



# Wetland Banking Program Title Insurance Procedures

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A title insurance policy naming the State of Minnesota, Board of Water and Soil Resources as the insured party is required for all Wetland Bank Conservation Easements. This document is intended to clarify the State's expectations and requirements related to title insurance for wetland bank easements.

## GENERAL MATTERS

### Title Commitment

BWSR easement acquisition staff will contact the title insurance company chosen by the landowner directly via email to request the title commitment on behalf of the landowner. This request will occur after the easement boundary legal survey has been approved by BWSR. Upon receiving a complete commitment, BWSR will perform a detailed review of the exceptions listed under Schedule B-II and request additional information and/or removal of exceptions as appropriate. The State Attorney General's Office will act as BWSR's legal counsel.

### Title Policy Form

The final policy issued shall be an ALTA OWNERS POLICY, in a form and with such endorsements as approved by the State. The date and time of the final Title Insurance Policy shall be the same as the recording date and time of the Conservation Easement.

### Billing

The easement grantor and/or bank sponsor is responsible for all costs associated with the title insurance commitment, easement recording, and title insurance policy.

## TITLE COMMITMENT

### Searches

The title must be examined back to land patent. Forty-year searches are not acceptable for State of MN Conservation Easements per the State Attorney General's Office. (Land Patent refers to an official document by which title to a portion of public land is conveyed from the government.) A full search must be performed, including complete name searches, tax searches, levied and special assessment searches, and, where appropriate, bankruptcy searches.

### Schedule A

The insured is to be listed as State of Minnesota, Board of Water and Soil Resources.

BWSR will determine and provide the title insurance policy amount.

The Schedule A shall list all parties whom have fee title interest in the easement property as it is described in the easement Certificate of Survey.

If the Certificate of Survey includes an ingress/egress easement route that crosses another party's property, that property owner shall also be listed as having a fee title interest. The title of the area containing the ingress/egress must also be searched as a part of the commitment and insured as a part of the policy.

The Schedule A shall not include a typed out legal description. Instead, it must reference and attach a copy of the Certificate of Survey that will be provided by BWSR or the landowner. The same Certificate of Survey will be attached to and made part of the Conservation Easement, therefore it is important for the title agent to use the exact copy that has been provided and approved by BWSR.

## **Schedule B-I (Requirements)**

The Schedule B-I shall list all requirements that must be met prior to issuing a policy (e.g., record mortgage consent and Conservation Easement, etc.).

Unlike the purchase/sale of a home, State Conservation Easements do not have a "closing." Instead, the easement grantor and State will execute the Conservation Easement and send the original version to the title agent to perform a gap check, record the easement with the applicable County Recorder's Office, and issue the final title insurance policy.

## **Schedule B-II (Exceptions)**

All property taxes and their current status (paid or due) shall be listed on the Schedule B-II.

Schedule B-II shall not include "general" exceptions such as zoning ordinances, "easements for roads, if any", "severed mineral interests, if any", or specific zoning ordinances (even if of record).

Exceptions must be as limited as possible (i.e., if another easement or encumbrance does not affect the Conservation Easement parcel, then the easement or encumbrance should not appear as an exception).

Schedule B-II shall not list the State's access nor the Conservation Easement to be acquired as exceptions from coverage. The State's access must be insured either in the policy's general insuring provisions or affirmatively in the Final Title Insurance Policy itself.

Severed mineral interests or reservations must be searched for and listed specifically when applicable.

Schedule B-II shall individually list any environmental problems of record or of which the agent or insurance company is aware. These matters can be listed as an exception on Schedule B-II or as a note on the commitment for informational purposes only. The main point is to make the State aware of potential environmental problems so that it can investigate the problem further.

## **Delivery of Commitment**

The title agent or landowner/consultant must send the following items to BWSR:

- A first generation copy of the commitment. The State recognizes the use of electronic signatures and so a paper original commitment is not necessary. The State will not, however, accept illegible or size reduced copies of commitments.
- Complete copies (non-certified) of all relevant Schedule B-II exceptions, e.g. mineral reservations, oil, gas and mineral and other leases, easement for drainage, pipelines and right of first refusal agreements. If

BWSR requires copies of any of the above, it is the title agent's duty to provide those documents. Copies of mortgages are required only upon specific request by the State.

- BWSR will review the commitment and respond with comments, questions, and additional requests for information as appropriate.

## Title Clearance

Prior to easement recording, BWSR and the State Attorney General's Office will review and approve the title commitment as is or identify the following:

- Schedule B-II exceptions which must not appear on the policy
- Any other requirements that must be completed before recording of the easement can occur

If additional actions are required to clear the title, BWSR will:

- Consult with the title agent to determine what will be required to delete the objectionable exceptions
- Inform the easement grantor of the title company's requirements to delete each objectionable exception (i.e. request utility easement confinement, obtain mortgage consent, purchase severed mineral interests, etc.)
- Ensure the agent receives all items provided by easement grantor to clear title or remove objectionable exceptions

The easement grantor is responsible for:

- Title clearance and satisfaction of all other requirements as communicated per the above which are a prerequisite to completing the easement acquisition
- Delivering all documents necessary to clear title, delete exceptions, subordinate liens and mortgages etc. to BWSR (not directly to the agent) for State Attorney General Office review and approval

## EASEMENT RECORDING

Upon approval of the title commitment and appropriate title clearance by grantor, BWSR will send the title agent the Conservation Easement with instructions to obtain the landowner's signature(s) and the submission of the second easement acquisition fee. Title agent will also draft and organize signature(s) on any required seller's affidavits. Upon receiving the original Conservation Easement, BWSR will counter sign and send the original fully executed Conservation Easement and any other documents that must be recorded prior to issuance of the final policy to the title agent. The title agent must record the documents in the order specified by BWSR (when applicable).

Prior to recording the required documents, the agent must perform a "gap" check to search for any new encumbrances between the date of the title commitment and date of the final policy. If it is discovered that the current fee owner is not the grantor of the Conservation Easement, or if other problems have occurred or new encumbrances have been recorded, the title agent shall notify BWSR immediately and shall not record the Conservation Easement or complete the final policy until all issues are resolved to the satisfaction of the State.

## TITLE INSURANCE POLICY

The title agent shall deliver the title insurance policy and original recorded Conservation Easement (and all other applicable recorded documents) to BWSR for final review and approval by the State Attorney General's Office. The title insurance policy must comply with the following:

- The format of the policy's Schedule A shall follow the attached **Specimen Title Insurance Policy**
- The title policy issued shall be in the form of an ALTA OWNERS POLICY
- The State will NOT accept title policy with any new exception, i.e., exceptions that did not appear on the commitment, unless previously agreed to by the State.
- All general exceptions must be deleted from the policy, except for taxes or special assessments not shown as existing liens by public records. This is accomplished by the agent requiring the landowner to fill out a standard form Seller's Affidavit.
- The policy is to affirmatively insure that there are no delinquent taxes through policy date
- All subordinated mortgages and other liens and encumbrances shall be noted on the policy to recognize that they are subordinate to the Conservation Easement. The following is the language required by the State that shall precede the mortgage or lien/encumbrance information:

**"In addition to the foregoing, the title to the estate or interest in the land described in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the easement interest insured herein:"**

The purpose of the above statement is to ensure that enforcement of the mortgage or other liens will not extinguish the insured Conservation Easement, and that any title acquired by enforcing the mortgage or other liens will be subject to the Conservation Easement.