BOARD OF WATER AND SOIL RESOURCES

Public Drainage System Acquisition and Compensation of Ditch Buffer Strips and Alternative Practices Required by the Minnesota Buffer Law

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Purposes of this Document

1) Provide county and watershed district drainage authorities, their advisors, affected landowners, and others an overview of applicable provisions of the Minnesota Buffer Law and Minnesota Statutes Chapter 103E Drainage law that enable public drainage systems to acquire and compensate buffer strips and alternative practices required by the Buffer Law; and
2) Provide information about landowner and drainage system financing of ditch buffer strips and Buffer Law alternative practices.

Note: Text in blue contains a hyperlink to additional information about the topic of the text, including statute provisions and program fact sheets.

Executive Summary

The Buffer Law (Section 103F.48 RIPARIAN PROTECTION AND WATER QUALITY PRACTICES) includes a provision referencing drainage law (Chapter 103E DRAINAGE) provisions that enable public drainage systems to acquire and compensate ditch buffer strips and alternative practices required by the Buffer Law, in advance or retroactively. This must be done in accordance with Chapter 103E Drainage law.

Drainage law includes a requirement for drainage systems to establish and compensate minimum 16.5 ft. wide ditch buffer strips of perennial vegetation when viewers are appointed to determine drainage system benefits and/or damages. This includes for drainage system establishment, improvements, laterals, redetermination of benefits and damages, and certain repairs that require the appointment of viewers to determine benefits and damages. Drainage law also provides drainage authorities permissive authority for establishment and compensation of incremental, 16.5 ft. wide ditch buffer strips of perennial vegetation, and/or side inlet controls. Drainage law ditch buffer strips involve a permanent drainage system right-of-way easement.

In 2016, the Buffer Law was revised to refer to drainage law for measurement of ditch buffer strips, and drainage law was revised to require the determination of damages for retroactive compensation of buffer strips or alternative practices required by the Buffer Law to consider the land use prior to establishment of the buffer strips or alternative practices.

Drainage law also includes provisions for drainage systems to use external sources of funding and drainage system funds for certain purposes, including water quality improvements.

Landowners can apply for applicable local, state, or federal cost-share grants, contracts, or loans to help finance buffer strips or alternative practices required by the Buffer Law, subject to applicable program eligibility and priority criteria.

Drainage authorities can utilize applicable loans on behalf of the drainage system to finance ditch buffer strips or alternative practices installed or acquired under Chapter 103E drainage law. Drainage authorities can also utilize external sources of funding and drainage system funds for water quality improvements involving a Chapter 103E public drainage system.

Notes:

1) Drainage authorities should consult their legal counsel, engineers and other advisors, as appropriate, to ensure effective and efficient implementation of the applicable provisions of law.
2) Drainage law does not include provision for alternative practices to reduce the buffer strip width required by drainage law.

Applicable Buffer Law Provisions (statute text of applicable subdivisions)

Section 103F.48 **RIPARIAN PROTECTION AND WATER QUALITY PRACTICES.**

Subd. 3. **Water resources riparian protection requirements on public waters and public drainage systems.**

(a) Except as provided in paragraph (b), landowners owning property adjacent to a water body identified and mapped on a buffer protection map must maintain a buffer to protect the state's water resources as follows:

(1) for all public waters, the more restrictive of:

(i) a 50-foot average width, 30-foot minimum width, continuous buffer of perennially rooted vegetation; or

(ii) the state shoreland standards and criteria adopted by the commissioner under section 103F.211; and

(2) for public drainage systems established under chapter 103E, a 16.5-foot minimum width continuous buffer as provided in section 103E.021, subdivision 1. The buffer vegetation shall not impede future maintenance of the ditch.

(b) A landowner owning property adjacent to a water body identified in a buffer protection map and whose property is used for cultivation farming may meet the requirements under paragraph (a) by adopting an alternative riparian water quality practice, or combination of structural, vegetative, and management practices, based on the Natural Resources Conservation Service Field Office Technical Guide, common alternative practices adopted and published by the board, other practices approved by the board, or practices based on local conditions approved by the local soil and water conservation district that are consistent with the Field Office Technical Guide, that provide water quality protection comparable to the buffer protection for the water body that the property abuts. Included in these practices are retention ponds and alternative measures that prevent overland flow to the water resource.

(c) The width of a buffer on public waters must 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. The width of the buffer on public drainage systems must be measured as provided in section 103E.021, subdivision 1.

(d) Upon request by a landowner or authorized agent or operator of a landowner, a technical professional employee or contractor of the soil and water conservation district or its delegate may issue a validation of compliance with the requirements of this subdivision. The soil and water conservation district validation may be appealed to the board as described in subdivision 9.

(e) Buffers or alternative water quality practices required under paragraph (a) or (b) must be in place on or before:

(1) November 1, 2017, for public waters; and

(2) November 1, 2018, for public drainage systems.

(f) Nothing in this section limits the eligibility of a landowner or authorized agent or operator of a landowner to participate in federal or state conservation programs, including enrolling or reenrolling in federal conservation programs.

(g) After the effective date of this section, a person planting buffers or water quality protection practices to meet the requirements in paragraph (a) must use only seed mixes verified by the Department of Agriculture as consistent with chapter 18G or 21 to prevent contamination with Palmer amaranth or other noxious weed seeds.

Subd. 10. **Landowner financial assistance and public drainage system procedure.**

(a) A landowner or drainage authority may contact the soil and water conservation district for information on how to apply for local, state, or federal cost-share grants, contracts, or loans that are available to establish buffers or other water resource protection measures.

(b) The provisions of sections 103E.011, subdivision 5; 103E.021; and 103E.715 may be used in advance or retroactively to acquire or provide compensation for all or part of the buffer strip establishment or alternative riparian water quality practices as required under subdivision 3, paragraph (a) or (b).

Notes:

1) For public drainage ditches, buffer strips required by the Buffer Law are measured the same as buffer strips required by, or otherwise established under Chapter 103E Drainage law.
2) The in advance or retroactive acquisition and compensation provision in Subd. 10(b) is key to the purposes of this document.

Applicable Drainage Law Provisions (*summary*, or statute text)

Section 103E.021 DITCHES MUST BE PLANTED WITH PERENNIAL VEGETATION.

Subdivision 1. **Spoil banks must be spread and permanent vegetation established.**

Summary: This subdivision requires public drainage systems to establish minimum 16.5 ft. wide ditch buffer strips of perennial vegetation (preferably native vegetation of a local ecotype) when viewers are appointed to determine drainage system benefits and/or damages, and to acquire the associated permanent right-of-way easement. For existing drainage systems, the types of proceedings that require the appointment of viewers include establishment, improvements, improvement of an outlet, laterals, redetermination of benefits and damages, or certain types of petitioned repairs that require determination of benefits and/or damages.

Ditch Buffer Strips

Subd. 6. **Incremental implementation of vegetated ditch buffer strips and side inlet controls.**

Summary: This subdivision provides permissive authority enabling a drainage authority to implement permanent ditch buffer strips of perennial vegetation, and/or side inlet controls, "where necessary to control erosion and sedimentation, improve water quality, or maintain the efficiency of the drainage system". This is done as a repair. The drainage authority may or may not appoint an engineer or viewers. A hearing on the project is required, as are findings and an order by the drainage authority. Cost apportionment is based on the benefited properties and benefits on record for the drainage system.

Ditch Side Inlet Structure - Drop Inlet

Note: If the definition of benefited properties and benefits on record for a drainage system are not current, the only way to update them is through a redetermination of benefits and damages for the drainage system (Section 103E.351), which involves the appointment of viewers and trips the requirement in Section 103E.021, Subd. 1 to establish permanent ditch buffer strips.

Section 103E.351 REDETERMINING BENEFITS AND DAMAGES.

Summary: This section of drainage law enables a drainage authority to order a redetermination of benefits and damages for a drainage system, if the drainage authority determines that the benefited area, benefits or damages determined in a prior drainage proceeding do not reflect present land values, or that the benefited or damaged areas have changed. A simple majority of landowners of property benefited or damaged by the drainage system can petition for a redetermination of benefits and damages to correct an error that was made at the time of the proceeding that established the drainage system. Three viewers are appointed by the drainage authority to conduct a redetermination of benefits and damages and prepare an associated viewers' report. Property owner reports are prepared and a hearing is held by the drainage authority. Redetermined benefits confirmed by the drainage authority become the updated basis for drainage system cost apportionment. Use of this section requires the establishment of 16.5 ft. wide ditch buffer strips, in accordance with Section 103E.021, Subd. 1.

Section 103E.701 REPAIRS. (statute text)

Subd. 6. **Wetland restoration and replacement; water quality protection and improvement.** Repair of a drainage system may include the preservation, restoration, or enhancement of wetlands; wetland replacement under section 103G.222; the realignment of a drainage system to prevent drainage of a wetland; and the incorporation of measures to reduce channel erosion and otherwise protect or improve water quality.

Note: The last clause of this subdivision, which was added to drainage law in 2013, provides authority for repairs to incorporate measures to reduce channel erosion and otherwise protect or improve water quality.

Section 103E.715 REPAIR BY PETITION.

Summary: An individual or an entity interested in or affected by a drainage system may file a petition to repair the drainage system. Appointment of viewers is required for a petitioned repair involving resloping of ditch banks, incorporation of a multistage ditch cross-section, installation of erosion control measures, spoil bank leveling, or tree removal that requires the acquisition of additional drainage system right-of-way easement or creates additional drainage system benefits. Appointment of viewers trips the requirement to establish ditch buffer strips in accordance with Section 103E.021, Subd. 1. The associated petitioned repair process includes appointment of an engineer to prepare a repair report, preparation of a viewers' report, a hearing on the engineer's repair report and the viewers' report, and associated findings and an order by the drainage authority. Cost apportionment for a petitioned repair is based on the benefited properties and benefits on record for the drainage system, potentially supplemented by any additional benefits determined if spoil bank leveling or tree removal is involved.

Section 103E.315 ASSESSING DRAINAGE BENEFITS AND DAMAGES.

Subd. 8. **Extent of damages**.

Summary: Subd. 8, paragraph (b) was added in 2016 to clarify Chapter 103E in relation to Sec. 103F.48, Subd. 10(b) regarding retroactive acquisition and compensation of ditch buffer strips and alternative practices. This provision requires viewers and drainage authorities to consider the land use prior to buffer strip or alternative practice installation in determining the fair market value of the property for acquisition and compensation of ditch buffer strip right-of-way easements or alternative practices.

Section 103E.011 DRAINAGE AUTHORITY POWERS.

Subd. 5. **Use of external sources of funding.**

Summary: This subdivision enables drainage systems to use external sources of funding, with or without drainage system funds, for certain types of activities involving the drainage system (wetland preservation or restoration, water quality improvements, or flood control). These activities provide benefits for which external sources of funding may be available, as well as benefits to the drainage system typically associated with reduced peak flows and reduced use of capacity in the drainage system, and/or erosion and sedimentation reduction. The buffer strips and alternative practices required by the Buffer Law have a key purpose for water quality protection and improvement, which fits with this provision of drainage law. This provision can be used to help compensate ditch buffer strips and alternative practices that benefit the drainage system.

Landowner and Drainage System Financing of Ditch Buffer Strips and Alternative Practices

General

As indicated in Section 103F.48, Subd. 10(a), a landowner or drainage authority may contact the applicable SWCD for information about how to apply for local, state, or federal cost-share grants, contracts, or loans that are available to establish buffers or other water resource protection measures.

Drainage authorities can acquire ditch buffer strips and alternative practices required by the Buffer Law and compensate affected landowners, in advance or retroactively, using the existing provisions of drainage law outlined above. Ditch buffer strips, side inlet controls, or other permanent erosion control and water quality improvement measures established or acquired under Chapter 103E drainage law, become part of the drainage system. The permanent components of a Chapter 103E drainage system are typically paid for and maintained by the drainage system. Drainage law directs drainage authorities to assess drainage system costs to the applicable drainage system account, and/or to the benefited properties on record for the drainage system, in proportion to the benefits on record for those properties.

As indicated above, **Section 103E.011**, Subd. 5. **Use of external sources of funding** enables drainage authorities to use drainage system funds in conjunction with external sources of funding for certain purposes, including water quality improvement, wetland restoration, or flood control. See information below about potential external sources of financial assistance or financing for drainage system acquisition and compensation of ditch buffer strips and alternative practices for water quality.

Note: Drainage authorities should consult their drainage system legal counsel to ensure correct use of this and other provisions of drainage law outlined above and associated proceedings.

Internal Loans or Bonds

If a drainage system account has insufficient funds to pay associated drainage system costs, a drainage authority can borrow (with interest) from other drainage system accounts that it administers, borrow from the general fund of the drainage authority (Section 103E.655 Paying of Drainage System Costs), or issue and sell bonds for drainage system repair (Section 103E.731 Assessment; Bonds) or drainage system improvement (Section 103E.635 Drainage Bond Issues).

Financial Assistance

As indicated in Section 103F.48, Subd. 10(a) above, landowners and drainage authorities affected by the Buffer Law can contact their Soil and Water Conservation District (SWCD) about how to apply for available financial and technical assistance to establish buffers or other water resource protection measures. Landowners may be eligible for a number of federal and state conservation programs, but are subject to program eligibility requirements and to the applicable deadline(s) in Subd. 3(e) of the Buffer Law for buffer strip and/or alternative practices establishment, unless an exemption in Subd. 5 or a temporary conditional compliance waiver applies. Landowners can also establish buffer strips before the Buffer Law deadline and later seek drainage system acquisition of ditch buffer strips or alternative practices in accordance with drainage law, or financial assistance for alternative practices to reduce or replace buffer strips, to the extent allowed by Buffer Law alternative practices provisions and BWSR guidance.

Drainage authority eligibility for financial assistance on behalf of a Chapter 103E drainage system is limited, but can include certain Clean Water Funds administered by the Board of Water and Soil Resources (BWSR), as well as low interest loans through the AgBMP Loan Program administered by the Minnesota Department of Agriculture (MDA).

Financial Assistance for Landowners

Conservation Reserve Program (CRP)

The Conservation Reserve Program, including the Continuous Conservation Reserve Program (CCRP), are administered by the USDA-Farm Service Agency (FSA) for qualifying agricultural land and include buffers as an eligible conservation practice (CRP CP-21 Grass Filter Strip). CRP and CCRP involve a limited duration contract with an annual rental payment (10 to 15 years) for conservation land use. The CP-21 conservation practice has a minimum buffer width of 30 ft. in Minnesota. Please refer to the program link in this paragraph for additional information, including availability of program funding.

Conservation Reserve Enhancement Program (CREP)

The Minnesota Conservation Reserve Enhancement Program is a partnership of the federal Conservation Reserve Program (CRP), administered by the USDA-Farm Service Agency (FSA) for qualifying agricultural land, and the Reinvest in Minnesota (RIM) Reserve Program, administered by the BWSR in partnership with SWCDs. This CREP combines a CRP limited duration contract and rental payments with a perpetual RIM conservation easement. The program area includes 54 counties in southern, southwest and west-central areas of Minnesota. Buffers are an eligible conservation practice (CRP CP-21 Grass Filter Strip). Please refer to the program link in this paragraph for additional information and/or to the applicable SWCD.

Buffer Law Buffer Strip or Alternative Practices Cost-Share

The Legislature and Governor appropriated $5 million to BWSR in Fiscal Year 2018 for Buffer Law implementation cost-share for landowners through SWCDs. This cost-share can be used by landowners to comply with Buffer Law requirements for buffer strips or alternative practices, in accordance with Buffer Law requirements and BWSR Common Alternative Practices Technical Guidance. BWSR developed Buffer Cost-Share Frequently Asked Questions for SWCDs about this FY 2018 funding. Landowners should consult their applicable SWCD to inquire about this cost-share funding.

Financial Assistance for Drainage Systems

Clean Water Fund Multipurpose Drainage Management (MDM) Program

The Clean Water Fund Multipurpose Drainage Management Program administered by BWSR annually provides competitive grants to partnerships of a Chapter 103E drainage authority and SWCD for priority public drainage systems. The primary purpose is to improve water quality, while reducing peak flows, reducing drainage system maintenance, and/or benefiting the capacity of the system. Eligible practices include some that can be alternative practices under the Buffer Law, but do not include buffer strips required by drainage law or the Buffer Law. The program fact sheet link in this paragraph includes additional information about the program.

Ag Best Management Practices (AgBMP) Loan Program

Buffer strips and other water quality protection and improvement practices on agricultural land are eligible for the AgBMP Loan Program administered by the MDA in partnership with local government units. This is a revolving fund, low interest loan program. All counties in Minnesota except Ramsey County have a local government administrator of the AgBMP Loan Program and available lenders (https://app.gisdata.mn.gov/mda-agbmploan/). A document outlining Chapter 103E Drainage Authority Participation in the AgBMP Loan Program is available from the MDA. The document includes explanations about how drainage authorities can participate, an example situation, the link above to a map of local government administrators of the program and available lenders, and the email address of the MDA program manager.

Note: The AgBMP Loan Program has a loan period up to 10 years.

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