



**March 14, 2025**

TO: The Planning Commission

FROM: The Comprehensive and Neighborhood Planning Committee

SUBJECT: Mississippi River Corridor Critical Area (MRCCA) Zoning Study

**Background:**

In the 1970s, the State of Minnesota created the Mississippi River Corridor Critical Area (MRCCA) to protect the Mississippi River's natural, cultural, and scenic resources through coordinated land planning and regulations within the seven-county metropolitan area. In 2017, new MRCCA rules were adopted by the state, which include specific zoning code provisions, definitions, and regulations that local units of government within the seven-county metropolitan area are required to adopt, along with new overlay zoning districts (*see the detailed timeline appendix for more information, pages 58-59*). This study was initiated in response to those 2017 state Department of Natural Resources (DNR) changes to the MRCCA rules that require cities in seven county metro area to adopt new zoning code provisions. **The recommended amendment language in this draft ordinance is specifically required by the MRCCA Rules and cannot be changed without approval from the DNR.**

In January 2023, the Planning Commission held a public hearing on a draft of amendments that included optional provisions not required by the DNR model ordinance. Following the public hearing on the initial draft amendments, staff reconsidered and revised the proposed amendments to remove any optional provisions. This change is intended to simplify the regulatory framework for redevelopment in Saint Paul to the greatest extent possible to create predictability in our development processes. **Because of the substantial changes to the draft ordinance since the 2023 public hearing, staff is recommending holding a second public hearing at the Planning Commission** (*see the 2023 public hearing appendix for more information, pages 60 -71*).

## **Overview of Draft River Corridor & Floodplain Ordinance:**

Chapter 68 – Floodplain Management and River Corridor Overlay Districts contains most of the draft regulations. All existing Zoning Code Chapter 68 River Corridor Overlay District language, originally adopted in 1982, must be deleted. All existing Chapter 72 – Floodplain Management Overlay District language is proposed to be incorporated into Chapter 68 and renumbered as Chapter 68, Article I, 68.100, Floodplain Management Overlay Districts. The new MRCCA ordinance is proposed as Chapter 68, Article II, 68.200, MRCCA Mississippi River Corridor Critical Area Overlay Districts.

Chapters 60 and 61 include general provisions and definitions required in the MRCCA Rules. Outdated definitions are also removed from Chapter 60 based on changes to the MRCCA ordinance.

The temporary “River Corridor” language in Chapter 66 is now obsolete with the new Critical Area regulations in Chapter 68 and is deleted in the draft ordinance.

## **Adoption Process:**

Following the second Planning Commission public hearing, the Comprehensive and Neighborhood Planning Committee will send final edits to the Planning Commission who will consider committee recommendations and make a recommendation to the Mayor and City Council. The City Council will hold another public hearing before adopting the ordinance. Once adopted and signed by the mayor, the ordinance must be submitted to the DNR for final review and approval for conformance with the MRCCA Rules. The MRCCA Rules provide that the DNR Commissioner may then grant the ordinance final approval or return the ordinance for modification with a written explanation of the need for modification.

## **Recommended Action for the Planning Commission**

**The Comprehensive and Neighborhood Planning Committee recommends that the Planning Commission release the study for public review and set a public hearing for May 2, 2025.**

# **Recommended Amendments**

## **Chapter 60. Zoning Code—General Provisions and Definitions; Zoning Districts and Maps Generally**

### **Sec. 60.106. Essential services.**

Essential services shall be permitted as authorized and regulated by law and other provisions of the Saint Paul Legislative Code, it being the intention hereof to exempt such essential services from the application of this zoning code, except as regulated under section 68.255 within the Mississippi River Corridor Critical Area.

## **ARTICLE II. 60.200. GENERAL DEFINITIONS**

### **Sec. 60.203. B.**

~~*Backwater.* A body of water connected with, but little affected by, the main stream.~~

~~*Barge fleeting area.* An area on the river, on or off channel, where barges are temporarily parked and secured while tows are assembled or broken up.~~

~~*Barge slip.* A basin, usually adjacent to a wharf, jetty, dock or other cargo handling facility, where barges are brought for the purposes of loading or unloading cargo.~~

~~*Bluffline.* A line along the top of certain steep slopes facing the Mississippi River Valley as shown on the River Corridor Zoning Maps. In any particular case, the bluffline shall mean a line drawn along the top of the bluff such that the slope below the line is steeper than eighteen (18) percent and the slope above is eighteen (18) percent or less.~~

### **Sec. 60.204. C.**

~~*Clear cutting.* The removal of an entire stand of trees and shrubs.~~

~~*Conditional use.* A use that due to its potential effects would not be appropriate in a zoning district generally but may be allowed with a conditional use permit, subject to appropriate conditions and limitations as are determined to be necessary to fulfill the intent and purpose of the zoning code, upon a finding that:~~

- ~~(1) The use will comply with all of the special conditions and standards for the use as detailed in this zoning code;~~
- ~~(2) The use conforms with the comprehensive plan; and~~
- ~~(3) The use is compatible with the surrounding area.~~

### **Sec. 60.205. D.**

~~*Development (river corridor district only).* The making of any material change in the use or appearance of any structure or land including, but not limited to: a reconstruction, alteration of the size, or material change in the external appearance, of a structure or the land; a change in the intensity of use of the land; alteration of a shore or bank of a river, stream, lake or pond; a commencement of drilling (except to obtain soil samples); mining or excavation; demolition of a structure; clearing of land as an adjunct to construction; deposit of refuse, solid or liquid waste, or fill on a parcel of land; or the dividing of land into two (2) or more parcels.~~

### **Sec. 60.206. E.**

~~*Essential services.* The erection, construction, alteration or maintenance by public utilities or municipal departments of underground, surface or overhead gas, electric, communication, steam, fuel or water transmission, or distribution, system collection, communication, supply, or disposal systems, including towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants, navigational structures, aviation safety facilities and similar equipment in conjunction therewith, but not including buildings, ~~which are necessary for the~~~~

~~furnishing of adequate service by such utilities or municipal departments for the general health, safety or welfare treatment works as defined in Minnesota Statutes, chapter [115.01](#).~~

**Sec. 60.210. I.**

~~*Interim use.* A temporary use of property that may be allowed with an interim use permit granted by the city council, under the provisions and requirements in Minnesota Statutes section 462.3597 Interim Uses, until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.~~

**Sec. 60.214. M.**

~~*Mississippi River Corridor.* That area of the city within the boundaries of the Mississippi River Corridor critical area, established by Executive Order No. 79-19.~~

**Sec. 60.215. N.**

~~*Normal highwater mark.* A mark delineating the highest water level that has been maintained for a sufficient period of time to leave evidence of the level upon the landscape. It is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. When the normal highwater mark is not evident, setbacks shall be measured from the stream bank of the main channel, adjoining side channels, backwater and sloughs.~~

**Sec. 60.221. T.**

~~*Treeline.* The more or less continuous line formed by the tops of trees in a wooded area when viewed from a particular point. Such line shall be determined during all seasons as if under full foliage.~~

**Sec. 60.223. V.**

~~*Variance.* {See: "zoning conditional uses and variances."} A modification or variation of the literal provisions and requirements of the zoning code where it is determined that strict enforcement would cause practical difficulties due to exceptional circumstances unique to the property. There are two (2) categories of variances:~~

- ~~(1) *Minor variance.* A modification of a provision regulating a one-family detached dwelling and pertaining specifically to construction of a fence, a deck, a swimming pool, an accessory building, or an addition to the main building when the addition is not designed to convert the building for use by more than one (1) family.~~
- ~~(2) *Major variance.* A modification of a provision regulating any development not specifically included in the definition of minor variance. Major variance includes any modification allowing the construction or moving of a one-family detached dwelling or allowing the addition of a second dwelling unit.~~

**Sec. 60.227. Z.**

~~*Zoning conditional uses and variances.*~~

- ~~(1) *Conditional uses.* A conditional use is a use permitted only after review and approval of an application by the planning commission, or the planning or zoning administrator where delegated to do so pursuant to section 61.202(c).~~
- ~~(2) *Variance.* A modification of the literal provisions of the zoning code granted when strict enforcement of the zoning code would cause practical difficulties owing to circumstances unique to the individual property on which the variance is granted. There are two (2) categories of variances:~~
  - ~~a. *Minor variance.* A modification of a provision regulating a one-family detached dwelling and pertaining specifically to construction of a fence, a deck, a swimming pool, an accessory building, or an addition to the main building when the addition is not designed to convert the building for use by more than one (1) family.~~
  - ~~b. *Major variance.* A modification of a provision regulating any development not specifically included in the definition of minor variance. Major variance includes any modification allowing the construction or moving of a one-family detached dwelling or allowing the addition of a second dwelling unit.~~

~~(3) The "conditional use" differs from the "variance" in several respects. A conditional use does not require hardship in order to be allowable. Conditional uses that are found in this code require approval by the planning commission. These land uses could not be conveniently allocated to one (1) zone or another, or the effects of such uses could not be definitely foreseen as of a given time. The general characteristics of these uses include one (1) or more of the following:~~

- ~~a. They require large areas;~~
- ~~b. They are infrequent;~~
- ~~c. They sometimes create an unusual amount of traffic;~~
- ~~d. They are sometimes obnoxious or hazardous;~~
- ~~e. They are required for public safety and convenience.~~

## **Chapter 61. Zoning Code—Administration and Enforcement**

### **Sec. 61.901. Violations.**

Any person, firm or corporation violating any of the provisions of this code, including failure to comply with conditions established in connection with granting conditional use permits, variances, or other zoning approval, shall be guilty of a misdemeanor. In addition, the owner or lessee of any building, structure or premises or part thereof, where any condition in violation of this code shall exist or be created, and who has assisted knowingly in the commission of such violation, shall be guilty of a separate offense, and upon conviction thereof shall be guilty of a misdemeanor.

## **Chapter 66. Zoning Code—Zoning District Uses, Density and Dimensional Standards**

### **ARTICLE III. 68.310. TRADITIONAL NEIGHBORHOOD DISTRICTS**

#### **Division 3. 66.330. Traditional Neighborhood District Density and Dimensional Standards**

### **Sec. 66.331. Density and dimensional standards table.**

- ~~(e) Except in the river corridor overlay district,~~ Height of structures may exceed the maximum if set back from side and rear setback lines a distance equal to additional height. Structures shall be no more than twenty-five (25) feet high along side and rear property lines abutting RL-RT2 residential districts; structures may exceed this twenty-five (25) foot height limit if stepped back from side and rear property lines a distance equal to the additional height.
- ~~(g) Except in the river corridor overlay district and within~~ light rail station areas between Lexington Parkway and Marion Street, a maximum height of ninety (90) feet may be permitted with a conditional use permit. Structures shall be stepped back one (1) foot from all setback lines for every two and one-half (2½) feet of height over seventy-five (75) feet. A shadow study may be required for a conditional use permit application to help determine the impact of the additional height.

## **Chapter 68. Zoning Code—Floodplain Management and River Corridor Overlay Districts**

### **ARTICLE I. 68.100. GENERAL PROVISIONS**

### **~~Sec. 68.101. Intent and purpose.~~**

~~(a) The River Corridor Overlay District and its subclassifications, RC1, RC2, RC3, RC4, are map overlay districts, designed to provide comprehensive floodplain and river bluff management for the city in accordance with the policies of Minnesota Statutes (Chapters 103 and 116G), Minnesota Regulations (MEQC 54) and Governor's Executive Order No. 79-19.~~

~~(b) It is the purpose of this chapter:~~

- ~~(1) To protect and preserve the Mississippi River Corridor as a unique and valuable resource for the benefit of the health, safety and welfare of the citizens of the city and the state;~~
- ~~(2) To prevent and mitigate irreversible damage to the Mississippi River Corridor;~~
- ~~(3) To protect and preserve the Mississippi River Corridor as an essential element in the federal, state, regional and local recreation, transportation, sewer and water systems;~~
- ~~(4) To maintain the river corridor's value and utility for residential, commercial, industrial and public purposes;~~
- ~~(5) To protect and preserve the Saint Paul Mississippi River Corridor's biological and ecological functions;~~
- ~~(6) To preserve and enhance the Saint Paul Mississippi River Corridor's aesthetic, cultural, scientific and historic functions;~~
- ~~(7) To guide development of the floodplain so as to minimize loss of life, threats to health, and private and public economic loss caused by flooding; and~~
- ~~(8) To guide floodplain development in order to lessen the adverse effects of floods, but not to reduce or eliminate flooding.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

#### **~~Sec. 68.102. Establishment.~~**

~~(a) This chapter shall apply to all lands within the city shown on the river corridor overlay zoning district maps as being located within the boundaries of the RC1 River Corridor Floodway District, RC2 River Corridor Flood Fringe District, RC3 River Corridor Urban Open Space District and RC4 River Corridor Urban Diversified District.~~

~~(b) The river corridor overlay zoning district maps accompanying this river corridor code, together with all matters attached thereto, are hereby adopted by reference and made a part of this code as if the matters and information set forth therein were fully described herein. The attached material shall include:~~

- ~~(1) The flood insurance study for the city prepared by the Federal Emergency Management Agency (FEMA), dated April 2, 2003; and~~
- ~~(2) The Flood Insurance Rate Map, dated April 2, 2003.~~

~~(c) The RC1 Floodway District shall include those areas designated as floodway and Zone AE without a floodway designation on the Flood Insurance Rate Map. The RC2 Flood Fringe District shall include those areas designated as Zone AE and outside of the floodway on the Flood Insurance Rate Map.~~

~~(d) Within these districts all uses not allowed as permitted uses or as permitted uses subject to special conditions shall be and are hereby prohibited. Legal nonconforming structures or uses existing on the effective date of this chapter or amendment thereto will be permitted to continue as provided in section 62.102 and section 65.900.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

#### **~~Sec. 68.103. Compliance.~~**

~~(a) *Permit required.* A permit issued by the zoning administrator in conformance with the provisions of this chapter shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure or land; prior to the change or extension of a nonconforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.~~

- ~~(b) *Compliance of uses or occupations required.* No use or occupation of any lands, for any purpose whatsoever, shall hereafter be permitted within the River Corridor District without full compliance with the terms of this chapter and other applicable laws.~~
- ~~(c) *Compliance of structures, fill, etc.* No structure, fill, material or object shall hereafter be placed on or removed from lands within the River Corridor District, and no structures or other object shall hereafter be located, used, constructed, extended, converted or altered within the district without full compliance with this chapter and other applicable laws.~~
- ~~(d) *Submission of site plan.* A site plan shall be submitted to and approved by the planning commission in accordance with section 62.108 before a permit is issued for any development on property wholly or partially located within the River Corridor District. For any development in the RC1 and RC2 districts, the site plan shall include the regulatory flood protection elevation; the proposed elevation of fill; the proposed elevation of the lowest floor of new structures, altered structures and additions to existing structures; and the proposed elevation to which structures will be floodproofed.~~
- ~~(e) *Review of building permits for adequate floodproofing.* All building permits for structures proposed to be floodproofed in the RC1 and RC2 districts shall be reviewed to determine whether the structures will be adequately floodproofed.~~
- ~~(f) *Certification.* Before a certificate of occupancy is issued for any development in the RC1 and RC2 districts, the applicant shall submit to the zoning administrator certification by a registered professional engineer, registered architect, registered landscape architect or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this chapter. Finished fill and building elevations shall be verified by ground surveys. Floodproofing measures shall be certified by a registered professional engineer or registered architect.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

## ~~ARTICLE II. 68.200. RIVER CORRIDOR OVERLAY DISTRICTS~~

### ~~Division 1. 68.210. RC1 River Corridor Floodway Overlay District~~

#### ~~Sec. 68.211. Permitted uses.~~

- ~~(a) The following uses shall be permitted within the RC1 Floodway District to the extent that they are not prohibited by any other provision of the zoning code or other ordinances. The uses are subject to the conditions of the underlying zoning district, to the standards for permitted uses in the Floodway District, section 68.212 and to the River Corridor Standards and Criteria, section 68.212.~~
  - ~~(1) Nonstructural industrial-commercial uses, such as open loading areas, parking areas, interior service roads, airport service roads and airport runways.~~
  - ~~(2) Public and private recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic and camp grounds, boat launching and beaching areas or ramps, swimming areas, parks, playgrounds, wildlife and nature preserves, game farms, fish hatcheries, and hiking, bicycling, horseback or recreational vehicle areas and trails, and other open space uses.~~
  - ~~(3) Accessory residential uses such as lawns, gardens, parking areas and play areas.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

#### ~~Sec. 68.212. Standards for permitted uses in the RC1 Floodway District.~~

- ~~(a) The use shall not obstruct flood flows to the point that it increases the one (1) percent chance flood elevation and shall not involve structures, fill, obstruction, excavations or storage of materials or equipment.~~
- ~~(b) The use shall have a low flood damage potential.~~
- ~~(c) The use shall not adversely affect the hydraulic capacity of the channel or floodway or any tributary to the main stream or of any ditch or other drainage facility or system.~~

~~(d) No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, Section 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~Sec. 68.213. Conditional uses.~~**

The following uses shall be permitted within the RC1 Floodway District to the extent they are not prohibited by any other provision of the zoning code or other ordinances. The uses shall be permitted only upon the application and issuance of a conditional use permit by the planning commission. The uses are subject to the conditions of the underlying zoning district, to the standards for conditional uses in the Floodway District, section 68.214 below, and to the River Corridor Standards and Criteria, section 68.400 below.

- ~~(a) Railroads, highways, streets, alleys, access roads, bridges, sewers, utilities, utility transmission lines and pipe lines.~~
- ~~(b) Marinas, boat rentals, docks, piers, mooring anchors, wharves, water control structures and navigation facilities.~~
- ~~(c) Storage yards or areas for equipment, machinery or bulk materials.~~
- ~~(d) Structures accessory to permitted uses, section 68.212, or conditional uses of this section.~~
- ~~(e) Placement of fill.~~
- ~~(f) Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~Sec. 68.214. Standards for conditional uses in the RC1 Floodway District.~~**

- ~~(a) No structure (temporary or permanent), fill deposit (including fill for roads and levees), obstruction, storage of materials or equipment, or other use may be allowed which will cause an increase in the height of the regional flood or cause an increase in flood damages in the reach or reaches affected.~~
- ~~(b) Fill shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.~~
- ~~(c) Accessory structures shall not be designed for human habitation.~~
- ~~(d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters.~~
  - ~~(1) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and~~
  - ~~(2) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.~~
- ~~(e) All accessory structures must be elevated on fill so that the lowest floor, including basement floor, is at or above the regulatory flood protection elevation. The finished fill elevation for accessory structures shall be no lower than one (1) foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.~~
- ~~(f) As an alternative to elevation on fill, accessory structures may be structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classification in the state building code or floodproofed to the FP-3 or FP-4 floodproofing classification in the state building code, provided the accessory structure constitutes a minimal investment, does not exceed five hundred (500) square feet in size and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All floodproofed accessory structures must meet the following additional standards, as appropriate:~~
  - ~~(1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls; and~~



- ~~(2) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed.~~
- ~~(g) Storage of materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the planning commission.~~
- ~~(h) Structural works for flood control that will change the course, current or cross-section of protected wetlands, or public waters shall be subject to the provisions of Minnesota Statutes, Chapter 103.G. Community wide structural works for flood control intended to remove areas from the regulatory floodplain shall not be allowed in the floodway.~~
- ~~(i) A levee, dike or floodwall constructed in the floodway shall not cause an increase to the regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.~~
- ~~(j) No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, Section 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided.~~
- ~~(C.F. No. 03-241, § 2, 3-26-03)~~

~~Division 2. 68.220. RC2 River Corridor Flood Fringe Overlay District~~

~~**Sec. 68.221. Permitted uses.**~~

~~Permitted uses in the RC2 Flood Fringe Overlay District shall be those uses of land or structures listed as permitted uses in the underlying zoning district, except that mining, extraction operations, the disposal of waste materials and landfills shall not be permitted. The uses are subject to the conditions of the underlying zoning district, to the standards for permitted uses in the Flood Fringe District, section 68.222 below, to the Standards for All Flood Fringe Uses, section 68.225 below, and River Corridor Standards and Criteria, section 68.400 below.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

~~**Sec. 68.222. Standards for permitted uses in the RC2 Flood Fringe District.**~~

- ~~(a) All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be not lower than one foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least 15 feet beyond the outside limits of the structure erected thereon.~~
- ~~(b) As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet for the outside dimension at ground level may be internally floodproofed in accordance with section 68.214(f).~~
- ~~(c) The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

~~**Sec. 68.223. Conditional uses.**~~

~~The following uses shall be permitted within the RC2 Flood Fringe District to the extent they are not prohibited by any other provision of the zoning code or other ordinances, except that mining, extraction operations, the disposal of waste materials and landfills shall not be permitted. The use shall be permitted only upon the application and issuance of a conditional use permit by the planning commission. The uses are subject to the conditions of the underlying zoning district, to the standards for conditional uses in the Flood Fringe District, section 68.224 below, to the Standards for All Flood Fringe Uses, section 68.224 below, and to the River Corridor Standards and Criteria, section 68.400.~~

- ~~(a) Any structure that is not elevated on fill or floodproofed in accordance with section 68.222(a) or (b) above.~~
- ~~(b) Any use of land that does not comply with the standards in section 68.222(c).~~
- ~~(c) Sewage treatment plants.~~

**~~Sec. 68.224. Standards for conditional uses in the RC2 Flood Fringe District.~~**

- ~~(a) Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls or above grade, enclosed areas such as crawl spaces or tuck-under garages. The base or floor of an enclosed area shall be considered above grade and not a structure's basement or lowest floor if: 1) the enclosed area is above grade on at least one (1) side of the structure; 2) is designed to internally flood and is constructed with flood resistant materials; and 3) is used solely for parking of vehicles, building access or storage. The above noted alternative elevation methods are subject to the following additional standards:~~
- ~~(1) *Design and certification.* The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent floodwater from entering or accumulating within these components during times of flooding.~~
- ~~(2) *Specific standards for above grade, enclosed areas.* Above grade, fully enclosed areas such as crawl spaces or tuck-under garages must be designed to internally flood and the design plans must stipulate:~~
- ~~a. The minimum area of openings in the walls where internal flooding is to be used as a floodproofing technique. When openings are placed in a structure's walls to provide for entry of floodwaters to equalize pressures, the bottom of all openings shall be no higher than one (1) foot above grade. There shall be a minimum of two openings and the openings shall be placed on at least two walls of the structure. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.~~
- ~~b. That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.~~
- ~~(b) Basements, as defined by section 60.203.B for this river corridor code, shall be subject to the following:~~
- ~~(1) Residential basement construction shall not be allowed below the regulatory flood protection elevation except as authorized in subsection (f) of this section.~~
- ~~(2) Nonresidential basements may be allowed below the regulatory flood protection elevation, provided the basement is protected in accordance with subsection (c) or (f) of this section.~~
- ~~(c) All areas of nonresidential structures including basements to be placed below the regulatory flood protection elevation shall be structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classifications in the State Building Code. This shall require making the structure watertight, with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures floodproofed to the FP-3 or FP-4 classification shall not be permitted.~~
- ~~(d) The storage or processing of materials that are, in times of flooding, flammable, explosive or potentially injurious to human, animal or plant life is prohibited. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the planning commission, or if elevated above the regulatory flood protection elevation by alternative methods which meet the requirements of subsection (a) above.~~
- ~~(e) No new construction, addition or modification to existing sewage treatment plants shall be permitted within the floodplain unless emergency plans and procedures for action to be taken in the event of flooding are prepared, filed with and approved by the Minnesota Pollution Control Agency. The emergency plans and procedures must provide for measures to prevent introduction of any pollutant or toxic materials into the floodwaters.~~

~~(f) When the Federal Emergency Management Agency has issued a conditional letter of map revision fill (CLOMR-F) for vacant parcels of land elevated by fill to the one (1) percent chance flood elevation, the area elevated by fill remains subject to the provisions of this chapter. A structure may be placed on the area elevated by fill with the lowest floor below the regulatory flood protection elevation provided the structure meets the following provisions:~~

~~(1) No floor level or portion of a structure that is below the regulatory flood protection elevation shall be used as habitable space or for storage of any property, materials, or equipment that might constitute a safety hazard when contacted by floodwaters. Habitable space shall be defined as any space in a structure used for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage rooms, laundry or utility space, and similar areas are not considered habitable space.~~

~~(2) For residential and nonresidential structures, the basement floor may be placed below the regulatory flood protection elevation subject to the following standards:~~

~~a. The top of the immediate floor above any basement area shall be placed at or above the regulatory flood protection elevation.~~

~~b. Any area of the structure placed below the regulatory flood protection elevation shall meet the "reasonably safe from flooding" standards in the Federal Emergency Management Agency (FEMA) publication entitled "Ensuring that Structures Build on Fill In or Near Special Flood Hazard Areas Are Reasonably Safe From Flooding," Technical Bulletin 10-01, a copy of which is hereby adopted by reference and made part of this chapter. In accordance with the provisions of this chapter, and specifically section 68.504(g), the applicant shall submit documentation that the structure is designed and built in accordance with either the "Simplified Approach" or "Engineered Basement Option" found in FEMA Technical Bulletin 10-01.~~

~~c. If the ground surrounding the lowest adjacent grade to the structure is not at or above the regulatory flood protection elevation, then any portion of the structure that is below the regulatory flood protection elevation must be floodproofed consistent with any of the FP-1 through FP-4 floodproofing classifications found in the State Building Code.~~

~~(C.F. No. 03-241, § 2, 3-26-03; C.F. No. 03-1028, § 1, 4-7-04)~~

#### **~~Sec. 68.225. Standards for all RC2 Flood Fringe Uses.~~**

~~(a) Vehicular access. All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the regulatory flood protection elevation. If a modification to this requirement is granted, the planning commission must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.~~

~~(b) Commercial uses. Accessory land uses, such as yards, railroad tracks and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth greater than two (2) feet or be subject to flood velocities greater than four (4) feet per second upon occurrence of the regional flood.~~

~~(c) Manufacturing and industrial uses. Measures shall be taken to minimize interference with normal plant operations. Certain accessory land uses such as yards and parking lots may be at lower elevation subject to requirements set out in subdivision (b) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in floodplain areas.~~

~~(d) Standards pertaining to fill. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the one (1) percent chance flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multistructure or multilot developments. These~~

~~standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.~~

- ~~(e) *Developments not to affect hydraulic capacities.* Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the official zoning map.~~
- ~~(f) *Manufactured homes.* Manufactured homes must meet all the density, setback, flood protection and other requirements for residential use of the zoning code and all requirements of the housing and building code. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.~~
- ~~(g) *Travel trailers.* Travel trailers shall not be used for living quarters, and are exempt from the provisions of this ordinance if they have current licenses required for highway use, are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and trailer parks, and the travel trailer/travel vehicle has no permanent structural type additions attached to it. Travel trailers and travel vehicles lose this exemption when development occurs on the parcel exceeding \$500 dollars for a structural addition to the travel trailer/travel vehicle or and accessory structure such as a garage or storage building. The travel trailer/travel vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and use of land restrictions specified in this ordinance. No new commercial travel trailer or travel vehicle parks shall be allowed in the RC1 floodway or RC2 flood fringe overlay districts.~~
- ~~(h) *Pollution of waters.* No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, Section 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided.~~

~~(C.F. No. 03-241, § 2, 3-26-03; C.F. No. 03-1028, § 1, 4-7-04)~~

### ~~Division 3. 68.230. RC3 River Corridor Urban Open Overlay District~~

#### ~~**Sec. 68.231. Intent.**~~

~~It is intended that lands and waters within this district shall be managed to conserve and protect the existing and potential recreational, scenic, natural and historic resources. Open space provided in the open river corridor is for public use and the protection of unique natural and scenic resources. The existing transportation role of the river in this district will be protected.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

#### ~~**Sec. 68.232. Permitted uses.**~~

~~In the RC3 River Corridor Urban Open Overlay District, use of the land, location and erection of new buildings or structures, and the alteration, enlargement and moving of existing buildings or structures from other locations or districts shall conform to those specified uses and standards of the corresponding underlying district as established in section 60.303 to the extent that they are not prohibited by any other provision of the zoning code. In addition, permitted uses shall be subject to the following applicable standards and those in section 68.400 et seq.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

#### ~~**Sec. 68.233. Standards for permitted uses in the RC3 Urban Open District.**~~

- ~~(a) Development shall be limited to forty (40) feet in height.~~
- ~~(b) The development of new and expansion of existing commercial and industrial uses shall only be on lands which are on the landward side of blufflines.~~
- ~~(c) Mining and extraction operations shall not be permitted.~~

~~(d) No use shall be permitted which is likely to cause pollution of water, as defined in Minnesota Statutes, Section 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~Sec. 68.234. Conditional uses.~~**

~~(a) Conditional uses are those specified by the corresponding underlying district as established in section 60.303 to the extent that they are not prohibited by any other provision of the zoning code. They are subject to standards specified in the corresponding underlying district section and to those specified in sections 68.233 and 68.400 et seq.~~

~~(b) Such uses will be permitted only upon application and issuance of a conditional use permit by the planning commission.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~Division 4. 68.240. RC4 River Corridor Urban Diversified Overlay District~~**

**~~Sec. 68.241. Intent.~~**

~~It is intended that the lands and waters in this district be used and developed to maintain the present diversity of commercial, industrial, residential and public uses of the lands, including the existing transportation use of the river; to protect historical sites and areas, natural scenic and environmental resources; and to expand public access to and enjoyment of the river. New commercial, industrial, residential and other uses are permitted if they are compatible with these goals.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~Sec. 68.242. Permitted uses.~~**

~~In the RC4 River Corridor Urban Diversified overlay district, use of the land, location and erection of new buildings or structures and the alteration, enlargement and moving of existing buildings or structures from other locations or districts shall conform to those specified uses and standards of the corresponding underlying district as established in section 60.303 to the extent that they are not prohibited by any other provision of the zoning code. In addition, permitted uses shall be subject to the standards specified in section 68.400 et seq.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~Sec. 68.243. Standards for permitted uses in the RC4 Urban Diversified District.~~**

~~No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, Section 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~Sec. 68.244. Conditional uses.~~**

~~(a) Conditional uses are those specified by the corresponding underlying district as established in section 60.303 to the extent that they are not prohibited by any other provision of the zoning code. They are subject to standards specified in the corresponding underlying district section and to those specified in section 68.400 et seq.~~

~~(b) Such uses will be permitted only upon application and issuance of a conditional use permit by the planning commission.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~ARTICLE III. 68.300. PUBLIC UTILITIES, RAILROADS, ROADS AND BRIDGES~~**

**~~Sec. 68.301. Public utilities, railroads, roads and bridges.~~**

- ~~(a) *Public utilities.* All public utilities and facilities such as gas, electrical, sewer and water supply systems to be located in the floodplain shall be floodproofed in accordance with the state building code or elevated to above the regulatory flood protection elevation.~~
- ~~(b) *Public transportation facilities.* Railroad tracks, roads and bridges to be located within the floodplain shall comply with sections 68.210 and 68.220 of this chapter. Elevation to the regulatory flood protection elevation may be required by the planning commission where the failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.~~
- ~~(c) *On-site sewage treatment and water supply systems.* Where public utilities are not provided:~~
- ~~(1) On-site water supply systems must be designed to minimize or eliminate infiltration of floodwaters into the systems; and~~
  - ~~(2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters and they shall not be subject to impairment or contamination during times of flooding.~~

~~Any sewage treatment system designed in accordance with the state's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this section.~~

~~{C.F. No. 03-241, § 2, 3-26-03}~~

#### ~~ARTICLE IV. 68.400. RIVER CORRIDOR STANDARDS AND CRITERIA~~

##### ~~**Sec. 68.401. Objectives.**~~

~~The objective of standards and criteria is to maintain the aesthetic integrity and natural environment of the river corridor in conformance to the St. Paul Mississippi River Corridor Plan by reducing the effects of poorly planned shoreline and bluffline development; providing sufficient setback for sanitary facilities; preventing pollution of surface and groundwater; minimizing flood damage; preventing soil erosion; and implementing metropolitan plans, policies and standards.~~

~~{C.F. No. 03-241, § 2, 3-26-03}~~

##### ~~**Sec. 68.402. Protection of shorelands, floodplains, wetlands and bluffs.**~~

- ~~(a) *Generally.* Development shall be conducted so that the smallest practical area of land be developed at any one time and that each area be subjected to as little erosion or flood damage as possible during and after development.~~
- ~~(b) *Placement of structures.*~~
- ~~(1) The following minimum setbacks for each class of public waters as described in Minnesota Regulations NR-82 shall apply to all structures except those specified as exceptions in subsection (7) below.~~
    - ~~a. For natural environment waters at least two hundred (200) feet from the normal high water mark for lots not served by public sewer and at least one hundred fifty (150) feet from the ordinary high water mark for lots served by public sewers.~~
    - ~~b. For general development waters at least seventy-five (75) feet from the normal high water mark for lots not served by public sewer and at least fifty (50) feet from the ordinary high water mark for lots served by public sewer.~~
  - ~~(2) No commercial or industrial development shall be permitted on slopes greater than twelve (12) percent.~~
  - ~~(3) No residential development shall be permitted on slopes greater than eighteen (18) percent.~~
  - ~~(4) Bluff development shall take place at least forty (40) feet landward of all blufflines.~~
  - ~~(5) Transportation, utility and other transmission service facilities and corridors shall avoid:~~

- a. ~~Steep slopes;~~
  - b. ~~Intrusions into or over streams, valleys and open exposures of water;~~
  - c. ~~Intrusions into ridge crests and high points;~~
  - d. ~~Creating tunnel vistas;~~
  - e. ~~Wetlands;~~
  - f. ~~Forests by running along fringe rather than through them. If necessary, to route through forests, utilize open areas in order to minimize cutting;~~
  - g. ~~Soils susceptible to erosion, which would create sedimentation and pollution problems;~~
  - h. ~~Areas of unstable soils which would be subject to extensive slippages;~~
  - i. ~~Areas with high water tables; and~~
  - j. ~~Open space recreation areas.~~
- (6) ~~At river crossing points, public facilities, crossing corridors and other rights of way shall be consolidated, so that the smallest area possible is devoted to crossing.~~
- (7) ~~Exceptions:~~
- a. ~~Location of piers and docks shall be controlled by applicable state and local regulations.~~
  - b. ~~Commercial, industrial or permitted open space uses requiring location on public waters may be closer to such waters than the setbacks specified in the standard set out in subsection (3) above.~~
- (c) ~~Grading and filling.~~
- (1) ~~A minimum amount of filling shall be allowed when necessary, but in no case shall the following restrictions on filling be exceeded. Furthermore, fill opportunities shall be fairly apportioned to riparian landowners. The developer shall evaluate ownership patterns, configuration and the bottom profile of each wetland basin before fill opportunities are apportioned.~~
  - (2) ~~Grading and filling in shoreland areas (when allowable) or any other substantial alteration of the natural topography shall be controlled in accordance with the following criteria:~~
    - a. ~~The smallest amount of bare ground shall be exposed for as short a time as feasible.~~
    - b. ~~Temporary ground cover shall be used.~~
    - c. ~~Methods to prevent erosion and trap sediment shall be employed.~~
    - d. ~~Fill shall be stabilized.~~
  - (3) ~~Only fill free of chemical pollutants and organic wastes shall be used.~~
  - (4) ~~Total filling shall not cause the total natural flood storage capacity of the wetland to fall below the natural volume of runoff from the wetland and watershed generated by a 100 year storm, as defined by the National Weather Service.~~
  - (5) ~~Solid waste disposal and landfill shall not be permitted in the River Corridor District.~~
  - (6) ~~Development shall fit existing topography and vegetation with a minimum of clearing and grading.~~
  - (7) ~~No rehabilitation slopes shall be steeper than eighteen (18) percent slope.~~
  - (8) ~~Dredging of a shoreland or wetland shall be allowed only when it will not have adverse effect upon the wetland. Dredging when allowed shall be limited as follows:~~
    - a. ~~It shall be located in the areas of minimum vegetation.~~
    - b. ~~It shall not significantly change the water flow characteristics.~~

~~c. The size of the dredged area shall be limited to the absolute minimum.~~

~~d. Deposit of dredged material shall not result in a change in the current flow, or in destruction of vegetation or fish spawning areas, or in water pollution.~~

~~{C.F. No. 03-241, § 2, 3-26-03}~~

**~~Sec. 68.403. Protection of wildlife and vegetation.~~**

~~Development shall be conducted so as to avoid intrusion into animal and plant habitats.~~

~~(a) No alteration of the natural environment or removal of vegetation shall be permitted when such alteration or removal would diminish the ability of dependent wildlife to survive in the River Corridor.~~

~~(b) No wetland or bluffline vegetation shall be removed or altered except that required for the placement of structures.~~

~~(c) Clear cutting shall be prohibited except as necessary for placing approved public roads, utilities, structures and parking areas.~~

~~(d) Natural vegetation shall be restored after any construction project.~~

~~(e) Watering areas necessary for plant survival shall be maintained or provided.~~

~~(f) Development shall not cause extreme fluctuations of water levels or unnatural changes in water temperature, water quality, water currents or movements which may have an adverse impact on endangered or unique species of birds or wildlife.~~

~~{C.F. No. 03-241, § 2, 3-26-03}~~

**~~Sec. 68.404. Protection of water quality.~~**

~~(a) Generally. Development shall occur so that surface and subsurface water is not adversely affected by contaminants. Water quality should meet or exceed state standards.~~

~~(b) Contamination.~~

~~(1) Development shall not be permitted on wet soils, very shallow soils, soils with high shrink-swell or frost action potential unless it is shown that appropriate construction techniques capable of overcoming the restrictive condition will be utilized.~~

~~(2) Septic tanks and soil absorption systems shall not be permitted where public sewer systems are available. In areas where public sewers are not available, system shall be set back from the normal high water mark in accordance with the class of public waters as prescribed in Minnesota Regulations NR-82:~~

~~a. On natural environment waters, at least one hundred fifty (150) feet.~~

~~b. On general development waters, at least fifty (50) feet.~~

~~(3) Private wells shall be placed in areas not subject to flooding and up slope from any source of contamination. Wells already existing in areas subject to flooding shall be floodproofed in accordance with accepted engineering standards as defined in the Uniform State Building Code.~~

~~(4) Commercial or industrial land uses requiring the storage or production of materials or wastes that may create a pollution hazard for groundwater or surface water shall be prohibited unless the quality of both the groundwater and surface waters can conform to all applicable state and federal standards, criteria, rules and regulations.~~

~~(c) Runoff.~~

~~(1) The phases of development shall be planned so that only areas which are actively being developed are exposed. Other areas shall have cover of vegetation or mulch.~~



- ~~(2) Natural vegetation in shoreland and bluff areas shall be preserved to retard surface runoff and soil erosion and to utilize excess nutrients.~~
- ~~(3) Sediment shall be retained within the development site area either by filtering runoff as it flows through the development area or by detaining sediment-laden runoff in a sediment basin so that the soil particles settle out.~~
- ~~(4) Water released to a drainage system shall be directed in such a manner as to travel over natural areas rather than across established surfaces.~~
- ~~(5) Stormwater runoff may be directed to wetlands only when free of silt, debris and chemical pollutants and only at rates which will not disturb vegetation or increase turbidity.~~
- ~~(6) Development which takes place near slopes greater than twelve (12) percent shall not result in increased runoff onto those slopes sufficient to damage vegetation or structures thereon.~~
- ~~(7) Plans shall be submitted to the planning commission for any development placed landward from dikes, floodwalls or levees which is below the flood protection elevation of the dikes, floodwalls or levees. The plans must provide measures to ensure that floodwaters do not back up onto the development from stormwater drainage systems.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

#### ~~ARTICLE V. 68.500. CONDITIONAL USE PERMITS~~

##### ~~Sec. 68.501. Application.~~

~~Applications for conditional use permits shall be submitted and reviewed according to the provisions in section 64.300. The planning administrator shall determine whether to require any or all of the following six (6) items of information to be supplied by the applicant as a prerequisite to the consideration of the application:~~

- ~~(a) Plans in triplicate drawn to scale, prepared by and signed by a registered engineer, architect and/or land surveyor as applicable, showing the nature, location, dimensions and elevation of the land; existing surface contours, structures, streets and utilities; proposed surface contours, structures, fill and the location and elevations of proposed streets, water supply, sanitary facilities and other utilities showing the relationship of the above to the channel and to the designated River Corridor District limits.~~
- ~~(b) Specifications for building construction and materials, floodproofing, filling, dredging, grading, channel improvements, storage of materials, water supply and sanitary facilities.~~
- ~~(c) Typical valley cross-sections of areas to be occupied by the proposed development showing the channel of the stream, elevation of land areas, high water information, vegetation and soil types.~~
- ~~(d) Plan (surface view) of the proposed development showing the proposed use or uses of the area and structures and providing location, relationships and spatial arrangements of those uses and related structures to pertinent elevations, fill, storage location, utilities and other features.~~
- ~~(e) Profile showing the slope of the bottom of the channel and flow lines of the stream.~~
- ~~(f) A written evaluation by a registered engineer or other expert person or agency of the proposed project in relationship to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of plans for flood protection and other technical matters.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

##### ~~Sec. 68.502. Other permits.~~

~~Applicable conditional use permits for lands in the designated River Corridor District must be obtained prior to application for all other permits required by law and ordinance. Conditional use permits for River Corridor areas are supplementary to other zoning and building permits.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~Sec. 68.503. Factors considered.~~**

~~In addition to the general standards and requirements in section 61.500 and all other relevant factors specified in other sections of this chapter, in reviewing conditional use permit applications, the planning commission or planning administrator shall consider the following:~~

- ~~(a) The relationship of the proposed use to the comprehensive plan and floodplain management program for the city.~~
- ~~(b) The importance of the services provided by the proposed facility to the community.~~
- ~~(c) The ability of the existing topography, soils and geology to support and accommodate the proposed use.~~
- ~~(d) The compatibility of the proposed use with existing characteristics of biologic and other natural communities.~~
- ~~(e) The proposed water supply and sanitation systems and the ability of those systems to prevent disease, contamination and unsanitary conditions.~~
- ~~(f) The requirements of the facility for a river dependent location, if applicable.~~
- ~~(g) The safety of access to the property for ordinary vehicles.~~
- ~~(h) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.~~
- ~~(i) The dangers to life and property due to increased flood heights or velocities caused by encroachments.~~
- ~~(j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.~~
- ~~(k) The danger that materials may be swept onto other lands or downstream to the injury of others.~~
- ~~(l) The availability of alternative locations or configurations for the proposed use.~~
- ~~(m) Such other factors as are relevant to the purposes of this chapter.~~

~~{C.F. No. 03-241, § 2, 3-26-03}~~

**~~Sec. 68.504. Conditions imposed.~~**

~~The planning commission or planning administrator may attach such conditions to the granting of conditional use permits as each deems necessary to fulfill the purposes of this chapter. Such conditions may include, but are not limited to, the following:~~

- ~~(a) Modifications of design, site planning or site treatment.~~
- ~~(b) Requirements for implementation of erosion and sediment control, vegetation management, wildlife management and other protective measures.~~
- ~~(c) Modifications of waste disposal and water supply facilities or operations.~~
- ~~(d) Limitations on period of use and operation, a flood warning system and an evacuation plan.~~
- ~~(e) Imposition of operational controls, sureties and deed restrictions.~~
- ~~(f) Requirements for construction of channel improvements, modifications, dredging, dikes, levees and other protective measures.~~
- ~~(g) Floodproofing measures shall be designed consistent with state established floodproofing standards and with the flood protection elevation for the particular area including flood velocities, duration and rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The commission shall require that the applicant submit a plan or documents certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood elevation and associated flood factors for the particular area. The floodproofing measures that may be required include, but are not limited to, the following:~~

- ~~(1) Anchorage to resist flotation and lateral movement.~~
  - ~~(2) Installation of watertight doors, bulkheads and shutters, or similar methods of construction.~~
  - ~~(3) Reinforcement of walls to resist water pressure.~~
  - ~~(4) Use of paints, membranes or mortars to reduce seepage of water through walls.~~
  - ~~(5) Addition of mass or weight to structures to resist flotation.~~
  - ~~(6) Installation of pumps to lower water levels in structures.~~
  - ~~(7) Construction of water supply and waste treatment systems to prevent the entrance of floodwaters.~~
  - ~~(8) Installation of pumping facilities or comparable practice for subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures.~~
  - ~~(9) Construction to resist rupture or collapse caused by water pressure or floating debris.~~
  - ~~(10) Installation of valves or controls on sanitary and storm drainage which will permit the drains to be closed to prevent backup of sewage and stormwaters into the buildings or structures. Gravity draining of basements may be eliminated by mechanical devices.~~
  - ~~(11) Location of all electrical equipment, circuits and installed electrical appliances such that they are not subject to the regional flood.~~
  - ~~(12) Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids or other toxic materials, which could be hazardous to public health, safety and welfare, above the flood protection elevation or provision of adequate floodproofing to prevent flotation of or damage to storage containers which could result in the escape of toxic materials into floodwaters.~~
- ~~(h) Specifications for building construction and materials, filling and grading, water supply, sanitary facilities, utilities and other work or construction to be submitted to the city division of housing and building code enforcement for review and approval prior to any development.~~
- ~~(C.F. No. 03-241, § 2, 3-26-03)~~

## ~~ARTICLE VI. 68.600. VARIANCES~~

### ~~Sec. 68.601. Variances.~~

- ~~(a) Applications for variance to the provisions of this chapter may be filed as provided in section 61.600. The burden of proof shall rest with the applicant to demonstrate conclusively that such variance will not result in a hazard to life or property and will not adversely affect the safety, use or stability of a public way, slope or drainage channel, or the natural environment; such proof may include soils, geology and hydrology reports which shall be signed by registered professional engineers. Variances shall be consistent with the general purposes of the standards contained in this chapter and state law and the intent of applicable state and national laws and programs. Although variances may be used to modify permissible methods of flood protection, no variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the flood protection elevation for the particular area, or permit a lesser degree of flood protection than required by state law.~~
- ~~(b) Notwithstanding any other provision of this river corridor code, variances may be granted for the repair or rehabilitation of historic structures upon a determination that the repair or rehabilitation will not preclude the structure's continued designation as a historic structure, the variance is the minimum necessary to preserve the historic character and design of the structure and the repair or rehabilitation will not cause an increase in the height of the regional flood or increase the flood damage potential of the structure.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

## ~~ARTICLE VII. 68.700. NONCONFORMING STRUCTURES~~

**~~Sec. 68.701. Floodplain nonconforming structures.~~**

Nonconforming use of structures and land and nonconforming structures shall be subject to the regulations in this section as well as provisions of chapter 62, Nonconforming Lots, Uses and Structures. A structure which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter may be continued subject to the following conditions:

- ~~(a) No structure shall be expanded, changed, enlarged or altered in a way which increases its nonconformity.~~
- ~~(b) Any alteration or addition to a nonconforming structure which would result in increasing the flood damage potential of that structure or use shall be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP 1 through FP 4, floodproofing classifications) allowable in the state building code, except as further restricted in subsection c. below.~~
- ~~(c) The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed fifty (50) percent of the market value of the structure unless the conditions of this section are satisfied. The cost of all structural alterations and additions constructed since January 28, 1982, must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds fifty (50) percent of the current market value of the structure, then the structure must meet the standards of Section 68.210 or 68.220 of this chapter for new structures depending upon whether the structure is in the floodway or flood fringe, respectively.~~
- ~~(d) When the use of a nonconforming structure is discontinued or ceases to exist for three hundred sixty-five (365) days, the nonconforming structure shall not thereafter be reused until the nonconforming is made conforming to the flood protection measures of this chapter, unless the planning commission, pursuant to a public hearing, finds that the nonconforming structure cannot reasonable or economically be made into a conforming structure and that reuse of the nonconforming structure is consistent with the public health, safety, morals and general welfare of the community and is consistent with the reasonable use and enjoyment of adjacent property.~~
- ~~(e) If any nonconforming structure is destroyed by any means, including floods, to an extent of fifty (50) percent or more of its market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter. The applicable provisions for establishing new structures in Section 68.210 or 68.220 will apply depending upon whether the structure is in the floodway or flood fringe, respectively.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**ARTICLE VIII. ~~68.800. AMENDMENTS~~**

**~~Sec. 68.801. Amendments.~~**

- ~~(a) All amendments shall be made in the manner set forth in Minnesota Statutes, Section 462.357. The floodplain designations established by this chapter shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the areas are filled to an elevation at or above the flood protection elevation and are contiguous to other lands lying outside the floodplain district. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he determines that, through other measure, lands are adequately protected for the intended use.~~
- ~~(b) All amendments to this chapter, including amendments to the River Corridor Overlay Districts maps, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes to the flood plain boundaries must meet the Federal Emergency Management Agency's (FEMA) technical conditions and criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given ten (10) days' written notice of all hearings to consider an amendment to this chapter and such notice shall include a draft of the ordinance amendment or technical study under consideration.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**~~Sec. 68.802. Areas protected by dikes, levies and floodwalls.~~**

Areas which the Federal Emergency Management Agency has removed from the floodplain through a revision to the flood insurance rate map or a letter of map revision because the areas are protected by a dike, levee or floodwall shall be exempt from the flood protection regulations of this code after said FEMA action has been adopted as a formal amendment to this chapter.

(C.F. No. 03-241, § 2, 3-26-03)

## ARTICLE IX. ~~68.900.~~ ADMINISTRATION

### **~~Sec. 68.901. Administration.~~**

- (a) ~~Record of elevation of lowest floor and floodproofing.~~ The zoning administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures, altered structures or additions to existing structures in the floodplain. The zoning administrator shall also maintain a record of the elevation to which all new structures and alterations or additions to structures are floodproofed.
- (b) ~~State and federal permits.~~ Applicants for special condition use permits, modifications and site plan review approval are responsible for obtaining all necessary state and federal permits.
- (c) ~~Warning and disclaimer of liability.~~ This chapter does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This chapter shall not create liability on the part of the City of Saint Paul or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.
- (d) ~~Severability.~~ If any section, clause, provision or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

(C.F. No. 03-241, § 2, 3-26-03)

### **~~Sec. 68.902. Notify commissioner of natural resources.~~**

A copy of the application for a conditional use permit or variance shall be submitted to the commissioner of natural resources sufficiently in advance so that the commissioner will receive at least ten (10) days' notice of the hearing. A copy of all decisions granting conditional use permits or variances shall be forwarded to the commissioner of natural resources within ten (10) days of such action.

(C.F. No. 03-241, § 2, 3-26-03)

### **~~Sec. 68.903. Notice of increased insurance costs.~~**

Applicants for a conditional use permit or variance to construct a structure below the regulatory flood protection elevation shall be notified that:

- (1) ~~The issuance of a conditional use permit or variance to construct a structure below the regulatory flood protection elevation may result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and~~
- (2) ~~Such construction below the regulatory flood protection elevation increases risks to life and property. Such notification shall be maintained with a record of the conditional use permit or variance. The planning or zoning administrator shall report such conditional use permits or variances issued in the biennial report submitted to the administrator of the National Flood Insurance Program.~~

(C.F. No. 03-241, § 2, 3-26-03)

## ARTICLE I. 68.100. FLOODPLAIN MANAGEMENT OVERLAY DISTRICTS

### Division 1. 68.110. General Provisions and Definitions

#### ARTICLE I. ~~72.10.~~ GENERAL PROVISIONS AND DEFINITIONS

**Sec. ~~68.111, 72.11~~. Authority, intent and purpose.**

- (a) *Statutory authorization and purpose.* This chapter is enacted pursuant to the authority granted to the municipality in Minnesota Statutes Chapter 103F, which delegates responsibility to local government units to adopt regulations designed to minimize flood losses. It is the purpose of this chapter to guide floodplain development in order to lessen the adverse effects of floods and to minimize loss of life, threats to health, and private and public economic loss caused by flooding.
- (b) *National Flood Insurance Program compliance.* This chapter is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59—78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.112, 72.12~~. Applicability, other local, regional, state, and federal regulations.**

~~(a)~~ In addition to the requirements of this chapter, all uses and development shall be subject to all other applicable local, regional, state, and federal permits and regulations. Applicants for city permits and approval are responsible for obtaining all other necessary permits.

~~(b) For any development application received on or after the effective date of this chapter, to the extent that the development application requires conformance with city regulations pertaining to floodplain management, it is the city's specific intent that the floodplain management regulations set forth under this chapter shall control and otherwise take precedence over any regulation set forth in chapter 68, river corridor overlay districts, that pertains to floodplain management.~~

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.113, 72.13~~. Warning and disclaimer of liability.**

This chapter does not imply that areas outside the floodplain management overlay districts or land uses permitted within such districts will be free from flooding or flood damages. This chapter shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.114, 72.14~~. Definitions.**

Terms defined elsewhere in the zoning code shall have the meanings as therein defined. The following terms shall have the meanings ascribed to them herein.

*Basement (floodplain management overlay districts only).* Any area of a structure having its floor subgrade (below ground level) on all four (4) sides.

*Flood.* A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

*Flood fringe.* That portion of the floodplain outside of the floodway.

*Flood proofing.* Those methods of construction described in the Minnesota State Building Code which, when applied to structures or properties, will prevent or mitigate damage from floods.

*Flood, regional.* A flood which is representative of large floods known to have occurred and characteristic of what can be statistically expected to have a one (1) percent chance of being equaled or exceeded in any given year. Regional flood is synonymous with the term "base flood" in the Flood Insurance Study, and is commonly referred to as the "one hundred-year flood" or "one (1) percent chance flood."

*Floodplain.* The areas adjoining a lake or watercourse at or below the water surface elevation associated with the regional flood that have been or hereafter may be covered by the regional flood.

*Floodway.* The bed of a lake or the channel of a watercourse and those portions of the adjoining floodplain which have been determined necessary to carry or store the discharge the regional flood. The floodway has been determined in accordance with Minnesota Statutes, Chapter 103F, and Minnesota Regulations Part 6120.5700, Subp. 4.

*Historic structure (floodplain management overlay districts only).* Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the department of interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district; or
- (3) Designated by the city as a heritage preservation site.

*Lowest floor (floodplain management overlay districts only).* The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.

*Manufactured home.* A structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."

*Obstruction (floodplain management overlay districts only).* Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure or matter in, along, across or projecting into any channel, watercourse or regulatory floodplain which may impede, retard or change the direction of the flow of water, either by itself or by catching or collecting debris carried by such water.

*Reach.* A hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two (2) consecutive bridge crossings would most typically constitute a reach.

*Recreational vehicle.* A vehicle that is built on a single chassis, is four hundred (400) square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this article, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.

*Regulatory flood protection elevation.* That elevation not less than two (2) feet above the water surface profile associated with the regional flood plus any increase in flood heights attributable to encroachments on the floodplain.

*Substantial damage.* Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

*Substantial improvement (floodplain management overlay districts only).* Within any consecutive three hundred sixty-five-day period, any reconstruction, rehabilitation, repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.115. 72-15.~~ Establishment.**

- (a) This chapter applies to all lands within the city shown on the flood insurance rate map as being located within the boundaries of zones A and AE for the Mississippi River and zone A for Lake Phalen and Beaver Lake. ~~If any of these floodplain land areas included on the flood insurance rate map are annexed into the city, they shall be subject to the provisions of this chapter immediately upon the date of annexation.~~
- (b) The following materials are hereby adopted by reference and made a part of this code as if the material and information set forth therein were fully described herein: the Flood Insurance Study, Ramsey County, Minnesota (All Jurisdictions), Flood Insurance Rate Map Panels numbered 27123C0080G, 27123C0087G, 27123C0089G, 27123C0092G, 27123C0093G, 27123C0094G, 27123C0101G, 27123C0102G, 27123C0103G, 27123C0104G, 27123C0108G, 27123C0110G, 27123C0111G, 27123C0112G, 27123C0116H, 27123C0117G, 27123C0118G, and 27123C0119G, and the Flood Insurance Rate Map Index numbered 27123CIND0B, all of these documents being prepared by the Federal Emergency Management Agency (FEMA) and dated June 4, 2010 except FIRM Panel No. 27123C0116H containing revised flood hazard information that ~~which shall~~ became effective ~~as of~~ September 16, 2015 and Flood Insurance Rate Map Index Panel No. 27123CIND0B reflecting the changes to FIRM Panel No. 27123C0116H effective ~~as of~~ September 16, 2015, and the Flood Insurance Study.
- (c) The FW floodway district shall include those zone AE areas designated as floodway on the flood insurance rate map and those zone A areas for Lake Phalen and Beaver Lake on the flood insurance rate map that are below the respective ordinary high water elevations as defined in Minnesota Statutes, § 103G.005, Subd. 14.
- (d) The FF flood fringe district shall include:
  - (1) ~~those areas designated as zone AE and outside of the floodway on the flood insurance rate map and~~ Those zone A areas for Lake Phalen and Beaver Lake on the flood insurance rate map that are located below the one hundred-year flood elevations (National Vertical Datum of 1988) of 861.36 ~~(National Vertical Datum of 1988)~~ for Lake Phalen and ~~below the one hundred-year flood elevation of 951.58 (National Vertical Datum of 1988) for Beaver Lake and above the respective ordinary high water elevations as defined in Minnesota Statutes, § 103G.005, Subd. 14; and~~
  - (2) All other areas designated as zone A or AE and outside of the floodway on the flood insurance rate map.
- (~~ee~~) Within these districts all uses not allowed as permitted or conditional uses shall be and are hereby prohibited. Legal nonconforming structures or uses existing on the effective date of this chapter or amendment thereto will be permitted to continue as provided in chapter 62 and section ~~68.141 72-41.~~

(C.F. No. 10-277, § 1, 4-14-10; Ord 15-41, § 2, 9-23-15)

**Sec. ~~68.116. 72-16.~~ District boundaries interpreted.**

Decisions on floodway and flood fringe overlay district boundaries shall be based on the regional flood profile; examination of the floodway delineation on the flood insurance rate map and other supporting technical data in the flood insurance study as adopted in section ~~68.115 72-15~~, and the ground elevations that existed on the site on the date of the first National Flood Insurance Program map, dated February 9, 1973, showing the area in the floodplain.

(C.F. No. 10-277, § 1, 4-14-10)

**Division 2. 68.120. Administration**

**ARTICLE II. 72.20. ADMINISTRATION**

**Sec. ~~68.121. 72-21.~~ Compliance.**

- (a) *Permit required.* A building permit issued by the building official in conformance with the provisions of this chapter shall be secured as required by the Minnesota State Building Code prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure, or portion thereof; prior to the construction of a dam or on-site septic system; and prior to the repair of a



structure that has been damaged by flood, fire, tornado, or any other source. A permit approved by the zoning administrator in conformance with the provisions of this chapter shall be secured prior to the use or change of use of a building, structure or land; prior to construction of a detached accessory structure, detached deck or platform, fence, retaining wall, or tank; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain. A permit issued by the planning commission in conformance with the provisions of this chapter shall be secured prior to the change or expansion of a nonconforming use.

- (b) *Compliance of uses or occupations required.* No use or occupation of any lands, for any purpose whatsoever, shall hereafter be permitted within the floodplain management overlay districts without full compliance with the terms of this chapter and other applicable laws.
- (c) *Compliance of structures, fill, etc.* No structure, fill, material or object shall hereafter be placed on or removed from lands within the floodplain management overlay districts, and no structures or other object shall hereafter be located, used, occupied, constructed, erected, converted, altered, or enlarged within the district without full compliance with this chapter and other applicable laws.
- (d) *Review of building permits for adequate floodproofing.* All building permits for structures proposed to be floodproofed shall be reviewed to determine whether the structures will be adequately floodproofed.
- (e) *Certification.* Before a certificate of occupancy is issued for any development in the floodplain management overlay districts, the applicant shall submit to the zoning administrator certification by a registered professional engineer, registered architect, registered landscape architect or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this chapter. Finished fill and building elevations shall be verified by ground surveys. Floodproofing measures shall be certified by a registered professional engineer or registered architect.
- (f) *Record of elevation of lowest floor and floodproofing.* The zoning administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures, altered structures or additions to existing structures in the floodplain. The zoning administrator shall also maintain a record of the elevation to which all new structures and alterations or additions to structures are floodproofed.
- (g) *Notifications for watercourse alterations.* The zoning administrator shall notify, in riverine situations, adjacent communities and the commissioner of the department of natural resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the commissioner of natural resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- (h) *Notification to FEMA when physical changes increase or decrease the one hundred-year flood elevation.* As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the zoning administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.122.~~ ~~72.22.~~ Site plan review.**

A site plan shall be submitted to and approved by the planning commission in accordance with section 61.402 before a permit is issued for any development on property wholly or partially located within the floodplain management overlay districts. The site plan shall include the regulatory flood protection elevation; the proposed elevation of fill; the proposed elevation of the lowest floor of new structures, altered structures and additions to existing structures; and the proposed elevation to which structures will be floodproofed.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.123.~~ ~~72.23.~~ Notify commissioner of natural resources.**

A copy of the application for a floodplain conditional use permit or variance shall be submitted to the commissioner of natural resources sufficiently in advance so that the commissioner will receive at least ten (10) days notice of the

hearing. A copy of all decisions granting floodplain conditional use permits or variances shall be forwarded to the commissioner of natural resources within ten (10) days of such action.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.124, 72.24~~. Notice of increased insurance costs.**

Applicants for a conditional use permit or variance to construct a structure below the regulatory flood protection elevation shall be notified that:

- (~~a~~1) The issuance of a conditional use permit or variance to construct a structure below the regulatory flood protection elevation may result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and
- (~~b~~2) Such construction below the regulatory flood protection elevation increases risks to life and property. Such notification shall be maintained with a record of the conditional use permit or variance. The planning or zoning administrator shall report such conditional use permits or variances issued in the biennial report submitted to the administrator of the National Flood Insurance Program.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.125, 72.25~~. Variances.**

- (a) The burden of proof shall rest with the applicant to demonstrate conclusively that a variance to the provisions of this chapter will not result in a hazard to life or property and will not adversely affect the public health and safety; such proof may include soils, geology and hydrology reports signed by registered professional engineers. Variances shall be consistent with the general purposes of the standards contained in this chapter and state law and the intent of applicable state and national laws and programs. In granting a variance, the board of zoning appeals shall make written findings, consistent with the criteria specified in this article, stating the grounds upon which the variance is justified. Although variances may be used to modify permissible methods of flood protection, no variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the flood protection elevation for the particular area, or permit a lesser degree of flood protection than required by state law.
- (b) Variances shall not be granted within the floodway if any increase in flood levels during the regional flood discharge would result.
- (c) Variances shall only be granted upon:
  - (1) A showing of good and sufficient cause;
  - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (d) Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.126, 72.26~~. Amendments.**

- (a) All amendments shall be made in the manner set forth in Minnesota Statutes, § 462.357. The floodplain designations established by this chapter shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the areas are filled to an elevation at or above the regulatory flood protection elevation and are contiguous to other lands lying outside the floodplain. Special exceptions to this rule may be permitted by the commissioner of natural resources if it is determined that, through other measures, lands are adequately protected for the intended use.

- (b) All amendments to this chapter, including amendments to the floodplain management overlay districts maps, must be submitted to and approved by the commissioner of natural resources prior to adoption. Changes to the floodplain boundaries must meet the Federal Emergency Management Agency's (FEMA) technical conditions and criteria and must receive prior FEMA approval before adoption. The commissioner of natural resources must be given ten (10) days' written notice of all hearings to consider an amendment to this chapter and such notice shall include a draft of the amendment or technical study under consideration.

(C.F. No. 10-277, § 1, 4-14-10)

### **Division 3. 68.130. Conditional Use Permits**

#### **ARTICLE III. 72.30. CONDITIONAL USE PERMITS**

##### **Sec. 68.131. 72.31. Application.**

The planning administrator shall determine whether to require any or all of the following six (6) items of information to be supplied by the applicant as a prerequisite to the consideration of the application:

- (a) Plans in triplicate drawn to scale, prepared by and signed by a registered engineer, architect and/or land surveyor as applicable, showing the nature, location, dimensions and elevation of the land; existing surface contours, structures, streets and utilities; proposed surface contours, structures, fill and the location and elevations of proposed streets, water supply, sanitary facilities and other utilities showing the relationship of the above to the channel or lake shoreline and to the designated floodplain management overlay districts limits.
- (b) Specifications for building construction and materials, floodproofing, filling, dredging, grading, channel improvements, storage of materials, water supply and sanitary facilities.
- (c) Typical valley cross-sections of areas to be occupied by the proposed development showing the channel of the stream, elevation of land areas, high water information, vegetation and soil types.
- (d) Plan (surface view) of the proposed development showing the proposed use or uses of the area and structures and providing location, relationships and spatial arrangements of those uses and related structures to pertinent elevations, fill, storage location, utilities and other features.
- (e) Profile showing the slope of the bottom of the channel and flow lines of the stream.
- (f) A written evaluation by a registered engineer or other expert person or agency of the proposed project in relationship to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of plans for flood protection and other technical matters.

(C.F. No. 10-277, § 1, 4-14-10)

##### **Sec. 68.132. 72.32. Factors considered.**

In addition to the general standards and requirements in section 61.500 and all other relevant factors specified in other sections of this chapter, in reviewing conditional use permit applications, the planning commission or planning administrator shall consider the following:

- (a) The relationship of the proposed use to the comprehensive plan and floodplain management program for the city.
- (b) The importance of the services provided by the proposed facility to the community.
- (c) The ability of the existing topography, soils and geology to support and accommodate the proposed use.
- (d) The compatibility of the proposed use with existing characteristics of biologic and other natural communities.
- (e) The proposed water supply and sanitation systems and the ability of those systems to prevent disease, contamination and unsanitary conditions.
- (f) The requirements of the facility for a river-dependent location, if applicable.
- (g) The safety of access to the property for ordinary vehicles.

- (h) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (i) The dangers to life and property due to increased flood heights or velocities caused by encroachments.
- (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
- (k) The danger that materials may be swept onto other lands or downstream to the injury of others.
- (l) The availability of alternative locations or configurations for the proposed use.
- (m) Such other factors as are relevant to the purposes of this chapter.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. 68.133. ~~72.23.~~ Conditions imposed.**

The planning commission or planning administrator may attach such conditions to the granting of conditional use permits as are deemed necessary to fulfill the purposes of this chapter. Such conditions may include, but are not limited to, the following:

- (a) Modifications of design, site planning or site treatment.
- (b) Requirements for implementation of erosion and sediment control, vegetation management, wildlife management and other protective measures.
- (c) Modifications of waste disposal and water supply facilities or operations.
- (d) Limitations on period of use and operation, a flood warning system and an evacuation plan.
- (e) Imposition of operational controls, sureties and deed restrictions.
- (f) Requirements for construction of channel improvements, modifications, dredging, dikes, levees and other protective measures.
- (g) Floodproofing measures shall be designed consistent with state-established floodproofing standards in the Minnesota State Building Code and with the flood protection elevation for the particular area including flood velocities, duration and rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The planning commission shall require that the applicant submit a plan or documents certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood elevation and associated flood factors for the particular area. The floodproofing measures that may be required include, but are not limited to, the following:
  - (1) Anchorage to resist flotation and lateral movement.
  - (2) Installation of watertight doors, bulkheads and shutters, or similar methods of construction.
  - (3) Reinforcement of walls to resist water pressure.
  - (4) Use of paints, membranes or mortars to reduce seepage of water through walls.
  - (5) Addition of mass or weight to structures to resist flotation.
  - (6) Installation of pumps to lower water levels in structures.
  - (7) Construction of water supply and waste treatment systems to prevent the entrance of floodwaters.
  - (8) Installation of pumping facilities or comparable practice for subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures.
  - (9) Construction to resist rupture or collapse caused by water pressure or floating debris.
  - (10) Installation of valves or controls on sanitary and storm drainage which will permit the drains to be closed to prevent backup of sewage and stormwaters into the buildings or structures. Gravity draining of basements may be eliminated by mechanical devices.

- (11) Location of all electrical equipment, circuits and installed electrical appliances such that they are not subject to the regional flood.
  - (12) Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids or other toxic materials that could be hazardous to public health, safety and welfare (if permissible under the Minnesota State Building Code) above the flood protection elevation or provision of adequate floodproofing to prevent flotation of or damage to storage containers which could result in the escape of toxic materials into floodwaters.
- (h) Specifications for building construction and materials, filling and grading, water supply, sanitary facilities, utilities and other work or construction to be submitted to the city department of safety and inspections for review and approval prior to any development.

(C.F. No. 10-277, § 1, 4-14-10)

#### **Division 4. 68.140. Nonconforming Uses and Structures**

#### **ARTICLE IV. ~~72.40. NONCONFORMING USES AND STRUCTURES~~**

##### **Sec. 68.141. ~~72.41.~~ Floodplain nonconforming uses and structures.**

Nonconforming structures and use of structures or land shall be subject to the regulations in this section as well as provisions of chapter 62, nonconforming lots, uses and structures. A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter may be continued subject to the following conditions:

- (a) No structure shall be expanded, changed, enlarged or altered in a way which increases its nonconformity.
- (b) Any structural alteration or addition to a nonconforming structure which would result in increasing the flood damage potential of that structure or use shall be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 through FP-4 floodproofing classifications) allowable in the Minnesota State Building Code, except as further restricted in subsection c. below.
- (c) Except for historic structures, if a substantial improvement (defined in section 68.114 ~~72.14~~) occurs from any combination of a building addition to the outside dimensions of an existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of section 68.160 ~~72.60~~ or 68.170 ~~72.70~~ for new structures, depending upon whether the structure is in the floodway or flood fringe, respectively. If a substantial improvement occurs only from a building addition, then the building addition must meet the elevation on fill or floodproofing requirements of section 68.160 ~~72.60~~ or 68.170 ~~72.70~~ for new structures and the existing structure must also meet the requirements of section 68.160 ~~72.60~~ or 68.170 ~~72.70~~ for new structures if any alteration is made to the common wall in excess of installing a standard doorway.
- (d) When a nonconforming use is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days, the building and premises shall thereafter be used in conformance with this chapter, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in section 62.109(e).
- (e) If any nonconforming structure is substantially damaged, it shall not be reconstructed except in conformity with the provisions of this chapter. The applicable provisions for establishing new structures in section 68.160 ~~72.60~~ or 68.170 ~~72.70~~ will apply depending upon whether the structure is in the floodway or flood fringe, respectively.

(C.F. No. 10-277, § 1, 4-14-10)

#### **Division 5. 68.150. General Standards and Regulations**

#### **ARTICLE V. ~~72.50. GENERAL STANDARDS AND REGULATIONS~~**

##### **Sec. 68.151. ~~72.51.~~ Public utilities, railroads, roads and bridges.**

- (a) *Public utilities.* All public utilities and facilities such as gas, electrical, sewer and water supply systems to be located in the floodplain shall be floodproofed in accordance with the Minnesota State Building Code or elevated to above the regulatory flood protection elevation.
- (b) *Public transportation facilities.* Railroad tracks, roads and bridges to be located within the floodplain shall comply with sections ~~68.160 72.60~~ and ~~68.170 72.70~~ of this chapter. Elevation to the regulatory flood protection elevation shall be provided where the failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.
- (c) *On-site sewage treatment and water supply systems.* Where public utilities are not provided: 1) on-site water supply systems must be designed to minimize or eliminate infiltration of floodwaters into the systems; and 2) new or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the state's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this section.

(C.F. No. 10-277, § 1, 4-14-10)

#### **Division 6. 68.160. FW Floodway Overlay District**

#### **ARTICLE VI. ~~72.60. FW FLOODWAY OVERLAY DISTRICT~~**

#### **Sec. ~~68.161. 72.61.~~ Permitted uses.**

- (a) The following uses shall be permitted within the FW Floodway District to the extent that they are not prohibited by any other provision of the zoning code or other ordinances. The uses are subject to the conditions of the underlying zoning district and to the standards for permitted uses in the Floodway District.
  - (1) Nonstructural industrial-commercial uses, such as open-loading areas, parking areas, interior service roads, airport service roads and airport runways.
  - (2) Public and private recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic and camp grounds, boat launching and beaching areas or ramps, swimming areas, parks, playgrounds, wildlife and nature preserves, game farms, fish hatcheries, and hiking, bicycling, horseback or recreational vehicle areas and trails, and other open space uses.
  - (3) Accessory residential uses such as lawns, gardens, parking areas and play areas.

(C.F. No. 10-277, § 1, 4-14-10)

#### **Sec. ~~68.162. 72.62.~~ Standards for permitted uses in the FW floodway district.**

- (a) The use shall not obstruct flood flows to the point that it increases the one (1) percent chance flood elevation and shall not involve structures, fill, obstruction, excavations or storage of materials or equipment.
- (b) The use shall have a low flood damage potential.
- (c) The use shall not adversely affect the hydraulic capacity of the channel or floodway or any tributary to the main stream or of any ditch or other drainage facility or system.
- (d) No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, Section 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided.

(C.F. No. 10-277, § 1, 4-14-10)

#### **Sec. ~~68.163. 72.63.~~ Conditional uses.**

The following uses shall be permitted within the FW floodway district to the extent they are not prohibited by any other provision of the zoning code or other ordinances, subject to issuance of a conditional use permit by the

planning commission according to the provisions for conditional use permits in chapter 61. The uses are subject to the conditions of the underlying zoning district and to the standards for conditional uses in the floodway district.

- (a) Railroads, highways, streets, alleys, access roads, bridges, sewers, utilities, utility transmission lines and pipe lines.
- (b) Marinas, boat rentals, docks, piers, mooring anchors, wharves, water-control structures and navigation facilities.
- (c) Storage yards or areas for equipment, machinery or bulk materials.
- (d) Structures accessory to permitted uses in section 68.161 ~~72.61~~ or conditional uses of this section.
- (e) Placement of fill.
- (f) Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures.
- (g) Fences.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. 68.164 ~~72.64~~. Standards for conditional uses in the FW floodway district.**

- (a) No structure (temporary or permanent), fill deposit (including fill for roads and levees), obstruction, storage of materials or equipment, or other use may be allowed that will cause an increase in the height of the regional flood or cause an increase in flood damages in the reach or reaches affected. The use shall not adversely affect the hydraulic capacity of the channel or floodway or any tributary to the main stream or of any ditch or other drainage facility or system. For Lake Phalen and Beaver Lake, compensating flood water storage volume shall be provided below the 100-year flood elevation for any obstruction placed in the floodplain.
- (b) Fill shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.
- (c) Accessory structures shall not be designed for human habitation.
- (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters:
  - (1) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and
  - (2) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
- (e) Accessory structures shall be elevated on fill or structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classification in the Minnesota State Building Code. As an alternative, an accessory structure may be floodproofed to the FP-3 or FP-4 floodproofing classification in the Minnesota State Building Code, provided the accessory structure constitutes a minimal investment, does not exceed five hundred (500) square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All floodproofed accessory structures must meet the following additional standards:
  - (1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
  - (2) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed; and
  - (3) To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

- (f) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited. Storage of materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the planning commission.
- (g) Structural works for flood control that will change the course, current or cross-section of protected wetlands, or public waters shall be subject to the provisions of Minnesota Statutes, chapter 103.G. Structural works for flood control intended to remove areas from the regulatory floodplain shall not be allowed in the floodway.
- (h) A levee, dike or floodwall constructed in the floodway shall not cause an increase to the regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.
- (i) No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, § 115.01, unless adequate safeguards, approved by the state pollution-control agency, are provided.

(C.F. No. 10-277, § 1, 4-14-10)

### **Division 7. 68.170. FF Flood Fringe Overlay District**

#### **ARTICLE VII. ~~72.70. FF FLOOD FRINGE OVERLAY DISTRICT~~**

##### **Sec. 68.171. ~~72.71.~~ Permitted uses.**

Permitted uses in the FF flood fringe overlay district shall be those uses of land or structures listed as permitted uses in the underlying zoning district. These uses are subject to the conditions of the underlying zoning district, to the standards for permitted uses in the flood fringe district in section 68.172 ~~72.72~~, and to the standards for all flood fringe uses in section 68.175 ~~72.75~~.

(C.F. No. 10-277, § 1, 4-14-10)

##### **Sec. 68.172. ~~72.72.~~ Standards for permitted uses in the FF flood fringe district.**

- (a) All structures with a roof and a wall or attachment to utilities, including gas and liquid storage tanks and accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for such structures shall be not lower than one (1) foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.
- (b) As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed five hundred (500) square feet for the outside dimension at ground level may be internally floodproofed in accordance with section 68.164(e) ~~72.64(e)~~.
- (c) The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.

(C.F. No. 10-277, § 1, 4-14-10)

##### **Sec. 68.173. ~~72.73.~~ Conditional uses.**

Any structure in the FF flood fringe district that is not elevated on fill or floodproofed in accordance with section 68.172(a) ~~72.72(a)~~ or (b), and any use of land that does not comply with section 68.172(c) ~~72.72(e)~~, shall only be allowable as a conditional use, subject to issuance of a conditional use permit by the planning commission according to the provisions for conditional use permits in chapter 61. The uses are subject to the conditions of the underlying zoning district, to the standards for conditional uses in the flood fringe district in section 68.174 ~~72.74~~, and to the standards for all flood fringe uses in section 68.175 ~~72.75~~.

(C.F. No. 10-277, § 1, 4-14-10)

##### **Sec. 68.174. ~~72.74.~~ Standards for conditional uses in the FF flood fringe district.**

- (a) Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls or



above grade, enclosed areas such as crawl spaces or tuck-under garages. The base or floor of an enclosed area shall be considered above grade and not a structure's basement or lowest floor if: 1) the enclosed area is above grade on at least one (1) side of the structure; 2) is designed to internally flood and is constructed with flood-resistant materials; and 3) is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

- (1) *Design and certification.* The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the Minnesota State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent floodwater from entering or accumulating within these components during times of flooding.
- (2) *Specific standards for above grade, enclosed areas.* Above grade, fully enclosed areas such as crawl spaces or tuck-under garages must be designed to internally flood and the design plans must stipulate:
  - a. A minimum area of "automatic" openings in the walls where internal flooding is to be used as a floodproofing technique. There shall be a minimum of two (2) openings on at least two (2) sides of the structure and the bottom of all openings shall be no higher than one (1) foot above grade. The automatic openings shall have a minimum net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters without any form of intervention.
  - b. That the enclosed area will be designed of flood-resistant materials in accordance with the FP-3 or FP-4 classifications in the Minnesota State Building Code and shall be used solely for building access, parking of vehicles or storage.

(b) Basements, as defined in section ~~68.114~~ 72.14, shall be subject to the following:

- (1) Residential basement construction shall not be allowed below the regulatory flood protection elevation except as authorized in subsection (e) of this section.
  - (2) Nonresidential basements may be allowed below the regulatory flood-protection elevation, provided the basement is protected in accordance with subsection (c) or (e) of this section.
- (c) All areas of nonresidential structures including basements to be placed below the regulatory flood protection elevation shall be structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classifications in the Minnesota State Building Code. This shall require making the structure watertight, with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures floodproofed to the FP-3 or FP-4 classification shall not be permitted.
- (d) The storage or processing of materials that are, in times of flooding, flammable, explosive or potentially injurious to human, animal or plant life is prohibited. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the planning commission, or if elevated above the regulatory flood protection elevation by alternative methods which meet the requirements of subsection (a) above. Storage of bulk materials may be allowed provided an erosion/sedimentation control plan is submitted which clearly specifies methods to be used to stabilize the materials on site for a regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the planning commission.
- (e) When the Federal Emergency Management Agency has issued a letter of map revision-fill (LOMR-F) for vacant parcels of land elevated by fill to the one (1) percent chance flood elevation, the area elevated by fill remains subject to the provisions of this chapter. A structure may be placed on the area elevated by fill with the lowest floor below the regulatory flood protection elevation provided the structure meets the following provisions:
- (1) No floor level or portion of a structure that is below the regulatory flood protection elevation shall be used as habitable space or for storage of any property, materials, or equipment that might constitute a safety hazard when contacted by floodwaters. Habitable space shall be defined as any space in a structure used for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage rooms, laundry or utility space, and similar areas are not considered habitable space.

- (2) For residential and nonresidential structures, the basement floor may be placed below the regulatory flood protection elevation subject to the following standards:
- a. The top of the immediate floor above any basement area shall be placed at or above the regulatory flood protection elevation.
  - b. Any area of the structure placed below the regulatory flood protection elevation shall meet the "reasonably safe from flooding" standards in the Federal Emergency Management Agency (FEMA) publication entitled "Ensuring that Structures Built on Fill In or Near Special Flood Hazard Areas Are Reasonably Safe From Flooding," Technical Bulletin 10-01, a copy of which is hereby adopted by reference and made part of this chapter. In accordance with the provisions of this chapter, and specifically section ~~68.133(g)~~ ~~72.33(g)~~, the applicant shall submit documentation that the structure is designed and built in accordance with either the "Simplified Approach" or "Engineered Basement Option" found in FEMA Technical Bulletin 10-01.
  - c. If the ground surrounding the lowest adjacent grade to the structure is not at or above the regulatory flood protection elevation, then any portion of the structure that is below the regulatory flood protection elevation must be floodproofed consistent with any of the FP-1 through FP-4 floodproofing classifications found in the Minnesota State Building Code.

(C.F. No. 10-277, § 1, 4-14-10)

**Sec. ~~68.175~~ ~~72.75~~. Standards for all FF flood fringe uses.**

- (a) *Vehicular access.* All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the regulatory flood protection elevation. If a variance to this requirement is granted, limitations on the period of use or occupancy of the structure for times of flooding must be specified and only after determining that adequate flood warning time and local flood emergency response procedures exist.
- (b) *Commercial uses.* Accessory land uses, such as yards, railroad tracks and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood.
- (c) *Manufacturing and industrial uses.* Measures shall be taken to minimize interference with normal plant operations. Certain accessory land uses such as yards and parking lots may be at lower elevation subject to requirements set out in subdivision (b) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in floodplain areas.
- (d) *Standards pertaining to fill.* Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the one (1) percent chance flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- (e) *Developments not to affect hydraulic capacities.* Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the official zoning map. For Lake Phalen and Beaver Lake, compensating flood water storage volume shall be provided below the one hundred-year flood elevation for any obstruction placed in the floodplain.
- (f) *Manufactured homes.* Manufactured homes must meet all the density, setback, flood protection and other requirements of the zoning code and all requirements of the housing and building code. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces. New manufactured home parks shall be subject to the provisions placed on subdivisions by section 69.510.
- (g) *Recreational vehicles.* Recreational vehicles shall not be used for living quarters, and are exempt from the provisions of this chapter if they have current licenses required for highway use, are highway ready meaning on wheels or the

internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks, and the recreational vehicle has no permanent structural type additions attached to it. Recreational vehicles lose this exemption when development occurs on the parcel exceeding five hundred dollars (\$500.00) for a structural addition to the recreational vehicle or an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and use of land restrictions specified in this chapter. There shall be no development or improvement on the parcel or attachment to the recreational vehicle that hinders the removal of the recreational vehicle to a flood free location should flooding occur. No new commercial recreational vehicle parks shall be allowed in the FW floodway or FF flood fringe overlay districts.

- (h) *Pollution of waters.* No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, § 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided. No new construction, addition or modification to existing sewage treatment plants shall be permitted within the floodplain unless emergency plans and procedures for action to be taken in the event of flooding are prepared, filed with and approved by the state pollution control agency. The emergency plans and procedures must provide for measures to prevent introduction of any pollutant or toxic materials into the floodwaters.

(C.F. No. 10-277, § 1, 4-14-10)

## **ARTICLE II. 68.200. MRCCA MISSISSIPPI RIVER CORRIDOR CRITICAL AREA OVERLAY DISTRICTS**

### **Division 1. 68.210. General Provisions and Definitions**

#### **Sec. 68.211. Statutory Authorization.**

This Mississippi River Corridor Critical Area (MRCCA) article is adopted pursuant to the authorization and policies contained in [Minnesota Statutes, Chapter 116G](#), [Minnesota Rules, Parts 6106.0010 - 6106.0180](#), and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462 and 473.

#### **Sec. 68.212. Policy.**

The Legislature of Minnesota has delegated responsibility to local governments of the state to manage the Mississippi River Corridor Critical Area as a multipurpose resource in a way that:

- (a) 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;
- (b) conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor;
- (c) 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;
- (d) utilizes certain reaches of the river as a source of water supply and as a receiving water for properly treated sewage, stormwater, and industrial waste effluents; and
- (e) protects and preserves the biological and ecological functions of the corridor.

#### **Sec. 68.213. Jurisdiction.**

The provisions of this article apply to land within the river corridor boundary as described in the State Register, volume 43, pages 508 to 519 and shown on the MRCCA Mississippi River Corridor Critical Area Overlay Districts zoning maps accompanying this code, which are hereby adopted by reference.

#### **Sec. 68.214. Definitions.**

Unless specifically defined below or in chapter 60, article II. 60.200 general definitions of this code, words or phrases used in this article shall be interpreted to give them the same meaning they have in common usage and to give this article its most reasonable application. For the purpose of this article, the words “must” and “shall” are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.

*Access path.* An area designated to provide ingress and egress to public waters.

Agricultural use. A use having the meaning given under Minnesota Statutes, section [40A.02](#).

Alternative design. 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.

Biological and ecological functions. The functions of vegetation in stabilizing soils and slopes, retaining and filtering runoff, providing habitat, and recharging groundwater.

Bluff. A natural topographic feature meeting one of the following definitions:

- (a) A slope that rises at least 25 feet where the grade of the slope averages 18 percent or greater, measured over a horizontal distance of 25 feet, from the toe of the slope to the top of the slope. Where the slope begins below the ordinary high water level, the ordinary high water level is the toe of the slope. See Figure 68.214(a).
- (b) A natural escarpment or cliff with a slope that rises at least ten feet above the ordinary high water level or toe of the slope, whichever is applicable, to the top of the slope, with a slope of 75 degrees or greater. See Figure 68.214(b).

Figure 68.214(a). Bluff and Bluff Impact Zone

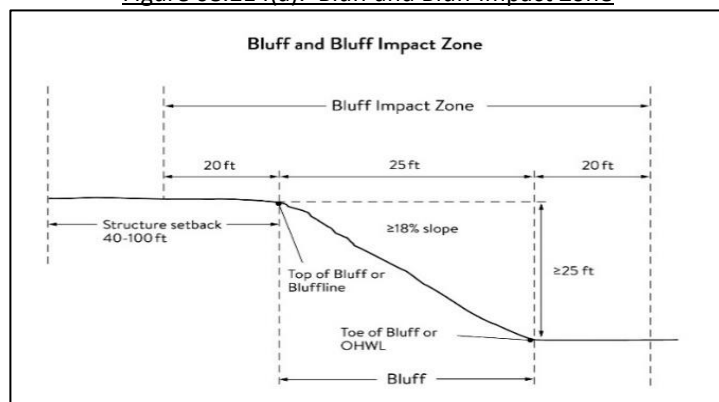
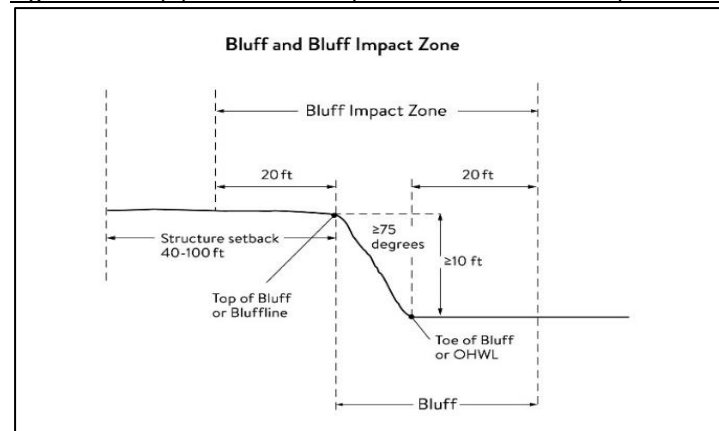


Figure 68.214(b). Natural Escarpment Bluff and Bluff Impact Zone



Bluff impact zone. A bluff and land located within 20 feet of the bluff. See Figures 68.214(a) and 68.214(b).

Bluffline. A line delineating the top of the bluff. More than one bluffline may be encountered proceeding landward from the river. See Figures 68.214(a) and 68.214(b).

Bluff, Toe of. A line along the bottom of a bluff, requiring field verification, such that the slope above the line exceeds 18 percent and the slope below the line is 18 percent or less, measured over a horizontal distance of 25 feet. See Figures 68.214(a) and 68.214(b).

Bluff, Top of. A line along the top of a bluff, requiring field verification, such that the slope below the line exceeds 18 percent and the slope above the line is 18 percent or less, measured over a horizontal distance of 25 feet. See Figures 68.214(a) and 68.214(b).

*Buildable area.* The area upon which structures may be placed on a lot or parcel of land and excludes areas needed to meet requirements for setback, rights-of-way, bluff impact zones, wetlands, designated floodways, land below the ordinary high water level of public waters, and other unbuildable areas.

*Building.* A structure with two or more outside rigid walls and a fully secured roof and affixed to a permanent site.

*Certificate of compliance.* A document written after a compliance inspection, certifying that the development complies with applicable requirements at the time of the inspection.

*Commissioner.* The commissioner of the Minnesota Department of Natural Resources.

*Conservation design.* A pattern of subdivision that is characterized by grouping lots within a portion of a parcel, where the remaining portion of the parcel is permanently protected as open space.

*Conventional subdivision.* A pattern of subdivision that is characterized by lots that are spread regularly throughout a parcel in a lot and block design.

*Deck.* A horizontal, unenclosed, aboveground level structure open to the sky, with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site.

*Developer.* Having the meaning given under Minnesota Statutes, section [116G.03](#).

*Development.* Having the meaning given under Minnesota Statutes, section [116G.03](#).

*Discretionary action.* An action under this chapter related to land use that requires a public hearing by local ordinance or statute, such as preliminary plats, final subdivision plats, planned unit developments, conditional use permits, interim use permits, variances, appeals, and rezonings.

*Dock.* Having the meaning given under Minnesota Rules, chapter [6115](#).

*Electric power facilities.* Equipment and associated facilities for generating electric power or devices for converting wind energy to electrical energy as identified and defined under Minnesota Statutes, section [216E](#).

*Floodplain.* Having the meaning given the meaning given under Minnesota Rules chapter [6120](#).

*Fully reconstructs.* The reconstruction of an existing impervious surface that involves site grading and subsurface excavation so that soil is exposed. Mill and overlay and other resurfacing activities are not considered fully reconstructed.

*Hard-surface trail.* A trail surfaced in asphalt, crushed aggregate, or other hard surface, for multi-purpose use, as determined by local, regional, or state agency plans.

*Historic property.* An archaeological site, standing structure, site, district, or other property that is:

- (a) Listed in the National Register of Historic Places or the State Register of Historic Places or locally designated as a historic site under Minnesota Statutes, section 471;
- (b) Determined to meet the criteria for eligibility to the National Register of Historic Places or the State Register of Historic Places as determined by the director of the Minnesota Historical Society; or
- (c) An unplatted cemetery that falls under the provisions of Minnesota Statutes, section 307, in consultation with the Office of the State Archaeologist.

*Impervious surface.* 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.

*Intensive vegetation clearing.* The removal of all or a majority of the trees or shrubs in a contiguous patch, strip, row, or block.

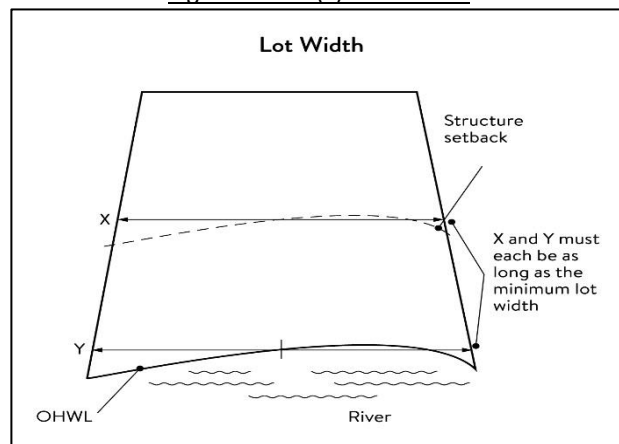
*Land alteration.* An activity that exposes the soil or changes the topography, drainage, or cross section of the land, excluding gardening or similar minor soil disturbances.

*Local government.* Counties, cities, and townships.

*Lot.* Having the meaning given under Minnesota Rules chapter [6120](#).

Lot width. 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. See Figure 68.214(c).

Figure 68.214(c). Lot Width



Marina. Having the meaning given under Minnesota Rules chapter [6115](#).

Mississippi River Corridor Critical Area (MRCCA) Plan. A chapter of the Saint Paul comprehensive plan.

Mooring facility. Having the meaning given under Minnesota Rules chapter [6115.0170](#).

Native plant community. A plant community identified by the Minnesota Biological Survey or biological survey issued or adopted by a local, state, or federal agency.

Natural-surface trail. A trail composed of native soil and rock or compacted granular stone, primarily intended for hiking, equestrian, or mountain bike use, as determined by local, regional, or state agency plans.

Natural vegetation. 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.

Nonconformity. Having the meaning given under Minnesota Statutes, section [394.22](#).

Nonmetallic mining. Construction, reconstruction, repair, relocation, expansion, or removal of any facility for the extraction, stockpiling, storage, disposal, or reclamation of nonmetallic minerals such as stone, sand, and gravel. Nonmetallic 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, processing structures and equipment, and any structures that drain or divert public waters to allow mining.

Off-premises advertising signs. 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.

Ordinary high water level (OHWL). Having the meaning given under Minnesota Statutes, section [103G.005](#).

Overlay district. A zoning district applied over one or more previously established zoning districts, establishing additional or stricter standards and criteria for covered properties in addition to those of the underlying zoning district. Overlay districts are often used to protect historic features and natural resources such as shoreland or floodplain.

Parcel. Having the meaning given under Minnesota Statutes, section [116G.03](#).

Patio. A constructed hard surface located at ground level with no railings and open to the sky.

Picnic shelter. A roofed structure open on all sides, accessory to a recreational use.

Planned unit development. 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 multiple years. Planned unit development includes any conversion of existing structures and land uses that utilize this method of development.

Plat. Having the meaning given under Minnesota Statutes, sections [505](#) and [515B](#).

*Port.* A water transportation complex established and operated under the jurisdiction of a port authority according to Minnesota Statutes, section 458.

*Primary conservation areas.* Key resources and features, including shore impact zones, bluff impact zones, floodplains, wetlands, gorges, areas of confluence with tributaries, natural drainage routes, unstable soils and bedrock, native plant communities, cultural and historic properties, and significant existing vegetative stands, tree canopies, and other resources identified in local government plans.

*Private facilities.* Private roads, driveways, and parking areas, private water access and viewing facilities, decks and patios in setback areas, and private signs.

*Professional engineer.* An engineer licensed to practice in Minnesota.

*Public facilities.* Public utilities, public transportation facilities, and public recreational facilities.

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

*Public river corridor views.* Specific views described and established in the MRCCA Plan, a chapter of the comprehensive plan.

*Public transportation facilities.* All transportation facilities provided by federal, state, or local government and dedicated to public use, such as roadways, transit facilities, railroads, and bikeways.

*Public utilities.* Electric power facilities, essential services, and transmission services.

*Public waters.* Having the meaning given under [Minnesota Statutes, section 103G.005](#).

*Readily visible.* Land and development that are easily seen from the ordinary high water level of the opposite shore during summer months.

*Resource agency.* A federal, state, regional, or local agency that engages in environmental, natural, or cultural resource protection or restoration activities, including planning, implementation, and monitoring.

*Retaining wall.* A 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.

*River corridor boundary.* The boundary approved and adopted by the Metropolitan Council under Minnesota Statutes, section [116G.06](#), as approved and adopted by the legislature in Minnesota Statutes, section [116G.15](#), and as legally described in the State Register, volume 43, pages 508 to 518.

*River-dependent use.* The use of land for commercial, industrial, or utility purposes, where access to and use of a public water feature is an integral part of the normal conduct of business and where the use is dependent on shoreline facilities.

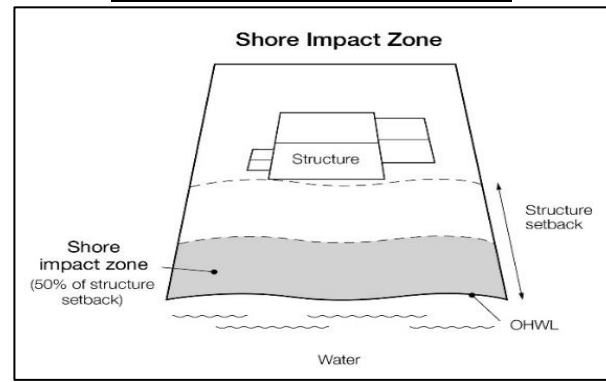
*Rock riprap.* Natural coarse rock placed or constructed to armor shorelines, streambeds, bridge abutments, pilings and other shoreline structures against scour, or water or ice erosion.

*Selective vegetation removal.* The removal of isolated 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.

*Setback.* A separation distance measured horizontally.

*Shore impact zone.* 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, for agricultural use, 50 feet landward of the ordinary high water level. See Figure 68.214(d).

Figure 68.214(d). Shore Impact Zone



**Shoreline facilities.** 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.

**Steep slope.** 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, and any slopes greater than 18 percent that are not bluffs.

**Storm water management facilities.** Facilities for the collection, conveyance, treatment, or disposal of storm water.

**Structure.** A building, sign, or appurtenance thereto, except for aerial or underground utility lines, such as sewer, electric, telephone, or gas lines, and utility line towers, poles, and other supporting appurtenances.

**Subdivision.** Having the meaning given under Minnesota Statutes, section [462.352](#).

**Subsurface sewage treatment system.** Having the meaning given under Minnesota Rules, part [7080.1100](#)

**Tiering.** Tiering refers to strategies of arranging building heights and massing to reduce the perceived visual impact of buildings with respect to public river corridor views identified in the MRCCA Plan. Strategies for prioritizing tiering through site plan review and/or conditional use permit review are identified in section 68.235.

**Transmission services.**

(a) Electric power lines, cables, pipelines, or conduits that are:

(1) Used to transport power between two points, as identified and defined under Minnesota Statutes, section [216E.01, subdivision 4](#); or

(2) For mains or pipelines for gas, liquids, or solids in suspension, used to transport gas, liquids, or solids in suspension between two points; and

(b) Telecommunication lines, cables, pipelines, or conduits.

**Treeline.** The mostly continuous line formed by the tree canopy when viewed from a particular point. Regardless of season, the treeline is determined as if under full foliage.

**Water access ramp.** 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.

**Water-oriented accessory structure.** A small building or other improvement, except stairways, fences, docks, and retaining walls, that, because of the relationship of its use to public waters, 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.

**Water quality impact zone.** Land within the shore impact zone or within 50 feet of the OHWL of the river, whichever is greater, and land within 50 feet of a public water, wetland, or natural drainage route.

**Wetland.** Having the meaning given under Minnesota Statutes, section [103G.005](#).

**Wharf.** Having the meaning given under Minnesota Rules, part [6115.0170](#).



## **Division 2. 68.220. Administration**

### **Sec. 68.221. Purpose.**

The purpose of this division is to identify administrative provisions to ensure this article is administered consistent with its purpose.

### **Sec. 68.222. Permits.**

A permit is required for the construction of buildings or building additions (including construction of decks and signs), the installation and/or alteration of sewage treatment systems, vegetation removal consistent with division 6 and land alterations consistent with division 7.

### **Sec. 68.223. Variances.**

Variances to the requirements under this article may only be granted in accordance with Minnesota Statutes, [Section 462.357](#). The board of zoning appeals or planning commission shall evaluate the potential impacts of variances on primary conservation areas, public river corridor views, and other resources identified in the MRCCA plan, and in addition to the requirements in section 61.601 of this code shall make written findings that the variance is consistent with the purpose of this article.

### **Sec. 68.224. Conditional and interim use permits.**

All conditional use permits required under this article must comply with Minnesota Statutes, section [462.3595](#). All interim use permits must comply with Minnesota Statutes, section [462.3597](#). The planning commission or city council shall evaluate the potential impacts on primary conservation areas, public river corridor views, and other resources identified in the MRCCA plan.

### **Sec. 68.225. Conditions of Approval.**

If a conditional or interim use permit or variance is found to have potential negative impacts on primary conservation areas, public river corridor views, or other resources identified in the MRCCA Plan the board of zoning appeals, planning commission, or city council shall require conditions to mitigate the impacts that are related to and proportional to the impacts. Mitigation may include restoration of vegetation identified as “vegetation restoration priorities” in the MRCCA plan, preservation of existing vegetation, stormwater runoff management, reducing impervious surface, increasing structure setbacks, wetland and drainage route restoration and/or preservation, limiting the height of structures, modifying structure design to limit visual impacts on public river corridor views, and other conservation measures.

### **Sec. 68.226. Application materials.**

Applications for permits and discretionary actions required under this article must include the following information unless the zoning administrator or planning administrator determines that the information is not needed:

- (a) A detailed project description.
- (b) Scaled maps and plans, dimensional renderings, maintenance agreements, and other materials that identify and describe:
  - (1) Primary conservation areas, public river corridor views, and buildable area.
  - (2) Ordinary high water level, blufflines, and all required setbacks.
  - (3) Existing and proposed topography and drainage patterns.
  - (4) Proposed storm water and erosion and sediment control practices.
  - (5) Existing and proposed vegetation to be removed and established.
  - (6) Existing and proposed structures and impervious surfaces.
  - (7) Existing and proposed subsurface sewage treatment systems.

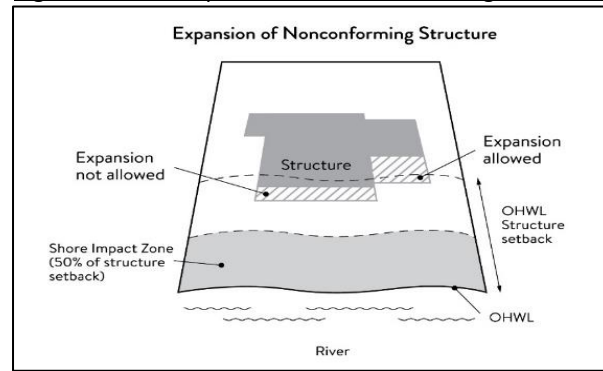
### **Sec. 68.227. Nonconformities.**

All legally established nonconformities as of the date of this ordinance may continue consistent with Minnesota Statutes, section [462.357 Subd. 1e](#) and are subject to the following additional parameters:

- (a) New structures erected in conformance with the setback averaging provisions of section 68.236(d) are conforming structures.

- (b) Nonstructural site alterations, including, but not limited to vegetation, erosion control, storm water control measures, and expansion of such site alterations that were legally made prior to the effective date of this ordinance are conforming.
- (c) Legally nonconforming principal structures that do not meet the setback requirements of section 68.236 may be expanded laterally provided that:
  - (1) The expansion does not extend into the shore or bluff impact zone or further into the required setback than the building line of the existing principal structure (See Figure 68.227); and
  - (2) The expanded structure's scale and bulk is consistent with that of the original structure and existing surrounding development.

**Figure 68.227. Expansion of Nonconforming Structure**



#### **Sec. 68.228. Notifications.**

The following notification requirements apply in addition to requirements listed elsewhere in this code:

- (a) Amendments to this article and to the MRCCA plan must be submitted to the commissioner as provided in Minnesota Rules, part 6106.0070, Subp. 3, Items B – I.
- (b) Notice of public hearings for discretionary actions, including conditional and interim use permits, variances, appeals, rezonings, preliminary and final subdivision plats, and master plans must be sent to the following entities at least ten (10) days prior to the hearing:
  - (1) The commissioner in a format prescribed by the DNR.
  - (2) National Park Service.
  - (3) For a conditional use permit or variance to exceed the height limits specified in section 68.234, local governments within the MRCCA adjacent to the site, including those with overlapping jurisdiction and those across the river.
- (c) Notice of final decisions for actions in section 68.228(b), including findings of fact, must be sent to the commissioner, the National Park Service, and adjoining local governments within the MRCCA within ten (10) days of the final decision.
- (d) Requests to amend district boundaries must follow the provisions in Minnesota Rules, part 6106.0100, Subp. 9, Item C.

#### **Sec. 68.229. Accommodating disabilities.**

Reasonable accommodations for ramps or other facilities to provide persons with disabilities access to the persons' property, as required by the federal Americans with Disabilities Act and the federal Fair Housing Act and as provided by Minnesota Rules, chapter 1341, shall comply with divisions 3 to 9. If divisions 3 to 9 cannot be complied with, ramps or other facilities are allowed with an administrative permit provided that the permit terminates on either a specific date or upon occurrence of a particular event related to the person requiring accommodation, and that upon expiration of the permit, the ramp or other facilities must be removed.

### **Division 3. 68.230. MRCCA Districts, Dimensional Standards, and Special Use Provisions**

#### **Sec. 68.231. Purpose.**

The purposes of this division are to:

- (a) Establish districts under which building height and structure placement are regulated to protect and enhance the Mississippi River's resources and features consistent with the natural and built character of each district.
- (b) Establish standards that protect primary conservation areas and public river corridor views from development impacts inconsistent with the purpose of the MRCCA and ensure that new development is sited consistent with the purpose of the MRCCA.
- (c) Identify development standards and considerations for land uses that have potential to negatively impact primary conservation areas and public river corridor views.

#### **Sec. 68.232. District description and management purpose.**

The MRCCA Mississippi River Corridor Critical Area is divided into the following MRCCA overlay districts.

- (a) ROS rural and open space overlay district.
  - (1) Description. The ROS district is characterized by rural and low-density development patterns and land uses. It includes land that is riparian or visible from the river, as well as large, undeveloped tracts of high ecological and scenic value, floodplain, and undeveloped islands. Many primary conservation areas exist in the district.
  - (2) Management purpose. The ROS District must be managed to sustain and restore the rural and natural character of the corridor and to protect and enhance habitat, parks and open space, public river corridor views, and scenic, natural, and historic areas.
- (b) RN river neighborhood overlay district.
  - (1) Description. The RN District is characterized by primarily residential neighborhoods that are riparian or readily visible from the river or that abut riparian parkland. The district includes parks and open space, limited commercial development, marinas, and related land uses.
  - (2) Management purpose. The RN District must be managed to maintain the character of the river corridor within the context of existing residential and related neighborhood development, and to protect and enhance habitat, parks and open space, public river corridor views, and scenic, natural, and historic areas. Minimizing erosion and the flow of untreated storm water into the river and enhancing habitat and shoreline vegetation are priorities in the district.
- (c) RTC river towns and crossings overlay district.
  - (1) Description. The RTC District is characterized by historic downtown areas and limited nodes of intense development at specific river crossings, as well as institutional campuses that predate designation of the MRCCA, and that include taller buildings.
  - (2) Management purpose. The 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 storm water into the river, providing public access to and public views of the river, and restoring natural vegetation in riparian areas and tree canopy are priorities in the district.
- (d) SR separated from river overlay district.
  - (1) Description. The SR District is characterized by its physical and visual distance from the Mississippi River. The district includes land separated from the river by distance, topography, development, or a transportation corridor. The land in this district is not readily visible from the Mississippi River.
  - (2) Management purpose. The SR district provides flexibility in managing development without negatively affecting the key resources and features of the river corridor. Minimizing negative impacts to primary conservation areas and minimizing erosion and flow of untreated storm water into the Mississippi River are priorities in the district.

(e) UM urban mixed overlay district.

- (1) Description. The UM District includes large areas of highly urbanized mixed use that are a part of the urban fabric of the river corridor, including institutional, commercial, industrial, and residential areas and parks and open space.
- (2) Management purpose. The UM District must be managed in a manner that allows for future growth and redevelopment, and intensely developed areas, that do not negatively affect public river corridor views and protect bluffs and floodplains. Accommodating urban growth while restoring and enhancing bluff and shoreline habitat, minimizing erosion and flow of untreated storm water into the river, and providing public access to and public views of the river are priorities in the district.

(f) UC urban core overlay district.

- (1) Description. The UC District includes downtown.
- (2) Management purpose. The UC District must be managed with the greatest flexibility to protect commercial, industrial, and other high-intensity urban uses, while minimizing negative impacts to primary conservation areas and minimizing erosion and flow of untreated storm water into the river. Providing public access to and public views of the river are priorities in the district.

**Sec. 68.233. MRCCA district map.**

The locations and boundaries of the MRCCA overlay districts established by this article are shown on the MRCCA Mississippi River Corridor Critical Area Overlay Districts zoning maps accompanying this code, which are incorporated herein by reference. The district boundary lines are intended to follow the centerlines of rivers and streams, highways, streets, lot lines, and municipal boundaries, unless a boundary line is otherwise indicated on the map. Where district boundaries cross unsubdivided property, the district boundary line is determined by use of dimensions or the scale appearing on the map.

**Sec. 68.234. Structure height.**

Structures and facilities must comply with the following maximum height standards unless identified as exempt in division 9. All of the following height standards, including additional height allowed with a conditional use permit, are subject to the requirement that structure design and placement minimize interference with public river corridor views.

- (a) ROS District: 35 feet.
- (b) RN District: 35 feet.
- (c) RTC District: 48 feet, except that additional height may be permitted with a conditional use permit according to section 68.236.
- (d) SR District: Height is determined by underlying zoning, provided the allowed height is consistent with that of the mature treeline, where present, and existing surrounding development as viewed from the OHWL of the opposite shore.
- (e) UM District: 65 feet, except that additional height may be permitted with a conditional use permit according to section 68.236.
- (f) UC District: Height is determined by underlying zoning.

**Sec. 68.235. Site Plan Review standards for tiering**

In addition to the site plan review requirements of section 61.402, criteria for reviewing and validating specific tiering strategies of a proposed structure or structures shall include the following:

- (a) Determination that the proposed structure meets the required bluff and OHWL setbacks;
- (b) Consideration of impacts to public river corridor views identified in the MRCCA Plan, including opportunities for improved or new views;
- (c) Determination that the proposed structure is consistent with the requirements in Minnesota Rules Part 6106.0120 for tiering of structures, through building design and/or generally lower heights for structures and structure sections closer to the river and/or bluffline, with consideration of topography. Consideration

of building design and other techniques to minimize the perceived bulk of the proposed structure include but are not limited to:

- (1) Using site design techniques, such as, having the building relate to the natural topography, screen the building established tree canopy, or rotating building orientation to align narrowest facades with public river view corridors;
- (2) Using architectural design techniques, such as tiering portions of the building away from the Mississippi River, narrowing the profile of upper floors of the building, or modifying roof design;
- (3) Using building materials that complement the existing landscape, including use of natural materials such as stone, a color palette that blends with surrounding vegetation and other landscape elements, and incorporate vegetative elements, or mimic surrounding topography.

**Sec. 68.236. Conditional use permit for additional height.**

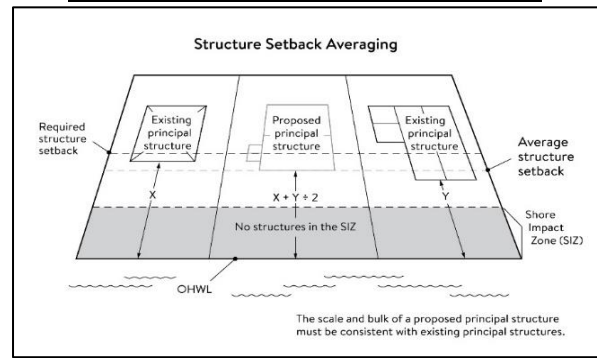
In addition to the conditional use permit requirements of section 68.224, criteria for considering whether to grant a conditional use permit for additional height under the provisions of section 68.234 shall include the following, and mitigation if required as describe under section 68.225:

- (a) Assessment of the visual impact of the proposed structure on public river corridor views, identified in the MRCCA Plan.
- (b) Determination that the proposed structure is consistent with the requirements in Minnesota Rules Part 6106.0120 for tiering of structures, through building design or generally lower heights for structures and structure sections closer to the river or bluffline, with consideration of topography. Consideration of building design and other techniques to minimize the perceived bulk of the proposed structure are those as identified in Sec. 68.235(c).
- (c) Identification of other techniques for reduction of impact to identified public river corridor views identified in the MRCCA Plan.
- (d) Opportunities for creation or enhancement of public river corridor view.

**Sec. 68.237. Structure and impervious surface placement.**

- (a) Structures and impervious surfaces must not be placed in the shore or bluff impact zones unless identified as an exemption in division 9.
- (b) Structures, impervious surfaces, and facilities must comply with the following OHWL setback provisions unless identified as exempt in division 9.
  - (1) ROS District: 200 feet from the Mississippi River and 150 feet from the Minnesota River.
  - (2) RN District: 100 feet from the Mississippi River.
  - (3) RTC District: 75 feet from the Mississippi River.
  - (4) UM District: 50 feet from the Mississippi River.
- (c) Structures, impervious surfaces, and facilities must comply with the following bluffline setback provisions unless identified as exempt in division 9: 100 feet in the ROS district; 40 feet in all other districts.
- (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 average of the adjoining setbacks, if the new structure's scale and bulk riverward or bluffward of the setbacks required under section 68.237(b) and (c) are consistent with adjoining development. See Figure 68.236.

Figure 68.236. Structure Setback Averaging



- (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.

**Sec. 68.238. Lot size and buildable area.**

- (a) The width of lots abutting the Mississippi River in the ROS district must be at least 200 feet, unless alternative design methods are used that provide greater protection of the riparian area.
- (b) All new lots must have adequate buildable area to comply with the setback requirements of section 68.237(b) and (c) so as not to require variances to use the lots for their intended purpose.

**Sec. 68.239. Special land use provisions.**

The purpose of this section is to identify development standards and considerations for land uses that have potential to negatively impact primary conservation areas and public river corridor views. Uses within the MRCCA are generally determined by underlying zoning, with additional provisions for the following land uses.

- (a) *Agricultural use.* Perennial ground cover is required within 50 feet of the ordinary high water level and within the bluff impact zone.
- (b) *Forestry.* Tree harvesting and biomass harvesting within woodlands, and associated reforestation, must be consistent with recommended practices in [Conserving Wooded Areas in Developing Communities: Best Management Practices in Minnesota](#).
- (c) *Nonmetallic mining.* Nonmetallic mining requires a conditional use permit or interim use permit issued by the local government, subject to the following:
- (1) New nonmetallic mining is prohibited within the shore impact zone and bluff impact zone and within the required structure setback from the bluffline and OHWL.
  - (2) Processing machinery must be located consistent with setback standards for structures as provided in section 68.237.
  - (3) Only one barge loading area, which shall be limited to the minimum size practicable, is permitted for each mining operation.
  - (4) New and, where practicable, existing nonmetallic mining operations shall not be readily visible and must be screened by establishing and maintaining natural vegetation. The unscreened boundaries of nonmetallic mining areas are limited to only the barge loading area.
  - (5) A site management plan must be developed by the operator and approved by the local government before new nonmetallic mining commences. Operations must be consistent with the site plan throughout the duration of operations at the site. The site management plan must:
    - a. Describe how the site will be developed over time with an emphasis on minimizing environmental risk to public waters;
    - b. Explain where staged reclamation may occur at certain points during the life of the site;
    - c. Address dust, noise, storm water management, possible pollutant discharges, days and hours of operation, and duration of operations; and
    - d. Describe any anticipated vegetation and topographic alterations outside the pit, and reclamation plans consistent with the stated end use for the land.

- (6) Existing and new nonmetallic mining operations must submit land reclamation plans to the local government compatible with the purposes of this ordinance.
- (d) River-dependent uses. River-dependent uses must comply with the following design standards.
  - (1) Structures and parking areas, except shoreline facilities and private roads and conveyances serving river-dependent uses as provided in division 9, must meet the dimensional and performance standards in this article, must be designed so that they are not readily visible (defined in section 68.214), and must be screened by establishing and maintaining natural vegetation.
  - (2) Shoreline facilities must comply with Minnesota Rules, chapter 6115 and must:
    - a. Be designed in a compact fashion to minimize the shoreline area affected; and
    - b. Minimize the surface area of land occupied in relation to the number of watercraft or barges to be served.
  - (3) Dredging and placement of dredged material are subject to existing federal and state permit requirements and agreements.
- (f) Wireless communication towers. Wireless communication towers require a conditional or interim use permit and are subject to the following design standards.
  - (1) The applicant must demonstrate that functional coverage cannot be provided through collocation, a tower at a lower height, or a tower at a location outside of the MRCCA.
  - (2) The tower shall not be located in a bluff or shore impact zone.
  - (3) Placement of the tower must minimize impacts on public river corridor views.
  - (4) The tower must comply with the general design standards in section 68.252.

#### **Division 4. 68.240. Performance Standards for Private Facilities**

##### **Sec. 68.241. Purpose.**

The purpose of this division is to establish design standards for private facilities that are consistent with best management practices and that minimize impacts on primary conservation areas, public river corridor views and other resources identified in the MRCCA plan.

##### **Sec. 68.242. General design standards.**

All private facilities must be developed in accordance with the vegetation management and land alteration requirements in divisions 6 and 7.

##### **Sec. 68.243. Private roads, driveways, and parking areas.**

Except as provided in division 9, private roads, driveways and parking areas shall:

- (a) Be designed to take advantage of natural vegetation and topography so that they are not readily visible (defined in section 68.214);
- (b) Comply with structure setback requirements according to Section 68.236; and
- (c) Not be placed within the bluff impact zone or shore impact zone, unless exempt under division 9 and designed consistent with section 68.252.

##### **Sec. 68.244. Private water access and viewing facilities.**

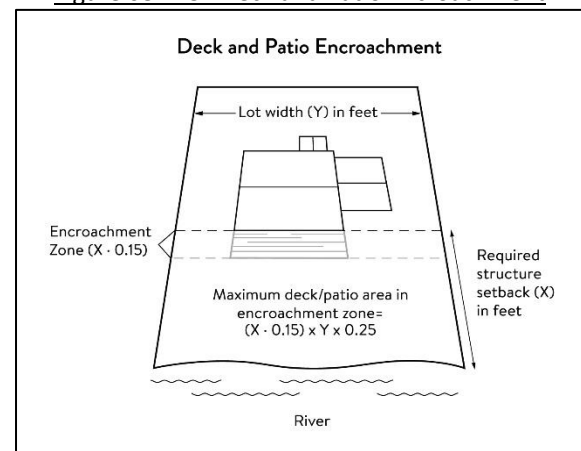
- (a) Private access paths shall be no more than eight feet wide if placed within the shore impact zone, and no more than four feet wide if placed within the bluff impact zone.
- (b) Private water access ramps must comply with Minnesota Rules, chapters 6115.0210 and 6280.0250, and shall be designed and constructed consistent with the applicable standards in Design Handbook for Recreational Boating and Fishing Facilities.
- (c) Design and construction of private stairways, lifts, and landings are subject to the following standards.
  - (1) Stairways and lifts shall 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 zoning administrator.

- (2) Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet area allowed for commercial properties and residential facilities held in common if approved by the zoning administrator.
- (3) Canopies or roofs are prohibited on stairways, lifts, or landings.
- (4) Stairways, lifts, and landings must be located in the least visible portion of the lot whenever practical.
- (5) Ramps, lifts, mobility paths, or other facilities for persons with physical disabilities are allowed for achieving access to shore areas according to section 68.244(c)(1-4), and as provided under section 68.229.
- (d) One water-oriented accessory structure is allowed for each riparian lot or parcel less than 300 feet in width at the ordinary high water level, with one additional water-oriented accessory structure allowed for each additional 300 feet of shoreline on the same lot or parcel. Water-oriented accessory structures are prohibited in the bluff impact zone, shall not exceed 12 feet in height, shall not exceed 120 square feet in area, and shall be placed a minimum of 10 feet from the ordinary high water level.

**Sec. 68.245. Decks and patios in setback areas.**

Decks and at-grade patios may encroach into the required setbacks from the ordinary high water level and blufflines when consistent with divisions 6 and 7, provided that the deck or patio does not extend into the bluff impact zone, the encroachment of the deck or patio into the required setback area does not exceed 15 percent of the required structure setback, and the area of the deck or patio that extends into the required setback area occupies no more than 25 percent of the total area between the required setback and the 15 percent using the formula: [Required setback depth (feet) x 0.15 x lot width (feet) at the required structure setback x 0.25 = maximum total area]. See Figure 68.245.

**Figure 68.245. Deck and Patio Encroachment**



**Sec. 68.246. Off-premise and directional signs.**

- (a) Off-premise advertising signs must meet required structure placement and height standards in sections 68.234 and 68.236, and shall not be *readily visible* (defined in section 68.214).
- (b) Directional signs for patrons arriving at a business by watercraft must be consistent with [Minnesota Statutes, section 86B.115](#), shall be no greater than ten feet in height and 32 square feet in surface area, and if located in a shore impact zone shall only convey the location and name of the establishment and the general types of goods and services available. If illuminated, the lighting must be fully shielded and directed downward to prevent illumination out across the river or to the sky.

**Division 5. 68.250. Performance Standards for Public Facilities**

**Sec. 68.251. Purpose.**

The purpose of this division is to establish design standards for public facilities that are consistent with best management practices and that minimize impacts on primary conservation areas, public river corridor views and other resources



identified in the MRCCA plan. Public facilities serve the public interest by providing public access to the Mississippi River corridor or require locations in or adjacent to the river corridor and therefore require some degree of flexibility.

**Sec. 68.252. General design standards.**

All public facilities must be designed and constructed to do the following:

- (a) Minimize visibility of the facility from the river to the extent consistent with the purpose of the facility.
- (b) Comply with the structure placement and height standards in division 3, except as provided in division 9.
- (c) Be consistent with the vegetation management standards in division 6 and the land alteration and storm water management standards in division 7, including use of practices identified in [Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-0001](#), where applicable.
- (d) Avoid primary conservation areas unless no alternative exists. If no alternative exists, then disturbance to primary conservation areas must be avoided to the greatest extent practicable, and design and construction must minimize impacts.
- (e) Minimize disturbance of spawning and nesting by scheduling construction that could impact spawning and nesting areas to be at times when local birds, fish and wildlife are not spawning or nesting.

**Sec. 68.253. Right-of-way maintenance standards.**

Right-of-way maintenance must comply with the following standards:

- (a) Vegetation currently in a natural state shall be maintained to the extent feasible.
- (b) Where vegetation in a natural state has been removed, native plants shall be planted and maintained on the right-of-way.
- (c) Chemical control of vegetation must be avoided when practicable, but when chemical control is necessary, chemicals used shall be in accordance with the regulations and other requirements of all state and federal agencies with authority over the chemical's use.

**Sec. 68.254. Crossings of public water or public land.**

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](#).

**Sec. 68.255. Public utilities.**

Public utilities shall comply with the following standards.

- (a) High-voltage transmission lines, wind energy conversion systems greater than five megawatts, and pipelines are regulated according to Minnesota Statutes, chapter [216E](#), [216F](#), and [216G](#) respectively.
- (b) If overhead placement is necessary, utility facility crossings must minimize visibility of the facility from the river and follow other existing rights of way as much as practicable.
- (c) The appearance of structures with regard to height, width, materials and color must be as compatible as practicable with the surrounding area in a natural state.
- (d) Wireless communication facilities, according to section 68.238(f).

**Sec. 68.256. Public transportation facilities.**

Public transportation facilities shall comply with structure placement and height standards in division 3. Where such facilities intersect or abut two or more MRCCA districts, the least restrictive standards apply. Public transportation facilities must be designed and constructed to give priority to providing scenic overlooks for motorists, bicyclists, and pedestrians; providing safe pedestrian crossings and facilities along the river corridor; providing access to the riverfront in public ownership; and allowing for use of the land between the river and the transportation facility.

**Sec. 68.257. Public recreational facilities.**

Public recreational facilities must comply with the following standards:

- (a) Buildings and parking associated with public recreational facilities must comply with the structure placement and height standards in division 3, except as provided in division 9.
- (b) Roads and driveways associated with public recreational facilities shall not be placed in the bluff or shore impact zones unless no other placement alternative exists. If no alternative exists, then design and construction must minimize impacts to shoreline vegetation, erodible soils and slopes, and other sensitive resources.
- (c) Trails, access paths, and viewing areas associated with public recreational facilities and providing access to or views of the Mississippi River are allowed within the bluff and shore impact zones if design, construction, and maintenance methods are consistent with the best management practice guidelines in [Trail Planning, Design, and Development Guidelines](#).
  - (1) Hard-surface trails are not allowed on the face of bluffs with a slope exceeding 30 percent. Natural surface trails are allowed, provided they do not exceed eight feet in width.
  - (2) Trails, paths, and viewing areas shall be designed and constructed to minimize visibility from the river, visual impacts on public river corridor views, and disturbance to and fragmentation of primary conservation areas.
- (d) Public water access facilities must comply with the following requirements:
  - (1) Watercraft access ramps must comply with Minnesota Rules chapters [6115.0210](#) and [6280.0250](#).
  - (2) Facilities must be designed and constructed consistent with the standards in Design Handbook for Recreational Boating and Fishing Facilities.
- (e) Public signs and kiosks for interpretive or directional purposes are allowed in the bluff or shore impact zones, provided they are placed and constructed to minimize disturbance to these areas and avoid visual impacts on public river corridor views. If illuminated, the lighting must be fully shielded and be directed downward.
- (f) Public stairways, lifts, and landings must be designed as provided in section 68.244(c).

## **Division 6. 68.260. Vegetation Management**

### **Sec. 68.261. Purpose.**

The purpose of this division is to establish standards that sustain and enhance the biological and ecological functions of vegetation, preserve the natural character and topography of the MRCCA, and maintain stability of bluffs and steep slopes and ensure stability of other erosion-prone areas.

### **Sec. 68.262. Applicability.**

This section applies to shore impact zones, areas within 50 feet of a wetland or natural drainage route, bluff impact zones, areas of native plant communities, and significant existing vegetative stands identified in the MRCCA plan.

### **Sec. 68.263. Activities allowed without a vegetation permit.**

- (a) Maintenance of existing lawns, landscaping and gardens;
- (b) Removal of vegetation in emergency situations as determined by the City;
- (c) Right-of-way maintenance for public facilities meeting the standards section 68.253;
- (d) Agricultural and forestry activities meeting the standards of sections 68.238(a) and (c);
- (e) Selective vegetation removal, provided that vegetative cover remains consistent with the management purpose of the MRCCA District, including removal of vegetation that is dead, diseased, dying, or hazardous; vegetation to prevent the spread of diseases or insect pests; individual trees and shrubs; and invasive non-native species.

### **Sec. 68.264. Activities allowed with a vegetation permit.**

- (a) Only the following intensive vegetation clearing activities are allowed with a vegetation permit:
  - (1) Clearing of vegetation that is dead, diseased, dying, or hazardous;
  - (2) Clearing to prevent the spread of diseases or insect pests;

- (3) Clearing to remove invasive non-native species.
- (4) Clearing to prepare for restoration and erosion control management activities consistent with a plan approved by the zoning administrator.
- (5) The minimum necessary for development that is allowed with a building permit or as an exemption under division 9.
- (b) General Performance Standards. The following standards must be met, in addition to a restoration plan under section 68.266, in order to approve a vegetation permit:
  - (1) Development is sited to minimize removal of or disturbance to natural vegetation;
  - (2) Soil, slope stability, and hydrologic conditions are suitable for the proposed work as determined by a professional engineer;
  - (3) Clearing is the minimum necessary and designed to blend with the natural terrain and minimize visual impacts to public river corridor views;
  - (4) Vegetation removal activities are conducted so as to expose the smallest practical area of soil to erosion for the least possible time; and
  - (5) Any other condition determined necessary to achieve the purpose of this section.

**Sec. 68.265. Prohibited activities.**

All other intensive vegetation clearing is prohibited.

**Sec. 68.266. Vegetation restoration plan.**

- (a) Development of a vegetation restoration plan and reestablishment of natural vegetation is required for any vegetation removed with a permit under section 68.264(a), upon failure to comply with any provisions in this division, or as part of the planning process for subdivisions as provided in division 8.
- (b) Restoration Plan Performance Standards. The vegetation restoration plan must satisfy the application submittal requirements in section 68.226 and the following standards.
  - (1) Vegetation shall be restored in one or more of the following restoration priority areas:
    - a. Areas with soils showing signs of erosion, especially on or near the top and bottom of steep slopes and bluffs.
    - b. Shoreline areas within 25 feet of the water with no natural vegetation, degraded vegetation, or planted with turf grass.
    - c. Areas on steep slopes and bluffs that are visible from the river with no natural vegetation, degraded vegetation, or planted with turf grass.
    - d. Other approved priority opportunity area, including priorities identified in the MRCCA plan, if none of the above exist.
  - (2) Include vegetation that provides suitable habitat and effective soil stability, runoff retention, and infiltration capability. Vegetation species, composition, density, and diversity shall be guided by nearby patches of native plant communities and by [Native Vegetation Establishment and Enhancement Guidelines](#).
  - (3) Any highly erodible soils disturbed during removal and/or restoration shall be stabilized with deep-rooted vegetation with a high stem density.
  - (4) Vegetation removed must be restored with native vegetation to the greatest extent practicable. The area (square feet) of the restored vegetation should be similar to that removed to the greatest extent practicable.
  - (5) For restoration of removed native plant communities, restored vegetation must also provide biological and ecological function equivalent to the removed native plant communities. The area (square feet) of the restored vegetation should be equivalent to that removed.
  - (6) The plan shall be prepared by a professional ecologist, arborist, landscape architect, or person with demonstrable experience and knowledge related to vegetation management.
  - (7) Include a maintenance plan that includes management provisions for controlling invasive species and replacement of plant loss for three years.

- (c) A certificate of compliance will be issued after the vegetation restoration plan requirements have been satisfied.

## **Division 7. 68.270. Land Alteration Standards and Stormwater Management**

### **Sec. 68.271. Purpose.**

The purpose of this division is to establish standards that protect water quality from pollutant loadings of sediment, nutrients, bacteria, and other contaminants; and maintain stability of bluffs, shorelines, and other areas prone to erosion.

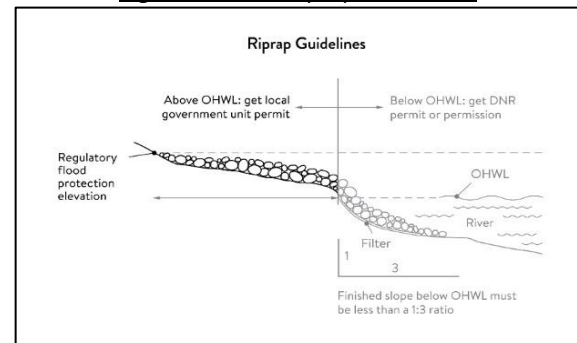
### **Sec. 68.272. Land alteration.**

- (a) Within the bluff impact zone, land alteration is prohibited except for the following, which are allowed by permit:
- (1) Erosion control consistent with a plan approved by the local government or resource agency and consistent with section 68.276;
  - (2) The minimum necessary for development that is allowed as an exception under division 9; and
  - (3) Repair and maintenance of existing buildings and facilities.
- (b) Within the water quality impact zone, land alteration that involves more than ten cubic yards of material or affects an area greater than 1,000 square feet requires a permit.

### **Sec. 68.273. Rock riprap, retaining walls, and other erosion control structures.**

- (a) Construction, repair, or replacement of rock riprap, retaining walls, and other erosion control structures located at or below the OHWL must comply with Minnesota Rules, chapters 6115.0215, subpart 4, item E, and 6115.0216, subpart 2. Work must not proceed until approved by the commissioner, permitted by the US Army Corps of Engineers, and any other permits are obtained. See Figure 68.273.

**Figure 68.273. Riprap Guidelines**



- (b) Construction or replacement of rock riprap, retaining walls, and other erosion control structures within the bluff impact zone and the water quality impact zone are allowed with a permit consistent with provisions of section 68.276 provided that:
- (1) If the project includes work at or below the OHWL, the commissioner has already approved or permitted the project.
  - (2) The structures are used only to correct an established erosion problem as determined by the zoning administrator.
  - (3) The size and extent of the structures are the minimum necessary to correct the erosion problem and are not larger than the following, unless a professional engineer determines that a larger structure is needed to correct the erosion problem. Retaining walls must not exceed five feet in height and must be placed a minimum horizontal distance of ten feet apart. Riprap must not exceed the height of the regulatory flood protection elevation.
- (c) Repair of existing rock riprap, retaining walls, and other erosion control structures above the OHWL does not require a permit provided it does not involve any land alteration.

### **Sec. 68.274. Stormwater management.**

- (a) In the bluff impact zone, storm water management facilities are prohibited, except by permit if:
  - (1) There are no alternatives for storm water treatment outside the bluff impact zone on the subject site;
  - (2) The site generating runoff is designed so that the amount of runoff reaching the bluff impact zone is reduced to the greatest extent practicable;
  - (3) The construction and operation of the facility does not affect slope stability on the subject property or adjoining properties; and
  - (4) Mitigation based on the best available engineering and geological practices is required and applied to eliminate or minimize the risk of slope failure.
- (b) In the water quality impact zone, development that creates new impervious surface, as allowed by exemption in division 9, or fully reconstructs existing impervious surface of more than 10,000 square feet requires a storm water permit. Multipurpose trails and sidewalks are exempt if there is down gradient vegetation or a filter strip that is at least five feet wide.
- (c) In all other areas, storm water runoff must be directed away from the bluff impact zones and unstable areas.

**Sec. 68.275. Development on steep slopes.**

Construction of structures, impervious surfaces, land alteration, vegetation removal, or other construction activities are allowed on steep slopes if the development can be accomplished without increasing erosion or storm water runoff, the soil types and geology are suitable for the proposed development, and vegetation is managed according to the requirements of division 6.

**Sec. 68.276. Conditions of land alteration permit approval.**

Land alteration permit approval shall be subject to the following conditions.

- (a) Temporary and permanent erosion and sediment control measures shall retain sediment onsite consistent with best management practices in the [Minnesota Stormwater Manual](#).
- (b) Natural site topography, soil, and vegetation conditions shall be used to control runoff and reduce erosion and sedimentation.
- (c) Construction activity shall be phased when possible.
- (d) All erosion and sediment controls shall be installed before starting any land disturbance activity.
- (e) Erosion and sediment controls shall be maintained to ensure effective operation.
- (f) The proposed work shall be consistent with the vegetation standards in division 6.
- (g) Best management practices for protecting and enhancing ecological and water resources identified in [Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-0001](#).

**Sec. 68.277. Compliance with other plans and programs.**

All development must be consistent with Minnesota Statutes, chapter 103B, and local water management plans completed under chapter 8410; meet or exceed the wetland protection standards under Minnesota Rules, chapter 8420; and meet or exceed the floodplain management standards under Minnesota Rules, chapter 6120. 5000 – 6120.6200.

**Division 8. 68.280. Subdivision and Land Development Standards**

**Sec. 68.281. Purpose.**

The purposes of this division are to protect and enhance the natural and scenic values of the MRCCA during development or redevelopment of large sites, establish standards for protecting and restoring biological and ecological functions of primary conservation areas on large sites, and encourage restoration of natural vegetation during development or redevelopment of large sites where restoration opportunities have been identified in MRCCA Plans.

**Sec. 68.282. Applicability.**

The design standards in this section apply to subdivisions and master-planned development and redevelopment of land involving ten or more acres for parcels that abut the Mississippi River and 20 or more acres for all other parcels, including smaller individual sites within subdivisions, planned unit developments and master-planned developments that are part of a common plan of development that may be constructed at different times.

The following activities are exempt from the requirements of this section: minor subdivisions consisting of three or fewer lots, minor boundary line corrections, resolutions of encroachments, additions to existing lots of record, placement of essential services, and activities involving river-dependent commercial and industrial uses.

**Sec. 68.283. Application materials.**

Project information listed in section 68.226 must be submitted for all proposed developments.

**Sec. 68.284. Design standards.**

- (a) Primary conservation areas, where they exist, must be set aside and designated as protected open space in quantities meeting the following as a percentage of total parcel area:
  - (1) ROS District: 50%.
  - (2) RN District: 20%.
  - (3) RTC, UM, and UC Districts: 10%.
  - (4) SR District: 10% if the parcel includes native plant communities or provides feasible connections to a regional park or trail system, otherwise no requirement.
- (b) If the primary conservation areas exceed the amounts specified in section 68.284(a), then protection of native plant communities and natural vegetation in riparian areas shall be prioritized.
- (c) If primary conservation areas exist but do not have natural vegetation (identified as restoration priorities in the MRCCA Plan), then a vegetation assessment must be completed to evaluate the unvegetated primary conservation areas and determine whether vegetation restoration is needed. If restoration is needed, vegetation must be restored according to section 68.266(b).
- (d) If primary conservation areas do not exist on the parcel and portions of the parcel have been identified in the MRCCA plan as a restoration area, vegetation must be restored in the identified areas according to section 68.266(b) and the area must be set aside and designated as protected open space.
- (e) Storm water treatment areas or other green infrastructure may be used to meet the protected open space requirements if the vegetation provides biological and ecological functions.
- (f) Land dedicated under sections 63.700 or 69.511 for public river access, parks, or other open space or public facilities may be counted toward the protected open space requirement.
- (g) Protected open space areas must connect open space, natural areas, and recreational areas, where present on adjoining parcels, as much as possible to form an interconnected network.

**Sec. 68.285. Permanent protection of designated open space.**

- (a) Designated open space areas must be protected through one or more of the following methods:
  - (1) Public acquisition by a government entity for conservation purposes.
  - (2) A permanent conservation easement, as provided in Minnesota Statutes, chapter 84C.
  - (3) A deed restriction.
  - (4) Other arrangements that achieve an equivalent degree of protection.
- (b) Permanent protection methods must ensure the long-term management of vegetation to meet its biological and ecological functions, prohibit structures, and prohibit land alteration, except as needed to provide public recreational facilities and access to the river.

**Sec. 68.286. Alternative design standards.**

Alternative design standards may be considered under the provisions for master-planned development in sections 66.344(b), 66.543, and 66.951, and under the provisions of 66.800 PD planned development district. Individual parcels in such master-planned development or PD planned development district are not required to meet the design standards of this division if the overall development is in compliance with the standards and purposes of this division.

Division 9. 68.290. Exemptions

**Sec. 68.291. Purpose.**

The purpose of this division is to provide exemptions to structure placement, height and other standards for specific river or water access dependent facilities as provided in [Minnesota Statutes 116G.15 Subd. 4.](#)

**Sec. 68.292. Applicability.**

- (a) Uses and activities not specifically exempted must comply with this article. Uses and activities exempted under shore impact zone and bluff impact zone must comply with the vegetation management and land alteration standards in divisions 6 and 7.
- (b) Uses and activities in section 68.293 are categorized as:
  - (1) **Exempt - E.** This means that the use or activity is allowed.
  - (2) **Exempt if no alternative - (E).** This means that the use or activity is allowed only if no alternatives exist.
  - (3) **Not exempt - N.** This means that a use or activity is not exempt and must meet the standards.

**Sec. 68.293. Use and activity exemptions classification.**

(a) General uses and activities.

<u>Use or Activity</u>	<u>Set backs</u>	<u>Height Limits</u>	<u>SIZ</u>	<u>BIZ</u>	<u>Applicable standards with which the use or activity must comply</u>
<u>Industrial and utility structures requiring greater height for operational reasons (such as elevators, refineries and railroad signaling towers)</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>N</u>	<u>Structure design and placement must minimize interference with public river corridor views.</u>
<u>Barns, silos, and farm structures</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>N</u>	
<u>Bridges and bridge approach roadways</u>	<u>E</u>	<u>E</u>	<u>E</u>	<u>(E)</u>	<u>Division 5</u>
<u>Wireless communication towers</u>	<u>E</u>	<u>E</u>	<u>N</u>	<u>N</u>	<u>68.238(f)</u>
<u>Chimneys, church spires, flag poles, public monuments, and mechanical stacks and equipment</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>N</u>	
<u>Historic properties and contributing properties in historic districts</u>	<u>E</u>	<u>E</u>	<u>E</u>	<u>E</u>	<u>Exemptions do not apply to additions or site alterations</u>
<u>Buildings and structures on the face of or abutting the bluff in the UC district</u>	<u>E</u>	<u>N</u>	<u>n/a</u>	<u>E</u>	

(b) Public utilities.

<u>Use or Activity</u>	<u>Set backs</u>	<u>Height Limits</u>	<u>SIZ</u>	<u>BIZ</u>	<u>Applicable standards with which the use or activity must comply</u>
<u>Electrical power facilities</u>	<u>E</u>	<u>E</u>	<u>E</u>	<u>(E)</u>	<u>Division 5</u>
<u>Essential services (other than storm water facilities)</u>	<u>E</u>	<u>E</u>	<u>E</u>	<u>(E)</u>	<u>Division 5</u>
<u>Storm water facilities</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>(E)</u>	<u>Division 7</u>
<u>Wastewater treatment</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>Division 5</u>
<u>Public transportation facilities</u>	<u>E</u>	<u>N</u>	<u>(E)</u>	<u>(E)</u>	<u>Division 5</u>

(c) Public recreational facilities.

<u>Use or Activity</u>	<u>Set backs</u>	<u>Height Limits</u>	<u>SIZ</u>	<u>BIZ</u>	<u>Applicable standards with which the use or activity must comply</u>
<u>Accessory structures, such as monuments, flagpoles, light standards, and similar park features</u>	<u>E</u>	<u>E</u>	<u>(E)</u>	<u>(E)</u>	<u>Division 5; within BIZ, only on slopes averaging less than 30%. Exemptions do not apply to principal structures.</u>
<u>Picnic shelters and other open-sided structures</u>	<u>E</u>	<u>N</u>	<u>(E)</u>	<u>N</u>	<u>Division 5</u>
<u>Parking lots</u>	<u>(E)</u>	<u>N</u>	<u>(E)</u>	<u>(E)</u>	<u>Division 5; within BIZ, only within 20 feet of toe of bluff; not on face of bluff; and must not affect stability of bluff</u>
<u>Roads and driveways</u>	<u>(E)</u>	<u>N</u>	<u>(E)</u>	<u>(E)</u>	<u>Division 5</u>
<u>Natural-surfaced trails, access paths, and viewing areas</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>E</u>	<u>Division 5</u>
<u>Hard-surfaced trails and viewing platforms</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>(E)</u>	<u>Division 5; within BIZ, only on slopes averaging less than 30%</u>
<u>Water access ramps</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>(E)</u>	<u>Division 5</u>
<u>Public signs and kiosks for interpretive or directional purposes</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>(E)</u>	<u>Division 5</u>

(d) River-dependent uses.

<u>Use or Activity</u>	<u>Set backs</u>	<u>Height Limits</u>	<u>SIZ</u>	<u>BIZ</u>	<u>Applicable standards with which the use or activity must comply</u>
<u>Shoreline facilities</u>	<u>E</u>	<u>N<sup>1</sup></u>	<u>E</u>	<u>(E)</u>	<u>Section 68.238(e). Exemptions do not apply to buildings, structures, and parking areas that are not part of a shoreline facility</u>
<u>Private roads and conveyance structures serving river-dependent uses</u>	<u>E</u>	<u>N<sup>1</sup></u>	<u>E</u>	<u>(E)</u>	<u>Section 68.238(e)</u>

<sup>1</sup> River-dependent commercial, industrial, and utility structures are exempt from height limits only if greater height is required for operational reasons.

(e) Private residential and commercial water access and use facilities.

<u>Use or Activity</u>	<u>Set backs</u>	<u>Height Limits</u>	<u>SIZ</u>	<u>BIZ</u>	<u>Applicable standards with which the use or activity must comply</u>
<u>Private roads serving 3 or more lots</u>	<u>(E)</u>	<u>N</u>	<u>N</u>	<u>(E)</u>	<u>Division 4; in BIZ, only on slopes averaging less than 30%. Exemption does not apply to private roads serving fewer 3 lots or to private driveways and parking areas</u>
<u>Access paths</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>E</u>	<u>Division 4</u>
<u>Water access ramps</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>Division 4</u>
<u>Stairways, lifts, and landings</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>E</u>	<u>Division 4</u>



<u>Use or Activity</u>	<u>Set backs</u>	<u>Height Limits</u>	<u>SIZ</u>	<u>BIZ</u>	<u>Applicable standards with which the use or activity must comply</u>
<u>Water-oriented accessory structures</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>Division 4</u>
<u>Patios and decks</u>	<u>E</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Section 68.245</u>
<u>Directional signs for watercraft (private)</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>N</u>	<u>Section 68.246; exemption does not apply to off-premise advertising signs</u>
<u>Temporary storage of docks, boats, and other equipment during the winter months</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>N</u>	
<u>Erosion control structures, such as rock riprap and retaining walls</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>(E)</u>	<u>Sections 68.273, 68.275 and 68.276</u>
<u>Flood control structures</u>	<u>E</u>	<u>N</u>	<u>E</u>	<u>(E)</u>	<u>Division 7</u>

**Chapter 72. Reserved**

## **DETAILED MRCCA TIMELINE APPENDIX**

- **1976** – The MRCCA was designated as a state critical area by Governor Wendel Anderson (Executive Order No. 130) to protect its natural, cultural and scenic resources through coordinated land planning and regulation for the 72-mile stretch of the Mississippi River through the seven-county metropolitan area. The MRCCA covers 54,000 acres of land in 30 local jurisdictions, including 7,150 acres of land in Saint Paul (21% of total city land area).
- **1979** – The MRCCA designation was continued by Governor Albert Quie (Executive Order 79-19) and made permanent by the Metropolitan Council. Executive Order 79-19 required local units of government to adopt local plans and regulations for the MRCCA and provided standards and guidelines for this.
- **1982** – The River Corridor Overlay Districts chapter of the Saint Paul Zoning Code (now Chapter 68) was adopted by the City Council and approved by the Minnesota Environmental Quality Board (EQB). It combined Critical Area and Floodplain Management regulations and established standards and criteria for four River Corridor Overlay Districts:
  - RC1 River Corridor Floodway Overlay District;
  - RC2 River Corridor Flood Fringe Overlay District;
  - RC3 River Corridor Urban Open Overlay District; and
  - RC4 River Corridor Urban Diversified Overlay District.
- **1995** – EQB responsibilities for the Critical Area were shifted to the Minnesota Department of Natural Resources (DNR) by Governor Arne Carlson (Reorganization Order 170).
- **2009** – The state legislature directed the DNR to conduct rulemaking for the MRCCA to provide more specific direction and achieve greater consistency for Critical Area plans and regulations in the 30 local jurisdictions in the Critical Area.
- **2010** – Saint Paul adopted a new floodplain management ordinance, based on a DNR model floodplain management ordinance, to meet new Federal Emergency Management Agency requirements for federal flood insurance program eligibility. The new floodplain ordinance was adopted as Legislative Code Chapter 72 – Floodplain Management Overlay Districts, with language that the floodplain management regulations in Chapter 72 “shall control and otherwise take precedence over any regulations set forth in Chapter 68, River Corridor Overlay Districts, that pertain to floodplain management.”
- **2014** – The Saint Paul Planning Commission held a public hearing on the DNR’s draft MRCCA Rules, receiving comments from individuals and a variety of stakeholder groups.
- **2015** – The Planning Commission submitted comments and recommendations on the draft Rules to the Mayor and City Council, reflecting comments received at their public hearing and specifically addressing development opportunity sites in the Critical Area including the Ford site, the West Side Flats, and the Ramsey County West and jail sites.
- **2016** – The City Council held a public hearing to gather additional public comments on the draft MRCCA Rules. The Mayor and City Council submitted City comments on the Rules to an administrative law judge in 2016 during the state’s formal rulemaking process, which included additional state public hearings.
- **2017** – The DNR concluded the rulemaking process, and the state [Mississippi River Corridor Critical Area \(MRCCA\) Rules](#) were adopted. The MRCCA Rules divide the Critical Area into six overlay zoning

districts and include specific zoning code provisions, definitions, and regulations that local units of government are required to adopt along with the new overlay zoning districts as amendments to local zoning to comply with the MRCCA Rules.

- **2019** – The DNR developed a **model Critical Area ordinance** to help local governments draft local ordinances to comply with the MRCCA Rules. The model ordinance includes and suggests optional language to clarify rule provisions that may otherwise be difficult to administer.
- **2020** – Saint Paul adopted a new Mississippi River Corridor Critical Area Plan chapter of the Saint Paul Comprehensive Plan in compliance with the MRCCA Rules.
- **2022** – Saint Paul submitted a draft of the new Saint Paul MRCCA zoning ordinance to the DNR, showing changes from the DNR model ordinance along with explanatory notes and comments. The DNR found the draft ordinance to be substantially consistent with Minnesota Statutes § 116G and Minnesota Rules Chapter 6106, and conditionally approved it on August 23, 2022.
- **2023** – The Planning Commission held a public hearing on the draft zoning amendments.
- **2024** – Revised draft zoning amendments based on public input presented to Comprehensive and Neighborhood Planning Committee. The revised draft ordinance was reviewed by DNR staff in advance of a formal hearing process at City Council.

# **JANUARY 2023 PUBLIC HEARING APPENDIX**

On January 20, 2023, the Planning Commission held a public hearing on draft zoning amendments developed to comply with requirements in new state [Mississippi River Corridor Critical Area \(MRCCA\) Rules](#) for local adoption of six MRCCA overlay zoning districts and specific zoning code provisions, definitions, and regulations ([PC Public Hearing Minutes 1-20-23](#)). Twelve people spoke at the public hearing, 10 letters and 59 emails were received, and a resolution of support was received from the Highland District Council. Following is a summary and analysis of issues raised in public testimony, with links to the written testimony and the public hearing minutes, and recommendations in response to the public testimony.

## **1. District Boundaries**

### 1.1 Background

The boundaries of the six new MRCCA overlay zoning districts have been established and mapped by the state, the map incorporated by reference in Minnesota Rules, Part 6106.0100, Subp. 9.

### 1.2 Testimony

A Ryan Companies letter suggests refining the MRCCA district boundaries in the Highland Bridge development (Ford Site) to follow public roadways that have now been platted.

St. Thomas neighbors suggested the River Town or Crossing (RTC) regulations are not restrictive enough for the St. Thomas South Campus and RTC should be reconsidered there.

### 1.3 Analysis

MRCCA district boundaries established by the MRCCA Rules may be amended only according to a state rulemaking process specified in Minnesota Rules, Part 6106.0100, Subp. 9.C. MRCCA district boundaries are established by the State through MRCCA Rules and may not be amended as part of the process for local adoption of a new MRCCA ordinance in compliance with MRCCA Rules. The MRCCA Rules require local adoption of the new MRCCA overlay zoning districts and regulations to comply with the Rules now, independent of any potential future City effort to pursue rulemaking for district boundary amendments under the provisions of Minnesota Rules, Part 6106.0100, Subp. 9.C.

### 1.4 Recommendation

Proceed with adoption of the MRCCA ordinance now, independent of any potential future City effort to pursue rulemaking for district boundary amendments under the provisions of Minnesota Rules, Part 6106.0100, Subp. 9.C.

## **2. Height Limits**

### 2.1 Background

MRCCA Rules, Part 6106.0120, establish structure height and placement standards to protect *primary conservation areas* and *public river corridor views* ([MRCCA Rule language on tiering and building heights](#)). The Rules define *primary conservation areas* as including shore impact zones, bluff impact zones, floodplains, wetlands, natural drainage routes, native plant communities, and historic properties. The Rules define *public river corridor views* as “views toward the river from public

parkland, historic properties, and public overlooks, as well as views toward bluffs from the ordinary high water level of the opposite shore, as seen during the summer months.” Those views are defined in the Mississippi River Corridor Critical Area (MRCCA) chapter of the city’s 2040 Comprehensive Plan.

The MRCCA Rules require a 35’ height limit for structures in the **ROS** and **RN** districts. The Rules state that maximum height in the **SR** district is determined by underlying zoning, provided that structure height must be generally consistent with the mature treeline, where present, and existing surrounding development as viewed from the ordinary high water level of the opposite shore.

In the **RTC** district the Rules allow a maximum height of 48 feet, provided that tiering of structures away from the Mississippi River and from blufflines is given priority, 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 are allowed with a conditional use permit (CUP), with consideration of the relationship of building height to the mature treeline, where present, and existing surrounding development, as viewed from public river corridor views.

In the **UM** district the Rules allow a maximum height of 65 feet, provided tiering of structures away from the Mississippi River and from blufflines is given priority, 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 are allowed with a conditional use permit (CUP).

The Rules state that maximum height in the **UC Urban Core** district is determined by underlying zoning, provided tiering of structures away from the Mississippi River and blufflines is given priority, with lower structure heights closer to the river and blufflines, and structure design and placement minimize interference with public river corridor views).

MRCCA Rules, Part 6106.0120, Subp. 2.D provides criteria for conditional use permits for additional height. Language reflecting these criteria was included in the public hearing draft ordinance. The [DNR model ordinance](#) structure height section suggests including a maximum height allowed through a CUP in the RTC and UM districts to provide better protection of scenic resources. The Planning Commission public hearing draft ordinance included a 65’ maximum height allowed through a CUP in the RTC district and a maximum height of 90’ allowed through a CUP in the UM district. The public hearing draft also provided for specific maximum heights based on location within the UC district, with an option for additional height through a CUP. The model ordinance also suggests replacing the vague tiering language for the RTC, UM and UC districts with specific height standards based on distance from the river.

## 2.2 Testimony

Testimony regarding height limits can be summarized in the following general categories:

- Downtown height limit concerns (primarily in the UC district).
- Support for the proposed limits, as drafted.
- Site specific concerns related to:
  - Development at 706 Mississippi Blvd. S.
  - St. Thomas University Campus.
- Technical concerns related to referencing Saint Paul datum.

The following are excerpts from each of these categories.

### Downtown Height Limits

Six letters and four emails had a substantial focus on UC Urban Core district height limits on the river side of Kellogg Boulevard along the downtown bluff and riverfront. Seven speakers at the January 20, 2023, Planning Commission public hearing also addressed this ([PC Public Hearing Minutes 1-20-23](#)).

In written comments and/or testimony at the public hearing, Downtown Alliance, Port Authority, St. Paul Chamber, and Ramsey County representatives referenced the proposed RiversEdge project and asked that the proposed height limits be reconsidered.

A letter from Joe Spencer, Saint Paul Downtown Alliance (SPDA) ([Downtown Alliance Letter](#)), says SPDA is developing a Downtown Investment Strategy for downtown growth and development, notes several development sites (RiversEdge, RiverCentre Parking ramp, Central Station, St. Joseph's campus, and other public and privately owned downtown parcels), and asks that MRCCA zoning amendments be changed or delayed until SPDA completes their Downtown Investment Strategy and understands the relationship of the zoning amendments to wider downtown plans and strategies.

A letter from B. Kyle, Saint Paul Area Chamber ([St Paul Area Chamber Letter](#)), asks "that the Planning Commission please exempt the Urban Core District from the height restrictions and allow for projects to continue to be reviewed against the goals of the comprehensive plan." A letter from Trista Matascastillo, Ramsey County Commissioner, ([Ramsey County letter](#)) asks "that the Planning Commission revise the code amendments to exempt the Urban Core District from height restrictions and allow for each project to be reviewed against the goals of the comprehensive plan." Josh Olson, Ramsey County Community and Economic Development, said they understand the existing height limits for the RiversEdge site but are concerned about adding new MRCCA height limits.

The letter from Colleen O'Connor Toberman, Friends of the Mississippi River ([FMR letter](#)), expressed concern about "watering down the ordinance to accommodate one or two potential projects," stating that if they "enhance the public experience of the river as promised, they should be able to meet the criteria for a CUP." In testimony at the Planning Commission public hearing ([PC Public Hearing Minutes 1-20-23](#) speaker #4), she said that absolute height limits could be eliminated provided a conditional use permit (CUP) is required. The FMR letter states that "maintaining the CUP standards as proposed ... is important."

Tom Dimond spoke about the importance of protecting river views from Kellogg Boulevard and said nothing should be built on the river side of Kellogg Boulevard above the grade of Kellogg. His emailed testimony details the history and reasons for creation and protection of river views from Kellogg, from creation of Kellogg Mall Park and river views from the downtown bluff in the 1920s and 1930s, to regulations protecting the downtown bluff and views adopted in the 1960s - 1980s, and Kellogg Mall Park being the centerpiece of the proposed River Balcony along the downtown bluff. The email suggests that building height above Kellogg might be allowed with a CUP, but there should be a maximum height allowed with a CUP.

#### General Support for Height Districts

A letter from Friends of the Mississippi River ([FMR letter](#)) states, "the city's clear height and setback limits, variance and conditional use permit (CUP) criteria, and approach to building tiering in taller districts create more consistency and predictability for developers and residents" (top of page 2).

A [Highland District Council resolution](#) submitted in support of the draft amendments specifically notes the RTC height limits and provision for a CUP for height up to 65' in the RTC district.

A couple of the [general emails](#) received commented on the draft height limits. Mark Gilbert said he is "strongly in favor of upzoning and building more housing in St. Paul [but thinks] the proposed height limits, are a good balance between allowing development and preserving the river for all."

#### Specific Concerns

Nine emails focused on proposed development of an apartment building at 706 S Mississippi River Boulevard and supported change from the existing 50' height limit to the 35' height limit in the new RN district as soon as possible.

Two letters and 13 emails focused on proposed development on the University of St. Thomas south campus. Two speakers at the January 20, 2023, Planning Commission public hearing also addressed this ([PC public hearing minutes 1-20-23](#), speakers #10 & #11). The speakers, one letter and all the emails recommended the greatest possible protection for the MRCCA and more restrictive standards for the south campus, several suggesting that the new RTC district is not appropriate and that more district council review is needed before such designation. A [University of St. Thomas letter](#) noted that "the University of St. Thomas currently operates and plans under the terms of a ... 1990 CUP [that] established allowable building heights for future development of our South Campus, [which] at the time ... was in the RC3 [MRCCA district] with a 40' height restriction." The St. Thomas letter goes on to "suggest the ordinance be amended to allow maximum building heights under the CUP to take precedent over MRCCA height limitations."

#### Technical Concerns

A letter from Luke Martinkosky, Capitol Region Watershed District ([Capitol Region Watershed District letter](#)), notes that references to Saint Paul datum in the draft UC district height standards is different from the height standards for other districts and may lead to confusion.

### 2.3 Analysis

The CUP process is the best way to provide for more flexible and subjective review of taller buildings with potential for greater impact, and careful consideration of the typically complex urban site context and relevant plans in determining compliance of an individual project with MRCCA requirements. This process guides the city to document *how* a project is meeting the intent of the ordinance through the proposed site plan review and CUP processes, without defaulting to a "one size fits all" approach that would allow for sufficient flexibility based on individual site conditions. As noted, MRCCA ordinance standards can be amended to provide clear definitions of tiering and priority for tiering for both by-right projects through a site plan review process and for projects requesting additional height through the CUP process. In both cases, projects will be reviewed for consistency with requirements in the MRCCA Rules for a priority for tiering, including employment of one or more tiering strategies as outlined in the revised draft ordinance, as proposed below. In the Planning Commission public hearing draft, a CUP was recommended for projects higher than the bluffline.

#### Urban Core (UC) District -Related Analysis

The MRCCA UC Urban Core is most relevant to regulations affecting downtown. The UC district does not affect downtown north of Kellogg Boulevard. The UC district structure height standards in the draft ordinance can be amended to delete absolute height limits and confusing references to Saint Paul datum.

#### River Town and Crossing (RTC) and Urban Mixed (UM) Districts Related Analysis

RTC and UM district height regulations were supported by Friends of the Mississippi, the Highland District Council and others as drafted, including the maximum height allowed through a CUP suggested in the DNR model ordinance. By-right heights of 48' in RTC and 65' in UM are allowed by

the rules and are recommended to remain unchanged. The proposed site plan review standards related to a priority for tiering, described above, are recommended to apply to all by-right projects in RTC and UM. In addition, those projects requiring a conditional use permit for heights exceeding the RTC and UM maximum would require showing a priority for tiering to be demonstrated through the CUP process. This will guide projects to be more compatible with the context of the site. Maximum heights permitted by CUP are recommended to be guided underlying zoning district, which will further support contextual compatibility. Therefore, the RTC and UM district height maximums are unnecessary, and the ordinance is recommended to be amended to remove RTC and UM height maximums.

The University of St. Thomas suggests amending the draft ordinance to allow maximum building heights under the 1990 St. Thomas CUP that established allowable building heights for future development of the South Campus to take precedent over MRCCA height limitations, noting that the 40' MRCCA height limit for the South Campus in 1990 is more restrictive than the new proposed RTC height limits (maximum height of 48' by right and up to 65' with a CUP). The 1990 St. Thomas CUP limits height to 30' in the southern and western parts of the South Campus, 60' in the eastern and northern parts of the South Campus, and 75' in the center of the South Campus (see 1990 St. Thomas CUP Map). The city attorney has advised that the more detailed existing CUP granted specifically for the St. Thomas campus takes precedent over the more general MRCCA height limits without any change to the draft ordinance. The new MRCCA rules and ordinance do not change the validity of the existing CUP.

## 2.4 Recommendation

Approve amendments to the public hearing draft ordinance as follows to allow for flexibility in specific height limits, additional review by the Planning Commission through the CUP process, and to provide more direction regarding site design related to tiering:

- Removed incorporation of Sec. 63.103. Height Districts into MRRCA.
- Amended draft § 68.234(f) to delete previously proposed maximum height limits based on height above Saint Paul datum in the UC district, and removed the provision for CUP, relying instead on underlying height limits.,
- Amended draft § 68.234(c) and (e) to remove maximum height allowed with a CUP in RTC and UM districts and refer to underlying zoning.
- Added new definition for "tiering" and a new section § 68.235, to provide standards for site plan review related to a priority for tiering.
- Add site plan review standards for tiering, Sec. 68.235.
- Amend conditional use permit standards in Sec. 68.236. to reflect other edits related to tiering and views.

Recommended edits are as follows:

[NOTE: Underlining indicates language that differs from language in the MRCCA Rules. Rule language to be deleted is shown by ~~strikeout~~.]

### **Sec. 68.214. Definitions.**

Tiering. Tiering refers to strategies of arranging building heights and massing to reduce the perceived visual impact of buildings with respect to public river corridor views identified in the MRCCA Plan. Strategies for prioritizing tiering through site plan review and/or conditional use permit review are identified in section 68.235.



**Sec. 68.234. Structure height.**

Structures and facilities must comply with the following maximum height standards unless identified as exempt in division 9. Height is measured on the side of the structure facing the Mississippi River. All of the following height standards, including additional height allowed with a conditional use permit, are subject to the requirement that structure design and placement minimize interference with public river corridor views.

(a) ROS District: 35 feet.

(b) RN District: 35 feet.

(c) RTC District: 48 feet, ~~except that, , provided tiering of structures away from the Mississippi River and from blufflines is given priority, with lower structure heights closer to the river and blufflines, and that structure design and placement minimize interference with public river corridor views.~~ Structures over 48 feet are allowed as additional height to a maximum of 65 feet, may be permitted with a conditional use permit according to section 68.236.

(d) SR District: Height is determined by underlying zoning, provided the allowed height is consistent with that of the mature treeline, where present, and existing surrounding development as viewed from the OHWL of the opposite shore.

(e) UM District: 65 feet, ~~except that, , provided tiering of structures away from the Mississippi River and from blufflines is given priority, with lower structure heights closer to the river and blufflines, and that structure design and placement minimize interference with public river corridor views.~~ Structures over 65 feet are allowed as additional height, to a maximum of 90 feet, may be permitted with a conditional use permit according to section 68.236.

(f) UC District: Height is determined by underlying zoning. ~~provided tiering of structures away from the Mississippi River and blufflines be given priority, with lower structure heights closer to the river and blufflines, and structure design and placement minimize interference with public river corridor views.~~ **Sec. 68.235. Site plan review standards for tiering**

In addition to the site plan review requirements of section 61.402, criteria for reviewing and validating specific tiering strategies of a proposed structure or structures shall include the following:

(a) Determination that the proposed structure meets the required bluff and OHWL setbacks;

(b) Consideration of impacts to public river corridor views identified in the MRCCA Plan, including opportunities for improved or new views;

(c) Determination that the proposed structure is consistent with the requirements in Minnesota Rules Part 6106.0120 for tiering of structures, through building design and/or generally lower heights for structures and structure sections closer to the river and/or bluffline, with consideration of topography. Consideration of building design and other techniques to minimize the perceived bulk of the proposed structure include but are not limited to:

- (1) Using site design techniques, such as, having the building relate to the natural topography, screen the building established tree canopy, or rotating building orientation to align narrowest facades with public river view corridors;
- (2) Using architectural design techniques, such as tiering portions of the building away from the Mississippi River, narrowing the profile of upper floors of the building, or modifying roof design;
- (3) Using building materials that complement the existing landscape, including use of natural materials such as stone, a color palette that blends with surrounding vegetation and other landscape elements, and incorporate vegetative elements, or mimic surrounding topography;

**Sec. 68.236. Conditional use permit for additional height.**

In addition to the conditional use permit requirements of section 68.224, criteria for considering whether to grant a conditional use permit for additional height under the provisions of section 68.234 shall ~~must~~ include the following:

- (a) Assessment of the visual impact of the proposed structure on public river corridor views, including views identified in the MRCCA Plan ~~from other communities.~~
- (b) Determination that the proposed structure is consistent with the requirements in Minnesota Rules Part 6106.0120 for providing priority for tiering of structures, through building design and/or heights away from the Mississippi River and blufflines, with generally lower structure heights for structures and structure sections closer to the river and blufflines, with consideration of topography. Consideration of building design and other techniques to minimize the perceived bulk of the proposed structure are those as identified in Sec. 68.235(c).
- (c) Identification of other techniques for reduction of impact to public river corridor views identified in the MRCCA Plan.
- (d) Opportunities for creation or enhancement of public river corridor views.

**3. Sec. 68.293(a) Exemptions for Buildings Near UC District Bluff**

**3.1 Background**

Based on MRCCA Rules, [Part 6106.0180](#) Exemptions from Setbacks, Height Limits, and Other Requirements, draft ordinance § 68.293(a) provides new special exemptions for buildings and structures on the face or abutting the bluff in the UC district of Saint Paul from the requirements in § 68.237 that structures must not be placed in the bluff impact zone or within 40 feet of the bluffline. MRCCA Rules, Part 6106.0120, establish structure height and placement standards to protect *primary conservation areas* and *public river corridor views*. The Rules define *primary conservation areas* as including bluff impact zones. Map CA-5, Bluffs and Bluff Impact Zones, in the MRCCA chapter of the 2040 Comprehensive Plan shows the downtown bluff and bluff impact zone along the river side of Kellogg Boulevard west of Jackson Street.

**3.2 Testimony**

Written testimony from Tom Dimond recommends deleting the new special exemptions for buildings and structures on the face or abutting the bluff in the UC district of Saint Paul from bluff

protection regulations. It says these are the only such exemptions in the entire 72 miles of the Mississippi River covered by MRCCA regulations, MRCCA regulations have protected bluffs from development since the 1970s, and the new ordinance should not reduce existing protection of river bluffs and blufftop views.

### 3.3 Analysis

Current Zoning Code § 68.402(b) prohibits commercial and industrial development on slopes greater than 12%, prohibits residential development on slopes greater than 18%, and requires a 40-foot setback from blufflines. While the proposed new exemptions in draft § 68.293(a) for buildings near the downtown St. Paul bluff are unique, the downtown bluff is also unique in that it already has substantial development on and near it.

### 3.4 Recommendation

Keep draft § 69.293(a) as follows (“E” means exempt & “N” means not exempt):

#### **Sec. 68.293. Use and activity exemptions classification.**

##### *(a) General uses and activities.*

<i>Use or Activity</i>	<i>Set backs</i>	<i>Height Limits</i>	<i>SIZ</i>	<i>BLZ</i>	<i>Applicable standards with which the use or activity must comply</i>
Industrial and utility structures requiring greater height for operational reasons (such as elevators, refineries and railroad signaling towers)	N	E	N	N	Structure design and placement must minimize interference with public river corridor views.
Barns, silos, and farm structures	N	E	N	N	
Bridges and bridge approach roadways	E	E	E	(E)	Division 5
Wireless communication towers	E	E	N	N	68.238(f)
Chimneys, church spires, flag poles, public monuments, and mechanical stacks and equipment	N	E	N	N	
Historic properties and contributing properties in historic districts	E	E	E	E	Exemptions do not apply to additions or site alterations
Buildings and structures on the face of or abutting the bluff in the UC district	E	N	n/a	E	

## **4. Bird-safe Glass**

### 4.1 Background

The MRCCA Rules do not include bird-safe glass requirements, but this was an issue that came up in review of the Minneapolis MRCCA ordinance. Friends of the Mississippi River recommended including bird-safe glass standards for consideration in the Saint Paul public hearing draft ordinance. In 2021 Councilmember Noecker expressed support for including bird-friendly lighting and design requirements in the draft ordinance. The public hearing draft ordinance included standards for bird-safe glass similar to Minneapolis bird-safe standards for skyways. The bird-safe glass treatments definition in the Planning Commission public hearing draft ordinance is similar to that in the San Francisco bird-safe buildings ordinance and 2020 New York City bird-friendly building design and construction requirements.

### 4.2 Testimony

Audubon Minnesota and 31 others submitted letters and emails in support of the bird-safe glass requirements in the public hearing draft ordinance without recommending any changes. Four speakers at the January 20, 2023, Planning Commission public hearing also addressed bird-safe glass ([PC Public Hearing Minutes 1-20-23](#) speakers #1, #2, #5 & #9). County Commissioner Trista MatasCastillo said the County agrees with the bird-safe glass requirements. Kiki Sonnen said they should be expanded to cover all glass on big buildings. FMR said the glass/window size minimum for bird-safe glass requirements to apply should be eliminated. FMR forwarded an email from Ann Laughlin, on behalf of a coalition of local bird conservation groups, recommending being specific that the bird-safe glass requirements apply to the outermost glass surface and reducing the 50 sq. foot glass size minimum for bird-safe glass requirements to apply.

The Audubon Minnesota Letter notes that “we are fortunate to live on a flyway, utilized by 60% of all North American migratory bird species, where birds are naturally concentrated as they follow the river. Unfortunately, the Twin Cities is among the ten most dangerous cities for migratory birds (6<sup>th</sup> in spring migration and 7<sup>th</sup> during fall migration). Saint Paul’s location along the Mississippi River migratory flyway offers both great opportunity and responsibility.”

#### 4.3 Analysis

According to Ann Laughlin, the 2020 New York City bird-friendly building design and construction requirements represent current best practices in bird safety. The NYC ordinance requires that non-bird friendly materials may not exceed 10 square feet within any 10-foot by 10-foot square area of an exterior surface below 75 feet above grade. It requires that where two glass sides come together at a corner, with a clear line of sight creating the illusion of a fly-through condition, all glass within 12 feet of the corner must be treated. It also requires that all glass railings, canopies and projections and glass on wind break panels and enclosed building connections must be treated.

The 2016 Toronto Bird-Friendly Best Practices Glass book, another highly regarded source for bird-safe glass standards, includes glass block among effective strategies for bird-safe glass. The American Bird Conservancy (ABC) publishes an extensive database of [bird-safe glass products](#) that have been tested, rated, and approved by ABC, including external insect screens.

Window openings in new buildings and building additions are currently reviewed for conformance with the window area standards in Zoning Code § 63.110, *building design standards*. Review for conformance with bird-safe glass requirements could be part of this review. A typical 2' x 4' residential window is below the 10 sq. foot maximum for non-bird friendly material. Two typical windows together, with insect screens on the bottom half, would also meet the NYC standard.

The Mississippi River migratory flyway is wider than the MRCCA and it would be more appropriate to put bird-safe glass standards in Zoning Code § 63.110, *building design standards* where they would apply citywide. The MRCCA Rules do not require bird-safe glass standards to be included in the MRCCA ordinance. The Minneapolis City Council determined that they needed more time to consider bird-safe glass standards and took them out of the final version of the Minneapolis MRCCA ordinance. For these three reasons, bird-safe glass standards are recommended to be removed from the proposed ordinance for MRCCA.

#### 4.4 Recommendation

Remove all bird-safe glass standards from the MRCCA ordinance because they are not required per the rules and would complicate the regulations, and the migratory flyway is broader than the MRCCA so it would not have the intended impact. Consider a future citywide zoning and/or building code study that would review potential bird-safe glass requirements applicable to exterior glass surfaces, potentially using language based on the 2020 (or most current) New York City bird-friendly building design and construction requirements and including glass block and products approved by the

American Bird Conservancy as types of bird-safe glass treatments. Such a future study might consider the inclusion of the following standards.

Potential bird-safe glass standards to consider with a future zoning/building code study:

- (a) *Require bird-safe glass treatments to reduce bird collisions up to 70 feet above the highest surrounding grade on exterior surfaces of new buildings and building additions as follows.*
  - (1) *Non-bird-safe glass must not exceed 10 square feet within any 10-foot by 10-foot square area of an exterior surface.*
  - (2) *Where two glass sides come together at a corner, with a clear line of sight creating the illusion of a fly-through condition, all glass within 12 feet of the corner must be treated.*
  - (3) *All glass railings, canopies and projections and glass on wind break panels and enclosed building connections must be treated.*
- (b) *Bird-safe glass treatments may include the following.*
  - (1) *Full glass treatment such as frosted glass, stained glass, and glass block.*
  - (2) *Patterns applied to the exterior surface that are white to medium gray, visible from the outside, and meet the following standards: line patterns must have a minimum of ⅛ inch wide lines with maximum 2 inch on-center spacing, and dot patterns must have a minimum of ¼ inch wide dots with maximum 2 inch on-center spacing each way.*
  - (3) *Ceramic frit with a surface reflectivity no greater than 15 percent applied to the full interior glass surface (surface 2).*
  - (4) *Physical structures on the exterior of the glass such as screens, grills, louvers, mesh, and shades with gaps no larger than 12 inches wide.*
  - (5) *Bird-safe products with an American Bird Conservancy Threat Factor Rating of 30 or less.*

**Sec. 68.248. Bird-safe glass.** Section removed, for reasons stated above.

## **5. Subdivision Standards**

### **5.1 Background**

Division 8, 68.280 of the draft ordinance provides subdivision and land development standards for large sites based on MRCCA Rules, Part 6106.0170. § 68.282, *Applicability* states when the standards of this division apply:

The design standards in this division apply to subdivisions and master-planned development and redevelopment of land involving ten or more acres for parcels that abut the Mississippi River and 20 or more acres for all other parcels, including smaller individual sites within subdivisions and master-planned developments that are part of a common plan of development that may be constructed at different times.

### **5.2 Testimony**

A letter from Luke Martinkosky, Capitol Region Watershed District ([Capitol Region Watershed District letter](#)), suggests considering a lower threshold (such as 3-5 acres) and inserting the optional word *contiguous* for parcels that abut the Mississippi River.

### **5.3 Analysis**

There are several reasons to leave this this section as proposed:

- There is very little land in Saint Paul that would be subdivided in this way the foreseeable future, and
- The MRCCA Rules prescribe how subdivision regulations are applied.

#### 5.4 Recommendation

Keep draft § 68.282 as it currently reads

### **Additional Recommended Amendments**

## **6. Legislative Intent**

### 6.1 Background

While there is much available information about the purpose and intent of the MRCCA, the public hearing draft ordinance had very little on this front, as follows:

#### **Sec. 68.212. Policy.**

The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of designated critical areas and thus preserve and enhance the quality of important historic, cultural, aesthetic values, and natural systems and provide for the wise use of these areas.

Upon additional review of the draft ordinance, some additional language from the DNR would be helpful for context and implementation.

### 6.2 Recommendation

Amend Sec. 68.212. Policy to read as follows:

#### **Sec. 68.212. Policy.**

The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of designated critical areas and thus preserve and enhance the quality of important historic, cultural, aesthetic values, and natural systems and provide for the wise use of these areas. manage the Mississippi River Corridor Critical Area as a multipurpose resource in a way that:

- (a) 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;
- (b) conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor;
- (c) 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;

- (d) utilizes certain reaches of the river as a source of water supply and as a receiving water for properly treated sewage, stormwater, and industrial waste effluents; and
- (e) protects and preserves the biological and ecological functions of the corridor.