

LAKE COUNTY BUFFER ORDINANCE #23

Effective: November 14, 2017

LAKE COUNTY BUFFER ORDINANCE #23

The Lake County Board of Commissioners of Lake County, Minnesota Ordains:

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 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 adopted under the 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.

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 it's 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 Lake County a political subdivision in the state of Minnesota.

2.1.5 “**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.

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

2.1.7 “**Landowner**” means the holder of the free 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 “**Local water management authority**” has the meaning provided in Minn. Stat. §103F.48, Subd.1(g).

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 drainage system**” has the meaning given in Minn. Stat. §103E.005, subd.12.

2.1.11 “**SWCD**” means the Lake County 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 **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.

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 **Compliance determinations.** Compliance status will be determined by the soil and water conservation district on a parcel by 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.

4.2 **Buffer width.** Except as provided in subsection 4.5, a landowner must establish and maintain a buffer area as follows:

(a) Fifty (50) foot average width and a thirty (30) foot minimum width buffer as measured according to subsection 4.3 for waters shown on the buffer protection map requiring said width, unless a greater width is required in Section 7.08 of the Lake County Shoreland Zoning Provisions (Article 7.0).

(b) Sixteen and a half (16.5) foot minimum width buffer as measured according to subsection 4.3 for waters shown on the buffer protection map requiring said width, unless a greater width is required in Section 7.08 of the Lake County Shoreland Zoning Provisions (Article 7.0).

4.3 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.

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

4.4 **Use of Buffer Area.** A buffer as defined in this ordinance may not be put to any use, included but not limited to cultivation farming, that would remove or prevent the permanent growth of perennial vegetation, except as provided in sections 4.5 and 4.6.

4.5 **Exemptions.** The requirement of subsection 4.1 does not apply to land that is exempted under Minn.Stat. §103F.48, Subd.5.

4.6 Alternative Practices. An owner of land that is used for cultivation farming may demonstrate compliance with subsection 4.2 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;
- (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; or
- (d) other practices adopted by BWSR;

4.7 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 Notification of Noncompliance. When the County observes a potential noncompliance, 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 confirm compliance status. This may include communication with the landowner or operator, inspection or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, 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.

5.1.1 At any time during noncompliance, the landowner or operator may provide documentation of compliance to the SWCD.

5.1.2 The SWCD will evaluate the 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 issue a Validation of Compliance if applicable and requested by the landowner.

5.2 Corrective Action Notice. On receipt of a SWCD Notification of Noncompliance, the County will issue the landowner of 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 time line 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 charges filed by the County.

The County in its judgment also may name as a responsible party a tenant of other person with control over that part of the property subject to section 4.0. The County may deliver or transmit the Corrective Action Notice by any means reasonably determined to reach the landowner or operator, 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 SWCD and BWSR.

5.2.1 At any time after receipt of a Corrective Action Notice, 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 5.2. The County shall provide the SWCD and BWSR a written copy of any modification made pursuant to the provision.

5.2.2 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.

5.2.3 A notice of noncompliance is not considered a final decision subject to appeal to BWSR.

6.0 ENFORCEMENT

6.1 A landowner who does not comply with the Corrective Action Notice issued under section 5.0 shall be remedied as a misdemeanor and shall be punishable as defined by law.

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 \$1000.00 and/or 90 days imprisonment or both. 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, Lake County, in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, or abate such violations or threatened violations. The County may and is empowered to issue citations for violations of this Ordinance.

Adopted by the Lake County Board of Commissioners this 14th Day of

November 2017.



**Chairperson
Lake County Board of Commissioners**

Attest:



**Laurel D. Buchanan
Clerk of the Board of Commissioners**

Approved as to Form:



**Russell Conrow
Lake County Attorney**



**Board of Commissioners
 Lake County Service Center
 616 Third Avenue
 Two Harbors, MN 55616**

Phone: 218-834-8320 Fax: 218-834-8360
 Website: www.co.lake.mn.us

First District – Peter R. Walsh
 Second District – Derrick (Rick) L. Goutermont
 Third District – Richard (Rick) C. Hogenson
 Fourth District – Jeremy M. Hurd
 Fifth District – Rich Sve

**RESOLUTION NO. 17111403
 RESOLUTION ADOPTING RECOMMENDATION BY THE
 PLANNING COMMISSION AND APPROVING LAKE COUNTY BUFFER ORDINANCE #23**

WHEREAS, The Planning Commission held a public hearing on November 14, 2017 to review the Lake County Buffer Ordinance #23 and;

WHEREAS, the Planning Commission reviewed the Lake County Buffer Ordinance #23 and support the compliance provisions regarding riparian vegetated buffers and alternative water quality practices for those water bodies identified in the Department of Natural Resources' Buffer Protection Map and support the implementation and enforcement of the water resources riparian protection requirements of Minn. Stat.§103F.48.

NOW THEREFORE BE IT RESOLVED that the Lake County Board of Commissioners adopts the recommendation made by the Planning Commission and approves the Lake County Buffer Ordinance #23.

ADOPTED: November 14, 2017

Commissioner Hurd moved the approval of the foregoing resolution and the same was declared adopted upon unanimous vote of all members present. Absent: None

STATE OF MINNESOTA }
 County of Lake } ss.
 Office of Clerk of the Board }

I, Laurel D. Buchanan, Clerk of the Lake County Board of Commissioners, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 14th day of November, 2017, and the same is a true and correct copy of the whole thereof.

WITNESS MY HAND AND SEAL OF MY OFFICE
 at Two Harbors, Minnesota, this 14th day of November,
2017.


 Laurel D. Buchanan, Clerk of the Board

Laurel D. Buchanan
 Clerk of the Board of Commissioners
laurel.buchanan@co.lake.mn.us

AFFIDAVIT OF PUBLICATION
STATE OF MINNESOTA)
)SS.
COUNTY OF LAKE)

A000188912

T000044523

Christine Mallory, being duly sworn, on oath says that he is the Editor or authorized agent or employee of the publisher of the newspaper known as the North Shore Journal, and has full knowledge of the facts which are stated below.

(A) The newspaper has complied with all the requirements constituting qualifications as a qualified newspaper, as provided by Minnesota Statute 331.A.02, 331.A.07, and other applicable laws, as amended.

(B) The printed

NOTICE OF PUBLIC HEARING ON DRAFT BUFFER LAW

which is attached was cut from the columns of said newspaper, and was printed and published once each week, for 1 successive week; it was first published on Friday, the 27th day of October, 2017; and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and type used in the composition and publication of the notice.

abcdefghijklmnopqrstuvwxyz
abcdefghijklmnopqrstuvwxyz

NOTICES

NOTICE OF A PUBLIC HEARING ON DRAFT BUFFER LAW ORDINANCE #23 IN LAKE COUNTY, MINNESOTA.

Notice is hereby given that the Lake County Planning Commission will conduct a public hearing on behalf of, and authorized by, the Lake County Board of Commissioners on November 14, 2017, at 1:00 p.m. in the Lake County Service Center, Split Rock River Room, 816 3rd Avenue, Two Harbors, MN 55616, at which time interested parties shall have the opportunity to discuss and provide input on Buffer Law Ordinance #23 which requires vegetated buffers and alternative water quality practices for all public drainage ditches and waters identified on the Department of Natural Resources Buffer Protection Map. The Planning Commission is seeking public review and input on the final draft of the Buffer Law Ordinance #23 before making a recommendation to the Lake County Board of Commissioners.

Christine McCarthy, Lake County Zoning Administrator - dated this 27th day of October, 2017.

Joseph Skala, Chairman, Lake County Planning Commission.

Northshore Journal:
October 27, 2017

BY: *Christine Mallory*
Editor/Authorized Agent

Subscribed and sworn to before me on
This 8th day of
November, 2017

Jessalyn Hansen
Notary Public

