

**BUFFALO CREEK
WATERSHED DISTRICT
RULES & REGULATIONS**


**REVISED
MARCH 27, 2018**



These Rules and Regulations are adopted pursuant to Minnesota Statute 2009, Chapter 103D.341, on this 27th day of March, 2018.



BWCD President



BWCD Secretary

**Buffalo Creek Watershed District
Board of Managers
~ as of March 27, 2018 ~**

**Donald Belter, Sibley County
Corey Henke, McLeod County
Larry Kramer, Renville County
Matt Melberg, Renville County
Larry Phillips, McLeod County**

Buffalo Creek Watershed District Rules & Regulations

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SECTION ONE: ADMINISTRATION

- 1.01 Official Website:** The Buffalo Creek Watershed District (BCWD or District) maintains an official website that contains the District’s rules and regulations, permit information, and the required application forms. The BCWD’s official website is located at:

www.bcwatershed.org

- 1.02 Origins of the District:** BCWD was established under the order of the Minnesota Water Resources Board (now known as the Minnesota Board of Water and Soil Resources or BWSR) on January 30, 1969. The District developed its first Overall Plan, in accordance with Minnesota Statutes Section 112.46, which was adopted on February 8, 1974. The Plan provided the District with a basis for making decisions on the management of its water resources until the Plan was revised in 1991. The third-generation plan was adopted in January 2004 and covered a 10-year period. The fourth-generation plan was adopted in May 2014, but was revised a year later to include the formation of the Marsh Water Management District (formally adopted on May 26, 2015). The current plan is set to expire in May 2024.

- 1.03 Jurisdiction:** The jurisdiction of these Rules and Regulations includes all the area, incorporated and unincorporated, including both land and water, within the territory of the Buffalo Creek Watershed District. The map found in Appendix A shows the District’s legal boundary (or visit www.bcwatershed.org to view a larger map). There was a minor boundary change located in the City of Stewart, Minnesota, which took place between BCWD and High Island Watershed District, with official BWSR Board approval in January 1999. The District spans approximately 422 square miles within parts of five counties: Renville (55%), McLeod (38%), Sibley (4%), Kandiyohi (2%), and Carver (1%) Counties.

1.04 Organizational Structure: Renville and McLeod County Boards of Commissioners each appoint two BCWD Board of Managers while Sibley County Board of Commissioners appoints one manager. Each manager is required to be a resident of the District. In addition, they are also prohibited from being a public official of the county, State or Federal government (exception: Soil and Water Conservation District Supervisors may also be BWCD managers). Board of Managers serve three-year terms, which are renewable upon reappointment by their respective County Board of Commissioners.

1.05 Mission Statement: The BCWD was formed with the Mission to: 1) help alleviate water problems, 2) enhance the living conditions of the area and 3) maintain or improve the economic well-being of the residents of the District. The District has in the past and will continue to strive towards the realization of this Mission by:

- A. Coordinating activities and issues between the public, interest groups, and governmental agencies;
- B. Providing technical and financial assistance, when feasible, towards important water-related issues and projects within the District;
- C. Collecting, analyzing, and reporting data on the quality and quantity of water resources throughout the District.

1.06 Intergovernmental Cooperation: The District will coordinate the administration of its Rules and Regulations with all involved local, state, and federal governmental units and agencies having jurisdiction in the District.

- A. The District shall review and provide comment to counties, cities, and townships for proposed land use activities, which have the potential to impact water quality and/or quantity in the District.
- B. The District shall have the opportunity to review and provide comment on any proposed change to ordinances regulating surface water, drainage, land use and development, stormwater management and/or similar issues.

- C. The District shall have the authority to administer all local, state, and federal provisions granted to watershed districts and/or specially granted to the Buffalo Creek Watershed District.

1.07 Due Process: It is the intention of the Board of Managers that no person shall be deprived or divested of any preciously established beneficial use or right, by any rule or regulation of the District, without due process of the law, and that all Rules and Regulations for the District shall be construed according to said intention.

- A. It shall be the function of the Board of Managers to exercise control over proposed improvements only to the extent necessary to protect the waters of the Watershed District from unreasonable impacts that are inconsistent with the policies contained in the Overall Plan and the Rules and Regulations.
- B. The Board of Managers shall review permit applications filed with the Minnesota DNR, pursuant to Minnesota Statutes 1990, Chapter 103G.001, that may impact water management decisions in the District as well as other development plans and proposed improvements. The Board of Managers desire to become informed of improvements and land development proposals during the early planning stages. The application shall be the primary vehicle for submission of proposed improvements to the Board of Managers.
- C. The Board of Managers will submit to the applicant their comments, recommendations, requirements and all other District actions regarding the proposed improvements.
- D. The Board of Managers will coordinate their review with the applicant and, when appropriate, the applicant will coordinate with all other regulating authorities.

1.08 Definitions: Appendix B contains a list of definitions, acronyms, and terminology used throughout these Rules and Regulations. If a definition, acronym, and/or terminology is not defined, the common usage of the definition, acronym, and/or terminology shall prevail.

1.09 Effective Date: The Buffalo Creek Watershed District Rules and Regulations shall be in full force and effect after adoption on April 27, 2018, and shall replace the Rules and Regulations adopted on January 25, 2011 (which replaced the Rules and Regulations adopted on May 25, 1993).

SECTION TWO:

PURPOSE, GOALS, AND OBJECTIVES OF THE BUFFALO CREEK WATERSHED DISTRICT

- 2.01 Purpose:** The District is required by Minnesota Chapter Statutes 103D to maintain administrative rules. In addition, the District's Overall Plan identifies several areas where rules are necessary to successfully achieve the District's statutory Mission Statement (*refer to Section 1.05*). These areas include, but are not limited to: agricultural drainage; erosion and sediment control; stormwater management; and reducing other sources of pollution and problems that affect both water quality and quantity. The District's rules are intended to fill gaps in existing local, state, and federal regulations and are not intended to duplicate existing regulations.
- 2.02 Goals:** The District's Rules and Regulations were developed with the following goals:
- A. To provide guidelines for the implementation of the District's Overall Plan; and
 - B. To inform permit applicants of the criteria which their proposed project will be reviewed; and
 - C. To inform the District's staff and/or hired consultants of the criteria on which they should base their review and recommendation; and
 - D. To aid the Board Managers in their review process.
- 2.03 Objectives:** Buffalo Creek Watershed District has enacted these rules to carry out the Mission Statement for which the District was created under Minnesota Statutes Chapter 103D and to implement the policies of the District's Overall Plan. Specifically, the District's Rules and Regulations have the following objectives: *

- A. To accomplish the Mission Statement for which the Watershed District was created (*refer to Section 1.05*).
 - B. To implement the policies contained in the District's Overall Plan.
 - C. To coordinate the District's activities with other governmental agencies.
 - D. To ensure that water resources are considered, protected and enhanced, when needed, during land use and development in the District.
 - E. To ensure that future regional water management needs are considered in the development of individual subdivisions, farms and all local water management plans.
 - F. To protect public health, safety, and general welfare.
- * The BCWD will work with applicants, landowners and stakeholders to secure funding to help minimize project costs.

SECTION THREE:

VALIDITY AND AMENDMENT PROCEDURE

3.01 Validity and Separability: All rules adopted by the District shall have the force and effect of law. If, for any reason, a section or subdivision of these rules should be held invalid, such decision shall not affect the validity of the remaining rules.

3.02 Amendment Procedure: The following amendment procedures shall apply to all rule adoption and/or rule amendments:

- A. Any property owner in the District, Board Manager, or District staff/consultant may propose rules or amendments to the Board. A copy of the proposed rules or amendments shall be submitted to each Board Manager, along with a statement justifying the proposed rule or amendment.
- B. At the Board's discretion, depending on the potential impact of the proposed rule, District staff may be directed to conduct stakeholder meetings to solicit input from persons and political subdivisions likely to be affected by the proposed rule.
- C. In accordance with Minnesota Chapter Statutes 103D, the District shall submit the proposed rules to the Board of Soil and Water Resources and transportation authorities within the District for comments 45 days before the Board Managers vote to adopt the proposed rules.
- D. The Board shall hold a public hearing prior to the adoption of all rules or amendments. The time, date, and location of the public hearing shall be determined by the District's Board Managers and notice shall be provided by publication in a legal newspaper of general circulation in each county with territory in the District.
- E. The Board Managers shall adopt or reject the proposed rules or amendments after a legally publicized public hearing and a majority vote of the Board Managers. Upon being signed by the District's Chair and Secretary, the proposed rules or amendments are deemed adopted.

- F. The adopted rules or amendments shall become effective and have the full affect and force of law after publication in a legal newspaper of general circulation in each county having territory in the District.
- G. A copy of the proposed and adopted rules or amendments shall be forwarded to each of the following persons: the County Auditor and the County Commissioners of each county having territory in the District; every Township Board Clerk, City Clerk, and Regional Development Commission Chairman within the District; the Board of Soil and Water Resources; the Commissioner of the Minnesota Department of Natural Resources Board; the Executive Director of the Minnesota Pollution Control Agency; the Commissioner of the Minnesota Department of Health, SWCD, all Zoning and Planning Boards in the District, the Administrator of the Minnesota Environmental Quality Board, and other entities that the Board deems appropriate.

SECTION FOUR: THE DISTRICT'S PERMITTING PROCESS

4.01 Justification and Prior Approval: The requirement for a permit for certain activities within the District is not intended to delay or inhibit development. The District finds that a permit program is needed to successfully achieve the District's statutory Mission Statement (*refer to Section 1.05*). No work or activity requiring a permit shall be commenced prior to issuance of the permit. If work does commence prior to permit approval, an after-the-fact fee can be assessed in addition to any fees associated with acquiring the required permit.¹ Both landowners and contactors will be held liable for all expenses related to bringing a project into compliance if it has proceeded without a District permit.

4.02 Application Process: Any permit required by these rules will be issued in accordance with the procedural process of this Section and all applications are subject to the following requirements:

A. Prior to the submission of any application, the applicant must be familiar with the District's rules, application requirements, and the standards for the approval of an application. The applicant is encouraged to contact and/or meet with the District Staff if necessary. A copy of the District's current Rules, permit requirements, and application forms are maintained on the District's official website at:

www.bcwatershed.org

B. **All applications for a District permit must be submitted on an application form approved by the District.**

C. All applications must be accompanied by a fee according to the District's current fee schedule.²

¹ *The after-the-fact fee is required due to the District having to spend additional time/money trying to determine preexisting conditions. The fee is not intended to be punitive in nature.*

² *The District's current Fee Schedule is available online at www.bcwatershed.org*

- D. Any application that requires Board review must be submitted, and deemed complete, 15 business days prior to the next regularly scheduled Board Meeting in order to be placed on the agenda. If an application is deemed to be incomplete, a written letter will be sent to the applicant outlining what additional information is required. Any change in the application may trigger a new review process.
- E. Drawings or plans are required to be submitted with every permit application. The drawings or plans are not required to be prepared by an engineer, but they must adequately depict the information required by the District's application form.
- F. Emails are initially accepted if the originals are placed in the mail the same day.
- G. An initial site inspection, in-progress site inspections, final site inspection, and post-project monitoring inspections may be required as part of the approval of a permit application. A site inspection fee is charged to the applicant for each required site inspection. The fee shall be equal to the District's actual costs as outlined in the District's Fee Schedule.

4.03 Staff and/or Administrative Review: It is administratively difficult for the Board to review every permit application. As a result, District Staff shall review all applications and make recommendations for approval or denial, including suggesting conditions that should be required. In addition, Staff may work with consultants on the administrative review of a permit. Any fees charged to the District may be passed to the applicant.

4.04 Board Approval: The Board will review and discuss all permit applications and may rely upon comments and/or advice from staff, legal counsel, consultants, governmental agencies, local units of government, and the general public.

- A. The Board shall review permit applications at regularly scheduled meetings.
- B. The applicant or a representative of the applicant must be present at the meeting to answer questions about the permit application. If no one is present and additional information on the permit is requested by the Board, the applicant will be contacted to

explain what additional information is required. This may ultimately delay the Board's final decision on the permit until all of the information required for the application is available.

- C. The Board may add reasonable conditions to the approval of a permit to address site-specific or activity-specific concerns.
- D. All Board approved permits shall be deemed issued when signed by the Board and all conditions of the permit have been satisfied.
- E. If the District denies an application, written reasons for the denial will be provided.

4.05 Conditions: A permit may be approved subject to reasonable conditions necessary to ensure compliance with the requirements and intent of these rules. All conditions of the permit must be satisfied before the permit is deemed to be issued and the applicant can begin work.

- A. A site inspection may be required any time before, during, or after a project is complete in order to ensure that the applicant will and/or has complied with the conditions of the permit. Applicants are responsible for associated site inspection fees as outlined in the District's Fee Schedule.
- B. The requirements of any other permit (i.e., NPDES permit, wetland permit, public water permit, etc) required for the proposed activity are incorporated into the District permit. A violation of other required permits is a violation of the District permit.
- C. By requesting and receiving a District permit, an applicant affirmatively grants the District a right of entry onto the applicant's property for the purpose of performing site inspections.
- D. A performance surety may be required as outlined in Section 4.07.
- E. The Board of Managers may charge a fee for field inspections, if one is required. This fee will vary from permit to permit based upon actual costs, a per diem, or the District's current fee schedule.

- F. The Board of Managers will also charge for after-the-fact permits. The fee for after-the-fact permits shall be up to \$1,000 plus all other expenses incurred by the Watershed District. All cost incurred shall be paid before the permit is issued.
- G. If conditions of the permit have not been met, the District has the authority to fix the situation at the applicant's expense.

4.06 Deadlines for Action: The District will seek to approve or deny a permit application within 60 days after receipt of a complete application and full payment of fees.

- A. An application that requires a site inspection is not deemed complete until a site inspection is completed by a person and/or business authorized by the District. When weather or other uncontrollable natural conditions makes a site inspection difficult or impossible, the timeline under this Section and Minnesota Statute 15.99 is tolled until conditions allow for the site inspection. Within 15 business days of receiving an application, the District will notify the applicant in writing if the application is incomplete or if the application requires a site inspection (and is therefore deemed incomplete until the site inspection is performed).
- B. The District will comply with Minnesota Statutes Section 15.99 when it is applicable. Failure to meet an approval deadline shall not authorize any activity for which a permit cannot be granted due to the activity being prohibited under applicable law.
- C. If a state or federal law or court order requires a process to occur before the District acts upon an application, or if an application requires prior approval of a state or federal agency, any applicable deadline for the District to approve or deny is extended to 60 days after the completion of the required process or approval is granted.
- D. Any change in the application may trigger a new review process.
- E. If necessary, the District may extend any applicable initial 60-day period according to the provisions found in Minnesota Statutes Section 15.99.

4.07 Performance Surety: In accordance with Minnesota Statute 103D.345 Subdivision 4, the District may require a performance surety, such as a bond or an irrevocable letter of credit, to secure performance of permit conditions and compliance with District rules and regulations. All political subdivisions are exempt from the requirements of this subdivision.

- A. When a performance surety is required, the surety must be provided to the District before the permit is deemed to be issued and the applicant can begin work.
- B. When the Board requires a performance surety, it shall be for an amount sufficient to cover the potential costs to resolve any problems that may result from a violation of the permit.
- C. The performance surety must be in a form acceptable to the District and from a surety company licensed to do business in Minnesota.
- D. The performance surety must allow the District to claim the performance surety if the conditions of the permit are not met.
- E. The District will release the performance surety in writing after all work is completed in compliance with the permit and District's rules and regulations. The District, in writing, may release a portion of the surety if the entire surety, in the District's sole discretion, is no longer necessary to secure compliance with the permit and District rules.

4.08 Applicant Agreement: When a permit is conditionally approved, the applicant is entering into an agreement with the District. The conditions of the permit must thereafter be executed before the permit is deemed to be issued and the applicant can begin work. The Board may require as a condition of the permit that an applicant and/or landowner, including any mortgagee, enter into an additional agreement with the District to specify the following items:

- A. Specify the responsibility for the construction and future maintenance of the project; and
- B. Document other continuing obligations of the applicant or owner; and

- C. Grant reasonable access to the proper authorities for inspection, monitoring and enforcement purposes; and
- D. Affirm that the District or other political subdivisions can require or perform the necessary repairs or reconstruction of the project, if necessary; and
- E. Reimburse the reasonable costs incurred to enforce the agreement; and
- F. Require indemnification of the District for claims arising from issuance of the permit or construction and use of the approved structures.

4.09 Assignment and Transfer of Permits: An assignment or transfer of a permit without a change in the approved plans may be approved by the District. No assignment or transfer of a permit is allowed where the approved plans are changed. A change in the approved plans requires a new permit application. If transferred, the responsibility of the permit transfers unless authorized by the District or the permit is currently in violation. No assignment or transfer shall relieve the original applicant from liability under the permit.

4.10 Expiration of Permits: Permits are valid for 12 months unless otherwise specified in the permit. Permit extensions may be granted by the District. Extension requests must be made in writing at least 30 days before the expiration of the permit. Additional conditions may be added to the permit when an extension is requested.

4.11 Appeals: Any person adversely affected by the approval or denial of a permit by the District may appeal the District's decision in accordance with the appellate procedure provided by Minnesota Statutes Sections 103D.537 and 103D.539.

4.12 Exemptions: The Board of Managers may hear requests for an exemption from the literal provisions of these Rules and Regulations in the rare circumstance where the strict enforcement would cause undue hardship because of conditions unique to the property under

consideration. In order to grant an exemption, the Board must find the request meets **ALL** of the following standards:

- A. Special conditions apply to the applicant's property that do not apply generally to other property within the District; and
- B. Because of the unique conditions of the property involved, undue hardship to the applicant will result, as distinguished from mere inconvenience, if the strict letter of the rules are carried out. Economic considerations alone shall not constitute undue hardship; and
- C. The proposed activity for which the exemption is sought will not adversely affect the public health, safety, and general welfare; will not create an extraordinary public expense; and will not adversely affect water quality or quantity; and
- D. The intent of the District's Rules and Regulations are met.

An exemption expires when the permit it is associated with expires. A violation of any condition for a permit where an exemption has been granted shall automatically terminate the exemption and the permit.

SECTION FIVE:

THE DISTRICT'S REQUIRED PERMITS

A permit from the Buffalo Creek Watershed District is required for the following water related projects or land use activities in the Watershed District:

- 5.01 Surface Water:** Surface water, as defined in Appendix B, includes any natural or manmade water body that is found above ground (i.e., lakes, streams, rivers, wetlands, drainage ditches, etc.). The District has a vested interest in ensuring that all of the following projects with the potential of negatively impacting surface water resources in the District are properly mitigated through the District's permitting process:
- A. ***Stream, Creek, and River Projects:*** Any project potentially affecting, crossing, or involving a stream, creek, and/or river.
 - B. ***Dams and/or Dikes:*** Any project involving a dam and/or dike.
 - C. ***Bridge and/or Crossings:*** Any bridge construction, repair, and/or crossing.
 - D. ***Culvert Repairs or Replacement:*** Any culvert repair or replacement project.
 - E. ***Clean Outs:*** Any surface water clean out, including drainage systems.
 - F. ***Water Discharge:*** Any project involving discharging water into a surface water resource.
 - G. ***Wetlands:*** Any wetland development, modification, and/or restoration.
 - H. ***Ponding and/or Berming:*** Any project potentially resulting in holding or retaining water.
 - I. ***Multiple Subwatersheds:*** Any project proposed to impact more than one subwatershed must demonstrate how the proposed project may impact both subwatersheds.

- J. **Miscellaneous:** Any other project or activity that has the potential to negatively impact surface water resources.
- K. The BCWD has adopted a separate rule on **Buffer Enforcement**, which can be found in Appendix D.

5.02 Drainage Systems: Every person shall use their land reasonably in disposing of surface water. Surface water shall not be artificially removed from upper land to and across lower land without adequate provision being made on the lower land for its passage, nor shall the natural flow of surface water be obstructed so as to cause an overflow onto the property of others. The District will enforce and comply with Minnesota’s Drainage Laws. The District intends to preserve drainage capacity, prevent flooding, and improve water quality by regulating certain agricultural drainage facilities within the watershed. In addition to the provision listed in Section 5.01, drainage systems have the following additional permit requirements:

- A. **Tiling:** Installation of any tile greater than 8” in diameter **or** any size tile where an easement is required (i.e., for projects potentially affecting adjacent landowner’s property).
- B. **New or improved systems:** Any proposed new or improved public or private ditch system.*
- C. **Outlets/Inlets:** Any new or improved outlets or inlets into an existing drainage system which increase the volume or rate of water directly entering into the drainage system.
- D. **Standards.** A site drawing with the location of all drainage facilities must be submitted with the permit application. Where the exact location of drain tiles is unknown, an

* The repair or replacement of an existing public or private drainage system is exempt from this Section as long as the repair or replacement is not an expansion or an improvement and the other provisions set forth in these Rules and Regulations are met.
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approximate location is sufficient. An application for a drainage permit under this Section must meet the following standards:

1. Demonstrate that downstream capacity exists for the additional water discharged by the drainage facility; and
2. Demonstrate that the proposed project complies with all local, State, and Federal wetland regulations; and
3. Design and maintain drain tile system intakes in a way that minimizes the introduction of sediments to the drainage facility; and
4. All new and improved outlets into existing public drainage systems or public waters shall be constructed in such design which will:
 - a) Provide and maintain a stable outfall that minimizes erosion; and
 - b) Will not impede the flow of water; and
 - c) Will not cause a deterioration of the receiving water.
5. It shall be the overall policy of the District to maintain up to a 3/8" drainage coefficient. Exceptions to this include when the drainage system was designed to accommodate smaller or larger coefficients or if mitigation measures are implemented (i.e., stormwater ponds, restored wetlands, etc.) when using larger drainage coefficients.
6. Projects shall not drain lands into the District that do not already drain into the District, nor shall projects drain lands out of the District that do not already drain out of the District.

5.03 Land Use and Development: The District has a vested interest in ensuring that all land use and development projects which could negatively impact surface or groundwater resources properly implemented through the District's permitting process. The following projects require a permit from the District:

- A. Any land use alterations that has the potential to negatively affect the quality or quantity of water resources.
- B. Any underground construction, including but not limited to storm sewers, gas lines, pipelines, manure holding basins, underground storage, etc. Exemptions include basements, foundations, septic systems, and wells.
- C. New or reconstructed roadway construction, development, or improvements which has the potential to negatively impact water resources.
- D. Any construction crossing (over, through, or underground) which has the potential to negatively impact water resources.
- E. The platting of property to ensure proper stormwater retention and drainage.
- F. Standards:
 - 1. For projects that permanently alter drainage patterns and/or flows, the applicant must submit hydrologic and hydraulic modeling calculations for the 2-year, 10-year, and 100-year critical duration storm events. Peak runoff rates from these events shall not be increased in aggregate.
 - a) Rainfall depths shall be based on NOAA Atlas 14 values, or as amended.
 - b) A hydrologic model based on NRCS Technical Release #20 or USGS Regression Equations must be used to analyze discharge and water levels.
 - c) The runoff from pervious and impervious areas within the model should be modeled separately.
 - 2. Any increase in peak flows from at a specific point of discharge must be limited and cause no adverse downstream impact
 - 3. Projects shall not drain lands into the Buffalo Creek Watershed that do not already drain to Buffalo Creek Watershed, nor shall projects drain lands out of the Buffalo Creek Watershed that do not already drain away from Buffalo Creek Watershed.

5.04 Erosion Control: The District intends to manage erosion and sedimentation into surface waters within the watershed by regulating land use activities. The District requires that erosion control measures be in place for all land use activities above specific thresholds. The erosion control measures must minimize erosion and sedimentation to meet local, state, and federal regulations. The following projects require a permit from the District:

A. Any person or political subdivision undertaking a land disturbing activity that is:

1. Greater than 400 square feet in area if located within 300 feet of any surface water resource; **OR**
2. Greater than one acre or more in area if located 300 feet or more from of any surface water resource.

B. **Agricultural Exemption.** The ordinary agricultural practices of cultivating and planting, performed as part of an ongoing farming operation, are exempt from this Section.

C. **Standards.** An erosion and sediment control plan must be submitted and approved before a permit may be issued. The plan must minimize erosion and sedimentation. A site plan drawing with the location of all erosion control features must be submitted with the permit application. The plan must demonstrate how the project will achieve the following standards:

1. Each landowner and operator is expected to apply land use practices to minimize runoff and soil erosion from sloping land; and
2. Sloping land abutting drainageways, lakes, ponds, or reservoirs shall be used in such manner so as to provide reasonable control of sediment. A permit is required from the Managers to till any area covered with permanent grass within 200 feet of the low water mark of drainageways and within 200 feet of the normal high-water mark of lakes, ponds, or reservoirs; and
3. The project must be phased to the greatest extent possible to minimize the area of disturbed land at any given time; and
4. Site specific topography and soil conditions must be specifically addressed; and

5. Best Management Practices (BMPs) must be used in a manner consistent with MPCA guidance documents.

5.05 Stormwater Management. The District intends to manage storm water runoff within the watershed to promote infiltration, encourage pretreatment, minimize peak flows after storm events and snow melt, and avoid adverse impacts to stream stability, flood elevations, or drainage due to increased runoff flow and volume. A District permit is required for any development or redevelopment of the following properties:

- A. The development or redevelopment of property resulting in the creation of more than one acre of new or reconstructed impervious surface.
- B. The development of any new resort or PUD.
- C. The expansion or replacement of a structure at an existing resort.
- D. The redevelopment of a parcel that currently exceeds impervious surface limits imposed by Minnesota Rules Chapter 6120 or by any political subdivision within the watershed.
- E. Construction of new or reconstruction of existing stormwater management facilities (e.g. stormsewer, culverts, ponding) for which conveyance capacity is increased, storage capacity is decreased, or flows are redirected from their current routing.
- F. Standards. A site plan must be submitted with the permit application. A storm water permit application under this Section must meet the following standards:
 1. The applicant must submit hydraulic/hydrologic calculation demonstrating that runoff rates for the proposed development or redevelopment of a property will not exceed existing runoff rates for the 2-year, 10-year, and 100-year critical storm events. Calculations must meet the requirements of Section 5.03F.
 2. The applicant must submit calculations demonstrating that all development or redevelopment of property will treat 1.0 inch of runoff from all newly created impervious surface and 0.5 inch of runoff from all reconstructed impervious surface on the property such that implemented storm water BMPs, consistent with MPCA guidance documents, achieve removal of 90 percent of total suspended solids and

50 percent of total phosphorus prior to any runoff leaving the property. Reconstruction of public roadways and sidewalks shall be exempt from this requirement.

3. The applicant must submit calculations demonstrating that the 100-year floodplain volume in any basin greater than one acre-foot in size will not be diminished, or that the applicant provides equivalent floodplain storage elsewhere that provides an identical flow reduction function.

5.06 Notification Only: A permit is normally not required on the following projects if the District is properly notified 30 days prior to the projects being issued a permit by the proper regulating authority:**

- A. Public facility wastewater projects
- B. Feedlot expansion and/or development projects
- C. Aggregate mining projects
- D. Any permit normally required in by the District as identified in this Section which is deemed exempt for being regulated by existing local regulations. These exemptions are described in Section 5.07.

** The District reserves the right to determine that a permit from the District is required if the proposed project triggers one of the topics regulated by the District's Rules and Regulations.

5.07 Exemption for Existing Regulation: The District does not intend to duplicate the regulations of other political subdivisions where other political subdivisions have regulations that are equally as stringent or more stringent than the District's regulations. An exemption from the District's Rules and Regulations will be assumed if all of the following conditions are met:

- A. The political subdivision must enforce its regulations at a standard which meets or exceeds the District's standards; and
- B. The political subdivision must provide the District with notice of all pending permit applications within the watershed 15 days prior to approval by the political subdivision; and
- C. The political subdivision must consider any comments provided by the District in regards to the pending permit.

SECTION 6: ENFORCEMENT

- 6.01 Violation is a Misdemeanor:** A violation of a District rule, or a permit issued under District rules, is a misdemeanor subject to the maximum penalty provided by Minnesota law.
- 6.02 Court Action:** The District may exercise all powers conferred upon it by Minnesota Statutes Chapter 103D in enforcing these rules, including criminal prosecution, injunction, or an action to compel performance, restoration, or abatement.
- 6.03 Administrative Order:** The District may enforce its rules by issuing a cease and desist order when it finds that an activity violates any rule of the District or permit issued by the District.
- 6.04 Order to Show Cause:** The Board may require a person or political subdivision in violation of a District rule or permit to appear at a District meeting to show cause why the violation should be allowed to continue.
- 6.05 Future Permits:** No future permit shall be issued to any person or political subdivision in violation of a District rule or a previously issued District permit until the violation has been remedied to the sole satisfaction of the District.
- 6.06 After-the-Fact Permits:** The Board of Managers may also charge for after-the-fact permits. The fee for after-the-fact permits shall be up to \$1,000 plus all other expenses incurred by the Watershed District. All costs incurred shall be paid before the permit is issued.

SECTION 7:

PUBLIC MEETINGS AND RECORDS

7.01 Public Meetings: All meetings of the District, whether regular or special, shall be open to the public and shall be held at a time, date, and place determined by the Board of Managers. All regular scheduled meetings shall be posted on the District's website at:

www.bcwatershed.org

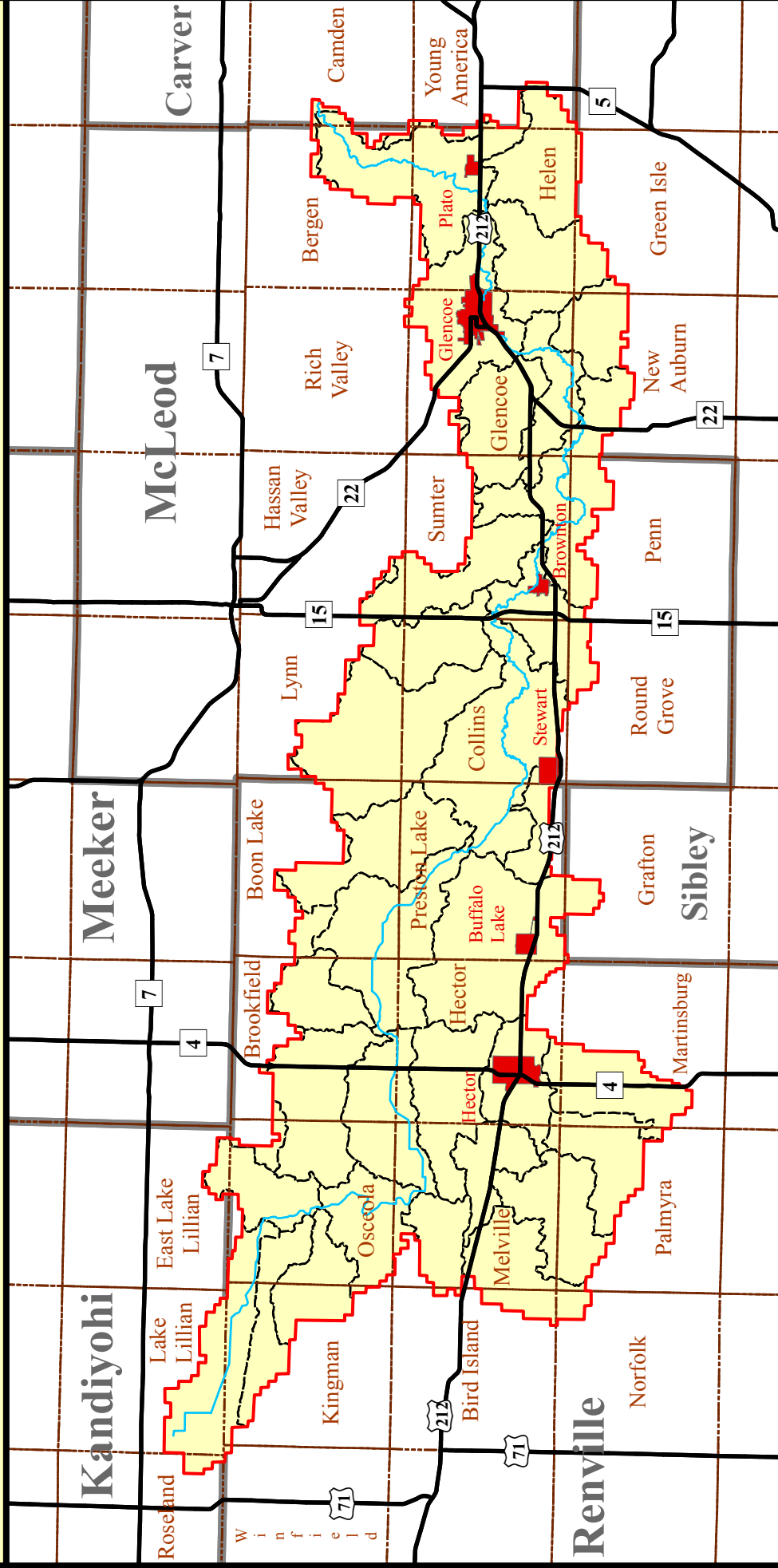
7.02 District Records: The records of the District shall be public records, as required by State statute and shall be available to the public for inspection to the extent required. The intention of the District is to cooperate with all persons, governmental units, organizations, and agencies in the promotion of the District's regulatory activities.

APPENDIX A:

BUFFALO CREEK

WATERSHED DISTRICT OFFICIAL MAP

Buffalo Creek Watershed District



MMDC

Prepared by the
Mid-Minnesota
Development Commission
(320) 235-8504

District Map Features

- District Boundary
- County Boundary
- Subwatershed
- City
- Watershed
- Major Road
- Buffalo Creek



**BUFFALO
CREEK**



WATERSHED DISTRICT
www.bcwatershed.org

APPENDIX B: DEFINITIONS, ACRONYMS, AND TERMINOLOGY

For the purpose of these rules, unless a different meaning clearly appears from the context, certain terms are defined as follows (if a phrase, acronym, and/or terminology is not defined, the common usage of the phrase, acronym, and/or terminology shall prevail. Definitions found in Minnesota's State Statutes, State Rules and Regulations, and the Webster-Merriam Dictionary may be consulted if necessary):

Alterations to Land: including, but not limited to, grading, excavation, fill or movement of soil or vegetative material.

BMPs (Best Management Practices): practices to prevent or reduce the pollution of waterbodies and wetlands, including schedules of activities, prohibitions of practices, and other management practices.

Board: the District's Board of Managers.

Board of Managers: the District's Board of Managers.

Board Meeting: the District Board of Managers meeting held on the fourth Tuesday of each month at the District Office.

BWSR: stands for the Minnesota Board of Water and Soil Resources and is the State's soil conservation agency. The 20-member board consists of representatives of local and state government agencies and citizens.

CROW: The Crow River Organization of Water (CROW) was formed in 1999 as a result of heightened interest in the Crow River. A Joint Powers Agreement has been signed between all ten of the Counties with land in the Crow River Watershed. The CROW Joint Powers Board is made up of one representative from each of the County Boards who signed the

agreement. The Counties involved in the CROW Joint Powers include Carver, Hennepin, Kandiyohi, McLeod, Meeker, Pope, Renville, Sibley, Stearns and Wright.

Detention System: a structure or facility which collects and stores runoff on a temporary basis with a subsequent gradual release of stormwater at a controlled rate. A detention basin may retain some water.

Discharge: the disposal, conveyance, channeling of runoff or drainage of water or material, including, but not limited to, surface water, drainage facilities, stormwater, and snow melt.

District: the Buffalo Creek Watershed District.

Drainage Facilities: open ditches and drain tile systems collectively.

Drain Tile System: any privately owned underground conduit used to conduct the flow of water in order to drain agricultural lands.

Erosion: the wearing away of soil by rainfall, surface water runoff, wind, or ice-movement.

Fill: soils, sand, gravel, clay, or any other natural material which is moved from one place to another and placed on land or in water.

FSA: stands for the Farm Service Agency, responsible for the implementation of U.S farm policy. The organizational structure of FSA is laid out by Congress and overseen by the secretary of agriculture. The FSA administrator reports to an undersecretary of agriculture for Farm and Foreign Agricultural Services (FFAS).

Groundwater Recharge Area: an area in which surface water accumulates and is conveyed to groundwater aquifers.

Intake: an opening through which fluid enters a duct, channel, or drainage tile.

Impervious Surface: a surface that is compacted or covered with a layer of material that is resistant to the infiltration of water, including, but not limited to, compacted sand, gravel, or clay and streets, sidewalks, parking lots, and structures.

Land Disturbing Activity: any disturbance to the ground surface that may result in soil erosion from water or wind and the movement of sediments into or upon waterbodies or wetlands within the watershed. Land-disturbing activity includes but is not limited to the demolition of

a structure or surface, soil stripping, clearing, grubbing, grading, excavating, filling and the storage of soil or earth materials. This includes a disturbance to the land that results in a change in the topography, existing soil cover, or vegetation that may result in accelerated storm water runoff which may lead to soil erosion and movement of sediment. The term does not include normal farming practices as part of an ongoing farming operation.

Lateral: any constructed waterway or drain which conveys water to a public ditch.

Managers: the Board of Managers of the Buffalo Creek Watershed District. Please refer to Section 1.03 of the District's Rules for more information.

MAWD: The Minnesota Association of Watershed Districts (MAWD) represents 45 watershed districts in the state. The watershed districts are partners in water protection and management.

MDNR: The Minnesota Department of Natural Resources.

MPCA: the Minnesota Pollution Control Agency.

NRCS: Since 1935, the Natural Resources Conservation Service (originally called the Soil Conservation Service) has provided leadership in a partnership effort to help America's private land owners and managers conserve their soil, water, and other natural resources.

On-Site: within the contiguous confines of a commonly owned land and/or parcel.

Open Ditch: any privately owned open channel used to conduct the flow of water in order to drain agricultural lands.

Ordinary High Water (OHW) – the boundary of public waters and wetlands which is an elevation delineating the highest water level which has been maintained for a sufficient period of time. Commonly it is the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the OHW is the elevation of the top of the bank of the channel.

Person: any individual, partnership, company, corporation, but does not include any political subdivision.

Point Discharge: discharge from a specific outlet, such as a storm sewer, pipe, culvert, or ditch.

Political subdivision: any city, township, county, school district, or political subdivision of the State of Minnesota.

Public Waters: are all types of surface water that meet the criteria set forth in Minnesota Statutes, Section 103G.005, subd. 15, that are identified on Public Water Inventory maps authorized by Minnesota Statutes, Section 103G.201.

PUD (Planned Unit Development): a type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, usually involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure types, land uses, and form of ownership.

Redevelopment: any change in use of a property or permanent physical change to a property that alters the drainage pattern of the property or causes an increase in pollutants in storm water runoff from the property.

Resort: a building or group of buildings located adjacent to any waterbody for purposes of providing convenient access to the waterbody, and held out to the public to be a place where sleeping accommodations are furnished to the public, primarily to those seeking recreation.

Retaining Wall: a structure or facility which accumulates a specified amount of stormwater or runoff.

Runoff: water, including nutrients, pollutants and sediments carried by water, discharged from a land surface.

Sediment: mineral or organic particulate matter what has been carried from its point of origin by water or wind.

Shoreland (Shoreland District or Shoreland Zone): land located within 1,000 feet of the ordinary high water mark of a protected water (lake) or 300 feet from a river or stream. These areas are often identified in the various county zoning ordinances.

Storm Sewer: a system installed for the specific purpose of transporting water from one location to another. Normally made of pipe material, but may also include reaches of flumes, spillways, or open channels.

Stormwater: normally refers to precipitation runoff and/or snow melt runoff, but may also include any other surface runoff and/or drainage that varies according to precipitation levels.

Surface Water: any natural or manmade water body that is found above ground (as opposed to underground). Surface water includes but is not limited to lakes, rivers, streams, ditches, wetlands, ponds, drainage ditches, etc.

TMDL: A Total Maximum Daily Load (TMDL) is a regulatory term in the U.S. Clean Water Act (CWA), describing a value of the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards. Alternatively, TMDL is an allocation of that water pollutant deemed acceptable to the subject receiving waters.

Vegetation: normally refers to naturally occurring brush, shrubs, grass, or trees, but may also refer to preferred vegetation based upon a prescribed Best Management Practice (BMP).

Waterbody: any body of water including lakes, rivers, streams, watercourses, or water basins.

Watercourse: channel having definable bends and banks capable of conducting confined runoff from adjacent lands (except during periods of flooding). A watercourse may be perennial or intermittent, natural (i.e. stream), or man-made (i.e. ditch).

Watershed: means the boundaries of Buffalo Creek Watershed District (see the District Map found in Appendix A or visit www.bcwatershed.org).

Wetland: lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water and where hydric soils and hydrophytic vegetation are present under normal circumstances. This definition includes public waters wetlands as designated by the Minnesota Department of Natural Resources and wetlands under the jurisdiction of the Wetland Conservation Act.

APPENDIX C:

BCWD PERMIT FORMS

APPLICATION FOR PERMIT

TO: BUFFALO CREEK WATERSHED DISTRICT PERMIT NO. _____

Applicant _____
(Print or Type)

Address _____

Telephone Number () _____ - _____ Email Address _____

Cell Phone Number () _____ - _____

Applicant proposes to do the following work:

- | | |
|---|--|
| <input type="checkbox"/> Clean Existing Ditch | <input type="checkbox"/> Install Erosion Control Structure |
| <input type="checkbox"/> Construct New Ditch | <input type="checkbox"/> Install Tile |
| <input type="checkbox"/> Build Water Retention Area | <input type="checkbox"/> Repair Shoreline |
| <input type="checkbox"/> Abandon and Fill an Existing Ditch
or Waterway | <input type="checkbox"/> Install Culvert |
| <input type="checkbox"/> Abandon Existing Tile and Replace
With a New Tile | |
| <input type="checkbox"/> Other _____ | |

The proposed construction is necessary because:

- | | |
|--|--|
| <input type="checkbox"/> Flooding Occurs | <input type="checkbox"/> Poor Drainage |
| <input type="checkbox"/> Control Runoff | <input type="checkbox"/> Ditch Filled with Silt |
| <input type="checkbox"/> Excessive Erosion | <input type="checkbox"/> Present Design Inadequate |
| <input type="checkbox"/> Other _____ | |

If a ditch is to be constructed or cleaned; a culvert is to be installed; a tile is to be installed, provide how many acres will it drain and percent of grade? _____ %

I intend to begin construction on/or about _____

The work is to be done in _____ TWP, TWP _____ North, Range _____ West,
Section _____

Secretary

APPENDIX D:
BCWD BUFFER ENFORCEMENT RULE
PURSUANT TO STATUES SECTION 103F.48

(Note: page numbering is sperate from the rest of this document)

BUFFALO CREEK WATERSHED DISTRICT BUFFER ENFORCEMENT RULE PURSUANT TO STATUTES SECTION 103F.48

Statutory authorization. This buffer enforcement rule is adopted pursuant to the authorization and policies contained in Minn. Stat. §103F.48, the Buffer Law, Minn. Stat. §103B.101, subdivision 12a, authority to issue penalty orders, and the Watershed District enabling legislation in Minn. Stat. chapter 103D.

1.0 Policy

It is the policy of the Board of Managers 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 closely with the District's landowners, soil and water conservation districts and counties, and utilize local knowledge and data, to achieve the stated purposes in a collaborative, effective and cost- efficient manner.
- (c) Integrate District authorities under Minn. Stat. §§103D.341 and 103F.48 to provide for clear procedures to achieve the purposes of the rule.

2.0 Definitions

BWSR or board: Minnesota Board of Water and Soil Resources.

Buffer: An area consisting of perennial vegetation, excluding invasive plants and noxious weeds.

Buffer law: Minnesota Statutes §103F.48, as amended.

Commissioner: Commissioner of the Minnesota Department of Natural Resources.

Cultivation farming: Practices that disturb vegetation roots and soil structure, or involve vegetation cutting or harvesting that impairs the viability of perennial vegetation.

Drainage authority: The public body having jurisdiction over a drainage system under Minnesota Statutes chapter 103E.

BCWD or district: The Buffalo Creek Watershed District.

Notice: Any notice or other communication to be provided herein shall be directed to the Landowner whose name and address appears on the County Property Taxes Records and listed as the taxpayer. Notice on said Landowner shall be considered sufficient notice to all those who may be considered a Landowner as defined in Section 2.1.7.

NRCS: U.S. Department of Agriculture, Natural Resource Conservation Service.

Operator: A party other than a landowner that directly or indirectly controls the condition of riparian land subject to a buffer under the rule.

Person: Individual or entity.

Public drainage system: has the meaning given to “drainage system” in Minn. Stat. §103E.005, subd. 12.

Public water: As defined at Minnesota Statutes §103G.005, subdivision 15, and included within the public waters inventory as provided in Minnesota Statutes §103G.201.

Riparian protection: A water quality outcome for the adjacent waterbody equivalent to that which would be provided by the otherwise mandated buffer, from a facility or practice owned or operated by a municipal separate storm sewer system (MS4) permittee or subject to a maintenance commitment in favor of that permittee at least as stringent as that required by the MS4 general permit in effect.

Shoreland standards: Local shoreland standards as approved by the Commissioner or, absent such standards, the shoreland model standards and criteria adopted pursuant to Minnesota Statutes §103F.211.

Structure: An above-ground building or other improvement that has substantial features other than a surface.

SWCD: Soil and Water Conservation District.

Validation of Compliance: means a notice issued by SWCD that validates that a site is compliant and that the validation is good as long as all practices identified/documented continue to be in place and substantially in the condition identified at the time of issuance.

3.0 Data sharing/management

- 3.1 The District may enter into arrangements with an SWCD, a county, the BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this rule.
- 3.2 The District will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

4.0 Vegetated Buffer Requirement

- 4.1 Except as subsection 4.3 or 4.4 may apply, a landowner must maintain a buffer on land that is adjacent to a watercourse identified and mapped on the buffer protection map established and maintained by the Commissioner pursuant to the buffer law.
 - 4.1.1 For a public water, the buffer must extend landward to the further of:
 - (a) a 50-foot average width and 30-foot minimum width; or
 - (b) the setback standard for the shore impact zone as identified in County shoreland ordinance and the state shoreland standards and criteria adopted by the Commissioner under Minnesota Statutes §103F.211.
 - 4.1.2 For public drainage systems established under chapter 103E, a 16.5-foot minimum width continuous buffer as provided in section [103E.021, subdivision 1](#). The buffer vegetation shall not impede future maintenance of the ditch..
 - 4.1.3 The buffer is measured from the top or crown of bank. Where there is no defined bank, measurement must be from the edge of the normal water level. Normal water level will be determined in accordance with BWSR guidance. For a public drainage system, the top or crown of bank will be determined in the same manner as for measuring the perennially vegetated strip under Minnesota Statutes §103E.021.
 - 4.1.4 A buffer may not be used for cultivation farming, but may be grazed, mowed, hayed or otherwise harvested, provided permanent growth of perennial vegetation is maintained.
- 4.2 The requirement of subsection 4.1 Applies to all public drainage ditches within the District's boundary for which it is the drainage authority; all public drainage ditches and public waters within the District's boundary that are not under the jurisdiction of County enforcement; and all public drainage ditches and public waters for which enforcement has been delegated to the District by a County.

- 4.3 The requirement of section 4.1 does not apply to land that is exempted from the water resources riparian protection requirements under Minn. Stat. §103F.48, subd. 5.
- 4.4 An owner of land that is used for cultivation farming may demonstrate compliance with subsection 4.1 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 sections 4.1. The adequacy of any alternative practice allowed under this section shall be evaluated and approved by the SWCD based on: the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); common alternative practices adopted and published by BWSR; practices based on local conditions approved by the SWCD that are consistent with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or other practices adopted by BWSR.
- 4.4.1 An alternative practice may be approved by means of a validation of compliance issued by the SWCD. The approval must find that the proposed practice provides water quality protection comparable to the buffer protection of subsection 4.1.
- 4.4.2 A landowner may not rely on an alternative practice for compliance with subsection 4.1 unless the landowner holds an SWCD-issued validation of compliance for the alternative practice and the landowner has implemented the practice and is maintaining it as the validation stipulates.
- 4.5 A landowner or authorized agent or operator of a landowner may, or for the purpose of paragraph 4.4.2 must, submit an application for a validation of compliance to the SWCD pursuant to administrative procedures prescribed by the SWCD. The application may request: (a) a finding that a buffer satisfies subsection 4.1; (b) a determination as to the applicability of an exemption listed in subsection 4.3; or (c) approval of an alternative practice pursuant to subsection 4.4. An SWCD validation of compliance will be conclusive for the purpose of subsection 7.2. In making a finding of compliance with this rule for the purpose of subsection 7.1, the District will give substantial weight to an SWCD validation of compliance. Any District compliance determination contrary to the SWCD validation will rest on specific findings justifying the contrary determination.

5.0 Drainage System Acquisition and Compensation for Buffer

Nothing in this rule shall prevent the acquisition and compensation of grass buffers on public drainage systems pursuant to Minnesota Statutes chapter 103E.

6.0 Action for Noncompliance

- 6.1 When the SWCD observes potential noncompliance or receives a third party complaint from a private individual or entity, or from another public agency, it will consult with the District to determine the appropriate course of action to confirm compliance status. This may include communication with the landowner or his/her agents or operators, communication with the shoreland management authority, 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 District. If the SWCD does not transmit such a notification, the District will not pursue a compliance or enforcement action under Minnesota Statutes §103F.48 and paragraph 7.2, but may pursue such an action under the authority of Minnesota Statutes §103D.341 and paragraph 7.1. If the SWCD does issue such a notification, the SWCD must include, for consideration by the District, a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. §103F.48; a recommended timeline for completing the corrective actions; and a standard by which the SWCD will judge compliance with the requirements of Minn. Stat. §103F.48 after the corrective actions are taken. The notification must also include identification of the landowner of record and any operator that, in its judgment, is a responsible party, along with identification of the tract of record to which it pertains and the portion of that tract that is alleged to be noncompliant.
- 6.2 On receipt of an SWCD notification of noncompliance, or if acting solely under authority of Minnesota Statutes §103D.341, the District will issue a corrective action list and practical schedule for compliance to the landowner. The District may inspect the property and will consult with the SWCD, review available information and exercise its technical judgment to determine appropriate and sufficient corrective action and a practical schedule for such action. The District will maintain a record establishing the basis for the corrective action that it requires.
- 6.2.1 The District will issue the corrective action list and schedule to the landowner of record and to any operator that, in its judgment, is a responsible party. The landowner and any other named responsible party each may be the independent subject of enforcement liabilities under subsections 7.1 and 7.2. The District may deliver or transmit the list and schedule by any means reasonably determined to reach the responsible party or parties, and will document receipt. However, a failure to document receipt will not preclude the District from demonstrating receipt or knowledge in an enforcement proceeding under section 7.0.
- 6.2.2 The corrective action list and schedule will identify the tract of record to which it pertains and the portion of that tract that is alleged to be noncompliant. It will describe corrective actions to be taken, a schedule of intermediate or final dates for correction, a compliance standard against which it will judge the corrective action, and a statement that failure to respond to this list and schedule will result in an enforcement action. The District will provide a copy of the list and schedule to the BWSR.

- 6.2.3 At any time, a landowner may supply information to identify an additional responsible party, and any named responsible party may supply information as evidence that it is not responsible. In addition, at any time a responsible party may supply information in support of a request to modify a corrective action or the schedule for its performance. On the basis of any such submittal or at its own discretion, the District may modify the corrective action list or schedule, and deliver or transmit the modified list and schedule in accordance with paragraph 6.3.1, or may advise the responsible party or parties in writing that it is not pursuing further compliance action.
- 6.2.4 The corrective action list and schedule for compliance may be modified in accordance with subsection 6.2, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.
- 6.2.5 At any time after the District has issued the list and schedule, a landowner, or authorized or operator of a landowner, may request that the SWCD issue a validation of compliance with respect to property for which the list and schedule has been issued. On District receipt of the validation: (a) the list and schedule will be deemed withdrawn for the purpose of subsection 7.2, and the subject property will not be subject to enforcement under that subsection; and (b) the subject property will not be subject to enforcement under subsection 7.1 unless the District makes a contrary compliance determination under subsection 4.5.
- 6.2.6 A corrective action list and schedule is not considered a final decision subject to appeal. A responsible party objecting to a finding of noncompliance may apply for a validation of compliance under subsection 4.5. An objection to a finding of noncompliance, or to any specified corrective action or its schedule, is reserved to the responsible party and may be addressed in an enforcement proceeding under section 7.0.

7.0 Enforcement

- 7.1 Under authority of Minnesota Statutes §§103D.545 and 103D.551, the District may seek remedies for noncompliance with section 4.0 against any responsible party including but not limited to: (a) administrative compliance order; (b) administrative order requiring reimbursement of District compliance costs under Minnesota Statutes §103D.345 and/or an escrow for same; (c) district court remedy including injunction, restoration or abatement order, authorization for District entry and/or order for cost recovery; and (d) referral to county attorney for criminal misdemeanor prosecution.
- 7.2 The District may issue an administrative order imposing a monetary penalty against a landowner for noncompliance with the corrective action list and schedule, as provided

under paragraphs 7.2.1 and 7.2.2. The penalty will continue to accrue until the noncompliance is corrected as provided in the corrective action list and schedule.

7.2.1 The penalty for a landowner on a single parcel that previously has not received a corrective action list and schedule for compliance shall be:

- (a) \$0 for 11 months after issuance of the corrective action list and schedule or during the schedule issued for taking correction actions, whichever is greater;
- (b) Up to \$200 per parcel per month for the first six (6) months (180 days) following the time period in (a); and
- (c) Up to \$500 per parcel per month after six (6) months (180 days) following the time period in (b).

7.2.2 The penalty for a landowner on a single parcel that previously has received a corrective action list and schedule for compliance shall be:

- (a) Up to \$200 per parcel per day for 180 days after issuance of the subsequent corrective action list and schedule; and
- (b) Up to \$500 per parcel per day for after 180 days following the time period in (a).

7.2.3 Penalty Determination. For administrative penalties imposed by the District, the District shall determine the severity of the noncompliance, intentional nature of noncompliance and frequency of noncompliance in determining the amount of violation. The amount of an administrative penalty will be based on considerations including the extent, gravity and willfulness of the noncompliance; its economic benefit to the responsible party; the extent of the responsible party's diligence in addressing it; any noncompliance history; the public costs incurred to address the noncompliance; and other factors as justice may require. Upon appropriate findings, the District shall use the following table to determining a penalty amount:

Nature of Violation	Severity of Violation		
	Minor	Moderate	Substantial
Initial noncompliance (initial term)	\$50	\$100	\$150
Initial noncompliance (subsequent term)	\$200	\$300	\$400
Subsequent initial noncompliance (new parcel, initial term)	\$100	\$150	\$200
Subsequent initial noncompliance (new parcel, subsequent term)	\$300	\$400	\$500
Repeat noncompliance (same parcel, initial term)	\$100	\$150	\$200
Repeat noncompliance (same parcel, subsequent term)	\$300	\$400	\$500

7.3 The administrative order will state:

- i. The facts constituting a violation of the buffer requirements;
- ii. The statute and/or rule that has been violated;
- iii. Prior efforts to work with the landowner to resolve the violation;
- iv. For an administrative penalty order, the amount of the penalty to be imposed, the facts supporting the amount of the penalty, the date the penalty will begin to accrue, and the date when payment of the penalty is due; and
- v. The right of the responsible party to appeal the order.

A copy of the APO must be sent to the SWCD and BWSR.

7.4 An administrative order under subsection 7.1 or 7.2 will be issued after a compliance hearing before the District Board of Managers. The landowner and any other responsible parties will receive written notice at least two weeks in advance of the hearing with a statement of the facts alleged to constitute noncompliance and a copy or link to the written record on which District staff intends to rely, which may be supplemented at the hearing. A responsible party may be represented by counsel, may present and question witnesses, and may present evidence and testimony to the Board of Managers. The District will make a verbatim record of the hearing.

7.5 After a hearing noticed and held for consideration of an administrative penalty or other administrative order, the Board of Managers may issue findings and an order imposing any authorized remedy or remedies.

7.5.1 The Board of Managers findings and order will be delivered or transmitted to the landowner and other responsible parties. An administrative penalty order may be appealed to the BWSR in accordance with Minnesota Statutes §103F.48,

subdivision 9, and will become final as provided therein. Other appellate relief may be sought pursuant to Minnesota Statutes §§103D.537 and .539. The District may enforce the order in accordance with Minnesota Statutes §116.072, subdivision 9, or otherwise as provided in Minnesota Statutes chapter 103D.

- 7.5.2 The Board of Managers may forgive an administrative penalty, or any part thereof, on the basis of diligent correction of noncompliance following issuance of the findings and order and such other factors as the Board finds relevant.
- 7.6 Absent a timely appeal pursuant to paragraph 7.5.2, an administrative penalty is due and payable to the District as specified in the administrative penalty order.
- 7.7 A landowner agent or operator may not remove or willfully degrade, wholly or partially, a riparian buffer or alternative practice, unless the agent or operator has obtained a signed statement from the landowner stating that written permission for the work has been granted by the District or that the buffer or alternative practice is not required as indicated in a validation of compliance issued by the SWCD. A prohibited action under this paragraph is a separate violation of this rule that is subject to remedies under both subsections 7.1 and 7.2.
- 7.8 Nothing within this rule diminishes or otherwise alters the District's authority under Minnesota Statutes, chapter 103E with respect to any public drainage system for which it is the drainage authority, or any buffer strip that is an element of that system, or under Minnesota Statutes chapter 103D regarding remedies for violations of District rules.

8.0 Effect of Rule

- 8.1 If any section, provision or portion of this rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the rule is not affected thereby.