

# RIM Handbook

## IMPORTANT NOTE (11/18/2024):

The content of this RIM Handbook is in the process of being updated and improved, section by section. For certain topics, more recent and accurate guidance may exist elsewhere on the BWSR website. Where applicable, outdated guidance has been struck out and a link to the most recent guidance or form has been added.

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# RIM Reserve Eligibility

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## A. RIM RESERVE OVERVIEW AND ELIGIBLE LANDS

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## A. RIM RESERVE OVERVIEW AND ELIGIBLE LANDS

### A.1. Purpose and Policy Statement

The Reinvest in Minnesota (RIM) Resources Law of 1986, Minnesota Statutes, sections 103F.501 to 103F.531, as amended, states:

*"It is the purpose of sections 103F.505 to 103F.531 to restore certain marginal agricultural land and protect environmentally sensitive areas to enhance soil and water quality, minimize damage to flood-prone areas, sequester carbon, and support native fish and wildlife habitats. It is state policy to encourage the restoration of wetlands and riparian lands and promote the retirement of marginal, highly erodible land, particularly land adjacent to public waters, drainage systems, wetlands, and locally designated priority waters."*

### A.2. Program Goals

- Reduce groundwater contamination potential
- Improve surface water quality
- Eliminate or reduce off-site deposition of nutrients, sediment, or pesticides
- Enhance retention of surface runoff
- Reduce flood impacts
- Reduce erosion
- Protect and improve fish and wildlife habitat
- Enhance biological diversity

### A.3. Definitions of Eligible Lands

As stated in the above purpose and policy statement, the objective of the RIM Reserve program is to restore marginal agricultural lands and protect environmentally sensitive areas. Agricultural land is defined in the program administrative rules as follows:

*"Agricultural land" means land devoted for use as pasture or hayland or to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops, or to growing nursery stocks, or for pasturing domestic livestock or dairy animals, or for use as animal feedlots, and may include contiguous land associated with the production of the above.*

Land may be placed in the Reinvest in Minnesota Reserve program if it meets one or more of the following Specific eligible land types listed below.

#### Sensitive Groundwater Area

Land with crop history and within a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near the land surface.

#### Riparian Lands

Lands adjacent to public waters, drainage systems, wetlands, or locally designated priority waters.

#### Wetland Restoration Area

Lands containing drained wetlands that are practical to restore to their pre-drainage condition, and where the state is able to secure the necessary land rights of adjacent landowners. "*Drained wetland*" means a former natural wetland that has been altered by draining, dredging, filling, leveling or other manipulation sufficient to render the land suitable for agricultural crop production. This alteration must have occurred before December 23, 1985, and must have been legal (Creating a wetland, or restoring a wetland to an elevation or area beyond its pre-drainage condition, is not considered wetland restoration).

#### **Marginal Agricultural Cropland Area**

Land with crop history that is composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the [land capability classification system](#) of the United States Department of Agriculture.

#### **Pastured Land**

Land that is used for grazing by domestic livestock and land which is not considered land with crop history.

#### **Living Snow fence Windbreak Area**

Agricultural land within 300 feet of the right-of-way of a highway; the land must have a strip or belt of trees, shrubs, or grass barriers at least six rows deep.

#### **Woodlots on Agricultural Land**

A distinct tract of naturally forested land that is surrounded by agricultural land. The woodlot is not eligible on its own.

#### **Abandoned Building Site on Agricultural Land**

A distinct tract of land which was formerly inhabited as a home site or farmstead and that is surrounded by agricultural land. The building site is not eligible on its own.

#### **Wellhead Protection Areas**

Land area surrounding a well or well field that supplies a public water system, through which contaminants are likely to move toward and reach the well or well field.

## **B. RIM RESERVE PROGRAM ELIGIBILITY CRITERIA**

### **B.1. General Criteria**

The land is owned by individuals, family farms, family farm partnerships, authorized farm partnerships, family farm corporations, authorized farm corporations, some general partnerships, or estates and testamentary trusts. Definitions can be found in the Landowner Definition section. In addition to meeting the definition, authorized farm corporations or authorized farm partnerships must provide proof that they are registered with the Minnesota Department of Agriculture.

The land must have been owned by the applicant, parent of the applicant or a blood relative of the applicant for at least one year before the date of application.

Easement areas must be at least five acres in size or must be a whole field as defined by the USDA Farm Services Agency (FSA). **Exceptions: windbreak, agricultural woodlot, riparian lands, restorable wetlands, wellhead protection area, or abandoned building site.**

The land must not be enrolled under another easement whose purpose conflicts with, or substantially duplicates, the terms of a RIM Reserve conservation easement. Conservation easements must be evaluated on a case-by-case basis to determine whether they substantially duplicate the RIM Reserve easement. For example, land enrolled in USDA's Wetland Reserve Program (WRP) with a perpetual easement would not be eligible because that program has purchased the same land rights that a RIM Reserve easement purchases, i.e., specifically preventing cropping and grazing and requiring the establishment and maintenance of conservation practices.

Unused (abandoned) wells on the proposed easement area must be properly sealed before the easement can be conveyed. All associated costs to properly seal the wells are the responsibility of the landowner. Properly sealed means in accordance with Minnesota Statutes 1031.301 and the Minnesota Dept. of Health's well code, Minnesota Rules Chapter 4725.

Hazardous substances, buried tanks, pollutants, or contaminants on the proposed easement area must be properly removed or cleaned up before the easement can be conveyed (recorded). All associated costs to do so are the responsibility of the landowner.

No structures, temporary or permanent, can be located on the easement area. Existing structures must be removed prior to conveying the easement, and all costs associated with the removal are the responsibility of the landowner.

Perpetual easements are, by law, required to be considered highest priority. Wetland restoration areas and living snow fences **must** be perpetual. Limited duration easements of no less than 20 years may be considered for enrollment in SWCDs where the SWCD has received formal approval by BWSR, or where program specific signup guidelines allow limited duration easement applications.

Public Waters and Public Waters Wetlands identified on the DNR Public Waters inventory are eligible for enrollment and should be included in the easement as donated acres. This does not apply when they are offered for enrollment as a wetland restoration.

Public surface drainage ditches, including one rod of the ditch bank, cannot be included in paid acreage, and therefore should be enrolled as donated acres. **This does not apply when the drainage ditch is offered for enrollment as part of a wetland restoration or replacement wetland project.**

## B.2. Specific Criteria

Specific considerations or restrictions may pertain to individual eligible land types. The following 11 items specify requirements that must be met for the land to comply with the crop history definition, or for the land to be eligible as riparian land, a wetland restoration area, a marginal agricultural cropland area, living snow fence, pastured hillside, agricultural woodlot, abandoned building site or replacement wetland.

Many times, a RIM Reserve easement sign-up for landowners may not include all eligible land types being available due to legislative funding source requirements, and/or other BWSR programmatic requirements

specific to the sign-up being offered. An example of this would be a riparian land buffer sign-up using Clean Water Fund (CWF) appropriation. More specific and detailed information will be provided by BWSR ahead of each RIM program landowner application period.

All lands that will be compensated at the "land with crop history" easement payment rate must meet the crop history criteria below.

### **Crop History**

Acres have been in agricultural crop production for at least two of the last five years (complete, annual cropping seasons) prior to the date of application. Acres enrolled in a federal or state conservation program at a cropland rate two of the past five years qualify as crop history.

### **Riparian Lands**

Riparian lands should be adjacent to or in close proximity to a riparian source water. Riparian lands do not need to meet crop history requirements to be eligible, but BWSR priority is on land that meets the crop history definition. Corridors or buffers of natural vegetation between the cropped or pastured area and the riparian source should be included in the easement. Landowners should be encouraged to donate these buffer areas, particularly acres that exceed 20% of the eligible cropland acres being offered.

"Adjacent to" is a subjective decision the SWCD must make. Generally, the field should be in close proximity to the riparian source and a direct conveyance route (e.g., gully, waterway, culvert, etc.) for surface water should exist between the field and the riparian source.

### **Wetland Restoration Area**

Wetland restoration area(s) must have wetlands that were legally drained and are restorable. "Restorable" means that the project is financially practical and technically feasible. A wetland that has been temporarily restored by a beaver dam is considered restorable. "Technically feasible" wetland restorations cannot negatively impact adjacent lands not enrolled in a RIM easement unless property rights are obtained.

The drained wetland must have been sufficiently altered to render the basin suitable for agricultural crop production. This does not necessarily refer to present conditions. SWCDs will need to make a subjective decision regarding this eligibility issue.

Restored wetland cannot be used to mitigate other wetland losses. All wetland restorations must be perpetual by law, MS103F.515 Subd 5 (3); no limited duration wetland restorations will be considered for enrollment into the program.

Adjacent lands may be enrolled as part of the easement area under the following conditions as outlined below.

**Adjacent land without qualifying crop history** cannot exceed one acre for each acre of wetland to be restored (a 1:1 ratio).

**Adjacent lands with qualifying crop history** cannot exceed eight acres for each acre of wetland to be restored (8:1 ratio).

*Please contact central office staff if you have specific questions relating to wetland restoration areas. General and specific guidelines are often complicated for projects involving multiple applications for a wetland restoration easement.*

### **Marginal Agricultural Cropland Areas**

All acres must have been in agricultural crop production for at least two of the last five years prior to the date of application (see Crop History above for a complete definition.)

The easement area must include at least 50% eligible soil types that have capability class IIIe, IVe, V, VI, VII, or VIII land.

### **Living Snow fence Windbreak Area**

All acres must have been in agricultural crop production for at least two of the last five years prior to the date of application (see Crop History above for a complete definition.) A windbreak of at least six rows of woody vegetation will be established and will benefit resource protection (i.e., reduce wind erosion or enhance wildlife habitat). The easement area must be located within 300 feet of the highway right-of-way and must be approved by the County Highway Engineer or Minnesota Dept. of Transportation Highway Engineer, whichever is applicable. There is no minimum size requirement for this easement type, and all easements must be perpetual.

### **Pastured Land**

The easement area must have been actively pastured two of last five years. At the time of application, the easement area must show evidence of excessive erosion due to overgrazing.

### **Woodlots on Agricultural Land**

Agricultural land means land devoted for use as pasture or hayland, or to the production of horticultural, row, close grown, introduced pasture, introduced hayland crops, or to growing nursery stock, or for the pasturing of domestic livestock or dairy animals, or for use as animal feedlots, and may include contiguous woodlots associated with the production of the above. These woodlot areas are not eligible by themselves.

### **Abandoned Building Sites on Agricultural Land**

A distinct tract of land which was formerly inhabited as a homesite or farmstead and that is surrounded by agricultural land. These sites are only eligible if adjacent to other RIM eligible lands. They are not eligible as stand-alone easement areas. There is no minimum size requirement for this easement type. All existing buildings must be removed from the easement area and all building foundations must be filled prior to conveyance of the easement. Removal of all buildings, filling of building foundations and the associated costs are the responsibility of the landowner. All wells on the easement area must be properly sealed prior to the conveyance of the easement and all associated costs are the responsibility of the landowner.

### **Sensitive Groundwater**

All acres must have been in agricultural crop production for at least two of the last five years prior to the date of application (see Crop History above for a complete definition.)

**Wellhead Protection**

Acres offered do not need to meet crop history requirements, but priority is given to cropland. The land must be in a designated wellhead protection area (WHPA) in areas designated as high or very high susceptibility to contamination.

**C. CALCULATION OF PAYMENT RATES**

Payment rates are established on an annual basis by BWSR. Assessor's Township Average Market Values (ATAMV) for tillable land are utilized by BWSR as the basis for determining payment rates. These values are reported to the MN Dept. of Revenue on an annual basis by local county assessors.

Refer to the current township payment rates provided by BWSR for specific township payment rates in your area.



# Landowner Eligibility Types

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RIM's definition of an eligible "Landowner" means an individual or entity that is not prohibited from owning agricultural land under section 500.24 and either owns eligible land or is purchasing eligible land under a contract for deed.

[MN Statute Section 500.24](#) was passed in 1971 to "encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family." As such, section 500.24 requires certain entities be certified by the Minnesota Department of Agriculture before engaging in farming or having an interest in agricultural land.

To meet Landowner eligibility requirements, the following entities will need to either be certified or determined exempt by the Department of Agriculture:

- Trust, Pension, or Investment Fund
- Corporation
- Limited Liability Company (LLC)
- Limited Partnership (LP)
- Limited Liability Limited Partnership (LLLP)

Note that General Partnerships and Limited Liability Partnerships do not need to be certified. Revocable Trusts do not need to be certified. Also, Trusts that had owned land prior to May 16, 2000 are grandfathered in and do not need to be certified.

If the Landowner is one of the listed entities, and is not already certified or exempt, complete a corporate farm application and send it to the Minnesota Department of Agriculture, along with a \$15 fee. Note that copies of recorded deeds are required to be sent with the application. Applications are located on the [Department of Agriculture's webpage](#). If the entity satisfies the requirements of the statute, the Department of Agriculture will send a certificate signed by the Commissioner stating that the entity is in compliance with the law.

The Department of Agriculture maintains the following guidance documents that will assist you with application preparation and submittal:

[Corporate Farm Application Instruction](#)  
[Explanation of Exemptions](#)

# Easement Acquisition Processing Framework

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## A. EASEMENT ACQUISITION OVERVIEW

### [A.1. The Three Stages to Conservation Easement Acquisition](#)

Application Stage

Agreement Stage

Easement Stage

### [A.2. SWCD Checklist](#)

## B. SWCD ADMINISTRATION

### [B.1. Easement Files](#)

### [B.2. Cancellation Procedures](#)

### [B.3. SWCD Reimbursable Expenses](#)

### [B.4. SWCD Work Order Invoicing](#)

## A. EASEMENT ACQUISITION PROCESS

### A.1. The Three Stages of Conservation Easement Acquisition

The process of acquiring a conservation easement involves three distinct stages:

1. **Application**
2. **Agreement**
3. **Easement**

The [Easement Acquisition Process flowchart](#) creates a visual picture of the easement acquisition process by showing the major steps involved in each stage of the process. Use the flowchart to explain the easement acquisition process to landowners inquiring about the program. The entire process can take from several months to several years, depending on the problems encountered during the process. Although every attempt is made to complete the process within 12- 18 months, it is better not to provide the landowner with estimates regarding how long it will take to complete the acquisition process since so many variables can affect the outcome.

#### **Application Stage**

Important steps of this stage include determining eligibility for both the landowner(s) and the land(s) being offered for enrollment. In the case of wetland restoration applications, technical feasibility should also be determined. If an applicant and the associated land are determined eligible, and the SWCD feels the area ranks high in terms of meeting state and local resource protection goals, the next step will be gathering the information required to submit the parcel for funding consideration. In some cases the SWCD may be asked to rank the resource protection priority of the parcel in relation to the other applications. This is dependent on specific program sign-up requirements and SWCDs will receive direction from BWSR as to when this applies.

If the proposed easement area meets local and state resource protection goals, and the landowner understands and consents to the terms and conditions of the easement, an application package should be completed as instructed in the Application Stage section of this handbook.

Applications that the SWCD approves to submit to the state for funding consideration are forwarded directly to the BWSR Conservation Easement Section in St. Paul. The BWSR Engineering Section will review wetland restoration applications prior to funding approval. SWCDs can generally expect to hear which applications will be funded two to four weeks after the sign-up period ends.

If the SWCD is aware of mortgages or liens on land submitted for enrollment they should contact, either directly or through the landowner, the holders of mortgages and liens to determine if they will sign a form to subordinate their interest to the conservation easement, or release the easement acres from the terms of the mortgage or lien. If the landowner(s) are unable to provide a land title that is clear of objectionable encumbrances, the application will need to be withdrawn (see item B.2 of this section).

Any environmental problems must be identified before preparing the application package. Abandoned wells will need to be sealed, and junk piles and/or structures will need to be removed from the easement area prior to recording the easement.

#### **Agreement Stage**

The conservation easement agreement documents will be developed by BWSR upon receipt and review of the application package from the SWCD. BWSR will develop the legal description for the easement area based on the ArcGIS shapefile submitted by the SWCD, and if there are any changes, send it back out for review and approval by the landowner prior to developing the legal RIM Agreement for landowner signatures. BWSR may adjust the shapefile boundary due to section lines, road right-of-ways, or ownership, so it is advisable to stake the boundaries of the easement area (as delineated in the BWSR revised GIS shapefile) and make sure the landowner understands and is comfortable with the easement area boundaries.

After the boundary and payment are finalized, the agreement will be drafted by BWSR and sent to the SWCD for landowner signature. Please refer to the Conservation Easement Agreement subsection of the Agreement Stage section in the handbook for further clarification.

The SWCD must also develop the conservation plan at this time so that it may be submitted for BWSR review and approval in conjunction with title insurance commitment. Successful establishment of conservation practices is paramount to achieving the desired environmental benefits associated with the easement. Please refer to the Conservation Plan Development subsection of the Agreement Stage section in the handbook for further clarification.

### **Easement Stage**

The final stage of easement acquisition begins after the conservation easement agreement has been signed by all parties (landowners and state departments). Once the landowner(s) receive the completed and signed conservation easement agreement, they should proceed to have the abstract to their property updated. At the same time the SWCD should initiate the title insurance process by submitting a written request to the title agent with whom they will be contracting. Please refer to the Easement Stage section the handbook for further clarification and instructions relating to title insurance.

The conservation easement will be developed by BWSR upon receipt and acceptance of the title insurance commitment and draft (unsigned) conservation plan. Once completed, the easement will be sent to the SWCD for landowner signature and recording. The conservation plan will also require the principal landowner's signature at this time; however, it does not get recorded. BWSR will make payment to the landowners upon receipt of the recorded easement, the final title insurance policy, the signed Conservation Plan, and any other items specifically requested by BWSR for a given easement.

Please refer to the Easement Stage section of the handbook for more detailed information.

### **A.2. Conservation Easement SWCD Checklist**

The [SWCD checklist](#) has been developed for SWCD staff. The checklist helps accomplish the required steps to an easement in a timely manner. Check off the components of each stage (as illustrated in the flowchart) and fill in the date when all the items are complete.

## B. SWCD ADMINISTRATION

### B.1. Easement Files

Retain the following information in the easement file (not intended as an all-inclusive list):

- A record of contact with the property owners
- Application Package
- Easement Area Site Assessment Forms
- Aerial Photo of the easement area
- Land Use History & Soils
- Courthouse Search Data Sheet (if applicable)
- RIM Reserve Wetland Restoration Information Sheet
- Wetland restoration topographical survey & map
- Wetland restoration project design information
- Conservation Easement Agreement and referenced attachments
- Agreement Information Form
- Exhibit "A" - (and aerial photo used to develop Exh. A)
- Legal Description
- Deed copy, Abstract legal copy, Govt. Lot Map, etc.
- W-9 Form (required IRS form)
- Conservation Easement Financial Worksheet
- Conservation Plan
- Conservation Practice Plan
- Conservation Plan Map
- Seeding Instructions
- Construction Plan and Notes
- Operation and Maintenance
- Practice Implementation Reimbursement Requests (formerly Cost Share Vouchers)
- Title Insurance
- Request for Title Insurance
- Documentation of Abstract Routing
- Copy of the Title Insurance Commitment
- Copies of Document Copies relating to pertinent exceptions listed on the T.I. Commitment
- Copy of the Final Policy
- Reimbursable RIM Reserve Invoice
- Easement
- Executed Easement and associated attachments and exhibits
- Other
  - Correspondence: SWCD, Landowner and State
  - Payment Notices from BWSR

- Receipts for mail, abstracts, etc...
- Easement Site Inspection forms
- Corrective Actions Transmittal and Landowner Response - Violation
- Corrective Action Plan and SWCD Certification - Violation
- Change of ownership information

## B.2. Cancellation Procedures

For various reasons a landowner or the SWCD may wish to request that BWSR cancel an enrolled applicant. The guidelines an SWCD should follow include:

### Landowner Requests Cancellation

If the conservation easement agreement has not been signed no binding documents between the state and the landowner exist. If a landowner no longer wants to convey a conservation easement encourage him or her to officially notify the SWCD of this in writing. **The SWCD must notify BWSR of the cancellation, either by forwarding a copy of the landowner's letter or sending an email.** BWSR should be promptly notified so the funds can be applied to other applicants.

If the conservation easement agreement has been signed, a binding contract between the state and the applicant does exist. Therefore, a landowner is **required** to send the SWCD a letter requesting cancellation. The SWCD must forward this letter to BWSR, along with a recommendation whether the applicant should be allowed to cancel. Because the conservation easement agreement is a binding document BWSR can exercise the right to continue with the easement acquisition process. In most cases BWSR approves the landowner's request to cancel. If BWSR has not contacted the SWCD within 30 working days of the date the cancellation request was mailed to BWSR the application has been cancelled.

### SWCD Requests Cancellation

An SWCD may wish to request that BWSR cancel an enrolled application in certain situations. Situations where it is appropriate to cancel an approved application include:

- The area has been signed up as a wetland restoration, but it is determined that the restoration is not technically feasible or will impact adjacent landowners who are unwilling to enter into a conservation or flowage easement.
- The landowner is unable to provide a title free of objectionable liens and encumbrances.
- The landowner is not completing the required steps in a timely manner.
- The conservation plan is not feasible or practical to implement.

A letter should be sent by the SWCD to BWSR requesting the approval to cancel an easement application. If BWSR approves the cancellation request, the SWCD notifies the landowner in writing that his or her easement application will be cancelled in 15 working days and state the reasons for the cancellation. Inform the landowner that the cancellation may be appealed within the 15 working day period. If 15 working days have passed and the applicant has not appealed the cancellation, an official notification of cancellation should be sent by certified mail. A copy of this letter must be mailed to BWSR so the easement can be deleted from our records and the associated funds applied to other applicants. If you have any questions please contact BWSR Easement Staff.

### B.3. SWCD Reimbursable Expenses

This section covers reimbursement for title insurance costs, recording costs, staking, and other expenses that are reimbursable to the SWCD. For information about work order invoicing, please see section B.4 below. For information on landowner conservation practice reimbursement, see the Conservation Plan Implementation section of this document.

Some of the SWCD costs associated with acquiring a conservation easement are reimbursable. For those expenses listed as reimbursable, or for those individually approved for reimbursement, SWCDs should submit a [Reimbursement Request Form](#) after BWSR has notified the SWCD that the easement payment has been issued.

Reimbursable Expenses:

- Title Insurance Commitments
- Title Insurance Policies
- Flowage Easement: Abstract Updating
- Metal Posts used to mark easement boundaries
- Recording Fees

Potential Reimbursable Expenses (case-by-case BWSR Easement Section Manager approval necessary):

- Certain expenses associated with determining the technical feasibility of a project (e.g. tile investigation, soil testing).
- Other unusual circumstances (e.g. investigating/solving problems attributed to a completed conservation practice).

### B.4. SWCD Work Order Invoicing

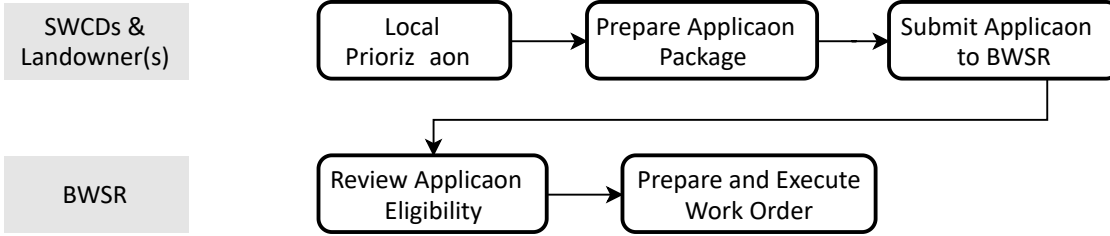
For easements acquisition and technical assistance work orders under the 2020 MJPA, SWCDs must submit a work order reimbursement invoice to receive compensation for easement acquisition and technical assistance services.

Under the 2024 MJPA, which covers work orders signed in January 2024 and later, no work order reimbursement invoices are required. Upon payment of the landowner, BWSR will reimburse the SWCD for easement acquisition services. Upon certification of construction, BWSR will reimburse the SWCD for technical assistance services.

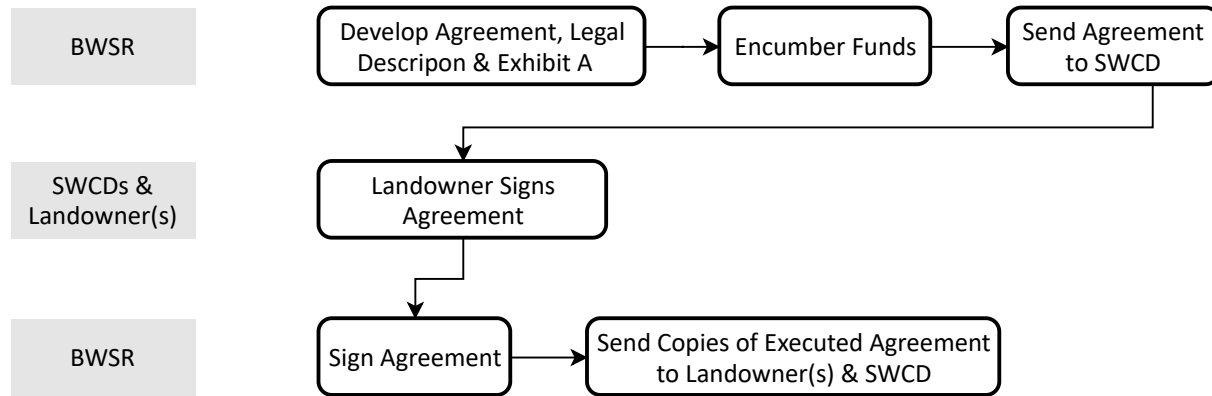
See the [Master Joint Powers Agreement \(MJPA\) page](#) on BWSR's website for more information.

# CONSERVATION EASEMENT ACQUISITION FLOWCHART

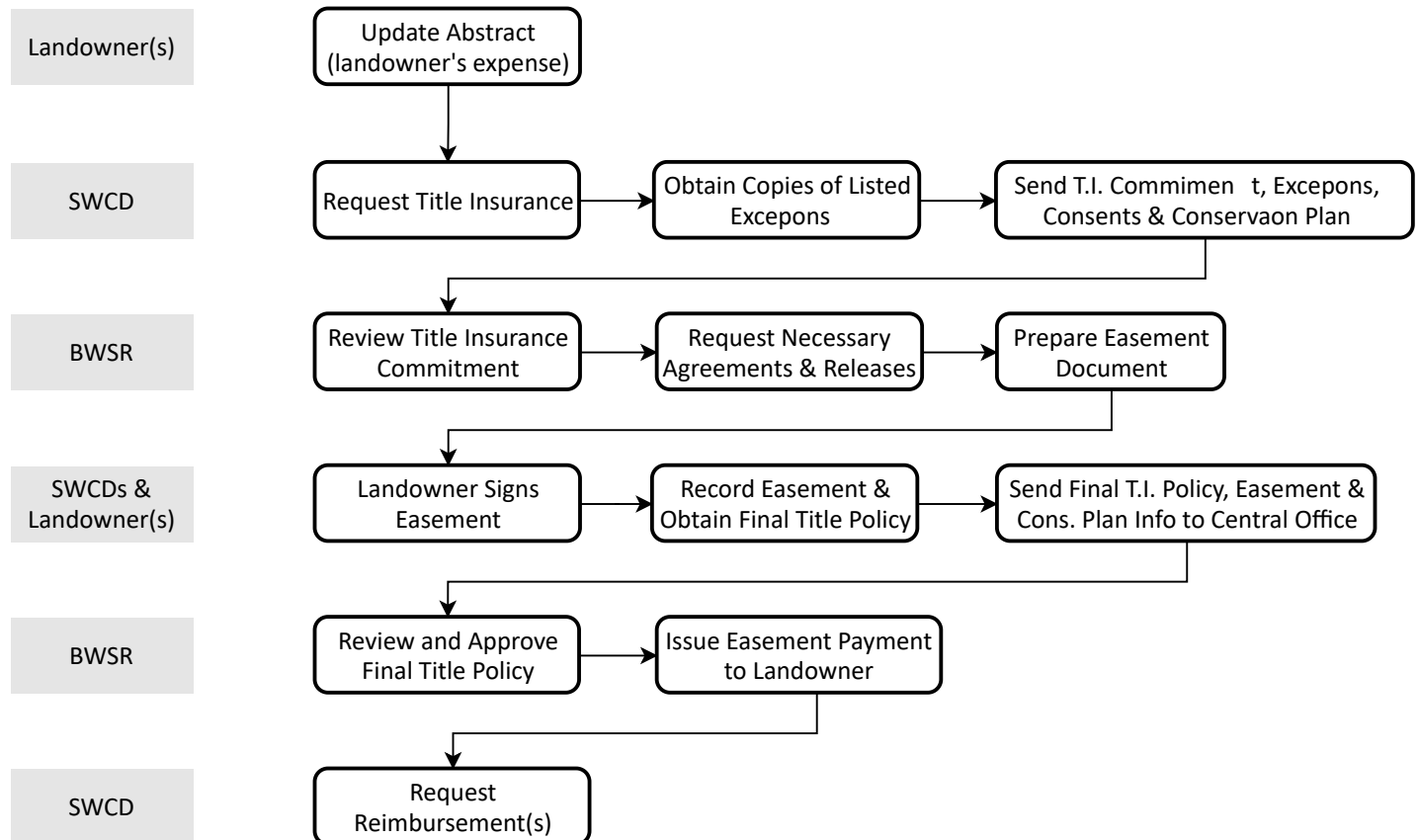
## Application Stage



## Agreement Stage



## Easement Stage





# Application Stage

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### A. GETTING STARTED

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### B. PREPARING AN APPLICATION PACKAGE

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[B.2. Aerial Photograph/Map\(s\)](#)

[B.3. GIS Shapefile](#)

[B.4. Easement Area Assessment](#)

[B.5. Conservation Easement Financial Worksheet](#)

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[B.7. Deeds & Ownership Documentation](#)

[B.8. Agreement Information Form](#)

[B.9. IRS W-9 Form](#)

**C. RESOLVING LEGAL AND ENVIRONMENTAL ISSUES**

**D. SPLITTING EASEMENT APPLICATIONS**

**E. WETLAND RESTORATION INFORMATION**

## A. GETTING STARTED

The RIM Reserve program requires a number of actions by both the SWCD and landowner to successfully complete a conservation easement transaction. Since easements affect the land title by restricting the use of the property, it is absolutely necessary that the landowner have a full understanding of the easement acquisition process and the obligations under the terms of the easement.

The application stage is a critical part of the conservation easement process. Information will be collected to determine landowner and site eligibility, possible title problems and payments. In addition, it is at this stage that the district must determine if the land offered for enrollment is compatible with local and state resource protection goals and meets specific program requirements associated with the legislative appropriation language and BWSR guidance.

Please refer to the Easement Acquisition: Processing Framework section of the handbook for an overview of the complete easement acquisition process. Whenever the program requirements or materials are not clearly understood, or the instructions do not cover the situation, call conservation easement section staff for assistance.

### A.1. Landowner Resources

In early discussions, landowners will want to know how much the state will pay for a conservation easement. However, it is equally important that they understand their obligations under the terms of the easement, including program eligibility requirements and resource protection priorities. Refer to the [Resources for Landowners](#) section on BWSR's website for more information.

Be frank about the time required for processing the application, and the time required to process the easement should the application be funded. The average processing time from the date of application to the date of payment is 12 to 18 or more months. It is in the district's best interest to take applications from individuals who fully understand the process and the terms of the easement. This will help to avoid the work of processing applications from marginally interested landowners who later cancel or wish to enroll areas that are low priority in terms of resource protection.

### A.2. Easement Eligibility

A determination of eligibility must be made early in discussions with the landowner. Both the landowner and the site must meet certain requirements, depending on the program. Before proceeding with the application procedures, refer to RIM Eligibility sections to determine if the landowner and the land meet eligibility requirements. Also refer to any program specific requirements that you may have received or are posted on BWSR's website about current easement sign-up opportunities.

### A.3. Local Prioritization

Historically, the demand for easement dollars has exceeded the program funds available. Therefore, the district may be asked to rank the applications it intends to forward to the state for funding consideration. This is

dependent on specific program requirements and BWSR easement staff will provide further direction when applicable.

The SWCD shall take one of the following actions on each application:

- (1) Approve the application and submit to the state for funding consideration; or
- (2) Retain the application for further investigation; or
- (3) Deny the application because it is ineligible or it is not of sufficient local resource protection priority.

#### **A.4. Land in More than One District**

If an application involves land in more than one district, the districts may jointly delegate the responsibility of reviewing and prioritizing that application to one of the districts. If the application is accepted for enrollment, the affected districts may also jointly delegate the responsibility of completing all the tasks necessary for the acquisition of the conservation easement to one of the districts.

#### **A.5. Access**

The state and its representatives must be able to access the easement area from a public road. If the easement boundary does not lie directly adjacent to a public road right-of-way, the SWCD must submit a map showing possible or existing access route locations as a part of the application package. In rare circumstances, BWSR may allow access from a public waterway or adjacent recorded RIM easement.

Careful consideration must also be given to the need for landowners to access other lands not contained in the easement in the future. When delineating the easement boundaries make sure that an access exists to areas not under easement, such as fields, woodlots, and potential building sites. When deciding whether or not to exclude land which provides access to an area not under easement, remember the terms of the easement require that the conservation practices identified in the conservation plan must remain intact and wildlife habitat must not be altered. Any prolonged travel over the same area would damage vegetation and could result in the landowner not being in compliance of the easement terms.

#### **A.6. SWCD Checklist**

After the application has been deemed eligible, an [SWCD Conservation Easement Checklist](#) should be started. Part I of the checklist identifies the components of the application package that need to be submitted to BWSR. It also documents SWCD approval, BWSR funding action and landowner notification.

#### **A.7. Record of Landowner Contact**

A record of landowner contact should be started at the time of the initial expression of interest in a conservation easement by the landowner. No standard form exists, but the record should summarize conversations and include other information for reference. An accurate and up-to-date record will allow other staff to work with the landowner in the absence of the person who routinely works with the easement programs.

#### **A.8 Courthouse Search**

The courthouse search is not required for every application, but may be advisable in some cases. The conservation easement process can only be completed on lands with a clear title—one that is not subject to objectionable liens or encumbrances. The applicants must be the landowners of record, and any variations in

names or the legal description must be accounted for or corrected. To complete the easement process, the holders of any mortgages or liens must consent to the easement or release the land being enrolled into the conservation easement. (For further clarification refer to the discussion on title insurance in the Easement Stage section of the handbook).

Applicants for a conservation easement could have so many title defects and/or obligations on their property it is unlikely they will be able to obtain consents and/or releases without prolonged delays and expense. It is better to discover such problems early in the process and avoid processing applications that will not result in easements.

Conduct a courthouse search only if you have reason to believe one is necessary as a result of landowner answers on the landowner questionnaire, or personal knowledge of the landowner.

A courthouse search is a preliminary records search that *should* be done by the SWCD, or a representative, as part of the RIM service grant obligation. Later in the acquisition process the state will purchase title insurance that will require a more formal search and opinion by the insurer. A final search will also be conducted by the title insurance agent prior to recording the easement to assure no new obligations or changes have taken place during the process.

Contact your county's administrative offices to determine where the information is kept. Usually, the County Recorder's office will have the title and mortgage records, the County Clerk of Courts' office will have records of judgments and liens, and the County Auditor's office will have the records of back taxes due.

## **B. PREPARING AN APPLICATION PACKAGE**

The development of the application package is one of the most important steps involved in acquiring the conservation easement. The documents required as part of the application package will allow the state to verify ownership and legally define the proposed easement area(s). The careful development of the application package by the SWCD will allow BWSR to accurately and efficiently prepare the required agreement documents (see Agreement Stage Section).

The components of a complete easement application package are listed below and discussed in detail throughout the rest of this section. The application packages are to be mailed to BWSR St. Paul, Easement Section at the following address:

MN Board of Water and Soil Resources  
Attn: Easement Section  
520 Lafayette Rd  
Saint Paul, MN 55155

### **Easement Application Package Checklist:**

1. Conservation Easement Application
2. Aerial Photograph/Maps(s)
3. GIS Shapefile
4. Easement Area Assessment form
5. Conservation Easement Financial Worksheet (CEFW)

6. Scoresheet
7. Deed(s) and other Ownership Documentation
8. Agreement Information Form (AIF)
9. IRS W-9 Form

### **B.1. Conservation Easement Application**

The [Conservation Easement Application](#) documents landowner interest in a conservation easement and supplies the information necessary to begin the application package. Be sure the landowner and parcel information are complete and accurate based on the most recent deed.

#### Landowner's or Entity's Full Name

Enter the landowner's name or, in the case of multiple owners, enter the name of the owner that will be representing the group. In the case of partnerships, corporations, trusts, etc., enter their official name in this space. In the adjacent box enter the name of the individual who will be applying on behalf of the entity. The specified address will receive all non-monetary correspondence.

#### Easement Type

Select the applicable program for the easement.

#### Easement Payments

Transfer the easement acres and easement payment from the Conservation Easement Financial Worksheet (CEFW). See below for additional guidance on the CEFW.

#### Terms and Conditions

After reviewing the four statements above the signature block with the applicant, and after you have assisted the landowner in completing the landowner questionnaire, have the application signed and dated by the landowner. The SWCD also signs and dates the application. Unsigned applications are not complete and will not be accepted by BWSR.

#### Landowner Questionnaire

Carefully go over the questions on page 2 of the application with the landowner to assure they understand the questions before answering them. The landowner should answer all the questions and provide explanations where appropriate. Important: if the landowner notes that they have a mortgage with Wells Fargo, the landowner will either have to re-finance with a new bank or the application must be cancelled. Wells Fargo will not subordinate to MN BWSR RIM Easements. If you have questions about this matter, please contact BWSR easement staff.

### **B.2. Aerial Photograph/Map(s)**

Each easement application must include map(s) with the below items identified. Identification of these features will aid in developing the Exhibit A and the easement's legal description.

- Boundary of the proposed easement area
- Proposed access route location, if applicable (refer to A.5 for information relating to easement access)
- Roads and railroads with names labeled (see below for additional information)

- All rivers, streams, ditches, lakes, etc. Include the name or number designation (see below for additional information on public drainage systems)
- Building sites, inhabited or abandoned, adjacent to or within the easement
- Conservation easement numbers and boundaries of any existing BWSR conservation easements on adjoining properties
- Conservation easements held by other entities besides BWSR
- Utility easement locations, if known (see below for additional information)
- Section corners and/or center of section clearly identified
- Scale and legend

### **Roads (cartways, township and county roads, state and federal highways)**

Identify all roads and label them by name or number. Typically, the center of a road is on the property line between two parcels. Roads are often positioned on the section, half-section, or quarter line. The conservation easement area cannot extend into the road right-of-way.

A township road and associated right-of-way will generally encompass a total width of 66 feet. Other roads will have varying right-of-way widths. For example, in general, highways will encompass a total width of 150 feet, C.S.A.H.'s will encompass a total width of 132 feet, and county roads will encompass a total width of 100 feet. Please attempt to verify the widths of roads and show on the aerial photo that gets submitted to BWSR.

### **Railroads**

Identify railroads and label them by name. Determine the actual width of the railroad right-of-way if known and indicate on the photo.

### **Public Drainage Systems**

Identify and appropriately label all public drainage ditches. Include the width of the public ditch if adjacent to or within the easement area. Since the land under public ditches belongs to the landowner if the ditch is within the legal description of ownership, it should be donated as a part of the easement whenever possible to allow for a more continuous easement area and to help avoid vague legal descriptions.

Also, identify and appropriately label any known private drainage ditches that are adjacent to or within the easement area that have recorded drainage easements/agreements. Adequate space for future maintenance should be provided along the sides of a private ditch.

### **Utilities**

If, during the preparation of the aerial photo for the application package, the exact locations of any utilities are known, identify them on the photo. Easements for pipelines and other utilities (gas lines, electric, phone, etc.) that exist on or adjacent to the proposed easement area will eventually have to be obtained as part of the

easement acquisition. Refer to Title Insurance in the Easement Stage section of the handbook for more information.

### **B.3. GIS Shapefile**

A shapefile (ESRI ArcMap file format) of the easement boundary depicted in the map must be included with the Application Package. This file is to be submitted electronically using the instructions from specific program guidance. The shapefile must be in the following coordinate system: NAD 1983 UTM Zone 15N (Meters).

### **B.4. Easement Area Assessment Form**

Complete the appropriate conservation [Easement Area Assessment](#) form for RIM and submit it with the application for funding consideration. The assessment form provides information about the resource features of the proposed easement, the environmental condition of the area and the environmental protection an easement would provide. Check marks are used to indicate items that apply. Sections of the form ask for brief narrative descriptions concerning the proposed easement. Please use the narrative to explain the local priority placed on the application.

You must complete and sign the environmental assessment portion of the form after an on-site inspection. The inspection is required to assure due diligence has been taken to protect the state from obligations for expenses to clean-up contamination that could be present on the site. The environmental assessment has serious implications and must be carefully conducted.

If you have questions, or want explanation about entries on the assessment form, contact BWSR easement staff.

### **B.5. The Conservation Easement Financial Worksheet (CEFW)**

This form identifies the amount of compensation to be received and should be the basis for discussions concerning payments. Payment amounts given on these forms should be as accurate as possible, as the state reserves the funds required for the easement based on the information supplied via this form.

There are different versions of the Conservation Easement Financial Worksheet (CEFW). Both versions are used to calculate the overall RIM easement acres and payment values, but they use different methods. See the application form to determine the correct CEFW for each program.

#### [Standard RIM Rate CEFW](#)

The standard RIM rate CEFW is fairly simple and is intended for RIM programs that have a set payment rate by Township (contact BWSR for current rates).

#### [Tax Assessed Calculation CEFW](#)

The tax assessed calculation CEFW calculates the RIM payment based on a percentage of the parcel's tax assessed value, therefore SWCDs must also submit a tax assessment sheet showing the parcel acres and taxable value. The RIM easement area cannot exceed the tax assessed acreage.

After the calculations are completed for the funding request, sign, and date this form. Note the acknowledgment statement verifies that the information on this page has been conveyed to the landowner.



## B.6. Scoresheet

Scoresheets allow potential easements to be prioritized based on program goals and environmental benefits. Scoresheets will vary by easement program. A completed scoresheet should be submitted along with the other application materials.

## B.7. Deeds & Ownership Documentation

The acquisition of a conservation easement is considered a real estate transaction. As a result, it is very important that the easement and the legal description describing the easement area boundary be accurately developed. Information regarding when and how the grantor(s) obtained the property is essential. The title insurance agent may require more detailed documentation of ownership at the title commitment stage.

The following information pertaining to property deeds, legal documents and maps is needed by BWSR to determine basic evidence of ownership. Good quality copies of these documents must be submitted by the SWCD as part of the application package.

The SWCD should contact BWSR easement staff with any questions prior to submitting the application package.

### Deed

The deed is the legal document used to transfer ownership or property rights of a person or entity to another person or entity. This information includes the name(s) of the person(s) or legal entity that purchased the property along with the legal description of the property acquired.

The legal description on the deed(s) must encompass all the lands within the proposed easement area, so that the landowner(s) can show ownership for all the easement area. This is very important! Please review the deed's legal description to verify ownership prior to submitting the agreement package to BWSR.

There are several different types of deeds. One of the types of deeds listed below will probably exist for the property and a copy of it must be submitted as part of the agreement package. The first three listed deeds are the most common and created as result of a voluntary transfer of the land. The next two deeds are developed as a result of the death of an owner identified on the deed. The last deed is developed for property conveyance for a minor or incompetent person.

If the legal description in the deed refers to another deed, easement, etc., a copy of the referenced document(s) must also be submitted.

#### **Warranty Deed**

This is the most comprehensive and common type of deed used in real estate transactions. With this type of deed, the grantor warrants that (s)he has good title to the property being transferred.

#### **Quit Claim Deed**

This type of deed is used when the grantor does not warrant that (s) he has good title to the property being transferred; (s) he is only conveying whatever interest (s)he has in the property.

#### **Contract for Deed**

A contract for deed is not an immediate transfer of a parcel of property. Instead, it is a contract for a sale, which requires the buyer to make a certain number of payments to the seller over a specified

period of time. The seller remains the fee owner of the property during the term of the contract. After all of the necessary payments are made to the seller, the seller provides the buyer with a deed of ownership.

**Probate or Personal Representative's Deed**

This type of deed is from a person authorized to transfer property from the estate of a deceased landowner.

**Trustee's Deed**

This type of deed is from a trustee who has authority, from a trust created in a will, to manage the property of a deceased landowner.

**Guardian's or Conservator's Deed**

This type of deed is from a person authorized to transfer property for a minor or incompetent person.

**Other Ownership/Legal Documents**

Occasionally, the ownership information from the deed or current information as provided by a landowner will indicate that a grantor identified on the deed is deceased, is divorced or divorcing, has designated another party to sign on their behalf, or the land has been transferred to a trust. In these non-typical situations, the SWCD may need to obtain additional information or documents from the landowner(s) and submit them as part of the agreement package. Please contact BWSR easement staff for guidance on what information or documents are needed for a particular non-typical situation. The landowner should consult an attorney if any of these documents need to be prepared.

The following is a listing and brief description of some of the documents that may be needed for these non-typical situations.

**Divorce of a landowner**

***Decree of Dissolution (Divorce Decree)***

A court order that shows how marital property is divided after a divorce has been finalized.

**Death of a landowner**

*Note:* The following pertains to husband and wife ownership scenarios. Transactions with multiple grantors, or situations not covered below will require guidance from BWSR easement staff and/or the title agent.

If the land was originally acquired by only the surviving spouse, and that deed is still the most recent deed of record, a death certificate should be all that is required.

If the land is owned by husband and wife as joint tenants, a copy of the death certificate should be sufficient.

If the land is owned by husband and wife as tenants in common, the deceased spouse's interest in the property will be dealt with in probate court. A Personal Representative's deed, a Decree of Distribution or other documents may be required. Please call BWSR easement staff to discuss these situations on a case-by-case basis.

**Land Held in Trust (Revocable Trust, Irrevocable Trust, Family Trust, Living Trust, etc.)**

*Trust Agreement or Certification of Trust*

A document that authorizes a trustee to sell property of the landowner. An Affidavit of Trustee attesting that the trustee has authorization to sell property under the trust may be requested.

**Land Held by Partnership (General Partnership, Limited Partnership, Limited Liability Partnership, Limited Liability Limited Partnership, etc.)***Partnership documents (Operating Agreement)*

A document that identifies the Partners and also authorizes Partners to sell, convey or pledge real estate on behalf of the Partnership

*Meeting Minutes*

A document (no more than one year old) that provides the most recent list of Partners and Titles.

**Land Held by Corporation (Limited Liability Company, General Corporation, S Corporation, etc.)***Articles of Incorporation*

A document that identifies the primary rules governing the management of the Corporation. This document is filed with the State of Minnesota.

*By-laws*

A document that identifies additional rules to detail the actions and responsibilities of its members.

*Meeting Minutes*

A document (no more than one year old) that provides the most recent list of Members and Titles.

**Additional Legal Documents***Power of Attorney (Attorney-in-Fact)*

A document in which a landowner authorizes another person to act, as their attorney-in-fact and enter into certain transactions on behalf of the landowner.

*Affidavits*

A sworn or affirmed statement by the person signing the affidavit attesting that (s)he has personal knowledge about the facts stated therein. The most typical types of affidavits are:

Affidavit of Survivorship - Used by the spouse or other person who jointly owned the property with the deceased and are attesting to the death of the person.

Affidavit of Identity - Used by a person to attest to the identity of another person named in a deed or judgment.

Affidavit from the Attorney-in-Fact - Used by the attorney-in-fact to attest that the power of attorney for the person identified has not been revoked or terminated.

Affidavit of Trustee - Used by the trustee to attest that their authorization to sell property under the trust has not been revoked or terminated.

*Letters of Guardianship or Conservatorship*

A document issued by the court authorizing a guardian or conservator to manage the legal affairs of a person under the age of 18 or of a mentally incompetent person. Note a person under the age of 18 cannot legally transfer real estate on their own.

*Letters Testamentary*

A document issued by the probate court authorizing a personal representative to manage the affairs of an estate.

**Government Land Office (Government Lot) Map**

A government lot map is the original Government Land Office Survey that is available at the county courthouse. Government lot maps are typically associated with lands adjacent to lakes and rivers that are used to define a boundary of a parcel of land. The presence of government lots in these situations will always be indicated in the deed's legal description.

Government lots are also associated with longitude/latitude adjustment sections. Certain sections within several townships around the state are adjusted to correct for non-parallel longitude and latitude lines. These adjustment sections are located along the west or north township boundary lines. The amount of area adjusted will vary between the different townships. The deed's legal descriptions will sometimes, but not always, indicate if an adjustment section is involved. If an easement area is located along a township's west or north boundary, review the deed's legal description carefully and also review other maps (USGS Quad, County Highway Map, aerial photo, etc.) for the presence of a distorted (adjusted) section and therefore a government lot.

If the easement area is located within one or more government lots, a copy of the pertinent government lot map(s) must be included with the agreement package. Lot maps may be accessed online from the [Public Land Survey Retrieval System](#).

**Survey, Plat and Subdivision Maps**

If the deed's legal description is in metes and bounds (property lines are described running so many feet in a specific direction), a copy of the survey map, if available, and its metes and bounds legal description, should be included with the agreement package. If the deed's legal description contains a reference to a specific lot within a plat or subdivision, a copy of the plat or subdivision map must be included with the agreement package. If SWCD Staff are aware of existing surveys for neighboring areas or properties and can get access to those surveys, this would be of great assistance to BWSR Easement Staff.

Survey, plat and subdivision maps can be located at the county courthouse or at the city office if the property is located within city limits.

**Minnesota Department of Agriculture Certification**

A partnership, corporation, or trust must qualify under the definition of an eligible landowner to be eligible for enrollment into a BWSR conservation easement program. To qualify, the entity must be certified by the Minnesota Department of Agriculture. BWSR will verify certification upon review of the application package.

Note that General Partnerships and Limited Liability Partnerships do not need to be certified. Also, Trusts that had owned land prior to May 16, 2000 are grandfathered in and do not need to be certified.

For more information, refer to the Program Eligibility sections in Part I of the handbook.

## B.8. Agreement Information Form (AIF)

BWSR will develop the agreement documents from the information provided on the Agreement Information Form (AIF), therefore it is very important that the information provided on the [Agreement Information Form](#) be accurate, up-to-date and well researched.

### Page 1 of AIF

#### **Grantor Information (Individuals)**

Type or legibly print the exact names of all grantors as shown on the property deed in the spaces provided under Grantor Name(s). In real estate transactions, including the conveyance of an easement, the name(s) must be listed exactly as shown on the deed; this includes any middle initial or middle name. If a grantor's name is now different from the spelling on the deed, list the grantor's current or correct name followed either A.K.A. (also known as) or F.K.A. (formerly known as) and then the grantor's name as shown on the deed. A.K.A. is used in cases of a misspelled name or some other change or mistake. F.K.A. is most frequently used when a grantor has married and taken a new last name.

Indicate the marital status of all grantors listed on the deed in the spaces provided. Always consult directly with the landowner(s) to obtain marital status information since the information on the deed may not be current. If currently married, both spouse's names must be listed together on the information form even if the spouse is not listed on the deed. Spouses are required by law to sign any real estate document.

Please indicate, as directed on the form, if any of the individuals listed on the deed are now deceased. If a deceased grantor is indicated, BWSR easement staff will contact you regarding the situation and may possibly request additional legal documents in order to accurately prepare the agreement documents (refer to Other Ownership/Legal Documents of this section for additional information).

In cases of multiple grantors, list the name of the principal landowner first. This landowner will likely be the person indicated on the application and listed to receive the easement payment check.

If the proposed easement area has been purchased by landowner(s) who own the property via a contract for deed, list, under *Grantor Name(s)*, both the buyers and sellers of the property (along with their spouses) as identified in the contract for deed. Please list the buyer (landowner applicant) first.

In the case of someone signing on behalf of one of the grantors, list, under *Individuals Signing on Behalf of Grantors*, the name of the individual who will be signing on the grantor's behalf. Indicate what type of authority the person has to sign (e.g., trustee) and include a copy of the legal document giving them that authority. Please indicate the name of the grantor(s) in whose behalf this person will be signing. Note that any grantor who is under 18 years of age must have a guardian sign on their behalf. Refer to Other Ownership/Legal Documents of this section for additional information regarding types of authority.

These guidelines should be followed by the SWCD when communicating to BWSR the information needed to appropriately develop the signature and acknowledgment sections for the agreement documents (always refer to the grantors names in exactly the same way they are referred to on the front of agreement):

#### 1. Single grantor

Example: Adam M. Smith, single

## 2. Married grantors to be acknowledged together

Example: Jeffery L. Johnson and Mary Jean Johnson, husband and wife\*

## 3. Married grantors to be acknowledged separately

Example: Daniel G. Larson, husband of Betty J. Larson  
Betty J. Larson, wife of Daniel G. Larson

## 4. Grantor was single but is now married

Example: Joseph T. Smith and Martha H. Smith, FKA Martha H. Anderson, husband and wife

## 5. Grantor's spouse is deceased and grantor has not remarried

Example: John H. Jones, single  
or  
Mary J. Jones, single

## 6. Multiple grantors

Example: William F. Clark, single; James J. Donovan and Sarah T. Donovan, husband and wife; and Robert G. Donovan and Carla S. Donovan, husband and wife

## 7. Contract for deed ownership

Example: William Buyer and Susan T. Buyer, husband and wife; and John F. Seller, single

## 8. Personal representative for a deceased landowner

Example: Norman Buffington, Personal Representative of the Estate of Ann Buffington

## 9. Attorney-in-Fact (Power of Attorney)

Example: James H. Brown, Attorney-in-Fact for John J. Smith

## 10. Grantor making a mark

Example: Donald I. Mueller, single, who signed by making his mark

## 11. Grantor's name is different from that shown on deed

Example: Amanda K. Luckey, AKA Amanda K. Lucky, single

## 12. Trustee (Co-Trustees) of a Trust

Example: Douglas Smart and Lena P. Olsen, Co-Trustees of the Duane Persson Family Trust created under the Last Will and Testament of Duane C. Persson

**Grantor Information (Corporation/Partnership)**

If the grantor is an eligible corporation or partnership, enter the corporation or partnership name under *Grantor Name(s)* (e.g. AgriEnterprises, Inc.). Marital status and spouses' signatures are not needed for partnerships or corporations. List the name and title of the individual(s) authorized to sign for the corporation or partnership in the spaces provided under *Individuals Authorized to Sign for Corporation or Partnership*.

All corporate officers must sign on behalf of the corporation, unless it states in the Corporate By-Laws that a specific person/post can sign on behalf of the corporation, or the corporation provides a copy of a resolution authorizing the signature of a non-corporate officer or a resolution authorizing just one individual to sign on behalf of the corporation. A copy of the resolution(s) must be submitted as part of the agreement package. In the case of Partnerships, all partners must sign the agreement and easement documents.

## Page 2 of AIF

### **Easement Payment Information**

The payee, listed on the left side of the page, must be one of the grantors. Include the mailing address where they would like to receive the easement payment check. You must send in a W-9 only for the payee. The payee name must match the name as it appears on the W-9. See B.9 below for more information on the W-9.

If the grantor is a trust, identify the name and mailing address of the trustee. If the grantor is a partnership or corporation, list the name and mailing address of the partnership or corporation as the payee.

If a spouse, other grantors, banks, etc., desire to be included as a payee on the check along with the primary payee, please indicate their name(s) under Co-Payee(s). Do not list an address for the co-payee(s). **Only one check will be issued per payment.**

If there is a mortgage on the property (as indicated on the easement application form), the landowner/SWCD must ask the lender if they want to be listed as a co-payee on the easement check, and the lender's name must be entered as a co-payee on the AIF.

Indicate whether or not the Payee is interested in an [electronic payment](#).

*Note:* A 1099S will be issued by the State of Minnesota for the full easement amount in the year easement payment is made.

An individual or a married couple will receive one 1099S form from the state Department of Revenue listing the income received from the total easement payment.

Multiple landowners will need to specify to the state the distribution of the easement payment. However, only one check will be issued. It will be the payees' responsibility to distribute the funds amongst all grantors. BWSR will include an IRS 1099S Payment Information Form with the easement documents for the landowners to use in reporting this information.

The completed form should be returned to the BWSR office as soon as possible. Payment cannot be made until the completed 1099S Payment Information Forms are received. The state Department of Revenue will then send each landowner or married couple a 1099S form listing only their portion of the total easement payment. Please make sure the landowners understand the importance of completely filling out the form and returning it to the

BWSR office. Refer to IRS Reporting Information of the Easement Stage section of this handbook for more information.

### **Conservation Practice Payment Information**

Specify the recipient of the cost-share reimbursement check(s) along with his/her mailing address. Enter “same” if information is identical to that for the easement payment. Note that the conservation practice payee does not have to be the same as the easement payment payee, but is usually a grantor (landowner) for the easement. The SWCD must submit a W-9 for the conservation practice payee if different than the easement payment payee.

Identify the name(s) of any co-payee(s) to be listed. If the co-payee(s) is someone other than a grantor, please provide a brief explanation under *Comments* as to their relationship to the grantor(s). Co-payee(s) can be included on specific reimbursement checks. If this is desired, please identify under *Comments* which conservation practice reimbursement check(s) the co-payee should be associated with and why. For example, the SWCD or DNR may request to be a co-payee for an RR-3 (tree planting) reimbursement.

### **B.9. IRS W-9 Form**

A completed and signed version of the standard [IRS W-9 Form](#) must be submitted for the Grantor who is listed as the main payee on the Agreement Information Form. The name listed on line 1 of the W-9 must be entered exactly how it appears on the grantor’s IRS record or income tax return. This is especially important when the grantor is an entity such as a trust, LLC, or partnership.

## **C. RESOLVING LEGAL AND ENVIRONMENTAL ISSUES**

### **C.1. Contacting Mortgage Holders**

As a part of preparing the application package, each lender with a mortgage on the property should be contacted and informed of the landowner’s intent to offer the state a conservation easement for all or a portion of the property. All mortgages should have been identified on the conservation easement application. The SWCD should work with the landowner in making these contacts.

The lender may request to be listed on the easement payment check as a co-payee. This information should be indicated in the *Easement Payment Information* section of the Agreement Information Form (refer to Agreement Information Form in this section for more information).

The lender should be informed that as part of acquiring a conservation easement from them, the state will require subordination or release from the lender’s mortgage as a part of providing clear title. Refer to the Easement Stage section of the handbook and the [Mortgage Subordination Fact Sheet](#) for more information regarding subordination and releases. If the lender expresses an unwillingness to provide the state with a subordination or release for the mortgage, the landowner will need to re-finance or the state will likely have to discontinue the easement acquisition process.



Note: If the landowner has a mortgage with Wells Fargo, the landowner will either have to satisfy the mortgage, inquire about a partial release, or re-finance with a new bank or the easement will have to be cancelled. Wells Fargo will not subordinate to the State's Easement.

Contact BWSR easement staff with any questions regarding existing property mortgages.

## **C.2. Resolving Environmental Problems/Issues**

Any environmental problems/issues discovered at the time of application will need to be discussed with the landowners and strategies for clean up or removal will need to be agreed upon. The state cannot allow recording of the conservation easement until it receives verification from the SWCD that these activities have been completed.

### **Environmental problems (dumps, spills, etc.)**

If contaminants and/or hazardous substances are suspected to be present, please contact BWSR easement staff and determine whether or not the MPCA should be contacted for assistance. If the problem does not involve hazardous substances, determine what actions are needed to clean up the problem. The SWCD should keep a detailed record of any environmental problems and the associated clean-up activities in the easement file. The SWCD should send copies of any pertinent correspondence relating to these environmental problems.

### **Abandoned Wells**

All abandoned wells existing on the proposed conservation easement area must be properly sealed by a licensed contractor in accordance with MN Statutes 103I.301 and the Minnesota Department of Health's well code (Minnesota Rules Chapter 4725).

### **Structures**

If any structures, temporary or permanent, exist on the proposed easement area, they must be removed at the landowner's expense prior to the recording of the easement.

## **C.3. Other Conflicting Property Restrictions**

Lands being enrolled in a conservation easement cannot be enrolled in certain federal or state government programs or under an easement that conflicts with, or substantially duplicates the terms of the conservation easement.

Other conservation type easements or agreements that exist on the property to be enrolled must be evaluated to determine if they substantially duplicate or conflict with the proposed RIM or PWP conservation easement. Duplication would include the prevention of cropping, grazing or haying, the requirement to establish and maintain certain conservation practices, or equivalent term length.

BWSR easement staff should be contacted to determine if any other identified conservation easements or agreements would affect the acquisition of the RIM conservation easement.

## **D. SPLITTING EASEMENT APPLICATIONS**

If a landowner wishes to enroll physically separated areas into an easement, it may be advantageous or necessary to complete separate applications for each area. Parcels that have the potential of being sold separately should be split into two applications. Although splitting applications requires additional work initially, individual easements covering each area will simplify the title transfer at the time of sale for the seller, purchaser and the state. Splitting applications will not change the amount of the payments issued to the landowner.

Consider splitting an application when:

- The areas are NOT part of the same abstract of title.
- The areas are on separate identifiable properties or tax parcels; are separated by a significant physical feature such as a river or highway; are in more than one section; or are in different townships.
- The landowner has an intention to sell part of the property in the near future.

Contact BWSR easement staff with any questions or if unsure about the need to split an application.

## **E. WETLAND RESTORATION INFORMATION**

Conservation easements for wetland restorations require additional application information because of the potential to temporarily or permanently affect land outside of the easement area. The information will be used by the BWSR engineering staff to determine feasibility of the project, level of design difficulty and involvement of adjoining lands to make sure all land rights are protected.

For wetland restorations, BWSR will provide sign-up specific direction and forms to fill out in order to properly assess wetland restoration project feasibility. Contact the BWSR engineering section for help to complete the necessary forms, and to arrange for engineering/surveying assistance, if necessary.

# Agreement Stage

## RIM Handbook

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The agreement stage involves the development of two separate, but closely related, documents - the Conservation Easement Agreement and its associated Conservation Plan. BWSR will prepare the Conservation Easement Agreement document, and the SWCD will prepare the Conservation Plan. The development of these two documents, in part, involves the application of practice specifications for the conservation easement programs and may occasionally require the acquisition of a flowage easement to facilitate the acquisition of the conservation easement. Therefore, the Agreement Stage section of the handbook is divided into the following four subsections for ready reference.

- I. The Conservation Easement Agreement subsection contains an overview of the steps required to prepare the Agreement document and obtain landowner signature(s).
- II. The Conservation Plan Development subsection contains the instructions and requirements necessary to develop the conservation plan as required by the conservation easement. This plan will identify the installation and maintenance requirements for the selected conservation practices.
- III. The Practice Specifications subsection contains program policy information as it relates to cost-sharing, seeding, planting, constructing, and maintaining each of the eligible conservation practices.
- IV. The Flowage Easement subsection contains information specific to acquiring the real estate rights for an associated flowage easement necessary to ensure feasibility of a conservation easement where wetlands are being restored.

# Conservation Easement Agreement

RIM Handbook

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## A. OVERVIEW

### [A.1. Purpose and Significance of the Conservation Easement Agreement](#)

### [A.2. Preparation of the Conservation Easement Agreement - Basic Steps](#)

Step #1 BWSR Development of Agreement Documents

Step #2 Landowner(s) Sign Agreement Documents

Step #3 BWSR and Other State Officials Complete Signature Process

### [A.3. Agreement Documents](#)

## B. EASEMENT BOUNDARY AND LEGAL DESCRIPTION

## C. SIGNATURE PROCESS

### [C.1. Landowner](#)

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## D. REVISION PROCESS

### [D.1. General](#)

### [D.2. Revisions Prior to Signing the Agreement Documents](#)

### [D.3. Revisions After Signing the Agreement Documents](#)

## A. OVERVIEW

### A.1. Purpose and Significance of the Conservation Easement Agreement

The purpose for developing the conservation easement agreement is to create a legal contract between the landowner and the state for the conveyance of a conservation easement to the state. In addition, the document:

- Discloses the terms of the conservation easement prior to recording it, including the identification of the parties involved, ownership information, easement area boundaries and associated legal descriptions, payment information, conservation practice obligations, and land title responsibilities.
- Allows landowner to crop or graze the area during the easement acquisition process.
- Enables the state to reserve (encumber) the funds required for the transaction.

Please become familiar with the language in the agreement; this will make it easier to clearly communicate to the landowner(s) what their obligations are.

### A.2. Overview of the Basic Steps Involved in Preparing the Agreement

#### Step #1 BWSR Development of Agreement Documents

Upon receipt and approval of the application package from the SWCD, BWSR will prepare the agreement and related documents, including the legal description, Exhibit A, and other necessary exhibits and forms. BWSR will prepare and send one original agreement document to the SWCD for signatures.

#### Step #2 Landowner(s) Sign Agreement Documents

Upon receipt of the agreement documents from BWSR, the SWCD should review the items carefully to make sure all information is correct. Make sure that any lenders that request to be listed on the easement payment check are accurately identified. Contact BWSR if you find or suspect any errors.

Notarized signatures of all identified landowners must be obtained on the agreement document. Upon completion, return the agreement document to BWSR via certified mail. Refer to Signature Process in this section for more information regarding notarization of a landowner's signature.

#### Step #3 BWSR and Other State Officials Complete Signature Process

After all required state signatures have been obtained, BWSR will send a copy of the signed agreement document to the principal landowner (the landowner identified to receive the easement payment check as indicated on the Agreement Information Form). A letter from BWSR will accompany the agreement document instructing the landowner(s) to update their abstract and provide it to the SWCD office. The abstract may not need to be updated in all cases, so SWCD staff should contact the Title Agent to confirm. BWSR will also send a copy of the signed agreement document to the SWCD office.

### A.3. Agreement Documents

BWSR will use the information from the application package to prepare the agreement and the conservation easement documents.

Please note that the below list of items in the Agreement will either be generated from information previously supplied on the easement application, or revised information based on correspondence between the SWCD and

BWSR. Refer to Revision Process in this section if any of this information has changed since the easement application.

- Easement type
- Easement payment amount
- Acres (compensated and uncompensated)
- Conservation plan payment amount

The following legal documents will be developed by BWSR to create the conservation easement agreement:

- The Agreement for Conservation Easement
- Legal Description
- Exhibit A - easement location map

It may also include of any these legal documents:

- Additional Grantors Form(s)
- Separate Acknowledgment Form(s)
- Other attachments as necessary

## B. EASEMENT BOUNDARY AND LEGAL DESCRIPTION

The legal description for the easement area will be developed by BWSR as accurately as possible based on the following information supplied by the SWCD:

- SWCD-submitted GIS shapefile
- Existing legal descriptions from deed plat maps or surveys for the property
- Field measurements

To simplify the development of the legal description, the boundary of described lands may include an area of land larger than the conservation easement area. However, it will be written as small as possible to avoid problems, particularly with lending institutions concerned about encumbrances on lands included in the description, but not actually within the easement area boundaries. The easement's legal description cannot exceed the boundary of lands owned by the applicant(s).

### B.2. Easement Area Boundary, Verification and Marking

During the application phase, the SWCD worked with the landowner to determine the desired easement boundary. BWSR staff may revise this boundary based on ownership, road and railroad right-of-ways, quality of line-work, and more. Once this process is complete, a revised shapefile will be sent to the SWCD, which needs to be approved and verified by the landowner before the process can continue. This verification should consist of marking (where appropriate) the easement area boundaries in the field using a high-accuracy handheld GPS unit whenever possible.

Permanent stakes and RIM easement signs must be established as soon as conditions permit their placement, and after easements are signed and recorded. Temporary stakes (lath or flags) should be used if seasonal conditions will not allow the placement of permanent stakes. Temporary stakes should also be considered if the land use during the acquisition process (e.g. cropping) will be hindered by the placement of permanent stakes.

The permanent marking and staking of the easement boundary should normally take place at easement corners and at minimum 500 foot intervals along straight and curved easement lines. The SWCD should coordinate the placement of the permanent stakes with the landowner. Use GPS units in the field when locating these boundary locations. This will help guard against losing the agreed to boundary in the future if stakes are moved or removed.

All permanent stakes must have RIM easement signs attached to them. Use large signs in areas likely to come in contact with the public, and small signs on other more remote boundary posts. BWSR will supply the RIM signs. Easements funded with Outdoor Heritage Funds (OHF) must use signs with the OHF logo in areas likely to be seen by the public. In other areas the smaller RIM signs will suffice. Refer to the Processing Framework section of the handbook for information regarding eligible reimbursement costs associated with materials used to stake easement boundaries.

Upon verification and approval of the staked easement boundary with the landowner, the SWCD should calculate the new cropland and non-cropland acreages. If acres have changed since the original application, the SWCD should fill out a revised Conservation Easement Financial Worksheet (CEFW) accordingly, sign, date, and return the CEFW to BWSR. If specifically requested by BWSR staff, the Crop History document may also need to be updated and sent along with the CEFW.

Figure 2 below summarizes the process of easement boundary development and approval.

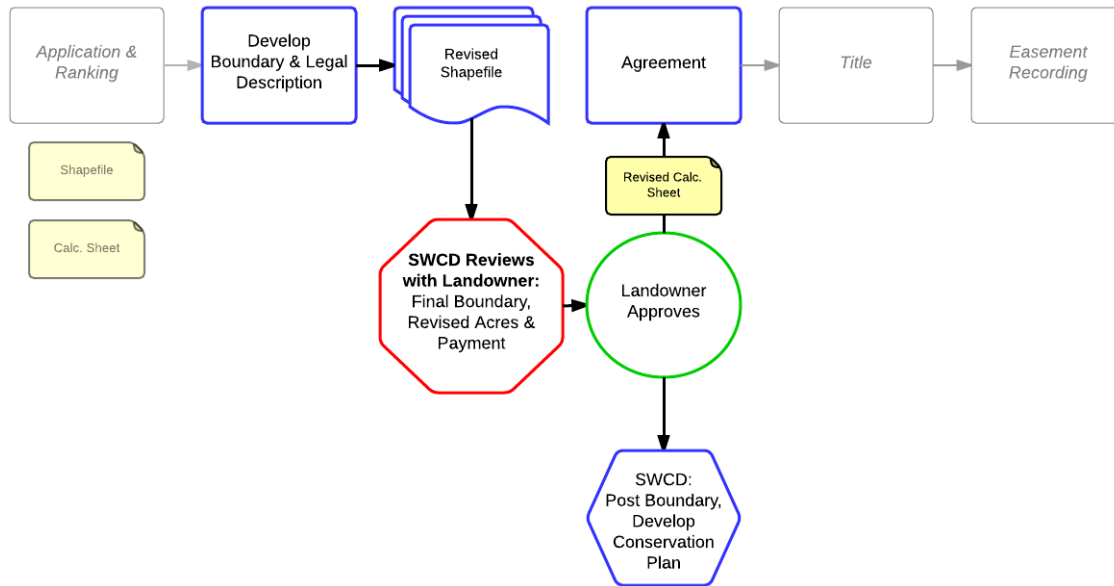


Figure 2: Easement Boundary Development Process

## C. SIGNATURE PROCESS

### C.1. Landowner Signature

BWSR will develop the agreement with each individual grantor's name typed below a signature line provided on the back of the agreement form. Please have the grantors sign their name exactly as it appears below their signature line.

The back of the agreement only provides spaces for a limited number of grantors to sign. If the number of grantors exceeds the number of signature lines available, an Additional Grantors form will be developed by BWSR with the remaining signature lines on it. If used, this form will be made an exhibit to the agreement.

#### Acknowledgment

An acknowledgment is a written declaration by the notary as to the identity of the person(s) signing a document. The notary is responsible for verifying the identity of the person who is executing the document and that the individual(s) has signed his/her name exactly as it is typed below the signature line. Each of the grantor's signatures must be acknowledged by the notary.

All signatures that are jointly executed can be notarized together by the notary. Any signatures done separately must be notarized separately as well. Separate acknowledgments are to be performed on the Acknowledgment for Individuals form (refer to Agreement Information Form in the Application section for more information). If



the grantors, as shown together on the acknowledgment line, cannot be notarized together, contact BWSR for revised pages which will be prepared and sent to the SWCD.

## **C.2. Corporation/Partnership Signature**

The agreement as developed by BWSR will identify the name of the corporation or partnership on the front of the form as the grantor.

The name and title of the individuals who will be signing the agreement form for the corporation or partnership will be typed below the signature lines on the back of the form. Please have these individuals sign their name exactly as it appears below their signature line. The name(s) of these individuals will be listed exactly as they appear on the [Agreement Information Form](#) submitted by the SWCD as part of the application package (refer to Agreement Information Form in the Application section for more information). The signature(s) of the individual(s) authorized to sign for the corporation or partnership must be notarized.

## **D. REVISION PROCESS**

### **D.1. General**

During development of the conservation easement many circumstances may prompt the need to revise the easement area and/or the size or locations of the conservation practice areas. The work required to make these changes depends largely on how far along the easement has come in the process.

Revisions usually involve changing the easement payment and/or conservation practice payments. In order to minimize confusion and assure adequate dollars are available to accommodate the change, the SWCD will need to formally request BWSR's approval to revise the easement information.

### **D.2. Revisions Prior to Signing the Agreement Documents**

Any requests for revising the easement information before the agreement documents are signed should, if possible, take place during or prior to submission of the agreement package. This will allow these revisions (i.e., acreage and/or payment changes) to be incorporated into the agreement documents as they are being developed by BWSR.

If the SWCD wishes to initiate a revision, the SWCD must complete and submit a revised Conservation Easement Financial Worksheet, aerial photo, and shapefile.

BWSR may initiate a revision as the easement area boundary is mapped and compared to existing right-of-way, utility, and ownership documentation. BWSR will send the SWCD a revised shapefile of the easement area. Once received, the SWCD should review the revised easement boundary with the landowner and confirm landowner concurrence with the revised boundary. The SWCD must then complete and submit a signed, revised [Conservation Easement Financial Worksheet](#) and return it to BWSR.

### **D.3. Revisions After Signing the Agreement Documents**

If a revision is required after the Agreement has been signed, BWSR staff will work with the SWCD to complete the required documentation. BWSR staff will provide the completed Revision Request form to the SWCD for landowner discussion and SWCD signature. Electronic signature is adequate.

The SWCD acknowledgment (part C of the form) is important, as it certifies that the landowners are aware of, and are in agreement with, the revisions. BWSR has forgone the requirement for landowner signature(s) on this form in an attempt to avoid delaying the process. It is extremely important that the SWCD representative not sign the form unless the terms of the SWCD acknowledgment statement have been met.

# Conservation Plan Development

## RIM Handbook

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Conservation Plan Workbook

Conservation Plan Map

#### [A.3. Practice Areas](#)

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### C. CONSERVATION PLAN - TECHNICAL & FINANCIAL REQUIREMENTS

#### [C.1. General Conservation Practice Requirements](#)

#### [C.2. Permanent Vegetative Cover -- To Be Established \(RR-1, RR-2\)](#)

#### [C.3. Permanent Vegetative Cover -- Already Established \(RR-1b, RR-2b, or RR-13\)](#)

#### [C.4. Tree and/or Shrub Planting \(RR-3, RR-4, or RR-11\)](#)

**C.5. Structural and/or Engineered Conservation Practices (RR-5, RR-6, RR-7, RR-8, or RR-12)**

**C.6. Wildlife Food Plots**

**C.7. Donated Land**

**C.8. Livestock Exclusion**

**C.9. Operation and Maintenance**

## A. OVERVIEW

### A.1. General Requirements

Minnesota state law requires that the entire area of a conservation easement be established and maintained as permanent cover, either with vegetation or water. To achieve this condition, a conservation plan must be developed for each conservation easement acquired. The conservation plan consists of several attachments that identify the location, establishment, and maintenance requirements for each of the approved conservation practices required for the duration of the easement. The term "conservation plan" will refer to this entire package.

The landowner is responsible for establishing and maintaining each conservation practice identified in the conservation plan and referenced in the conservation easement. This obligation transfers to each new owner for the duration of the conservation easement. These activities must be consistent with the standards and specifications described in the Practice Specifications subsection of the handbook.

The conservation plan is an agreement signed by the landowner(s) and the SWCD. It is referenced in, and made part of, the conservation easement even though the plan, or any amendment to it, is *not* recorded with the conservation easement. The original, signed copy of the conservation plan must be kept on file at the SWCD office. Any future alterations to the established conservation practices will require the development and signing of a new conservation plan and appropriate attachments.

Since the conservation plan is part of the conservation easement, it is enforceable and must be followed. Any willful action not in compliance with the conservation plan will be considered a direct violation of the conservation easement. Violations should be resolved and/or enforced following the violations procedure in the Non-Compliance/Violation Procedures section of the handbook.

The conservation plan must be developed using the instructions and materials found in this section of the handbook. Specific conservation practice standards and specifications may be obtained from a variety of technical sources. Refer to the Practice Specifications subsection of the handbook for more information. General planning requirements are given in the National Conservation Planning Manual (USDA-NRCS) and Section III of the Field Office Technical Guide ("FOTG"; USDA-NRCS).

The conservation plan for the easement area should include the greatest diversity of habitat cover type as practical and possible with cooperation and agreement of the landowner(s). The SWCD technical representative should consult the most up-to-date version of the [Native Vegetation Establishment and Enhancement Guidelines](#) to establish the most practical diversity of habitat cover suited to the proposed easement area. Habitat diversity ensures that most of the essential components necessary to establish and sustain wildlife habitat are provided on the easement area.

### A.2. Required Documents

The conservation plan must be prepared with enough detail to allow for the proper establishment and maintenance of the conservation practices identified. More specifically, the conservation plan will contain information that will identify:

- a) The conservation practices that will exist on the conservation easement area,

- b) where, how, and when these practices will be applied, and
- c) what operation and management requirements will exist for the easement owner.

To accomplish this, the conservation plan will generally consist of the following forms and attachments:

[Conservation Plan Workbook](#) (includes signature page, practice plan, and operation & maintenance plan)  
 Conservation Plan Map  
 Planting Plans (establishment of necessary grasses and trees/shrubs)  
 Construction Plans (for structures and/or engineered practices)  
 Supplementary Information (livestock exclusion plans, etc.)

### **Standard Components of Conservation Plan Package:**

#### **Conservation Plan Signature Page**

The conservation plan signature page (tab 1 of [workbook](#)) serves as the cover page of the conservation plan package. It accomplishes the following:

- Provides a framework for the remainder of the plan
- References the conservation easement and reminds the landowner(s) that any non-compliance of the conservation plan will be viewed as a violation of the easement
- Allows for the selection of a "principal" landowner who is responsible for implementing the conservation plan
- Provides a list of attachments that may be included in the plan and briefly describes the state's cost-sharing process
- SWCD signature serves as certification that the "already established" practices are in suitable condition

#### **Conservation Practice Plan**

The conservation practice plan (tab 2 of [workbook](#)) lists each of the practice areas, practice area sizes, conservation practice codes, and planned year(s) of practice installation. This form also calculates the maximum practice funds available for each practice. The practice information entered onto this form must correlate with the conservation plan map.

#### **Conservation Plan Map**

The conservation plan map must include boundaries and labeling for each of the practice areas listed on the conservation practice plan. This map must be created using the GIS shapefile of the easement boundary that has been approved by BWSR.

#### **Operations & Maintenance (O&M) Plan**

The O&M plan (tab 3 or 4 of the [workbook](#)) outlines the standard operation and maintenance activities that are required for a given easement. Tab 3 of the workbook contains a generic O&M plan that is suitable for most easements. Tab 4 of the workbook contains an editable version of the O&M plan that can be tailored to fit atypical situations.

### **A.3. Practice Areas**

Practice areas need to be identified for the entire easement area. Separate practice areas shall be identified for each unique or isolated conservation practice that exists or will be established. Practice areas must be included on the conservation practice plan and plan map. Each practice area identified shall be numbered using the most practical and logical sequence.

### **A.4. Conservation Practice Codes and Descriptions**

The codes and general descriptions for all allowed conservation practices on an easement area are identified in Table 1 of section A. This table should be used as a guide when developing the attachments to the conservation plan. Detailed descriptions of the practice codes are provided in the standard operation and maintenance requirements.

### **A.5. Using and Combining Conservation Practices (Primary & Supporting)**

For each conservation practice area identified for the easement area, a primary conservation practice must be designated. The primary conservation practice is the permanent practice cover expected to exist on the easement in the long-term.

Some practice areas will also require the establishment of a supporting practice. Supporting practices are those that, once established, will control erosion and aid in the establishment of the primary practice. Supporting practices can be established over all or portions of the practice area. Refer to table 1 of section A to determine the eligible amounts of program cost-sharing as well as the allowable combinations of primary and supporting conservation practices.

**Table 1:** Conservation Practice Cost-Share Payment Limits & Allowable Primary/Supporting Practice Pairings

PRIMARY CONSERVATION PRACTICES		SUPPORTING CONSERVATION PRACTICES	
PRACTICE CODE	MAXIMUM \$ AMOUNT ALLOWED PER ACRE	PRACTICE CODE	MAXIMUM \$ AMOUNT ALLOWED PER ACRE
RR-1b	\$0	RR-5 RR-6 RR-7	\$0 \$0 \$0
RR-2a RR-2b	\$450 \$0	RR-5 RR-6 RR-7	\$0 \$0 \$0
RR-3a RR-3b	\$400 \$0	RR-1a RR-2a RR-5 RR-6 RR-7	\$150 \$450 \$0 \$0 \$0
RR-4a RR-4b	\$400 \$0	RR-1a RR-2a RR-5 RR-6 RR-7	\$150 \$450 \$0 \$0 \$0
RR-8	\$1,200	RR-2a	\$450
RR-11	\$400	RR-1a RR-2a	\$150 \$450
RR-12	\$0	---	---
RR-13	\$0	---	---
RR-14	\$0	---	---
RR-FP	\$0	---	---

**Conservation Practice Codes and Descriptions**

CODE	DESCRIPTION	CODE	DESCRIPTION
<b>RR-1a</b>	Introduced Grasses/Legumes To Be Established	<b>RR-5</b>	Diversion
<b>RR-1b</b>	Introduced Grasses/Legumes Already Established	<b>RR-6</b>	Erosion Control Structure
<b>RR-2a</b>	Native Grasses To Be Established	<b>RR-7</b>	Grass Waterway
<b>RR-2b</b>	Native Grasses Already Established	<b>RR-8</b>	Wetland Restoration
<b>RR-3a</b>	Tree and/or Shrub Planting To Be Established	<b>RR-11</b>	Highway Windbreak
<b>RR-3b</b>	Tree and/or Shrub Planting Already Established	<b>RR-12</b>	Wetland Creation
<b>RR-4a</b>	Field Windbreak To Be Established	<b>RR-13</b>	Existing Wetland
<b>RR-4b</b>	Field Windbreak Already Established	<b>RR-14</b>	Existing Watercourse/Ditch
		<b>RR-FP</b>	Wildlife Food Plot



## **B. CONSERVATION PLAN PACKAGE DEVELOPMENT PROCEDURES**

### **B.1. Introduction**

The SWCD technical representative works with landowner(s) to identify the locations and types of conservation practices planned for the conservation easement area. Assistance from other agencies and organizations (e.g., NRCS, DNR, USFWS, Pheasants Forever, etc.) should be sought, if necessary, when planning and identifying the conservation practices to be established. Also, use information from existing resource conservation plans (farm plans), if applicable.

Record pertinent information as discussed with landowner(s) in the file folder notes and use this information to assist your efforts in developing the conservation plan package.

### **B.2. Developing the Conservation Practice Plan**

Using information obtained during development of the easement application, the SWCD technical representative will need to develop the conservation practice plan. This document should be prepared following these general guidelines:

- The completed conservation practice plan must be clearly organized and typed.
- The conservation practice plan must list the practice areas in consecutive order beginning with practice area 1.
- The total amount of acres entered in the conservation practice plan must equal the total acres of the conservation easement.
- For each practice area identified on the conservation practice plan, an associated primary conservation practice is required. Supporting conservation practices, if required, should also be identified.
- Enter the year the primary and supporting conservation practices will be established. If the primary conservation practice is an existing practice enter the year of the easement application. For wetlands that were previously restored through a different program (e.g. CRP), enter the words “already restored” instead of a year.
- The maximum practice funds available will calculate automatically at the bottom of the form.
- The landowner(s) must be informed of any remaining balances. The SWCD must make sure the landowner(s) understand that this balance is their responsibility. This balance may be paid by another eligible funding source, if prior arrangements were made. Refer to section C.1 “Financial Requirements” for additional information.

### **B.3. Developing the Conservation Plan Map**

Developing the Conservation Plan Map should be completed prior to drafting the Conservation Practice Plan, as practice area identification and acreage calculations originate from the mapping process. This map should be developed with GIS mapping software using the boundary shapefile that was previously approved by BWSR. Acreage calculations, practice area labelling, and practice area boundary placement can easily be completed using this software.

## **B.4. Submitting the Conservation Plan Package for BWSR Review**

Prior to the landowner signing the conservation plan, the SWCD must submit a complete conservation plan package for BWSR review. A complete package includes the conservation plan workbook Excel file and a PDF of the conservation plan map. This package must be submitted at the same time as the title insurance commitment and associated documents, after the easement agreement has been fully executed. BWSR will contact the SWCD if there are any questions or requests for revision.

## **B.5. Finalizing the Conservation Plan Package**

The conservation plan should be provided to the landowner(s) for review at the time the conservation easement is being signed. The delegated principal landowner will be responsible for signing the conservation plan at that time.

In addition to the conservation plan package, the following additional items need to be developed and reviewed by the landowner(s) before signing the conservation easement and associated conservation plan. These items will be part of the conservation plan given to the landowner upon finalization of the easement. Refer to section A.2 for additional instructions regarding contents of the conservation plan.

### **Planting Plans**

All RR-1a, RR-2a, RR-3a, RR-4a, RR-11, and RR-FP conservation practices must have a written planting plan developed for each practice area.

Practice areas with the same planting requirement may be combined in one planting plan but should be so indicated. It is suggested that planting plans be developed using a copy of an aerial photo for specific planting location reference. The conservation plan map developed for the conservation plan will not likely be detailed enough for this purpose.

### **Construction Plans**

All RR-5, RR-6, RR-7, RR-8, and RR-12 conservation practices yet to be installed must have a specific construction plan developed for each conservation practice area. When necessary, planting requirements should be included in the construction plan. Multiple practice areas may be included in one construction plan.

### **Supplementary Information**

This could include specific descriptions of operation and/or maintenance plans for livestock exclusion, BWSR approved vegetative management plans, trail use (snowmobiles, horses, walking/jogging, biking; frequency of use, etc.), or any other issues concerning the easement area. Recreational use of the easement area is not regulated by the terms of the easement. However, the easement does not allow wildlife habitat to be altered. Therefore locations of above items, such as trails, should appear on the conservation plan map so they can be monitored for compliance.

All financial information should again be reviewed with the landowner(s) when the conservation easement is signed. This is especially important if the landowner(s) have any financial responsibilities associated with establishing the conservation practices, or if any revisions to the conservation practice plan have been made since the easement application was submitted.

The conservation plan is signed along with the conservation easement. However, no part of the conservation plan package should be recorded with the easement.

A copy of the signed conservation plan package should be sent to BWSR along with the recorded conservation easement and final title insurance policy. Planting plans, operation and maintenance requirements and other supporting information do not need to be submitted. A current "signed and dated" conservation plan with attachments must be kept on file at the SWCD office. A copy of the conservation plan and all attachments should be given to the landowner(s).

## B.6. Summary

APPLICATION STAGE	Discuss easement goals with the landowner. Identify current condition of vegetation and note any areas where establishment will need to occur.
AGREEMENT STAGE	After the easement agreement has been fully executed, complete and submit copies of the conservation practice plan workbook and plan map for BWSR review. Conservation plan documents must be submitted to BWSR at the same time as the title commitment.
EASEMENT SIGNING STAGE	All attachments to the conservation plan package are prepared for landowner review. The principal landowner and authorized SWCD representative sign and date conservation plan.
EASEMENT RECORDING STAGE	Do not record conservation plan or any of its attachments. Submit copies of the final "signed" conservation plan package to BWSR. Give a copy of all documents to principal landowner for implementation.

## C. CONSERVATION PLAN TECHNICAL & FINANCIAL REQUIREMENTS

### C.1. General Conservation Practice Requirements

#### Technical Requirements

An SWCD technical representative will be responsible for developing the conservation plan and attachments. They will work with the landowner(s) to select the most appropriate conservation practice(s) for the conservation easement area. The SWCD technical representative may be an SWCD technician or other representative designated by the SWCD who has an appropriate technical approval authority.

The responsibilities of the technical representative include:

- a) Preparation of the conservation plan and attachments;
- b) A technical on-site inspection/review of the proposed conservation easement and corresponding practice area(s) to assess the adequacy of the proposed practices and their compliance with the Conservation Easement Practice Specifications; and
- c) Technical certification that the approved practices has been adequately installed.

### Financial Requirements

Activities necessary to successfully establish an approved conservation practice may be eligible for easement cost-share assistance from BWSR. Cost-sharing for the conservation easement programs is only available up to the maximum payment limits shown in table 1 in part A of this section. Any actual costs that exceed the total easement cost-share funds allocated are the responsibility of the landowner(s). However, landowners can reduce their contribution to the actual costs by seeking and receiving financial assistance from other contributors (e.g., other state and federal cost-share programs, conservation organizations, etc.).

Refer to the Practice Specifications subsection of the handbook for a specific list of cost-shareable and non-cost-shareable activities associated with each conservation practice.

### C.2. Permanent Vegetative Cover -- To Be Established

RR-1a Introduce grasses and legumes (only allowed as supporting practice)

RR-2a Native grasses

### Technical Requirements

If a planned conservation practice of permanent vegetative cover (RR-2) cannot be immediately established on a practice area or is delayed for a specific management purpose and weed and/or erosion control is necessary, temporary cover must be established on the area.

Refer to the Practice Specifications section of the handbook for more information on establishing permanent vegetative cover or on establishing temporary cover.

### Financial Requirements

Cost-sharing is available through BWSR Easement programs to establish permanent vegetative cover as either a primary or supporting conservation practice. Refer to table 1 for the maximum payment limits for these practices.

The cost for establishing temporary cover prior to establishing the permanent vegetative cover is an allowed cost-shareable item. However, the costs incurred to establish temporary cover must be included as part of the RR-1 or RR-2 establishment costs; refer to the Practice Specifications subsection of the handbook for additional information.

### C.3. Permanent Vegetative Cover -- Already Established

RR-1b/RR-2b Introduced/Native Vegetative Cover - Grass and/or Legumes - Already Established

RR-3b Vegetative Cover - Trees and/or Shrubs - Already Established

RR-4b Field Windbreak Already Established

RR-13 Wetland - Existing

### Technical Requirements

Primary conservation practices of existing cover must be in adequate condition at the time of enrollment. These practices must meet the specific criteria associated with each practice as identified in the Practice Specifications subsection of the handbook. Stands of introduced grasses (RR-1b) should be converted to native species (RR-2a) whenever possible.

The RR-13 practice includes existing wetlands, wildlife ponds, and livestock ponds.

**Note:** Previously restored wetlands being enrolled into a BWSR easement program should be considered as an RR-8 practice, not an RR-13 practice.

The size of the practice area for an existing wetland (RR-13) should be greater than the wetland's water surface area since a wetland's area, when delineated, will normally extend beyond any surface water that may be present. The size of the wetland practice area should be determined using the best resources available (historic/current photos, soil maps, topography, site investigation, etc.) or other acceptable delineation methods.

Refer to the Practice Specifications subsection of the handbook for more information regarding permanent vegetative cover that is already established.

### **Financial Requirements**

Cost-sharing is not available through BWSR Easement programs to establish or maintain any of these conservation practices; refer to the Practice Specifications subsection of the handbook for additional information.

## **C.4. Tree and/or Shrub Plantings**

RR-3a Tree and/or Shrub Planting

RR-4a Field Windbreak

RR-11 Highway Windbreak

### **Technical Requirements**

An SWCD technical representative is responsible for developing a tree/shrub planting plan. The area DNR Forester should be consulted as needed for assistance in developing the planting plans. Each planting plan for a RR-3, RR-4 or RR-11 practice should be reviewed by a DNR Wildlife representative to ensure wildlife benefits are addressed prior to incorporating it into the conservation plan.

If the existing vegetative cover within a planned woody planting is inadequate, permanent vegetative cover shall be established. The permanent vegetative cover must be identified on the CEFW and in the conservation practice plan as a supporting RR-1a or RR-2a conservation practice. On non-erosive land, the planting of grasses between tree and/or shrub rows may be delayed to aid in their establishment. The planting of grasses shall be delayed no longer than three years after planting of the trees.

Trees and/or shrubs should not be established within the right-of-way area of any utility. It is advisable to check with the utility owner to determine if any additional right-of-way requirements may exist.

Refer to the Practice Specifications subsection of the handbook for more information regarding establishing tree and/or shrub plantings.

## Financial Requirements

Cost-sharing is available through BWSR Easement programs to establish tree and/or shrub plantings as primary conservation practices only. Refer to table 1 for maximum payment limits for these practices.

A supporting practice of permanent vegetative cover (RR-1a or RR-2a) is a separate, cost-shareable item when associated with a primary practice of a tree and/or shrub planting (see C.2 and table 1).

## C.5. Structural and/or Engineered Conservation Practices

- RR-5 Diversion
- RR-6 Erosion Control Structure
- RR-7 Grass Waterway
- RR-8 Wetland Restoration
- RR-12 Wetland Creation
- RR-14 Existing Watercourse Drainage Ditch

## Technical Requirements

A SWCD technical representative is responsible for designing, or coordinating the design, of the specified structural and/or engineered conservation practice(s). The BWSR Engineering Section must review and approve the design prior to the establishment of the conservation practice or the conveyance of the conservation easement, whichever occurs first. Existing structural and/or engineered conservation practice(s) being enrolled must be reviewed by a SWCD technical representative to determine if the practice complies with the associated practice specifications.

If a primary structural and/or engineered conservation practice (RR-8 or RR-12) cannot be immediately established on a conservation practice area and weed and/or erosion control is necessary, the practice area must be established with a temporary or permanent vegetative cover (see C.2 Technical Requirements).

The size of the practice area for wetland practices (RR-8 or RR-12) should be greater than the wetland's water surface area since a wetland's area, when delineated, will normally extend beyond any surface water that may be present. The size of the wetland practice area should be determined using the best resources available (historic/current photos, soil maps, topography, site investigation, etc.) or other accepted delineation methods.

Any supporting structural and/or engineered conservation practice (RR-5, RR-6, or RR-7) to be established must be associated with an existing or planned primary vegetative conservation practice. The associated primary conservation practice and its corresponding practice area should be the area that is best protected by the supporting practice. The size of the supporting structural and/or engineered conservation practice (RR-5, RR-6, or RR-7) should be determined and noted on the conservation practice plan as follows:

RR-5	Diversion	"0.0" acres
RR-6	Erosion Control Structure	"0.0" acres
RR-7	Grass Waterway	"0.0" acres

Refer to the Practice Specifications subsection of the handbook for more information on establishing structural and/or engineered conservation practices.

### Financial Requirements

Cost-sharing is available through BWSR Easement programs to establish structural and/or engineered conservation practices (RR-8) as primary conservation practices only. Refer to table 1 for maximum payment limits for these practices.

A supporting conservation practice of permanent vegetative cover (RR-1a or RR-2a) is a separate, cost-shareable item when associated with a primary structural and/or engineered conservation practice (see C.2 and table 1). The cost of establishing the supporting conservation practice of permanent vegetative cover should remain separate from the cost of the primary structural and/or engineered conservation practice.

The cost of establishing temporary cover is only cost-shareable if included in the total overall construction cost of the primary structural and/or engineered conservation practice.

Cost-sharing is not available through BWSR Easement programs to construct supporting structural and/or engineered conservation practices (RR-5, RR-6, or RR-7). However, the cost of establishing the associated primary vegetative conservation practices is cost-shareable (see C.2 and table 1). Other funding sources should be sought to help finance the establishment of these supporting practices (e.g. other state and federal cost-share programs, conservation organizations, etc.).

## C.6. Wildlife Food Plot

RR-FP Wildlife Food Plot

### Technical Requirements

Food plots do not need a permanent vegetative cover as long as they are managed and maintained for wildlife. A temporary cover must be established on the practice area if weed and/or erosion control is necessary and the food plot cannot be immediately planted.

Not all sites require or will support a food plot due to location or topography (narrow riparian areas, slopes in excess of 6%, or wetness would be examples). Food plots should not exceed 10% of the easement acreage or 5 acres, whichever is less. If desired food plot acreage exceeds this amount, the BWSR Easement Section Manager will need to consider its approval.

If a food plot is discontinued, it must be immediately established to a permanent vegetative cover and the associated establishment costs are the responsibility of the landowner(s).

Refer to the Practice Specifications subsection of the handbook for more information on establishing wildlife food plots.

### **Financial Requirements**

Cost-sharing is not available through BWSR Easement programs to establish food plots or temporary cover on the food plot area.

## **C.7. Uncompensated (Donated) Land**

### **Technical Requirements**

Land donated to a conservation easement must have, or be established to, permanent cover. Any allowable combination of the conservation practices identified in table 1 may be applied on donated lands.

### **Financial Requirements**

Cost-sharing, up to the maximum limits shown in table 1, is available through BWSR Easement programs for conservation practices established on the donated portion of the easement area.

## **C.8. Livestock Exclusion**

### **Technical Requirements**

Any measures needed to exclude livestock from the easement area should be included as a specific additional item "Livestock Exclusion Plan" to the conservation plan package. A description of all necessary measures including planting requirements and/or other supplementary information should be provided.

### **Financial Requirements**

Cost-sharing is not available through BWSR Easement programs to establish any fences, gates, or stream crossings to exclude livestock from the easement area. All costs for any necessary measures to exclude livestock are at the expense of the landowner(s). Other funding sources should be sought to help finance the exclusion of livestock (e.g., other state and federal cost-share programs, conservation organizations, etc.).

## **C.9. Operation and Maintenance**

### **Technical Requirements**

All activities required or necessary to comply with operation and maintenance requirements of a conservation practice are typically the responsibility of the landowner. The state and/or SWCD will provide technical assistance to the landowner when necessary. These activities include items such as controlled burning, noxious weed control, mowing around trees, etc. Reseeding, replanting, and repairing practices that failed for reasons within the landowner(s) control are also considered operation and maintenance activities.

Refer to the Practice Specifications subsection of the handbook for more information regarding allowable operation and maintenance activities associated with each conservation practice.

### **Financial Requirements**



Refer to the Conservation Plan Implementation subsection of the Implementation Stage section and the Practice Specifications subsection of the handbook for additional information regarding availability of cost-sharing for operation and maintenance activities.

# RIM Reserve Practice Specifications

## RIM Handbook

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The following conservation practice specifications are detailed descriptions of the practices referred to in the [RIM Reserve Permanent Rules 8400.3700](#).

PRACTICE NUMBER	DESCRIPTION
<a href="#">RR-1</a>	Establishment of Permanent Introduced Grasses and Legumes
<a href="#">RR-2</a>	Establishment of Permanent Native Grasses
<a href="#">RR-3</a>	Tree and/or Shrub Planting for Permanent Wildlife Habitat
<a href="#">RR-4</a>	Field Windbreak Establishment
<a href="#">RR-5</a>	Diversion
<a href="#">RR-6</a>	Erosion Control Structure
<a href="#">RR-7</a>	Grass Waterway
<a href="#">RR-8</a>	Wetland Restoration
<a href="#">RR-9</a>	see RR-1b and RR-2b
<a href="#">RR-10</a>	see RR-3b
<a href="#">RR-11</a>	Highway Windbreak (living snow fence)
<a href="#">RR-12</a>	Wetland Creation
<a href="#">RR-13</a>	Existing Wetland
<a href="#">RR-14</a>	Existing Watercourse or Drainage Ditch
<a href="#">RR-FP</a>	Food Plot

## RR-1 ESTABLISHMENT OF PERMANENT INTRODUCED GRASS AND LEGUMES

### Subcodes:

**RR-1a** To be established

**RR-1b** Already established

### RR-1a

No longer allowed as a primary practice, in compliance with the following most recent vegetation guidelines: [Native Vegetation Establishment and Enhancement Guidelines](#). This practice code may be used as a supporting practice for native tree establishment (RR-3a, RR-4a, or RR-11).

- A. The purpose of this practice is to establish a perennial vegetative cover of introduced grasses and legumes on enrolled land that will control erosion, improve and protect water quality, and provide wildlife habitat.
- B. Policies for this practice are as follows
  1. Funding is authorized for:

- a. Minerals, eligible seed, seedbed preparation, seeding, and planned clipping during the establishment period
  - b. Herbicides and/or mechanical weed control specified as necessary in the RIM Reserve Conservation Plan to establish cover
  - c. Temporary cover specified as necessary in the RIM Reserve Conservation Plan when:
    - i. Needed until required seed is available
    - ii. Soil condition, such as chemical residue, will not allow immediate establishment of cover
2. Funding is not authorized for:
    - a. Pesticides used to maintain the vegetative cover after it is established
    - b. Clearing rocks or other obstructions from the area to be seeded
    - c. Fences
    - d. Minerals for enhancing production
    - e. Maintenance weed control (mowing and/or spraying) after grass is established
    - f. Replanting when failure is due to inadequate weed control measures
  3. Temporary Cover – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#).
  4. Seeding rates for permanent seeding must be based on pounds of Pure Live Seed. Seeding mixtures must be selected from the lists in the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#).
  5. Seed used must be labeled in accordance with the *Minnesota Seed Law, 1983, sections 21.80 to 21.92* and accompanying rules. The seed varieties used should be from those listed in USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), or the [MnDOT Seeding Manual](#).
  6. Lime and Fertilizer – USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#).
    - a. Funding for gypsum or other sulphur bearing materials may be approved if the soil test shows the need for sulphur.
  7. Seeding Dates – Refer to page 27 of the [Native Vegetation Establishment and Enhancement Guidelines](#) document for Planning Date Guidance for Restoration & BMP Projects.
  8. Seedbed Preparation – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#).
  9. Companion Crop – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#).
  10. Chemicals used in performing this practice must be federally, state and, if applicable, locally registered and must be applied strictly in accordance with authorized registered uses, directions on the label and other federal or state policies and requirements.
  11. Weed Control – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), state and/or county noxious weeds must be controlled at

the landowner's expense during the easement period via spot spraying, spot mowing, or similar technique that is least disruptive to the cover.

12. The acreage enrolled must not be harvested or grazed by domestic livestock for the duration of the easement period, unless specifically approved by the BWSR.
13. The cover shall be maintained by the landowner as specified in [RIM Permanent Rules 8400-3800](#).
  - a. **Note:** *Clipping, burning, disking, or reseeding of grasslands may be approved on a field-by-field basis for the purpose of restoring vegetation or stand vigor, except this practice may not be applied during the last 12 months of a limited duration easement.*
14. The acreage seeded will be viewed periodically by the SWCD to determine management measures to maintain stand vigor.
15. Maintenance is addressed in the provisions of each easement.
16. The SWCD must view the enrolled acreage at least once each year until stand establishment is assured.
17. Seeding of permanent vegetation after the easement is signed must be completed by the end of the next normal planting time, unless the landowner can provide documentation that seed stocks are not available, or soil conditions are not favorable. A temporary cover must be established during the interim period.

#### **RR-1b**

- A. The purpose of this practice is to maintain or enhance an existing vegetative cover of non-native permanent grasses, or non-native grasses and legumes on enrolled land that will provide wildlife habitat and control excessive erosion, and improve water, air and land quality.
- B. Apply this practice to already established permanent grasses.
- C. This practice must meet the criteria listed below. Where existing cover does not meet this criteria, other practices to establish cover (RR-2a or RR-3a) shall be used. This practice must:
  1. Control erosion at an acceptable level.
  2. Prevent excessive erosion from recurring.
  3. Be a cost effective solution when compared to other acceptable practices.
  4. Be maintained for the life of the easement.
  5. Be included in the RIM Reserve Conservation Plan.
- D. Policies for this practice are as follows:
  1. Chemicals used in performing this practice must be federally, state and, if applicable, locally registered and must be applied strictly in accordance with authorized registered uses, directions on the label and other federal or state policies and requirements.
  2. State and county listed noxious weeds shall be controlled at the landowner's expense throughout the duration of the easement period. If weed control results in loss of the permanent vegetative cover the landowner is responsible for restoring the vegetative cover at their own expense.
  3. The acreage seeded must not be harvested or grazed by domestic livestock for the duration of the easement period, unless specifically approved by the BWSR as part of the vegetative management plan.
  4. The cover must be maintained by the landowner as specified in [RIM Permanent Rules 8400-3800](#).

5. The acreage shall be reviewed periodically by the SWCD to determine management measures needed to maintain stand vigor.

## RR-2 ESTABLISHMENT OF PERMANENT NATIVE GRASSES AND FORBS

### Subcodes:

**RR-2a** To be established

**RR-2b** Already established

**RR-2PP** Pollinator Planting

### RR-2a

- A. The purpose of this practice is to establish and maintain a perennial vegetative cover of native grasses and forbs on enrolled land that will control erosion, improve water quality and provide wildlife habitat.
- B. Policies for this practice are as follows.
  1. Funding is authorized for:
    - a. Eligible seed, seedbed preparation, seeding, and planned mowing during the establishment period.
    - b. Herbicides specified as necessary in the RIM Reserve Conservation Plan to establish cover. This may include the applications indicated in the RIM Reserve Conservation Plan, within 36 months of practice initiation.
    - c. Temporary cover specified as necessary in the RIM Reserve Conservation Plan when:
  - C. Needed until required seed is available.
  - D. Needed because normal planting period for the mixture has passed.
  - E. Soil condition, such as chemical residue, will not allow immediate establishment of cover.
  - F. A dormant seeding is planned.
    - a. Forbs recommended by the technical agency.
    - b. Prescribed burning or tree removal, when used as a cost-effective and less disruptive activity than extensive site preparation & interseeding on current native prairie areas.
  2. Funding is not authorized for:
    - a. Herbicides used to maintain vegetative cover after the 3 year practice establishment period.
    - b. Clearing rock piles or other unnatural obstructions from the area to be seeded.
    - c. Fences.
    - d. Minerals for enhancing production.
    - e. Maintenance weed control (mowing and/or spraying after vegetation is fully established).
    - f. Replanting when failure is due to inadequate weed control measures by the landowner.
  3. Temporary Cover – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#).

4. Seeding rates for permanent seeding must be based on pounds of Pure Live Seed. Seed mixes can be developed using the recommendations from the BWSR [Native Vegetation Establishment and Enhancement Guidelines](#) document or [State Seed Mixes](#). For additional guidance refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), [Filter Strip \(393\)](#) or [Restoration of Declining Habitats \(643\)](#).
5. Seed used must be labeled in accordance with the *Minnesota Seed Law, 1983, Section 21.80 to 21.92* and accompanying rules.
6. Seeding Dates – Refer to page 27 of the [Native Vegetation Establishment and Enhancement Guidelines](#) document for Planning Date Guidance for Restoration & BMP Projects.
7. Seedbed Preparation – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), [Filter Strip \(393\)](#) or [Restoration of Declining Habitats \(643\)](#).
8. Companion Crops – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), [Filter Strip \(393\)](#) or [Restoration of Declining Habitats \(643\)](#).
9. Chemicals used in performing this practice must be federally, state and, if applicable, locally registered and must be applied strictly in accordance with authorized registered uses, directions on the label and other federal or state policies and requirements.
10. Weed Control – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), [Filter Strip \(393\)](#) or [Restoration of Declining Habitats \(643\)](#). State and/or county noxious weeds must be controlled at landowner expense during the easement period via spot spraying, spot mowing, or similar technique that is least disruptive to the cover. Clipping will more than likely be needed during the establishment period.
11. The acreage seeded must not be harvested or grazed by domestic livestock for the duration of the easement period, unless specifically approved by the BWSR as part of a vegetative management plan designed for habitat improvement.
12. The cover must be maintained by the landowner as specified in [RIM Permanent Rules 8400.3800](#).
13. Maintenance: the acreage enrolled will be viewed periodically by the SWCD to determine management measures to maintain stand and vigor. Native plant communities are best managed by the use of prescribed fire. Refer to [USDA NRCS practice standard \(338\)-Prescribed Burning](#). Other management techniques include mowing/haying and prescribed grazing. Periodic management will normally be required to maintain the stand, control woody species, and fully establish desired species.
14. Seeding of permanent vegetation after the easement is signed shall be completed by the end of the next normal planting time, unless the landowner can provide documentation that seed stocks are not available, or soil conditions are not favorable. A temporary cover must be established during the interim period.

#### **RR-2b**

- A. The purpose of this practice is to maintain or enhance an existing vegetative cover of native permanent grasses, or grasses and forbs on enrolled land that will provide wildlife habitat and control excessive erosion, and improve water, air and land quality.
- B. Apply this practice to already established permanent native grasses, or native grasses and forbs on enrolled land.

- C. This practice must meet the criteria listed below. Where existing cover does not meet this criteria, other practices to establish cover (RR2a or RR3a) shall be used. This practice must:
1. Control erosion at an acceptable level.
  2. Prevent excessive erosion from recurring.
  3. Be a cost-effective solution when compared to other acceptable practices.
  4. Be maintained for the life of the easement.
  5. Be included in the RIM Reserve Conservation Plan.
- D. Policies for this practice are as follows:
1. Chemicals used in performing this practice must be federally, state and, if applicable, locally registered and must be applied strictly in accordance with authorized registered uses, directions on the label and other federal or state policies and requirements.
  2. State and county listed noxious weeds shall be controlled at the landowner's expense throughout the duration of the easement period. If weed control results in loss of the permanent vegetative cover the landowner is responsible for restoring the vegetative cover at their own expense.
  3. The acreage seeded must not be harvested or grazed by domestic livestock for the duration of the easement period, unless specifically approved by the BWSR as part of a vegetative management plan designed for habitat improvement.
  4. The cover must be maintained by the landowner as specified in [RIM Permanent Rules 8400.3800](#).
  5. The acreage shall be reviewed periodically by the SWCD to determine management measures the maintain stand vigor.

#### **RR-2PP**

- A. The purpose of this practice is to establish and maintain a perennial vegetative cover of native grasses and forbs on enrolled land that will provide high vegetative diversity and provide nectar and pollen sources throughout several seasons. This cover is also intended to control erosion, improve water quality and provide wildlife habitat.
- B. Policies for this practice are as follows:
1. Site selection is dependent on the following factors, and potential locations and acreages must be confirmed with BWSR staff prior to inclusion in the conservation plan:
    - a. Minimum plot size of 1 acre. Total plot area NTE 10% of easement acreage or 5 acres, whichever is less.
    - b. If planted in a strip, strip must be a minimum of 20 feet wide.
    - c. Site selection should account for the following factors:
      1. Distance from areas that experience pesticide and fungicide use
      2. Water source within 200 feet to account for flight distance
      3. Site is not isolated (habitat complexes are preferred)
  2. Funding is authorized for:
    - a. Eligible seed, seedbed preparation, seeding, and planned mowing during the establishment period.
    - b. Herbicides specified as necessary in the RIM Reserve Conservation Plan to establish cover. This may include the applications indicated in the RIM Reserve Conservation Plan, within 36 months of practice initiation.

- c. Temporary cover specified as necessary in the RIM Reserve Conservation Plan when:
    - 1. Needed until required seed is available.
    - 2. Needed because normal planting period for the mixture has passed.
    - 3. Soil condition, such as chemical residue, will not allow immediate establishment of cover.
    - 4. A dormant seeding is planned.
  - d. Forbs recommended by the technical agency.
  - e. Prescribed burning or tree removal, when used as a cost-effective and less disruptive activity than extensive site preparation & interseeding on current native prairie areas.
3. Funding is not authorized for:
    - a. Herbicides used to maintain vegetative cover after the 3 year practice establishment period.
    - b. Clearing rock piles or other unnatural obstructions from the area to be seeded.
    - c. Fences.
    - d. Minerals for enhancing production.
    - e. Maintenance weed control (mowing and/or spraying after vegetation is fully established).
    - f. Replanting when failure is due to inadequate weed control measures by the landowner.
  4. Refer to resources specific to planning a pollinator planting, such as the [CRP CP42 Job Sheet](#) or the [BWSR Pollinator Toolbox](#).
  5. Temporary Cover – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#).
  6. Seeding rates for permanent seeding must be based on pounds of Pure Live Seed. Seed mixes can be developed using the recommendations from the May 2014 BWSR document, [Native Vegetation Establishment and Enhancement Guidelines](#), or [State Seed Mixes](#) may be used. Use USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), [Filter Strip \(393\)](#) or [Restoration of Declining Habitats \(643\)](#) for additional guidance. **The seeding plan must contain at least one species for each blooming period and must not contain non-native vegetation. You may also consider the inclusion of native, early-blooming shrubs to meet this criteria, if appropriate for the site location.**
  7. Seed used must be labeled in accordance with the *Minnesota Seed Law, 1983, Section 21.80 to 21.92* and accompanying rules.
  8. Seeding Dates – Refer to page 27 of the [Native Vegetation Establishment and Enhancement Guidelines](#) document for Planning Date Guidance for Restoration & BMP Projects.
  9. Seedbed Preparation – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), [Filter Strip \(393\)](#) or [Restoration of Declining Habitats \(643\)](#).
  10. Companion Crops – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), [Filter Strip \(393\)](#) or [Restoration of Declining Habitats \(643\)](#).



11. Chemicals used in performing this practice must be federally, state and, if applicable, locally registered and must be applied strictly in accordance with authorized registered uses, directions on the label and other federal or state policies and requirements.
12. Weed Control – Refer to the USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#), [Filter Strip \(393\)](#) or [Restoration of Declining Habitats \(643\)](#). State and/or county noxious weeds must be controlled at landowner expense during the easement period via spot spraying, spot mowing, or similar technique that is least disruptive to the cover. Clipping will more than likely be needed during the establishment period.
13. The acreage seeded must not be harvested or grazed by domestic livestock for the duration of the easement period, unless specifically approved by the BWSR as part of a vegetative management plan designed for habitat improvement.
14. The cover must be maintained by the landowner as specified in [RIM Permanent Rules 8400.3800](#).
15. Maintenance: The acreage enrolled will be viewed periodically by the SWCD to determine management measures to maintain stand and vigor. Native plant communities are best managed by the use of prescribed fire. Refer to [USDA NRCS practice standard \(338\)-Prescribed Burning](#). Other management techniques include mowing/haying and prescribed grazing. Periodic management will normally be required to maintain the stand, control woody species, and fully establish desired species.
16. Seeding of permanent vegetation after the easement is signed shall be completed by the end of the next normal planting time, unless the landowner can provide documentation that seed stocks are not available, or soil conditions are not favorable. A temporary cover must be established during the interim period.

## RR-3 TREE AND/OR SHRUB PLANTING FOR PERMANENT WILDLIFE HABITAT

### Subcodes:

- RR-3a To be planted  
 RR-3b Already established/natural succession

### RR-3a

- A. The purpose of this practice is to establish and provide a balanced and diverse blend of wildlife habitat that will control erosion and enhance wildlife habitat.
- B. Apply this practice to improve wildlife habitat, complement other habitats, or increase the availability of key habitat types that are lacking in abundance or quality. Aesthetics, recreational opportunities, limited timber production, and other multiple-use aspects should also be considered.
- C. Policies for this practice are as follows:
  1. Funding is authorized for:
    - a. Site preparation, native trees, native shrubs, forbs and planting costs, and release from vegetative competition to ensure establishment of planting.
    - b. Temporary cover (using RR-1 or RR-2)
      1. When required in the RIM Reserve Conservation Plan.
      2. When needed until planting stock is available.

3. When needed because normal planting period for the species has passed.
  4. Where soil condition, such as chemical residue, will not allow immediate establishment of cover.
  - c. For interplanting to bring stand up to desired stocking level when failure was due to circumstances beyond the landowner's control.
  - d. Other permanent vegetative cover that will provide habitat for wildlife and for erosion control (use RR-1 or RR-2).
  - e. Seeded (green) firebreaks (use RR-1 or RR-2).
  - f. Tubes, tree mats, etc.
2. Funding is not authorized for:
- a. Tree plantings that were not part of the original, state approved conservation plan.
  - b. Tilled (black) firebreaks, fuel breaks, fire lanes or roads.
  - c. Fences.
  - d. Planting orchard or nut trees for commercial production.
  - e. Planting for ornamental purposes.
  - f. Planting for Christmas tree production.
  - g. Plantation plantings.

***NOTE: Items d, e, f, and g above are not permitted on RIM Reserve acres.***

3. Planting must be protected from destructive fire and must not be harvested or grazed by domestic livestock for the duration of the easement period, unless specifically approved by the BWSR as part of the vegetative management plan designed for habitat improvement.
4. Chemicals used in performing this practice must be federally, state and, if applicable, locally registered and must be applied strictly with authorized uses, directions on the label and other federal or state policies and requirements. Chemicals used to establish or release trees or shrubs must be banded or spot applied.
5. The practice must be maintained by the landowner as specified in RIM Permanent Rules 8400.3800.
6. The acreage planted is limited to 10% of total easement acres, not to exceed 10 acres.
7. The acreage planted shall be reviewed by the technical agency at customary intervals.
  - D. Planting must be completed according to the RIM Reserve Conservation Plan time schedule unless the landowner can provide acceptable documentation that seed or planting stocks are not available.
  - E. Technical specifications should include, but are not limited to, USDA NRCS Field Office Technical Guide (FOTG) Conservation Practice Standards (CPS) for [380](#), [612](#), [645](#), and [391](#), *Minnesota Extension Service Bulletin 196*, and *Woody Cover Plantings for Wildlife*, MN DNR, 1985.
  - F. Tree planting plans must not conflict with existing electrical lines, telephone lines, road right-of-way or Drainage systems.

G. Permanent vegetative cover within the woody planting may be delayed until after the planting is established (no longer than three years) if erosion is not a problem. However, weeds must be controlled.

H. To provide adequate erosion control and create wildlife habitat, the areas between tree and shrub rows must be established in permanent vegetation (RR-1 or RR-2) for the life of the easement.

1. Forest management activities are allowed if included as part of a forest management plan included in the conservation plan, but not cost shared by RIM, as long as the wildlife habitat goals of this practice are met.

### **RR-3b**

- A. The purpose of this practice is to maintain or enhance existing plantings of trees and shrubs on enrolled land, or to allow natural regeneration of woody tree species in floodplain areas that will provide wildlife habitat and control excessive erosion, and improve water quality.
- B. Apply this practice to trees and shrubs already established on enrolled land that meets the required enrollment criteria.
- C. This practice must meet the criteria listed below. Where existing plantings do not meet these criteria, other practices to establish cover shall be used. This practice must:
  - 1. Control erosion at an acceptable level.
  - 2. Prevent erosion from recurring.
  - 3. Be a cost effective solution when compared to other acceptable practices.
  - 4. Be maintained for the life of the easement.
  - 5. Be included in the RIM Reserve Conservation Plan agreement.
- D. Policies for these practices are as follows.
  - 1. Funding is not authorized for:
    - a. Fencing, clean tilled (black) firebreaks, fuel breaks, fire lanes or roads.
    - b. Planting orchard or nut trees for commercial production.
    - c. Planting for ornamental purposes.
    - d. Planting for Christmas tree production.
    - e. Plantation maintenance.

***NOTE: Items b, c, d and e are not permitted on RIM Reserve acres.***

- 2. Chemicals used in maintaining this practice must be federally, state and locally registered and must be applied strictly in accordance with authorized registered uses, directions on the label and other federal or state policies and requirements.
- 3. The acreage planted must not be harvested or grazed by domestic livestock for the duration of the easement period, unless specifically approved by the BWSR as part of the vegetative management plan.

4. The practice must be maintained for the life of the easement as specified in RIM Permanent Rules 8400.3800.
  5. The acreage treated shall be reviewed by the technical agency at customary intervals.
  6. The majority of the existing acres of trees and shrubs must be native species.
- E. Selective cutting for timber stand improvement is allowable, but not cost-shared by RIM, as long as the wildlife habitat goals of this practice are met. Both the DNR Forester and the DNR Wildlife Manager must sign the conservation plan if any forestry measures are included in the plan.

## RR-4 FIELD WINDBREAK ESTABLISHMENT

### Subcodes:

**RR-4a** To be established

**RR-4b** Already established

### RR-4a

- A. The primary purpose of a field windbreak is two-fold:
1. To reduce wind erosion and,
  2. To get uniform snow distribution over the protected cropland for uniform soil recharge. Additional benefits are the creation of wildlife habitat, beautification and enhancement of the landscape, living snowfence and a reduction in evaporation/transpiration rates for groundwater recharge.
- B. Field windbreaks may be used in or around open fields, which need protection against wind erosion. Additional benefits will be realized from the creation of wildlife habitat. **Note: SWCD should consult BWSR field staff to determine suitability and location of this practice prior to including in the RIM Conservation Plan**
- C. Policies for this practice are as follows:
1. Funding is authorized for:
    - a. Site preparation and planting native trees or shrubs as field windbreaks that will reduce wind erosion to an acceptable level.
    - b. Weed control to release from vegetative competition. This is limited to banding or spot treatment.
    - c. Temporary cover (use RR-1 or RR-2):
      1. When required in the RIM Reserve Conservation Plan.
      2. When needed until planting stock is available.
      3. When needed because normal planting period for species has passed.
      4. Where soil condition, such as chemical residue, will not allow establishment of cover immediately.
    - d. Seeded (green) firebreaks (use RR-1 or RR-2).
  2. Funding is not authorized for:
    - a. Field Windbreaks that were not part of the original state approved conservation plan.

- b. Fencing, clean tilled (black) firebreaks, fuel breaks, fire lanes or roads.
- c. Planting orchard or nut trees for commercial production.
- d. Ornamental plantings.
- e. Christmas tree production.
- f. Plantation maintenance.

**NOTE: Items c, d, e, and f are not permitted in RIM Reserve acres.**

- 3. Planting must be protected from destructive fire and from grazing by domestic livestock for the duration of the easement period.
  - 4. Chemicals used in performing this practice must be federally, state and if applicable, locally registered and must be applied strictly in accordance with authorized registered uses, directions on the label, and other federal or state policies and requirements.
  - 5. The field windbreak must be maintained by the landowner as specified in the [RIM Permanent Rules 8400.3800](#).
- D. Planting must be completed according to the RIM Reserve Conservation Plan time schedule, unless the landowner can provide documentation that seed or plant stocks are not available. Specifications for this practice are as follows:
- 1. The practice must be carried out according to the USDA NRCS Field Office Technical Guide (FOTG) Conservation Practice Standards (CPS) for [Tree/Shrub Establishment \(612\)](#) and [Windbreak/Shelterbelt Establishment \(380\)](#). The species used are to be selected in accordance with the Field Office Technical Guide.
- E. Tree planting plans must not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage systems.
- F. Selective cutting for timber stand improvement is allowable, but not cost-shared by RIM, as long as the wildlife habitat goals of this practice are met. This can be done via an approved vegetative management plan for the easement.

#### **RR-4b**

- A. The purpose of this practice is to maintain or enhance existing field windbreak plantings of trees and shrubs on enrolled land that will provide wildlife habitat and control excessive erosion, and improve water.
- B. Apply this practice to field wind breaks already established on enrolled land that meets the required enrollment criteria.
- C. This practice must meet the criteria listed below. Where existing plantings do not meet these criteria, other practices to establish cover shall be used. This practice must:
  - 1. Control erosion at an acceptable level.
  - 2. Prevent wind erosion from recurring.
  - 3. Be a cost effective solution when compared to other acceptable practices.
  - 4. Be maintained for the life of the easement.

5. Be included in the RIM Reserve Conservation Plan agreement.

D. Policies for these practices are as follows:

1. Funding is not authorized for:
  - a. Fencing, clean tilled (black) firebreaks, fuel breaks, fire lanes or roads.
  - b. Planting orchard or nut trees for commercial production.
  - c. Planting for ornamental purposes.
  - d. Planting for Christmas tree production.
  - e. Plantation maintenance.

**NOTE: Items b, c, and d are not permitted on RIM Reserve acres.**

2. Chemicals used in maintaining this practice must be federally, state and locally registered and must be applied strictly in accordance with authorized registered uses, directions on the label and other federal or state policies and requirements.
  3. The acreage shall not be harvested or grazed by domestic livestock for the duration of the easement period.
  4. The practice must be maintained for the life of the easement as specified in [RIM Permanent Rules 8400.3800](#).
  5. The acreage treated shall be reviewed by the technical agency at customary intervals and additions made to the conservation plan as necessary to maintain this practice.
  6. The majority of the existing acres of trees and shrubs must be native species.
- E. Selective cutting for timber stand improvement is allowable, but not cost-shared by RIM, as long as the wildlife habitat goals of this practice are met. This can be done via an approved vegetative management plan for the easement.

## RR-5 DIVERSION

- A. The primary purpose of a diversion is to divert water away from an area to permit the establishment of vegetative cover, or divert water to areas where it can be used or disposed of safely. Diversion may provide additional benefit to wildlife.
- B. A diversion may be used where:
1. Runoff from a high area is eroding enrolled lands, or is needed to establish vegetative cover; or,
  2. Surface and shallow subsurface flow is damaging sloping enrolled lands or contaminating ground or surface water; or,
  3. Surface water can be diverted to an area where it can be used or disposed of safely.
  4. Diversions may be installed on nonenrolled lands if necessary to enhance or protect enrolled lands.
- C. Policies for this practice are as follows.
1. Authorized activities under this practice include:

- a. Surface diversions.
  - b. Diversion ditches.
  - c. Dikes.
  - d. Pipe, chutes, or outlets if necessary to protect outlets from erosion.
  - e. Excavation and filling necessary to install an effective system.
  - f. Subsurface drains that are essential for the proper functioning of the diversion and including outlet stabilization structures, if needed. Funding is limited solely to the minimum size tile specified by the technician as needed for the proper functioning of the diversion.
  - g. Necessary vegetative protection that meets the component seeding specifications of this practice.
  - h. Mulching to protect the practice from erosion hazards. The technician will determine the type required and the size of the area to be mulched.
2. Nonauthorized activities under this practice include:
- a. Ditches or dikes designed to impound water for later use, or that will be part of an irrigation system.
  - b. Subsurface drains as the sole component of the practice.
  - c. Removing stone or hedgerows.
  - d. Installing a structure on land other than land designated for RIM Reserve purposes, unless necessary to enhance or protect enrolled lands.
- D. A protective outlet or waterway, which is installed solely as an outlet for a diversion system and serves no other conservation purpose, may be cost-shared as a component of this practice.
- E. Technical specifications for this practice are as follows:
- 1. The practice and any supporting practices must be carried out according to USDA NRCS Field Office Technical Guide (FOTG) Conservation Practice Standards (CPS) for [342](#), [362](#), [410](#), [412](#), [606](#), and [620](#).
- F. The diversion must be maintained by the landowner as specified by [RIM Permanent Rules 8400.3800](#).
- G. Where required, the landowner is responsible for obtaining easements, right-of-way, local, state and federal permits, or other permission necessary to perform and maintain the practice.

## RR-6 EROSION CONTROL STRUCTURE

- A. The purpose of this practice is to permit the establishment of vegetative cover, control soil erosion, protect or improve water quality, or create or improve wildlife habitat. An erosion control structure may provide additional benefits including, but not limited to, recreation, flood control, and channel stability.
- B. Structures may be used on enrolled lands where they are necessary to permit establishment of vegetative cover, for the control of soil erosion, water quality protection or improvement, or creation or enhancement of wildlife habitat. Structures may also be installed on nonenrolled lands if necessary to enhance or protect enrolled lands.
- C. Policies for this practice are as follows.
  - 1. Authorized activities under this practice include:

- a. Water and sediment control basins, grade stabilization structures, or similar structures, including conduits used for outlets.
  - b. Channel linings, chutes, drop spillways, and pipe drops that dispose of excess water.
  - c. Vegetative cover and for leveling and filling to permit the installation of the structure.
  - d. Mulching to protect the practice from erosion hazards. The technician will determine the type required and the size of the area to be mulched.
  - e. Riprapping, when needed to protect the slopes or outlets.
  - f. The installation of tile to provide a suitable outlet for water impounded by the structure.
2. Nonauthorized activities under this practice include:
- a. Irrigation structures that are a part of a distribution system for irrigation water.
  - b. Fencing.
  - c. Installing a structure on land other than land designated for RIM Reserve purposes, unless necessary to enhance or protect enrolled lands.
  - d. Combining this practice with RR-8 or RR-12 structures and practices.
- D. Authorization is only given if the structure is needed to make possible the establishment of vegetative cover on RIM Reserve acres.
- E. The structure must be maintained by the landowner as specified by [RIM Permanent Rules 8400.3800](#).
- F. Technical specifications for this practice are as follows:
1. The practice and necessary supporting practices must be carried out according to USDA NRCS Field Office Technical Guide (FOTG) Conservation Practice Standards (CPS) for [342](#), [350](#), [410](#), [484](#), [584](#), [587](#), [606](#), [620](#), and [638](#).
- G. Where required, the landowner is responsible for obtaining easements, utility rights-of-way, local state and federal permits or other permission necessary to perform and maintain the practice.

## **RR-7 GRASS WATERWAY**

- A. The purpose of a grass waterway is to permit the establishment of vegetative cover, provide a means of regulating or removing runoff to control erosion, or protect or improve water quality. Additional benefits may be provided through creation of wildlife habitat.
- B. A grass waterway may be used on enrolled lands by using vegetative measures for control of erosion or improvement of water quality. Grass waterways may also be installed on nonenrolled lands if necessary to protect or enhance enrolled lands.
- C. Policies for this practice are as follows.
1. Authorized activities under this practice include:
    - a. Site preparation, grading, shaping and filling.
    - b. Subsurface drains that are essential for the proper functioning of the waterway and including outlet stabilization structures, if needed. The technician will specify the minimum size tile needed for the proper functioning of the waterway.



- c. Mulching to protect the practice from erosion hazards. The technician will determine the type required and the size of the area to be mulched.
  - d. Cover that may consist of sod, sod-forming grasses, or other types of permanent vegetative cover that will provide the needed protection from erosion.
  - e. Temporary cover until permanent vegetative cover is established.
2. Nonauthorized activities under this practice include:
- a. Subsurface drains as the sole component of the practice.
  - b. Fencing.
  - c. Installing a structure on land not designated for RIM Reserve purposes, unless necessary to enhance or protect enrolled acres.
- D. The practice must be maintained by the landowner as specified by [RIM Permanent Rules 8400.3800](#).
- E. Specifications for this practice are as follows:
- 1. The practice must be carried out according to USDA NRCS Field Office Technical Guide (FOTG) Conservation Practice Standards (CPS) for [342](#), [410](#), [412](#), [484](#), [606](#), [620](#), and [638](#).
- F. Where required, the landowner is responsible for obtaining easements, rights-of-way, local, state and federal permits or other permission necessary to perform and maintain the practice.

## RR-8 WETLAND RESTORATION

- A. The purpose of this practice is to restore wetland areas for wildlife and more specifically:
- 1. To restore previously drained or partially drained wetlands to their original condition.
  - 2. To restore wetland complexes that include a variety of wetland types.
- B. Apply this practice to designated areas under RIM Reserve suitably located and adapted to the restoration of previously drained wetlands for wildlife.
- C. Policies for this practice are as follows.
- 1. Funding is authorized for:
    - a. Construction of dams, water control structures, levees, or dike, ditch or drain tile plugs, tile rerouting, and scraping, if needed to assist in the restoration of the wetland.
    - b. Costs associated with designing the practice.
    - c. Necessary vegetative protection that meets the component seeding specifications of this practice.
    - d. Mulching to protect the practice from erosion hazards. The technician will determine the type required and the size of the area to be mulched.
    - e. Temporary cover on the floodable area to control erosion and create a residue based to accelerate invertebrate production after reflooding.
    - f. Riprapping to protect the slopes or outlets of the structure.
  - 2. Funding is not authorized for:
    - a. Fencing.

- b. Installing a structure on land not designated for RIM Reserve or other conservation program.
  - c. Level ditching and dugouts.
  - d. Restoration on limited duration easements.
  - e. Any project initiated for the purpose of wetland mitigation.
3. Where required, the landowner is responsible for obtaining easements, utilities, rights-of-way, local, state and federal permits and other permission necessary to perform and maintain this practice.
- D. The pool area must be planted to a temporary or permanent cover if a suitable vegetative cover does not exist to help control erosion and weeds until the pool area has water cover.
- E. Funding is only authorized for restoration on perpetual easements.
- F. The practice must be maintained by the landowner as specified by [RIM Permanent Rule 8400.3800](#).
- G. Specifications for this practice are as follows:
- 1. USDA NRCS Field Office Technical Guide (FOTG) Conservation Practice Standards (CPS) for [342](#), [378](#), [484](#), [587](#), [620](#), [644](#), and [657](#) may be used as a guide to implement this practice. All work must meet accepted engineering specifications.
- H. Refer to the [Minnesota Wetland Restoration Guide](#).

### **RR-11 HIGHWAY WINDBREAK (Living Snow fence)**

- A. The primary purpose of this practice is to establish living snow fences made up of multiple rows of trees and shrubs along highways experiencing snow drifting problems. A secondary purpose is to create wildlife habitat.
- B. Specifications for this practice are as follows.
- 1. Funding is authorized for:
    - a. Site preparation, native trees, native shrubs and planting costs, and release from vegetative competition to ensure establishment of planting.
    - b. Temporary cover:
      - 1. When required in the RIM Reserve Conservation Plan Agreement.
      - 2. When needed until planting stock is available.
      - 3. When needed because normal planting period for the species has passed.
      - 4. Where soil condition, such as chemical residue, will not allow establishment of planting immediately.
    - c. For replanting dead, dying, and diseased trees and shrubs to bring stand up to desired stocking level during the one to three year establishment period when the failure was due to circumstances beyond the landowner's control.
    - d. Planting other noncompeting permanent vegetative cover that will provide habitat for wildlife and control erosion. (Use RR-2a Vegetative Cover in Wood Planting specifications, see F. below.)

***NOTE: In all cases, funding is only authorized if the respective road authority has approved the planting plan.***

2. Funding is not authorized for:
  - a. Tilled (black) firebreaks, fire lanes or roads.
  - b. Fences.
  - c. Planting orchard or not trees for commercial production.
  - d. Planting for Christmas tree or timber production.

***NOTE: Items c and d are not permitted on RIM Reserve acres.***

3. Planting must be protected from fire and from grazing by domestic livestock.
  4. Chemicals used in performing this practice must be federally, state and if applicable, locally registered and must be applied strictly in accordance with authorized uses, directions on the label, and other federal or state policies and requirements. Chemicals used to establish or release trees or shrubs must be banded or spot applied.
  5. This practice must be maintained by the landowner for the duration of the easement. Once established, the maintenance responsibilities may shift to the respective road authority.
  6. The acreage planted shall be reviewed by the technical agency and the respective road authority at customary intervals and amendments made to the plan, as necessary, to maintain the planting.
- C. Planting must be completed by the end of the next planting season after the easement is signed, unless the landowner can provide acceptable documentation that soil condition is not conducive to planting, and/or planting stock is not available.
  - D. An SWCD representative will develop the planting plan in cooperation with the road authority and the landowner. A minimum of six rows of trees and shrubs must be planted. The planting must be consistent with the USDA NRCS Field Office Technical Guide (FOTG) Conservation Practice Standards (CPS) for [Windbreak Shelterbelt Establishment \(380\)](#). In row and between row spacing must be adequate to ensure long-term survival and function of the planting. A minimum of two rows shall be shrubs, and a minimum of two rows shall be conifers. The remaining two or more rows may be any combination of trees and/or shrubs.
  - E. Plantings must not conflict with existing electrical lines, telephone lines, rights-of-way or drainage systems.
  - F. If erosion is not a concern, permanent vegetative cover within the tree and shrub planting is optional. However, weeds must be controlled during the establishment period. Once the planting is established, permanent vegetative cover shall be seeded in accordance with USDA NRCS Field Office Technical Guide (FOTG) [Conservation Practice Standards \(CPS\) for Conservation Cover \(327\)](#).
  - G. The first inside row of trees/shrubs shall be a minimum of 100 feet from the road edge.
  - H. The area between the road right-of-way and the first row of trees or shrubs must be planted to RR-1 or RR-2 as soon as practical.

## **RR-12 SHALLOW WATER AREA – CREATION**

*BWSR no longer offers cost-share for this practice.*

- A. The purpose of this practice is to create shallow water areas for wildlife.
- B. Apply this practice to designated areas under RIM Reserve suitably located and adapted to the creation of a shallow water area for wildlife.
- C. Policies for this practice are as follows.
  - 1. Authorized activities under this practice include:
    - a. Construction of dams, water control structures, levees, or dike, ditch or drain tile plugs, and scraping, if needed to assist in the creation of the shallow water area.
    - b. Costs associated with designing the practice.
    - c. Planting to help establish aquatic vegetation for permanent habitat cover.
    - d. Necessary vegetative protection that meets the component seeding specifications of this practice.
    - e. Mulching to protect the practice from erosion hazards. The technician will determine the type required and the size of the area to be mulched.
    - f. Temporary cover on the floodable area to control erosion and create a residue base to accelerate invertebrate production after flooding.
  - 2. Funding is not authorized for:
    - a. Fencing.
    - b. Installing a structure on land not designated for RIM Reserve purposes.
    - c. Level ditching and dugouts.
    - d. Any project initiated for the purpose of wetland mitigation.
  - 3. Where required, the landowner is responsible for obtaining easements, utility rights-of-way, local, state and federal permits or other permission necessary to perform and maintain the practice.
- D. The pool area must be planted to a temporary or permanent cover if a suitable vegetative cover does not exist to help control erosion and weeds until the pool area has water cover.
- E. The practice must be maintained by the landowner as specified by [RIM Permanent Rules 8400.3800](#).
- F. Specifications for this practice are as follows:
  - 1. USDA NRCS Field Office Technical Guide (FOTG) Conservation Practice Standards (CPS) for [342](#), [378](#), [484](#), [587](#), [620](#), [644](#), and [657](#) may be used as a guide to implement this practice. All work must meet accepted engineering specifications.

### **RR-13 Existing Wetlands**

- A. Use this practice for existing natural wetlands that have not been previously restored through another program.

### **RR-14 Existing Rivers and Ditches**

- A. Use this practice for existing ditches, creeks, rivers, etc. (Grass waterways are covered under RR-7 above).

**RR-FP**

- A. The purpose of this practice is to create and maintain food plots for wildlife, or other monoculture plots for pollinator benefit.
- B. Policies and practices are as follows:
  - 1. No cost-sharing is authorized for this practice.
  - 2. Food plots shall be no larger than 10% of the total easement area.
  - 3. Food plots shall not exceed 5 acres, unless allowance is made by BWSR staff.
  - 4. Food plot crops must be left over winter for wildlife. No fall harvest or tillage operations are allowed.

# Conservation Plan Development

## RIM Handbook

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## A. OVERVIEW

### A.1. General Requirements

Minnesota state law requires that the entire area of a conservation easement be established and maintained as permanent cover, either with vegetation or water. To achieve this condition, a conservation plan must be developed for each conservation easement acquired. The conservation plan consists of several attachments that identify the location, establishment, and maintenance requirements for each of the approved conservation practices required for the duration of the easement. The term "conservation plan" will refer to this entire package.

The landowner is responsible for establishing and maintaining each conservation practice identified in the conservation plan and referenced in the conservation easement. This obligation transfers to each new owner for the duration of the conservation easement. These activities must be consistent with the standards and specifications described in the Practice Specifications subsection of the handbook.

The conservation plan is an agreement signed by the landowner(s) and the SWCD. It is referenced in, and made part of, the conservation easement even though the plan, or any amendment to it, is *not* recorded with the conservation easement. The original, signed copy of the conservation plan must be kept on file at the SWCD office. Any future alterations to the established conservation practices will require the development and signing of a new conservation plan and appropriate attachments.

Since the conservation plan is part of the conservation easement, it is enforceable and must be followed. Any willful action not in compliance with the conservation plan will be considered a direct violation of the conservation easement. Violations should be resolved and/or enforced following the violations procedure in the Non-Compliance/Violation Procedures section of the handbook.

The conservation plan must be developed using the instructions and materials found in this section of the handbook. Specific conservation practice standards and specifications may be obtained from a variety of technical sources. Refer to the Practice Specifications subsection of the handbook for more information. General planning requirements are given in the National Conservation Planning Manual (USDA-NRCS) and Section III of the Field Office Technical Guide ("FOTG"; USDA-NRCS).

The conservation plan for the easement area should include the greatest diversity of habitat cover type as practical and possible with cooperation and agreement of the landowner(s). The SWCD technical representative should consult the most up-to-date version of the [Native Vegetation Establishment and Enhancement Guidelines](#) to establish the most practical diversity of habitat cover suited to the proposed easement area. Habitat diversity ensures that most of the essential components necessary to establish and sustain wildlife habitat are provided on the easement area.

### A.2. Required Documents

The conservation plan must be prepared with enough detail to allow for the proper establishment and maintenance of the conservation practices identified. More specifically, the conservation plan will contain information that will identify:

- a) The conservation practices that will exist on the conservation easement area,



- b) where, how, and when these practices will be applied, and
- c) what operation and management requirements will exist for the easement owner.

To accomplish this, the conservation plan will generally consist of the following forms and attachments:

[Conservation Plan Workbook](#) (includes signature page, practice plan, and operation & maintenance plan)

Conservation Plan Map

Planting Plans (establishment of necessary grasses and trees/shrubs)

Construction Plans (for structures and/or engineered practices)

Supplementary Information (livestock exclusion plans, etc.)

### **Standard Components of Conservation Plan Package:**

#### **Conservation Plan Signature Page**

The conservation plan signature page (tab 1 of [workbook](#)) serves as the cover page of the conservation plan package. It accomplishes the following:

- Provides a framework for the remainder of the plan
- References the conservation easement and reminds the landowner(s) that any non-compliance of the conservation plan will be viewed as a violation of the easement
- Allows for the selection of a "principal" landowner who is responsible for implementing the conservation plan
- Provides a list of attachments that may be included in the plan and briefly describes the state's cost-sharing process
- SWCD signature serves as certification that the "already established" practices are in suitable condition

#### **Conservation Practice Plan**

The conservation practice plan (tab 2 of [workbook](#)) lists each of the practice areas, practice area sizes, conservation practice codes, and planned year(s) of practice installation. This form also calculates the maximum practice funds available for each practice. The practice information entered onto this form must correlate with the conservation plan map.

#### **Conservation Plan Map**

The conservation plan map must include boundaries and labeling for each of the practice areas listed on the conservation practice plan. This map must be created using the GIS shapefile of the easement boundary that has been approved by BWSR.

#### **Operations & Maintenance (O&M) Plan**

The O&M plan (tab 3 or 4 of the [workbook](#)) outlines the standard operation and maintenance activities that are required for a given easement. Tab 3 of the workbook contains a generic O&M plan that is suitable for most easements. Tab 4 of the workbook contains an editable version of the O&M plan that can be tailored to fit atypical situations.

### **A.3. Practice Areas**

Practice areas need to be identified for the entire easement area. Separate practice areas shall be identified for each unique or isolated conservation practice that exists or will be established. Practice areas must be included on the conservation practice plan and plan map. Each practice area identified shall be numbered using the most practical and logical sequence.

### **A.4. Conservation Practice Codes and Descriptions**

The codes and general descriptions for all allowed conservation practices on an easement area are identified in Table 1 of section A. This table should be used as a guide when developing the attachments to the conservation plan. Detailed descriptions of the practice codes are provided in the standard operation and maintenance requirements.

### **A.5. Using and Combining Conservation Practices (Primary & Supporting)**

For each conservation practice area identified for the easement area, a primary conservation practice must be designated. The primary conservation practice is the permanent practice cover expected to exist on the easement in the long-term.

Some practice areas will also require the establishment of a supporting practice. Supporting practices are those that, once established, will control erosion and aid in the establishment of the primary practice. Supporting practices can be established over all or portions of the practice area. Refer to table 1 of section A to determine the eligible amounts of program cost-sharing as well as the allowable combinations of primary and supporting conservation practices.

**Table 1:** Conservation Practice Cost-Share Payment Limits & Allowable Primary/Supporting Practice Pairings

PRIMARY CONSERVATION PRACTICES		SUPPORTING CONSERVATION PRACTICES	
PRACTICE CODE	MAXIMUM \$ AMOUNT ALLOWED PER ACRE	PRACTICE CODE	MAXIMUM \$ AMOUNT ALLOWED PER ACRE
RR-1b	\$0	RR-5 RR-6 RR-7	\$0 \$0 \$0
RR-2a RR-2b	\$450 \$0	RR-5 RR-6 RR-7	\$0 \$0 \$0
RR-3a RR-3b	\$400 \$0	RR-1a RR-2a RR-5 RR-6 RR-7	\$150 \$450 \$0 \$0 \$0
RR-4a RR-4b	\$400 \$0	RR-1a RR-2a RR-5 RR-6 RR-7	\$150 \$450 \$0 \$0 \$0
RR-8	\$1,200	RR-2a	\$450
RR-11	\$400	RR-1a RR-2a	\$150 \$450
RR-12	\$0	---	---
RR-13	\$0	---	---
RR-14	\$0	---	---
RR-FP	\$0	---	---

**Conservation Practice Codes and Descriptions**

CODE	DESCRIPTION	CODE	DESCRIPTION
<b>RR-1a</b>	Introduced Grasses/Legumes To Be Established	<b>RR-5</b>	Diversion
<b>RR-1b</b>	Introduced Grasses/Legumes Already Established	<b>RR-6</b>	Erosion Control Structure
<b>RR-2a</b>	Native Grasses To Be Established	<b>RR-7</b>	Grass Waterway
<b>RR-2b</b>	Native Grasses Already Established	<b>RR-8</b>	Wetland Restoration
<b>RR-3a</b>	Tree and/or Shrub Planting To Be Established	<b>RR-11</b>	Highway Windbreak
<b>RR-3b</b>	Tree and/or Shrub Planting Already Established	<b>RR-12</b>	Wetland Creation
<b>RR-4a</b>	Field Windbreak To Be Established	<b>RR-13</b>	Existing Wetland
<b>RR-4b</b>	Field Windbreak Already Established	<b>RR-14</b>	Existing Watercourse/Ditch
		<b>RR-FP</b>	Wildlife Food Plot

## B. CONSERVATION PLAN PACKAGE DEVELOPMENT PROCEDURES

### B.1. Introduction

The SWCD technical representative works with landowner(s) to identify the locations and types of conservation practices planned for the conservation easement area. Assistance from other agencies and organizations (e.g., NRCS, DNR, USFWS, Pheasants Forever, etc.) should be sought, if necessary, when planning and identifying the conservation practices to be established. Also, use information from existing resource conservation plans (farm plans), if applicable.

Record pertinent information as discussed with landowner(s) in the file folder notes and use this information to assist your efforts in developing the conservation plan package.

### B.2. Developing the Conservation Practice Plan

Using information obtained during development of the easement application, the SWCD technical representative will need to develop the conservation practice plan. This document should be prepared following these general guidelines:

- The completed conservation practice plan must be clearly organized and typed.
- The conservation practice plan must list the practice areas in consecutive order beginning with practice area 1.
- The total amount of acres entered in the conservation practice plan must equal the total acres of the conservation easement.
- For each practice area identified on the conservation practice plan, an associated primary conservation practice is required. Supporting conservation practices, if required, should also be identified.
- Enter the year the primary and supporting conservation practices will be established. If the primary conservation practice is an existing practice enter the year of the easement application. For wetlands that were previously restored through a different program (e.g. CRP), enter the words “already restored” instead of a year.
- The maximum practice funds available will calculate automatically at the bottom of the form.
- The landowner(s) must be informed of any remaining balances. The SWCD must make sure the landowner(s) understand that this balance is their responsibility. This balance may be paid by another eligible funding source, if prior arrangements were made. Refer to section C.1 “Financial Requirements” for additional information.

### B.3. Developing the Conservation Plan Map

Developing the Conservation Plan Map should be completed prior to drafting the Conservation Practice Plan, as practice area identification and acreage calculations originate from the mapping process. This map should be developed with GIS mapping software using the boundary shapefile that was previously approved by BWSR. Acreage calculations, practice area labelling, and practice area boundary placement can easily be completed using this software.

## **B.4. Submitting the Conservation Plan Package for BWSR Review**

Prior to the landowner signing the conservation plan, the SWCD must submit a complete conservation plan package for BWSR review. A complete package includes the conservation plan workbook Excel file and a PDF of the conservation plan map. This package must be submitted at the same time as the title insurance commitment and associated documents, after the easement agreement has been fully executed. BWSR will contact the SWCD if there are any questions or requests for revision.

## **B.5. Finalizing the Conservation Plan Package**

The conservation plan should be provided to the landowner(s) for review at the time the conservation easement is being signed. The delegated principal landowner will be responsible for signing the conservation plan at that time.

In addition to the conservation plan package, the following additional items need to be developed and reviewed by the landowner(s) before signing the conservation easement and associated conservation plan. These items will be part of the conservation plan given to the landowner upon finalization of the easement. Refer to section A.2 for additional instructions regarding contents of the conservation plan.

### **Planting Plans**

All RR-1a, RR-2a, RR-3a, RR-4a, RR-11, and RR-FP conservation practices must have a written planting plan developed for each practice area.

Practice areas with the same planting requirement may be combined in one planting plan but should be so indicated. It is suggested that planting plans be developed using a copy of an aerial photo for specific planting location reference. The conservation plan map developed for the conservation plan will not likely be detailed enough for this purpose.

### **Construction Plans**

All RR-5, RR-6, RR-7, RR-8, and RR-12 conservation practices yet to be installed must have a specific construction plan developed for each conservation practice area. When necessary, planting requirements should be included in the construction plan. Multiple practice areas may be included in one construction plan.

### **Supplementary Information**

This could include specific descriptions of operation and/or maintenance plans for livestock exclusion, BWSR approved vegetative management plans, trail use (snowmobiles, horses, walking/jogging, biking; frequency of use, etc.), or any other issues concerning the easement area. Recreational use of the easement area is not regulated by the terms of the easement. However, the easement does not allow wildlife habitat to be altered. Therefore locations of above items, such as trails, should appear on the conservation plan map so they can be monitored for compliance.

All financial information should again be reviewed with the landowner(s) when the conservation easement is signed. This is especially important if the landowner(s) have any financial responsibilities associated with establishing the conservation practices, or if any revisions to the conservation practice plan have been made since the easement application was submitted.

The conservation plan is signed along with the conservation easement. However, no part of the conservation plan package should be recorded with the easement.

A copy of the signed conservation plan package should be sent to BWSR along with the recorded conservation easement and final title insurance policy. Planting plans, operation and maintenance requirements and other supporting information do not need to be submitted. A current "signed and dated" conservation plan with attachments must be kept on file at the SWCD office. A copy of the conservation plan and all attachments should be given to the landowner(s).

## B.6. Summary

APPLICATION STAGE	Discuss easement goals with the landowner. Identify current condition of vegetation and note any areas where establishment will need to occur.
AGREEMENT STAGE	After the easement agreement has been fully executed, complete and submit copies of the conservation practice plan workbook and plan map for BWSR review. Conservation plan documents must be submitted to BWSR at the same time as the title commitment.
EASEMENT SIGNING STAGE	All attachments to the conservation plan package are prepared for landowner review. The principal landowner and authorized SWCD representative sign and date conservation plan.
EASEMENT RECORDING STAGE	Do not record conservation plan or any of its attachments. Submit copies of the final "signed" conservation plan package to BWSR. Give a copy of all documents to principal landowner for implementation.

## C. CONSERVATION PLAN TECHNICAL & FINANCIAL REQUIREMENTS

### C.1. General Conservation Practice Requirements

#### Technical Requirements

An SWCD technical representative will be responsible for developing the conservation plan and attachments. They will work with the landowner(s) to select the most appropriate conservation practice(s) for the conservation easement area. The SWCD technical representative may be an SWCD technician or other representative designated by the SWCD who has an appropriate technical approval authority.

The responsibilities of the technical representative include:

- a) Preparation of the conservation plan and attachments;
- b) A technical on-site inspection/review of the proposed conservation easement and corresponding practice area(s) to assess the adequacy of the proposed practices and their compliance with the Conservation Easement Practice Specifications; and
- c) Technical certification that the approved practices has been adequately installed.

### Financial Requirements

Activities necessary to successfully establish an approved conservation practice may be eligible for easement cost-share assistance from BWSR. Cost-sharing for the conservation easement programs is only available up to the maximum payment limits shown in table 1 in part A of this section. Any actual costs that exceed the total easement cost-share funds allocated are the responsibility of the landowner(s). However, landowners can reduce their contribution to the actual costs by seeking and receiving financial assistance from other contributors (e.g., other state and federal cost-share programs, conservation organizations, etc.).

Refer to the Practice Specifications subsection of the handbook for a specific list of cost-shareable and non-cost-shareable activities associated with each conservation practice.

### C.2. Permanent Vegetative Cover -- To Be Established

RR-1a Introduce grasses and legumes (only allowed as supporting practice)

RR-2a Native grasses

### Technical Requirements

If a planned conservation practice of permanent vegetative cover (RR-2) cannot be immediately established on a practice area or is delayed for a specific management purpose and weed and/or erosion control is necessary, temporary cover must be established on the area.

Refer to the Practice Specifications section of the handbook for more information on establishing permanent vegetative cover or on establishing temporary cover.

### Financial Requirements

Cost-sharing is available through BWSR Easement programs to establish permanent vegetative cover as either a primary or supporting conservation practice. Refer to table 1 for the maximum payment limits for these practices.

The cost for establishing temporary cover prior to establishing the permanent vegetative cover is an allowed cost-shareable item. However, the costs incurred to establish temporary cover must be included as part of the RR-1 or RR-2 establishment costs; refer to the Practice Specifications subsection of the handbook for additional information.

### C.3. Permanent Vegetative Cover -- Already Established

RR-1b/RR-2b Introduced/Native Vegetative Cover - Grass and/or Legumes - Already Established

RR-3b Vegetative Cover - Trees and/or Shrubs - Already Established

RR-4b Field Windbreak Already Established

RR-13 Wetland - Existing

### Technical Requirements

Primary conservation practices of existing cover must be in adequate condition at the time of enrollment. These practices must meet the specific criteria associated with each practice as identified in the Practice Specifications subsection of the handbook. Stands of introduced grasses (RR-1b) should be converted to native species (RR-2a) whenever possible.

The RR-13 practice includes existing wetlands, wildlife ponds, and livestock ponds.

**Note:** Previously restored wetlands being enrolled into a BWSR easement program should be considered as an RR-8 practice, not an RR-13 practice.

The size of the practice area for an existing wetland (RR-13) should be greater than the wetland's water surface area since a wetland's area, when delineated, will normally extend beyond any surface water that may be present. The size of the wetland practice area should be determined using the best resources available (historic/current photos, soil maps, topography, site investigation, etc.) or other acceptable delineation methods.

Refer to the Practice Specifications subsection of the handbook for more information regarding permanent vegetative cover that is already established.

#### **Financial Requirements**

Cost-sharing is not available through BWSR Easement programs to establish or maintain any of these conservation practices; refer to the Practice Specifications subsection of the handbook for additional information.

### **C.4. Tree and/or Shrub Plantings**

RR-3a Tree and/or Shrub Planting

RR-4a Field Windbreak

RR-11 Highway Windbreak

#### **Technical Requirements**

An SWCD technical representative is responsible for developing a tree/shrub planting plan.

If the existing vegetative cover within a planned woody planting is inadequate, permanent vegetative cover shall be established. The permanent vegetative cover must be identified on the CEFW and in the conservation practice plan as a supporting RR-1a or RR-2a conservation practice. On non-erosive land, the planting of grasses between tree and/or shrub rows may be delayed to aid in their establishment. The planting of grasses shall be delayed no longer than three years after planting of the trees.

Trees and/or shrubs should not be established within the right-of-way area of any utility. It is advisable to check with the utility owner to determine if any additional right-of-way requirements may exist.

Refer to the Practice Specifications subsection of the handbook for more information regarding establishing tree and/or shrub plantings.

#### **Financial Requirements**



Cost-sharing is available through BWSR Easement programs to establish tree and/or shrub plantings as primary conservation practices only. Refer to table 1 for maximum payment limits for these practices.

A supporting practice of permanent vegetative cover (RR-1a or RR-2a) is a separate, cost-shareable item when associated with a primary practice of a tree and/or shrub planting (see C.2 and table 1).

### **C.5. Structural and/or Engineered Conservation Practices**

- RR-5 Diversion
- RR-6 Erosion Control Structure
- RR-7 Grass Waterway
- RR-8 Wetland Restoration
- RR-12 Wetland Creation
- RR-14 Existing Watercourse Drainage Ditch

#### **Technical Requirements**

A SWCD technical representative is responsible for designing, or coordinating the design, of the specified structural and/or engineered conservation practice(s). The BWSR Engineering Section must review and approve the design prior to the establishment of the conservation practice or the conveyance of the conservation easement, whichever occurs first. Existing structural and/or engineered conservation practice(s) being enrolled must be reviewed by a SWCD technical representative to determine if the practice complies with the associated practice specifications.

If a primary structural and/or engineered conservation practice (RR-8 or RR-12) cannot be immediately established on a conservation practice area and weed and/or erosion control is necessary, the practice area must be established with a temporary or permanent vegetative cover (see C.2 Technical Requirements).

The size of the practice area for wetland practices (RR-8 or RR-12) should be greater than the wetland's water surface area since a wetland's area, when delineated, will normally extend beyond any surface water that may be present. The size of the wetland practice area should be determined using the best resources available (historic/current photos, soil maps, topography, site investigation, etc.) or other accepted delineation methods.

Any supporting structural and/or engineered conservation practice (RR-5, RR-6, or RR-7) to be established must be associated with an existing or planned primary vegetative conservation practice. The associated primary conservation practice and its corresponding practice area should be the area that is best protected by the supporting practice. The size of the supporting structural and/or engineered conservation practice (RR-5, RR-6, or RR-7) should be determined and noted on the conservation practice plan as follows:

RR-5	Diversion	"0.0" acres
RR-6	Erosion Control Structure	"0.0" acres
RR-7	Grass Waterway	"0.0" acres

Refer to the Practice Specifications subsection of the handbook for more information on establishing structural and/or engineered conservation practices.

### Financial Requirements

Cost-sharing is available through BWSR Easement programs to establish structural and/or engineered conservation practices (RR-8) as primary conservation practices only. Refer to table 1 for maximum payment limits for these practices.

A supporting conservation practice of permanent vegetative cover (RR-1a or RR-2a) is a separate, cost-shareable item when associated with a primary structural and/or engineered conservation practice (see C.2 and table 1). The cost of establishing the supporting conservation practice of permanent vegetative cover should remain separate from the cost of the primary structural and/or engineered conservation practice.

The cost of establishing temporary cover is only cost-shareable if included in the total overall construction cost of the primary structural and/or engineered conservation practice.

Cost-sharing is not available through BWSR Easement programs to construct supporting structural and/or engineered conservation practices (RR-5, RR-6, or RR-7). However, the cost of establishing the associated primary vegetative conservation practices is cost-shareable (see C.2 and table 1). Other funding sources should be sought to help finance the establishment of these supporting practices (e.g. other state and federal cost-share programs, conservation organizations, etc.).

## C.6. Wildlife Food Plot

RR-FP Wildlife Food Plot

### Technical Requirements

Food plots do not need a permanent vegetative cover as long as they are managed and maintained for wildlife. A temporary cover must be established on the practice area if weed and/or erosion control is necessary and the food plot cannot be immediately planted.

Not all sites require or will support a food plot due to location or topography (narrow riparian areas, slopes in excess of 6%, or wetness would be examples). Food plots should not exceed 10% of the easement acreage or 5 acres, whichever is less. If desired food plot acreage exceeds this amount, the BWSR Easement Section Manager will need to consider its approval.

If a food plot is discontinued, it must be immediately established to a permanent vegetative cover and the associated establishment costs are the responsibility of the landowner(s).

Refer to the Practice Specifications subsection of the handbook for more information on establishing wildlife food plots.

### Financial Requirements

Cost-sharing is not available through BWSR Easement programs to establish food plots or temporary cover on the food plot area.

## **C.7. Uncompensated (Donated) Land**

### **Technical Requirements**

Land donated to a conservation easement must have, or be established to, permanent cover. Any allowable combination of the conservation practices identified in table 1 may be applied on donated lands.

### **Financial Requirements**

Cost-sharing, up to the maximum limits shown in table 1, is available through BWSR Easement programs for conservation practices established on the donated portion of the easement area.

## **C.8. Livestock Exclusion**

### **Technical Requirements**

Any measures needed to exclude livestock from the easement area should be included as a specific additional item "Livestock Exclusion Plan" to the conservation plan package. A description of all necessary measures including planting requirements and/or other supplementary information should be provided.

### **Financial Requirements**

Cost-sharing is not available through BWSR Easement programs to establish any fences, gates, or stream crossings to exclude livestock from the easement area. All costs for any necessary measures to exclude livestock are at the expense of the landowner(s). Other funding sources should be sought to help finance the exclusion of livestock (e.g., other state and federal cost-share programs, conservation organizations, etc.).

## **C.9. Operation and Maintenance**

### **Technical Requirements**

All activities required or necessary to comply with operation and maintenance requirements of a conservation practice are typically the responsibility of the landowner. The state and/or SWCD will provide technical assistance to the landowner when necessary. These activities include items such as controlled burning, noxious weed control, mowing around trees, etc. Reseeding, replanting, and repairing practices that failed for reasons within the landowner(s) control are also considered operation and maintenance activities.

Refer to the Practice Specifications subsection of the handbook for more information regarding allowable operation and maintenance activities associated with each conservation practice.

### **Financial Requirements**

Refer to the Conservation Plan Implementation subsection of the Implementation Stage section and the Practice Specifications subsection of the handbook for additional information regarding availability of cost-sharing for operation and maintenance activities.

# Flowage Easements

RIM Handbook

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## A. OVERVIEW

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[D.1. General](#)

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## **A. OVERVIEW**

### **A.1. General**

These instructions should be used to prepare flowage easements if needed to accompany conservation easements when restoring drained wetlands. A flowage easement secures the right for the state to temporarily or permanently flood an area as a result of restoring a drained wetland. With the exception of access rights to and flooding of the flowage easement area, no other rights are acquired as part of the easement. The only restriction placed on the property is that the landowner cannot appropriate or drain waters from the flowage easement area without written approval from the State.

Flowage easements provide landowners who do not want a conservation easement with another option to cooperate with neighboring landowners on a wetland restoration project. It is a good tool to use for many areas alongside wetland restoration projects where securing conservation easements is not an option or just not necessary for the site. When conditions permit, the flowage easement area can be cropped, pastured or hayed. A flowage easement alone cannot be used to restore a drained wetland. It must coincide with at least one conservation easement either with the same landowner or with a neighboring landowner. Since there is typically no compensation given for flowage easements, they can be taken on lands enrolled into other programs including CRP without termination from the program.

### **A.2. Payment for Flowage Easements**

Because flowage easements do not restrict agricultural activities on the easement area, they are typically donated to the State with no compensation made to the landowner. However, the State does have the option to pay for flowage easements in cases where it is deemed absolutely necessary to complete a high priority wetland restoration project. Payment terms for such situations would be made on a case by case basis. Conservation groups or other third-party supporters of a project could also compensate the landowner upon the successful acquisition by the State of a donated flowage easement.

The State will, in certain situations, pay for the cost of updating the landowner's abstract when doing so for securing a flowage easement. Refer to Processing Procedures in sections C and D below for more information regarding this item.

### **A.3. Flowage Easement Area**

The area included in a flowage easement is typically described as the area being below a certain elevation as defined from the topographic survey of the site. The elevation reference in the flowage easement document must be at a mean sea level datum. The elevation chosen for the flowage easement boundary is typically two feet above the planned restored wetland elevation. However, certain situations will allow this elevation difference to be lower than two feet and some will require it be more. Factors such as soils, hydrology, hydraulics and topography will all affect the elevation chosen for the flowage easement. Work with easement program staff to establish the proper flowage easement elevation.

If tying the site into mean sea level datum is not possible or practical, the State can describe the flowage easement area much the same way it describes the area for a conservation easement.

## **B. APPLICATION PROCEDURE**

## B.1. Flowage Easement Application Information

Flowage easement applications should be submitted during a normal sign-up period along with the associated conservation easement application(s) for the project. However, the State will accept the application for a flowage easement at any time should the need for it be determined after acceptance of the adjoining conservation easement(s).

The general [Conservation Easement Application](#) form should be completed and signed when submitting a flowage easement application. A separate easement number should be designated for the flowage easement application.

## B.2. Necessary Site Information

For flowage easements, very little site-specific information is required at the application stage. The approximate acreage of the flowage easement area should be indicated on the application form. An aerial photo should be submitted showing the approximate flowage easement area in relation to the adjoining wetland restoration conservation easement(s). The proposed wetland restoration boundary should be depicted as well.

It is likely that the exact area and elevation required for the flowage easement boundary will not be known at the time the application is submitted. Therefore, it is not required to have the site tied to mean sea level datum at this time. This can be done after the project is approved for funding.

## C. PROCESSING PROCEDURES - SAME LANDOWNER

### C.1. General

Follow the procedures in this section when processing a flowage easement and a conservation easement with the same landowner on the same parcel of land. If the two easements are being processed concurrently, the flowage easement acquisition process will follow along with the conservation easement acquisition process eliminating the duplication of several steps.

### C.2. Basic Steps

**Step #1** As part of preparing the agreement package for the conservation easement, identify clearly on the aerial photo being submitted the flowage easement boundary in relation to the conservation easement boundary. Refer to the Preparing an Application Package subsection of the Application Stage section of the handbook for more information regarding this step. This step is important in that the boundary of described lands used to create the conservation easement's legal description will need to include the flowage easement area. Some modification of the flowage easement boundary will still be allowed as the elevation for it is likely still being determined.

**Step #2** As part of developing the agreement documents for the conservation easement, BWSR staff will also prepare the legal description for the flowage easement.

**Step #3** Follow Section B, Title Insurance, in the Easement Stage section of the handbook for instructions on purchasing title insurance policies. When requesting the title insurance commitment, be sure to inform the title agent that two easements are being processed and the conservation easement's legal description also includes the area of the flowage easement. The agent should prepare one commitment covering both easements. If the flowage easement is being

donated, the value of the conservation easement should be used to determine the amount of title insurance requested. If payment is also being made for the flowage easement, increase the amount of title insurance accordingly.

SWCD expenses incurred when purchasing title insurance are reimbursable. Refer to Section C, State Reimbursement for Title Insurance Expenses, in the Easement Stage section of the handbook. When the landowner is granting both a flowage easement and a paid conservation easement, **the landowner will not be reimbursed for the costs of updating the abstract.**

**Step #4** After approval of the title insurance commitment, BWSR will prepare the flowage easement exhibit A and both easement documents and will send them to the SWCD for signatures and recording. Be sure that both easements are recorded at the same time and that they are covered in the same final title policy. The cost of recording is also reimbursable to the SWCD.

## D. PROCESSING PROCEDURES - DIFFERENT LANDOWNER

### D.1. General

Follow the procedures in this section when processing a flowage easement with a neighboring landowner who is not also granting a paid conservation easement.

The procedures under this scenario are slightly different to those procedures in Part C above. These procedures will require you to utilize and follow several parts of the processing framework established for securing a conservation easement. Process the flowage easement in a timely fashion so it follows closely with the other easement(s) associated with the project.

### D.2. Basic Steps

**Step #1** Submit the following items as they relate to the flowage easement area:

- ❖ A completed Agreement Information Form. This will include all of side one and the applicable portions (if any) of side two.
- ❖ A copy of the deed for the land.
- ❖ An aerial photo accurately depicting the flowage easement boundary in relation to the boundary of the adjoining conservation easement(s).

Upon review of this information, BWSR easement staff will notify the SWCD if any additional information is needed. For more information regarding these items, refer to the Preparing an Application Package Section of the Application Stage section of the handbook.

**Step #2** BWSR staff will prepare the legal description for the flowage easement. This information will be returned to the SWCD so title insurance can be requested.

**Step #3** To request title insurance for the flowage easement area, follow Section B Title Insurance of the Easement Stage section of the handbook. If the flowage easement is being donated, coordinate with BWSR staff to determine the amount of title insurance required for the title insurance policy. If payment is being made for the flowage easement, that payment value will determine the amount of title insurance requested for the flowage easement's title policy.

SWCD expenses incurred when purchasing title insurance are reimbursable. Under this “different landowner” procedure for processing a flowage easement, **the cost of updating the abstract is reimbursable if the flowage easement is being donated.** The SWCD will initially incur the expense of updating the abstract for the landowner and should submit a request for reimbursement. Refer to Section C, State Reimbursement for Title Insurance Expenses, of the Easement Stage section of the handbook for more information regarding reimbursement procedures.

**Step #4**

After approval of the title insurance commitment, BWSR will prepare the Exhibit A and send it, along with the flowage easement and legal description, to the SWCD for signatures and recording. Be sure that all easements associated with the project are recorded at the same time. The cost of recording is also reimbursable to the SWCD.



# Easement Stage: Title Insurance Development and Execution

RIM Handbook

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## A. CONSERVATION EASEMENT

### A.1. Overview

The conservation easement is the official document that conveys cropping, grazing and other land control rights to the state and requires the landowner(s) to establish and maintain the conservation practices that have been agreed to and identified in the conservation plan. The easement cites BWSR's authority to acquire and enforce the easement and specifies the obligations of the current and future landowners. Please familiarize yourself with the language of the easement.

### A.2. Steps to Developing the Conservation Easement

The three required steps to develop and execute the conservation easement are:

- 1) Obtaining title insurance on behalf of the state (see item B.3 of this section)
- 2) Preparing the easement document
- 3) Finalizing the document (landowner signatures and recording)

## B. TITLE INSURANCE

### B.1. Definitions

Some of the commonly referred to terms associated with property titles and title insurance are listed below.

**Abstract of Title** – a condensed history or summary of all the transactions affecting a particular tract of land. It is not a title.

**Abstract Property** - property for which the history of all transactions affecting the land are summarized in a cumulative list that forms the abstract of title (see above). Thus, it is possible to trace the chain of title to the abstract property. (Contrast with Torrens property definition below). Most RIM/PWP applications involve abstract property.

**Access** – the right to enter (ingress) and leave (egress) the enrolled lands. This includes the right to cross over lands not enrolled in the program to reach the easement area from a public road.

**Chain of Title** - a term applied to the past series of transactions and documents transferring the title to a particular parcel of land.

**Clear Title** - a title not subject to objectionable liens or encumbrances.

**Clouded Title** - a title with one or more encumbrances.

**Deed** - a document by which the ownership of land is transferred from one owner to another.

**Encumbrance** - a lien or property right held by another entity such as, but not limited to, a mortgage, delinquent taxes, or an easement.

**Endorsement** - a written agreement by the title insurance company to remove or change an exception or other item from the title insurance commitment or final policy.

**Exceptions** - items listed in the *Schedule B* of the title insurance commitment or the final policy which are identified as being excluded from the policy's coverage.

**Lien** - a creditor's hold, a claim or a charge against the debtor's land held as security for repayment of a debt.

**Marketable Title** - a clear title free from reasonable doubt (see Clear Title).

**Mortgage** - an instrument used to encumber land as security for a debt.

**Title** - the evidence or right which a person has to the ownership and possession of land.

**Title Insurance** - insurance against the loss or damage resulting from defects or failure of title to a particular parcel of real property.

**Title Insurance Commitment** - the title insurance company's agreement to issue a final title insurance policy. It is treated as an initial title report on the property.

**Title Search** - an examination of public records to disclose the current facts regarding ownership of real estate.

**Torrens or Registered Property** - property that the landowner has registered through a judicial proceeding in order to clarify the public records on ownership of the property. A certificate of title is issued to show the current owner and outstanding encumbrances against the property. Most RIM/PWP land is *not* Torrens or registered property.

## B.2. Title Insurance Overview

Title insurance is purchased by the state to ensure that the owner of property being proposed for a conservation easement has marketable title. The company issuing the policy defends and/or compensates the state if any title problem not excepted from coverage arises that affects the state's ability to enforce the terms of the easement. Title insurance is purchased by the state because it:

- supplies the required legal review and examination of the property title
- identifies any existing liens and other encumbrances on the property
- verifies that the applicant owns the legally described easement area
- avoids the expensive process of sending bulky, valuable, and fragile property abstracts back and forth in the mail
- minimizes attorney general staff review time by identifying the important legal items that need attention

Once the state is satisfied that the title is (or will be) cleared of objectionable encumbrances, a conservation easement will be generated by the state and forwarded to the SWCD for execution.

## B.3. Steps to Obtaining Title Insurance

Steps required to obtain title insurance:

- Update the abstract-see Abstract Flow Chart found within the "Title Insurance Procedures" portion of the Handbook

- Order title insurance-see “Title Insurance Procedures” portion of the Handbook
- Review title insurance commitments
- Resolve problems
- Obtain final policy

#### **B.4. Updating the Property Record (Abstract or Torrens Certificate)**

Ownership of a tract of land is recorded in a document called an abstract, or, less commonly, on a certificate of title if the property is Torrens (registered). These documents list all of the transactions that have occurred involving the legally described tract of land, including the sale or subdivision of the land (abstract property only), as well as the placement of mortgages, liens, judgments or other encumbrances on the land. Updating the abstract or certificate of title makes the state aware of *most* encumbrances on the land prior to finalizing the easement. Note, however, that the title insurance agent will need to check the most current public records for taxes, judgments and other liens that may have attached to the property since the abstract or certificate of title was issued.

Updating the property record is the responsibility of the seller in the typical real estate transaction. Likewise, the landowner is required to incur the expenses associated with updating the property's abstract (except in the case of flowage easements). The updating process should be initiated after the landowner receives the finalized conservation easement agreement. It is important not to update the abstract too far in advance of requesting title insurance because transactions may be missed, and the agent may require another update before proceeding (please see abstract flow chart for more information about when or when not to update abstract). The landowner should promptly deliver the updated abstract or certificate of title to the SWCD. When leaving the abstract with the SWCD, a landowner should be provided with acknowledgment that the document was received (i.e., make a copy of the abstract face, write the date it was received and sign it as the SWCD representative).

#### **B.5. Ordering Title Insurance**

The SWCD should complete a “[Title Insurance Request Form](#)”, with necessary supporting documents attached, and deliver it, along with the updated abstract (-see Abstract Flow Chart within the “Title Insurance Procedures” portion of the Handbook), to the title agent. Information required to complete the form includes:

- the correctly spelled name(s) of the easement applicant(s) as shown on the conservation agreement form
- the correct amount of title insurance which is equal to the conservation easement payment as shown on the conservation easement agreement
- the legal description and Exhibit ‘A’ map from the conservation easement agreement
- a copy of the State’s Specimen Title Insurance Policy

Please make sure that the title company you are working with has a copy of the State of Minnesota, Conservation Easement Program, Title Insurance Procedures.

The title insurance agent will first prepare a commitment to insure the title. This will be treated as a report on the condition of the title and will be reviewed by the SWCD, BWSR and attorney general's office representative. Once the commitment has been reviewed and is acceptable to the state, a final title policy will be requested in conjunction with the recording of the conservation easement.

#### **B.6. Title Insurance Commitment - Schedule A**

The Schedule A is part of the commitment for the title insurance document that conveys the general information

of the policy, such as the policy type, effective date, insured party, property title and description.

The district's review of Schedule "A" should focus on identifying problems prior to submitting the commitment to BWSR for review:

**Fee title holder(s)**

If the landowner's names (fee owner) of the property are listed differently from what is shown on the signed conservation easement agreement form, call BWSR title staff for assistance to correct the problem.

**Name of insured and interest to be insured**

The name of the insured party shown on the commitment must be stated as *The State of Minnesota, Board of Water and Soil Resources*. The interest to be insured must be identified as a *conservation easement*. This is often done incorrectly because agents are used to writing policies for home buyers. If either of these items are not correct the SWCD should immediately speak with the agent to get this corrected. An endorsement to the commitment or new Schedule A may be completed and sent to you. Or it may be decided that this error will be corrected and shown on the final policy.

**Amount of title insurance coverage**

The correct amount of title insurance is 100% of the state's easement payment amount. Be sure to indicate the correct amount when requesting title insurance and let your title insurance agent know if it changes.

**Legal description**

The legal description within the commitment must match BWSR's legal exactly. This means that the agent should make reference on the Schedule A under item 4, to the BWSR legal and Exhibit 'A' map being attached. The agent should attach an exact copy of the legal and Exhibit 'A' map, rather than re-typing the legal and not attaching the Exhibit 'A' map. Both the legal and Exhibit 'A' map must be attached because together they properly convey the easement area. Neither are stand-alone documents.

**B.7. Title Insurance Commitment - Schedule B**

The title agent's examination of the updated abstract and other pertinent records determines the items that are too great a risk for the company to insure. Items that will not be covered by the insurance policy will be listed as an exception in Schedule B of the commitment.

The title insurance commitment Schedule B can be modified by doing the work necessary to convince the title insurance company that the exception is no longer a problem. When a title company is satisfied that an exception is no longer a problem (i.e., a utility company has released the area from their blanket easement) they issue an endorsement, a new Schedule A or B, or they agree in writing that the appropriate changes or corrections will be shown on the final title insurance policy. BWSR title staff will work with the SWCD to determine the appropriate action to correct issues within the commitment.

There are many types of exceptions that can be listed on the Schedule B. Not all exceptions will preclude the state from acquiring the conservation easement. However, any exception that adversely affects the conservation easement, or will be adversely affected by the easement, must be satisfactorily addressed. If an objectionable exception cannot be resolved, BWSR may not be legally able to complete the easement acquisition.

Various methods can be employed to address Schedule B problems:

- Obtain a release whereby the other party relinquishes its interest in the land covered by the conservation easement.
- Obtain a consent whereby the other party agrees that its interest will be subordinate to the conservation easement.
- BWSR and other party with an interest in the land enter into "non-disturbance" agreement whereby both parties agree not to adversely affect the other party's interest in the land.
- Exclude the acreage where the problem exists from the conservation easement legal description.
- Do not take the easement because the risk is too high that the easement area will be adversely affected.

Below is a list of exceptions frequently listed on the commitment, along with general guidelines on how to handle the exceptions. If an exception appears that is not listed below please contact BWSR title staff for instructions on how to address it.

### **Financial Encumbrances – Mortgages, Assignments, etc.**

Prior to developing the agreement, the SWCD or landowner should have contacted any lending institutions with a mortgage on the property. Upon receiving the commitment the SWCD should check the Schedule B exceptions for mortgages. The SWCD must coordinate with the landowner to obtain the lender's signature on a Mortgage Subordination Agreement. There are multiple versions of this form on BWSR's website. See the [Mortgage Subordination Tips](#) document on BWSR's website for additional information

If there is difficulty obtaining signatures from a bank on the State's Mortgage Subordination Agreement document, please refer to our [Mortgage Subordination Fact Sheet](#) found on BWSR's Easement Forms webpage. This document explains what a mortgage subordination is and why it's needed. The SWCD can relay this information to a bank to help them understand why subordination is required in order for the State to continue the processing of an easement.

If the lender has signed a Mortgage Subordination Agreement contingent upon their name being listed as a co-payee on the easement check, and they were not listed as such on the agreement, please send a letter from the landowner indicating that the state must include their name on the easement check.

BWSR cannot proceed with developing the easement if a subordination agreement is missing. ***Subordination agreements are recorded by the title agent, along with the easement. Retain the original for recording and send only copies to BWSR easement staff.***

A Schedule B exception for a contract for deed does not require consent or subordination. Instead, all parties to the contract for deed must sign the easement as grantors. If the contract for deed was listed as a Schedule B exception, you must work with your title agent to ensure it will not appear on the final title insurance policy as an exception.

### **Mineral Rights**

Mineral rights are part of the total ownership of a piece of property. If the mineral rights have been severed from the surface rights (i.e., the mineral rights belong to someone other than the fee title landowner), then the mineral rights holder may be able to destroy the surface of the land without compensating the landowner. The only mineral rights reservations that are never a problem are those owned by the State of Minnesota.

If the SWCD finds an exception for mineral rights in the commitment, be sure a copy of the documents severing the mineral rights is included with the commitment when it is submitted to BWSR. BWSR title staff will work with the SWCD to remove this type of exception from the commitment.

See the Severed Mineral Rights Policy and Procedures document for additional details.

### **Wells and Environmental Problems**

State law requires that BWSR make a diligent effort to be sure that no environmental problems exist at the time of the easement is finalized. Environmental problems that could be listed as an exception are:

- an agreement by one landowner to supply water to another landowner
- an abandoned well or observation well
- an old dump or closed landfill on or adjacent to the easement area

Environmental exceptions require that a copy of the documents referred to in the commitment be submitted to BWSR for review along with the commitment.

Environmental problems identified in the Application Stage, and the agreed upon action to resolve the problem developed between the landowner and the district in the Agreement Stage, require that the SWCD verify that the problem(s) have been satisfactorily resolved. A brief explanation of the problem and the resolution actions taken, along with a statement indicating that the SWCDs feels the problem has been resolved, must accompany the title commitment. The easement cannot be recorded until these problems are adequately resolved.

### **Property Taxes and Assessments**

State law requires that all taxes be paid on the property to be acquired for a conservation easement. If the commitment shows an exception for delinquent taxes the exception will have to be addressed and removed for the final policy. In most cases, removal of the exception will require documentation from the county auditor's office showing that the delinquent taxes have been paid. This also applies to special assessments unless they are assessed over a number of years (e.g. 15 years) and each installment has been paid (i.e., nothing delinquent). If the commitment exception shows the remaining balance of delinquent taxes or special assessments, no additional information needs to be sent to BWSR with the title commitment. BWSR staff will work with SWCDs to resolve these exceptions.

### **Other Conservation Easements**

There are other types of conservation easements, such as a U.S. Fish and Wildlife waterfowl area management easement, which may duplicate or conflict with, all or part of BWSR's easement. The terms of the other conservation easement will have to be reviewed to assure that they do not substantially duplicate the terms of the state's conservation easement. The SWCD should obtain a copy of the other conservation easement document and send it to BWSR for review with the title commitment.

### **Right-of-Way Easements (roads, railroads, ditches, protected waters, etc.)**

All rights of way for roads, railroads, ditches etc. must be excluded from the conservation easement area by sending BWSR a shapefile with these areas excluded. BWSR will in turn except them from the written legal description of the conservation easement. BWSR will contact you if additional information is necessary for these exceptions.

### **Electric, Telephone or Other Utility Easements**

All utility easements are a potential concern since typically they are blanket easements that cover an entire quarter section and do not confine the actual installed utility line to a specific location. Thus, it is necessary to

send BWSR a copy of each electric, telephone or other utility easement for review and to determine next steps. It is also helpful to send in a map with the utility location shown, if possible.

All blanket easements must be confined. Confinement requests can be completed by filling out the [“Utility Confinement/Release” letter](#) found under General Forms.

It is important to attach a copy of the conservation easement Exhibit ‘A’ map and legal, as well as a copy of the utility easement the company holds, so that they know what easement of theirs we are concerned with and how it relates to the location of the conservation easement.

If the utility easement is already confined, you still must send in a copy of the utility easement for BWSR’s review so that a determination can be made about how or if the utility easement will adversely affect the conservation easement. BWSR may request additional information to help with this determination. An example of a conflict between the utility easement and the conservation easement would be, if the conservation plan identified a tree planting that would likely interfere with electric lines. To resolve this problem, BWSR would request the SWCD modify the conservation plan and possibly even the easement to assure that trees would not be planted in that location.

In addition, there are many times that after sending in a request to confine a utility easement, the company may draft and record a “Release of Easement” because it is found that their utility line either was never installed, or it does not cross the conservation easement.

### **Pipeline Easements**

All pipeline easements are potential problems on a conservation easement. This is because most pipeline easements are typically blanket easements that cover an entire quarter section.

*Just as in the case of electric, telephone or other utility easements, a request to confine or release may be needed. A copy of the pipeline easement must be sent to BWSR for review, along with the title commitment, and to determine next steps. This requirement applies whether the pipeline is confined or not.*

For wetland restoration easements, more work may be required of the SWCD in order to minimize the potential conflicts between the two easements. Any additional information needed will be requested by the BWSR office, which may decide that an agreement is necessary between the state and the pipeline company to protect both easements.

### **Drainage Agreements/Easements**

Any exception listed on the commitment relating to drainage agreements/easements must have the referenced documents submitted to BWSR for review. The SWCD will have to identify the location of the drainage areas or tile lines referred to in the exception on a copy of an Exhibit A map or preferably on an aerial photo. If the conservation easement includes a wetland restoration or is a PWP, this type of exception will have to be reviewed even more carefully to be sure the wetland does not affect the drainage agreement and vice versa.

The SWCD will need to make the landowner(s) aware of their responsibility for the perpetual maintenance of the easement area. If a tile or drainage system in the easement area needs repair, any resulting damage to the vegetation on the conservation easement is the landowner's responsibility to repair to comply with the terms of the conservation easement. If additional information is necessary the BWSR office will request it from the SWCD.

## **B.8. Final Title Insurance Policy**



When all changes and/or endorsements necessary to provide the state with a good title have been made to the title insurance commitment, the conservation easement will be sent to the SWCD for signature and recording. Prior to recording the easement and associated documents, the title agent must check the public records for any taxes, judgments or other encumbrances that have attached to the property since the date of the commitment. If none have occurred the title agent should record the easement and associated documents and prepare the final title insurance policy. The amount of the policy should be equal to the easement payment. When the recorded easement and final policy are received at BWSR they are reviewed to be sure that there are no new exceptions, and to be sure that no errors have occurred. If no problems are found, the Final Title Insurance Policy is approved and the landowner is paid.

## **B.9 Frequent Problems with Title Insurance Policies**

The four most frequently occurring final title insurance policy problems that have required policy endorsement before final approval and landowner payment can be made by the State are listed below. Each of these problems includes a reference to the page and item of the Specimen Policy that addresses that specific problem.

### **Final Title Insurance Policy is for an Incorrect Amount**

The policy should be issued for the amount of the easement payment. Issuing the final policy based on the value given in the recorded easement will always result in the correct policy amount. (See Schedule A of the [Specimen Policy](#).)

### **Ownership Interests – Fee Title and Easement**

*Problem* - The final title insurance policy either does not specify the State of Minnesota as the owner of the Conservation Easement and/or does not specify the fee owner(s) of the property where the easement is located. To avoid this problem use the wording on Schedule A, item 3 of the [Specimen Policy](#). If the ownership is subject to a contract for deed it should be listed here and not in Schedule B as an exception.

### **General Legal Descriptions**

*Problem* - The final title insurance policy includes an exception for a general legal description that is written to apply to all easement areas including those that in whole or part are described by a specific legal description. The State will not approve an exception for a general legal description except when an easement area has a complete general description (i.e., beginning with "Part of"). To avoid this problem completely, please use the specific language in the [Specimen Policy](#) that covers both general and specific legal description situations. This specific language can be found in item 2, Special Exceptions, on Schedule B of the Specimen Policy.

### **Subordination Agreements**

*Problem* – The final title insurance policy lists a mortgage as an exception but does not acknowledge the mortgage subordination to the conservation easement prepared by the mortgage lender and/or does not utilize the language of the Specimen Policy insuring that the mortgage is subordinate to the easement. To avoid the mortgage and subordination consent problem, use the language provided in the [Specimen Policy](#). The ‘subordinate language’ can be found in item 3, Special Exceptions, on Schedule B of the Specimen Policy.

All efforts to minimize these problems in final title insurance policies will be appreciated and will help speed up the conservation easement process for everyone.

## **C. EASEMENT RECORDING AND PAYMENT**

The final conservation easement document will be produced by BWSR upon satisfactory resolution of problems identified on the title insurance commitment.

### **C.1. Signing and Recording**

The SWCD should review the conservation easement document upon receipt from BWSR. Check to make sure names are spelled correctly, the correct marital status is listed, the easement payment is correct and the legal description and Exhibit A are consistent with what the landowner has agreed to. It is very important to review the terms and conditions of the easement with the grantors. Make sure they understand these terms.

If easement boundaries have not been staked with posts in the field using the BWSR supplied ArcGIS shapefile boundary already, this will need to be done as soon as possible and when field conditions are suitable. Permanent posts should be placed with RIM signs attached at all easement corners, and a minimum of every 500 feet along straight and curvilinear boundaries. Use larger RIM signs on posts where the public is apt to encounter easement land, and small signs on all other posts.

In addition, review the conservation plan, practice plan, plan map and other pertinent documents relating to the installation/establishment and maintenance of conservation practices with the landowners. Have the principal landowner sign the conservation plan. Make sure the landowners are aware of the dollar amounts available to cost-share the establishment of the practices, particularly if the amount has changed between the time the Agreement was signed and by the time the Easement will be signed. Have the landowner(s) sign and notarize the conservation easement.

It is highly recommended that the title agent, rather than SWCD staff, record the Easement. Once the SWCD has the fully executed Easement in hand, they should deliver the Easement (and any other documents needing to be recorded, such as mortgage subordination agreements) either in person to the title agent, or via certified mail. The landowner should never be given the direction to record an easement themselves. In order for the SWCD to be reimbursed by BWSR for the recording of the Easement, they need to require the title agent to obtain a receipt for the recording so that it may be attached to the Reimbursement Request Form and sent in to BWSR.

The SWCD must not deliver the fully executed Easement document to the title agent to record if the landowner has not adequately resolved environmental problems, abandoned wells or structures on the easement area.

### **C.2. IRS Reporting Information**

The conveyance of a perpetual conservation easement is considered to be a real estate transaction by the IRS and may be subject to capital gains tax. Make sure that all grantors are aware that the full amount of the easement payment will be reported to the IRS corresponding to the year the payment is made. Where an easement has multiple grantors, a 1099S Information Form will be included with the easement documents and must be filled out indicating how much (including zero) of the total easement payment will be paid to each individual (married couples are considered the same as individuals). Failure to fill out and submit the 1099S Information Forms will result in the easement payment being withheld. Therefore, the distribution forms must be submitted to BWSR with the recorded easement.

### **C.3. Submitting for Payment**

In order for the state to make the easement payment all of the following documents must be submitted to BWSR, and BWSR and the Attorney General must approve:

- Recorded easement showing the recording information, and any other recorded documents, such as mortgage subordination agreements.
- Final title insurance policy.
- A complete copy of the final signed conservation plan package
- IRS 1099S Payment Information forms (for multiple grantors only).

#### **D. STATE REIMBURSEMENT FOR TITLE INSURANCE EXPENSES**

The state will reimburse the SWCD for expenses incurred relating to the purchase of the title insurance policy and the cost of recording the easement documents. The state will not reimburse landowners for the expense of updating their abstract or torrens certificate except when associated with a flowage easement. A [Reimbursement Request Form](#) can be found on the BWSR website under “Easement Forms.”

Following landowner payment for the easement, SWCD personnel should submit this form to BWSR for reimbursement. The state cannot reimburse the SWCD for title insurance expenses until after the title insurance policy has been accepted by BWSR and the Attorney General’s office and the easement has been paid. Thus, the SWCD must wait to submit reimbursement requests until after they have received BWSR’s email payment notification.

Attach supporting documentation to the reimbursement request (invoice). Supporting documentation may include invoices and proof of payment documentation. For more information on SWCD reimbursable expenses refer to the Processing Framework section of the handbook.

# Title Insurance Procedures

RIM Handbook

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## A. GENERAL MATTERS

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[A.2. Contact Person\(s\)](#)

[A.3. State Costs](#)

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## B. TITLE COMMITMENT

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[B.6. Title Clearance](#)

[B.7. Recording & Delivery of Easement & Final Policy](#)

## **A. GENERAL MATTERS**

### **A.1. Final Policy Form**

The final policy issued shall be an ALTA OWNERS POLICY 1987 (6-17-06), in a form and with such endorsements as approved by the State. The date of the final Title Insurance Policy shall be the same date as the recording date of the State's easement.

### **A.2. Contact Person(s)**

Soil and Water Conservation District (SWCD) personnel will act on behalf of BWSR to obtain title insurance from local agents. For purposes of title insurance, all easements acquired under the RIM umbrella are considered substantively similar and will be collectively referred to herein as "Conservation Easements." It is strongly suggested that each local title agent have one or two individuals at their company's corporate level who have authority to:

- Direct the company's agents to delete exceptions
- Issue marked up commitments
- Provide necessary coverage and issue policies acceptable to the State of Minnesota without the necessity of obtaining prior approval from others within the company

SWCD and/or BWSR staff will deal primarily with the local agent for specific policy concerns on any given easement. The BWSR staff in St. Paul will deal primarily with the contact person(s) in those instances when it is necessary.

The Attorney General will deal primarily with legal counsel for the company and the contact person(s).

### **A.3. State Costs**

- Premium as agreed upon by Company and State
- Reasonable service charges by the title agent
- The State will not pay for the creation or updating of landowner's abstract. The State will, however, pay for the cost of continuing title evidence from date of commitment to policy date only.
- Costs, if any, advanced for filing fees, recording service charges, mailing, etc. (misc. charges)
- Examination charges, if any
- Costs of providing maps and copies (non-certified) of schedule B exceptions

### **A.4. Landowner/Grantor Costs**

- Abstract updating
- Creation of title evidence if there is none or initial continuation of existing title evidence
- All costs associated with title clearance, if any, as well as charges to update an expired commitment where the expiration date was caused by landowner delays in clearing exceptions

Neither the company nor its agents will incur any other expenses on behalf of State without its prior approval.

### **A.5. Billing**

The easement grantor and the State (SWCD) are to be billed for their charges separately. The State billing will be sent to SWCD. The SWCD is responsible for review and payment of the State's bill, and will be reimbursed by the State for that payment. The State assumes no responsibility for payment of charges billed to easement grantor. The title agent agrees that issuance and delivery of the commitment or policy will not be conditioned on payment of easement grantor's bill. The State will reimburse the SWCD when a [Reimbursement Request](#), recorded easement and final title policy are delivered to and accepted by State.

The Landowner/Grantor will provide or pay for creation of initial title evidence and any continuance due to title or encumbrance problems.

## A.6. Abstract

In most cases, the grantor will be required to provide an updated abstract to the title agent. It is important for the SWCD to first check with the title agent for the need for an updated abstract before instructing the grantor to begin this work. Many agents have the ability to complete an electronic tract search. This *may* eliminate the need for a landowner to provide an updated abstract to the agent, ***but only if it does not result in additional expense to the state.***

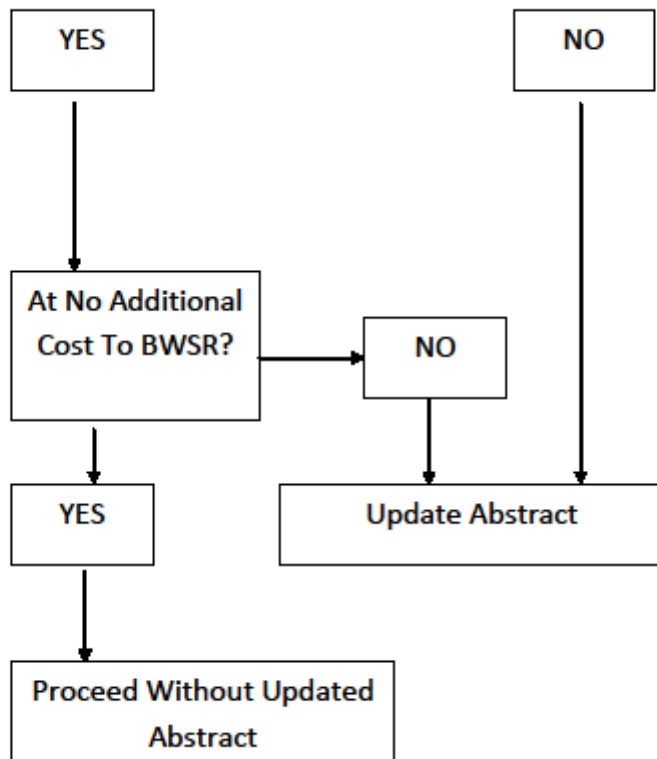
Updating of the abstract is a landowner expense. If it is determined that a landowner does need to get an abstract updated, but cannot find or does not have an abstract for their property, the landowner may work either with their own attorney or the agent hired by the SWCD to have an abstract completed. If the landowner chooses the title agent hired by the SWCD, the agent is to **bill the landowner separately** for the costs related to the updating.

Upon conclusion of transaction all title evidence is to be returned to easement grantor, provided grantor's bills are paid.

The following flow chart depicts how to determine if an abstract update is required.

*Title Insurance*  
*Abstract Updating*

**Question to Title Agent:** Can you provide a title insurance commitment and final insurance policy that meets BWSR's requirements (per Title Insurance Procedures and Specimen Policy provided) **without an updated abstract??**



## B. TITLE COMMITMENT

It is important to note that the SWCD, NOT the landowner, hires the title agent to complete title work on behalf of the State. This is because the State is the purchaser of the title insurance, NOT the landowner. Therefore, landowners may not request to use their own attorney or agent to complete this work.

### B.1. Searches

Agents are required to examine back to land patent. Forty-year searches are not acceptable for State of MN conservation easements per the 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 will be performed, including complete name searches, tax searches, levied and special assessment searches, and, where appropriate, bankruptcy searches.

### B.2. Inspection and Plat Drawing

No inspection or plat drawing necessary by agent.

### B.3. Schedule A

Insured to be listed as State of Minnesota, Board of Water and Soil Resources. The SWCD will provide the amount of insurance when ordering the policy. The amount of insurance is the total of the easement payment.

Interests to be listed as follows:

- Fee title including contract for deed information, if appropriate
- Easement interest vested in the State of Minnesota, Board of Water and Soil Resources

Please refer to the Specimen Policy for an example of an acceptable document.

### B.4. Schedule B (Exceptions)

All general exceptions will be deleted from the final policy based on a standard form Seller's Affidavit from the owner in possession, except for exceptions for taxes or special assessments not shown as existing liens by public records.

Policy is to affirmatively insure that there are no delinquent taxes through policy date.

No "general" exceptions such as zoning ordinances, "easements for roads, if any", or specific zoning ordinances (even if of record) will appear in Schedule B, except that the general exceptions appearing in the policy jacket shall apply.

The conservation easement being acquired is not to appear in Schedule BII.

On the policy, all subordinated mortgages and other liens and encumbrances should use the language as shown in the *Specimen Policy* to insure that they are subordinated to the conservation easement. This means that enforcing 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. See Specimen Policy document.



The State will permit only the approved exception shown in the [Specimen Policy](#) for loss or damage due to the general nature of the legal description contained in the easement description.

If the agent specifies that a requirement in the commitment be met before issuing the policy, the agent shall list in Schedule BI all requirements to issue policy (e.g., record subordination consent and conservation easement, etc.).

Schedule BII 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 in Schedule B).

Access is to be insured either in the policy's general insuring provisions or affirmatively in the Final Title Insurance Policy itself.

The agent shall individually list in the commitment 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 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.

## B.5. Delivery of Commitment

The agent will send the following items to the SWCD:

- A first generation copy of the commitment. The State recognizes the use of electronic signatures and so a paper original commitment is no longer necessary. The State will not, however, accept illegible or size reduced copies of commitments.
- Complete copies (non-certified) of all relevant schedule B 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 agent's duty to provide those documents. Copies of mortgages are required only upon specific request by State.

The Company/Agent must agree to deliver to the SWCD:

- A title commitment **within 14 days** after receipt of the request and evidence of title. If the title agent is not an abstractor, the Company will deliver the commitment to SWCD **within 14 days** after the non-abstractor agent receives the request and evidence of title.

Failure to meet these criteria may result in the State opting to use a different agent.

## B.6. Title Clearance

The Attorney General will determine the following:

- Which Schedule B exceptions must not appear on the policy
- What other requirements must be completed before recording of the easement can occur
- If the Commitment and Policy are acceptable and approve them as such

The SWCD and/or State will:

- Inform the easement grantor of the title company's requirements to delete each objectionable exception (Schedule B)

- In consultation with agent or contact person for the Company, discover what Company requires to delete these exceptions
- Provide the agent with all items provided by easement grantor to clear title or remove objectionable exceptions

The easement grantor shall:

- Be responsible for title clearance and satisfaction of all other requirements as communicated per the above which are a prerequisite to completing the easement acquisition
- Deliver all documents necessary to clear title, delete exceptions, subordinate liens and mortgages etc. to the SWCD (not directly to the agent) for the Attorney General's review and approval

Documents submitted to the SWCD will be forwarded to the State for approval. Once approved by the State, the SWCD will deliver said documents to the agent.

### **B.7. Recording & Delivery of Easement & Final Policy**

The SWCD is responsible for providing adequate instruction to the agent for recording of the easement and associated documents. At a minimum, the instructions provided to the agent shall include:

- A requirement to search for new encumbrances or matters (if any) arising in the "gap" period between the commitment date and the final policy date (the date of the final Title Insurance Policy shall be the same date as the recording date of the State's easement)
- Order of filing instructions
- Returning of recorded instruments (the State shall receive the original recorded RIM easement and original recorded subordination consent documents)
- Other instructions, as appropriate

**NOTE:** The instructions referred to above will be provided to the SWCD with the letter attached to the RIM Easement for signature. This letter will come from BWSR and be sent directly to the SWCD office.

Documents to be recorded include:

- Conservation easement documents
- Subordination consent document(s)
- All other clearance documents
- Notice of Funding Restrictions form (if applicable to the easement's funding source)

If 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 Agent shall notify the State immediately through the SWCD and shall not record the Conservation Easement or complete the final policy** until all issues are resolved to the satisfaction of the State.

If no changes have occurred since the title commitment, the Agent shall record the easement, issue the final title policy and send it together with a final billing to the SWCD. **The State will NOT accept a final policy with any new exceptions, i.e., exceptions that did not appear on the commitment unless previously agreed to by the State.**

- The Company/Agent agrees to deliver to the SWCD the final policy **within four business days** after the recorded conservation easement, subordination consents, etc. are received
- Failure to meet these criteria may result in the State opting to use a different agent

# Severed Mineral Rights Policy and Procedures

## RIM Handbook

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### What are severed mineral rights?

A severance is a separation of the ownership of the minerals from the ownership of the surface of the land. See the MN DNRs website for more information on [mineral rights ownership in Minnesota](#).

### How frequently are severed mineral interests found and in what parts of the state?

Mineral reservations can be found anywhere in Minnesota. However, BWSR has found that mineral reservations are more likely to occur in the central and northern part of the State. Although mineral reservations have been discovered in the southern part of the State, this occurs on a very infrequent basis.

### Who might hold these rights?

Ownership of mineral rights range from private landowners to large companies or federal agencies. BWSR has reviewed documents noting ownership of mineral rights from the following entities; private landowners, corporations such as Conoco Phillips, insurance companies, the Bureau of Land Management, the State of MN, privately owned banks such as AgriBank of St. Paul, MN and finally lumber companies.

### Why is it important for MN BWSR to address mineral reservations?

As part of protecting the State's interest in its conservation easements, mineral reservations must be addressed. It would be detrimental to an easement if a mining company exercised their rights to mine on a State conservation easement. Any restoration activities that may have occurred on the conservation easement would potentially be disturbed or completely destroyed. The best case scenario would be for the easement grantor to be in control of the mineral rights. This is because once they sign a conservation easement and it's recorded, the right to mine can no longer be exercised and therefore the conservation easement is protected.

### Policy

It is the policy of the RIM program that landowners buy back mineral rights whenever possible. BWSR staff, working through Soil and Water Conservation Districts (SWCDs), will help guide landowners on the process of obtaining 100% interest in any mineral rights found within the easement area. Providing that those mineral reservations are post January 1, 1975 (refer to MN Statute 93.55). In cases where this is not possible, BWSR staff working through SWCDs, will instruct the landowner on how to resolve their particular situation.

The following are instructions on how to handle each type of reservation that may arise:

### **Mineral reservations noted prior to 1973:**

If a mineral reservation appears as an exception on a title insurance commitment, and those rights were reserved prior to 1973, and if the owner of a mineral interest failed to file the Verified Statement required by section 93.52, before January 1, 1975, as to those interests, the mineral interest forfeited to the State of Minnesota (refer to MN Statute 93.55). BWSR accepts the risk associated with mineral rights owned by the State of MN because although the authorized agency in charge of the State held mineral rights (MN DNR) can still lease or sell those rights, BWSR is confident that two State agencies can work together to keep those rights with the State and to not exercise them within the conservation easement area. This is because both agencies have an interest in protecting a State investment, which is the conservation easement. In order to continue processing title work, it is required that the title agent add the following statement to these types of mineral reservation exceptions, “No Verified Statement regarding mineral interest pursuant to M.S.A. 93.52 appears of record.” The addition of this statement helps to confirm that the minerals were not transferred to any other party, and are in fact held by the State of MN.

### **State held mineral rights:**

If it is specifically stated in an exception on a title insurance commitment, that the State of MN owns the mineral rights within the easement area, MN BWSR can accept this risk and continue the processing of title work. No further work needs to be done. The same concept applies here as to the situation above whereas no verification statement regarding mineral interests was filed for reservations prior to 1975.

### **Severed minerals that cannot be re-purchased by easement grantor:**

When severed mineral rights cannot be re-purchased by the easement grantor, the next option is to obtain a non-disturbance agreement with the mineral rights holder. To do this, the landowner must work either with the title agent who is familiar with the issue, or with their own attorney. The choice is the landowner’s since this is a landowner responsibility and will be at their cost. BWSR can provide a sample non-disturbance agreement for the landowner to forward to the title agent or their attorney so that they can see and understand what it is that BWSR is seeking. It is important that once a non-disturbance agreement is drafted by the agent or attorney, that BWSR is forwarded a copy for the State’s Attorney General to review and approve. Once that approval has taken place, the non-disturbance agreement can be signed, notarized and recorded.

MN BWSR has an established process when working to obtain a non-disturbance agreement from AgriBank of St. Paul, MN. AgriBank is a common holder of mineral reservations that appear within title insurance commitments received by BWSR. BWSR, AgriBank and the State’s attorney general have worked together to draft a non-disturbance agreement that addresses the interests and needs of all parties.

### **Steps to be completed to obtain a non-disturbance agreement from AgriBank:**

- 1) BWSR staff will send an e-mail to the Director of Minerals Management at AgriBank containing the RIM easement location information (Section, Township, Range and County) as well as attaching the document noted in title work that talks about their mineral reservation.
  - This is an important first step, as sometimes it’s discovered that they do not hold any interest in the property. AgriBank has previously been known as the Farm Credit Bank of St. Paul, and also the Federal Land Bank of St. Paul. Through these transfers, mineral rights may or may not have been retained.

- 2) If AgriBank confirms the mineral reservations are held by them, BWSR staff shall call the SWCD office to discuss the findings and the need for a non-disturbance agreement. It will be important for the SWCD staff to inform the landowner of the requirement for a non-disturbance agreement and its cost of \$1,000 because this cost will be the landowner's.
- 3) Once the SWCD staff have informed the landowner of the situation and the landowner agrees to proceed, BWSR staff can then request AgriBank draft the non-disturbance agreement. When doing so, AgriBank may ask for a copy of the fully executed RIM agreement the landowner and the State have signed, as evidence that we are capturing the correct grantors. Given that this document is not public information, BWSR staff must contact SWCD staff and ask that the SWCD staff obtain landowner permission to send this document to AgriBank. An e-mail forwarded from SWCD staff stating that the landowner has given permission is sufficient for BWSR to forward the RIM agreement. BWSR staff should print the e-mail and add it to the title file as evidence that the landowner gave their permission.
- 4) Once AgriBank has received the necessary information to draft a non-disturbance agreement, they should be directed by BWSR staff to draft the non-disturbance agreement and to send to BWSR for review and approval before they sign and notarize.
- 5) Upon BWSR's review and approval of the non-disturbance agreement, BWSR staff should then e-mail AgriBank and notify them that the non-disturbance agreement has been approved.
- 6) In order for AgriBank to release the document to BWSR for recording by the title agent, they need \$1,000.00 paid to them by the landowner. The \$1,000.00 fee is their standard fee to complete a non-disturbance agreement. AgriBank will notify BWSR of the need for the payment from the landowner via e-mail. BWSR staff should then forward AgriBank's contact information to the SWCD. The SWCD staff will work with the landowner to forward payment to AgriBank.
- 7) Once AgriBank receives the payment from the landowner, they will send the fully executed, original non-disturbance agreement to BWSR. BWSR staff shall hold the agreement for the Attorney General's final review upon his/her review of the title insurance commitment. If the AG approves the agreement and the title work, BWSR staff should then send the fully executed, original non-disturbance agreement in the mail to the SWCD as a package along with the easement for landowner signature and recording, as well as the request for the issuance of a title insurance policy.
- 8) Finally, it is important to notify the SWCD that BWSR needs a **copy** of the recorded non-disturbance agreement as well as AgriBank. The landowner should maintain the **original recorded** non-disturbance agreement for their records.

### **Inability to obtain a non-disturbance agreement resulting in a risk assessment:**

When a non-disturbance agreement cannot be obtained then BWSR requires a risk assessment be completed by a qualified geologist. This situation has occurred in cases where minerals are reserved by the Bureau of Land Management (BLM). BLM will not sell mineral rights back to landowners and they will not complete a risk

assessment for BWSR at no cost. Currently BWSR has been working with a Precambrian Geologist from the Minnesota Geological Survey at the University of Minnesota, St. Paul to obtain free risk assessments.

To request a mineral assessment from the geologist, it is important to e-mail the Section, Township, and Range information as well as the County of the reserved mineral reservations. With this information the geologist can determine what minerals might be within the easement area and what risk it may or may not pose to BWSR. The assessment can take anywhere from a day to a few weeks.

Once an assessment is received, the assessment will come in the form of an e-mail, BWSR staff will review the assessment and make a recommendation to the Conservation Easement Section Manager to either accept the risk indicated within the assessment because there is little to no risk of mining, or to reject the risk indicated within the assessment because risk of mining is determined to be high.

MN BWSR has a form called the “Mineral Assessment Acceptance Form”, and is to be filled out by Easement staff and the Conservation Easement Section Manager, to document the risk of mining via information received from the geologist. Once this form is completed and signed by the Easement Section Manager, it will be placed in the file for documentation.

**BWSR staff is unable to obtain a risk assessment from geologist at no cost:**

The landowner is responsible for the cost to hire a geologist if an assessment of risk cannot be obtained for free. BWSR staff can help guide landowner’s through the SWCD staff, as to contact information for a qualified geologist.

August 25, 2014

**STATE OF MINNESOTA  
CONSERVATION EASEMENT PROGRAM  
SPECIMEN TITLE INSURANCE POLICY**

(Policy: ALTA OWNERS POLICY (6/17/06))

**SCHEDULE A**

NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE
	(should match exact time and date of Easement recording)	\$ (equals easement payment amount)

1. Name of Insured: STATE OF MINNESOTA,  
BOARD OF WATER AND SOIL RESOURCES
  
2. The estate or interest in the land described herein and which is covered by this policy is:
 

A Perpetual Conservation Easement. Said easement was recorded on September 10, 1991 in Book 107 of Deeds at page 310, as document number 2196 in the office of the County Recorder of Renville County.
  
3. The estate or interest referred to herein is at date of policy vested in:
  - a. Perpetual Conservation Easement in the name of the insured above.
  - b. Fee simple title in the name of John A. Smith and Mary F. Smith, husband and wife, (If contract for deed, list names of contract vendor(s) and vendee(s), together with recording information.)
  
4. The land referred to in this policy is situated in the County of Renville, State of Minnesota, and is described as follows:
 

See attached legal description and Exhibit 'A' map.

(Attach an exact copy of the State's legal description-do not re-type, and an exact copy of the State's Exhibit 'A' map to policy)



## SCHEDULE B

This policy does not insure against loss or damage by reason of the following exceptions:

### General Exceptions:

1. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
2. Taxes or special assessments which are not shown as existing liens by the public records.

### Special Exceptions:

1. Taxes and special assessments in the year \_\_\_\_\_ and thereafter. The second half of the taxes for the year \_\_\_\_\_ are \$280.00. There are no delinquent taxes or special assessments.
2. Where the legal description for a parcel, or portion thereof, contained in the recorded easement is a general description and does not specifically identify or locate either the servient real estate or the specific boundaries of the easement which is being insured hereunder, the coverage of this policy expressly excludes those matters causing loss or damage which are occasioned by the use of a general description. This exception applies only to parcels, or portions thereof, having a general description, and other parcels are not subject to this exception. Notwithstanding the foregoing and without limitation thereof, the Company hereby insures the insured that the fee owner referenced at Schedule A hereof is the recorded owner of the property described at Schedule A hereof.
3. 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:
  - a. Mortgage dated December 16, 1980, filed December 22, 1980, in Book 101 of Mortgages at page 6, executed by John D. Smith and Mary F. Smith, his wife, to the Federal Land Bank of Saint Paul (now known as Farm Credit Bank of St. Paul), given to secure the sum of \$69,000.00, due and payable according to note.
4. Environmental problems of record or of which the title insurance agent or company is aware, are as follows: None (State should be made aware of environmental problems on the title commitment.)

Countersigned and Validated

By \_\_\_\_\_  
 JAMES JONES, AUTHORIZED REPRESENTATIVE

# Conservation Plan Implementation Procedures

RIM Handbook

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## A. Conservation Plan Implementation Overview

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## B. Installing Conservation Practices

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**E. Reinstalling and Repairing Failed Conservation Practices**

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**[E.2. Cost-Share Assistance](#)**

**[E.3. Authorization of Reinstallation Activities](#)**

## A. CONSERVATION PLAN IMPLEMENTATION OVERVIEW

### A.1. General

Establishing the conservation practices identified in the conservation plan is arguably the single most important component of the easement process. The care taken to ensure that conservation practices are properly installed and maintained will pay off in healthy vigorous stands of vegetation and/or properly functioning engineering practices. Despite these efforts, conditions are not always favorable for proper establishment and circumstances sometimes require a practice to be reinstalled. Regardless of the activity, whether it be the installation, reinstallation, establishment or maintenance of a conservation practice, the SWCD is responsible to ensure the activity is properly completed and in accordance with terms of the conservation easement.

Any willful action by the landowner that is not in compliance with the conservation plan and all attachments will be considered a direct violation of the conservation easement and should be resolved following the procedures identified in the Non-Compliance/ Violation Procedures subsection of the handbook.

This subsection of the handbook defines, illustrates and provides instructions regarding the installation, reinstallation, establishment and maintenance of conservation practices as well as the procedure for using easement program cost-share funds to accomplish these components.

### A.2. Definitions

**Easement Program Cost-Sharing** refers to the payment that the state has agreed to make upon the completion and certification of any authorized installation, reinstallation, or establishment of a practice on a BWSR conservation easement.

**Establishment (Post-Installation)** refers to activities performed to a conservation practice shortly after it has been installed that are deemed necessary to ensure its adequate development.

**Installation** refers to the procedures required to construct structures, plant trees, seed grass, or provide other means of improving native habitat.

**Operation and Maintenance** refers to the continuous upkeep of a conservation practice by the landowner.

**Practice Certification** refers to the SWCD's verification that the conservation practice has been satisfactorily installed according to practice specifications and seeding, planting or construction plans.

**Reinstallation** refers to reseeding, replanting, repairing or reconstructing a conservation practice identified in the practice plan.

## B. INSTALLING CONSERVATION PRACTICES

### B.1. Overview

A copy of the conservation plan with all the attachments will be given to the landowner(s) when the conservation easement is signed. This information will provide the installation, establishment and maintenance requirements of the conservation practices identified. The following components of the conservation plan package should be followed by the landowner and the SWCD to implement the conservation plan:

- [Conservation Plan Workbook](#) (includes signature page, practice plan, and operation & maintenance plan)
- Conservation Plan Map
- Seeding, Planting and Construction Plans
- Supplementary Information (livestock exclusion plans, etc.)

The landowner is responsible for installing each conservation practice identified in the conservation plan in accordance with the requirements of the conservation easement. When necessary, this responsibility includes the hiring and associated negotiations with contractors selected to install the practices (e.g., structural work, seeding, etc.). The SWCD should assist the landowner to the extent allowable in the selection of a contractor(s). It is important that the contractor hired is capable of performing the job identified. It is equally important that landowners who desire to do the work themselves are capable of performing the job identified.

### B.2. Installation Period

Conservation practices should be installed and established as soon as possible after the conservation easement has been signed and recorded. All conservation practices should be installed, fully established (including final clipping/spraying) and certified within three years after the easement is recorded. At the end of the three-year time frame, BWSR will free up any remaining cost-share funds that have been set aside for the conservation practices.

The three-year time frame for installations will begin:

- a) The calendar year (season) in which the easement recording dates were between January 1st and May 31st; or
- b) The following calendar year (season) for easements with recording dates between June 1st and December 31st.

The three-year time frame will end on December 31st of the third year.

Landowners may occasionally request to take advantage of planting and construction seasons, and install certain conservation practices prior to recording of the conservation easement. Due to the potential complications and commitments associated with early installation activities, it is suggested the SWCD not promote it. However, it is allowed with the following limitations.

#### Installation Prior to Application

Although unlikely, a request may be made to install a practice prior to BWSR's acceptance of the application. Conservation practices installed during this time frame will not be eligible for any easement program cost-sharing assistance nor can the state guarantee acceptance of the parcel. Eligibility criteria should be reviewed to determine if the practice installation will affect eligibility for enrollment (e.g., wetland restoration "must be restorable at time of application"). Refer to item B of the Program Eligibility section of the handbook, or at the

specific program guidance document for the signup for more information.

### **Installation Prior to Signing the Conservation Easement Agreement**

Although conservation practices may be installed during this time frame, no easement program cost-sharing will be allowed for the practice installation nor can BWSR guarantee acquisition of the easement. The landowner will be responsible for the cost of the installation. They may seek financial assistance from another agency or organization.

### **Installation After Signing the Conservation Easement Agreement**

Easement program cost-sharing for the installation of any conservation practices is permissible only after all required parties have signed the conservation agreement. Easement program cost-share dollars cannot be paid to the landowner until the conservation easement has been fully executed and recorded. If for some reason the conservation easement is not recorded, the costs associated with installing the practice will be the landowner's responsibility. Please review the conservation plan language in the Agreement for conservation easement with the landowner. It is extremely important that landowners are aware of this should they decide to install a practice prior to easement recording.

### **B.3. Cost-Share Assistance**

Cost-share assistance is available from the state through the conservation easement programs to help the landowner pay for the installation of the required conservation practices as identified in the conservation plan. Refer to the Practice Specifications subsection of the Agreement Stage section of the handbook for more information regarding eligible costs associated with practice installations.

The amount of cost-share funds available is identified in the Conservation Plan Workbook. Please refer to the Conservation Plan Development subsection of the handbook for more information regarding the allowable amounts of cost-sharing and how to utilize those funds. Refer to Cost-Share Payment Process, item E in this section, for detailed information on requesting cost-share funds.

## C. COST-SHARE PAYMENT PROCESS

### C.1. Overview

The cost-share payment process reimburses the landowner for eligible costs incurred when installing, reinstalling and establishing conservation practices identified on the conservation plan. These eligible costs are set by law, and vary between practices and durations of easements. Refer to information contained within this subsection of the handbook and to Table 1 in the Conservation Plan Development subsection of the Agreement Stage section of the handbook for more information regarding specific cost-share amounts.

### C.2. Practice Certification

The SWCD technical representative is responsible for certifying that all installation, reinstallation and establishment activities are satisfactorily completed in accordance with the required practice standards and specifications. Practice certification is required by law and is needed before the state can make a cost-share payment to the landowner. Refer to the Practice Specifications subsection of the handbook for more information regarding practice standards and specifications.

Certification of these activities is required regardless of who performs them. For example, if the U.S. Fish & Wildlife Service installs a wetland restoration practice on the easement area, the SWCD technical representative is responsible for inspecting the work performed and certifying that it was installed according to the appropriate practice standards and specifications. As with any construction activity, this requires the SWCD technical representative to be available for periodic site inspections during the construction of the practice.

If the SWCD technical representative discovers that certain activities are not completed in accordance with the practice standards and specifications, they must document and discuss the corrective measures required with the landowner(s) and any other parties involved. These corrective measures must be made prior to the SWCD certifying completion of the practice installation.

The SWCD is responsible for certifying each conservation practice installed on an easement area. Certification of a practice installation must be done within one year of the practice installation. However, timely practice certification and voucher submittal are necessary for the state to promptly reimburse the landowner for its share of the installation & establishment cost. Certification of practice completion is documented in the [Practice Implementation Reimbursement Request](#) item E of the ~~[Cost Share Voucher & Practice Certification Form](#)~~.

### C.3. Requesting Cost-share Payments

To request a cost-share payment complete a [Practice Implementation Reimbursement Request \(PIRR\)](#) ~~[Cost Share Voucher and Practice Certification Form](#)~~ and email a signed copy to BWSR.

BWSR will use the data received from this form for many things, including assessment of cost-share rates, appraisal of practice activities and acknowledgment of all financial contributors to the program.

**See current guidance on how to complete a Practice Implementation Reimbursement Request (PIRR) form [HERE](#).**

Guidance has been replaced at link above.



Guidance has been replaced at link above.

## D. ESTABLISHING AND MAINTAINING CONSERVATION PRACTICES

### D.1. Overview

Maintenance activities are very important in keeping each conservation practice identified on the easement area in good condition. Maintenance begins after successful development of the conservation practice and continues for the duration of the practice. However, prior to successful development of a conservation practice, certain establishment activities may be needed after the installation to assist in the practice's development. The following guidelines should be used to distinguish between "establishment" and "maintenance" activities.

Establishment activities include:

- Chemical treatment and/or planned mowing to control heavy weed competition that is inhibiting the growth of trees or grasses during the establishment period.
- Use of a weed badger to control heavy weed competition that is inhibiting the growth of trees during the establishment period.
- Minor construction activities to enhance or improve a structural conservation practice.

Maintenance activities include:

- Spot mowing or spot chemical treatment to control noxious weeds after the establishment of grasses or trees.
- Trapping or poisoning of rodent infestations that are adversely affecting the vegetation and/or structure.
- Prescribed burning of native grasses after the installation and establishment period.
- Removal of undesirable trees or shrubs after the installation and establishment period.
- Monitoring of the easement area.

### D.2. Maintenance Period

As previously stated, maintenance usually begins after successful development of the conservation practice and continues for the duration of it.

### D.3. Establishment Period

There are three different development categories that a conservation practice can generally be placed into:

- a) Conservation practices that already exist;

- b) Conservation practices that require installation; and
- c) Conservation practices that may require installation at a later date but natural succession will first be given an opportunity to occur.

Regardless of which category a conservation practice fits into, the SWCD should monitor the development of the practice by performing periodic site inspections. If a conservation practice is not developing satisfactorily, the SWCD will need to work with the landowner to determine what specific establishment activities can be implemented to improve conditions for proper development of the practice.

There is no set time period in which establishment activities must take place. However, with most conservation practices, it is expected that establishment will take place within three years of installing the practice.

An exception to this will likely be the establishment of vegetation in riparian floodplain areas where the practice installation may be delayed in attempt to allow natural succession to occur, thereby eliminating the need for the installation. Certain localized establishment activities may be needed to allow for increased natural revegetation (e.g., disking a non-erosive area to provide a tree-seed bed).

#### **D.4. Use of Easement Program Cost-Share Funds**

Easement program cost-sharing may be available to reimburse the landowner(s) for establishment activities that are conducted after the seeding has occurred, with the exception of MN CREP which is further explained in Section D.5 below. Using easement program cost-share funds for establishment activities is not authorized if the required activity is the result of improper installation (i.e., inadequate site preparation). Refer to the Practice Specifications subsection of the Agreement Stage section of the handbook for more information regarding eligible costs associated with establishment activities.

Easement program funds can be used to cost-share the establishment activity only if funds remain from the initial conservation practice installation. In other words, if the full \$300 per acre was used to initially install a RR-2a grass planting, there would be no funds remaining for any establishment activity that may be needed for that grass planting. The cost of the activity would then be the landowner's responsibility.

Only the amount of easement program cost-share dollars remaining from the initial installation can be requested for establishment activities.

#### **D.5. MN CREP and Cost-Share Funds**

Easement program cost-sharing is not available to reimburse landowners for establishment activities associated with MN CREP easements. Establishment activities after the seeding occurs may still be necessary to ensure successful implementation of conservation practices. This programmatic decision will allow for a timelier closeout of BWSR MN CREP appropriations to occur.

Non-state resources are available to cover a portion or all of the cost of establishment on MN CREP easements. The landowner may receive cost-share from CRP that covers approximately 50% of the cost of all establishment activities. Additionally, landowners may be eligible for a Practice Incentive Payment (PIP) from CRP. The total amount received from CRP cost-share and the PIP may sufficiently cover landowner cost of any establishment activities performed.

## **E. ENHANCING, REINSTALLING AND REPAIRING FAILED CONSERVATION PRACTICES**

## E.1. Overview

The information in this section pertains when all or a portion of a conservation practice has failed and is in need of reseeding, replanting or repairing. Practice failure can be attributed to many things, the most common being weather conditions. However, landowner negligence in maintaining a practice is also cause for a number of failures.

Upon discovery or notification of a failed conservation practice, the SWCD must attempt to determine the cause for failure and assess if the landowner was at fault. The BWSR easement staff should be consulted to help determine the cause of failure, if unsure. The operation and maintenance requirements given to the landowner should be reviewed to assist in making the determination. If the SWCD determines that the landowner is at fault (e.g., not properly maintaining the practice), follow the procedures identified in the Non-Compliance/Violations Procedures subsection of the handbook to correct the problem.

If the SWCD determines that the failure was caused by reasons beyond the landowner's control (i.e., drought, flooding, fire, etc.), the state may allow for easement program cost-sharing for the necessary reinstallation activities for the failed practice.

Some examples of reinstallation activities include:

- Reseeding or replanting all or a portion of a practice area
- Repairing or reconstructing a water control structure, dike, tile line, etc. which has failed or is damaged
- Inter-seeding to add additional native species to the stand

## E.2. Cost-Share Assistance

Cost-share assistance is available from the state through the conservation easement programs to help the landowner pay for certain enhancements to the site or reinstallation if the SWCD determines the practice failure was caused by reasons beyond the landowner's control. Refer to the Practice Specifications subsection of the Agreement Stage section of the handbook for more information regarding eligible costs associated with installing practices.

The maximum amount of program practice payment limits can be used to cost-share for site enhancements and the reinstallation of a failed conservation practice. Refer to Table 1 of the Conservation Plan Development subsection of the handbook for a listing of current payment limits. This maximum amount is not restricted by the original amount of easement programs cost-share funds requested and/or used to install the practice. The current maximum easement program cost-share rate applied to the practice area being reinstalled is the available dollar amount for the activity (see example of worktable in item C.3). Occasionally the cost to reinstall the practice will exceed the maximum available cost-share rate. The overage in cost will either need to come from the landowner or other partner agency, or in some special cases the Easement Section Manager may approve an amount that exceeds the maximum available cost-share rate. Refer to Cost-Share Payment Process, item E in this section, for detailed information on requesting cost-share funds.

## E.3. Authorization of Activities

The landowner and SWCD need to seek authorization from BWSR to perform reinstallation activities only if they are requesting BWSR easement program cost-sharing or if the reinstallation activity involves the repair or modification of a structural conservation practice (i.e., RR-8: wetland restoration). This authorization must be obtained prior to beginning any of the reinstallation activity.

To request BWSR authorization, the SWCD and landowner must complete and submit the applicable portions of the [Practice Implementation Request for Funding \(PIRF\) Practice Implementation/Amendment Request Form](#).

See current guidance on how to complete a Practice Implementation Request for Funding (PIRF) form [HERE](#).

Guidance has been replaced at link above.

Guidance has been replaced at link above.

# Conservation Plan Amendments

RIM Handbook

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## A. CONSERVATION PLAN AMENDMENT OVERVIEW

### [A.1. General](#)

## B. AMENDMENT PROCEDURES

### [B.1. General](#)

### [B.2. Amendment Requests That Will Physically Alter the Conservation Plan](#)

### [B.3. Amendment Requests Due to Natural Changes on the Easement Area](#)

## A. CONSERVATION PLAN AMENDMENT OVERVIEW

### A.1. General

This subsection of the handbook provides instructions for changing conservation plans after recording of the conservation easement.

The need to change a conservation plan after conveyance of the conservation easement can happen for a variety of reasons. Changes in wildlife habitat management goals and in vegetative cover types through natural succession are the most common reasons. Changes in wildlife habitat management goals are very common with many easements and usually occur along with a change of ownership. This could mean adding trees to the easement area or perhaps switching a cool season grass planting to a native grass planting. In addition, as an easement's landscape changes naturally over time, it will be important that its conservation plan stay current with these changes. Therefore, periodic amendments to conservation plans may be required to address these natural changes. An example of this may be a riparian grass planting that has been overcome by trees through natural succession.

## B. AMENDMENT PROCEDURES

### B.1. General

All conservation plan amendments should be submitted on the most current program forms using current procedures as they relate to the conservation plan process. Contact BWSR easement program staff if assistance is needed in converting the conservation plan from older forms.

### B.2. Amendment Requests that Physically Alter the Conservation Plan

The BWSR Easement Programs Manager or designee must approve all plan amendments resulting in a physical alteration of the conservation plan area. This includes any amendment request that either requires additional program funds or alters existing previously committed program funding. It also includes any amendment request that will be funded by other sources. The purpose of the amendment request should be to improve wildlife cover and habitat diversity elements on the easement area. Justification for this must be clearly explained as part of the amendment request.

To initiate the plan amendment request, the SWCD must complete and submit certain items to BWSR for review and approval, prior to implementation.

**Prepare an updated [Conservation Plan Workbook](#) and map, as applicable, and submit to [bwsr.rim@state.mn.us](mailto:bwsr.rim@state.mn.us). See current guidance on how to request a conservation plan amendment [HERE](#).**

**Guidance has been replaced at link above.**

Guidance has been replaced at link above.

### **B.3. Amendment Requests Due to Natural Changes on the Easement Area**

Conservation plan amendments may periodically be needed to address any natural changes that have occurred to the landscape over time. This is important from both enforcement as well as a management perspective. The need to amend a plan under these circumstances will usually be identified as part of performing a required site inspection.



# Easement Site Inspections

RIM Handbook

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## A. GENERAL

[A.1. Site Inspection Timeline](#)

[A.2. Time Line Example](#)

[A.3. Notification of Easements Scheduled for Inspection](#)

## B. COMPLETING THE SITE INSPECTION FORM

[B.1. Procedure](#)

[B.2. Inspection Guidelines](#)

[B.3. Possible Violations](#)

## A. GENERAL

The primary reason for performing inspections of easement lands is to ensure that the landowner is fulfilling easement terms. The site inspection also affords the SWCD and the landowner an opportunity to discuss progress of conservation practice installation and establishment. The reviewer can identify needed maintenance requirements with the landowner for specific practice areas as identified on the conservation plan map. The reviewer can also determine if changes to the conservation plan are needed.

### A.1. Site Inspection Timeline

Easement site inspections are required for the five consecutive years beginning the year after the easement is recorded. Thereafter, inspections will be performed every three years.

### A.2. Timeline Example

2014 Easement recorded (anytime during calendar year)

<u>First 5 years</u>	<u>Begin 3 Year Rotation</u>
2015 - first site inspection	2020 - no inspection
2016 - second site inspection	2021 - no inspection
2017 - third site inspection	2022 - inspection required
2018 - fourth site inspection	2023 - no inspection
2019 - fifth site inspection	2024 - no inspection
	2025 - inspection required

### A.3 Notification of Easements Scheduled for Inspection

BWSR will annually notify SWCDs of those easements which are due for inspection that year. Lists will be sent in late winter or early spring. We recognize that some problem or sensitive sites may require more frequent inspections than the proposed schedule. These sites may include those with structures that require close monitoring such as wetland restoration sites or those with recent noncompliance or violation problems. If you have reason to monitor these sites more frequently, use the Site Inspection Form to aid in associated reporting, as appropriate.

## B. COMPLETING THE SITE INSPECTION FORM

### B.1. Procedure

Site inspections must be completed on the [Conservation Easement Site Inspection Form](#). Inspections should be performed sometime during May through August, with May and June being the optimum time. This allows time to take corrective actions if any are needed (e.g. control noxious weeds before they go to seed). SWCD signed and dated site inspection lists are due in the BWSR central office by the date given in the inspection list cover memo, usually the end of September. On easements with potential violations or problems, also send along a copy of the completed site inspection form ASAP to BWSR. A copy of the inspection form must also be sent to the landowner.

When doing site inspections, it is highly advised to meet with the landowner. This can be especially important on those easements where maintenance of conservation practices is clearly needed, or in cases where

conservation plans need to be updated. Meeting with the landowner or operator facilitates needed conservation practice maintenance discussions, or decisions to amend plans.

## **B.2. Inspection Guidelines**

Use the following information as a guide when performing site inspections and completing the site inspection form.

- Assess each practice area individually and select the appropriate rating for each practice on the site inspection form
- Only primary conservation practices should appear on the site inspection form.
- Any practice marked as “N/E” (not established yet) or “Poor” requires a comment from the SWCD (use the space at the bottom of the form or attach additional sheets as necessary). A condition marked as “Poor” could potentially be in noncompliance with easement terms and conditions and could lead to a violation. Therefore, thoroughly document your findings. Photos and GPS points of potential violations are a good way to thoroughly document your observations.
- Make sure the easement boundary is accurately and adequately staked, and remember to check the boundary for any encroachment
- Answer the questions on the back of the form as best you can to help remind the landowner of the easement terms and conditions.
- Remember to sign the inspection and include the date you inspected the site.

## **B.3. Possible Violations**

If a possible violation is discovered while performing the site inspection, refer to the Non-compliance/Violations Procedures subsection of the Implementation Stage section of the handbook for specific instructions on how to proceed.

# Non-Compliance/Violation Procedures

RIM Handbook

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## A. PROCEDURAL OVERVIEW

[A.1. Definitions](#)

[A.2. SWCD Jurisdictional Areas](#)

[A.3. Other Government Jurisdictional Areas](#)

## B. NON-COMPLIANCE DETERMINATIONS AND RESOLUTION

[B.1. SWCD Investigations and Documentation](#)

[B.2. SWCD Non-Compliance Determination](#)

## C. VIOLATION DETERMINATIONS AND RESOLUTION

[C.1. BWSR Easement Field Staff Role](#)

[C.2. BWSR Easement Programs Section Manager Role](#)

[C.3. Board Role](#)

[C.4. Minnesota Attorney General's Role](#)

[C.5. SWCD Monitoring of Court Compliance](#)

## [D. PROCEDURAL FLOWCHART](#)

## A. PROCEDURAL OVERVIEW

### A.1. Definitions

For administrative purposes, the following terminology will be used to describe failure of the landowner to carry out required provisions of the conservation easement.

#### Non-Compliance

Failure of the grantor (landowner) to carry out the provisions of the conservation easement.

#### Corrective Actions Transmittal

[This form](#) notifies the landowner that the Soil and Water Conservation District (SWCD) has determined that the landowner is not in compliance with the terms of the conservation easement and what actions are required to return to compliance status.

#### Violation

Failure of a landowner who is in a non-compliance status to implement corrective actions as required by the SWCD within the timelines identified on the Corrective Actions Transmittal.

#### Corrective Action Plan (CAP)

[This form](#) is used to document the status of the non-compliance determination. If the status indicates that the landowner is not in compliance or they did not respond to the Corrective Actions Transmittal, the non-compliance is now considered a violation. Actions to resolve the violations are listed. In addition, this form is used by the SWCD to certify that the landowner has failed to acknowledge and/or implement the corrective actions within the required timelines. It is also used to certify that the non-compliance issue has been resolved.

### A.2. SWCD Jurisdictional Areas

SWCDs will be involved in resolving all types of easement non-compliance issues with landowners. In certain types of issues the district will have primary responsibility to resolve problems, in others the district will play a support role. *The SWCD has primary responsibility to resolve the following non-compliant conditions where the landowner has:*

- failed to allow the State or its agent access to the easement area to inspect and enforce the easement;
- failed to establish or maintain vegetative cover and/or structures specified in the Conservation Plan (as referenced in the recorded conservation easement);
- caused or allowed unauthorized alteration of the easement area;
- produced agricultural crops on the easement;
- employed timber stand improvement measures, except where allowed by the conservation plan;
- failed to restore the easement area after lawful repair or improvement to a public or private drainage system;
- placed unauthorized materials, substances, objects or constructed unauthorized structures in the easement area;
- appropriated, drained or diverted water from a wetland on the easement area; or
- cropped, grazed or altered wildlife habitat, natural features or vegetative cover without prior written approval from the state;
- additional responsibilities as assigned by the state.

### A.3. Other Governmental Units Jurisdictional Areas

For the following types of non-compliance, another unit of government has a process in place to deal with the issue. The SWCD is expected to provide information and assistance to the responsible unit of government to resolve the non-compliant conditions when a landowner has:

- failed to control noxious weeds (county, township, city or MN Dept. of Agriculture has jurisdiction);
- failed to conduct emergency control of pests necessary to protect the public health (county, township, city, or MN Dept. of Health has jurisdiction); or
- failed to pay taxes and assessments levied against the easement area (county has jurisdiction).

## B. NON-COMPLIANCE DETERMINATIONS AND RESOLUTION

Non-compliance situations may come to light in several ways including complaints, rumors, eyewitness reports, site investigations, and audits, to name a few. Most typically the SWCD is in the best position to learn of non-compliance and to resolve these situations quickly. Whenever possible, resolve non-compliance issues informally. The following procedure is designed to provide a framework to work from if non-compliance issues cannot be informally resolved and to help districts to be thorough and reasonably uniform in conducting investigations.

### B.1. SWCD Investigations

If initial investigation, including conversations with the landowner, turns up an obvious situation not in compliance with the conservation easement and the landowner(s) agrees to take immediate corrective action, document this decision and follow up to see that corrective actions were taken.

After learning of potential non-compliance, make sure to do the following:

- review applicable law and rule;
- review contents of conservation easement file, including a review of the easement language, conservation plan, and conservation plan map;
- do an on-site investigation, including taking photographs of easement area the [Conservation Easement Site Inspection](#) form must be completed as part of this investigation); and
- interview the landowner and/or other parties where appropriate.

Keep a log of dates, times and facts surrounding your investigation. This should become part of the landowner's conservation easement file. The Conservation Easement Site Inspection form should be the central document in the investigation. All subsequent documentation should be attached to this form. Remember that the purpose of the investigation is to verify the facts. Documentation is very important!

If the district finds that the investigation has revealed that the landowner is in compliance with the requirements of the conservation easement, you can document this decision and end your work. If the non-compliance issue is not obvious to the district person conducting the investigation, or if a landowner is not cooperative, it is suggested that the SWCD board make a more formal determination.

The BWSR easement staff person should be consulted for advice when needed.

### B.2. SWCD Non-compliance Determination

Now that the facts have been gathered, the SWCD must make a determination whether a landowner is not in compliance with the conservation easement requirements. It is suggested that the SWCD board of supervisors be the decision-maker. Staff should present the information at a formal district board meeting for decision by the board of supervisors.

If the district board determines that the landowner is in compliance with the terms of the conservation easement and the conservation plan, then the case is closed. If the district board determines that a non-compliant condition exists, then a [Corrective Actions Transmittal](#) form must be completed by SWCD staff, with input from the landowner, and sent via registered mail to the landowner. Send a copy to BWSR easement staff. This form should be used to:

- reference the specific items that are not in compliance with the easement or the conservation plan;
- specify what the landowner must do to correct the situation; and,
- give deadlines for performance.
- Put landowner on notice that they must sign and return this form within 30 days for them to have input on what must be done to rectify the non-compliance problem.

The SWCD should not make any fines or damage payments to be paid by the landowner as part of the required actions to be taken in the Corrective Actions Transmittal, or the Corrective Action Plan.

If the landowner responds to the Corrective Actions Transmittal and contacts the SWCD and tells them he has rectified the problem, the SWCD should visit the site to confirm this, and then document this in the landowner's easement file, case closed. SWCD should also indicate that the landowner is now in compliance by checking the box at the top of the Corrective Actions Plan form and signing the first SWCD signature line on the form only. Send a copy of the form to BWSR Easement staff and keep the original in your local easement file.

If landowner does not respond to the SWCD Corrective Actions Transmittal within 30 days, or refuses to comply with the Corrective Actions Transmittal, then the SWCD should use the Corrective Action Plan (CAP) form to further stipulate what the landowner must do to rectify the situation, and puts them on notice that failure to agree to the CAP is a violation of their easement and they will be subject to legal action from the State.

In cases where the landowner responds to the Corrective Actions Transmittal, but has yet to rectify the problem, SWCD staff should solicit landowner input when developing a suitable [Corrective Action Plan](#). It is important that the prior corrective action transmittal not be an absolute mandate because the landowner may have knowledge of certain conditions, or suggest actions to achieve the desired end results, which might be somewhat different from what the district has proposed. This provides opportunity for negotiation between the district and the landowner. Deadlines for landowner performance should be practical and reasonable. For example, reseeding of vegetation should be required during the next upcoming recommended seeding period for the cover to be established; removal of unauthorized materials should be accomplished as soon as necessary equipment can access the area, etc. The district should allow up to 30 days for the landowner to respond and to negotiate. If there is any uncertainty on the part of the district board in making the determination, contact your BWSR board conservationist or easement staff.

Once negotiations are completed the SWCD should complete the [Corrective Action Plan](#) portion of the form with the landowner, if possible, and obtain the landowner's signature. If a negotiated plan is not arrived at within the 30-day period, the district should complete the Corrective Action Plan, sign it and provide it to the landowner(s) requesting their concurrence and signature and the return of the form within 10 working days. If, upon re-inspection the SWCD confirms that the landowner has rectified the problem by the agreed upon deadline,

landowner compliance should be recorded in the district's conservation easement files, and the *Landowner is now in compliance* box at the top of the CAP form should be checked and a copy sent to BWSR easement staff.

If the landowner fails to comply with the corrective actions identified in the Corrective Actions Plan (CAP) they will be considered in violation of the terms of the easement. The SWCD should then complete the bottom box on the Corrective Action Plan form titled *Certification of Landowner Refusal to Cooperate* and send it via registered mail to the landowner, with a copy of the completed form to BWSR easement staff.

## **C. VIOLATIONS PROCEDURE DETERMINATIONS AND RESOLUTION**

Occasionally, the SWCD's best efforts to resolve non-compliance issues may not be successful. If the landowner(s) fails to respond, refuses to sign and/or does not implement the required corrective action plan, the landowner(s) is considered in a "violations" status. The SWCD must work closely with BWSR Easement Field Staff to resolve all violations.

### **C.1. BWSR Easement Field Staff Role**

Up to this point the easement staff role has been to advise the SWCD. With an unresolved violation, the BWSR easement field staff person becomes directly involved with the problem. The SWCD should review the file materials with BWSR staff and accompany BWSR staff on an on-site visit to the conservation easement area. The landowner should be invited to accompany them on the site. BWSR staff may wish to consider inviting the BWSR Easement Programs Manager to participate in the on-site visit.

After the on-site visit the BWSR staff person will decide to either uphold the SWCD's corrective action recommendations or recommend a different corrective action plan. If BWSR staff recommends changing the SWCD's corrective action plan, BWSR staff should coordinate this with the district and obtain a modified corrective action plan prior to communicating with the landowner. The BWSR staff person will then communicate the required follow-up action to be taken by the landowner in writing via registered mail to the landowner(s). BWSR staff will inform the landowner(s) that if the new plan (or the existing plan if no changes are recommended) is not agreed to within 10 working days from landowner receipt of the letter, then the violation will be forwarded via BWSR to the State Attorney General (AG) to commence legal action to enforce the provisions of the conservation easement. A copy of this letter should be provided to the Conservation Easement Manager. If the landowner(s) agree to the new corrective action plan, it is the responsibility of the SWCD to monitor landowner implementation.

If BWSR field staff has not successfully resolved the violation, then the violation is referred to the BWSR Easement Programs Manager.

### **C.2. BWSR Easement Programs Section Manager Role**

The BWSR Easement Programs Section Manager will refer easement violations to the BWSR Board along with a recommendation to commence legal action. Such recommendations shall be made through the Executive Director.

### **C.3. Board Role**

The Board shall consider all staff recommendations to commence legal action. If the Board determines that the recommendation is valid, it shall request the AG representative to commence legal action. The Board may hear appeals from landowners consistent with Minn. Rules Subp. 8400.3930.



#### **C.4. Attorney General Role**

The Easement Programs Manager and/or BWSR easement staff shall brief the AG representative regularly on non-compliance issues and solicit advice to resolve them.

BWSR staff and/or the Easement Programs Manager shall brief the AG representative and share all file materials and evidence on an easement violation at the time a request to commence legal action is made. The AG representative may wish to communicate directly with the SWCD at this point to obtain additional information.

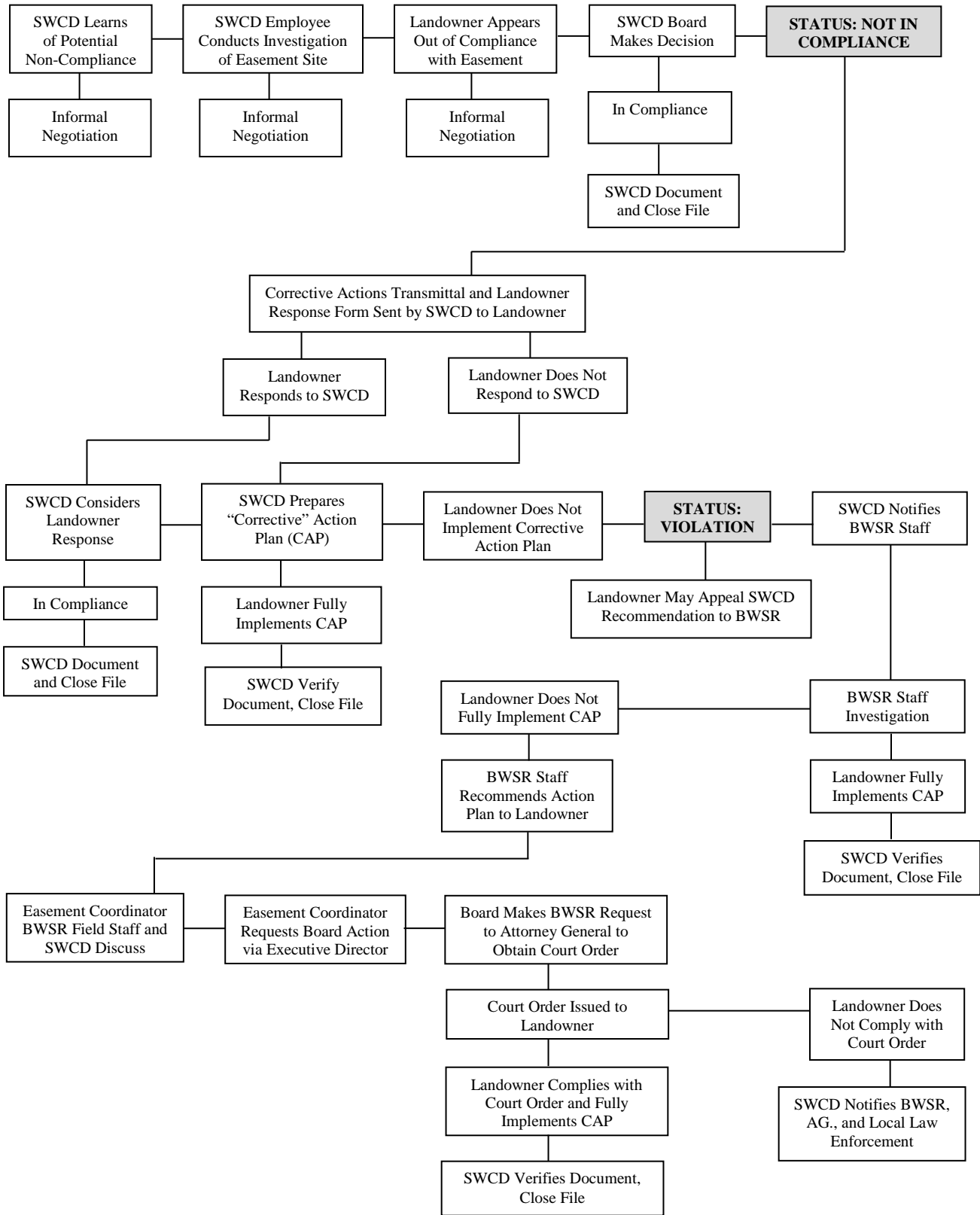
Upon request, the AG may commence legal action to resolve the violation as authorized in MRS 103F 515, Subd. 9 (b):

"(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 been committed, or where the landowner resides or has a principal place of business."

#### **C.5. Monitoring Compliance with Court Orders**

If a court order is obtained, the AG shall provide a copy of the order to the BWSR Easement Programs Manager. The Easement Programs Manager shall, in turn, provide a copy to BWSR Easement staff and the SWCD. It is the responsibility of the SWCD to notify the AG if any court order to correct the easement violation is not carried out.

**D. PROCEDURAL FLOWCHART**



# Easement Land Ownership Changes

RIM Handbook

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## A. OWNERSHIP CHANGE PROCEDURES

[A.1. Standard Ownership Changes](#)

[A.2. Ownership Splits](#)

## A. OWNERSHIP CHANGE PROCEDURES

When the SWCD learns that easement land has changed ownership, it is important to take a number of steps to keep district and state records up to date, and to inform the new landowner about the terms and conditions of the easement. Whenever possible, the SWCD should meet with each new landowner in person to review the easement and conservation plan practices in place on their property.

### A.1. Standard Ownership Changes

When the entire easement area has been conveyed to a new landowner, the SWCD should provide the following to BWSR:

- The [easement ownership change](#) form, filled out completely with the new landowner's contact information
- A copy of the recorded deed(s) showing all current property owners

The SWCD should also provide a copy of the easement and conservation plan and map to the new landowner for their records. At this time, it is also important for the SWCD to verify that the easement boundary is properly posted to ensure the new landowner is aware of the location of the easement boundary.

### A.2. Ownership Splits

When the land within one easement has been divided or sold to more than one new owner, an ownership split has occurred. In this case, some additional steps are necessary to complete the ownership change process. First, the SWCD should provide the following to BWSR:

- An Easement Ownership Change form, filled out completely, for EACH new landowner
- A copy of the recorded deed(s) showing the property transfer

BWSR will then map out each parcel in GIS and provide the SWCD with a split easement boundary shapefile and the calculated easement acres belonging to each new owner. A modified easement number will be assigned, and the district should create a new file for each additional landowner. Then, using the shapefiles and acres provide, the SWCD should:

- Create a split conservation plan and map, dividing the practice areas up appropriately among each new landowner.
- Have each landowner sign their respective plan, and provide them with a copy of the easement and conservation plan.
- Verify that the easement boundary is properly posted.

Provide copies of the signed conservation plans to BWSR to complete the ownership change.

# Easement Alterations

RIM Handbook

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## A. ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS

### **B. PROCEDURE**

#### B.1. Landowner Information Required

#### B.2. SWCD Information Required

## C. BOARD APPROVAL

## A. ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS

### A.1. Overview

The process to seek approval from BWSR for the alteration, release, or termination of a Conservation Easement is detailed in [section 8400.3610 of the Permanent Rules Relating to Reinvest in Minnesota Conservation Reserve and Permanent Wetland Preserve Program](#). It should be noted that the rules give the Board wide discretion by stating the Board *may* approve this type of request when asked. The primary basis the Board must use for considering a request to alter, release, or terminate a conservation easement is that the public interests and general welfare will be maintained or improved. The Board has adopted a policy to further help clarify this process for SWCDs and landowners, and establishes a fee structure that landowners pay to cover the administrative costs associated with easement alteration requests (See [Easement Alteration Policy](#)).

## B. PROCEDURE

### B.1. Landowner Information Required

To initiate an alteration, release, or termination of an existing easement, the landowner must submit a letter of request to the local SWCD Board. This letter must justify the change and identify how the public interest and general welfare will be better served. In cases where proposed changes to an easement are due to public works projects, the request letter can come from the governmental unit responsible for the project.

### B.2. SWCD Information Required

When the SWCD receives a request to alter, release, or terminate an easement, the following information must be forwarded to and received by BWSR at least 30 days prior to a regularly scheduled BWSR Board meeting:

- a copy of the letter the SWCD Board received requesting approval to alter, release or terminate a conservation easement
- a letter from the SWCD Board indicating their recommendation to approve or disapprove the proposed change (a copy of SWCD Board meeting minutes with an appropriate motion concerning the proposed change can be submitted in place of a letter)
- a letter from the DNR area wildlife manager recommending either approval or disapproval of the proposed change (this is not necessary for changes due to public infrastructure projects); the SWCD should request the DNR wildlife manager for this review
- The check from the landowner for the required processing fee
- other supporting information and documents including, but not limited to:
  - aerial photograph identifying the proposed change
  - soil survey map of the area
  - cropping history information
  - other pertinent information such as a detailed legal description or maps from a highway department, as necessary

## **C. BOARD APPROVAL**

In order to approve an easement change, the Board will have to be compensated for any loss in area or resource value of the easement. This is done by the landowner actually replacing or exchanging the land area lost, or, in the case of public works projects, by making a monetary payment to the state for the loss. The Board reserves the right to decide what is adequate compensation, on a case-by-case basis, and to require other special provisions.

Contact the conservation easement program staff early in the process if you have any questions concerning a request to alter, release or terminate a conservation easement.