



# Board of County Commissioners Agenda Request

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Agenda Item #

**Requested Meeting Date:** July 11, 2017

**Title of Item:** Set Public Hearing for Buffer Ordinance

<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	<b>Action Requested:</b> <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <small>*provide copy of hearing notice that was published</small>
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<b>Submitted by:</b> Terry Neff, Environmental Services Director	<b>Department:</b> Environmental Services
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<b>Presenter (Name and Title):</b> Terry Neff, Environmental Services Director	<b>Estimated Time Needed:</b> N/A
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**Summary of Issue:**

In 2015 the Legislature adopted Chapter 4 creating a water quality buffer initiative which authorizes Counties to assume jurisdiction over the compliance provisions of this initiative. On June 13, 2016, the County Board of Commissioners adopted a resolution which affirms Aitkin County's jurisdiction to administer and enforce the provisions of the water quality initiative. In doing so, the County must adopt an Ordinance to carry out the compliance provisions of the initiative. The notice and public hearing on the proposed Buffer Ordinance are the next steps in the Ordinance adoption process.

**Alternatives, Options, Effects on Others/Comments:**

Failure to hold a public hearing and adopt an Ordinance would violate the compliance provisions of Mn Statute 103B.101 and 103F.48.

**Recommended Action/Motion:**

Set a public hearing for September 12, 2017, at 9:30am.

**Financial Impact:**

Is there a cost associated with this request?     Yes     No

What is the total cost, with tax and shipping? \$ 40,000.00

Is this budgeted?     Yes     No    *Please Explain:*

**Aitkin County Environmental Services Planning and Zoning**  
**209 Second Street NW**  
**Room 100**  
**Aitkin, MN 56431**  
Phone: 218-927-7342  
Fax: 218-927-4372



**MEMORANDUM**

**DATE:** June 29, 2017  
**TO:** Aitkin County Board of Commissioners  
**FROM:** Terry Neff, Environmental Services Director   
**RE:** Public Hearing for Adoption of Aitkin County Buffer Ordinance

On June 13, 2017, the Aitkin County Board of Commissioners adopted a resolution electing jurisdiction to carry out the compliance provisions of MN Statutes 103B.101, Subd.12a and 103F.48 (the buffer law). In doing so, the County must adopt an Ordinance to carry out the compliance provisions.

Commissioner Anne Marcotte, Commissioner Bill Pratt, County Highway Engineer John Welle, SWCD Manager Steve Hughes and myself have reviewed the enclosed draft Buffer Ordinance. The draft is based off the model Ordinance created by the Board of Water and Soil Resources in order to fulfill the requirements of the above mentioned Statutes.

At the July 11, 2017 Aitkin County Board of Commissioners meeting I will request approval to hold a public hearing on the proposed Buffer Ordinance and answer any questions the Board may have on the Ordinance or adoption process. The County Board will have to determine when, and before whom, to hold the public hearing. Enclosed is a proposed notice of hearing to adopt the Buffer Ordinance.

If you have any questions prior to the meeting, please contact me at 218-927-7342 or by e-mail at [tneff@co.aitkin.mn.us](mailto:tneff@co.aitkin.mn.us).

enclosures

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August 2, 9, and 16, 2017

### **NOTICE OF HEARING**

The Aitkin County Planning Commission will hold a public hearing on the adoption of the Aitkin County Buffer Ordinance. The hearing will be conducted on August 21, 2017, at 4:00pm in the Aitkin County Board of Commissioners Room of the Aitkin County Courthouse. The Planning Commission will make a recommendation on the adoption of the Buffer Ordinance to the County Board of Commissioners for final review at a regularly scheduled board meeting on September 12, 2017, at 9:30am.

The Aitkin County Buffer Ordinance is proposed for adoption in order to meet the requirements of MN Statutes 103B101, Subd.12a and MN Statutes 103E.48. The Buffer Ordinance identifies the width of buffer areas required on public ditches as shown on a buffer protection map, describes how to measure the buffer width, explains the uses that are allowed within the buffer area, allowed exemptions to the buffer requirements and alternative buffer practices. The remainder of the Ordinance explains how the County will handle complaints, noncompliance issues and enforcement.

The above is only a summary; a full text is available for public review at the Aitkin County Planning and Zoning Office and the Aitkin County Auditor's Office in the Aitkin County Courthouse during regular business hours. A copy of the proposed Buffer Ordinance can also be viewed in its entirety on the Aitkin County website at [www.co.aitkin.mn.us](http://www.co.aitkin.mn.us). Comments can be submitted in writing to the Aitkin County Planning and Zoning Office: 209 2<sup>nd</sup> St NW, Rm 100, Aitkin, MN 56431, by facsimile (218) 927-4372, or by e-mail to [aitkinpz@co.aitkin.mn.us](mailto:aitkinpz@co.aitkin.mn.us) before 4:00pm on August 18, 2017. Please include a full name and complete mailing address with all correspondences.

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# 6/29/17 DRAFT - AITKIN COUNTY BUFFER ORDINANCE

## 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 Aitkin 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 **“Local water management authority”** has the meaning provided in Minn. Stat. 103F.48, Subd.1(g).

2.1.8 **“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.

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

2.1.10 **“SWCD”** means the Aitkin 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.**

2.3.1 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.

2.3.2 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 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 Sections 5.31 and 5.62 of the Aitkin County Shoreland Management Ordinance.

(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 Sections 5.31 and 5.62 of the Aitkin County Shoreland Management Ordinance.

(c) Compliance with subsection 4.2(a) and (b) also constitutes compliance with Aitkin County Shoreland Management Ordinance Section 5.62.

#### **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 measurement of the required buffer on land adjacent to a water requiring a sixteen and a half (16.5) foot minimum width buffer must be in the same manner as for measuring the vegetated grass strip under Minn. Stat. 103E.021.

**4.4 Use of Buffer Area.** A buffer as defined in this ordinance may not be put to any use that would remove or prevent the permanent growth of perennial

vegetation, such as cultivation farming, 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 ; or

(b) Other practices adopted by BWSR.

## **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 anytime during noncompliance, the landowner or operator may provide documentation of compliance to the SWCD. The SWCD will evaluate the documentation, or review the buffer and/or alternative practices to determine if the parcel is in compliance and issue its determination in writing to the landowner or operator. The SWCD may issue a validation of compliance if applicable and requested by the landowner or operator. A validation of compliance must also be sent to the County. The SWCD must send a copy of a noncompliance determination to the County and BWSR.

**5.2 Corrective Action Notice.** On receipt of a notification of noncompliance, the County will issue the landowner of record 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 time line for complying with this notice;

(c) provide a compliance standard against which it will judge the corrective action; and

(d) include a statement that failure to respond to this notice will result in 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 during noncompliance, the landowner or operator may provide documentation of compliance to the SWCD or County. In addition, the landowner or operator may supply information 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, in writing, may modify the corrective action notice and timeline in accordance with this section. The SWCD should determine if the noncompliance has been fully corrected and issue its determination in writing to the landowner or operator and the County.

5.2.2 The SWCD may issue a validation of compliance if requested by the landowner. On County receipt of the validation 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, Aitkin 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 Aitkin County Board of Commissioners this \_\_\_th\_\_\_ Day of  
\_\_\_\_\_, 2017.

\_\_\_\_\_  
**Chairperson**  
**Aitkin County Board of Commissioners**

**Attest:**

\_\_\_\_\_  
**Kirk Peysar**  
**Aitkin County Auditor**

**Approved as to Form:**

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**Jim Ratz**  
**Aitkin County Attorney**