

## CHAPTER 8400

### BOARD OF WATER AND SOIL RESOURCES

### COST-SHARE PROGRAM

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#### DEFINITIONS

##### **8400.0100 DEFINITIONS.**

**Subpart 1. Scope.** For purposes of parts 8400.0100 to 8400.2900, the definitions in this part, in addition to those in Minnesota Statutes, chapter 40, apply.

**Subp. 1a. Adequately protected.** "Adequately protected" means that soil erosion and other factors that influence the sustained productive use of the resource base are within acceptable limits, which are achieved through the use of soil and water conservation practices. With respect to soil erosion, the loss may not exceed "T."

**Subp. 2. Agricultural Stabilization and Conservation Service.** "Agricultural Stabilization and Conservation Service" means the United States Agricultural Stabilization and Conservation Service, an agency of the United States Department of Agriculture.

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**Subp. 3. Annual plan.** "Annual plan" means a plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9, 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 frequent change, is available at the State Law Library, and is incorporated by reference.

**Subp. 4. Approved practice.** "Approved practice" means a soil and water conservation practice which qualifies for state cost-sharing and which has been approved by the state board.

**Subp. 5. Area conservationist.** "Area conservationist" means the area conservationist of the Soil Conservation Service.

**Subp. 6. Assigned Soil Conservation Service personnel.** "Assigned Soil Conservation Service personnel" means the district conservationist or Soil Conservation Service personnel designated by the area conservationist to provide need and performance certification to the program.

**Subp. 7. [Repealed, 9 SR 2439]**

**Subp. 7a. Class I-IV soil.** "Class I-IV soil" means soil generally suitable for field crop production according to United States Department of Agriculture Handbook No. 210, "Land Capability Classification" (Washington, D.C., September, 1961). That publication is not subject to frequent change, is available at the Saint Paul Public Library, and is incorporated by reference. Soil in Class I has few limitations that restrict their use while Class IV soil has very severe limitations that require very careful management.

**Subp. 8. Comprehensive plan.** "Comprehensive plan" means a long-range plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9 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 frequent change, is available in the State Law Library, and is incorporated by reference.

**Subp. 8a. Descriptive maps.** "Descriptive maps" means computer-generated maps prepared by the land management information center of the State Planning Agency and provided to districts depicting high priority wind and water erosion and sedimentation areas. These maps are a tool for the district to identify high priority problem areas. These maps can and should be supplemented by the district as needed to more accurately reflect high priority erosion and sedimentation problems.

**Subp. 9. District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

**Subp. 10. District board.** "District board" means the five supervisors of a district authorized to carry out the functions of the district.

**Subp. 11. District conservationist.** "District conservationist" means the district conservationist of the Soil Conservation Service.

**Subp. 12. District cooperator.** "District cooperator" means a land occupier who has requested the assistance of a district in controlling conservation problems. The request must be formalized by the signing of a district cooperator's agreement provided by the state board and approved by the district board.

**Subp. 13. District technician.** "District technician" means a district employee or county employee assigned to the district who possesses expertise in the design and application of soil and water conservation practices.

**Subp. 14. Enduring practice.** "Enduring practice" means a soil and water conservation practice which is designed for an effective life of ten years or more.

**Subp. 14a. Feedlot model.** "Feedlot model" means the analytical model contained in "An Evaluation System To Rate Feedlot Pollution Potential," publication no. ARM-NC-17, of the Agricultural Research Service of the United States Department of Agriculture (Peoria, Illinois, April 1982), designed for programmable hand-held calculators and used to determine the pollution potential rating of an animal feedlot. That publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

**Subp. 15. Field Office Technical Guide.** "Field Office Technical Guide" means the document providing standards and specifications for technical requirements of soil and wa-

ter conservation practices as provided by the Soil Conservation Service and adopted by the district board.

**Subp. 16. Group spokesperson.** "Group spokesperson" means an individual designated by the several individuals involved in a group project, who may speak for the entire group in negotiations with a 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 on Class I-IV soils equal to or in excess of  $2 \times T$  tons per acre per year or any area within 300 feet of a water course or within 1,000 feet of a water basin or wetland eroding by water in excess of  $T$  tons per acre per year. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Erosion problems occurring on nonshoreland areas in excess of  $T$  but less than  $2 \times T$  tons per acre per year are classified as secondary priority.

**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 a sinkhole or ground water so as to impair their quality or usefulness, including high priority feedlots and sedimentation problems.

"High priority feedlots" means feedlots where the pollution potential rating from the feedlot model is greater than or equal to one and which are discharging pollutants to Department of Natural Resources designated protected waters or to a sinkhole or shallow soils overlying fractured or cavernous bedrock or within 100 feet of a water well. Feedlots not meeting these criteria are not eligible for cost-sharing assistance except as provided in part 8400.2600, subpart 3.

"High priority sedimentation problems" means areas within 300 feet of a water course or 1,000 feet of a water basin or wetland where the water erosion rate exceeds three tons per acre per year or areas where the districts can show that sediment delivery occurs from a watershed or direct conveyance structure such as a storm sewer or paved outlet channel discharging to these waters. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Sedimentation problems not meeting these criteria are not eligible for cost-sharing assistance.

**Subp. 17. [Repealed, 9 SR 2439]**

**Subp. 18. Land occupier.** "Land occupier" means a person, firm, or corporation, including the governments of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state, who possess lands lying within a district organized under Minnesota Statutes, chapter 40, whether as owner, lessee, renter, tenant, or otherwise, including, during the life of a practice, successors of a land occupier who received a cost-share payment. This definition also includes the federal government.

**Subp. 19. Nonproduction practice.** "Nonproduction practice" means a soil and water conservation practice which is installed or applied to control soil erosion or sedimentation or to protect or improve water quality. Practices installed or applied primarily to bring land into production or to increase the short-term productivity are not eligible for cost-sharing.

**Subp. 20. Program plan.** "Program plan" means a statewide plan developed by the state board, in consultation with the districts and appropriate agencies, for control of the soil and water conservation problems in the state.

**Subp. 20a. Protected water.** "Protected water" means those water basins, water courses, and wetlands, as defined in Minnesota Statutes, section 105.37, on the inventory of public waters and wetlands under Minnesota Statutes, section 105.391, subdivision 1, and identified on a protected waters and inventory map available in a county auditor's office.

**Subp. 20b. Registered professional engineer.** "Registered professional engineer" means a person who practices professional engineering within the meaning of Minnesota Statutes, sections 326.02 to 326.15, and who performs technical professional services such as, but not limited to, the planning, designing, or inspecting of the construction of erosion, sediment control, or water quality protection or improvement measures. A registered professional engineer may be designated by a district board and may use criteria in a recognized technical procedure to design, install, and certify practices which qualify for state cost-sharing.

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**Subp. 20c. Shallow soils overlying fractured or cavernous bedrock.** "Shallow soils overlying fractured or cavernous bedrock" means areas where the soil depth or texture in conjunction with the condition of the bedrock will not provide treatment of agricultural waste sufficient to protect groundwater quality. Determination of these areas is made on an individual project basis by assigned Soil Conservation Service personnel or a registered professional engineer. Actual determination may be done by the district technician.

**Subp. 20d. Sinkhole.** "Sinkhole" means a depression or hole in the earth's surface caused by dissolving of underlying limestone; drainage is through joints and fractures in underlying bedrock.

**Subp. 21. Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to the land for the purpose of controlling soil erosion, sediment, agricultural waste, or other water pollutants.

**Subp. 22. Soil Conservation Service.** "Soil Conservation Service" means the United States Soil Conservation Service, an agency of the United States Department of Agriculture.

**Subp. 22a. Special project.** "Special project" means a conservation project including but not limited to a demonstration project, accelerated watershed or water quality project, long-term conservation agreement, planning technique, or nonstructural erosion or sediment control or water quality protection or improvement measure. Special projects may address nonshoreland secondary priority erosion problems and are submitted to the state board according to "Guidelines for Special Projects" published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

**Subp. 23. State board.** "State board" means the state Board of Water and Soil Resources created in Minnesota Statutes, section 40.03.

**Subp. 24. [Repealed, 9 SR 2439]**

**Subp. 25. T.** "T" means soil loss tolerance which is the maximum level of soil erosion that will permit a high level of crop productivity to be sustained economically and indefinitely. In Minnesota, "T" ranges from one to five tons per acre per year depending on the particular soil characteristics. "T" values for Minnesota soils are provided in the Field Office Technical Guide.

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

**Statutory Authority:** *MS s 40.036 subd 3*

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

## 8400.0200 AUTHORITY.

Minnesota Statutes, chapter 40, authorizes the state Board of Water and Soil Resources, in cooperation with the soil and water conservation districts, to administer a program of cost-sharing with land occupiers on the installation of soil and water conservation practices. Parts 8400.0100 to 8400.2900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts, and standards and guidelines which the district boards shall use in allocating funds to land occupiers.

**Statutory Authority:** *MS s 40.036 subd 3*

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

## STATE BOARD FUNCTIONS

### 8400.0300 ESTABLISHING APPROVED PRACTICES.

The state board, in consultation with the districts, shall maintain a list of practices which are eligible for cost-share funds and a schedule of maximum rates. The list is contained in parts 8400.2000 to 8400.2700 and the schedule in parts 8400.2800 and 8400.2900. Changes to the list and schedule must be made pursuant to Minnesota Statutes, chapter 14.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** *9 SR 2439*

### 8400.0400 CRITERIA FOR APPROVED PRACTICES.

Practices approved by the state board must meet the criteria in items A to C.

A. Their primary purpose must be the control of soil erosion or sedimentation, or protection or improvement of water quality.

B. They must be enduring in nature. All practices cost-shared under this program must be designed for a minimum effective life of ten years.

C. They must be nonproduction practices.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 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 ALLOCATION OF FUNDS.

**Subpart 1. Comprehensive plan.** Before the state board can allocate cost-share funds to a district it must first approve the district's comprehensive plan, including its most recent amendment and the annual work plan which includes the application for needed cost-share funds. The plans must be in a format required by the state board.

**Subp. 2. [Repealed, 9 SR 2439]**

**Subp. 3. Review criteria.** The state board shall review all district applications for cost-share funds with respect to the following criteria:

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

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

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

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

E. readiness of the district to effectively use the funds.

The state board shall review all district applications for special project funds with respect to criteria established in the most recent version of the Guidelines for Special Projects published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

**Subp. 4. Grants.** Following review and approval of the annual and comprehensive plans, the state board shall allocate to districts in the form of grants at least 70 percent of the cost-sharing funds available statewide for conservation practices to address high priority erosion or water quality problems. The remaining cost-share funds may be allocated by the board to districts for technical and administrative assistance or special projects. Technical and administrative assistance grants may be used for controlling secondary priority nonshoerland erosion problems.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.0700 MONITORING.

For the purpose of monitoring the progress of the program and use of funds, the state board shall receive from each district an annual report of the year's accomplishments by a date deemed reasonable by the state board. The state board may require additional special reports deemed necessary by the state board to monitor the cost-sharing program. The reports must be on forms provided by the state board.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

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## 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 ADMINISTRATION OF FUNDS.

Following receipt of grant funds from the state board, a district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 40 and all other applicable laws. The district board may make all decisions concerning use of these funds in accordance with parts 8400.0100 to 8400.2900.

As a condition to receiving grant funds from the state board, the district shall ensure compliance with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 40 by monitoring all cost-share contracts made with land occupiers.

Prior to considering any applications from land occupiers for cost-share assistance, the district board shall establish the cost-share rates for practices to be installed under the program, which may not exceed the maximum rates established by the state board. This decision shall be based on the following factors:

- A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;
- B. advice of technical experts familiar with the district;
- C. cost-share rates currently in effect under the agricultural conservation program administered by the United States Agricultural Stabilization and Conservation Service and other assistance programs;
- D. district priorities as established in the districts' comprehensive and annual plans; and
- E. cost-share funds available.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.

Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the state board and available from the district office. Each application must be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available for the current fiscal year. After initial priority screening by the district board, assigned Soil Conservation Service personnel or a registered professional engineer are responsible for making a determination of need and cost estimate. Actual determination of need and cost estimate may be done by the district technician. Additional information on the desired practice which may be required by the district board in its consideration of the application shall be included.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.1100 GROUP PROJECT.

A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The 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 a division of payments and designate a group spokesperson. The spokesperson must be identified on the group cooperator agreement and shall file all forms with the district and negotiate all project details with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## 8400.1200 COST-SHARE PROGRAM

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### 8400.1200 LAND IN MORE THAN ONE DISTRICT.

If a project involves land in more than one district, application must be made to the district containing the most land benefited by the practice.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.1300 CRITERIA FOR DISTRICT BOARD REVIEW.

Criteria for district board review:

- A. The applicant must be a district cooperator.
- B. The practice needed to solve the problem must be on the list of approved practices.
- C. The primary purpose of the requested practice must be the control of soil erosion or sedimentation, or the protection or improvement of water quality. In cases where the primary purpose is questionable, the district board shall make a determination of the acceptability of the application. Additionally, the district board shall make determination of the need for supplemental practices to protect any practice installed under this program, such as fencing of water impoundment structures. If the district board determines that supplemental practices are necessary, it shall authorize cost-sharing for their installation.
- D. The requested practice must be consistent with district plans and priorities.
- E. The practice must be maintained by the land occupier, who is responsible for operation and maintenance of practices applied under this program.
- F. Priority consideration shall be given to land occupiers or groups of land occupiers who demonstrate the ability to meet matching requirements. Cost-share funds may not be used for repair of practices installed solely with private or federal cost-sharing funds.
- G. The practice must comply with the technical requirements of the Field Office Technical Guide. For practices not included in the Field Office Technical Guide, other recognized technical procedures may be used to design, install, and certify practices.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.1400 DISTRICT APPROVAL.

**Subpart 1. General.** After completion of a priority determination and cost estimate, the district board shall either approve or deny the application. If it is approved, the district board shall instruct the chair or acting chair to sign the application. Once it is signed, the application becomes the contract between the district and land occupier and serves as the authorization for work to proceed on the practice. Practices begun prior to district approval are ineligible for financial assistance. If it is denied, the district board shall notify the land occupier in writing within 30 days after board action of the reason for denial of the application. Changes in any provisions of the contract are subject to review and approval by the district board.

**Subp. 2. High priority problems.** In order to ensure compliance with part 8400.0600, subpart 4, the district board shall approve only those applications that involve the high priority problems for which they received funds.

**Statutory Authority:** *MS s 40.036 subd 3*

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

### 8400.1405 STARTING AND COMPLETION DEADLINES.

**Subpart 1. Time limit; cancellation.** Projects not started within 18 months after district board approval must be canceled unless an amendment to the project has been approved by the district board. Projects not completed within two calendar years after initial approval must be canceled.

**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 state board or its authorized representative may authorize a district board to issue a partial payment for the work that has been completed. The following conditions must be met before the state board or its authorized representative will consider authorizing a partial payment:

- A. The anticipated completion date will be in compliance with subpart 1.
- B. The completed work meets the requirements of part 8400.1300, item G.
- C. The state board's authorized representative must review the work and concur in the payment decision.

Subp. 3. **Payment conditions.** If the state board or its authorized representative authorizes a partial payment under subpart 2, the following conditions apply:

- A. Payment percentages must comply with part 8400.2800.
- B. The balance of the project must be paid by the district board upon the satisfactory completion of the total project.
- C. All expenses incurred in correcting damage caused to the project by virtue of its incompleteness must be borne by the land occupier.
- D. Land occupiers receiving partial payments must complete the project within a time deemed reasonable by the district board.
- E. Land occupiers not completing partially paid projects are violating part 8400.1700 and shall be directed to return the amount of financial assistance received.
- F. Partial payment authorizations shall not be construed as precedent setting. Every request will be considered by the state board or its authorized representative on its own merits.

Subp. 4. **Denial.** If the state board or its authorized representative denies a request for partial payment under subpart 2, the district board shall be notified within 30 days of the reasons for denial of the request.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## 8400.1500 DISTRICT RECORDS.

The 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 district has contracted, the practices involved, the status of construction, and a total of funds encumbered.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## 8400.1600 PAYMENTS.

Subpart 1. **Construction of practice.** Construction of practices must be monitored by the district board to ensure compliance with part 8400.1300, item G. Upon completion, assigned Soil Conservation Service personnel or a registered professional engineer shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of part 8400.1300, item G. No certification shall be made until all specifications have been satisfied. Exceptions must be in accordance with part 8400.1405, subpart 2. Upon certification of completion, the land occupier shall contact the 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. 2. **In kind services.** In kind services provided by the land occupier such as, but not limited to, earth work, seedbed preparation, and seeding may be credited toward the land occupier's share of the total cost of the practice. The district board shall determine whether charges for in kind services are practical and reasonable.

Subp. 3. **Actual cost differing from estimated cost.** In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share contract has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the estimated cost, or postpone the starting or completion date of the practice. These changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share contract covering the changes. Amendments may not be authorized for providing final cost-sharing percentages in excess of the originally approved percentage or additional money for projects

that were knowingly underfunded at the time of approval. Amendments may not be authorized after final approval of payment has been made on the original contract. Where the actual cost is less than the estimated cost, the district shall only share the approved percentage of the actual cost of the practice. The district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the district share of the practice. If the 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 district board shall then authorize the issuance of a check for the district share of the justified claims.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.1700 MAINTENANCE.

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 of ten or more years is achieved. Should the land occupier fail to maintain the practices during their effective life, the land occupier is liable for the amount of financial assistance received for their installation. The 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. 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. In no case shall a 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 failed due to improper maintenance.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.1800 APPEALS.

If a land occupier feels she or he has been treated unfairly, the occupier may request that the district board review its decision. Should the land occupier and the district board reach an impasse, the land occupier may petition in writing for a hearing before the state board. If it grants the hearing, which shall be informal, the state board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The referee, if one is used, shall report the findings and recommendation to the state board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the district board.

**Statutory Authority:** *MS s 40.036 subd 3*

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

### 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 VARIANCES.

If a district board feels that a particular requirement of parts 8400.0100 to 8400.2900 prevents an erosion or sedimentation control or water quality project from being installed, a request for a variance may be filed with the director of the state board. The request must be in writing and contain:

A. the name and address of the district board making the request and the signature of the district chairperson;

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 the installation of the affected project if the variance is not granted; and

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

Variance requests must be submitted to the director at least 30 days prior to the state board meeting at which the variance is requested to be heard. Within 45 days after the meeting, the state board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance will not be granted if it is in conflict with any statute. The state board may grant a variance upon such conditions as it may prescribe.

If a variance has been granted by the state board, the district board holding the variance may file with the state board at any time a written request for modification or amendment of the variance. The request for modification or amendment, and the state board's consideration of the request, shall comply with requirements of this part.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## APPROVED PRACTICES

### 8400.2000 APPROVED PRACTICE: EROSION CONTROL STRUCTURES.

**Subpart 1. Definition.** "Erosion control structure" means a structure such as, but not limited to, floodwater retarding or multipurpose dams designed to provide temporary storage of floodwater, control the release rate of water providing downstream channel stability, or impound water.

**Subp. 2. Purpose.** The purpose of an erosion control structure is to control soil erosion or to protect or improve water quality. An erosion control structure may provide multiple benefits including, but not limited to, water supply for livestock, recreation, flood control, channel stability, wildlife habitat, and fire prevention.

**Subp. 3. Applicability.** Erosion control structures may be used on any lands where they are necessary for the control of soil erosion or water quality protection or improvement.

**Subp. 4. Policies.** Cost-sharing is authorized:

A. only for the construction of erosion control structures that provide for reduction of soil erosion or water quality protection or improvement;

B. for the installation of livestock watering facilities in conjunction with erosion control structures only if the facilities are necessary for the proper management and protection of the structure as determined by the district board;

C. for permanent fencing of an erosion control structure as determined by the district board;

D. for tree and shrub plantings adjacent to the structure and seeding necessary to stabilize an erosion control structure and adjacent critical areas, including, whenever possible, the use of those species that provide wildlife habitat and visual enhancement;

E. for erosion control structures which provide multiple benefits if the primary benefit is soil erosion control or water quality protection or improvement;

F. for temporary materials and seedings necessary to properly stabilize an erosion control structure during construction; and

G. for erosion control dams and ponds if a minimum of 50 percent of the contributing drainage area above the proposed project is adequately protected.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.2100 APPROVED PRACTICE: STRIP-CROPPING.

**Subpart 1. Definition.** "Strip-cropping" means the development and application of a cropping system for a farming unit which provides for planting row crops with the contour where practicable and incorporates alternate strips of row crops, close grown crops, sod crops, or fallow.

**Subp. 2. Purpose.** The purpose of strip-cropping is to establish a system of farming with contour, field, or wind strip-cropping to control soil erosion or protect or improve water quality. Strip-cropping may provide additional benefits to wildlife.

**Subp. 3. Applicability.** Strip-cropping may be used on any lands where it is necessary for the control of soil erosion or water quality protection or improvement.

**Subp. 4. Policies.** Cost-sharing is authorized for equipment and labor costs involved in the marking of individual strip lines. Equipment and labor costs must not exceed equivalent total costs as listed in "Custom Rate Estimates for Minnesota," published annually by the University of Minnesota Agricultural Extension Service, and available in county agricultural extension offices. That publication is adopted by reference.

A project is not eligible for state cost-share assistance if federal cost-share funds are used on the same project.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.2200 APPROVED PRACTICE: TERRACES.

**Subpart 1. Definition.** "Terrace" means an earth embankment, or a combination ridge and channel constructed across the slope at the required spacing.

**Subp. 2. Purpose.** Terraces are constructed to:

- A. reduce erosion;
- B. reduce sediment content in runoff water;
- C. intercept and conduct surface runoff at a nonerosive velocity to a stable outlet;
- D. prevent gully development;
- E. reduce flooding; or
- F. protect or improve water quality.

Terraces may provide additional benefits by creating wildlife habitat and retaining runoff for moisture conservation.

**Subp. 3. Applicability.** Terraces may be used on any lands where they are needed for the control of soil erosion or water quality protection or improvement.

**Subp. 4. Policies.** Cost-sharing is authorized:

- A. for construction necessary to properly establish terraces, including earthwork, material, and seedings if necessary;
- B. for temporary materials and seedings necessary to properly stabilize terraces during construction; and
- C. for tile systems necessary for the establishment and operation of the terraces, including the outlet which shall be limited to 300 feet below the last terrace in a system.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### 8400.2300 APPROVED PRACTICE: DIVERSIONS.

**Subpart 1. Definition.** "Diversion" means a channel with a supporting ridge on the lower side constructed across the slope.

**Subp. 2. Purpose.** The purpose of a diversion is to divert water away from erosive areas or areas that pose a threat to water quality to areas where it can be used or disposed of safely. Diversions may provide additional benefit to wildlife.

**Subp. 3. Applicability.** A diversion may be used where:

- A. runoff from higher lying areas is eroding cropland, pastureland, or farmsteads, or is needed to support conservation practices such as terraces or strip-cropping in the control of erosion or sedimentation;
- B. surface and shallow subsurface flow is damaging sloping upland or contaminating ground or surface water; or
- C. it is required as a part of a pollution abatement system, or to control erosion or sedimentation on urban or developing areas and construction sites.

**Subp. 4. Policies.** Cost-sharing is authorized:

- A. for tile systems necessary for the establishment and operation of diversions;
- B. for construction necessary to properly establish diversions including earthwork, materials, and seedings;

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C. for temporary materials and seedings necessary to properly stabilize diversions during construction; and

D. for permanent fencing of diversions as determined by the district board.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## 8400.2400 APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

**Subpart 1. Definition.** "Stormwater control system" means a practice or system of practices such as, but not limited to, grassed waterways, water and sediment control basins, and grade stabilization structures installed to convey storm runoff to a constructed or natural outlet in a nonerosive manner. This practice does not apply when the primary purpose is drainage to expand or improve crop production or making the cropping system more convenient.

**Subp. 2. Purpose.** The purpose of a stormwater control system is to provide a means of regulating or removing runoff to control erosion or protect or improve water quality. Additional benefit may be provided through creation of wildlife habitat.

**Subp. 3. Applicability.** A stormwater control system may be used on all lands by using vegetative or structural measures for control of erosion or protection or improvement of water quality.

**Subp. 4. Policies.** Cost-sharing is authorized:

A. For the construction of practices required in a complete stormwater control system. These practices include, but are not limited to a lined waterway or outlet, detention ponds, vegetative filter strips, permanent sod cover, and permanent vegetation including trees, shrubs, and grasses. At least 80 percent of the contributing drainage area above grassed waterways on land owned or controlled by the applicant, must be adequately protected.

B. For tile systems necessary for the establishment and operation of stormwater control systems, including the outlet, which is limited to 300 feet below the end of the waterway.

C. For temporary materials and seedings necessary to properly stabilize a stormwater control system during construction.

D. For permanent fencing of stormwater control systems as determined by the district board.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## 8400.2500 APPROVED PRACTICE: FIELD WINDBREAKS.

**Subpart 1. Definitions.** "Field windbreak" means a strip or belt of trees, shrubs, or grass barriers established within or adjacent to a field.

**Subp. 2. Purpose.** The primary purpose of a field windbreak is to reduce wind erosion. Additional benefits may be the protection of crops, livestock, and wildlife, increased moisture conservation by controlling snow deposition, and beautification and enhancement of the landscape.

**Subp. 3. Applicability.** Field windbreaks may be used in or around open fields which need protection against wind erosion. Additional benefits may be realized from the creation of wildlife habitat.

**Subp. 4. Policies.** Cost-sharing is authorized for site preparation, planting materials, planting, chemicals for weed control, and other applicable costs necessary to establish a field windbreak. The land occupier is responsible for controlling competitive vegetation for two years following planting and must bear the cost of control.

Cost-sharing is prohibited for plantings installed primarily for farm beautification, protection of buildings or livestock, energy conservation, or other uses where erosion control is not the primary purpose.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## 8400.2600 APPROVED PRACTICE: ANIMAL WASTE CONTROL SYSTEMS.

**Subpart 1. Definition.** "Animal waste control system" means a planned agricultural waste management system to contain and manage liquid and solid wastes including runoff

from concentrated animal waste (feedlot) areas with ultimate disposal in a manner which does not degrade soil or water resources. This practice includes systems for safe disposal of livestock wastes through use of soil and plants.

**Subp. 2. Purpose.** Agricultural waste management systems are used to manage wastes in rural areas in a manner which prevents or minimizes degradation of soil and water resources and protects public health and safety. These systems are planned to preclude discharge of pollutants to surface or ground water and, to the fullest practicable extent, recycle wastes through soil and plants.

**Subp. 3. Applicability.** Animal waste control systems may be used with any high priority feedlot or where the land occupier was cited by the Minnesota Pollution Control Agency or other situations where that agency determines there is a potential feedlot pollution hazard.

**Subp. 4. Policies.** Cost-sharing is authorized for:

A. All structures and permanent shrubs, trees, or grasses necessary to store animal wastes or control stormwater runoff from animal confinement areas including storage facilities, diversions, waste storage ponds, and waterways. A complete system, controlling discharge of runoff from animal confinement areas to waters of the state, is required.

B. Tile systems necessary for the establishment and operation of an animal waste control system.

C. Temporary materials and seedings necessary to properly stabilize an animal waste control system during construction.

D. Permanent fencing of an animal waste control system as determined by the district board.

Cost-sharing is prohibited on any costs normally incurred in the management of an animal confinement area. This includes buildings, yards, permanent or portable pumps, tank wagons, loaders, stackers, and similar items.

Holding tanks, collection basins, waste conveying pipe, and other animal waste facilities are eligible for cost-sharing if the district board determines that they are necessary to protect water quality and if the entire system needed to control pollution is installed.

A holding tank which will become an integral part of a building is eligible for cost-sharing if there is no other feasible alternative available for controlling pollution. The district board, with technical review completed by technicians available to it, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building is not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## 8400.2700 APPROVED PRACTICE: CRITICAL AREA STABILIZATION.

**Subpart 1. Definition.** "Critical area stabilization" means planting permanent vegetation such as trees, shrubs, vines, grasses, or legumes or placing rock cover on highly erodible or severely eroded sites or in areas where vegetation is needed to protect or improve water quality.

**Subp. 2. Purpose.** The purpose of critical area stabilization is to provide permanent vegetative or rock cover to stabilize the soil, to control erosion or to protect or improve water quality. Additional benefit may be gained by improving wildlife habitat and enhancing natural beauty.

**Subp. 3. Applicability.** Critical area stabilization may be used on sediment-producing, highly erodible, or severely eroded areas or in areas where vegetation is needed to protect or improve water quality, such as, but not limited to, abandoned mine spoil, construction sites, and denuded or gullied areas where vegetation is difficult to establish.

**Subp. 4. Policies.** Cost-sharing for stabilizing streambank, lakeshore, and roadside areas must be addressed with the approved practice in part 8400.2705.

Cost-sharing is authorized for:

A. earthwork, materials, seed, and seedings and other associated costs necessary to stabilize the area;

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B. temporary materials and seedings necessary to stabilize the area during construction; and

C. permanent fencing of the area as determined by the district board.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## **8400.2705 APPROVED PRACTICE: STREAMBANK, LAKESHORE, AND ROAD-SIDE STABILIZATION.**

**Subpart 1. Definition.** "Streambank, lakeshore, and roadside stabilization" means stabilizing and protecting streambank, lakeshore, and roadside areas against erosion by vegetative or structural means.

**Subp. 2. Purpose.** The purpose of streambank, lakeshore, and roadside stabilization is to control erosion or protect or improve water quality.

**Subp. 3. Applicability.** Streambank, lakeshore, and roadside stabilization may be used on eroding or sediment producing areas on streambank, lakeshore, or roadside sites where vegetative or structural measures are needed to correct the problem.

**Subp. 4. Policy.** Cost-sharing is authorized for:

A. earthwork, materials, seed, and seedings necessary to stabilize the area;

B. temporary materials and seedings necessary to stabilize the area during construction; and

C. permanent fencing of the area as determined by the district board.

Permanent fencing may be used as the sole remedy if it is determined by the district board to be the most practical solution, except that fencing of property boundaries and roads is ineligible for cost-sharing.

**Subp. 5. Cost-sharing limit.** Cost-sharing may not exceed 50 percent of total eligible project costs.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

## **COST-SHARE RATES**

### **8400.2800 MAXIMUM RATES.**

The maximum percent of the total cost of a practice installed to control a high priority erosion or water quality problem that may be funded by state cost-share funds is 75 percent except as stated in part 8400.2100, subpart 4. The maximum percent of the total cost of a practice installed to control a secondary priority nonshoreland erosion problem that may be funded by state cost-share funds is 50 percent except as stated in part 8400.2100, subpart 4. State cost-share funds may be matched with federal money or other state funds except as stated in part 8400.2100, subpart 4. The combined state and federal amount may not exceed the maximum rates in this part or part 8400.2705, subpart 5.

**Statutory Authority:** *MS s 40.036 subd 3*

**History:** 9 SR 2439

### **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*

## **RIM RESERVE AND PERMANENT WETLANDS PRESERVE PROGRAMS**

**NOTE:** These rules were promulgated by the commissioner of agriculture, but are administered by the Board of Water and Soil Resources

### **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]**

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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 18.

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

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**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

## 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

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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*

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## 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-

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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;

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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 easement program practice specifications. Establishment of approved practices must be monitored by the district board to ensure compliance with the conservation plan and the conservation easement. Upon establishment or partial completion of an approved practice, a district technical

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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]**

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## 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 40.19 to 40.28 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 40.19 to 40.28.

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

**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 apriary 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, chapter 40.

**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 40.

**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 including 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.

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**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*

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

## 8400.4005 LOCAL DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, 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*

**History:** *11 SR 742*

## 8400.4010 SOIL AND WATER CONSERVATION DISTRICT DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, 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*

**History:** *11 SR 742*

### 8400.4015 COMMISSIONER'S DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, 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 40.19 to 40.28 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*

**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 40.19 to 40.28. A local government may adopt soil loss limits which are stricter than the model ordinances.

**Statutory Authority:** *MS s 40.21*

**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;

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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;

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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 40.21, 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*

**History:** *11 SR 742*