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*Dawn M. Crouse*

OFFICE OF COUNTY RECORDER

Douglas County Minnesota

Dawn M Crouse Recorder

Douglas County, Minnesota  
Board of Commissioners

November 21, 2017

## Riparian Buffer Ordinance

**An ordinance providing for the protection and enhancement of natural resources in Douglas County through the establishment of vegetation buffers along public waters and public drainage ditches, with particular attention to locations where agricultural uses are occurring.**

**The County Board of Commissioners does hereby ordain:**

### SECTION I. GENERAL PROVISIONS

#### A. LEGAL AUTHORITY

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

#### B. PURPOSE

It is the purpose and intent of Douglas County to protect and enhance natural resources by providing for vegetated riparian buffers and water quality practices to achieve the following specific goals:

- (1) Protect state water resources from erosion and runoff pollution;
- (2) Stabilize soils, lake shores and water course banks; and
- (3) Establish and maintain riparian corridors.

In doing so, the County intends to coordinate the implementation and enforcement of the water resources riparian protection requirements of Minn. Stat. §103F.48 with the shoreland management rules and ordinances adopted under the authority of Minn. Stat. §103F.201 to 103F.227 and the management of public drainage systems established under Minn. Stat. chapter 103E where applicable. The County will also cooperate with State and local agencies to assist in providing guidance to landowners and effective protection of surface water quality and land resources.

#### C. SEVERABILITY

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

#### D. JURISDICTION

The provisions of this ordinance apply to all waters, including public drainage systems for which the County is not the drainage authority under Minn. Stat. chapter §103E, shown on the buffer protection map.

#### E.

The County shall maintain records concerning compliance and enforcement actions taken on parcels related to the requirements of this ordinance and follow all applicable provisions of the Minnesota Data Practices Act (Minn. Stat. §13).

### **SECTION II. DEFINITIONS**

**APO** - administrative penalty order issued pursuant to Minn. Stat. §103F.48, subd. 7 and Minn. Stat. §103B.101, subd. 12a.

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

**Buffer protection map** - has the meaning provided in Minn. Stat. §103F.48, subd. 1(d).

**BWSR** - means the Board of Water and Soil Resources.

**County** – Douglas County, Minnesota or the Douglas County Board of Commissioners

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

**Director** – means the Douglas County Land & Resource Management Director

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

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

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

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

**Parcel** - means a unit of real property that has been given a tax identification number maintained by the County.

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

**SWCD** – means the Douglas County Soil and Water Conservation District, or the District Board of Supervisors.

**Riparian Buffer TEP** – means the technical evaluation panel established to provide technical guidance and recommendations to the County and SWCD in the determination of compliance with the standards of the agricultural riparian buffer ordinance, in cases where the determination of compliance has been appealed by the landowner.

**Validation of compliance** – a form completed by the SWCD at the request of the landowner that certifies to the landowner and other responsible government units that the land required to be buffered meets the standards of this ordinance.

### **SECTION III. STANDARDS**

A. A riparian buffer shall be established and maintained on all property adjacent to a water body identified on the buffer protection map with the following standards:

1. For all public waters as shown on the buffer protection map (50-ft buffer requirement), the required width of the buffer shall be an average of fifty (50) feet and a minimum of thirty (30) feet.
2. For all public drainage ways as shown on the buffer protection map (16.5-ft buffer requirement), the required width of the buffer shall be sixteen and one half (16.5) feet.
3. Except as provided in (B) below, a buffer as defined in this ordinance may not be put to any use, including but not limited to cultivation farming, which would remove or prevent the permanent growth of perennial vegetation.

B. The following are exceptions to the buffer width requirements list in (A) above:

1. Any land that is exempted from the water resources riparian protection requirements under Minn. Stat. §103F.48, subd. 5.
2. Any land where an agricultural use is occurring adjacent to a public water and within the Shoreland Zoning District of Douglas County shall maintain a 50-ft vegetated buffer or as provided in Section V.5.a(1) of the Douglas County Zoning Ordinance.
3. Land that is used for cultivation farming may be compliant with the buffer requirement in (A) 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. The adequacy of any alternative practice allowed under this article shall be based on:
  - a) the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG);
  - b) common alternative practices adopted and published by BWSR;
  - c) 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
  - d) other practices adopted by BWSR.

C. Buffer width measurement.

1. The width of any required buffer on land adjacent to a water requiring a fifty (50) foot average width and a thirty (30) foot minimum width buffer shall be measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level.
2. The width of any required buffer on land adjacent to a water requiring a sixteen and a half (16.5) foot minimum width buffer shall be measured in the same manner as for measuring the vegetated grass strip under Minn. Stat. §103E.021, subd. 6.

#### **SECTION IV. COMPLIANCE/CORRECTIVE ACTION**

A. Compliance with the buffer requirements will be determined by the SWCD on a parcel by parcel basis.

1. The compliance status of each bank, or edge of a waterbody on an individual parcel will be determined independently.
2. The SWCD will evaluate the available documentation, and/or evaluate and/or inspect the buffer and/or alternative practices to determine if the parcel is in compliance.

3. The SWCD may issue a written compliance determination to the landowner, the County, and BWSR. The SWCD may also issue a Validation of Compliance if applicable and requested by the landowner.

B. In cases of noncompliance with the standards of the ordinance the County shall take the following actions prior to commencing any enforcement action.

1. In cases where the County is aware of potential noncompliance with the standards of this ordinance, the County shall notify the SWCD.
2. Upon notification by the County, or by another party, entity, or agency, the SWCD will determine the compliance status of the parcel by the means available to the SWCD, and provide notification to the County of the status of the parcel.
3. If the SWCD does not issue such a notification, or if the notification states that the status of the parcel is compliant, the County will not pursue a compliance or enforcement action under Minnesota Statutes §103F.48 and subsection 6.2.
4. On receipt of an SWCD notification of noncompliance, the County will issue the landowner of record and any other responsible party a corrective action notice that will include:
  - a) a list of corrective actions needed to come into compliance with the requirements of this ordinance and Minn. Stat §103F.48;
  - b) a timeline for complying with this notice;
  - c) a compliance standard against which it will judge the corrective action; and
  - d) a statement that failure to respond to this notice will result in the criminal charges and/or the assessment of financial penalties.

The County will document its determined method of notice and receipt of notice provided to the landowner and any other noticed party. The County shall send a copy of the notice to the SWCD and BWSR. A failure to document receipt will not preclude the County from demonstrating receipt or knowledge of the corrective action notice in an enforcement proceeding.

5. The landowner may request the County to modify the corrective action or the timeline for compliance with the submittal of information supporting such a request. The County at its discretion may modify the corrective action or timeline for compliance, and will provide notification of the modified corrective action and timeline in accordance with the notification requirements above.

6. At any time, the landowner or operator may provide documentation of compliance to the SWCD or the County. Said documentation will be reviewed by the SWCD and a subsequent determination of compliance letter will be provided to the landowner and County if the parcel is deemed to be compliant.
7. The SWCD shall determine if the noncompliance has been fully corrected, and shall notify the County and landowner of the determination. Upon County receipt of the compliance validation from the SWCD, the corrective action notice will be deemed satisfied, and the subject property will not be subject to enforcement.
8. Landowners or any other responsible party may appeal the determination of the compliance status of a parcel as identified through a corrective action notice. Appeals of the determination of the compliance status shall be referred to the Riparian Buffer Technical Evaluation Panel (TEP) and must be made within 30 days of the receipt of the corrective action notice. The appeal shall be filed in the following manner:
  - a) Appeals shall be made in writing to the Director and shall include:
    - (1) The name(s) and address(es) of the landowner and party making the appeal.
    - (2) The parcel identification number(s) and/or legal description(s) of the parcel(s) about which the appeal is being made.
    - (3) A copy of the corrective action notice
    - (4) Any evidence supporting the appeal including photos, contracts, letters, certifications, or other evidence as is deemed necessary.
  - b) Upon receipt of a complete appeal, the Director shall schedule a TEP meeting. The TEP shall meet to consider technical facts related to the determination of the compliance status of the parcel. After discussion and consideration of the technical information, the TEP shall provide a consensus opinion and/or findings of fact to the landowner, appellant, Director and members of the TEP within 60 days of the receipt of the completed appeal. The 60-day time period may be extended at the Director's discretion if reasons related to gathering or evaluating evidence related to the appeal warrant the additional time, including but not limited to viewing the property during the growing season.
  - c) Any timeline for compliance and/or any enforcement action by the County shall be suspended during the appeal process. The timeline for corrective action or enforcement shall continue from the point at which it was suspended at the time the TEP decision or findings are received by the County.

d) The SWCD may consider the TEP opinion and findings of fact and at the SWCD's discretion, amend the compliance status of the parcel(s) on which the appeal is made. Any changes to the compliance status of the parcel(s) under appeal shall be made within 30 days of receipt of the TEP findings and shall be in writing to the landowner, appellant, and the County.

e) A decision by the SWCD not to change the compliance status of a parcel(s) by the refusal of the SWCD in writing to issue a Validation of Compliance may be appealed to the BWSR within 30 days of the notice of such a decision by the SWCD as provided in Minn. Stat. §103F.48, subd. 9.

9. At least two members of the TEP must have knowledge and experience in the evaluation of wetland and/or riparian vegetation, fluvial geomorphology, hydrology, or agricultural or erosion control best management practices. The TEP shall consist of representatives from the following entities:

- a) SWCD Staff
- b) BWSR Staff
- c) Department of Natural Resources Staff
- d) Land & Resource Management Department Staff
- e) Agriculture and Ditch Inspector
- f) Minnesota Department of Agriculture Staff

10. TEP meetings shall be scheduled as soon as possible after the notice of appeal has been received by the Director. Members of the TEP and the landowner and appellant shall be notified of the date of the scheduled meeting at least 10 days prior to the meeting. The meeting may include a site inspection and shall include a scheduled time for the landowner and/or appellant to provide evidence related to the appeal.

## **SECTION V. ENFORCEMENT AND PENALTIES**

A. Failure to comply with a corrective action notice shall cause the County, at its own discretion, to pursue enforcement either through criminal prosecution or an administrative penalty order as set forth herein.

1. Failure to comply with a corrective action notice issued pursuant to this ordinance constitutes a misdemeanor and shall be punishable as defined by law.
2. The County may issue an APO as provided for in Minn. Stat. §103F.48, subd. 7(b) and (c) and 103B.101, subdivision 12a to a landowner who has failed to take the corrective action set forth in the corrective action notice within three years of the discovery of the violation.

a) The APO shall be served on the landowner together with a copy of the corrective action notice or as a combined corrective action notice and APO so long as the combined Notice/APO includes all the elements of both. Service is effective either by personal service or by depositing the documents set forth herein in the U.S. Mail. A copy of the APO must be sent to the SWCD and BWSR.

b) A valid APO issued by the County shall contain the following:

- (1) The facts constituting the violation of the riparian protection and water quality practices requirements set forth in this section 4.0 of this ordinance or Minn. Stat. §103F.48;
- (2) The specific statute and/or ordinance section(s) that has/have been violated;
- (3) A written description of prior efforts to work with the landowner to resolve the violation;
- (4) The amount of the penalty to be imposed;
- (5) The date the penalty will begin to accrue;
- (6) The date that payment of the penalty is due;
- (7) The date by which all or part of the penalty may be forgiven if the landowner has/have complied with the Corrective Action Notice; and
- (8) A statement of the landowner's right to appeal the APO.

c) Within the timeline established by the County to make corrective actions and to pay penalties, the landowner shall submit written notice to the County that includes evidence of the correction of the violation set forth in the notice of noncompliance. The County shall transmit the written notice to the SWCD, which shall determine if the parcel is partially, completely, or not in compliance with the requirements of the notice following the procedures outlined in Section IV above.

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

B. Appropriate penalties shall be issued by the County according to the method of enforcement.

1. Any landowner who violates any of the terms, provisions, or standards of this ordinance, including failure to comply with the terms and conditions of a corrective action notice, may be charged with a misdemeanor. Each day the violation occurs or continues shall constitute a separate offense. All fines paid



as a result of violations of this ordinance shall be paid to the County and shall be credited to the general revenue environmental mitigation fines fund.

## 2. Penalties for APO

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

- (1) \$0 for 11 months after issuance of the Corrective Action Notice;
- (2) \$125 per parcel per month for six (6) months (180 days) following the time period in (1); and
- (3) \$300 per parcel per month after six (6) months (180 days) following the time period in (2).

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

- (1) \$100 per parcel per day for 180 days after issuance of the Corrective Action Notice; and
- (2) \$250 per parcel per day for after 180 days following the time period in (1).

c) Ongoing penalty assessment. Any penalty assessed under this section shall continue until the corrective action notice has been satisfied.

d) Unless the landowner appeals the APO, the penalty specified in the APO becomes due and payable to the County as set forth in the APO. If, however, the landowner or the SWCD submits written documentation to the County that the violation has been corrected prior to the time the penalty becomes due and payable the County shall adjust the penalty to an amount the landowner would have owed had the penalty been paid on the date the landowner submitted written documentation of compliance.

e) All penalties and interest assessed under an APO must be paid by the landowner within the time specified. All payments shall be made payable to the County and shall be credited to the general revenue environmental mitigation fines fund. Any penalty or interest not received in the specified time may be collected by the County using any lawful means.

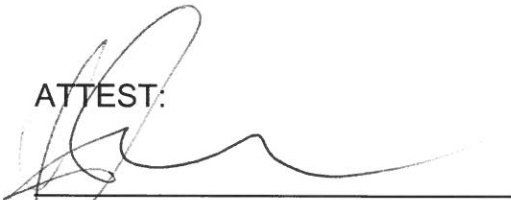
The above Riparian Buffer Ordinance was approved by the Douglas County Board of Commissioners on November 21, 2017 and shall be in effect immediately.  
Those voting yes: Englund, Meyer, Miller, and Stratton. Those voting no: Rapp.

BOARD OF COMMISSIONERS  
DOUGLAS COUNTY, MINNESOTA



James Stratton, Chair

ATTEST:



Heather Schlangen, Coordinator  
Clerk of the Board  
Douglas County, Minnesota