

CHAPTER II: LEGAL POWERS & RESPONSIBILITIES

Section I: Conservation District's Legal Powers

These powers, fully detailed in Conservation District Law; Public Act 463 of 1998, Section 9308 as amended, are outlined as follows:

1. Conduct surveys, investigations and research relating to the conservation of farmland and natural resources, and to publish results.
2. Conduct demonstration projects on conservation methods and measures.
3. Carry out preventive and control measures on lands owned or controlled by the state or on private lands upon obtaining consent of owner.
4. Cooperate or enter into agreements with agencies, governmental or otherwise, or any landowner in carrying out erosion control or prevention measures.
5. Own or lease property, earn income from that property, sell or lease that property, and use funds obtained to support District activities as provided by law.
6. Make available services, machinery and materials, which will assist land users to establish conservation measures on their lands, according to terms prescribed by the District.
7. Engage in plant rescue operations; plant, harvest, and sell only conservation species indicated on the list as established in Part 9304a(2) of Public Act 463 of 1998 as amended.
8. Provide technical assistance to other Conservation Districts.
9. Construct, improve, and maintain structures and measures necessary to carry out operations authorized in the Act.
10. Develop comprehensive plans for conservation of farmland and natural resources and for control and prevention of soil erosion.
11. Takeover by purchase, lease or otherwise, to administer any farmland and natural resource conservation project located in the District, which has been established by any agency of state or federal government; or to manage as agent of any agency of state or federal government any farmland and natural resource conservation project within the District, including acquisition, construction, operation and administration.
12. Accept donations, gifts, monetary contributions, services materials or otherwise from any state, federal or other source to use or expend in carrying out District operations.
13. Sue and be sued in the name of the District; have perpetual succession; have a seal that is judicially noticed; make and execute contracts and other instruments to exercise powers; and make, amend and repeal rules and regulations to put into effect its purposes and powers.
14. Borrow money for facilities or equipment for conservation purposes and pledge the assets of the District as collateral against loans. Money borrowed is the sole obligation of the District.
15. Require contributions in money, services, and materials or otherwise for extending benefits provided under the Act to private landowners, and may require landowners to enter into and perform agreements or covenants as to the permanent use of the lands that will tend to prevent or control erosion.
16. Act as compliance assistance agent for other federal, state, and county laws.
17. Act as the enforcing agency for a county, if designated under Section 9105 of Public Act 451 of 1994 as amended.

Section II: Conservation Districts' Responsibilities to Maintain its Legal Status as an Entity of Government

Section 9307 of Conservation District Law; Public Act 463 of 1998, as amended, fully details the responsibilities, which are outlined as follows:

1. Establish a fiscal year. This is done by Board action and can be any twelve month period. The fiscal year can be changed at any time by subsequent board action.
2. Hold an annual meeting of all District residents of legal voting age; notice of annual meeting must be published in the official paper of record for the District at least 45 days prior to the date of the event.
3. Hold an election of directors at the annual meeting; term of office shall be four (4) years. Absentee ballots shall be provided to residents unable to attend the annual meeting at any time after publication of, and prior to, the meeting date.
4. Fill board of director vacancies by appointment until next annual meeting.
5. Execute surety bonds for officers and employees entrusted with funds and equipment.
6. Keep full and accurate records of all proceedings.
7. Provide an annual audit, or a financial review as specified in the Operations Grant, of the accounts of receipts and disbursements. For further information regarding District financial audits, please see the Michigan Conservation District Uniform Accounting Procedures Manual.
8. Provide copies of all proceedings, contracts, copies of ordinances, rules, regulations, orders, etc. to the Michigan Department of Agriculture, upon request.

Note: As a unit of government, Conservation Districts must comply with all federal and state laws and rules governing the operation of a governmental entity, such as:

- The Open Meetings Act (Public Act 267 of 1976, as amended)
- Freedom of Information Act (Public Act 442 of 1976, as amended)
- Civil Rights Acts (Public Act 220 and 453 of 1964, as amended)

For more information on these Acts, refer to *Appendix B*.

Section III: Other Legal Responsibilities of a Conservation District

Because Conservation Districts are recognized for their expertise in areas dealing with soil, water and related resources, they have been written into various state laws and given a role to play in the operation of those laws. Your District office should have a copy of the full text of these laws on hand for reference. Below is a brief description of Conservation District responsibilities concerning each of these laws:

Soil Erosion and Sedimentation Control Act, Section 9105, Public Act 451 of 1994 The Michigan Compiled Environmental Code (formerly Public Act 347 of 1972).

This Act provides for the control of soil erosion and to protect the waters of the state from sedimentation. This Act pertains to earth changes within 500 feet of a lake or stream or which disturbs one or more acres of land. The practices of forestry, mining, or tilling and harvesting of crops are exempt from this law.

Section 9105 provides various means for Conservation District involvement. (Note: "the department" in Section 9105 refers to the Michigan Department of Environmental Quality):

1. The Department of Agriculture, with the assistance of the Conservation Districts and in consultation with appropriate state and local agencies, shall prepare and submit to the department for the department's approval a unified statewide soil erosion and sedimentation control program.
2. The county board of commissioners, by resolution, shall designate a county agency or a Conservation District upon the concurrence of the Conservation District, as the county enforcing agency responsible for administration and enforcement in the name of the county. The resolution may set forth fees for inspections, plan reviews, and permits and may set forth other matters relating to the administration and enforcement of this part and the rules.
3. A city, village, or charter township by ordinance may provide for soil erosion and sedimentation control on public and private land uses within its boundaries, except that a charter township ordinance shall not be applicable within a village that has in effect an ordinance providing soil erosion and sedimentation control. The city, village, or charter township may consult with a Conservation District for assistance or advice in the preparation of the ordinance.
4. A city, village, or charter township ordinance for soil and sedimentation control proposed to be adopted shall be submitted to the department for approval before adoption. The department shall forward a copy to the appropriate Conservation District for review and comment.
5. An authorized public agency or a county or local enforcing agency may enter into an agreement with a Conservation District for assistance and advice in overseeing and reviewing compliance with adequate soil erosion and sedimentation control procedures and in reviewing existing or proposed land uses, land use plans, or site plans with regard to technical matters pertaining to soil erosion and sedimentation control.
6. In addition to, or in absence of, such agreements, Conservation Districts may perform periodic reviews and evaluations of the agency's operation procedures pursuant to standards and specifications developed in cooperation with the respective Districts and as approved by the department. Such reviews and evaluations shall be submitted to the administering agency of the department for the appropriate action.
7. A state, local, or county agency may apply to the department for designation as an authorized public agency by submitting to the department the soil erosion and sedimentation control procedures governing all land uses normally undertaken by the agency. If the applicant is a local or county agency, the department shall submit the procedures to the appropriate Conservation District for review, and the Conservation District shall submit its comments on the procedures to the Michigan Department of Agriculture (MDA) within 60 days.

It is a good practice to review Soil Erosion and Sedimentation Control permits; however, many Conservation Districts do not. Where reviews are currently completed, the procedures for review vary widely. When in doubt, the local or county enforcing agent should be consulted for review procedures.

Inland Lakes and Stream Act, Part 301, Public Act 451 of 1994 (formerly known as Public Act 346 of 1972).

This Act regulates inland lakes and streams and protects riparian rights and public interest in inland lakes and streams. Generally, Part 301 permits are required for dredge or fill operations or changes that interfere with the natural flow of an inland lake or stream. Numerous exceptions exist under the law. Questions regarding the necessity of a 301 permit should be directed to the Department of Environmental Quality, Geological and Land Management Division. Under Part 301, Conservation Districts:

1. Are allowed 20 days from submission of the application to review permit.
2. Can submit changes in conservation practices or inclusion of them if omitted in application.
3. May submit a written request to Department of Environmental Quality, Geological and Land Management Division for a public meeting to review the application. The purpose of the meeting would be to recommend changes in the application to the landowner and the Department of Natural Resources.

The Conservation District's role is to comment on the permit application, but no action need be taken. Districts should record for the minutes that the notice has been reviewed and filed or action taken. Six months is long enough to keep this on file.

Sand Dune Protection and Management Act, Part 353, Public Act 451 of 1994 (Formerly known as Public Act 222 of 1976).

This Act provides for study, protection, management, and reclamation of Great Lakes sand dunes. This Act affects Conservation Districts in that:

- Part 353 requires that all applications for permitted uses in a designated Critical Dune Area include in writing: *"assurances that the cutting and removing of trees and other vegetation will be performed according to the instructions or plans of the local soil conservation district."*
- Local Conservation Districts shall receive a notice of an application for permits for uses in critical dune areas. The notice shall state that unless a written request is filed with the local unit of government within 20 days after notice is mailed, the local unit of government may grant the application without public hearing.
- After consulting with the local Conservation District, a local unit of government that has one (1) or more critical dune areas within its jurisdiction may formulate a zoning ordinance pursuant to the zoning acts noted in Sec. 35312(1)(a-c) of Part 353.
- A zoning ordinance shall require that all applications for permits for the use of a critical dune area include in writing, among other things, assurances that the cutting and removing of trees and other vegetation will be performed according to the instructions or plans of the local Conservation District.
- Unless a variance is granted, a zoning ordinance shall not permit the following use, among others, in a critical dune area: A structure and access to the structure on a slope within a critical dune area that has a slope that measures from 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with plans prepared for the site by a registered professional architect or a licensed professional engineer and the plans provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water. Prior to approval of the plan, the planning commission shall consult with the local Conservation District.
- Appropriations to the Department of Agriculture shall be sufficient to assure adequate funding for the Conservation Districts to fulfill their responsibilities under this part.

The Conservation District's primary role is to provide a Vegetation Removal Assurance report for all projects requiring a permit under the Sand Dune Protection and Management Act. Conservation District staff provide a technical review of the proposed project to ensure that the removal of vegetation will not have a negative impact on the overall site stability or adversely affect unique habitat or threatened and endangered species, and provide recommendations to replace the vegetation that is removed. A secondary role is to comment on the permit application, although no action need be taken. Districts should record for the minutes that the notice has been reviewed and filed or action taken. Vegetation Removal Assurance Reports and public notices of permit applications should be kept on file in the Conservation District office for a minimum of 2 years or until the project is complete.

In order to develop and maintain a consistent statewide program for the protection of critical dunes, the Michigan Conservation District Critical Dune Partnership was formed in the summer of 2007. The Partnership Agreement is a non-regulatory, non-contractual statement of intent, support and willingness of a Conservation District to participate in the Partnership and follow certain guidelines for providing Vegetation Removal Assurances in designated critical dune areas as developed by the Partnership.

The Great Lakes Submerged Lands Act and the Ordinary High-Water Mark, Part 325, Public Act 451 of 1994 (formerly Public Act 247 of 1955, as amended).

This Act authorizes the Department of Environmental Quality to grant, convey, or leave unconveyed lake bottomlands and unconveyed lands in the Great Lakes belonging to the State of Michigan. The Act also provides rules for the use of public and private submerged lands and establishes an ordinary high-water mark for the Great Lakes. Under this Act, a permit and/or lease, deed or agreement is required from the Department of Environmental Quality for:

1. Dredging and/or filling bottomland below the ordinary high-water mark.
2. Placement or alteration of a structure on bottomland below the ordinary high-water mark (including permanent docks and boathouse).
3. Development, construction, and operation of a marina.
4. Interference with the natural flow of Great Lakes coastal waters.
5. Construction, alteration or connection of any artificial waterway (i.e., upland channel, lagoon, artificial harbor, etc.) extending landward off the ordinary high-water mark.
6. Any artificially-made lands below the ordinary high-water mark fill.

Not all Conservation Districts review Act 325 applications. For those that do a review, the District has 20 days from date of mailing to respond with their concerns about the application. The Conservation District's role is to comment on the permit application, but no action need be taken. Districts should record for the minutes that the notice has been reviewed and filed or any actions taken. Six months is long enough to keep on file.

Farmland and Open Space Preservation Act, Part 361, Public Act 451 of 1994, as amended (formerly Public Act 116 of 1974 - still commonly referred to as PA 116).

This Act provides for farmland development rights agreements and open space development rights agreements. Under this law, Conservation Districts are asked to review Part 361 applications. The District has 30 days to review, comment, and make recommendations to the local governing body with which the application is filed. While the District does not have approval or rejection power, the District's review is very instrumental in an application approval or denial, as a District is often the only review body that has local knowledge and experience in agriculture.

In addition, part of the application for Purchase of Development Rights (PDR) requires that the applicant submit to the state pertinent information obtained from the local Conservation District. This portion of the application asks the Conservation District to verify the number and percentage of acres nominated to PDR that are devoted to agriculture, the number and percentage of acres considered prime and/or unique farmland, and whether the nominated land has any other unique characteristics (i.e. centennial farm, stream or lake frontage, cultural historic site, significant wetlands, etc.).

The following are some suggestions for handling Part 361 applications:

1. All actions of the District on applications should be recorded in the minutes in the form of motions. (A motion may cover individual applications or one motion can apply to the whole group presented.)
2. Applications should be listed in the minutes by: Owner, Location (township and section number), and Number of acres. This will be helpful when questions arise as to what action was taken on a particular parcel of land. Note: Some Districts are numbering each application consecutively by year (e.g. 86-217).
3. A listing of applications by owner and location on the agenda is helpful to directors who may want to look at or ask questions about a parcel prior to the board meeting.
4. Verification forms should be sent to the Michigan Department of Agriculture, Environmental Stewardship Division.
5. A letter of approval or denial for Part 361 applications should be sent to the county or township clerk and a copy to the landowner.

For an overview of the Farmland and Open Spaces act along with a sample 361 letter of approval, please see *Appendix B*.

Section IV: Conservation District Name Change Petition

Section 9305(2) of the Conservation District Law, Public Act 463 of 1998 states: "A Conservation District's board may petition the department (Michigan Department of Agriculture) to change the District's name. The department shall provide the petition form. The department shall give due consideration to the petition and, if the request is determined to be needed and practical, shall approve the change in name and request the secretary of state to enter the new name in the secretary of state's official records of the District."

The following is the format for Conservation Districts to use if requesting a name change of their District to the Michigan Department of Agriculture:

Date:

Michigan Department of Agriculture
Environmental Stewardship Division
P.O. Box 30017
Lansing, Michigan 48909

To whom it may concern:

Pursuant to Public Act 463 of 1998, we the directors of the (name) Conservation District, hereby petition the Michigan Department of Agriculture to change the name of the (name) Conservation District to (new name) Conservation District. The reasons for this change of name petitions are: (list reasons here) (current name) Conservation District.

Signed: _____ (Chairman)
_____ (Secretary)
_____ (Director)
_____ (Director)
_____ (Director)

Section V: Conservation District Boundaries Revision

In the event that a District is no longer able to operate sufficiently for whatever reason, the termination of its perpetual succession may only be carried out as provided by Conservation District Law (Sec. 9312. of Public Act 463 of 1998).

Conservation District Law provides the option of the consolidation of two or more Districts only if a Conservation District petitions the department for a revision in the boundaries of one or more Conservation Districts.

In the event that a District petitions the department for a revision of its boundaries, the department shall not take action on the petition unless it is signed by a majority of the directors **of each** of the Districts involved in the proposed revision.

Within 30 days after receipt of a proper petition, the department shall cause notice of hearing to be given to the residents in the area or areas affected by the proposed revision as identified by the directors of a District and within 60 days hold a hearing to receive comments relative to the proposed change.

The department shall determine if the proposed revision as petitioned for is desirable. If it finds in the affirmative, the department shall issue an order that states that the boundaries of the Districts are to be moved, merged, consolidated, or separated at a date specified in the order and includes the name and the revision of the boundaries of the revised District or Districts.

For complete information regarding the consolidation of Conservation Districts, please refer to Conservation District Law in *Appendix A*.

Section VI: Conservation District Liability

The Conservation District Law under powers of Districts and directors, Section 9308 of Public Act 463 of 1998, paragraph (l) states: "To sue and be sued in the name of the District." This statement in the District's enabling legislation protects District directors from legal claims arising from their activities as District directors. The Conservation District is the liable party.

Conservation Districts are afforded protection under Public Act 170 of 1964, which provides immunity in all cases where a government agent is engaged in the exercise and discharge of a governmental function. There are exceptions to the law where Conservation Districts are liable in cases involving:

1. Breach of contract.
2. Liability for bodily injury and property damage resulting from negligent operation of a government-owned vehicle by any director, agent, or employee of a governmental agency.
3. Liability for bodily injury or property damage resulting from a dangerous or defective condition of a public building.
4. Liability from which the District has charged for its services.
5. As local units of government, Conservation Districts may be entitled to the services of the Michigan Attorney General's office. All requests to the Attorney General must be channeled first to the Director of the Environmental Stewardship Division of the Michigan Department of Agriculture. There are also three main non-profit organizations that assist Districts in determining their liability: the Michigan Association of Conservation Districts, the Michigan Association of Conservation District Employees, and the National Association of Conservation Districts.

Section VII: Conservation District Insurance Packages

Every effort should be made to minimize the potential for injury, damage or loss in all aspects of Conservation District operation; however, accidents occur and law suits are a potential. Conservation Districts, like any other business or organization, should recognize this risk, and plan accordingly. Each Conservation District should review their insurance coverage on an annual basis to consider increased or decreased risk associated with current activities and projects.

Insurance coverage can be obtained individually by a Conservation District, or through a group plan. The Michigan Association of Conservation Districts has a group insurance plan that is available to all Michigan Conservation Districts. The group rates provide Districts with significant savings compared to individual policies. Included here is an overview of the insurance coverage categories that Conservation Districts should consider during their annual review of insurance coverage needs.

Base Level Insurance Package:

- Business Personal Property. This includes office equipment, furniture, supplies, etc. This also includes the Michigan Insurance Company Package (MIC Pak) endorsement. MIC Pak contains 35 different coverage categories. Please contact MACD for details regarding the MIC Pak endorsement.
- Equipment breakdown. This includes computer, electrical, mechanical, refrigeration heating and cooling systems. This coverage is included in any building coverage provided. The limit for this coverage is the building and or contents limit.
- Contractors Equipment. This includes fire and theft.
- Employee Dishonesty. This includes embezzlement, and employee theft.
- General Liability. This includes coverage for property damage and bodily injury to third parties.
- Non-owned auto liability. This coverage insures the Conservation District if an employee who uses their own vehicle in the course of work has an accident that results in a lawsuit brought against the District.
- Umbrella Policy. This provides coverage liability over and above your other policies.

The above package is available through the MACD group insurance plan. If a District is not interested in all of the above coverage categories, the District may purchase specific coverage categories separately. However, if the District chooses to purchase individual coverage categories, the District would not be included in the MACD group insurance plan and therefore individual coverage may/will be more expensive. Additional coverage levels can be added to the above components. *There is also additional coverage available for buildings for Districts that own their office space.*

Other Insurance Coverage Options:

- Auto Policy. This coverage includes owned auto liability.
- Workers' Compensation Policy. This includes the employer's liability.
- Building Insurance. The building is covered under special form, which means all risk except what is excluded. A few examples of exclusions include:
 - Ordinance or law
 - Earth movement
 - Governmental actions
 - Nuclear Hazard
 - War & military actions
 - Certain water damage (surface water)
 - Wear & tear
 - Settling, cracking, shrinking, expansion Nesting or infestation
 - Dishonest or criminal act by the insured, employees, directors, etc.

The policy has a complete list of the exclusions, including:

- Directors & Officers Liability coverage (D&O). Coverage covers decisions made by the District Board where a third party suffers a financial loss.
- Employment Practices Liability coverage (EPLI). EPLI covers wrongful termination, sexual harassment, mental anguish, financial loss and violation of statute stemming from District actions as an employer.

The above coverage options *are not included in the General Liability package*.

For more information regarding the MACD group insurance plan and coverage options, please contact MACD at (517) 324-4421.

Section VIII: Deposit of Conservation District Funds

Conservation Districts as political subdivisions (local units of government) of this state are allowed to deposit funds in all forms of saving plans, including regular passbook savings offered by banks which are insured by the Federal Deposit Insurance Corporation; in bonds or other direct obligations of the United States, or an agency or instrumentality of the United States; in savings and loan associations which are members of the Federal Savings and Loan Corporation; or in credit unions which are insured by the National Credit Union Administration (Public Act 500 of 1978). (See *Appendix C* for INVESTMENT OF SURPLUS FUNDS OF POLITICAL SUBDIVISIONS Act 20 of 1943)