



## **Drainage Law, Buffer Law and Public Drainage Ditch Buffer Strips**

### **Drainage Work Group Discussion Paper**

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#### **Summary of Key Points**

- 1) Drainage law and buffer law buffer strips along public drainage ditches are separate requirements that include the same strips of land.
- 2) There are two ways that ditch buffer strips are established under drainage law:
  - a) drainage law requires drainage systems to establish minimum 16.5-ft. perennial buffer strips along drainage ditches when viewers are appointed (Section 103E.021, Subd. 1); and
  - b) a drainage authority can order incremental buffer strips using Section 103E.021, Subd. 6.
- 3) Buffer law requirements apply to individual landowners.
- 4) Buffer law buffer strips along public drainage ditches must be 16.5 ft. wide, except where a public ditch is also a public water with a shoreland classification, in which case the required buffer width is 30 ft. minimum and 50 ft. average. (See DNR Buffer Protection Maps.)
- 5) The buffer law includes an alternative practices provision and exemptions that drainage law does not include. Therefore, 16.5 ft. buffer strips are necessary when required under drainage law.
- 6) Drainage systems must compensate landowners for ditch buffer strip right-of-way easements when buffers are required under drainage law. Drainage authorities are authorized to assess the costs of the buffer strip right-of-way easements and planting of perennial vegetation to all of the benefited lands of the drainage system prorated based on the most recent adopted benefits.
- 7) The buffer law and a 2016 revision of Section 103E.315, Subd. 8 enable viewers and drainage authorities to consider the land use prior to establishment of buffer law buffer strips when determining damages to be paid retroactively by the drainage system for ditch buffer strips.
- 8) Authorities in Section 103F.48, Subd. 10(b) and Section 103E.011, Subd. 5 also allow a drainage system to use assessed funds, in conjunction with external sources of funding, to compensate all or part of buffer strips wider than 16.5 ft., or eligible alternative water quality practices.

#### **Public Drainage Ditch Buffer Strip Establishment Requirements**

- **Drainage Law (Chapter 103E)**
  - Ditch buffer strips have been a Chapter 103E drainage system requirement since 1977 (current Section 103E.021, Subd. 1), triggered by the appointment of viewers to determine drainage system benefits and damages. This includes establishment, improvement, redetermination of benefits and damages, and certain petitioned repairs that require appointment of viewers to determine damages for the taking of additional permanent right-of-way easements. Connecting this requirement in drainage law to the appointment of viewers enabled the determination of damages to be paid by the drainage system for buffer strip right-of-way easements to be done by viewers in conjunction with re/determination of benefits and damages.
  - Requires minimum 16.5 ft. ditch buffer strips of perennial vegetation approved by the drainage authority. No provision for alternative water quality practices or exemptions, like the buffer law.
  - Section 103E.021, Subd. 6 provides permissive authority for establishment of incremental buffer strips of perennial vegetation approved by the drainage authority, where necessary to control erosion and sedimentation, improve water quality, or maintain the efficiency of the drainage system. These incremental buffer strips are implemented using drainage law repair procedures.

- **Buffer Law (Section 103F.48)**

- Public ditch buffer strips, or alternative water quality practices, are a landowner requirement of the buffer law to protect water resources.
- Requires 16.5 ft.-wide ditch buffer strips of perennial vegetation, as provided in Section 103E.021, Subd. 1, by November 1, 2018, subject to certain exemptions or alternative water quality practice(s). However, where a public drainage ditch is also a Public Waters Inventory public water with a shoreland classification, the required buffer width is 30 ft. minimum and 50 ft. average, as identified on the DNR Buffer Protection Maps.

#### **Landowner Financial Compensation for Ditch Buffer Strips**

- **Drainage Law**

- Drainage system right-of-way easements for ditch buffer strips are purchased from the landowner by the drainage system when buffer strips are required by Section 103E.021, Subd. 1 or use of Subd. 6. Associated costs for damages and buffer strip establishment are prorated to all benefited lands in the system, based on the most recent adopted benefits determined by lot, 40-acre tract, or fraction of a lot or tract under separate ownership. Appointment of viewers to re/determine benefits and damages that triggers Section 103E.021, Subd. 1 buffer strip requirements also updates the determination of benefited lands and benefits. The viewers determine damages to be paid to landowners for buffer strip right-of-way easements according to Section 103E.315 Assessment of Drainage Benefits and Damages, Subd. 8 Extent of Damages.
- Drainage authority use of Section 103E.021, Subd. 6 does not include redetermination of benefited lands and benefits. In this case, the costs for buffer strip right-of-way easements and planting of perennial vegetation are assessed as a repair, based on the most recent determination of benefited lands and benefits, which could be outdated. Damages for buffer strip right-of-way easements are determined by the drainage authority, or viewers, according to Section 103E.315, Subd. 8.

- **Buffer Law**

- Buffer strip establishment is a landowner responsibility, except where a drainage law buffer strip already exists or a buffer law exemption applies. In accordance with Section 103E.48, Subd. 10(a) of the buffer law, “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”.
- The buffer law includes permissive authority in Section 103E.48, Subd. 10(b) for public drainage systems to use certain provisions of drainage law (Section 103E.011, Subd. 5; Section 103E.021; and Section 103E.715) “in advance or retroactively to acquire or provide compensation for all or part of the buffer strip establishment or alternative riparian water quality practices required” by the buffer law. In conjunction with buffer law revisions in 2016, Section 103E.315, Subd. 8 was revised to enable viewers and drainage authorities to consider the land use prior to buffer law buffer strip establishment when determining damages for a required public ditch buffer strip. This revision, which was recommended by the DWG, enables drainage system compensation for public ditch buffer strips when required by drainage law to be essentially the same after enactment of the buffer law as before the buffer law.
- Section 103F.48, Subd. 10(b) and Section 103E.011, Subd. 5 authorities also allow a drainage system to use assessed funds, in conjunction with external sources of funding, to compensate all or part of buffer strips wider than 16.5 ft., or eligible alternative water quality practices.