

Response to Mississippi River Corridor Critical Area Rulemaking Project (2013)

City of Ramsey, October 11, 2013

Statement of Purpose

This document is a preliminary response to the current set of draft rules for the Critical Area. This is not a formal Statement of Policy and has not been adopted by the Ramsey City Council. Ramsey City Staff is forwarding this document in order to submit comments by the October 11, 2013 deadline.

Ramsey Staff would like to thank the DNR for its previous support in our special legislation efforts in removing overlapping regulations, as we were previously both in the Critical Area as well as the Wild and Scenic Overlay. The removal of the overlap will help immensely in the administration of our ordinances while still focusing on appropriate regulations to protect the corridor. Additionally, Ramsey Staff sees benefit to the tiered district approach, as this appears to have the potential of eliminating certain non-conformities for non-riparian lots within the Critical Area, but said process should still not create the result of substantial non-conforming structures in other communities within the corridor. Ramsey Staff also sees the benefit of updating the administrative portions to match current business practices and recent legal decisions related to the Critical Area.

History

The following is a brief history of the City of Ramsey's participation in the rulemaking process for the Critical Area.

2009 Process

The City did participate and provide comment to the technical aspects of the rulemaking process commenced in 2009. We hope that our comments from that process will be used in the process commenced in 2013.

August 13, 2013 City Council Review

On August 13, 2013, the Ramsey City Council met to discuss the current rulemaking process. City Staff provided the current materials provided by the DNR and the proposed schedule. The City Council did not discuss specific standards nor overarching policy. The City Council did direct City Staff to prepare a collaborative public process to involve residents and stakeholders early in the policy and standards development process instead of reacting to a set of draft rules prepared by the DNR. This collaborative process was held on September 16, 2013. Details of the process are included below.

September 16, 2013 Ramsey Collaborative Process

On September 16, 2013, the City of Ramsey did host a collaborative process with its residents to discuss opportunities and barriers related to the rulemaking process. ***A copy of the invite to the collaborative process is attached to this memo as Exhibit A.***

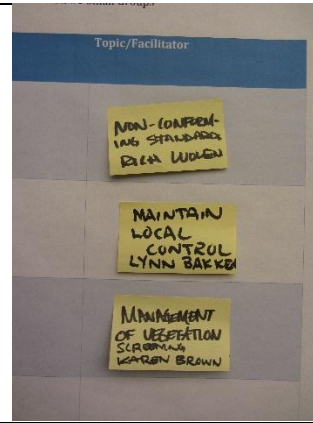
The City posed the question as:

- What key resources do you feel the City and the State of Minnesota should protect through updated standards, if any?

- What types of standards (i.e. setbacks, limits on impervious [hard] surface, limits on vegetative removal) would you feel important for the City to protect through administration of additional land use controls, if any?
- What general questions or concerns regarding the Critical Area would you like to discuss with the DNR?



Step 1: Convening as a large group



Step 2: Scheduling small group sessions



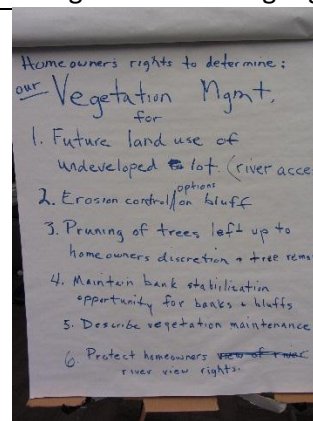
Step 3: Convening small group sessions



Step 4: Reporting back to the larger group



Step 5: Building consensus around topics to bring forward to the DNR to discuss further



Step 6: In their own words - Bringing forward comments in a transparent environment and involving stakeholders proactively in the development process

This was a higher level policy discussion. The City did not review the draft rules line by line, but the draft rules were available to discuss as needed. The City did not prepare the agenda; the topics were chosen by the participants of the collaborative process.

The comments provided as an outcome of this collaborative process are not intended to provide the official policy statement on behalf of the City of Ramsey. As part of the City of Ramsey's 2013 Strategic Plan, the City identified 'Transparency' as a core value for the organization. With that in mind, the City designed this collaborative process to allow for a forum for stakeholders to provide feedback in their own words. In the interest of transparency, Ramsey City Staff is forwarding these comments unedited for the benefit of the process with the hope that any draft rule can assist in clarifying and/or correcting issues, barriers, or opportunities.

These comments are intended to be helpful in the development of the rulemaking process, as these are the issues and questions most important to Ramsey's key stakeholders in the corridor. Suggested alternatives range from appropriate language changes in the draft rules to no changes at all.

Issues to address

The issues raised that the City desires the DNR to clarify, comment, or address through the draft rules are the output of the collaborative process. ***These comments are intentionally unfiltered, and attached to this memo as Exhibit B.***

A summary of the comments is listed below.

1. Protection for lawful, non-conforming uses and structures
2. Additional local control provided in decision-making process
3. Flexibility in vegetation management
4. Support Draft Standards by providing technical analysis for need
5. Provide examples of current issues
6. Discuss relationship and separation between the Mississippi National River & Recreation Area (MNRRA) and Mississippi River Trail (MRT)

Recommendations

City Staff has a number of recommendations to improve the draft rules based on stakeholder feedback.

1. Protection for lawful, non-conforming uses and structures

A primary concern of our residents is the potential creation of lawful, non-conforming structures. Although the impact may be minor in Ramsey, the current draft rules do create the potential for the creation of non-conforming structures, most notably the bluff setback standard that differs from the standard currently in Ramsey's ordinance. The City of Ramsey does acknowledge the lawful, non-conforming protections under Minnesota Statutes Chapter 462.357.

The City would like to explore the ability to strengthen lawful, non-conforming protections through the rulemaking process or the City's general ordinances. Any support that the DNR could provide would be appreciated.

2. Additional local control provided in decision-making process

The City of Ramsey acknowledges that the draft rules do correct documented concerns we have had with our existing ordinance in the past. However, the City of Ramsey also acknowledges concerns raised by our partners and peer communities within the corridor. If updated rules are to be adopted, we would want to ensure that local communities have the flexibility to meet the needs of their community, its existing development pattern, and future land use plans (Comprehensive Plans).

3. Flexibility in vegetation management

A number of Ramsey residents expressed concern of limitations on vegetation management. Understanding the DNR's assumption that natural vegetation has a benefit to bluff stabilization, water quality, and scenic qualities of the corridor, Ramsey Staff would like to clarify our role in determining proper vegetation management and what activities a homeowner can complete without approval from the City. We have a finite amount of resources to provide to administering these rules; any additional duties, if any are proposed, above what is being provided under the existing rules comes at an additional cost to the City.

4. Support Draft Standards by providing technical analysis for need

A number of Ramsey residents expressed a desire to have access to technical resources to support the methodology utilized to develop specific draft standards. Ramsey's Comprehensive Plan notes [paraphrased] that our land use decisions should be supported by peer-reviewed science. Ramsey Staff recommends the creation of a Resource Library to help in our decision-making process by providing important details on how these draft standards protect the resources identified in existing rules as well as why these resources need to be protected through corridor-wide rules.

5. Provide examples of current issues

The Ramsey Staff understands there may be examples of river bank failures that have come close to having an impact to existing structures, or have directly impacted existing structures. It would be helpful for us to see those examples and see how those circumstances apply to the built-environment in Ramsey.

6. Discuss relationship and separation between the Mississippi National River & Recreation Area (MNRRA) and Mississippi River Trail (MRT)

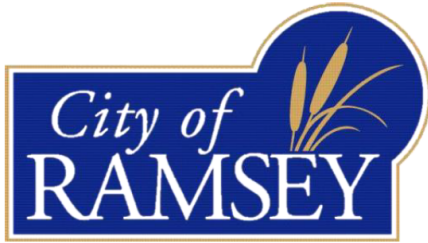
The Ramsey Staff understands that the Critical Area, MNRRA, and MRT are separate components. However, it appears that the relationship and separation are still unclear to many of our stakeholders. This is especially true as it relates to the Critical Area and MNRRA, as they share the same boundary. In addition, the MRT traverses within the boundary of the Critical Area. A resource explaining what the MNRRA is and what it means to private property owners would be helpful in our analysis.

Conclusion

The City of Ramsey Staff reiterates that this document is simply a summary of the information provided to us by our key stakeholders and previous policy statements. This document is not an official Statement of Policy on behalf of the City of Ramsey until the City Council has an opportunity to adopt said Statement of Policy. It is anticipated that the City of Ramsey will adopt an official Statement of Policy and detailed Technical Review in November. The City of Ramsey Staff is forwarding this document at this time to meet the October 11, 2013 deadline for comment prior to the DNR completing a revised Draft Rules document.

It is our hope that this document will help improve the quality of the rulemaking process as we move forward.

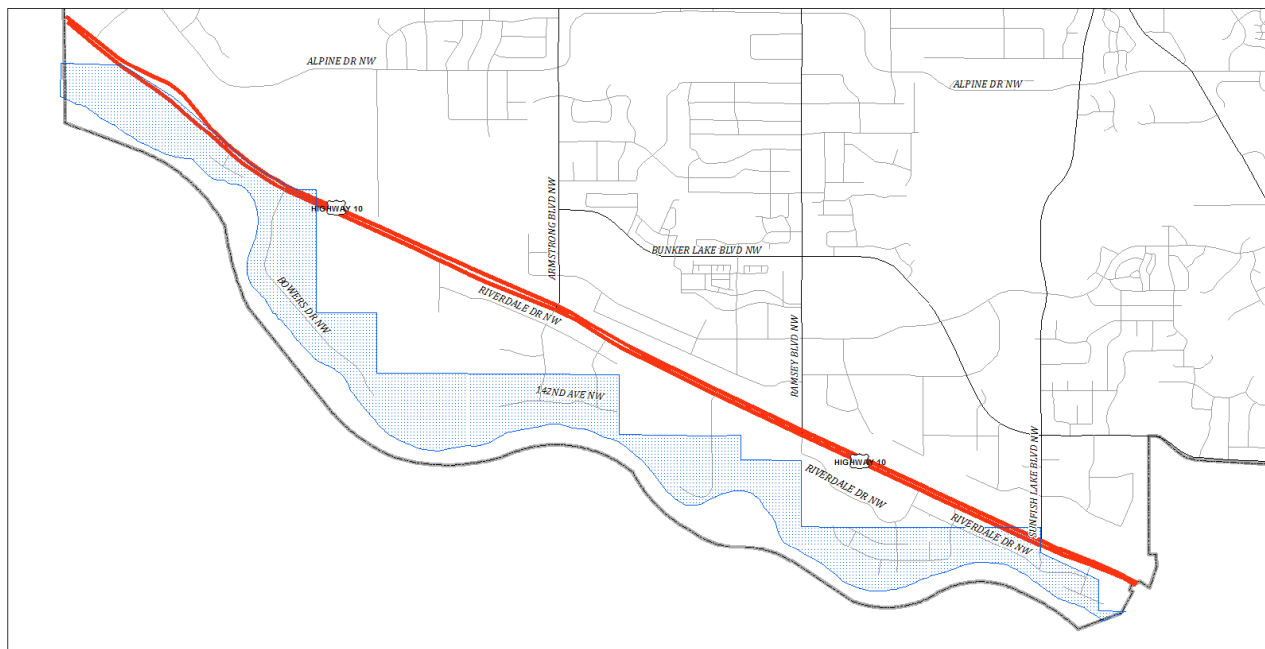
Document continues on next page



7550 Sunwood Drive NW • Ramsey, MN 55303
City Hall: 763-427-1410 • Fax: 763-427-5543
www.cityoframsey.com

Ramsey wants to invite you to participate in a public process to discuss appropriate standards and be part of the review for the Mississippi River Corridor Critical Area

The City of Ramsey is reaching out to you as a Property Owner near the Mississippi River that is located in the Mississippi River Corridor Critical Area (MRCCA/Critical Area). The Critical Area is a State of Minnesota designation that includes properties along the Mississippi River stretching from Ramsey to Hastings. The intent of this district is to protect key natural, economic, cultural, and ecological resources and protect the scenic quality of the river corridor. The map below indicates areas in Ramsey that are part of the Critical Area.



The City invites you to participate in being part of the process and reviewing alternatives (ranging from new and amended standards to no changes at all) related to an upcoming rulemaking project led by the Minnesota Department of Natural Resources (DNR).

Monday, September 16, 2013 at 6:00 p.m.
Ramsey Municipal Center, Alexander Ramsey Room
7550 Sunwood Drive NW, Ramsey, MN 55303

During the 2013 State of Minnesota Legislative Session, the Minnesota Legislature approved House File #1183 (Senate File #1051). This bill, also known as the Omnibus Legacy Bill, included direction for the DNR to update standards for the Critical Area. A similar

process was completed in 2009, however the process was not completed by the required deadline, and revised rules were not adopted. The Critical Area is an existing designation, and the City has previously adopted rules consistent with the existing Statute. This process will potentially update these existing rules.

In order for the Planning Commission, Environmental Policy Board (EPB), and City Council to make informed recommendations on potential draft rules, we first want to hear from you as Property Owners, those most impacted by potential changes to standards. You are an integral part of this process, and the City needs your feedback in order to make an informed decision. As the process has yet to formally begin, the City cannot fully analyze the potential impacts to our residents. However, the City desires to hear from you prior to the process beginning so that you can be part of the discussion, process, and ultimate outcome.

The City desires to hear your thoughts on:

- What key resources do you feel the City and State of Minnesota should protect through updated standards, if any?
- What types of standards (i.e. setbacks, limits on impervious [hard] surface, limits on vegetative removal) would you feel important for the City to protect through administration of additional land use controls, if any?
- What general questions or concerns regarding the Critical Area would you like the City to discuss with the DNR?

This initial public forum hosted by the City on September 16th will begin with a short background presentation at 6:00 p.m. followed by an open public forum and process.

The DNR will be meeting with City Staff and policy makers in late September. In order for this meeting to be productive, your participation in providing input is critical. In addition, the DNR will be hosting Open Houses on the process later this fall. The City Council has asked City Staff to reach out to impacted Property Owners prior to that stage to ensure that your feedback is incorporated into preliminary discussion and in preparation for the upcoming Open House sponsored by the DNR.

Please consider joining us on September 16, 2013 to be part of the discussion and solution. You may also submit comments to tgladhill@cityoframsey.com or by calling 763-576-4308. For more background information, visit our webpage at www.cityoframsey.com/shoreland under the 'Mississippi River Corridor Critical Area (MRCCA)' section.

Sincerely,

CITY OF RAMSEY



Tim Gladhill
Development Services Manager

**MISSISSIPPI RIVER CORRIDOR CRITICAL AREA (MRCCA) RULEMAKING
Ramsey Initial Stakeholder Meeting**

On existing properties - want to be able to:

- Mow to river bank
- Put in Rip Rap and rock to stabilize bank
- Trees do not stabilize river banks (see #2)
 - Can dead trees be removed?
- Funds from Federal or State Government for river bank stabilization

Local Control:

- MRT Concern
- Program for takeover
- Local control being key
- Create problem then find solution perception
- What are proactive steps identified so we can manage locally-necessary steps
- Define problem
- Grandfather rights
 - Transferable?
- City sewer vs. private septic
- Is DNR saying to keep things the same? Or what is the problem?
- See the list of problems
- Money available for Rip Rap, boulders, Etc. from Government?
 - Narrow in critical area
- Wing dams
- Department of Interior agenda?
- Make it clear that the City fights for retain rights for its citizens
- Ask for reasons of what drives setback – technical reasons
- City to develop statement for long term protection

Homeowners' rights to determine our vegetation management for:

- Future land use of undeveloped lot (river access)
- Erosion control options on bluff
- Pruning of trees and tree removal left up to homeowners discretion
- Maintain bank stabilization opportunity for banks and bluffs
- Describe vegetation maintenance
- Protect homeowners river view rights

**MISSISSIPPI RIVER CORRIDOR CRITICAL AREA (MRCCA) RULEMAKING
Ramsey Initial Stakeholder Meeting**

Comment 1:

What is a visual intrusion? Who determines it is a visual intrusion? What is screening? What material is it? Who determines what needs to be screened? Part 6106.0130 Subp. 12 Plans.

Comment 2:

Tim,

In regards to the open meeting on MRCCA proposed [rulemaking], I am having a tough time formulating any real ideas for comments and input. Is there any place on line that I can find a general idea of what may be proposed [?] Without having some indication of restrictions that may be part of the new rules I'm guessing and shooting in the dark.

As I look around our neighborhood and also travel up and down this beautiful river by water I really don't see anything that I would consider changing. I think that most of us have been good caretakers of this resource.

Are we sure we really need to fix things that appear not to need fixing?

It is hard for me to believe that home owners located on the river and paying high taxes are not taking care of their property. We have a fairly modest home of less than 3000 sq ft and pay taxes of \$5000.

So far in looking on line I only see that MRCCA will have more information on proposed rules shortly.

Obviously not in time for putting our comments together.

Thank you for your time.

Comment 3:

September 12, 2013

Dear Mr. Gladhill,

Re: MRCCA

We have been Ramsey residents for 39 years and have been property owners on the Mississippi River for 24 years. We support the protection and enjoyment by all of this valuable resource, but we find many of the new rules too imposing, intrusive and far reaching for the DNR as well as other government agencies. Many of these rules that impact property owners have no environmental value, but are primarily aesthetic in nature.

We would encourage the City of Ramsey to oppose limits on homeowners on the Mississippi specifically regarding removal of their own dead or diseased trees, branches, plants or shrubs. We don't need a specialist to oversee these activities. If tree branches are overgrown in our yards and new rules prevent us from maintaining them they could harming us by poking us in the eye or causing an

accident on our mower. (That's if we're still allowed to mow our grass, if, we can keep it.) We should be able to trim them on our own as we have over the years. We don't need a tree specialist or a government agent to make that determination. Seriously, who is going to foot that bill, guess who? We also are users of the river and when branches on trees are allowed to be fully overgrown we cannot enjoy the view either.

Speaking of enjoying the view. Who discerns what is visually intrusive? The person going by in a canoe? Should peoples['] homes, garages, vehicles be screened from view? How again does that improve our environment? People live in houses everywhere, we all know that and do we really have to keep them out of view so as not to offend "the user"? [Doesn't] he or she live in a house too? Is there a conforming material for that? Will there be tax credits for those people who cannot afford to comply, will others be penalized on their real estate taxes? Personally, a concrete or asphalt parking lot full of vehicles is intrusive to look at from the water, but that is exempt. I think it contributes to run off but I am no expert on that. Doesn't run off have an ecological impact? So public exempt properties don't have to be aesthetic or environmentally safe? Only privately held properties?

Restoration of vegetation to a natural state is a great idea. In a perfect world. But we also would like to enjoy parts of our acreage that we pay those exorbitant real estate taxes for. The person using the river is not the only user here. Let's not forget that. There are many properties where lawns meet the river. Ours is not one of those. I think that educating the homeowner and encouraging incorporation of some natural vegetation is acceptable. Forcing people to do these things does not bring about a good outcome. I also don't believe the original intention of this plan is to return to the way it used to be years ago.

We are also concerned that someday when we sell our home there will be something nonconforming given all of the rules. A nonconforming property creates an exception in the title policy. The mortgage company will not underwrite a loan for the buyer. What protection or guarantees do we have for availability of mortgages for MRCCA nonconforming properties? Will the Commissioner create a rule for that?

There are many other issues that impact homeowners (i.e. set backs, heights, zones) and their rights to enjoy their properties that don't personally affect our property as far as we can tell. However, the rules should be more inclusive to allow enjoyment of this resource by all with more reasonable standards supported by proven ecologically beneficial results.

The money generated by the Omnibus Legacy Bill provided to the DNR might be better spent improving the quality of this body of water rather than its aesthetics. Zebra mussels have now found their way to our area and other species continue to threaten Minnesota lakes and rivers but the DNR recently rejected the idea of using legacy fund dollars for prevention. We have all contributed sales tax money towards that since 2008, but we don't know best how it should be spent. Really?

Thank you for your consideration of our input. I hope that a mutually beneficial plan incorporating fewer updated standards and less land controls can be created.

Comment 4:

Hi Tim,

My Wife and I have been property owners on the Mississippi River since 1987. We support the protection for all to enjoy this valuable resource, but we find many of these new rules that would impact property owners to have no environmental value. Our property has both natural vegetation, and an area we have landscaped to enhance the property. People floating by in canoe's etc. always comment how nice our

landscaped area looks but never say anything about the natural area. Also the natural area during high water (April-June) is very difficult to keep protected, shoreline erosion is significant. The roots from the trees and vegetation are not enough to keep the soil from eroding. Since we have owned the property we have lost many feet of shoreline from the high water in the natural vegetation area, but none of the area we have landscaped has been affected by high water.

We feel the money generated by the Omnibus Legacy Bill provided to the DNR would be better spent on improving the quality of the water. Many of the small river and tributes that feed into the Mississippi river are running through farm land.

Every year more farm land is getting tilled and it is drained into these tributes. Studies have shown how the herbicides, pesticides, and fertilizers are affecting the water quality. If the water continues to be contaminated no one will be able to enjoy the river.

We encourage the City of Ramsey to oppose limits on homeowners who live on the Mississippi River.