Model Soil Loss Ordinance

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# Background

This model ordinance was originally developed in response to Minnesota Statutes, [§103F.411](https://www.revisor.mn.gov/statutes/cite/103F.411), which directs the Board of Water and Soil Resources (BWSR) as follows:

## **Subdivision 1.** Authority. The Board of Water and Soil Resources, in consultation with counties, soil and water conservation districts, and other appropriate agencies, shall adopt a model ordinance and rules that serve as a guide for local governments to implement sections [103F.401](https://www.revisor.mn.gov/statutes/cite/103F.401) to [103F.455](https://www.revisor.mn.gov/statutes/cite/103F.455) and provide administrative procedures for the board for sections [103F.401](https://www.revisor.mn.gov/statutes/cite/103F.401) to [103F.455](https://www.revisor.mn.gov/statutes/cite/103F.455).

## **Subd. 2.** Model ordinance. The model ordinance must specify the technical and administrative procedures required to control soil loss and erosion. The model ordinance is the minimum regulation to be adopted. The model ordinance must use the soil loss tolerance for each soil series described in the United States Natural Resources Conservation Service Field Office Technical Guide to determine soil loss limits, but the soil loss limits must be attainable by the best practicable soil conservation practice.

## **Subd. 3.** Periodic review. At least once every five years the board shall review the rules and model ordinance in cooperation with counties, soil and water conservation districts, and appropriate agencies to ensure their continued applicability and relevance.

This revision constitutes BWSR’s five-year review of the model.

The first model ordinance was developed in 1994. At that point, only five Minnesota counties (Fillmore, Goodhue, Mower, Olmsted, and Winona) had adopted ordinances to control erosion resulting from agricultural use of land. Since that time, no additional counties have adopted such ordinances. Some counties regulate erosion under other authorities, such as nuisance ordinances, or pursue resolution of complaints through negotiation. Many cities, counties and townships have also adopted erosion control and stormwater management ordinances to meet the requirements of National Pollutant Discharge Elimination System (NPDES) regulations for municipal, industrial and construction stormwater.[[1]](#footnote-1)

**When Does Soil Erosion Become a Problem?**

Erosion is a natural process caused by the weathering of soils and bedrock. Some degree of erosion occurs naturally everywhere. However, land-disturbing activities such as agriculture and urban development can greatly accelerate the erosion process. Erosion can reduce soil productivity and result in negative impacts to adjacent lands or waters. Sediment is a prevalent water pollutant worldwide and in much of Minnesota; soil erosion can move sediment into water bodies.

According to the most recent National Resources Inventory (NRI) in 2015, the annual rate of soil erosion in Minnesota declined between 1987 and 2007 but has remained fairly constant since then. The NRI estimated that 127 million tons of soil eroded from Minnesota’s 21 million acres of cropland from both wind and water erosion, or approximately 6 tons per cropland acre per year.

In 2010, the NRI specified that nearly 13 million acres of Minnesota cropland had erosion control needs. The DNR has calculated and mapped water erosion potential based on soil and slope conditions across Minnesota. Erosion potential is highest in the steepest agricultural lands, with the highest values observed in the extreme southwest and southeast parts of the state.

The model ordinance was developed consistent with the statutory planning and zoning authorities granted to local governments under Minnesota Statutes, §394.25 (counties and townships) and §462.357 (cities). Both statutes refer to “agriculture” and “soil conservation” as authorized purposes for establishing zoning ordinances. Other types of land use, such as “forestry” and “development” are also mentioned in both statutes.

The initial model ordinance was developed in consultation with an advisory committee of local government organizations and state agencies.

This third iteration of the model ordinance has been simplified and streamlined to make it easier to adapt to local conditions. Its title has been simplified from “Model Ordinance for Agricultural Erosion Control” to “Model Soil Loss Ordinance.”

Local government partners and organizations invited to review the draft ordinance included:

* Association of Minnesota Counties
* Minnesota Agricultural Water Resource Center
* Minnesota Association of Planning and Zoning Administrators
* Minnesota Association of Soil and Water Conservation Districts
* Minnesota Association of Townships
* Minnesota Association of Watershed Districts
* Minnesota Coalition for Environmental Advocacy
* Minnesota Corn Growers Association
* Minnesota Environmental Partnership
* Minnesota Farm Bureau
* Minnesota Farmers Union
* Minnesota Soybean Growers

Many comments from reviewers have been incorporated into the model. BWSR staff are happy to discuss the ordinance and soil health issues with stakeholders. For the most recent links to BWSR Board Conservationists, see the “[BWSR Maps and Apps Gallery](https://bwsr.maps.arcgis.com/apps/MapAndAppGallery/index.html?appid=e9a35cd6723944d1bcb88afea28205d6)” for work areas and contact information.

It is important to stress that local governments are not required to adopt the model ordinance, or any soil loss ordinance. Adoption of this version would only be required *if* the local government chooses to use the procedures outlined in the model ordinance to implement the soil loss statute.

A local government may also choose to adopt its own official control to implement the state soil loss law. If this path is chosen, legal consultation may be appropriate to confirm that the locally established procedures are consistent with state statute and rule (if that is indeed their intent).

This iteration of the model ordinance adds several provisions intended to more directly reference the language in the statute. However, these additions should also be treated as optional enhancements and clarifications. New provisions are highlighted in this draft.

# 2021 Model Soil Loss Ordinance

Key: New optional provisions

[specific language to be added by local government]

| **Ordinance Language** | **Commentary** |
| --- | --- |
| **Section 1.0** |  |
| **Section 1.0 Policy.** Uncontrolled and inadequately planned use 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 the local tax base, and hindering the ability of [LGU] to provide adequate community services. | Shortened and retitled “Policy” rather than “Findings of Fact.” “Public health, safety and general welfare” are among the established purposes of zoning. Findings of fact would likely not be necessary in the ordinance itself (if part of a zoning ordinance) but rather as part of a resolution adopting the ordinance. |
| **1.1 Purpose.** The purposes of this ordinance are to encourage and guide the agricultural use of land in accordance with its capabilities and to:   1. control erosion of land-disturbing activities associated with all agricultural uses of land to rates no greater than soil loss tolerances; 2. protect wetlands, lakes, streams, and ditches from excessive sedimentation and/or excessive erosion resulting from land-disturbing activities associated with agricultural use of land; 3. abate or minimize impacts of excessive sedimentation from agricultural use of land to adjoining lands; and 4. ensure proper maintenance of agricultural erosion control practices. | Original commentary discussed need for an ag erosion and sediment control program, preferably initiated by 2000, to achieve “T” by 2020, and suggested the use of a sliding scale for compliance. In 2020, this advice is outdated – simply using “T” as defined in the Field Office Technical Guide should be sufficient for a local ordinance. |
| **Section 2.0** |  |
| **Section 2.0. Definitions.** For the purposes of this ordinance, the following terms shall have the definitions given them in this section. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the same meaning they have in common usage and to give this ordinance its most reasonable application. | Added language from model buffer ordinance on common usage definitions. |
| **2.1. Administrator.** The person designated to administer this ordinance for [county]. | The administrator may be the County Planning and Zoning Director or another designated representative. |
| **2.2. Agricultural erosion control practices**. 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. |  |
| **2.3. Agricultural use**. Use of land for the production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock including sod, fruit, vegetables, forage and cash grains, or bees and apiary products. Wetlandsand pastured areas accompanying land in agricultural use are also in agricultural use. |  |
| **2.4. Conservation plan.** A document listing a set of practices that, when implemented and properly maintained, will decrease erosion to the soil loss limits on a particular tract of land. | “Conservation Plan” is the term in statute and is consistent with NRCS practice. Replaces the term “Agricultural erosion control plan” in prior ordinance. Shortened and modified for consistency with statute and rule (103F.401, subd. 2 and MR 8400.4002, subp. 5) -- “tract” rather than “parcel” is used here. |
| **2.5. District.** The [county] soil and water conservation district organized and operating under Minnesota Statutes, chapter 103C. | Replaced “conservation district” with “district”; same definition |
| **2.6. Drainage conveyance.** Any path, including but not limited to ditches, streams, overland flow channels, and storm sewer systems, travelled by water as it passes through any delineated watershed within [LGU]. |  |
| **2.7. Erosion.** Any process that removes soil away from the surface of the land by the action of water, wind, or gravity. | Revised to use language in statute (103F.401, subd. 5) |
| **2.8. Erosion, Excessive.** Excessive erosion occurs when either or both of the following conditions exist: (a) estimated average annual rate of soil erosion for a particular tract of land under agricultural use resulting from sheet and rill erosion or wind erosion is greater than the soil loss tolerance for any of the soil series comprising that particular parcel of land, or (b) evidence of active erosion on land under agricultural use. | Was “excessive erosion.” “Tract” replaces parcel; definition of tract is added below. |
| **2.9. Erosion, Sheet and Rill.** Displacement of thin layers of soil by the action of rainfall and surface runoff acting over the whole soil surface. | Modified from “sheet erosion” definition in prior ordinance. |
| **2.10. Erosion, Wind.** The process of detachment, transport, and deposition of soil by wind. | NRCS[[2]](#footnote-2) definition |
| **2.11. Extreme Rainfall Event.** A rainfall event of an intensity equal to or greater than a 10-year frequency 24-hour return interval as defined by the National Weather Service Hydrometeorological Design Studies Center’ s NOAA Atlas 14 or subsequent atlas. | This frequency is provided as a typical example. An LGU may determine a different interval. See definition of “sedimentation, excessive.” |
| **2.12. Gully.** A miniature valley with steep sides cut by running water and through which water ordinarily runs only after rainfall. The distinction between a gully and a rill is one of depth. A gully generally is an obstacle to farm machinery and is too deep to be eliminated by ordinary tillage; a rill is of lesser depth and can be smoothed over by ordinary tillage. | NRCS standard Soil Survey definition.[[3]](#footnote-3) Distinguishes between gully and rill. |
| **~~Handbook of standards.~~** | Deleted, since it is now replaced by the Field Office Technical Guide for the county. |
| **2.13. Land-disturbing activity.** 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. |  |
| **2.14. Land occupier**. 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. |  |
| **2.15. Public waters.** Waters as defined in Minnesota Statutes, section 103G.005, subdivision 15. | Deleted “and inventoried under MS 103G.201” since definition should be sufficient. “Public waters wetlands” are combined with general wetland definition below. |
| **2.16. Rill.** A steep sided channel resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. | NRCS standard Soil Survey definition |
| **2.17. Sediment.** Solid mineral or organic material that is in suspension, is being transported, or has been moved from its original location by air, water, gravity, or ice, and has been deposited at another location. | Revised to match statute (MS § 103F.401, Subd. 9.) |
| **2.18. Sedimentation.** Any one or more of the processes associated with the suspension, transport or deposition of sediment by water or wind. |  |
| **2.19. Sedimentation, Excessive.** Sedimentation that can be directly attributed to sheet and/or rill erosion, ephemeral or classic gully erosion, and/or wind erosion leaving a tract, that affects another tract of land or body of water, and that can be documented to have occurred with a frequency and volume that is not related solely to extreme rainfall events. | New definition developed to clarify conditions under which sedimentation should be considered excessive – i.e., when it leaves a property and affects another tract of land or water body, plus exception for extreme rainfall events. |
| **2.20. Soil.** The unconsolidated mineral and organic material on the immediate surface of the earth that serves as natural medium for the growth of terrestrial plants. | Changed from “land plants” |
| **2.21. Soil Loss Tolerance (T).**  The soil loss tolerance rate (T) is the maximum rate of annual soil loss that will permit crop productivity to be sustained economically and indefinitely on a given soil. Erosion is considered to be greater than T if either the water (sheet & rill) erosion or the wind erosion rate exceeds the soil loss tolerance rate. | NRCS definition[[4]](#footnote-4) shown in left column is more precise and replaces definition in prior model ordinance:  “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 sustain the productive capacity of soil to produce food and fiber over the long term.” |
| **2.22. Tract.** A unit of contiguous land that is under one ownership and that is operated as a farm or part of a farm. A tract may also be referenced as a parcel of land. | Definition added to be consistent with statute, which uses the term “tract” to identify a unit of land with excessive soil loss – see 103F.421. This is the FSA definition in the federal code (7 CFR 718.2)[[5]](#footnote-5) |
| **2.23. Wetlands.** Wetlands as defined in Minnesota Statutes, section 103G.005, subdivision 15a and 19a. | General definition of wetlands includes both public water wetlands and WCA wetlands; this reference replaces duplicative language in prior model. |
| **Section 3.0** |  |
| Section 3.0. **Adoption of Field Office Technical Guide**. [LGU] adopts the USDA NRCS Field Office Technical Guide for [ ] County, as the minimum acceptable set of practice specifications and planning procedures for implementing the provisions of the Ordinance. | Revised to identify the FOTG as the primary reference. An LGU may adopt other guides if desired, but the FOTG is specified in statute and is regularly updated. |
| **Section 4.0** |  |
| Section 4.0. **Excessive Erosion and Sedimentation Prohibited**. A person may not cause, conduct, contract for, or authorize an activity that causes excessive erosion or excessive sedimentation. A land occupier is not in violation of this section if they are farming by methods that implement the best practicable conservation practices or if they are operating under an approved conservation plan. | Modified to use statutory language (MS § 103F.415) rather than prior ordinance language – more precise and consistent. |
| **Section 5.0** | New section details process of filing a complaint. |
| Section 5.0. **Complaints.** An adversely affected land occupier, elected or appointed official of the local government, or district board member may submit a signed written complaint to the administrator if conditions exist that would indicate that excessive erosion or excessive sedimentation is occurring as a result of land-disturbing activity associated with agricultural use. | New section incorporating material in statute on who may file a complaint (MS § 103F.421). Some of this material is found in footnotes in the prior ordinance. |
| 5.1. **Contents of complaint**. The complaint must be signed by the complainant and should include the following information, as practicable:   1. the name and address of the land occupier(s) on whose land excessive soil loss is alleged to be occurring; 2. the location of the tract of land under agricultural use that appears to be the source of excessive erosion or excessive sedimentation; 3. the date(s) the alleged violation was documented by the complainant; 4. the water or adjoining land that is affected by the alleged excessive erosion or excessive sedimentation; and 5. a description of the nature of the agricultural activities and the resulting adverse effects. | New provision outlining the contents of the complaint, adapted from MS § 103F.421, subd. 1, and footnotes in prior ordinance. |
| 5.2. **Confidentiality of complaint.** Minnesota Statutes, section 13.44, requires that the local government hold in confidence the complainant’s identity and related information and that such information not be revealed to the alleged offending land occupier. | New provision per MS § 13.44 – emphasizes assurance of confidentiality to the complainant. |
| 5.3. **Response to complaint**. When a complaint is received, the administrator shall:   1. notify the allegedly offending land occupier of the complaint; and that the conservation district will be contacting them to review the site, determine the severity of the problem, and assist them in correcting the problem, as applicable. 2. notify the conservation district and request it to investigate the complaint and prepare a report of its findings and recommendations. | New provision continues step-by-step description of procedure, based on MS § 103F.421, subd. 2. |
| **Section 6.0** | New section details process of investigation. |
| Section 6.0. **Investigation of complaint and report.** Upon request by the local government, the conservation district must investigate the complaint.   1. The district may enter public or private land to make an inspection for the determination of soil loss or to complete the report. 2. The conservation district shall notify the land occupier of the time of the inspections 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 the 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 conservation district must determine the rate of erosion and sedimentation that is occurring or has occurred, and the average annual soil loss in tons per acre per year of the tract of land cited in the complaint, and identify any adverse effects resulting from excessive erosion or excessive sedimentation from the land-disturbing activity. | New provision based on MS §103F.421, subd. 2 and MR 8400.4040. (notice) |
| 6.2 **Contents of report.** The conservation district must prepare a written report that documents the average rate of soil loss in tons per year. Other elements may include:   1. Presence of rill and/or gully erosion    1. Soil loss measurements of gully erosion will use volume estimation based on the length, width, and depth of the gully and weight of the soil being eroded    2. The Revised Soil Loss Equation or other NRCS-approved methods will be used to calculate sheet and rill erosion and to develop options that will reduce soil loss to tolerable levels. 2. Extent of adverse impacts on adjoining land or a waterbody from sedimentation 3. Average rate of soil loss from water or wind erosion in tons per acre per year | New (optional) guidance re contents of report – drawn from Fillmore County Soil Erosion Ordinance, Section 6.1. |
| **Section 7.0** |  |
| Section 7.0. **Conservation plan**. If the administrator determines, based on the conservation district report, that the land disturbing activity is resulting in excessive erosion or excessive sedimentation, the administrator shall request the land occupier to develop a conservation plan.   1. The land occupier must complete the plan within 60 days of notification, except that the administrator may grant an extension of up to 60 days where the land occupier demonstrates that a bona-fide effort has been made to complete the plan in a timely manner. 2. The land occupier may request the conservation district to prepare the plan or may seek alternative technical assistance from another qualified professional or agency. 3. If the conservation district is requested to provide technical assistance to complete the plan but is unable to do so within the required time period, the administrator shall extend the planning period until such assistance is available. | Reorganized (sections 5.0 and 6.0 in prior ordinance.)  60-day time frame: no time frame was provided in the prior model ordinance. This optional provision is based on Olmsted Co. ordinance, Section E.6.  Ordinance gives land occupier the option of seeking technical assistance from the conservation district or from another source. |
| 7.1. **Criteria for plan.** The conservation plan must address the prevention of excessive erosion and excessive sedimentation damages and the following criteria, as applicable:   1. Controlling stormwater discharge to minimize downstream erosion potential; 2. Stabilizing waterways and outlets; 3. Proper methods of working in or crossing water bodies 4. Proper maintenance of agricultural erosion control practices; 5. Management of irrigation water for adequate growth and production without causing excessive erosion, excessive sedimentation, or their associated adverse effects; and 6. Consistency with the approved local water management plan of [LGU or watershed] and any existing land use controls relating to agricultural land preservation, or shoreland, floodplain, or wild and scenic river management. | “Criteria” and “contents” of plan (7.2 below) have been reorganized from prior ordinance to distinguish between criteria (for evaluating the plan) and the actual contents of the plan.  Note: criteria are “as applicable” and can be modified to suit conditions of the site and surroundings. |
| 7.2. **Contents of plan.** The plan must include the following, as applicable:   1. Location map; 2. Location and description of the types of erosion occurring or that had occurred; 3. Location and description of agricultural erosion control practices to be installed; 4. Property boundary and designation of applicable whole fields, including their individual boundaries; 5. Soils mapped; 6. Existing and final contours; 7. Existing and final drainage flow patterns and receiving water bodies; 8. Existing public waters; 9. Wetlands, including public waters wetlands 10. Existing and proposed cropping rotations, pasture lands, and other lands designated; 11. Marginal cropland area(s); 12. Aboveground and underground utilities; 13. Description of the maintenance needed for each prescribed agricultural erosion control practice; and 14. A schedule for installation of the agricultural erosion control practices. | This section can be modified to suit site conditions and needs, or can be removed from the ordinance entirely and maintained as a separate checklist  “Wetlands” definition revised to include public water wetlands |
| 7.3 **Review and Approval of Conservation Plan**. The administrator shall consult with and seek the approval of the conservation district in determining the technical adequacy and effectiveness of the proposed plan.   1. If the administrator determines that the conservation plan meets the requirements of this ordinance, the administrator shall notify the land occupier of the [LGU’s]approval of the plan, contingent upon the satisfactory implementation and completion of the approved conservation plan. 2. If the administrator determines that the conservation plan does not meet the requirements of this ordinance, the administrator shall not approve the proposed plan. The land occupier may seek to revise the plan and resubmit a request for plan approval. | Simplified and combined “approval” and “denial” (sections 6.1 through 6.3 in prior model ordinance). |
| 7.4 **Conservation Plan Implementation Schedule.**  For each of the practices included in the conservation plan, the land occupier shall provide a schedule of application dates, meeting the following guidelines:   1. Provided the necessary technical assistance is available from the conservation district and that cost-share assistance is provided as requested, conservation practices are to be applied within the first three (3) years following plan approval. 2. If technical assistance and cost-share funds are not available, the administrator shall extend the schedule for applying those practices until such assistance and cost-share funds are provided. | New optional section drawn from Olmsted County, Section F.5 to establish a schedule for compliance with the plan.  Time frames can be modified (for example, Olmsted County allows 5 years for completion of structural practices; 3 years for other practices). |
| 7.5. **Review of Plan Implementation.** The administrator, in cooperation with the conservation district, shall review the land occupier's progress in implementing the conservation plan. If the administrator finds that insufficient progress is occurring based on the agreed-upon schedule, the administrator shall immediately notify the land occupier of the problem and request compliance. If the land occupier refuses to comply, the administrator shall treat the matter as a violation and pursue mediation according to Section 8.0. | Revised to reference conservation schedule and mediation. This draft removes prior section 7.1, Certification of Completion of Agricultural Erosion Control Plan – section doesn’t appear necessary since it doesn’t appear in statute or rule. |
| **Section 8.0** | New section |
| Section 8.0 **Mediation.** If the land occupier does not agree to implement the plan, the administrator shall request him or her to participate in mediation with the [LGU] to attempt to resolve the issue. The [LGU] may appoint the planning and zoning director, a planning commissioner, or other county official to act as a mediator, or may contract with a mediation center. | Prior model ordinance did not mention mediation, but statute and rule both emphasize mediation to resolve excessive soil loss complaints (MS § 103F.421, subd. 3, MR 8400.4040, subp. 5). However, mediation is considered optional for LGUs. |
| **Section 9.0** | Revised section |
| Section 9.0 **Violations.** Any of the following circumstances shall constitute a violation of this ordinance:   1. Failure to complete an approved conservation plan and schedule within the specified time frame; 2. Failure to implement the practices in the conservation plan within the time frame approved by the administrator. | Revision of Section 8.0 of prior ordinance, based on Olmsted County ordinance. |
| Section 9.1 **Corrective Action.** If the land occupier refuses to participate in mediation, if a mediated settlement is not reached, or if a violation exists, as listed in Section 9.0, the administrator shall forward the issue to the County Attorney. | Prior ordinance stated that failure to comply constitutes a misdemeanor and that the land occupier may be subject to a civil fine. This revision provides more discretion for LGU in determining the penalties for a violation. The violation may be forwarded to the County Attorney or County Board.  If this ordinance is incorporated into the community’s zoning ordinance, another option is simply to cross-reference to the violation and penalty provisions of the zoning ordinance. |
| Section 9.2. **Defense.** A defense in an administrative or criminal proceeding is that excessive erosion or excessive sedimentation resulted from an extreme rainfall event rather than from agricultural practices. | 9.2 is revision of prior Section 8.0 – “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.” “Extreme rainfall event” is defined in Section 2.13; definition can be modified by LGU. |
| **Section 10.0** | New section |
| Section 10.0. **Agreement and Eligibility for Cost Share.** If land occupier agrees to implement the conservation plan, he or she has 90 days after approval of the conservation plan or after a mediated settlement is filed to apply for state cost-sharing funds equal to 75 percent of the cost of the permanent conservation practices. If the land occupier does not make application within 90 days of the filing date, the land occupier is eligible for a 50 percent cost-share. | Adding reference to cost-share as expressed in statute (MS 103F.421, subd. 4, MR 8400.4045). Updated here to state that 90-day clock applies to approval of conservation plan as well as to approval of a mediated settlement. |
| **Section 11.0** |  |
| Section 11.0. **Remediation Required.** Whenever the administrator has determined, based upon the conservation district’s report referenced in Section 6, that any roadway, right-of-way, or drainage conveyance under the jurisdiction of the [LGU] has been adversely affected by excessive sedimentation resulting from land-disturbing activities associated with the agricultural use of land under the control of the land occupier in question, the administrator and the [LGU’s]attorney shall seek remediationof the adverse effects. | **OPTIONAL:** This section does not appear in statute or rule but seems to be within the authority of the LGU. |
| 11.1 **Remediation Actions.** Remediation may include, but is not 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 adjacent to the adversely affected roadway, right-of-way, or drainage conveyance; 2. requesting the county engineer to direct or oversee the restoration of the adversely affected 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 [LGU] treasurer within [ ] calendar days. If full payment is not remitted within the specified time limit, the [LGU] may assess the cost of remediation against the land in question. | Minor revisions to simplify language. |
| **Section 12.0** |  |
| **Appeals, Variances** | If the local government already has a comprehensive zoning ordinance (as most do), the “appeals” and “variances” procedures described in the ordinance will be sufficient and need not be included here. If this model is being adopted as a free-standing ordinance, appeals and variance procedures should follow the requirements in M.S. 394.27 (for counties) or M.S. 462.357 (for cities and townships). |
| **Section 13.0** |  |
| 13.0. **Severability.** If any portion of this ordinance is determined to be invalid or unconstitutional by a court of competent jurisdiction that portion shall be considered severable from the remaining portions of this ordinance and shall not affect the validity of the remainder of the ordinance. | If the local government already has a comprehensive zoning ordinance, the severability provisions in that ordinance will be sufficient. If not, use this language (simplified from prior ordinance; this language is commonly used for ordinances). |

1. <https://www.pca.state.mn.us/water/stormwater> [↑](#footnote-ref-1)
2. NRCS: Soil Erosion – About the Data. <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/home/?cid=stelprdb1041925> [↑](#footnote-ref-2)
3. Example: <https://www.nrcs.usda.gov/Internet/FSE_MANUSCRIPTS/minnesota/MN103/0/Nicollet_MN.pdf> [↑](#footnote-ref-3)
4. <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/home/?cid=stelprdb1041925> [↑](#footnote-ref-4)
5. <https://www.law.cornell.edu/cfr/text/7/718.2> [↑](#footnote-ref-5)