

## Buffer Program Enforcement Update August 9, 2017

This Buffer Program Update is to provide information to counties, watershed districts and soil and water conservation districts regarding the status of local government enforcement of the Buffer Law, next steps for local governments, and Board of Water and Soil Resources (BWSR) responsibilities and procedures for carrying out those responsibilities. As always, frequent communication and coordination will help ensure these next steps in the Buffer Program are completed as smoothly as possible. With that in mind, local government officials and staff are encouraged to stay in touch with your local partners and BWSR staff.

### Election of Jurisdiction Status

As of June 28, 2017, a total of 72 out of 87 counties and 14 out of 46 watershed districts have elected jurisdiction to enforce the Buffer Law. A map showing this information is available on the BWSR website: [http://bwsr.state.mn.us/maps/Website/Land%20&%20Water/Buffers/Election\\_of\\_Jurisdiction\\_7-24-2017.pdf](http://bwsr.state.mn.us/maps/Website/Land%20&%20Water/Buffers/Election_of_Jurisdiction_7-24-2017.pdf)

### Next Steps for Counties and Watershed Districts

It is essential that counties and watershed districts that have elected jurisdiction and will be enforcing the buffer requirement on lands adjacent to public waters as shown on the Buffer Protection Map (<http://www.dnr.state.mn.us/buffers/index.html>) have a rule, ordinance or official control in effect on or before November 1, 2017. Development of your ordinance and rule should include the following steps:

1. Develop your draft ordinance/rule, using the model language (<http://bwsr.state.mn.us/buffers/>) as a starting point.
2. Send that draft ordinance/rule to this email address [buffers.bwsr@state.mn.us](mailto:buffers.bwsr@state.mn.us) and request a preliminary review by BWSR staff. Comments will be provided as soon as possible, but please provide any public hearing dates or other meetings where having BWSR comments would be desirable.
3. Incorporate the comments to the draft ordinance/rule, if any, provided by BWSR staff.
4. Re-submit your draft ordinance/rule for BWSR review if, during the public hearing process, a substantive change is made to the document.
5. Following adoption by your board, submit your ordinance/rule for a final BWSR staff review. BWSR will provide its adequacy and/or consistency determination within 60 days as provided in Procedure 9: BWSR's Review of County and Watershed Districts Buffer Rules, Ordinances and Official Controls.

The process is laid out in this manner to ensure there is early and frequent communication with BWSR staff. The goal of frequent communication is to have a smooth local adoption process and compliance with the Buffer Law.

Key BWSR contacts include:

- Board Conservationists (see work area map - [http://bwsr.state.mn.us/maps/Website/Administrative%20Boundaries/BWSR%20Administrative/BC\\_areas.pdf](http://bwsr.state.mn.us/maps/Website/Administrative%20Boundaries/BWSR%20Administrative/BC_areas.pdf))

- Tom Gile, Buffers and Soil Erosion Coordinator (507-206-2894/[tom.gile@state.mn.us](mailto:tom.gile@state.mn.us))
- Travis Germundson, Appeals and Regulatory Compliance Coordinator (651-297-4958/[travis.germundson@state.mn.us](mailto:travis.germundson@state.mn.us))

## Ordinance and Rule Submission

Preliminary and final ordinances should be sent to BWSR at the following email address: [buffers.bwsr@state.mn.us](mailto:buffers.bwsr@state.mn.us). You should copy your BWSR Board Conservation on this email.

## Resources

BWSR has a number of documents on our website that you will find useful as you draft your rule, ordinance or official control (<http://bwsr.state.mn.us/buffers/>). These documents include:

- Procedure 9: BWSR’s Review of County and Watershed Districts Buffer Rules, Ordinances and Official Controls: Provides important details on BWSR’s required review of your official controls, including that it must be submitted to BWSR at least 60 days prior to its effective date.
- Model Buffer Ordinance: This was developed with the DNR, and consulted with counties, and provides a useful starting point in the drafting of your buffer ordinance.
- Model Buffer Rule: This was developed in coordination with the Minnesota Association of Watershed Districts, and like the Model Buffer Ordinance provides a useful starting point in the drafting of your buffer rule.
- Administrative Penalty Order (APO) Plan for Buffer Law Implementation: This is the BWSR enforcement document for the 15 counties where the state is obligated to provide enforcement. It also includes a model APO Plan which may be used by counties and watershed districts which is identical to provisions in each of the models described above.
- Guidance for Buffer Related Ordinances and DNR Guidance for amending shoreland ordinances which are both helpful documents to review when thinking about how you would like your ordinance to be set up locally and ensuring consistency within different requirements of your ordinances.

## **BWSR Procedure 9: BWSR’s Review of County and Watershed Districts Buffer Rules, Ordinances and Official Controls:**

Counties and watershed districts are advised to review this Procedure as it provides important details on BWSR authority and process to review your rule, ordinance, and official control, including future amendments. This Procedure provides that BWSR will complete its final review within 60 days and the following information regarding submission of the rule, ordinance, or official control for BWSR review:

*Counties and watershed districts that elect to exercise their jurisdiction, must submit the following information to BWSR, at least 60 days prior to the effective date of the rule, ordinance or other official control which includes:*

- i. The resolution or other formal decision of the county or watershed district governing body documenting adoption of the rule, ordinance or other official control;*
- ii. The rule, ordinance or other official control adopted by the county or watershed district governing body; and*
- iii. If applicable, a document that describes how the rule, ordinance or other official control departs from the model ordinance or rule developed by BWSR.*

Procedure 9 provides additional details that should be reviewed as the official control development and approval process gets underway.

### **Variations in Language**

The question of using alternative language to that provided in the model ordinance often comes up. Every county and watershed district have their own way of doing business and there is not necessarily one “right way” to do things. Alternative language in a rule, ordinance or other official control will be acceptable so long as the intent of the language in the model ordinance or rule is met.

For example, “grandfathering” or nonconforming uses, the model ordinance provides the following:

**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.

As an alternative, other counties have proposed use of this language:

**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 Statutes §394 and §462 shall not apply to compliance with this ordinance and Minnesota Statutes §103F.48.

Either would be acceptable as each has the same intent.

### **Relationship with Shoreland Management**

BWSR has coordinated the development of the model ordinance and the state agency review process of your official controls with the Department of Natural Resources (DNR). In addition to submitting your ordinance to [buffers.bwsr@state.mn.us](mailto:buffers.bwsr@state.mn.us), you should also contact your DNR area hydrologist when amending your shoreland management ordinance or substantially deviating from the model county buffer ordinance. If you have any questions you should contact Tom Gile at BWSR (507-206-2894/[tom.gile@state.mn.us](mailto:tom.gile@state.mn.us)).

As stated previously, frequent communication among counties, watershed districts, soil and water conservation districts, and BWSR will help ensure that this process of implementing the Buffer Law provides water quality benefits and is done in a manner that works for landowners and local government alike.