

# **LAND TRUSTS:**

*Real Solutions*

*for*

*Real Estate Interests*

**Twin Cities**

**Financial and Estate Planning Councils**

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## A. What makes land valuable?

- a. Personal attachment (phase I): For many of our predecessors land was the most valuable asset they owned. It wasn't because it represented the largest holding in monetary value. Nor was it because it was the largest in size. It was because of its importance. *It was the asset that provided their sustenance!* Prior to 1900 85% - 90% of the population owned their own business---the family farm. They lived off the profits from the farm. And that farm land had been passed down from several generations. Whether it was technically a crop-raising operation, a dairy operation, a ranch, or some combination, its importance was the same. Geography and geology played significant roles in making Minnesota predominately an agricultural state with these same attributes toward the importance of land.
- b. Personal attachment (phase II): As the industrial revolution took hold at the turn of the prior century the importance of land experienced an evolution. Workers moved to the cities to be closer to their jobs. 'Over decades cities grew in population and density. By the mid-1950's and early 1960's suburbs began to grow, fueled by better roads and vehicles, improved communication systems, the emergence and impact of the "baby boomer" generation, and a desire for home ownership, with a large lot.
- c. Personal attachment (phase III): Many Minnesotans are enamored with "going to the lake." It's more than a ritual. It's part of a family's heritage. Enhanced once again by geology, Minnesota has a treasure of wonderful natural resources---all tied to the land. And Minnesotans place special value on those resources when they have contributed personally to their enjoyment. The value of a lake cabin goes beyond the price-per-foot of lakeshore. It is tied up in fond childhood memories and experiences that are priceless.
- d. Uniqueness: Since the beginning of codified law (statutes), real estate has held a lofty position. That is because real estate is not fungible, whereas money is. If you had \$100 in bills and they became mixed with another person's cash, you are not concerned with retrieving your exact bills. You only want to be sure to extract \$100 in value in bills. That is because the bills are fungible. They can be intermixed, and one dollar bill is as valuable as another dollar bill, no more or less (unless the paper is of limited circulation causing it to have value above its stated face). Although the U. S. Treasury Department places serial numbers on bills, that, in and of itself, does not cause differences in purchasing power between bills, one with a higher serial number than the other.

The law recognizes the individual characteristics of real estate, and the fact that it is not fungible. The exact **surface** area of a particular acre is not duplicated anywhere in the universe. It is this specificity in the very nature of real estate that requires comparable specificity in codified laws regarding it. Yes, the geological aspects of one tract compared to another may be similar---even identical. The density, type of soil, moisture retention, compactness, weight-bearing abilities, etc. may be the same. However, the surface area (not size, but the area itself) and ownership rights on and over that surface area are unique. These rights include:

- i. right to occupy
- ii. right to improve
- iii. right to change the topography
- iv. right to mine minerals (usually limited)
- v. right to plant and harvest
- vi. right to remove real and personal property located on it
- vii. right to extract water
- viii. right to issue rights to another (rent or other uses)
- ix. right to transfer rights:
  1. by gift
  2. by inheritance
  3. by sale

#### **B. What is a Land Trust?**

- a. A split-interest arrangement: A land trust is a voluntary undertaking in which a land owner transfers title or certain rights in land (legal interests) to a valid trust while retaining certain beneficial rights (equitable interests) or transferring such beneficial interests to others. The arrangement usually is irrevocable and permanent.<sup>1</sup>
- b. History of land trusts: The concept of land trusts has roots in medieval England over 500 years ago. Land trusts were used by the common man ("serfs") to protect property rights from land barons and from the monarchy. They also were used to avoid taxes and maneuver around the laws of descent that might interfere with passage of title within a blood line.

Simple title-holding trusts in this country were originally started in Illinois, often causing them to be referred to as Illinois Land Trusts. These trusts were established as asset protection devices to insulate real estate from liens, judgments, lis pendens and governmental claims. The owner would create the trust, transfer legal title, but retain

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<sup>1</sup> For this presentation the concept of a land trust does not include a revocable trust funded in part or in total with a trustor's real estate interests. Nor is it intended to include a Personal Residence Grantor Retained Annuity Trust (Personal Residence GRAT), sometimes referred to as a Qualified Personal Residence Trust (QPRT), even though such entities are irrevocable trusts that hold real estate interests.

all beneficial interests such as the right of possession, collection of rents, mortgage the property and obtain a homestead exemption.

- c. Tax-advantaged arrangements: For the most part, today the term "land trusts" refers to a plan structured to preserve and conserve land for its natural, recreational, scenic, historical and productive values. These programs are attractive to a land owner because, when properly established, they provide tax incentives permitted under state law and the Internal Revenue Code.<sup>2</sup>
- d. Nonprofit organizations: The term "land trust" has also come to identify a charitable organization established under federal tax laws that, as all or part of its mission, actively works to conserve land by
  - i. undertaking or assisting in land acquisition, or
  - ii. conservation easement acquisition, or
  - iii. stewardship of such land or easements, or
  - iv. accepting donations of land, or
  - v. accepting donations of funds to purchase land, or
  - vi. accepting bequests of land or funds.

These organizations are independent but work with landowners who want to preserve open space. They also work closely with local and regional governmental agencies by acquiring or managing land, researching open spaces needs and priorities, or assisting in the development of open space plans.

### C. Growth of Land Trusts

- a. Rapid growth since 1990: As separate charitable organizations land trusts were fairly few in number until 1990. For instance, in 1950 only 53 land trusts operated in 26 states. Today there are over 1,720 such trusts serving every state in the nation.

2010 is the latest year for which a national land trust census was taken. The census is taken every 5 years. That census revealed that total acreage conserved by local, state and national land trusts grew to 47 million acres by the end of 2010---an increase of 10 million acres since 2005 and 23 million since 2000.<sup>3</sup> That is an area equal to 85% of the total size of the State of Minnesota, and over twice the size of all the national parks in the contiguous United States

A few other statistics from that census:

- i. California has the most land trusts with 197, followed by Massachusettes (159), Connecticut (137), Pennsylvania (103) and New York (97).

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<sup>2</sup> IRC §170

<sup>3</sup> The census was conducted by the Land Trust Alliance, a non-profit organization established and operated to provide a central association of subscribing land trusts throughout the nation. See [www.lta.org](http://www.lta.org).

- ii. The number of active land trust volunteers increased by 70% since 2005, while the number of paid staff and contractors increased by 19%.
- iii. On average a land trust with a **strategic conservation plan** guiding its land or easement acquisition **conserves twice as many acres** as a land trust without such a plan.
- iv. From 2005 to 2010, state and local land trusts **more than doubled the amount of funding they have dedicated to monitoring, stewardship and legal defense**. They also nearly tripled their operating endowments.
- v. The Midwest region saw the greatest growth by percentage of acres conserved, with an 82% increase between 2005 and 2010. The Southwest saw the largest growth by the total number of acres conserved, with an additional 1.15 million acres protected between 2005 and 2010.
- vi. Land trusts drew the support of nearly **five million members** and financial supporters:

(1) Staff and Contractors	12,361
(2) Board members	15,660
(3) Volunteers	347,028
(4) Members/financial supporters	4,986,093

- vii. Professionalism of land trusts is increasing, with most land trusts agreeing to more stringent rules of conduct, and securing larger annual budgets and stewardship endowments. Most now adopt and follow *Land Trust Standards and Practices*, the ethical and technical guidelines for responsible operation of a land trust in the public interest. Two areas, in particular, are the focus of the most successful land trust operations:

- (1) Practice 8B: The land trust has a defined process for selecting land and easement projects, including written selection criteria that are consistent with its mission.
- (2) Practice 8A: The land trust has identified specific natural resources or geographic areas where it will focus its work.

- viii. The priorities for protecting types of land are interesting:

- #1 important natural areas or wildlife habitats
- #2 water resources, including wetlands
- #3 open space, in general
- #4 working farms or ranchlands
- #5 working forest kinds
- #6 recreation lands
- #7 historic or cultural resources
- #8 urban parks, gardens or open spaces

ix. Designated funding has been significant:

Monitoring and stewardship	\$ 169,132,379
Legal defense and enforcement	\$ 27,823,726
Monitoring, stewardship and legal defense combined	\$ 282,093,212
Land acquisition	\$ 514,751,504
Operating endowment	<u>\$ 683,374,572</u>
TOTAL	\$1,677,175,393

x. Finally, financial trends are interesting:

<u>Funding Focus</u>	<u>% change '05 - '10</u>
Monitoring and stewardship	72%
Legal defense and enforcement	178%
Monitoring, stewardship and legal defense combined	125%
Land acquisition	3%
Operating endowment	<u>186%</u>
TOTAL	80%

- b. Contributing factors: According to the Land Trust Alliance there are several factors contributing to this rapid growth. Foremost is the simple fact that Americans love their land. They are concerned about the unmitigated loss of open space in their own communities to aggressive development. They see subdivisions supplanting the open spaces where they walked, hiked, and hunted. They want to know how they can gain power to preserve the **green spaces** that make their communities so unique.

A growing core of willing and visionary landowners are entrusting their lands to the perpetual care of land trusts, making a commitment that will extend beyond their lifetimes. The story is not just about acreage; it appears to be about local people taking individual steps to preserve the natural features that define their quality of life.

Land trusts are very effective vehicles for conserving land. Starting a new trust is certainly optional, but the existence of over 1,700 qualified, IRS-approved, and professionally run land trusts present a compelling solution for landowners interested in preservation.

Pre-existing tax incentives, plus temporary embellishments in those incentives, with the anticipation of continuation from Congress, gives landowners added reasons for undertaking land trust-based solutions.

#### **D. The Contra-Argument**

- a. Loss of future land value increases: Land developers have a very persuasive argument for why a landowner should not dedicate land to a land trust---the loss of financial gain had they retained full ownership and sold to development in the future. True, strong winds of real estate development can quickly fan flames of escalating values. This presenter had been involved with client's attorneys and other professionals in quite a few planning opportunities along the I-94 corridor from Maple Grove all the way to Alexandria, Minnesota. Until 2005 - 06, prices-per-acre were rising at double multiples in just 6-9 month periods. Although currently very flat, once the housing market rebounds the price aggression may reappear.



- b. Community development stagnates: A few community leaders have suggested that conservation easements are not good for a community because too many such easements will result in diminished or "no-growth" for a region, with rippling negative economic fallout. However, there has been no statistical proof of such claims.

#### **E. Methods for Funding a Land Trust**

- a. The conservation easement: The most common strategy, this method is a legal agreement between a landowner and a land trust or government agency that permanently limits use of the land in order to protect its conservation values. Its attraction for landowners is their continued ownership and use of the land, and the ability to sell it or pass it on to heirs.

When a conservation easement is donated the owner gives up some rights to the land. An example would be the right to build additional structures, while retaining the right to grow crops. Future owners are bound by the same restrictions. The land trust or the governmental agency is responsible for making sure the easement's terms are followed.

The **flexibility** of the conservation easement is another of its features. For example, the easement on land containing rare wildlife habitat might prohibit any development,<sup>4</sup> while one on a working farm may permit continued farming operations and the addition of constructing related farming structures. Easements can apply to just a portion of the property. In addition, there is no requirement that public access is granted.

A conservation easement can be sold by the landowner, but usually are donated. They can protect all types of land, including coastlines; farm and ranchland; historical or cultural landscapes; scenic views; streams and rivers; trails; wetlands; wildlife areas; and working forests.

- b. Donating land: This direct method of transfer to a land trust is typically found under the following circumstances:
  - i. no immediate family and a strong desire to let the general public enjoy use of the land.
  - ii. the property no longer has any use for the owner.
  - iii. the owner has highly appreciated property; too great a tax burden if sold outright.

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<sup>4</sup> Such are the conservation easements promoted by Pheasants Forever, Quail Forever and their Forever Land Trust.

iv. ownership of extensive real estate holdings and a desire to diversify investments.

v. desire relief from real estate management.

The owner can donate the land but reserve a life estate. This gift of a **remainder interest** allows continued enjoyment of the right of ownership for the owner's life, or combined lives of the owner and another person. The gift can be lifetime, or by means of a testamentary disposition.

Retention of desired income interest from the land can be achieved by a **charitable gift annuity** or a **charitable remainder unitrust**. The former will produce a set amount to the donor landowner annually, while the latter will provide a percentage income based on the value of the trust measured annually. In both cases a conservation easement can be placed on the land before it is donated. Then the land trust trustee will sell the land subject to the easement and invest the net proceeds to produce the desired income stream.

- c. Bargain sale of land: If immediate cash is desired but partial land preservation is also a goal the landowner may use this method. By selling the land to a land trust for less than fair market value the owner can realize proceeds more quickly because the arrangement is more affordable for the land trust. Yet, tax benefits for the owner are retained.

#### F. Tax Benefits

- a. Avoid or minimize capital gains tax: A donation of land directly to a land trust will avoid the tax on gain realized if the land is sold.

The same is true for a charitable remainder trust.

The gift of a remainder interest or the use of a charitable gift annuity will reduce the capital gain tax but not eliminate it. The amount allocated to the donating landowner is a proportionate part based on the value of what is retained or the discounted value of the annuity payments over the life of the gift annuity.

- b. Reduce or eliminate federal estate taxes: Large tracts of land can impose difficult estate tax burdens on heirs. Since taxes can reach the 51% rate (federal and state, combined) unless the estate has cash reserves it may have to borrow the funds or sell the land to pay the tax obligation, thereby eliminating the ability to preserve it for family or others. Creating a conservation easement on the land, thereby removing its development potential, should significantly reduce its taxable value in the estate. Furthermore, **through 2012 an exclusion from the taxable estate is allowed for up to 40% of the remaining property value (maximum of \$500,000) in the estate. This is regardless of**

**when the easement is donated, during life or at death.**

- c. Charitable income tax deduction: **Outright** land donation without restrictions on it will entitle the donor to a deduction equal to the fair market value of the land. However, because land is defined by the Code as "capital gain property"<sup>5</sup> the amount that can be deducted in any one tax year is limited to 30% of the donor's contribution base.<sup>6</sup> Any qualified charitable contribution in excess of the contribution base generally can be carried forward for up to 5 succeeding taxable years.<sup>7</sup>

Donation of a **remainder interest** will generate a deduction based on the fair market value of the donated property less the expected value of the reserved life estate(s). A similar result occurs with the **charitable gift annuity**, and the **charitable remainder trust**.

A **bargain sale** will entitle the landowner to a charitable deduction based on the difference between the land's fair market value and its sale price.

The granting of a **conservation easement** on land also entitled the landowner to a charitable deduction as long as the easement is granted to a qualified charity (which most land trusts are). Generally the amount of the donation is the difference between the land's value with the easement and its value without the easement.

Under recent **enhanced legislation** Congress granted very favorable tax treatment for qualified conservation easements. It is important to be aware of the benefits even though the law expired as of 12/31/2007. It was extended to 12/31/2009 by the 2008 Farm Bill, and again to 12/31/2011 under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. Awareness is meaningful because future legislation, with sufficient lobbying effort, may reinstate some or all of the benefits. Here were the provisions:

Under the Pension Protection Act of 2006<sup>8</sup> special section 170(b)(1)(E) was added to the Code. For taxable years beginning after 12/31/2005 and ending before 01/01/2008 the following enhancements were added:

- i. the 30% limitation base was raised to 50%.<sup>9</sup>
- ii. for a qualified farmer or rancher<sup>10</sup> the limitation was increased to

<sup>5</sup> IRC §170(b)(1)(C)(iv).

<sup>6</sup> "Contribution base" is defined as the individual's adjusted gross income, computed without regard to any net operating loss carryback. IRC §170(b)(1)(G).

<sup>7</sup> IRC §170(b)(1) and (d)(1).

<sup>8</sup> Pub. L. No. 109-2870, 120 Stat. 780 (2006), §1206(a)(1).

<sup>9</sup> IRC §170(b)(1)(E)(i).

<sup>10</sup> Defined under IRC §170(b)(1)(E)(v) as a taxpayer whose gross income from the trade or business of farming or ranching (within the meaning of §2032 (A)(e)(5)) is greater than 50 percent of the taxpayer's

100%.

- iii. the 5 year carry forward period was extended to 15 years<sup>11</sup>

**Example:** A landowner earning \$50,000 per year, who donates a \$1 million conservation easement, could deduct:

**Prior to 2007**

\$15,000 x 6 years = \$90,000  
(30% for all landowners)

**Under expanded legislation**

\$25,000 x 16 years = \$400,000 (50% for  
a regular landowner)

\$50,000 x 16 years = \$800,000 (100%  
for a farmer or rancher)

- d. Property tax savings: This presenter found no evidence that placing a conservation easement on land will produce a property tax reduction.
- e. IRS challenges to abusive transactions: The Service has seen abuses of deductions for charitable contributions of conservation easements and has stepped up audits to identify them. Some typical abuses include:
  - i. questionable appraisals generating inappropriately large deductions
  - ii. taxpayers develop property contrary to the easement provisions
  - iii. charities allow property owners to modify easements after the fact
  - iv. false "facade" easements under which the taxpayer agrees in the easement to not modify the facade of a historic structure, when the facade was already subject to restrictions under local zoning ordinances resulting in taxpayer actually giving up nothing.

**G. Suggested Requirements**

- a. Property qualification: The property itself must meet certain criteria. For instance, it must have significant environmental, scenic or historic value. Local laws can also have an impact. Size is usually not a requirement. However, location of a homestead on the property could have an undesired impact.
- b. Value determination: A valid IRS-approved appraisal is mandatory. It is

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gross income for the taxable year.

<sup>11</sup> IRC §170(b)(1)(E)(ii).

important to be sure the selected appraiser follows Uniform Standards of Professional Appraisal Practice. In addition the property may need to be surveyed in order to accurately determine the placement of the easement and the boundaries of restricted land.

- c. Full disclosure to interested parties: Because easements "run with the land" and are placed in perpetuity, a family has to be sure it wants to permanently restrict development---and thereby forego the potential for a large windfall in the future.
- d. Care in drafting: Since it would be expensive and involved to have to modify an easement or irrevocable gift arrangement, great care is needed in drafting conservation easements, or charitable trusts. Court action will typically be needed to make such adjustments. Obviously, getting it right the first time is best.

**Example:** *Carpenter et al v. Commissioner*; January 3, 2012:

The petitioners claimed charitable deductions on their Federal income tax returns for conservation easement contributions of Colorado land to the same qualified charity (Greenland) as follows:

Carpenter	\$385,600	2004
Van Wyhe	\$272,998	2004
	\$265,247	2005
	\$262,876	2006 (carryover)
McSweens	\$336,500	2003
	\$336,500	2004
	\$311,776	2004 (carryover)
	\$612,844	2005 (carryover)

Each of the easements contained the following language:

*"Extinguishment – If circumstances arise in the future such that render the purpose of this Conservation Easement impossible to accomplish, the Conservation easement can be terminated or extinguished, whether in whole or in part, by judicial proceedings, or by mutual written agreement of both parties, provided no other parties will be impacted and no laws or regulations are violated by such termination."*

The Tax Court found that these conservation easements failed as a matter of law to comply with the enforceability in perpetuity requirements under regulation,<sup>12</sup> and thus were not qualified conservation contributions.<sup>13</sup>

<sup>12</sup> Reg. section 1.170A-14(g)

<sup>13</sup> IRC § 170(h)(1).

- e. Consider using an established land trust: It can be expensive to create an individual arrangement. Much can be gained by working with an experienced local land trust that has met all IRS qualifications.<sup>14</sup> These organizations can assist in determining if the proposed donor's land is qualified, if the proposed conservation easement has merit, what its value may be, and most importantly **how the donor's intentions for the land or the easement can best be preserved.**

Qualified land trusts will also follow the Indicator Practices under the Guidance Document published by the Land Trust Accreditation Commission,<sup>14</sup> which is updated from time to time. It helps applicants interpret specific indicator practices drawn from *Land Trust Standards and Practices*. Accreditation starts with a voluntary application by the requesting land trust. Basic requirements include being a U.S.-based tax-exempt or quasi-governmental organization, in operation for at least two years, and an extensive assessment. The application fee is dependent on an applicant land trust's total annual operating expenses, ranging from \$1,445 for annual expenses between \$0 - \$50,000, and a fee of \$10,910 for expenses between \$10,000,001 - \$20,000,000. Accreditation awarded is good for 5 years, and must be renewed.

## H. Land Trusts in Minnesota

Here are some interesting facts about land trusts in Minnesota, taken from the 2010 Land Trust Alliance Census:

- a. Land trusts in Minnesota have protected 50,772 acres. This is a 51% increase in acres conserved since 2005.
- b. Minnesota ranks 36<sup>th</sup> in the nation in acres conserved, and 7<sup>th</sup> in the Midwest.
- c. Minnesota increased their full- and part-time staff and contractors 81% in 5 years.
- d. There are now 7 land trusts in Minnesota, including 5 staffed groups.<sup>15</sup>
- e. There is one accredited land trust in Minnesota, which has protected 347,775 acres as of 2010:

**Minnesota Land Trust**  
2356 University Ave W, Ste 240  
Saint Paul, MN 55114-1851  
Phone: 651-647-9590

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<sup>14</sup> See [www.landtrustaccreditation.org](http://www.landtrustaccreditation.org)

<sup>15</sup> Those that have become members of the Land Trust Alliance can be found at [www.lta.org](http://www.lta.org).

Fax: 651-647-9769

E-mail: [mnland@mnlmd.org](mailto:mnland@mnlmd.org)

Website: [www.mnland.org](http://www.mnland.org)

Founded: 1991

Area of Operation: statewide

Adopted Standards & Practices: Yes

Primary Land Types: Important natural area or wildlife habitat;  
Open space, unspecified;  
Water resources, including wetlands;  
Scenic areas.

### **I. Specific Minnesota Statutes**

Please refer to attachments of the following statutory excerpts:

§ 103F.515 Conservation Reserve Program

§ 103F.516 Permanent Wetlands Preserve

§ 103F.518 Reinvest in Minnesota Clean Energy Program

§ 103F.535 Reservation Of Marginal Land And Wetlands

§ 103H.105 Conservation Easements To Protect Sensitive Areas

# LAND TRUSTS:

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## APPENDIX



## 2011 Minnesota Statutes

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### 103F.515 REINVEST IN MINNESOTA RESERVE PROGRAM.

Subdivision 1. **Establishment of program.** The board, in consultation with the commissioner of agriculture and the commissioner of natural resources, shall establish and administer the reinvest in Minnesota reserve program. The board shall implement sections 103F.505 to 103F.531. Selection of land for the reinvest in Minnesota reserve program must be based on its enhancement potential for fish, wildlife, and native plant habitats, reducing erosion, and protecting water quality.

Subd. 2. **Eligible land.** (a) Land may be placed in the reinvest in Minnesota reserve program if the land meets the requirements of paragraphs (b) and (c) or paragraph (d).

(b) Land is eligible if the land:

(1) is marginal agricultural land;

(2) is adjacent to marginal agricultural land and is either beneficial to resource protection or necessary for efficient recording of the land description;

(3) consists of a drained wetland;

(4) is land that with a windbreak or water quality improvement practice would be beneficial to resource protection;

(5) is land in a sensitive groundwater area;

(6) is riparian land;

(7) is cropland or noncropland adjacent to restored wetlands to the extent of up to eight acres of cropland or one acre of noncropland for each acre of wetland restored;

(8) is a woodlot on agricultural land;

(9) is abandoned building site on agricultural land, provided that funds are not used for compensation of the value of the buildings; or

(10) is land used for pasture.

(c) Eligible land under paragraph (a) must:

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

(2) be at least five acres in size, except for a drained wetland area, riparian area, windbreak, woodlot, wellhead protection area, or abandoned building site, or be a whole field;

(3) not be set aside, enrolled or diverted under another federal or state government program unless enrollment in the reinvest in Minnesota reserve program would provide additional conservation benefits or a longer term of enrollment than under the current federal or state program; and

(4) have been in agricultural crop production for at least two of the last five years before the date of application except drained wetlands, riparian lands, woodlots, abandoned building sites, environmentally sensitive areas, wellhead protection areas, or land used for pasture.

(d) Land is eligible if the land is a wellhead protection area as defined under section 103I.005, subdivision 24, and has a wellhead protection plan approved by the commissioner of health.

(e) In selecting land for enrollment in the program, highest priority must be given to permanent easements that are consistent with the purposes stated in section 103F.505.

Subd. 3. **Conservation easements.** (a) The board may acquire, or accept by gift or donation, conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on land for windbreak purposes, under subdivision 2, may be only of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of chapters 16B and 16C.

(b) The board may acquire, or accept by gift or donation, flowage easements when necessary for completion of wetland restoration projects.

Subd. 4. **Nature of property rights acquired.** (a) A conservation easement must prohibit:

(1) alteration of wildlife habitat and other natural features, unless specifically approved by the board;

(2) agricultural crop production and livestock grazing, unless specifically approved by the board for conservation management purposes or extreme drought; and

(3) spraying with chemicals or mowing, except:

(i) as necessary to comply with noxious weed control laws;

(ii) for emergency control of pests necessary to protect public health; or

(iii) as approved by the board for conservation management purposes.

(b) A conservation easement is subject to the terms of the agreement provided in subdivision 5.

(c) A conservation easement must allow repairs, improvements, and inspections necessary to maintain public drainage systems provided the easement area is restored to the condition required by the terms of the conservation easement.

(d) Notwithstanding paragraph (a), the board must permit the harvest of native grasses for use in seed production or bioenergy on wellhead protection lands eligible under subdivision 2, paragraph (d).

Subd. 5. **Agreements by landowner.** The board may enroll eligible land in the reinvest in Minnesota reserve program by signing an agreement in recordable form with a landowner in which the landowner agrees:

(1) to convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance;

(2) to seed the land subject to the conservation easement, as specified in the agreement, to establish and maintain perennial cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the board; or to plant trees or carry out other long-term capital improvements approved by the board for soil and water conservation or wildlife management;

(3) to convey to the state a permanent easement for the wetland restoration;

(4) that other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if it supports natural vegetation and has not been used in agricultural crop production, will not be converted to agricultural crop production or pasture; and

(5) that the easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or facilitate its administration.

Subd. 6. **Payments for conservation easements and establishment of conservation practices.** (a) The board shall establish rates for payments to the landowner for the conservation easement and related practices. The board

shall consider market factors, including the township average equalized estimated market value of property as established by the commissioner of revenue at the time of easement application.

(b) The board may establish a payment system for flowage easements acquired under this section.

(c) For wetland restoration projects involving more than one conservation easement, state payments for restoration costs may exceed the limits set by the board for an individual easement provided the total payment for the restoration project does not exceed the amount payable for the total number of acres involved.

(d) The board may use available nonstate funds to exceed the payment limits in this section.

**Subd. 7. Easement renewal.** When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the board and the landowner, under the terms of this section. The board may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

**Subd. 8. Correction of conservation easement boundary lines.** To correct errors in legal descriptions for easements that affect the ownership interests in the state and adjacent landowners, the board may, in the name of the state, with the approval of the attorney general, convey, without consideration, interests of the state necessary to correct legal descriptions of boundaries. The conveyance must be by quitclaim deed or release in a form approved by the attorney general.

**Subd. 9. Enforcement and damages.** (a) A landowner who violates the term of a conservation easement or agreement under this section, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

(b) Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney's fees, and any other appropriate relief to enforce sections 103F.505 to 103F.531 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

**Subd. 10. Use for mitigation prohibited.** Money made available under the reinvest in Minnesota reserve program may not be used for environmental regulatory or wetland mitigation purposes required under federal or state law.

**History:** 1990 c 391 art 6 s 73; 1991 c 354 art 10 s 3; 1992 c 415 s 3; 1996 c 449 s 1-3; 1998 c 386 art 2 s 31; 1999 c 231 s 127; 2001 c 99 s 2; 2009 c 172 art 2 s 16-20, 31; 2009 c 176 art 1 s 35-39; 2010 c 189 s 38

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### 103F.516 PERMANENT WETLANDS PRESERVE.

Subdivision 1. **Easements.** Upon application by a landowner, the board may acquire permanent easements and may pay for the cost of related capital improvement projects to preserve or restore wetlands on land containing type 1, 2, 3, 4, 5, or 6 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), public waters wetlands, or public waters.

Subd. 2. **Nature of property rights acquired.** (a) The nature of property rights acquired in an easement under this section must be consistent with the provisions of section 103F.515, subdivision 4.

(b) A permanent easement may include four adjacent upland acres of land for each acre of wetlands, public waters wetlands, or public waters included..

(c) The easement must require that the landowner control noxious weeds in accordance with sections 18.77 to 18.88.

(d) The permanent easement must be conveyed to the state in recordable form free of any prior title, lien, or encumbrance and must provide for a right of entry by the state for inspection and correction of violations.

Subd. 3. **Payment.** (a) Payment for the conservation easement may be made in ten equal annual payments or, at the option of the landowner, in a lump sum at:

(1) 50 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application for wetlands, public waters wetlands, or public waters located outside of the metropolitan counties, as defined in section 473.121, subdivision 4, and wetlands located on agricultural lands within a metropolitan county;

(2) for wetlands, public waters wetlands, or public waters located on nonagricultural land within the metropolitan county, 20 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application; or

(3) for wetlands, public waters wetlands, or public waters connected to a public or private drainage system, an amount determined by the board based on the fair market value of the land if drainage infrastructure were restored.

(b) Payment for adjacent upland acreage of cropped and noncropped land under subdivision 2, paragraph (b), must be made at 90 percent and 60 percent, respectively, of the township average equalized market value of agricultural land as established by the commissioner of revenue at the time of easement application.

Subd. 4. **Enforcement and corrections.** Enforcement of the permanent easement and violation corrections is governed by section 103F.515, subdivisions 8 and 9.

Subd. 5. **Available funds.** A property owner eligible for payments under this section must receive payments to the extent that funds are available. If funds are not available and payments are not made, restrictions on the use of the property owner's wetlands are terminated under this section.

**History:** 1991 c 354 art 3 s 1; 1994 c 627 s 2; 1995 c 186 s 29; 2001 c 146 s 1-3

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### 103F.518 REINVEST IN MINNESOTA CLEAN ENERGY PROGRAM.

Subdivision 1. **Establishment of program.** (a) The board, in consultation with the technical committee established in subdivision 11, shall establish and administer a reinvest in Minnesota (RIM) clean energy program that is in addition to the program under section 103F.515. Selection of land for the clean energy program must be based on its potential benefits for bioenergy crop production, water quality, soil health, reduction of chemical inputs, soil carbon storage, biodiversity, and wildlife habitat.

(b) For the purposes of this section, "diverse native prairie" means a prairie planted from a mix of local Minnesota native prairie species. A selection from all available native prairie species may be made so as to match species appropriate to local site conditions.

Subd. 2. **Eligible land.** Eligible land under this section must:

- (1) be owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application;
- (2) be at least five acres in size;
- (3) not be currently set aside, enrolled, or diverted under another federal or state government program; and
- (4) have been in agricultural use, as defined in section 17.81, subdivision 4, or have been set aside, enrolled, or diverted under another federal or state program for at least two of the last five years before the date of application.

Subd. 3. **Designation of project areas.** The board shall develop a process to designate defined project areas. The designation process shall prioritize projects that include coordinated cooperation of a cellulosic biofuel facility or a bioenergy production facility, target impaired waters, or support other state or local natural resource plans, goals, or objectives.

Subd. 4. **Easements.** The board may acquire, or accept by gift or donation, easements on eligible land. An easement may be permanent or of limited duration. An easement of limited duration may not be acquired if it is for a period less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of chapters 16B and 16C.

Subd. 5. **Nature of property rights acquired.** (a) An easement must prohibit:

- (1) agricultural crop production, unless approved by the board for energy production purposes; and
- (2) spraying with chemicals, except as necessary to comply with noxious weed control laws, emergency pest control necessary to protect public health, or as needed to establish a productive planting as determined by the technical committee under subdivision 11.

(b) An easement is subject to the terms of the agreement provided in subdivision 6.

(c) Agricultural crop production and harvest are limited to native, perennial bioenergy crops. Harvest shall occur outside of bird nesting season.

(d) An easement must allow repairs, improvements, and inspections necessary to maintain public drainage systems provided the easement area is restored to the condition required by the terms of the easement.

(e) An easement may allow nonnative perennial prairie or pasture established by September 1, 2007, that meet the other objectives outlined in subdivision 7.

(f) An easement may allow grazing of livestock only if practiced under a plan, approved by the board, that protects water quality, wildlife habitat, and biodiversity.

Subd. 6. **Agreements by landowner.** The board may enroll eligible land in the reinvest in Minnesota clean energy program by signing an agreement in recordable form with a landowner in which the landowner agrees:

- (1) to convey to the state an easement that is not subject to any prior title, lien, or encumbrance;
- (2) to seed the land subject to the easement, as specified in the agreement, at seeding rates determined by the board, or carry out other long-term capital improvements approved by the board; and
- (3) that the easement duration may be lengthened through mutual agreement with the board.

Subd. 7. **Payments for easements.** The board must develop a tiered payment system for easements partially based on the benefits of the bioenergy crop production for water quality, soil health, reduction in chemical inputs, soil carbon storage, biodiversity, and wildlife habitat using cash rent or a similar system as may be determined by the board. The payment system must provide that the highest per-acre payment is for diverse native prairie and perennials.

Subd. 8. **Easement renewal.** When an easement of limited duration expires, a new easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the board and the landowner under the terms of this section. The board may adjust payment rates as a result of renewing an agreement and easement only after examining the condition of the established plantings, conservation practices, and land values.

Subd. 9. **Correction of easement boundary lines.** To correct errors in legal descriptions for easements that affect the ownership interest in the state and adjacent landowners, the board may, in the name of the state, with the approval of the attorney general, convey, without consideration, interests of the state necessary to correct legal descriptions of boundaries. The conveyance must be by quitclaim deed or release in a form approved by the attorney general.

Subd. 10. **Enforcement and damages.** (a) A landowner who violates the term of an easement or agreement under this section, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

(b) Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce this section in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

Subd. 11. **Technical committee.** To ensure that public benefits, including water quality, soil health, reduction of chemical inputs, soil carbon storage, biodiversity, and wildlife habitat are secured along with bioenergy crop production, the Board of Water and Soil Resources shall appoint a technical committee consisting of one representative from the Departments of Agriculture, Natural Resources, and Commerce and the Pollution Control Agency; two farm organizations; one sustainable agriculture farmer organization; three rural economic development organizations; three environmental organizations; and three conservation or wildlife organizations. The board and technical committee shall consult with private sector organizations and University of Minnesota researchers involved in biomass establishment and bioenergy or biofuel conversion. The technical committee is to develop program guidelines and standards, as appropriate to ensure that reinvest in Minnesota clean energy program contracts provide public benefits commensurate with the public investment. The technical committee shall review and make recommendations on the guidelines and standards every five years.

**History:** 2007 c 57 art 1 s 119

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### 103F.535 RESERVATION OF MARGINAL LAND AND WETLANDS.

Subdivision 1. **Reservation of marginal land and wetlands.** (a) Marginal land and wetlands are withdrawn from sale or exchange unless:

(1) notice of the existence of the nonforested marginal land or wetlands, in a form prescribed by the Board of Water and Soil Resources, is provided to prospective purchasers; and

(2) the deed contains a restrictive covenant, in a form prescribed by the Board of Water and Soil Resources, that precludes enrollment of the land in a state-funded program providing compensation for conservation of marginal land or wetlands.

(b) This section does not apply to transfers of land by the Board of Water and Soil Resources to correct errors in legal descriptions under section 103F.515, subdivision 8, or to transfers by the commissioner of natural resources for:

(1) land that is currently in nonagricultural commercial use if a restrictive covenant would interfere with the commercial use;

(2) land in platted subdivisions;

(3) conveyances of land to correct errors in legal descriptions under section 84.0273;

(4) exchanges of nonagricultural land with the federal government, or exchanges of Class A, Class B, and riparian nonagricultural land with local units of government under sections 94.342, 94.343, and 94.344;

(5) land transferred to political subdivisions for public purposes under sections 84.027, subdivision 10, and 94.10; and

(6) land not needed for trail purposes that is sold to adjacent property owners and lease holders under section 85.015, subdivision 1, paragraph (b).

(c) This section does not apply to transfers of land by the commissioner of administration or transportation or by the Minnesota Housing Finance Agency, or to transfers of tax-forfeited land under chapter 282 if:

(1) the land is in platted subdivisions; or

(2) the conveyance is a transfer to correct errors in legal descriptions.

(d) This section does not apply to transfers of land by the commissioner of administration or by the Minnesota Housing Finance Agency for:

(1) land that is currently in nonagricultural commercial use if a restrictive covenant would interfere with the commercial use; or

(2) land transferred to political subdivisions for public purposes under sections 84.027, subdivision 10, and 94.10.

Subd. 2.[Repealed, 1992 c 502 s 7; 1992 c 561 s 10]

Subd. 3.[Repealed, 1992 c 502 s 7; 1992 c 561 s 10]

Subd. 4.[Repealed, 1992 c 561 s 10]

Subd. 5. **Release and alteration of conservation easements.** Conservation easements may be altered, released, or terminated by the board after consultation with the commissioners of agriculture and natural resources. The board may alter, release, or terminate a conservation easement only if the board determines that the public interest and general welfare are better served by the alteration, release, or termination.

**History:** 1990 c 391 art.6 s 78; 1990 c 473 s 1,2; 1990 c 572 s 13; 1991 c 214 s 5; 1992 c 502 s 1; 1992 c 561 s 1,9; 1Sp2005 c.1 art 2 s 119; 2009 c 172 art 2 s 25; 2009 c 176 art 1 s 44



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### **103H.105 CONSERVATION EASEMENTS TO PROTECT SENSITIVE AREAS.**

(a) Agricultural land within a sensitive area identified in section 103H.101, subdivision 2, or by the Board of Water and Soil Resources and land in or immediately surrounding a sinkhole is marginal agricultural land for purposes of section 103F.515, subdivision 2, and is eligible for the reinvest in Minnesota reserve program under section 103F.515.

(b) Notwithstanding section 103F.515, subdivision 2, paragraph (c), clauses (1) and (4), and subdivision 4, the Board of Water and Soil Resources may authorize acquisition of hillside easements that restrict hillside pasturing or grazing of livestock.

**History:** 1989 c 326 art 1 s 4; 1990 c 391 art 10 s 3; 2009 c 176 art 1 s 50