

## Guidance to Counties on Buffer-Related Ordinances

The Minnesota Board of Water and Soil Resources (BWSR) and Minnesota Department of Natural Resources (DNR) have developed a comprehensive package of model ordinance language and operational guidance that counties may use to implement the Buffer Law (Minnesota Statutes, §103F.48). The intent of this package is to provide counties with a menu of implementation options and model language that is simple, consistent, and compliant with state law on buffers, shorelands, and public drainage systems.

This document provides specific guidance to counties on ordinance options and available model language. This guidance is not intended to provide legal advice. Counties are strongly encouraged to seek legal advice regarding the implementation of model ordinance language into their own ordinance.

### Counties Electing Jurisdiction

For counties electing jurisdiction to enforce the Buffer Law, a model buffer ordinance is available on the BWSR website. **This model buffer ordinance is designed to be a stand-alone chapter of a county's zoning ordinance, separate from the shoreland ordinance chapter.**

Although they are related, the Buffer Law and Shoreland Act are governed by two separate statutes with different purposes and state agency regulatory authorities. As such, counties are encouraged to keep ordinance provisions related to each program separate and distinct to minimize administrative confusion and retain program integrity long-term.

Regarding the width of buffers for public waters, counties have options under Minn. Stat. § 103F.48, subd. 3:

- **50' average/30' minimum buffer width:** If a county simply wants to enforce the 50' average/30' minimum buffer width in the Buffer Law, the model buffer ordinance contains this width by default. To alleviate potential confusion, a county should consider amending the 50' agricultural buffer requirement in its shoreland ordinance to be consistent with the 50' average/30' minimum requirement in the buffer ordinance. The DNR finds such an amendment to be substantially compliant with the statewide shoreland rules and has developed guidance and model language for amending a shoreland ordinance for consistency with Minnesota's buffer law – attached and following this guidance.
- **≥ 50' minimum width:** If a county's shoreland ordinance requires a 50' or greater minimum width instead of the 50' average/30' minimum width in the Buffer Law, the county should plug the higher value into its buffer ordinance and eliminate the need to cross-reference the shoreland ordinance.

BWSR is the agency responsible for reviewing and approving local buffer ordinances. DNR is the agency responsible for reviewing and approving amendments to local shoreland ordinances.

## Counties Not Electing Jurisdiction

Counties not electing jurisdiction to enforce the Buffer Law will not need to adopt a buffer ordinance and do not need to amend their shoreland ordinances. To alleviate potential confusion over varying standards in different laws, counties should work with their local SWCD and the entity taking on enforcement (watershed district and/or BWSR) to clarify which width will be enforced. The county may consider amending the 50' agricultural buffer requirement in its shoreland ordinance to be consistent with the 50' average/30' minimum standard in the buffer law. The DNR finds such an amendment to be substantially compliant with the statewide shoreland rules and has developed guidance and model language for amending a shoreland ordinance for consistency with Minnesota's buffer law – attached and following this guidance. DNR is the agency responsible for reviewing and approving amendments to local shoreland ordinances.

## More on Shoreland Ordinances & Enforcement

**Enforcing shoreland ordinances:** Whether or not a county elects jurisdiction to enforce the Buffer Law, all counties are still responsible for enforcing their shoreland ordinances (and wild and scenic river ordinances, if applicable), including any additional vegetative cutting and land alteration restrictions. These restrictions pertain to all properties in shoreland and wild and scenic river districts, not just properties with permitted agricultural uses.

**Coordination with SWCDs and BWSR:** It will be important for counties to coordinate with their SWCDs and BWSR to ensure that more protective buffer standards in their shoreland ordinances are adhered to when determining compliance and enforcement actions under the Buffer Law. This is especially true for counties that do not elect jurisdiction.

**Restrictions on alternative practices in shoreland ordinances:** Counties have the authority to prohibit or place restrictions on the use of alternative riparian water quality practices as provided in Minn. Stat. § 103F.48, subd. 3.(b) in their shoreland ordinances (see the following links: [394 - 2016 Minnesota Statutes](#), [103F.211, subp. 1 - 2016 Minnesota Statutes](#), and [6120.2800, subp. 1 - Minnesota Administrative Rules](#)).

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## Guidance & Model Language for Amending a Shoreland Ordinance for Consistency with Minnesota's Buffer Law – For Permitted Agricultural Uses

If a local government's shoreland ordinance currently requires a 50-foot or greater buffer on parcels with permitted agricultural uses, the local government can keep this standard or amend its ordinance to be consistent with the 50-foot average/30-foot minimum in the Buffer Law (Minn. Stat. § 103F.48). A local government may also amend its shoreland ordinance to incorporate the use of "alternative riparian water quality practices" consistent with the Buffer Law. The Minnesota Department of Natural Resources (DNR) finds these amendments to be substantially compliant with the statewide shoreland rules. There are two steps to amend a shoreland ordinance, each explained in detail in this document:

- 1) amending the ordinance text (per model language), and
- 2) receiving DNR approval of the proposed amendment.

**Note:** *The DNR and the Board of Water and Soil Resources (BWSR) have worked jointly to develop a comprehensive package of guidance and model ordinance language for implementing the Buffer Law. The intent is to provide communities with a menu of implementation options and model language that is simple, consistent, and complies with state law on buffers, shorelands, and public ditches. This guidance and model language is not intended to provide legal advice. Local governments are encouraged to consult with their own legal counsel regarding any ordinance language for implementing the Buffer Law. Check with your local BWSR Board Conservationist or DNR Area Hydrologist for more information.*

### Step 1: Amending the Shoreland Ordinance Text – Model Language

The DNR will accept the following model language as being substantially compliant with the statewide shoreland rules. Additions and deletions shown are to language in Minnesota Rule, part 6120.3300, subp. 7:

- A. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet an area with a 50-foot average width and a 30-foot minimum width, as measured from the ordinary high water level if identified, or the top or crown of bank or normal water level as provided in Minnesota Statutes, section 103F.48, subd. 3(c), whichever is applicable.
- B. General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in perennial ~~permanent~~ vegetation or operated under an approved conservation plan ~~(Resource Management Systems)~~ that includes alternative riparian water quality practices\* based on the Natural Resources Conservation Service ~~consistent with the field office technical guide (FOTG)s of the local soil and water conservation districts or the Natural Resource Conservation Service,~~ practices approved by the Board of Water and Soil Resources (BWSR), or practices based on local conditions ~~United States Soil Conservation Service,~~ approved by the local soil and water conservation district that are consistent with the FOTG.

\* Communities may prohibit or place restrictions on the use of alternative practices, such as requiring a minimum buffer. Goodhue County has done this using the following language:

*Incorporation of approved alternative practices may reduce the overall buffer width, however the minimum width cannot be less than 30 feet.*

This model language only affects agricultural land in shorelands. It does not affect land within a designated Wild and Scenic River District or the National Lower St. Croix Riverway. Required buffers and vegetative cutting restrictions in these areas may be more protective than the 50-foot average/30-foot minimum buffer and also apply.

## **Step 2: DNR Approval of Proposed Amendment – Process to Be Followed**

The process for receiving DNR approval of amendments to shoreland ordinances follows:

1. Notify the DNR of the proposed amendments. State rules and your shoreland ordinance require you to notify the DNR *ten (10) days prior* to the public hearing to consider ordinance amendments. Notify the DNR by sending the notice of public hearing to consider the amendment and the proposed amendment text to your local DNR Area Hydrologist.
2. DNR reviews proposed amendments. The DNR Area Hydrologist will review the proposed amendments for consistency with the Buffer Law and the shoreland rules. If the amendments are consistent, the DNR will send you a letter conditionally approving the amendments prior to the public hearing.
3. Local government adopts amendments. The county board or city council adopts the amendments conditionally approved by the DNR.
4. DNR gives final approval. State rules and your shoreland ordinance require you to send the DNR the ordinance amendments within 10 days of adoption. Send the approved amendment and resolution approving the amendment to your local DNR Area Hydrologist. The DNR Area Hydrologist will review the approved amendment for consistency with the language that was previously conditionally approved. If consistent, the DNR will send you a final approval letter.

**Note:** *If a community adopts the model language provided in this document with no other proposed amendments, DNR review and approval will be streamlined.*

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