

**WASECA COUNTY PLANNING COMMISSION
TENTATIVE PUBLIC HEARING SCHEDULE FOR UDC REVIEW**

ARTICLE	SECTIONS	SUBSECTIONS TO BE REVISED	DATE OF PUBLIC HEARING
2 NONCONFORMITIES AND LOTS OF RECORD	2.07 Shoreland Nonconformities	(B)(2)	August 1
3 DEVELOPMENT REVIEW PROCESSES AND REQUIREMENTS	3.02 Zoning Permits	(B)(4); (C)(9)	
	3.03 Amendments/Rezoning	(B)(7); (F)(1)	
	3.04 Required Setback	Title revision; (B)(6)	
	3.05 Site Plans	(B)	
	3.06 Subdivision Regulations	(C)(7)(d); (C)(9)	
	3.07 Conditional Use Permits	(C)(7); (D)(6)	
	3.08 Variances and Appeals	(F)(7); (K)(2)	
	3.09 Special Events Permit	(D)(g); (E)(p)	
4 GENERAL REGULATIONS	4.01 General Provisions	(C)	
	4.02 General Regulations for Structures	(F)	
	4.12 Sign Regulations	(B)	
	4.13 Extraction of Material and Minerals, Open Pits and Impounding of Waters	(A)	
6 ZONING DISTRICT REGULATIONS	6.01 Districts and District Boundaries	(B)(1)	
	6.02 Allowed and Conditional Land Uses	(E); (F)(6)	
6 ZONING DISTRICT REGULATIONS	6.16 SPECIFIC STANDARDS FOR COMMERCIAL AND INDUSTRIAL USES	A WHOLE NEW SUBSECTION	SEPTEMBER 5
5 GENERAL ENVIRONMENTAL REGULATIONS	5.02 Subsurface Sewage Treatment Systems		October 3
	5.03 Sanitary Provisions		
	5.04 Stormwater Management and Sediment and Erosion Control	(A); (B); (G)(1); (H); (I)(7)	
	5.05 Buffer Code	(B) Title revision and move definitions to 8.03	

WASECA COUNTY, MINNESOTA UNIFIED DEVELOPMENT CODE

ARTICLE 5: GENERAL ENVIRONMENTAL REGULATIONS

Section

[5.01](#) Public waters

[5.02](#) Subsurface sewage treatment systems

[5.03](#) Sanitary provisions

[5.04](#) Stormwater management and sediment and erosion control

[5.05](#) Buffer Code

§ 5.01 PUBLIC WATERS.

(A) The public waters of the County have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300 and the protected waters inventory map for the County.

(B) The County Shoreland Management Program regulates public waters with the Shoreland Overlay Zoning District. These waters are shown on the zoning map and are listed below with their classifications:

- (1) NE = Natural Environment;
- (2) RD = Recreational Development; and
- (3) GD = General Development.

(C) (1) *Protected water basins.*

PWI ID	PWI Name	Shoreland Class
07-0002	Madison	NE
07-0003	Born	NE
24-0049	Trenton	NE
40-0035	Cherry	NE
81-0003	St. Olaf	RD
81-0005	Mud	NE
81-0010	Senn Marsh	NE
81-0013	Watkins	NE
81-0014	Clear	GD
81-0015	Loon	GD
81-0016	Goose	RD
81-0017	Waseca Marsh	NE
81-0018	Gaiter	NE
81-0022	Rice	NE
81-0023	Knutson	NE

81-0027	Everson	NE
81-0044	Silver	NE
81-0055	Reeds	RD
81-0058	Toners	NE
81-0066	Helena	NE
81-0067	Lily	NE
81-0076	Mott	NE
81-0083	Buffalo	NE
81-0086	Willis Slough	NE
81-0087	Sibert	NE
81-0088	Rice	NE
81-0088	Fish	NE
81-0090	Lilly	NE
81-0091	Unnamed (Willis)	NE
91-0092	Hoffman Marsh	NE
81-0095	Elyslan Elysian	RD
81-0114	Moonan Marsh	NE

(2) Protected watercourses.

<i>Name</i>	<i>Section</i>	<i>From Township</i>	<i>Range</i>	<i>Section</i>	<i>To Township</i>	<i>Range</i>
<i>A. Agricultural Rivers</i>						
LeSueur River (LSR)	36	105	22	30	107	24
Big Cobb River	34	105	24	31	105	24
<i>B. Tributary Rivers</i>						
Unnamed to LSR	25	106	22	35	106	22
Unnamed to LSR	36	106	22	36	105	22
Boot Creek (BC)	36	105	23	31	106	22
Bolt Creek	31	105	22	25	105	23
Unnamed to BC	24	105	23	124	105	23
Unnamed to LSR	11	105	23	35	106	23
Little LeSueur River (LLSR)	11	105	22	7	22	
Unnamed to LLSR	9	106	22	9	106	22
Unnamed to LLSR	16	106	22	9	105	22
Unnamed to LSR	21	107	23	34	107	23
Unnamed to Unnamed	27	107	23	27	107	23
Unnamed to LSR	4	106	23	32	107	23

Unnamed to LSR	19	107	23	30	107	23
Unnamed to BCR	32	105	23	34	105	24
Unnamed to Tributary	20	105	24	19	105	24
Little Cobb River (LCR)	14	105	24	31	106	24
Unnamed to LCR	22	105	23	33	106	24
Bull Run Creek (BRC)	4	105	23	18	106	24
Iosco (IC)	20 (Basin 60)	108	23	1 (Basin 95)	108	24
Unnamed to IC	27	108	23	17	108	23
Silver Creek	25	108	24	17	108	23
Unnamed to Lake Elysian	6 (Basin 89)	108	24	10 (Basin 95)	106	24
Unnamed Tributary	28 (Basin 95)	108	24	33	108	24
Unnamed to CD #6	16 (Basin 83)	107	24	8	107	24
White Water Creed (WWC)	25	108	23	3	108	23
Unnamed to WWC	7 (Basin 23)	108	22	11	108	23
Waterville Creek	20	108	22	4	108	22
Crane Creek	22	108	22	1	107	22
Unnamed to Rice Lake	9 (Basin 14)	107	22	4 (Basin 22)	107	22

(Ord. 97, passed 7-21-2009)

§ 5.02 SUBSURFACE SEWAGE TREATMENT SYSTEMS.

(A) *Purpose.* The purpose of this ordinance is to establish minimum requirements for regulation of ~~subsurface sewage treatment systems (SSTS)ISTS and MSTs~~ for the treatment and dispersal of sewage within the applicable jurisdiction of the ~~county~~County to protect public health and safety, groundwater quality, and prevent or eliminate the development of public nuisances. It is intended to serve the best interests of the ~~county's~~County's citizens by protecting its health, safety, general welfare and natural resources.

(B) *Objectives.* The principal objectives of this section shall include the following:

(1) The protection of lakes, rivers and streams, wetlands and groundwater in the ~~county~~County essential to the promotion of public health, safety, welfare, socioeconomic growth and development of the ~~county~~County;

(2) The regulation of proper SSTS construction, reconstruction, repair and maintenance to prevent the entry and migration of contaminants, thereby protecting the degradation of surface water and groundwater quality;

(3) The establishment of minimum standards for SSTS placement, design, construction, reconstruction, repair and maintenance to prevent contamination and, if contamination is

discovered, the identification and control of its consequences and the abatement of its source and migration;

(4) The appropriate utilization of privy vaults and other non-water carried sewage collection and storage facilities; and

(5) The provision of technical assistance and education, plan review, inspections, SSTS surveys and complaint investigations to prevent and control water-borne diseases, lake degradation, groundwater related hazards and public nuisance conditions.

(C) *Authority.* This ordinance is adopted pursuant to M.S. § 115.55, ~~as it may be amended from time to time~~; M.S. §§ 145A.01 through 145A.08, ~~as they may be amended from time to time~~; M.S. § 375.51, ~~as it may be amended from time to time~~; or successor statutes, and Minnesota Rules, Chapter 7080, Chapter 7081, Chapter 7082; or successor rules.

(D) *Effective date.* The provisions set forth in this ordinance shall become effective on January 21, 2010.

(E) *Scope.* This ordinance regulates the siting, design, installation, alterations, operation, maintenance, monitoring and management of all SSTS within the ~~county's~~ County's applicable jurisdiction including, but not necessarily limited to, individual SSTS and cluster or community SSTS, privy vaults, holding tanks and other non-water carried SSTS. All sewage generated in unsewered areas of the ~~county~~ County shall be treated and dispersed by an approved SSTS that is sited, designed, installed, operated and maintained in accordance with the provisions of this ordinance or by a system that has been permitted by the Minnesota Pollution Control Agency (MPCA).

(F) *Jurisdiction.* The jurisdiction of this ordinance shall include all lands of the ~~county~~ County except for incorporated areas that administer a ~~subsurface sewage treatment system (SSTS)~~ program by ordinance within their incorporated jurisdiction, which is at least as strict as this ordinance and has been approved by the ~~county~~ County. The County ~~Public Health Services~~ Land and Water Resources Department shall keep a current list of local jurisdictions within the ~~county~~ County administering a SSTS program. The ~~county~~ County must permit and inspect SSTS within cities and townships that do not administer an effective SSTS ordinance.

(G) *County administration.* The County ~~Public Health~~ Land and Water Resources Department shall administer the SSTS program and all provisions of this ordinance. At appropriate times, the ~~county~~ County shall review ~~this and~~ revise and update this ordinance as necessary. The ~~county~~ County shall employ or retain under contract qualified and appropriately licensed professionals to administer and operate the SSTS program.

(H) *State.* Where a single SSTS or group of SSTS under single ownership within one-half mile of each other have a design flow greater than 10,000 gallons per day, the owner or owners shall make application for and obtain a state disposal system permit from MPCA. For any SSTS that has a measured daily flow for a consecutive seven-day period which equals or exceeds 10,000 gallons per day, a state disposal system permit is required. SSTS serving establishments or facilities licensed or otherwise regulated by the state shall conform to the requirements of this ordinance.

(I) *Cities and towns.* Any jurisdiction within the ~~county~~ County that regulates SSTS must comply with the standards and requirements of this ordinance. The standards and ordinance of the jurisdiction may be administratively and technically more restrictive than this ordinance.

(J) *Validity.* The validity of any part of this ordinance shall not be affected by the invalidity of any other parts of this ordinance where the part can be given effect irrespective of any invalid part or parts.

(K) *Liability.* Any liability or responsibility shall not be imposed upon the department or agency or any of its officials, employees or other contract agent, its employees, agents or servants thereof for damage resulting from the defective construction, operation or abandonment of any onsite ~~or cluster treatment system~~ SSTS regulated under this rule by reason of standards, requirements or inspections authorized hereunder.

(L) *Retroactivity.*

(1) *All SSTS.* Except as explicitly set forth in § ~~5.02(L)(2)4.01(B)~~, all provisions of this ordinance shall apply to any SSTS regardless of the date it was originally permitted.

(2) *Existing permits.* Unexpired permits which were issued prior to the effective date shall remain valid under the terms and conditions of the original permit until the original expiration date or until a change in system ownership whichever is earlier.

(3) *SSTS on lots created ~~before~~ after January 23, 1996.* All lots created after January 23, 1996 must have a minimum of two soil treatment and dispersal areas that can support ~~a Type I system trenches, seepage beds, mounds, and at-grade systems~~ as described in Minnesota Rules, Parts 7080.2200 through 7080.2230; or site conditions described in 7081.0270, Subp. 3 through 7.

(4) *Existing SSTS without permits.* Existing SSTS with no permits of record shall require a permit and be brought into compliance with the requirements of this ordinance regardless of the date they were originally constructed ~~regardless of the date they were originally constructed upon inspection or Public Health Services Land and Water Resources Department investigation.~~

(M) *Upgrade, repair, replacement and abandonment.*

(1) *SSTS capacity expansions.* Expansion of an existing SSTS must include any system upgrades that are necessary to bring the entire system into compliance with the prevailing provisions of this ordinance at the time of the expansion.

(2) *Bedroom additions.* The owner is allowed five years from the date of issuance of a bedroom addition permit to upgrade, repair, replace or abandon an existing system if the following conditions apply.

(a) Any time an application for a zoning permit is made for the addition of a bedroom on the property, or a variance is requested to an existing system:

1. If a request for an additional bedroom or variance is received between November 1 and April 30, the ~~county~~ County may issue a permit or variance immediately with the requirement that a compliance inspection be completed by the following June 1 and a certificate of compliance be submitted by the property owner by the following September 30. All other requests require a certificate of compliance prior to issuance of a permit.

~~2. If a system constructed between May 27, 1989 and January 23, 1996 does not comply with applicable requirements, and is not an imminent public health threat, a property owner applying for a zoning permit to construct a bedroom addition has five years from the date of issuance of such zoning permit to bring the system into compliance and submit a certificate of compliance to the Environmental Health Department.~~

(b) The SSTS does not comply with Minnesota Rules, Part 7080.1500, Subp. 4.B.;

(c) The SSTS is not determined to be an imminent threat to public health or safety in accordance with Minnesota Rules, Part 7080.1500, Subp. 4.A.

(3) *Failure to protect groundwater.* An SSTS that is determined not to be protective of groundwater in accordance with Minnesota Rules, Part 7080.1500, Subp. 4.B shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this ordinance within five years of ~~the date of inspection~~receipt of a notice of noncompliance.

(4) *Imminent threat to public health or safety.* An SSTS that is determined to be an imminent threat to public health or safety in accordance with Minnesota Rules, Part 7080.1500, Subp. 4A shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this ordinance within ten months of ~~the date of inspection~~receipt of a notice of noncompliance.

(5) *Abandonment.* Any SSTS, or any component thereof, which is no longer intended to be used, must be abandoned in accordance with Minnesota Rules, Part 7080.2500.

(N) *SSTS in floodplains.* SSTS shall not be located in a floodway and wherever possible, location within any part of a floodplain should be avoided. ~~If, if~~ no option exists to locate a SSTS outside of a floodplain, location within the flood fringe is allowed if the requirements in Minnesota Rules, Part 7080.2270 and all relevant local requirements are met.

(O) *Class V injection wells.* All owners of new or replacement SSTS that are considered to be Class V injection wells, as defined in the Code of Federal Regulations, title 40, 40-C.F.R. part 144, are required by the federal government to submit SSTS inventory information to the Environmental Protection Agency as described in 40-C.F.R. 40, Part 144. Further, owners are required to identify all Class V injection wells in property transfer disclosures.

(P) *SSTS practitioner's license.*

(1) No person shall engage in site evaluation, inspection, design, installation, construction, alternation, extension, repair, maintenance or pumping of SSTS without an appropriate and valid license issued by MPCA in accordance with Minnesota Rules, Chapter 7083, except as exempted in Part 7083.0700.

(2) ~~Pressurized systems, mounds and Type III, IV or V systems shall not be constructed by anyone other than a licensed installer. All systems whether constructed by a property owner or a licensed contractor shall be inspected in accordance with § 5.02.~~ A license is not required for an individual who is constructing a system on land that is owned or leased by the individual and functions solely as a dwelling or seasonal dwelling for that individual. The SSTS shall be designed by a business or individual licensed as specified in § 4.05(A). The individual shall provide to the ~~Public Health Services~~Land and Water Resources Department a signed agreement which indemnifies and holds the ~~county~~County harmless from all losses, damages, costs and charges that may be incurred by the ~~county~~County due to the failure of the permittee to conform to and comply with the provisions of this ordinance. ~~Pressurized systems or mounds and Type III, IV or V systems shall not be constructed by anyone other than a licensed installer. All systems whether constructed by a property owner or a licensed contractor shall be inspected in accordance with § 7.02(B).~~

(Q) *Prohibitions.*

(1) *Occupancy or use of a building without a compliant SSTS.* It is unlawful for any person to maintain, occupy or use any building intended for habitation ~~that is not provided with a wastewater treatment system~~ that disposes of wastewater in a manner that does not comply with the provisions of this ordinance.

(2) *Sewage discharge to ground surface or surface water.* It is unlawful for any person to construct, maintain or use any SSTS system regulated under this ordinance that results in raw or partially treated wastewater seeping to the ground surface or flowing into any surface water. Any

surface discharging system must be permitted under the National Pollutant Discharge Elimination System (NPDES) program by the MPCA.

(3) *Sewage discharge to a well or boring.* It is unlawful for any person to discharge raw or treated wastewater into any well or boring as described in Minnesota Rules, Part 4725.2050, or any other excavation in the ground that is not in compliance with this ordinance.

(4) *Discharge of hazardous or deleterious materials.* It is unlawful for any person to discharge into any ~~treatment system~~SSTS regulated under this ordinance any hazardous or deleterious material that adversely affects the treatment or dispersal performance of the system or groundwater quality.

(R) *Standards adopted by reference.* The ~~county~~County hereby adopts by reference Minnesota Rules, Chapters 7080 and 7081 in their entirety as now constituted and from time to time amended. This adoption does not supersede the ~~county's~~County's right or ability to adopt local standards that are in compliance with M.S. § 115.55, as it may be amended from time to time.

(S) *Amendments to the adopted standards.*

(1) *List of adopted standards.* In addition to the SSTS setbacks set forth in Minnesota Rules, Chapters 7080 and 7081:

(a) The separation distance from a SSTS to a Type 3, 4, 5 or 6 wetland shall be 50 feet;

(b) The separation distance to artificial drainage ditch shall be 50 feet; and

~~—(c) The separation distance from a well to a SSTS shall be as specified in M.S. § 1031, as it may be amended from time to time, and Minnesota Rules Chapter 4725 and 4720 as amended.~~

~~(c)~~ When a permanent SSTS easement is placed on an adjacent property, the side or rear property line setback distance may be reduced or eliminated between the parcel with a residence or commercial use and the easement tract. In such SSTS easement situations, the side and rear yard setbacks shall be applied to the easement area.

(2) *Determination of hydraulic loading rate and SSTS sizing.* Table IX from Minnesota Rules, Part 7080.2150, Subp. 3(E) entitled “Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Detail Soil Descriptions” and herein adopted by reference shall be used to determine the hydraulic loading rate and infiltration area for all SSTS permitted under this ordinance.

(3) *Compliance criteria for existing SSTS.* SSTS built before April 1, 1996 outside of areas designated as shoreland areas, wellhead protection areas or SSTS providing sewage treatment for food, beverage or lodging establishments must have at least two feet of vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock. SSTS built after March 31, 1996 or SSTS located in a shoreland area, wellhead protection area or serving a food, beverage or lodging establishment as defined under Minnesota Rules, Part 7080.1100, Subp. 84 shall have a three-foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. Existing systems that have no more than a 15% reduction in this separation distance (a separation distance no less than 30.6 inches) to account for settling of sand or soil, normal variation of separation distance measurements and interpretation of limiting layer characteristics may be considered compliant under this ordinance. The vertical separation measurement shall be made outside the area of system influence but in an area of similar soil in accordance with Minnesota Rules, Chapter 7080.1500, Subp.4.

(4) *Holding tanks.* Holding tanks shall be installed in accordance with Minnesota Rules, Chapter 7080.2290. Holding tanks are restricted to the following:

(a) Where it can be documented that there is extremely low flow to the system which could result in winter freezing;

(b) Where there is no other building or system on the property where sewage could be combined and treated together;

(c) Existing lots of record which have no other alternative. When a holding tanks is permitted, it must be used under the following conditions.

~~1. The owner shall install a holding tank in accordance with Minnesota Rules Part 7080.2290.~~

~~2. The owner shall install a water meter to continuously record indoor water use.~~

31. The owner shall maintain a valid contract with a licensed liquid waste hauler to pump and haul the holding tank to a licensed treatment facility.

42. The holding tank shall be regularly pumped, no less frequently than bi-weekly or other regular schedule agreed upon with the Public Health Services Land and Water Resources Department.

53. The pumper shall certify each date the tank is pumped, the volume of the liquid waste removed, and the treatment facility to which the waste was discharged, ~~and the water meter reading at the time of pumping~~ and report to the Public Health Services Land and Water Resources Department that the holding tank is pumped less frequently than biweekly or other schedule agreed upon with the Public Health Services Land and Water Resources Department.

4. The requirement to maintain a valid contract is waived if the owner is a farmer who is exempt from licensing under M.S. § 115.56, Subdivision 3, paragraph (b), clause (3), as it may be amended from time to time.

(T) *Variances.*

(1) *Variance requests.* A property owner may request a variance from the standards as specified in this ordinance pursuant to ~~county~~ County policies and procedures.

(2) *Affected agency.* Variances that pertain to the standards and requirements of the state must be approved by the affected state agency pursuant to the requirements of the state agency.

(3) *Board of Adjustment.* The Board of Adjustment shall have the authority only to consider variances to horizontal setbacks from property lines, rights-of-way, structures or buildings. Variances shall only be permitted when they are in harmony with the general purposes and intent of this ordinance where there are practical difficulties or particular hardship in meeting the strict letter of this ordinance. ~~Variance requests to deviate from the design flow determination procedures in Minnesota Rules, Part 7081.0110 if the deviation reduces the average daily estimated flow from greater than 10,000 gallons per day to less than 10,000 gallons per day, or to provisions in Parts 7080.2150, Subp. 2, and 7081.0080, Subp. 2 through 5 regarding the vertical separation required beneath the treatment and dispersal soil system and saturated soil or bedrock from the required three feet of unsaturated soil material (except as provided in Parts 7082.1700, Subp. 4D) must be approved by MPCA. Variances to wells and water supply lines must be approved by the State Department of Health.~~

(U) *Permit required.* It is unlawful for any person to construct, install, modify, replace or operate a SSTS without the appropriate permit from the County Planning and Zoning Department. The issuing

of any permit, variance or conditional use under the provisions of this ordinance shall not absolve the applicant of responsibility to obtain any other required permit.

(V) *Zoning permit.* A zoning permit shall be obtained by the property owner or an agent of the property owner from the ~~county~~ County prior to the installation, construction, replacement, modification, alteration, repair or capacity expansion of a SSTS. The purpose of this permit is to ensure that the proposed construction activity is sited, designed and constructed in accordance with the provisions of this ordinance by appropriately certified and/or licensed practitioner(s).

(1) *Activities requiring a construction permit.* A zoning permit is required for installation of a new SSTS, for replacement of an existing SSTS, or for any repair or replacement of components that will alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout or function.

(2) *Activities not requiring a permit.* A zoning permit is not required for minor repairs or replacements of system components that do not alter the original function of the system, change the treatment capacity of the system, change the location of the system or otherwise change the original system's design, layout or function.

(3) *Permit application requirements.*

(a) Zoning permit applications shall be made on forms provided by the County Planning and Zoning Department and signed by the applicant. Construction designs shall be complete and signed by an appropriately certified practitioner including the practitioner's certification number and date of expiration.

(b) The applications shall include the documents listed in subsections (V)(3)(b)1. through (V)(3)(b)5. below:

1. Name, mailing address, telephone number and email address;
2. Property identification number and address or other description of property location;
3. Site evaluation report as described in Minnesota Rules, Part 7080.1730;
4. Design report as described in Minnesota Rules, Part 7080.2430; and
5. Management Plan as described in Minnesota Rules, Part 7082.0600.

(4) *Application review and response.*

(a) The County Planning and Zoning Department shall refer the permit to the County ~~Public Health~~ Land and Water Resources Department. The County ~~Public Health~~ Land and Water Resources Department shall review a permit application and supporting documents. Upon satisfaction that the proposed work will conform to the provisions of this ordinance, the County Land and Water Resources ~~Public Health~~ Department shall issue a written notification that the Planning and Zoning Department may issue a permit authorizing construction of the SSTS as designed, in the event the applicant makes a significant change to the approved application, the applicant must file an amended application detailing the changed conditions for approval prior to initiating or continuing construction, modification or operation for approval or denial. The Planning and Zoning Department shall refer the amended permit to the County Land and Water Resources ~~Public Health~~ Department. The County Land and Water Resources ~~Public Health~~ Department shall complete the review of the amended application. If the permit application is incomplete or does not meet the requirements of this ordinance the County Land and Water Resources ~~Public Health~~ Department shall advise the County Planning and Zoning office to deny the application.

(b) A notice of denial shall be provided to the applicant by the County Land and Water Resources ~~Public Health~~ Department which must state the reason for the denial.

1. *Appeal.* The applicant may appeal the County ~~Public Health Services~~ Land and Water Resources Department's decision to deny the zoning permit in accordance with the ~~county's~~ County's established policies and appeal procedures.

2. *Permit expiration.* The zoning permit for an SSTS system is valid for a period of no more than one year from its date of issue. Satisfactory completion of construction shall be determined by receipt of final record drawings and a signed certification that the construction or installation of the system was completed in reasonable conformance with the approved design documents by a qualified employee of the County ~~Public Health Services~~ Land and Water Resources Department or a licensed inspection business, which is authorized by the ~~Public Health Services~~ Land and Water Resources Department and independent of the owner and the SSTS installer.

3. *Extensions and renewals.* The County ~~Public Health Services~~ Land and Water Resources Department may authorize the County Planning and Zoning Department to grant an extension of the zoning permit if the construction has commenced prior to the original expiration date of the permit. The permit may be extended for a period of no more than ~~six months~~ one (1) year.

4. *Transferability.* A zoning permit for an SSTS system ~~shall not~~ may be transferred to a new owner. ~~The new owner must apply for a new zoning permit in accordance with this section.~~

5. *Suspension or revocation.* The Planning and Zoning Department may suspend or revoke a zoning permit issued under this section for any false statements, misrepresentations of facts on which the zoning permit was issued, or if notified by the County ~~Public Health Services~~ Land and Water Resources Department that there have been unauthorized changes to the system design that alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout or function. A notice of suspension or revocation and the reasons for the suspension or revocation shall be conveyed in writing to the permit holder. If suspended or revoked, installation or modification of a treatment system may not commence or continue until a new or amended zoning permit is obtained.

6. *Posting.* The zoning permit shall be posted on the property in such a location and manner so that the permit is visible and available for inspection until construction is completed and certified.

(W) *Operating permit.*

(1) *SSTS requiring an operating permit.* An operating permit shall be required of all owners of new ~~Type IV, Type V, MSTs, holding tanks or MSTs~~ or any other system deemed by the County ~~Public Health Services~~ Land and Water Resources Department to require operational oversight. Sewage shall not be discharged to ~~a holding tank or MSTs~~ the system until the County ~~Public~~ Land and Water Resources ~~Health~~ Department certifies that the MSTs or holding tank was installed in substantial conformance with the approved plans, receives the ~~final record~~ as-built drawings ~~of the MSTs~~ and a valid operating permit ~~is has been~~ issued to the owner.

(2) *Permit application requirements.* Application for an operating permit shall be made on a form provided by the Planning and Zoning Department, including:

- (a) Owner name, mailing address, telephone and email address;
- (b) Construction permit reference number and date of issue;
- (c) Final record drawings of the treatment system; and

~~—(d) Owners of holding tanks must submit a copy of a valid executed monitoring and disposal contract with a licensed maintenance business; and~~

(ed) The permit will be forwarded to the County Land and Water Resources ~~Public Health~~ Department for final approval.

~~—(3) *Monitoring and disposal contract.* Owners of holding tanks shall provide to the County ~~Public Health Services~~Land and Water Resources Department a copy of a valid monitoring and disposal contract executed between the owner and a licensed maintenance business, which guarantees the removal of the holding tank contents in a timely manner that prevents an illegal discharge in accordance with Minnesota Rules, Part 7082.0100, Subp. 3G. This requirement is waived if the owner is a farmer who is exempt from licensing under M.S. § 115.56, Subdivision 3, paragraph (b), clause (3), as it may be amended from time to time.~~

(43) County Land and Water Resources~~Health~~ Department response. The County ~~Public Health Services~~Land and Water Resources Department shall review the record drawings, operation and maintenance manual, management plan, maintenance and servicing contract, and any other pertinent documents as appropriate for accuracy and completeness. If any deficiencies are identified, the operating permit shall be denied until the deficiencies are corrected to the satisfaction of the County ~~Public Health Services~~Land and Water Resources Department. If the submitted documents fulfill the requirements, the County ~~Public Health~~Land and Water Resources Department shall ~~notify the County Planning and Zoning Department that the permit is ready to issue. The Planning and Zoning Department shall~~ issue the operating permit.

(54) *Operating permit terms and conditions.* The operating permit shall comply with Minnesota Rules, Chapter 7082.0600, Subp. 2.~~include the following:~~

~~—(a) System performance requirements;~~

~~—(b) System operating requirements;~~

~~—(c) Monitoring locations, procedures and recording requirements;~~

~~—(d) Maintenance requirements and schedules;~~

~~—(e) Compliance limits and boundaries;~~

~~—(f) Reporting requirements;~~

~~—(g) Department notification requirements for non-compliant conditions;~~

~~—(h) Valid contract between the owner and a licensed maintenance business;~~

~~—(i) Disclosure, location and condition of acceptable soil treatment and dispersal system site; and~~

~~—(j) Descriptions of acceptable and prohibited discharges.~~

(X) *Permit expiration and renewal.*

(1) Operating permits shall be valid for the specific term stated on the permit as determined by the County Land and Water Resources Department.

(2) An operating permit must be renewed prior to its expiration. If not renewed, the ~~Department may require the~~ system may be required to be removed from service or operated as a holding tank

until the permit is renewed. If not renewed within in 90 calendar days of the expiration date, the ~~county~~County may require that the system be abandoned in accordance with §~~5.02(M)(5)~~4.04.

(3) The County Land and Water Resources Department shall notify the holder of an operating permit at least 90 calendar days prior to expiration of the permit. The owner must apply for renewal at least 30 calendar days before the expiration date.

(4) Application shall be made on a form provided by the County ~~Public Health Services~~Land and Water Resources Department, including:

- (a) Applicant name, mailing address and phone number;
- (b) Reference number of previous owner's operating permit;
- (c) Any and all outstanding compliance monitoring reports as required by the operating permit;
- (d) Certified treatment system inspection signed and/or sealed by a certified designer, maintenance contractor or operator at the discretion of the County ~~Public Health Services~~Land and Water Resources Department;
- (e) Any revisions made to the operation and maintenance manual; and
- (f) Payment of application review fee as determined by the County ~~Public Health Services~~Land and Water Resources Department.

(Y) *Amendments to existing permits not allowed.* The ~~county~~County may not amend an existing permit to reflect changes in this ordinance until the permit term has expired and is renewed, unless an amendment is necessary to eliminate an imminent threat to public health or safety.

(Z) *Transfers.* The operating permit may not be transferred. A new owner shall apply for an operating permit in accordance with §~~5.02(W)~~4.03(B). The ~~current permit~~Department shall not ~~be terminate terminated the current permit~~ until 60 calendar days after the date of sale unless an imminent threat to public health and safety exists. ~~To consider the new owner's application, the Department may require a~~ performance inspection of the treatment system certified by a licensed inspector or qualified employee may be required as part of the new owner's application.

(AA) *Suspension or revocation.*

(1) The Department may suspend or revoke any operating permit issued under this section for any false statements or misrepresentations of facts on which the operating permit was issued.

(2) Notice of suspension revocation and the reasons for revocation shall be conveyed in writing to the owner.

(3) If suspended or revoked, the County Land and Water Resources Department may require that the treatment system be removed from service, operated as a holding tank, or abandoned in accordance with §~~5.02(M)(5)~~Article IV.

(4) At the County Land and Water Resources Department's discretion, the operating permit may be reinstated or renewed upon the owner taking appropriate corrective actions.

(BB) *Compliance monitoring.*

(1) Performance monitoring of a SSTS shall be performed by a ~~licensed inspection business or~~ licensed service provider hired by the holder of the operating permit in accordance with the monitoring frequency and parameters stipulated in the permit.

(2) A monitoring report shall be prepared and certified by the ~~licensed inspection business or~~ licensed service provider. The report shall be submitted to the County Land and Water Resources Department on a form provided by the Department on or before the compliance reporting date stipulated in the operating permit. The report shall contain a description of all maintenance and servicing activities performed since the last compliance monitoring report as described below:

- (a) Owner name and address;
- (b) Operating permit number;
- (c) Average daily flow since last compliance monitoring report;
- (d) Description of type of maintenance and date performed;
- (e) Description of samples taken (if required), analytical laboratory used and results of analyses;
- (f) Problems noted with the system and actions proposed or taken to correct them; and
- (g) Name, signature, license and license number of the licensed professional who performed the work.

(CC) *Abandonment certification.*

(1) *Purpose.* The purpose of the system abandonment certification is to ensure that a treatment system no longer in service is abandoned within a reasonable time following decommissioning and in a manner that protects public health, safety and water quality. It also terminates all permits associated with the system.

(2) *Abandonment requirements.*

(a) Whenever the use of a SSTS or any system component is discontinued as the result of a system repair, modification, replacement or decommissioning following connection to a municipal or private sanitary sewer, or condemnation or demolition of a building served by the system, further use of the system or any system component for any purpose under this ordinance shall be prohibited.

(b) Continued use of a treatment tank where the tank is to become an integral part of a replacement system or a sanitary sewer system requires the prior written approval of the County Land and Water Resources Department and a written statement by an appropriately certified and or licensed contractor.

(c) An owner of an SSTS must retain a ~~contractor licensed installation~~ business to abandon all components of the treatment system within 60 calendar days of a system. Abandonment shall be completed in accordance with Minnesota Rules, Part 7080.2500. No prior notification of the ~~Public Health Services~~Land and Water Resources Department of an owner's intent to abandon a system is necessary.

(d) A report of abandonment certified by the licensed installation business shall be submitted to the County Land and Water Resources Department. The report shall include:

1. Owner's name and contact information;
2. Property address;
3. System construction permit and operating permit;
4. A copy of the MPCA Abandonment Form;

5. The reason(s) for abandonment; and

56. A brief description of the abandonment methods used, description of the system components removed or abandoned in place, and disposition of any materials or residuals.

~~(DD3)~~ *Abandonment certificate.* The County Land and Water Resources Department shall keep on file a copy of the abandonment certificate as submitted by a licensed contractor. ~~Upon receipt of an abandonment report and its determination that the SSTS has been abandoned according to the requirements of this ordinance, the Department shall issue an abandonment certificate.~~ If the abandonment is not completed ~~according~~according to the requirements of this ordinance, the County ~~Public Health Services~~Land and Water Resources Department shall notify the owner of the SSTS of the deficiencies, which shall be corrected within 30 calendar days of the notice.

~~(EEDD)~~ *Management plans.*

(1) *Purpose.* The purpose of management plans is to describe how a particular SSTS is intended to be operated and maintained to sustain the performance required. The plan is to be provided by the certified designer to the system owner when the treatment system is ~~commissioned~~designed.

(2) *Management plan requirements.*

(a) *SSTS requiring management plans.* Management plans are required for all new or replacement SSTS. The management plan shall be submitted to the County ~~Public Health Services~~Land and Water Resources Department with the construction permit application for review and approval. The County ~~Public Health Services~~Land and Water Resources Department shall be notified of any system modifications made during construction and the management plan revised and resubmitted at the time of final construction certification

(b) *Required contents of a management plan.* Management plans shall contain all the information required by (Minnesota Rules, Part 7082.0600, Subp. 1): and other requirements as determined by the County Land and Water Resources Department. These may include, but are not limited to: a description of the system and each component, how the system functions, a plot plan of the system, equipment specifications, emergency operating procedures in the event of a malfunction and a troubleshooting guide. ~~include (Minnesota Rules, Part 7082.0600, Subp. 1):~~

~~1. Operating requirements describing tasks that the owner can perform and tasks that a licensed service provider or maintainer must perform;~~

~~2. Monitoring requirements;~~

~~3. Maintenance requirements including maintenance procedures and a schedule for routine maintenance;~~

~~4. Statement that the owner is required to notify the Department when the management plan requirements are not being met;~~

~~5. Disclosure of the location and condition of the additional soil treatment and dispersal area on the owner's property or a property serving the owner's residence; and~~

~~6. Other requirements as determined by the Department. These may include, but are not limited to: a description of the system and each component, how the system functions, a plot plan of the system, equipment specifications, emergency operating procedures in the event of a malfunction and a troubleshooting guide.~~

(~~FFEE~~) *Requirements for systems not operated under a management plan (Minnesota Rules, Part 7082.0100, Subp. 3(L)).* SSTS that are not operated under a management plan or operating permit must have treatment tanks inspected and provide for the removal of solids if needed at least once every three years. Solids must be removed when their accumulation meets the limit described in Minnesota Rules, Part 7080.2450.

(~~GGFF~~) *Compliance management.*

(1) *Public education outreach.* Programs ~~shall~~may be provided by the Department and/or others to increase public awareness and knowledge of SSTS. Programs may include distribution of educational materials through various forms of media and SSTS workshops focusing on SSTS planning, construction, operation, maintenance and management.

(2) *Compliance inspection program.*

(a) County ~~Public Health Services~~Land and Water Resources Department. It is the responsibility of the Department, or its agent, to perform various SSTS compliance inspections periodically to assure that the requirements of this ordinance are met.

(b) SSTS compliance inspections must be performed:

1. To ensure compliance with applicable requirements;
2. To ensure system compliance before issuance of a permit for addition of a bedroom unless the permit application is made during the period of November 1 to April 30, provided a compliance inspection is performed before the following June 1 and the applicant submits a certificate of compliance by the following September 30;
3. For all new SSTS construction, system upgrades or replacement; and
4. For an evaluation, investigation, inspection, recommendation or other process used to prepare a disclosure statement if conducted by a party who is not the SSTS owner. Such an inspection constitutes a compliance inspection and shall be conducted in accordance with Minnesota Rules, ~~Part~~Chapter 7082.0700 using the SSTS inspection report forms provided by MPCA.

(c) All compliance inspections must be performed according to Minnesota Rules Parts 7080 or 7081 and signed by licensed inspection businesses or qualified employees certified as inspectors.

(d) The County ~~Public Health Services~~Land and Water Resources Department shall be given access to enter a property at any reasonable time to inspect and/or monitor the SSTS system. As used in this paragraph, **PROPERTY** does not include a residence or private building. ~~The Department shall notify the owner of the Department's intent to inspect the SSTS least in advance of the intended inspection.~~

(e) No person shall hinder or otherwise interfere with the County ~~Public Health Services~~Land and Water Resources Department's employees in the performance of their duties and responsibilities pursuant to this ordinance. Refusal to allow reasonable access to the property by the County ~~Public Health Services~~Land and Water Resources Department shall be deemed a separate and distinct offense.

(~~HHGG~~) *New construction or replacement.*

(1) It is the responsibility of the SSTS owner or the owner's agent to notify the Department one calendar day prior to any permitted work on the SSTS. If the owner or owner's agent provides proper notice and the ~~County Public Health Services~~Land and Water Resources Department does not provide

inspection within two hours after time set; construction may be completed according to the approved design. The licensed contractor shall then submit to the County Public Health Services~~Land and Water Resources~~ Department within five working days: photographs of the system prior to covering; and record as-built drawing of the system on forms provided or approved by the County Public Health Services~~Land and Water Resources~~ Department to include a certified statement that the work was installed in accordance with submitted design and that it was free from defects.

(2) A certificate of compliance for new SSTS construction or replacement, which shall be valid for five years, shall be issued by the County Land and Water Resources Department if the County Land and Water Resources Department has reasonable assurance that the system was built in accordance with the applicable requirements as specified in the construction permit. The Certificate of Compliance shall become invalid if the County Land and Water Resources Department finds evidence of noncompliance.

~~—(3) The certificate of compliance must include a certified statement by the certified inspector or qualified employee who conducted the inspection that the SSTS is or is not in compliance with the ordinance requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must be issued to the owner which includes a statement specifying those ordinance provisions with which the SSTS does not comply.~~

~~—(4) The certificate of compliance must include a certified statement by the certified inspector or qualified employee who conducted the inspection that the SSTS is or is not in compliance with the ordinance requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must be issued to the owner which includes a statement specifying those ordinance provisions with which the SSTS does not comply.~~

~~—(5) Certificates of compliance for new construction or replacement shall remain valid for five years from the date of issue unless the Department finds evidence of noncompliance.~~

~~(HHH)~~ *Existing systems.*

(1) Compliance inspections shall be required when any of the following conditions occur:

- (a) When a construction permit is required to repair, modify or upgrade an existing system;
- (b) Any time there is an expansion of use of the building being served by an existing SSTS which may impact the performance of the system;
- (c) Any time there is a change in use of the property being served by an existing SSTS which may impact the performance of the system; and/or
- (d) In designated Shoreland Overlay Districts, any time a zoning permit is applied for. At any time as required by this ordinance or the Public Health Services~~Land and Water Resources Department deems appropriate such as upon receipt of a complaint or other notice of a system malfunction.~~

(2) Compliance inspections of existing SSTS shall be reported on the inspection report forms provided by MPCA. The following conditions, must be assessed or verified:

- (a) Water-tightness assessment of all treatment tanks including a leakage report;
- (b) Vertical separation distance between the bottom of the soil treatment and dispersal system and the periodically saturated soil or bedrock including a vertical separation verification report; and
- (c) Sewage backup, surface seepage or surface discharge including a hydraulic function report.

(3) The certificate of compliance must include a certified statement by a qualified employee or licensed inspection business, indicating whether the SSTS is in compliance with the ordinance requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must include a statement specifying those ordinance provisions with which the SSTS does not comply. A construction permit application must be submitted to the County Public Health Services Land and Water Resources Department if the required corrective action is not a minor repair.

(4) The certificate of compliance or notice of noncompliance must be submitted to the Public Health Services Land and Water Resources Department and the property owner or the owner's agent no later than 15 calendar days after the date the inspection was performed. The County Public Health Services Land and Water Resources Department may deliver the certificate of compliance or notice of noncompliance to the owner or the owner's agent within 90 calendar days of receipt from the licensed inspection business.

(5) Certificates of compliance for existing SSTS shall remain valid for three years from the date of issue unless the County Public Health Services Land and Water Resources Department finds evidence of noncompliance.

~~(HII)~~ *Transfer of properties.*

(1) *Sale or transfer of property.*

(a) A compliance inspection must be completed prior to the closing date on the sale or transfer of all properties served by an ~~IST~~SSTS. Either a certificate of compliance or a notice of noncompliance shall be issued. A notice of noncompliance shall indicate the presence of an imminent health threat as defined in this section.

(b) Those properties receiving a notice of noncompliance for an imminent health threat must upgrade within ten months.

(c) For certificate of compliance situations: the certificate of compliance shall be filed with the County Property and Election Services Department Auditor along with the certificate of real estate value.

(d) For notice of noncompliance/non-imminent health threat situations: the notice of noncompliance shall be filed with the County Auditor along with the certificate of real estate value. An upgrade shall occur within five years.

(e) For imminent health threat situations: a certificate of compliance indicating an approved system has been installed or a zoning permit indicating an upgrade will occur within ten months and evidence of escrow account shall be filed with the County Property and Election Services Department Auditor along with the certificate of real estate value.

(f) Transactions occurring between November 1 and April 30: if the closing date on the sale or transfer of property occurs between November 1 and the following April 30, and the inspection cannot be completed, the transfer may occur with a stipulation that evidence of an escrow account be filed with the certificate of real estate value. A compliance inspection shall be completed and a certificate of compliance, notice of noncompliance or zoning permit submitted to the County Property and Election Services Department Auditor by the following June 1.

(g) Escrow account amount: the amount to be escrowed shall be:

1. The amount of the bid for the approved design used in obtaining the filed zoning permit; or

2. The annual average cost of a standard mound system as determined by the County Land and Water Resources Department.

(h) Exempt transactions: no compliance inspection is required if the sale or transfer involves the following circumstances (in subsections (JJ)(1)(h)1., (JJ)(1)(h)2. and (JJ)(1)(h)3. below, an exemption form shall be filed with the County Property and Election Services Department Auditor along with the certificate of real estate value):

1. The tract of land is without buildings or contains no dwellings or other buildings with plumbing fixtures;

2. The sale or transfer completes a contract for deed entered into prior to January 1, 1998. This subsection applies only to the original vendor and vendee on such a contract;

3. Any dwellings or other buildings with running water which are connected to a municipal treatment system; and

4. No certificate of real estate value need be filed with the County Property and Election Services Department Auditor, as per M.S. Chapter 272.115, as it may be amended from time to time.

(2) *Notices, certificates and the like.* Neither the issuance of permits, certificates of compliance or notices of noncompliance as requested or issued shall be construed to represent a guarantee or warranty of the system's operation or effectiveness. Such certificates signify that the system in question is or has been designed and installed in compliance or noncompliance with the provisions of these standards and regulations.

~~(KKJ)~~ *Enforcement (state notification).* In accordance with state law, the County Public Health Services Land and Water Resources Department shall notify the MPCA of any inspection, installation, design, construction, alteration or repair of an SSTS by a licensed/certified person or any septage removal by a licensed pumper that is performed in violation of the provisions of this ordinance.

~~(LKK)~~ *Record-keeping.* The ~~county~~County shall maintain a current record of all permitted systems. The record shall contain all permit applications, issued permits, fees assessed, variance requests, certificates of compliance, notices of noncompliance, enforcement proceedings, site evaluation reports, design reports, ~~record-as-built~~ drawings, management plans, maintenance reports, an annual list of all sewage tanks installed in the ~~county~~County sorted by licensed installation businesses and other records relevant to each system.

~~(MML)~~ *Annual report.* The County Public Health Services Land and Water Resources Department shall provide an annual report of SSTS permitting activities to MPCA no later than February 1 for the previous calendar year.

~~(NNM)~~ *Fees.* From time to time, the Waseca County Board shall establish fees for activities undertaken by the County Public Health Services Land and Water Resources Department pursuant to this ordinance. Fees shall be due and payable at a time and in a manner to be determined by the County Public Health Services Land and Water Resources Department.

~~(OON)~~ *Interpretation.* In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the ~~county~~County and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

~~(POO)~~ *Severability.* If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

(~~QQPP~~) *Abrogation and greater restrictions.* It is not intended by this ordinance to repeal, abrogate or impair any other existing ~~county-County~~ ordinance, easements, covenants or deed restrictions; however, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

(~~RRQQ~~) *Ordinance repealed.* The ~~county-County~~ previous ordinance for the regulation of individual sewage treatment systems of the ~~county-County~~ contained within the Unified Development Code is hereby repealed and the code amended as shown herein.

(Ord. 97, passed 7-21-2009; Ord. 98, passed 1-5-2010; Ord. 145, passed 4-6-2021)

§ 5.03 SANITARY PROVISIONS.

(A) *Required compliance.* All sewage and water systems hereafter constructed or reconstructed shall conform to the provisions of this section and any other ordinance or regulations of the ~~county~~ County and the state.

(B) *Municipal treatment systems.* Methods of disposal shall comply with the standards, criteria, rules and regulations of the State Pollution Control Agency.

(C) *Agricultural waste disposal.* Any agricultural waste disposal operations must conform to the standards, criteria, rules and regulations of the State Pollution Control Agency.

(D) *Water systems.*

(1) Public water facilities, including pipe fittings, hydrants and the like, shall be installed and maintained as required by standards and specifications as established by the County Board and the State Department of Health Standards for water quality.

(2) Where public water facilities are not available, the County Board may by ordinance grant a franchise for such water facilities, to serve all properties within the area where a complete and adequate community water distribution system is designed, and complete plans for the system are submitted to and approved by the County Board and the State Department of Health.

(3) Individual wells shall be constructed and maintained according to standards and regulations contained in the ~~county-County~~ water well ordinance and the State Department of Health Well Code.

(E) *Waste water treatment.*

(1) Public wastewater treatment systems shall be installed as required by standards and specifications as established by the Board of County Commissioners, the State Pollution Control Agency, and the State Department of Health.

(2) Where municipal waste water treatment is not available, the Board of County Commissioners may by ordinance grant a franchise for such sewers to serve all properties in the area where a complete and adequate community waste water treatment system and plant are designed, and complete plans for the system and plant are submitted to and approved by the Board of County Commissioners, the State Pollution Control Agency and the State Department of Health before construction.

(Ord. 97, passed 7-21-2009)

§ 5.04 STORMWATER MANAGEMENT AND SEDIMENT AND EROSION CONTROL.

(A) *Best Management Practices encouraged and Stormwater Pollution Prevention Plan required.*

(1) *Best Management Practices (BMPs) encouraged.* Whenever possible, existing natural drainageways, ~~wetlands~~ and vegetated soil surfaces must be used to convey, store, filter and retain stormwater runoff before discharge to public waters.

(a) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.

(b) When development density, topographic features and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways and ponds may be used. Preference must be given to designs using surface drainage, vegetation and infiltration rather than buried pipes and human-made materials and facilities.

(2) *Stormwater Pollution Prevention Plan.*

(a) A Stormwater Pollution Prevention Plan (SWPPP) shall be required to all proposed land development activity, unless otherwise exempted in this ordinance that meets any or all of the following:

1. Any land development activity that may ultimately result in the addition of one acre or greater of impervious surfaces, including smaller individual sites that are part of a common plan of development that may be constructed at different times;

2. A subdivision plat;

3. The construction of any new public or private road; and/or

4. Any land development activity, regardless of size, that the ~~county~~ County determines is likely to cause an adverse impact to an environmentally sensitive area or other property.

(b) A SWPPP shall be required providing the measures to be taken to control or manage runoff and erosion from such land disturbance listed in 5.04(A)(2)(a) both during construction and after final stabilization of the site. No ~~building zoning~~ permit, subdivision approval or permit to allow land-disturbing activities shall be issued until approval of this SWPPP by the MPCA. All SWPPPs shall be consistent with National Pollutant Discharge Elimination System (NPDES) permit requirements, and the filing or approval requirements of other regulatory bodies.

(B) *Erosion and sediment control permit required.* An Erosion and Sediment Control (ESC) permit, including an Erosion and Sediment Control Plan shall be required to all proposed land-disturbing activity, unless otherwise exempted in this ordinance, that meets any or all of the following:

(1) Disturbs a total land surface area of ~~36~~ 000 square feet or more;

(2) Involves excavation or filling, or a combination of excavation and filling, in excess of 400 cubic yards of material;

(3) Involves the laying, repairing, replacing or enlarging of an underground utility, pipe or other facility, or the disturbance of road ditch, grass swale ~~or other open channel~~ for a distance of 300 feet or more; or

(4) Is a land-disturbing activity, regardless of size, that the ~~county~~ County determines is likely to cause an adverse impact to an environmentally sensitive area or other property, or may violate any other erosion and sediment control standard set forth in this ordinance.

(C) *Exemptions.* The following activities shall be exempt from all of the requirements of this ordinance:

(1) Emergency work to protect life, limb or property; and

(2) Routine agricultural activity. Tilling, planting, harvesting and associated activities. Other agricultural activities are not exempt and including activities such as feedlots, storage sheds.

(D) *Stormwater and erosion and sediment control specifications.*

(1) *Stormwater Pollution Prevention Plan requirements.* The minimum requirements of the SWPPP shall be consistent with the most recent version of the NPDES permit requirements.

(2) *Erosion and Sediment Control Plan requirements.* The minimum requirements of the ESC Plan shall be consistent with the most recent version of the NPDES permit requirements.

(E) *Stormwater and erosion and sediment control performance standards.* Stormwater management performance standards.

(1) *Volume control for water quantity.* All stormwater facilities shall be designed, installed and maintained to effectively accomplish the following:

(a) Maintain predevelopment peak runoff rates for the one-year and two-year, 24-hour storm events;

(b) Maintain predevelopment peak runoff rates for the ten-year, 24-hour storm event. At a minimum, the storm sewer conveyance system shall be designed for this storm event. Low areas must have an acceptable overland drainage route with the proper transfer capacity when the storm event is exceeded;

(c) Provide a stable emergency overflow to safely pass the 100-year, 24-hour storm event or the 100-year ten-day snowmelt, whichever is greater;

(d) Discharges must have a stable outlet capable of carrying designed flow at a non-erosive velocity. Outlet design must consider flow capacity and flow duration. This requirement applies to both the site outlet and the ultimate outlet to stormwater conveyance or waterbody;

(e) The project shall use existing natural drainageways and vegetated soil surfaces to convey, treat, filter and retain stormwater runoff before discharge into public waters or a stormwater conveyance system. The applicant shall limit the impervious surface of the developed site or subdivision by incorporating design considerations identified in the Minnesota Stormwater Manual such as narrowing street widths, reducing parking lot space, reducing setbacks and driveways, maximizing open space while incorporating smaller lot sizes to conserve natural areas to help reduce the amount of stormwater runoff generated at the site; and

(f) Runoff from rooftops, driveways and other impervious areas shall be directed to pervious surfaces, where feasible, or unless the applicant can demonstrate the practice is likely to result in nuisance flooding and/or groundwater contamination.

(2) *Infiltration for volume reduction.* The following requirements must be met.

(a) Infiltration volumes and facility sizes shall be designed using the procedures in Chapter 12 of the Minnesota Stormwater Manual.

(b) Design and placement of infiltration BMPs shall be done in accordance with the State Department of Health guidance called “Evaluating Proposed Stormwater Infiltration Projects in Vulnerable Wellhead Protection Areas”.

(3) *Protection of surface waters.* Waterbodies shall be protected from runoff generated during construction and after completion of the development in accordance with state statutes and the NPDES permit. Runoff shall not be discharged directly into surface waters without appropriate quantity and quality runoff control.

(4) *Buffers.*

(a) Buffers are areas of vegetation located adjacent to receiving waters to protect water quality. Buffers help minimize runoff of sediment, debris, nutrients and pesticides into receiving waters by providing an area of undisturbed vegetation in order to trap sediment and debris from adjacent land areas.

(b) Buffers for water quality protection shall commence at the “ordinary high water mark”, or at the delineated boundary of the waterbody.

(c) The widths are established by the slope of land between the activity and the water body as follows:

(5) *Slope of land between activity and water body.*

Recommended Width of Filter Strip	
Slope	Distance*
0 to 10%	50 feet
11 to 20%	51 to 70 feet
21 to 40%	71 to 110 feet
41 to 70%	111 to 150 feet

*For roads, distance is measured from the edge of soil disturbance. For fills, distance is measured from the bottom of the fill slope, filter strip width increases approximately two feet for each percent increase in slope above 10%. For example, the filter strip recommendation for a range in slope values from 11 to 20% is 51 to 70 feet. If the slope is 18%, then the filter strip width is 66 feet.

(a) The applicant shall maintain the buffer for the first year after completion of the project.

(b) Where land-disturbing construction activity occurs within a buffer area, and where no impervious surface is present, adequate approved native vegetative cover of 70% or greater shall be established and maintained. The native vegetative cover shall be sufficient to provide for bank stability from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.

(c) BMPs such as filter strips, swales or wet detention basins, designed to control pollutants from nonpoint pollution sources may be located in the buffer area.

(d) For special waters, impaired waters and wetlands in areas identified by the ~~county~~County as exceptional buffers shall be a minimum of 100 feet.

(6) *Special, impaired and/or TMDL water requirements.* All projects to special, impaired and/ or TMDL waters must meet the minimum requirements of the NPDES permit to discharge stormwater associated with construction activity.

(7) *Erosion and sediment control performance standards.*

(a) Construction activity requirements for erosion and sediment control are provided in the NPDES permit. They include stormwater pollution prevention plans, erosion prevention practices, sediment control practices, dewatering and basin draining, and final stabilization.

(b) In addition, streets shall be cleaned and swept within 24-hours whenever tracking of sediment occurs and before sites are left idle for weekends and holidays.

(F) *Pollution prevention.* In addition to the following the applicant will comply with NPDES permit for pollution prevention management measures.

(1) *Illegal disposal.*

(a) No person shall throw, deposit, place, leave, maintain or keep or permit to be thrown, placed, left, maintained or kept, any refuse, rubbish, garbage or any other discarded or abandoned objects, articles or accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin conduit or drainage structure, business place or upon any public or private plot of land in ~~county~~County, so that the same might be or become a pollutant, except in containers, recycling bags or other lawfully established waste disposal facility.

(b) No person shall intentionally dispose of grass, leaves, dirt or other landscape debris into a water resource buffer, street, road, alley, catch basin, culvert, curb, gutter, inlet, ditch, natural watercourse, flood control channel, canal, storm drain or any fabricated natural conveyance.

(2) *Illicit discharges and connections.*

(a) No person shall cause any illicit discharge to enter the public stormwater system unless such discharge:

1. Consists of non-stormwater that is authorized by an NPDES point source permit obtained from the MPCA; and

2. Is associated with firefighting activities.

(b) No person shall use any illicit connection to intentionally convey non-stormwater to ~~county~~County stormwater system.

(3) *Good housekeeping provisions.* Any owner or occupant of property within the ~~county~~County shall comply with the following good housekeeping requirements.

(a) No person shall leave, deposit, discharge, dump or otherwise expose any chemical or septic waste in an area where discharge to streets or storm drain system may occur. This section shall apply to both actual and potential discharges. For pools, water should be allowed to sit seven days to allow for chlorine to evaporate before discharge. If fungicides have been used, water must be tested and approved for discharge to the wastewater treatment plant.

(b) Runoff of water from residential property shall be minimized to the maximum extent practicable.

(c) Runoff of water from the washing down of paved areas in commercial or industrial property is prohibited unless necessary for health or safety purposes and not in violation of any other provisions in ~~county~~County codes.

(4) *Storage of materials, machinery and equipment.*

(a) Objects, such as motor vehicle parts, containing grease, oil or other hazardous substances, and unsealed receptacles containing hazardous materials, shall not be stored in areas susceptible to runoff.

(b) Any machinery or equipment that is to be repaired or maintained in areas susceptible to runoff shall be placed in a confined area to contain leaks, spills or discharges.

(5) *Removal of debris and residue.* Debris and residue shall be removed, as noted below.

(a) All motor vehicle parking lots shall be swept, at a minimum of twice a year to remove debris. Such debris shall be collected and properly disposed.

(b) Fuel and chemical residue or other types of potentially harmful material, such as animal waste, garbage or batteries, which is located in an area susceptible to runoff, shall be removed as soon as possible and disposed of properly. Household hazardous waste may be disposed of through ~~county~~County collection program or at any other appropriate disposal site and shall not be placed in a trash container.

(G) *Inspections and maintenance.*

(1) *Inspections and enforcement.* The applicant is responsible for inspections and record keeping in accordance with the NPDES permit requirements. ~~The Waseca County Engineer~~, or a consulting engineer assigned by the County ~~Engineer~~ shall conduct inspections, at an applicant's expense, on a regular basis to ensure that both stormwater and erosion and sediment control measures are properly installed and maintained prior to construction, during construction, and at the completion of the project. Mandatory inspections ~~are~~ may be required as follows:

(a) Before any land-disturbing activity begins;

(b) At the completion of the project; and

(c) Prior to the release of financial securities.

(2) *Stop work order.* In cases where cooperation is withheld, construction stop work orders shall be issued by the ~~county~~County, until stormwater and erosion and sediment control measures meet the requirements of this ordinance. An inspection must follow before work can commence. Expenses incurred by the county will be paid by the developer.

(3) *Construction stop order.* The ~~county~~County may issue construction stop orders until stormwater management measures meet specifications. A second stormwater management inspection must then be scheduled and passed before the final inspection will be done.

(4) *Perimeter breach.* If stormwater and/or erosion and sediment control management measures malfunction and breach the perimeter of the site, enter streets, other public areas, or waterbodies, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-way from the adjoining property owner, and implement the cleanup and restoration plan within 48 hours of obtaining permission, if in the discretion of the ~~county~~County, the applicant does not repair the damage caused by the stormwater runoff the ~~county~~County can do the remedial work required and charge the cost to the applicant.

(5) *Actions to ensure compliance.* The ~~county~~County can take the following action in the event of a failure by applicant to meet the terms of this ordinance:

(a) Withhold inspections or issuance of certificates or approvals;

(b) Revoke any permit issued by the ~~county~~County to the applicant;

(c) Conduct remedial or corrective action on the development site or adjacent site affected by the failure;

(d) Charge applicant for all costs associated with correcting the failure or remediating damage from the failure. If payment is not made within 30 days, payment will be made from the applicant's financial securities;

(e) Bring other actions against the applicant to recover costs of remediation or meeting the terms of this ordinance; and

(f) Any person, firm or corporation failing to comply with or violating any of these regulation shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. Each day that a separate violation exists shall constitute a separate offense.

(H) *Long-term inspection and maintenance of stormwater facilities.*

(1) *Private stormwater facilities.* No private stormwater facilities may be approved unless a maintenance plan is provided that defines who will conduct the maintenance, the type of maintenance and the maintenance intervals. All private stormwater facilities shall be inspected annually and maintained in proper condition consistent with the performance standards for which they were originally designed.

(a) *Facility access.* Access to all stormwater facilities must be inspected annually and maintained as necessary. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the facilities for inspection or maintenance for both the responsible party and the ~~county~~County.

(b) *Removal of settled materials.* All settled materials from ponds, sumps, grit chambers and other devices, including settled solids, shall be removed and properly disposed of.

(c) *County inspections.* All stormwater facilities within the ~~county~~County shall ~~may~~ be inspected by ~~the Waseca~~County ~~Engineer~~ or a consulting engineer assigned by the County ~~Engineer~~, during construction, during the first year of operation, and at least once every five years thereafter.

(2) *Public stormwater facilities.*

(a) *Acceptance of publicly owned facilities.* Before work under the permit is deemed complete, the permittee must submit as-builts and a maintenance plan to the ~~Waseca~~County ~~Engineer~~ demonstrating at the time of final stabilization that the stormwater facilities conform to design specifications. A final inspection shall be required before the ~~county~~County accepts ownership of the stormwater facilities.

~~—(b) *Inventory of stormwater facilities.* Upon adoption of this ordinance, the county shall inventory and maintain a database for all private and public stormwater facilities within county requiring maintenance to assure compliance with this ordinance. The county shall notify owners of public and private stormwater facilities of the need for conducting maintenance at least every five years, following the completion and public acceptance of the facilities.~~

(c) *Maintenance.* The ~~county~~-County shall perform maintenance of publicly owned stormwater facilities in accordance with their comprehensive stormwater management plan and other regulatory requirements.

(1) *Permit review process, financial procedures and enforcement actions.*

(1) *Pre-review.* The County ~~Engineer~~ shall make a determination regarding the completeness of a permit application within ten days of the receipt of the application and notify the applicant if the application is not complete.

(2) *Permit review.* The applicant shall not commence any construction activity subject to this ordinance until a permit has been authorized by the County ~~Engineer~~. A complete review of the permit application shall be done within 14 business days of the receipt of a complete permit application from the applicant. The ~~county~~-County will work with the necessary ~~state~~State, ~~county~~County and local agencies to complete the review.

(3) *Permit authorization.* If the ~~county~~-County determines that the application meets the requirements of this ordinance, the ~~county~~-County may issue approval which authorizes the project or activity. The approval shall be valid for one year. Approval will typically be in the form of a letter from the County Engineer to the applicant.

(4) *Permit denial.* If the ~~county~~-County determines the application does not meet the requirements of this ordinance, this application must be resubmitted for approval before activity begins. All land use and building permits shall be suspended until the applicant has an authorized permit.

(5) *Modification of plans.* The applicant must amend the ESC Plan or SWPPP as necessary to include additional requirements such as additional or modified BMPs designed to correct problems identified or address situations whenever:

(a) A change in design, construction, operation, maintenance, weather or seasonal conditions that has a significant effect on the discharge of pollutants to surface waters or underground waters;

(b) Inspections or investigations by site operators, local, state or federal officials indicate the plans are not effective in eliminating or significantly minimizing the discharge of pollutants to surface waters or underground waters or that the discharges are causing water quality standard exceedances; or

(c) The plan is not achieving the general objectives of minimizing pollutants in stormwater discharges associated with construction activity, or the plan is not consistent with the terms and conditions of this permit.

(6) *Variance requests.* The ~~county~~-County may grant a variance on a case-by-case basis. The content of a variance shall be specific, and shall not affect other approved provisions of a permit.

(a) The variance request shall be in writing and include the reason for requesting the variance.

(b) Economic hardship is not sufficient reason for granting a variance.

(c) The ~~county~~-County shall respond to the variance request in writing and include the justification for granting or denying the request.

(7) *Financial securities.* The applicant ~~shall~~may be required to provide security for the performance of the work described and delineated on the approved permit and related remedial work in an amount of \$3,000 per gross acre (\$6,000 for work done in special or impaired waters as

determined by the county) or \$1,500 for each single or two-family home, whichever is greater. This amount shall apply to the maximum acreage of soil that will be simultaneously exposed during the project's construction. The form of the securities shall be one or a combination of the following to be determined by the ~~county~~County.

(a) *Cash deposit.* The first \$3,000 of the financial security for erosion and sediment control shall be by cash deposit to the ~~county~~County.

(b) *Securing deposit.* Deposit, either with the ~~county~~County, a responsible escrow agent, or trust company, at the option of the ~~county~~County, either:

1. An irrevocable letter of credit or negotiable bonds of the kind approved for securing deposits of public money or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein the financial institution pledges funds are on deposit and guaranteed for payment;

2. Cash in U.S. currency; or

3. Other forms and securities (e.g., disbursing agreement) as approved by the ~~county~~County.

(c) *County free and harmless.* This security shall save the ~~county~~County free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the ~~county~~County.

(8) *Maintaining the financial security.* If at anytime during the course of the work this amount falls below 50% of the required deposit, the developer shall make another deposit in the amount necessary to restore the cash deposit to the required amount. If the developer does not bring the financial security back up to the required amount within seven days after notification by the ~~county~~County that the amount has fallen below 50% of the required amount, the ~~county~~County may:

(a) Withhold inspections. Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy.

(b) Revocation of permits. Revoke any permit issued by the ~~county~~county to the applicant for the site in question or any other of the applicant's sites within the ~~county's~~County's jurisdiction.

(9) *Proportional reduction of the financial security.* When more than one-third of the applicant's maximum exposed soil area achieves final stabilization, the ~~county~~County can reduce the total required amount of the financial security by one-third. When more than two-thirds of the applicant's maximum exposed soil area achieves final stabilization, the ~~county~~County can reduce the total required amount of the financial security to two-thirds of the initial amount. This reduction in financial security will be determined by the ~~county~~County staff.

(10) *Action against the financial security.* The ~~county~~County may access financial security for remediation actions if any of the conditions listed below exist. The ~~county~~County shall use the security to finance remedial work undertaken by the ~~county~~County, or a remedial work including, but not limited to, staff time and attorney's fees.

(a) *Abandonment.* The developer ceases land-disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.

(b) *Failure to implement the SWPPP or ESC plan.* The developer fails to conform to the grading plan and/or the SWPPP as approved by the ~~county~~County.

(c) *Failure to perform.* The techniques utilized under the SWPPP fail within one year of installation.

(d) *Failure to reimburse ~~county~~County.* The developer fails to reimburse the ~~county~~County for corrective action taken.

(11) *Returning the financial security.* The security deposited with the ~~county~~County for faithful performance of the SWPPP or the ESC Plan and any related remedial work shall be released one full year after the completion of the installation of all stormwater pollution control measures as shown on the SWPPP or ESC Plan.

(12) *Emergency action.* If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the health, safety and welfare, as determined by the ~~county~~County, the ~~county~~County may take emergency preventative action. The ~~county~~County shall also take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the ~~county~~County may be recovered from the applicant's financial security.

(13) *Notification of failure of the permit.* The ~~county~~County shall notify the permit holder of the failure of the permit's measures.

(a) *Initial contact.* The initial contact will be to the party or parties listed on the application and/or the SWPPP as contacts. Except during an emergency action, 48 hours after notification by the ~~county~~County or 72 hours after the failure of erosion and sediment control measures, whichever is less, the ~~county~~County at its discretion, may begin corrective work. Such notification should be in writing, but if it is verbal, a written notification should follow as quickly as practical. If after making a good faith effort to notify the responsible party or parties, the ~~county~~County has been unable to establish contact, the ~~county~~County may proceed with corrective work. There are conditions when time is of the essence in controlling erosion. During such a condition, the ~~county~~County may take immediate action, and then notify the applicant as soon as possible.

(b) *Erosion off-site.* If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan within 48 hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from the ~~county~~County, may more than seven calendar days go by without corrective action being taken.

(c) *County may do remedial work.* If in the discretion of the ~~county~~County, the permit holder does not repair the damage caused by the erosion, the ~~county~~County may do the remedial work required. When restoration to wetlands and other resources are required, the applicant should be required to work with the appropriate agency to ensure that the work is done properly.

(d) *Erosion into streets, wetlands or water bodies.* If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands or other water bodies, cleanup and repair shall be immediate. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.

(e) *Failure to do corrective work.* When an applicant fails to conform to any provision of this policy within the time stipulated, the ~~county~~County may take the following actions:

1. Issue a stop work order, withhold the scheduling of inspections, and/or the issuance of a certificate of occupancy;

2. Revoke any permit issued by the ~~county~~County to the applicant for the site in question or any other of the applicant's sites within the ~~county's~~County's jurisdiction;

3. Correct the deficiency or hire a contractor to correct the deficiency;

4. Require reimbursement to the ~~county~~County for all costs incurred in correcting stormwater pollution control deficiencies;

5. If payment is not made within 30 days after costs are incurred by the ~~county~~County, payment will be made from the applicant's financial securities as described in subsection (I)(7) above; and/or

6. If there is an insufficient financial amount in the applicant's financial securities as described in subsection (I)(7) above, then the ~~county~~County may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the ~~county~~County, concur that the benefit to the property exceeds the amount of the proposed assessment, and waive all rights by virtue of M.S. § 429.081, as it may be amended from time to time, to challenge the amount or validity of assessment.

(14) *Enforcement.* The ~~county~~County shall be responsible enforcing this ordinance and assessing any penalties. Any person, firm or corporation failing to comply with or violating any of these regulations, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. All land use and building permits must be suspended until the applicant has corrected the violation. Each day that a separate violation exists shall constitute a separate offense.

(15) *Right of entry and inspection.* The issuance of a permit constitutes a right-of-entry for the ~~county~~County or its contractor to enter upon the construction site. The applicant shall allow the ~~county~~County and its authorized representatives, upon presentation of credentials to:

(a) Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations or surveys;

(b) Bring such equipment upon the permitted development as is necessary to conduct such surveys and investigations;

(c) Examine and copy any books, papers, records or memoranda pertaining to activities or records required to be kept under the terms and conditions of this permitted site;

(d) Inspect the stormwater pollution control measures;

(e) Sample and monitor any items or activities pertaining to stormwater pollution control measures; and

(f) Correcting deficiencies in stormwater and erosion and sediment control measures.

(16) *Abrogation and greater restrictions.* It is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions; however, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

(Ord. 97, passed 7-21-2009)

§ 5.05 BUFFER CODE.

(A) *Statutory authorization and policy.*

(1) *Statutory authorization.* This buffer ordinance is adopted pursuant to the authorization and policies contained in M.S. § 103F.48, as it may be amended from time to time, the Buffer Law, and the

~~county~~County planning and zoning enabling legislation in M.S. Chapter 394, as it may be amended from time to time.

(2) *Purpose and intent.* It is the purpose and intent of the ~~county~~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 M.S. § 103F.48, as it may be amended from time to time with the shoreland management rules and ordinances adopted under the authority of M.S. §§ 103F.201 to 103F.227, as they may be amended from time to time, and the management of public drainage systems established under M.S. Chapter 103E, as it may be amended from time to time, where applicable; and

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

(B) ~~Definitions and g~~General provisions.

~~—(1) Definitions. Unless specifically defined below, 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 section its most reasonable application. For the purpose of this section, the words “must” and “shall” are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.~~

~~—APO. The administrative penalty order issued pursuant to M.S. §§ 103F.48, Subd. 7 and 103B.101, Subd. 12a, as they may be amended from time to time.~~

~~—BUFFER. The meaning provided in M.S. § 103F.48, Subd. 1(c), as it may be amended from time to time.~~

~~—BUFFER PROTECTION MAP. The meaning provided in M.S. § 103F.48, Subd. 1(d), as it may be amended from time to time and which are available on the Department of Natural Resources website.~~

~~—BWSR. The Board of Water and Soil Resources.~~

~~—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.~~

~~—DRAINAGE AUTHORITY. The meaning provided in M.S. § 103E.005, Subd. 9, as it may be amended from time to time.~~

~~—LANDOWNER. 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 M.S. § 103F.401, Subd. 7, as it may be amended from time to time or any other party conducting farming activities on or exercising control over the real property.~~

~~—LOCAL WATER MANAGEMENT AUTHORITY. The meaning provided in M.S. § 103F.48, Subd. 1(g), as it may be amended from time to time.~~

~~— **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.~~

~~— **PARCEL.** A unit of real property that has been given a tax identification number maintained by the county.~~

~~— **PUBLIC DRAINAGE SYSTEM.** The meaning given to “drainage system” in M.S. § 103E.005, Subd. 12, as it may be amended from time to time.~~

~~— **SWCD.** Soil and Water Conservation District.~~

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

(32) *Data sharing/management.*

(a) The ~~county~~ 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 section.

(b) The ~~county~~ County will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

(C) *Jurisdiction.* The provisions of this section apply to all waters, shown on the buffer protection map, excluding public drainage systems for which the ~~county~~ County is not the drainage authority under M.S. Chapter 103E, as it may be amended from time to time.

(D) *Buffer requirements.*

(1) *Buffer width.* Except as provided in subsections (D)(4) and (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 50-foot width buffer, the buffer width will be 50-foot average and 30-foot minimum width as provided in M.S. § 103F.48, Subd. 3, as it may be amended from time to time, as measured according to subsection (D)(2); and

(b) For waters shown on the buffer protection map requiring a 16.5-foot minimum width buffer, the buffer width will be 16.5 feet as provided in M.S. § 103F.48, Subd. 3, as it may be amended from time to time, and as measured according to subsection (D)(2).

(2) *Measurement.*

(a) The width of any required buffer on land adjacent to a water requiring a 50-foot average width and a 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 M.S. § 103F.48, Subd.3(c), as it may be amended from time to time.

(b) The width of any required buffer on land adjacent to a water requiring a 16.5-foot minimum width buffer shall be measured in the same manner as for measuring the vegetated grass strip under M.S. § 103E.021, Subd. 6, as it may be amended from time to time, as provided in M.S. § 103F.48, Subd. 3(c), as it may be amended from time to time.

(3) *Use of buffer area.* Except as provided in subsections (D)(4) and (5), a buffer as defined in this section 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.

(4) *Exemptions.* The requirement of subsection (D)(1) does not apply to land that is exempted from the water resources riparian protection requirements under M.S. § 103F.48, Subd. 5, as it may be amended from time to time.

(5) *Alternative practices.* As provided in M.S. § 103F.48, Subd. 3(b), as it may be amended from time to time, an owner of land that is used for cultivation farming may demonstrate compliance with subsection (D)(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 subsections (D) through (D)(3). The adequacy of any alternative practice allowed under this section 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.

(6) *Nonconformity.* Where the provisions of any statute, other ordinance or regulation imposes greater restrictions than this section, the provisions of such shall be controlling. The continuation of nonconformities provided for by M.S. §§ 394 and 462, as they may be amended from time to time, shall not apply to compliance with this section and M.S. § 103F.48, as it may be amended from time to time.

(E) *Compliance determinations.*

(1) *Compliance determinations.* Compliance with the buffer requirements set forth in subsection (D) 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.

(2) *Investigation and notification of noncompliance.* When the ~~county~~ 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~~ County. If the SWCD does not issue such a notification, the ~~county~~ County will not pursue a compliance or enforcement action under M.S. § 103F.48, as it may be amended from time to time and subsection (F)(2).

(a) At any time during process set forth in subsections (E)(2) and (3), the landowner may provide documentation of compliance to the SWCD.

(b) 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~~County and BWSR. The SWCD may also issue a validation of compliance if applicable and requested by the landowner.

(3) *Corrective action notice.*

(a) On receipt of an SWCD notification of noncompliance, the ~~county~~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 M.S. § 103F.48, as it may be amended from time to time;

2. Provide a timeline for complying with the corrective action notice;

3. Provide a compliance standard against which the ~~county~~County will judge the corrective action; and

4. Include a statement that failure to respond to this notice may result in the assessment of criminal, civil or administrative penalties.

(b) The ~~county~~County may send the landowner a combined corrective action notice and APO as provided in subsection (F)(2) so long as the combined notice/APO includes all the required elements of both.

(c) The ~~county~~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 (F). The ~~county~~County shall also send a copy of the notice to the SWCD and BWSR.

(d) Counties may modify the corrective actions and timeline for compliance, in accordance with subsection (E)(2), to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

(e) At any time after receipt of a corrective action notice, the landowner may provide documentation of compliance to the ~~county~~County. In addition, the landowner may supply information to the ~~county~~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~~County may make a written modification to the corrective action notice or timeline for compliance. The ~~county~~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 (E)(3). The ~~county~~County shall provide the SWCD and BWSR a written copy of any modification made pursuant to this provision.

(f) The SWCD may, after an evaluation of the evidence documenting compliance submitted by the landowner, issue a written validation of compliance if requested by the landowner. Upon receipt by the ~~county~~County of a written compliance determination issued by the SWCD, the corrective action notice will be deemed withdrawn for the purpose of subsection (F), and the subject property will not be subject to enforcement under that section.

(F) *Enforcement.*

(1) *Failure to comply with a corrective action notice issued under subsection (E).* The ~~county~~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 subsection (E) constitutes a misdemeanor and shall be punishable as defined by law.

(b) The ~~county~~ County may issue an APO as provided for in M.S. §§ 103F.48, Subd. 7(b) and (c) and 103B.101, Subd. 12a, as they may be amended from time to time, 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~~ 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.

(2) *Administrative penalty order (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~~ County shall be:

1. \$0 for 11 months after issuance of the corrective action notice;
2. \$50 per parcel per month for the first six months (180 days) following the time period in subsection (F)(2)(a)1.; and
3. \$200 per parcel per month after six months (180 days) following the time period in subsection (F)(2)(a)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~~ County shall be:

1. \$50 per parcel per day for 180 days after issuance of the corrective action notice; and
2. \$200 per parcel per day for after 180 days following the time period in subsection (F)(2)(b)1.

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

(d) 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 subsection (D) or M.S. § 103F.48, as it may be amended from time to time;
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.

(e) 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 M.S. § 103F.48, Subd. 7(d), as it may be amended from time to time.

(f) A copy of the APO must be sent to the SWCD and BWSR.

(g) An APO issued under this subsection may be appealed to the BWSR within 30 days of receipt by the landowner in accordance with the requirements set forth in M.S. § 103F.48, Subd. 9, as it may be amended from time to time. Any APO that is not appealed within the 30-day period shall be deemed final.

(3) *Administrative penalty order procedures.*

(a) *Statute of limitations.* According to M.S. § 541.07, as it may be amended from time to time, the ~~county~~-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.

(b) *Compliance verification.*

1. 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~~-County will:

a. Review and evaluate all information related to the APO to determine if the violation has been corrected;

b. Verify compliance by site visit, re-inspection, examination of documentation or other means as may be reasonable under the facts of the case; and

c. Document compliance verification.

2. The ~~county~~-County may consult with the SWCD when conducting a compliance verification.

(c) *Right to appeal.* Within 30 days after receipt of the APO, a landowner may appeal the terms and conditions of an APO issued by a ~~county~~-County to BWSR as provided in M.S. § 103F.48, Subd. 9, as it may be amended from time to time. 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.

(d) *Penalty due.*

1. Unless the landowner appeals the APO as provided in subsection (F)(3)(c), the penalty specified in the APO becomes immediately due and payable to the ~~county~~-County as set forth in the APO. If, however, the landowner submits written documentation that the violations has been corrected prior to the time the penalty becomes due and payable, the ~~county~~-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.

2. However, if the ~~county~~-County determines the violation was not fully corrected, the ~~county~~-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 as provided in the corrective action notice and APO.

(e) *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~~County. Any penalty or interest not received in the specified time may be collected by the ~~county~~County using any lawful means.

(f) *Reporting and documentation.* The ~~county~~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;
4. Documentation showing whether the violation has the potential to harm to the natural resources of the state;
5. A record of past violations;
6. Efforts by the SWCD, ~~county~~County, Watershed District or BWSR to assist the responsible party or parties to become compliant, including written and oral communications with the responsible party or parties; and
7. Past and present corrective action efforts by the responsible party or parties.

(Ord. 126, passed 10-17-2017)