



# ***BUFFER ORDINANCE***

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**Adopted: October 17, 2017**

# MURRAY COUNTY BUFFER ORDINANCE

## SECTION 1 STATUTORY AUTHORIZATION AND POLICY

- 1.1 **Statutory authorization.** This buffer ordinance is adopted pursuant to the authorization and policies contained in Minn. Stat. § 103F.48, and the county planning and zoning enabling legislation in Minn. Stat. Chapter 394.
- 1.2 **Purpose and intent.** It is the purpose and intent of the County to:
- 1.2.1 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.
  - 1.2.2 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 adopted under the authority of and the management of public drainage systems established under Minn. Stat. Chapter 103E where applicable; and
  - 1.2.3 Provide efficient and effective direction to landowners and protection of surface water quality and related land resources.

## SECTION 2 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 **Buffer** has the meaning provided in Minn. Stat. § 103F.48, subd. 1(c).
  - 2.1.2 **Buffer protection map** has the meaning provided in Minn. Stat. § 103F.48, subd. 1(d) and available on the Department of Natural Resources website.
  - 2.1.3 **BWSR** means the Board of Water and Soil Resources.
  - 2.1.4 **County** means Murray County, a political subdivision in the State of Minnesota.
  - 2.1.5 **County Board** means Murray County Board of Commissioners.
  - 2.1.6 **Cultivation farming** means practices that disturb root or soil structure or that impair the viability of perennial vegetation due to cutting or harvesting near the soil surface.
  - 2.1.7 **Drainage authority** has the meaning provided in Minn. Stat. §103E.005, subd. 9.
  - 2.1.8 **Drainage inspector**, also known as Ditch Inspector, has the meaning provided in Minn. Stat. § 103E.065.
  - 2.1.9 **ESO** means Murray County Environmental Services Office.

- 2.1.10 **Landowner** means the holder of the fee title, the holder's agents or assigns, any lessee, licensee, or operator 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. Any notice or other communication to be provided herein shall be directed to the Landowner whose name and address appears on the County's Property Taxes Records and listed as the taxpayer. Notice on said landowner shall be considered sufficient notice to all those who may be considered a Landowner as defined in this Section.
- 2.1.11 **Local water management authority** has the meaning provided in Minn. Stat. § 103F.48, subd. 1(g).
- 2.1.12 **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.
- 2.1.13 **Parcel** means a unit of real property that has been identified by a unique, locally defined property identification number or description maintained by the County.
- 2.1.14 **Public drainage system** has the meaning given in Minn. Stat. § 103E.005, subd. 12.
- 2.1.15 **Public Waters** has the meaning given in Minn. Stat. § 103G.005, subd. 15, which means public waters that are on the public waters inventory as provided in Minn. Stat. § 103G.201.
- 2.1.16 **SWCD** means Murray Soil and Water Conservation District.
- 2.1.17 **Validation of Compliance** means a notice issued by SWCD that validates that a sites(s) is compliant and that said validation is good as long as all practices identified/documented continue to be in place and substantially in the condition identified at the time of issuance.
- 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 **Interpretation.** In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.
- 2.4 **Data sharing/management.**
  - 2.4.1 The County may enter into arrangements with an SWCD, a watershed district if applicable, BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this ordinance.
  - 2.4.2 The County will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

## SECTION 3 JURISDICTION

- 3.1 **Jurisdiction.** The provisions of this ordinance apply to all waters, including public drainage systems for which the County is not the drainage authority under Minn. Stat. Chapter 103E, shown on the buffer protection map.

## SECTION 4 BUFFER REQUIREMENTS

- 4.1 **Buffer width.** Except as provided in subsection 4.4 and 4.5, a landowner must establish and maintain a buffer area as follows:
- 4.1.1 Fifty (50) foot average width and a thirty (30) foot minimum width buffer as measured according to subsection 4.2 for waters shown on the buffer protection map requiring said width, unless a greater width is required in Section 16 of the Murray County Zoning Ordinance.
  - 4.1.2 Sixteen and a half (16.5) foot minimum width buffer as measured according to subsection 4.2 for waters shown on the buffer protection map requiring said width, unless a greater width is required in Section 16 of the Murray County Zoning Ordinance.
  - 4.1.3 Compliance with subsection 4.1(A) and (B) also constitutes compliance with Murray County Zoning Ordinance Section 16.
- 4.2 **Measurement.**
- 4.2.1 The width of any required buffer on land adjacent to a water requiring a fifty (50) foot average width and a thirty (30) foot minimum width 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).
  - 4.2.2 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, subd. 1 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 may 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 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, based on:
- 4.5.1 The Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG);
  - 4.5.2 Common alternative practices adopted and published by BWSR;
  - 4.5.3 Practices based on local conditions approved by the SWCD that are consistent with the NRCS FOTG; or
  - 4.5.4 Other practices adopted by BWSR
- 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. Chapters 394 and 462 shall not apply to compliance with this ordinance and Minn. Stat. § 103F.48.

## SECTION 5 COMPLIANCE DETERMINATIONS

- 5.1 **Compliance determinations.** Compliance status will be determined by the SWCD on a parcel by parcel basis for those parcels adjacent to public waters identified on the Buffer Protection Map. For those parcels adjacent to public drainage systems identified on the Buffer Protection Map, compliance status will be determined by the Drainage Inspector as allowed by Minn. Stat. Chapter 103E. The compliance status of each bank, or edge of a waterbody on an individual parcel will be determined independently.
- 5.2 **Notification of Noncompliance.** When the ESO receives a notice of noncompliance or a third-party complaint from a private individual or entity, or from another public agency, it will consult with the SWCD or the Drainage Inspector, as appropriate, to determine the appropriate course of action to confirm compliance status. This may include communication with the landowner, inspection, or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, the SWCD or the Drainage Inspector, as appropriate, may issue a Notification of Noncompliance to the ESO. If the SWCD or the Drainage Inspector, as appropriate, does not issue such a notification, the ESO will not pursue a compliance or enforcement action under Minn. Stat. §103F.48 and subsection 6.2.
- 5.2.1 **Compliance determination.** At any time during noncompliance, the landowner may provide documentation of compliance to the SWCD or the Drainage Inspector, as appropriate. The SWCD or the Drainage Inspector, as appropriate, will evaluate the documentation, or review the buffer and/or alternative practices to determine if the parcel is in compliance and issue its determination in writing to the landowner. The SWCD or the Drainage Inspector, as appropriate, may issue a Validation of Compliance if applicable and requested by the landowner. A Validation of Compliance must also be sent to the ESO. The SWCD or the Drainage Inspector, as appropriate, must send a copy of noncompliance determination to the ESO and BWSR.
- 5.3 **Corrective Action Notice.** On receipt of Notification of Noncompliance, the ESO will issue the landowner of record a Corrective Action Notice that will:
- 5.3.1 include a list of corrective actions needed to comply with the requirements of Minn. Stat. §103F.48;
  - 5.3.2 provide a timeline for complying with this notice;
  - 5.3.3 provide a compliance standard against which it will judge the corrective action; and
  - 5.3.4 include a statement that failure to respond to this notice will result in criminal charges filed by the ESO.

The ESO may, in its judgment, also name a tenant or other person with control over that part of the property subject to section 4 as a responsible party. The ESO 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. The ESO must send a copy of the notice to the SWCD or Drainage Inspector, as appropriate, and BWSR.

- 5.3.5 At any time during noncompliance, the landowner may provide documentation of compliance to the SWCD, Drainage Inspector, as appropriate, or ESO. In addition, the landowner may supply information in support of a request to modify a corrective action or the timeline for compliance. On the basis of any such submittal or at its own discretion, the ESO, in writing, may modify the Corrective Action Notice and/or timeline in accordance with this section. The SWCD or Drainage Inspector, as appropriate, should determine if the noncompliance has been fully corrected and issue its determination in writing to the landowner and ESO.
- 5.3.6 The SWCD or Drainage Inspector, as appropriate, may issue a Validation of Compliance if requested by the landowner. On ESO receipt of the validation, the Corrective Action Notice will be deemed withdrawn for the purpose of section 6, and the subject property will not be subject to enforcement under that section.
- 5.3.7 A Notice of Noncompliance is not considered a final decision subject to appeal to BWSR.

## **SECTION 6 ENFORCEMENT**

- 6.1 A landowner who fails to comply with a corrective action notice issued under section 5 is guilty of a misdemeanor, punishable by up to 90 days imprisonment and/or up to a \$1,000.00 fine. Each day that a violation is permitted to exist shall constitute a separate offense.
- 6.2 Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with, or who resists the enforcement of any other provisions of this ordinance shall be guilty of a misdemeanor, punishable by up to 90 days imprisonment and/or up to a \$1,000.00 fine. Each day that a violation is permitted to exist shall constitute a separate offense. The County Attorney shall have the authority to prosecute any and all violations of this Ordinance.
- 6.3 In the event of a violation or a threatened violation of this ordinance, the County, in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, or abate such violations or threatened violations.

**SECTION 7 DATE OF EFFECT**

7.1 The Murray County Buffer Ordinance shall be in full force and effect from and after its passage and publication according to law.

Adopted by the Murray County Board of Commissioners this 17th Day of October, 2017.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Glenn Kluis, Chairman of the Board

ATTEST:

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Aurora Heard, County Coordinator

Recommended By: The Murray County Planning Commission

Date: \_\_\_\_\_

\_\_\_\_\_  
Ron Holinka, Chairman

ATTEST:

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Jean M. Christoffels, County Zoning/Environmental Adm