

**STATE OF MINNESOTA  
BOARD OF WATER AND SOIL RESOURCES**

**In the Matter of the Proposed Amendments to  
Rules of the Board of Water and Soil Resources  
Governing the Reinvest In Minnesota Reserve  
and the Permanent Wetlands Preserve Programs**

**STATEMENT OF NEED  
AND REASONABLENESS**

General Statement

The Minnesota Board of Water and Soil Resources ("Board") administers several water and soil conservation programs through soil and water conservation districts (SWCDs). SWCDs provide technical and financial assistance to landowners who need erosion control, water quality protection and wildlife habitat enhancement on their private lands. The amendments proposed to this rule (parts 8400.3000 to 8400.3930) govern two conservation easement programs administered by the Board, the Reinvest In Minnesota (RIM) Reserve program and the Permanent Wetlands Preserve (PWP) program.

It should be noted that the PWP program incorporates most aspects of the RIM Reserve program because the enabling statute for PWP refers to certain portions of the enabling statute for RIM Reserve regarding the nature of property rights acquired in a PWP conservation easement. Specifically, *Minnesota Statutes*, section 103F.516, subdivision 2(a), provides that the nature of property rights acquired in a conservation easement under this section must be consistent with the provisions of *Minnesota Statutes*, section 103F.515, subdivision 4. This provision of the RIM Reserve enabling statute in turn refers to *Minnesota Statutes*, section 103F.515, subdivision 5, which lists the obligations and restrictions required for the conservation agreement. As a result, unless the enabling statute for PWP specifically provides otherwise, the two rules governing the two programs have been made parallel to the extent possible.

The amendments to the permanent rules were proposed to improve the overall implementation of these conservation easement programs, in cooperation with SWCDs. The principal reasons for amending the rules were to:

1. incorporate legislative and administrative revisions that the Board and SWCDs have suggested since 1990, the date of the last revisions to the permanent rule;
2. incorporate updated statutory references due to *Laws of Minnesota 1990, Chapter 391*, which recodified, clarified and relocated provisions relating to water law;
3. develop rules for the PWP program, as authorized by *Laws of Minnesota 1991, Chapter 354*, the Wetland Conservation Act of 1991, and amended by *Laws of Minnesota 1994, Chapter 627*, sections 2 and 12; and
4. improve the clarity of the permanent rule.

The Board published a Notice of Solicitation for Outside Information and Opinions regarding revision of rules governing the RIM Reserve and the PWP programs in the *State Register* (Vol.17, No. 47) on May 24, 1993. No comments were received. In January 1994, the Board convened a 23-member Conservation Easement Advisory Group to discuss an initiative to improve the administration of the conservation easement programs and to review a January 1994 draft of proposed amendments to the rules. Few oral comments were offered and five letters were received. Those comments were considered in the drafting process. Board staff prepared a February 1994 draft and distributed it to the Conservation Easement Advisory Group and all 91 SWCDs. Seven letters were received and those comments were considered in the drafting process. An April 1994 draft was prepared and again distributed to the Conservation Easement Advisory Group and all 91 SWCDs. Only one letter was received. Board staff proposed two additional amendments to the Board at its April 27, 1994, meeting. The Board unanimously endorsed the April 1994 draft, as amended, and directed staff to prepare a notice for adoption of the rule amendments without a public hearing because it believes the proposed amendments are non-controversial.

A compilation of proposed administrative amendments resulted from the Board's comprehensive "retooling" effort to respond to suggested improvements that have been offered by SWCD staff and supervisors since 1990 regarding the conservation easement programs. The objectives of the easement programs "retooling" initiative were to provide:

1. program stability,
2. a more user-friendly administrative handbook,
3. a more streamlined process for the conveyance of conservation easements, and
4. a more locally-driven program.

To adequately assess and properly address these concerns and to meet these objectives, Board staff conducted several internal discussions to identify possible solutions and improvements. An intra-agency staff team was established to draft a new administrative handbook and to propose policies to address the solutions identified. The Board also created a 3-member committee to oversee the retooling initiative; it met three times with selected staff to review proposed policies and draft documents.

#### Statutory Authority

*Minnesota Statutes* sections 103F.501 *et. seq.* and 84.95 authorize the Board in cooperation with SWCDs, private groups, and state and federal agencies, to implement conservation easement programs to (a) provide permanent protection to land containing types 1, 2, 3, or 6 wetlands, (b) retire certain marginal agricultural land from agricultural crop production or pasturing and to reestablish perennial cover on those lands, or (c) enhance and protect the natural resources of other private lands.

*Minnesota Statutes* section 103F.531 specifically authorizes the Board to adopt rules

to implement conservation easement programs. In addition, the Board has general rule making authority for implementing all of its programs pursuant to *Minnesota Statutes*, section 103B.101, subdivision 7.

### Small Business Considerations

The proposed amendments to the rule relates to local government administration of a state program. Therefore, pursuant to *Minnesota Statutes* section 14.115, subdivision 7(2), the Board is exempt from describing specific impacts to small businesses.

### Fiscal Impact

*Minnesota Statutes*, section 14.11, subdivision 1, does not apply because adoption of the proposed amendments will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the proposed amendments.

### Agricultural Land Impact

The proposed amendments to the rule relates to acquiring (a) permanent easements on agricultural or non-agricultural land with types 1, 2, 3, or 6 wetlands, and (b) permanent or limited duration easements on certain marginal agricultural lands. The proposed amendments to the rule relate to the voluntary enrollment of eligible agricultural land into conservation easement programs. Pursuant to *Minnesota Statutes* section 14.11, subdivision 2, the Board is exempt from the requirements of *Minnesota Statutes*, sections 17.80 to 17.84, because adoption of the proposed amendments will not result in direct and substantial adverse impacts on agricultural lands.

### Analysis of Proposed Amendments

#### **A. NON-SUBSTANTIVE AMENDMENTS TO THE PERMANENT RULE.**

Numerous amendments to the permanent rule have been proposed which:

1. incorporate updated statutory references due to *Laws of Minnesota 1990, Chapter 391*, which recodified, clarified and relocated provisions relating to water law;
2. improve the clarity of the permanent rule; or
3. delete certain internal administrative procedures which are purely administrative and which do not affect the rights of the public. These administrative procedures will be incorporated in a revised administrative handbook ("conservation easement handbook" as defined in 8400.3030).

1. The following amendments regarding statutory recodification are reflected in:

- 8400.3000, "authority";
- 8400.3030, "definitions", subparts relating to:
  - (a) "annual plan",
  - (b) "public waters", and
  - (c) "RIM Reserve program";
- 8400.3300, "criteria for screening committee review", item F;
- 8400.3700, "cost-shared practices", subpart 2, item B;
- 8400.3730, "failure of approved practices", subpart 1; and
- 8400.3830, "violations and enforcement", subpart 3.

2. Amendments proposed to improve the clarity of the rule are reflected in:

- 8400.3000, "authority";
- 8400.3030, "definitions", subparts relating to:
  - (a) "annual plan",
  - (b) "approved practice",
  - (c) "conservation agreement",
  - (d) "conservation plan",
  - (e) "district",
  - (f) "district technical representative" -- formerly "district technician",
  - (g) "hydric soils",
  - (h) "hydrophytic vegetation",
  - (i) "inherently unproductive",
  - (j) "introduced hayland",
  - (k) "introduced pasture",
  - (l) "marginal agricultural land",
  - (m) "pastured hillside",
  - (n) "perennial cover" -- formerly "permanent cover",
  - (o) "screening committee",
  - (p) "soil and water conservation practice", and
  - (q) "wetland";
- 8400.3060, "criteria for allocation of funds";
- 8400.3110, "duration of conservation easements";
- 8400.3130, "local priority setting";
- 8400.3160, "criteria for eligible land", subparts 1 and 2;
- 8400.3200, "maximum enrollment";
- 8400.3230, "application by landowners";
- 8400.3300, "criteria for screening committee review";
- 8400.3330, "criteria for district board review";
- 8400.3360, "district action on applications";
- 8400.3400, "conservation agreement for easement";
- 8400.3460, "title requirements";
- 8400.3500, "easement conveyance";
- 8400.3560, "payment schedule";

- 8400.3600, "renewal and extension of conservation easements";
- 8400.3610, "alteration, release, or termination of conservation easements";
- 8400.3630, "approved practices", subpart 1;
- 8400.3700, "cost-shared practices", subparts 2 through 4;
- 8400.3730, "failure of approved practices", subpart 1;
- 8400.3800, "operation and maintenance";
- 8400.3830, "violations and enforcement", subparts 2 and 3;
- 8400.3930, "reconsideration and review", subparts 1 and 3.

3. Proposed deletions which will be incorporated in the revised administrative handbook ("conservation easement handbook") are reflected in:

- 8400.3030, "definitions", a subpart relating to "screening committee"--removes requirement of SWCDs to annually notify specific agencies to participate on the screening committee;
- former 8400.3100, "administration of funds" -- removes language which is already contained in grant agreements between the Board and each SWCD receiving such funds;
- 8400.3230, "application by landowners", items A through C (regarding certain supporting information);
- 8400.3300, "criteria for screening committee review" regarding requirements of the screening committee to prioritize applications and for applications with questionable eligibility to be resolved before providing such applications to the screening committee for prioritization;
- 8400.3360, "district action on applications" regarding:
  - (a) requirement of district board chair or acting chair to sign each approved application,
  - (b) requirement of establishing "pending status" list of high priority applications when insufficient funds will not allow for their immediate enrollment,
  - (c) requirement of stating the reason for denial on each denied application, and
  - (d) requirement of the minimum duration for which unfunded applications will be retained by each SWCD (former item E), and
  - (e) requirement of district board to formally notify the screening committee when it prioritizes applications differently than the screening committee (former item F);
- 8400.3430, "procedures for review of conservation agreement";
- 8400.3460, "title requirements" -- formerly entitled "abstract and title requirements", first and last sentences removed regarding landowner responsibility for delivering abstract to SWCD office and requirement of SWCD to return the abstract to the landowner;
- 8400.3860, "monitoring"; and
- 8400.3900, "district board records".

**B. SUBSTANTIVE AMENDMENTS TO THE PERMANENT RULE.**

#### **8400.3000 AUTHORITY**

- A reference to *Minnesota Statutes*, section 103A.209, is incorporated to emphasize the state policy regarding "marginal, erodible land."
- "State and local" is deleted because most private groups are organized locally and at the state level.
- "Marginal" and "agricultural" are added to clarify and emphasize the purpose of the RIM Reserve program as stated in *Minnesota Statutes*, section 103F.505.
- The three distinct purposes of the RIM Reserve and the PWP programs are clarified through their designation in the proposed amendments.
- The phrase "restoring drained wetlands, establishing windbreaks adjacent to highways" is deleted because it is unnecessary due to the proposed amendments to the definition of "perennial cover" which will incorporate other types of "cover."

#### **8400.3030 DEFINITIONS**

"Agricultural land" is added to clarify intent of part 8400.3000 and to clarify eligible lands for RIM Reserve Program as described in part 8400.3160, subpart 1.

"Annual plan" is revised to reflect a more accurate representation of how often the "Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans" document is actually changed.

"Approved practice" is revised to clarify that wildlife habitat enhancement is an acceptable type of practice that may be applied to conservation easement areas.

"Conservation easement handbook" is added to identify and clarify the content of the publication which SWCDs use in the routine tasks of locally administering the conservation easement programs. The term is created to provide the opportunity to simply reference this document which contains the administrative guidelines that are proposed to be deleted elsewhere (refer to proposed amendments to parts 8400.3230, items A through C; 8400.3300, last paragraph; 8400.3360, items E and F; 8400.3400, item K; 8400.3430; 8400.3460, first and last sentences; 8400.3530, portions of former subpart 2; 8400.3860; and 8400.3900) from the existing rule so as to simplify and improve the clarity of the entire rule.

"Conservation easement program" is added to allow for a generic reference to both or either of the two conservation easement programs (i.e., RIM Reserve program, or PWP program) governed by the proposed amendments to this rule.

"Conservation plan" is revised to clarify the content of the plan and to clarify that some types of allowable "approved practices" consist of already established perennial cover of some type (i.e., existing water or wetland areas, and existing grasses or trees).

"Cost-shared practice" is added to clarify that only some "approved practices" may be cost-shared through the "conservation easement programs" administered by the Board.

"Crop history" is deleted and replaced with "land with crop history" to clarify the types of qualifying crops as well as to authorize the eligibility of land that has been enrolled in another conservation program (e.g., federal Conservation Reserve Program) for the prerequisite number of years.

"Cropland" is deleted because it is no longer necessary due to addition of "agricultural land" definition and its relationship to the existing definition of "agricultural crop production."

"District" and "district board" is revised to be consistent with *Minnesota Statutes*, section 103C.101, subdivisions 3 and 4.

"District cooperator" is deleted because the term is no longer used in the rule.

"District technical representative" replaces "district technician" to distinguish this relatively generic term from that of a "technician" because not all "technicians" employed by or assigned to districts are necessarily responsible for assisting in the local administration of these conservation easement programs.

"Drained wetland" is revised to be consistent with *Minnesota Statutes*, section 103F.511, subdivision 5.

"Easement program practice specifications" is added to replace "RIM Reserve conservation practice specifications" definition so as to provide for practice standards and specifications to be established for the "approved practices" under both conservation easement programs.

"Enduring practice" is deleted since the term is no longer used in the rule. The concept of "effective life" of an approved practice will be more appropriately addressed in the revised "easement program practice specifications."

"Farmed wetland" is added to define a specific wetland that is authorized to receive a 90% easement payment rate under the PWP program (see part 8400.3530, subpart 2).

"Farm operation" and "farming" are deleted because the terms are no longer used in the rule.

"Food plot" is revised to delete "annually" because it may be unnecessary to reestablish the food plot each year because of residual food value for wildlife. The flexibility to determine when the food plot must be reestablished will be deferred to the SWCDs and administrative guidance will be provided in the "conservation easement handbook."

"Highway windbreak" is revised to be consistent with *Minnesota Statutes*, section

103F.511, subdivision 11.

"Hydric soils" is revised to be consistent with *Minnesota Rules*, part 8420.0110, subpart 21. Other revisions reflect:

- (1) a more appropriate location for the document to be accessed by the public, and
- (2) a more accurate indication of how often the publication is actually changed.

"Hydrophytic vegetation" is revised to be consistent with *Minnesota Rules*, part 8420.0110, subpart 22.

"Inherently unproductive" is revised to clarify its relationship to "agricultural crop production" and the overall purpose of the RIM Reserve Program as described in part 8400.3000 and in *Minnesota Statutes*, section 103F.505.

"Introduced hayland" and "introduced pasture" are revised to clarify their relationship to "land with crop history".

"Land with crop history" replaces "crop history" to clarify the types of allowable crops as well as to authorize the eligibility of land that has been enrolled in another conservation program (e.g., federal Conservation Reserve Program) for the prerequisite number of years.

"Marginal agricultural land" is revised to be consistent with *Minnesota Statutes*, section 103F.511, subdivision 7, and with the proposed revisions to definitions for "inherently unproductive" and "significant potential environmental impact". Other revisions reflect:

- (1) a more accurate indication of how often the eligible soils list is actually changed, and
- (2) a deletion of the reference to sinkholes which has been more appropriately moved to the definition of "sensitive ground water area."

"Pasture" and "pastured hillside" are revised to simplify the definitions.

"Natural vegetation" and "nonproduction practice" are deleted because the terms are no longer used in the rule.

"Permanent cover" is renamed as "perennial cover" to be consistent with the term used in *Minnesota Statutes*, section 103F.505. The definition is revised to allow for non-vegetative types of cover (e.g., water and wetland areas) and to allow for already established vegetation as well as vegetation that will be established as a condition of the land being enrolled in the conservation easement program.

"Permanent wetlands preserve program" is added to identify the program which is added to this permanent rule with the proposed amendments.



"Present value" and "public access" are deleted because the terms are no longer used in the rule. "Protected waters" is deleted because this term is no longer referenced in statutes; it has been replaced with the combination of "public waters" and "public waters wetlands".

"Public waters" is revised to delete the phrase "and wetlands" because "public waters" is no longer as comprehensive in scope as previously used; "public waters wetlands" is added to properly acknowledge this new and distinct statutory term and to distinguish these wetlands from those which were formerly referred to as a type of "public waters".

"Replacement wetland" is added to clarify the new eligibility category as authorized by *Minnesota Statutes*, section 103G.2242.

"Restored wetland" is renamed as "restorable drained wetland" to clarify this eligible type of land for enrollment in the RIM Reserve program.

"RIM Reserve conservation practice specifications" is replaced with "easement program practice specifications" to provide for practice standards and specifications to be established for the "approved practices" under both conservation easement programs.

"Riparian land" replaces "riparian" to be consistent with *Minnesota Statutes*, section 103F.511, subdivision 8a.

"Sensitive ground water area" is revised to more appropriately incorporate the reference to sinkholes within this definition; the specific reference to sinkholes within the "marginal agricultural land" definition is thereby deleted.

"Significant potential soil productivity loss" is replaced with "significant potential environmental impact" to more effectively address the purposes of protection of "soil and water quality" as stated in *Minnesota Statutes*, section 103F.505.

"Soil and water conservation practice" is revised to clarify the true scope of practices which are typically established to address soil and water conservation concerns.

"Wetland" is revised to be consistent with *Minnesota Statutes*, section 103F.511, subdivision 10.

#### **8400.3060 CRITERIA FOR ALLOCATION OF FUNDS**

- Item A is revised to provide for any combination of the following four considerations for this criterion:
  - (1) number of applications accepted for enrollment,
  - (2) cost of applications accepted for enrollment,
  - (3) number of conservation easements conveyed, or
  - (4) cost of conservation easements conveyed.

- Items B, C and D are deleted because they represent only three of the possible nine types of eligible land for enrollment in RIM Reserve. In addition, the consideration of these lands as a criterion for allocation of program funds is adequately addressed in items B and C, as amended.
- Language of item B is replaced with language that provides for a broader consideration of the priorities which relate to the purposes of the conservation easement programs.
- Item E is renamed as C and revised to emphasize and clarify the sum total of desired benefits which will likely be realized from (i.e., priorities addressed by) specific easement areas that are being offered for enrollment by applicants.
- Item F is renamed as D.
- A sentence is added at the end of this part of the permanent rule to emphasize and clarify the statutory requirement of the Board to fund permanent easements as a higher priority than limited duration easements.

#### **8400.3110 DURATION OF CONSERVATION EASEMENTS**

- This part is renamed to clarify its content.
- A reference to "replacement wetlands" is added to reflect the Board's belief that such lands were to receive permanent protection upon enrollment in RIM Reserve and that no allowance for a limited duration easement was intended by the legislature under the Wetland Conservation Act of 1991 (*Laws of Minnesota 1991, Chapter 354*).
- A requirement is added that applications for limited duration easements may be accepted by a SWCD only if the Board has approved enrollment of limited duration easements within the jurisdiction of that SWCD. The Board has not funded any limited duration easement applications since 1989 due to the overwhelming interest of landowners to enroll lands under perpetual easements in RIM Reserve. The Board proposes this amendment to encourage local government initiative to establish additional and complimentary measures, particularly local ordinances, for the protection of "soil and water quality". Consequently, the Board believes it is reasonable to provide a limited opportunity for SWCDs to use limited duration easements, such as when used in conjunction with existing local official controls to ensure that soil erosion from certain marginal agricultural lands will not cause undesired off-site damages upon the expiration of the limited duration easement.

#### **8400.3130 LOCAL PRIORITY SETTING**

- The first sentence is revised to clarify that at least one screening committee must be convened annually.
- Item B is revised to allow SWCDs to consider priorities contained within comprehensive local water plans which will provide a better opportunity for the conservation easement programs to address local resource protection needs.

#### **8400.3160 CRITERIA FOR ELIGIBLE LAND**

##### **Subpart 1:**

- Existing text, as revised, becomes subparts 1 and 2 and new language is added as

subparts 3 and 4 to distinguish eligibility criteria for the RIM Reserve program from those for the PWP program.

- Item C of subpart 1 is separated into two items: item C, as revised, and new language for item D. The last sentence of item C is deleted because it is already stated in *Minnesota Statutes*, section 103F.515 subdivision 2(e). Revised item C and new language for item D (relating to restorable drained wetlands and their adjacent lands) reflect the existing format of items A and B (relating to marginal agricultural land and its adjacent agricultural land).
- Existing language of item D of subpart 1 is revised and renamed as E; the phrase "control snow drifting" is deleted to make the revised text consistent with *Minnesota Statutes*, section 103F.515 subdivision 2(b)(4).
- Item E of subpart 1 is renamed as F. "Cropland" is replaced with "land" because of the "crop history" requirement stated in item (1) of subpart 2 of this part.
- Item F of subpart 1 is renamed as G. "Cropland" and "public waters" are deleted because they are no longer eligibility requirements due to statutory revisions from *Laws of Minnesota 1992*, Chapter 415, section 2.
- Items G, H and I of subpart 1 are renamed accordingly.
- Items K and L of subpart 1 are added to incorporate the new eligibility category as authorized by *Minnesota Statutes*, section 103G.2242. Items K and L reflect the existing format of items A and B (relating to marginal agricultural land and its adjacent lands) and the proposed revisions to the format of revised item C and the new language for item D (relating to restorable drained wetlands and their adjacent lands).

Subpart 2:

- The remaining existing language is revised and renamed as new subpart 2 ("minimum acreage requirements; RIM Reserve program").
- The first paragraph is added to subpart 2 to provide authority for a SWCD board to limit the maximum allowable ratio of adjacent lands or adjacent uplands to eligible restorable drained wetlands and replacement wetlands. The Board believes it is appropriate to provide such discretionary authority, albeit limited in scope, because SWCDs locally administer the conservation easement programs and such flexibility will enhance their responsiveness to county commissioners who may be concerned about potential tax forfeiture of large contiguous blocks of enrolled lands.
- Items A and B are added to subpart 2 to provide authority for a SWCD board to waive the minimum acreage requirement of a landowner who owns part of a restorable drained wetland or a replacement wetland under a specific limited circumstance. The Board believes it is appropriate to provide such discretionary authority, albeit limited in scope, because very small tracts of the subject wetland area are sometimes owned by individuals other than the applicant and those landowners should be appropriately compensated for conveying land rights to the State of Minnesota. Currently, these landowners may only donate these lands to the state under a flowage easement with no financial compensation; the Board does not believe this is appropriate consideration for their contributions to wetland protection activities.

- Revisions to subitem (1) of subpart 2 deletes an unnecessary phrase regarding the eligible period of years relating to crop history which was changed with *Laws of Minnesota 1992*, Chapter 415, section 3. Text was added to clarify that "land adjacent to restorable drained wetland" need not have a crop history in order to be eligible for enrollment. This addition is consistent with the legislative revisions pursuant to *Laws of Minnesota 1991*, Chapter 354, article 10, section 3.
- Subitem (4) of subpart 2 is deleted because it is an undesirable eligibility requirement for all types of land to be enrolled in RIM Reserve. The Board believes that this consideration is more appropriately addressed, as necessary, through proper long-term management of the perennial cover (e.g., grass or shrubs or trees) that exists or will be established on the easement area within 200 feet of any building. For example, the Board does not believe that this is an appropriate prohibition when the perennial cover is a wetland or water area.
- Subitem (5) of subpart 2 is renamed as (4). This subitem is revised to clarify the implementation of *Minnesota Statutes*, section 103F.515, subdivision 2(c)(3).
- Subitem (6) of subpart 2 is deleted because any land requiring a crop history as a condition of eligibility must have been cropped at least two of the five years prior to applying for enrollment in RIM Reserve. Consequently, this component of the "land with crop history" definition will adequately ensure that the land under consideration for enrollment will be "physically possible to crop".
- A new paragraph is added at the end of subpart 2 to clarify some additional eligibility requirements regarding "replacement wetlands." These requirements are stated in *Minnesota Rules*, part 8420.0540, subpart 10, item I.

Subpart 3:

- Subpart 3 is added to distinguish eligibility criteria for the PWP program from those for RIM Reserve (subpart 1).
- Subitems (1) and (2) of item A of subpart 3 is required by *Minnesota Statutes*, section 103F.516, subdivision 1, and as amended by *Laws of Minnesota 1994*, Chapter 627, sections 2 and 12.
- Subitems (3) and (4) of item A of subpart 3 is added to establish a minimum size requirement to be consistent with a similar requirement for RIM Reserve (*Minnesota Statutes*, section 103F.515, subdivision 2(c)(2)). However, this language also addresses land within an incorporated area because such areas often have very small acreages (usually "lots") that are not typically the size equivalent of most agricultural land parcels.
- Subitem (1) of item B of subpart 3 is added because the Board believes it clarifies the intent of the legislature under the Wetland Conservation Act of 1991 (*Laws of Minnesota 1991*, Chapter 354). In addition, this requirement is consistent with the Board's *Strategic Plan* (September 1990) which states (page 7):

It is the BWSR's position that:

4. Wetlands restored, enhanced or created under state and federal programs designed to increase our wetland base should not be used for mitigation purposes.

- Subitem (2) of item B of subpart 3 is required by *Minnesota Statutes*, section 103F.516, subdivision 2(b).
- Subitem (3) of item B of subpart 3 is added to be consistent with a similar requirement for RIM Reserve {*Minnesota Statutes*, section 103F.515, subdivision 2(c)(1)}.
- Subitem (4) of item B of subpart 3 is added to be consistent with a similar requirement for RIM Reserve {*Minnesota Statutes*, section 103F.515, subdivision 2(c)(3)}, and as authorized by *Laws of Minnesota 1994*, Chapter 627, section 12.

**Subpart 4:**

- Subpart 4 is added to distinguish minimum acreage requirements for the PWP program from those for RIM Reserve (subpart 2).
- The first sentence of subpart 4 is added to be consistent with a similar requirement as proposed for RIM Reserve which will authorize a SWCD board to limit the maximum allowable ratio of upland adjacent to the eligible wetlands. The Board believes it is appropriate to provide such discretionary authority, albeit limited in scope, because SWCDs locally administer the conservation easement programs and such flexibility will enhance their responsiveness to county commissioners who may be concerned about potential tax forfeiture of large contiguous blocks of enrolled lands.
- The last sentence of subpart 4 is added to be consistent with a similar requirement as proposed for RIM Reserve which will authorize a SWCD board to waive the minimum acreage requirement of a landowner who owns part of an eligible wetland under a specific limited circumstance. The Board believes it is appropriate to provide such discretionary authority, albeit limited in scope, because very small tracts of the subject wetland area are sometimes owned by individuals other than the applicant and those landowners should be appropriately compensated for conveying land rights to the State of Minnesota. Currently, these landowners may only donate these lands to the state under a flowage easement with no financial compensation; the Board does not believe this is an appropriate consideration for their contributions to wetland protection activities.

**8400.3200 MAXIMUM ENROLLMENT**

Added a statement regarding the PWP program since no limitation is provided in *Minnesota Statutes* and the Board does not desire to arbitrarily limit a landowner's enrollment.

**8400.3210 DELEGATION OF PROGRAM TO ANOTHER DISTRICT**

This part is added to ensure that any landowner wishing to make application to the conservation easement programs will have an opportunity to do so, yet not burden all SWCDs with the obligation of administering these programs, especially in those situations where a SWCD board may not have processed an easement for some time. This flexibility will also ensure a higher quality of service to interested landowners because the SWCD board which accepts delegation is more likely to better understand the program and, therefore, better serve the interests of the applicant.

#### **8400.3230 APPLICATION BY LANDOWNERS**

- The phrase "in which the land is located" is deleted to be consistent with the proposed amendment in part 8400.3210.
- The phrase "district board shall direct its staff or the district technical representative to" replaces "district technician shall" to acknowledge that most eligibility determinations are administrative in nature, not technical.
- A sentence regarding "questionable eligibility" is deleted because of the proposed amendments to part 8400.3360, item B.
- The last sentence of this part is deleted because the SWCD board lacks the authority to require another agency or an organization to provide technical assistance.

#### **8400.3260 LAND IN MORE THAN ONE DISTRICT**

This part is amended to provide the administrative flexibility for two adjoining SWCDs to determine if one or both SWCDs will process an application which includes land in the adjoining SWCDs. This flexibility will ensure a higher quality of service by eliminating or minimizing duplication of tasks required of the applicant or of the participating SWCDs.

#### **8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS**

- This part is renamed to clarify its content.
- The phrase "responsible district staff or the district technical representative" replaces "district technician" pursuant to similar proposed amendments to part 8400.3230.
- "Shall" is replaced with "may" to no longer obligate the screening committee to prioritize each application. While most screening committees are likely to continue this function, the Board believes this is an unnecessary and arbitrary obligation when an SWCD receives only a few applications.

#### **8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW**

- The first sentence of this part is revised to be consistent with the proposed amendments to part 8400.3300 and to emphasize that the prioritization of criteria (reflected in part as items A through F of part 8400.3300) is more important than the prioritization of individual applications.
- Item C is revised to:
  - (1) acknowledge the funds available for the PWP program which has now been incorporated in the permanent rule with the proposed amendments, and
  - (2) delete the reference to "and other sources" because funds for purposes other than these conservation easement programs are not governed by these permanent rules, and would, therefore, not be subject to consideration as a criterion regarding their availability for funding easements.

#### **8400.3360 DISTRICT ACTION ON APPLICATIONS**

- This part is revised to clarify that the SWCD board makes all decisions regarding eligibility, and, therefore, it must take one of three actions for each application. This amendment is consistent with other amendments in part 8400.3930 regarding an

applicant's right to request reconsideration or to appeal the SWCD board's decision pertaining to the eligibility of the application.

- The language of item B is replaced to authorize a SWCD board to retain any application that it believes requires further investigation regarding eligibility, priority, feasibility, or other similar considerations that it was unable to complete prior to an application submission deadline as established by the Board.
- The label of item D is deleted to indicate that this is not one of the three proposed actions that a SWCD board must take for each application. Instead, this task is set aside as an individual paragraph following this list of required actions so as to be consistent with the other proposed amendments to this part. This sentence is also revised to lengthen the period during which the SWCD must notify each applicant of the status of their respective application(s). The Board believes that a 60-day period is more appropriate for SWCD boards which often meet only once each month and may decide not to meet in any given month.

#### **8400.3390 EASEMENT ACQUISITION PROCEDURES**

This part is added to designate the administrative handbook ("conservation easement handbook") which contains the detailed administrative guidelines and procedures necessary to process an application and to manage the enrolled easement areas. Those items designated in section A.3. of the "Analysis of Proposed Amendments" of this statement will be incorporated into the "conservation easement handbook."

#### **8400.3400 CONSERVATION AGREEMENT FOR EASEMENT**

- The phrase "direct its staff or the district technical representative to" is added to clarify that a SWCD staff person will actually prepare the necessary documents for the conservation agreement.
- The reference to *Minnesota Statutes*, section 103F.515 subdivisions 4 and 5, is added to allow for deletion of the language of items A through K, M and P because the statutes adequately address these requirements. This deleted language has been incorporated in the language on the conservation agreement and conservation easement forms.
- Item N is relabeled as B and revised to clarify that any existing structures must be removed from the easement area prior to easement conveyance and that all costs to do so are the responsibility of the landowner. These requirements are consistent with similar language proposed in item A of subpart 2a of part 8400.3530.
- Item C is added to require the landowner to remove any existing hazardous and materials from the easement area prior to easement conveyance and that all costs to do so are the responsibility of the landowner. These requirements are consistent with those proposed in item B.
- Item D is added to require the landowner to properly seal all abandoned wells on the easement area prior to easement conveyance and that all costs to do so are the responsibility of the landowner. These requirements are consistent with those proposed in items B and C.
- Item O is relabeled as E.

#### **8400.3460 TITLE REQUIREMENTS**

- This part is renamed because all references to an abstract refer only to administrative tasks which need not be contained in the permanent rule. Instead, these tasks will be included in the "conservation easement handbook."

#### **8400.3530 EASEMENT PAYMENT RATES**

- This part is renamed to clarify its content.
- Subparts 1 and 2 are replaced with a new subpart 1 regarding the RIM Reserve program. Subparts 3 and 4 are replaced with a new subpart 2 regarding the PWP program. The content of the former subpart 3 is incorporated in the language proposed for item B of part 8400.3600 regarding the payment rate for extending an existing limited duration easement. Subpart 2a is added to clarify those items for which the Board may not compensate a landowner.

##### **Subpart 1:**

- The new subpart 1 requires the Board to annually establish easement payment rates which must be selected from one of two types of payment bases, including the payment basis currently used by the Board. The Board desires the designation of an additional basis of payment to provide some administrative flexibility to better address SWCD concerns regarding the continued use of a township average assessed market value of agricultural land as the exclusive basis of easement payment.
- Items A and B of the new subpart 1 establish the existing payment rates as maximum payment rates, thereby allowing the Board the discretion to set easement payments at a lower rate. The Board believes that establishing these rates as maximum levels is reasonable because of the overwhelming interest of landowners to enroll lands under perpetual easements in RIM Reserve.
- Items C and D of the new subpart 1 establish maximum payment rates for limited duration easements. The Board believes that these maximum levels are appropriate when considering those established in items A and B for perpetual easements. The Board has established these maximum levels to allow for establishing differential rates pertaining to specific durations (e.g., maximum levels for 75- or 100-year easements and a lesser level for 20-year easements).

##### **Subpart 2:**

- The new subpart 2 establishes the easement payment rates for the PWP program. Most of these payment rates are established in *Minnesota Statutes*, section 103F.516, subdivision 3. However, the Board has established an additional payment rate relating to "farmed wetlands" (subitem 1 of items A and B). The payment rate of 90 percent for farmed wetlands is necessary and reasonable due to the nature of these wetlands as they occur on agricultural land. As defined in part 8400.3030, "farmed wetlands" are used for agricultural production. Farmed wetlands typically occur in a matrix of cropland and are farmed in the same manner and at the same time as the surrounding cropland. These wetlands are characterized as being temporarily flooded or saturated early in the growing season. In most years, crop production is only slightly, if ever, delayed due to wetness. The payment rate for farmed wetlands should, therefore, be similar to that for cropland because it is used as cropland. To



encourage enrollment of these wetlands, a payment rate equal to that of surrounding cropland is needed.

- With the exception of the payment rate established for "farmed wetlands", all of the payment rates in items A, B and C of the new subpart 2 are from *Minnesota Statutes*, section 103F.516, subdivision 3(a), clauses (1) and (2), and subdivision 3(b).

#### **Subpart 2a:**

- This subpart is added to clarify those items for which the Board may not compensate a landowner.
- Item A of subpart 2a is added to retain the intent of similar language that was deleted within the former subpart 2.
- Item B of subpart 2a is added because the Board, generally speaking, believes it was not the intent of the legislature to compensate a landowner for any land areas occupied by water or wetland within each easement area enrolled in the conservation easement programs. However, the Board also believes that the legislature clearly intended to compensate a landowner under certain limited situations for land areas occupied by waters or wetlands within an easement area enrolled in the conservation easement programs. The exceptions are identified as subitems (1) through (4) of item B of subpart 2a. The Board believes these exceptions are reasonable because they are consistent with *Minnesota Statutes*, sections 103F.601 and 103F.516, subdivision 1, as amended by *Laws of Minnesota 1994*, Chapter 627, section 12.

#### **8400.3560 PAYMENT SCHEDULE**

- This part is renamed to clarify its content.
- With the incorporation of the PWP program in the permanent rule, the Board chose to establish a single set of easement payment schedule options for both conservation easement programs. Since *Minnesota Statutes* section 103F.516 subdivision 3(a) requires the Board to offer payment in ten equal installments for PWP easements, this same option was made for RIM Reserve easements to make both programs consistent.

#### **8400.3600 RENEWAL AND EXTENSION OF CONSERVATION EASEMENTS**

- This part is renamed to clarify its content.
- Item B is revised to:
  - (1) clarify which landowner (i.e., "current") may be a party to the decision of whether to extend the duration of an existing limited duration easement; and
  - (2) add language which incorporates the content of language which is deleted with the proposed repeal of subpart 3 of part 8400.3530 regarding determination of easement payment rate for "conversion to permanent easement".

#### **8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS**

- Item A is revised to clarify that a landowner request to alter, release, or terminate a conservation easement must be initiated through the SWCD board and that a copy of the landowner's request be submitted to the Board along with the additional

information as specified in items B through D.

- Item B is revised to clarify that the SWCD board must recommend "either approval or disapproval of the proposed change" to the Board.
- Item C is revised to clarify that the area wildlife manager must recommend "either approval or disapproval of the proposed change" to the Board.
- The last sentence of this part is deleted because the Board believes it is an unnecessary consideration since the Board is not readily able to accept cash contributions, either as gifts or as settlements for easement violations.

#### **8400.3630 APPROVED PRACTICES**

- This part is renamed to clarify its content.
- Existing language, as revised, becomes subpart 1 and retains the existing content pertaining to "criteria."
- New language becomes subpart 2, pertaining to the "establishment of approved practices." This language is consistent with that deleted from subpart 1 of part 8400.3700.

##### Subpart 1:

- The phrase "be enduring in nature"; and the sentence regarding minimum effective life, nonproduction practices, and specifications, are deleted from this part to be consistent with the proposed amendments to part 8400.3030 (deletion of definition for "enduring practice"). The concept of "effective life" (i.e., "enduring in nature") of an approved practice will be more appropriately addressed in the revised "easement program practice specifications" (which are included in the administrative handbook, referred to as the "conservation easement handbook" in the proposed amendments to the rule).
- The phrase "considered an approved practice" is added to clarify the distinction between those practices which are approved for use on easement areas, and, of those, which are eligible for cost-sharing through the conservation easement programs. The former set of practices is large, while the latter group of practices is a subset of the former. This amendment is consistent with other proposed amendments to part 8400.3030 (addition of definition for "cost-shared practice"), subpart 2 of this part, part 8400.3700 ("cost-shared practices"), and part 8400.3730 ("failure of approved practices").
- The phrase "and approved by the board in cooperation with the commissioner of natural resources" is deleted from the last sentence of this subpart because the Board believes that this decision is more appropriately delegated to SWCD boards and also that consultation with the commissioner of natural resources is an unnecessary consideration. The Board believes these amendments are reasonable for a practice which is already considered an "approved practice" and for one which affects a relatively small acreage of total enrolled lands in the conservation easement programs.

##### Subpart 2:

- This new language is consistent with that deleted from subpart 1 of part 8400.3700.

## **8400.3700 COST-SHARED PRACTICES**

- This part is renamed to clarify its content.
- The existing language of subpart 1, pertaining to "installation of approved practices", is replaced with new language pertaining to "approved practices eligible for cost-sharing." The content of the deleted language is incorporated in part 8400.3630, subpart 2.

### **Subpart 1:**

This subpart is renamed and replaced to establish those approved practices which are eligible for cost-sharing under the RIM Reserve program, as authorized by *Minnesota Statutes*, section 103F.515 subdivision 6(a) clauses (1) and (2). This language establishes practice payment rates for the PWP program which are consistent with those for RIM Reserve. The Board believes it is necessary to provide cost-sharing for the perennial cover that is similarly required on these easement areas pursuant to *Minnesota Statutes*, section 103F.516, subdivision 2(a). The Board believes the establishment of the authority to cost-share on these practices is reasonable because it is consistent with the intent of the RIM Reserve program and because the enabling authority for the PWP program (*Minnesota Statutes*, section 103F.516) is wholly contained within the enabling statutes for RIM Reserve (*Minnesota Statutes*, sections 103F.505 to 103F.531).

### **Subpart 2:**

- The first sentence of item A of this subpart is added to be consistent with the proposed amendments to part 8400.3630, subpart 2, but limited here to only the "installation" (i.e., not the complete establishment) of a cost-shared practice.
- The phrase "the unjustified claim within 30 days" within item A of this subpart is replaced with "this determination" to clarify what the SWCD board will be notifying the landowner about. This amendment also eliminates the timeframe by which the SWCD board must notify the landowner. The Board believes that the existing 30-day limitation is unnecessary because SWCD boards often meet only once each month and may decide not to meet in any given month.
- The next to last sentence of item A of this subpart is revised to lengthen the period during which the landowner must request reconsideration of the SWCD board regarding the landowner's request for reimbursement. The Board believes that a 30-day period is a more appropriate duration for the landowner to decide whether to request reconsideration by the SWCD board.
- The language of item B of this subpart is replaced to clarify the limitations on the practice payments which the Board may provide to participating landowners, pursuant to *Minnesota Statutes*, section 103F.515, subdivision 6(a), clauses (1) and (2). The last sentence added to item B incorporates the content of item D which is deleted from this subpart.
- Item C of this subpart is revised to be consistent with the proposed amendments to item B of this subpart.

### **Subpart 4:**

The last sentence of this subpart is deleted because it pertains to a contributor not governed by this permanent rule.

#### **8400.3730 FAILURE OF APPROVED PRACTICES**

- The existing language, as revised, becomes subpart 1 ("cost-shared practices"). New language is added as subpart 2 ("all other approved practices").

##### **Subpart 2:**

- This subpart is added to distinguish failure of "cost-shared practices" (subpart 1) from those associated with "other approved practices" that are not eligible for cost-sharing through the conservation easement programs.

#### **8400.3760 MAXIMUM PAYMENT**

This part is deleted due to legislative revisions pursuant to *Laws of Minnesota 1989*, Chapter 353, section 3.

#### **8400.3800 OPERATION AND MAINTENANCE**

- This part is renamed to clarify its content.
- The phrase "planting, establishment" is deleted because these requirements are adequately addressed in the proposed amendments to part 8400.3630, subpart 2.
- The reference to "effective life" is deleted to be consistent with the proposed amendments to part 8400.3030 (deletion of the definition for "enduring practice") and part 8400.3630, subpart 1. The concept of "effective life" (i.e., "enduring in nature") of an approved practice will be more appropriately addressed in the revised "easement program practice specifications."

#### **8400.3830 VIOLATIONS AND ENFORCEMENT**

- The existing language, as revised, becomes portions of subparts 2 and 3. New language is added as subpart 1 and new language is added to what is proposed as subpart 2.

##### **Subpart 1:**

- This subpart is created to clarify and establish the role of the SWCD board in determining non-compliance and to initiate violations procedures.

##### **Subpart 2:**

- This subpart is created to clarify and establish the role of the Board in resolving violations that have been identified by SWCD boards.

##### **Subpart 3:**

- This subpart is created to distinguish the role of the Attorney General from that of the Board in resolving violations.
- The sentence near the end of this subpart is deleted but its content is incorporated in the last sentence of the language proposed as subpart 1.

#### **8400.3870 SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE PROGRAMS**

This part is added to emphasize this statutory authority as provided by *Minnesota Statutes*, section 103F.525.

#### **8400.3930 RECONSIDERATION AND APPEAL**

- This part is renamed to clarify its content.