



**CITY OF NEWPORT
PLANNING COMMISSION MEETING
NEWPORT CITY HALL**

(May Be Held Electronically From Remote Locations)

Zoom Meeting Information <https://us02web.zoom.us/j/85246335342> Meeting ID: 852 4633 5342 (PW: Newport)

January 14, 2021 – 5:30 P.M.

Commissioner: Anthony Mahmood
Commissioner: Maria Bonilla
Commissioner: Brandon Leyde
Commissioner: Vacant
Commissioner: Vacant

City Administrator: Deb Hill
Asst. to the City Admin: Travis Brierley
Planner: Sherri Buss
Council Liaison: Bill Sumner

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. CHAIR NOMINATION
4. VICE-CHAIR NOMINATION
5. MEETING MINUTES
 A. December 10, 2020
6. PUBLIC HEARING- Mississippi River Corridor Critical Area (MRCCA)
7. PLANNING COMMISSION ROLES AND RESPONSIBILITIES
8. COMMISSION REPORTS
9. ADJOURNMENT



**CITY OF NEWPORT
PLANNING COMMISSION MEETING MINUTES
NEWPORT CITY HALL
December 10, 2020**

1. CALL TO ORDER

Chair David Tweeten called the Planning Commission meeting to order at 5:30 p.m. on December 10, 2020.

2. ROLL CALL

Present (5): Chairman David Tweeten, Commissioner Marvin Taylor, Commissioner Anthony Mahmood, Commissioner Maria Bonilla, and Commissioner Brandon Leyde.

Not Present (0): None.

3. MEETING MINUTES

A. November 12, 2020

Commissioner Taylor motioned to approve the Planning Commission minutes from November. Seconded by Commissioner Leyde. Approved 3-0-2 (Tweeten, Mahmood).

4. PUBLIC HEARING- Zoning Ordinance Updates

City Planner Sherri Buss stated these are a few ordinance changes since we adopted the comprehensive plan. Many of the changes are related to issues that came up with applications or changes to state statutes. Planner Buss gave a brief overview on the proposed changes which includes Sections 36-45 through 36-47 on CUP's and Variances, Section 36-49 on Interim Use Permits (IUP), and Section 36-151 on Uses.

Chair Tweeten opened the public hearing at 5:44 p.m. on December 10, 2020.

Chair Tweeten closed the public hearing at 5:45 p.m. on December 10, 2020.

The Commission discussed the CUP section and Chair Tweeten stated there are a few punctuation and grammar changes. The Commission discussed the Variance section. Commissioner Taylor inquired about the termination or abandonment paragraph and discussed changing the language. Planner Buss stated can change the language to state if the City determines that a violation has been made after granting a variance, the City may terminate or review the variance. The Commission discussed the IUP section. Chair Tweeten inquired about the benefit of an interim use of property if it must comply with the zoning ordinance. Planner Buss stated an interim use is typically when you do not want to grant a permanent ability for someone to have a use on a property. An example is a kennel where the owner makes a difference. You want to make sure the owner has the knowledge and ability to manage that use. An IUP has a specific date or event when it ends. The Commission discussed the uses section. Chair Tweeten found a redundant statement.

Chair Tweeten motioned to recommend the Zoning Ordinance updates with the discussed changes to the City Council. Seconded by Commissioner Taylor. Approved 5-0.

Planner Buss stated there is a resident interested in a catering business in one of our mixed-use districts. When looking through the code, catering is not listed as a use. There are food related businesses such as restaurants and coffee shops. The City would have to consider if we want to allow this use and in which district(s). The City would also need to decide if it would be a permitted use or require a conditional use permit (CUP).

Commissioner Leyde stated it sounds like a permitted use since they are not serving food and alcohol on site. Assistant to the City Administrator Travis Brierley stated a liquor license that is issued to a catering company is transferable if they are the ones providing and serving the alcohol at their catering event. They also must be serving food. Assistant Brierley stated the issue is the alcohol license needs to be issued to a residential address, not a business. Commissioner Bonilla stated it sounds more consistent with a bakery and therefore would be a conditional use because sales are not done onsite. Planner Buss stated the reason for a conditional use for bakeries is related to traffic. Also, the number of vehicles and where they park the vehicles overnight.

Assistant Brierley stated under our sign ordinance we allow for homes to put a family sign out. Assistant Brierley inquired if the Commission would allow for a business sign to be placed in front of a residential property. Planner Buss stated they would need to use the sign regulations in the mixed-use district which has requirements if those properties are adjacent to other residential properties that limit lighting, size, etc.

Chair Tweeten inquired if there are any differences between a restaurant and a catering business in terms of other regulations that would limit their intensity or size. Commissioner Mahmood stated under a restaurant you need to get two separate licenses. Planner Buss stated there are more rules that would limit the capacity of a restaurant in terms of seats and parking that wouldn't apply to a catering business. Chair Tweeten stated that would point more to a conditional use for a catering business. Planner Buss stated we would need to look at this as a new use and figure out where to put it in the tables.

Planner Buss stated the DNR has given provisional approval to your critical area ordinance. They are asking for a few small corrections but are basically fine with it and all the permit documents. Newport is the first community in the whole critical area to get our ordinance in and approved. This ordinance needs to be adopted by the end of January. We will be holding a public hearing at the January Planning Commission meeting and then it would go to the following Council meeting.

5. MX-2 (Transit-Oriented Design)

Planner Buss stated at the last meeting the Commission was given examples of design standards that other communities have used and asked for additional time. The first thoughts were to add a historical section in order to give a background on the transit orientated district area. There was also some discussion about adding the area along 7th Avenue to the design guidelines.

Commissioner Leyde stated the historical piece is important. If we are going to have a design for the transit-oriented area, that should continue at least down 7th Avenue until Glenn, so it looks consistent. Commissioner Leyde stated he feels we need to hear from the Council about the plan for Hastings Avenue so we can keep our designs consistent. Chair Tweeten stated this is a gateway plan and we should have plans for other areas along 7th and Hastings and those plans should be coherent. Commissioner Bonilla stated that the gateways should highlight the geography like what Burnsville did. Commissioner Mahmood stated this could be a wonderful public relation for our town. You could have different colleges apply with designs for the entire city and the winner would be showcased. Planner Buss stated if the City wanted gateways, you could see if there would be a U of M architecture or landscape class that wanted to take that on as a project and provide some ideas. City Administrator Deb Hill mentioned the Minnesota Design Team as another group we could possibly reach out to.

Chair Tweeten inquired who has control over the underside of overpasses as it might be neat to incorporate the one on 494 into Newport. Planner Buss stated we would have to start with Mn/Dot because they most likely own those overpasses. Commissioner Taylor stated it would be nice to have the Planning Commission focus on the PUD district by the transit site.

6. COMMISSION REPORTS

None.

7. NEW / OLD BUSINESS

None.

8. ADJOURNMENT

Commissioner Mahmood motioned to adjourn the Planning Commission meeting. Seconded by Chair Tweeten. Approved 4-1 (Tweeten).

The Planning Commission meeting was adjourned at 7:08 p.m. on December 10, 2020.

Respectfully Submitted:
Jill Thiesfeld,
Administrative Assistant

Signed: _____
Planning Commission Chair

Planning Memorandum

To:	Newport Planning Commission	Reference:	January Planning Commission Meeting Agenda Items
Copies To:	Deb Hill, City Administrator		
	Travis Brierley, Assistant to the Administrator		
		Project No.:	N2019-0002
From:	Sherri Buss, City Planner	Routing:	
Date:	January 7, 2021		

1. Public Hearing – Mississippi River Corridor Critical Area (MRCCA) Overlay District Ordinance

The Planning Commission will hold a public hearing on the city's draft MRCCA Overlay District Ordinance at the Planning Commission meeting on January 14. The area is shown on the attached map that identifies MRCCA districts and underlying zoning districts. Staff have attached a copy of the draft ordinance.

The State of Minnesota adopted new rules governing the MRCCA District in 2017 after a 5+ year planning process that involved landowners, 30 local governments, agencies, advocacy organizations, and other stakeholders.

The State rules required that local governments like Newport adopt a management plan for the MRCCA district and zoning regulations that are consistent with the State rules and local plan. The cities in the MRCCA district will implement the new regulations. Newport adopted its plan for the MRCCA in its 2040 Comprehensive Plan.

The Planning Commission has worked on the zoning regulations for the MRCCA during 2020. The draft ordinance is attached and will be the focus of the public hearing on January 14.

Summary information that staff will provide at the hearing includes the following:

- The MRCCA ordinance is an overlay ordinance that includes some specific standards for the MRCCA area. However, the requirements of the city's underlying zoning ordinance and Code apply in the MRCCA districts, modified by the requirements in the overlay ordinance. The overlay ordinance includes some unique requirements for this district (such as setbacks from the ordinary high-water level and bluffs), but it does not replace most of the underlying zoning requirements such as performance standards.
- The DNR provided a Model Ordinance to local governments to use to craft the local ordinances. Newport's draft MRCCA Overlay District Ordinance is proposing to use most of the language and requirements from the Model Ordinance.

- The MRCCA within Newport is a fully developed area. Only a handful of vacant, developable properties exist within the MRCCA in Newport. No redevelopment is expected with the MRCCA in the foreseeable future.
- The MRCCA in Newport includes 3 districts:
 - The CA-UM District, which includes the industrial lands north of I-494 (occupied by the Recycling Center, Gerdau Steel, and Xcel Energy) and the Newport Cold Storage and tank farm properties south of I-494.
 - The CA-RN District, which includes residential properties adjacent to the river and south of the tank farm to the refinery.
 - The CA-SR District, which includes residential properties in a north-south band east of the RN District. These properties are not located on the river.
- The new ordinance includes requirements related to Primary Conservation Areas (PCAs) and Primary Corridor Views PVCs). The PCAs include natural resource areas such a bluffs, wetlands, and native vegetation communities. The locations of PCAs are limited in Newport, and most areas such as bluffs and wetlands are protected from development or alteration by existing regulations. Staff have attached a copy of the draft MRCCA chapter that includes the PCA and PVC maps that were included in the 2040 Comprehensive Plan showing their locations.
- Given its fully developed status, the impacts of the new ordinance will primarily be on existing properties that may propose some changes, such as new or expanded structures.
- The significant items in the new ordinance that may impact landowners who propose changes in their properties include the following:
 - The setbacks from the ordinary high-water level for new or expanded structures in the CA-RN District will be 100 feet rather than the 50 feet in the current ordinance. Setbacks will not be changed in the CA-UM or CA-SN Districts.
 - Existing structures in the CA-RN district will not be affected by the new setbacks unless the property owner proposes an expansion into the OHWL setback. Since most of the existing structures in the MRCCA in Newport are well-outside the 100-foot setback, most property owners will be able to expand their buildings or add new buildings on their properties without impacting the setback area.
 - The setback from the bluffline will increase from 30 feet to 40 feet under the new ordinance. Existing structures will not be affected by the new requirement unless property owners propose to expand them toward the bluffline.
 - The City will need to evaluate the potential impacts of requests for CUPs and variances on primary conservation areas, corridor views, and natural resources and include conditions for the CUP or variance to mitigate the identified impacts. Examples of mitigation could include conditions to preserve existing vegetation or stormwater management practices to avoid impacts.

- The requirements for public and private facilities (such as roads, utilities, stairways, decks, etc.) in the new ordinance are the same or similar to the current Shoreland ordinance requirements.
- Landowners who want to make changes to existing vegetation or alter the grade of the areas within shore or bluff impact zones, within wetlands, or existing areas of native vegetation will need to get new permits approved by the city. The new permit requirements and application forms are included on the MRCCA section of the city's website.
- The ordinance includes requirements for major subdivisions, PUDs, and redevelopment projects to set aside a proportion of primary conservation areas within the development as protected open space. The requirements vary by zoning district.
- In addition to the requirements for protection of PCAs, the City will use its own park dedication requirements to require dedication parks and open space areas in new developments. It may require additional dedication in areas developed as PUDs, particularly those that protect important natural resources within the MRCCA district.

The draft ordinance was sent to the DNR in October after it was completed by the Planning Commission, along with copies of the new permit documents and other administrative documents that the City will use to implement the ordinance. DNR staff review the ordinance and requested a few edits to the text. The DNR did not change any of the substantive text in the draft documents and gave its provisional approval to the ordinance.

The next steps for ordinance adoption are 1) hold the public hearing, 2) make any changes to the draft based on the hearing comments, 3) send the draft to the City Council, 4) the Council will adopt the ordinance. The City committed to a schedule to adopt the ordinance by the end of January 2021 at the start of the process to develop the ordinance.

2. Planning Commission Roles and Responsibilities Discussion

The Planning Commission may have some new members at the meeting on January 14.

Staff have attached a guidance document from the League of Minnesota Cities that discusses some of the important responsibilities of planning commissions. We will have a brief discussion of the Commission roles and responsibilities at the meeting on January 14.

DRAFT Ordinance submitted to Minnesota DNR for review on October 8, 2020

DIVISION 3. – MISSISSIPPI RIVER CORRIDOR CRITICAL AREA (MRCCA) OVERLAY DISTRICT

Sec. 36-360. – Authority, Intent, and Purpose.

- (1) **Statutory Authorization.** This Mississippi River Corridor Critical Area (MRCCA) overlay district ordinance 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 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.

(Code 1997, § 1370.04(2))

Sec. 36-361. – General Provisions and Definitions.

- (1) **Jurisdiction.** The provisions of this division apply to land within the river corridor boundary as described in the State Register, volume 43, pages 508 to 519 and shown on the city's MRCCA Overlay District zoning map.
- (2) **Enforcement.** The city is responsible for the administration and enforcement of this division. 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 division can occur regardless of whether a permit is or is not required for a regulated activity listed in Section 36-363 (2) of this division.
- (3) **Severability.** If any section, clause, provision, or portion of this division is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this division shall not be affected thereby.
- (4) **Abrogation and greater restrictions.** It is not intended by this division to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this division imposes greater restrictions, the provision of this division shall prevail. All other divisions or sections that are inconsistent with this division are hereby repealed to the extent of their inconsistency only.
- (5) **Underlying zoning.** Uses and standards of underlying zoning districts apply except where standards of this overlay district are more restrictive.

(Code 1997, § 1370.04(3))

Sec. 36-362. - Definitions.

Unless specifically defined below, words or phrases used in this division shall be interpreted to give them the same meaning they have in common usage and to give this division its most reasonable application. For the purpose of this division "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.

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

Adjacent means having a boundary that physically touches or adjoins.

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

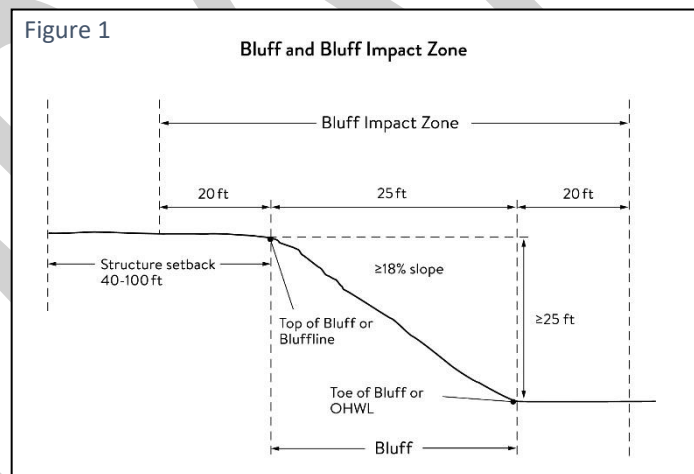
Alternative design means subdivision design methods such as conservation design, transfer of development density, or similar zoning and site design techniques that protect open space and natural areas.

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

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

Bluff means a natural topographic feature having:

- A. A slope that rises at least twenty-five (25) feet and the grade of the slope averages eighteen (18) percent or greater, measured over a horizontal distance of twenty-five (25) feet, as follows:
 - a. Where the slope begins above the ordinary high-water level, from the toe of the slope to the top of the slope; or
 - b. Where the slope begins below the ordinary high-water level, from the ordinary high-water level to the top of the slope. See Figure 1; or



- B. A natural escarpment or cliff where a slope that rises at least ten (10) 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 seventy-five (75) degrees or greater. See Figure 2.

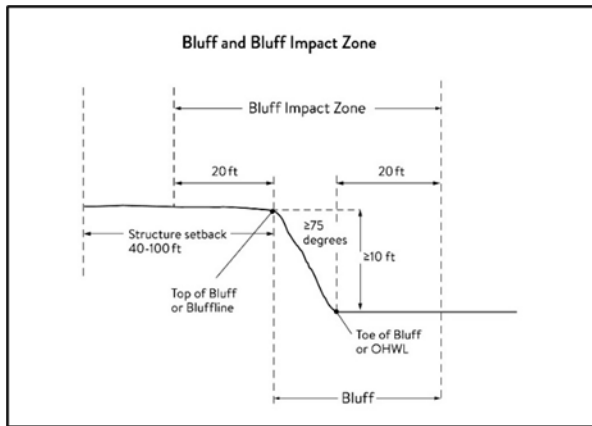


Figure 2. Natural Escarpment Bluff and Bluff Impact Zone

2. *Bluff impact zone* means a bluff and the land located within 20 feet of the bluff. See Figures [1](#) and [2](#).

Bluffline means 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 means a line along the bottom of a bluff, requiring field verification, such that the slope above the line exceeds eighteen (18) percent and the slope below the line is eighteen (18) percent or less, measured over a horizontal distance of twenty-five (25) feet. See Figures [1](#) and [2](#).

Bluff, Top of means a line along the top of a bluff, requiring field verification, such that the slope below the line exceeds eighteen (18) percent and the slope above the line is eighteen (18) percent or less, measured over a horizontal distance of twenty-five (25) feet. See Figures [1](#) and [2](#).

Buildable area means 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, historic properties, wetlands, designated floodways, land below the ordinary high water level of public waters, and other unbuildable areas.

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

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

Commissioner means the commissioner of the [Minnesota](#) Department of Natural Resources.

Conditional use means a use having the meaning given under Minnesota Statutes, chapters [394](#) and [462](#).

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

Deck means 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 has the meaning given under Minnesota Statutes, section [116G.03](#).

Development has the meaning given under Minnesota Statutes, section 116G.03.

Discretionary action means an action under this division 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 has the meaning given under Minnesota Rules, chapter [6115](#).

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

Essential services mean 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 has the meaning given for animal feedlots under Minnesota Rules chapter [7020](#).

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

Fully reconstructs means 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 means 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 means 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 means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, decks, sidewalks, patios, parking lots, storage areas, and driveways, including those with concrete, asphalt, or gravel surfaces.

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

Interim use has the meaning given under Minnesota Statutes, section [394](#) and [462](#).

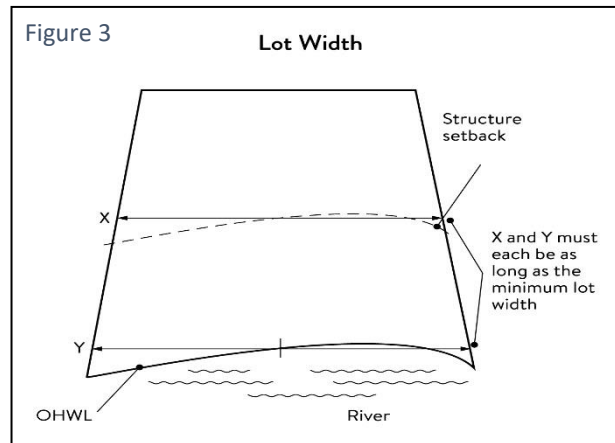
Land alteration means an activity that exposes the soil or changes the topography, drainage, or cross section of the land, excluding gardening or similar minor soil disturbances.

Local government means counties, cities, and townships.

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

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

Lot width means the shortest distance between lot lines measured at both the ordinary high-water level and at the required structure setback from the ordinary high-water level. [See Figure 3.](#)



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

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

Mississippi River Corridor Critical Area (MRCCA) Plan means a chapter or other element in the city's comprehensive plan.

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

Native plant community means a plant community that has been identified as part of the Minnesota Biological Survey or biological survey issued or adopted by a local, state, or federal agency.

Natural-surface trail means 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 means any combination of ground cover, understory, and tree canopy that, while it may have been altered by human activity, continues to stabilize soils, retain and filter runoff, provide habitat, and recharge groundwater.

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

Nonmetallic mining means the 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 means 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) has the meaning given under Minnesota Statutes, section [103G.005](#).

Overlay district means a zoning district that is 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 has the meaning given under Minnesota Statutes, section [116G.03](#).

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

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

Planned unit development means a method of land development that merges zoning and subdivision controls, allowing developers to plan and develop a large area as a single entity, characterized by a unified site design, a mix of structure types and land uses, and/or phasing of development over a number of years. Planned unit development includes any conversion of existing structures and land uses that utilize this method of development.

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

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

Primary conservation areas means 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 mean private roads, driveways, and parking areas, private water access and viewing facilities, decks and patios in setback areas, and private signs.

Professional engineer means an engineer licensed to practice in Minnesota.

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

Public recreation facilities mean 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 means 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 chapter of the comprehensive plan.

Public transportation facilities mean 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 mean electric power facilities, essential services, and transmission services.

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

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

Resource agency means 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 means 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.

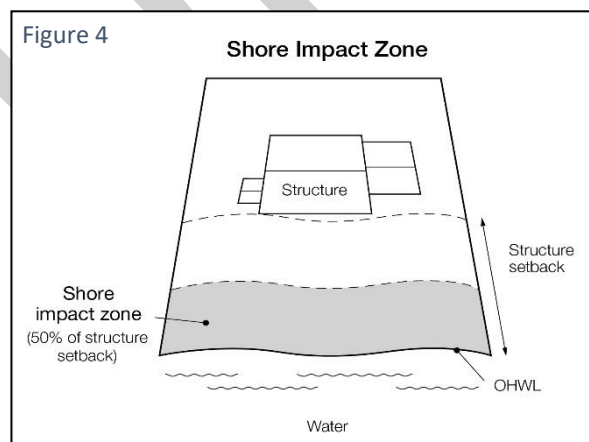
Rock riprap means natural coarse rock placed or constructed to armor shorelines, streambeds, bridge abutments, pilings and other shoreline structures against scour, or water or ice erosion.

River corridor boundary means 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 means 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 means 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 means a separation distance measured horizontally.



Shore impact zone means land located between the ordinary high-water level of public waters and a line parallel to it at a setback of 50 percent of the required structure setback or, for agricultural use, 50 feet landward of the ordinary high water level. See Figure 4.

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

Special purpose units of government means 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 means 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 means a natural topographic feature with an average slope of twelve(12) to eighteen (18) percent, measured over a horizontal distance equal to or greater than fifty (50) feet, and any slopes greater than nineteen (19) percent that are not bluffs.

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

Structure means 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 has the meaning given under Minnesota Statutes, section [462.352](#).

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

Transmission services means

- 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 means the more or less continuous 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 means the area over which the Metropolitan Council has jurisdiction according to Minnesota Statutes, section [473.121 subdivision 2](#).

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

Water access ramp means a boat ramp, carry-down site, boarding dock, and approach road, or other access that allows launching and removal of a boat, canoe, or other watercraft with or without a vehicle and trailer.

Water-oriented accessory structure means a small building or other improvement, except stairways, fences, docks, and retaining walls, that, because of the relationship of its use to public waters, 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 means 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 has the meaning given under Minnesota Statutes, section [103G.005](#).

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

(Code 1997, § 1370.04(5))

Sec. 36-363. – Administration

- (1) *Purpose*. The purpose of this Section is to identify administrative provisions to ensure this division is administered consistent with its purpose.
- (2) *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 Section 36-369 and land alterations consistent with Section 36-370.
- (3) *Variances*. Variances to the requirements under this division may only be granted in accordance with Minnesota Statutes Section 462.357 and must consider the potential impacts of variances on primary conservation areas (PCAs), public river corridor views (PRCVs), and other resources identified in the MRCCA plan. In reviewing the variance application, the city 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 36-363 (5) and
 - b. Make written findings that the variance is consistent with the purpose of this division 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 PRVCs nor will it contribute to negative incremental impacts to PCAs and PRVCs when considered in the context of past, present and reasonable future actions; and
 - iv. The variance will not negatively impact **other MRCCA resources identified in the city's MRCCA Plan such as wetlands, river overlooks, parks and open space, etc.**
- (4) *Conditional and interim use permits.* All conditional and interim uses required under this division 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 city's MRCCA plan. In reviewing the application, the city 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 36-363 (5); and
 - b. Make written findings that the conditional use is consistent with the purpose of this division 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 PRVCs nor will it contribute to negative incremental impacts to PCAs and PRVCs when considered in the context of past, present, and reasonable future actions; and
 - iv. The conditional use will not negatively impact **other resources identified in the city's MRCCA plan, such as wetlands, river overlooks, and parks and open space.**
- (5) *Conditions of approval.* The city 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 city's MRCCA plan.
 - b. Preservation of existing vegetation;
 - c. Stormwater runoff management;
 - d. Reducing impervious surface;

- e. Increasing structure setbacks;
- f. Wetland and drainage route restoration and/or preservation
- g. Limiting the height of structures;
- h. Modifying structure design to limit visual impacts on the PRCVs; and
- i. Other conservation measures.

(6) *Application materials.* Applications for permits and discretionary actions required under this division must submit the following information unless the city determines that the information is not needed.

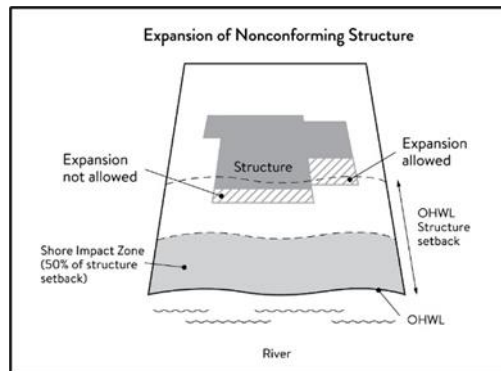
- a. A detailed project description; and
- b. Scaled maps and plans, dimensional renderings, maintenance agreements, and other materials that identify and describe:
 - i. Primary conservation areas;
 - ii. Public river corridor views;
 - iii. Buildable area;
 - iv. Existing and proposed topography and drainage patterns;
 - v. Proposed stormwater 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 Minnesota Statutes 462.357 Subd. 1e.
- b. New structures erected in conformance with the setback averaging provisions of Section 36-366 (2)e 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 36-366 (4) may be expanded laterally provided that:

- i. 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
- ii. The expanded structure's scale and bulk is consistent with that of the original structure and existing surrounding development.

Figure 5. Expansion of Nonconforming Structures



(8) *Notifications.*

- a. Amendments to this division and to the MRCCA plan must be submitted to the Commissioner as provided in Minnesota rules, part 6106.0070, Subp. 3, items B-I, and via email to the appropriate DNR Area Hydrologist.
- 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 thirty (30) days prior to the hearing:
 - i. To the Commissioner in a format prescribed by the DNR;
 - ii. To the National Park Service; and
 - iii. Where building heights exceed the height limits specified in Section 36-366 (3) as part of the conditional use or variance process, to the 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 36-365 (8)b, including findings of fact, but 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 accommodation for ramps and 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 36-365 to 36-372; or
- b. If Sections 36-365 to 36-372 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.

36-364. 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 city is divided into the following MRCCA Districts:

- a. 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.
- b. 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 the flow of untreated storm water into the river are priorities in the district. 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.

c. Urban Mixed (UM).

- i. *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, parks, and open space.
- ii. *Management purpose.* The UM district must be managed in a manner that allows for future growth and potential transition of intensely developed areas that does not negatively affect public river corridor views and that protects bluffs and floodplains. 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.

- (3) *MRCCA district map.* The locations and boundaries of the MRCCA districts established by this division are shown on the 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 property that has not be subdivided, the district boundary line is determined by the use of dimensions or the scale appearing on the map.

36.365. Special Land Use Provisions

- (1) *Purpose.* 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.

- (2) *Underlying zoning.* 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 fifty (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 the recommended practices in *Conserving Wooded Areas in Developing Communities: Best Management Practices in Minnesota*.

c. *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 36-372 must meet the dimensional and performance standards in this division, 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:

- 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; and
 - C. Dredging and placement of dredged material are subject to existing federal and state permit requirements and agreements.
- c. *Wireless communication towers.* Wireless communication towers require a conditional 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.
 - iii. Placement of the tower must minimize impacts on public river corridor views.
 - iv. The tower must comply with the general design standards in Section 36-368 (2).

36.366. Structure Height and Placement and Lot Size

- (1) *Purpose.* The purpose of this section is 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 36-372.
 - a. Structures and facilities must comply with the following standards unless identified as exempt in Section 36-372.
 - i. RN district: maximum 35 feet
 - ii. SR district: Height is determined by underlying zoning, provided the allowed height is consistent with that of the mature tree line, where preset, and existing surrounding development, as viewed from the OHWL of the opposite shore.
 - iii. UM district: maximum 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. Structures taller than 65 feet and **up to 70 feet** may be allowed as a conditional use when they meet the goals of the MRCCA district and are in accord with Section 36-366 (2) c.
 - b. Height shall be measured on the side of the structure facing the Mississippi River.

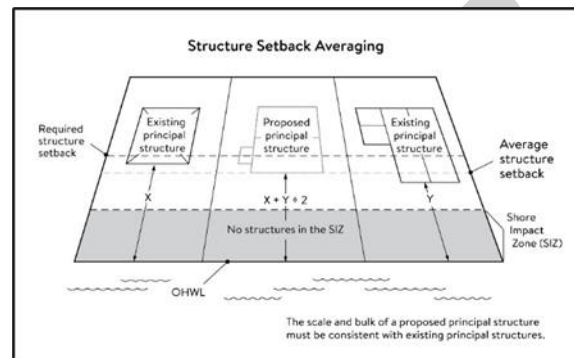
- c. In addition to the conditional use permit requirements for structures proposed to exceed the height standard in the UM district, the criteria for considering whether to grant a conditional use permit for structures exceeding the height limits must include:
 - i. Assessment of the visual impact of 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 one or more of the following techniques to minimize the perceived bulk of the proposed structure:
 - A. Placing the long axis of the building perpendicular to the river;
 - B. Stepping back of portions of the façade;
 - 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.

(4) 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 exception in Section 36-372.
- b. Structures and facilities must comply with the following OHWL setback provisions unless identified as exempt in Section 36-372.
 - i. RN district: 100 feet from the Mississippi River.
 - ii. UM district: 50 feet from the Mississippi River.
- c. Structures and facilities must comply with the following bluffline setback provisions unless identified as exempt in Section 36-372.
 - i. RN district: 40 feet.
 - ii. SR district: 40 feet.

- iii. UM district: 40 feet.
- d. Subsurface sewage treatment systems, including the septic tank and absorption area, must be located at least seventy-five (75) feet from the OHWL of the Mississippi River and all other public water bodies.
- e. *Structure setback averaging.* 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 above are consistent with adjoining development.
 - i. **The City may consider the setbacks of additional structures on nearby lots in determining the average setbacks if needed, for example for corner lots.**

Figure 6. Structure Setback Averaging



(5) Lot size and buildable area.

- a. All new lots must have adequate buildable area to comply with the setback requirements of Sections 36-366 (4) b and c so that a variance is not required to use the lots for their intended purpose.

36.367. Performance standards for private facilities

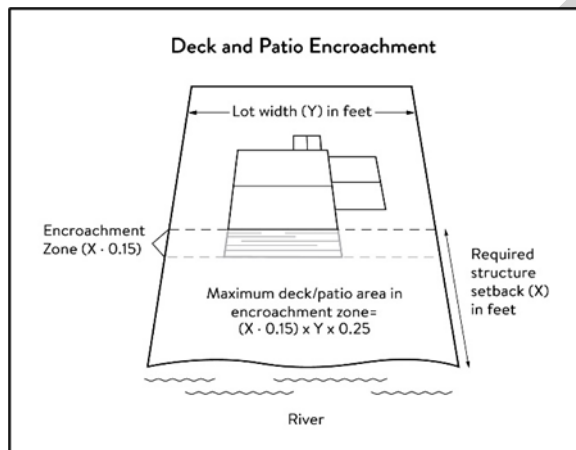
- (1) *Purpose.* To establish design standards for private facilities that are consistent with best management practices and that minimize impacts to primary conservation areas, public river corridor views and other resources identified in the MRCCA plan.
- (2) *General design standards.* All private facilities must be developed in accordance with the vegetation management and land alteration requirements in Sections 36-369 and 36-370.
- (3) *Private roads, driveways, and parking areas.* Except as provided in 36-372, 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 36-366; and
 - c. Not be placed within the bluff impact zone or shore impact zone, unless exempt under Section 36-372 and designed consistent with Section 36-368 (2).

(4) Private water access and viewing facilities

- a. Private access paths must be no more than:
 - i. Eight (8) feet wide, if placed within the shore impact zone; and
 - ii. Four (4) 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 the *Design Handbook for Recreational Boating and Fishing Facilities (US Fish and Wildlife Service)*.
- c. Design and construction of private stairways, lifts, and landings are subject to the following standards:
 - i. Stairways and lifts must not exceed four (4) feet in width on residential lots. Wider stairways may be used for commercial properties and residential facilities held in common, if approved by a **conditional use permit**;
 - ii. Landings for stairways and lifts on residential lots must not exceed thirty-two (32) square feet in area. Landings larger than thirty-two (32) square feet in area may be allowed for commercial properties and residential facilities held in common, if approved **by a conditional use permit**;
 - iii. Canopies or roofs are prohibited on stairways, lifts, or landings;
 - iv. Stairways lifts, and landings shall 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 items i-iv in this section and as provided under Section 36-363 (9).
- d. One water-oriented accessory structure is allowed for each riparian lot or parcel less than three hundred (300) feet in width at the ordinary high water level, with one additional water-oriented accessory structure allowed for each additional three hundred (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 twelve (12) feet in height;
 - ii. Not exceed one hundred and twenty (120) square feet in area; and
 - iii. Be placed a minimum of ten (10) feet from the ordinary high-water level.
- e. *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 36-369 and 36-370 provided that:

- i. The encroachment of the deck or patio into the required setback area does not exceed fifteen (15) percent of the required structure setback using this formula:
- ii. The area of the deck or patio that extends into the required setback area occupies no more than twenty-five (25) percent of the total area between the required setback and fifteen (15) percent using the formula: [Required setback depth (feet) x 0.15 x lot width (feet) = maximum total area]
- iii. The deck or patio does not extend into the bluff impact zone. See Figure 7.

Figure 7. Deck and Patio Encroachment



- iv. (5) Off-premises and directional signs
 - a. Off-premises advertising signs must:
 - i. Meet required structure placement and height standards in Section 36-366 (2) and (4).
 - ii. Not be readily visible.
 - b. 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 (10) feet in height and thirty-two (32) square feet in surface area; and
 - iv. If illuminated, the lighting must be fully shielded and directed downward to prevent illumination out across the river or to the sky.

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

- a. Not higher than six (6) feet.
- b. Not located within forty (40) feet of slopes greater than twelve (12) percent.

- c. Not located in the regulatory floodplain

(7) *Lighting.* Within the OHWL setback:

- a. Lighting shall be fully shielded and directed away from the river.
- b. Up-lighting is prohibited.

36.368. Performance standards for public facilities

- (1) *Purpose.* The purpose of this section is to establish 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 6.0, except and provided in Section 36-372;
 - c. Be consistent with the vegetation management standards in Section 36-369 and the land alteration and stormwater management standards in Section 36-370, 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.
 - f. Minimize disturbance during bird migration and nesting times by scheduling construction at times when birds are not migrating 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 practical, but when chemical control is necessary the 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 waters 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 (5) 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 the 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 36-365 (2)c.
- (6) *Public transportation facilities.* Public transportation facilities shall comply with structure placement and height standards in Section 36-366. 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:
 - 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.* 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 Section 36-366, except as provided in Section 36-372;
 - 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 thirty (30) percent. Natural surface trails are allowed, provided they do not exceed eight (8) 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:
 - i. Watercraft access ramps must comply with Minnesota Rules chapters 6115.0210 and 6280.0250; and
 - ii. Facilities must be designed and constructed consistent with the standards in the *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 36-367 (4)c.

36-369. 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 the 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 route;
 - c. Bluff impact zones;
 - d. Areas of native plant communities; and
 - e. Significant existing vegetation 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;
- c. Right-of-way maintenance for public facilities meeting the standards in Section 36-368 (3);
- d. Agricultural and forestry activities meeting the standards of Section 36-365 (2), items a and b;
- e. Selective vegetation removal, provided that vegetative cover remains consistent with the management purpose of the MRCCA District, including the removal of:
 - i. Vegetation that is dead, diseased, dying, or hazardous;
 - ii. Vegetation to prevent the spread of diseases or insect pests;
 - iii. Individual trees and shrubs; and
 - iv. Invasive non-native species.

(4) Activities allowed with a vegetation permit.

- a. Only 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;
 - v. The minimum necessary for development that is allowed with a building permit or as an exemption under Section 36-372.
- b. General Performance Standards. The following standards must be met, in addition to a restoration plan under Section 36-369, item (6), in order to approve a vegetation permit:
 - 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 the City Engineer;
 - iii. Clearing is the minimum necessary and designed to blend with the natural terrain and minimize visual impacts to public river corridor views and other scenic views;

- iv. Vegetation removal activities are conducted to expose the smallest practical area of soil to erosion for the least possible time, and to avoid bird migration and nesting seasons; and
- v. 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. For any vegetation removed with a permit issued under Section 36-369, item (4);
 - 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 36-371.
- b. Restoration Plan Performance Standards. The vegetation restoration plan must satisfy the application submittal requirements in Section 36-363, item (6) and:
 - i. Vegetation must 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; or
 - D. Other approved priority opportunity area, including priorities identified in the MRCCA plan, if none of the above exist.
 - ii. 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*.
 - iii. Any highly erodible soils disturbed during removal and/or restoration must be stabilized with deep-rooted vegetation with a high stem density.
 - iv. 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

- v. 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.
 - vi. Be prepared by a qualified individual; and
 - vii. Include a maintenance plan that includes management provisions for controlling invasive species and replacement of plant loss for three (3) years.
- c. The city will issue a certificate of compliance after the vegetation restoration plan requirements have been satisfied.

36-370. 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 the stability of bluffs, shorelines, and other areas prone to erosion.

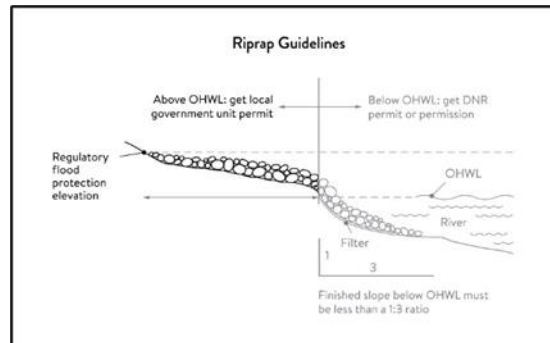
(2) Land Alteration

- a. Within the bluff impact zone, land alteration is prohibited, except for the following, which are allowed by permit.
 - i. Erosion control consistent with a plan approved by the City and consistent with Section 36-370, item (6)
 - ii. The minimum necessary for development that is allowed as an exception under Section 12; and
 - iii. Repair and maintenance of existing buildings and facilities.
- b. Within the water quality impact zone, land alteration that involves more than ten (10) cubic yards of material or affects an area greater than one thousand (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, permitted by the US Army Corps of Engineers, and any other permits are obtained. 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 10.6 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.
 - 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 (5) feet in height and must be placed a minimum horizontal distance of ten (10) 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 36-370, item (2).

(4) Stormwater management

- a. In the bluff impact zone, stormwater 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 12.0, or fully reconstructs existing impervious surface of more than ten thousand (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 (5) 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 36-369.
- (6) Conditions of land alteration permit approval
- a. Temporary and permanent erosion and sediment control measures retain sediment onsite consistent with the 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 36-369; and
 - g. Best management practices are employed for protecting and enhancing ecological and water resources identified in *Best Practices for Meeting DNR General Public Waters 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 Minnesota Rules 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.

36-371. 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 (10) or more acres for contiguous parcels that abut the Mississippi River and twenty (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 (3) 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.
- c. Application materials. Project information listed in Section 36-363, item (6) must be submitted for all proposed developments.
- d. Design standards.
 - i. 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:

- A. CA-RN District: 20%
 - B. CA-UM District: 10%
 - C. 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.
- iv. If the primary conservation areas exceed the amounts specified in Section 36-372 (2) d, then protection of native plant communities and natural vegetation in riparian areas shall be prioritized.
 - v. 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 36-369, item (6)b.
 - vi. 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 36-369, item (6)b and the area must be set aside and designated as protected open space.
 - vii. 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.
 - viii. Land dedicated under Chapter 28, Article IV, Section 28-126 of this code for public river access, parks, or other open space or public facilities may be counted toward the protected open space requirement.
 - ix. 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.
- e. Permanent protection of designated open space
 - i. 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; or
 - iv. Other arrangements that achieve an equivalent degree of protection.
 - v. 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.

- f. **Alternative design standards.** The city will consider the following alternative design option to increase the permanent protection of Primary Conservation Areas (PCAs) in subdivisions and other new developments in the MRCCA District and encourage restoration of native vegetation communities. The City may grant density bonuses to increase the permanent protection of PCAs and/or native plant communities up to thirty (30) percent of the parcel area in the CA-RN, CA-UM and CA-SR District. Protection and restoration must be accomplished consistent with the requirements of this section.

The City may award additional development units based on the size of the area protected, as follows:

- i. **Density bonuses.** The City may approve density bonuses for a major subdivision when the proposed subdivision meets the objectives and requirements of this division and Article VI of the city code to protect and preserve bluffs, steep slopes, native vegetation, natural resources, views of the bluffs area, and open space.

The city shall determine the amount and location of the density bonus permitted for each major subdivision based on site conditions, zoning district regulations, and potential impacts to the site and surrounding areas. The maximum density bonus for a subdivision shall be twenty (20) percent for single-family and duplex housing units and thirty (30) percent for multifamily units.

36-372. 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 Division. Uses and activities exempted under shore impact zone and bluff impact zone must comply with the vegetation management and land alteration standards in Sections 36-369 and 36-370.
 - b. Uses and activities in Section 12.3 are categorized as:
 - i. Exempt-E. This means that the use or activity is allowed;
 - ii. Exempt if no alternative-(E). This means that the use or activity is allowed only if no alternatives exist; and
 - iii. Not exempt-N. This means that a use or activity is not exempt and must meet the standards of this ordinance.
- (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)	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)	Section 8
Wireless communication towers	E	E	N	N	Section 5.26
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 CA-UC district of St. Paul, between Chestnut Street and Highway 52.	E	n/a	n/a	E	Height in CA-UC district is governed by underlying zoning

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	E	E	E	(E)	Section 8
Essential services (other than storm water facilities)	E	E	E	(E)	Section 8
Storm water facilities	E	N	E	(E)	Section 10
Wastewater treatment	E	N	E	N	Section 8
Public transportation facilities	E	N	(E)	(E)	Section 8

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	E	E	(E)	(E)	Section 8; within BIZ, only on slopes averaging less than 30%. Exemptions do not apply to principal structures.
Picnic shelters and other open-sided structures	E	N	(E)	N	Section 8
Parking lots	(E)	N	(E)	(E)	Section 8; 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	(E)	N	(E)	(E)	Section 8
Natural-surfaced trails, access paths, and viewing areas	E	N	E	E	Section 8
Hard-surfaced trails and viewing platforms	E	N	E	(E)	Section 8; within BIZ, only on slopes averaging less than 30%
Water access ramps	E	N	E	(E)	Section 8
Public signs and kiosks for interpretive or directional purposes	E	N	E	(E)	Section 8

d. River-dependent uses

Use or Activity
Shoreline facilities
Private roads and conveyance structures serving river-dependent uses

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	(E)	N	N	(E)	Section 7; 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	E	N	E	E	Section 7
Water access ramps	E	N	E	N	Section 7
Stairways, lifts, and landings	E	N	E	E	Section 7
Water-oriented accessory structures	E	N	E	N	Section 7
Patios and decks	E	N	N	N	Section 7.5
Directional signs for watercraft (private)	E	N	E	N	Section 7.6; exemption does not apply to off-premise advertising signs
Temporary storage of docks, boats, and other equipment during the winter months	E	N	E	N	
Erosion control structures, such as rock riprap and retaining walls	E	N	E	(E)	Sections 10.3, 10.5 and 10.6
Flood control structures	E	N	E	(E)	Section 10

XII. Mississippi River Corridor Critical Area Plan

A. OVERVIEW – HISTORY AND GOALS

The Mississippi River Corridor Critical Area (MRCCA) covers a 72-mile stretch of the Mississippi River through the Twin Cities Metropolitan Area, extending from Dayton and Ramsey in Hennepin and Anoka Counties downstream to Ravenna Township in Dakota County. Minnesota Governor Wendell Anderson designated the MRCCA in 1976 by Executive Order 130. The designation was renewed by Governor Albert Quie in 1979, and made permanent that year by a Metropolitan Council resolution.

The legal boundary of the MRCCA was established in Executive Order 79-19. The MRCCA varies in width and includes 54,000 acres of water and public and private lands. A total of 30 communities have land within the MRCCA, including the City of Newport.



Land use in the MRCCA has been regulated by local governments through local MRCCA plans and ordinances as directed by Executive

Order 79-19. By the early 1980's, all local governments within the MRCCA had adopted MRCCA plans.

In 1988, the U.S. Congress established the Mississippi National River and Recreation Area (MNRRA), a unit of the National Park System. MNRRA shares the same boundaries as the MRCCA. In 1997, the Minnesota Legislature recognized the MNRRA as a state-designated Critical Area. In 1995, Governor Arne Carlson transferred administrative responsibility for the MRCCA from the Environmental Quality Board (EQB) to the Minnesota Department of Natural Resources (DNR). This order transferred rulemaking authority for management of the MRCCA to the DNR.

In 2007, the Minnesota Legislature directed the DNR to prepare a report on the status of the MRCCA, which was delivered to the Legislature in 2008. In 2009, the Legislature directed the DNR to establish rules for the MRCCA. DNR launched the rulemaking process in 2009. The process was put on hold in 2011 after the DNR was unable to publish a notice of intent to adopt rules or notice of hearing within 18 months of the date of the legislative directive, and its authority to complete the rulemaking lapsed.

In 2013, the Legislature directed the DNR to resume rulemaking, requiring the DNR to consult with local governments before adopting the rules, and making other changes to the rulemaking process. The second rulemaking process began in 2013. The DNR made extensive revisions to the proposed rules, and produced a final draft of the MRCCA rules. The DNR adopted the rules in 2016.

The goals for the MRCCA and its rules are to preserve and enhance the natural, aesthetic, economic, recreational, cultural, and historic value of the Mississippi River corridor within the Twin Cities metropolitan area and protect its environmentally sensitive areas.

The MRCCA rules require cities and townships to complete an MRCCA plan as a required chapter in the comprehensive plan that complies with the state rules. Local governments must also adopt ordinances that are consistent with the rules to implement the plan.

Newport's MRCCA Plan and Planning Process

This chapter is Newport's MRCCA plan. It includes the elements that the rules require for local plans, and is consistent with the State rules.

The City's Planning Commission worked with City staff to develop this plan and reviewed the plan. The City Council reviewed and provided direction and comments on the draft plan. City residents, including residents within the MRCCA area, participated in the development of the

plan and public meetings to provide comments. The draft plan was posted on the City website and notices about the plan and meetings were provided directly to residents within the MRCCA boundary in Newport.

The Planning Commission reviewed maps and completed field work to identify the Primary Conservation Areas and Public River Corridor Views. The City's Planning and Engineering consultants and staff completed the plan maps and provided other technical input for the plan.

Progress since the 2008 Critical Area Plan (2030 Comp Plan)

The City of Newport included the required Mississippi River Corridor Critical Area (MRCCA) Plan chapter in its 2030 Comprehensive Plan. The chapter was developed in 2008, and the City used the chapter in the following ways:

- The City used the 2008 Critical Area Plan to update its Zoning Ordinance, including 1) a new Division 3 – Critical Overlay District that regulated uses and standards in the Critical Area to implement the Plan; 2) a new Bluff Overlay District that includes specific regulations for all bluff areas in the city; and 3) a new River Development Overlay District that managed redevelopment in areas near the river to be compatible with the Critical Area requirements and Red Rock Redevelopment Area.
- The City updated its Zoning Map to identify the MRCCA boundary.
- The City used the Critical Area Plan and related Zoning Regulations in the review of all proposed projects, variance requests, Conditional Use Permit requests, site plan reviews, and other planning and zoning applications located within the MRCCA, and required that they comply with the plan and regulations.
- The City used the Critical Area Plan and related Zoning Regulations to provide technical assistance and information to residents and businesses located in the MRCCA, particularly those considering changes to their properties and planning and zoning requests. The 2030 Comprehensive Plan, including the MRCCA chapter, and zoning regulations are available on the City's website.

B. MRCCA DISTRICTS

The 2016 MRCCA rules include six districts that will replace the four previous districts. The Districts include:

- CA-ROS: Rural & Open Space District
- CA-RN: River Neighborhood District
- CA-RTC: River Towns and Crossings District

CA-SR: Separated from River District
CA-UM: Urban Mixed District
CA-UC: Urban Core District

The districts are based on the natural and built character of the areas within the MRCCA area. The MRCCA rules include requirements for structures setbacks from the Ordinary High Water Level (OHWL) and bluffs, building height limits, and amount of open space required for subdivisions and redevelopment areas that vary by district.

The three districts that are located within Newport, and the descriptions of those districts in the rules, include the following:

CA-RN: River Neighborhood District: The district is characterized by primarily residential neighborhoods that are riparian or readily visible from the river, or that abut riparian parkland. The district may include parks and open space, limited commercial development, marinas, and related land uses.

The MRCCA rules say that the CA-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 stormwater into the river and enhancing habitat and shoreline vegetation are priorities in the district.”

In Newport, the CA-RN district includes the residential areas in the “old town” west of Highway 61 that are visible from the river, several public river accesses, and some existing and proposed park lands.

CA-SR: Separated from River District: this district includes land within the MRCCA boundary that is separated from and not visible from the river.

The MRCCA rules say that the CA-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 the flow of untreated stormwater into the Mississippi River are priorities in the district.”

In Newport, the CA-SR district includes older single-family residential neighborhoods west of Highway 61 and some city park land.

CA-UM: Urban Mixed District: this district includes large areas of highly-urbanized mixed uses that are part of the urban fabric of the river corridor,

including commercial, institutional, and industrial and residential areas, as well as parks and open space.

The MRCCA rules say that the CA-UM district “must be managed in a manner that allows for future growth and potential transition of intensely developed areas that does not negatively affect public river corridor views and that protects bluffs and floodplains. Restoring and enhancing bluff and shoreline habitat, minimizing erosion and flow of untreated stormwater into the river, and providing public access to and public views of the river are priorities in this district.”

In Newport, this area includes industrial uses such as Newport Cold Storage, a petroleum storage facility, and Western Refining.

The boundaries of the districts within Newport are shown on Figure 7-1.

MRCCA Districts and Fit with Newport's Future Land Use Plan

The MRCCA Districts, descriptions, and permitted uses are a good fit with Newport's Future Land Use Plan, discussed later in this Chapter, and few conflicts are expected in adopting the MRCCA Districts as an overlay to the City's Zoning Map.

The City does not need to see a need to adjust the boundaries of any of the districts. Potential issues for the future include:

- If some of the industrial uses in the CA-UM District leave, and there are opportunities to redevelop this area, the City will need to consider the potential for redevelopment to support the MRCCA goals and rules, and whether changes in the classification are needed to support redevelopment.
- The City may need to request flexibility from setback standards in some older neighborhoods due to the location of existing infrastructure. It has not evaluated this issue in detail, but will do so as begins to consider the updates its Zoning Ordinance.

Goals and Policies – Land Use

Newport's goals and policies for managing land use within the MRCCA land use districts include the following:

Goal 1: **Guide land use and development to be consistent with the management purpose of each MRCCA District.**

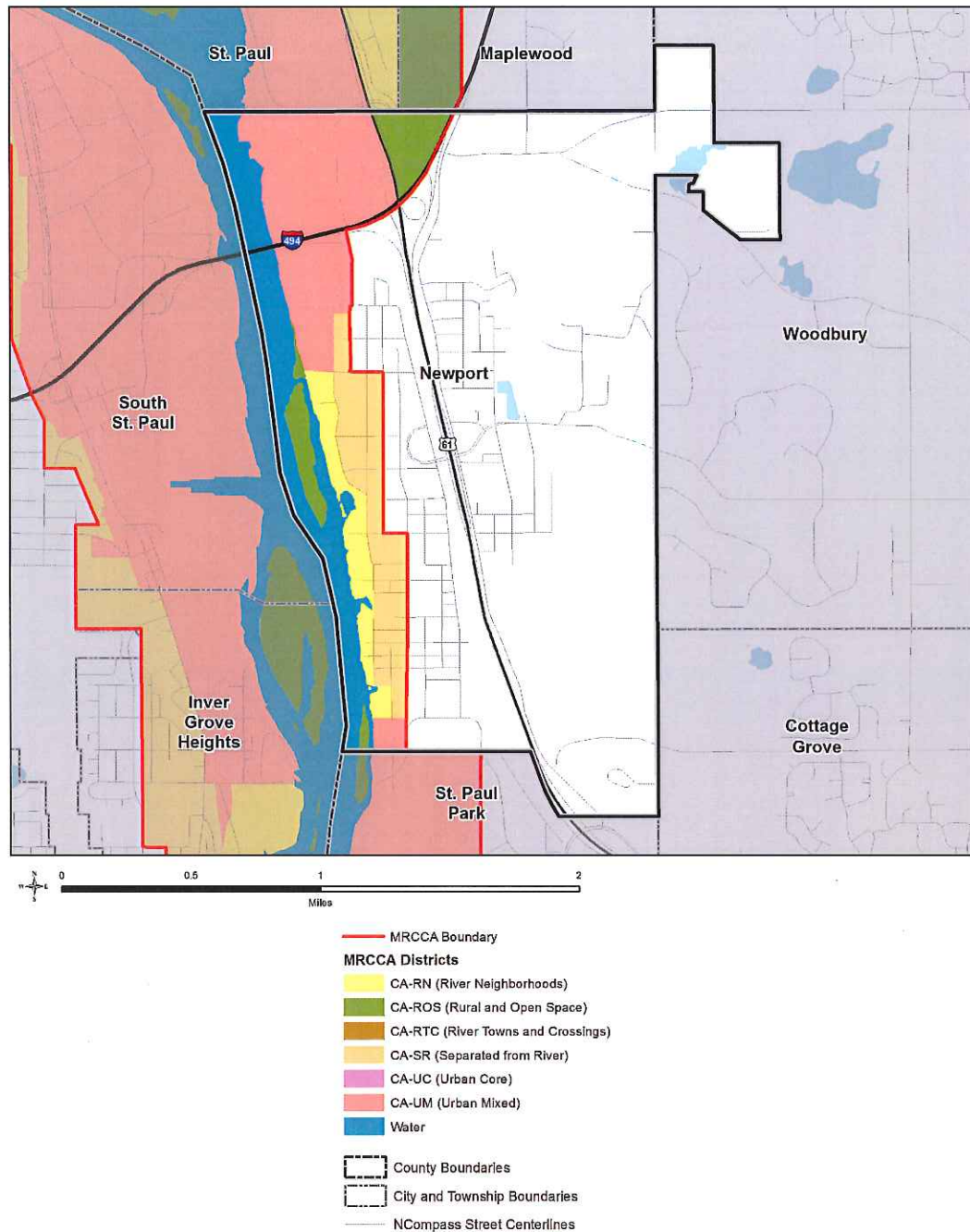
Policy 1.1: The City will update its Zoning Ordinance and Zoning Map to be consistent with the MRCCA rules and land use districts.

Policy 1.2: The City's land use regulations will guide land use and development to be consistent with the management purposes of the MRCCA land use districts.

Policy 1.3: The City may consider a request for flexibility from the rules in some areas to accommodate the location of existing infrastructure.

Figure 7-1
MRCCA Districts in Newport

Mississippi River Corridor Critical Area Districts
City of Newport, Washington County



C. PRIMARY CONSERVATION AREAS

The term “*primary conservation areas*” identifies the key natural and cultural resources and features that are addressed in the MRCCA rules. The list of features includes:

- *Shore Impact Zone*—the land located between the OHWL and a line parallel to it at a setback of 50% of the required structure setback.
- *Floodplains, wetlands, and areas of confluence with key tributaries*—floodplains and wetlands as defined in Minnesota Rules 6120.500 and Minnesota Statutes 103G.005, respectively; areas of confluence are located at the confluence of the Mississippi River with the Crow, Rum, Minnesota and Vermillion Rivers
- *Natural drainage ways*—includes stream and river locations emptying into the Mississippi as mapped by the DNR or defined by the community.
- *Bluffs and bluff impact zones*—a *bluff* is a slope that rises at least 25 feet above the OHWL, or the toe of the slope to the top of the slope, and the grade averages 18% or greater, measured over a horizontal distance of 25 feet; or a natural escarpment or cliff which a slope that rises at least 10 feet above the OHWL, or toe of the slope to the top of the slope, with an average slope of 100% or greater.
The *bluff impact zone* is the bluff itself and land within 20 feet of the bluff.
- *Native plant communities and significant existing vegetative stands*—*native plant communities* are plant communities that have been identified and mapped by the Minnesota Biological Survey, and *significant existing vegetative standards* have been identified and mapped by the DNR based on data from MNRRA.
- *Cultural and historic properties*—includes properties that are listed in the National Register of Historic Places, eligible sites, and other properties and sites that have local cultural and historical significance.
- *Gorges*—the area located between St. Anthony Falls in Minneapolis and the High Bridge in St. Paul
- *Unstable soils and bedrock*—known areas of unstable soils and bedrock.

The term *primary conservation areas* is used in several parts of the rules to ensure that key resources and features are given priority consideration for protection, including in the content of local plans, in local regulations for land use and development, and in the project information submitted for proposed developments within the MRCCA.

Bluff protection was a closely analyzed issue in the MRCCA rules development process. The rules include a uniform set of definitions and terms related to bluffs for use in mapping and local regulations.

Newport used the data provided by the DNR and others, as well as city information that identifies natural drainage routes, significant vegetation stands, cultural and historic properties, and unstable soils and bedrock areas to create the map of Primary Conservation Areas within Newport, Figure 7-2.

MRCCA Primary Conservation Areas—Resources and Features in Newport

Shore Impact Zones

The Shore Impact Zone is defined in the MRCCA rules as the “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.” The Shore Impact Zone in the two applicable districts in Newport is as follows:

Zoning District	Structure Setback From OHWL	Shore Impact Zone From OHWL
CA-RN	100 feet	50 feet
CA-SR	NA	NA
CA-UM	50 feet	25 feet

Based on the size of the Shore Impact Zones, the areas would not be visible on maps at the scale used in this plan. The Zone is located within some of the other PCAs mapped for this plan. The City will incorporate the zone definition and MRCCA rule standards for the zones in its Zoning Ordinance.

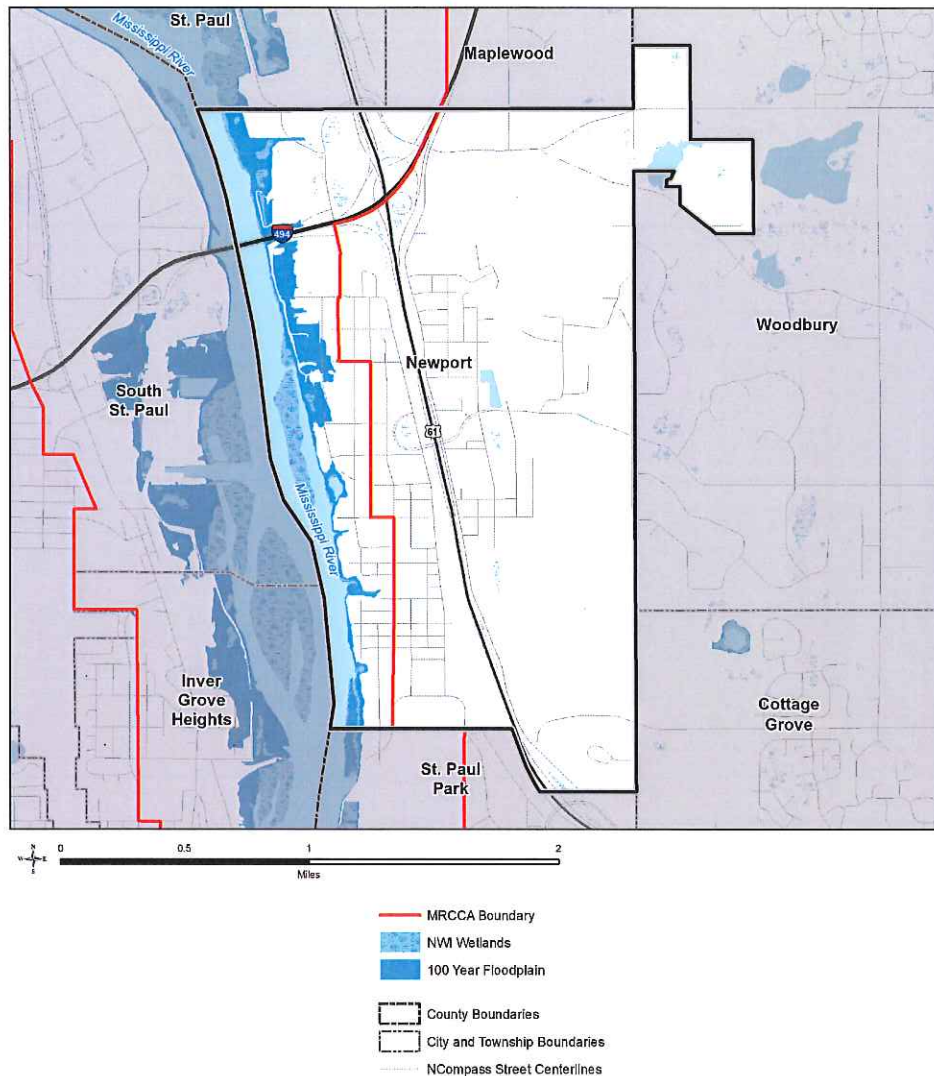
Wetlands and Floodplains

The limited wetland areas located within the MRCCA in the City of Newport are identified on Figure 7-2. The areas are concentrated along the river and include the Mill Pond Site and several wetlands located in the industrial area north of Interstate 494. The areas adjacent to these wetlands are currently developed with industrial or residential uses.

Figure 7-3 also identifies the Floodplain areas within the MRCCA. Article VII, Section 4 of the City’s Zoning Ordinance regulates the Floodplain Overlay District areas and is consistent with State rules.

**Figure 7-2
Wetlands and Floodplains within the MRCCA**

**Mississippi River Corridor Critical Area - Wetlands & Floodplains
City of Newport, Washington County**



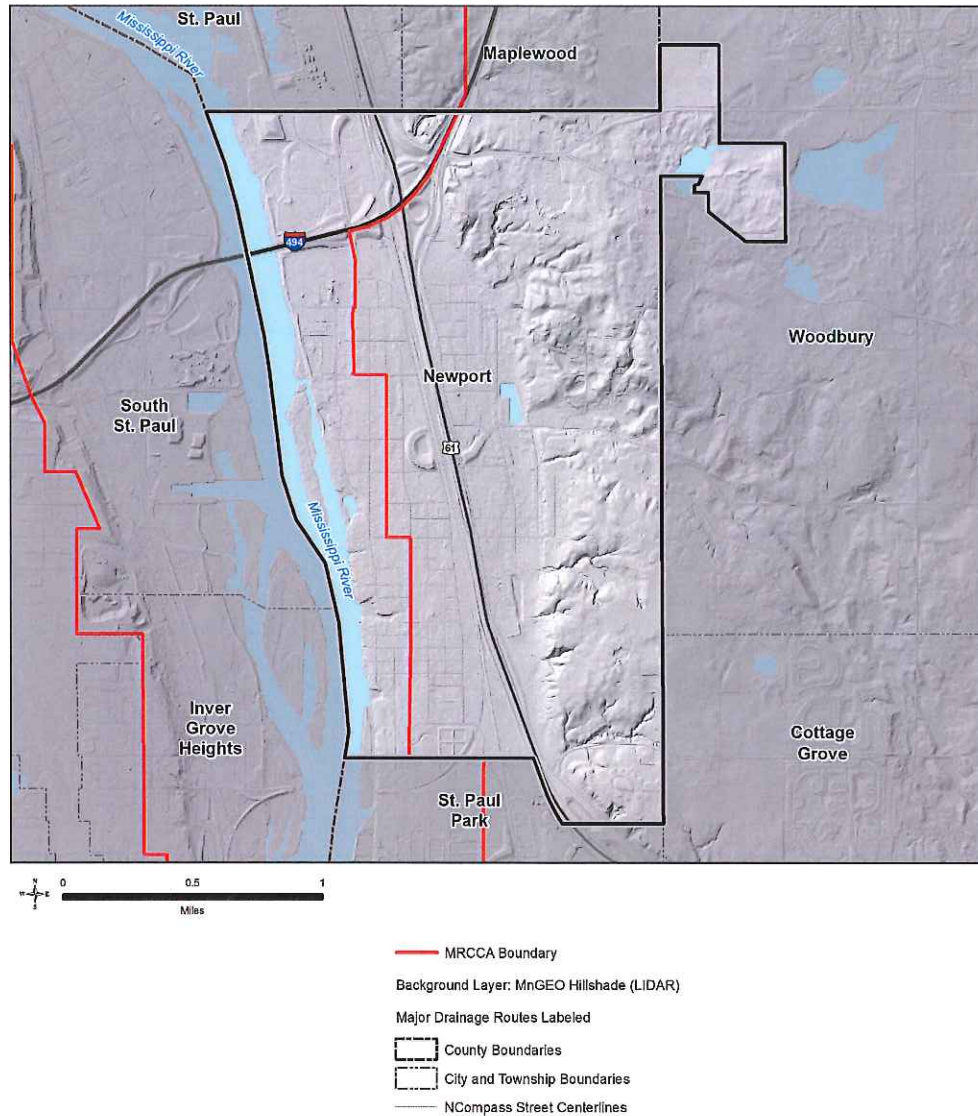
Natural Drainage Routes

The River is the only major drainage course in the MRCCA area within Newport. A number of smaller seasonal drainage courses provide surface water drainage to the river. The City recognizes that preservation of

natural drainage courses is beneficial from a public investment standpoint as it reduces costs for storm sewers and other capital improvements.

Figure 7-3
Natural Drainage Routes within the MRCCA

Mississippi River Corridor Critical Area - Major Natural Drainage Routes
City of Newport, Washington County

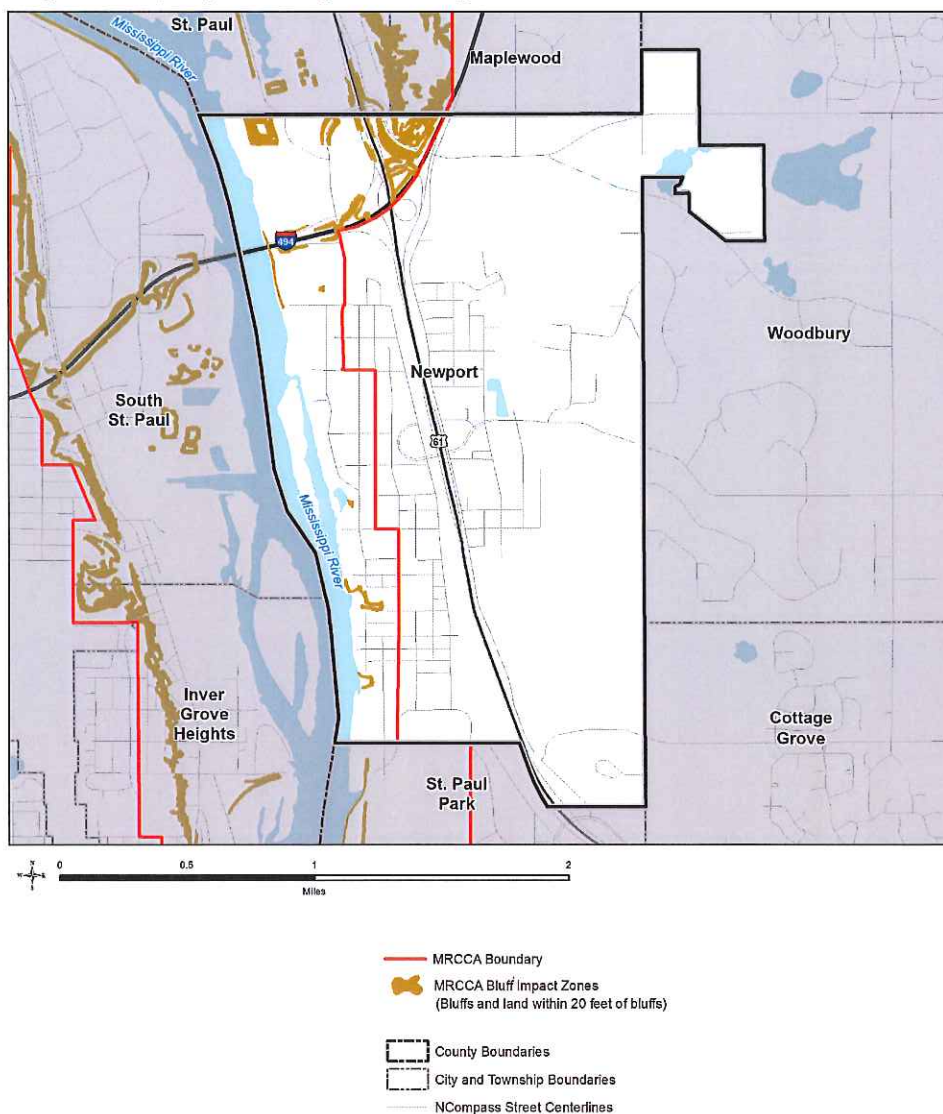


Bluff Impact Zones

The Bluff Impact Zones within the MRCCA are primarily located within the large-lot residential areas north of Interstate 494 and east of Highway 61, and in a few isolated locations along the river.

Figure 7-4
Bluff Impact Zones within the MRCCA

Mississippi River Corridor Critical Area - Bluff Impact Zones
City of Newport, Washington County



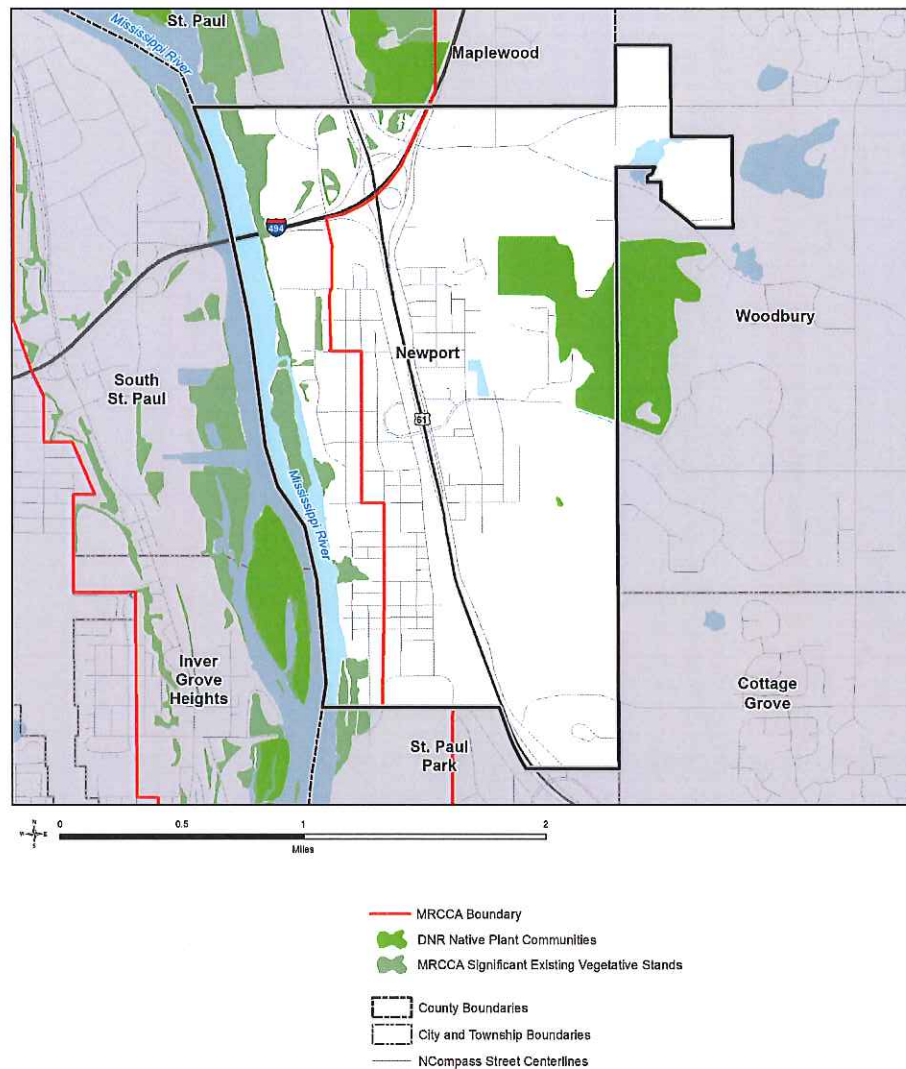
The bluff areas shown on the map above are located within the area that is regulated by the City's Bluffland Overlay District Ordinance, Article VII, Division 5 of the Zoning Ordinance. The Bluffland Overland and Critical Corridor Division of the Zoning Ordinance will be updated after adoption of the 2040 Comprehensive Plan to be consistent with the MRCCA Corridor rules.

Native Plant Communities and Significant Vegetation Stands

The neighborhoods in Newport that are the MRCCA are largely fully-developed with a variety of uses, and therefore limited areas of native plant communities and natural vegetation stands remain. The areas are concentrated on a few sites within the industrial area north of Interstate 494, on an island in the river near the City's proposed new park and within the park area, and around the historic Mill Pond site. The areas are largely located within Floodplain areas that cannot be developed.

Figure 7-5
Native Plant Communities and Significant Existing Vegetation Stands
in the MRCCA

**Mississippi River Corridor Critical Area - Native Plant Communities and
Significant Existing Vegetative Stands
City of Newport, Washington County**



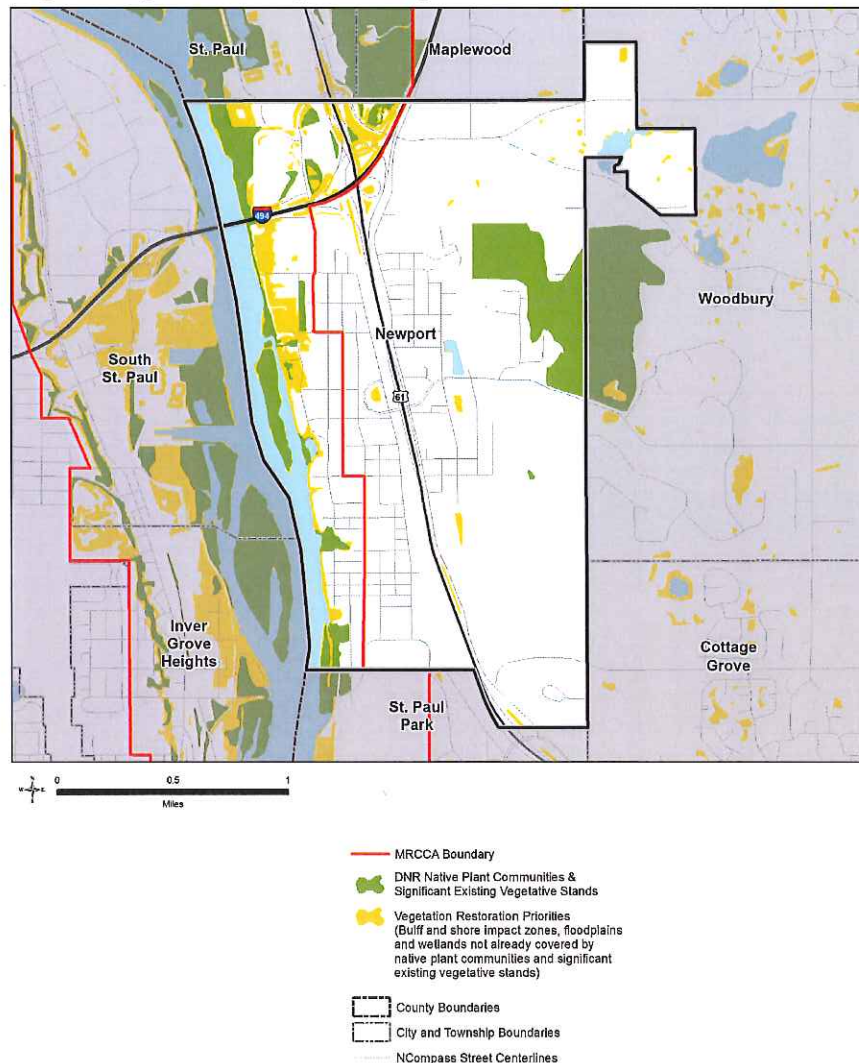
Vegetation Restoration Priorities

Figure 7-6 shows the areas that the DNR has identified for potential restoration of native plant communities within the MRCCA in Newport.

The areas are largely located on existing industrial properties associated with owned by Gerdau Steel, Washington County's Recycling and Resource Recovery facility, Newport Cold Storage, a petroleum Tank Farm, and St. Paul Park/Western Refinery. Opportunities to restore native vegetation communities on these sites could occur if the current uses leave and the sites are redeveloped. In the near term, the City will consider the potential to restore native plant communities within its current and proposed parks that are located within the MRCCA.

Figure 7-6
Vegetation Restoration Priorities

Mississippi River Corridor Critical Area - Vegetation Restoration Priorities
City of Newport, Washington County



Cultural and Historic Properties

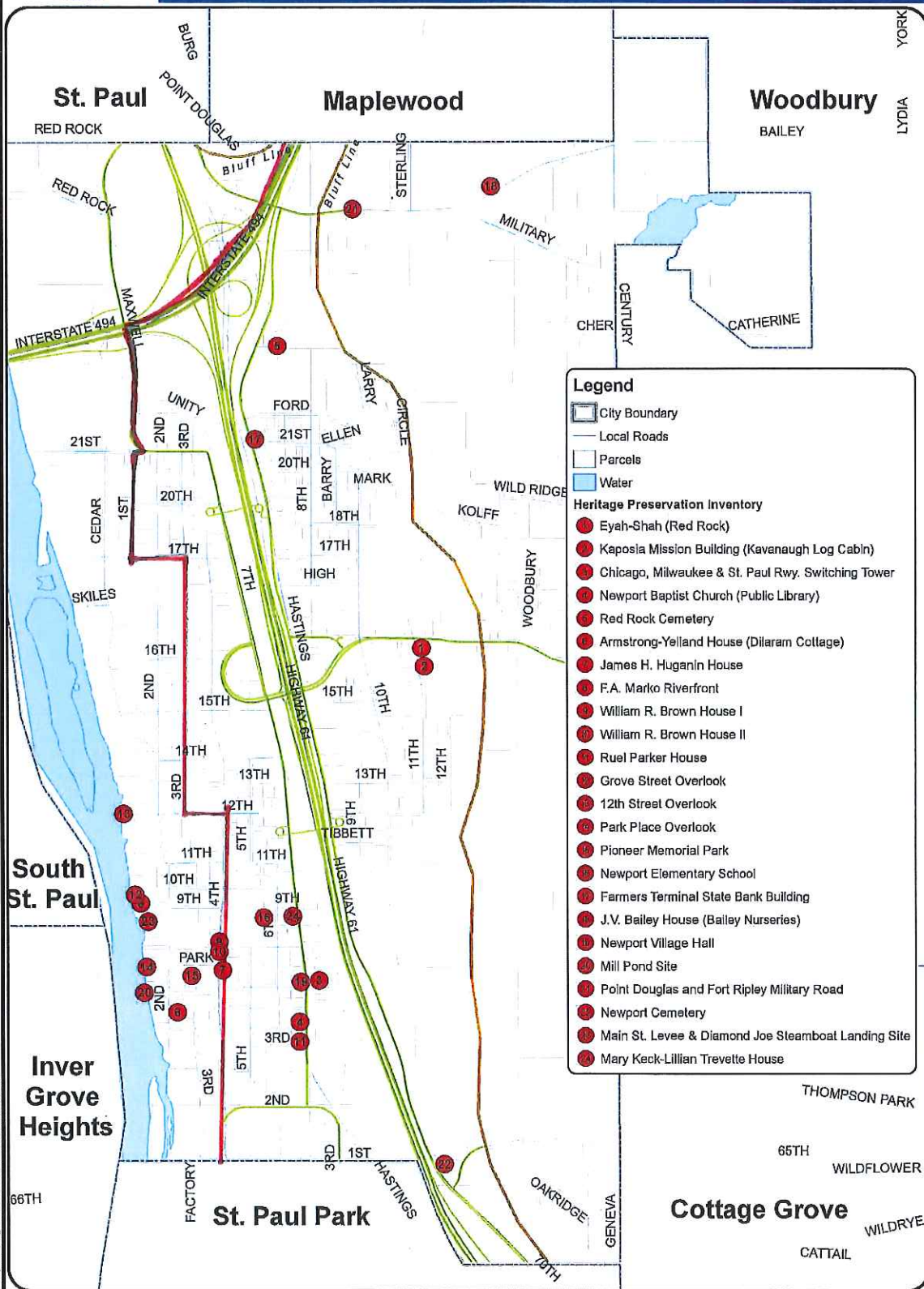
The following properties located in the MRCCA (Figure 7-7) are on the National Historic Register, eligible for designation, or have been designated culturally and historically significant by the City:

- Armstrong-Yelland House (Dilaram Cottage), 480 2nd Avenue. Rare surviving example of a Red Rock campground cottage, built in 1911 as a camp cottage for the Armstrong family from St. Paul; significant for its association with the Red Rock camp revival meetings (1868-1937).
- James H. Hugin House, 597 4th Avenue. Vernacular cottage with Queen Anne style detailing built circa 1890 for James H. Hugin (1818-1901), a prominent local merchant and one of the original proprietors of the Newport town site (platted 1857).
- F. A. Marko Riverfront, 121 10th Street. Historically important example of vernacular landscape architecture built on the home grounds of Frank A. Marko (1889-1976).
- William R. Brown House I, 331 7th Street. Probably the oldest standing structure in Newport, the core of the home built by William R. Brown (1816-1874) may date from as early as 1842.
- William R. Brown House II, 330 7th Street. Built by William R. Brown circa 1865, this house is historically significant as a well preserved, early example of vernacular architecture.
- Grove Street Overlook, 10th Street at the Mississippi River. Ruins of a riverfront park designed and constructed by the Works Progress Administration 1938-39.
- 12th Street Overlook, 12th Street at the Mississippi River. Designed and constructed by the Works Progress Administration 1938-39.
- Park Place Overlook, Park Place at the Mississippi River. Designed and constructed by the Works Progress Administration 1938-39.
- Pioneer Memorial Park, bounded by 4th Avenue, 6th Street, 2nd Avenue, and Park Place. Newport's first public park, acquired by the village in 1937; also associated with local improvements undertaken by the Works Progress Administration circa 1938-41.
- Mill Pond Site, on Mississippi River south of 10th Street. Contains the ruins of the Shelton-Irish-Durand Mill, an early lumber and flour manufacturing facility (water- and steam-powered) that operated from 1857 until circa 1900. Privately-owned site
- Main Street Levee and Diamond Joe Steamboat Landing Site, 6th Street at the Mississippi River. Historically important riverboat landing, believed to have been in continuous use from the 1840s until the 1940s; may contain an important archaeological component associated with the steamboat era on the Upper Mississippi River.



City of Newport Heritage Resources Inventory

Comprehensive Plan - Draft



Legend

- City Boundary
- Local Roads
- Parcels
- Water

Heritage Preservation Inventory

- 1 Eyah-Shah (Red Rock)
- 2 Kaposia Mission Building (Kavanaugh Log Cabin)
- 3 Chicago, Milwaukee & St. Paul Rwy. Switching Tower
- 4 Newport Baptist Church (Public Library)
- 5 Red Rock Cemetery
- 6 Armstrong-Yelland House (Dilaram Cottage)
- 7 James H. Haganin House
- 8 F.A. Marko Riverfront
- 9 William R. Brown House I
- 10 William R. Brown House II
- 11 Ruel Parker House
- 12 Grove Street Overlook
- 13 12th Street Overlook
- 14 Park Place Overlook
- 15 Pioneer Memorial Park
- 16 Newport Elementary School
- 17 Farmers Terminal State Bank Building
- 18 J.V. Bailey House (Bailey Nurseries)
- 19 Newport Village Hall
- 20 Mill Pond Site
- 21 Point Douglas and Fort Ripley Military Road
- 22 Newport Cemetery
- 23 Main St. Levee & Diamond Joe Steamboat Landing Site
- 24 Mary Keck-Lillian Trevette House

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TKDA
ENGINEERS • ARCHITECTS • PLANNERS

Data sources include the Heritage Preservation Committee,
City of Newport, Metropolitan Council and TKDA.



2,000

Feet

Unsuitable soils and bedrock

High bedrock conditions exist throughout the MRCCA area within Newport and in much of the community. Bedrock is within several feet of the ground surface throughout the area west of Highway 61.

The bedrock conditions create challenges for developing or redeveloping infrastructure and buildings throughout the City. The conditions also limit the use of infiltration as a stormwater strategy throughout the area west of Highway 61.

MRCCA Primary Conservation Areas—Goals and Policies

The local MRCCA plans must include goals and policies to protect and minimize impacts to the Primary Conservation Areas mapped in the plan. Grey Cloud Township's goals and policies for these areas include the following:

Goal 1: Protect the Shore Impact Zones from alteration and development.

Policy 1.1: The City will update its Zoning Ordinance to be consistent with the MRCCA rules that prohibit development of structures and impervious surfaces in the shore impact zones.

Policy 1.2: The City will require preparation and approval of site plans for all new development and building permits that adequately assess and minimizes adverse impacts in Shore Impact Zones, and will require that all new development or expansion shall be designed and constructed in a manner that minimizes site alterations through conservation design or other design approaches.

Policy 1.3: The City will require protection of existing vegetation, slopes, and habitat in the shore impact zones when development is permitted in adjacent areas.

Policy 1.4: The City will require permanent protection and/or restoration of native plant communities, bluffs, slopes, and other resources within the shore impact zone when opportunities are available with development or approval of zoning permits such as variances and conditional use permits.

Policy 1.5: The City will require landowners subdividing and developing parcels to consult with the Planning Commission to

identify options to provide opportunities for protection of Primary Conservation Areas open space embellishment and public viewing and access to the river corridor.

Goal 2: Protect wetlands and floodplains from impacts and require mitigation when appropriate.

Policy 2.1: The SWWD serves as the LGU for the Minnesota Wetland Conservation Act, including mitigation when required. The City will support the efforts of the SWWD to protect and restore wetlands and their functions within Newport.

Policy 2.2: The City will continue to work with the South Washington Watershed District as they enforce the regulations that protect wetlands, require wetland buffers, and encourage mitigation for impacts or restoration of wetlands and adjacent habitat areas.

Policy 2.3: The City will require permanent protection and/or restoration of floodplains, wetlands, buffers, and related habitat areas when opportunities are available with development or approval of zoning permits. The City will encourage conservation design to protect wetlands and floodplain areas.

Goal 3: Protect natural drainage routes and mitigate impacts when feasible.

Policy 3.1: The City will manage land use and development within the MRCCA to be consistent with its Land Use plan for 2040 and the requirements of MRCCA rules, including minimizing impervious cover and maintain natural drainage routes.

Policy 3.2: The City will allow housing densities and subdivision design that encourage conservation development to provide efficient use of land by preserving open space, scenic views, natural drainage systems, and other desirable features of the natural environment.

Policy 3.3 The City implement its Stormwater Ordinance and work with SWWD to enforce the District's rules that regulate development runoff quality and quantity, and erosion and sediment control to protect natural drainage routes.

Policy 3.4: The City will work with SWWD when opportunities arise with development and infrastructure projects to protect and improve the quality of surface waters in Newport through cost-share and partnership projects.

Goal 4: Protect bluff impact zones and mitigate impacts when feasible.

Policy 4.1: The City will update its Zoning Ordinance to be consistent with the MRCCA rules that prohibit development of structures and impervious surfaces in the bluff impact zones and require bluff setbacks.

Policy 4.2: The City will require preparation and approval of site plans for all new development and building permits that adequately assess and minimizes adverse impacts in Bluff Impact Zones, and will require that all new development or expansion shall be designed and constructed in a manner that minimizes site alterations, including the use of conservation design when appropriate.

Policy 4.3: The City will implement its Stormwater Ordinance and will work with SWWD to enforce the District rules that regulate development runoff quantities and require erosion and sediment controls to protect bluffs and bluff impact zones.

Policy 4.4: The City will work with SWWD and landowners to protect and restore nature drainage routes and vegetation when opportunities arise to protect bluff areas and impact zones.

Goal 5: Protect native plant communities, rare and endangered species, wildlife habitat, and significant existing vegetation stands.

Policy 5.1: The City will manage land use and development to minimize impervious cover, and maintain existing vegetation communities of good and high quality, particularly within shoreland, floodplain, and bluff areas.

Policy 5.2: The City will prohibit clear-cutting except as necessary for placing public roads, utilities, structures, and parking areas where these uses are permitted consistent with the policies of this plan. The City will permit removal of non-native invasive plant species and encourage restoration of native plant species and communities.

Policy 5.3: The City will enforce its Stormwater Ordinance and will work with SWWD to enforce the District rules that regulate development, erosion and sediment control, and wetland and buffer protection to protect existing stands of vegetation on bluffs, slopes and near wetland areas.

Policy 5.3 The City will work with SWWD and support cost share projects to improve the quality of existing vegetation stands and to restore native plant communities when opportunities arise, particularly in shoreland and bluff areas.

Policy 5.4 The City will encourage the protection and restoration of native plant communities and native vegetation, landscape buffers, and re-vegetation, including native plant communities and vegetated areas that are removed during development, to minimize erosion and sedimentation, provide wildlife habitat, and to screen intrusive views. It will restrict clear cutting within the MRCCA and allow for selective cutting and pruning to the minimum amount necessary for new development and maintenance of existing development and utilities.

Policy 5.5 Throughout the Critical Area, but especially within 100 feet of the river, the City will encourage the preservation of native vegetation and the use of native vegetation as an alternative to mowed and maintained lawns. The City will encourage a reduction in the use of chemical fertilizers on public and private properties.

Policy 5.6 The City will use its plans and ordinances to protect endangered, threatened, and rare species, and restore native plant communities and wildlife habitat.

Policy 5.7 Development should not adversely affect and should encourage permanent protection of sensitive environmental resources including but not limited to, natural habitats, backwaters, natural drainages, significant vegetative stands, and shorelines.

Policy 5.8 The City will allow clustering and housing densities that provide for efficient use of land by preserving open space, scenic views, natural drainage systems, and other desirable features of the natural environment.

Goal 6: Identify, protect cultural and historical properties

Policy 6.1: The City will support the protection and preservation of properties of historical, architectural, archaeological, and cultural significance by designating buildings, sites, structures, and districts as Newport Heritage Landmarks.

The City will maintain its inventory of significant heritage resources that give the community its special character and that can

contribute to the quality of life enjoyed by present and future residents of the City.

Policy 6.2: The City will ensure that no significant heritage resources are destroyed or damaged as a result of any undertaking permitted, assisted, or funded by the City of Newport.

Policy 6.3.: The City supports private and public efforts to protect the cultural and historical properties in Newport. It will work with the Minnesota Historical Society, Washington County Historical Society, and local landowners on these efforts, including protecting historic and cultural sites as part of conservation development design.

Policy 6.4: The City will adopt a flexible performance-based, "best management practices" approach to the preservation, protection, and use of heritage resources.

Policy 6.5: The City will maintain the City-owned heritage resources in good condition and interpret them for public understanding and enjoyment. It will use heritage preservation as an economic development and community revitalization tool.

Policy 6.6: The City will integrate heritage preservation goals and policies with other planning for land use, code enforcement, capital improvements, economic development, housing, parks and recreation, public works, emergency preparedness, and natural resources protection.

Policy 6.7: The City will provide the public with ready access to information about heritage resources and appropriate treatment measures.

Policy 6.8: The City will implement the residential design standards in its ordinance that require infill and new development in the older neighborhoods of the community to be compatible with existing neighborhoods.

Goal 7: Protect areas with unstable soils and soils that are limited for development of structures.

Policy 7.1: The City will enforce its Stormwater Ordinance, Bluff Ordinance and Engineering Standards to regulate development runoff quantities, and erosion and sediment control to protect unstable soils zones.

Policy 7.3: The City will require all new development within the MRCCA to utilize the City's municipal sewer system.

Goal 8: Implement actions to protect the Primary Conservation Areas when development is proposed and implemented.

Policy 8.1: The City will require site plans and development applications to map and identify the Primary Conservation Areas, and the methods that will be used to protect these areas or mitigate impacts through the design and construction of the project.

Policy 8.2: The City will evaluate variance and CUP applications for potential impacts to Primary Conservation Areas, and require conditions to avoid impacts when possible or mitigate for impacts to Primary Conservation Areas.

Policy 8.3 The City will utilize its website to provide information about the Primary Conservation Areas to residents and property owners and identify actions that residents and landowners can take to protect, preserve, and restore natural resources in these areas.

Policy 8.4 The City will encourage the preservation and use of native vegetation, landscape buffers, re-vegetation, and the use of conservation design. It will restrict clear cutting in the MRCCA, while allowing for selective cutting and pruning to the minimum amount necessary for new development and maintenance of existing development and utilities. Throughout the Critical Area, but especially within 100 feet of the river, the City will encourage the preservation of native vegetation and the use of native vegetation as an alternative to mowed and maintained lawns and encourage a reduction in the use of chemical fertilizers.

Policy 8.5 The City will develop criteria for prioritizing the protection of PCA's when a site contains multiple PCA's.

Policy 8.6 The City will develop administrative procedures for integrating DNR and local permitting for riprap, retaining walls, and other hard armoring of shoreland and slopes in the MRCCA.

D. PUBLIC RIVER CORRIDOR VIEWS

The MRCCA 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 summer months.”

Newport used the following process to identify and map its public river corridor views:

- City staff took photos and mapped the river views from public spaces in Newport—the public river overlooks and park areas with views of the river. The photos and map are included in this plan.

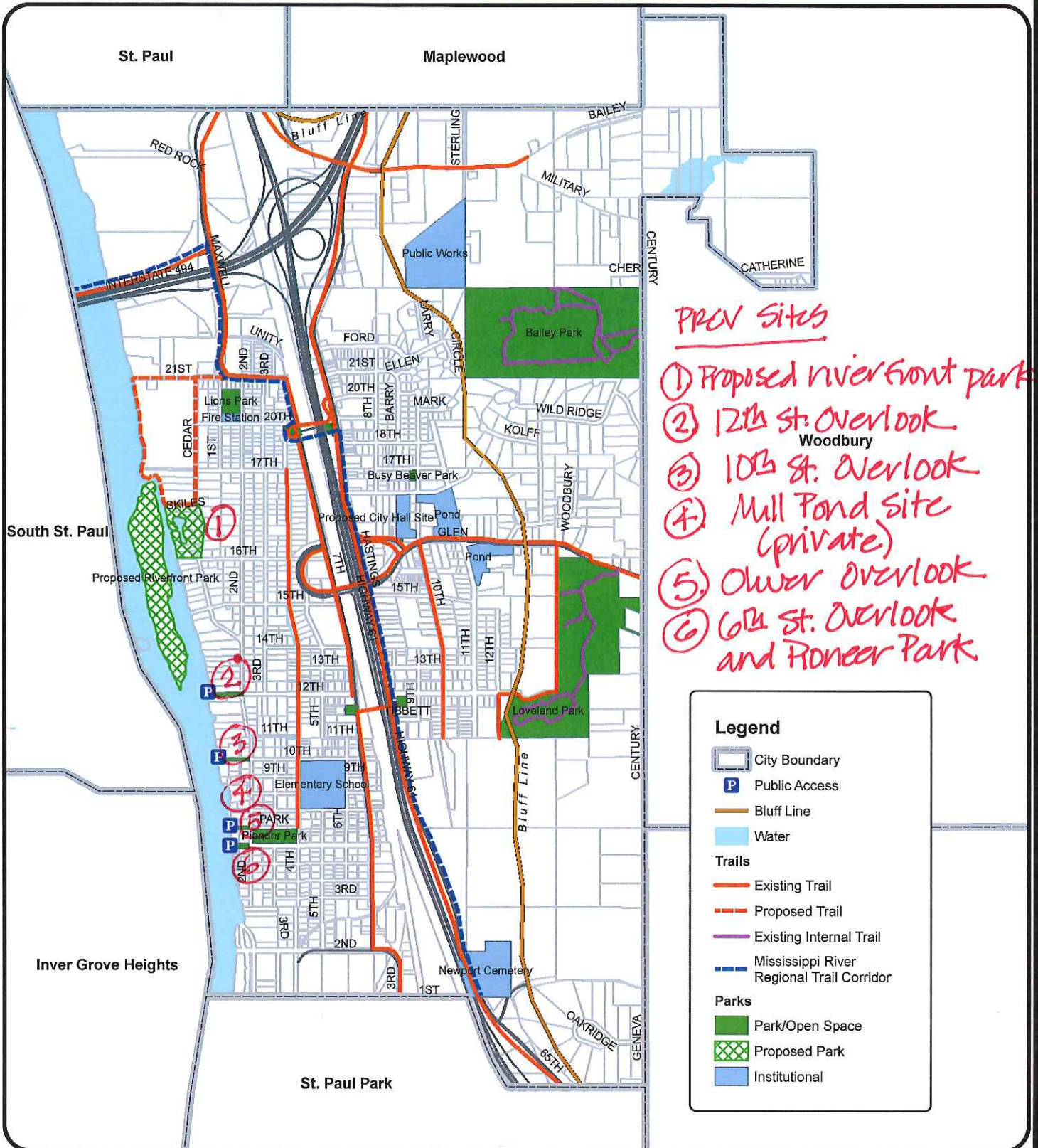
The photos, maps and descriptions were reviewed by the City's Planning Commission, City Council, and public and comments addressed before submission of the draft MRCCA Plan.

- The City's Planning Commission and staff completed a field review of river views from the river itself (pontoon boat) and opposite shore to identify the important views from the river toward the bluffs and other views valued by the community.
- The City compiled the maps, photos and descriptions of *public river corridor views* to create the maps and text included in this plan that locate and describe the views.



City of Newport Parks and Trails Plan

Comprehensive Plan



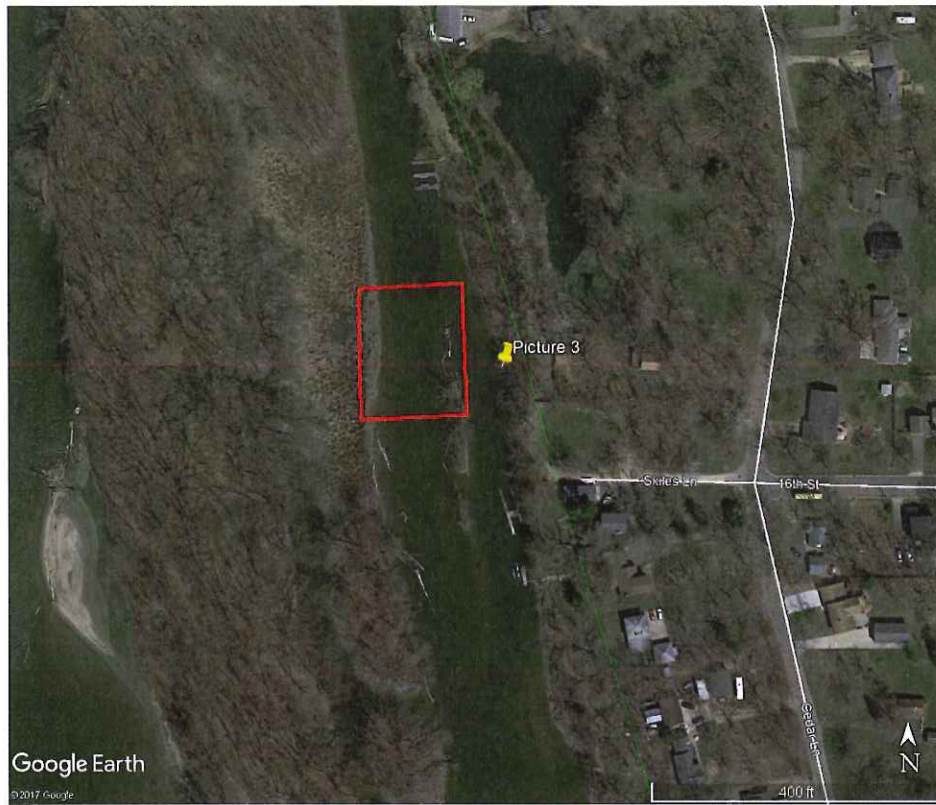
Views toward the River from Public Places in Newport (Site numbers on Figure 7-8 match the numbers of the descriptions below.)

1. Proposed Riverfront Park near former levee

- Description: the city is in the process of purchasing several properties within the floodplain area behind an old levee that is irreparable and will be removed. The City is considering developing a passive, river-oriented park on these parcels, and has started the master plan process. The parcels view an undeveloped island in the Mississippi River that is privately owned and also within the floodplain.
- Value: The proposed park could provide a sheltered river access for canoes and kayaks and a fishing pier, along with passive recreational facilities such as trails and picnic areas. The park would be connected by a parkway and trail to other trails including the Mississippi Regional Trail. The park may serve as the future home to the historic Red Rock, and offer opportunities for historic and ecological interpretation.
- Potential threats: None identified. Facilities will be planned to accommodate the location in the floodplain. Surrounding neighborhood is fully-developed with single-family homes.



View from proposed Levee Park toward island



View location from Proposed Levee Park photo

2. 12th Street Overlook



View from the overlook to the river.



View of 12th Street Overlook from Cedar Lane to the overlook and river.

- Description: the overlook area is located within a narrow, undeveloped road right-of-way. The view of the river was taken from the viewing area at the west end of the right-of-way.
- Value: While the view is narrow, it shows a vegetated, undeveloped area of islands along the South St. Paul shoreline and in the river. The overlook site includes a historic WPA stone wall.
- Potential Threats: Residential or commercial development on the opposite bank would change the view; however, the islands are in the floodplain so development is unlikely. Areas adjacent to the overlook are developed with existing single-family homes and unlikely to impact the overlook.

3. 10th Street (Grove) Overlook



Views from overlook toward the river.

- Description: The overlook includes historic WPA walls, native plantings, seating area, and mosaic pillar identifying historic flood levels. The overlook is located within a narrow public right-of-way corridor with existing residential development on each side.
- Value: primary overlook for public access and views of the river in Newport, and provides a wider view than the other overlooks in the

City. View to south is of natural islands and vegetation in Inver Grove Heights. View to the north is largely natural but includes some industrial structures in South St. Paul.

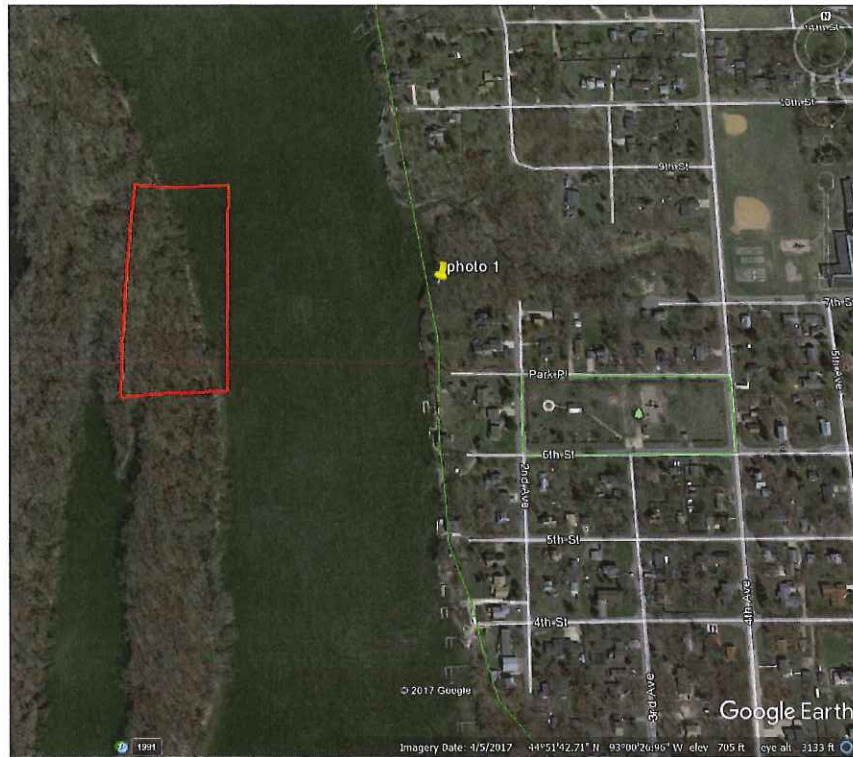
- Potential Threats: additional development on opposite shore could change the view. The area surrounding the overlook is fully developed it is located within a public right-of-way, so the situation of the overlook itself is unlikely to change.

4. Mill Pond Site (Private Property)

- Description: The Mill Pond site is a large floodplain area with frontage on the Mississippi River. The remains of an historic mill are located within the site. The site is currently privately owned. The owner has discussed a potential sale of the property to the city.
- Value: The site has historic interest, and could provide a good river access for fishing and passive recreational activities. There is currently no formal trail to the site.
- Potential threats: none known—floodplain location and steep slopes at the site prohibit development of the parcel.

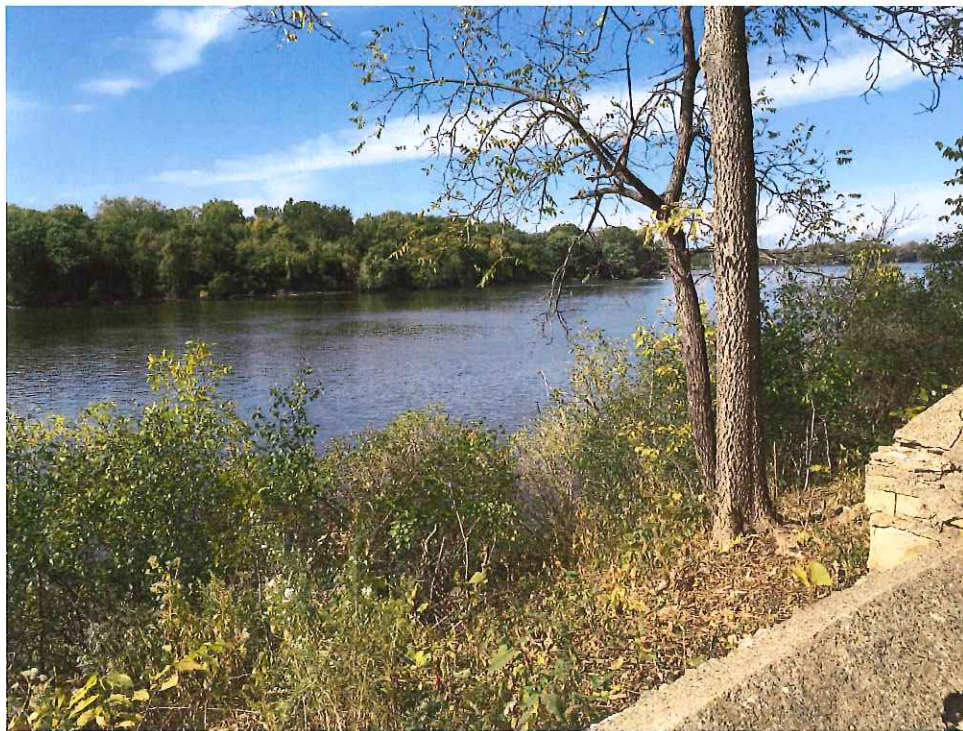


Mill Pond view of Mississippi River photo



Mill Pond view opposite bank of river

5. Oliver Overlook



View from the overlook toward the Mississippi River

- Description: Overlook is at the west end of a narrow right-of-way corridor with residential development on each side, at the northwest corner of Pioneer Park
- Value: Currently this Overlook provides very limited views of the Mississippi River due to thick vegetation on the bluffs. Cutting vegetation to increase the view could impact bluff areas by causing erosion. The Overlook site includes a historic WPA wall.
- Potential threats: unknown. The area surrounding the overlook is fully-developed with existing homes.

6. 6th Street Overlook and Pioneer Park



- Description: The Overlook is at the west end of a narrow right-of-way corridor with residential development on each side, at the southwest corner of Pioneer Park
- Value: Currently provides views of vegetated islands and shoreline in Inver Grove Heights. Includes watercraft access opportunity.
- Potential threats: urban development on opposite shore would change the view from this Overlook.



View from Pioneer Park to Oliver Overlook



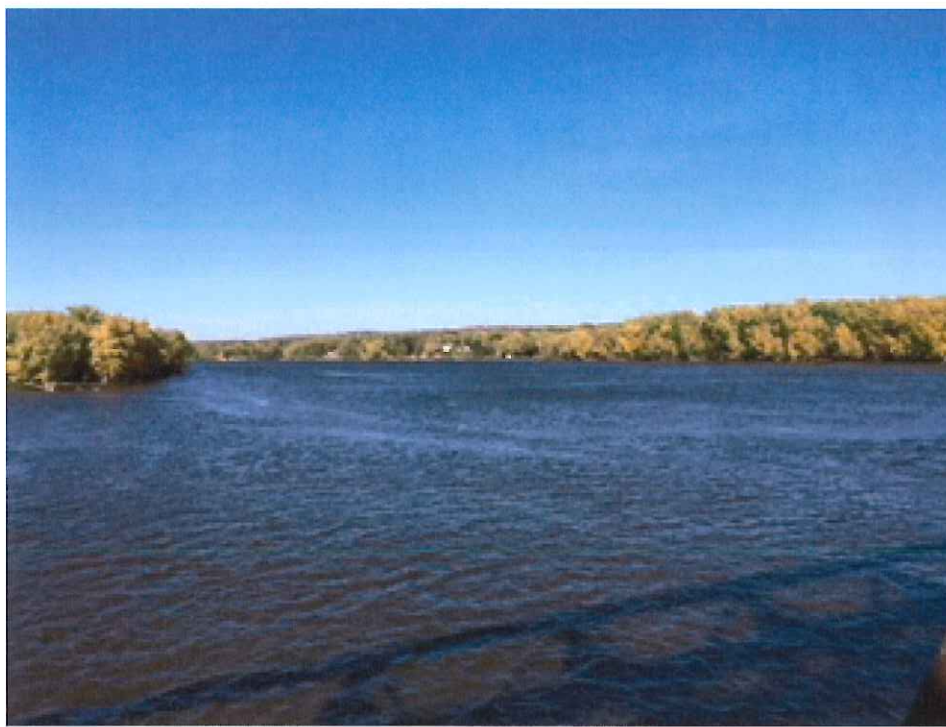
View from Pioneer Park to 6th Street Overlook

- Description: the river is barely visible from the northwest and southwest corners of the park, looking toward the 6th Street and Oliver overlooks. Other views from the park are blocked by existing homes.
- Value: Park has a strong historic connection to the river and historic landing located in this area.
- Potential threats: None known.

Other Public River Corridor Views

There are no views of bluffs on the opposite shore from the OHWL in Newport. The opposite shore and islands within view are have generally flat topography.

The bluffs in Newport can be clearly viewed from across the river. A particularly good view is from the Rock Island Swing Bridge and park in Inver Grove Heights. The photo below shows the view of Newport and its older residential areas from the Rock Island Bridge.



Newport's bluffs and "old town" area from Inver Grove Heights

MRCCA Public and River Corridor Views—Goals and Policies

The local MRCCA plans must include goals and policies to protect and minimize impacts to the Public River Corridor View areas identified in the Plan. Grey Cloud Township's goals and policies for these areas include the following:

Goal 1: Protect the views of the Mississippi River Corridor from Public River Corridor View areas and minimize impacts from public and private development and management activities.

Policy 1.1: The City will maintain the four existing public river overlooks, and will develop a master plan for the proposed riverfront park that protects views of the corridor and minimizes impacts to the river.

Policy 1.2: The City will prohibit the installation of billboards or other advertisement signs that are visible from the river or its opposite shores.

Policy 1.3: The City will use its subdivision and zoning ordinance to regulate structure and site location to ensure that the views of riverbanks, bluffs, historic neighborhoods, and scenic overlooks are protected. The City will identify the information that must be submitted for zoning and land use applications that have the potential to impact PRCV's and how this information will be evaluated. The City will determine appropriate mitigation procedures and methods for variance and CUP's applications with potential to impact PRCV's.

Policy 1.4: The City will require preservation of existing screening vegetation and may require restoration of vegetation and additional screening as part of subdivision, conditional use permits, the vegetation permit, and review and approval of variances in areas that affect Public River Corridor Views.

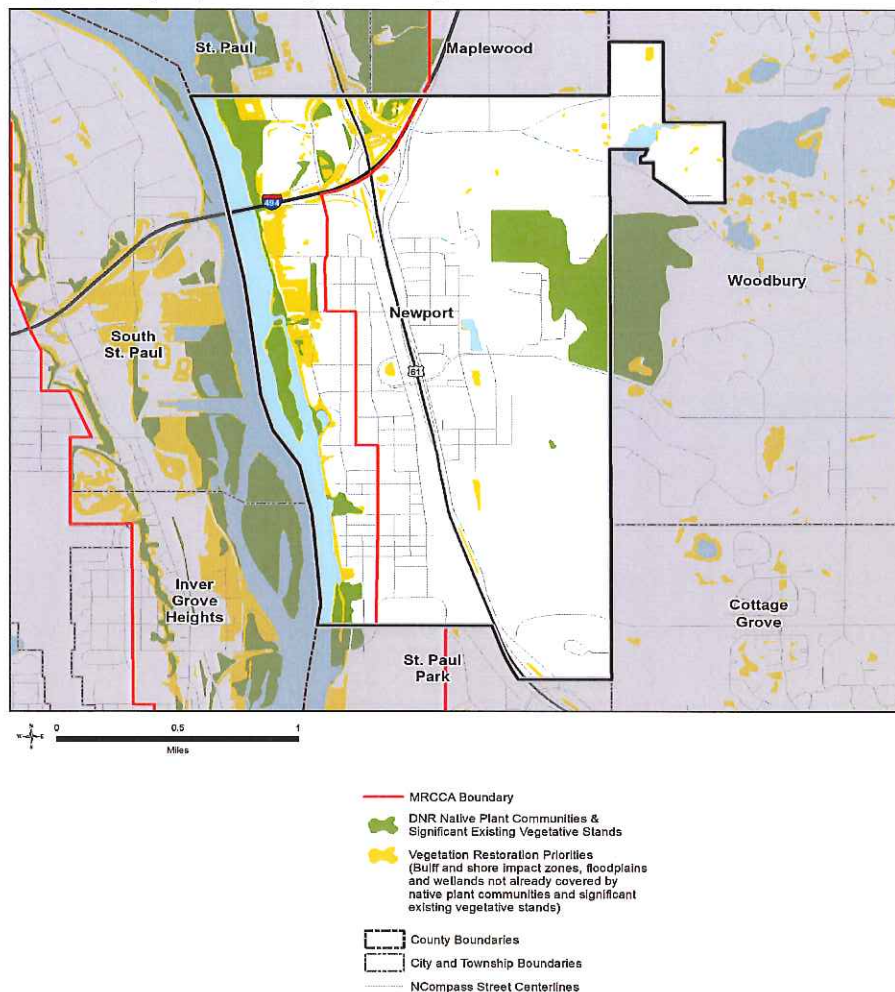
Policy 1.5: The City recognizes that views of the bluffs and other features of the shoreline are valued by other communities, and will work to protect these views using its ordinances, permits, and communication with other jurisdictions.

E. MRCCA RESTORATION PRIORITIES

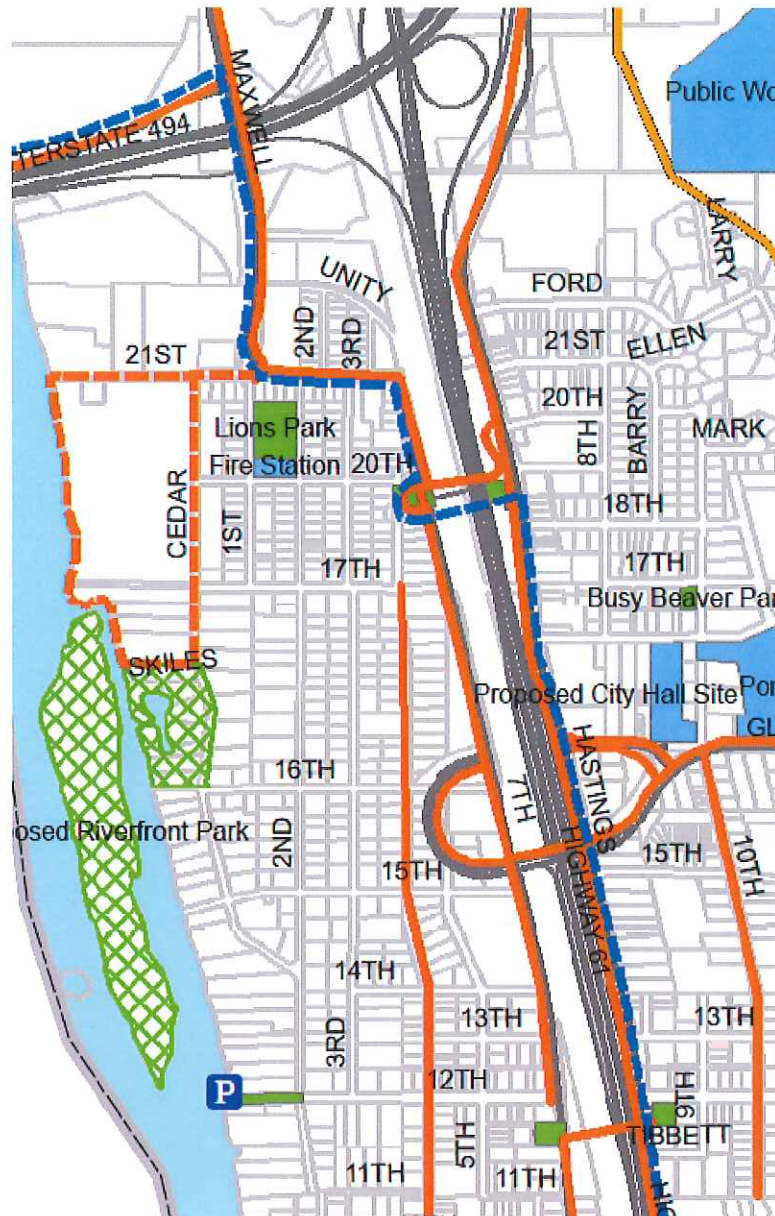
The MRCCA Corridor within Newport is fully developed with existing residential, industrial, and park uses. The map below was developed by the Minnesota DNR to show potential restoration priority areas. However, virtually all of the areas identified are owned by private interests such as Gerdau Steel, Newport Cold Storage, Aggregate Industries, and Western Refining. None of the existing landowners have indicated that redevelopment is likely through 2040.

Figure 7-9
Vegetation Restoration Priorities in the MRCCA

Mississippi River Corridor Critical Area - Vegetation Restoration Priorities
City of Newport, Washington County



The City's priority restoration area within the MRCCA through 2040 is the area proposed for a new riverside park (green hatched area, below).



The City's 2040 Land Use and Parks and Trails map identify the area as a proposed park. The City has initiated the development of a Master Plan for the park, which would include green space, trails, picnic and play areas, a fishing pier, and kayak and canoe launch area. It may also include a new site and interpretation for the Red Rock. The City will work with Washington County, the National Park Service, and other agencies to discuss the potential for a park in this area, and resources available to purchase private properties and convert the area to a park. The City is

considering including the adjacent islands in the Mississippi River as part of the park. The islands are in private ownership.

MRCCA Restoration Priority Areas—Goals and Policies

The local MRCCA plans must include goals and policies to restore vegetation similar to the native communities that once occupied the lands within the MRCCA. The priority restoration vegetation areas within the Newport focused near the Mill Pond area and future Levee Park area.

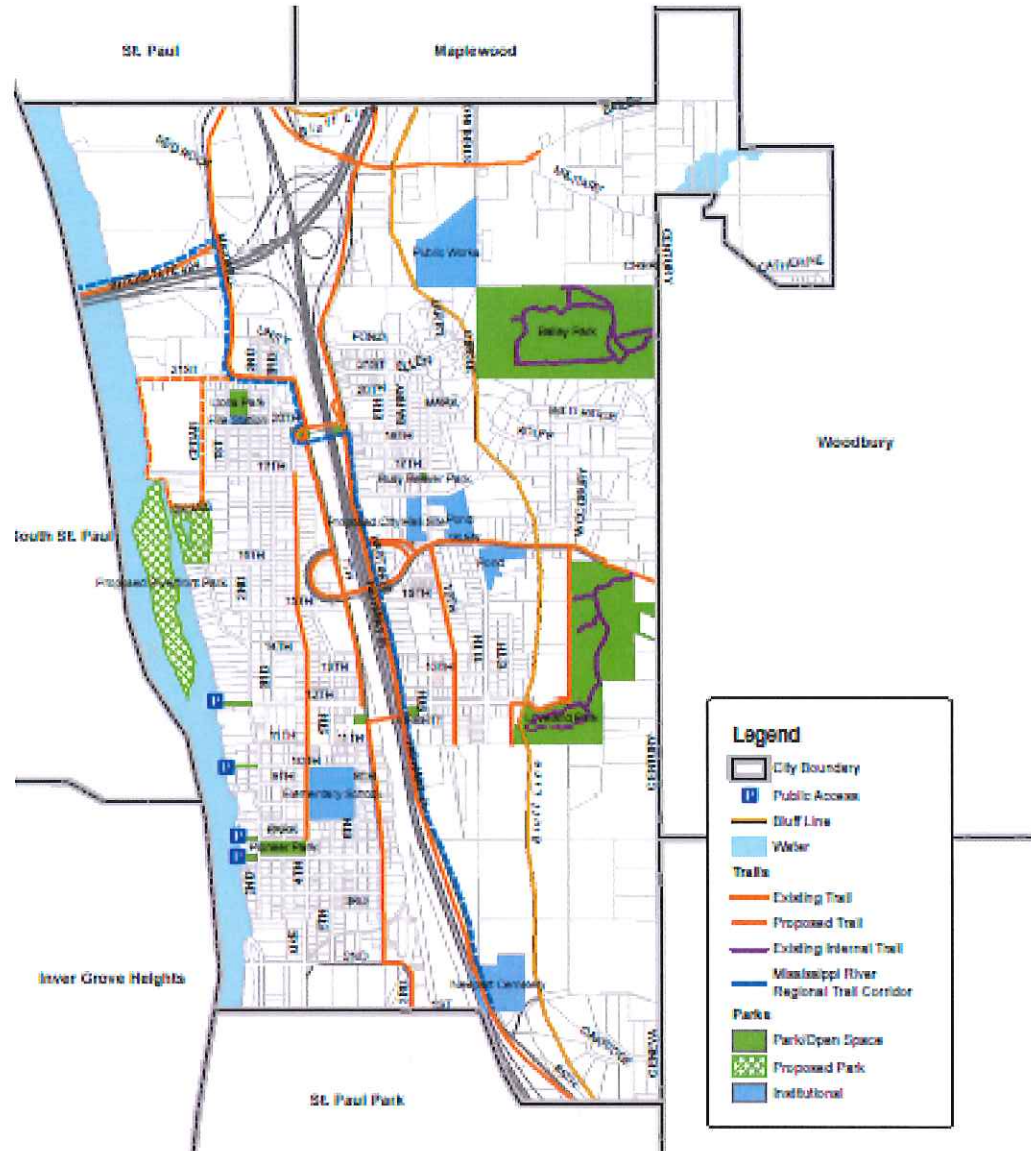
Goal 1: Restore native vegetation communities in the priority locations on Figure 29 as opportunities occur.

- Policy 1.1: The City will include restoration of native plant communities and plant communities similar to native communities as it completes planning for Levee Park.
- Policy 1.2: The City will adopt the standards and requirements in the MRCCA rules in its subdivision and zoning ordinance including setbacks, bluff and steep slope protection, the protection of native vegetation communities and native plantings, and standards that sustain and enhance ecological functions and habitat values in areas of new development.
- Policy 1.3: The City will require preservation of existing native vegetative communities and will require additional screening and mitigation for impacts as part of subdivision, conditional use permits, and review and approval of variances in areas that affect Public River Corridor Views.
- Policy 1.4: The City will require vegetation restoration if native or natural vegetation is removed by development. Priorities for restoration will include stabilization of erodible soils, riparian buffers, bluffs, and steep slopes that are visible from the Mississippi River.
- Policy 1.5: The City will create the vegetation permit required by the MRCCA rules and use the permit to require vegetation restoration as required by the rules and Township ordinances.
- Policy 1.6: The City will evaluate proposed development sites for erosion prevention and bank and slope stabilization issues and require restoration as part of the development process.

F. OPEN SPACE AND RECREATIONAL FACILITIES

Figure 7-10

Existing and Proposed Park and Recreation Facilities within the MRCCA



The figure above shows the existing and proposed park and open space areas within the MRCCA in Newport. The existing facilities include the following:

- Pioneer Park* is a historic open space area that includes community gathering space, picnic shelters, play equipment, and volleyball and basketball facilities. The park is located near the place where Minnesota soldiers were mustered for the Civil War.

- Newport has developed *four public Overlook* sites at the river. The Overlooks are limited to passive recreation, including seating, viewing areas, plantings, and protection of some historic elements such as walls.
- The City Parks and Trails Plan identifies an existing and proposed trail system to connect the parks and neighborhoods within the corridor and the City.

Future Open Space Facility within the MRCCA

Proposed riverfront park: The Mississippi river front within Newport is predominantly privately owned offering little opportunity for the community as a whole to experience the river. The existing river overlooks within the City offer access to views of the river, but no physical or recreational access to the river. Community discussions during the development of this Comprehensive Plan placed a priority on providing additional access to the river and creating a “destination park” with river access for residents and visitors.

The City is planning to develop of a new park along the riverfront near Cedar Lane and 16th Street to take advantage of properties it has acquired behind an old levee. The area includes an island within the Mississippi River, and is identified on Figure 7-10. Much of the area is currently behind a levee which was created in response to floods in the 1960's. The levee is in poor repair and the properties are located within the floodplain. The U.S. Army Corps of Engineers determined that the levee cannot be repaired at a reasonable cost. Since this determination, the City has purchased most of the parcels in this area with grant funds from the Minnesota DNR and has removed the existing structures.

The City is working to acquire the remaining parcels near the levee, and would breach or remove the old levee after acquisition. The City has discussed creation of a passive park with river access for canoes and kayaks, picnicking, open space and interpretive facilities on the acquired parcels. The City has discussed this opportunity with other agencies including as the Mississippi National River Recreation Area (MNRRA), Minnesota DNR, and Washington County, to determine whether a partnership or assistance is possible to create a park in this location. The City has also discussed the purchase of the adjacent, undeveloped island in the Mississippi with the private owners. The islands are also located within the floodplain and are not developable, and could be connected to the park.

The proposed park offers a unique opportunity for the City to take advantage of its location on the Mississippi and provide a significant

recreational amenity to its residents and others in the community and the region seeking access to the river in a beautiful, quiet setting.

Parkway and Trail connections between the new riverfront park and adjacent neighborhoods: The City is proposing to link the new park near the levee to the City's existing trail system, regional trails, and to the Red Rock Gateway Redevelopment area using a parkway along Cedar Street and new trails that would link to existing local trails and the Mississippi River Regional Trail Corridor.

MRCCA Open Space and Recreational Facilities—Goals and Policies

Goal 1: Continue to provide public open space, trails, and park facilities with a river orientation.

Policy 1.1: The City will maintain its existing park and park overlook facilities near the River, and work to develop the new park on the levee site with a strong orientation and public access to the river.

Policy 1.2: The City will develop multi-use trails and boulevards that connect the river-oriented open space facilities with the CA-SR District and to the City's entire park and trail system and regional trails.

Policy 1.3: The City will work with landowners and developers that are proposing new development or redevelopment to identify opportunities to provide locations for public open space that helps to protect and showcase resources with the MRCCA and provide public viewing opportunities and access to the river corridor. The City will require developers to comply with the MRCCA rules for protection of Conservation Areas and will track and monitor open space that is dedicated through the subdivision process.

Policy 1.4: The City will work with Federal and State agencies, Washington County, the SWWD, and other organizations to develop the Master Plan for its new park on the Mississippi River, and connect it with other regional recreation resources.

Policy 1.5: The City supports the acquisition of park, trail and open space facilities from willing sellers.

G. SURFACE WATER USES

MRCCA plans must minimize potential conflict of surface water uses such as recreational boat traffic, barge fleeting, and commercial riverboat tours.

Newport does not have a barge terminal or landing or marina for commercial riverboat tours. The Oliver Street Overlook includes an access that accommodates small recreational boats, and the City's plans for the future park on the river near the old levee may include a canoe and kayak access.

The City does not regulate surface water use under Minnesota Statutes, Chapter 86B. There are no current surface water use conflicts or negative impacts due to the recreational boat traffic from the Oliver Street access.

Surface Water Uses—Goals and Policies

Goal 1: The City supports the MRCCA goal to minimize potential conflict among surface water uses.

Policy 1.1: The city recognizes that the Mississippi River is a “working river” that is important to the economy of the Twin Cities area.

Policy 1.2: The City supports the maintenance of the 9' navigation channel and Lock and Dam No. 2 for continued barge traffic.

Policy 1.3: Barge fleeting facilities and seaplane operations shall not be permitted within the Newport MRCCA area because of incompatibility with existing and planned land uses and safety considerations.

Policy 1.4: The City will work with Federal and State agencies, the NPS, Washington County, the SWWD, and other organizations to develop the Master Plan for its new park on the Mississippi River, and if recreational access for canoes and kayaks is included in the plan, the plans will minimize potential conflicts among surface water users.

H. WATER-ORIENTED USES

MRCCA plans must provide for existing and future water-oriented uses, such as commercial and industrial land uses that require water access, such as barge terminals and recreational marinas.

The Holiday Tank Farm has a docking structure that is used regularly by barges to transfer fuel. Trees on the existing levee and island to the south

provide some screening for this facility. No other barge terminals, recreational marinas or other water-oriented uses exist in the Newport, and there have been no demands and are no plans to add these uses in the city.

Water Oriented Uses—Goals and Policies

Goal 1: The City will minimize the potential conflict between the existing water-oriented use in the city and other land uses.

Policy 1.1: The city will require that riverfront development is compatible with riverfront uses, and preserves a natural appearance while minimizing the interference with views to and from the river.

Policy 1.2: The City will maintain the existing screening of the tank farm docking area as it develops and implements its Master Plan for the new park near the levee.

I. TRANSPORTATION AND PUBLIC UTILITIES

MRCCA plans must provide for public transportation and public utilities in a manner consistent with Minnesota Rules Chapter 6106.

Public transportation facilities are defined as all transportation facilities provided by federal, state, or local governments and dedicated to public use, such as roadways, transit facilities, railroads, and bikeways. Public utilities are defined as electric power facilities, essential services, and transmission services.

Existing Transportation Infrastructure

The existing and proposed transportation and public utilities within the MRCCA in Newport include:

- Sections of Interstate 494, County Road 38 (Maxwell Avenue and 7th Avenue)
- A section of the Mississippi River Regional Trail Corridor
- Local trails and sidewalks

The Newport Transit Station is located near the corridor but not within its boundaries.

No new highways, bridges, streets, trails, streets, sidewalks, or solar and wind generation facilities are planned within the MRCCA in Newport through 2040. Since 2010, the City has vacated several vacant street rights-of-way within the MRCCA at the request of adjacent residents, removing the possibility of new streets at those locations.

Existing Utilities

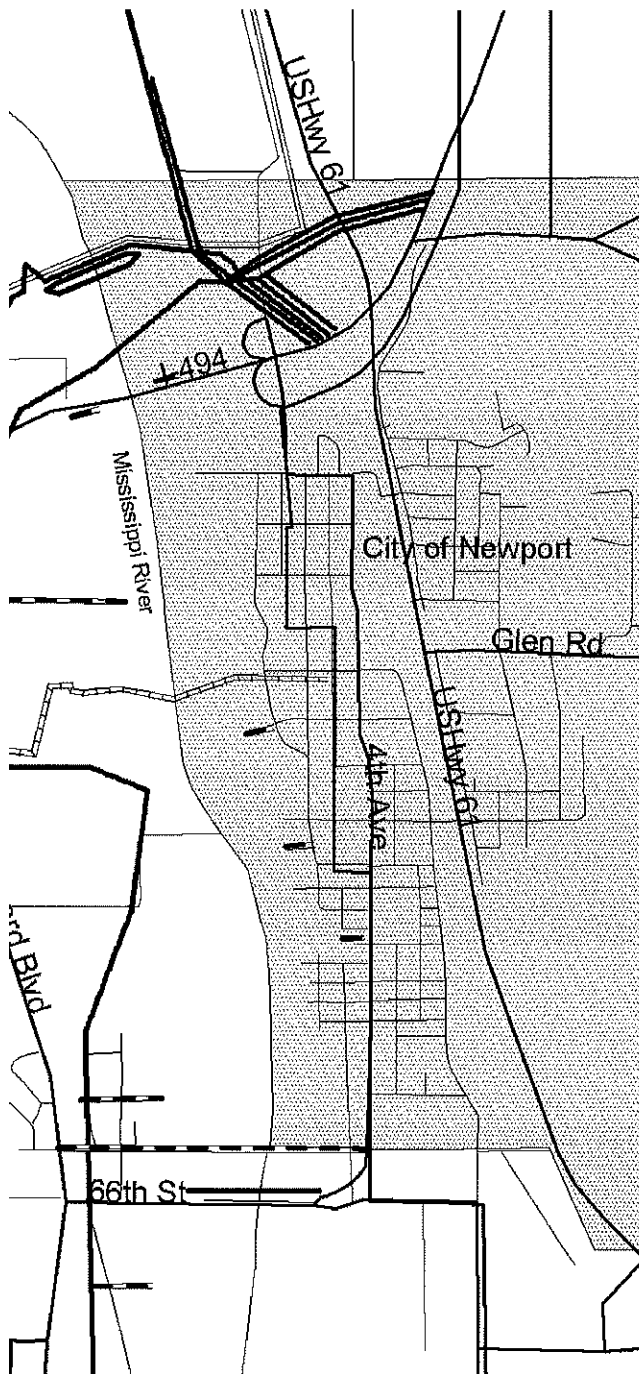
The entire Critical Area Corridor is within the MUSA and is served with public utilities. The residential and industrial uses that had previously used their own on-site septic systems have been hooked up to public sanitary sewer.

There are three storm water discharge points into the river located at 7th, 15th, and 17th Streets. The City's goals and policies related to storm water management are included in its Local Surface Water Management Plan and the Comprehensive Plan.

There are a number of river utility crossings in the Critical Area corridor. Both overhead and underground lines are identified on the Utility Crossings map.

The City's older sewage treatment facility is located along the riverfront south of 2nd Street. Since the City was connected to the Metropolitan Council Environmental Services system, this facility has not been used. There are no current plans for new uses or utilities on this site.

**Figure 7-11:
Utility Crossings**



***City of Newport
Critical Area Plan***
Utility Crossings

Legend

- Mississippi River
- Critical Area Boundary
- Utility Types**
 - Above Grade Electric Distribution/Transmission
 - At Grade Storm Sewer Outlet
 - Belowground Electric Distribution
 - Belowground High Pressure Product Transmission Pipeline
 - Belowground Product Distribution Pipeline
 - Belowground Sanitary Sewer Outlet
 - Belowground Telephone Distribution



1000 0 1000 2000 3000 Feet

Transportation and Public Utilities—Goals and Policies

Goal 1: The City supports the MRCCA goal to minimize impacts to PCA's and PRCVs from solar and wind generation facilities, public transportation facilities, and public utilities.

Policy 1.1: Future development governed by the City will minimize utility and infrastructure needs and crossings, concentrate them at existing crossings where possible, and will protect scenic vistas, trails, and walkways.

Policy 1.2: Property within the Newport MRCCA shall not be utilized as rights-of-way for new or modified above-ground utilities unless it can be demonstrated by the proponent of the utility that the utility cannot be feasibly placed underground and will not substantially impact the planned land and water uses of the area.

J. KEY ISSUES AND OPPORTUNITIES IN THE MRCCA AREA

The City of Newport is a historic river community. The area within the MRCCA is fully-developed, and dominated by single-family residential neighborhoods with parks and river overlooks. Industrial uses that have existed for decades are located at the northern and southern areas of the MRCCA within Newport.

The City has experienced some recent redevelopment around the Newport Transit station. This redevelopment area is located outside the MRCCA. Long-term plans for the area suggest that if the industrial uses adjacent to the river leave, this area could be redeveloped. However, there is no indication that this will occur by 2040.

Newport's key issues and opportunities in the MRCCA districts through 2040 include the following:

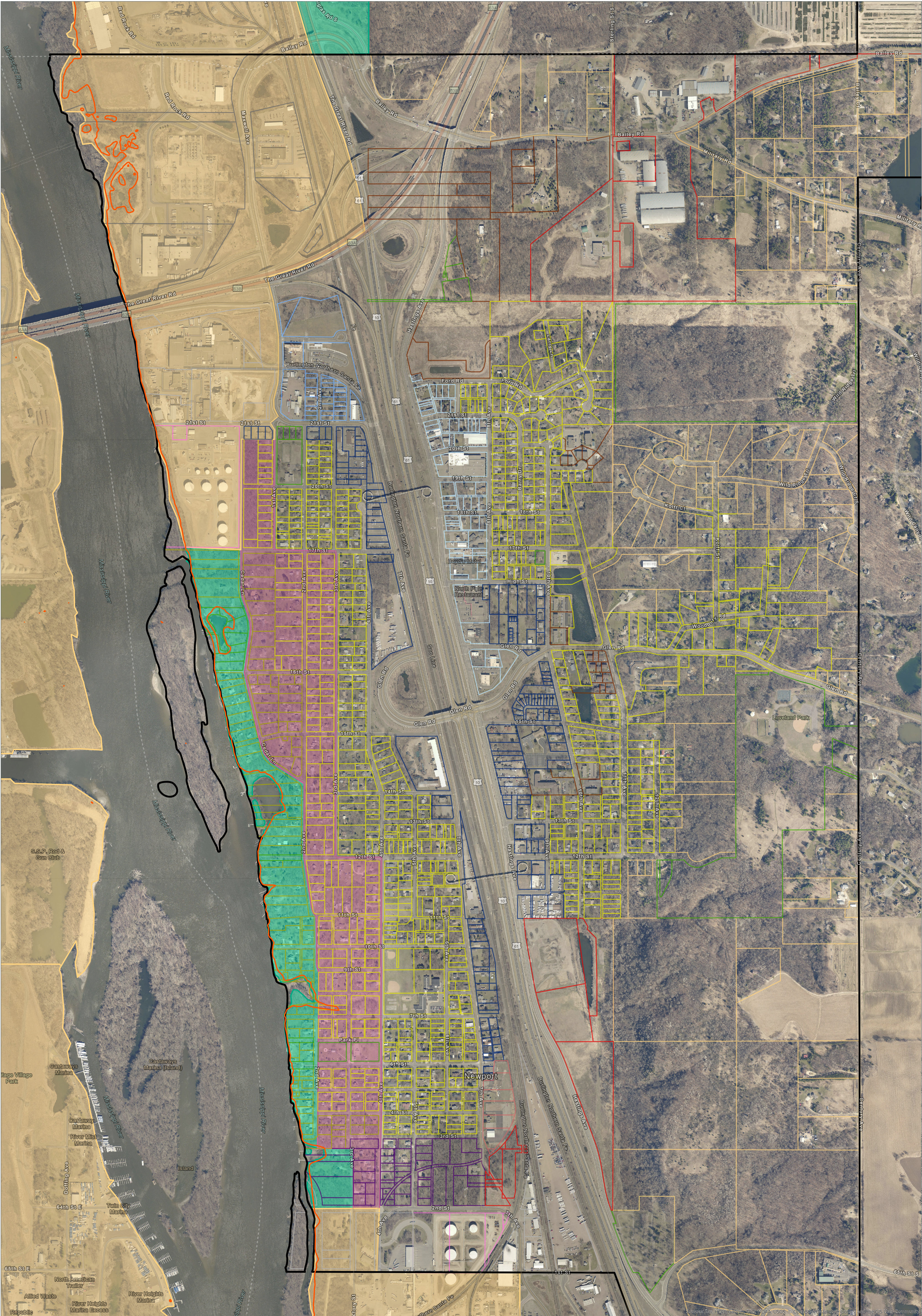
- Maintain and support the quality and character of the existing residential neighborhoods, public parks and overlooks within the MRCCA
- Complete a master plan for and development of a new park on the City-owned parcels near the old levee. The vision for the park includes largely passive uses, such as trails, picnic areas and green space. The plan may include a home for the historic Red Rock, a fishing pier, and canoe/kayak launch area.
- Manage potential impacts to the river and bluffs by updating and enforcing the City's ordinances.
- If redevelopment is proposed, require that it comply with the MRCCA rules.

K. IMPLEMENTATION ACTIONS

The MRCCA plan is a policy document that functions as a guide to future development and growth of the community. Implementation strategies are action steps that the City of Newport can take realize the goals and ideas outlined throughout the plan.

Newport will take the following actions to implement the goals and policies included in this Chapter:

- Amend its zoning and Subdivision Ordinances to be consistent with the MRCCA rules.
- Amend its Zoning Map to include the new MRCCA Districts and boundary.
- Updates its Local Water Management Plan and stormwater ordinance requirements to be consistent with the MRCCA rules.
- Develop MRCCA design guidelines and policies.
- Establish MRCCA vegetation and land-alteration permit processes.
- Develop an approach to reviewing CUPs, PUDs, and variances that is consistent with MRCCA rules.
- Develop a mitigation scoring system for evaluating proposed development.
- Develop a system for reviewing, tracking and monitoring open space dedication as part of the subdivision and PUD process.
- Provide information to Newport's residents using the city's website to notify them about the new zoning districts and zoning requirements.
- Coordination with regional, state, county, and national park planning efforts within the MRCCA.





MSA

Data Sources:
Aerial - 2017 Washington Co
MRCCA - Met. Council
Parcels/Boundaries - Washington Co
Zoning - City of Newport
Contours - Washington Co
OHWL Contour - MnDNR Hydrologist



 City of Newport Boundary

 Approximate Ordinary High Water Contour (MnDNR)

Zoning Districts by Parcel

 OS Open Space

 RE Residential Estate

 R1 Low-Density Single-Family Residential

 R-1A River Residential


 R-2 Urban Residential

 MX-1 Downtown

 MX-2 Transit-Oriented Design


 MX-3 General Mixed Use

 MX-4 Mixed Use Buffer

 B-1 Business Park

 B-2 General Business

 I-S Industrial Storage

 I-1 Light Industrial

 I-2 General Industrial

Mississippi River Critical Area Districts

 CA-RN

 CA-SR

 CA-UM

MRCCA OVERLAY DISTRICT MAP

MISSISSIPPI RIVER CORRIDOR CRITICAL AREAS

CITY OF NEWPORT
WASHINGTON, MN



*Working to protect the Mississippi River
and its watershed in the Twin Cities area.*

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651-222-2193
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January 6, 2021

Dear Members of the Planning Commission:

Thank you for the opportunity to comment on Newport's proposed Mississippi River Corridor Critical Area (MRCCA) ordinance. We applaud Newport for following a timely ordinance adoption process; Minneapolis is the only other city (of 25) to have approved its ordinance so far.

Friends of the Mississippi River (FMR) is a non-profit organization with a mission to engage community members and other stakeholders to protect, restore and enhance the Mississippi River and its watershed in the Twin Cities Region. We represent thousands of people in the metropolitan area who care deeply about the river, including a growing membership of over 2,700 people and more than 3,200 volunteers and 2,000 advocates engaged each year.

The Mississippi River is a natural, cultural and historic wonder that helps define our metro area. In recognition of this, its 72-mile stretch through the Twin Cities is not only a state-designated Critical Area but also a national park afforded special protective policies.

The MRCCA ordinance adoption process is an important opportunity for communities to define their goals and expectations for years to come. A successful ordinance will guide riverfront use in a way that reflects the city's environmental, development, and recreational priorities while providing clarity for landowners and developers.

Strong and thoughtful ordinance

On the whole, we're pleased with Newport's draft MRCCA ordinance; it reflects a high degree of care and attention. It's well-crafted to support the city's goals of increasing public riverfront access and parkland.

Newport's ordinance exceeds minimum state standards in some notable ways. These strong points include:

- Extending the public and agency notice period for discretionary actions to 30 days, allowing more time for the DNR and National Park Service to provide feedback and technical assistance.
- Specifying a reasonable maximum building height allowed by CUP in the Urban Mixed district, providing predictable and clear standards for property owners and residents.
- Including clear, strong standards to ensure that variances and CUPs do not negatively harm the river or its important features.

- Including regulations on fences, which will reduce conflicts between neighbors about river views.
- Adding protections for migrating birds by reducing light pollution and requiring that public facilities are constructed at times that minimize impacts to migration and nesting.
- Specifying priority areas for vegetation restoration, ensuring that restoration benefits are maximized.
- Incentivizing permanent protection of natural areas through density bonuses.

Recommendation: expand bird-safe standards

The Mississippi River is a crucial migratory flyway for about 40% of all North American migrating birds. Roughly 270 bird species live in or travel through the Twin Cities river flyway. Bird populations are experiencing significant collapse and are under continued threat. In the U.S. it's estimated that 600 million birds are killed in window strikes each year. Lighting, landscaping, and building glass are all contributing factors.

One way to balance a city environment with wildlife protection is to require bird-friendly lighting design, building design, and building materials (such as frosted glass) in all new development along the river. The state of Minnesota already incorporates these specifications into its B3 Guidelines for state-funded projects. FMR recommends that Newport require adherence to the same specifications for all new buildings constructed within MRCCA. Ideally this would be required in all MRCCA districts, but it could also be reasonable to require these standards only in the Urban Mixed district.

Both short and tall buildings pose risks to birds. Most bird activity takes place near the first 1-3 stories of a building, and the presence of trees and other vegetation near windows increases the risk of bird collisions. However, single-family homes also tend to have fewer of the large expanses of glass that pose the highest risk to birds.

Future redevelopment considerations

While it's likely that significant redevelopment in Newport's Urban Mixed district areas won't happen in the immediate future, we encourage the city to keep in mind how it might want to use the MRCCA ordinance to influence future redevelopment when the time comes.

Tiering building heights to promote river views

The state MRCCA rules state that in the Urban Mixed district "tiering of structures away from the Mississippi River and from blufflines is given priority, with lower structure heights closer to the river and blufflines." We encourage cities to find a concrete and holistic way to enforce this requirement in advance of individual building projects. Otherwise it's too easy for piecemeal project-by-project development to obscure the big picture, and eventually the city could end up violating this requirement.

Tiered building heights are important to good river-oriented design and can promote additional development by making it possible for buildings further back from the riverfront to still enjoy some views of the river.

One way to approach this requirement would be to follow the DNR's recommendation to create subdistricts within the Urban Mixed districts, with areas closer to the river being placed in subdistricts

with height limits lower than 65 feet. However, it could be challenging to set subdistrict boundaries on Newport's large parcels that aren't currently platted for redevelopment (this has become a bit of a challenge at the Ford redevelopment site in St. Paul, where district boundaries across the site were set before the street grid was designed, putting some parcels into two separate districts). This subdistricting could be considered as part of future master planning processes.

Additional recommendations

We have some additional recommendations for Newport's ordinance:

- Section 36-363 (Administration), 5: Additional mitigation options to list could include:
 - Increasing, enhancing, and/or connecting habitat for pollinators, birds, and other wildlife
 - Increasing open space dedication
- Section 36.367 (Performance Standards for Private Facilities), 5.a: The requirement that signs must "not be readily visible" could be clearer if "from the water or shoreline" were added.

Minneapolis has provided a good example for this standard; their ordinance states that "off-premise advertising signs and billboards, including the sign face and structure, which may be viewed from the Mississippi River shall be prohibited, except a sign or billboard designated by the Heritage Preservation Commission or determined by the Heritage Preservation Commission to be a contributing feature in a historic district."

- Section 36-369 (Vegetation Management), 6.b.vi: We recommend that vegetation restoration plans must be prepared by "a qualified individual-with demonstrable experience and knowledge related to management of natural areas such as natural resource manager or ecologist."

FMR's staff ecologists recommend this wording to ensure that the plans are prepared by someone with specific expertise in natural vegetation that a landscape architect, arborist, etc. may not necessarily have.

Please don't hesitate to contact me at ctoberman@fmr.org or 651-222-2193 x29 to discuss any of our comments further. FMR also has extensive MRCCA ordinance resources (including videos, handouts, and interactive maps) available at www.fmr.org/river-rules.

Thank you for your time and consideration.

For the river,



Colleen O'Connor Toberman
River Corridor Program Director

Planning and Zoning 101

Learn the basics of why and how cities engage in land use planning and regulation, and why local officials should take time to carefully and conscientiously create land use laws. Tools discussed include comprehensive land use plans and zoning ordinances. Find a graphic illustrating levels of city council discretion to decide at various stages in these processes.

RELEVANT LINKS:

I. Land use regulation

City governments provide many important services, but one function stands apart in its impact on future generations—the authority to engage in planning and zoning of the community. Comprehensive plans and zoning ordinances adopted and enforced by current officials affect the future layout and landscape of a city for many years to come. Whether it is the development or preservation of open space, or the redevelopment and revival of existing properties, what a community will look like dozens of years from now depends on decisions made today.

City planning and zoning took root in the early 20th century as a way to minimize conflicts between incompatible land uses and to plan more coherent development. People increasingly were living in built-up urbanized areas, and were suffering health impacts, including reduced life span, related to density and industrialization. In order to promote better health, safety and welfare, cities began regulating the use, size and location of structures on the land through zoning ordinances, and developing future plans for harmonious and healthy land use patterns.

II. Conflicts and lawsuits

People tend to feel strongly about land use in most communities, and it often goes both ways. Private property owners may feel they should be able to use their land as they see fit, without government telling them what they can and cannot do and where they can and cannot build.

On the other hand, residents may feel equally strongly about what others are doing nearby, to the extent that it may injure or disturb the peace and quiet of their neighborhood—hardly anyone wants to live next door to a major industrial operation for example.

RELEVANT LINKS:

[*Euclid v. Ambler*](#), 272 U.S. 365, 47 S. Ct. 114, 71, (1926).

Conflicts often lead to litigation, and land use regulation is no different. It was through litigation that the U.S. Supreme Court first upheld the constitutionality of zoning in the seminal 1926 decision, *Euclid v. Ambler*. And lawsuits continue to this day. The League of Minnesota Cities Insurance Trust (LMCIT) provides a unique land use insurance coverage that defends cities in land use lawsuits even when there is not a claim for damages. LMCIT members spend almost \$3 million a year defending these lawsuits.

III. Making versus applying law

Land use litigation is costly, and often puts city officials in the difficult position of dealing with controversies that may displease people, no matter the outcome. City officials can help themselves through these controversies by educating themselves about land use regulation authority, and the process and procedures necessary to exercise it. An important consideration is how much authority the city has over any given land use decision. A city has much broader authority when creating its land use plans and ordinances than it does when administering the same. Consequently, it is important for a city official to be aware of what authority the city is acting under whenever making a particular decision.

When creating, adopting and amending land use plans and zoning ordinances, a city is making law by exercising so-called “legislative” authority. The council sits as a body of elected representatives to make plans and laws (ordinances) for the entire community to advance health, safety, and welfare. When acting legislatively, the council has broad discretion and will be afforded considerable deference by any reviewing court. In contrast, when applying existing plans and laws, a city council is exercising so-called “quasi-judicial” authority. The limited task is to determine the facts associated with a particular request, and then apply those facts to the relevant law. A city council has less discretion when acting quasi-judicially, and a reviewing court will examine whether the city council applied rules already in place to the facts before it.

It can be helpful to visualize this as a “pyramid of discretion” that shows cities have greater discretion when making land use decisions at the base of the triangle, and less as decision-making moves up the pyramid. Discretion is greatest when officials are creating local laws and the least when officials are administering those laws.

See Appendix A: Pyramid of discretion.

RELEVANT LINKS:

[Minn. Stat. § 462.351.](#)
[Minn. Stat. § 462.352,](#)
[subd.5.](#)

Learn more about planning
commissions in LMC
information memo, [Planning
Commission Guide.](#)

Land use disputes tend to arise most often when a city is applying laws, rather than when making law. But a city usually has less ability to address the root of the dispute when applying the law, than it would when making the law in the first instance. When acting legislatively, a city council can engage in far-ranging policy discussion, and sort through competing views about what plans and laws would be in the best interest of the city. Although not everyone may be on board with the outcome, the more public participation in the law-making stage, the better the understanding among the public of why the city has a particular plan or law in place.

IV. The comprehensive plan

A comprehensive plan is document that sets forth a vision and the goals for the future of the city. State law defines a comprehensive plan as a compilation of policies, goals, standards and maps for guiding the physical, social and economic development, both public and private, of the municipality and its environment. The purpose is to guide future development of land to ensure a safe, pleasant, and economical environment for residential, commercial, industrial, and public activities.

The comprehensive plan provides the overall foundation for all land use regulation in city. State law encourages all cities to prepare and implement a comprehensive municipal plan. In addition, cities within the seven-county metro area are required to adopt comprehensive plans. Under state law, a city planning commission or department is tasked with the creation of the city's comprehensive plan.

Planning is a professional field that encompasses a broad array of skills and techniques. In developing comprehensive plans, many cities use educated, certified land use professionals. But at its core, planning is a relatively straightforward three-step process:

- First, a community takes stock of where it is today.
- Second, the community generates a shared vision and goals for what the city will be like in the future.
- Third, but certainly not least, the city develops a set of specific strategies to achieve that vision over time.

There are many reasons cities create and adopt comprehensive plans. The planning process helps communities identify issues before they arise, stay ahead of trends in land use development and redevelopment, and anticipate and navigate change in populations and land use patterns.

RELEVANT LINKS:

A comprehensive plan also protects and makes the most out of public investment by ensuring that development coincides with investments in infrastructure. A comprehensive plan protects and promotes the value of private property. Finally, a comprehensive plan provides legal justification for a community's land-use decisions and ordinances.

The comprehensive plan itself can contain many different elements, and importantly, is not limited in scope to land use.

The land use plan lays out desired timing, location, design and density for future development, redevelopment, or preservation. In addition to a specific land use plan, comprehensive plans typically include plans for:

- Public or community facilities,
- Parks and open space,
- Housing,
- Natural resources,
- Transportation, and
- Infrastructure.

Most comprehensive plans include a variety of maps, including a land use plan map that indicates how the plan guides the future land use in different areas of the community.

[Minn. Stat. § 462.355, subd. 2.](#)

State law provides certain processes that cities must follow for comprehensive plan adoption and amendment. Prior to adoption of a comprehensive plan, the planning commission must hold at least one public hearing. A notice of the time, place, and purpose of the hearing must be published once in the official newspaper of the municipality, and at least 10 days before the day of the hearing. Unless otherwise provided in a city charter, the city council may, by resolution by a two-thirds vote of all of its members, adopt and amend the comprehensive plan or a portion of the plan. This means that on a five-member council, the comprehensive plan must receive at least four affirmative votes.

[Minn. Stat. § 462.355, subd. 3.](#)

After a city has adopted a comprehensive plan, all future amendments to the plan must be referred to the planning commission for review and comment. No plan amendment may be acted upon by the city council until it has received the recommendation of the planning commission, or until 60 days have elapsed from the date an amendment proposed by the city council has been submitted to the planning commission for its recommendation. In submitting review and comment to council, the planning commission serves in a strictly advisory role. The city council ultimately decides on the acceptance, rejection or the revision of the plan, and is not bound by planning commission recommendations.

RELEVANT LINKS:

[Minn. Stat. § 473.175.](#)

[Minn. Stat. § 473.175, subd. 3.](#)

[Minn. Stat. § 462.355, subd. 1a.](#)

[Minn. Stat. § 462.356, subd. 1.](#)

[Minn. Stat. § 462.357.](#)

For more on zoning see LMC information memo, [Zoning Guide for Cities](#).

Cities in the seven-county metropolitan area must submit their comprehensive plan to the Metropolitan Council for review of its compatibility and conformity with the Council's regional system plans. When the Metropolitan Council determines that a city's comprehensive land use plan may have a substantial impact on, or contain a substantial departure from the Metropolitan Council's regional system plans, the Council has the statutory authority to require the city to conform to the Council's system plans. Cities within the seven-county metro area must review and update their plan, fiscal devices, and official controls at least every 10 years, and submit their revised plans to the Metropolitan Council for review.

Adopting and amending a comprehensive plan should be a dynamic public process with an eye towards implementation. Public participation ensures broad and ongoing support, brings a variety of information and perspectives, and instills a sense of community ownership in the plan. Once adopted, the city should actively consult the plan, periodically review it for consistency with current policies and practices, and recommend amendments whenever necessary. State law provides that comprehensive plans should be implemented through zoning and subdivision regulations, as well as coordination of public improvements and city services, and a capital improvements program.

V. The zoning ordinance

State law authorizes a city zoning ordinance as a tool to implement a comprehensive plan. Zoning is a method of establishing a land use pattern by regulating the way land is used by landowners. A zoning ordinance has area standards that regulate the size and location of buildings and structures in the city. Comprised of text and a map, most zoning ordinances also typically divide a city into various zoning districts, and set standards regulating uses in each district.

“Area standards” are rules that constrain the size and location of building and other structures. These typically include rules about building location and size, including height, width and bulk; and the percentage of lot space that may be occupied, and required yards or open spaces. Other standards might be performance standards such as related to density, parking or lighting.

Most zoning ordinances use a map to divide the community into zoning districts that establish similar compatible land uses. By creating zoning districts that separate uses, the city assures that adequate space is provided for each and that transition areas or buffers exist between distinct and incompatible uses. Examples may include, but are not limited to residential, commercial, industrial and agricultural. Larger cities will often have districts of varying density or intensity, such as single-family residential and multi-family residential, or light industrial and heavy industrial.

RELEVANT LINKS:

[Minn. Stat. §§ 462.357, subd. 2 – 5.](#)

For each district, a zoning ordinance typically sets forth uses that are allowed in each district and the performance standards that must be met. The allowed uses often are set forth in lists or use tables. Allowed uses typically include permitted uses, accessory uses and conditional uses.

- A permitted use is generally the principal use of the land or building, and is allowed without a public hearing.
- An accessory use is an allowed use located on the same lot, subordinate or accessory to permitted use.
- A conditional use is a use that is allowed after a public hearing only if the landowner meets the general and specific standards as set forth in the zoning ordinance. The more specific and clear the standards set forth in the ordinance, the easier it will be to administer.

State law mandates a procedure for the adoption or amendment of zoning ordinances. The process includes:

- A public hearing must be held by the council or the planning commission (if one exists) before the city adopts or amends a zoning ordinance.
- A notice of the time, place and purpose of the hearing must be published in the official newspaper of the municipality at least 10 days prior to the day of the hearing. In addition, if an amendment to a zoning ordinance involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least 10 days before the day of the hearing to each owner of affected property and property situated completely or partly within 350 feet of the property to which the amendment applies.
- Zoning ordinances must be adopted by a majority vote of all of the members of the council.

An important component of the zoning ordinance is the zoning ordinance map which assigns zoning districts to given parcels in the community. When the city changes the zoning district designation of a parcel from one zoning district to another, the process is termed rezoning, and must be done after a public hearing. Rezoning is an amendment to the actual zoning ordinance and the procedures for amendments to the zoning ordinance apply.

[Minn. Stat. § 462.357, subd. 2.](#)

State law, however, has a two-tiered voting requirement for rezoning of residential property. When property is rezoned from residential to commercial or industrial, a two-thirds majority of all members of the city council is required. For other rezoning decisions, a simple majority vote of all members is all that is required. Rezoning should be consistent with the comprehensive plan land use plan map.

RELEVANT LINKS:

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jburkett@lmc.org

[League of Minnesota Cities –
Land Use Services.](#)

VI. Results of careful planning

Keeping city plans and ordinances current can save money and headaches. Whether disagreements about the vision for future of city, or disputes between neighboring property owners, land use conflicts eventually confront most city officials. In creating comprehensive plans and adopting zoning ordinances, cities can proactively engage the public to create ground rules for all.

Planning and zoning a community is a substantial undertaking that deserves thoughtful consideration. The more effort a city puts in at the front end by in adopting and amending plans and ordinances, the easier it will be to administer. Plans and ordinances adopted years ago may not be consistent with current vision, particularly in an economic downturn. A capital improvement program, in particular, should be regularly revisited for consistency with current conditions.

VII. Further assistance

LMCIT offers land use consultations, training and information to members. Contact the League's Loss Control Land Use Attorney for assistance. You can also learn more about land use issues in the land use section of the League's website.

Appendix A: The pyramid of discretion

The pyramid framework illustrates how much discretion the city has to make land use decisions based on the role it is playing.

