

1 **SECTION 38 – BUFFER ORDINANCE**
2 **THE BOARD OF COMMISSIONERS OF FARIBAULT COUNTY, MINNESOTA DOES ORDAIN:**
3

4 **SECTION 1 STATUTORY AUTHORIZATION AND POLICY**

5 1.1 **Statutory authorization.** This buffer ordinance is adopted pursuant to the authorization and policies
6 contained in Minn. Stat. §103F.48, the Buffer Law, and the County planning and zoning enabling
7 legislation in Minn. Stat. chapter 394.

8 1.2 **Purpose and intent.** It is the purpose and intent of the County to:

9 (a) Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:

- 10 (1) Protect state water resources from erosion and runoff pollution;
- 11 (2) Stabilize soils, shores and banks; and
- 12 (3) Protect or provide riparian corridors.

13
14
15 (b) Coordinate the implementation and enforcement of the water resources riparian protection
16 requirements of Minn. Stat. §103F.48 with the shoreland management rules and ordinances adopted
17 under the authority of Minn. Stat. §103F.201 to 103F.227 and the management of public drainage
18 systems established under Minn. Stat. chapter 103E where applicable; and

19 (c) Provide efficient and effective direction to landowners and protection of surface water quality and
20 related land resources.

21
22 **SECTION 2 DEFINITIONS AND GENERAL PROVISIONS**

23 2.1 **Definitions.** Unless specifically defined below, words or phrases used in this ordinance shall be
24 interpreted to give them the same meaning they have in common usage and to give this ordinance it's
25 most reasonable application. For the purpose of this ordinance, the words "must" and "shall" are
26 mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.

27
28 2.1.1 **"APO"** means the administrative penalty order issued pursuant to Minn. Stat. §103F.48, subd. 7
29 and Minn. Stat. §103B.101, subd. 12a.

30 2.1.2 **"Buffer"** has the meaning provided in Minn. Stat. §103F.48, subd. 1(c).

31 2.1.3 **"Buffer protection map"** has the meaning provided in Minn. Stat. §103F.48, subd. 1(d) and which
32 are available on the Department of Natural Resources website.

33 2.1.4 **"BWSR"** means the Board of Water and Soil Resources.

34
35 2.1.5 **"County"** means Faribault County and all of its agencies, including, but not limited to Planning &
36 Zoning and Drainage.

37 2.1.6 **"Cultivation farming"** means farming practices that disturb root or soil structure or that impair the
38 viability of perennial vegetation due to cutting or harvesting near the soil surface.

39 2.1.7 **"Drainage authority"** has the meaning provided in Minn. Stat. §103E.005, subd. 9.

40 2.1.8 **"Landowner"** means the holder of the fee title, the holder's agents or assigns, any lessee, licensee,
41 or operator of the real property and includes all land occupiers as defined by Minn. Stat.
42 §103F.401, subd. 7 or any other party conducting farming activities on or exercising control over
43 the real property.

44 2.1.9 "Parcel" means a unit of real property that has been given a tax identification number maintained
45 by the County.

46 2.1.10 "Public drainage system" has the meaning given to "drainage system" in Minn. Stat. §103E.005,
47 subd. 12.

48 2.1.11 "Local water management authority" has the meaning provided in Minn. Stat. §103F.48, Subd.
49 1(g).

50 2.1.12 "Normal water level" means the level evidenced by the long-term presence of surface water as
51 indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological
52 models or analysis.

53 2.1.13 "SWCD" means Faribault County Soil and Water Conservation District.

54 2.2 **Severability.** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or
55 invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected
56 thereby.

57 2.3 **Data sharing/management.**

58 2.3.1 The County may enter into arrangements with the SWCD, BWSR and other parties with respect to
59 the creation and maintenance of, and access to, data concerning buffers and alternative practices
60 under this ordinance.

61 2.3.2 The County will manage all such data in accordance with the Minnesota Data Practices Act and
62 any other applicable laws.
63

64 SECTION 3 JURISDICTION

65 3.1 **Jurisdiction.** The provisions of this ordinance apply to all waters, shown on the buffer protection map,
66 including public drainage systems for which the County is the drainage authority under Minn. Stat.
67 chapter 103E.

68 SECTION 4 BUFFER REQUIREMENTS

69 4.1 **Buffer width.** Except as provided in subsection 4.4 and 4.5, a landowner owning property adjacent to a
70 water body identified on the buffer protection map must establish and maintain a buffer area as follows:
71

72 (a) For waters shown on the buffer protection map requiring a fifty (50) foot width buffer, the buffer
73 width will be fifty (50) foot average and thirty (30) foot minimum width as provided in Minn. Stat.
74 §103F.48, subd. 3 and as measured according to subsection 4.2; and

75 (b) For waters shown on the buffer protection map requiring a sixteen and a half (16.5) foot minimum
76 width buffer, the buffer width will be sixteen and a half (16.5) feet as provided in Minn. Stat. §103F.48,
77 subd. 3 and as measured according to subsection 4.2. This subsection applies only if the County is the
78 drainage authority.

79 4.2 **Measurement.**

80 (a) The width of any required buffer on land adjacent to a water requiring a fifty (50) foot average width
81 and a thirty (30) foot minimum width buffer shall be measured from the top or crown of the bank. Where
82 there is no defined bank, measurement must be from the edge of the normal water level as provided in
83 Minn. Stat. §103F.48, subd. 3(c).

84 (b) The width of any required buffer on land adjacent to a water requiring a sixteen and a half (16.5) foot
85 minimum width buffer shall be measured in the same manner as for measuring the vegetated grass strip
86 under Minn. Stat. §103E.021, subd. 6 as provided in Minn. Stat. §103F.48, subd. 3(c).

87 4.3 **Use of buffer area.** Except as provided in sections 4.4 and 4.5 a buffer as defined in this ordinance may
88 not be put to any use, included but not limited to cultivation farming, which would remove or prevent the
89 permanent growth of perennial vegetation.
90

91 4.4 **Exemptions.** The requirement of section 4.1 does not apply to land that is exempted from the water
92 resources riparian protection requirements under Minn. Stat. §103F.48, subd. 5.
93

94 4.5. **Alternative practices.** As provided in Minn. Stat. §103F.48, subd. 3(b) an owner of land that is used for
95 cultivation farming may demonstrate compliance with subsection 4.1 by establishing and maintaining an
96 alternative riparian water quality practice(s), or combination of structural, vegetative, and management
97 practice(s) which provide water quality protection comparable to the water quality protection provided
98 by a required buffer as defined in sections 4.1 to 4.3. The adequacy of any alternative practice allowed
99 under this section shall be based on the approved SWCD Alternative Practices or other practices adopted
100 by BWSR:

101 (a) the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG);

102 (b) common alternative practices adopted and published by BWSR;

103 (c) practices based on local conditions approved by the SWCD that are consistent with the Natural
104 Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or

105 (d) other practices adopted by BWSR.
106
107

108 SECTION 5 COMPLIANCE DETERMINATIONS 109 110

111 5.1 **Compliance determinations.** Compliance with the buffer requirements set forth in section 4 will be
112 determined by the SWCD on a parcel by parcel basis. The compliance status of each bank, or edge of a
113 waterbody on an individual parcel will be determined independently.
114

115 5.2 **Investigation and notification of noncompliance.** When the County identifies a potential noncompliance
116 with the buffer requirements or receives a third party complaint from a private individual or entity, or
117 from another public agency, it will consult with the SWCD to determine the appropriate course of action
118 to document compliance status. This may include communication with the landowner, inspection or
119 other appropriate steps necessary to verify the compliance status of the parcel. On the basis of the
120 evidence gathered in this process, the SWCD may issue a Notification of Noncompliance to the County. If
121 the SWCD does not issue such a Notification, the County will not pursue a compliance or enforcement
122 action under Minnesota Statutes §103F.48 and subsection 6.2.
123

124 At any time during process set forth in 5.2 and 5.3, the landowner may provide documentation of
125 compliance to the SWCD.
126

127 5.2.1 **Compliance determination.** The SWCD will evaluate the available documentation, and/or evaluate
128 and/or inspect the buffer and/or alternative practices to determine if the parcel is in compliance.
129 Upon completion of the evaluation and/or inspection the SWCD shall issue a written compliance
130 determination to the landowner, the County and BWSR. The SWCD may also issue a Validation of
131 Compliance if applicable and requested by the landowner.
132

133 5.3 **Corrective Action Notice.** On receipt of an SWCD Notification of Noncompliance, the County will issue the
134 landowner a Corrective Action Notice that will:
135

136 (a) include a list of corrective actions needed to come into compliance with the requirements of Minn.

137 Stat. §103F.48;

138
139 (b) provide a timeline for complying with the corrective action notice;

140
141 (c) provide a compliance standard against which the County will judge the corrective action; and

142
143 (d) include a statement that failure to respond to this Notice may result in administrative penalties.

144
145 The County may send the landowner a combined Corrective Action Notice and APO as provided in section
146 6.2 so long as the combined Notice/APO includes all the required elements of both.

147
148 The County shall transmit the corrective action notice by either personal service to the landowner or by
149 depositing the same in the U.S. Mail. If service is made by U.S. mail, the document is deemed received
150 three business days after the notice was placed in the U.S. mail. Failure of actual receipt of a corrective
151 action notice that has either been personally served or served by depositing the same in the U.S. Mail
152 shall not be deemed a defense in an enforcement proceeding under section 6.0. The County shall also
153 send a copy of the Notice to the SWCD and BWSR.

154
155 The County may modify the corrective actions and timeline for compliance, in accordance with section
156 5.2, to extend the compliance timeline for a modification that imposes a substantial new action or
157 significantly accelerates the completion date for an action.

158
159 5.3.1 At any time after receipt of a corrective action notice, the landowner may provide documentation
160 of compliance to the County. In addition, the landowner may supply information to the County or
161 the SWCD in support of a request to modify a corrective action or the timeline for compliance. On
162 the basis of any such submittal or at its own discretion, the County may make a written
163 modification to the Corrective Action Notice or timeline for compliance. The County should also
164 make a written determination documenting whether the noncompliance has been fully corrected.
165 Any such modification of a compliance determination will be served on the landowner in the
166 manner provided for in section 5.3. The County shall provide the SWCD and BWSR a written copy
167 of any modification made pursuant to this provision.

168
169 5.3.2 The SWCD may, after an evaluation of the evidence documenting compliance submitted by the
170 landowner, issue a written Validation of Compliance if requested by the landowner. Upon receipt
171 by the County of a written compliance determination issued by the SWCD, the Corrective Action
172 Notice will be deemed withdrawn for the purpose of section 6.0, and the subject property will not
173 be subject to enforcement under that section.

174 175 176 **SECTION 6 ENFORCEMENT**

177
178 6.1 The County may issue an APO as provided for in Minn. Stat. §§103F.48, subd. 7(b) and (c) and 103B.101,
179 subdivision 12a to a landowner who has failed to take the corrective action as set forth in the corrective
180 action notice. For the APO to be effective it must be served on the landowner together with a copy of the
181 corrective action notice or alternatively the County may serve the landowner with a combined Corrective
182 Action Notice and APO so long as the combined Notice/APO includes all the elements of both. Service is
183 effective either by personal service or by depositing the documents set forth herein in the U.S. Mail. Any
184 penalty assessed in the APO shall continue to accrue until the violation is corrected as provided in the
185 Corrective Action Notice and APO.

188 **6.2 Administrative Penalty Order (APO).**
189

190 **6.2.1 Initial violation.** The penalty for a landowner on a single parcel that has not previously been the
191 subject of an APO issued by the County shall be:

- 192
193 i. \$0 for 11 months after issuance of the Corrective Action Notice;
194 ii. \$100 per parcel per month for the first six (6) months (180 days) following the time period in i;
195 and
196 iii. \$350 per parcel per month after six (6) months (180 days) following the time period in ii.
197

198 **6.2.2 Repeat violation.** The penalty for a landowner on a single parcel that has previously been the
199 subject of an APO issued by the County shall be:

- 200 i. \$100 per parcel per day for 180 days after issuance of the Corrective Action Notice; and
201 ii. \$350 per parcel per day for after 180 days following the time period in i.
202

203 **6.2.3 Ongoing penalty assessment.** Any penalty assessed under this section shall continue until the
204 corrective action notice has been satisfied.
205

206 **6.2.4 APO.** To be valid the APO shall include, at a minimum:
207

- 208 i. The facts constituting the violation of the riparian protection and water quality practices
209 requirements set forth in this section 4.0 of this ordinance or Minn. Stat. §103F.48 ;
210 ii. The specific statute and/or ordinance section(s) that has/have been violated;
211 iii. A written description of prior efforts to work with the landowner to resolve the violation;
212 iv. The amount of the penalty to be imposed;
213 v. The date the penalty will begin to accrue;
214 vi. The date that payment of the penalty is due;
215 vii. The date by which all or part of the penalty may be forgiven if the landowner has/have complied
216 with the Corrective Action Notice; and
217 viii. A statement of the landowner's right to appeal the APO.
218

219 **6.2.5** All or part of the penalty may be forgiven based on the correction of the noncompliance by the date
220 specified in the APO by the landowner as provided in Minn. Stat. §103F.48, subd. 7(d).
221

222 **6.2.6** A copy of the APO must be sent to the SWCD and BWSR.
223

224 **6.2.7** An APO issued under this section may be appealed to the BWSR within 30 days of receipt by the
225 landowner in accordance with the requirements set for the in Minn. Stat. §103F.48, subd. 9. Any
226 APO that is not appealed within the 30 day period shall be deemed final.
227

228 **6.3 Administrative Penalty Order Procedures**
229

230 **6.3.1 Statute of limitations.** Any administrative enforcement proceeding including the issuance of an
231 APO should be undertaken within three years after the alleged violations was discovered or
232 reasonably should have been discovered by the County. According to Minn. Stat. §541.07, the County
233 has two years in which to commence an APO action after the date the violation is discovered. The
234 goal is to complete the action as soon as reasonably practical, recognizing that situations for which
235 data must be gathered, field investigations must be completed and/or modeling must be performed
236 will require adequate time to complete the work and communicate with the landowner involved.
237

238 6.3.2 **Compliance verification.** Once a landowner has submitted written evidence of correction of
239 the violation set forth in the notice of compliance, compliance must be verified. The County will:
240

- 241 i. Review and evaluate all information related to the APO to determine if the violation has been
242 corrected;
- 243 ii. Verify compliance by site visit, re-inspection, examination of documentation, or other means
244 as may be reasonable under the facts of the case; and
- 245 iii. Document compliance verification.

246 The County may consult with the SWCD when conducting a compliance verification.
247

248 6.3.3 **Right to appeal.** Within 30 days after receipt of the APO, a landowner may appeal the terms
249 and conditions of an APO issued by a County to BWSR as provided in Minn. Stat. §103F.48, subd. 9.
250 The appeal must be in writing and must include a copy of the APO that is being appealed, the basis for
251 the appeal and any supporting evidence. The appeal may be submitted personally, by U.S. mail, or
252 electronically, to the Executive Director of BWSR.
253

254 6.3.4 **Penalty due.** Unless the landowner appeals the APO as provided in section 6.3.3 the penalty
255 specified in the APO becomes immediately due and payable to the County as set forth in the APO. If,
256 however, the landowner submits written documentation that the violations has been corrected prior
257 to the time the penalty becomes due and payable the County shall verify compliance and adjust the
258 penalty to an amount the landowner would have owed had the penalty been paid on the date the
259 landowner submitted written documentation of compliance. Written documentation of compliance
260 may include a written validation of compliance issued by the SWCD.
261

262 However, if the County determines the violation was not fully corrected, the County shall notify the
263 landowner by issuing a written letter of determination and depositing it in the U.S. Mail. Any
264 determination sent by U.S. Mail shall be deemed received three business days after the letter of
265 determination has been deposited in the U.S. Mail. The landowner shall have an additional 20 days
266 after receipt of the letter of determination to pay the penalty or the time period specified in the APO
267 as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as
268 provided in the Corrective Action Notice and APO.
269

270 6.3.5 **Referral for collection of penalty.** All penalties and interest assessed under an APO must be
271 paid by the landowner within the time specified in this section. All payments shall be made payable to
272 the County. Any penalty or interest not received in the specified time may be collected by the County
273 using any lawful means.
274

275 6.3.6 **Reporting and documentation.** The County shall maintain the following records for any
276 potential violation of the riparian protection and water quality practices requirements. Said records
277 shall include but are not limited to the following:

- 278 i. The cause of the violation;
- 279 ii. The magnitude and duration of the violation;
- 280 iii. Documentation showing whether the violation presents an actual or imminent risk to public
281 health and safety;
- 282 iv. Documentation showing whether the violation has the potential to harm to the natural
283 resources of the state;
- 284 v. A record of past violations;
- 285 vi. Efforts by the SWCD, County, or BWSR to assist the responsible party or parties to become
286 compliant, including written communications with the responsible party or parties; and
- 287 vii. Past and present corrective action efforts by the responsible party or parties.

288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318

SECTION 7 ADOPTION


7.1 **Adoption.** The Faribault County Buffer Ordinance is hereby adopted by the Faribault County Board of Commissioners on this 17th day of October, 2017.

7.2 **Effective Date.** This Ordinance shall be in full force and effect from and after November 1st, 2017.

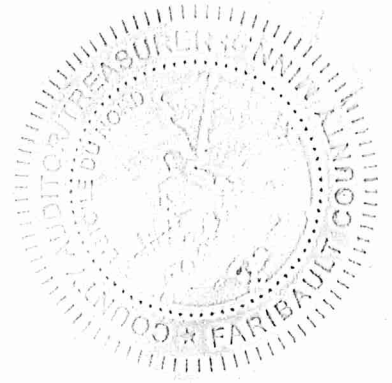


John Roper, Chairman
Faribault County Board of Commissioners

ATTEST:



John L. Thompson, Auditor/Treasurer/Coordinator



Notice of Public Hearing Published: October 2, 2017
Public Hearing: October 17, 2017
Adopted by County Board: October 17, 2017
Publication of Ordinance: tbd
Filed with County Recorder: tbd
Effective Date: November 1, 2017