

Blue Earth County

Buffer Ordinance

Chapter 6 – Article VIII (Public Hearing Draft)

1.0 STATUTORY AUTHORIZATION AND PURPOSE

- 1.1 **Statutory authorization.** This buffer ordinance is adopted pursuant to the authorization and policies contained in Minn. Stat. §103F.48, Riparian Protection and Water Quality Practices, the local water management authority under Minn. Stat. §103B, and the County planning and zoning enabling legislation in Minn. Stat. §394.
- 1.2 **Purpose and intent.** It is the purpose and intent of the County to:
 - (a) Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:
 - (1) Protect state water resources from erosion and runoff pollution;
 - (2) Stabilize soils, shores and banks; and
 - (3) Protect or provide riparian corridors.
 - (b) Coordinate the implementation and enforcement of the water resources riparian protection requirements of Minn. Stat. §103F.48 with the shoreland management rules and ordinances adopted under the authority of Minn. Stat. §103F.201 to 103F.227 and the management of public drainage systems established under Minn. Stat. §103E where applicable.
 - (c) Establish procedures for enforcement of the Riparian Protection and Water Quality Practices law under the jurisdiction of the County as provided in Minn. Stat. §103F.48 subd. 7, and Minn. Stat. §103B.101, subd. 12a.
 - (d) Provide efficient and effective direction to landowners and protection of surface water quality and related land resources.

2.0 DEFINITIONS AND GENERAL PROVISIONS

- 2.1 **Definitions.** Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the same meaning they have in common usage and to give this ordinance its most reasonable application. For the purpose of this ordinance, the words “must” and “shall” are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.
 - 2.1.1 **“Administrative Penalty Order”** means the administrative penalty order issued pursuant to Minn. Stat. §103F.48, subd. 7 and Minn. Stat. §103B.101, subd. 12a.
 - 2.1.2 **“Buffer”** has the meaning provided in Minn. Stat. §103F.48, subd. 1(c); except when the provisions of Minn. Stat. §103E.021 are applicable.
 - 2.1.3 **“Buffer protection map”** has the meaning provided in Minn. Stat. §103F.48, subd. 1(d) and which are available on the Department of Natural Resources website.
 - 2.1.4 **“Board of Water and Soil Resources”** means the Minnesota Board of Water and Soil Resources.

- 2.1.5 **“Corrective Action Notice”** has the meaning provided in Minn. Stat. § 103F.48, subd. 7, paragraph (a).
- 2.1.6. **“County”** means Blue Earth County.
- 2.1.7 **“Cultivation farming”** means farming practices that disturb root or soil structure or that impair the viability of perennial vegetation due to cutting or harvesting near the soil surface.
- 2.1.8 **“Drainage authority”** has the meaning provided in Minn. Stat. §103E.005, subd. 9.
- 2.1.9 **“Landowner”** means the holder of the fee title, the holder’s agents or assigns, any lessee, licensee, or operator of the real property and includes all land occupiers as defined by Minn. Stat. §103F.401, subd. 7 or any other party conducting farming activities on or exercising control over the real property.
- 2.1.10 **“Local water management authority”** has the meaning provided in Minn. Stat. §103F.48, subd. 1(g).
- 2.1.11 **“Normal water level”** means the level evidenced by the long-term presence of surface water as indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological models or analysis.
- 2.1.12 **“Notice of Noncompliance”** means a document from the Soil and Water Conservation District notifying the County that a parcel is out of compliance with the requirements in Minn. Stat. §103F.48.
- 2.1.13 **“Parcel”** means a unit of real property that has been given a tax identification number maintained by the County.
- 2.1.14 **“Public drainage system”** has the meaning given to “drainage system” in Minn. Stat. §103E.005, subd. 12.
- 2.1.15 **Repeat Violation** – Removal or willful degradation of a riparian buffer or water quality practice, wholly or partially, by a landowner, agent or operator in an offense subsequent to the original violation identified in a preceding Corrective Action Notice.
- 2.1.16 **“Soil and Water Conservation District”** means the Blue Earth County Soil and Water Conservation District.
- 2.1.17. **“Validation of Compliance”** means a document issued by the Soil and Water Conservation District at the request of the landowner, as provided in Minn. Stat. 103F.48 Subd. 3 (d).
- 2.2 **Severability.** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.
- 2.3 **Data sharing/management.**
- 2.3.1 The County may enter into arrangements with the Soil and Water Conservation District, Board of Water and Soil Resources and other governmental or contracted parties with respect to the

creation and maintenance of, and access to, data concerning buffers and alternative practices under this ordinance.

2.3.2 The County will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

3.0 JURISDICTION

3.1 **Jurisdiction.** The provisions of this ordinance apply to all waters shown on the Buffer Protection Map.

4.0 BUFFER REQUIREMENTS

4.1 **Buffer width.** Except as provided in subsection 4.4 and 4.5, a landowner owning property adjacent to a water body identified on the buffer protection map must establish and maintain a buffer area as follows:

(a) For waters shown on the buffer protection map requiring a fifty (50) foot width buffer, the buffer width will be fifty (50) feet as provided in Minn. Stat. §103F.48, subd. 3 and as required in Blue Earth County Shoreland Ordinance Sec. 14-116 (b) Agricultural Use Standards, as measured according to subsection 4.2; and

(b) For waters shown on the buffer protection map requiring a sixteen and a half (16.5) foot minimum width buffer, the buffer width will be sixteen and a half (16.5) feet as provided in Minn. Stat. §103F.48, subd. 3 and as measured according to subsection 4.2.

4.2 **Measurement.**

(a) The width of any required buffer on land adjacent to a water requiring a fifty (50) foot buffer shall be measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level as provided in Minn. Stat. §103F.48, subd. 3(c).

(b) The width of any required buffer on land adjacent to a water requiring a sixteen and a half (16.5) foot minimum width buffer shall be measured in the same manner as for measuring the vegetated grass strip under Minn. Stat. §103E.021 as provided in Minn. Stat. §103F.48, subd. 3(c).

4.3 **Use of buffer area.** Except as provided in sections 4.4 and 4.5 a buffer as defined in this ordinance shall not be put to any use, included but not limited to cultivation farming, which would remove or prevent the permanent growth of perennial vegetation.

4.4 **Exemptions.** The requirement of section 4.1 does not apply to land that is exempted from the water resources riparian protection requirements under Minn. Stat. §103F.48, subd. 5.

4.5. **Alternative practices.** As provided in Minn. Stat. §103F.48, subd. 3(b) an owner of land that is used for cultivation farming may demonstrate compliance with subsection 4.1 by establishing and maintaining an alternative riparian water quality practice(s), or combination of structural, vegetative, and management practice(s) which provide water quality protection comparable to the water quality protection provided by a required buffer as defined in sections 4.1 to 4.3. The adequacy of any alternative practice allowed under this section shall be based on:

(a) the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG);

- (b) common alternative practices adopted and published by the Board of Water and Soil Resources;
- (c) practices based on local conditions approved by the Soil and Water Conservation District that are consistent with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or
- (d) other practices adopted by the Board of Water and Soil Resources.

4.6. **Nonconformity.** Where the provisions of any statute, other ordinance, or regulation imposes greater restrictions than this ordinance, the provisions of such shall be controlling. The continuation of nonconformities provided for by Minn. Stat. §394 and §462 shall not apply to compliance with this ordinance and Minn. Stat. §103F.48.

5.0 COMPLIANCE DETERMINATIONS

5.1 **Compliance determinations.** Compliance with the buffer requirements set forth in section 4 will be determined by the Soil and Water Conservation District on a parcel by parcel basis pursuant to Minn. Stat. §103F.48 Subd. 3, Subd. 5, Subd. 6 and Subd. 7 (a). The compliance status of each bank, or edge of a waterbody on an individual parcel will be determined independently.

5.2 **Investigation and notification of noncompliance.** When the County identifies a potential noncompliance with the buffer requirements, it will refer the potential noncompliance to the Soil and Water Conservation District and consult as needed with the Soil and Water Conservation District to determine appropriate actions to determine compliance.

When the County receives a third-party complaint from a private individual or entity, or from another public agency, it will refer the complainant to the Soil and Water Conservation District. The Soil and Water Conservation District will determine, in consultation with the County, the appropriate course of action to document compliance status as provided in Minn. Stat. 103F.48 Subd.7. On the basis of the evidence gathered in this process, the Soil and Water Conservation District may issue a Notification of Noncompliance. If the Soil and Water Conservation District does not issue such a Notification, the County will not pursue a compliance or enforcement action under Minnesota Statutes §103F.48 and subsection 6.2.

At any time during the process set forth in 5.2 and 5.3, the landowner may provide documentation of compliance to the Soil and Water Conservation District.

5.2.1 **Compliance determination.** As provided in Minn. Stat. §103F.48, the Soil and Water Conservation District will evaluate the available documentation, or evaluate or inspect the buffer, or alternative practices to determine if the parcel is in compliance. Upon completion of the evaluation or inspection the Soil and Water Conservation District shall issue a written compliance determination to the landowner, the County and the Board of Water and Soil Resources. The Soil and Water Conservation District may also issue a Validation of Compliance if applicable and requested by the landowner. If a Validation of Compliance is issued by the Soil and Water Conservation District, the County shall be included in such notice.

5.3 **Corrective Action Notice.** On receipt of a Soil and Water Conservation District Notification of Noncompliance, the County will issue the landowner a Corrective Action Notice that will:

- (a) include a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. §103F.48;
- (b) provide a timeline for complying with the corrective action notice;
- (c) provide a compliance standard against which the County will judge the corrective action; and
- (d) include a statement that failure to respond to this Notice may result in the assessment of criminal, civil or administrative penalties.

The County may send the landowner a combined Corrective Action Notice and Administrative Penalty Order as provided in section 6.2 so long as the combined Notice/Administrative Penalty Order includes all the required elements of both.

The County shall transmit the corrective action notice by either personal service to the landowner or by depositing the same in the U.S. Mail. If service is made by U.S. mail, the document is deemed received three business days after the notice was placed in the U.S. mail. Failure of actual receipt of a corrective action notice that has either been personally served or served by depositing the same in the U.S. Mail shall not be deemed a defense in an enforcement proceeding under section 6.0. The County shall also send a copy of the Notice to the Soil and Water Conservation District and the Board of Water and Soil Resources.

The County may modify the corrective actions and timeline for compliance, in accordance with section 5.2 and in accordance with the determination of the Soil and Water Conservation District, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

5.3.1 At any time after receipt of a corrective action notice, the landowner may provide written documentation of compliance to the County, which the County will transmit to the Soil and Water Conservation District. In addition, the landowner may supply information to the County or the Soil and Water Conservation District in support of a request to modify a corrective action or the timeline for compliance. On the basis of any such submittal and/or in accordance with the determination of the Soil and Water Conservation District, the County may make a written modification to the Corrective Action Notice or timeline for compliance. The County should also make a written determination documenting whether the noncompliance has been fully corrected. Any such modification of a compliance determination will be served on the landowner in the manner provided for in section 5.3. The County shall provide the Soil and Water Conservation District and the Board of Water and Soil Resources a written copy of any modification made pursuant to this provision.

5.3.2 Pursuant to Minn. Stat. §103F.48, Subd. 3 (d), the Soil and Water Conservation District may, after an evaluation of the evidence documenting compliance submitted by the landowner or transmitted by the County, issue a written Validation of Compliance if requested by the landowner. If a Validation of Compliance is issued, the County shall be included in such notice. Upon receipt by the County of a written compliance determination issued by the Soil and Water Conservation District, the Corrective Action Notice will be deemed withdrawn for the purpose of section 6.0, and the subject property will not be subject to enforcement under that section.

6.0 ENFORCEMENT

6.1 Failure to comply with a corrective action notice issued under Section 5.

The County may, at its own discretion, elect to pursue the failure to comply with a corrective action notice either criminally or through an administrative penalty order as set forth herein.

(a) Failure to comply with a corrective action notice issued under section 5 constitutes a misdemeanor and shall be punishable as defined by law.

(b) The County may issue an Administrative Penalty Order as provided for in Minn. Stat. §103F.48, subd. 7(b) and (c) and 103B.101, subdivision 12a to a landowner who has failed to take the corrective action set forth in the corrective action notice. For the Administrative Penalty Order to be effective it must be served on the landowner together with a copy of the corrective action notice or alternatively the County may serve the landowner with a combined Corrective Action Notice and Administrative Penalty Order so long as the combined Notice/Administrative Penalty Order includes all the elements of both. Service is effective either by personal service or by depositing the documents set forth herein in the U.S. Mail. Any penalty assessed in the Administrative Penalty Order shall continue to accrue until the violation is corrected as provided in the Corrective Action Notice and Administrative Penalty Order.

6.2 Administrative Penalty Order.

(a) Initial violation. The penalty for a landowner on a single parcel that has not previously been the subject of an Administrative Penalty Order issued by the County shall be:

- i. \$0 for 11 months after issuance of the Corrective Action Notice;
- ii. \$50 per parcel per month for the first six (6) months (180 days) following the time period in i; and
- iii. \$200 per parcel per month after six (6) months (180 days) following the time period in ii.

(b) Repeat violation. The penalty for a landowner on a single parcel that has previously been the subject of an Administrative Penalty Order issued by the County or shall be:

- i. \$50 per parcel per day for 180 days after issuance of the Corrective Action Notice; and
- ii. \$200 per parcel per day for after 180 days following the time period in i.

(c) Ongoing penalty assessment. Any penalty assessed under this section shall continue until the corrective action notice has been satisfied.

6.2.1 Administrative Penalty Order. To be valid the Administrative Penalty Order shall include, at a minimum:

- i. The facts constituting the violation of the riparian protection and water quality practices requirements set forth in this section 4.0 of this ordinance or Minn. Stat. §103F.48;
- ii. The specific statute and/or ordinance section(s) that has/have been violated;
- iii. A written description of prior efforts to work with the landowner to resolve the violation;
- iv. The amount of the penalty to be imposed;
- v. The date the penalty will begin to accrue;
- vi. The date that payment of the penalty is due;
- vii. The date by which all or part of the penalty may be forgiven if the landowner has/have complied with the Corrective Action Notice; and

viii. A statement of the landowner's right to appeal the Administrative Penalty Order.

6.2.2 All or part of the penalty may be forgiven based on the correction of the noncompliance by the date specified in the Administrative Penalty Order by the landowner as provided in Minn. Stat. §103F.48, subd. 7(d).

6.2.3 A copy of the Administrative Penalty Order must be sent to the Soil and Water Conservation District and the Board of Water and Soil Resources.

6.2.4 An Administrative Penalty Order issued under this section may be appealed to the Board of Water and Soil Resources within 30 days of receipt by the landowner in accordance with the requirements set for the in Minn. Stat. §103F.48, subd. 9. Any Administrative Penalty Order that is not appealed within the 30-day period shall be deemed final.

6.3 Administrative Penalty Order Procedures

6.3.1 Statute of limitations. Any criminal enforcement action undertaken pursuant to section 6.1 of this ordinance must be undertaken within two years after the alleged violation was discovered or reasonably should have been discovered by the County. According to Minn. Stat. §541.07, the County has two years in which to commence an Administrative Penalty Order action after the date the violation is discovered. The goal is to complete the action as soon as reasonably practical, recognizing that situations for which data must be gathered, field investigations must be completed and/or modeling must be performed, will require adequate time to complete the work and communicate with the landowner involved.

6.3.2 Compliance verification. Once a landowner has submitted written evidence of correction of the violation set forth in the notice of compliance, compliance must be verified. The County or Soil and Water Conservation District, in coordination with the County, will:

- i. Review and evaluate all information related to the Administrative Penalty Order to determine if the violation has been corrected;
- ii. Verify compliance by site visit, re-inspection, examination of documentation, or other means as may be reasonable under the facts of the case; and
- iii. Document compliance verification.

6.3.3 Right to appeal. Within 30 days after receipt of the Administrative Penalty Order, a landowner may appeal the terms and conditions of an Administrative Penalty Order issued by a County to the Board of Water and Soil Resources as provided in Minn. Stat. §103F.48, subd. 9. The appeal must be in writing and must include a copy of the Administrative Penalty Order that is being appealed, the basis for the appeal and any supporting evidence. The appeal may be submitted personally, by U.S. mail, or electronically, to the Executive Director of the Board of Water and Soil Resources.

6.3.4 Penalty due. Unless the landowner appeals the Administrative Penalty Order as provided in section 6.3.3 the penalty specified in the Administrative Penalty Order becomes immediately due and payable to the County as set forth in the Administrative Penalty Order. If, however, the landowner submits written documentation that the violations have been corrected prior to the time the penalty becomes due and payable, the County shall verify compliance pursuant to section 6.3.2 and adjust the penalty to an amount the landowner would have owed had the penalty been paid on the date the

landowner submitted written documentation of compliance. Written documentation of compliance may include a written validation of compliance issued by the Soil and Water Conservation District.

If the County determines the violation was not fully corrected, the County shall notify the landowner by issuing a written letter of determination and depositing it in the U.S. Mail or through personal service. Any determination sent by U.S. Mail shall be deemed received three business days after the letter of determination has been deposited in the U.S. Mail. The landowner shall have an additional 20 days after receipt of the letter of determination to pay the penalty or the time period specified in the Administrative Penalty Order as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the Corrective Action Notice and Administrative Penalty Order.

6.3.5 Referral for collection of penalty. All penalties and interest assessed under an Administrative Penalty Order must be paid by the landowner within the time specified in this section. All payments shall be made payable to the County. Any penalty or interest not received in the specified time may be collected by the County using any lawful means.

6.3.6 Reporting and documentation. The County will maintain records for any violation of the riparian protection and water quality practices requirements of Minnesota Stat. §103F.48. Said records will document the following to the extent known or available:

- i. The cause of the violation;
- ii. The magnitude and duration of the violation;
- iii. Documentation showing whether the violation presents an actual or imminent risk to public health and safety;
- iv. Documentation showing whether the violation has the potential to harm to the natural resources of the state;
- v. A record of past violations;
- vi. Efforts by the Soil and Water Conservation District or County, or the Board of Water and Soil Resources to assist the responsible party or parties to become compliant, including written and oral communications with the responsible party or parties; and
- vii. Past and present corrective action efforts by the responsible party or parties.