

Ordinance

Soil Erosion Control

FILLMORE COUNTY
SOIL EROSION CONTROL
ORDINANCE

ADOPTED 1982
AMENDED 1990
AMENDED 1994
AMENDED 1996

FILLMORE COUNTY SOIL EROSION CONTROL ORDINANCE

AN ORDINANCE REQUIRING THAT FARMING PRACTICES BE IMPLEMENTED THAT WOULD REDUCE SOIL LOSSES TO NO MORE THAN IS NECESSARY TO SUSTAIN THE PRODUCTIVE CAPACITY OF THE SOIL.

The **Fillmore County Board of Commissioners of Fillmore County Minnesota** ordains:

Section 1.0. Finding of Fact

The Fillmore County Board of Commissioners hereby finds that protection of the water and soil resources found within Fillmore County is necessary for public good. Uncontrolled and inadequately planned use of natural resources adversely affects the public health, safety and general welfare by contributing to pollution, erosion, flooding, and other environmental problems, and by creating nuisances, impairing local tax base, and hindering the ability of Fillmore County to provide adequate community services.

Section 1.1. Purpose

The purposes of this ORDINANCE are to encourage and guide the agricultural use of land in accordance with its capacities and to:

1. Control erosion caused by land-disturbing activities associated with all agricultural uses of land to rates no greater than soil loss tolerances;
2. Protect wetlands, rivers, streams, and ditches from excessive sedimentation resulting from land-disturbing activities associated with agricultural use of land;
3. Abate and minimize impacts of excessive sedimentation to adjoining lands; and
4. Ensure proper maintenance of agricultural erosion control practices.

Section 2.0. Definitions

For the purpose of this ORDINANCE the following terms shall have the definitions given them in this section.

Section 2.1. Zoning Administrator

"Zoning Administrator" means the person designated to administer this official control for Fillmore County.

Section 2.2. Agricultural erosion control practices

"Agricultural erosion control practices" means measures commonly used to control erosion resulting from agricultural use of land to rates no greater than soil loss tolerances or to abate or minimize excessive erosion and excessive sedimentation resulting from agricultural use of land.

Section 2.3. Agricultural erosion control plan

"Agricultural erosion control plan" means a document, which prescribes and describes the practices that, when implemented and properly maintained, will result in the prevention or abatement of excessive erosion or excessive sedimentation.

Section 2.4. Agricultural Use

"Agricultural Use" means the use of land for the growing and/or production of trees, crops, livestock, and livestock products including but not limited to the following:

- a. Trees, when enrolled in a tree farm program authorized by the DNR and operated under a forest management program.
- b. Crops, including but not limited to: barley, soybeans, corn, hay, oats, potatoes, rye, sorghum, sunflowers, and wheat;
- c. Livestock, including but not limited to: dairy and beef cattle, goats, horses, sheep, hogs, poultry, game birds, and other animals including dogs, ponies, rabbits, and mink.
- d. Livestock products including but not limited to: milk, butter, cheese, eggs, meat, fur, and honey.
- e. Pastureland and any tillable lands enrolled in a government set aside program.

Section 2.5. Conservation District

"Conservation District" means the Fillmore County Soil and Water Conservation District organized and operating under Minnesota Statutes, Chapter 103C.

Section 2.6. Drainage Conveyance

"Drainage Conveyance" means any path, including but not limited to ditches, streams, overland flow channels, and storm sewer systems, traveled by water as it passes through any delineated watershed within Fillmore County.

Section 2.7. Erosion

"Erosion" means the wearing away of the land surface by water, wind, ice, or other geologic agents and by such processes as gravitational creep.

Section 2.8. Excessive erosion. "Excessive erosion" occurs when either or both of the following conditions exist:

1. Estimated average annual rate of soil erosion for a particular parcel of land under agricultural use resulting from sheet and rill erosion or wind erosion is greater than the soil loss tolerance of any of the soil series comprising that particular parcel of land as stated in the Handbook of Standards (Section 3); or
2. Evidence of active gully erosion on land under agricultural use.

Section 2.9. Excessive sedimentation

"Excessive sedimentation" means the rate or an amount of sedimentation from agricultural land that results in any observable detrimental effect, damage or result to adjacent lands, waters, or the atmosphere.

Section 2.10. Gully erosion

"Gully erosion" means displacement of a large, single channel (gully) of soil by water due to the combination of concentrated flows from numerous rills. "Gully erosion" is characterized by its typically persistent and ever-enlarging nature and steep, unstable side slopes. "Gully erosion" cannot be obliterated by ordinary tillage operations.

Section 2.11. Handbook of Standards (handbook)

"Handbook of standards" means a handbook, adopted by Fillmore County (pursuant to section 3.0), containing a compilation of the agricultural erosion control practices, design specifications, and planning procedures used in the control of soil erosion resulting from the agricultural use of land.

Section 2.12. Land-disturbing activity

"Land-disturbing activity" means a physical disturbance resulting from agricultural use of the land surface that may result in excessive erosion or excessive sedimentation associated with activities that include clearing, grading, excavating, transporting, tilling, and filling of land or grazing of land by domestic livestock.

Section 2.13. Land occupier

"Land occupier" means a person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of lands in agricultural use, as an owner, lessee, or otherwise. "Land occupier" includes both the owner and the occupier of the land if they are not the same.

Section 2.14. Public waters

"Public waters" means waters as defined in Minnesota Statutes, section 103G.005, subdivision 15 and inventoried under Minnesota Statutes, section 103G.201.

Section 2.15. Public waters wetlands

"Public waters wetlands" means wetlands as defined in Minnesota Statutes, section 103G.005, subdivision 18.

Section 2.16. Rill erosion

"Rill erosion" means displacement of tiny or small channels of soil by water due to initial concentration of surface flows from "sheet erosion". "Rill erosion" is characterized by its temporary nature and the fact that it is easily obliterated by ordinary tillage operations.

Section 2.17. Sediment

"Sediment" means the solid mineral or organic material deposited by the result of erosion.

Section 2.18. Sedimentation

"Sedimentation" means any one or more of the processes associated with the suspension, transport or deposition of sediment by water or wind.

Section 2.19. Sheet erosion

"Sheet erosion" means displacement of thin layers of soil by the action of rainfall and surface runoff acting over the whole soil surface. "Sheet erosion" is the sum of these processes: (a) raindrop splash, which provides the detachment energy, and (b) surface flow, which provides the transporting capacity.

Section 2.20. Soil

"Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as natural medium for the growth of land plants.

Section 2.21. Soil loss tolerance

"Soil loss tolerance" means the maximum average annual rate of soil loss from sheet and rill erosion or wind erosion, expressed in tons per acre per year, that is allowed yet still sustains the productive capacity of soil to produce food and fiber over the long term.

Section 2.22. Ten-Year Storm

“Ten Year Storm” means rainfall that amounts to 4.4 inches of rain or more in a 24-hour period.

Section 2.23. Wetlands

"Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands must:

1. Have a predominance of hydric soils.
2. Be inundated or saturated by surface water or ground water at a frequency or duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
3. Under normal circumstances, support a prevalence of hydrophytic vegetation.

Section 3.0. Adoption of Handbook of Standards

Fillmore County hereby adopts the Natural Resource Conservation Service technical Guide dated December 1975 and as amended thereafter, as the minimum acceptable set of practice specifications and planning procedures for implementing the provisions of this ORDINANCE.

Section 4.0. Agricultural Land Occupier

Any land occupier of agricultural land shall be considered in compliance with this Ordinance if:

1. The land occupier is using approved soil conservation practices approved by the Fillmore Soil and Water Conservation District Board to prevent erosion; and
2. The land occupier does not have rills, gullies, or sediment deposits in fields; and
3. The land occupier's farming methods do not create erosion or sediment problems on adjoining properties.

Section 5.0. Excessive Erosion and Excessive Sedimentation Prohibited

A person may not cause, conduct, contract for, or authorize any activity that causes excessive erosion or excessive sedimentation.

Section 5.1. Ten-Year Storm

The soil loss that occurs in the event of a Ten Year Storm shall not be considered excessive soil loss and soils that are deposited as a result of the Ten Year Storm shall not be considered excessive sedimentation.

Section 6.0. Complaints

Any Fillmore County land occupier, elected or appointed official of Fillmore County, or a soil and water conservation district board member may submit a written and signed complaint to the Fillmore County Zoning Office if conditions may exist that indicate there is excessive erosion or excessive sedimentation on a tract of land in Fillmore County. The written complaint must contain:

1. The name and address of the land occupier whose land is causing excessive erosion or excessive sedimentation.
2. The location of the tract of land with the excessive erosion or excessive sedimentation.
3. The description of land or water that is affected by the excessive erosion or excessive sedimentation, and
4. A description of the nature of the excessive erosion or excessive sedimentation.

Section 6.1. District determination of soil loss

1. After receipt of a complaint, the Zoning Administrator shall notify the allegedly offending land occupier of the complaint and ask the SWCD to determine the rates of erosion and sedimentation.
2. The SWCD shall determine the average annual soil loss in tons per acre per year of the tract of land cited in the complaint. The SWCD may enter public or private land to make an inspection for the determination of soil loss. The SWCD shall notify the land occupier of the time of the inspection(s) and give the land occupier an opportunity to be present when the inspection is made. The notice must:
 - 1) Be given ten days prior to the date of inspection;
 - 2) Be delivered either by personal service or certified mail; and
 - 3) If the owner of the property and the occupier of the residence differ, be delivered to both the owner and the occupier.
3. The SWCD shall submit a report to the Zoning Administrator that states the average soil loss in tons per acre per year for the tract of land cited in the complaint and if that soil loss is excessive under the applicable soil loss limits.
4. If a soil erosion problem does not exist, the Zoning Administrator shall dismiss the complaint and notify the land occupier.

Section 6.2. Informal Negotiations

If a soil erosion problem does exist, the Zoning Administrator must within ten days of receipt of the SWCD report provide written notice to the land occupier that excessive soil erosion is occurring. The Zoning Administrator shall then schedule a meeting between the land occupier, the SWCD staff and board, the Township, and the Zoning Administrator for the purpose of discussing methods to reduce the excessive soil erosion. The land occupier must be notified of the time and location of the meeting and be given an opportunity to be present. The appropriate Township Board shall be invited to be present at this meeting to facilitate a resolution to the soil erosion problem.

If a soil erosion problem does exist and the land occupier is unable to come to an agreement with the SWCD, Township Board, and Zoning Administrator as to corrective measures to be taken to reduce the excessive soil erosion to acceptable levels, the SWCD shall submit a supplemental report to the Zoning Administrator that contains an Agricultural Erosion Control Plan and time schedule and identifies existing farming practices that will prevent excessive soil loss or reduce the soil loss to soil loss tolerances. The land occupier must submit annually a report on what activities been undertaken in the past year to correct the soil loss problem and to report on the progress of the overall plan.

Section 6.3. Formal Mediation

If the Fillmore County Zoning Administrator determines that soil loss from the tract of land is excessive and alternative practices are available to reduce the soil loss, Fillmore County shall request the land occupier to participate in mediation with Fillmore County. The land occupier shall be requested to develop a plan to control the soil erosion.

The Fillmore County Board of Commissioners shall appoint a mediator. The Fillmore County Soil and Water Conservation Board shall represent Fillmore County.

The land occupier and Fillmore County representatives shall attempt to agree on an Agricultural Erosion Control Plan and times to implement the plan that will reduce soil loss to soil loss tolerances.

A mediated settlement shall be in writing and filed with the Fillmore County Zoning Office and Soil and Water Conservation District.

The land occupier must submit annually a report on what activities have been undertaken in the past year to correct the soil loss problem and to report on the progress of the overall plan.

Penalty. If a land occupier does not comply with the provisions of the mediated settlement, the land occupier is subject to a civil penalty of \$500, and the county may seek injunctive relief from the District Court to enforce the mediated settlement.

Section 6.4. District Court Hearing

If the land occupier and Fillmore County do not agree on a mediated settlement or if the land occupier has refused mediation, the County Attorney shall petition the District Court for a hearing. The land occupier shall have the opportunity to present his Agricultural Erosion Control Plan and time schedule as an alternative to Fillmore County's Plan and time schedule. The court shall order the land occupier to implement the agricultural Erosion Control Plan and time schedule that is the least burdensome to the land occupier and will reduce soil loss to at least the soil loss tolerance. The court may amend Fillmore County's or the land occupiers plan and time schedule, or develop a new plan and time schedule. The court shall set times to implement, make satisfactory progress, and complete the conservation plan.

In an administrative or criminal proceeding, it is a defense that the excessive erosion or excessive sedimentation did not result from a land-disturbing activity or that it resulted from a rainfall or wind event of an intensity or duration whose erosive effects are beyond the ability of soil erosion control practices that are referenced in the Handbook of Standards.

If a land occupier does not comply with the provisions of the District Court's order, the land occupier is subject to a civil penalty of up to \$500, and the County may seek injunctive relief from the District Court to enforce the order.

Section 7.0. Remediation Required

Whenever the Zoning Administrator and County Engineer have determined that any roadway, Right-of-Way, or drainage conveyance under the jurisdiction of Fillmore County or the State of Minnesota has been adversely affected by excessive sedimentation resulting from land disturbing activities associated with the agricultural use of land under the control of land occupier, the County Attorney shall seek remediation of the adverse effects. Remediation shall consider, but not be limited to, any of the following actions or combinations of actions:

1. Requesting the county engineer to direct or oversee the excavation of the sediment deposited due to land-disturbing activities from the land in question and under the control of the land occupier and adjacent to the adversely affected Fillmore County roadway, Right-of-Way, or drainage conveyance;
2. Requesting the county engineer to direct or oversee the restoration of the adversely affected Fillmore County roadway, Right-of-Way, or drainage conveyance to its intended design specifications;
3. Requesting the county engineer to direct or oversee the transport of the excavated sediment to a mutually agreed-to location on the land occupier's land; or
4. Billing all costs for remediation directly to the land occupier with notification that all costs are to be paid in full to the Fillmore County treasurer within 90 calendar days.

If the offending land occupier does not remit full payment to the Fillmore County treasurer within the specified time limit, Fillmore County shall determine the land so benefited and assess against the land the cost of remediation. Such assessments shall be made only against that portion of the tract of land to which the remediation order pertained.

Section 8.0. Cost Sharing

A land occupier found to have accelerated erosion or accelerated sedimentation may take advantage of cost sharing money's available during the time from the determination of a problem to the completion of mediation. If the land occupier refuses to agree to a settlement or does not complete an agreed upon plan, cost sharing funds shall not be available.

Section 9.0. Woodland Activities

Land occupiers who use wooded land for pasture must ensure that proper management is used to prevent accelerated erosion or sedimentation due to over grazing or cattle paths. The Zoning Administrator and County Board of Adjustment prohibit clearing 10,000 square feet or more of woodland to convert the land to another use without a permit and approval.

Section 10.0. Construction/Subdivision Activities

Any Construction/Subdivision Plan that will disturb over 10,000 sq. ft. shall include a proposed erosion control plan as part of the overall plan.

Section 11.0. Change of Ownership

Land that is determined to be in violation of this Ordinance shall be brought back into compliance as prescribed in Section 6.1 regardless of ownership. Any land occupier who participates in informal or formal mediation under sections 6.1 and 6.2, or in a District Court hearing under section 6.3 shall bear responsibility for fully implementing the agriculture erosion control plan.

Section 12.0. Severability

If any section, subsection, sentence, clause, phrase, or other portion of this ORDINANCE is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ORDINANCE, it being the intent of the County of Fillmore that this ORDINANCE shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or other portion thereof.

Section 13.0. Effective Date

This ORDINANCE shall take effect and be in full force the day after its passage and official publication. Passed by Fillmore County this 6th day of August 1996.

ATTEST:

APPROVED:

County Coordinator

County Board Chairman

