

1.1 **8400.0050 PURPOSE.**

1.2 The land and water treatment program is administered through districts to provide
1.3 financial and technical assistance to land occupiers for the application of conservation
1.4 practices that reduce erosion, control sedimentation, improve and protect water quality, or
1.5 address water quantity problems due to altered hydrology to ensure the sustainable use
1.6 of Minnesota's natural resources.

1.7 **EROSION CONTROL AND WATER MANAGEMENT PROGRAM**

1.8 **8400.0060 AUTHORITY.**

1.9 Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation
1.10 with the districts, to administer a program of cost sharing with land occupiers for the
1.11 installation of soil and water conservation practices. Parts 8400.0060 to 8400.1900
1.12 provide procedures and criteria to be followed by the state board in allocating cost-sharing
1.13 funds to districts and standards and guidelines that the district boards shall use in
1.14 allocating funds to land occupiers.

1.15 **8400.0100 DEFINITIONS.**

1.16 Subpart 1. **Scope.** For purposes of parts 8400.0050 to 8400.1900, the definitions in this
1.17 part, in addition to those in Minnesota Statutes, chapter 103C, apply.

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 [Repealed, 20 SR 2185]

1.19 Subp. 2. [Repealed, 20 SR 2185]

1.20 Subp. 2a. [Repealed, 37 SR 1277]

1.21 Subp. 3. **Annual work plan.** "Annual work plan" means a plan prepared by the
1.22 district pursuant to Minnesota Statutes, section 103C.331, subdivision 11, paragraph (e),
1.23 and according to the most recent policy published by the state board.

1.24 Subp. 4. [Repealed, 37 SR 1277]

2.1 [For text of subps 5 to 7a, see M.R.]

2.2 Subp. 8. **Comprehensive plan.** "Comprehensive plan" means a long-range plan
2.3 adopted by the district pursuant to Minnesota Statutes, section 103C.331, subdivision 11,
2.4 and according to the most recent policy published by the state board.

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 [Repealed, 20 SR 2185]

2.6 Subp. 9. **District.** "District" means a soil and water conservation district organized
2.7 under Minnesota Statutes, chapter 103C.

2.8 Subp. 10. **District board.** "District board" means the board of supervisors of a soil
2.9 and water conservation district as organized under Minnesota Statutes, chapter 103C.

2.10 Subp. 10a. [Repealed, 37 SR 1277]

2.11 [For text of subps 10b to 14a, see M.R.]

2.12 Subp. 14b. [Repealed, 37 SR 1277]

2.13 Subp. 15. [Repealed, 37 SR 1277]

2.14 Subp. 16. [Repealed, 37 SR 1277]

2.15 Subp. 16a. [Repealed, 37 SR 1277]

2.16 Subp. 16b. [Repealed, 37 SR 1277]

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

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

2.21 Subp. 18a. [Repealed, 37 SR 1277]

2.22 Subp. 18b. [Repealed, 37 SR 1277]

2.23 Subp. 19. [Repealed, 20 SR 2185]

3.1 Subp. 19a. [Repealed, 37 SR 1277]

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

3.3 Subp. 20a. [Repealed, 37 SR 1277]

3.4 Subp. 20b. [Repealed, 37 SR 1277]

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

3.6 Subp. 20d. [Repealed, 37 SR 1277]

3.7 Subp. 21. [Repealed, 20 SR 2185]

3.8 Subp. 22. [Repealed, 20 SR 2185]

3.9 Subp. 22a. [Repealed, 37 SR 1277]

3.10 [For text of subps 23 and 24, see M.R.]

3.11 Subp. 25. [Repealed, 37 SR 1277]

3.12 Subp. 26. [Repealed, 37 SR 1277]

3.13 Subp. 27. [Repealed, 37 SR 1277]

3.14 **8400.0250 PROGRAM POLICY.**

3.15 The state board shall adopt policies providing for administration and implementation of
3.16 parts 8400.0500 to 8400.1900.

3.17 **8400.0300 APPROVED CONSERVATION PRACTICES.**

3.18 Subpart 1. [Repealed, 37 SR 1277]

3.19 Subp. 2. **Criteria for approved conservation practices.** Practices eligible for
3.20 cost-share funds must meet the criteria in items A to D.

3.21 A. The objectives of the approved conservation practices may include, but are not
3.22 limited to, activities that:

3.23 (1) control nutrient runoff;

- 4.1 (2) control sedimentation;
- 4.2 (3) divert runoff to protect and improve water quality;
- 4.3 (4) reduce wind erosion;
- 4.4 (5) control gully, rill, or sheet erosion;
- 4.5 (6) protect shoreland from erosion;
- 4.6 (7) control storm water runoff;
- 4.7 (8) protect or improve surface water and groundwater quality;
- 4.8 (9) provide energy conservation and snow protection; or
- 4.9 (10) address water quantity problems due to altered hydrology.

4.10 B. Practices to restore, protect, or enhance natural wildlife, aquatic, or native plant
4.11 habitat are eligible when used in combination with the practices listed in item A.

4.12 C. No cost-share funds shall be furnished for conservation practices designed
4.13 primarily to increase land productivity.

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

4.16 Subp. 3. [Repealed, 37 SR 1277]

4.17 **8400.0500 MAXIMUM COST-SHARE RATES.**

4.18 The maximum cost-share rates established by the state board represent the maximum
4.19 percent or amount of the total cost of a conservation practice that may be funded using
4.20 state cost-share funds.

4.21 **8400.0550 RECORDING CONSERVATION PRACTICES.**

4.22 The state board may determine that long-term maintenance of a conservation practice
4.23 is desirable and may require that maintenance be made a covenant upon the land for the

5.1 effective life of the practice. A covenant under this part shall be construed in the same
5.2 manner as a conservation restriction under Minnesota Statutes, section 84.65.

5.3 **8400.0600 STATE BOARD ALLOCATION OF FUNDS TO DISTRICTS.**

5.4 Subpart 1. [Repealed, 37 SR 1277]

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

5.6 Subp. 3. [Repealed, 37 SR 1277]

5.7 Subp. 4. **Grants to districts.** The state board shall allocate cost-share funds to district
5.8 boards that have fully complied with Minnesota Statutes, section 103C.501, subdivision 3;
5.9 all erosion control and water management program rules; and program policies.

5.10 Subp. 5. **Other funds.** Other funds received by the state board may be allocated to
5.11 districts for the treatment of erosion, sedimentation, water quality problems, or water
5.12 quantity problems due to altered hydrology. These additional funds may be incorporated
5.13 with existing erosion control and water management program funds and their use may be
5.14 governed by the program policy or may be subject to other policies or guidelines required
5.15 to fully implement the intent for which these additional funds were appropriated.

5.16 **8400.0900 DISTRICT ADMINISTRATION OF PROGRAM FUNDS.**

5.17 Subpart 1. **General.** Following receipt of grant funds from the state board, a district is
5.18 responsible for administration of the funds in accordance with Minnesota Statutes, chapter
5.19 103C, parts 8400.0050 to 8400.1900, program policies, and all other applicable laws. All
5.20 funds allocated to districts must be used for the purposes designated by the state board.

5.21 Subp. 2. **Maximum cost-share rate.** Prior to considering any applications from
5.22 land occupiers for cost-share assistance, the district board shall establish cost-share rates
5.23 for conservation practices to be installed under the program, up to the maximum rates
5.24 established by the state board.

5.25 Subp. 3. [Repealed, 37 SR 1277]

6.1 Subp. 4. **Criteria for district board review.** The district board shall use the factors in
6.2 items A to D to determine practice eligibility and to review applications for conservation
6.3 practice funding.

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

6.6 (1) grant the district's representatives access to the parcel where the
6.7 conservation practice will be located;

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

6.10 (3) be responsible for operation and maintenance of conservation practices
6.11 applied under this program according to an operation and maintenance plan prepared or
6.12 approved by a district technical representative or the district's delegate.

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

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

6.18 D. Conservation practices where construction has begun prior to district approval
6.19 are ineligible for financial assistance. The board may waive this requirement for
6.20 emergency needs.

6.21 Subp. 5. **Entering into contract.** After review of practice eligibility, the district board,
6.22 or its delegate, shall approve or deny the application. If the application is approved, the
6.23 district board, or its delegate, may enter into a contract with the land occupier.

7.1 **8400.1650 RECORDING CONSERVATION PRACTICES.**

7.2 When a district board, or its delegate, determines that long-term maintenance of a
7.3 conservation practice is desirable, the board, or its delegate, may require that maintenance
7.4 be made a covenant upon the land for the effective life of the conservation practice.
7.5 A covenant under this part shall be construed in the same manner as a conservation
7.6 restriction under Minnesota Statutes, section 84.65.

7.7 **8400.1700 MAINTENANCE.**

7.8 Subpart 1. **Land occupier maintenance responsibilities.** The land occupier is
7.9 responsible for operation and maintenance of conservation practices applied under this
7.10 program to ensure that their conservation objective is met and the effective life is achieved.
7.11 Should the land occupier fail to maintain the conservation practices during their effective
7.12 life, the land occupier is liable to the district for up to 150 percent of financial assistance
7.13 received to install and establish the conservation practice. The land occupier is not liable
7.14 for cost-share assistance received if the failure was caused by reasons beyond the land
7.15 occupier's control, or if conservation practices are applied at the land occupier's expense
7.16 which provide equivalent protection of the soil and water resources.

7.17 Subp. 2. **Reapplication of conservation practices.** In no case shall a district provide
7.18 cost-share assistance to a land occupier for the reapplication of conservation practices
7.19 which were removed by the land occupier during their effective life or that failed due
7.20 to improper maintenance.

7.21 **8400.1750 PRACTICE SITE INSPECTIONS.**

7.22 The district or the district's delegate shall conduct site inspections of conservation
7.23 practices installed with cost-share funds to determine if the land occupier is in compliance
7.24 with the operation and maintenance requirements under part 8400.1700 and the policy,
7.25 guidelines, and requirements of the state board.

8.1 **8400.1800 APPEALS.**

8.2 Land occupiers may appeal a district's action within 60 days of receiving notice of the
8.3 action by submitting a written request to the district board asking the board to reconsider
8.4 its decision. Should the land occupier and the district board reach an impasse, the land
8.5 occupier may petition to appeal the district board's decision to the state board within
8.6 60 days of receiving notice of the district board's final decision. The state board or its
8.7 executive director, as delegated, shall review and grant the petition, unless it is deemed
8.8 without sufficient merit, within 30 days of the receipt of the petition. The state board shall
8.9 make its decision on the appeal, if granted, within 60 days of a hearing date. The state
8.10 board's decision may uphold, remand, reverse, or amend the decision of the district board.

8.11 **8400.1900 REPORTS TO STATE BOARD.**

8.12 For the purpose of reporting and monitoring the progress of the program and use of
8.13 funds, each district shall submit an accomplishments report according to the guidelines
8.14 and requirements established by the state board.

8.15 **EASEMENT PROGRAM**

8.16 **8400.3000 AUTHORITY.**

8.17 Minnesota Statutes, sections 84.95, 103A.209, and 103F.501 to 103F.531, authorize
8.18 the state board, in consultation with districts, private groups, and state and federal
8.19 agencies, to implement a program to acquire easements on land to retire certain marginal
8.20 agricultural land and protect environmentally sensitive areas to enhance soil and water
8.21 quality, minimize damage to flood-prone areas, sequester carbon, and support native plant,
8.22 fish, and wildlife habitats and to reestablish perennial cover and restore wetlands on that
8.23 land. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the
8.24 state board and district boards in implementing Minnesota Statutes, sections 103F.501
8.25 to 103F.531. The state board shall implement the reinvest in Minnesota reserve program
8.26 with district boards when practical, but may also implement the program directly.

9.1 **8400.3030 DEFINITIONS.**

9.2 [For text of subps 1 to 5, see M.R.]

9.3 Subp. 6. [Repealed, 37 SR 1277]

9.4 Subp. 6a. [Repealed, 37 SR 1277]

9.5 [For text of subps 7 to 10, see M.R.]

9.6 Subp. 10a. [Repealed, 37 SR 1277]

9.7 [For text of subps 10b to 13, see M.R.]

9.8 Subp. 14. **District.** "District" means a soil and water conservation district organized
9.9 under Minnesota Statutes, chapter 103C.

9.10 Subp. 15. **District board.** "District board" means the board of supervisors of a soil
9.11 and water conservation district organized under Minnesota Statutes, chapter 103C.

9.12 [For text of subps 16 and 17, see M.R.]

9.13 Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that
9.14 has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to
9.15 reduce its natural function.

9.16 Subp. 17b. **Easement program practice specifications.** "Easement program practice
9.17 specifications" means the detailed descriptions of the approved practices that are allowed
9.18 on lands enrolled in the conservation easement programs.

9.19 Subp. 18. [Repealed, 19 SR 550]

9.20 Subp. 19. [Repealed, 37 SR 1277]

9.21 Subp. 20. [Repealed, 37 SR 1277]

9.22 Subp. 20a. [Repealed, 37 SR 1277]

9.23 [For text of subps 20b to 23, see M.R.]

10.1 Subp. 24. [Repealed, 37 SR 1277]

10.2 Subp. 25. [Repealed, 37 SR 1277]

10.3 Subp. 26. [Repealed, 37 SR 1277]

10.4 [For text of subp 27, see M.R.]

10.5 Subp. 28. [Repealed, 37 SR 1277]

10.6 [For text of subps 29 and 30, see M.R.]

10.7 Subp. 31. **Landowner.** "Landowner" means an individual or entity that is not prohibited
10.8 from owning agricultural land under Minnesota Statutes, section 500.24, and who either
10.9 owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

10.10 [For text of subp 31a, see M.R.]

10.11 Subp. 32. [Repealed, 37 SR 1277]

10.12 Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" means land that is:

10.13 A. composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land
10.14 capability classification system of the United States Department of Agriculture; or

10.15 B. similar to land described under item A and identified under a land classification
10.16 system selected by the board.

10.17 [For text of subps 33a to 39b, see M.R.]

10.18 Subp. 39c. [Repealed, 37 SR 1277]

10.19 Subp. 40. [Repealed, 37 SR 1277]

10.20 Subp. 41. [Repealed, 19 SR 550]

10.21 Subp. 42. **RIM reserve program.** "RIM reserve program" means the program
10.22 established in Minnesota Statutes, section 103F.515.

11.1 Subp. 42a. **Riparian land.** "Riparian land" means land adjacent to public waters,
11.2 drainage systems, wetlands, or locally designated priority waters.

11.3 [For text of subps 43 and 43a, see M.R.]

11.4 Subp. 44. [Repealed, 37 SR 1277]

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

11.8 Subp. 46. [Repealed, 37 SR 1277]

11.9 Subp. 47. [Repealed, 14 SR 1928]

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

11.11 Subp. 48. **Wetland.** "Wetland" means wetlands as defined in Minnesota Statutes,
11.12 section 103G.005, subdivision 19.

11.13 **8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF**
11.14 **APPLICATIONS.**

11.15 The state board may direct districts to utilize a local screening process or committee
11.16 to prioritize local project areas or applications. The criteria for screening committee
11.17 prioritization are as follows:

11.18 A. consistency with the purpose and policy of the respective conservation easement
11.19 program;

11.20 B. the parcel's potential impact on reducing soil erosion and sedimentation, improving
11.21 water quality, reducing flooding, and enhancing fish and wildlife habitat;

11.22 C. compatibility with established priorities of the organizations and agencies
11.23 participating in the screening process; and

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

12.3 **8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION**
12.4 **EASEMENTS.**

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

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

12.12 [For text of items A and B, see M.R.]

12.13 C. a letter from the Department of Natural Resources recommending either approval
12.14 or disapproval of the proposed change; and

12.15 D. other supporting documents, including:

12.16 (1) an aerial photo identifying the requested change;

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

12.18 (3) cropping history information; and

12.19 (4) other pertinent documentation that will support the request.

12.20 The state board reserves the right to require special provisions to ensure at least
12.21 equal resource value as a condition of approving the request. The state board must be
12.22 compensated by the landowner for all damages and loss of benefits to the conservation
12.23 easement and the state board may also require reimbursement for administrative expenses
12.24 and costs incurred in the alteration, release, or termination of a conservation easement.

13.1 **8400.3630 APPROVED PRACTICES.**

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

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

13.17 **8400.3700 COST-SHARED PRACTICES.**

13.18 Subpart 1. **Approved practices eligible for cost-sharing.** The state board shall
13.19 determine which approved practices are eligible for conservation easement program
13.20 cost-sharing, consistent with the criteria as described in part 8400.3630, subpart 1.

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

13.22 A. Upon satisfactory performance under part 8400.3630, subpart 2, the landowner
13.23 shall present receipts or invoices to the district board, or its delegate, of the costs incurred
13.24 in the installation of the cost-shared practice. The district board shall review the receipts
13.25 or invoices to determine the costs eligible for conservation easement program payment. If
13.26 the district board determines that the costs requested for reimbursement are reasonable

14.1 and necessary, it shall recommend payment to the landowner by submitting certification of
14.2 satisfactory performance and providing documentation of reimbursable practice costs to
14.3 the state board on forms provided by the state board. If the district board determines that
14.4 certain costs requested for reimbursement are not eligible or reasonable, it shall notify the
14.5 landowner in writing of this determination. The landowner may request reconsideration of
14.6 this determination by the district board within 30 days of receipt of the determination.
14.7 If additional costs are determined to be eligible and reasonable, the district board shall
14.8 then recommend payment for the approved amount. The state board reserves the right to
14.9 approve whether costs requested for reimbursement are eligible and reasonable.

14.10 B. Eligible costs for approved practices are limited to those prescribed by the state
14.11 board as allowed in Minnesota Statutes, section 103F.515, subdivision 6.

14.12 C. The state board reserves the right to approve and provide funding for
14.13 cost-shared practices.

14.14 Subp. 3. **Payment for in-kind services.** In-kind services provided by the landowner
14.15 including, but not limited to, earthwork, seedbed preparation, and seeding, may be
14.16 credited to the landowner's share of the total cost of establishing the cost-shared practice.
14.17 The district board shall credit only those costs it determines to be practical and reasonable
14.18 and may approve receipts or invoices directly or through its delegate.

14.19 Subp. 4. **Funds from other sources.** Conservation easement program cost-sharing
14.20 funds may be augmented by funds from other agencies, organizations, or individuals.

14.21 **8400.3730 FAILURE OF APPROVED PRACTICES.**

14.22 Subpart 1. **Cost-shared practices.** A landowner is not in violation of the conservation
14.23 easement if the failure, in whole or part, of a cost-shared practice was caused by reasons
14.24 beyond the landowner's control such as extreme weather conditions. In these instances,
14.25 the district board may recommend to the state board that conservation easement program
14.26 cost-sharing funds be encumbered for reestablishment of the cost-shared practice. The

15.1 encumbrance must comply with the limits prescribed by the state board. In no case
15.2 may a district board authorize conservation easement program financial assistance to a
15.3 landowner for the reestablishment of cost-shared practices that were removed or altered
15.4 by the landowner, or that have failed due to improper maintenance during the term of the
15.5 conservation easement.

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

15.9 **8400.3830 VIOLATIONS AND ENFORCEMENT.**

15.10 [For text of subp 1, see M.R.]

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

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

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

15.22 [For text of subp 3, see M.R.]

15.23 **REPEALER.** Minnesota Rules, parts 8400.0100, subparts 2a, 4, 10a, 14b, 15, 16, 16a,
15.24 16b, 18a, 18b, 19a, 20a, 20b, 20d, 22a, 25, 26, and 27; 8400.0200; 8400.0300, subparts
15.25 1 and 3; 8400.0600, subparts 1 and 3; 8400.0700; 8400.0800; 8400.0900, subpart 3;
15.26 8400.1000; 8400.1100; 8400.1200; 8400.1250; 8400.1300; 8400.1400; 8400.1405;

- 16.1 8400.1460; 8400.1500; 8400.1600; 8400.2900; 8400.3030, subparts 6, 6a, 10a, 19, 20,
- 16.2 20a, 24, 25, 26, 28, 32, 39c, 40, 44, and 46; 8400.3060; and 8400.3870, are repealed.