

SECTION 37 - Riparian Buffer Standards

37.1 STATUTORY AUTHORIZATION AND POLICY

Subdivision 1. Statutory authorization. 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.

Subdivision 2. Purpose and intent. It is the purpose and intent of Houston County to:

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

37.2 DEFINITIONS AND GENERAL PROVISIONS

Subdivision 1. Definitions. Unless specifically defined below, or in Section 3 of the Houston County Zoning Ordinance, words or phrases used in this section shall be interpreted to give them the same meaning they have in common usage and to give this ordinance its most reasonable application. In the event of an inconsistency, the definitions provided below shall supersede those provided in Section 3. For the purpose of this ordinance, the words “must” and “shall” are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.

“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.

“Alternative Riparian Water Quality Practice” shall have the meaning as identified in Subsection 37.4, Subd. 3, (2) of this Ordinance.

“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.

“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.

“BWSR” means the Board of Water and Soil Resources.

“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.

“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.

“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.

“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” 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.

“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.

“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.

“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 Soil and Water Conservation District.

“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/documentated continue to be in place and substantially in the condition identified at the time of issuance. Said notice shall be in recordable form.

Subdivision 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.

Subdivision 3. Data sharing/management.

- (1) The County may enter into arrangements with an 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) The County will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

Subdivision 4. 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 Subsection 37.2, Subd. 1.

37.3 JURISDICTION

Subdivision 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 Minn. Stat. chapter 103E, shown on the buffer protection map.

37.4 BUFFER REQUIREMENTS

Subdivision 1. Buffer width. Except as provided in subsection 37.4 Subds. 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:

- (1) 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 subsection 37.4 subd. 2; and
- (2) 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 subsection 37.4 subd. 2.

Subdivision 2. 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 as provided in Minn. Stat. §103F.48, subd. 3(c).
- (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 as provided in Minn. Stat. §103F.48, subd. 3(c).

Subdivision 3. Use of buffer area. Except as provided in subsections 37.4 Subds. 4 & 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.

Subdivision 4. Exemptions. The requirement of subsection 37.4 subd. 1 does not apply to land that is exempted from the water resources riparian protection requirements under Minn. Stat. §103F.48, subd. 5, including:

- (1) enrolled in the federal Conservation Reserve Program;
- (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;
- (3) covered by a road, trail, building, or other structures; or
- (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:
 - (5) municipal separate storm sewer system (MS4);
 - (6) construction storm water (CSW); or
 - (7) industrial storm water (ISW); or
 - (8) part of water-inundation cropping system; or
 - (9) 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.

Subdivision 5. Alternative riparian water quality 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 subsection 37.4 subd. 1 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 as defined in sections 37.4 subd. 1 to subd. 4. 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 Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or
- (4) other practices adopted by BWSR.

Subdivision 6. Nonconformity. Where the provisions of any statute, other ordinance or regulation imposes greater restrictions than this ordinance, the provisions of such shall be controlling. The continuation of nonconformities provided for by Section 9 of the Houston County Zoning Ordinance and Minn. Stat. §394 and §462 shall not apply to compliance with this ordinance and Minn. Stat. §103F.48. ~~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 be controlling.~~

~~**Subdivision 6.** Parcels grandfathered in for other preexisting land uses shall not be nonconforming with respect to these provisions and with respect to compliance with the Buffer Law, Minn. Stat. § 103F.48.~~

37.5 COMPLIANCE DETERMINATIONS

Subdivision 1. Compliance determinations. Compliance with the buffer requirements set forth 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.

Subdivision 2. Investigation and notification of noncompliance. When the County identifies a potential noncompliance with the buffer requirements or receives a third party complaint from a private individual or entity, or from another public agency, it will consult with the SWCD 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 Minnesota Statutes §103F.48 and Subsection 37.6, subd. 1. At any time during process set forth in Subsection 37.5, Subds. 2 & 3, the landowner may provide documentation of compliance to the SWCD.

- (1) Compliance determination. 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. Upon completion of the evaluation and/or 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.

Subdivision 3. Corrective Action Notice. On receipt of an SWCD Notification of Noncompliance, the County will issue the landowner a Corrective Action Notice that will:

- (1) include a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. §103F.48;
- (2) provide a timeline for complying with the corrective action notice;
- (3) provide the standard by which compliance will be evaluated after the corrective actions are taken; and
- (4) include a statement that failure to respond to this Notice may result in the assessment of criminal, civil or administrative penalties.

Subdivision 4. The County may send the landowner a combined Corrective Action Notice and APO as provided in Subsection 37.6, subd. 2 so long as the combined Notice/APO includes all the required elements of both. The County shall transmit the corrective action notice by either personal service 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 was placed in the U.S. mail. Failure of actual receipt of a corrective action notice that has either been personally served or served by depositing the same in the U.S. Mail shall not be deemed a defense in an enforcement proceeding under Subsection 37.6. The County shall also send a copy of the Notice to the SWCD and BWSR.

Subdivision 5. 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 County may make a written modification to the Corrective Action Notice or timeline for compliance. The County 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 subsection 37.5, subd. 3. The County shall provide the SWCD and BWSR a written copy of any modification made pursuant to this provision.

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 County shall withdraw the Corrective Action Notice and the subject property will not be subject to enforcement under Subsection 37.6 or Section 10 of the Houston County Ordinance.

37.6 ENFORCEMENT

Subdivision 1. Failure to comply with a corrective action notice issued under subsection 37.5, Subd. 3.

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.

- (1) Failure to comply with a Corrective Action Notice issued under subsection 37.4 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.
- (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.

Subdivision 2. Administrative Penalty Order (APO).

- (1) 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:
 - ~~(a)~~ \$0 for 11 months after issuance of the Corrective Action Notice; ~~or during the schedule issued by the County for taking corrective actions, whichever is greater;~~
 - ~~(b)~~(a) _____ \$200 per parcel per month for the first six (6) months (180 days) following the time period in (a) above; and
 - ~~(c)~~(b) _____ \$500 per parcel per month after six (6) months (180 days) following the time period in (b) above.
- (2) 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:
 - (a) \$200 per parcel per day for 180 days after issuance of the Corrective Action Notice; and
 - (b) \$500 per parcel per day for after 180 days following the time period in (a) above.
- (3) Ongoing penalty assessment. Any penalty assessed under this section shall continue until the corrective action notice has been satisfied.

Subdivision 3. APO. To be valid the APO shall include, at a minimum:

- (1) The facts constituting the violation of the riparian protection and water quality practices requirements set forth in this subsection 37.4 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.

Subdivision 4. All or part 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 Minn. Stat. §103F.48, subd. 7(d).

Subdivision 5. A copy of the APO must be sent to the SWCD and BWSR.

Subdivision 6. An APO issued under this section may be appealed to BWSR within 30 days of receipt by the landowner in accordance with the requirements set for the in Minn. Stat. §103F.48, subd. 9. Any APO that is not appealed within the 30 day period shall be deemed final.

37.7 Administrative Penalty Order Procedures

Subdivision 1. Statute of limitations. Any criminal enforcement action undertaken pursuant to subsection 37.6, subd. 1 of this ordinance must be undertaken within two years after the alleged violation was discovered or reasonably should have been discovered by the County. ~~Any administrative enforcement proceeding including the issuance of an APO should be undertaken within three years after the alleged violations was discovered or reasonably should have been discovered by the County.~~ According to Minn. Stat. §541.07, the County has two 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.

Subdivision 2. Compliance verification. Once a landowner has submitted written evidence of correction of the violation set forth in the notice of compliance, compliance must be verified. The County will:

- (1) Review and evaluate all information related to the APO to determine if the violation has been corrected;
- (2) Verify compliance by site visit, re-inspection, examination of documentation, or other means as may be reasonable under the facts of the case; and
- (3) Document compliance verification.

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

Subdivision 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 and 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.

Subdivision 4. Penalty due. Unless the landowner appeals the APO as provided in subsection 37.7, subd 3, 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 been corrected prior to the time the penalty becomes due and payable the County shall verify compliance and 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. 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 issuing a written letter of determination and depositing it in the U.S. Mail. Any determination sent by U.S. Mail shall be deemed received three business days after the letter of determination has been deposited in the U.S. Mail. The landowner shall have an additional 20 days after receipt of the letter of 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. 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.

Subdivision 5. 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:

- (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;