

**MEMORANDUM of UNDERSTANDING  
for BUFFER RULE ENFORCEMENT COORDINATION**

\_\_\_\_\_ **WATERSHED DISTRICT**  
and \_\_\_\_\_ **SOIL AND WATER CONSERVATION DISTRICT**

This Memorandum of Understanding (MOU) establishes the roles and responsibilities for coordination of efforts to provide for riparian vegetated buffers through implementation of the buffer rule between the \_\_\_\_\_ Watershed District (District) and the \_\_\_\_\_ Soil and Water Conservation District (SWCD) (the parties).

***Recitals and Statement of Purpose***

WHEREAS pursuant to Minnesota Statutes §§103B.101, subdivision 12a; 103D.341; and 103F.48 the District has adopted a rule providing procedures to implement the statutory buffer rule, including compliance review, the issuance of administrative penalty orders and other enforcement measures, and appeals;

WHEREAS the SWCD is responsible under Minnesota Statutes §103F.48 to develop a summary of watercourses for inclusion in the District's plan, assist landowners to implement the buffer requirements, and determine whether a landowner is in compliance with the buffer requirements; and

WHEREAS it is in the public interest that the parties coordinate their efforts to implement the buffer rule in order to most effectively educate the public about potential impacts on waters and regulatory requirements; create stable expectations for property owners and others subject to the buffer rule; avoid duplication and unnecessary public expenditures; and provide for more effective water resource management and protection;

NOW THEREFORE the parties enter into this MOU in order to document the understanding of the parties as to the roles and responsibilities of each, and in signing this MOU, the governing bodies of the parties are directing their staffs to develop and implement more detailed protocols to implement the terms herein. The scope of coordination under this MOU is limited to implementation of the buffer law at Minnesota Statutes §103F.48 and the District rule adopted pursuant to the above-cited statutes.

***Terms of Coordination***

**1. Designated representative.** At all times, each party will have a designated representative responsible for coordination under this MOU. Each party commits to a comprehensive coordination effort that includes cooperation in informing landowners and the public of the requirements under the statutory buffer rule.

**2. Inspection authority.** The District has authority under Minnesota Statutes §103D.335, subd. 14, to enter onto private lands inside or outside the District to investigate compliance with District requirements. The SWCD has general authority to conduct surveys, investigations, and research concerning land conservation practices under Minnesota Statutes §103C.331, subd. 3, but also generally conducts inspections on private property with landowner permission. Each party is responsible to establish its own inspection protocols and train its own field staff for the parties' respective inspection and investigation roles.

**3. Data sharing.** The parties will coordinate sharing of and access to data concerning buffers and alternative practices. The parties will coordinate to maintain and coordinate the data platform and platform administration. The SWCD has primary responsibility for data management. All coordination and management of data will be done in accordance with any BWSR protocols.

**4. Inspection data classification.** Inspection observations and other information about land subject to the statutory buffer requirements will be shared by the parties consistent with the Minnesota Data Practices Act. When data is shared, data classification will remain the same as in the possession of the party that first obtained the data, and the party receiving the data will consult with the other before making it publicly available. In implementing responsibilities under the District rule and Minnesota Statutes §103D.335, each party may request the informal input or assistance of the other in regard to data management activities, which will be accommodated to the extent possible.

**5. Validation of compliance.** The SWCD will establish its own standard application documents and administrative procedures for a validation of compliance application defined under Minnesota Statutes §103F.48, subd. 3d. Upon receipt of an application for a validation of compliance, the SWCD will notify the District. This notification will include the name, location, nature of application (i.e., (a) Does an exemption apply? (b) Is an alternative practice adequate? (c) Does the land comply? (d) Has the noncompliance notice/list of corrective actions been addressed?), and state whether the notice of noncompliance is outstanding. The District will notify the SWCD if it wishes to inspect the site for compliance, and the parties will attempt to coordinate any planned inspections and investigations of the site. The SWCD will afford the District the opportunity to consult or provide input regarding the compliance decision. If the SWCD decides to issue a validation of compliance, it will provide a copy of the validation determination to the District.

**6. Buffer funding assistance.** If the District is the drainage authority, it will make the decision to provide compensation for a buffer or alternative practice under Rule 5.0. The District will consult with the SWCD in making this decision. If the District is not the drainage authority, and either party receives an inquiry about funding assistance in installing the required buffer or an alternative practice, the party will advise the landowner of possible options, direct the landowner to the other party as one possible resource, and advise the other party of the request so that there may be informal mutual consultation as the parties deem appropriate.

**7. Identifying noncompliance.** There are three routes by which noncompliance may be identified: SWCD inspection or observation; District inspection or observation; or information or a complaint provided by a third party. If the information or complaint comes to the District from a third party, or District inspection or observation reveals noncompliance, the District will advise the SWCD of the noncompliance. The SWCD is responsible for inspecting and investigating the reported noncompliance. The District may independently inspect and investigate the noncompliance. The parties will cooperate informally so that each is informed as to the active potential noncompliance inspections and investigations of the other. If a site inspection is planned, the parties will coordinate so that both may participate in the inspection.

**8. Notice of noncompliance.** The SWCD is responsible to decide compliance. If the SWCD finds that a site appears to be noncompliant, it will send the District a notice of potential noncompliance. The SWCD and District then will consult to determine if noncompliance is clearly demonstrated or if additional fact-finding (e.g., data review, communication with landowner or operator, inspection) is appropriate. After such further efforts, if the SWCD determines that a site is noncompliant, it must send to the District a written notice of noncompliance. This notice should be addressed to the District administrator and contain the name, location, and nature of noncompliance. The District will issue the notice of noncompliance to the landowner and other responsible parties, along with a corrective action list and schedule. The SWCD will maintain a record establishing a basis for the required corrective action and schedule. The parties will coordinate to establish and update this record.

**9. Corrective action.** The parties will coordinate to monitor landowner and other responsible party compliance with the corrective action list and schedule. The District is the primary coordinator of monitoring efforts. If the SWCD receives a request for a validation of compliance from a landowner or responsible party subject to a corrective action list and schedule, the SWCD must notify the District of the request. On receipt of a validation of compliance from the SWCD or on the basis of other information received, tThe District may consult with the SWCD as the parties deem appropriate, may modify the corrective action list and schedule in response to this submittal, or may discontinue compliance action and may consult with the SWCD as the parties deem appropriate.

**10. Remedies for noncompliance.** Once the SWCD has made a determination of noncompliance, the District ~~will~~may seek remedies for noncompliance under District rule section 4.07.0. The SWCD's role in enforcement is: (a) Maintenance of accurate and complete records of its inspection and related compliance monitoring activity; (b) Consulting with the District as mutually useful on noncompliance cases and enforcement judgments; and (c) Providing documentary evidence and testimony at enforcement proceedings.

**11. Reporting.** The SWCD is responsible for the reporting required by Minnesota Statutes §103F.48. The District will cooperate as necessary for the SWCD to fulfill its reporting duty.

**12. Notice of termination.** The terms herein are effective on signature of the parties. Should a party desire to terminate this MOU, it ~~must~~will alert the other party of its intent with 30 days' advance notice.

\_\_\_\_\_ **WATERSHED DISTRICT**

\_\_\_\_\_  
Administrator

Date: \_\_\_\_\_

\_\_\_\_\_ **SOIL AND WATER CONSERVATION DISTRICT**

\_\_\_\_\_  
District Manager

Date: \_\_\_\_\_