

CHAPTER 8400
BOARD OF WATER AND SOIL RESOURCES
COST-SHARE PROGRAM

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8400.3000 AUTHORITY.

Minnesota Statutes, sections 84.95, 103A 209, and 103F 501 to 103F 531, authorize the state board, in consultation with districts, private groups, and state and federal agencies, to implement a program to (a) acquire permanent easements on land containing type 1, 2, 3, or 6 wetlands, (b) to retire certain marginal agricultural land from agricultural crop production or pasturing and to reestablish perennial cover on that land; and (c) to enhance and protect other private lands. Parts 8400 3000 to 8400 3930 provide procedures and criteria to be followed by the state board and district boards in implementing Minnesota Statutes, sections 103F 501 to 103F 531.

Statutory Authority: *MS s 103F531*

History: *19 SR 550*

8400.3030 DEFINITIONS.

Subpart 1 **Scope.** The definitions in this part apply to parts 8400 3000 to 8400 3930.

Subp 2 **Agricultural crop production.** "Agricultural crop production" means an agricultural activity

A including but not limited to tillage, planting, or harvesting operations, and

B devoted to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops

Subp 3a **Agricultural land.** "Agricultural land" means land devoted for use as pasture or hayland for domestic livestock or dairy animals, or to agricultural crop production, or to growing nursery stocks, or for use as animal feedlots, and may include contiguous land associated with these uses

Subp 4 **Annual plan.** "Annual plan" means a plan prepared by the district under Minnesota Statutes, section 103C 331, subdivision 11, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to periodic change. The current version is available at the district office and state board office and is incorporated by reference.

Subp 5 **Approved practice.** "Approved practice" means a soil and water conservation practice or wildlife habitat enhancement that may be established on an easement area and is described in the easement program practice specifications.

Subp 6 **Authorized farm corporation.** "Authorized farm corporation" has the meaning given in Minnesota Statutes, section 500 24, subdivision 2.

Subp. 6a **Authorized farm partnership.** "Authorized farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp 8 [Repealed, 19 SR 550]

Subp 9 **Conservation agreement.** "Conservation agreement" means a written contract stating the terms and conditions for conveying a conservation easement by the landowner to the state

Subp 10. **Conservation easement.** "Conservation easement" has the meaning given for "conservation easement" in Minnesota Statutes, section 84C 01, paragraph (1).

Subp 10a **Conservation easement handbook.** "Conservation easement handbook" means the current edition of the state board's publication containing detailed procedures and guidelines for implementing the conservation easement programs administered by the state board This publication is subject to periodic change, is available at the state board office and at district offices, and is incorporated herein by reference

Subp 10b **Conservation easement program.** "Conservation easement program" refers to both the RIM reserve program, as defined in subpart 42, and the permanent wetlands preserve program, as defined in subpart 36a

Subp 11 **Conservation plan.** "Conservation plan" means a written description and map of the approved practices that must be applied to or that already exist on the easement area

Subp 11a **Cost-shared practice.** "Cost-shared practice" means an approved practice which qualifies for cost-sharing through a conservation easement program administered by the state board

Subp. 12 [Repealed, 19 SR 550]

Subp 13 [Repealed, 19 SR 550]

Subp. 14 **District.** "District" means a local soil and water conservation district

Subp 15 **District board.** "District board" means the board of supervisors of a soil and water conservation district

Subp 16 [Repealed, 19 SR 550]

Subp. 17 **District technical representative.** "District technical representative" means a district employee or other designee assigned by the district who has expertise in the design and application of approved practices

Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to render the land suitable for agricultural crop production The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources

Subp 17b **Easement program practice specifications.** "Easement program practice specifications" means the detailed descriptions of the approved practices that are allowed on lands enrolled in the conservation easement programs This information is contained in the current edition of the conservation easement handbook, a publication of the state board that is defined in subpart 10a

Subp. 18 [Repealed, 19 SR 550]

Subp 19 **Family farm.** "Family farm" has the meaning given in Minnesota Statutes, section 500 24, subdivision 2

Subp 20 **Family farm corporation.** "Family farm corporation" has the meaning given in Minnesota Statutes, section 500 24, subdivision 2

Subp 20a **Family farm partnership.** "Family farm partnership" has the meaning given in Minnesota Statutes, section 500 24, subdivision 2

Subp 20b **Farmed wetland.** "Farmed wetland" means a wetland, as defined in subpart 48, that has been devoted to agricultural crop production, as defined in subpart 2, since December 23, 1985

Subp 21 [Repealed, 19 SR 550]

Subp 22. [Repealed, 19 SR 550]

Subp 23 **Food plot.** "Food plot" means an area established for the purpose of providing food for wildlife

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Subp 24 **Highway windbreak.** "Highway windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway

Subp 25 **Hydric soils.** "Hydric soils" means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. A current list of hydric soils is available at the state board office and the district office, is subject to periodic change, and is incorporated herein by reference

Subp 26 **Hydrophytic vegetation.** "Hydrophytic vegetation" means macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content

Subp 27 **Individual.** "Individual" means a person or legal entity, whether or not a resident of Minnesota.

Subp 28 **Inherently unproductive.** "Inherently unproductive" means that the soil properties of available water capacity, bulk density, and pH in the uppermost 100 centimeters (39 inches) of a soil are present so that an unfavorable rooting environment exists for agricultural crop production

Subp 29 **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation easement program. These areas must have been harvested by mechanical methods at least two years during the five years prior to applying for enrollment in a conservation easement program

Subp 30 **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation easement program. These areas must have been harvested by grazing at least two years during the five years prior to applying for enrollment in a conservation easement program

Subp 31 **Landowner.** "Landowner" means an individual, family farm, family farm partnership, authorized farm partnership, family farm corporation, authorized farm corporation, estate, or testamentary trust, who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota

Subp 31a **Land with crop history.** "Land with crop history" means land that has produced horticultural, row, or close grown crops or that has been enrolled at a cropland rate in a federal or state conservation program at least two of the five years prior to applying for enrollment in a conservation easement program, or land that meets the definition of introduced hayland in subpart 29, or land that meets the definition of introduced pasture in subpart 30. For the purposes of parts 8400.3000 to 8400.3930, land with crop history includes acres devoted to "set aside" or "conserving use" for the United States Department of Agriculture programs

Subp 32 **Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29

Subp 33 **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means agricultural land that is (1) composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land capability classification system of the United States Department of Agriculture; or (2) similar to land described under clause (1) and identified under a land classification system selected by the state board that is composed of soils that are inherently unproductive, as defined in subpart 28, for agricultural crop production or likely to cause significant potential environmental impact, as defined in subpart 44.

If the state selects a land classification system as provided by clause (2), the state board will provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts, upon state board approval, may change the list as necessary to reflect local soil characteristics. A current list is available at the state board office and at district offices, is subject to periodic change, and is incorporated herein by reference

Subp 33a **Pasture.** "Pasture" means land used for grazing by domestic livestock and land which is not considered land with crop history as defined in subpart 31a

Subp 33b **Pastured hillside.** "Pastured hillside" means land on a hillside that is used for pasture as defined in subpart 33a or used for introduced pasture as defined in subpart 30.

Subp 34 [Repealed, 19 SR 550]

Subp 35 [Repealed, 19 SR 550]

Subp. 36 **Perennial cover.** "Perennial cover" means the water area created by restoring a drained wetland or the perennial vegetation established under a conservation easement program, or the perennial vegetation or the water or wetland areas that already exist on the easement area

Subp 36a **Permanent wetlands preserve program.** "Permanent wetlands preserve program" means the program established under Minnesota Statutes, section 103F 516

Subp 37. [Repealed, 19 SR 550]

Subp 38 [Repealed, 19 SR 550]

Subp 39 [Repealed, 19 SR 550]

Subp 39a. **Public waters.** "Public waters" means waters as defined in Minnesota Statutes, section 103G 005, subdivision 15, and inventoried under Minnesota Statutes, section 103G 201 A copy of the inventory is available in the district office

Subp 39b **Public waters wetlands.** "Public waters wetlands" means wetlands as defined in Minnesota Statutes, section 103G 005, subdivision 18

Subp 39c **Replacement wetland.** "Replacement wetland" means a wetland that has been replaced under Minnesota Statutes, section 103G 2242

Subp 40 **Restorable drained wetland.** "Restorable drained wetland" means a drained wetland as defined in subpart 17a that is practical to restore and for which the state board is able to secure the necessary land rights of adjacent landowners

Subp. 41 [Repealed, 19 SR 550]

Subp 42 **RIM reserve program.** "RIM reserve program" means the program established in Minnesota Statutes, sections 103F 515 and 103F 525

Subp 42a **Riparian land.** "Riparian land" means land adjacent to public waters, drainage systems, wetlands, or locally designated priority waters identified in a comprehensive local water plan, as defined in Minnesota Statutes, section 103B 3363, subdivision 3

Subp 43 **Screening committee.** "Screening committee" means a group established by the district board to assist in implementing the conservation easement programs. The screening committee is chaired by a district board member and is composed of representatives of private, state, and local organizations or clubs, and local, state, and federal agencies with an interest in the conservation easement programs.

Subp 43a. **Sensitive groundwater area.** "Sensitive groundwater area" means a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near the land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the state board. Wellhead protection areas and land that is adjacent and draining to a sinkhole may be designated as a sensitive groundwater area

Subp 44 **Significant potential environmental impact.** "Significant potential environmental impact" means that the use of agricultural land may result in surface water or groundwater quality degradation or deposition of eroded sediments on property of adjacent landowners due to the soil properties of erosion potential, permeability, runoff potential, slope stability, or depth to water table.

Subp 45. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to land for the purposes of controlling soil erosion, sediment, agricultural waste, or other water pollutants

Subp 46. **Soil mapping unit.** "Soil mapping unit" means a unit or type of soil or combination of soils shown on a soil survey map

Subp 47a **State board.** "State board" means the Board of Water and Soil Resources

Subp 48. **Wetland.** "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration suffi-

cient to support, or that periodically does support, a predominance of hydrophytic vegetation

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

The state board must annually allocate funds available to implement the conservation easement programs based on the following criteria

A the number or cost of applications accepted for enrollment in the conservation easement programs administered by the state board, or conservation easements conveyed to the state board within each district,

B the need for soil erosion or sediment control, protection or improvement of water quality, or improvement of fish and wildlife habitat, within a specified geographical area as determined by the state board, or as identified in the annual plan of each district or in any comprehensive local water plans prepared pursuant to Minnesota Statutes, section 103B 231, 103B 255, 103B 311, 103D 401, or 103D 405,

C the cumulative degree of soil erosion or sediment control, protection or improvement of water quality, or improvement of fish and wildlife habitat likely to be accomplished by the enrollment of selected easement areas, and

D the expressed interest and readiness of each district board, as well as cooperating groups and agencies, to implement the conservation easement programs

The allocated funds may be increased, decreased, or shifted by the state board as necessary to maximize the use of available funds among districts. In selecting land for enrollment in the RIM reserve program, highest priority must be given to permanent conservation easements pursuant to Minnesota Statutes, section 103F 515, subdivision 2, paragraph (f)

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3100 [Repealed, 19 SR 550]

8400.3110 DURATION OF CONSERVATION EASEMENTS.

For purposes of the RIM reserve program, a conservation easement may be permanent or of limited duration. A conservation easement acquired on restorable drained wetlands, replacement wetlands, or land for highway windbreak purposes, must be of permanent duration. A conservation easement of limited duration may be acquired on other eligible land within a district if it is for a period not less than 20 years and only if the state board has approved enrollment of limited duration conservation easements in that district.

All permanent wetlands preserve program conservation easements must be of permanent duration.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3130 LOCAL PRIORITY SETTING.

Annually, the participating district board shall call at least one screening committee meeting. The screening committee must establish priorities within the district. Establishment of priorities must be based on the following criteria:

A the priorities established by the state board,

B the location of high priority soil erosion or water quality problem areas in the district as outlined in the district comprehensive and annual plans and any comprehensive local water plans prepared pursuant to Minnesota Statutes, section 103B 231, 103B 255, 103B 311, 103D 401, or 103D 405,

C the potential for fish and wildlife production, soil erosion reduction, and water quality protection,

D recommendations from technical agricultural and natural resource experts familiar with the district,

E the established priorities of the agencies and organizations represented on the screening committee,

F maximizing the benefits of current programs administered by the United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and Minnesota Department of Natural Resources, and

G. the amount of conservation easement program funds available

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3160 CRITERIA FOR ELIGIBLE LAND.

Subpart 1 **RIM reserve program.** Land eligible for the RIM reserve program must be at least one of the following

A marginal agricultural land,

B agricultural land adjacent to marginal agricultural land that is being enrolled if enrollment of the adjacent agricultural land is beneficial to resource protection or necessary for efficient recording of the land description and if at least 50 percent of the total proposed acreage is marginal agricultural land,

C a restorable drained wetland on agricultural land,

D agricultural land adjacent to a restorable drained wetland that is being enrolled if enrollment of the adjacent land is beneficial to resource protection or necessary for efficient recording of the land description, and no more than four acres of adjacent land with crop history nor more than one acre of adjacent land without crop history for each acre of restored wetland is enrolled;

E agricultural land that with a highway windbreak would be beneficial to resource protection,

F agricultural land in a sensitive groundwater area;

G agricultural riparian land,

H a woodlot on agricultural land,

I an abandoned building site on agricultural land,

J a pastured hillside,

K a replacement wetland on agricultural land, or

L agricultural land adjacent to a replacement wetland that is being enrolled if enrollment of the adjacent agricultural land is beneficial to resource protection or necessary for efficient recording of the land description, and no more than one acre of adjacent agricultural land for each acre of replacement wetland is enrolled

Subp. 2 **Minimum acreage requirements; RIM reserve program.** A district board may limit the enrollment of eligible land with crop history adjacent to a restorable drained wetland to less than the maximum allowable four acres for each acre of restored wetland. A district board may waive the minimum acreage requirement for a landowner

A who owns part of a restorable drained wetland that will be restored, in whole or part, upon enrollment in the RIM reserve program through the cooperation of adjacent owners of the restorable drained wetland; or

B whose enrollment in the RIM reserve program of a portion of an eligible replacement wetland is dependent upon the collective enrollment of additional adjacent owners of the replacement wetland

In addition, land eligible for the RIM reserve program must have all four characteristics listed in subitems (1) to (4). Eligible land must be

(1) land with crop history, except restorable drained wetlands, agricultural land adjacent to restorable drained wetlands, riparian lands, woodlots, abandoned building sites, or pastured hillsides,

(2) owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application,

(3) at least five acres in size, except for a highway windbreak, or a woodlot or abandoned building site, or must be a whole field as defined by the Agricultural Stabilization and Conservation Service, and

(4) land not enrolled under another federal or state government program whose purpose either conflicts with or substantially duplicates that of the RIM reserve program. However, any lands enrolled under another federal or state government program may become eligible for the RIM reserve program if they are released prior to conveyance of the conservation easement.

If the eligible land is a replacement wetland, the land is not eligible for enrollment into the RIM reserve program until one year after completion of the replacement. In addition, the applicant must be the same landowner who drained or filled the wetland that was subject to the Wetland Conservation Act and which was subsequently replaced on the applicant's property following a replacement plan that was approved by the responsible local unit of government.

Subp 3. Permanent wetlands preserve program.

A Land eligible for the permanent wetlands preserve program must be

(1) land with a wetland that has been identified as a type 1, 2, 3, or 6 wetland as defined in United States Fish and Wildlife Service Circular No 39 (1971 edition), or

(2) land with a wetland that, as of July 1, 1991, was subject to an easement agreement under Minnesota Statutes, section 103F 601, subdivision 1, and

(3) in an unincorporated area, at least five acres in size or a whole field as defined by the Agricultural Stabilization and Conservation Service; or

(4) in an incorporated area, at least 2-1/2 acres in size or a whole tax parcel as identified by the local assessor

B. In addition, land eligible for the permanent wetlands preserve program must be all of the following:

(1) land that is not a site used to mitigate a wetland loss,

(2) land that has no more than four adjacent upland acres enrolled for each acre of wetland enrolled,

(3) land owned by the landowner or a parent or other blood relative of the landowner, for at least one year before the date of application, and

(4) land not enrolled under another federal or state government program whose purpose either conflicts with or substantially duplicates that of the permanent wetland preserves program, unless that land was subject to an easement agreement under Minnesota Statutes, section 103F 601, subdivision 1, as of July 1, 1991. However, any lands enrolled under another federal or state government program may become eligible for the permanent wetland preserves program if they are released prior to conveyance of the conservation easement.

Subp 4. Minimum acreage requirements; permanent wetlands preserve program.

A district board may limit the enrollment of upland adjacent to an eligible wetland to less than the maximum allowable four acres of adjacent upland for each acre of eligible wetland. A district board may waive the minimum acreage requirement for a landowner whose enrollment in the permanent wetlands preserve program of a portion of the eligible wetland is dependent upon the collective enrollment of additional adjacent owners of the eligible wetland.

Statutory Authority: *MS s 103F.531*

History: *19 SR 550*

8400.3200 MAXIMUM ENROLLMENT.

The total land for which a landowner may receive compensation from the RIM reserve program may not exceed 20 percent of the average farm size in the county where the land is being enrolled. The average size must be based on the most recent United States Department of Agriculture Census of Agriculture. There is no acreage limitation for which a landowner may receive compensation for enrolling eligible land into the permanent wetlands preserve program.

Statutory Authority: *MS s 103F.531*

History: *19 SR 550*

8400.3210 DELEGATION OF PROGRAM TO ANOTHER DISTRICT.

A district board may enter into an agreement with other district boards as authorized by Minnesota Statutes, section 103C.231, to delegate to another district board the responsibility

for administering any conservation easement program of the state board. Where such delegation has been mutually agreed upon, each district board must so notify all landowners in their respective district and each district must so notify the state board.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3230 APPLICATION BY LANDOWNERS.

Landowners interested in participating in a conservation easement program must submit an application to the appropriate district office, during the application period established by the district board, and on forms provided by the state board. The landowner must complete the application in its entirety along with any supportive information required for proper consideration of the application.

The district board shall direct its staff or the district technical representative to make an initial determination of conservation easement eligibility at the time of application. Providing proof of eligibility is the responsibility of the landowner. The district technical representative shall develop a cost estimate for the conservation easement and approved practices for all eligible applications.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3260 LAND IN MORE THAN ONE DISTRICT.

If an application involves land in more than one district, the participating districts may jointly delegate to one of the districts the responsibility for review and prioritization of that application. If that application is accepted for enrollment, the affected districts may also jointly delegate to one of the districts the responsibility for completing all of the tasks necessary for conveyance of the conservation easement to the state board.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS.

Upon completion of the application period and initial eligibility determination by the responsible district staff or the district technical representative, the screening committee may confer and prioritize each eligible application. The criteria for screening committee prioritization are as follows:

A consistency with the purpose and policy of the respective conservation easement program for which an application has been submitted by an eligible landowner,

B the parcel's relationship to the priorities previously determined in part 8400.3130;

C the parcel's potential impact on reducing soil erosion and sedimentation, improving water quality, and enhancing fish and wildlife habitat,

D potential title problems and encumbrances,

E compatibility with established priorities of the organizations and agencies represented on the screening committee, and

F highest priority must be given to permanent easements pursuant to Minnesota Statutes, section 103F.515, subdivision 2, paragraph (f).

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW.

The district board shall meet and review the applications after considering screening committee priorities. Criteria for district board review are as follows:

A criteria in part 8400.3300 used in screening committee review,

B compatibility with district plans and priorities; and

C availability of funds.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3360 DISTRICT ACTION ON APPLICATIONS.

Upon completion of district board review of the applications, the district board shall take one of the following actions for each application.

A the application is approved and submitted to the state board for funding consideration,

B. the application is retained by the district board for further investigation, or

C the application is denied because the land or landowner is deemed to be ineligible or because the land is not of sufficient priority as related to the criteria listed in part 8400 3300

The district board shall notify all applicants in writing of their application status within 60 days after the end of the application period

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3390 EASEMENT ACQUISITION PROCEDURES.

Upon completion of district board review of the eligible applications, applications approved for further processing must follow the administrative guidelines and procedures described in the current edition of the Conservation Easement Handbook. This state board publication is subject to periodic change, is available at the state board office and at district offices, and is hereby incorporated by reference

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall direct its staff or the district technical representative to develop conservation agreements as prescribed by the state board and in a recordable form for all approved applications which incorporate the minimum requirements stated in Minnesota Statutes, section 103F 515, subdivisions 4 and 5 In addition, each conservation agreement must require the landowner to

A pay, when due, all taxes and assessments that may be levied against the easement area,

B remove any existing structures as required by the district board or the state board prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place, erect, or construct any temporary or permanent structures on the easement area,

C remove any existing hazardous and toxic substances or any pollutants and contaminants prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place such substances, pollutants, or contaminants on the easement area,

D properly seal all abandoned wells on the easement area prior to the conveyance of the conservation easement, with all associated costs being the responsibility of the landowner; and

E allow the state board and its employees and agents to enter the easement area for the purposes of inspection and enforcement of the terms and conditions of the conservation easement

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3430 [Repealed, 19 SR 550]

8400.3460 TITLE REQUIREMENTS.

The landowner must have good and marketable title that is insurable under a title insurance policy In addition, the title must not be subject to any prior liens or encumbrances determined to be objectionable by the Attorney General Objectionable title defects, liens, or en-

cumbrances must be promptly removed or corrected by the landowner prior to easement conveyance

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3500 EASEMENT CONVEYANCE.

The conservation easement is conveyed after the conservation easement has been recorded and title has been accepted by the state

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3530 EASEMENT PAYMENT RATES.

Subpart 1 **RIM reserve program.** The state board shall annually establish statewide easement payment rates on the following payment basis (1) township average assessed market value of agricultural lands, or (2) actual assessed market value of agricultural lands, as authorized by Minnesota Statutes, section 103F.515, subdivision 6, paragraph (a), clause (5), and paragraph (b) Easement payments shall be made as follows

A for perpetual easements on lands with crop history, payment must not exceed 90 percent of the established payment basis,

B. for perpetual easements on lands without crop history, payment must not exceed 60 percent of the established payment basis,

C for limited duration easements on lands with crop history, payment must not exceed 75 percent of the established payment basis, and

D for limited duration easements on lands without crop history, payment must not exceed 45 percent of the established payment basis

Subp. 2. **Permanent wetlands preserve program.** Easement payments shall be made on a payment basis as authorized by Minnesota Statutes, section 103F 516, subdivision 3. Easement payments shall be made at the following rates:

A for wetlands in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington that are

(1) farmed wetlands on agricultural land with crop history, 90 percent of the payment basis,

(2) wetlands on agricultural land, 50 percent of the payment basis, or

(3) wetlands on nonagricultural land, 20 percent of the payment basis,

B for wetlands in all other counties that are

(1) farmed wetlands on agricultural land with crop history, 90 percent of the payment basis, or

(2) wetlands on agricultural or nonagricultural land, 50 percent of the payment basis,

C for adjacent upland

(1) with crop history, 90 percent of the payment basis, or

(2) without crop history, 60 percent of the payment basis

Subp 2a. **Noncompensable items.** In any computation of payments under subpart 1 or 2, the state board shall not compensate for any of the following

A the value of any buildings or other structures that must be removed as required by the district board or the state board from the easement area, or

B the land area occupied by any public surface drainage system, or public waters, or public waters wetlands, however, the state board may compensate for such land if it is

(1) previously or currently enrolled in the state waterbank program pursuant to Minnesota Statutes, section 103F 601,

(2) authorized by part 8400 3160, subpart 2, which describes eligible land for the permanent wetlands preserve program;

(3) an eligible restorable drained wetland that will be restored upon enrollment in the RIM reserve program, or

(4) an eligible replacement wetland that will be enrolled in the RIM reserve program

Subp 3 [Repealed, 19 SR 550]

Subp 4 [Repealed, 19 SR 550]

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3560 PAYMENT SCHEDULE.

Payments shall be made by the state board as prescribed by the conservation agreement. Payments may be assigned by the landowner

Payments for conservation easements will be a one time lump sum amount unless the landowner requests a split payment of ten equal annual installments for which no interest is paid.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3600 RENEWAL AND EXTENSION OF CONSERVATION EASEMENTS.

A When a conservation easement of limited duration expires, a new conservation agreement and conservation easement for an additional period of not less than 20 years may be acquired by agreement of the state board and the landowner under the rules in force at that time. The state board may adjust payment rates as a result of renewing a conservation agreement and conservation easement after examining the condition of the established cover, conservation practices, and land values

B The easement duration may be lengthened through mutual agreement of the current landowner with the state board, in consultation with the commissioners of agriculture and natural resources, if the state board determines that the changes are consistent with the purpose of the conservation easement program. When converting limited duration easements to permanent easements, the payment is the difference between the amount that would be paid per acre for the permanent easement as established for the most recent sign-up period and the amount already paid for the limited duration easement on the area

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS.

The state board may alter, release, or terminate a conservation easement after consultation with the commissioners of agriculture and natural resources. The board may alter, release, or terminate an easement only if the state board determines that the public interests and general welfare are better served by the alteration, release, or termination

The state board must be provided the following information at least 30 days prior to a state board meeting, before the state board will consider a request to alter, release, or terminate a conservation easement

A a copy of the letter from the landowner to the district board justifying the change and identifying how the public interest and general welfare will be better served,

B a letter from the district board recommending either approval or disapproval of the proposed change,

C a letter from the Department of Natural Resources area wildlife manager recommending either approval or disapproval of the proposed change, and

D other supporting documents, including

(1) an aerial photo identifying the requested change,

(2) a soil survey map of the area,

(3) cropping history information, and

(4) other pertinent documentation that will support the request

The state board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. The state board must be compensated

by the landowner for all damages and loss of benefits to the conservation easement and the state board may also require reimbursement for administrative expenses and costs incurred in the alteration, release, or termination of a conservation easement

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3630 APPROVED PRACTICES.

Subpart 1 **Criteria.** Approved practices must have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, or enhancement of fish and wildlife habitat. Approved practices are further specified in the easement program practice specifications. Practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for conservation easement program cost-sharing, but are considered an approved practice and, therefore, are allowed on enrolled acres if they are included in the conservation plan.

Subp. 2 **Establishment of approved practices.** A landowner is responsible for the establishment of all approved practices on the easement area in accordance with the easement program practice specifications. Establishment of approved practices must be monitored by the district board to ensure compliance with the conservation plan and the conservation easement. Upon establishment or partial completion of an approved practice, a district technical representative shall certify whether or not the approved practice, in whole or part, has been satisfactorily performed.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3660 [Repealed, 19 SR 550]

8400.3700 COST-SHARED PRACTICES.

Subpart 1 **Approved practices eligible for cost-sharing.** The state board shall determine which approved practices are eligible for conservation easement program cost-sharing, consistent with the criteria as described in part 8400 3630, subpart 1, and consistent with the payment limits in Minnesota Statutes, section 103F 515, subdivision 6, paragraph (a), clauses (1) and (2).

Subp. 2 **Eligible costs for cost-shared practices.**

A. Upon satisfactory performance under part 8400 3630, subpart 2, the landowner shall present receipts or invoices to the district board of the costs incurred in the installation of the cost-shared practice. The district board shall review the receipts or invoices to determine the costs eligible for conservation easement program payment. If the district board determines that the costs requested for reimbursement are reasonable and necessary, it shall recommend payment to the landowner by submitting certification of satisfactory performance and providing documentation of reimbursable practice costs to the state board on forms provided by the state board. If the district board determines that certain costs requested for reimbursement are not eligible or reasonable, it shall notify the landowner in writing of this determination. The landowner may request reconsideration of this determination by the district board within 30 days of receipt of the determination. If additional costs are determined to be eligible and reasonable, the district board shall then recommend payment for the approved amount. The state board reserves the right to approve whether costs requested for reimbursement are eligible and reasonable.

B. Eligible costs for approved practices are limited to those prescribed by Minnesota Statutes, section 103F 515, subdivision 6, paragraph (a), clauses (1) and (2), and to the total state funds encumbered for the cost-shared practices designated in the conservation plan. The amount of encumbered funds may be increased, within the statutory limits, after a landowner request, which has been properly executed on forms prescribed by the state board, has been approved by the state board.

C. If the actual cost of installing a cost-shared practice designated in the conservation plan is less than the statutory payment limit described in item B, the state shall only pay the actual cost of the installation.

Subp. 3 **Payment for in-kind services.** In-kind services provided by the landowner including, but not limited to, earthwork, seedbed preparation, and seeding, may be credited

to the landowner's share of the total cost of establishing the cost-shared practice. The district board shall credit only those costs it determines to be practical and reasonable.

Subp. 4. **Funds from other sources.** Conservation easement program cost-sharing funds may be augmented by funds from other agencies, organizations, or individuals. Securing these funds is the responsibility of the landowner.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3730 FAILURE OF APPROVED PRACTICES.

Subpart 1 **Cost-shared practices.** A landowner is not in violation of the conservation easement if the failure, in whole or part, of a cost-shared practice was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the state board that conservation easement program cost-sharing funds be encumbered for reestablishment of the cost-shared practice. The encumbrance must comply with the limits in Minnesota Statutes, section 103F 515, subdivision 6, paragraph (a), clauses (1) and (2). In no case may a district board authorize conservation easement program financial assistance to a landowner for the reestablishment of cost-shared practices that were removed or altered by the landowner, or that have failed due to improper maintenance during the term of the conservation easement.

Subp. 2 **All other approved practices.** A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3760 [Repealed, 19 SR 550]

8400.3800 OPERATION AND MAINTENANCE.

A landowner is responsible for the operation and maintenance of approved practices designated in the conservation plan.

Statutory Authority: *MS s 103F 531*

History: *19 SR 550*

8400.3830 VIOLATIONS AND ENFORCEMENT.

Subpart 1. **District board action.** The district board may take such measures as are necessary to ensure landowner compliance with the conservation agreement, conservation easement, and conservation plan. If the district board is unsuccessful at obtaining landowner compliance, the district board shall notify the state board of the violation and may recommend appropriate measures to be taken to correct violations.

Subp. 2 **State board action.** Upon notification by the district board of a violation of a conservation agreement, conservation easement, or conservation plan, the state board shall take action to resolve the violation.

A landowner who violates the terms of a conservation agreement, conservation easement, or conservation plan under this chapter, or induces, assists, or allows another to do so, is liable to the state for treble damages if the violation is willful or double damages if the violation is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

If the state board is not successful in resolving the violation, it may request the state attorney general to commence legal action to enforce the conservation agreement, conservation easement, or conservation plan.

Subp. 3 **Attorney general action.** Upon request by the state board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce Minnesota Statutes, sections 103F 501 to 103F.531 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

Conservation easements remain in effect even if maintenance violations have occurred

Statutory Authority: *MS s 103F.531*

History: *19 SR 550*

8400.3860 [Repealed, 19 SR 550]

8400.3870 SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE PROGRAMS.

The state board may supplement payments made under federal or other state land retirement programs to the extent of available appropriations other than bond proceeds. The payments must be used to establish perennial cover on land or to supplement payments for land enrolled in land retirement programs approved by the state board.

Statutory Authority: *MS s 103F.531*

History: *19 SR 550*

8400.3900 [Repealed, 19 SR 550]

8400.3930 RECONSIDERATION AND APPEAL.

Subpart 1 **Reconsideration by district board.** An affected landowner may request the district board to reconsider its:

A recommendation or determination regarding that landowner's application for enrollment in a conservation easement program;

B recommendation or determination to cancel that landowner's conservation agreement,

C determination regarding that landowner's eligible and allowable costs to be reimbursed by the state board,

D request to that landowner to correct any alleged noncompliant conditions regarding that landowner's enrolled easement area, or

E recommendation to disapprove that landowner's request to change an enrolled easement area.

Subp. 2 **Time for reconsideration by district board.** A landowner requesting reconsideration under subpart 1 shall mail a written request to the district board within 15 days of receipt of notice of the district board's determination or recommendation of the matters specified in subpart 1. The request for reconsideration shall include the specific reasons for the request and evidence to support the landowner's claims. The district board shall notify the landowner in writing of its final recommendation and the reasons for the recommendation within 60 days of receipt of the landowner's request for reconsideration.

Subp. 3 **Appeal to state board.** An affected landowner may appeal to the state board from a final recommendation made by the district board pursuant to subpart 2. The landowner shall mail a written appeal to the state board within 15 days after receipt of the district board's final recommendation. The appeal shall include the specific reasons for the request and evidence to support the landowner's claims. The state board shall notify in writing the landowner and the district board of its final decision and the reasons for the decision within 60 days of receipt of the landowner's appeal.

Statutory Authority: *MS s 103F.531*

History: *19 SR 550*