

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

**RIPARIAN PROTECTION AND WATER QUALITY PRACTICES  
ORDINANCE**

**SECTION 1.0 STATUTORY AUTHORIZATION AND POLICY**

**1.1 STATUTORY AUTHORIZATION**

This buffer ordinance is adopted pursuant to the authorization and policies contained in Minn. Stat. §103F.48, the Riparian Protection and Water Quality Practices statute (aka Buffer Law), and the County planning and zoning enabling legislation in Minn. Stat. chapter 394.

**1.2 PURPOSE AND INTENT**

It is the purpose and intent of the County to:

- 1.2.1 Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:
  - A. Protect state water resources from erosion and runoff pollution;
  - B. Stabilize soils, shores and banks; and
  - C. Protect or provide riparian corridors.
- 1.2.2. 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; and
- 1.2.3 Provide efficient and effective direction to landowners and protection of surface water quality and related land resources.

## SECTION 2.0      DEFINITIONS AND GENERAL PROVISIONS

### 2.1      DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the same meaning they have in common usage and to give this ordinance its most reasonable application. For the purpose of this ordinance, the words “must” and “shall” are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.

- 2.1.1 **“APO”** means the administrative penalty order issued pursuant to Minn. Stat. §103F.48, subd. 7 and Minn. Stat. §103B.101, subd. 12a.
- 2.1.2 **“Buffer”** has the meaning provided in Minn. Stat. §103F.48, subd. 1(c).
- 2.1.3 **“Buffer protection map”** has the meaning provided in Minn. Stat. §103F.48, subd. 1(d) and which are available on the Department of Natural Resources website.
- 2.1.4 **“BWSR”** means the Board of Water and Soil Resources.
- 2.1.5 **“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.
- 2.1.6 **“Drainage authority”** has the meaning provided in Minn. Stat. §103E.005, subd. 9.
- 2.1.7 **“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.
- 2.1.8 **“Parcel”** means a unit of real property that has been given a tax identification number maintained by the County.
- 2.1.9 **“Public drainage system”** has the meaning given to “drainage system” in Minn. Stat. §103E.005, subd. 12.
- 2.1.10 **“Local water management authority”** has the meaning provided in Minn. Stat. §103F.48, Subd. 1(g).
- 2.1.11 **“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.

2.1.112 “**SWCD**” means Soil and Water Conservation District.

## 2.2 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.

## 2.3 GREATER RESTRICTIONS

Where the provisions of any statute, other ordinance or regulation imposes greater restrictions than this ordinance, the provisions of such shall be controlling

## 2.4 ADOPTION BY REFERENCE

The following are adopted by reference when combined are referred to as the “*Buffer Protection Map*” established and maintained by the Minnesota DNR:

- A. The *Protected Waters and Wetlands Inventory* Map of Dodge County Minnesota dated 1984 adopted under Minnesota Statutes 103G.021, or successor.
- B. Public drainage systems established under Minnesota Statutes 103E

## 2.5 DATA SHARING/MANAGEMENT

2.5.1 The County may enter into arrangements with the SWCD, a watershed district if applicable, BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this ordinance.

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

## **SECTION 3.0 JURISDICTION**

### 3.1 JURISDICTION

The provisions of this ordinance apply to land adjacent to all waters identified on the *Buffer Protection Map*.

For non-adjacent parcels located within the Shoreland Overlay District that are not subject to the Riparian Protection and Water Quality Practices Act, the shoreland buffer provisions of Chapter 14 of the Dodge County Zoning Ordinance would apply.

## **SECTION 4.0 EXEMPTIONS**

The following uses are exempt from the Riparian Protection and Water Quality Practices act, provided they comply with the requirements of Chapter 14 of the Dodge County Zoning Ordinance (Shoreland Overlay District) and Minnesota Rules Chapter 6120:

- 4.1 Land enrolled in the federal Conservation Reserve Program (CRP)
- 4.2 Land used as public or private water access or recreational use area including legal stairways, landings, picnic area, access paths, beach and watercraft access area, and permitted water-oriented structures as provided in Chapter 14 of the Dodge County Zoning Ordinance (Shoreland Overlay District);
- 4.3 Land covered by a road, trail, building or other structures;
- 4.4 Land regulated by a NPDES/SDS permit under Minnesota Rules Chapter 7090 which provides water resources riparian protection, in any of the following categories:
  - A. Municipal Separate Storm Sewer System (MS4)
  - B. Construction Storm Water (CSW); or
  - C. Industrial Storm Water (ISW).
- 4.5 Land that is part of water-inundation cropping system; or
- 4.6 Land in a temporary non-vegetated condition due to drainage tile installation and maintenance, alfalfa, or other perennial crop or plant seeding, or construction or conservation projects authorized by a federal, state, or local government unit.

## **SECTION 5.0 ACCEPTABLE PRACTICES FOR COMPLIANCE**

Landowners subject to the Riparian Protection and Water Quality Practices Act may comply by either establishing a vegetative buffer or installing an approved alternative practice, in accordance with the following provisions.

### **5.1 VEGETATIVE BUFFERS**

Landowners planting a buffer must only use seed mixes verified by the Minnesota Department of Agriculture as consistent with Minnesota Statutes 18G (Plant Protection and Export Certification) or 21 (Seeds), or successor, to prevent contamination with Palmer Amaranth or other noxious weed seeds.

All vegetative buffers shall be managed to maintain compliance with Minnesota Statutes 18.75 to 18.91 (Noxious Weed Law), as amended.

#### 5.1.1 BUFFER WIDTH

The width of any required 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 normal water. A landowner owning property adjacent to a water course identified on the buffer protection map must establish and maintain a buffer area as follows:

##### A. PUBLIC WATERS

For all public water designated under Minnesota Statutes 103G.201 (*Public Waters Inventory Map*), a fifty (50) foot average and thirty (30) foot minimum width continuous buffer of perennial rooted vegetation shall be established and maintained in accordance with Minnesota Statutes 103F.48, Subd. 3 and Chapter 14 of the Dodge County Zoning Ordinance and Minnesota Rules Chapter 6120.3300, Subp.7 (Agricultural Use Standards), as amended.

##### B. PUBLIC DITCHES

For public drainage systems established under Minnesota Statutes 103E, a sixteen and a half (16.5) foot width buffer of continuous perennial rooted vegetation shall be established and maintained in accordance with Minnesota Statutes 103E.021, Supb. 1.

#### 5.1.2 USE OF BUFFER AREA

Buffers may not be put to any use which would remove or prevent the permanent growth of perennial vegetation, or violate Chapter 14 of the Dodge County Zoning Ordinance (Shoreland Overlay District), or the provisions of Minnesota Rules Chapter 6120 and Minnesota Statutes 103E, or successor.

#### 5.2 ALTERNATIVE PRACTICES

An approved alternative riparian water quality practice or combination of structural, vegetative, and management practices which provide water quality protection comparable to the water quality protection provided by a vegetative buffer may also be installed to comply the Riparian Protection and Water Quality Practices Act.

The adequacy of any comparable alternative practice allowed under this section shall be determined by the Dodge SWCD and based on:

- 5.2.1 The Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG);
- 5.2.2 Common alternative practices adopted and published by BWSR;
- 5.2.3 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
- 5.2.4 Other practices adopted by BWSR.

## **SECTION 6.0 COMPLIANCE DETERMINATIONS**

### **6.1 INVESTIGATION**

Inquiries, documentation/information, observations or complaints regarding a potential noncompliance with this ordinance shall be referred to the Dodge County SWCD for a compliance determination. The SWCD will evaluate the available documentation and/or perform inspections to determine the compliance status of the parcel. A Validation of Compliance (VOC) can be issued when requested by the landowner. A landowner may appeal a Validation of Compliance to BWSR following the procedures of Section 7.3.4, below.

### **6.2 COMPLIANCE DETERMINATIONS**

Initial and final compliance with the requirements for acceptable practices in Section 4 will be determined by the SWCD on a parcel by parcel basis. The compliance status of each bank, or edge of a waterbody on an individual parcel will be determined independently.

#### **6.2.1 COMPLIANCE**

If the parcel is determined compliant, the SWCD shall notify the County to document the status.

#### **6.2.2 NON-COMPLIANCE**

If the parcel is determined non-compliant, the SWCD shall provide a *Notification of Noncompliance (NON)* to the county to initiate the county's enforcement process.

## **SECTION 7.0 ENFORCEMENT**

### **7.1 CORRECTIVE ACTION NOTICE (CAN)**

On receipt of an SWCD NON, the County shall issue a Corrective Action Notice (CAN) to the landowner by first class mail. Copies of the CAN shall be provided to the SWCD and BWSR. The CAN shall include:

- 7.1.1 A copy of the NON issued by the SWCD;
- 7.1.2 Options of acceptable corrective actions to obtain compliance;
- 7.1.3 A timeline for compliance;
- 7.1.4 A statement that the violation will be deemed resolved upon receipt of a VOC issued by the SWCD;
- 7.1.5 A statement that failure to respond to the CAN will result in the assessment of civil and/or administrative penalties;

The compliance deadline may be extended based upon the type of practice chosen, the time of year or other any other legitimate reasons when requested by the landowner and approved by the County and SWCD. Any modification to the CAN shall be provided to the landowner, the SWCD and BWSR.

The applicant may appeal the terms of the CAN to the Dodge County WCA TEP panel.

At any time after receipt of a corrective action notice, the landowner may provide a Validation of Compliance from the SWCD as documentation of compliance to the County.

Upon receipt of the Validation of Compliance from the SWCD, the County will provide written notification of the resolution of the violation to the landowner, the SWCD and BWSR.

### **7.2 FAILURE TO COMPLY**

The County may, at its own discretion, elect to pursue the failure to comply with a corrective action notice either criminally or through an Administrative Penalty Order (APO) as set forth herein.

- 7.2.1 Failure to comply with a corrective action notice issued under Section 7.1 constitutes a misdemeanor and shall be punishable as defined by law. The criminal enforcement process will be administered in accordance with Chapter 19 of the Dodge County Zoning Ordinance, as amended.

7.2.2 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. For the APO to be effective it must be served on the landowner together with a copy of the Corrective Action Notice or alternatively the County may serve the landowner with 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. Any penalty assessed in the APO shall continue to accrue until the violation is corrected as provided in the Corrective Action Notice and APO.

### 7.3 ADMINISTRATIVE PENALTY ORDER (APO)

#### 7.3.1 STATUTE OF LIMITATIONS

Under Minnesota Statutes §541.07, commencement of an APO action shall occur within two years from the date the violation is discovered.

#### 7.3.2 APO CONTENTS

The SWCD and BWSR shall be copied on any APO issued to a property owner. The APO shall include:

- A. The facts constituting the violation of the riparian protection and water quality practices act
- B. The specific ordinance section(s) that has/have been violated;
- C. A written description of prior efforts to resolve the violation;
- D. The amount of the penalty to be imposed;
- E. The date the penalty will begin to accrue;
- F. The date that payment of the penalty is due;
- G. The date by which all or part of the penalty may be forgiven if the landowner complies with the CAN; and
- H. A statement of the landowner's right to appeal the APO.

#### 7.3.3 COMPLIANCE VERIFICATION

The property owner shall submit a Validation of Compliance issued by the Dodge County SWCD to the Environmental Services Department to verify compliance.

#### 7.3.4 APPEAL OF AN APO

The landowner may appeal the APO issued by the County to BWSR in writing within 30 days after receipt of the APO. For the purposes of this section, receipt of the APO is determined to be three business days after the date of the APO.

A valid appeal must include:

- A. A copy of the APO that is being appeal
- B. The basis for the appeal
- C. Documentation to support the appeal

Any APO that is not appealed within the 30 day period after receipt shall be deemed final.

#### 7.3.5 PENALTY DUE

Unless the landowner appeals the APO, the penalty specified in the APO becomes immediately due and payable to the County. Should the landowner submit a *Validation of Compliance* to the county prior to the deadline specified in the APO, the penalty may be reduced or waived by the Dodge County Board. Any penalty assessed under this section shall continue until the violation is resolved.

The County may issue an APO of up to \$10,000 for noncompliance as provided for in Minn. Stat. § 103B.101, subdivision 12a(a),12a(b), and 12a(c) against a landowner that does not comply with a Corrective Action Notice. The APO should be sent with the Corrective Action Notice, alternatively, a combined Corrective Action Notice and APO may be sent so long as the combined Notice/APO includes all the elements of both. The penalty will continue to accrue until the violation is corrected as provided in the Corrective Action Notice and APO. The penalty schedules shown below in (A) and (B) will be used by BWSR to evaluate County APO plan consistency with the Plan adopted by BWSR according to Minn. State. § 103F.48, subd. 7

##### 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:

<b>MONTHS FROM CAN</b>	<b>PENALTY PER PARCEL PER MONTH</b>
0-11	\$0
12 -17 (180 days)	\$500
18-24 (180 days)	\$1000

**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:

<b>DAYS SINCE CAN ISSUED</b>	<b>PENALTY PER PARCEL PER DAY</b>
1 - 180	\$200
181-360	\$500

**7.3.6 REFERRAL FOR COLLECTION**

All penalties assessed under an APO must be paid by the landowner within the time specified in this section. All payments shall be made payable to the County. Any penalty or interest not received in the specified time may be collected by the County using any lawful means.

**SECTION 8.0 REPORTING AND DOCUMENTATION**

The County shall maintain on file all documents associated with any violation of the Riparian Protection and Water Quality Act in accordance with Minnesota Statutes 13.03 pertaining to data retention.