

1 Board of Water and Soil Resources

2

3 Adopted Permanent Rules Relating to Reinvest in Minnesota

4 Conservation Reserve Program

5

6 Rules as Adopted

7 8400.3000 AUTHORITY.

8 Minnesota Statutes, sections 40.40 to 40.46 and 84.95,
9 authorize the board, in cooperation with districts, state and
10 local private groups, and state and federal agencies, to
11 implement a program of retiring certain agricultural land from
12 crop production and establishing on that land permanent
13 vegetative cover, restoring drained wetlands, establishing
14 windbreaks adjacent to highways, or enhancing and protecting
15 other private lands. Parts 8400.3000 to 8400.3930 provide
16 procedures and criteria to be followed by the board and district
17 boards in implementing Minnesota Statutes, sections 40.40 to
18 40.46.

19 8400.3030 DEFINITIONS.

20 Subpart 1. and 2. [Unchanged].

21 Subp. 3. [See Repealer.]

22 Subp. 4. to 6. [Unchanged.]

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

26 Subp. 7. [See Repealer.]

27 Subp. 8. **Board.** "Board" means the Board of Water and Soil
28 Resources.

29 Subp. 9. **Conservation agreement.** "Conservation agreement"
30 means a written contract stating the terms and conditions for
31 conveying the conservation plan and the conservation easement by
32 the landowner to the board.

33 Subp. 10. to 17. [Unchanged.]

34 Subp. 17a. **Drained wetland.** "Drained wetland" means a
35 former natural wetland that has been altered by draining,

1 dredging, filling, leveling, or other manipulation sufficient in
2 an attempt to render the land suitable for agricultural crop
3 production. The alteration must have occurred before December
4 23, 1985, and must be a legal alteration as determined by the
5 commissioner of natural resources.

6 Subp. 18. to 20. [Unchanged.]

7 Subp. 20a. **Family farm partnership.** "Family farm
8 partnership" has the meaning given in Minnesota Statutes,
9 section 500.24, subdivision 2.

10 Subp. 21. to 30. [Unchanged.]

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

17 Subp. 32. [Unchanged.]

18 Subp. 33. **Marginal agricultural land.** "Marginal
19 agricultural land" for the RIM reserve program means land with
20 cropland soils that are inherently unproductive for agricultural
21 crop production or subject to significant potential soil
22 productivity loss from erosion. The state board shall provide
23 districts with a list of soil mapping units indicative of
24 marginal agricultural land. Districts may change the list as
25 necessary to reflect local soil characteristics. Changes must
26 be approved by the board. This list, with changes, is available
27 at the state law library and at district offices, is subject to
28 frequent change, and is incorporated by reference. In addition,
29 land immediately surrounding a sinkhole is marginal agricultural
30 land.

31 Subp. 33a. **Pasture.** "Pasture" means land used for grazing
32 by domestic livestock on and before June 2, 1989, which has not
33 been cultivated or interseeded at least twice during the period
34 of 1976 to 1985, and therefore is not considered to be in
35 agricultural crop production.

36 Subp. 33b. **Pastured hillside.** "Pastured hillside" means

1 land used for pasture in land capability classes III to VIII as
2 defined by the United States Department of Agriculture,
3 Agricultural Handbook Number 210. This publication is available
4 at the state law library and at district offices, is not subject
5 to frequent change, and is incorporated by reference.

6 Subp. 34. to 36. [Unchanged.]

7 Subp. 37. **Present value.** "Present value" means the value
8 today of an amount that would have been received later, at a
9 discount rate established annually by the board.

10 Subp. 38. to 39. [Unchanged.]

11 Subp. 39a. **Public water.** "Public water" means waters and
12 wetlands as defined in Minnesota Statutes, section 105.37 and
13 inventoried under Minnesota Statutes, section 105.391. A copy
14 of the inventory is available in the district office.

15 Subp. 40. **Restored wetland.** "Restored wetland" means a
16 drained wetland restored under the RIM reserve program if the
17 wetland meets the definition of a wetland in subpart 48.

18 Subp. 41. **RIM reserve conservation practice specifications.**
19 "RIM reserve conservation practice specifications" means the
20 current edition of the board's publication containing detailed
21 descriptions of the approved conservation practices found in
22 part 8400.3660. This publication is subject to frequent change,
23 is available at the state law library and at district offices,
24 and is incorporated by reference.

25 Subp. 42. **RIM reserve program.** "RIM reserve program"
26 means the Reinvest in Minnesota Resources Conservation Reserve
27 program established in Minnesota Statutes, sections 40.41 to
28 40.46.

29 Subp. 42a. **Riparian.** "Riparian" means cropland adjacent
30 to public water. For the RIM reserve program, the cropland must
31 begin within 100 feet of the boundary of the public water to be
32 eligible.

33 Subp. 43. [Unchanged.]

34 Subp. 43a. **Sensitive groundwater area.** "Sensitive
35 groundwater area" means a geographic area defined by natural
36 features where there is a significant risk of groundwater

1 degradation from activities conducted at or near the land
2 surface. These areas may be identified by mapping or other
3 appropriate methods determined by the commissioner of natural
4 resources and the board. Wellhead protection areas may be
5 designated as a sensitive groundwater area.

6 Subp. 44. to 46. [Unchanged.]

7 Subp. 47. [See Repealer.]

8 Subp. 48. [Unchanged.]

9 8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

10 The board shall allocate funds to participating district
11 boards based on the following criteria:

12 A. and B. [Unchanged.]

13 C. the potential for restoring drained wetlands;

14 D. to F. [Unchanged.]

15 The allotted funds may be increased, decreased, or shifted
16 by the board as necessary to maximize the use of funds among
17 districts.

18 8400.3100 ADMINISTRATION OF FUNDS.

19 The participating district board is responsible for
20 administration of the funds in accordance with Minnesota
21 Statutes, sections 40.40 to 40.46 and other applicable laws.
22 The district board may make recommendations concerning use of
23 these funds in accordance with parts 8400.3000 to 8400.3930.

24 8400.3110 EASEMENT DURATION.

25 The board may acquire conservation easements on eligible
26 land. An easement may be permanent or of limited duration. An
27 easement acquired on drained wetlands or land for highway
28 windbreak purposes must be of permanent duration. An easement
29 of limited duration may not be acquired if it is for a period
30 less than 20 years.

31 8400.3130 PRIORITY SETTING.

32 Annually, before considering any applications from
33 landowners, the participating district board shall call a
34 screening committee meeting. The screening committee must

1 establish priority areas within the district. Establishment of
2 priority areas must be based on the following criteria:

3 A. the priorities established by the board;

4 B. the location of high priority soil erosion or
5 water quality problem areas in the district as outlined in the
6 district comprehensive and annual plans;

7 C. the potential of the land for fish and wildlife
8 production, reducing soil erosion, and protecting water quality;

9 D. recommendations from technical agricultural and
10 natural resource experts familiar with the district;

11 E. the established priorities of the agencies and
12 organizations represented on the screening committee;

13 F. maximizing the benefits of current programs
14 administered by the United States Agricultural Stabilization and
15 Conservation Service, United States Fish and Wildlife Service,
16 and Minnesota Department of Natural Resources; and

17 G. the amount of RIM reserve program funds available.

18 8400.3160 CRITERIA FOR ELIGIBLE LAND.

19 Land eligible for the RIM reserve program must meet at
20 least one of the following criteria:

21 A. and B. [Unchanged.]

22 C. The land is drained wetland and cropland adjacent
23 to the drained wetland, with up to four acres of adjacent
24 cropland for each acre of restored wetland. In selecting
25 drained wetlands for enrollment, the highest priority must be
26 given to wetlands with a cropping history during the period 1976
27 to 1985.

28 D. [Unchanged.]

29 E. The land is cropland in a sensitive groundwater
30 area.

31 F. The land is cropland riparian to public waters.

32 G. The land is a woodlot on agricultural land.

33 H. The land is an abandoned building site on
34 agricultural land.

35 I. The land is a pastured hillside.

1 In addition, eligible land must have all of the following
2 characteristics:

3 (1) The land has been in agricultural crop
4 production for at least two years during the period 1981 to
5 1985, except drained wetlands, woodlots, abandoned building
6 sites, or hillsides used for pasture.

7 (2) The land has been owned by the landowner on
8 ~~January 17, 1985, or owned by the landowner~~, or a parent or other
9 blood relative of the landowner, for at least one year before
10 the date of application.

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

15 (4) The land must not be within 200 feet of any
16 building.

17 (5) The land must not be set-aside, enrolled, or
18 diverted under another federal or state government crop land
19 retirement program including, but not limited to, federal
20 conservation reserve, federal production adjustment set-aside,
21 or state or federal water bank.

22 (6) The land must be physically possible to crop,
23 except for drained wetlands, woodlots, abandoned building sites,
24 and hillsides used for pasture.

25 8400.3200 MAXIMUM ENROLLMENT.

26 The total land for which a landowner may receive
27 compensation from the RIM reserve program may not exceed 20
28 percent of the average farm size in the county where the land is
29 being enrolled according to the average size determined by the
30 most recent United States Department of Agriculture Census of
31 Agriculture.

32 8400.3230 APPLICATION BY LANDOWNERS.

33 Landowners interested in participating in the RIM reserve
34 program must submit an application to the appropriate district
35 office in which the land is located, during the application

1 period established by the board, and on forms provided by the
2 board. The landowner must complete the application in its
3 entirety along with any supportive information required for
4 proper consideration of the application. The supportive
5 information includes, but is not limited to:

- 6 A. crop history of the parcel;
- 7 B. aerial photographs or a sketch of the parcel; and
- 8 C. description of other land owned or leased as part
9 of the same farm operation at the time of application.

10 The district technician shall make an initial determination
11 of easement eligibility at the time of application.

12 Applications having questionable eligibility must be referred to
13 the district board for eligibility determination. Providing
14 proof of eligibility is the responsibility of the landowner.

15 The district technician shall develop a cost estimate for the
16 easement and approved practices for all eligible applications.

17 Other organizations and agencies may be requested to provide
18 technical assistance in preparing cost estimates.

19 8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

20 The district board shall develop a conservation agreement
21 for all approved applications in which the landowner agrees to:

- 22 A. [Unchanged.]
- 23 B. establish and maintain permanent cover and other
24 conservation practices on the land subject to the easement as
25 described in the conservation plan approved by the board, which
26 is incorporated into the conservation easement;
- 27 C. convey to the state a permanent wetland
28 restoration easement when a drained wetland is being restored;
- 29 D. not convert to agricultural crop production,
30 pasture, or introduced pasture any other land supporting natural
31 vegetation owned or leased as part of the same farm operation at
32 the time of application, if those lands support natural
33 vegetation or have not been used in agricultural crop
34 production, pasture, or introduced pasture except that land may
35 be converted to pasture if done according to an approved

1 district conservation plan;

2 E. the enforcement of the terms of the easement and
3 agreements as provided in Minnesota Statutes, section 40.43,
4 subdivision 9, or other relief authorized by law;

5 F. not alter wildlife habitat, natural features, or
6 the vegetative cover and other conservation practices
7 established in the conservation plan, except by the prior
8 written approval of the board;

9 G. not produce agricultural crops, unless approved by
10 the board for wildlife management purposes;

11 H. not graze livestock, except easements secured from
12 the 1986, 1987, and 1988 application periods, may be grazed with
13 the prior written approval of the board, after consultation with
14 the commissioner of the Department of Natural Resources, in the
15 case of severe drought or a local emergency;

16 I. and J. [Unchanged.]

17 K. notify the board in writing within 30 days after
18 the conveyance of all or part of the title or interest in the
19 land in which the easement area is located by providing the
20 names and addresses of the grantees, assignees, or heirs;

21 L. to N. [Unchanged.]

22 O. allow the board and the board's employees and
23 agents to enter the easement area for the purposes of inspection
24 or enforcement of the terms and conditions of the easement; and

25 P. [Unchanged.]

26 The conservation agreement must be recordable and on forms
27 approved by the board.

28 8400.3430 PROCEDURE FOR REVIEW OF CONSERVATION AGREEMENT.

29 After the conservation agreement has been developed by the
30 district board, the unsigned agreement must be processed as
31 follows:

32 A. It must be reviewed by a field representative of
33 the board.

34 B. It must have a review and determination by the
35 board.

1 C. The landowner must be notified of the board's
2 decision.

3 D. If it is approved by the board, the agreement must
4 be given to the landowner for signature.

5 E. The agreement must be returned to the board for
6 signature by the necessary state officials and encumbrance of
7 state funds.

8 F. A copy of the signed agreement must be provided to
9 the landowner.

10 8400.3460 ABSTRACT AND TITLE REQUIREMENTS.

11 After notification of the board's signing of the
12 conservation agreement, the landowner, at the landowner's
13 expense, shall deliver to the district office an original
14 up-to-date abstract of title or registered property abstract,
15 with certifications as to liens, bankruptcies, real estate
16 taxes, and judgments. The landowner must have good and
17 marketable title, not subject to any prior liens or
18 encumbrances, as determined by the Attorney General, or an
19 insurable title under a title insurance policy, not subject to
20 any prior liens or encumbrances, approved by the Attorney
21 General. Any title defect, liens, or encumbrances must be
22 promptly removed or corrected by the landowner including, but
23 not limited to, the following: lien waivers, releases or
24 consent and subrogation from mortgagees, release or satisfaction
25 of judgments, and receipt for payment of delinquent real estate
26 taxes. The landowner's abstract of title must be returned to
27 the landowner.

28 8400.3500 EASEMENT CONVEYANCE.

29 Upon delivery and recording of a properly executed
30 conservation easement, approved by the board, and the vesting of
31 the easement interest in the board, not subject to any prior
32 lien or encumbrances, payment must be made for the easement to
33 the landowner, landowner's designees, assignees, or heirs.

34 8400.3530 PAYMENT RATES.

1 Subpart 1. [Unchanged.]

2 Subp. 2. **New easements.** For permanent easements, payments
3 are per acre figures derived from county average cash rent
4 adjusted for countywide variations in estimated township market
5 value. The figures are established on a township basis with the
6 lower of the following two values selected as the payment:

7 A. 100 percent of the present value of the derived
8 per acre figure calculated for perpetuity; or

9 B. 90 percent of estimated township market value.

10 This payment method provides higher values for better quality
11 land and ensures that payments do not exceed estimated market
12 values. A schedule of payments for townships and unorganized
13 areas is developed annually and is available at district offices
14 or from the board.

15 For limited duration easements not less than 20 years in
16 length, payments are based on 65 percent of the permanent
17 easement payment.

18 Payment rates for eligible lands without a cropping history
19 must be based on a percentage of the permanent easement payment
20 rate as determined by the board annually. There must be no
21 compensation for the value of any buildings or other structures
22 that may be on the easement area.

23 Payment rates may be modified prior to the sign up by the
24 board if the board determines the rates established above do not
25 reflect current market values based on the most recent land
26 value market indicators.

27 The board shall annually establish the discount rate to be
28 used for calculating present value. Average cash rent and
29 estimated market value are based on information provided by the
30 Department of Revenue in cooperation with local assessors.

31 Subp. 3. and 4. [Unchanged.]

32 8400.3600 EASEMENT RENEWAL AND CONVERSION.

33 A. When a conservation easement of limited duration
34 expires, a new conservation easement and agreement for an
35 additional period of not less than 20 years may be acquired by

1 agreement of the board and the landowner under the rules in
2 force at that time. The board may adjust payment rates as a
3 result of renewing an agreement and conservation easement only
4 after examining the condition of the established cover,
5 conservation practices, and land values.

6 B. The easement duration may be lengthened through
7 mutual agreement with the board in consultation with the
8 commissioners of agriculture and natural resources if they
9 determine that the changes effectuate the purpose of the program
10 or to facilitate its administration.

11 8400.3610 ALTERATION, RELEASE, OR TERMINATION OF EASEMENTS.

12 The board may alter, release, or terminate an easement
13 after consultation with the commissioners of agriculture and
14 natural resources. The board may alter, release, or terminate
15 an easement only if the board determines the public interests
16 and general welfare are better served by the alteration,
17 release, or termination.

18 The board must be provided the following information at
19 least 30 days prior to a board meeting, before the board will
20 consider a request to alter, release, or terminate an easement:

21 A. a letter from the landowner justifying the change
22 and identifying how the public interest and general welfare will
23 be better served;

24 B. a letter from the district board recommending the
25 change;

26 C. a letter from the Department of Natural Resources
27 wildlife manager recommending the change; and

28 D. other supporting documents, including:

29 1. an aerial photo identifying the requested
30 change;

31 2. a soil survey map of the area;

32 3. cropping history information; and

33 4. other pertinent documentation that will
34 support the request.

35 The board reserves the right to require special provisions

1 to ensure at least equal resource value as a condition of
2 approving the request. The board must be compensated for all
3 damages and loss of benefits to the conservation easement as
4 well as administrative expenses and costs incurred in the
5 alteration, release, or termination of an easement. Priority
6 must be given to obtaining eligible replacement land rather than
7 cash payment for damage or loss of benefits.

8 8400.3630 CRITERIA FOR APPROVED PRACTICES.

9 Approved practices must be enduring in nature and have as
10 their primary purpose the control of soil erosion or
11 sedimentation, protection or improvement of water quality, or
12 creation or improvement of fish and wildlife habitat. The list
13 is contained in part 8400.3660 and is further specified in the
14 RIM reserve conservation practice specifications. Practices
15 under this program must be designed for a minimum effective life
16 of 20 years, be nonproduction practices, and have specifications
17 providing for the use of plant species and construction
18 techniques that provide quality fish and wildlife benefits.
19 Production practices that do not qualify as approved practices
20 include, but are not limited to, Christmas tree plantations and
21 fruit orchards. Food plots are not eligible for RIM reserve
22 cost-sharing, but are allowed on enrolled acres if they are
23 included in the conservation plan and approved by the board in
24 cooperation with the commissioner of natural resources.

25 8400.3700 ESTABLISHMENT OF APPROVED PRACTICES.

26 Subpart 1. [Unchanged.]

27 Subp. 2. Costs for approved practices.

28 A. The district board shall review the receipts and
29 invoices provided by the landowner to determine the actual cost
30 eligible for RIM reserve payment. If the district board
31 determines that the claims are reasonable and necessary, it
32 shall recommend payment to the landowner by submitting a
33 completed certification of practice completion and a cost-share
34 voucher to the board. If the district board determines that
35 certain claims are not justified or not eligible, it shall

1 notify the landowner in writing of the unjustified claim within
2 30 days. The landowner may request reconsideration of this
3 determination by the district board within 15 days of receipt of
4 the determination. If additional eligible costs are justified,
5 the district board shall then recommend payment for the approved
6 amount. The board reserves the right to determine whether
7 claims for payment are reasonable and necessary.

8 B. and C. [Unchanged.]

9 D. The board may encumber additional funds for
10 eligible costs if the additional encumbrance is consistent with
11 the purpose and policy of the RIM reserve program and the
12 maximum amounts in Minnesota Statutes, section 40.43,
13 subdivision 6, clauses (1) and (2), are not exceeded.

14 Subp. 3. and 4. [Unchanged.]

15 8400.3730 FAILURE OF APPROVED PRACTICES.

16 A landowner is not in violation of the conservation
17 easement if the failure of approved practices was caused by
18 reasons beyond the landowner's control such as extreme weather
19 conditions. In these instances, the district board may
20 recommend to the board that additional RIM reserve funds be
21 encumbered for reinstallation of the approved practices. The
22 encumbrance must comply with the limits in Minnesota Statutes,
23 section 40.43, subdivision 6, clauses (1) and (2), and cannot
24 exceed the amount encumbered for the initial installation. In
25 no case may a district board provide financial assistance to a
26 landowner for the reapplication of approved practices that were
27 removed, altered, or failed due to improper maintenance during
28 the term of the easement.

29 8400.3830 VIOLATIONS.

30 The board may enforce the easement and agreement by the
31 legal action in items A and B.

32 A. A landowner who violates the terms of a
33 conservation easement or agreement under this chapter, or
34 induces, assists, or allows another to do so, is liable to the
35 state for treble damages if the trespass is willful, but liable

1 for double damages only if the trespass is not willful. The
2 amount of damages is the amount needed to make the state whole
3 or the amount the landowner has gained due to the violation,
4 whichever is greater.

5 B. Upon the request of the board, the attorney
6 general may commence an action for specific performances,
7 injunctive relief, damages, including attorney fees, and any
8 other appropriate relief to enforce Minnesota Statutes, sections
9 40.41 to 40.46 in district court in the county where all or part
10 of the violation is alleged to have been committed, or where the
11 landowner resides or has a principal place of business.

12 The district board may recommend to the board appropriate
13 measures to be taken to correct violations. Easements remain in
14 effect even if maintenance violations have occurred.

15 8400.3860 MONITORING.

16 The board may require reports from the district to monitor
17 the progress of the RIM reserve program and the use of funds.
18 The reports must be on forms provided by the board.

19 8400.3900 DISTRICT BOARD RECORDS.

20 The district shall maintain a current ledger of easements
21 on forms provided by the board. The ledger must specify the
22 names of the landowners with whom the easements have been
23 developed, the approved practices involved, the status of
24 permanent cover establishment, the total of funds encumbered and
25 expended, the size and type of easements, and their effective
26 date.

27 8400.3930 RECONSIDERATION AND REVIEW.

28 Subpart 1. to 3. [Unchanged.]

29 Subp. 4. [See Repealer.]

30

31 REPEALER. Minnesota Rules, parts 8400.3030, subparts 3, 7,
32 and 47; 8400.3760; and 8400.3930, subpart 4; are repealed.