

**Notice of Intent to Establish
Cass County Ordinance No. 2017-04
Cass County Buffer Ordinance**

The Cass County Planning Commission will hold a Public Hearing on Monday, December 11, 2017 time will be determined, the meeting will be held at the Cass County Land Department Meeting Room, Backus, MN and will be published on November 21st and 28th in the Pine Cone Press Citizen for the 1st reading of proposed Cass County Buffer Ordinance No. 2017-04.

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 county planning and zoning enabling legislation in Minn. Stat. chapter 394.

1.2 **Purpose and intent.** It is the purpose and intent of Cass 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.

2.1.2 "Buffer" has the meaning provided in Minn. Stat. §103F.48, subd. 1(c).

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 "BWSR" means the Board of Water and Soil Resources.

2.1.5 "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.

2.1.6 "Drainage authority" has the meaning provided in Minn. Stat. §103E.005, subd. 9.

2.1.7 "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.

2.1.8 "Parcel" means a unit of real property that has been given a tax identification number maintained by Cass County.

2.1.9 "Public drainage system" has the meaning given to "drainage system" in Minn. Stat. §103E.005, subd. 12.

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 "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 Cass County may enter into arrangements with a SWCD, a watershed district if applicable, BWSR and other parties with respect to and alternative practices under this ordinance.

2.3.2 Cass 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 located within its boundaries identified on the Department of Natural Resources Buffer Protection Map, including public drainage systems for which Cass County is not the drainage authority under Minn Statute §103E, if a watershed district has not elected jurisdiction under the Buffer Law.

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); or
- (d) Other practices adopted by BWSR.

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.

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 Cass 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 Cass County. If the SWCD does not issue such a Notification, Cass County will not pursue a compliance or enforcement action under Minnesota Statute §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, Cass 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, Cass 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 Cass County will judge the corrective action; and
- (d) Failure to respond to this Notice may result in the assessment of criminal penalties.

Cass 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. Cass County shall also send a copy of the Notice to the SWCD and BWSR. Cass County 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 Cass County. In addition, the landowner may supply information to Cass 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, Cass County may make a written modification to the Corrective Action Notice or timeline for compliance. Cass 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. Cass 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 Cass 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.

A Notice of Noncompliance is not considered a final decision subject to appeal to BWSR. (Minn. Stat. §103F.48, subd. 9). Cass County may establish a local process to appeal a Corrective Action Notice. The time period for compliance and the initiation of a penalty should be put on hold while any appeal is pending.

6.0 ENFORCEMENT

ENFORCEMENT – Criminal Prosecution Only

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

6.2 **Reporting and documentation.** Cass 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 the natural resources of the state;
- v. A record of past violations;
- vi. Efforts by the SWCD, Cass 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.

Copies of the referenced ordinances may be viewed during regular business hours at Cass County Environmental Services Department or on the Cass County website: <http://www.co.cass.mn.us/ordinances>

To submit written comments or obtain additional information contact the Cass County Environmental Services Department at (218) 547-7241.

/s/ Joshua Stevenson, Cass County Administrator