

**Drainage Work Group
Consensus Recommendations
1-19-07**

Policy Recommendations

Topics:

- **Clarify point of beginning for measuring required ditch buffer strips and width of required buffer strips** (Section 103E.021, Subd. 1 and 6)
- **Enhance authority to establish and maintain buffers** (Sections 103E.021, Subd. 1,2,3,6; 103E.315, Subd. 8; 103E.321, Subd. 1; 103E.701, Subd. 7; 103E. 705, Subd. 1,2,3; 103E.728, Subd. 2)
- **Enhance ditch buffer strip compliance and enforcement** (Section 103E.705, Subd. 1)

In the following table, strikethrough indicates recommended text deletion and underline indicates recommended text addition in Minnesota Statutes, Chapter 103E.

Recommended Drainage Law Clarifications	Explanations
<p>103E.021 Ditches must be planted with <u>perennial</u> vegetation<u>permanent</u> grass.</p> <p>Subdivision 1. Spoil banks must be spread and <u>permanent</u> vegetation established<u>grass planted</u>.</p> <p>In any proceeding to establish, construct, improve, or do any work affecting a public drainage system under any law that appoints viewers to assess benefits and damages, the authority having jurisdiction over the proceeding shall order spoil banks to be spread consistent with the plan and function of the drainage system. The authority shall order that permanent grass, other than a noxious weed, be planted on the banks<u>ditch side slopes and that a permanent strip of perennial vegetation approved by the drainage authority be established on each side of the ditch. The approved perennial vegetation shall not impede future maintenance of the ditch. on aThe permanent strips of perennial vegetation shall be 16-1/2 feet in width measured outward from the top edge of the constructed channel resulting from the proceeding, or to the crown of the leveled spoil bank, whichever is the greater, except for an action by a drainage authority that results only in a redetermination of benefits and damages, for which the required width shall be 16-1/2 feet. on each side of the top edge of the channel of the ditch. Drainage system right-of-way for The acreage and additional property required for the <u>permanent strips</u>planting must be acquired by the authority having jurisdiction.</u></p>	<p>This section includes ditch buffer strip requirements triggered by the appointment of viewers. Clarifications would:</p> <ol style="list-style-type: none"> 1) allow perennial vegetation approved by the drainage authority on permanent buffer strips that does not impede future ditch maintenance; 2) rename “banks” to “ditch side slopes” to distinguish from “spoil banks”; 3) clarify the point of beginning for measuring required buffer strips to be “top edge of the constructed channel resulting from the proceeding” (where, when); 4) remove requirement for the buffer strip width to extend to the crown of the leveled spoil bank for redetermination of benefits and damages proceedings only.

<p>Subdivision 2. Reseeding and harvesting perennial vegetationgrass. The authority having jurisdiction over the repair and maintenance of the drainage system shall supervise all necessary reseeded. The permanent <u>strips of perennial vegetationgrass</u> must be maintained in the same manner as other drainage system repairs. Harvest of the <u>vegetationgrass</u> from the <u>permanentgrass</u> strips in a manner not harmful to the <u>vegetationgrass</u> or the drainage system is the privilege of the fee owner or assigns. The county drainage inspector shall establish rules for the fee owner and assigns to harvest the <u>vegetationgrass</u>.</p>	<p>Clarifications would: 1) conform with allowing approved perennial vegetation on permanent buffer strips; 2) acknowledge both county and watershed district drainage inspectors</p>
<p>Subdivision 3. Agricultural practices prohibited. Agricultural practices, other than those required for the maintenance of a permanent growth of <u>perennial vegetationgrass</u>, are not permitted on any portion of the property acquired for the <u>perennial vegetationplanting</u>.</p>	<p>To conform with allowing approved perennial vegetation on permanent buffer strips.</p>
<p>Subdivision 4. Compliance work by drainage authority. If a property owner does not bring an area into compliance with this section as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority. If a property owner does not bring an area into compliance after being notified under section 103E.705, subdivision 2, the drainage authority must issue an order to have the work performed to bring the property into compliance. After the work is completed, the drainage authority must send a statement of the expenses incurred to bring the property into compliance to the auditor of the county where the property is located and to the property owner.</p>	<p>No recommended revisions.</p>
<p>Subdivision 5. Collection of compliance expenses. (a) The amount of the expenses to bring an area into compliance with this section is a lien in favor of the drainage authority against the property where the expenses were incurred. The auditor must certify the expenses and enter the amount in the same manner as other drainage liens on the tax list for the following year. The amount must be collected in the same manner as real estate taxes for the property. The provisions of law relating to the collection of real estate taxes shall be used to enforce payment of amounts due under this section. The auditor must include a notice of collection of compliance expenses with the tax statement. (b) The amounts collected under this subdivision must be deposited in the drainage system account.</p>	<p>No recommended revisions.</p>
<p><u>Subdivision 6. Incremental implementation of vegetated ditch buffer strips and side inlet controls.</u> (a) <u>Notwithstanding other provisions of this chapter requiring appointment of viewers and redetermination of benefits and damages, a drainage authority may implement permanent buffer strip(s) of perennial vegetation approved by the drainage authority, and/or side inlet</u></p>	<p>This new subdivision would: 1) enhance authority to establish and maintain buffers and side inlet controls along public drainage ditches, where</p>

<p><u>control(s), adjacent to a public drainage ditch, where necessary to control erosion and sedimentation, improve water quality, or maintain the efficiency of the drainage system. The approved perennial vegetation shall not impede future maintenance of the ditch. The permanent strip(s) of perennial vegetation shall be 16-1/2 feet in width measured outward from the top edge of the existing constructed channel. Drainage system right-of-way for the acreage and additional property required for the permanent strip(s) must be acquired by the authority having jurisdiction.</u></p> <p><u>(b) A project under this subdivision shall be implemented as a repair in accordance with section 103E.705, except that the drainage authority may appoint an engineer to examine the drainage system and prepare an engineer’s repair report for the project.</u></p> <p><u>(c) Damages shall be determined by the drainage authority, or viewer(s) appointed by the drainage authority, in accordance with section 103E.315, subdivision 8. A damages statement shall be prepared, including definition of how the damages were determined for each property affected by the project, and filed with the auditor or watershed district. Within 30 days after the damages statement is filed, the auditor or watershed district shall prepare property owners’ reports in accordance with section 103E.323, subdivisions 1, 2, 6, 7 and 8 and mail a copy of the property owner’s report and damages statement to each owner of property affected by the proposed project.</u></p> <p><u>(d) After a damages statement is filed, the drainage authority shall set a time, by order, not more than 30 days after the date of the order, for a hearing on the project. At least 10 days before the hearing, the auditor or watershed district shall give notice by mail of the time and location of the hearing to the owners of property and political subdivisions likely to be affected by the project.</u></p> <p><u>(e) The drainage authority shall make findings and order the repairs to be made, if the drainage authority determines from the evidence presented by the viewer(s) and/or engineer, if appointed, and at the hearing, that the repairs are necessary for the drainage system and the costs of the repairs are within the limitations of section 103E.705.</u></p>	<p>needed;</p> <p>2) use the same buffer strip point of beginning as required under 103E.021, subdivision 1 and a 1-rod buffer width;</p> <p>3) use repair procedures;</p> <p>4) drainage authority <u>may</u> appoint an engineer;</p> <p>5) require the determination of damages by the drainage authority or viewer(s), but <u>not</u> the redetermination of benefits under this provision;</p> <p>6) utilize due process procedures that are essentially the same as used for other repair projects.</p>
<p>103E.315 Assessment of drainage benefits and damages.</p> <p>Subd. 8 Extent of damages.</p> <p>Damages to be paid may include:</p> <p>(1) the fair market value of the property required for the channel of an open ditch and the permanent grass-strip <u>of perennial vegetation</u> under section 103E.021;</p> <p><u>(5) costs to restore a perennial vegetative cover or structural practice existing under a federal or state conservation program adjacent to the permanent drainage system right-of-way and damaged by the drainage project.</u></p>	<p>To conform with allowing approved perennial vegetation on permanent buffer strips.</p> <p>For projects that appoint viewers (e.g. improvement), this would clarify that damages may be paid by a drainage system to restore a practice adjacent to the drainage system right-of-way this is damaged by the project.</p>

<p>103E.321 Viewers' report. Subdivision 1. Requirements. (6) the damages paid for the permanent grass strip of perennial <u>vegetation</u> under section 103E.021;</p>	<p>To conform with allowing approved perennial vegetation on permanent buffer strips.</p>
<p>103E.701 Repairs. Subdivision 7. Restoration of a practice disturbed or destroyed by a repair. <u>If a drainage system repair disturbs or destroys a perennial vegetative cover or structural practice existing under a federal or state conservation program adjacent to the permanent drainage system right-of-way, the practice must be restored in accordance with the applicable practice plan, or as determined by the drainage authority, if a practice plan is not available. Restoration costs shall be paid by the drainage system.</u></p>	<p>Clarify that for a repair project, the drainage system must pay to restore a vegetative or structural practice adjacent to the permanent drainage system right-of-way that is damaged by the project.</p>
<p>103E.705 Repair procedure. Subdivision 1. Inspection. After the construction of a drainage system has been completed, the drainage authority shall maintain the drainage system that is located in its jurisdiction including <u>the permanentgrass strips of perennial vegetation</u> under section 103E.021 and provide the repairs necessary to make the drainage system efficient. The drainage authority shall have the drainage system inspected on a regular basis by an inspection committee of the drainage authority or a drainage inspector appointed by the drainage authority. <u>Open drainage ditches shall be inspected at minimum every five years where no violation of section 103E.021 is found, and annually where a violation of section 103E.021 is found, until one year after the violation is corrected.</u></p>	<p>To conform with allowing approved perennial vegetation on permanent buffer strips.</p> <p>Define minimum inspection period for open ditches to enhance compliance and enforcement of section 103E.021.</p>
<p>Subdivision 2. <u>Permanentgrass strip of perennial vegetation inspection and compliance notice.</u> (a) The drainage authority having jurisdiction over a drainage system must inspect the drainage system for violations of section 103E.021. If an inspection committee of the drainage authority or a drainage inspector determines that permanent grass-strips <u>of perennial vegetation</u> are not being maintained in compliance with section 103E.021, a compliance notice must be sent to the property owner. (b) The notice must state: (1) the date the ditch was inspected; (2) the persons making the inspection; (3) that spoil banks are to be spread in a manner consistent with the plan and function of the drainage system and <u>that the drainage system has acquired a permanentgrass strip of perennial vegetation, in accordance with section 103E.021</u>46 1/2 feet in width or to the crown of the spoil bank, whichever is greater;</p>	<p>To conform with allowing approved perennial vegetation on permanent buffer strips.</p> <p>Ditto and to correspond to buffer strip width in section 103E.021.</p>

<p>Subdivision 3. Drainage inspection report.</p> <p>For each drainage system that the board designates and requires the drainage inspector to examine, the drainage inspector shall make a drainage inspection report in writing to the board after examining a drainage system, designating portions that need repair or maintenance of <u>the permanentgrass strips of perennial vegetation</u> and the location and nature of the repair or maintenance. The board shall consider the drainage inspection report at its next meeting and may repair all or any part of the drainage system as provided under this chapter. The <u>permanentgrass strips of perennial vegetation</u> must be maintained in compliance with section 103E.021.</p>	<p>To conform with allowing approved perennial vegetation on permanent buffer strips.</p>
<p>103E.728 Apportionment of repair costs.</p> <p>Subdivision 2. Additional assessment for agricultural practices on permanentgrass strip of perennial vegetation.</p> <p>(a) The drainage authority may, after notice and hearing, charge an additional assessment on property that has agricultural practices on or otherwise violates provisions related to the permanentgrass strip of <u>perennial vegetation</u> acquired under section 103E.021.</p>	<p>To conform with allowing approved perennial vegetation on permanent buffer strips.</p>

Topic: Enhance establishment of public drainage ditch buffers (additional recommendation)

The Board of Water and Soil Resources (BWSR) should work with the Farm Services Agency to clarify CRP policies statewide regarding CRP implementation along public drainage ditches, including CRP eligibility and piggybacking of drainage system right-of-way for permanent buffer strips. This should be done in consultation with the Drainage Work Group.

Budget-Related Recommendations

Topic: Drainage Records Preservation and Modernization

- 1) The BWSR should develop and disseminate guidelines for drainage records preservation and modernization by June 30, 2008, in consultation with the Drainage Work Group. It is recommended that \$150,000 of state funding be made available to develop and disseminate these guidelines. Specific objectives include:
 - a) identify key components of modern drainage records;
 - b) share experience of drainage authorities with modern, electronic records to reduce costs of drainage records preservation and modernization by other drainage authorities; and
 - c) promote statewide consistency and efficiency of public drainage records and drainage system administration.
- 2) An additional \$2M of state cost-share should be made available through Local Water Management Challenge Grants to accelerate public drainage records preservation and modernization statewide.

Topic: Update of the Minnesota Public Drainage Manual

The Minnesota Public Drainage Manual should be updated, in consultation with the Drainage Work Group, to reflect revisions and clarifications of Minnesota drainage law since 1991. Current information about drainage system BMP options, design and partnership opportunities should be added to the manual to enable enhanced drainage system management statewide for multiple purposes. It is recommended that the Legislature appropriate \$300,000 to the BWSR for this update.

Topic: Continuation of the Drainage Work Group

The Drainage Work Group should continue to develop consensus recommendations to the Legislature, agencies and other stakeholders for additional drainage issues and topics brought forward by its members. The BWSR should continue to facilitate this work.

Topic: Drainage Assistance Team

The State should create and fund a drainage assistance team to work with drainage authorities and others to better enable multi-purpose projects involving drainage infrastructure in Minnesota. The roles of this team should include:

- 1) Coordinate expertise from various sources for multi-purpose projects and enhanced BMPs involving drainage infrastructure in Minnesota.
- 2) Coordinate access to funding from applicable programs.
- 3) Provide coordinated technical assistance for alternatives analysis, design and construction.
- 4) Provide information and education for drainage management options to drainage authorities, drainage inspectors, viewers, applicable program staff, and others.

Participants should include BWSR, MDNR, MDA, MPCA, the University of Minnesota, applicable federal agencies, and other stakeholder groups, as appropriate. The BWSR should lead this team.