



Friends of the Mississippi River

360 North Robert Street, Suite 400 • Saint Paul, MN 55101 • 651/222-2193 • Fax 651/222-6005

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

December 13, 2007

Kent Lokkesmoe, Division Director
DNR Division of Waters
500 Lafayette Rd.
St. Paul, MN 55155

Dear Mr. Lokkesmoe,

Friends of the Mississippi River would like to thank the DNR for the opportunity to facilitate the stakeholder engagement process for the Mississippi River Critical Area study. During this process we engaged 66 stakeholders in reviewing, discussing and providing thoughtful input on the program's strengths and weaknesses and potential solutions or management options to address identified weaknesses and concerns. The stakeholder process generated many viable ideas and approaches for enhancing management of the Mississippi River Critical Area, and we believe that the information gathered in our report offers a real opportunity to move forward on several fronts to ensure protection of one of our state's most significant resources.

The purpose of this letter is to provide FMR's input as a stakeholder on the Critical Area study. During the stakeholder meetings and the subsequent writing of the report, FMR acted as an impartial mediator of the process and did not provide formal input. Five of our board members participated, but primarily acted as observers in the process. As an organization with 1,400 members and 3,000 volunteers annually who support our mission to protect and enhance the Mississippi River Corridor, FMR has an enormous stake in the Critical Area program. We offer the following suggested course of action as a reflection of our many years of working with stakeholders on corridor protection, and the valuable insights we gained by facilitating the stakeholder meetings this fall. We look forward to continuing to work with DNR, MNRRA and other key stakeholders to implement a successful strategy going forward.

Maintain a state management framework that is unique to the Mississippi River corridor
FMR supports keeping the Mississippi River critical area program, but the program needs to be strengthened in order to be successful. We are also open to the idea of creating a special category under either the state Shoreland or Wild and Scenic Rivers programs, but only if it is unique to the MNRRA corridor and if current Critical Area values, goals and boundaries for the corridor are maintained or enhanced. If the DNR decides to recommend moving corridor protection into an

existing state program, we recommend an additional stakeholder meeting be held to present and discuss these options in more depth.

Keep program and authorities within DNR

We agree with the overwhelming sentiment from the stakeholders' meetings that DNR is the most appropriate agency to oversee management of the river corridor. To be successful going forward, we strongly believe the State of Minnesota and the DNR must raise the profile of the Mississippi River as a nationally significant resource and give higher priority to managing the Critical Area corridor. Additional resources are needed for the DNR to successfully implement its activities, and it will be necessary to identify strategies to increase financial resources. FMR is interested in working collaboratively with DNR, MNRRA and other stakeholders to identify and advocate for these additional resources for program enhancements.

In implementing the program, DNR should regularly consult with other agencies and possibly establish a formal process for key agencies and/or stakeholders to meet regularly. In particular, the partnership and coordination efforts with MNRRA should be strengthened. We also recommend considering increased internal coordination with the DNR Central Region, possibly elevating reportability of the program activities to the regional director's office. Under the integrating responsibilities of the regional director, the corridor's issues may be afforded higher regional visibility, and it could well facilitate inter-divisional coordination, as well as inter-agency and stakeholder involvement.

Integrate proactive approaches and program enhancements

A number of potential strategies to enhance and clarify goals for the program had broad support from stakeholders. FMR would like to see these proactive approaches utilized alongside efforts to update rules, regulations and authorities for the program.

Outreach and technical assistance to local communities about the significance of the corridor and tools for implementing the program are needed to ensure that communities understand how and why the corridor is protected. FMR and MNRRA are currently conducting outreach about the MNRRA, the Mississippi River critical area program and the model ordinance, and we will be providing workshops for elected and appointed officials in four corridor cities in 2008. Increasing this effort to include most or all of the corridor communities would serve the river and program well, although it is expensive to carry out this work effectively. Outreach will also be most effectual if ongoing communication and technical support is provided to public officials and other key community stakeholders.

Protecting scenic and cultural resources is a common source of conflict within the critical area, and there is an urgent need to ensure these important resources are not further degraded by local decisions that do not give scenic and cultural assets sufficient priority. Developing and implementing a process to document and possibly rank scenic and cultural resources would provide a number of benefits, including establishing a baseline for corridor resources and a rationale for how they might be effectively protected through standards or rules.

Establishing and mapping priority resources for different reaches of the corridor ranked high as a preferred option among stakeholders. Although there is some danger in pitting these resources against each other, establishing which resources are high priority for protection could be an excellent outreach strategy that would serve to engage community members and officials in learning about the significance of the corridor and the resources in their reach of the river.

One area of caution regarding prioritization is revisiting the economic values of the corridor. When the program was established, navigation and industrial stakeholders were a strong lobby for ensuring that the corridor could continue to function as a navigation channel, yet there was less participation

from these interests than we had hoped for during our recent stakeholder process (representatives of the Saint Paul Port Authority and Aggregate Industries came to the Developer/River Business stakeholder meeting and an FMR board member who works for Upper River Services attended the all-stakeholder meeting). The steady migration of industrial uses, including commercial navigation, away from the river should be further evaluated during a prioritization process. Economic values were included in E.O. 79-19 specifically to support continuation of commercial navigation, but it is our view that is not the intent of the designation to consider corridor development and market land values as economic assets worthy of protection. The intention of the executive order as we view it is to allow development, provided the natural, scenic, historical, cultural, recreational (and navigation) values are not negatively impacted. Granting development (other than parks, public access, etc) a priority value would defeat the purpose of having a protective designation, and make prioritization even more ambiguous.

All of these enhancement options have significant costs and it may not be realistic for DNR to bear the cost, especially if additional resources are needed for rulemaking. FMR is eager to work with MNRRRA to secure federal resources and seek new private funding that can support implementation of some of these strategies.

Establish or affirm clear and consistent goals and regulations for the corridor

During the stakeholder process, all three groups — river businesses and developers, environmental/civic groups and citizens, and local and state government, expressed the need for clear, consistent standards and definitions for the Mississippi River critical area. Local units of government want clear rules that don't require them to make subjective decisions; citizens want minimum standards that they can count on government to enforce; and developers want to know what the rules are before they invest in property in the corridor. Stakeholders in all the groups expressed the sentiment that the current framework for implementing goals for the critical area is cumbersome, time consuming and often becomes protracted in the political process. There was general agreement that more of the standards should be expressed in dimensional terms at the state level, and that performance standards need to be better defined to be attainable.

FMR believes state-level protection of the Mississippi River Critical Area needs to be reinforced and strengthened through new legislation and state rules for the corridor. Our recommendation is for legislation to provide an umbrella framework for the program that recognizes the corridor's local, state and national significance and commits the state to protection of the MNRRRA corridor. Legislation should also authorize state rulemaking, decision-making oversight (project design review/technical assistance, variance certification or appeal board), and include clear direction and/or a process for Critical Area boundary amendments. A limited number of key definitions relevant to the definition of the Mississippi River Critical Area could be included in legislation to set clear parameters for the rulemaking process. Aligning the purpose, language and definitions of the legislation with shoreland and/or wild and scenic rivers statutes could be helpful for implementation at both the local and state level.

Implement oversight process for variances

FMR believes that decision-making oversight at the state level is an essential tool for corridor protection. Citizens and local units look to the state to set clear limits and developers will be more likely to settle for a compromise if there is clear oversight. FMR would support variance certification for the critical area, but we are very intrigued by the concept of a technical review panel, modeled after the wetland conservation act, that could act as an appeal board for variances.

Such an appeal board has a number of advantages from our perspective. We believe it would bring added technical expertise into the discussion of projects and affords a step back from the challenging and sometimes charged atmosphere of such decisions. We also believe it would provide a venue for

projects to be reviewed for their consistency with state and regional goals. The appeal board could also offer a natural opportunity to provide early input on projects before they are formally proposed, as well as providing the needed oversight when stakeholders charge that a poor decision has been made.

We would like to see an appeal board include members from both the private and public sectors. Members of the private sector should represent multiple viewpoints and bring a variety of technical expertise such as landscape architecture, municipal planning, land protection, ecology/restoration, water quality and economic development. Public representatives could include staff from DNR, MNRRA, EQB, SHPO and Met Council.

We have some concerns that such a board could become a liability if its decision-making or appointment process became too political. We are interested in continuing the conceptual discussion of this idea with DNR staff and other interested parties.

Establish protective guidelines for boundary amendments

The issue of Critical Area boundary changes came up a few times during the stakeholder meetings. At the final all-stakeholder meeting, there was a strong preference for allowing boundary changes, but only if the changes maintain or increase protection of river corridor resources. FMR shares this view and suggests that setting standards for amending boundaries should be approached with caution to ensure that community development interests do not abuse such a process to increase or intensify land uses that are inconsistent with the original intent of the Critical Area designation.

We assert that Critical Area corridor boundary changes should be allowed for extreme cases only. A very strong or very weak connection to the river and its resources must be clearly demonstrated, and any change should have broad stakeholder support.

FMR is strongly opposed to changing district boundaries to accommodate urban growth. To do so makes critical area nothing more than an exercise in staging development. We believe the purpose of the Mississippi River critical area designation is to protect the resource within the context of growth, and the framers of the designation were well aware that urbanization was inevitable for many corridor communities. The process for amending boundaries should be clarified through legislation and rules to ensure corridor resources will be protected or enhanced if a district boundary change occurs.

Thank you again for the opportunity to assist the DNR in preparing the Critical Area study. We appreciate your careful consideration of our comments on moving forward with a stronger river corridor protection program that has the potential to improve outcomes for stakeholders in all categories. We look forward to continuing to work in partnership with the DNR as we move forward into the 2008 legislative session. Please feel free to contact us if you have questions about these comments or the study report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Whitney L. Clark". The signature is fluid and cursive, with the first name being the most prominent.

Whitney L. Clark
Executive Director