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CHAPTER 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, the Buffer Law, 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:

- (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. chapter 103E where applicable; and
- (c) Provide efficient and effective direction to landowners and protection of surface water quality and related land resources.

CHAPTER 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 which are available on the Department of Natural Resources website.
 - 2.1.3 “BWSR”** means the Board of Water and Soil Resources.
 - 2.1.4 “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.
 - 2.1.5 “Drainage authority”** has the meaning provided in Minn. Stat. §103E.005, subd. 9.
 - 2.1.6 “Landowner”** means the holder of the fee title, the holder’s agents or assigns, and 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.
 - 2.1.7 “Parcel”** means a unit of real property that has been given a tax identification number maintained by the County.
 - 2.1.8 “Public drainage system”** has the meaning given to “drainage system” in Minn. Stat. §103E.005, subd. 12.
 - 2.1.9 “Local water management authority”** has the meaning provided in Minn. Stat. §103F.48, subd. 1(g).
 - 2.1.10 “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.
 - 2.1.11 “SWCD”** means Soil and Water Conservation District.
- 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 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.
- 2.3.2** The County will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

CHAPTER 3

JURISDICTION

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

CHAPTER 4

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) foot average and thirty (30) foot minimum width as provided in Minn. Stat. §103F.48, subd. 3 and 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. This subsection applies only if the County is the drainage authority.

4.2 Measurement.

- (a) 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).
- (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, subd. 1 as provided in Minn. Stat. §103F.48, subd. 3 (c).

4.3 Use of buffer area. Except as provided in section 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 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 BWSR;

- (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); or
- (d) 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 Minnesota Statute §394 and §462 shall not apply to compliance with this ordinance and Minnesota Statutes §103F.48.

CHAPTER 5

COMPLIANCE DETERMINATIONS

5.1 Compliance determinations. Compliance with the buffer requirements set forth in section 4 will be determined by the SWCD on a parcel by parcel basis. 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 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.

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

5.2.1 Compliance determination. The SWCD will evaluate the available documentation, and/or evaluate and/or inspect the buffer and/or alternative practices to determine if the parcel is in compliance. Upon completion of the evaluation and/or inspection the SWCD shall issue a written compliance determination to the landowner, the County and BWSR. The SWCD may also issue a Validation of Compliance if applicable and requested by the landowner.

5.3 Corrective Action Notice. On receipt of an SWCD 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 penalties.

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 SWCD and BWSR.

Counties may modify the corrective actions and timeline for compliance, in accordance with section 5.2, 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 documentation of compliance to the County. In addition, the landowner may supply information to the County or the SWCD 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 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 SWCD and BWSR a written copy of any modification made pursuant to this provision.

5.3.2 The SWCD may, after an evaluation of the evidence documenting compliance submitted by the landowner, issue a written Validation of Compliance if requested by the landowner. Upon receipt by the County of a written compliance determination issued by the SWCD, 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.

CHAPTER 6

ENFORCEMENT

- 6.1 Failure to comply.** Failure to comply with a Corrective Action Notice issued under Section 5 constitutes a misdemeanor and shall be punishable as defined by law.

ADOPTION AND EFFECTIVE DATE

Planning Commission Recommendations. The Martin County Planning Commission, after proper notice and publication, held public hearings on the adoption of the Ordinance on November 28, 2017, at the Martin County Commissioners Room. After hearing public testimony and with due deliberation, the Planning Commission voted unanimously to recommend adoption of the Ordinance to the Martin County Board of Commissioners.

Adoption by Board of Commissioners. The Martin County Board of Commissioners, after proper notice and publication, and with due deliberation, voted unanimously to adopt this Ordinance on December 19, 2017, at the Martin County Commissioners Room.

Effective Date. The Ordinance shall be in full force and effective beginning December 19, 2017.

Passed December 19, 2017

Dan Schmidtke
Chairperson, Martin County Board of Commissioners

Attest:

Scott Higgins
Martin County Coordinator

ADOPTION AND EFFECTIVE DATE (Signed)

Planning Commission Recommendations. The Martin County Planning Commission, after proper notice and publication, held public hearings on the adoption of the Ordinance on November 28, 2017, at the Martin County Commissioners Room. After hearing public testimony and with due deliberation, the Planning Commission voted unanimously to recommend adoption of the Ordinance to the Martin County Board of Commissioners.

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Passed December 19, 2017



Dan Schmidtke
Chairperson, Martin County Board of Commissioners

Attest:



Scott Higgins
Martin County Coordinator



RESOLUTION

R-#17/'17

RESOLUTION REGARDING THE ELECTION OF JURISDICTION FOR THE MINNESOTA BUFFER LAW

WHEREAS, provisions in Minnesota Statute 103F.48 (Buffer Law) allow a county or watershed district to affirm jurisdiction to carry out the compliance provisions regarding riparian vegetated buffers and alternative water quality practices for those waterbodies identified on the Department of Natural Resources' Buffer Protection Map; and

WHEREAS, a county with jurisdiction over a noncompliant site shall enforce corrective actions through a coordinated approach under the authority granted in Minnesota Statute 103B.101, subd. 12a, the Buffer Law or other authority granted by statute; and

WHEREAS, Martin County agrees to carry out corrective actions on a parcel basis to ensure compliance with the buffer requirements, which may include an Administrative Penalty Order (APO) plan under the authority provided in Minnesota Statutes 103B.101, subd. 12a and 103F.48; and

WHEREAS, Martin County is electing jurisdiction on all public drainage ditches for which it is the drainage authority and public waters, located within its boundaries, identified on the Department of Natural Resources' Buffer Protection Map; and

WHEREAS, the Buffer Law requires that each Local Government Unit provide notice affirming jurisdiction and identify the rule, ordinance, or other official controls that will be used to carry out the compliance provisions of the buffer requirements to the Board of Water and Soil Resources, including a copy of the adopting resolution.

THEREFORE, BE IT RESOLVED, that Martin County hereby accepts the authority and administrative responsibility to implement the Buffer Law as the Local Government Unit within the legal boundaries of Martin County for the water features identified above as of June 20, 2017, in accordance with Minnesota Statute 103F.48.

Motion by Commissioner Belgard, seconded by Commissioner FLohrs, and adopted by a vote of 5 For, Zero Against said resolution was duly passed at the regular meeting of the Board of Commissioners of Martin County on his 20th day of June, 2017.

BOARD OF COMMISSIONERS
MARTIN COUNTY, MN

Dan Schmidtke
Dan Schmidtke, Board Chair

ATTEST: Scott Higgins
Scott Higgins, County Coordinator