

BENTON COUNTY MINNESOTA
CHERYL L. KANTOR
COUNTY RECORDERBy: KB

6-0-1

This ordinance is being rerecorded to correct a statement regarding the vote count on Ord. 459 recorded on 8/15/2017 as Doc.No. 424524.

BENTON COUNTY ORDINANCE NO. 459**ORDINANCE RELATING TO ENFORCEMENT OF THE MINNESOTA BUFFER LAW**

WHEREAS, on June 20, 2017, the Benton County Board of Commissioners (County) passed Resolution No. 2017-26 accepting enforcement jurisdiction for the Minnesota Buffer Law; and,

WHEREAS, the acceptance of enforcement jurisdiction requires the adoption of an Administrative Penalty Order plan consistent with the plan adopted by BWSR (Minn. Stat. §103F.48, subd. 7(c)); and,

WHEREAS, on July 25 and July 27, 2017, Notice of Public Hearing and intent to adopt Benton County Ordinance was published in the official newspapers of the county; and,

WHEREAS, on August 10, 2017, the Benton County Planning Commission held a public hearing; and,

WHEREAS, on August 15, 2017, the Benton County Board of Commissioners conducted a public hearing to consider the adoption of an ordinance relating to enforcement of the Minnesota Buffer Law; and,

WHEREAS, the Benton County Board of Commissioners, by unanimous vote, voted to enact the proposed Ordinance;

NOW, THEREFORE, THE COUNTY BOARD OF BENTON COUNTY ORDAINS that Benton County Ordinance No. 459 read as follows:

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.

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1.2 **Policy.** It is the policy of the County to:

- (a) Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:
 - i. Protect state water resources from erosion and runoff pollution;
 - ii. Stabilize soils, shores and banks; and,
 - iii. 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 adopted under authority of and the management of public drainage systems established under Minn. Stat. chapter 103E where applicable; and,
- (c) 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 **"Board"** means the Minnesota Board of Water and Soil Resources.
- 2.1.2 **"Buffer"** means an area consisting of perennial vegetation, excluding invasive plants and noxious weeds, adjacent to all bodies of water within the state and that protects the water resources of the state from runoff pollution; stabilizes soils, shores, and banks; and protects or provides riparian corridors.
- 2.1.3 **"Buffer protection map"** means buffer maps established and maintained by the commissioner of natural resources.
- 2.1.4 **"Commissioner"** means the commissioner of natural resources.
- 2.1.5 **"Cultivation farming"** means practices that disturb root or soil structure or that impair the viability of perennial vegetation due to plowing, cutting or harvesting.
- 2.1.6 **"Drainage authority"** means the County of Benton Board of Commissioners or joint county drainage authority having jurisdiction over a drainage system or project.

2.1.7 **"Public drainage system"** means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority. "Drainage system" includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system.

2.1.8 **"Local water management authority"** means the County of Benton Board of Commissioners operating separately in its role as local water management authority under Minn. Stat. chapter 103B or Minn. Stat. Chapter 103D.

2.1.9 **"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.

2.1.10 **"Public waters"** means public waters as used in this section applies to waters that are on the public waters inventory as provided in Minn. Stat. Chapter 103G.201.

2.1.11 **"Shoreland management rules"** means the standards and criteria for the subdivision, use, and development of the shorelands of public waters as provided in Minn. Rules parts 6120.2500 – 6120.3900.

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 a SWCD, a watershed district if applicable, the Board and other 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.

Section 3. JURISDICTION

3.1 **Jurisdiction.** The provisions of this ordinance apply to all waters, including public ditches for which the County is 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 4.5, a landowner must establish and maintain a buffer area as follows:

- (a) For waters shown on the buffer protection map requiring a fifty (50) foot average width and a thirty (30) foot minimum width buffer as measured according to subsection 4.2, unless a greater width is required in Development Code Section 7S, Shoreland District Management; and
- (b) For waters shown on the buffer protection map requiring a sixteen and a half (16.5) foot minimum width buffer as measured according to subsection 4.2, unless a greater width is required in Development Code Section 7S, Shoreland District Management.

4.2 **Measurement.**

- (a) The measurement of the required buffer on land adjacent to a water requiring a fifty (50) foot average width and a thirty (30) foot minimum width buffer must be 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 in accordance with Board guidance.
- (b) The measurement of the required buffer on land adjacent to a water requiring a sixteen and a half (16.5) foot minimum width buffer must be from the top or crown of bank in the same manner as for measuring the vegetated grass strip under Minn. Stat. §103E.021 in accordance with Board guidance.

4.3 **Use of Buffer Area.** A buffer may not be used for cultivation farming but may be mowed, hayed, grazed or otherwise harvested, provided permanent growth of perennial vegetation is maintained, except as provided in subsections 4.4.(g) and 4.5 consistent with Board guidance.

4.4 **Exemptions.** The requirement of subsection 4.1 does not apply to land that is:

- (a) Enrolled in the federal Conservation Reserve Program; or
- (b) Used as a public or private water access or recreational use area including stairways, landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented structures as provided in the shoreland model standards and criteria adopted pursuant to Minn. Stat. §103F.211 or as provided for in an approved local government shoreland ordinance; or
- (c) Covered by a road, trail, building, or other structures; or
- (d) Regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) permit under Minnesota Rules, chapter 7090, and

provides water resources riparian protection, in any of the following categories: (i) municipal separate storm sewer system (MS4); (ii) construction storm water (CSW); or (iii) industrial storm water (ISW); or

- (e) Part of a water-inundation cropping system; or
- (f) In a temporary non-vegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or a construction or conservation project authorized by a federal, state or local government unit; or
- (g) Any other exemption as outlined in Minn. Stat. §103F.48, subd. 5.

4.5 **Alternative practices.** 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 subsections 4.1 to 4.3, based on:

- (a) The Natural Resources Conservation Service Field Office Technical Guide; or
- (b) Other practices adopted by the Board.
- (c) Practices based on local conditions approved by the SWCD that are consistent with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG);

4.6 **Grandfathering:** Where the provisions of any statute, other ordinance or regulation imposes greater restrictions than this ordinance, the provisions of such statute, other ordinance or regulation shall be controlling. Parcels grandfathered in for other preexisting land uses shall not be grandfathered in with respect to these provisions and with respect to compliance with the Buffer Law, Minn. Stat. § 103F.48.

Section 5. COMPLIANCE DETERMINATIONS

- 5.1 **Compliance determinations.** Compliance status will be determined by Benton SWCD on a parcel basis as identified by a unique locally defined property identification number or description and the compliance status of each bank, or edge of a water body 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 or receives a third party complaint from a private individual or entity, or from another public agency, it will consult with the SWCD to determine the appropriate course of action to document

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 the evidence gathered in this process, the SWCD may issue a Notification of Noncompliance to the County. If the SWCD 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.

- 5.3 Validation of **compliance determination appeal**. Pursuant to Minn. Stat. §103F.48, subd. 3(d), a landowner, agent, or operator may request Benton SWCD issue a validation of compliance with requirements of Section 4. A landowner, agent, or operator may appeal a validation of compliance determination made by Benton SWCD to the Board of Soil and Water Resources through the process outlined in Minn. Stat. §103F.48, subd. 9.
- 5.4 **Corrective Action Notice.** The Benton SWCD must send a copy of a noncompliance determination to the County and the Board. On receipt of a Benton SWCD notice of noncompliance, the County will issue the landowner of record a corrective action notice that will:
 - (a) Describe the nature of the violation;
 - (b) Describe corrective actions to be taken;
 - (c) Provide a practical timeline of intermediate or final dates for correction;
 - (d) A statement that failure to respond to the corrective action notice will result in an administrative penalty order and the assessment of financial penalties.

The County may deliver or transmit the corrective action notice by any means reasonably determined to reach the landowner, and any other responsible party or parties, and will document receipt. However, a failure to document receipt will not preclude the County from demonstrating receipt or knowledge of the corrective action notice in an enforcement proceeding under section 6.0. The County must send a copy of the notice to the Benton SWCD and the Board.

- 5.4.1 At any time during this process, the landowner or responsible party or parties may provide documentation of compliance to the County. The County shall forward documentation to Benton SWCD, and Benton SWCD shall determine if the noncompliance has been fully corrected and issue its determination. The County shall notify the landowner in writing of Benton SWCD's determination. The Benton SWCD may issue a validation of compliance if requested by the landowner. In addition, the landowner or responsible party or parties 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 County in writing may modify the corrective action or timeline for compliance, and will deliver or transmit the modified action and timeline in accordance with this section.

5.4.2 A corrective action notice is not considered a final decision subject to appeal.

Section 6. ENFORCEMENT

6.1 A landowner who does not comply with the notice of noncompliance issued under Section 5 shall be remedied:

- (a) shall be guilty of a misdemeanor and shall be punishable as defined by law; or
- (b) issued an administrative penalty order under Minn. Stat. §103B.101, subdivision 12a and Minn. Stat. §103F.48, subd. 7 and the procedures provided in this section.

6.2 Administrative Penalty Order.

6.2.1 An administrative penalty order requires violations of this ordinance to be corrected and assesses monetary penalties up to \$500 for noncompliance commencing on day one of the 11th month after the corrective action notice was issued.

6.2.2 1st Violation. The penalty for a landowner that has not previously been the recipient of an administrative penalty order will be assessed on the following schedule:

- (a) Commencing on day 1 up to 180 days after issuance of the APO, a monthly fee will be assessed in the amount of \$50 per parcel.
- (b) Commencing on day 181 after issuance of the APO, a monthly fee will be assessed in the amount of \$200 per parcel. The monthly fee will continue until the property is brought into compliance.

6.2.3 2nd Violation and subsequent violations. The penalty for a landowner that has previously been the recipient of an administrative penalty order will be assessed on the following schedule:

- (a) Commencing on day 1 up to 180 days after issuance of the APO, a daily fee will be assessed in the amount of \$50 per parcel.
- (b) Commencing on day 181 after issuance of the APO, a daily fee will be assessed in the amount of \$200 per parcel. The daily fee will continue until the property is brought into compliance.

6.2.4 Order. The APO will state:

- (a) The facts constituting a violation of the water resources riparian protection requirements;
- (b) The statute and/or ordinance that has been violated;
- (c) Prior efforts to work with the landowner to resolve the violation;
- (d) The amount of the penalty to be imposed and the date the penalty will begin to be assessed, and the date that payment of the penalty is due; and,
- (e) The responsible party(ies) right to appeal the order.

6.2.5 All or part of the penalty may be forgiven on the basis of diligent correction of noncompliance following issuance of the APO by the landowner or responsible party(ies).

6.2.6 A copy of the APO must be sent to the SWCD and the Board.

6.2.7 An APO that is not submitted for appeal to the executive director within 30days of receipt by the landowner is final.

6.3 Administrative Penalty Order Procedures

6.3.1 Statute of limitations. According to Minn. Stat. §541.07, clause (2), the County has two years in which to commence an administrative penalty order action after the violation is discovered. The goal is to complete the action as soon as reasonably practical, recognizing that situations on 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(s) involved.

6.3.2 Compliance verification. Once a landowner has submitted written evidence of correction of the violation, compliance must be verified. The County, in coordination with the SWCD will:

- (a) Review and evaluate all information related to the APO to determine if the violation has been corrected;
- (b) Verify compliance by site visit, re-inspection, examination of documentation, or other means as may be reasonable under the facts of the case; and,
- (c) Document compliance verification.

6.3.3 Right to appeal. An administrative penalty order may be appealed to the Board in accordance with Minn. Stat. 103F.48, subd. 9, and will be as provided therein.

6.3.4 Penalty due, interest assessed. Unless the violator requests an appeal of the APO within 30 days of receipt of the APO, the penalty is due and payable to the County as specified in the APO. If the violator submits written evidence within 30 days of the date specified in the APO, which may include a validation of compliance issued by the Benton SWCD, that the violation was corrected, may include a written validation of compliance issued by the Benton SWCD.

Interest will accrue at the rate established pursuant to Minn. Stat 549.09 beginning on the 31st day after issuance of the order, or the 21st day after the landowner receives the letter of determination that the violation has not been fully corrected.

6.3.5 Referral for collection of penalty. All penalties and interest assessed under an APO must be paid by the violator within the specified time and made payable to the County. Any penalty or interest not received in the specified time may be collected by lawful means.

6.3.6 Reporting and documentation. Effective compliance reporting and documentation will ensure that proper enforcement action is taken, and that a record is maintained of these actions. When the County identifies a violation of the water resources riparian protection requirements, staff will follow record keeping procedures to assess and note the following to the extent known or available:

- (a) Cause of the violation;
- (b) Magnitude and duration of the violation;
- (c) Whether the violation presents an actual or imminent risk to public health and safety, or the natural resources of the state;
- (d) Past violations;
- (e) Efforts by Benton SWCD, County, watershed district or the Board to assist the landowner to become compliant, including written and oral communications with the landowner; and,
- (d) Past and present corrective action efforts by the landowner.

This ordinance shall be effective November 1, 2017.

Approved and adopted by the Benton County Board of Commissioners this 15th day of August in the year of 2017.

Warren Peschl

Warren Peschl, Chair

Benton County Board of Commissioners

ATTEST:

Montgomery Headley

Montgomery Headley
Benton County Administrator

Montgomery Headley