

1 Board of Water and Soil Resources

2

3 Adopted Permanent Rules Relating to Reinvest in Minnesota

4 Conservation Reserve and Permanent Wetlands Preserve Programs

5

6 Rules as Adopted

7 8400.3000 AUTHORITY.

8 Minnesota Statutes, sections 84.95, 103A.209, and 103F.501  
 9 to 103F.531, authorize the state board, in consultation with  
 10 districts, private groups, and state and federal agencies, to  
 11 implement a program to (a) acquire permanent easements on land  
 12 containing type 1, 2, 3, or 6 wetlands; (b) to retire certain  
 13 marginal agricultural land from agricultural crop production or  
 14 pasturing and to reestablish perennial cover on that land; and  
 15 (c) to enhance and protect other private lands. Parts 8400.3000  
 16 to 8400.3930 provide procedures and criteria to be followed by  
 17 the state board and district boards in implementing Minnesota  
 18 Statutes, sections 103F.501 to 103F.531.

19 8400.3030 DEFINITIONS.

20 Subpart 1. Scope. The definitions in this part apply to  
 21 parts 8400.3000 to 8400.3930.

22 Subp. 2. Agricultural crop production. "Agricultural crop  
 23 production" means an agricultural activity:

24 A. including but not limited to tillage, planting, or  
 25 harvesting operations; and

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

28 Subp 3a. Agricultural land. "Agricultural land" means

29 land devoted for use as pasture or hayland for domestic

30 livestock or dairy animals, or to the agricultural crop

31 production of horticultural, row, close-grown, introduced

32 pasture, or introduced hayland crops, or to growing nursery

33 stocks, or for pasturing domestic livestock or dairy animals, or

34 for use as animal feedlots, and may include contiguous land

35 associated with the production of the above these uses.

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

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

13 Subp. 6. **Authorized farm corporation.** "Authorized farm  
14 corporation" has the meaning given in Minnesota Statutes,  
15 section 500.24, subdivision 2.

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

19 Subp. 8. [See repealer.]

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

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

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

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

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

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

8 Subp. 12. [See repealer.]

9 Subp. 13. [See repealer.]

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

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

14 Subp. 16. [See repealer.]

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

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

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

33 Subp. 18. [See repealer.]

34 Subp. 19. Family farm. "Family farm" has the meaning  
35 given in Minnesota Statutes, section 500.24, subdivision 2.

36 Subp. 20. Family farm corporation. "Family farm

1 corporation" has the meaning given in Minnesota Statutes,  
2 section 500.24, subdivision 2.

3 Subp. 20a. **Family farm partnership.** "Family farm  
4 partnership" has the meaning given in Minnesota Statutes,  
5 section 500.24, subdivision 2.

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

10 Subp. 21. [See repealer.]

11 Subp. 22. [See repealer.]

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

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

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

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

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

29 Subp. 28. **Inherently unproductive.** "Inherently  
30 unproductive" means that the soil properties of available water  
31 capacity, bulk density, and pH in the uppermost 100 centimeters  
32 (39 inches) of a soil are present so that an unfavorable rooting  
33 environment exists for agricultural crop production.

34 Subp. 29. **Introduced hayland.** "Introduced hayland" means  
35 an area devoted to the production of forage that has been  
36 cultivated in a rotation of row crops or small grains or

1 interseeded with introduced or native species at least twice  
2 during the ten years prior to applying for enrollment in a  
3 conservation easement program. These areas must have been  
4 harvested by mechanical methods at least two years during the  
5 five years prior to applying for enrollment in a conservation  
6 easement program.

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

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

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

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

35 Subp. 33. **Marginal agricultural land.** "Marginal  
36 agricultural land" for the RIM reserve program means

1 agricultural land that is: (1) composed of class IIIe, IVe, V,  
2 VI, VII, or VIII land as identified in the land capability  
3 classification system of the United States Department of  
4 Agriculture; or (2) similar to land described under clause (1)  
5 and identified under a land classification system selected by  
6 the state board that is composed of soils that are inherently  
7 unproductive, as defined in subpart 28, for agricultural crop  
8 production or likely to cause significant potential  
9 environmental impact, as defined in subpart 44.

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

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

21 Subp. 33b. **Pastured hillside.** "Pastured hillside" means  
22 land on a hillside that is used for pasture as defined in  
23 subpart 33a or used for introduced pasture as defined in subpart  
24 30.

25 Subp. 34. [See repealer.]

26 Subp. 35. [See repealer.]

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

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

35 Subp. 37. [See repealer.]

36 Subp. 38. [See repealer.]

1 Subp. 39. [See repealer.]

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

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

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

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

16 Subp. 41. [See repealer.]

17 Subp. 42. **RIM reserve program.** "RIM reserve program"  
18 means the program established in Minnesota Statutes, sections  
19 103F.515 and 103F.525.

20 Subp. 42a. **Riparian land.** "Riparian land" means land  
21 adjacent to public waters, drainage systems, wetlands, or  
22 locally designated priority waters identified in a comprehensive  
23 local water plan, as defined in Minnesota Statutes, section  
24 103B.3363, subdivision 3.

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

32 Subp. 43a. **Sensitive groundwater area.** "Sensitive  
33 groundwater area" means a geographic area defined by natural  
34 features where there is a significant risk of groundwater  
35 degradation from activities conducted at or near the land  
36 surface. These areas may be identified by mapping or other

1 appropriate methods determined by the commissioner of natural  
2 resources and the state board. Wellhead protection areas and  
3 land that is adjacent and draining to a sinkhole may be  
4 designated as a sensitive groundwater area.

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

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

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

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

21 Subp. 48. **Wetland.** "Wetland" means land that has a  
22 predominance of hydric soils and that is inundated or saturated  
23 by surface or groundwater at a frequency and duration sufficient  
24 to support, or that periodically does support, a predominance of  
25 hydrophytic vegetation.

26 **8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.**

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

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

34 B. the need for soil erosion or sediment control,  
35 protection or improvement of water quality, or improvement of



1 fish and wildlife habitat, within a specified geographical area  
2 as determined by the state board, or as identified in the annual  
3 plan of each district or in any comprehensive local water plans  
4 prepared pursuant to Minnesota Statutes, section 103B.231,  
5 103B.255, 103B.311, 103D.401, or 103D.405;

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

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

13 The allocated funds may be increased, decreased, or shifted  
14 by the state board as necessary to maximize the use of available  
15 funds among districts. In selecting land for enrollment in the  
16 RIM reserve program, highest priority must be given to permanent  
17 conservation easements pursuant to Minnesota Statutes, section  
18 103F.515, subdivision 2, paragraph (f).

19 8400.3110 DURATION OF CONSERVATION EASEMENTS.

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

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

31 8400.3130 LOCAL PRIORITY SETTING.

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

- 1           A. the priorities established by the state board;
- 2           B. the location of high priority soil erosion or
- 3 water quality problem areas in the district as outlined in the
- 4 district comprehensive and annual plans and any comprehensive
- 5 local water plans prepared pursuant to Minnesota Statutes,
- 6 section 103B.231, 103B.255, 103B.311, 103D.401, or 103D.405;
- 7           C. the potential for fish and wildlife production,
- 8 soil erosion reduction, and water quality protection;
- 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 conservation easement program funds
- 18 available.

19 8400.3160 CRITERIA FOR ELIGIBLE LAND.

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

- 22           A. marginal agricultural land;
- 23           B. agricultural land adjacent to marginal
- 24 agricultural land that is being enrolled if enrollment of the
- 25 adjacent agricultural land is beneficial to resource protection
- 26 or necessary for efficient recording of the land description and
- 27 if at least 50 percent of the total proposed acreage is marginal
- 28 agricultural land;
- 29           C. a restorable drained wetland on agricultural land;
- 30           D. agricultural land adjacent to a restorable drained
- 31 wetland that is being enrolled if enrollment of the adjacent
- 32 land is beneficial to resource protection or necessary for
- 33 efficient recording of the land description, and no more than
- 34 four acres of adjacent land with crop history nor more than one
- 35 acre of adjacent land without crop history for each acre of

1 restored wetland is enrolled;

2 E. agricultural land that with a highway windbreak  
3 would be beneficial to resource protection;

4 F. agricultural land in a sensitive groundwater area;

5 G. agricultural riparian land;

6 H. a woodlot on agricultural land;

7 I. an abandoned building site on agricultural land;

8 J. a pastured hillside;

9 K. a replacement wetland on agricultural land; or

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

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

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

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

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

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

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

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

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

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

23 **Subp. 3. Permanent wetlands preserve program.**

24 A. Land eligible for the permanent wetlands preserve  
25 program must be:

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

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

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

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

1 assessor.

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

4 (1) land that is not a site used to mitigate a  
5 wetland loss;

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

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

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

20 Subp. 4. **Minimum acreage requirements; permanent wetlands**  
21 **preserve program.** A district board may limit the enrollment of  
22 upland adjacent to an eligible wetland to less than the maximum  
23 allowable four acres of adjacent upland for each acre of  
24 eligible wetland. A district board may waive the minimum  
25 acreage requirement for a landowner whose enrollment in the  
26 permanent wetlands preserve program of a portion of the eligible  
27 wetland is dependent upon the collective enrollment of  
28 additional adjacent owners of the eligible wetland.

29 8400.3200 MAXIMUM ENROLLMENT.

30 The total land for which a landowner may receive  
31 compensation from the RIM reserve program may not exceed 20  
32 percent of the average farm size in the county where the land is  
33 being enrolled. The average size must be based on the most  
34 recent United States Department of Agriculture Census of  
35 Agriculture. There is no acreage limitation for which a

1 landowner may receive compensation for enrolling eligible land  
2 into the permanent wetlands preserve program.

3 8400.3210 DELEGATION OF PROGRAM TO ANOTHER DISTRICT.

4 A district board may enter into an agreement with other  
5 district boards as authorized by Minnesota Statutes, section  
6 103C.231, to delegate to another district board the  
7 responsibility for administering any conservation easement  
8 program of the state board. Where such delegation has been  
9 mutually agreed upon, each district board must so notify all  
10 landowners in their respective district and each district must  
11 so notify the state board.

12 8400.3230 APPLICATION BY LANDOWNERS.

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

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

27 8400.3260 LAND IN MORE THAN ONE DISTRICT.

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

1 to the state board.

2 8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF  
3 APPLICATIONS.

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

9 A. consistency with the purpose and policy of the  
10 respective conservation easement program for which an  
11 application has been submitted by an eligible landowner;

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

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

17 D. potential title problems and encumbrances;

18 E. compatibility with established priorities of the  
19 organizations and agencies represented on the screening  
20 committee; and

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

24 8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW.

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

28 A. criteria in part 8400.3300 used in screening  
29 committee review;

30 B. compatibility with district plans and priorities;  
31 and

32 C. availability of funds.

33 8400.3360 DISTRICT ACTION ON APPLICATIONS.

34 Upon completion of district board review of the

1 applications, the district board shall take one of the following  
2 actions for each application:

3           A. the application is approved and submitted to the  
4 state board for funding consideration;

5           B. the application is retained by the district board  
6 for further investigation; or

7           C. the application is denied because the land or  
8 landowner is deemed to be ineligible or because the land is not  
9 of sufficient priority as related to the criteria listed in part  
10 8400.3300.

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

14 8400.3390 EASEMENT ACQUISITION PROCEDURES.

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

22 8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

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

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

32           B. remove any existing structures as required by the  
33 district board or the state board prior to the conveyance of the  
34 conservation easement with all associated costs being the  
35 responsibility of the landowner, and not place, erect, or



1 construct any temporary or permanent structures on the easement  
2 area;

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

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

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

16 8400.3460 TITLE REQUIREMENTS.

17 The landowner must have good and marketable title that is  
18 insurable under a title insurance policy. In addition, the  
19 title must not be subject to any prior liens or encumbrances  
20 determined to be objectionable by the Attorney General.  
21 Objectionable title defects, liens, or encumbrances must be  
22 promptly removed or corrected by the landowner prior to easement  
23 conveyance.

24 8400.3500 EASEMENT CONVEYANCE.

25 The conservation easement is conveyed after the  
26 conservation easement has been recorded and title has been  
27 accepted by the state.

28 8400.3530 EASEMENT PAYMENT RATES.

29 Subpart 1. RIM reserve program. The state board shall  
30 annually establish statewide easement payment rates on the  
31 following payment basis: (1) township average assessed market  
32 value of agricultural lands, or (2) actual assessed market value  
33 of agricultural lands, as authorized by Minnesota Statutes,  
34 section 103F.515, subdivision 6, paragraph (a), clause (5), and

1 paragraph (b). Easement payments shall be made as follows:

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

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

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

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

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

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

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

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

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

26 B. for wetlands in all other counties that are:

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

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

31 C. for adjacent upland:

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

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

36 Subp. 2a. **Noncompensable items.** In any computation of

1 payments under subpart 1 or 2, the state board shall not  
2 compensate for any of the following:

3           A. the value of any buildings or other structures  
4 that must be removed as required by the district board or the  
5 state board from the easement area; or

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

9                   (1) previously or currently enrolled in the state  
10 waterbank program pursuant to Minnesota Statutes, section  
11 103F.601;

12                   (2) authorized by part 8400.3160, subpart 2,  
13 which describes eligible land for the permanent wetlands  
14 preserve program;

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

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

19           Subp. 3. [See repealer.]

20           Subp. 4. [See repealer.]

21 8400.3560 PAYMENT SCHEDULE.

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

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

28 8400.3600 RENEWAL AND EXTENSION OF CONSERVATION EASEMENTS.

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

1 established cover, conservation practices, and land values.

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

12 8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION  
13 EASEMENTS.

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

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

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

27           B. a letter from the district board recommending  
28 either approval or disapproval of the proposed change;

29           C. a letter from the Department of Natural Resources  
30 area wildlife manager recommending either approval or  
31 disapproval of the proposed change; and

32           D. other supporting documents, including:

33                   (1) an aerial photo identifying the requested  
34 change;

35                   (2) a soil survey map of the area;

1 (3) cropping history information; and  
2 (4) other pertinent documentation that will  
3 support the request.

4 The state board reserves the right to require special  
5 provisions to ensure at least equal resource value as a  
6 condition of approving the request. The state board must be  
7 compensated by the landowner for all damages and loss of  
8 benefits to the conservation easement and the state board may  
9 also require reimbursement for administrative expenses and costs  
10 incurred in the alteration, release, or termination of a  
11 conservation easement.

12 8400.3630 APPROVED PRACTICES.

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

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

34 8400.3700 COST-SHARED PRACTICES.

35 Subpart 1. Approved practices eligible for cost-sharing.

1 The state board shall determine which approved practices are  
2 eligible for conservation easement program cost-sharing,  
3 consistent with the criteria as described in part 8400.3630,  
4 subpart 1, and consistent with the payment limits in Minnesota  
5 Statutes, section 103F.515, subdivision 6, paragraph (a),  
6 clauses (1) and (2).

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

8 A. Upon satisfactory performance under part  
9 8400.3630, subpart 2, the landowner shall present receipts or  
10 invoices to the district board of the costs incurred in the  
11 installation of the cost-shared practice. The district board  
12 shall review the receipts or invoices to determine the costs  
13 eligible for conservation easement program payment. If the  
14 district board determines that the costs requested for  
15 reimbursement are reasonable and necessary, it shall recommend  
16 payment to the landowner by submitting certification of  
17 satisfactory performance and providing documentation of  
18 reimbursable practice costs to the state board on forms provided  
19 by the state board. If the district board determines that  
20 certain costs requested for reimbursement are not eligible or  
21 reasonable, it shall notify the landowner in writing of this  
22 determination. The landowner may request reconsideration of  
23 this determination by the district board within 30 days of  
24 receipt of the determination. If additional costs are  
25 determined to be eligible and reasonable, the district board  
26 shall then recommend payment for the approved amount. The state  
27 board reserves the right to approve whether costs requested for  
28 reimbursement are eligible and reasonable.

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

1 board.

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

6 Subp. 3. **Payment for in-kind services.** In-kind services  
7 provided by the landowner including, but not limited to,  
8 earthwork, seedbed preparation, and seeding, may be credited to  
9 the landowner's share of the total cost of establishing the  
10 cost-shared practice. The district board shall credit only  
11 those costs it determines to be practical and reasonable.

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

16 8400.3730 FAILURE OF APPROVED PRACTICES.

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

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

35 8400.3800 OPERATION AND MAINTENANCE.

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

4 8400.3830 VIOLATIONS AND ENFORCEMENT.

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

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

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

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

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



1 Conservation easements remain in effect even if maintenance  
2 violations have occurred.

3 8400.3870 SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE PROGRAMS.

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

10 8400.3930 RECONSIDERATION AND APPEAL.

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

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

16 B. recommendation or determination to cancel that  
17 landowner's conservation agreement;

18 C. determination regarding that landowner's eligible  
19 and allowable costs to be reimbursed by the state board;

20 D. request to that landowner to correct any alleged  
21 noncompliant conditions regarding that landowner's enrolled  
22 easement area; or

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

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

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

11 EFFECTIVE DATE. Parts 8400.3000 to 8400.3960 are effective  
12 October 1, 1994.

13 REPEALER. Minnesota Rules, parts 8400.3030, subparts 8, 12, 13,  
14 16, 18, 21, 22, 34, 35, 37, 38, 39, and 41; 8400.3100;  
15 8400.3430; 8400.3530, subparts 3 and 4; 8400.3660; 8400.3760;  
16 8400.3860; and 8400.3900, are repealed.