

City of Brooklyn Park Planning Commission Staff Report

Agenda Item:	5.3	Meeting Date:	February 14, 2024
Agenda Section:	Public Hearings	Originating Department:	Community Development
Resolution:		Prepared By:	Erin McDermott, Associate Planner
Ordinance:	X		
Attachments:	5	Presented By:	Erin McDermott, Associate Planner
Item:	Zoning Code Text Amendment: 152.530 Mississippi River Corridor Critical Area (MRCCA)		

Proposed Action:

MOTION _____ SECOND _____ TO RECOMMEND APPROVAL OF AN ORDINANCE AMENDING CHAPTER 152 OF THE BROOKLYN PARK CODE OF ORDINANCES PERTAINING TO THE MISSISSIPPI RIVER CORRIDOR CRITICAL AREA.

Staff Recommendation:

Staff recommends approval of proposed ordinance changes.

Overview:

In 2017, the Minnesota Legislature passed a law requiring all cities within the Mississippi River Corridor Critical Area (MRCCA) to adopt updated regulations protecting the river. The proposed amendment must be adopted into the Zoning Ordinance to comply with state law (Minn. Rule 6106.0070 Subp. 5.).

The MRCCA was established in 1976 by State legislation, at which time the boundaries were described. Within Brooklyn Park, there are three MRCCA districts identified, Rural and Open Space (ROS), River Neighborhood (RN), and Separated from River (SR). The only properties identified as ROS are islands in the Mississippi River. Properties identified as RN are riparian lots– those adjacent to the river, and properties identified as SR are non-riparian lots. The boundary of the MRCCA for the majority of the city is West River Road, with a portion of the Willowstone neighborhood being included. While the map of affected properties is attached to this report, the Brooklyn Park Zoning Map is not being amended at this time, as the entire map will be amended as part of the overall 2040 Comprehensive Plan zoning update which is anticipated to be completed by June 2024.

The Department of Natural Resources (DNR) provided a model ordinance for each municipality affected by the MRCCA to adopt. The standards within this amendment are the same standards against which the DNR was previously reviewing development. By adopting this language into ordinance, it provides transparency to the property owners impacted by these regulations.

Staff mailed an informational letter to all impacted property owners prior to the mailing of the public hearing notice, as well as posted the proposed Ordinance text on the City website. There were 6 emails and 47 phone calls received by staff from the property owners with questions regarding the changes and how they would impact each property.

Technical Changes

The text amendment replaces the text of Code Section 152.530 which articulates setbacks and guidelines for developed lots with text that provides in depth guidance for development and land uses within the MRCCA. The standards being adopted in this text amendment were provided by the DNR, as they are the standards with which all permits in this area were being reviewed previously. The impact of the adoption of this amendment are not on changes to the properties within this overlay district, but with how permits are reviewed, as it is now the responsibility of City staff to perform the permit reviews.

- Within the MRCCA there are individual zoning overlays impacting properties, three of which exist in Brooklyn Park.
- Special land uses are articulated with requirements for each.
- Structure height and placement are articulated within each MRCCA district.
- Performance standards for uses are spelled out. These standards are in addition to those already guided by the underlying zoning.
- Vegetation management and land alteration provide standards for which permits will be issued. This will be administered by the City, where the DNR had regulated this in the past.
- A use table is included to note what activities are permitted, conditional, and not permitted within the MRCCA.

Budgetary/Fiscal Issues:

Not applicable.

Alternatives to Consider:

1. Approve the text amendment as presented.
2. Approve the text amendment with modifications.
3. Decline to approve the text amendment.

Attachments:

- 5.3A Zoning Code Text Amendment: Mississippi River Corridor Critical Area
- 5.3B Zoning Code Text Amendment: Definitions
- 5.3C DNR Conditional Approval
- 5.3D MRCCA Overlay Map
- 5.3E Letter to Impacted Property Owners and Communication from Impacted Property Owner

152.530 MISSISSIPPI RIVER CORRIDOR CRITICAL AREA**A. AUTHORITY, INTENT AND PURPOSE**

- (1) **Statutory Authorization.** This Mississippi River Corridor Critical Area (MRCCA) section 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.
- (2) **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.

B. GENERAL PROVISIONS

- (1) **Jurisdiction.** The provisions of this *section* apply to land within the river corridor boundary as described in the State Register, volume 43, pages 508 to 519 and shown on the zoning map (*insert reference citation*).
- (2) **Enforcement.** The *City Manager* is responsible for the administration and enforcement of this section. Any violation of its provisions or failure to comply with any of its requirements including violations of conditions and safeguards established in connection with grants of variances or conditional uses constitutes a misdemeanor and is punishable as defined by law. Violations of this *section* can occur regardless of whether a permit is required for a regulated activity listed in Section 152.530(C)(2).
- (3) **Severability.** If any section, clause, provision, or portion of this *section* is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this *section*) shall not be affected thereby.
- (4) **Abrogation and Greater Restrictions.** It is not intended by this *section* to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this *section* imposes greater restrictions, the provisions of this *section* shall prevail. All other *sections* inconsistent with this *section* are hereby repealed to the extent of the inconsistency only.
- (5) **Underlying Zoning.** Uses and standards of underlying zoning districts apply except where standards of this overlay district are more restrictive.

C. ADMINISTRATION

- (1) **Purpose.** The purpose of this Section is to identify administrative provisions to ensure this *section* is administered consistent with its purpose.
- (2) **Permits.** A permit is required for the construction of structures and additions (including construction of decks and signs), the installation and/or alteration of sewage treatment systems, vegetation removal consistent with Section 152.530(I) and land alterations consistent with Section 152.530(J).
- (3) **Variances.** Variances to the requirements under this *section* may only be granted in accordance with Minnesota Statutes, Section 462.357 and must consider the potential impacts of variances on primary conservation areas, public river corridor views, and other resources identified in the MRCCA plan. In reviewing the variance application, the *City Council* shall:
 - (A) Evaluate the impacts to these resources. If negative impacts are found, require conditions to mitigate the impacts that are related to and proportional to the impacts, consistent with Section 152.530(C)(5) and
 - (B) Make written findings that the variance is consistent with the purpose of this section, as follows.
 - i. The extent, location and intensity of the variance will be in substantial compliance with the MRCCA Plan;

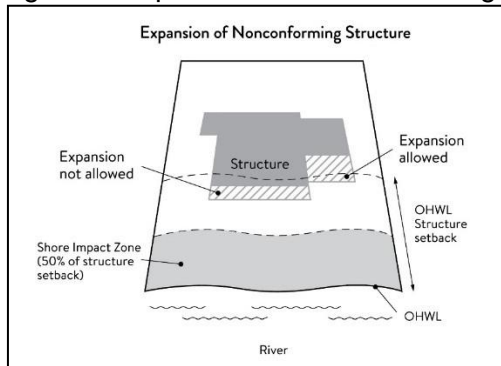
- ii. The variance is consistent with the character and management purpose of the MRCCA district in which it is located;
 - iii. The variance will not be detrimental to PCAs and PRCVs nor will it contribute to negative incremental impacts to PCAs and PRCVs when considered in the context of past, present and reasonable future actions; and
- (4) **Conditional and interim use permits.** All conditional and interim uses, required under this *section*, must comply with Minnesota Statutes, section [462.3595](#) and must consider the potential impacts on primary conservation areas, public river corridor views, and other resources identified in the MRCCA plan. In reviewing the application, the *City Council* shall:
- (A) Evaluate the impacts to these resources and if negative impacts are found, require conditions to mitigate the impacts that are related to and proportional to the impacts, consistent with Section 3.5; and
 - (B) Make written findings that the conditional use is consistent with the purpose of this (section, chapter, or article), as follows.
 - i. The extent, location and intensity of the conditional use will be in substantial compliance with the MRCCA Plan;
 - ii. The conditional use is consistent with the character and management purpose of the MRCCA district in which it is located;
 - iii. The conditional use will not be detrimental to PCAs and PRCVs nor will it contribute to negative incremental impacts to PCAs and PRCVs when considered in the context of past, present and reasonable future actions; and
- (5) **Conditions of Approval.** The *City Council* shall evaluate the impacts to PCAs, PRCVs, and other resources identified in the MRCCA Plan, and if negative impacts are found, require conditions to mitigate the impacts that are related to and proportional to the impacts. Mitigation may include:
- (A) Restoration of vegetation identified as “vegetation restoration priorities” identified in the MRCCA plan.
 - (B) Preservation of existing vegetation;
 - (C) Stormwater runoff management;
 - (D) Reducing impervious surface;
 - (E) Increasing structure setbacks;
 - (F) Wetland and drainageway restoration and/or preservation; and
 - (G) Other conservation measures.
- (6) **Application materials.** Applications for permits and discretionary actions required under this *section* must submit the following information unless the City Manager determines that the information is not needed.
- (A) A detailed project description; and
 - (B) Scaled maps and plans, dimensional renderings, maintenance agreements, and other materials that identify and describe:
 - i. Primary conservation areas;
 - ii. Public river corridor views;
 - iii. Buildable area;
 - iv. Existing and proposed topography and drainage patterns;
 - v. Proposed storm water and erosion and sediment control practices;
 - vi. Existing and proposed vegetation to be removed and established;
 - vii. Ordinary high water level, blufflines, and all required setbacks;
 - viii. Existing and proposed structures;
 - ix. Existing and proposed impervious surfaces; and

x. Existing and proposed subsurface sewage treatment systems.

(7) Nonconformities.

- (A) All legally established nonconformities as of the date of this ordinance may continue consistent with [462.357 Subd. 1e](#).
- (B) New structures erected in conformance with the setback averaging provisions of Section 152.530(F)(4) are conforming structures.
- (C) Site alterations and expansion of site alterations that were legally made prior to the effective date of this ordinance are conforming. Site alterations include vegetation, erosion control, storm water control measures, and other nonstructural site improvements.
- (D) Legally nonconforming principal structures that do not meet the setback requirements of Section 152.530(F)(3) may be expanded laterally provided that:
- 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 5); and
 - The expanded structure's scale and bulk is consistent with that of the original structure and existing surrounding development.

Figure 5. Expansion of Nonconforming Structure



(8) Notifications.

- (A) Amendments to this *section* 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 plats, final subdivision plats, master plans, and PUDs, must be sent to the following entities at least ten (10) days prior to the hearing:
- The Commissioner in a format prescribed by the DNR;
 - National Park Service; and
 - Where building heights exceed the height limits specified in Section 152.530(F)(2) as part of the conditional use or variance process, adjoining local governments within the MRCCA, including those with overlapping jurisdiction and those across the river.

- (C) Notice of final decisions for actions in Section 152.530(C)(7)(A), 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.
 - (E) The DNR will be notified at time of application submittal of master plans, PUDs, preliminary, and final plats.
- (9) **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](#), must:
- (A) Comply with Sections 152.530(F) to 152.530(L); or
 - (B) If Sections 152.530(F) to 152.530(L) cannot be complied with, ramps or other facilities are allowed with an administrative permit provided:
 - i. The permit terminates on either a specific date or upon occurrence of a particular event related to the person requiring accommodation; and
 - ii. Upon expiration of the permit, the ramp or other facilities must be removed.

D. MRCCA DISTRICTS

- (1) **Purpose.** The purpose of this Section is to 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.
- (2) **District description and management purpose.** The MRCCA within the Brooklyn Park is divided into the following MRCCA Districts:
 - (A) Rural and Open Space (ROS).
 - i. Description. The ROS District is characterized by rural and low-density development patterns and land uses, and includes land that is riparian or visible from the river, as well as large, undeveloped tracts of high ecological and scenic value, floodplain, and undeveloped islands. Many primary conservation areas exist in the district.
 - ii. 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) River Neighborhood (RN).
 - i. 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.
 - ii. 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) Separated from River (SR).
 - i. 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.
 - ii. 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. 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.

- (3) **MRCCA district map.** The locations and boundaries of the MRCCA districts established by this section are shown on MRCCA Overlay District map which is 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.

E. SPECIAL LAND USE PROVISIONS

- (1) **Purpose.** To identify development standards and considerations for land uses that have potential to negatively impact primary conservation areas and public river corridor views.
- (2) **Underlying zoning.** Uses within the MRCCA are 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) **Feedlots.** New animal feedlots and manure storage areas are prohibited. Existing animal feedlots and manure storage areas must conform with [Minnesota Rules, chapter 7020](#).
- (C) **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](#).
- (D) **Nonmetallic mining.** Nonmetallic mining requires a conditional use permit or interim use permit issued by the local government, subject to the following:
- i. 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;
 - ii. Processing machinery must be located consistent with setback standards for structures as provided in Section 152.530(F)(3);
 - iii. Only one barge loading area, which must be limited to the minimum size practicable, is permitted for each mining operation;
 - iv. New and, where practicable, existing nonmetallic mining operations must 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;
 - v. 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

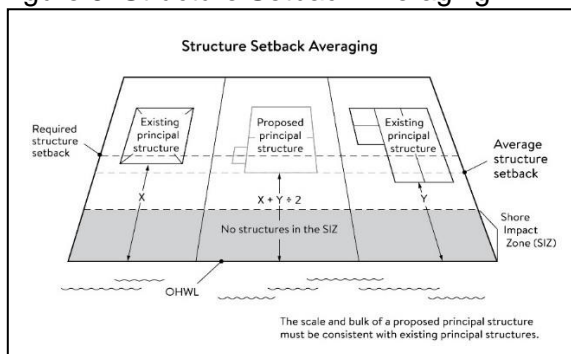
- (d) Describe any anticipated vegetation and topographic alterations outside the pit, and reclamation plans consistent with the stated end use for the land; and;
 - vi. Existing and new nonmetallic mining operations must submit land reclamation plans to the local government compatible with the purposes of this ordinance.
- (E) **River-dependent uses.** River-dependent uses must comply with the following design standards:
- i. Structures and parking areas, except shoreline facilities and private roads and conveyances serving river- dependent uses as provided in Section 152.530(L), must meet the dimensional and performance standards in this *section*, must be designed so that they are not readily visible, and must be screened by establishing and maintaining natural vegetation;
 - ii. Shoreline facilities must comply with [Minnesota Rules, chapter 6115](#) and must:
 - (e) Be designed in a compact fashion to minimize the shoreline area affected; and
 - (f) Minimize the surface area of land occupied in relation to the number of watercraft or barges to be served; and
 - iii. 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:
- i. The applicant must demonstrate that functional coverage cannot be provided through co-location, a tower at a lower height, or a tower at a location outside of the MRCCA;
 - ii. The tower must not be located in a bluff or shore impact zone; and
 - iii. Placement of the tower must minimize impacts on public river corridor views.
 - iv. Comply with the general design standards in Section 152.530(H)(2).

F. STRUCTURE HEIGHT AND PLACEMENT AND LOT SIZE

- (1) **Purpose.** To establish standards that protect primary conservation areas and public river corridor views from development impacts and ensure that new development is sited consistent with the purpose of the MRCCA.
- (2) **Structure height.** Structures and facilities must comply with the following standards unless identified as exempt in Section 152.530(L).
 - (A) Structures and facilities must comply with the following standards unless identified as exempt in Section 152.530(L)
 - i. ROS District: 35 feet or lower.
 - ii. RN District: 35 feet.
 - iii. 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 OWHL of the opposite shore.
 - (B) Height is measured on the side of the structure facing the Mississippi River.
 - (C) In addition to the conditional use permit requirements of Section 152.530(C)(4), criteria for considering whether to grant a conditional use permit for structures exceeding the height limits must include:
 - i. Assessment of the visual impact of the proposed structure on public river corridor views, including views from other communities;
 - ii. Determination that the proposed structure meets the required bluff and OHWL setbacks;
 - iii. Identification and application of techniques to minimize the perceived bulk of the proposed structure, such as:
 - (a) Placing the long axis of the building perpendicular to the river;

- (b) Stepping back of portions of the facade;
 - (c) Lowering the roof pitch or use of a flat roof;
 - (d) Using building materials or mitigation techniques that will blend in with the natural surroundings such as green roofs, green walls, or other green and brown building materials;
 - (e) Narrowing the profile of upper floors of the building; or
 - (f) Increasing the setbacks of the building from the Mississippi River or blufflines;
 - iv. Identification of techniques for preservation of those view corridors identified in the MRCCA Plan; and
 - v. Opportunities for creation or enhancement of public river corridor views.
- (3) Structure and impervious surface placement.
- (A) Structures and impervious surface must not be placed in the shore or bluff impact zones unless identified as an exemption in Section 152.530(L).
 - (B) Structures and facilities must comply with the following OHWL setback provisions unless identified as exempt in Section 152.530(L).
 - i. ROS District: 200 feet from the Mississippi River and 150 feet from the Minnesota and Vermillion Rivers.
 - ii. RN District: 100 feet from the Mississippi River and 75 feet from the Rum and Vermillion Rivers.
 - iii. SR District: 75 feet from the Vermillion River.
 - (C) Structures and facilities must comply with the following bluffline setback provisions unless identified as exempt in Section 152.530(L):
 - i. ROS District: 100 feet.
 - ii. RN District: 40 feet.
 - iii. SR District: 40 feet.
 - (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 Sections 152.530(F)(3)(B) and 152.530(F)(3)(C) are consistent with adjoining development. See Figure 6.

Figure 6. 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.
- (4) 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 Sections 152.530(F)(3)(B) and 152.530(F)(3)(C) so as to not require variances to use the lots for their intended purpose.

G. PERFORMANCE STANDARDS FOR PRIVATE FACILITIES

- (1) **Purpose.** To establish design standards for private facilities that are consistent with best management practices and that minimize impacts to primary conservation areas, public river corridor views and other resources identified in the MRCCA plan.
- (2) **General design standards.** All private facilities must be developed in accordance with the vegetation management and land alteration requirements in Sections 152.530(I) and 152.530(J).
- (3) **Private roads, driveways, and parking areas.** Except as provided in Section 152.530(L), private roads, driveways and parking areas must:
 - (A) Be designed to take advantage of natural vegetation and topography so that they are not readily visible;
 - (B) Comply with structure setback requirements according to Section 152.530(F)(3); and
 - (C) Not be placed within the bluff impact zone or shore impact zone, unless exempt under Section 152.530(L) and designed consistent with Section 152.530(H)(2).
- (4) Private water access and viewing facilities.
 - (A) Private access paths must be no more than:
 - i. Eight feet wide, if placed within the shore impact zone; and
 - ii. Four feet wide, if placed within the bluff impact zone.
 - (B) Private water access ramps must:
 - i. Comply with Minnesota Rules, chapters [6115.0210](#) and [6280.0250](#); and
 - ii. 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:
 - i. Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties and residential facilities held in common, if approved by the City Manager;
 - ii. 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 City Manager;
 - iii. Canopies or roofs are prohibited on stairways, lifts, or landings;
 - iv. Stairways, lifts, and landings must be located in the least visible portion of the lot whenever practical; and
 - v. Ramps, lifts, mobility paths, or other facilities for persons with physical disabilities are allowed for achieving access to shore areas according to Section 152.530(G)(4)(C)i-iv., and as provided under Section 152.530(C)(9).

(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 and must:

- i. Not exceed 12 feet in height;
- ii. Not exceed 120 square feet in area; and
- iii. Be placed a minimum of 10 feet from the ordinary high water level.

(5) **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 without a variance, when consistent with Sections 152.530(I) and 152.530(J), provided that:

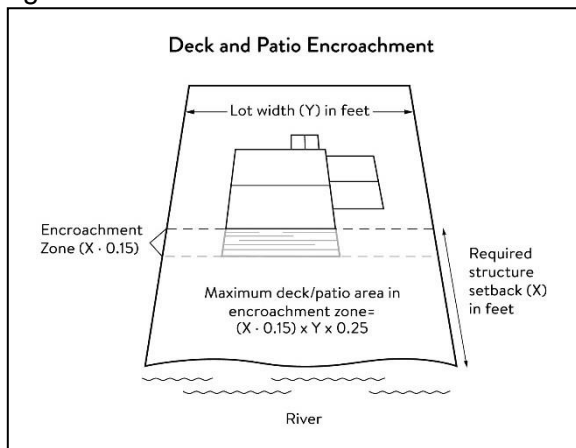
(A) The encroachment of the deck or patio into the required setback area does not exceed 15 percent of the required structure setback;

(B) 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:

$$[\text{Required setback depth (feet)} \times 0.15 \times \text{lot width (feet)} \times 0.25 = \text{maximum total area}]$$

(C) The deck or patio does not extend into the bluff impact zone. See Figure 7.

Figure 7. Deck and Patio Encroachment



(6) directional signs.

(A) Directional signs for patrons arriving at a business by watercraft must comply with the following standards:

- i. They must be consistent with Minnesota Statutes, section 86B.115.
- ii. Only convey the location and name of the establishment and the general types of goods and services available, if located in a shore impact zone.
- iii. Be no greater than ten feet in height and 32 square feet in surface area; and
- iv. If illuminated, the lighting must be shielded to prevent illumination out across the river or to the sky.

(7) Fences. Fences between principal structures and the river are allowed if fences are:

- (A) Not higher than six feet.
- (B) Not located within 40 feet of slopes greater than 12%.
- (C) Not located in the regulatory floodplain.

H. PERFORMANCE STANDARDS FOR PUBLIC FACILITIES

- (1) **Purpose.** To establish design standards for public facilities that are consistent with best management practices and that minimize impacts to 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.
- (2) **General design standards.** All public facilities must be designed and constructed to:
 - (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 Section 152.530(F), except as provided in Section 152.530(L);
 - (C) Be consistent with the vegetation management standards in Section 152.530(I) and the land alteration and storm water management standards in Section 152.530(J), 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; and
 - (E) Minimize disturbance of spawning and nesting times by scheduling construction at times when local fish and wildlife are not spawning or nesting.
- (3) **Right-of-way maintenance standards.** Right-of-way maintenance must comply with the following standards:
 - (A) Vegetation currently in a natural state must be maintained to the extent feasible;
 - (B) Where vegetation in a natural state has been removed, native plants must be planted and maintained on the right- of-way; and
 - (C) Chemical control of vegetation must be avoided when practicable, but when chemical control is necessary, chemicals used must be in accordance with the regulations and other requirements of all state and federal agencies with authority over the chemical's use.
- (4) **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.
- (5) **Public utilities.** Public utilities must 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; and
 - (B) If overhead placement is necessary, utility facility crossings must minimize visibility of the facility from the river and follow other existing right of ways as much as practicable.
 - (C) The appearance of structures must be as compatible as practicable with the surrounding area in a natural state with regard to height and width, materials used, and color.
 - (D) Wireless communication facilities, according to Section 152.530(E)(2)(F).
- (6) **Public transportation facilities.** Public transportation facilities shall comply with structure placement and height standards in Section 152.530(F). Where such facilities intersect or about two or more MRCCA districts, the least restrictive standards apply. Public transportation facilities must be designed and constructed to give priority to:
 - (A) Providing scenic overlooks for motorists, bicyclists, and pedestrians;
 - (B) Providing safe pedestrian crossings and facilities along the river corridor;
 - (C) Providing access to the riverfront in public ownership; and
 - (D) Allowing for use of the land between the river and the transportation facility.

- (7) **Public recreational facilities.** Where such facilities intersect or abut two or more MRCCA districts, the least restrictive dimensional standards apply. Public transportation facilities must be designed and constructed to give priority to:
- (A) Buildings and parking associated with public recreational facilities must comply with the structure placement and height standards in Section 152.530(F), except as provided in Section 152.530(L);
 - (B) Roads and driveways associated with public recreational facilities must 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](#).
 - i. 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.
 - ii. Trails, paths, and viewing areas must be designed and constructed to minimize:
 - (a) Visibility from the river;
 - (b) Visual impacts on public river corridor views; and
 - (c) Disturbance to and fragmentation of primary conservation areas.
 - (D) Public water access facilities must comply with the following requirements:
 - iii. Watercraft access ramps must comply with Minnesota Rules chapters [6115.0210](#) and [6280.0250](#); and
 - iv. 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.
 - (F) Public stairways, lifts, and landings must be designed as provided in Section 152.530(G)(4)(C).

I. VEGETATION MANAGEMENT

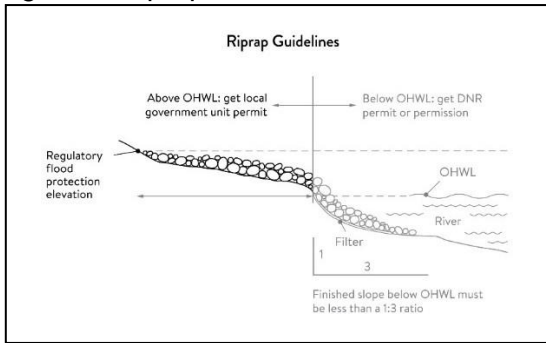
- (1) **Purpose.** To establish standards that sustain and enhance the biological and ecological functions of vegetation; preserve the natural character and topography of the MRCCA; and maintain stability of bluffs and steep slopes and ensure stability of other erosion-prone areas.
- (2) **Applicability.** This section applies to:
 - (A) Shore impact zones;
 - (B) Areas within 50 feet of a wetland or natural drainage way;
 - (C) Bluff impact zones;
 - (D) Areas of native plant communities; and
 - (E) Significant existing vegetative stands identified in the MRCCA plan.
- (3) 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 Manager;
 - (C) Right-of-way maintenance for public facilities meeting the standards Section 152.530(H)(3);
 - (D) Agricultural and forestry activities meeting the standards of Sections 152.530(E)(2)(A) and 152.530(E)(2)(C);
 - (E) Selective vegetation removal, provided that vegetative cover remains consistent with the management purpose of the MRCCA District, including:
 - i. Vegetation that is dead, diseased, dying, or hazardous;
 - ii. To prevent the spread of diseases or insect pests;
 - iii. Individual trees and shrubs; and
 - iv. Removal of invasive non-native species.
- (4) Activities allowed with a vegetation permit.
 - (A) The following intensive vegetation clearing activities are allowed with a vegetation permit:
 - i. Clearing of vegetation that is dead, diseased, dying, or hazardous;
 - ii. Clearing to prevent the spread of diseases or insect pests;
 - iii. Clearing to remove invasive non-native species.
 - iv. Clearing to prepare for restoration and erosion control management activities consistent with a plan approved by the City Manager.
 - v. The minimum necessary for development that is allowed with a building permit or as an exemption under Section 152.530(L).
 - (B) Conditions of vegetation permit approval:
 - i. Development is sited to minimize removal of or disturbance to natural vegetation;
 - ii. Soil, slope stability, and hydrologic conditions are suitable for the proposed work as determined by a professional engineer or (*insert name of resource agency, if someone other than professional engineer is desired*);
 - iii. Clearing is the minimum necessary and designed to blend with the natural terrain and minimize visual impacts to public river corridor views;
 - iv. Any native plant communities removed are replaced with vegetation that provides equivalent biological and ecological functions consistent with an approved vegetation restoration plan as provided in Section 152.530(I)(6)(B). If replaced, priorities for restoration are stabilization of erodible soils, restoration or enhancement of shoreline vegetation, and revegetation of bluffs or steep slopes visible from the river;
 - v. All other vegetation removed is restored with natural vegetation to the greatest extent practicable consistent with an approved vegetation restoration plan as provided in Section 152.530(I)(6)(B). Priorities for replacement are the same as under Section 152.530(I)(4)(B)iv.;

- vi. Any disturbance of highly erodible soils is replanted with deep-rooted vegetation with a high stem density;
 - vii. Vegetation removal activities are conducted so as to expose the smallest practical area of soil to erosion for the least possible time;
 - viii. Areas of vegetation restoration priorities identified in the MRCCA plan are restored, if applicable; and
 - ix. Any other condition determined necessary to achieve the purpose of this section.
- (5) **Prohibited activities.** All other intensive vegetation clearing is prohibited.
- (6) Vegetation restoration plan.
- (A) Development of a vegetation restoration plan and reestablishment of natural vegetation is required:
- i. As a condition of a vegetation permit issued under Section 152.530(I)(4)(B)iv and 152.530(I)(4)(B)v;
 - ii. Upon failure to comply with any provisions in this section; or
 - iii. As part of the planning process for subdivisions as provided in Section 152.530(K).
- (B) The vegetation restoration plan must satisfy the application submittal requirements in 152.530(C)(6), and:
- i. Include vegetation that provides suitable habitat and effective soil stability, runoff retention, and infiltration capability. Vegetation species, composition, density, and diversity must be guided by nearby patches of native plant communities and by Native Vegetation Establishment and Enhancement Guidelines;
 - ii. Be prepared by a qualified individual; and
 - iii. 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.

J. LAND ALTERATION STANDARDS AND STORMWATER MANAGEMENT

- (1) **Purpose.** 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.
- (2) Land alteration permit.
- (A) Within the bluff impact zone, land alteration is prohibited, except for the following, which are allowed by permit.
- i. Erosion control consistent with Section 152.530(J)(6);
 - ii. The minimum necessary for development that is allowed as an exception under Section 152.530(L); and
 - iii. 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.
- (3) 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. See Figure 8.

Figure 8. 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 152.530(K)(6) provided that:

- i. If the project includes work at or below the OHWL, the commissioner has already approved or permitted the project.
- ii. The structures are used only to correct an established erosion problem as determined by the City Manager.
- iii. 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:
 - (a) Retaining walls must not exceed five feet in height and must be placed a minimum horizontal distance of ten feet apart; and
 - (b) 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 under Section 152.530(J)(2).

(4) Stormwater management.

(A) In the bluff impact zone, storm water management facilities are prohibited, except by permit if:

- i. There are no alternatives for storm water treatment outside the bluff impact zone on the subject site;
- ii. The site generating runoff is designed so that the amount of runoff reaching the bluff impact zone is reduced to the greatest extent practicable;
- iii. The construction and operation of the facility does not affect slope stability on the subject property or adjacent properties; and
- iv. 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 Section 152.530(L), or fully reconstructs existing impervious surface of more than 1 acre requires a storm water permit or approved storm water plan. 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 or unstable areas.
- (5) **Development on steep slopes.** Construction of structures, impervious surfaces, land alteration, vegetation removal, or other construction activities are allowed on steep slopes if:
- (A) The development can be accomplished without increasing erosion or storm water runoff;
 - (B) The soil types and geology are suitable for the proposed development; and
 - (C) Vegetation is managed according to the requirements of Section 152.530(I).
- (6) Conditions of land alteration permit approval.
- (A) Temporary and permanent erosion and sediment control measures retain sediment onsite consistent with best management practices in the Minnesota Stormwater Manual;
 - (B) Natural site topography, soil, and vegetation conditions are used to control runoff and reduce erosion and sedimentation;
 - (C) Construction activity is phased when possible;
 - (D) All erosion and sediment controls are installed before starting any land disturbance activity;
 - (E) Erosion and sediment controls are maintained to ensure effective operation;
 - (F) The proposed work is consistent with the vegetation standards in Section 152.530(I); and
 - (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.
- (7) Compliance with other plans and programs. All development must:
- (A) Be consistent with Minnesota Statutes, chapter 103B, and local water management plans completed under chapter 8410;
 - (B) Meet or exceed the wetland protection standards under Minnesota Rules, chapter 8420; and
 - (C) Meet or exceed the floodplain management standards under Minnesota Rules, chapter 6120. 5000 – 6120.6200

K. SUBDIVISION AND LAND DEVELOPMENT STANDARDS

- (1) Purpose.
- (A) To protect and enhance the natural and scenic values of the MRCCA during development or redevelopment of the remaining large sites
 - (B) To establish standards for protecting and restoring biological and ecological functions of primary conservation areas on large sites; and
 - (C) To encourage restoration of natural vegetation during development or redevelopment of large sites where restoration opportunities have been identified in MRCCA Plans.
- (2) Applicability.
- (A) The design standards in this section apply to subdivisions, planned unit developments and master-planned development and redevelopment of land involving ten or more acres for contiguous parcels that abut the Mississippi River and 20 or more acres for all other parcels, including smaller individual sites within the following developments that are part of a common plan of development that may be constructed at different times:
 - i. Subdivisions;
 - ii. Planned unit developments; and
 - iii. Master-planned development and redevelopment of land.
 - (B) The following activities are exempt from the requirements of this section:
 - i. Minor subdivisions consisting of three or fewer lots;

- ii. Minor boundary line corrections;
 - iii. Resolutions of encroachments;
 - iv. Additions to existing lots of record;
 - v. Placement of essential services; and
 - vi. Activities involving river-dependent commercial and industrial uses.
- (3) **Application materials.** Project information listed in Section 3.6 must be submitted for all proposed developments.
- (4) 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:
- i. CA-ROS District: 50%;
 - ii. CA-RN District: 20%;
 - iii. CA-RTC, CA-UM, and CA-UC Districts: 10%; and
 - iv. CA-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 152.530(K)(4)(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 152.530(I)(6)(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 152.530(I)(6)(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 151.061 Public Sites and Open Space and Park Land Dedication 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 adjacent parcels, as much as possible to form an interconnected network.
- (5) Permanent protection of designated open space.
- (A) Designated open space areas must be protected through one or more of the following methods:
- i. Public acquisition by a government entity for conservation purposes;
 - ii. A permanent conservation easement, as provided in Minnesota Statutes, chapter 84C;
 - iii. A deed restriction; and
 - iv. 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.

L. EXEMPTIONS

(1) **Purpose.** 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.](#)

(2) Applicability.

(A) Uses and activities not specifically exempted must comply with this section. Uses and activities exempted under shore impact zone and bluff impact zone must comply with the vegetation management and land alteration standards in Sections 9 and 10.

(B) Uses and activities in Section 152.530(L)(3) are categorized as:

- i. **Permitted - P.** This means that the use or activity is allowed;
- ii. **Conditional - C** This means that the use or activity is allowed only if no alternatives exist, as a conditional use; and
- iii. **Permitted with Additional Standards - S.** This means that a use or activity is not exempt and must meet the standards of this ordinance.
- iv. **Not Permitted – NP.** The use is prohibited.

(3) Use and activity exemptions classification.

(A) General uses and activities.

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Industrial and utility structures requiring greater height for operational reasons (such as elevators, refineries and railroad signaling towers)	S	P	S	S	Structure design and placement must minimize interference with public river corridor views.
Barns, silos, and farm structures	S	P	S	S	
Bridges and bridge approach roadways	P	P	P	C	Section 152.530(H)
Wireless communication towers	NP	NP	S	S	Section 152.530(E)(2)(F)
Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Chimneys, church spires, flag poles, public monuments, and mechanical stacks and equipment	S	P	S	S	
Historic properties and contributing properties in historic districts	P	P	P	P	Exemptions do not apply to additions or site alterations

(B) Public utilities.

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Electrical power facilities	P	P	P	C	Section 152.530(H)
Essential services (other than storm water facilities)	P	P	P	C	Section 152.530(H)
Storm water facilities	P	S	P	C	Section 152.530(J)
Wastewater treatment	P	S	P	NS	Section 152.530(H)
Public transportation facilities	P	S	C	C	Section 152.530(H)

(C) Public recreational facilities.

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Accessory structures, such as monuments, flagpoles, light standards, and similar park features	P	P	C	C	Section 152.530(H); within BIZ, only on slopes averaging less than 30%. Exemptions do not apply to principal structures.
Picnic shelters and other open-sided structures	P	S	C	S	Section 152.530(H)
Parking lots	C	S	C	C	Section 152.530(H); within BIZ, only within 20 feet of toe of bluff; not on face of bluff; and must not affect stability of bluff
Roads and driveways	C	S	C	C	Section 152.530(H)
Natural-surfaced trails, access paths, and viewing areas	P	S	P	P	Section 152.530(H)
Hard-surfaced trails and viewing platforms	P	S	P	C	Section 152.530(H); within BIZ, only on slopes averaging less than 30%
Water access ramps	P	S	P	C	Section 152.530(H)
Public signs and kiosks for interpretive or directional purposes	P	S	P	C	Section 152.530(H)

(D) River-dependent uses.

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Shoreline facilities	P	S ¹	P	C	Section 152.530(E)(2)(E). Exemptions do not apply to buildings, structures, and parking areas that are not part of a shoreline facility

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

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Private roads and conveyance structures serving river-dependent uses	P	S ¹	P	C)	Section 152.530(E)(2)(E)

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

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Private roads serving 3 or more lots	C	S	S	C	Section 152.530(I); 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
Access paths	P	S	P	P	Section 152.530(I)
Water access ramps	P	S	P	S	Section 152.530(I)
Stairways, lifts, and landings	P	S	P	P	Section 152.530(I)
Water-oriented accessory structures	P	S	P	S	Section 152.530(I)
Patios and decks	P	S	N	S	Section 152.530(I)(5)
Directional signs for watercraft (private)	P	S	P	S	Section 152.530(I)(6); exemption does not apply to off-premise advertising signs
Temporary storage of docks, boats, and other equipment during the winter months	P	S	P	S	
Erosion control structures, such as rock riprap and retaining walls	P	S	P	C	Sections 152.530(J)(3), 152.530(J)(5) and 152.530(J)(6)
Flood control structures	P	S	P	C	Section 152.530(J)

152.008 Definitions

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

Use, Agricultural. 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.

Barge fleeting. Temporarily parking and securing barges on the river, on or off channel, while tows are assembled or broken up.

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

Figure 1.

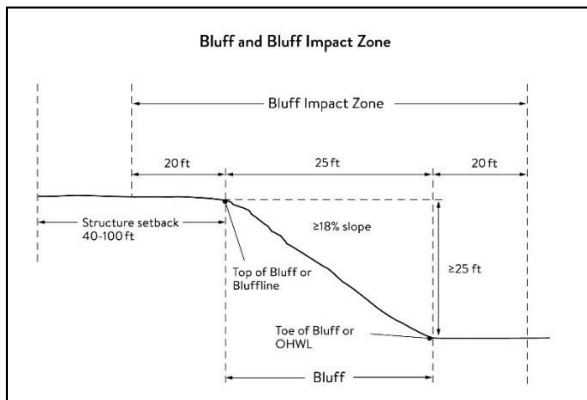
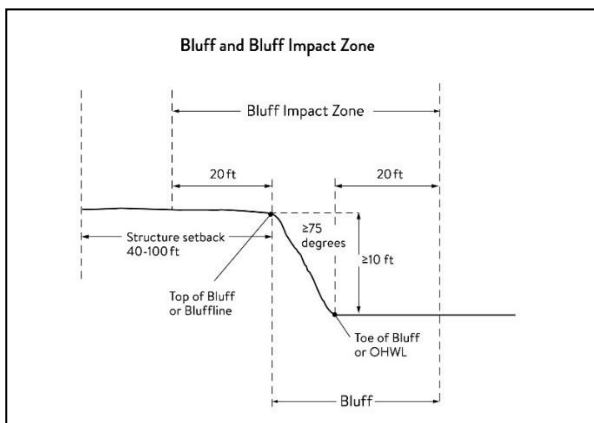


Figure 2.



Bluff impact zone (BIZ). A bluff and land located within 20 feet of the bluff. See Figures 1 and 2.

5.3B – ZONING CODE TEXT AMENDMENT: DEFINITIONS

Bluffline. A line delineating the top of the bluff. More than one bluffline may be encountered proceeding landward from the river. See Figures 1 and 2.

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 1 and 2.

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 1 and 2.

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. Any person, including a governmental agency, undertaking any development as defined in Minnesota Statutes 116G.01 to 116G.14, as defined in 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. A narrow platform or structure extending waterward from the shoreline intended for ingress and egress for moored watercraft or seaplanes or to provide access to deeper water for swimming, fishing or other water-oriented recreational activities, as defined in 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](#).

Essential services. Underground or overhead gas, electrical, communications, steam, or water distribution, collection, supply, or disposal systems, including storm water. Essential services include poles, wires, mains, drains, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants, navigational structures, aviation safety facilities or other similar equipment and accessories in conjunction with the systems. Essential services does not include buildings, treatment works as defined in Minnesota Statutes, chapter [115.01](#), electric power facilities or transmission services.

Feedlot. A lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which

5.3B – ZONING CODE TEXT AMENDMENT: DEFINITIONS

manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure, as defined in Minnesota Rules chapter 7020.

Fully reconstructs. Areas where impervious surfaces have been removed down to the underlying soils. Activities such as structure renovation, mill and overlay projects, and other pavement rehabilitation projects that do not expose the underlying soils beneath the structure, pavement, or activity are not considered fully reconstructed. Maintenance activities such as catch basin repair/replacement, utility repair/replacement, pipe repair/replacement, lighting, and pedestrian ramp improvements 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. The area of a lot, above the ordinary high water level, covered with buildings including all appurtenances, driveways and sidewalks, and similar impervious materials. For the purpose of this chapter, driveways that have a gravel base shall be considered impervious. Decks that allow drainage through the decking and that do not have a plastic weed barrier or some other material that would impede drainage into the ground and swimming pool water surface area shall not be considered impervious.

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

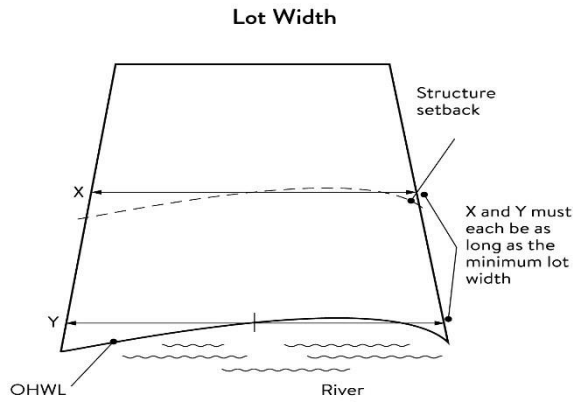
Land alteration. An activity that exposes the soil or changes the topography, drainage, or cross section of the land, excluding gardening or similar minor soil disturbances.

Local government. Counties, cities, and townships.

Local park agencies. The Minneapolis Park and Recreation Board and the Three Rivers Park District.

Lot width (MRCCA). 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 3.

Figure 3. Lot Width



Marina. An inland or offshore commercial mooring facility for the concentrated mooring of seven or more watercraft or seaplanes wherein commercial ancillary services common to marinas are provided, as defined in Minnesota Rules chapter [6115](#).

~~**MISSISSIPPI RIVER CRITICAL AREA.**~~ The Mississippi River and adjacent lands in the Twin Cities region were designated a Critical Area by the State of Minnesota under the Critical Areas Act. Executive Order No. 79-19 established the Mississippi River Critical Area.

~~**Mississippi River Corridor Critical Area (MRCCA).**~~ The area within the River Corridor Boundary (See Section 2.680).

~~**Mississippi River Corridor Critical Area (MRCCA) Plan.**~~ A chapter or other element in the *Brooklyn Park* Comprehensive Plan.

Mooring facility. A concentrated area intended solely for the mooring or containment of seven or more watercraft or seaplanes by docks, mooring buoys, or other means, as defined in 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.

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.

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.

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

5.3B – ZONING CODE TEXT AMENDMENT: DEFINITIONS

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. 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 and documented in the MRCCA plan/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 waters. Having the meaning given under [Minnesota Statutes, section 03G.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.

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.

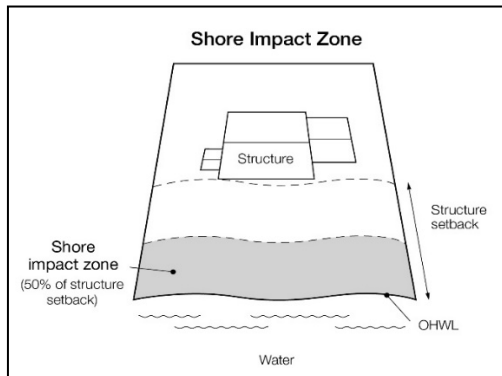
River corridor boundary. The boundary approved and adopted by the Metropolitan Council under Minnesota Statutes, section [116G.06](#), as approved and adopted by the legislature in Minnesota Statutes, section [116G.15](#), and as legally described in the State Register, volume 43, pages 508 to 518.

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.

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.

Shore impact zone (SIZ). 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 4.

Figure 4. 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.

Special purpose units of government. The University of Minnesota, the St. Paul Port Authority, watershed management organizations established under Minnesota Statutes, chapter 103B, watershed districts established under Minnesota Statutes, chapter 103D, and any other unit of government other than local government or a state or regional agency.

State or regional agency. The Metropolitan Airports Commission, Minnesota Historical Society, University of Minnesota, Department of Natural Resources, Department of Transportation, Metropolitan Council and other state agencies.

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.

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

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

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 line formed by the tops of trees in a wooded area when viewed from a particular point. The treeline is determined during all seasons as if under full foliage.

Twin Cities Metropolitan area. The area over which the Metropolitan Council has jurisdiction according to Minnesota Statutes, section [473.121 subdivision 2](#).

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

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 boundary of a public water, wetland, or natural drainage way, whichever is greater.

Wetland. Land transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water, as defined in [Minnesota Statutes, section 103G.005](#).

Wharf. A permanent structure constructed into navigable waters as part of a port facility for berthing or mooring commercial watercraft, or for transferring cargo to and from watercraft in an industrial or commercial enterprise, or for loading or unloading passengers from commercial watercraft, or for the operation of a port facility, as defined in [Minnesota Rules, part 6115.0170](#).



Ecological and Water Resources
1801 South Oak Street
Lake City, MN 55041

July 05, 2023

Erin McDermott
Associate Planner
City of Brooklyn Park
5200 85th Avenue N
Brooklyn Park, MN 55443

Re: Conditional Approval of Brooklyn Park's MRCCA Ordinance

Dear Ms. McDermott:

Thank you for sending your proposed Mississippi River Corridor Critical Area (MRCCA) ordinance and administrative forms and procedures (administrative checklist items) to the Minnesota Department of Natural Resources (DNR) on 5/25/2023. We have found that the ordinance is substantially consistent with Minnesota Statutes, §116G and Minnesota Rules, chapter 6106. The submitted administrative forms and procedures demonstrate that the City is ready to administer the ordinance once it is adopted. I am pleased to inform you that the proposed ordinance is hereby approved, provided all of the conditions of approval in this letter are met. The City may now adopt the ordinance. Minnesota Rules 6106.0070 Subp.3.G. require local governments to adopt the ordinance within 60-days of DNR approval.

Conditions of Approval

The following conditions must be met before the DNR will issue final approval:

1. Please provide the adopted amended general definitions for verification, as noted within the comments in the attached draft ordinance.
2. Edit all placeholder phrases prior to adoption, as noted within the comments in the attached draft ordinance.

Next Steps

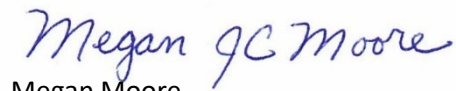
Following are the steps for completing and receiving final DNR approval for your ordinance:

1. Revise the ordinance based on the conditions listed above under conditional approval.
2. The City Council adopts the ordinance.
3. Email the completed Ordinance Processing Checklist (attached) and the documents identified on the checklist within 10 days of City Council adoption to:
 - a. Wes Saunders-Pearce; wes.saunders-pearce@state.mn.us
 - b. Ordinance.review.dnr@state.mn.us

4. We will review the ordinance adopted by the City Council for consistency with the ordinance that received conditional approval. We will also send a copy to the National Park Service and the Metropolitan Council as required by rule.
5. If the adopted ordinance is consistent, I will send you a “final approval” letter. Under Minnesota Statutes, §116G Subd. 8 (e), only ordinances receiving final approval from the commissioner have the force and effect of law.

A MRCCA ordinance is an important land use regulation that helps to protect surface water quality, near shore habitat, and scenic character of the MRCCA. We appreciate your efforts to protect these resources for all present and future Minnesotans. Wes Saunders-Pearce is available to assist with ordinance technical guidance and to consult with you on other land and water-related projects.

Sincerely,



Megan Moore

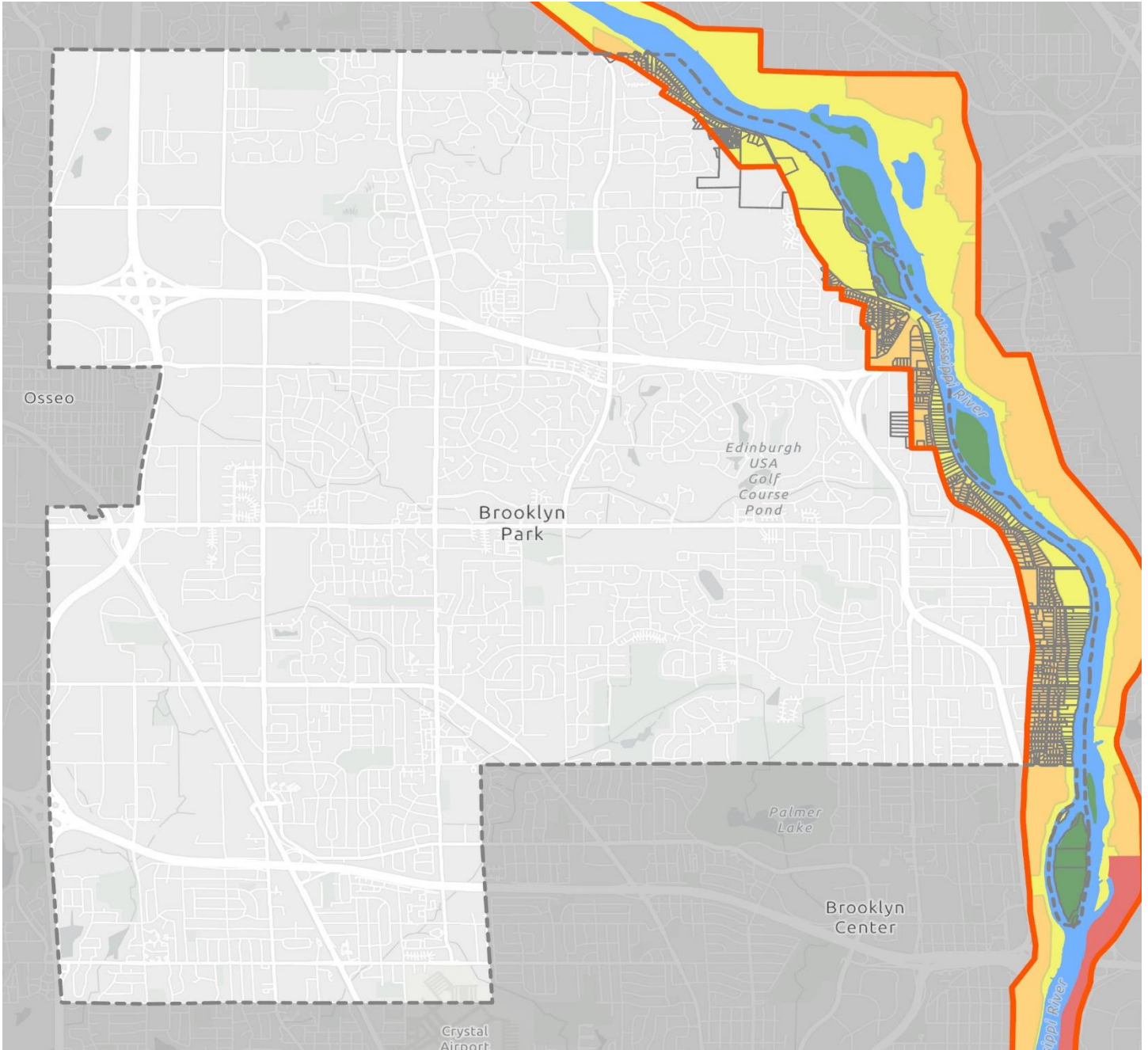
District Manager – Ecological and Water Resources

Attachments:

Proposed Ordinance with DNR Comments
MRCCA Ordinance Processing Checklist

- c: Wes Saunders-Pearce, DNR Area Hydrologist
Raya Esmaili, Metropolitan Council
Adam Muilenburg, National Park Service
Ordinance.review.dnr@state.mn.us

5.3 MRCCA OVERLAY MAP



MRCCA Text Amendment
Case #24-102
MRCCA area within the City of Brooklyn Park





City of Brooklyn Park
City Hall
5200 85th Ave. N.
Brooklyn Park, MN 55443
763-424-8000
www.brooklynpark.org

January 10, 2024

Dear Brooklyn Park resident,

Thank you for choosing to live in the City of Brooklyn Park! It is residents like yourself who make the city a vibrant place to live. With over 86,000 residents, Brooklyn Park is the sixth largest city in the state and rich with diversity and beautiful spaces. We continue to strive towards the vision statement of a thriving community inspiring pride where opportunities exist for all.

In 2017, the Minnesota Legislature passed a law requiring all cities within the Mississippi River Corridor Critical Area (MRCCA) to adopt updated regulations protecting the river. In February, the City of Brooklyn Park plans to adopt these standards into the Zoning Ordinance to comply with state law.

You are receiving this letter because your property has been identified as being located within the MRCCA.

The MRCCA has been in place since 1976, so properties along the river have been subject to protections for nearly 50 years. Adopting the updated rules developed by the Department of Natural Resources into the City's zoning ordinance will result in additional transparency for property owners and make it easier for the City to administer the required rules, cutting down on processing time when homeowners apply for building permits.

Where can I view the proposed text amendment?

The text amendment and other informative documents, such as the Zoning Map, are available on the City website at www.brooklynpark.org/planning-zoning-and-development

What does this mean for me as a property owner?

- **This will give you access to all review standards for the MRCCA zoning requirements.** These standards were previously enforced by the DNR and will now be readily available within the Brooklyn Park Zoning Ordinance.
- **The City will be your primary contact for vegetative clearing permits.** Previously this fell under the jurisdiction of the DNR, but with new regulation the City will issue permits for extensive vegetative clearing in the MRCCA.
- **For a more in depth explanation of this update, the DNR has prepared a Statement Of Need and Reasonableness (SONAR) explaining the necessity of this update.** The SONAR can be located here:
<https://files.dnr.state.mn.us/input/rules/rulemaking/mrcca/sonar.pdf>

If you have any questions, I can be reached at erin.mcdermott@brooklynpark.org.

Sincerely,

Erin McDermott

Erin McDermott, Associate Planner

From: Paul Mogush

Sent: Wednesday, February 7, 2024 11:52 AM

To: 'Joe Klohs' <jklohs@live.com>

Cc: Eric Duncan <ebduncan@comcast.net>; Christian Eriksen <Christian.Eriksen@brooklynpark.org>; Xp Lee <Xp.Lee@brooklynpark.org>; Tony McGarvey <Tony.McGarvey@brooklynpark.org>; Jay Stroebel <Jay.Stroebel@BrooklynPark.Org>; Kimberly Berggren <Kimberly.Berggren@brooklynpark.org>; Katrina Doshier <Katrina.Doshier@brooklynpark.org>; Jesse Struve <Jesse.Struve@BrooklynPark.Org>; Dan Ruiz <Dan.Ruiz@BrooklynPark.Org>

Subject: RE: MRCCA - Update of regulation for Brooklyn Park

Mr. Klohs,

I appreciate these thoughtful questions. I think there will be a lot of interest from others in knowing the answers to your questions, so I'm putting them in an email here that will be distributed to the mayor and council. Feel free to share with others, and we'll include this in the Planning Commission and Council reports on the ordinance update as well. Answers related to the code update are from me, and those related to funding/erosions/stormwater are from colleagues in Engineering. If you still have follow-up questions, feel free to give me a call.

- City appears to be late to the table to update regulations to be in compliance.

This is true. We are behind in bringing the ordinance update forward because of staffing turnover in the Planning Division and many competing priorities. We're glad to be bringing it forward now so that the City can be in compliance and property owners can have transparency regarding the DNR rules.

- Unable to find a copy of the proposed version for review – not available on city site or proposed agenda – meeting is less than a week away

It was posted on the web site when the letter went out to property owners a few weeks ago. Here is a link:

<https://www.brooklynpark.org/planning-zoning-and-development/2024-land-usage-code-update/>

- Involvement of the city to support acquisition funding/funds/grants for improvements to private landowners riverbanks – many other neighboring cities have received funds – not Brooklyn Park

The City submitted three Clean Water Funds to the Board of Soil and Water Resources since 2020. In the most recent application, the West Mississippi Watershed Management Commission became an active partner assisting with writing the grant and providing funds to match with state funds. Although unsuccessful in garnering the larger Clean Water Fund grant, they were able to appropriate approximately \$60,000 in a different, non-competitive state grant. Based on feedback we received from the granting agency, the Commission, county, and city staff thought it best to further define the suite of stabilization methods needed for restoration and get a better handle on the estimated cost.

- What is the cities action plan including timeline to support the acquisition of funds similar the neighboring cities

With the \$60,000 state grant dollars, the West Mississippi Watershed Management Commission is completing more survey work to better define the scope of erosion that is occurring, what the erosive sources may be, and what infrastructure (e.g. homes, other structures, drainage pipes, etc.) would likely be affected in the future. This information will then be used to draft preliminary designs in the highest priority area(s). These designs will outline specific restoration activities and specific locations, and could be used by landowners to engage contractors to complete the work and/or be used as a supplement to another grant application.

- Why is the city far behind the curve in initiating/submitting their plan?

I think this is answered above, but happy to answer any additional questions.

- Is the cities use of wetlands near 9100 West River Road for storm water retention contributing to the springs and problematic water problems for residents

With the reconstruction of West River Road in 2002/2003, a stormwater treatment pond was installed at the north end of Jewell Park to improve water quality and control the rate of runoff to the wetland area. Prior to the reconstruction, West River Road did not have curb and gutter installed in this area allowing drainage from the roadway direct runoff to the wetland.

- Problematic/acceleration of riverbank deterioration has increased since the city diverted storm water to the wetlands near 9100 West River Road – will this be researched?

The West Mississippi Watershed Management Commission is currently working to define the scope of erosion that is occurring, what the erosive sources may be and what infrastructure would likely be affected in the future.

- Will city funds be appropriated to resolve all riverbank erosion problems associated with the wetland use for storm water?

The work being done currently by the West Mississippi Watershed Management Commission will be used to draft preliminary designs in the highest priority area(s). These designs will outline specific restoration activities and specific locations, and could be used by landowners to engage contractors to complete the work and/or be used as a supplement to another grant application. The City previously had appropriated some funding for the Clean Water Fund grant submittals.

- Property value impact

I'm sure of the specific question, but from my perspective the combination of zoning regulations and proactive measures to protect the river (erosion control, etc) are important for protecting property values.

Paul Mogush *(he/him/his)*

Planning Director

763-493-8051

Brooklyn Park 
Unique. United. Undiscovered.

   www.brooklynpark.org

5200 85th Avenue N, Brooklyn Park, MN 55443

From: Joe Klohs <jklohs@live.com>

Sent: Tuesday, February 6, 2024 2:56 PM

To: Tony McGarvey <Tony.McGarvey@brooklynpark.org>; Paul Mogush <Paul.Mogush@brooklynpark.org>

Cc: Eric Duncan <ebduncan@comcast.net>; Christian Eriksen <christian@eriksenforbrooklynpark.com>; Xp Lee <Xp.Lee@brooklynpark.org>

Subject: MRCCA - Update of regulation for Brooklyn Park

Tony and Paul – can you provide a phone number and time I can call you regarding the upcoming meeting regarding the cities mandatory update to the MRCCA. I have been unable to contact

anyone in the planning department to ask questions I as well as numerous neighbors on the river have – several messages left.

- City appears to be late to the table to update regulations to be in compliance
- Unable to find a copy of the proposed version for review – not available on city site or proposed agenda – meeting is less than a week away
- Involvement of the city to support acquisition funding/funds/grants for improvements to private landowners riverbanks – many other neighboring cities have received funds – not Brooklyn Park
- What is the cities action plan including timeline to support the acquisition of funds similar the neighboring cities
- Why is the city far behind the curve in initiating/submitting their plan?
- Is the cities use of wetlands near 9100 West River Road for storm water retention contributing to the springs and problematic water problems for residents
- Problematic/acceleration of riverbank deterioration has increased since the city diverted storm water to the wetlands near 9100 West River Road – will this be researched?
- Will city funds be appropriated to resolve all riverbank erosion problems associated with the wetland use for storm water?
- Property value impact

Joe Klohs

8900 West River Road

612-670-1801

joeklohs@gmail.com

Sent from [Mail](#) for Windows