

CARLTON COUNTY

**BUFFER
ORDINANCE
#34**



Adopted:

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ARTICLE 1. TITLE, AUTHORITY, PURPOSE, SCOPE JURISDICTION AND SEVERABILITY

Section 1. Title

This Ordinance shall be known and may be referred to as the Carlton County Buffer Ordinance; when referred to herein, it shall be known as “this Ordinance.”

Section 2. Statutory Authorization

This Ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statute Section 103F.48, the Buffer Law, and Minnesota Statutes Section 103B.101, as those statutory provisions may be amended from time to time.

Section 3. Purpose and Intent

The purpose and intent of this Ordinance is to:

1. Provide for riparian vegetated buffers and water quality practices to achieve the following objectives:
 - a) Protect state water resources from erosion and runoff pollution;
 - b) Stabilize soils, shores, and banks; and
 - c) Protect or provide riparian corridors.
2. Coordinate the implementation and enforcement of the water resources riparian protection requirements of Minnesota Statute Section 103F.48 with the shoreland management rules and ordinances adopted under the authority of Minnesota Statute Sections 103F.201 to 103F.227 and the management of public drainage systems established under Minnesota Statute Chapter 103E, where applicable;
3. Provide protection of surface water quality and related land resources; and
4. Provide efficient and effective guidance to landowners regarding the SWCD’s monitoring and the County’s enforcement of the water resources riparian protection requirements of Minnesota Statute Section 103F.48.

Section 4. Scope and Applicability

Where the provisions of this Ordinance impose greater restriction than those of any statute, other ordinance, or regulation, the provisions of this Ordinance shall be controlling. Where the provisions of any statute, other ordinance, or regulation impose greater restrictions than this Ordinance, the provisions of such statute, other ordinance, or regulation shall be controlling.

Section 5. Delegation and Collaboration

Nothing shall prevent the County from entering into an agreement with any other entity, as authorized under Minnesota Statutes Section § 103F.48, to enforce the provisions of that Statute or this Ordinance within the entity’s jurisdiction. The County may delegate functions under this Ordinance to the SWCD pursuant to the provisions of this Ordinance or by separate agreement. The County may enter into arrangements with the SWCD, BWSR, or other parties with respect to the creation and maintenance of and access to data concerning buffers and alternative practices under this ordinance.

Section 6. Jurisdiction

The provision of this Ordinance shall apply to all waters, as shown on the buffer protection map maintained by the Minnesota Department of Natural Resources.

Section 7. Severability

The provisions of this Ordinance shall be severable and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, or subdivision of this Ordinance.

ARTICLE 2. DEFINITIONS

The following words and phrases shall have the meanings assigned to them in this Ordinance. If not specifically defined in this Article, terms used in this Ordinance shall have the same meaning as provided in the standards adopted by reference. Words or phrases that are not defined shall have common usage meaning.

1. **Administrative Penalty Order or APO.** The penalty issued pursuant to Minnesota Statute Section 103F.48, subdivision 7, and Minnesota Statute Section 103.B101, subdivision 12a.
2. **Buffer.** 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.
3. **Buffer Protection Map.** Buffer maps established and maintained by the Commissioner of Natural Resources and available on the Department of Natural Resources website.
4. **BWSR.** The Minnesota Board of Water and Soil Resources.
5. **County.** Carlton County and its employees, representatives, or disignees.
6. **Cultivation Farming.** 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.
7. **Landowner.** The holder of 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 Minnesota Statute Section 103F.401, subdivision 7, or any other party conducting farming activities on or exercising control over the real property.
8. **Parcel.** A unit of real property that has been given a tax identification number maintained by the County.
9. **Normal Water Level.** 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.
10. **SWCD.** The Carlton Soil and Water Conservation District.

ARTICLE 3. BUFFER REQUIREMENTS

Section 1. Buffer Width

Except as provided in Article 3, Sections 4 and 5, a landowner owning property adjacent to a waterbody identified on the buffer protection map must establish and maintain a buffer area 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 Minnesota Statute Section 103F.48, subdivision 3, and as measured according to Article 3, Section 2.

Section 2. Measurement

The width of any required buffer on land adjacent to a waterbody 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 provided in Minnesota Statute Section 103F.48, subdivision 3(c). All distances are measured horizontally, unless otherwise specified.

Section 3. Use of Buffer Area

Except as provided in Article 3, Sections 4 and 5, a buffer as defined in this ordinance may not be put to any use, included but not limited to cultivation farming, which would remove or prevent the permanent growth of perennial vegetation.

Section 4. Exemptions

The requirements of Article 3, Section 1, do not apply to land that is exempted from the water resources riparian protection requirements under Minnesota Statute Section 103F.48, subdivision 5.

Section 5. Alternative Practices

As provided in Minnesota Statute 103F.48, subdivision 3(b), an owner of land that is used for cultivation farming may demonstrate compliance with Article 3, Section 1, by establishing and maintaining alternative riparian water quality practice or a combination of structural, vegetative, and management practices that provide water quality protection comparable to the water quality protection provided by a required buffer as set forth in Article 3, Sections 1 to 3. The adequacy of any alternative practice allowed under this section shall be based on:

1. The Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG);
2. Common alternative practices adopted and published by BWSR;
3. Practices based on local conditions approved by the SWCD that are consistent with the NRCS FOTG; or
4. Other practices adopted by BWSR.

ARTICLE 4. COMPLIANCE DETERMINATIONS

Section 1. Compliance Determinations

The SWCD will evaluate and determine compliance with the buffer requirements set forth in Article 3 on a parcel-by-parcel basis. The compliance status of each bank or edge of a waterbody on an individual parcel will be evaluated independently from other banks and edges.

Section 2. Investigation and Notification of Noncompliance

When the County or SWCD identifies a potential noncompliance with the buffer requirements or receives a complaint from a member of the public or from another agency, the SWCD will determine the appropriate course of action to evaluate and document the compliance status. The SWCD may communicate with the landowner, conduct inspections, review available documentation, or undertake other appropriate steps to determine the compliance status of the parcel. At any time during the process set forth in Article 4, Sections 1 and 2, the landowner may provide documentation of compliance to the SWCD.

Upon completion of the compliance investigation, the SWCD shall issue a written compliance determination to the landowner, the County, and BWSR. If the SWCD finds that the parcel is noncompliant, the SWCD must provide a Notification of Noncompliance to the County, which will allow the County to take action pursuant to Article 4, Section 3, and/or Article 5. If the SWCD does not issue a Notification of Noncompliance, the County will not pursue a compliance or enforcement action under Minnesota Statute Section 103F.48 and Article 5.

Section 3. Corrective Action Notice

1. Upon receipt of an SWCD Notification of Noncompliance, the County must issue a Corrective Action Notice to the landowner that will:
 - a. Include a list of corrective actions needed to come into compliance with the requirements of Minnesota Statute Section 103F.48 and this Ordinance;
 - b. Provide a timeline for complying with the Corrective Action Notice;
 - c. Provide a compliance standard against which the County will judge the corrective action; and
 - d. Include a statement that failure to respond to the Corrective Action Notice may result in the assessment of civil or administrative penalties.
2. The County shall serve the Corrective Action Notice on the landowner by either personal delivery to the landowner or by depositing the same in the U.S. Mail. If service is made by U.S. Mail, the document is deemed received three business days after the Notice is

placed in the U.S. Mail. The County shall also send a copy of the Corrective Action Notice to the SWCD and BWSR.

3. At any time after the receipt of the Corrective Action Notice, the landowner may provide the County with documentation that supports a request to modify a corrective action or the timeline for compliance. The County may consult with the SWCD about such request and has the sole authority to modify the terms and conditions of a Corrective Action Notice. If the County determines a modification to the Corrective Action Notice or timeline for compliance is warranted, it will make such modifications in writing. Any modification to the terms and conditions of a Corrective Action Notice shall be served on the landowner in the manner provided for in Article 4, Section 3.2, with a copy sent to the SWCD and BWSR.
4. At any time after receipt of a Corrective Action Notice, the landowner may provide the SWCD with documentation of compliance. For documentation submitted by the landowner to establish compliance, the SWCD will conduct a compliance verification pursuant to Article 4, Section 4, and make a written determination as to whether the landowner has come into compliance with the Corrective Action Notice, this Ordinance, and Minnesota Statutes Section 103F.48.

Section 4. Compliance Verification

1. When the landowner provides notice and submits written documentation that a violation has been corrected following receipt of a Corrective Action Notice or APO, the SWCD will verify compliance pursuant to this Section.
2. To verify that the landowner has corrected the violation and come into compliance, the SWCD will:
 - a. Review and evaluate all information related to the Corrective Action Notice and/or APO;
 - b. Conduct a site visit, re-inspection, and/or examination of documentation, and/or use other means to evaluate compliance as may be reasonable under the facts of the case; and
 - c. Document the compliance verification.
3. The SWCD may consult with the County when conducting a compliance verification.
4. After completing the compliance verification, the SWCD shall notify the landowner and the County in writing of its determination as to whether the violation has been fully corrected. If the SWCD determines the violation has not been fully corrected, the Corrective Action Notice and/or APO will remain in full force and effect. If the SWCD

determines the violation has been fully corrected, the County, after receiving the SWCD's written determination, shall serve a Letter of Determination of Compliance on the landowner by depositing it in the U.S. Mail or by personal delivery. Upon service of the Letter of Determination of Compliance on the landowner, the Corrective Action Notice will be deemed withdrawn. The County shall send a copy of the Letter of Determination of Compliance to the SWCD and BWSR. The County will not initiate an enforcement action pursuant to Article 5 after receiving written notice from the SWCD that a violation has been fully corrected.

Section 5. Reporting and Documentation

The SWCD shall collect and maintain records of all violations of the riparian protection and water quality practices requirements. To the extent available or ascertainable, such documentation should include the following information:

1. The cause of the violation;
2. The magnitude and duration of the violation;
3. Documentation showing whether the violation presents an actual or imminent risk to public health and safety;
4. Documentation showing whether the violation has the potential to harm natural resources of the state;
5. Efforts by the SWCD, County, or BWSR to assist the landowner to become compliant, including written and oral communications with the landowner; and
6. Past and present corrective action efforts by the landowner.

Data relating to violations and potential violations of the riparian protection and water quality practices requirements will be maintained pursuant to the Minnesota Government Data Practices Act and the County's data retention policy.

ARTICLE 5. ENFORCEMENT

Section 1. Administrative Penalty Order (APO)

The County may elect to pursue the failure to comply with a Corrective Action Notice through an APO, as provided for in Minnesota Statutes Sections 103F.48, subdivisions 7(b) and (c), and 103B.101, subdivision 12a, and as set forth herein.

1. The APO must be made in writing and shall include the following information:
 - a. A description of the violation of the riparian protection and water quality practices requirements set forth in this Ordinance or Minnesota Statute 103F.48;
 - b. The specific statutes and/or ordinance sections that have been violated;
 - c. A description of prior efforts to work with the landowner to resolve the violation;
 - d. The amount of the penalty to be imposed;
 - e. The factual basis for the penalty amount;
 - f. The date the penalty will begin to accrue;
 - g. The date that payment of the penalty is due;
 - h. The date by which all or part of the penalty may be forgiven if the landowner has complied with the Correction Action Notice; and
 - i. A statement of the landowner's right to appeal the APO.
2. For the APO to be effective, it must be served on the landowner together with a copy of the Corrective Action Notice. Alternatively, the County may serve the landowner with a combined Corrective Action Notice and APO that meets the requirements of both Article 4, Section 3, and Article 5, Section 2. The County shall effect service of the APO on the landowner either by personal service or by depositing the documents set forth herein in the U.S. Mail. The County shall provide a copy of the APO to the SWCD and BWSR.
3. *Initial violation.* The penalty for a landowner on a single parcel that has not been previously been the subject of an APO issued by the County shall be:
 - a. \$0 for 11 months following the issuance of the Corrective Action Notice or for the period specified in the Corrective Action Notice to allow the landowner to come into compliance, whichever is longer;
 - b. \$50 to \$200 per parcel per month for the first six (6) months (180 days) following the time period in (a); and

- c. \$200 to \$500 per parcel per month after six (6) months (180 days) following the time period in (b).
4. *Subsequent 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:
 - a. \$50 to \$200 per parcel per day for 180 days after issuance of the subsequent Corrective Action Notice; and
 - b. \$200 to \$500 per parcel per day for after 180 days following the time period in (a).
5. For administrative penalties imposed by the County, the County shall determine the severity of the noncompliance, intentional nature of noncompliance and frequency of noncompliance in determining the amount of violation. The amount of an administrative penalty will be based on considerations including the extent, gravity, and willfulness of the noncompliance; its economic benefit to the responsible party; the extent of the landowner's diligence in addressing it; any noncompliance history; the public costs incurred to address the noncompliance; and other factors as justice may require.
6. Any penalty assessed in the APO shall continue to accrue until the violation is corrected as provided in the Corrective Action Notice and verified pursuant to Article 4, Section 4.
7. All or part of the penalty may be forgiven based on the correction of the noncompliance by the landowner by the date specified in the APO, as provided in Minnesota Statute Section 103F.48, subdivision 7(d).
8. The landowner may appeal an APO issued under this section as set forth in Article 5, Section 4, and Minnesota Statute Section 103F.48, subdivision 9. If the landowner does not appeal the APO as set forth in those provisions, the APO shall be deemed final.

Section 2. Statute of Limitations

Pursuant to Minnesota Statute Section 541.07(2), the County has two years in which to commence APO action after the date the violation is discovered by the SWCD.

Section 3. Right to Appeal

Within 30 days after receipt of the APO, the landowner may appeal an APO to BWSR as provided in Minnesota Statute Section 103F.48, subdivision 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. If the landowner does not appeal an APO within 30 days, the APO shall be deemed final.

Section 4. Penalty Due

Unless the landowner appeals the APO as provided in Article 5, Section 4, or as otherwise set forth in this Section, the penalty specified in the APO becomes immediately due and payable to the County as set forth in the APO. If the landowner is found to have come into compliance with the Corrective Action Notice, 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.

If, after conducting a compliance verification as set forth in Article 4, Section 4, the SWCD determines the violation has not been fully corrected, the landowner shall pay the penalty within the time period specified in the APO or within 20 days after receipt of the SWCD's written determination, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the Corrective Action Notice.

Section 5. Collection of Penalty

All penalties and interest assessed under an APO must be paid by the landowner. 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.

ARTICLE 6. EFFECTIVE DATE

Approved and adopted this ___ day of ____ 2018, by the Carlton County Board of Commissioners. This Ordinance shall be in full force and effect on 1st day of _____ 2018, after its approval and publication as provided by law.

/s/

Susan Zmyslony, Board Chair

ATTEST:

/s/

Paul G. Gassert, County Auditor