

NICOLLET COUNTY BUFFER ORDINANCE

1.0 STATUTORY AUTHORIZATION AND POLICY

1.1 Title and Statutory Authorization. This Ordinance shall be known, cited, and referred to as the “Nicollet County Buffer Ordinance,” except as referred to herein, where it shall be known as “the Ordinance” or “this Ordinance.” This Ordinance is adopted pursuant to the authorization and polices contained in Minn. Stat. § 103F.48 and the zoning enabling legislation in Chapter 394 of the Minnesota Statutes.

1.2 Purpose and Intent. It is the purpose and intent of the Nicollet County 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 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 Minnesota Statute § 103F.201 to 103F.227 and the management of public drainage systems established under Chapter 103E of the Minnesota Statutes where applicable; and

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

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 **“Administrative Penalty Order” or “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 **“Alternative Riparian Water Quality Practice”** shall have the meaning as identified in Section 4.5 of this Ordinance.

2.1.3 **“Board”** means the Nicollet County Board of Commissioners.

2.1.4 **“Buffer”**, as defined in Minn. Stat. § 103F.48, subd. 1(c), means an area consisting of perennial vegetation, excluding invasive plants and noxious weeds, adjacent to all bodies of water within the state and that protects the water

resources of the state from runoff pollution; stabilizes soils, shores, and banks; and protects or provides riparian corridors.

- 2.1.5 **“Buffer Protection Map”**, as defined in Minn. Stat. § 103F.48, subd. 1(d), means the buffer maps established and maintained by the Commissioner of Natural Resources. Buffer maps are available on the Department of Natural Resources website.
- 2.1.6 **“BWSR”** means the Minnesota Board of Water and Soil Resources.
- 2.1.7 **“Corrective Action Notice” or “CAN”** is the notice issued to a landowner stating noncompliance with the Buffer Law as per Section 5.3 of this Ordinance.
- 2.1.8 **“County”** means Nicollet County and its employees, designees or representatives.
- 2.1.9 **“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.
- 2.1.10 **“Drainage Authority”**, as defined in Minn. Stat. § 103E.005, subd. 9, means the board or joint county drainage authority having jurisdiction over a drainage system or project.
- 2.1.11 **“Landowner”** means the holder of the fee title, the holder’s agents or assigns, any lessee, licensee, or operator of the real property, or any other party conducting farming activities on or exercising control over the real property. It shall include all “land occupiers,” as defined by Minn. Stat. § 103F.401, subd. 7 as “a person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of lands as owner, lessee, or otherwise.”
- 2.1.12 **“Local Water Management Authority”**, as defined in Minn. Stat. § 103F.48, subd. 1(g), means a watershed district, metropolitan water management organization, or county operating separately or jointly in its role as local water management authority under Chapter 103B or 103D of the Minnesota Statutes.
- 2.1.13 **“Normal Water Level”** means the water 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.
- 2.1.14 **“Operator”** means the person who works the land for agricultural purposes and makes day-to-day management decisions. It shall include the owner, hired manager, cash tenant, share tenant, and/or a partner. If land is rented or worked on shares, the tenant or renter is the operator.
- 2.1.15 **“Parcel”** means a tract, lot, and piece or parcel of land, 40 acre tracts or portions thereof, contiguous quantity of land in the possession of, owned by, or recorded as the property of, the same claimant or person.
- 2.1.16 **“Perennial Vegetation”** has the meaning of vegetation present at all seasons of the year.
- 2.1.17 **“Public Drainage Authority”** has the meaning given in Minnesota Statute §103E.005, Subd. 12.
- 2.1.18 **“Public Drainage System”**, as defined in Minn. Stat. § 103E.005, means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority. "Drainage system" includes the improvement of a natural waterway used in the

construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system.

2.1.19 **“Soil and Water Conservation District” or “SWCD”** means the Nicollet Soil and Water Conservation District.

2.1.20 **“Validation of Compliance”** means a notice issued by SWCD that validates a site(s) is compliant and that said 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. Said notice shall be in recordable form.

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 Data Sharing/Management

2.3.1 The County may enter into an arrangement with the Nicollet 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.

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

2.4 Delegation of Enforcement. Nothing herein shall prevent the County from entering into an agreement with any other entity, authorized under statutes section 103F.48 to enforce buffer requirements for the enforcement of buffer requirements within its jurisdiction according to this ordinance or other properly adopted enforcement rule.

2.5 Drainage System Acquisition and Compensation for Buffer. Nothing in this Ordinance shall prevent the acquisition and compensation of grass buffers on public drainage systems pursuant to Minnesota Statutes Chapter 103E.

2.6 Notice. Any notice or other communication to be provided herein shall be directed to the Landowner whose name and address appears on the County’s 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 2.1.11.

3.0 JURISDICTION

3.1 Jurisdiction. The provisions of this ordinance apply to all waters, including public drainage systems for which the County is not the drainage authority under Chapter 103E of the Minnesota Statutes, shown on the buffer protection map, where another enforcement authority has elected enforcement jurisdiction.

4.0 BUFFER REQUIREMENTS

4.1 Buffer Width. Except as provided in Sections 4.4 and 4.5, a landowner owning property adjacent to a water body identified on the Buffer Protection Map must establish and maintain a buffer area as follows:

- (a) For waters shown on the Buffer Protection Map requiring a fifty (50) foot width buffer, the buffer width will be fifty (50) foot average and thirty (30) foot minimum width as provided in Minn. Stat. § 103F.48, subd. 3 and as measured according to Section 4.2 of this Ordinance; and
- (b) For waters shown on the Buffer Protection Map requiring a sixteen and a half (16.5) foot minimum width buffer, the buffer width will be sixteen and a half (16.5) feet as provided in Minn. Stat. § 103F.48, subd. 3 and as measured according to Section 4.2 of this Ordinance; and

4.2 Measurement.

- (a) 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 as defined in Section 2.1.13 of this Ordinance and Minn. Stat. § 103F.48, subd. 3(c).
- (b) 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. 1 and Minn. Stat. § 103F.48 subd. 3(c).

4.3 Use of Buffer Area. Except as provided in sections 4.4 and 4.5, a buffer as defined in Section 2.1.4 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.

4.4 Exemptions. The requirements of Section 4.1 do not apply to land that is exempted under Minn. Stat. § 103F.48, subd. 5, such as lands:

- 4.4.1 enrolled in the federal Conservation Reserve Program;
- 4.4.2 used as a public or private water access or recreational use area including stairways, landings, picnic areas, aces paths, beach and watercraft access areas, and permitted water orientated structures as provided in the Shoreland model standards and criteria adopted pursuant to section 103F.211 or as provided for in an approved local government shoreland ordinance;
- 4.4.3 covered by a road, trail, building, or other structures; or

- 4.4.4 regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) permit under Minnesota Rules, chapter 7090, and provides water resources riparian protection , in any of the following categories:
 - 4.4.4.1 municipal separate storm sewer system (MS4);
 - 4.4.4.2 construction storm water (CSW); or
 - 4.4.4.3 industrial storm water (ISW); or
- 4.4.5 part of water-inundation cropping system; or
- 4.4.6 in a temporary nonvegetated 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.

4.5 Alternative Practices. As provided in Minn. Stat. § 103F.48, subd. 3(b), an owner of land that is used for Cultivation Farming may demonstrate compliance with Section 4.1 by establishing and maintaining Alternative Riparian Water Quality Practices, or a 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 to 4.3. The adequacy of any alternative practice allowed under this section shall be based on the following factors, with consideration given as to whether that practice will interfere with the mandatory buffer required under Minn. Stat. § 103E.021:

- (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 NRCS FOTG; or
- (d) Other practices adopted by BWSR.

4.6 Nonconformities. Where the provisions of any statute, other ordinance or regulation imposes greater restrictions than this ordinance, the provisions of such statute, other ordinance, or regulation shall control. Parcels that are considered nonconforming for other land uses shall not be nonconforming with respect to these provisions and with respect to compliance with the Minn. Stat. § 103F.48.

5.0 COMPLIANCE DETERMINATIONS

5.1 Compliance Determinations. Compliance with the buffer requirements set forth in Section 4 will be determined by the SWCD by parcel. The compliance status of each bank or edge of a waterbody on a parcel will be determined independently.

5.2 Investigation and notification of noncompliance. When the SWCD identifies a potential noncompliance with this ordinance or receives a third party complaint, it shall consult with the County to determine the appropriate course of action to document compliance

status. This may include communication with the landowner, inspection or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of the evidence gathered in this process, the SWCD may issue a Notification of Noncompliance to the County. If the SWCD does not issue such a Notification, the County will not pursue a compliance or enforcement action under Minn. Stat. § 103F.48 and Section 6.2 of this Ordinance. If the SWCD does issue such a Notification, the SWCD must include for consideration by the County, 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.

At any time during the process set forth in Sections 5.2 and 5.3 of this Ordinance, the landowner may provide documentation of compliance to the SWCD.

5.2.1 Compliance Determinations. In order to determine if a parcel is in compliance or if acceptable alternative practices have been used, the SWCD shall evaluate available documentation on the parcel and inspect the buffer. Upon completion of the evaluation and inspection, the SWCD shall 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.

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

- (a) Include a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. § 103F.48;
- (b) Provide a timeline for completing the corrective action;
- (c) Provide the standard by which compliance will be evaluated after the corrective actions are taken;
- (d) Include a statement that failure to respond to the Notification of Noncompliance may result in the assessment of criminal or administrative penalties.

The County may send the landowner a combined Corrective Action Notice and APO as provided in Section 6.2 of this Ordinance, so long as the combined Notice/APO includes all the requisite elements provided in Sections 5.3 and 6.2.1 of this Ordinance.

5.3.1 At any time after receipt of a Corrective Action Notice, the landowner may provide documentation of compliance to the County. In addition, the landowner may supply information to the County or the SWCD in support of a request to modify a corrective action or the timeline for compliance. On the basis of any such submittal or at its own discretion, the Nicollet County Property and Public Services department may make a written modification to the Corrective Action Notice or timeline for compliance. The County, upon review and notification by the SWCD, should also make a written determination documenting whether the noncompliance has been fully corrected. Any such modification of a compliance determination will be served on the landowner in the manner provided for in Section 5.3 of this Ordinance. The County shall

provide the SWCD and BWSR with a written copy of any modification made to the Corrective Action Notice.

- 5.3.2 At any time after receipt of a Corrective Action Notice, the landowner may request a written Validation of Compliance from the SWCD and submit evidence in support of that request to the SWCD. After evaluating any evidence submitted by the landowner, the SWCD may issue a written Validation of Compliance. Upon receipt of a written Validation of Compliance from the SWCD, the Corrective Action Notice will be deemed withdrawn for the purpose of section 6.0, and the subject property will not be subject to enforcement under that section.

6.0 ENFORCEMENT

6.1 Failure to comply with a Corrective Action Notice issued under Section 5.3 of this Ordinance

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 as set forth herein.

- (a) Failure to comply with a Corrective Action Notice issued under section 5.3 of this Ordinance constitutes a misdemeanor and shall be punishable as defined by law. Any criminal enforcement action undertaken pursuant to this Section of the Ordinance must be undertaken within two (2) years after the alleged violation was discovered or reasonably should have been discovered by the County.
- (b) The County may issue an Administrative Penalty Order as provided for in Minn. Stat. § 103F.48, subd. 7(c) and 103B.101, subd. 12a to a landowner who has failed to take the corrective action set forth in the Corrective Action Notice. For the Administrative Penalty Order 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 Administrative Penalty Order so long as the combined Corrective Action Notice/Administrative Penalty Order 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 Administrative Penalty Order shall continue to accrue until the violation is corrected as provided in the Corrective Action Notice and Administrative Penalty Order.

6.2 Administrative Penalty Order (APO).

- (a) Initial Violation. The penalty for a landowner on a parcel that has not previously been issued a corrective action notice by the County shall be:
- i. \$0 for 11 months after issuance of the Corrective Action Notice or during the schedule issued for taking corrective actions;
 - ii. \$100 per parcel per month for 180 days following the time period in Section 6.2(a)(i) of this Ordinance; and

- iii. \$500 per parcel per month after 180 days following the time period in Section 6.2(a)(ii) of this Ordinance.
- (b) Repeat Violation. The penalty for a landowner on a parcel that has previously been issued a corrective action notice by the County shall be:
- i. \$100 per parcel per day for 180 days after issuance of the subsequent Corrective Action Notice; and
 - ii. \$500 per parcel per day for 180 days following the time period in Section 6.2(b)(i) of this Ordinance.
- (c) **Ongoing Penalty Assessment**. Any penalty assessed under this section shall continue until the corrective action notice has been satisfied.

6.2.1 APO Requirements. To be valid, the APO shall include, at a minimum:

- i. The facts constituting a violation of the riparian protection and water quality practices requirements set forth in Section 4.0 of this Ordinance or Minn. Stat. § 103F.48;
- ii. The specific statute and/or ordinance section (s) that has/have been violated;
- iii. A written description of prior efforts to work with the landowner to resolve the violation;
- iv. The amount of the penalty to be imposed;
- v. The date the penalty will begin to accrue;
- vi. The date that payment of the penalty is due;
- vii. 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
- viii. A statement of the landowner's right to appeal the APO.

6.2.2 Fifty percent of the penalty may be forgiven based on the correction of the noncompliance by the date specified in the APO by the landowner as provided in Minnesota Statute §103F.48, subdivision 7(d).

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

6.3 Administrative Penalty Order Procedures.

6.3.1 Statute of Limitations. Any criminal enforcement action undertaken pursuant to Section 6.1 of this Ordinance must be undertaken within two years after the alleged violation was discovered or reasonably should have been discovered by the SWCD. According to Minn. Stat. § 541.07, the County has two (2) years in which to commence an APO action after the date the violation is discovered. The goal is to complete the action as soon as reasonably practical, recognizing that situations for which data must be gathered, field investigations must be completed and/or modeling must be performed will require adequate time to complete the work and communicate with the landowner involved.

6.3.2 Compliance Verification. Once a landowner has provided notice and submitted written evidence of correction of the violation set forth in the Notice of Noncompliance, compliance must be verified. The County will refer the landowner's evidence and notices to the SWCD to:

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

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

6.3.3 Right to Appeal. Minnesota Statute §103F.48, subdivision 9, establishes the rights and procedures for a landowner or his/her agent or operator to appeal an APO issued for a violation of the riparian protection and water quality practices requirements. A landowner of his/her agent or operator may appeal, in writing, the terms and conditions of an APO issued by the County within 30 days of receipt of the APO. The appealing party must provide 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 the U.S. mail, or electronically, to the Executive Director of BWSR. At the discretion of the Executive Director, APOs for the same or similar violations on a parcel may be combined and addressed as a single appeal. The Executive Director will review the appeal and supporting evidence and issue a decision within 60 days of receipt of the appeal. The Executive Director's decision is appealable to the Minnesota Court of Appeal pursuant to Minnesota Statute §14.63 to 14.69. The penalty shall not accrue while the appeal is pending.

6.3.4 Penalty Due. Unless the landowner appeals the APO as provided in Section 6.3.3 of this Ordinance, the penalty specified in the APO becomes immediately due and payable to the County as set forth in the APO. If however, the landowner submits written documentation that the violation(s) has/have been corrected prior to the time the penalty becomes due and payable, the County shall verify compliance and adjust the penalty equal to the amount as listed in Section 6.2 (a) and (b) of this Ordinance based on the documentation submittal date. Written documentation of compliance may include a written Validation of Compliance issued by the SWCD.

However, if the County determines the violation was not fully corrected, the County shall notify the landowner by sending a written letter of determination to the landowner via U.S. Mail. Any determination sent by U.S. Mail shall be deemed received three (3) business days after the letter of determination has

been deposited in the U.S. Mail. The landowner shall have an additional twenty (20) days after receipt of the determination to pay the penalty or the time period specified in the APO as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the Corrective Action Notice and APO.

6.3.5 Referral for Collection of Penalty. All penalties and interest 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.

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

- i. The cause of the violation;
- ii. The magnitude and duration of the violation;
- iii. Documentation showing whether the violation presents an actual or imminent risk to public health and safety;
- iv. Documentation showing whether the violation has the potential to harm the natural resources of the state;
- v. A record of past violations;
- vi. Efforts by the Nicollet SWCD, County, Watershed District if applicable, or BWSR to assist the responsible party or parties to become compliant, including written and oral communications with the responsible party or parties; and
- vii. Past and present corrective action efforts by the responsible party or parties.

7.0 APPEALS PROCESS

7.1 The Executive Director of BWSR's decision on appeal of an APO in accordance with Section 6.3.3 of this Ordinance is appealable to the Minnesota Court of Appeals in accordance with Minn. Stat. §§ 14.63 to 14.69. The penalty associated with the APO shall not accrue while an appeal is pending.

8.0 EFFECTIVE DATE

This ordinance shall be in full force and effect from and after November 2 2017 of the date of its passage and publication according to law, whichever occurs first.

Dated this 24th day of October, 2017

Marie Dranttel

Marie Dranttel, Chair
Nicollet Board of Commissioners

ATTEST:



Ryan Krosch
Clerk to the Board