

**Recommendations for *Accelerating* Public
Drainage System Acquisition and Establishment of
Buffer Strips and Alternative Practices**

**A Report to the Legislature
from the Board of Water and Soil Resources
in Coordination with the Drainage Work Group**

February 1, 2018

Minnesota Board of Water and Soil Resources
February 2018
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Cost of preparing this report:

Report preparation cost data, in accordance with Minnesota Statutes, Chapter 3.197

BWSR Staff:	\$ 17,300
<u>Printing, postage and supplies:</u>	<u>100</u>
Total:	\$ 17,400

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Executive Summary

The 2017 Minnesota Legislature directed the Board of Water and Soil Resources (BWSR) to coordinate with the stakeholder Drainage Work Group to evaluate and develop recommendations to help Minnesota Chapter 103E drainage authorities *accelerate* the acquisition and establishment of buffer strips and alternative practices adjacent to public drainage ditches, and the associated compensation of landowners. The impetus for this action is the 2015 Buffer Law (Minnesota Statutes Section 103F.48), which requires landowners to establish buffer strips along all public drainage ditches, or alternative practices, by November 1, 2018. These buffer strips and the associated landowner compensation must be consistent with the provisions of Minnesota Drainage Law (M.S. Chapter 103E).

The Drainage Work Group formed a 16-member Project Advisory Committee with BWSR staff support to evaluate the issue and develop recommendations for Drainage Work Group consideration. During three meetings in the fall of 2017 the Advisory Committee evaluated the impediments to drainage system acquisition and establishment of buffer strips and then formulated actions for statutory, funding, and administrative policy changes, and outreach, to address the impediments. The Drainage Work Group used the products from their Advisory Committee to develop the recommendations in this report and encourages their implementation. The BWSR Board subsequently accepted the report of the Drainage Work Group for transmittal to the designated Legislative Policy Committees.

Recommendations

The Recommendations are categorized according to the type of action required (e.g., statutory change, administrative policy change) and grouped according to the potential for the recommended actions to *accelerate* the acquisition and establishment of drainage system buffer strips and alternative practices in 2018, or by their potential long-term benefits in 2019 and beyond. Several of the Recommendations are mutually supportive and may be developed as a package for legislative and agency implementation. The Recommendations section of this report (pages 6-9) contains an explanation of the purpose and intent of each Recommendation.

Recommendations to *Accelerate* Establishment of Drainage System Buffer Strips in 2018

Session Law or Statutory Changes (2018 Session)

S1. Add a temporary legislative provision to allow, with landowner consent, a drainage authority to seed and establish ditch buffer strips in advance of drainage law proceedings to determine damages and acquire a permanent easement.

S2. Clarify Section 103E.021, Subd. 6, to expressly state that, upon findings and an order, the drainage authority is vested with jurisdiction over property rights acquired for 16.5-ft. ditch buffer strips.

S3. Revise Section 103E.351 Redetermination of Benefits and Damages to enable 26 percent of benefited landowners, or owners of 26 percent of the benefited lands, to petition for a redetermination of benefits in order to update benefited area(s) and benefits on record and more equitably apportion drainage system costs, including for ditch buffer strips.

S4. Create an exemption for landowners under Section 103F.48 for drainage systems, which do not have a specific DNR shoreland classification, where a buffer has been acquired, established, maintained and enforced under Chapter 103E.

Funding

F1. Increase and extend the funding for the Buffer Cost Share program based on an estimate of need.

Administrative Policy and Procedure Changes

P1. Clarify the Buffer Cost-Share program to allow drainage authorities to access funds on behalf of the drainage system, in coordination with applicable landowners and Soil and Water Conservation Districts, to establish buffer strips, but not to acquire land rights, along Chapter 103E ditches in accordance with Section 103F.48.

P2. In consultation with the Drainage Work Group, provide priority consideration for eligible external sources of funding to drainage authorities based on progress toward acquisition and establishment of buffer strips under Chapter 103E.

Outreach, Information and Education

O1. AMC, MAWD and BWSR, with appropriate funding and in cooperation with MASWCD and other partners, should develop a coordinated outreach effort to landowners, drainage authorities and their advisors, to inform them of the applicable buffer law provisions, drainage law provisions and procedures, and potential external financial assistance for acquisition and establishment of ditch buffer strips, as well as to provide an overall review of drainage law. The Drainage Work Group must be consulted in the development and dissemination of these products.

Recommendations with Long-term Benefits (2019 and beyond)

Statutory changes

S5. Explore the feasibility of modifying Section 103E.305 to clearly enable county appraisers to serve as viewers.

S6. Clarify Section 103E.071 County Attorney, to make it clear that drainage authorities, including counties, may hire outside legal counsel per Section 388.09, Subd. 1.

Funding

F2. Provide increased multipurpose drainage management program funding for water quality purposes.

Administrative Policy and Procedure Changes

P3. Develop a more efficient method to do redeterminations of benefits or funding to cover the costs of redeterminations of benefits.

P4. For a ditch system that does not have adequate cash flow capability, modify an existing or create a new loan program for buffer strip acquisition and establishment.

P5. Drainage authorities should consider inventorying alternative practices, such as side inlets and other infrastructure (e.g. tile outlets), that may affect the integrity and management of the system.

Outreach, Information and Education

O1. AMC, MAWD and BWSR, with appropriate funding and in cooperation with MASWCD and other partners, should develop a coordinated outreach effort to landowners, drainage authorities and their advisors, to inform them of the applicable buffer law provisions, drainage law provisions and procedures, and potential external financial assistance for acquisition and establishment of ditch buffer strips, as well as to provide an overall review of drainage law. The Drainage Work Group must be consulted in the development and dissemination of these products.

Proposed Next Steps

Drainage Work Group

The Drainage Work Group will:

- Develop, in consultation with state agency and legislative staff, proposed legislation consistent with Recommendations S1 through S6.
- Advise BWSR and other agencies on the Administrative Policy and Procedure recommendations P1 and P2, and Outreach, Information and Education Recommendation O1.

Board of Water and Soil Resources

The Board of Water and Soil Resources will:

- Coordinate and assist the Drainage Work Group.
- Convene and support an ad hoc work group with leadership from the Association of Minnesota Counties and the Minnesota Association of Watershed Districts, and other relevant partner organizations, to address Recommendation O1.
- Estimate the need for additional Buffer Cost Share funding and evaluate the allocation formula and eligibility criteria for possible modifications consistent with Recommendations F1, P1 and P2.

Introduction

Minnesota contains approximately 19,150 miles of Minnesota Statutes Chapter 103E public drainage ditches, most of which have been in place since the early 1900s. Most of Minnesota’s drainage systems serve agricultural production by receiving and conveying excess surface and subsurface runoff downstream. Drainage systems are managed by drainage authorities: a county board of commissioners, joint county board, or watershed district board of managers, who act on behalf of the landowners served by the drainage system. These drainage authorities act under the provisions of Minnesota’s Drainage Law (Minnesota Statutes Chapter 103E Drainage, hereinafter Chapter 103E) that defines the responsibilities and procedures by which these systems are established, improved, maintained/repared, and paid for.

In 1959, drainage authorities were given permissive authority to require open ditches to be protected with a 1-rod (16½-foot) grass buffer strip along one or both sides in order to maintain ditch function and reduce maintenance. In 1977, Drainage Law was changed to make permanent ditch buffer strips a requirement whenever viewers are appointed by the drainage authority to determine the benefits and damages of the system. Viewers are appointed whenever a drainage system is established, improved, undergoes certain major repairs, or when the drainage authority orders a redetermination of benefits and damages.

In 2015, the Legislature enacted what has become known as the Buffer Law (Minnesota Statutes Section 103F.48, hereinafter Section 103F.48), which ties the establishment of permanent vegetative buffers along watercourses and public drainage ditches to the protection of the state’s water quality. Under the Buffer Law’s requirements, which were modified in 2016 and 2017, landowners adjacent to public drainage ditches must establish buffer strips as defined in the Buffer Law, or establish comparable alternative practices, by November 1, 2018.

Practices or Measures?

Buffer Law (Section 103F.48) refers to “alternative practices” while Drainage Law (Chapter 103E) uses the term “alternative measures.” Which is correct?

For the purposes of this report, the term that is generally used is “alternative practices” because it is more currently in use in connection with discussions about buffers.

However, any recommended changes to Drainage Law that make reference to alternative practices to buffer strips will use the term “measures” to be consistent with other sections of Chapter 103E.

See further discussion of this issue on page 13.

Legislative Directive for Evaluation and Recommendations to Accelerate Drainage System Acquisition of Buffer Strips and Alternative Practices

The 2017 Minnesota Legislature passed, and Governor Dayton signed, a directive to the Board of Water and Soil Resources (BWSR) to “coordinate the stakeholder drainage work group in accordance with Minnesota Statutes, section 103B.101, subdivision 13, to evaluate and make recommendations to accelerate drainage system acquisition and establishment of ditch buffer strips under Minnesota Statutes, chapter 103E, or compatible alternative practices required by Minnesota Statutes, section 103F.48. The evaluation and recommendations must be submitted in a report to the senate and house of representatives committees with jurisdiction over agriculture and environment policy by February 1, 2018.”

Drainage Work Group Approach and Methodology

Following this legislative directive, BWSR staff coordinated the Drainage Work Group to establish a stakeholder Project Advisory Committee. The Committee met three times (October 31, November 16, and December 8, 2017). The process and outcomes included: 1) identification and prioritization of the impediments to drainage system acquisition of ditch buffer strips and alternative practices, 2) identification of potential solutions to overcome the impediments, and 3) selection of proposed recommendations for Drainage Work Group consideration. Persons serving on the Committee included the following with their relevant affiliation:

Bruce Albright- Buffalo-Red River Watershed

District Administrator

Craig Austinson-Blue Earth County Drainage Administrator

Tyler Carlson-Sauk River Watershed District Manager

Matt Detjen-Wright County Drainage Coordinator

Darrell Gerber-MN Center for Environmental Advocacy

Robert Hiivala-Wright County Auditor/Treasurer

Emily Javens-MN Association of Watershed Districts

John Kolb-Rinke Noonan Law Firm

Randy Kramer-Renville County Commissioner

Harlan Madsen-Kandiyohi County Commissioner

Chris Otterness-Houston Engineering Inc.

Alan Perish-MN Farmers Union

Ron Ringquist-MN Viewers Association

Joe Smentek-MN Soybean Growers

Gene Tiedemann-Red Lake Watershed District Manager

Kale Van Bruggen-Rinke Noonan Law Firm

The Project Advisory Committee received staff support from BWSR Chief Engineer and Drainage Work Group Coordinator, Al Kean, and from BWSR Project Manager/Facilitator, Don Buckhout.

Report Development and Review

BWSR staff and the PAC submitted a preliminary draft report with the results of its deliberations to the Drainage Work Group on December 14, 2017. The Drainage Work Group members reviewed the draft report and developed their final consensus recommendations on January 11, 2018. BWSR staff prepared a final report with those recommendations for BWSR Board action. At its January 24, 2018 meeting, the Board accepted the final report and directed that it be sent to the legislature.

As directed by 2017 Minnesota Session Laws, Chapter 93, SF-844, Article 1, Sec. 4 (h), this report contains recommendations to *accelerate* buffer strip and alternative practices acquisition and establishment by public drainage systems in Minnesota.

Recommendations

These Recommendations are submitted to the Minnesota Legislature by the Board of Water and Soil Resources and the stakeholder Minnesota Drainage Work Group. They are categorized according to the Drainage Work Group's determination of types of actions needed and grouped according to their potential to *accelerate* the acquisition and establishment of buffer strips and alternative practices, as included in the legislative directive. Each Recommendation is followed by a brief explanation of its purpose and the number of the Impediment(s) that the Recommendation is intended to address. Impediment numbers reflect prioritization by the Project Advisory Committee, with number 1 signifying their highest priority and number 15 their lowest priority Impediment. See pages 12-13 for a list of the Impediments.

Recommendations to Accelerate Drainage System Buffer Strip Establishment in 2018

2018 Session Law or Statutory Changes to promote Acceleration

S1. Add a temporary legislative provision to allow, with landowner consent, a drainage authority to seed and establish ditch buffer strips in advance of drainage law proceedings to determine damages and before acquiring permanent easements.

This provision is intended as a potential benefit to landowners who must comply with Section 103F.48 by November 1, 2018, and could serve to accelerate the establishment of drainage system buffer strips before viewers are appointed to redetermine drainage system benefited lands, benefits and the associated apportionment of drainage system costs. If landowners request assistance from the drainage authority for buffer strip establishment, this provision would give the drainage authority the ability to authorize the drainage system to establish ditch buffer strips using drainage system or external funding prior to acquiring easements and compensating landowners for damages. The use of this provision by the drainage authority requires the consent of the affected landowners. The establishment of buffer strips by the drainage authority on behalf of multiple landowners may cost less per acre than what landowners acting alone would spend. (Impediments 3,9)

S2. Clarify Section 103E.021, Subd. 6 to expressly state that, upon findings and an order, the drainage authority is vested with jurisdiction over property rights acquired for 16.5-ft. ditch buffer strips.

This statutory modification is intended to make explicit that the drainage authority has jurisdiction over property rights acquired for drainage system buffer strips under Section 103E.021, Subd. 6. This will address a Court of Appeals ruling (Court of Appeals file A15-0782, Zimmerman vs. Sauk River Watershed District, 2-16-2016). (Impediment 9)

S3. Revise Section 103E.351 Redetermination of Benefits and Damages to enable 26 percent of benefited landowners, or owners of 26 percent of the benefited lands, to petition for a redetermination of benefits in order to update benefited area(s) and benefits on record and more equitably apportion drainage system costs, including for ditch buffer strips.

This statutory revision would clarify benefited landowners' rights to petition their drainage authority to order a redetermination of benefits and damages where the landowners have reason to believe that the existing determination is outdated or inequitable. The 26 percent threshold is consistent with other provisions for benefited landowners petitioning an improvement or certain repairs in Chapter 103E. (Impediments 1,4,7,8,13)

S4. Create an exemption for landowners under Section 103F.48 for drainage systems that do not have a specific DNR shoreland classification, where a buffer strip has been acquired, established, maintained and enforced under Chapter 103E.

This exemption would more clearly remove the burden for compliance with Section 103F.48 from the landowner in those cases where a buffer strip has previously been acquired, established, maintained, and enforced by the drainage authority under Chapter 103E. However, for those drainage system reaches that are also designated as public waters and have a specific shoreland classification, Section 103F.48 requires a buffer strip width of at least 30 feet, a 50 ft. average, or establishment of an alternative practice(s). (Impediment 1)

2018 Funding to support Acceleration

F1. Increase and extend funding for the Buffer Cost Share program based on an estimate of need.

The \$5 million FY 18-19 biennial appropriation from the Clean Water Fund for Section 103F.48 buffer strip establishment is generally seen as inadequate to meet the demand, particularly if drainage authorities can act on behalf of multiple landowners to establish buffer strips. However, any increase and extension of funding should be based on an estimate of need, appropriateness of funding sources, and, possibly, a modification of the apportionment formula to Soil and Water Conservation Districts. (Impediment 5)

2018 Administrative Policy and Procedure Changes to Support Acceleration

P1. Clarify the Buffer Cost-Share program to allow drainage authorities to access funds on behalf of the drainage system, in coordination with applicable landowners and Soil and Water Conservation Districts, to establish buffer strips, but not to acquire land rights, along Chapter 103E ditches in accordance with Section 103F.48.

This clarification would verify that drainage authorities may apply for and receive buffer cost share program dollars from Soil and Water Conservation Districts to establish buffer strips on behalf of multiple landowners on a Chapter 103E drainage system. These funds cannot be used for acquisition of buffer strip land rights. (Impediments 5,6)

P2. In consultation with the Drainage Work Group, provide priority consideration for eligible external sources of funding to drainage authorities based on progress toward acquisition and establishment of buffer strips under Chapter 103E.

Those drainage authorities that are aggressively pursuing buffer strip acquisition and establishment should receive priority for funding that will support their efforts. Rather than a penalty on less ambitious drainage authorities, this provision is intended to be an incentive to them to step up their efforts. (Impediments 4,5,6,12)

Recommendations with Long-term Benefits (2019 and beyond) for Drainage System Buffer Strip and Alternative Practices Acquisition and Establishment

Statutory Changes

S5. Explore the feasibility of modifying Section 103E.305 to clearly enable county appraisers to serve as viewers.

Although not prohibited by existing drainage law, this statute may need to be modified to address the reported perspective of some county attorneys that county appraisers are not eligible to serve as viewers because of a potential conflict of interest. Before a specific statutory change can be proposed, additional consultation is needed with county officials and representatives of the Minnesota Association of Assessing Officers. (Impediment 2)

S6. Clarify Section 103E.071 County Attorney, to make it clear that drainage authorities, including counties, may hire outside legal counsel per Section 388.09, Subd. 1.

This modification would clear up a reported misconception among some county attorneys that county drainage authorities must rely only on county attorneys for legal advice on drainage law proceedings. (Impediment 3)

Funding

F2. Provide increased multipurpose drainage management program funding for water quality purposes.

The history of multipurpose drainage management program funding has included establishment of buffer strips and alternative practices but not acquisition of drainage system land rights. (Impediments 1,4,5,7,8)

Administrative Policy and Procedure Changes

P3. Develop a more efficient method to do redeterminations of benefits or funding to cover the costs of redeterminations of benefits.

This recommendation is intended to address a significant impediment to redeterminations of benefits, which is the time and cost required. A more efficient method or external funding could increase landowner willingness to support redeterminations of benefits and damages, which update drainage system cost apportionment and require the acquisition and establishment of ditch buffer strips. (Impediment 1)

P4. For a ditch system that does not have adequate cash flow capability, modify an existing or create a new loan program for buffer strip acquisition and establishment.

This recommendation provides for buffer strip acquisition and establishment financing using an external source of funds available through an existing or new loan program. For example, the current AgBMP Loan program, which some drainage authorities use to establish buffer strips, may have eligibility limitations on borrowers that could be temporarily waived. For a new loan program, there may be a need for a new appropriation or establishment of a new cooperative lending program among drainage authorities. This issue will require further investigation. (Impediment 4)

P5. Drainage authorities should consider inventorying alternative practices, such as side inlets and other infrastructure (e.g. tile outlets), that may affect the integrity and management of the system.

This recommendation addresses the need to determine which Buffer Law alternative practices might make sense for the drainage system to acquire or be cognizant of in addition to 16.5-ft. buffer strips.

Recommendation for Outreach, Information, Education

01. AMC, MAWD and BWSR, with appropriate funding and in cooperation with MASWCD and other partners, should develop a coordinated outreach effort to landowners, drainage authorities and their advisors, to inform them of the applicable buffer law provisions, drainage law provisions and procedures, and potential external financial assistance for acquisition and establishment of ditch buffer strips, as well as to provide an overall review of drainage law. The Drainage Work Group must be consulted in the development and distribution of these products.

Suggested elements to include:

- Provide training & education opportunities to disseminate information and knowledge about applicable Chapter 103E provisions, procedures and benefits of buffer strips to the drainage system.
- Inform drainage authorities and their advisors how they can determine damages for buffer strip acquisition per Section 103E.021, Subd. 6.
- Promote distribution and understanding of the BWSR document summarizing Drainage Law and Buffer Law provisions about acquisition and compensation of ditch buffer strips and alternative practices. (See Appendix A, page 16.)
- Develop a list(s) of steps necessary to use the applicable provisions of Chapter 103E, including the redetermination of benefits and damages provision, the incremental buffer strips provision, provisions pertinent to alternative practices, and the use of external sources of funding provision. This would not eliminate the need for applicable legal counsel.
- Develop a Questions and Answers document about this topic, including guiding principles for use of existing provisions of Chapter 103E.
- Clarify that “alternative measures” in drainage law are not alternative to Chapter 103E 16.5-ft. buffer strips, but rather practices in addition to the 16.5-ft. buffer strip.
- Update the 2002 “Understanding Minnesota Public Drainage Law” document.
- Investigate a potential funding source and sponsor to complete a viewers’ guidance manual.

This recommendation is intended to address the need for additional information, education, and outreach regarding authorities and responsibilities under, Drainage Law (Chapter 103E) and associated provisions of the Buffer Law (Section 103F.48) for drainage systems. In the short term, drainage authorities and their advisors need specific guidance regarding the acquisition and establishment of buffer strips. In the longer term, the goal is to develop more robust and consistent understanding and use of Drainage Law authorities and procedures. The Association of Minnesota Counties (AMC), which represents county drainage authorities, and the Minnesota Association of Watershed Districts (MAWD), which represents watershed district drainage authorities, are key participants in this recommendation. The Board of Water and Soil Resources will act to coordinate this effort and will involve other partner agencies and organizations, including the Minnesota Association of Soil and Water Conservation Districts and others. The Drainage Work Group will be informed and consulted regarding outreach product development and distribution. Designated funding is needed to fully implement this recommendation. (Impediments 2,3,8,10,10)

Runoff and Sediment Delivery Option

The Project Advisory Committee discussed a recommendation to implement the Runoff and Sediment Delivery Option for drainage system repair cost apportionment that is currently under consideration by the Drainage Work Group. While Committee members generally supported the addition of this option in Drainage Law because it could help accelerate drainage system acquisition of ditch buffer strips and side inlet controls in

accordance with Section 103E.021 Subd. 6, the consensus of the Committee was to defer to the ongoing Drainage Work Group consideration of this option.

Proposed Next Steps

This section describes actions that the Drainage Work Group and BWSR will take to implement some of these Recommendations.

Drainage Work Group

The Drainage Work Group will:

- Develop, in consultation with state agency and legislative staff, proposed legislation consistent with Recommendations S1 through S6.
- Advise BWSR and other agencies on the Administrative Policy and Procedure recommendations P1 and P2 and Outreach, Information and Education Recommendation O1.

Board of Water and Soil Resources

The Board of Water and Soil Resources will:

- Provide staff support to the Drainage Work Group.
- Convene and support an ad hoc work group with leadership from the Association of Minnesota Counties and the Minnesota Association of Watershed Districts, and other relevant partner organizations, to address Recommendation O1.
- Estimate the need for additional Buffer Cost Share funding and evaluate the allocation formula and eligibility criteria for possible modifications consistent with Recommendations F1, P1 and P2.

Evaluation

This section provides background material describing the current situation regarding the acquisition and establishment of Chapter 103E ditch buffer strips, alternative practices, and landowner compensation and potential sources of funding for the same.

Extent of Drainage System Buffer Strips

Based on the best available information, Minnesota has 19,150 miles of public drainage system ditches. This includes drainage system segments that are also designated as public waters (M.S. Chapter 103G), which total 5,310 miles, and public drainage systems that are not public waters, which total 13,840 miles. (Source: Minnesota Department of Natural Resources, 2017, personal communication.)

There is no up-to-date, accurate count of the miles of public drainage system with vegetative ditch buffer strips. However, there are estimates based on various analyses.

The 2006 “Public Drainage Ditch Buffer Study,” (MN Board of Water and Soil Resources, February 2006) concluded that approximately 60 percent of the total miles of public drainage ditches were “buffered” at that time (2005). This percentage was based on several findings. The report stated that “major federal and state conservation programs have enabled filter strip and riparian buffer practices to be established along approximately 1,787 miles of public drainage ditches.” The bulk of these buffer strips and practices were implemented through the federal Conservation Reserve Program. Another 1,560 miles of ditches were reported as having buffer strips as provided for in Section 103E.021 (Drainage Law). The report also included an estimate of 9,635 miles of public drainage ditches with “natural” buffers of perennial vegetation, which was based on a 2005 GIS assessment. Many of these 9,635 miles of drainage ditch are in north central and northeast Minnesota where land use is not row crops and where perennial vegetation exists along many historic Chapter 103E drainage systems. One item to note is that the 2006 report had estimated a total of 21,415 miles of public drainage ditches in the state, about 2,300 more miles than the current best estimate. Using the estimate estimate of 19,150 total miles of public drainage ditches, the estimated miles with buffer strips reported in 2005 is closer to 68 percent of the Chapter 103E drainage systems statewide.

Since 2007, drainage authorities have been required by Section 103E.067 to submit annual reports to BWSR enumerating the additions of buffer strips to their systems. Consequently, BWSR has been able to record gains in buffer strip miles and has determined that an additional 2,355 miles of drainage ditch buffer strips have been added under Drainage Law proceedings from 2006 through 2016. These additions would bring the statewide percentage of ditches with vegetative buffer strips to **approximately 80 percent** of the total miles.

The BuffCAT (Buffer Compliance and Tracking) inventory methodology developed by BWSR identifies the percentage of land parcels with buffer strips adjacent to or bisected by a Chapter 103E public drainage ditch. This tool indicated that approximately **68 percent** of these land parcels have their corresponding ditch segments buffered, as of November 28, 2017. This value will be updated periodically throughout 2018. Note

that this percent is based on parcels along public drainage ditches, while the 80 percent estimate is based on miles of public drainage ditches.

Impediments to Drainage System Acquisition and Establishment of Buffer Strips and Alternative Practices

The Project Advisory Committee identified the impediments that drainage authorities or landowners may face in attempting to comply with both Drainage Law and Buffer Law regarding the acquisition and establishment of, and compensation for, buffer strips and alternative practices.

The Committee identified and ranked 15 impediments, listed below, with the highest priority first and the lowest priority last. The priority ranking suggests those impediments that should be addressed first. The Recommendations on pages 6-9 are cross-referenced to these impediments as numbered.

1. Reluctance of drainage authorities to initiate proceedings to acquire buffer strips because of political, economic, and constituent pressures.
 2. Lack of available “lead” viewers to conduct redeterminations of benefits and damages.
 3. Drainage authorities and advisors lack experience with provisions of Chapter 103E (Drainage Law) to acquire and compensate buffer strips and alternative practices
 4. Drainage authority unlikely to pay for buffer strips without a Redetermination of Benefits to fairly apportion the costs.
 5. Lack of external funding for an activity perceived as having a state-wide water quality benefit.
 6. Cost of redetermining benefits and acquiring grass buffer strips vs. benefit of grass buffer strips to the drainage system.
 7. Lack of landowner interest/urgency in initiating the process.
 8. Some drainage authorities have no history of assessing the benefitting landowners.
 9. Judicial ambiguity regarding incremental acquisition of grass buffer strips under 103E.021, Subd. 6 (see Court of Appeals file A15-0782, Zimmerman vs. Sauk River Watershed District, 2-16-2016).
 10. (ranking tie) Uncertainty as to how/whether 103E.021 (or other 103E provisions) allow for use of ditch funds to pay for buffers in excess of 16.5 feet (i.e. for ditches that are also public watercourses with shoreland classification under Section 103F.48) or for alternative practices (other than side inlets).
- (ranking tie) Lack of knowledge by drainage authorities as to what “alternative practices” means.

12. The timing and allocation of funding for alternative practices to be implemented under 103E.011, Subd. 5, and the timing of drainage system repairs or other actions on the drainage system presenting the opportunity to implement such practices do not always coincide.
13. Reluctance of landowners to initiate buffer strip acquisition because of inequity involved in repair costs apportionment without updating the benefited area and benefits.
14. Perception that redetermination of benefits is expensive.
15. Impediments to replacing open ditches with tile based on the definition of improvement.

Alternative Practices on Chapter 103E Drainage Systems

Several of the Impediments in the previous section address the uncertainty on the part of drainage authorities regarding the applicability of alternative practices, as provided for in Section 103F.48, to drainage system buffer strip acquisition and establishment. Drainage Law provides for certain practices, such as side inlets, to be funded by the drainage system, and side inlets have also been determined to be an eligible alternative practice under the Buffer Law. However, there are other alternative practices eligible under the Buffer Law that may not be applicable for drainage system acquisition and establishment. Soil and Water Conservation Districts and BWSR are tasked with the responsibility to determine the eligibility of alternative practices with comparable water quality protection benefits to substitute for buffer strips under Section 103F.48. The BWSR website provides guidance on alternative practices (http://bwsr.state.mn.us/buffers/#alternative_practices). Nevertheless, there is a need for drainage authorities and their advisors to receive further clarification on this issue. Outreach, Information and Education Recommendation O.1 is intended, in part, to address this need.

Current Drainage Law and Buffer Law Provisions

This section provides brief summaries of the existing provisions in Drainage Law (Chapter 103E) and Buffer Law (Section 103F.48) for acquisition, establishment, and compensation of buffer strips and alternative practices. See Appendix A (page 16) for the BWSR document, “Public Drainage System Acquisition and Compensation of Ditch Buffer Strips and Alternative Practices Required by the Minnesota Buffer Law (August 9, 2017),” from which these summaries are taken. That document is also available on the BWSR website at: (www.bwsr.state.mn.us/drainage/Drainage_System_Acquisition_of_Buffer_Strips_%20Alt_Practices.pdf).

Minnesota Drainage Law Provisions for Buffer Strips and Alternative Practices

When Buffer Strips are required

Minnesota Statutes Section 103E.021 has two subdivisions that contain authority and requirements for the establishment of drainage ditch buffer strips. Subdivision 1, 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 damages. The drainage authority must also acquire the associated permanent right-of-way easement, which is typically acquired

before establishment of the buffer strip(s). For existing drainage systems, the types of proceedings that require the appointment of viewers include establishment, improvements, improvement of an outlet, a new lateral, redetermination of benefits and damages, or certain types of petitioned repairs that require determination of benefits and damages.

Section 103E.021, Subd. 6 provides permissive authority for 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.

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.

Paying for Buffer Strips

The cost of buffer strip establishment and easement acquisition are generally borne by the drainage system. In 2016, Drainage Law was revised to remove a potential disadvantage for landowners who establish drainage system buffer strips on their own to comply with Section 103F.48. Drainage Law, in Section 103E.315, Subd. 8(b), now requires the determination of damages for *retroactive compensation* of landowners for buffer strips or alternative practices to consider the land use prior to establishment of the buffer strips or alternative practices.

See Appendix A (page 16) for additional statutory requirements under Minnesota Drainage Law.

Minnesota Buffer Law Requirements for Ditch Buffer Strips

The Buffer Law (Minnesota Statutes Section 103F.48) requires landowners owning property adjacent to a water body identified and mapped on the Buffer Protection Map to maintain a buffer to protect the state’s water resources. Those landowners with property on public drainage systems established under Drainage Law (Chapter 103E) must maintain a 16.5-ft. minimum width continuous buffer strip as provided in Section 103E.021, Subd. 1, or an alternative practice(s) as provided in Section 103F.48, Subd. 3(b). The Buffer Law width requirement for public waters (i.e., 30-ft. minimum, 50-ft. average) applies where a public drainage ditch is also a public water with a specific shoreland classification. In addition, the buffer vegetation must be of a type that does not impede future maintenance of the ditch. The Buffer Law also references Drainage Law 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 (Section 103F.48, Subd. 10(b)). This must be done in accordance with Drainage Law.

In 2016, the Buffer Law was revised to refer to Drainage Law for measurement of ditch buffer strips. See Appendix A (page 16) for additional statutory requirements under Minnesota Buffer Law.

Funding Sources

Buffer Law Section 103F.48, Subd. 10(a) provides that a landowner or drainage authority may contact the applicable Soil and Water Conservation District (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 in Appendix A. Ditch buffer strips, side inlet controls, or other permanent erosion control and water quality improvement measures established or acquired under Drainage Law, become part of the drainage system. The permanent components of a 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 thereby to the benefited properties on record for the drainage system, in proportion to the benefits on record for those properties.

Drainage Law 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.

Appendix A, pages 20-22, contains a list of various sources of funding both internal and external to the drainage system that can be used to help finance or cost-share buffer strips or alternative practices.

Appendix A: BWSR Public Drainage System Acquisition and Compensation of Ditch Buffer Strips and Alternative Practices Required by the Minnesota Buffer Law (August 9, 2017)



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

August 9, 2017

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-ft. 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 Drainagelaw.
- 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.

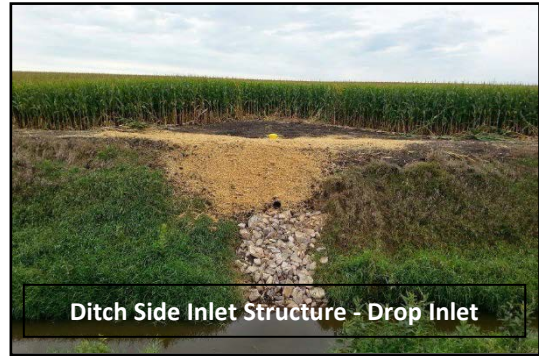
Summary: This subdivision requires public drainage systems to establish minimum 16.5 ft. wide ditch buffer strips of perennial vegetation (preferably native vegetation of a local ecotype) when viewers are appointed to determine drainage system benefits and/or damages, and to acquire the associated permanent 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.



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](http://www.mda.state.mn.us/grants/loans/agbmploan.aspx) (<http://www.mda.state.mn.us/grants/loans/agbmploan.aspx>) 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](http://www.mda.state.mn.us/grants/loans/agbmploan/localgovernment.aspx) (<http://www.mda.state.mn.us/grants/loans/agbmploan/localgovernment.aspx>) 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.

Recommendations for Accelerating Public Drainage System Acquisition and Establishment of Buffer Strips and Alternative Practices: A Report to the Legislature

WHEREAS, 2017 Minnesota Session Laws, Chapter 93, Article 1, Sec.4(h) directs the Board of Water and Soil Resources to “coordinate the stakeholder Drainage Work Group in accordance with Minnesota Statutes, section 103B.101, subdivision 13, to evaluate and make recommendations to accelerate drainage system acquisition and establishment of ditch buffer strips under Minnesota Statutes, chapter 103E, or compatible alternative practices required by Minnesota Statutes, section 103F.48;” and

WHEREAS, the legislative directive further requires that “the evaluation and recommendations must be submitted in a report to the senate and house of representatives committees with jurisdiction over agriculture and environment policy by February 1, 2018;” and

WHEREAS, BWSR staff coordinated the Drainage Work Group (DWG) to form a Project Advisory Committee to evaluate and draft recommendations consistent with the purpose of the legislative directive; and

WHEREAS, the Project Advisory Committee met in October, November and December and developed a set of consensus recommendations which were included in a draft report prepared by BWSR staff and forwarded to the DWG on December 14, 2017; and

WHEREAS, the DWG reviewed the draft report and recommendations, modified the content and adopted it as a final report and recommendations at their meeting on January 11, 2018; and

WHEREAS, the BWSR Buffers, Soils, and Drainage Committee received and reviewed the final report from the Drainage Work Group and, on January 23, 2018, recommended it be accepted by the BWSR Board and transmitted to the Legislature.

NOW THEREFORE, BE IT RESOLVED THAT, the BWSR Board hereby accepts the report, “Recommendations for *Accelerating* Public Drainage System Acquisition and Establishment of Buffer Strips and Alternative Practices,” and directs that it be transmitted to the Senate and House of Representatives agriculture and environment policy committees by February 1, 2018; and

NOW THEREFORE, BE IT FURTHER RESOLVED THAT, staff are directed to work with the Governor’s office, stakeholders and the legislature to pursue the recommendations that best accelerate drainage system acquisition and establishment of ditch buffer strips and alternative practices.

By: Gerald Van Amburg Date: 1-24-2018
Gerald Van Amburg, Chair
Board of Water and Soil Resources

Attachment: “Recommendations for *Accelerating* Drainage System Acquisition and Establishment of Buffer Strips and Alternative Practices” report