

MEMORANDUM OF UNDERSTANDING
between
KITTSON COUNTY
and
KITTSON SOIL AND WATER CONSERVATION DISTRICT

WHEREAS, Kittson County (“County”) has adopted a Buffer Ordinance for buffer enforcement pursuant to Minnesota Statute 103F.48 (“Buffer Law”);

WHEREAS, the Ordinance was prepared with the support of the Kittson Soil and Water Conservation District (“SWCD”) due to the SWCD’s unique technical expertise and obligation under the Buffer Law;

WHEREAS, the Ordinance provides for the coordination between the County and SCWD in an effort to effectively administer the requirements of the Ordinance and State law by utilizing the SWCD’s technical expertise and the County’s enforcement authority;

WHEREAS, the Minnesota Board of Soil and Water Resources issued a letter determination of the adequacy of the Ordinance dated December 14, 2017 and granted the County jurisdiction in accordance with Minnesota Statute 103F.48 Subd. 1(j); and

WHEREAS, the County and SWCD enter into this Memorandum of Understanding to document each party’s role in the administration of the Ordinance.

NOW, THEREFORE BE IT RESOLVED, the parties agree as follows:

- 1. Acceptance of Ordinance.** The County has provided the SWCD with a copy of the Ordinance. Both the County and SWCD agree to abide by the terms of the Ordinance and agree that the Ordinance controls the relationship of the parties in the administration of the Buffer Law. The County and SWCD agree to consult in the on-going review, and revision if necessary, of the Ordinance.
- 2. Allocation of Responsibilities.** Under the Ordinance, and in accordance with the Buffer Law, the SWCD is responsible for inspecting and investigating buffers (Ordinance Section 5.1), determining the compliance status of buffers (Ordinance Section 5.1), issuing Notifications of Noncompliance (Ordinance Section 5.2); and issuing Validations of Compliance of buffers (Ordinance Sections 5.2.1) within Kittson County. The County is responsible for the issuance of Corrective Action Notices (Ordinance Sections 5.3) and enforcement of the Ordinance (Ordinance Section 6).
- 3. Certain Administrative Responsibilities Delegated.** The SWCD agrees to fulfil the duties listed below for the county required by Minn. Stat. §103F.48 Subd. 7 and the Ordinance:

- a. Provide County with draft letter of noncompliance and corrective action plan.
 - b. Send Letters of noncompliance to landowners after Kittson County has signed them.
 - c. Confirm Landowner compliance or completion of corrective actions.
 - d. Facilitate enforcement actions, including, but not limited to:
 - i. Conduct of required hearings.
 - ii. Preparation of findings and Administrative Penalty Orders (APO).
 - iii. Provide recommendations for administrative penalty.
 - iv. Track timing and triggers for initial, subsequent and repeat violation penalties.
 - e. Maintain all records related to compliance, enforcement and issuance and satisfaction of APOs.
- 4. County Retained Obligations.** The County shall retain the obligations listed below:
- a. Execute all instruments required by ordinance including, but not limited to, letters of noncompliance, corrective action plans, findings and APOs.
 - b. Impose and collect administrative penalties through available legal means.
- 5. Compensation to SWCD.** The County shall compensate the SWCD annually for its services by remitter of 95% of the state allocation to the County, after distribution to other enforcement authorities within the County. Annual compensation shall continue at the same rate, unless the parties mutually agree to a different.
- 6. Timing.** The County and SWCD each acknowledge that prompt responses and actions by each party are critical to the effective administration of the Ordinance and to minimize hardships to landowners. The parties shall endeavor to act in a timely manner to prevent bottlenecks or backlogs in the procedures established by the Ordinance. Nothing in the Ordinance shall be construed as a “request” pursuant to Minnesota Statute 15.99.
- 7. Liability.** The County and SWCD shall each remain liable for its own acts. It is understood and agreed that nothing in this Memorandum shall affect or otherwise constitute a waiver of the limits on the liability of either party provided by Minnesota Statutes Chapter 466 or other applicable law. Nothing in this Memorandum shall constitute a waiver of any available immunities or defenses.

- 8. Advice of County Attorney.** The County Attorney may provide legal advice and support to the SWCD for administration and enforcement (Minn. Stat. 103C.321 Subd. 4). The County Attorney may charge a reasonable fee for such assistance to be paid by the SWCD.
- 9. Data Practices.** The County and SWCD acknowledge that the sharing of data between the two entities is critical to the effective administration of the Ordinance and each party agrees to comply with the Minnesota Data Practices Act (Minnesota Statutes Chapter 13) and data retention requirements of Minnesota Statute 15.17 for all data received, created, or shared pursuant to the Ordinance and this Memorandum.
- 10. Dispute Resolution.** The County and SWCD enter into this Memorandum for the collaborative purpose of administering the requirements of the Buffer Law. To the extent that any dispute arises between the County and SWCD, the parties agree representative from the County Board and the SWCD Board will meet in person to address any such dispute before seeking input from the Board of Soil and Water Resources or initiating any form of legal action.

This Memorandum of Understanding is approved as of April 17, 2018.

KITTSON COUNTY



Board Chair



County Administrator

KITTSON-SWCD



Board Chair



Executive Director

