

2018

**Big Stone County
Riparian Buffer
Protection Ordinance**

As adopted in June, 2018

County Commissioners

Brent Olson, Chairman
Roger Sandberg, Vice Chairman
Wade Athey
Jay Backer
Joseph Berning

Planning Commission

Ann Holme, Chairman
Don Diekmann, Vice Chairman
Wade Athey
Neil Brandt
Pat Dwyer
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Board of Adjustment

Charles Lindquist-Chairman
Neil Brandt-Vice Chairman
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Mike Trulson

County Attorney

Joseph Glasrud

Environmental Officer

Darren Wilke

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1.0 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.

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 **"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, per 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"** means the board or joint county drainage authority having jurisdiction over a drainage system or project per Minn. Stat. §103E.005, subd. 9.

- 2.1.6 **“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.
- 2.1.7 **“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”** 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, per Minn. Stat. §103E.005, subd. 12.
- 2.1.9 **“Local water management authority”** means a watershed district, metropolitan water management organization, or county operating separately or jointly in its role as local water management authority under chapter 103B or 103D, per 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 per Minn. Stat. §103F.48, subd. 1(h).
- 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 a 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.

3.0 JURISDICTION

- 3.1 **Jurisdiction.** The provisions of this ordinance apply to all waters, including public drainage systems for which the County is the drainage authority under Minn. Stat. chapter 103E, 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) 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.

- 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 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 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);
 - (d) other practices adopted by BWSR.
- 4.6 **Compliance with other statute, ordinance or regulation.** Where the provisions of any statute, other ordinance or regulation imposes greater restrictions than this ordinance, the provision of such statute, other ordinance or regulation shall be controlling.

5.0 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.
- 5.2.2 **Local Appeals.** Within 45 days of receipt of a Notification of Noncompliance, landowners may appeal to the Big Stone County Board of Adjustment. The Board of Adjustment may only rule on the adequacy of the Notification of Noncompliance and not on the need for buffers or water quality practices on a

certain waterbody. Procedures for application, along with notice and hearing requirements, shall be as described in section 12.2 – 12.4 of the Big Stone County Land and Related Resources Management Ordinance, 2011. The Board of Adjustment shall make a ruling within 60 days of receipt of an appeal application. The Findings of Fact and final decision shall be filed with the County Recorder.

5.3 **Corrective Action Notice.** On receipt of an SWCD Notification of Noncompliance, and after the appeal time has expired, 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 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.

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, as authorized by Minn. Stat. §394.37.

Failure to comply with a corrective action notice issued under section 5 constitutes a misdemeanor, with a maximum fine of up to \$500, and shall otherwise be punishable as defined by law.

6.2 Enforcement Procedures.

6.2.1 **Statute of limitations.** Any 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. 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.

6.2.2 **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 will:

- i. Review and evaluate all information related to enforcement 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.

The County may consult with the SWCD when conducting a compliance verification.

6.2.3 **Enforcement Action.** Unless the landowner appeals the notice as provided in section 5.2.2., enforcement action, as outlined in Section 14 of the Big Stone County Land and Related Resource Management Ordinance 2011, may commence at discretion of the County Attorney in consultation with the County Board. Enforcement will cease if the landowner submits written documentation that violations have been corrected prior to the commencement of enforcement

proceedings. Written documentation of compliance may include a written validation of compliance issued by the SWCD.

6.2.4 Reporting and documentation. The County shall maintain the following records for any potential violation of the riparian protection and water quality practices requirements. Said records shall include but are not limited to the following:

- 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 SWCD, County, Watershed District or BWSR 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.

7. ADOPTION OF ORDINANCE

This Ordinance shall become effective and be in force from and after its passage, approval, publication and recording in the office of the County Recorder.

Recommended by the Planning Commission, Big Stone County, Minnesota,

this 15th day of June, 2018.

Ann E. Holme

Ann Holme
Big Stone County Planning Commission Chair

Passed and approved by the Board of County Commissioners, Big Stone County, Minnesota,

this 15 day of June, 2018.

Brent Olson

Brent Olson, Chairman
Big Stone County Board of Commissioners

Attest:

Michelle R Knutson

Michelle Knutson, Big Stone County Auditor

I, Michelle Knutson, do hereby certify that this is a true and correct copy of the Big Stone County Riparian Buffer Protection Ordinance as passed by the Board of County Commissioners

on June 15, 2018.

Michelle R Knutson

Michelle Knutson, County Auditor
Big Stone County

Date of Publication of Summary of Ordinance _____, 2018.

Filed in the Office of the County Recorder, Big Stone County, Minnesota,

this _____ day of _____, 2018.