

CHAPTER 8400

BOARD OF WATER AND SOIL RESOURCES

COST-SHARE PROGRAM

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8400.0050 PURPOSE.

The state cost-share program is administered through local conservation districts to provide financial and technical assistance to land occupiers for the application of conservation practices that reduce erosion, control sedimentation, or improve and protect water quality to ensure the sustainable use of Minnesota's natural resources.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

DEFINITIONS

8400.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.0050 to 8400.1800, the definitions in this part, in addition to those in Minnesota Statutes, chapter 103C, apply.

Subp. 1a. [Repealed, 20 SR 2185]

Subp. 2. [Repealed, 20 SR 2185]

Subp. 2a. **Administrative Guidelines.** "Administrative Guidelines" means the Administrative Guidelines for the State Cost-Share Program, being the most current compilation of the approved practices, practice guidelines, administrative guidelines, and examples

of administrative forms provided to conservation districts by the state board to assist in locally administering the state cost-share program. The publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 3. **Annual plan.** “Annual plan” means a plan prepared by the conservation district pursuant to Minnesota Statutes, section 103C.331, subdivision 11, paragraph (f), 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 not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 4. **Approved practice.** “Approved practice” means a conservation practice that qualifies for state cost-sharing and that has been approved by the state board.

Subp. 5. [Repealed, 20 SR 2185]

Subp. 5a. **Comprehensive local water plan.** “Comprehensive local water plan” means a local water plan authorized under Minnesota Statutes, section 103B.311; a watershed overall plan required under Minnesota Statutes, section 103D.401; a watershed management plan required under Minnesota Statutes, section 103B.231; or a county groundwater plan authorized under Minnesota Statutes, section 103B.255.

Subp. 6. [Repealed, 20 SR 2185]

Subp. 7. [Repealed, 9 SR 2439]

Subp. 7a. [Repealed, 20 SR 2185]

Subp. 8. **Comprehensive plan.** “Comprehensive plan” means a long-range plan adopted by the conservation district pursuant to 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 not subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 8a. [Repealed, 20 SR 2185]

Subp. 9. **Conservation district.** “Conservation district” means a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 10. **Conservation district board.** “Conservation district board” means the board of supervisors of a soil and water conservation district as organized under Minnesota Statutes, chapter 103C.

Subp. 10a. **Conservation district technical representative.** “Conservation district technical representative” means a district employee assigned by the conservation district board or other designee who has expertise in the design and application of conservation practices.

Subp. 10b. **Conservation practices.** “Conservation practices” means practices applied to the land for the purpose of controlling or preventing soil erosion, sedimentation, nutrient runoff, or other water pollution to maintain the sustainable use of soil and water and other natural resources.

Subp. 11. [Repealed, 20 SR 2185]

Subp. 12. [Repealed, 20 SR 2185]

Subp. 13. [Repealed, 20 SR 2185]

Subp. 14. **Effective life.** “Effective life” means the time span for which a conservation practice effectively fulfills its intended purpose.

Subp. 14a. [Repealed, 20 SR 2185]

Subp. 14b. **Farm Service Agency.** “Farm Service Agency” means the Farm Service Agency, an agency of the United States Department of Agriculture.

Subp. 15. **Field Office Technical Guide.** “Field Office Technical Guide” means the document providing technical standards and specifications for conservation practices as provided by the Natural Resource Conservation Service and adopted by the conservation district board.

Subp. 16. **Group spokesperson.** “Group spokesperson” means a principal land occupier designated by the individuals involved in a group project who is authorized to speak for the entire group in negotiations with a conservation district for cost-share assistance.

Subp. 16a. **High priority erosion problems.** “High priority erosion problems” means areas where erosion from wind or water is occurring equal to, or in excess of, 2 x T tons per acre per year or is occurring on any area that exhibits active gully erosion or is identified as high priority in the comprehensive local water plan or the conservation district’s comprehensive plan.

Subp. 16b. **High priority water quality problems.** “High priority water quality problems” means areas where sediment, nutrients, chemicals, or other pollutants discharge to Department of Natural Resources designated protected waters or to any high priority waters as identified in a comprehensive local water plan or the conservation district’s comprehensive plan, or discharge to a sinkhole or groundwater. The pollutant delivery rate to the water source is in amounts that will impair the quality or usefulness of the water resource.

Subp. 17. [Repealed, 9 SR 2439]

Subp. 18. **Land occupier.** “Land occupier” means a person, corporation, or legal entity that holds title to or is in possession of land within a conservation district as an owner, lessee, tenant, or otherwise.

Subp. 18a. **Landowner.** “Landowner” means a person, corporation, or legal entity that holds title to a parcel of land.

Subp. 18b. **Natural Resource Conservation Service.** “Natural Resource Conservation Service” means the Natural Resource Conservation Service, an agency of the United States Department of Agriculture.

Subp. 19. [Repealed, 20 SR 2185]

Subp. 19a. **Other recognized technical practices.** “Other recognized technical practices” means any conservation practice or compilation of such practices not on the approved list of conservation practices that have been approved by the state board for cost-share assistance on a case-by-case basis.

Subp. 20. [Repealed, 20 SR 2185]

Subp. 20a. **Protected waters.** “Protected waters” means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 103G.005, subdivision 15, and inventoried under Minnesota Statutes, section 103G.201, and identified on a protected waters inventory map available in a county auditor’s office.

Subp. 20b. **Registered professional engineer.** “Registered professional engineer” means a person who is duly registered to practice professional engineering according to Minnesota Statutes, sections 326.02 to 326.15.

Subp. 20c. [Repealed, 20 SR 2185]

Subp. 20d. **Sinkhole.** “Sinkhole” means a depression or hole in the earth’s surface caused by dissolving of underlying limestone carbonate bedrock and subsequent settling or collapse of surficial soils.

Subp. 21. [Repealed, 20 SR 2185]

Subp. 22. [Repealed, 20 SR 2185]

Subp. 22a. **Special project.** “Special project” means a conservation project or program including but not limited to those projects or programs that accelerate implementation of innovative soil and water conservation activities.

Subp. 23. **State board.** “State board” means the state Board of Water and Soil Resources created in Minnesota Statutes, section 103B.101.

Subp. 24. [Repealed, 9 SR 2439]

Subp. 25. **T.** “T” means the soil loss tolerance that is the maximum average annual rate of soil loss from sheet and rill erosion or wind erosion, expressed in tons per acre per year, that is allowed yet still sustains the productive capacity of the soil to produce food and fiber over the long term.

Subp. 26. **2 x T.** “2 x T” means soil erosion at the rate of two times T.

Subp. 27. **Technical approval authority.** “Technical approval authority” means the authorization granted in accordance with the administrative guidelines for the state cost-share program to a conservation district technical representative to provide comprehensive technical assistance for individual conservation practices, including associated technical sign-off as the conservation district technical representative of record.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185*

8400.0200 AUTHORITY.

Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation with the conservation districts, to administer a program of cost-sharing with land occupiers for the installation of soil and water conservation practices. Parts 8400.0050 to 8400.1800 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to conservation districts, and standards and guidelines that the conservation district boards shall use in allocating funds to land occupiers.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185*

STATE BOARD FUNCTIONS

8400.0300 APPROVED PRACTICES.

Subpart 1. **Approved practices.** The state board, in consultation with the conservation districts, shall maintain a list of practices that are eligible for cost-share funds, along with guidelines pertaining to the components of the practices that are eligible or ineligible for cost-share funds. The list includes farmstead windbreaks and is contained in the Administrative Guidelines.

Subp. 2. **Criteria for approved practices.** Practices approved by the state board must meet the criteria in items A to D.

A. The primary purpose of all practices must be the control of soil erosion, sedimentation, or chemical or nutrient runoff or infiltration that impairs water quality. Farmstead windbreaks are exempt from this requirement.

B. All practices cost-shared under this program must be designed and maintained for a minimum effective life of ten years. The beginning date for a practice's effective life is the same date the conservation district board approves the final payment and the project is considered complete.

C. No cost-share funds shall be furnished for practices designed only to increase land productivity.

D. All practices must be consistent with the district's comprehensive plan.

Subp. 3. **Objectives of approved practices.** The Administrative Guidelines contains a list of approved practices. The objectives of these approved practices may include, but are not limited to, activities that:

- A. control nutrient runoff;
- B. stabilize critical erosive areas;
- C. divert runoff to protect and improve water quality;
- D. reduce wind erosion;
- E. control gully, rill, or sheet erosion;
- F. protect shoreland from erosion;
- G. control stormwater runoff; or
- H. protect or improve surface water and groundwater quality.

Approved practices must meet the criteria listed in subpart 2.

Statutory Authority: *MS s 40.036; 103C.501; L 1999 c 231 s 203*

History: *9 SR 2439; 20 SR 2185; 24 SR 1240*

8400.0400 [Repealed, 20 SR 2185]

8400.0500 MAXIMUM COST-SHARE RATES.

The maximum cost-share rates established by the state board represent the maximum percent of the total cost of a practice that may be funded by state cost-share funds. Where state and federal funds are cost-shared on the same project, their combined amount shall not exceed the maximum cost-share rate.

Statutory Authority: *MS s 40.036 subd 3*

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS.

Subpart 1. **Comprehensive plan.** Before the state board can allocate cost-share funds to a conservation district it must approve the conservation district's comprehensive plan, including its most recent amendment and the annual work plan that includes the application and justification for needed cost-share funds. The plans must be in a format required by Minnesota Statutes, section 103C.331, subdivision 11, and the state board.

Subp. 2. [Repealed, 9 SR 2439]

Subp. 3. **Review criteria.** The state board shall review all conservation district applications for cost-share funds based on the following criteria:

A. the extent of high priority erosion or water quality problems in the conservation district as outlined in the conservation district comprehensive and annual plans and comprehensive local water plan;

B. priorities for the control of soil erosion or water quality problems as established in the Administrative Guidelines of the state board;

C. historical success of the conservation district in applying soil and water conservation practices;

D. availability of cost-share funds from other sources; and

E. the ability of the conservation district to expend the funds in a timely manner.

Subp. 4. **Grants to conservation districts.** The state board shall annually allocate cost-share funds to conservation district boards that have fully complied with all state cost-share program rules and comprehensive and annual planning guidelines as prescribed by the state board. At least 70 percent of the cost-sharing funds available statewide will be allocated to conservation districts in the form of grants for conservation practices addressing high priority erosion, sedimentation, or water quality problems. The remaining cost-share funds may be allocated by the board to conservation districts for conservation practices for lower priority erosion, sedimentation, or water quality problems and for technical and administrative assistance or to carry out special projects or programs, except not more than 20 percent of the total funds may be allocated for technical and administrative services.

Subp. 5. **Other state and federal funds.** Other funds received by the state board may be allocated to conservation districts for the treatment of erosion, sedimentation, or water quality problems. These additional funds may be incorporated with existing cost-share program funds and their use may be governed by the Administrative Guidelines or may be subject to other administrative guidelines required to fully implement the intent for which these additional funds were appropriated.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

8400.0700 PROGRAM REPORTING AND MONITORING.

For the purpose of reporting and monitoring the progress of the program and use of funds, each conservation district shall submit an annual report of the year's accomplishments according to the guidelines and requirements established by the state board. The state board shall require additional special reports, including, but not limited to, summaries of practice site inspections and special projects.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

DISTRICT FUNCTIONS

8400.0800 APPLICATION FOR FUNDS BY DISTRICTS.

Each district shall apply for funds as indicated in part 8400.0600.

Statutory Authority: *MS s 40.036 subd 3*

8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS.

Subpart 1. **General.** Following receipt of grant funds from the state board, a conservation district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 103C, the Administrative Guidelines, and all other applicable laws. The conservation district board shall make all decisions concerning use of these funds in accordance with parts 8400.0050 to 8400.1800 and the Administrative Guidelines. All funds allocated to conservation districts must be used for the purposes designated by the state board.

Subp. 2. **Maximum cost-share percentage.** Prior to considering any applications from land occupiers for cost-share assistance, the conservation district board shall establish cost-share rates for practices to be installed under the program, up to the maximum rates established by the state board. The maximum percent of the total eligible cost of the practices installed using state cost-share funds must not exceed 75 percent. Other state or federal funds from any source, when used in combination with cost-share funds of this program, must not exceed the maximum payment rate of 75 percent of the total eligible costs. The conservation district board shall establish cost-share rates based on the following factors:

- A. the extent of high priority erosion or water quality problems in the conservation district as outlined in the conservation district's comprehensive and annual plans;
- B. advice of technical experts familiar with the conservation district;
- C. cost-share rates currently in effect under the agricultural conservation program administered by the United States Farm Service Agency and other assistance programs;
- D. conservation district priorities as established in the conservation district's comprehensive and annual plans and comprehensive local water plan;
- E. cost-share funds available; and
- F. the state board's Administrative Guidelines.

The maximum cost-share rates must be identified in the conservation district's annual plan and other documents containing the policies of the conservation district.

Subp. 3. **Reencumbering funds.** Prior to the end of the grant period for which the state board has granted the cost-share funds, a conservation district board may reencumber all funds resulting from canceled projects or from those projects that did not use the full amount encumbered. For unencumbered funds remaining after the grant period, the conservation district board shall follow the procedures described in part 8400.1460.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.

Land occupiers seeking assistance under this program shall apply to the conservation districts on forms provided by the state board and available from the conservation district office. Each application must be filled out in its entirety and must be signed by the land occupier. If the land occupier is not the landowner, the application must also bear the landowner's signature.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

8400.1100 GROUP PROJECT.

Where the cooperation of several land occupiers is required to solve an erosion or water quality problem, the conservation district may share the cost of such a group project if all of

the land occupiers are eligible as individuals and the practices satisfy the criteria of the program. The land occupiers must reach agreement on division of payments and designate a group spokesperson. The spokesperson must sign the application on behalf of the group and negotiate all project details with the conservation district. Payment for the conservation district's share of the practice shall be issued to the group spokesperson who will be responsible for executing the division of payment plan prepared by the group.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

8400.1200 COOPERATIVE AND JOINT PROJECTS OF CONSERVATION DISTRICTS.

Subpart 1. **Land in more than one conservation district.** If a project involves land in more than one conservation district, application for the entire project must be made to the conservation district containing the majority of the project lands.

Subp. 2. **Pooling cost-share allocation for joint projects.** Conservation district boards may enter into an agreement to pool all or portions of their collective cost-share allocations to implement joint projects. Cooperative and joint projects may be undertaken to accomplish watershed-based resource management goals or other goals of mutual benefit as identified in the county's comprehensive local water plan or the district's comprehensive plan.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION.

A determination of the effectiveness of a practice to address the erosion or water quality problem and a cost estimate must be made by the conservation district technical representative prior to the conservation district board's review of the application for cost-share funds. The assessment and cost estimate must be conducted by an individual with the appropriate level of technical approval authority or by a registered engineer with expertise in the design of the conservation practices.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW.

Criteria for conservation district board review:

A. The practice needed to solve the problem must be on the list of approved practices presented in the Administrative Guidelines or must have received approval from the state board.

B. The primary purpose of the requested practice must be to treat a high priority erosion problem or high priority water quality problem, except for farmstead windbreaks.

C. The requested practice must be consistent with conservation district plans and priorities.

D. The application must be signed by the land occupier and the landowner, if different, indicating their agreement to:

(1) grant the soil and water conservation district's representatives access to the parcel where the conservation practice will be located;

(2) obtain all permits required in conjunction with the installation and establishment of the practice prior to starting construction of the practice; and

(3) be responsible for operation and maintenance of practices applied under this program according to an operation and maintenance plan prepared by the conservation district technical representative.

E. Costs to repair damage to conservation practices installed with state cost-share dollars are eligible if the damage was caused by reasons beyond the control of the land occupier.

F. If the practice has fully met or exceeded its designed effective life, the cost to reconstruct the practice is eligible for cost-share assistance.

Statutory Authority: *MS s 40.036; 103C.501; L 1999 c 231 s 203*

History: *9 SR 2439; 20 SR 2185; 24 SR 1240*

8400.1400 CONSERVATION DISTRICT APPROVAL.

Subpart 1. **General.** After completion of the conservation district board review, the conservation district board shall either approve or deny the application. If it is approved, the conservation district board shall instruct the chair or acting chair to sign the application. Once it is signed, the application becomes the contract between the conservation district and land occupier and serves as the authorization to construct the practice according to the approved conservation practice plan. Practices where construction has begun prior to conservation district approval are ineligible for financial assistance. Changes in any provisions of the contract are subject to review and approval by the conservation district board pursuant to part 8400.1600, subpart 1.

If the application is denied, the conservation district board shall notify the land occupier in writing within 30 days after conservation district board action of the reason for denial.

Subp. 2. **Conservation practice plans.** The project plans for conservation practices must be prepared according to standards in the Field Office Technical Guide or other standards approved by the state board and must be approved by a conservation district technical representative with the appropriate level of technical approval authority. Plans prepared by a registered professional engineer must meet Field Office Technical Guide standards, meet other standards approved by the state board, or be certified as appropriate standards by the registered professional engineer. Upon completion and technical approval of the plan, one copy must be given to the land occupier and one copy retained with the project file located in the conservation district office.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 17 SR 1279; 20 SR 2185*

8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT.

Subpart 1. **Time limit and cancellation.** Projects not started within 18 months after conservation district board approval must be canceled unless an amendment to the project contract has been approved by the conservation district board. Projects not completed by the end of the state's third fiscal year after initial conservation district board approval must be canceled unless prior written approval of the state board has been received.

Subp. 2. **Partial payment.** In cases where weather or other unanticipated circumstances beyond the control of the land occupier force postponement of certification of completion until the following construction season, the conservation district board may issue a partial payment for the work that has been completed. The conservation district board shall not consider issuing a partial payment unless:

- A. the anticipated completion date complies with subpart 1;
- B. the completed work meets the requirements of part 8400.1400, subpart 2; and
- C. the conservation district technical representative has reviewed the work and has defined the total percent of construction that is complete.

Subp. 3. **Partial payment conditions.** If the conservation district issues a partial payment under subpart 2, the following conditions apply:

- A. payment percentages must comply with part 8400.0900, subpart 2;
- B. the balance of the project must be paid by the conservation district board upon the satisfactory completion of the total project;
- C. all expenses incurred to correct damage caused by the land occupier's failure to expeditiously complete the conservation practice must be borne by the land occupier;
- D. land occupiers receiving partial payments must complete the project within a time deemed reasonable by the conservation district board; and

E. land occupiers not completing partially paid projects shall be considered as violating part 8400.1700 and shall be directed, unless otherwise authorized by the state board as provided elsewhere in part 8400.1700, to return the amount of financial assistance received.

Every request for partial payment will be considered by the conservation district board on its own merits.

Subp. 4. **Denial.** If the conservation district board denies a request for partial payment under subpart 2, the board shall notify the land occupier within 30 days of the reasons for denial of the request.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

8400.1460 RETURN OF ALLOCATED FUNDS.

Cost-share funds unencumbered by the conservation district board after the grant period must be returned to the state board within 30 calendar days following the end of that grant period.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

8400.1500 CONSERVATION DISTRICT RECORDS.

The conservation district shall maintain a current ledger of all cost-share contracts on forms provided by the state board. The ledger must specify the land occupiers with whom the conservation district has contracted, the practices involved, the status of construction, and a total of funds encumbered. The conservation district shall also document efforts to identify and contact land occupiers with high priority erosion problems.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

8400.1600 EXECUTING THE COST-SHARE CONTRACT.

Subpart 1. **Amending cost-share contracts.** Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to amend the original cost-share contract. If changes to the original cost-share contract are needed, an amendment must be approved by the conservation district board. The conservation district board shall not approve amendments that increase the originally approved cost-share percentage, nor shall the conservation district board approve any amendments after the approval to issue final payment on the original contract has been made.

Subp. 2. **Construction of practice.** Construction of the practices must be monitored by the conservation district board to ensure compliance with part 8400.1400, subpart 2. Upon completion, the conservation district technical representative with appropriate technical approval authority or the registered engineer shall certify whether the practice has been satisfactorily constructed according to the approved conservation practice plans and meets the design criteria of the practice as specified in the Field Office Technical Guide or other standards certifiable by a registered professional engineer or other standards approved by the state board. No certification shall be made until all specifications have been satisfied. Exceptions for partial completion must be according to part 8400.1405, subpart 3. Upon certification of completion, the land occupier shall contact the conservation district for payment and shall present documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 3. **In kind services and materials.** In kind services and materials provided by the land occupier such as, but not limited to, earth work, seedbed preparation, seeding, and permanent fencing materials may be credited toward the land occupier's share of the total cost of the practice. The conservation district board shall determine whether charges for in kind services and materials are practical and reasonable.

Subp. 4. **Actual cost different than estimated cost.** In cases where the actual cost of the practice exceeds the estimated cost, the conservation district may only share the approved

percentage of the estimated cost, except when an amendment to increase the cost estimate listed on the cost-share contract has been approved by the conservation district board. Where the actual cost is less than the estimated cost, the conservation district shall only share the approved percentage of the actual cost of the practice.

Subp. 5. **Issuing cost-share payments.** The conservation district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the conservation district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the conservation district's share of the practice. If the conservation district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The conservation district board shall then authorize the issuance of a check for the conservation district's share of the justified claims.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

8400.1650 RECORDING PRACTICES.

The size, location, and effective life of the soil and water conservation practices that have received cost-share payments under this program equal to or in excess of \$50,000 shall be recorded by the conservation district on the property title. The conservation district board may require the recording of practices where cost-share payments are less than \$50,000 where such action is considered appropriate by the conservation district board. Recording procedures, including the prescribed forms, are described in the administrative guidelines for the state cost-share program.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

8400.1700 MAINTENANCE.

Subpart 1. **Land occupier maintenance responsibilities.** The land occupier is responsible for operation and maintenance of practices applied under this program to ensure that their conservation objective is met and the effective life, a minimum of ten years, is achieved. Should the land occupier fail to maintain the practices during their effective life, the land occupier is liable to the state of Minnesota for the full amount of financial assistance received to install and establish the practice. The land occupier is not liable for cost-share assistance received if the failure was caused by reasons beyond the land occupier's control, or if soil and water conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources.

Subp. 2. **Reapplication or removal of practices.** In no case shall a conservation district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or that failed due to improper maintenance. The conservation district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice and the purpose of the original practice has been achieved.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

8400.1750 PRACTICE SITE INSPECTIONS.

As a condition to receive grant funds from the state board, the conservation district shall ensure compliance with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 103C, by monitoring all cost-share contracts made with land occupiers. The conservation districts shall conduct site inspections of practices installed with cost-share funds to determine if the land occupier is in compliance with the operation and maintenance requirements under part 8400.1700. Site inspection procedures, including the prescribed forms and frequency, are described in the Administrative Guidelines for the State Cost-Share Program.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

8400.1800 APPEALS.

Land occupiers may appeal a conservation district's action within 60 days of receiving notice of the action by submitting a written request to the conservation district board asking the board to reconsider its decision. Should the land occupier and the conservation district board reach an impasse, the land occupier may appeal the conservation district board's decision to the state board within 60 days of receiving notice of the district board's final decision. If an informal hearing is granted, the state board or its appointed mediator shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The mediator, if one is used, shall report the findings and recommendation to the state board. The state board shall make its decision on the appeal within 60 days of the hearing date or 60 days after receiving the mediator's report, upholding, reversing, or amending the decision of the conservation district board.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 17 SR 1279; 20 SR 2185*

8400.1900 REPORTS TO STATE BOARD.

Each district shall submit to the state board the reports identified in part 8400.0700.

Statutory Authority: *MS s 40.036 subd 3*

8400.1950 [Repealed, 20 SR 2185]

8400.2000 [Repealed, 20 SR 2185]

8400.2100 [Repealed, 20 SR 2185]

8400.2200 [Repealed, 20 SR 2185]

8400.2300 [Repealed, 20 SR 2185]

8400.2400 [Repealed, 20 SR 2185]

8400.2500 [Repealed, 20 SR 2185]

8400.2600 [Repealed, 20 SR 2185]

8400.2700 [Repealed, 20 SR 2185]

8400.2705 [Repealed, 20 SR 2185]

8400.2800 [Repealed, 20 SR 2185]

COST-SHARE RATES**8400.2900 DISTRICT RATES.**

Each district shall establish its cost-share rates as provided in part 8400.0900.

Statutory Authority: *MS s 40.036 subd 3*

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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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. 3. [Repealed, 14 SR 1928]

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. 7. [Repealed, 14 SR 1928]

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.

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 15a.

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. 47. [Repealed, 14 SR 1928]

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

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550; L 1996 c 462 s 43*

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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 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 40.45; 103F.531*

History: *13 SR 1055; 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 40.45; 103F.531*

History: *13 SR 1055; 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 40.45; 103F.531*

History: *13 SR 1055; 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 de-

scribed 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 encumbrances must be promptly removed or corrected by the landowner prior to easement conveyance.

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *14 SR 1928; 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 ease-

ment 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

8400.3760 [Repealed, 14 SR 1928; 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 40.45; 103F.531*

History: *13 SR 1055; 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 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 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.

Subp. 4. [Repealed, 14 SR 1928]

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

EXCESSIVE SOIL LOSS CONTROL

8400.4000 GENERAL PROVISIONS.

Subpart 1. **Purpose.** The purpose of parts 8400.4000 to 8400.4080 is to reduce the amount of soil erosion on Minnesota land. The benefits of the local adoption of parts 8400.4000 to 8400.4080 include decreasing the amount of off-site damages from sediment, retaining the productivity of the soil, and improving water quality.

Subp. 2. **Policy.** Parts 8400.4000 to 8400.4080 are adopted in accordance with Minnesota Statutes, sections 103F.401 to 103F.455 and apply to all activities which cause excessive soil loss.

Subp. 3. **Scope.** Parts 8400.4000 to 8400.4080 pertain to all activities that will disturb the land surface and cause excessive soil loss, and are consistent with the minimum degree of local protection against soil erosion. Local governments may enact soil loss limits which are more restrictive than parts 8400.4000 to 8400.4080.

Subp. 4. **Voluntary adoption.** A local government of a county, home rule charter or statutory city, or town with the authority to adopt and administer an ordinance may choose to adopt and administer soil loss limits. Parts 8400.4000 to 8400.4080 are only applicable if the local government adopts a soil loss limits ordinance under Minnesota Statutes, sections 103F.401 to 103F.455.

Subp. 5. **Conformance with local ordinances.** A local soil loss limits ordinance must not violate an ordinance the local government is enforcing.

Statutory Authority: *MS s 40.21; 103F.411*

History: *11 SR 742*

8400.4002 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 8400.4000 to 8400.4080 the terms defined in this part have the meanings given.

Subp. 2. **Agricultural use.** "Agricultural use" means the use of land for the production of livestock, dairy animals, dairy products, poultry or poultry products, fur bearing animals, horticultural or nursery stock, including sod, fruit, vegetables, forage and cash grains, forestry, or bees and apiary products. Wetlands, pasture, and woodlands accompanying land in agricultural use are also defined as an agricultural use.

Subp. 3. **Board.** "Board" means the state Board of Water and Soil Resources created under Minnesota Statutes, section 103B.101.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of agriculture or a designated agent.

Subp. 5. **Conservation plan and time schedule.** "Conservation plan" means a document listing a set of practices that, when implemented, will decrease soil erosion to the soil loss limits on a particular parcel of land. The "time schedule" will set times to implement, make satisfactory progress on, and complete the conservation plan.

Subp. 6. **Conservation practice.** "Conservation practice" means a practice containing a definition, purpose, conditions under which the practice is applied including design requirements, and specifications containing a statement of details required for installing a conservation practice, including necessary kinds, quality, and quantity of work and materials. A conservation practice may be a permanent or temporary, vegetative or structural measure that, when applied to the land, will contribute to the control of wind and water erosion and sedimentation. "Conservation practices" may be used in a development activity area or an agricultural area. Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, strip-cropping, water and sediment control basins, and other permanent practices approved by the board. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, fabric filter barriers, filter strips, stormwater inlet and outlet protection, and any other cultural practices approved by the board. The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

Subp. 7. **Development activity.** "Development activity" means a physical disturbance, excluding agricultural use, of the land associated with activities that may result in sedimentation of adjacent lands or waters. These activities include, but are not limited to, clearing, grading, excavating, transporting, draining, and filling lands. Federal, state, county, and municipal road construction designed and installed according to Department of Transportation standard specifications for construction are not development activities.

Subp. 8. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 9. **Erosion.** "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice, or gravity. "Erosion" can be accelerated by the activities of people or nature.

Subp. 10. **Excessive soil loss.** "Excessive soil loss" means soil loss that is greater than the soil loss limit or which causes sedimentation on adjoining land or in a body of water, watercourse, or wetland.

Subp. 11. **Field office technical guide.** "Field office technical guide" means the guide developed by the United States Department of Agriculture, Soil Conservation Service and adopted by the soil and water conservation districts containing technical information includ-

ing methods and procedures by which the various types of erosion can be estimated, and conservation practice standards and specifications required in the application of soil and water conservation practices.

Subp. 12. **Land occupier.** “Land occupier” means a person, firm, corporation, municipality, or other legal entity that owns or possesses land as owner, lessee, renter, tenant, or otherwise. The terms include both the owner and the occupier of the land if they are not the same.

Subp. 13. **Local government.** “Local government” means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include a soil and water conservation district, water management organization, joint power board, watershed district, or other governmental entity responsible for resource management within the affected jurisdiction.

Subp. 14. **Sediment.** “Sediment” means solid mineral or organic material that is in suspension or motion, being transported or has been moved from its original site by air, water, gravity, or ice.

Subp. 15. **Sedimentation.** “Sedimentation” means the process or action of depositing sediment that, upon inspection, is determined to have been caused by erosion.

Subp. 16. **Sedimentation control plan; time schedule.** “Sedimentation control plan” means a document listing a set of practices that, when implemented, will decrease sedimentation to the allowable level on a particular parcel of land. A “time schedule” must set times to implement, make satisfactory progress on, and complete the “sedimentation control plan.”

Subp. 17. **Soil.** “Soil” means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

Subp. 18. **Soil loss limits.** “Soil loss limits” means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil. The local soil loss limits ordinance must use the soil loss tolerance for each soil series described in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county, whichever is more current.

Subp. 19. **Soil loss tolerance.** “Soil loss tolerance” means the maximum rate of annual soil erosion that will permit crop productivity to be sustained economically and indefinitely. In Minnesota, “soil loss tolerance” ranges from one to five tons per acre per year depending on the particular soil characteristics. “Soil loss tolerance” values for Minnesota soil series are provided in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county.

Statutory Authority: *MS s 40.21; 103F.411*

History: *11 SR 742; L 1987 c 358 s 34; 17 SR 1279*

8400.4005 LOCAL DUTIES.

In accordance with Minnesota Statutes, sections 103F.401 to 103F.455, a local government may adopt soil loss limits which meet the minimum standards and criteria for soil loss, and once adopted shall administer and enforce the soil loss limits ordinance.

Statutory Authority: *MS s 40.21; 103F.411*

History: *11 SR 742*

8400.4010 SOIL AND WATER CONSERVATION DISTRICT DUTIES.

In accordance with Minnesota Statutes, sections 103F.401 to 103F.455, districts shall:

- A. provide assistance to local governments in determining whether excessive soil loss is occurring;
- B. provide assistance to the land occupiers in developing a conservation plan and time schedule suggesting conservation practices and a time schedule for their application;
- C. make available to land occupiers state cost-share funds as provided by parts 8400.4045 and 8400.4060;

D. provide assistance to local governments in the development, review, monitoring, and enforcement of local soil loss limits ordinances, conservation plans, and time schedules, and sedimentation control plans and time schedules; and

E. provide assistance to the commissioner in the development and review of additional adequate technical information.

Statutory Authority: *MS s 40.21; 103F.411*

History: *11 SR 742*

8400.4015 COMMISSIONER'S DUTIES.

In accordance with Minnesota Statutes, sections 103F.401 to 103F.455, the commissioner of agriculture shall:

A. establish statewide standards reviewed every five years, for the management of land to prevent excessive soil loss from occurring;

B. upon request, assist the local government in the drafting of a soil loss limits ordinance which meets the provisions of Minnesota Statutes, sections 103F.401 to 103F.455 and parts 8400.4000 to 8400.4080 which assistance includes, but is not limited to, creation of specific guidelines to be used locally in the formulation of reasonable regulations and other conservation practices based on sound technical data and consistent with statewide standards and community land use needs;

C. where sufficient information is not available, cooperate to the fullest extent with appropriate federal, state, and local governments in securing adequate technical information;

D. periodically review and upgrade soil loss limits criteria based on new technical methodologies;

E. disseminate to the local government, whenever available, technical information including information of federal, state, and local programs, educational materials and other material useful in carrying out a soil loss limits program; and

F. coordinate federal, state, and local soil loss limits activities in the state.

Statutory Authority: *MS s 40.21; 103F.411*

History: *11 SR 742*

8400.4025 MINIMUM STANDARDS FOR LOCAL SOIL LOSS LIMITS ORDINANCES.

Subpart 1. **Permitted soil loss.** Local government soil loss limits must use the soil loss tolerance for each soil series as the maximum amount of soil loss permitted. The final recommendation of the soil loss tolerance information used rests with the district.

Subp. 2. **Permitted sedimentation limits.** Local government sedimentation limits must minimize sediment on adjoining land or in a body of water, watercourse, or wetland. In establishing these sedimentation limits the local government shall give consideration to the nature of the affected land or water. In making these determinations the local government should seek the advise of local, state, and federal agencies.

Subp. 3. **Sedimentation control plan.** Local government soil loss limits must require that a sedimentation control plan and time schedule must be developed by a land occupier and submitted to the local government before any development activity begins. The following must be addressed in developing and implementing a sedimentation control plan:

A. stabilization of denuded areas and soil stockpiles;

B. establishment of permanent vegetation;

C. protection of adjacent properties;

D. timing and stabilization of sediment trapping measures;

E. sediment basins;

F. stabilization of cut and fill slopes;

G. stabilization of watercourses;

H. stabilization of construction access routes;

I. disposition of all temporary measures; and

J. maintenance of all temporary and permanent urban conservation practices.

Subp. 4. **Model ordinances.** The model ordinances incorporated by reference in part 8400.4080 are the minimum standards for the adoption or amendment of soil loss limits under Minnesota Statutes, sections 103F.401 to 103F.455. A local government may adopt soil loss limits which are stricter than the model ordinances.

Statutory Authority: *MS s 40.21; 103F.411*

History: *11 SR 742*

8400.4030 PROHIBITED ACTIVITIES.

Subpart 1. **General prohibition.** A person may not cause, conduct, contract for, or authorize an activity which causes excessive soil loss.

Subp. 2. **Agricultural activity.** A land occupier shall:

A. if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;

B. if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths;

C. if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss; and

D. if a body of water, watercourse, or wetland is located within an agricultural use area, wooded or open land used for pasture, or a wooded area used for timber harvest, ensure that proper management and conservation practices are being applied to the surrounding land.

Subp. 3. **Agricultural land occupier.** A land occupier of agricultural land is not violating subparts 1 and 2 if the district report, as developed through part 8400.4040, subpart 3, shows that the existing farming practices and methods being applied are effectively controlling soil loss.

Subp. 4. **Development activity.** A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss or sediment from damaging adjacent land, bodies of water, watercourses, or wetlands, to the local government for its approval.

Subp. 5. **Road construction and maintenance.** A land occupier engaged in federal, state, county, municipal, or township road construction and maintenance is not violating subpart 1 if the road construction and maintenance is designed and installed according to Department of Transportation standard specifications for construction and maintenance.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4037 PROCEDURE FOR DEVELOPMENT ACTIVITY.

Subpart 1. **Submission of sedimentation control plan and time schedule.** A land occupier shall submit a sedimentation control plan and time schedule to the local government for approval prior to beginning any development activity which will disturb over one acre of land.

Subp. 2. **Specification of methods.** A sedimentation control plan and time schedule must specify how the movement of soil and damage to other lands and regions will be minimized during the construction process. A sedimentation control plan and time schedule must address the items in part 8400.4025, subpart 3. Urban conservation practices in a sedimentation plan may include, but are not limited to, the use of temporary seeding, fabric fiber barriers, plastic, straw mulch, sediment control basins, or other conservation practices adequate to prevent erosion and sediment damage.

Subp. 3. **Conformance with local ordinances.** Any method used in controlling sedimentation developed for the sedimentation control plan must not violate any existing ordinance the local government is enforcing.

Subp. 4. **Review of plan and schedule.** The local government may appoint the zoning or planning director, building inspector, engineer, or district to review the sedimentation control plan and time schedule. The local government must forward the sedimentation control plan and time schedule to the appointed reviewer within seven days of receiving the sedimentation control plan and time schedule from the land occupier.

Subp. 5. **Time for review.** The appointed reviewer shall review the sedimentation control plan and time schedule within 21 days of receiving the plan from the local government. The local government shall notify the land occupier of its decision after receipt of comments from the reviewer and no more than 28 days after receiving the sedimentation control plan and time schedule from the land occupier.

Subp. 6. **Issuance of permit.** If the reviewer determines that the sedimentation control plan and time schedule will prevent sedimentation, the local government shall issue a permit that authorizes the development activity contingent upon the implementation of the sedimentation control plan and time schedule.

Subp. 7. **Denial of permit.** If the reviewer determines that the sedimentation control plan and time schedule does not control sedimentation, the local government shall not issue a permit for the development activity. The sedimentation control plan and time schedule must be resubmitted for approval before the development activity begins.

Subp. 8. **Penalty.** A land occupier engaged in a development activity who does not obtain an approved sedimentation control plan and time schedule or does not commence or complete the plan or make satisfactory progress to complete the plan is subject to a civil penalty and the local government shall file the complaint with the county attorney.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4040 PROCEDURE FOR AGRICULTURAL ACTIVITIES.

Subpart 1. **Complaint.** Adversely affected land occupiers, elected or duly appointed officials of the local government, or district board members may submit a signed written complaint to the local government if conditions exist that indicate there is excessive soil loss from a tract of land. The local government shall submit the complaint to the district for soil loss determination. The local government shall notify the alleged offending land occupier of the complaint and that the district will be contacting the land occupier to review the site, determine the severity of the problem, and assist the land occupier in correcting the problem. The local government shall also name a contact person for further assistance.

The signed written complaint must include:

- A. the name and address of the alleged offending land occupier;
- B. the location of the tract of land with the alleged excessive soil loss;
- C. other land or water that is allegedly being affected by the excessive soil loss; and
- D. a description of the nature of the alleged excessive soil loss and resulting sedimentation.

Subp. 2. **Determination.** Upon request by the local government, the district shall determine the average annual soil loss in tons per acre per year of the tract of land cited in the complaint. The district may enter public or private land to make an inspection for the determination of soil loss or to complete the report. The district shall notify the land occupier of the time of the inspections and give the land occupier an opportunity to be present when the inspection is made.

The notice must:

- A. be given ten days prior to the date of the inspection;
- B. be delivered either by personal service or certified mail; and
- C. if the owner of the property and the occupier of the residence differ, be delivered to both the owner and the occupier.

Subp. 3. **Report.** The district shall submit a report to the local government that states the average soil loss in tons per acre per year for each tract of land and if that soil loss is excessive under the applicable soil loss limits.

If the soil loss is excessive, the report must include identification of existing farming practices and a preliminary conservation plan and time schedule that will prevent excessive soil loss.

If the report shows that soil loss from the tract of land is equal to or below the soil loss tolerance for that soil series, the local government shall dismiss the complaint and notify the land occupier.

Subp. 4. Notification of excessive soil loss. If the local government finds that excessive soil loss is occurring, it must give written notification to the land occupier. The notification must:

- A. describe the land and state the extent to which soil loss exceeds the soil loss limits;
- B. be delivered within ten days of the local government's decision;
- C. be delivered either by personal service or by certified mail; and
- D. state a time, not more than 90 days after the date of delivery of the order, by which mediation must be commenced.

Subp. 5. Mediation. If the district report shows that soil loss from a tract of land is excessive and conservation practices are available to reduce the soil loss, the local government shall request the offending land occupier to participate in mediation with the local government. The local government may appoint the planning and zoning director, a planning commissioner, or other official to act as mediator. The local government also may contract with a private mediation center to provide mediation services.

The land occupier and local government must attempt to agree on a conservation plan and time schedule that will reduce soil loss to the acceptable limits set by a local soil loss limits ordinance.

A mediated settlement must be approved by the local government and land occupier, put in writing, and filed with the county.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4045 COST-SHARE FUNDS FOR A MEDIATED SETTLEMENT.

When the local government approves the mediated written agreement, the land occupier has 90 days to apply for state cost-share funds that will provide 75 percent of the cost of the permanent conservation practices.

If the land occupier does not apply for cost-share funds within 90 days after the local government approves the mediated written agreement, only 50 percent cost-share funds may be provided. The land occupier must apply for 50 percent cost-share funds within 270 days after the mediated written agreement is approved.

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements must follow the current state or federal guidelines.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4050 PENALTY.

If a land occupier does not comply with the provisions of the notification or mediated written agreement, the land occupier is subject to a civil penalty up to \$500.

The local government shall file the complaint with the county attorney.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4055 HEARING PROCEDURE.

If the land occupier and local government do not reach a mediated written agreement or if the land occupier has refused mediation, the local government shall forward the complaint to the county attorney. The county attorney may petition the district court for a hearing.

At the hearing, the land occupier may present a conservation plan and time schedule as an alternative to the conservation plan and time schedule developed by the local government. The court shall review both plans and order the land occupier to implement the conservation plan and time schedule that will reduce soil loss to at least the soil loss limit. The court may choose to amend the conservation plan and time schedule developed by the local government or land occupier or develop a new conservation plan and time schedule.

The settlement must be put in writing and filed with the appropriate county official.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4060 COST-SHARE FUNDS FOR A COURT ORDER.

Subpart 1. **Alternative plans.** If the court orders the implementation of the land occupier's conservation plan and time schedule, an amended conservation plan and time schedule, or a new conservation plan and time schedule, the offending land occupier is eligible to apply for 75 percent cost-share funds for permanent conservation practices on that tract of land.

The land occupier must apply for those cost-share funds within 90 days after the court order. If the land occupier does not apply for the cost-share funds within 90 days, the cost-share funds are reduced to 50 percent. The court shall establish a time when the land occupier is no longer eligible for cost-share funds at 50 percent.

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements must follow the current state or federal guidelines.

Subp. 2. **Local government plan.** If the court orders the implementation of the conservation plan and time schedule developed by the local government, the offending land occupier is eligible for only 50 percent cost-share funds for permanent conservation practices on that tract of land. To qualify for those cost-share funds, the land occupier must apply for those cost-share funds within 90 days after the court order.

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements must follow the current state and federal guidelines.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4065 PENALTY.

A land occupier who does not comply with a court-ordered agreement is subject to a civil penalty up to \$500.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4070 ESTABLISHMENT OF COST-SHARE FUNDS.

Except for a development activity, a land occupier may apply for cost-share funds in the amounts set in parts 8400.4045 and 8400.4060. If cost-share funds are not currently available, the land occupier and the district shall enter into a priority cost-share assistance contract for future cost-share funds. The priority cost-share assistance contract must state the percentage of cost-share funds as set in parts 8400.4045 and 8400.4060. With the approval of the priority cost-share assistance contract, the land occupier is considered to be in compliance with the mediated or court ordered agreement.

The priority cost-share assistance contract, prepared by the commissioner of agriculture, is incorporated by reference. This document is subject to frequent change and is available at the State Law Library.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4075 VARIANCES.

Subpart 1. **Land occupier variance.** A land occupier may petition the local government for a variance from part 8400.4040 due to economic hardship or technical infeasibility.

Subp. 2. **Local government variances.** If a local government feels that a particular requirement of parts 8400.4000 to 8400.4070 prevents conservation practices or sedimentation control practices from being installed, a written request for a variance may be filed with the board. The request must contain:

A. the name and address of the local government making the request and the signature of the appropriate personnel;

B. the nature of the variance being sought, including an identification of the applicable rule from which the variance is sought, the time period for which it is sought, and the reason for seeking the variance;

C. a statement of alternatives for dealing with installation of the affected practices if the variance is not granted; and

D. a statement of the effects on applicable natural resources and the public if the variance is granted.

Subp. 3. **Decision.** Local government variance requests must be submitted to the board at least 30 days prior to the board meeting at which the variance is to be considered. Within 45 days after the meeting, the board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance may not be granted if it is in conflict with any statute.

Subp. 4. **Modifications.** If a variance has been granted by the board, the local government holding the variance may file with the board, at any time, a written request for modification or amendment of the variance. The request for modification or amendment and the board's consideration of the request must comply with this part.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4080 MODEL ORDINANCE.

The model ordinance, prepared by the commissioner of agriculture, in consultation with counties, districts, and other appropriate agencies, pursuant to Minnesota Statutes, section 103F.411, subdivision 1, is incorporated by reference. That document may be subject to change and is available at the State Law Library.

Statutory Authority: *MS s 40.21; 103F.411*

History: *11 SR 742*