COON CREEK WATERSHED DISTRICT
Request for Board Action

MEETING DATE: January 12, 2015
AGENDA NUMBER: 28
ITEM: Mississippi River Corridor Critical Area Update

POLICY IMPACT: Discussion
FISCAL IMPACT: Budgeted

REQUEST
Provide staff direction and receive the staff report.

BACKGROUND
In 2009, the Minnesota Legislature directed the DNR to establish rules to replace the 35+ year old standards and guidelines in Executive Order 79-19. The DNR issued a Request for Comments on the scope of the rulemaking and launched an extensive public involvement process, including the formation of four geographically-focused working groups comprised of a variety of interests and viewpoints to advise the development of draft rules. In addition, the DNR met with local governments to receive their input on the draft rules, held two public open houses, and met with a number of other agencies and interest groups at their request. Based on this input, the DNR completed draft rules in 2011. However, the rulemaking process was put on hold in 2011 and the DNR’s authority to continue the rulemaking expired.

In 2013, the Minnesota Legislature restored the DNR’s rulemaking authority and made changes to the statutory language guiding rule development to better address local government concerns. After this rulemaking restarted, the DNR again met with local governments numerous times individually and in groups to obtain input on the 2011 draft rules, as well as with other agencies and interest groups. The DNR made revisions to the 2011 draft rules based on feedback received. The resulting document is referred to as the “working draft rules”.

On June 2, 2014, the Department of Natural Resources (DNR) issued a request for comments on the Mississippi River Corridor Critical Area (MRCCA) working draft rules. The comment period ended on September 20, 2014. The DNR received about 560 comments from local governments, residents, businesses and a variety of agencies and organizations. The DNR has been hosting stakeholder meetings to clarify comments and discuss key changes to the rules.

ISSUES/CONCERNS
The following is a list of the key changes to the rules:

- Definition changes for Substantial Compliance, Consistency and Ordinance Flexibility
• State & Regional Agencies (Including Regional Park Agencies) no longer need to comply with local government ordinances including their permitting requirements established under MRCCA rules.

• Bluffs & Bluff Impact Zone definition changes.
  o A bluff is now defined as a slope >18% that rises at least 25 feet measured over a horizontal distance of 25 feet. The 25 foot horizontal criterion is new.

• Additional language was added to the Nonconforming section of the rules to allow “lateral” expansions of primary structures not accessory structures.

• District definitions have been clarified to better describe their unique character, management objectives, and to recognize that each district includes parks and open space. District boundary changes by a local government or agency will be required to conduct a public hearing as part of their boundary change request.

• The maximum height for the River Towns and Crossings (RTC) district has been set at 48 feet. Taller buildings will be considered through a CUP process but will have additional considerations.

• A local vegetation management permit is still required and is focused on unauthorized clear cutting of sensitive areas and not on routine yard maintenance.

• Land alteration permits are still required but there’s greater focus on sensitive areas. A 1,000 square foot threshold was chosen.
  o Additional standards for retaining walls and riprap have been added. Retaining walls cannot exceed 5 feet and riprap cannon exceed the regulatory flood protection elevation.
  o New standards for stormwater treatment in bluff areas was added which allows local governments to adopt MPCA approved treatment instead of NPDES MS4 and construction treatment requirements. MIDS is an example.

• Development thresholds at which the set-aside standards apply have been set at 10 acres for riparian parcels and 20 acres for non-riparian parcels.

Phase 3 in the process will be the publication of the Notice of Intent (NOI) to Adopt Rules with a public hearing by the DNR to explain how the DNR considered the comments and determined the direction of each part of the rules. This is expected to be released sometime in winter 2015. The anticipated adoption of the rules is late summer-early fall 2015.

The District will have an opportunity to provide comments on the NOI and staff will continue to attend stakeholder meetings to keep the Board informed.

RECOMMENDATION
  1. Direct staff to review and prepare to make comments when the NOI is published
  2. Receive the report