subpart describes the provisions to modify district boundaries administratively. This was requested by local governments in the 2009-2010 process since EO 79-19 does not provide a mechanism for changing boundaries.</i></p>



Working Draft Rules	Commentary/Rationale for Changes
<ul style="list-style-type: none"> <li>a) be approved by the appropriate governing body;</li> <li>b) identify proposed changes to plans and ordinances;</li> <li>c) identify changes in land uses, infrastructure, or other conditions that justify the proposed changes since these MRCCA rules were adopted;</li> <li>d) be consistent with local, regional, state, and federal plans;</li> <li>e) address potential negative impacts to primary conservation areas and other resources and features identified in local government plans.</li> <li>f) contain a summary of feedback from affected parties as provided under subitem (2).</li> </ul> <p>(2) The local government or the Metropolitan Council requesting the district boundary amendment must give notice of the proposed district boundary amendment to adjoining or overlapping local governments, the Metropolitan Council, the commissioner, the National Park Service, and property owners in the area directly affected by the proposed district boundary amendment and publish notice in an official newspaper of general circulation in the area.</p> <p>(3) Upon receiving a complete request for a district boundary amendment as provided under subitem (1), the commissioner has 60 days to approve or deny the request or return the request for modification.</p> <p>(4) The commissioner must consider the request and all items submitted under subitem (1) and must, by written decision, approve or deny the request or return the request for modification. The decision must include findings that address the consistency of the proposed district boundary amendment with the purposes of these MRCCA rules.</p> <p>C. This subpart does not apply to the river corridor boundary established by Executive Order 79-19.</p>	
<b>PART 6106.0110 USES</b>	
<p>Subpart 1. <b>Underlying zoning.</b> Uses permissible within the Mississippi River Corridor Critical Area are generally determined by the local government's underlying zoning, with additional provisions for certain uses as specified by this part.</p> <p>Subp. 2. <b>Agricultural use.</b> Where agricultural use is allowed by the local government, perennial ground cover is required within 50 feet of the ordinary high water level and within the bluff impact zone. Within the slope preservation zone, a local government may allow row crops subject to a conservation plan approved by the soil and water conservation district board.</p> <p>Subp. 3. <b>Feedlots.</b> New animal feedlots and manure storage areas are</p>	<p><i>This part describes how uses are regulated. With a few exceptions, uses are regulated by a local government's existing or underlying zoning. Subparts 2 – 7 describe six uses with special considerations.</i></p>

Working Draft Rules	Commentary/Rationale for Changes
<p>prohibited. Existing animal feedlots and manure storage areas must conform to the standards in chapter 7020.</p> <p>Subp. 4. <b>Forestry.</b> Where forestry is allowed by the local government, tree harvesting and biomass harvesting within woodlands, and associated reforestation, must be conducted consistent with recommended practices in Conserving Wooded Areas in Developing Communities, Best Management Practices in Minnesota, incorporated by reference under part 6106.0090.</p> <p>Subp. 5. <b>Aggregate mining and extraction.</b> If allowed by the local government, aggregate mining and extraction requires a conditional use permit or interim use permit issued by the local government, subject to the following:</p> <ul style="list-style-type: none"> <li>A. new aggregate mining and extraction are prohibited within the shore impact zone, slope preservation zone, bluff impact zone, and within 40 feet of the bluffline;</li> <li>B. processing machinery must be located consistent with setback standards for structures as provided in part 6106.0120;</li> <li>C. only one barge loading area, which must be limited to the minimum size practicable, is permitted for each mining or extraction operation;</li> <li>D. new and, where practicable, existing aggregate mining and extraction operations must be managed to minimize visibility and must be screened by establishing and maintaining natural screening devices. The unscreened boundaries of aggregate mining and extraction areas are limited to only the barge loading area;</li> <li>E. a site management plan must be developed by the operator and approved by the local government before new aggregate mining and extraction commence. Operations must be consistent with the site plan throughout the duration of operations at the site. The site management plan must: <ul style="list-style-type: none"> <li>(1) describe how the site will be developed over time with an emphasis on minimizing environmental risk to public waters;</li> <li>(2) explain where staged reclamation may occur at certain points during the life of the site; and</li> <li>(3) address dust, noise, storm water management, possible pollutant discharges, days and hours of operation, duration of operation, any anticipated vegetation and topographic alterations outside the pit, and reclamation plans consistent with the stated end use for the land; and</li> </ul> </li> <li>F. existing and new aggregate mining and extraction operations must submit land reclamation and reforestation plans to the local government compatible with the purposes of these MRCCA</li> </ul>	<p><i>Mining, cellular towers, and disability accommodations are the only uses that require a CUP or IUP in these rules.</i></p>



Working Draft Rules	Commentary/Rationale for Changes
<p>rules.</p> <p>Subp. 6. <b>River-dependent uses.</b> By the nature of their use, river-dependent uses, such as river-dependent commercial and industrial uses, water supply facilities, wastewater treatment facilities, storm water facilities, and hydropower facilities, cannot comply with all shoreline setback standards under part 6106.0120, but must comply with items A to C.</p> <ul style="list-style-type: none"> <li>A. Parking areas and structures, except shoreline facilities, must meet the dimensional and performance standards in these MRCCA rules and must be designed to incorporate topographic and vegetative screening.</li> <li>B. Shoreline facilities must comply with chapter 6115 and must: <ul style="list-style-type: none"> <li>(1) be designed in a compact fashion so as to minimize the shoreline area affected; and</li> <li>(2) minimize the surface area of land occupied in relation to the number of watercraft or barges to be served.</li> </ul> </li> <li>C. The placement of dredged material is allowed subject to existing federal and state permit requirements and agreements.</li> </ul> <p>Subp. 7. <b>Cellular telephone towers.</b> Cellular telephone towers require a conditional use permit or interim use permit issued by the local government, subject to the following:</p> <ul style="list-style-type: none"> <li>A. The tower must not be located in the bluff impact zone, shore impact zone, or slope preservation zone;</li> <li>B. Placement of the tower must minimize interference with public river corridor views; and</li> <li>C. The applicant must demonstrate that functional coverage cannot be provided through colocation, a tower at a lower height, or a tower at a location outside the Mississippi River Corridor Critical Area.</li> </ul>	<p><i>MS 116G.15 provides for continued river-dependent uses. This provision clarifies standards for those uses in the immediate riverfront area.</i></p> <p><i>Note also the development standards in part 6106.0140.</i></p> <p><i>Cellular tower use moved from "Structure Height Exemptions" since it must be treated as a required conditional/interim use.</i></p>
<p><b>PART 6106.0120 DIMENSIONAL STANDARDS</b></p> <p>Subpart 1: <b>Purpose.</b> The purpose of this part is to establish dimensional standards that protect primary conservation areas from impacts of development and ensure that new development is sited in appropriate locations.</p>	<p><i>This part outlines standards for structure height; setbacks from the water and bluff; and lot area and width. These standards vary by district.</i></p>
<p>Subpart 2. <b>Structure height.</b></p> <ul style="list-style-type: none"> <li>A. Structures, including accessory structures, must be no taller than the heights specified for each district: <ul style="list-style-type: none"> <li>(1) CA-ROS: 35 feet;</li> <li>(2) CA-RN: 35 feet;</li> <li>(3) CA-RTC: (48 - 56) feet, provided tiering of structures away from the Mississippi River and from blufflines is considered,</li> </ul> </li> </ul>	<p><i>This subpart defines the height standard for each district.</i></p> <p><i>CA-RTC: Input requested! DNR is considering</i></p>

Working Draft Rules	Commentary/Rationale for Changes
<p>with lower structure heights closer to the river and blufflines and that structure design and placement minimizes interference with public river corridor views. Taller buildings may be allowed by conditional use permit, as provided under item D.</p> <p>(4) CA-SR: height is determined by the local government's underlying zoning, provided the structure's height is generally consistent with the height of existing surrounding development as viewed from the ordinary high water level of the opposite shore;</p> <p>(5) CA-UM: 65 feet, provided tiering of structures away from the Mississippi River and from blufflines is considered, with lower structure heights closer to the river and blufflines, and that structure design and placement minimize interference with public river corridor views. Taller buildings may be allowed by conditional use permit, as provided under item D.</p> <p>(6) CA-UC: height is determined by the local government's underlying zoning, provided tiering of structures away from the Mississippi River and blufflines is considered, with lower structure heights closer to the river and blufflines, and structure design and placement minimize interference with public river corridor views:</p> <p>B. For the purposes of this subpart, height must be measured on the side of the structure facing the Mississippi River.</p> <p>C. The height requirements in Item A do not apply to those structures and facilities identified in Table 1, Exemptions, meeting the requirements of part 6106.0130.</p> <p>D. Standards and criteria for conditional use permits for taller buildings. Criteria for considering conditional use permits for buildings exceeding the height limits in item A must include the following:</p> <p>(1) assessment of the visual impact of the proposed building on public river corridor views, using the methodology set forth in the <i>Mississippi National River and Recreation Area Visual Resources Protection Plan</i>, incorporated by reference, including public river corridor views from other communities;</p> <p>(2) identification of techniques to minimize the perceived bulk of the proposed building, such as:</p> <ol style="list-style-type: none"> <li>placing the long axis of the building perpendicular to the river;</li> <li>stepping back of portions of the façade;</li> <li>narrowing the profile of upper floors of the building; or</li> <li>increasing the setbacks of the building from the</li> </ol>	<p>increasing height from 48' to 56' and adding a CUP for taller buildings, based on LGU comments &amp; redevelopment plans.</p> <p>CA-SR: Input requested! This revision uses more general language, focusing on the height of surrounding development rather than the treeline. Is this change justifiable and appropriate?</p> <p>CA-UM: Input requested! This draft adds a CUP provision for taller buildings, based on LGU comments / redevelopment plans.</p> <p>"Public river corridor views" is defined as (a) and (b).</p> <p>Revision uses definition of height in underlying zoning, provided it is measured on the 'river side' of a structure.</p> <p>Item C refers to structures that are exempt from the height limits. Exemptions have been consolidated in Table 1 for ease of reference.</p> <p>New standards in D apply to taller buildings that may be allowed by conditional use, a new provision in item A above. Input requested on CUP standards for taller buildings.</p>



Working Draft Rules	Commentary/Rationale for Changes
<p>Mississippi River and/or blufflines.</p> <p>(3) identification of techniques for preservation of view corridors identified in the local government's plan; and</p> <p>(4) opportunities for creation or enhancement of public river corridor views.</p>	
<p>Subp. 3. <b>Location of structures.</b></p> <p>A. Structures and impervious surfaces must not be located in the shore impact zone and must meet the following setback requirement from the ordinary high water level of the Mississippi River and other waters within the Mississippi River Corridor Critical Area, as specified for each district:</p> <ol style="list-style-type: none"> <li>(1) CA-ROS: 200 feet from the Mississippi River and 150 feet from the Minnesota and Vermillion Rivers;</li> <li>(2) CA-RN: 100 feet from the Mississippi River and 75 feet from the Rum River;</li> <li>(3) CA-RTC: 75 feet from the Mississippi River, Crow River and Rum River;</li> <li>(4) CASR: 75 feet from the Vermillion River;</li> <li>(5) CA-UM: 50 feet from the Mississippi and Rum Rivers;</li> <li>(6) CA-UC: underlying zoning; and</li> <li>(7) all other public waters within the Mississippi River Corridor Critical Area are subject to underlying zoning.</li> </ol> <p>B. Structures and impervious surfaces must not be located in the bluff impact zone or the slope preservation zone and must meet the following setback requirements from the bluffline and the top of very steep slopes as specified for each district:</p> <ol style="list-style-type: none"> <li>(1) CA-ROS: 100 feet;</li> <li>(2) CA-RN: 40 feet;</li> <li>(3) CA-RTC: 40 feet;</li> <li>(4) CA-SR: 40 feet;</li> <li>(5) CA-UM: 40 feet; and</li> <li>(6) CA-UC: 40 feet.</li> </ol> <p>C. The structure location requirements in items A and B do not apply to those structures and facilities listed in Table 1 as exempt from these requirements.</p> <p>D. Where principal structures exist on the adjoining lots on both sides of a proposed building site, the minimum setback may be altered to conform to the adjoining setbacks, provided that the new structure's height, area, and width riverward or bluffward of the setbacks required under items A and B are compatible with adjoining development. No structures or impervious surfaces are allowed within the bluff impact zone, shore impact zone, or slope preservation zone, unless specified in the exceptions under item C and Table 1.</p>	<p><i>This subpart describes the structure setbacks in each district from the ordinary high water level of the Mississippi River and other rivers tributary to the Mississippi River in the MRCCA. It also clarifies that no structures are allowed in the shore impact zone – while this may seem obvious, since the shore impact zone is half the specified setback distance, some LGUs requested clarity on what could and could not be placed in the shore impact zone since it is not explicitly stated anywhere in the rules. Table 1 also helps to clarify.</i></p> <p><i>Structure setbacks from the OHWL vary by district and river. Specific standards were derived from EO79-19, existing standards in local government ordinances, and existing development patterns.</i></p> <p><i>Revision: setback for CA-UC not required. – no setback was specified for the current Urban Diversified district in EO 79-19.</i></p> <p><i>Item B lists the setbacks from bluffs in each district, and also clarifies that no structures are allowed in bluff impact zones or slope preservation zones.</i></p> <p><i>Item C refers to the table of exemptions from height and setback requirements, SIZ, BIZ, and SPZ. It includes many items requested by local governments.</i></p> <p><i>Item D allows for setback averaging in developed areas. This will reduce nonconformities in developed areas.</i></p>

Working Draft Rules	Commentary/Rationale for Changes
<p>E. Subsurface sewage treatment systems, including the septic tank and absorption area, must be located at least 75 feet from the ordinary high water level of the Mississippi River and all other public waters within the Mississippi River Corridor Critical Area.</p>	<p><i>Item E requires septic systems to be set back at least 75 feet from the ordinary high water level.</i></p>
<p><b>PART 6106.0130 GENERAL DEVELOPMENT STANDARDS FOR PUBLIC FACILITIES</b></p> <p>Subpart 1. <b>Purpose and Scope.</b> The purpose of this part is to establish standards for public facilities that are consistent with best management practices and protect primary conservation areas. The term “public facilities” as used in this part includes public utilities, public transportation facilities, and public recreation facilities. These facilities serve the public interest by providing public access to the Mississippi River corridor or require locations in or adjacent the river corridor, and therefore require some degree of flexibility.</p>	<p><i>This part specifies standards for the design of <b>public</b> facilities, including utilities, transportation and recreation facilities. Design standards for <b>private</b> facilities are covered in part 6106.0140.</i></p> <p><i>Many public facilities are governed by other state statutes and agencies, and DNR role regarding these regional facilities is primarily advisory.</i></p>
<p>Subp. 2. <b>General design standards.</b> All public facilities must be designed and constructed to:</p> <ul style="list-style-type: none"> <li>A. minimize visibility of the facility to the extent reasonable and consistent with the purpose of the facility;</li> <li>B. comply with the dimensional standards in part 6106.0110, except where indicated in Table 1;</li> <li>C. comply with the land alteration and storm water management requirements in parts 6106.0150 - 0160.</li> <li>D. avoid primary conservation areas, unless no reasonable alternative exists. If no reasonable alternative exists, then design and construction must minimize impacts; and</li> <li>E. minimize disturbance of spawning and nesting times by scheduling construction to be undertaken at times when local fish and wildlife are not spawning or nesting, respectively.</li> </ul>	
<p>Subp. 3. <b>Right-of-way maintenance standards.</b> Right-of-way maintenance for public facilities is subject to the following standards:</p> <ul style="list-style-type: none"> <li>A. vegetation currently in a natural state must be maintained, where reasonable and prudent;</li> <li>B. where vegetation in a natural state has been removed, native plants must be planted and maintained on the right-of-way; and</li> <li>C. chemical control of vegetation should be avoided when practicable, but when such methods are necessary, chemicals used and the manner of their use must be in accordance with the rules, regulations, and other requirements of all state and federal agencies with authority over the chemical’s use.</li> </ul>	
<p>Subp. 4. <b>Crossings of public water or public land.</b> Crossings of public waters or land controlled by the commissioner are subject to approval by the commissioner according to Minnesota Statutes, sections 84.415 and 103G.245. The commissioner must give primary consideration to crossings that are proposed to be located within or adjoining existing</p>	<p><i>River crossings are governed by existing statutes.</i></p>

Working Draft Rules	Commentary/Rationale for Changes
rights-of-way for public transportation and public utilities.	
<p>Subp. 5. <b>Public utilities.</b> Public utilities must comply with the following standards:</p> <ul style="list-style-type: none"> <li>A. high-voltage transmission lines, wind energy conversion systems greater than five megawatts, and pipelines are regulated according to Minnesota Statutes, chapters 216E, 216F, and 216G, respectively; and</li> <li>B. if overhead placement is necessary, utility crossings must be hidden from view as much as practicable. The appearance of structures must be as compatible as practicable with the surrounding area in a natural state with regard to height and width, materials used, and color.</li> </ul>	<p><i>Standards for the design of high voltage power lines and other utilities.</i></p>
<p>Subp. 6. <b>Public transportation facilities.</b> Where public transportation facilities intersect or abut two or more of the districts established under part 6106.0100, the least restrictive standards apply. <u>As long as the purpose and objectives of the p</u>Public transportation facilities <u>are not adversely affected, any redesign, construction, or upgrade should</u><del>must</del> be designed and constructed <u>to reasonably protect, preserve, and enhance the following priorities to give priority to:</u></p> <ul style="list-style-type: none"> <li>A. scenic overlooks for motorists, bicyclists and pedestrians;</li> <li>B. safe pedestrian crossings and facilities along the river corridor;</li> <li>C. access to the riverfront <u>public parks and recreational facilities in public ownership; and</u></li> <li><u>D. reasonable use of the land between the river and the transportation facility; and</u></li> <li><del>D.</del><u>E. River commercial/industrial commerce.</u></li> </ul>	
<p>Subp. 7. <b>Public recreational facilities.</b></p> <ul style="list-style-type: none"> <li>A. Buildings and parking. Buildings and parking associated with recreational facilities, with the exceptions noted in Table 1, must meet the setback requirements in part 6106.0120 and must not be placed within the bluff impact zone, shore impact zone, or slope preservation zone.</li> <li>B. Roads and driveways. Roads and driveways associated with public recreational facilities must not be placed in the bluff impact zone, shore impact zone, or slope preservation zone unless no other reasonable placement alternatives exist. If no reasonable alternative exists, then design and construction must minimize impacts.</li> <li>C. Trails, access paths, and viewing areas. Facilities providing access to or views of the Mississippi River may be placed within the bluff impact zone, shore impact zone, or slope preservation zone if design, construction, and maintenance methods are consistent with the best management practice standards in Trail Planning Design and Development Guidelines, incorporated by</li> </ul>	<p><i>Item (A) was added to clarify that, unlike other public recreational facilities, buildings and parking must meet structure setbacks.</i></p> <p><i>Public trails may be placed in sensitive areas subject to these design guidelines.</i></p>

**Comment [EDL22]:** I am not sure how this works in practice. I rewrote trying to give all a balanced priority.

**Comment [EDL23]:** The Rules throughout should recognize the River as a working river. Commercial/Industrial use along the River and use of the River should be expressed as a priority with the expressed understanding that this use while promoted and urged to be enhanced should be in the furtherance of protecting the River, including but not limited to its biological and ecological functions and its natural, aesthetic, cultural, and historical values.



Working Draft Rules	Commentary/Rationale for Changes
<p>reference under part 6106.0090. Trails, paths and viewing areas must be designed and constructed:</p> <ol style="list-style-type: none"> <li>(1) to minimize visibility from the river and interference with public river corridor views; and</li> <li>(2) to minimize fragmentation of primary conservation areas.</li> </ol> <p>D. Water access facilities are subject to the following requirements:</p> <ol style="list-style-type: none"> <li>(1) watercraft access ramps must comply with chapters 6115 and 6280; and</li> <li>(2) public water access facilities must be designed and constructed consistent with the standards in the Design Handbook for Recreational Boating and Fishing Facilities, incorporated by reference under part 6106.0090.</li> </ol>	
<p><b>PART 6106.0140 GENERAL DEVELOPMENT STANDARDS FOR PRIVATE FACILITIES</b></p> <p>Subp. 1. <b>Purpose.</b> The purpose of this part is to provide design standards for private facilities within the Mississippi River Corridor Critical Area that are consistent with best management practices and will minimize impacts to primary conservation areas and other identified resources. Local government ordinances must be consistent with the standards in this part unless the commissioner approves a flexibility request under part 6106.0070 subp. 6.</p>	<p><i>Design standards for private facilities are described in this part.</i></p>
<p>Subp. 2. <b>General design standards.</b> All private facilities must be developed in accordance with the land alteration, vegetation, and stormwater management requirements in parts 6106.0150 and 6106.0160.</p>	
<p>Subpart 3. <b>Private roads, driveways and parking areas.</b> Private roads, driveways, and parking areas, with the exemptions noted in Table 1, must:</p> <ol style="list-style-type: none"> <li>A. be designed and constructed to take advantage of natural vegetation and topography to achieve maximum screening from view to minimize visibility;</li> <li>B. comply with structure setback requirements according to part 6106.0100; and</li> <li>C. not be placed within the slope preservation zone, bluff impact zone, or shore impact zone.</li> </ol>	<p><i>Private roads, driveways and parking areas must meet structure setbacks from the river and bluffs and cannot be placed in slope preservation zones.</i></p> <p><i>Note the exemption in Table 1 for private roads, and conveyance structures serving river-dependent uses.</i></p>
<p>Subpart 4. <b>Private water access and viewing facilities.</b></p> <ol style="list-style-type: none"> <li>A. Access paths: <ol style="list-style-type: none"> <li>(1) if placed within the shore impact zone, an access path must be no more than eight feet wide; and</li> <li>(2) if placed within the bluff impact zone or slope preservation zone, an access path must be no more than four feet wide.</li> </ol> </li> <li>B. Water access ramps:</li> </ol>	<p><i>This subpart identifies private water access and use facilities and provides specific standards for them.</i></p> <p><i>Provisions are applicable to residential and to commercial recreation, i.e. yacht clubs, rowing clubs, private institutions, etc.</i></p>

**Comment [EDL24]:** I do not know if and how this affects our River Terminals.

Working Draft Rules	Commentary/Rationale for Changes
<p>(1) must comply with chapters 6115 and 6280; and</p> <p>(2) must be designed and constructed consistent with the applicable standards in the Design Handbook for Recreational Boating and Fishing Facilities, incorporated by reference under part 6106.0090.</p> <p>C. Stairways, lifts and landings. Design and construction of stairways, lifts, and landings are subject to the following standards:</p> <p>(1) stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties and residential facilities held in common, if approved by the local government;</p> <p>(2) landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, and residential facilities held in common, if approved by the local government;</p> <p>(3) canopies or roofs are prohibited on stairways, lifts, or landings;</p> <p>(4) stairways, lifts, and landings must be located in the least visible portion of the lot; and</p> <p>(5) facilities such as ramps, lifts, or mobility paths for persons with physical disabilities are allowed for achieving access to shore areas according to items (1) to (4) and as provided under part 6106.0080 , subpart 7.</p> <p>D. Shoreline recreational use areas. One shoreline recreation use area is allowed on each lot, not to exceed 5,000 square feet in total area and 12% of the total lot width or 25 feet, whichever is greater, and not extending more than 25 feet landward from the OHWL.</p> <p>E. Water-oriented accessory structures. One water-oriented accessory structure may be allowed for each riparian lot less than 300 feet in width at the ordinary high water level, with one additional water-oriented accessory structure allowed per each additional 300 feet of shoreline on the same lot. Water-oriented accessory structures are prohibited in the bluff impact zone and the slope preservation zone. A water-oriented accessory structure must not exceed 12 feet in height and 120 square feet in area. The structure must be placed a minimum of 10 feet from the ordinary high water level.</p>	<p><i>Item C describes the design standards for private stairways, lifts and landings. Local governments requested clarification on what is allowed and appropriate design standards for these features.</i></p>
<p><b>Subpart 5. Landscaping, patios and retaining walls in non-riparian residential yards in slope preservation zones.</b></p> <p>A. Where non-riparian residential yards within the slope preservation zone have been altered with lawns, gardens, and similar landscaping, local governments may allow patios and</p>	<p><i>This new provision applies to existing developed lots with yards in the Slope Preservation Zone; based on local government comments.</i></p> <p><i>Seeking feedback on the threshold; ideally,</i></p>

Working Draft Rules	Commentary/Rationale for Changes
<p>retaining walls up to (250 – 500) square feet to be constructed, in compliance with part 6106.0150, provided that:</p> <ol style="list-style-type: none"> <li>(1) the slope is not abutting a bluff or part of a natural drainageway;</li> <li>(2) the stability of the slope is maintained;</li> <li>(3) the development will not result in erosion problems; and</li> <li>(4) the site is not readily visible.</li> </ol>	<p><i>this threshold would match that for permit requirements under the land alteration standards in part 6106.0150 subp. 7.</i></p>
<p>Subp. 6. <b>Private signs.</b> Placement of signs is guided by the local government's underlying zoning, with the following additional provisions:</p> <ol style="list-style-type: none"> <li>A. The local government may allow off-premise advertising signs, provided that: <ol style="list-style-type: none"> <li>(1) the signs meet all required setbacks and height limits standards of these MRCCA rules; and</li> <li>(2) the signs are not readily visible.</li> </ol> </li> <li>B. The local government may allow directional signs for patrons arriving at a business by watercraft, provided that the signs <ol style="list-style-type: none"> <li>(1) are consistent with Minnesota Statutes, chapter 86B;</li> <li>(2) if located within the shore impact zone, convey only the location and name of the establishment and the general types of goods and services available;</li> <li>(3) are no greater than ten feet in height and 32 square feet in surface area; and</li> <li>(4) if illuminated, have lighting that is shielded to prevent illumination out across the river or to the sky.</li> </ol> </li> </ol>	<p><i>This subpart describes the design and placement of signs.</i></p> <p><i>"Readily visible" – visible from the ordinary high water level on the opposite site of the river.</i></p>
<p><b>PART 6106.0150 VEGETATION MANAGEMENT AND LAND ALTERATION STANDARDS</b></p>	
<p>Subpart 1. <b>Purpose.</b> The purpose of this part is to establish standards that:</p> <ol style="list-style-type: none"> <li>A. sustain and enhance the ecological functions of vegetation;</li> <li>B. preserve the natural character and topography of the MRCCA; and</li> <li>C. maintain stability of bluffs and very steep slopes; and ensure stability of other areas prone to erosion.</li> </ol>	<p><i>This new part combines previous separate parts on vegetation management, land alteration, and bluffs and steep slopes. It establishes general requirements and a permit process to achieve the stated purpose. The ecological function of vegetation, as defined, is to stabilize soils, retain and filter runoff, provide habitat and recharge groundwater.</i></p>
<p>Subpart 2. <b>General provisions.</b></p> <ol style="list-style-type: none"> <li>A. Applicability. The standards and criteria of this part apply to: <ol style="list-style-type: none"> <li>(1) land alteration: <ol style="list-style-type: none"> <li>a) within the shore impact zone or 50 feet, whichever is greater, abutting a public water, wetland, or natural drainage way;</li> <li>b) within a slope preservation zone; or</li> <li>c) within a bluff impact zone</li> </ol> </li> <li>(2) vegetation removal within:</li> </ol> </li> </ol>	<p><i>The standards in this section apply to various types of development/land alteration. This approach is very similar to that used by the Capital Region and Ramsey-Washington Metro Watershed Districts for managing erosion.</i></p>



Working Draft Rules	Commentary/Rationale for Changes
<ul style="list-style-type: none"> <li>a) a shore impact zone;</li> <li>b) a bluff impact zone;</li> <li>c) a slope preservation zone; or</li> <li>d) areas of native plant communities;</li> <li>e) tree canopies and significant vegetative stands identified in local governments' adopted plans.</li> </ul> <p>B. In the areas specified in item A, no land alteration or vegetation removal activities are allowed except as provided by this part.</p>	
<p>Subpart 3. <b>Permit process.</b> Local governments must regulate the land alteration and vegetation removal activities identified in Subpart 2 through a permit process.</p> <ul style="list-style-type: none"> <li>A. The permit process established by the local government may be through a building permit, land alteration permit, vegetation management permit, or other permit process.</li> <li>B. Local governments may delegate the permitting responsibilities described in this part to a resource agency or other qualified agent as determined by the local government.</li> <li>C. Local governments must require permit applicants to submit information sufficient to evaluate permits for consistency with the standards and requirements of this part and consistent with part 6106.0080 subp. 6., site plans.</li> <li>D. Local governments must evaluate permit applications for consistency with Table 1 and the performance standards in this part as applicable to guide land alteration and vegetation removal activities.</li> <li>E. When reviewing permit applications, local governments must refer to those areas identified under subpart 2 (A)(2).</li> <li>F. Local governments may grant the permit, deny the permit, or grant the permit with conditions necessary to achieve the purposes of this part, as provided under subpart 5.</li> </ul>	<p><i>This subpart outlines the permit process and options for integrating land alteration and vegetation removal permits with other existing permits and/or delegating permitting responsibilities.</i></p>
<p>Subpart 4. <b>General performance standards.</b> The following standards guide all land alteration and vegetation removal activity in the areas described in subpart 2.</p> <ul style="list-style-type: none"> <li>A. Intensive vegetation clearing is prohibited.</li> <li>B. Development, if permitted, must be sited to minimize land alteration and the removal of or disturbance to natural vegetation.</li> <li>C. Maintenance of dead and dying trees that do not pose a potential hazard is encouraged to provide shelter and nesting sites for wildlife.</li> <li>D. Grading that results in terrain that is not characteristic of the natural topography must be avoided.</li> <li>E. Local governments must not restrict the height of ground cover vegetation in the shore impact zone, the slope preservation zone, or bluff impact zone.</li> <li>F. Land alteration and vegetation removal activities must be</li> </ul>	<p><i>The performance standards in this subpart apply to all activities in the designated areas, whether or not a permit is required.</i></p> <p><i>Item E is intended to prohibit "weed" control ordinances from allowing natural vegetation of any height in these sensitive areas.</i></p>

Working Draft Rules	Commentary/Rationale for Changes
<p>conducted so as to expose the smallest practical area of soil to erosion for the least possible time.</p> <p>G. The amount of the land alteration and vegetation removal activity must be increasingly limited as the degree of slope and the risk of soil erosion increases.</p>	
<p>Subpart 5. <b>Vegetation permit requirements.</b></p> <p>A. Permit not required. The following activities within the areas described in subpart 2, item B, are allowed without a permit:</p> <ol style="list-style-type: none"> <li>(1) Pruning of branches that pose a visual security or physical safety hazard, and to maintain plant health and to improve aesthetics;</li> <li>(2) Selective vegetation removal that does not reduce the total tree canopy or vegetative cover by more than (5-15%) or affect an area of more than (1,000 – 5,000) square feet, whichever area is less, over a two-year period. This includes removal of vegetation that is dead, dying, or diseased; removal of invasive, non-native plants; or to prevent the spread of known diseases or insect pests.</li> <li>(3) Maintenance of existing lawns, landscaping, and gardens.</li> <li>(4) Removal of vegetation in emergency situations as determined by the local government.</li> <li>(5) Right-of-way maintenance for public facilities meeting the standards of part 6106.0130, subp. 3.</li> <li>(6) Agricultural activities meeting the standards of part 6106.0100 subp. 2.</li> </ol> <p>B. Permit required. Selective vegetation removal above the thresholds identified in item A(2) or as required for permitted development as specified in Table 1 requires a permit from local government.</p> <p>C. Vegetation removal permit conditions. The local government must require protective and/or restoration measures as a condition of permit approval as follows:</p> <ol style="list-style-type: none"> <li>(1) Any native plant communities removed must be replaced with vegetation equivalent to their habitat, slope stabilization, and stormwater retention value. Stabilization of erodible soils, restoration or enhancement of shoreline vegetation, and revegetation of bluffs or very steep slopes visible from the river are priorities for restoration.</li> <li>(2) Removal of other vegetation, including dead, dying, or diseased vegetation and removal of invasive non-native plants, must be replaced with natural vegetation to the greatest extent practicable. Priorities for replacement are the same as those listed in item C(1).</li> <li>(3) Any disturbance of highly erodible soils must be replanted with appropriate deep-rooted vegetation with a high stem density.</li> </ol>	<p><i>Requesting feedback on the vegetation removal threshold in (A.2)! Property owners routinely remove small amounts of vegetation; the goal is to allow this to continue in a non-burdensome way. Is "percent of natural vegetative cover" something that can be administered or would another metric be better? This provision seeks to address parcels with variable amounts of natural vegetation.</i></p> <p><i>Permit conditions vary depending on the type of vegetation being removed, soil conditions, and other factors determined by local government.</i></p>

Working Draft Rules	Commentary/Rationale for Changes
(4) Other conditions determined necessary by local government.	
<p>Subpart 6. <b>Vegetation restoration plan requirements.</b>  Reestablishment of natural vegetation according to a restoration plan must be required upon failure to comply with the requirements in this part or as part of the planning process for subdivisions as provided in part 6106.0170.</p> <p>A. The vegetation restoration plan must:</p> <ol style="list-style-type: none"> <li>(1) include vegetation that provides suitable habitat and effective soil stability, runoff retention and infiltration capability. Vegetation species, composition, density, and diversity must be guided by nearby patches of native plant communities;</li> <li>(2) be prepared by a qualified individual as defined by the local government; and</li> <li>(3) include a maintenance plan that includes management provisions for controlling invasive species and replacement of plant loss for three years.</li> </ol> <p>B. The local government must issue a certificate of compliance after it has determined that the restoration requirements of items A have been satisfied.</p> <p>C. Vegetation management and restoration activities must be guided by Native Vegetation Establishment and Enhancement Guidelines, incorporated by reference under part 6106.0090, or other appropriate guidance material.</p>	<p><i>A vegetation restoration plan is required as a condition of violations, as well as for large subdivisions or land developments (part 6106.0170)</i></p>
<p>Subpart 7. <b>Land alteration permit requirements</b></p> <p>A. When required. A land alteration permit is required for any activity that disturbs a total land surface area of (5-10) cubic yards or (250 – 3,000) square feet within the areas specified in subpart 2(A)(1).</p> <ol style="list-style-type: none"> <li>(1) Construction or replacement of retaining walls, riprap, or other erosion control structures within the areas specified in subpart 2(A)(1) requires a permit.</li> <li>(2) Land alteration within the bluff impact zone and slope preservation zone is prohibited except as provided in Table 1.</li> </ol> <p>B. Permit conditions. Temporary and permanent erosion and sediment control measures must be sufficient to retain sediment onsite consistent with established best management practices.</p>	<p><i>Requesting feedback on (A)! The 2011 draft rules require erosion and sediment control BMPs for activity disturbing 3,000 square feet or more anywhere in the MRCCA. This revision proposes to limit the requirement for BMPs to disturbances to the specific areas listed in subp. 2(A)(1). Should the disturbance threshold at which BMPs are required be the same as the permit threshold or something higher? (Note: Capital Region and Ramsey Washington Metro watershed districts require BMPs for disturbances greater than 1,000 square feet within 500 feet of water.)</i></p> <p><i>Land disturbance is prohibited in the bluff impact zone and the slope preservation zone, subject to some exceptions (see Table 1).</i></p>
<p>Subpart 8. <b>Rock riprap and retaining walls.</b></p> <p>A. Within shore impact zones, bluff impact zones, and slope</p>	



Working Draft Rules	Commentary/Rationale for Changes
<p>preservation zones, construction or replacement of retaining walls, riprap, or other impervious surfaces, or use of bioengineering techniques must meet the following requirements:</p> <ol style="list-style-type: none"> <li>(1) except as provided under item B, retaining walls, riprap, or other erosion control structures must only be used for the correction of an established erosion problem that cannot be controlled through the use of vegetation, slope stabilization using mulch, a biomat, or similar bioengineering methods. This determination must be done by a qualified person as determined by the local government;</li> <li>(2) design, construction, and maintenance must be consistent with best management practices in Protecting Water Quality in Urban Areas Manual, incorporated by reference under part 6106.0090, or other appropriate resource agency manual; and</li> <li>(3) placement of riprap or retaining walls below the ordinary high water level requires a permit from the commissioner and must comply with chapter 6115.</li> </ol> <p>B. In the CA-UC district, bluffs that have been structurally altered and/or structurally reinforced may continue to be reinforced, consistent with the best management practices specified in item A(2).</p>	<p><i>Item B addresses existing reinforced bluffs in urban areas – i.e., downtown St. Paul.</i></p>
<p>Subpart 9. <b>Development on steep slopes</b> A local government may allow structures, impervious surfaces, land alteration, vegetation removal, or construction activities on steep slopes when the following conditions are met:</p> <ol style="list-style-type: none"> <li>A. The applicant can demonstrate that the development can be accomplished without increasing erosion or storm water runoff;</li> <li>B. The soil types and geology are suitable for the proposed development; and</li> <li>C. Vegetation is managed according to the requirements of this part.</li> </ol>	<p><i>Steep slopes are defined as slopes between 12% and 18%.</i></p> <p><i>Vegetation removal standards in this part apply if the steep slopes include native plant communities, tree canopies or significant vegetative stands identified in local governments' adopted plans.</i></p>
<p>Subpart 10. <b>Compliance with other plans and programs.</b> All development must:</p> <ol style="list-style-type: none"> <li>A. be consistent with Minnesota Statutes, chapter <a href="#">103B</a>, and local water management plans completed under chapter <a href="#">8410</a>;</li> <li>B. meet or exceed the wetland protection standards under chapter <a href="#">8420</a>; and</li> <li>C. meet or exceed the floodplain management standards under chapter <a href="#">6120</a>.</li> </ol>	

Working Draft Rules	Commentary/Rationale for Changes
<p><b>PART 6106.0160 STORM WATER MANAGEMENT</b></p> <p>Subpart 1. <b>Purpose.</b> The purpose of this part is to:</p> <ul style="list-style-type: none"> <li>A. protect property from damage resulting from storm water runoff and erosion;</li> <li>B. protect water quality from pollutant loadings of sediment, nutrients, bacteria, and other contaminants; and</li> <li>C. promote infiltration and groundwater recharge.</li> </ul>	<p><i>This part describes measures to protect water quality of the Mississippi River and its tributaries. It recognizes and relies on existing federal, state, and local regulations as key elements in addressing water quality.</i></p>
<p>Subpart 2. <b>Performance standards.</b> The requirements in this part apply to all development that creates new or fully reconstructs impervious surface of more than 10,000 square feet on parcels that abut a public water body, wetland or natural drainageway.</p> <ul style="list-style-type: none"> <li>A. If a local government is covered by an MS4 General Permit from the pollution control agency, then the requirements of the General Permit for post-construction storm water management for new development and redevelopment projects apply.</li> <li>B. If a local government is not covered by an MS4 General Permit, then runoff from the new or fully reconstructed impervious surface must comply with the treatment requirements in the current National Pollution Discharge and Elimination System (NPDES) Program permit for construction storm water.</li> <li>C. Multipurpose trails and sidewalks are exempt from items A and B if there is down gradient vegetation or a filter strip that is at least 5 feet wide.</li> <li>D. Storm water treatment located at the top of slopes must be designed to maintain slope integrity.</li> </ul>	<p><i>Requesting feedback! This provision would reduce the threshold typically required by the MS4 permit for required stormwater treatment from one acre to 10,000 square feet in these highly sensitive areas. Comments on the cost of administering this provision by local governments compared to the water quality benefits are welcome.</i></p>
<p><b>PART 6106.0170 SUBDIVISION AND LAND DEVELOPMENT STANDARDS</b></p>	<p><i>This part describes standards for subdivisions, PUDs and other large-scale developments/redevelopments.</i></p>
<p>Subpart 1. <b>General provisions.</b></p> <ul style="list-style-type: none"> <li>A. Purpose. The purpose of this part is to provide for subdivision, development and redevelopment of land while protecting primary conservation areas and preserving or restoring the ecological functions of those areas.</li> <li>B. Applicability. This part applies to all subdivisions, planned unit developments and redevelopment of land involving (10-20) or more acres, including smaller individual sites that are part of a common plan of development that may be constructed at different times, with the following exceptions: <ul style="list-style-type: none"> <li>(1) minor boundary line corrections;</li> <li>(2) resolutions of encroachments;</li> <li>(3) additions to existing lots of record; and</li> <li>(4) placement of essential services.</li> </ul> </li> <li>C. Site information. Local governments must require detailed site information and provide for pre-project review of all proposed subdivisions, redevelopments, and planned unit developments</li> </ul>	<p><i>Requesting feedback on (B) – should the threshold for these subdivision/land development standards be set at 10 acres, 20 acres, or other size? Inventory of parcels in the MRCCA [TBA] will show numbers of parcels in each category.</i></p>

Working Draft Rules	Commentary/Rationale for Changes
as provided under part 6106.0080, subpart 6.	
<p>Subp. 2. <b>Lot standards for new lots.</b></p> <p>A. Where new lots are created, lot area and width standards for conventional subdivisions and commercial and industrial lots must comply with the requirements of the underlying zoning districts, except as follows:</p> <p>(1) the width of riparian lots in the CA-ROS district must be at least 200 feet, unless alternative design methods are used that provide greater protection of riparian areas.</p> <p>B. Lots must have adequate buildable area to comply with part 6106.0120.</p> <p>C. Local government ordinances must contain incentives for alternative design methods such as conservation design, transfer of development density, or other zoning and site design techniques that achieve better protection of primary conservation areas.</p>	<p><i>The lot width provision applies only to new lots on tracts exceeding the size threshold established under subp. 1. Narrower lots may be allowed if conservation design methods or other techniques are used to protect riparian areas.</i></p>
<p>Subpart 3. <b>Design standards.</b></p> <p>A. Primary conservation areas must be set aside as protected open areas. The amount of area to be protected must be determined as a percentage of tract size as follows:</p> <p>(1) CA-ROS (1/2): at least (30-50%)</p> <p>(2) CA-RN (3): at least (20-30%)</p> <p>(3) CA-RTC (4), CA-UM (6), CA-UC (7): at least (10-20%)</p> <p>(4) CA-SR (5): (10-20%) if the parcel includes native plant communities or provides feasible connections to a regional park or trail system; otherwise, no requirement</p> <p>B. If the primary conservation areas exceed the percentages provided by item A, then the local government may determine which primary conservation areas are to be protected.</p> <p>C. If primary conservation areas exist but do not have natural vegetation, then a vegetation assessment must be completed for the areas to be protected to determine if vegetation restoration is needed. If restoration is needed, it must be restored according to part 6106.0150 subpart 7.</p> <p>D. If the primary conservation areas do not exist or do not meet the percentages specified under item A, local governments must determine whether any portions of the parcel have been identified as potential restoration areas in local plans, according to part 6106.0070 subpart 4. Where such areas have been identified, vegetation must be restored consistent with a restoration plan according to 6106.0150, subpart 7.</p> <p>E. Stormwater treatment areas or other green infrastructure may be used to meet the coverage standards if the plants provide suitable habitat.</p>	<p><i>Feedback requested on percentages of open space: are these ranges reasonable and appropriate?</i></p> <p><i>Item D: new provision for restoration of land areas according to a restoration plan.</i></p>



Working Draft Rules	Commentary/Rationale for Changes
<p>F. The permanent protection of areas that have been set aside for protection or restoration may be achieved through:</p> <ul style="list-style-type: none"> <li>(1) public acquisition by a government entity for conservation purposes</li> <li>(2) a permanent conservation easement, as provided in Minnesota Statutes, chapter 84C;</li> <li>(3) a deed restriction; or</li> <li>(4) other arrangements that achieve an equivalent degree of protection as determined by the local government.</li> </ul> <p>G. Any of the above permanent protection methods must ensure the long-term management of vegetation to meet its ecological functions, prohibit structures, and prohibit land alteration, except as needed to provide public recreational facilities and access to the river.</p> <p>H. Protected open areas must connect neighboring or abutting open space, natural areas, and recreational areas as much as possible to form an interconnected network.</p>	
<p>Supbart 4. <b>Land dedication.</b> Those local governments that require dedication of land or equivalent amounts of cash for parks and open space under Minnesota Statutes 462.358 or 394.25 shall encourage dedication of lands suitable for riverfront access, parks, open space, storm water management or other public facilities within the MRCCA.</p>	<p><i>This section cites existing dedication requirements, but does not add to them.</i></p>

**Table 1: Exemptions from Setbacks, Height Limits, and Other Requirements in parts 6106.120 through 6106.170**

Note that all exemptions in the Shore Impact Zone (SIZ), Bluff Impact Zone (BIZ) and Slope Preservation Zone (SPZ) are also subject to the Vegetation and Land Alteration standards in part 6106.0150 and the Storm Water Management standards in part 6106.0160.

	Setbacks	Height Limits	SIZ	BIZ / SPZ	Standards (the use must comply with standard or referenced parts)
Industrial and utility structures requiring greater height for operational reasons (i.e., elevators, refineries, railroad signaling towers, etc.)	N	E	N	N	Structure design and placement must minimize interference with public river corridor views
Barns, silos, farm structures	N	E	N	N	
Bridges, bridge approach roadways	E	E	E	E	part 6106.0130
Cellular telephone towers	E	E	N	N	part 6106.0100 subp. 7
Chimneys, church spires, flag poles, public monuments, mechanical service stacks, and similar mechanical equipment	N	E	N	N	
Historic sites and districts	E	E	E	E	
<b>Public utilities</b> (essential services, electric power facilities and transmission services)	E	E	E	E	part 6106.0130
Public transportation facilities	E	N	(E)	(E)	part 6106.0130
<b>Public recreational facilities</b>					
• Buildings and parking	N	N	N	N	part 6106.0130
• Roads and driveways	(E)	N	(E)	(E)	part 6106.0130
• Picnic shelters	E	N	N	N	part 6106.0130
• Trails, access paths and viewing areas	E	N	E	E	part 6106.0130
• Water access ramps	E	N	E	(E)	part 6106.0130
<b>River-dependent commercial, industrial and utility uses</b>					
• Buildings and parking that are not part of a "shoreline facility"	N	N*	N	N	part 6106.0110 subp. 6
• Shoreline facilities, i.e., barge and port facilities, marinas, etc.	E	N*	E	E	part 6106.0110 subp. 6
• Private roads and conveyance structures serving river-dependent uses	E	N*	E	E	part 6106.0110 subp. 6
<b>Private residential and commercial water access and use facilities</b>					
• Private roads, driveways and parking areas	N	N	N	N	part 6106.0140
• Access paths	E	N	E	E	part 6106.0140
• Water access ramps	E	N	E	N	part 6106.0140
• Stairways, lifts & landings	E	N	E	E	part 6106.0140
• Shoreline recreational use area	E	N	E	N	part 6106.0140
• Water-oriented accessory	E	N	E	N	part 6106.0140

	Setbacks	Height Limits	SIZ	BIZ / SPZ	Standards (the use must comply with standard or referenced parts)
structures					
<b>Signs</b>					
• Off-premise advertising signs	N	N	N	N	part 6106.0140, subp. 6
• Directional signs for watercraft (private)	E	N	E	N	part 6106.0140, subp. 6
• Public directional, interpretive, educational, safety, or handicapped designation signs	E	N	E	E	Structure design and placement must minimize interference with public river corridor views, except as necessary for public safety
Rock riprap & retaining walls to correct erosion problems	E	N	E	E	Part 6106.0150, subp. 8
Structural reinforcement of bluffs in urban areas in CA-UC district	E	N	N	E	part 6106.0150, subp. 8
Flood control structures	E	N	E	E	
Landscaping, patios and retaining walls in non-riparian residential yards in slope preservation zones	E	N	N	E**	part 6106.0140 subp. 5
Vegetation restoration and soil stabilization projects	E	N	E	E	part 6106.0150, subp. 6C
Expansion of nonconforming structures due to setbacks.	E	N	N	N	part 6106.0080, subp. 3

E = exempt

(E) = may be allowed if no reasonable alternatives exist

N = not exempt - must meet standard in rules (i.e., setback, height limit)

\* Some river-dependent commercial, industrial and utility structures may also be exempt from height limits if greater height is required for operational reasons.

\*\* Exemption applies only to Slope Preservation Zones



