



# Conservation Easement Agreement

## RIM Handbook

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## 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 Resolve all Legal and Environmental Issues

After official acceptance and approval of the easement application, the SWCD will assist the landowner(s) in notifying each lender with a mortgage on the property that the landowner intends to offer the state a conservation easement for all or a portion of the property. Refer to Contacting Mortgage Holders in this section for more information.

All environmental problems/issues discovered during the application stage (dumps, abandoned wells, structures) will need to be discussed with the landowners and strategies for clean up or removal will need to be agreed upon. Refer to Resolving Environmental Problems/Issues in this section for more information.

The SWCD should assist the landowner(s) to begin terminating any conflicting property restrictions previously placed on all or part of the proposed easement area. Refer to Other Conflicting Property Restrictions in this section for more information.

#### Step #2 SWCD Development of Agreement Package

For each easement application approved for funding, the SWCD must prepare the information identified in the “Agreement Package Contents/Checklist” (Figure 1), in the order listed and submit it directly to the BWSR. Dependent on the BWSR program guidance provided for the specific signup, the Application package and Agreement package may need to be submitted at the same time.

#### Step #3 BWSR Development of Agreement Documents

Upon receipt of the agreement package from the SWCD, the BWSR will prepare the agreement and related documents, including the legal description, Exhibit A, and other necessary exhibits and forms. In addition to the information in the agreement package, the BWSR will also use information previously supplied with the easement application to help prepare the agreement documents. Refer to Agreement Documents in this section for more information regarding the agreement documents.

BWSR will prepare and send one original agreement document to the SWCD for signatures.

#### **Step #4 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 the 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 the BWSR via certified mail. Refer to Signature Process in this section for more information regarding notarization of a landowner's signature.

#### **Step #5 BWSR and Other State Officials Complete Signature Process**

After all required state signatures have been obtained, the 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 the 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. The BWSR will also send a copy of the signed agreement document to the SWCD office.

### **A.3 Agreement Package**

The development of the agreement package is one of the most important steps involved in acquiring the conservation easement. The documents required as part of the agreement package will allow the state to verify ownership and legally define the proposed easement area(s). The careful development of the agreement package by the SWCD will allow the BWSR to accurately and efficiently prepare the required agreement documents (see A.4 of this section).

The SWCD should prepare the agreement package by following the "Agreement Package Contents/Checklist" (Figure 1). The agreement package, including the legal documents, forms; copies and other information as identified in figure 1, should be obtained/prepared and submitted directly to the BWSR in the order listed.

If you have any questions regarding the information or documents required for the agreement package please contact the BWSR easement staff.

### **A.4 Agreement Documents**

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

Please note that the following 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

**Figure 1. Agreement Package Contents/Checklist**

ITEM

1. Agreement Information Form
2. Copy of the deed(s) for the land
3. ArcGIS shapefile of easement area
4. Conservation Easement Financial Worksheet (CEFW)
5. W-9 form for the primary Grantor listed to receive the easement payment and practice payment
6. Copies of other pertinent ownership/legal documents (e.g. Power of Attorney, etc.)
7. Copy of Government Land Office (GLO) map identifying any government lots  
(<http://www.mngeo.state.mn.us/glo/index.html>)
8. Copy of the deed survey map, if available, if the deed's legal description is in metes and bounds (when boundaries are defined by bearings and distances)
9. Copy of the plat or subdivision map if easement area is part of a platted area or subdivision
10. Registration of Authorized Farm Corporation/Partnership (MN Dept. of Ag certification)

## B. RESOLVING LEGAL AND ENVIRONMENTAL ISSUES

### B.1 Contacting Mortgage Holders

After BWSR acceptance of the landowner(s) application, each lender with a mortgage on the property needs to be contacted and informed of the landowner's intent to offer the state a conservation easement for all or a portion of the property. The landowner usually identifies mortgages during the application stage. The SWCD should work with the landowner in making these contacts.

For the preparation of the agreement package, each lender must be asked if they want their name 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 a subordination consent or release from the lender's mortgage. Refer to the [Easement Stage](#) section of the handbook and the [Mortgage Subordination Fact Sheet](#) for more information regarding consents and releases. If the lender expresses an unwillingness to provide the state with a consent 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 re-finance with a new bank or the easement will have to be cancelled. Wells Fargo will not consent to the State's Easement.

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

### B.2 Resolving Environmental Problems/Issues

Any environmental problems/issues discovered during the application stage 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 BWSR should be sent 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 1031.301 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.

### **B.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 whether or not 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.

The 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.

## **C. AGREEMENT INFORMATION FORM**

The BWSR will develop the agreement documents from the information provided on the Agreement Information Form and from information provided at the agreement stage (refer to Agreement Documents in this section for more information). It is very important that the information provided on the [Agreement Information Form](#) be accurate, up-to-date and well researched.

Please refer to the following instructions when completing the [Agreement Information Form](#). When completed, the form should be submitted as part of the agreement package (refer to Agreement Package of this section for more information).

### **Easement Application Information**

Enter the easement identification number that was assigned at the application stage. Make sure all documents in the agreement package have the same ID number.

### **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, the spouse's name must be listed 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 grantors 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 the 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.

**Easement Payment Information**

The primary payee must be one of the grantors. Include their mailing address and social security number. You must send in a W-9 only for the primary payee listed.

If the grantor is a trust, identify the name and mailing address of the trustee. In the case of family, living, or revocable trusts, a social security number is acceptable.

If the grantor is a partnership or corporation, list the name and mailing address of the partnership or corporation as the payee. List both the state and federal tax identification number for partnerships and for corporations.

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.**

In the case of an irrevocable trust, federal and state tax ID are required. For more information on how to obtain a state tax ID #, contact the central office RIM staff. Please note that in the case of trusts, partnerships or corporations registered in a state other than Minnesota, only the federal tax ID is required.

*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. The 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. List the social security number or state and/or federal tax identification number using the same guidelines as above. Note that the recipient of the cost-share reimbursement check does not have to be the same primary payee as for the easement payment, but does need to be a grantor (landowner) for the easement.

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.

## **D. OWNERSHIP DOCUMENTS**

### **D.1 Overview**

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 the BWSR to determine basic evidence of ownership. Good quality copies of these documents must be submitted by the SWCD as part of the agreement package.

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

### **D.2 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 of the lands within the proposed easement area, so that the landowner(s) can show ownership for all of 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.

### **D.3 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 the 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 the 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 the BWSR easement staff to discuss these situations on a case-by-case basis.

## **Land Held in Trust**

### *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**

### *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**

### *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.

### **D.4 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 by going to this website: <http://www.mngeo.state.mn.us/glo/index.html>

### **D.5 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.

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.

### **D.6 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. A copy of this certification or other type of verification from the Department of Agriculture would be received by the grantor and may need to be submitted with an easement application.

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

For more information, refer to the [Program Eligibility](#) sections in Part I of the handbook.

## E. EASEMENT BOUNDARY AND LEGAL DESCRIPTION

The legal description for the easement area will be developed by the 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).

## F. AERIAL PHOTO & SHAPEFILE

### F.1 Overview

A map of the proposed easement boundary with a current aerial photo was sent to BWSR as part of the original Application Package. Section B.2 of the [Application Stage](#) section of the handbook detailed what information the aerial photo should have included.

A shapefile (ESRI ArcMap file format) of the easement boundary depicted in the map must now be included with the Agreement Package. This file is to be submitted electronically using the instructions from specific program guidance. Please name the shapefile in the following format: "<EASEMENT NUMBER>-<LANDOWNER NAME>.shp" (For example, "10-01-15-09-Johnson-Peter.shp") The shapefile must be in the following coordinate system: NAD 1983 UTM Zone 15N (Meters).

The shapefile and the information provided on the application map will be used by the BWSR to develop the Exhibit A map for the agreement and the easement. The Exhibit A will graphically illustrate the boundary of the easement and the easement's legal description, as well as other pertinent land features as they relate to the easement area.

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

During the application phase, the SWCD worked with the landowner to determine the desired easement boundary. This agreed-upon boundary is what should be included in the PDF map and the Shapefile that gets prepared and sent to BWSR as described above in section F.1. BWSR staff will 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.

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. 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.

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. Permanent stakes and RIM easement signs must be established as soon as conditions permit their placement, and after easements are signed and recorded. The SWCD should coordinate the placement of the permanent stakes with the landowner. 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.

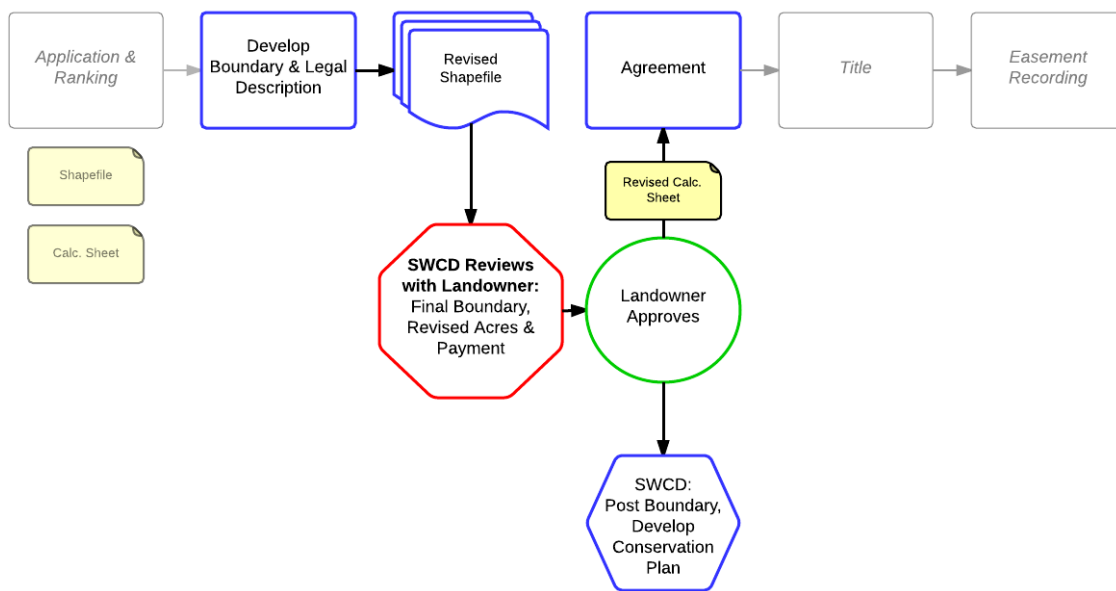


Figure 2: Easement Boundary Development Process

### F.3 Other Information

The following physical features (where applicable) should also be identified on the aerial photo if located adjacent to, or within, the same section as the easement area. Identification of these features will aid in developing the Exhibit A and the easement’s legal description. Use a separate aerial photo(s) to draw/identify these physical features if the amount of information becomes too detailed or interferes with the requirements of *Easement Area*

*Boundary above.*

### **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 the 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.

### **Natural Water Bodies and Water Courses (Lakes, Rivers, Streams)**

Identify and name all natural water features. Include the name or number designation, if available.

### **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 agreement 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.

## **G. SIGNATURE PROCESS**

### **G.1 Landowner Signature**

The 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.

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

## **G.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 agreement package (refer to Agreement Information Form in this section for more information).

## **Acknowledgment**

The acknowledgment for corporations or partnerships will need to be done on a separate acknowledgment form developed specifically for corporations and partnerships. BWSR will prepare an *Acknowledgment for a Corporation or Partnership* form and send it to the SWCD with the agreement documents to be signed. The signature(s) of the individual(s) authorized to sign for the corporation or partnership must be notarized using this form.

## **H. REVISION PROCESS**

### **H.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.

### **H.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.

The BWSR may initiate a revision as the easement area boundary is mapped and compared to existing right-of-way, utility, and ownership documentation. The 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 the BWSR.

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

Revisions required after the agreement documents have been signed must be initiated by the SWCD completing and submitting a Revision Request Form to the BWSR (refer to Completing the Conservation Easement Revision Request Form of this section). In addition, depending upon the nature of the revisions requested, it is possible the agreement documents will need to be revised and re-executed. BWSR staff will contact you, as needed, in regards to any additional information needed to process the revision request. If the easement boundaries are being expanded to include more land, additional documents may be necessary to verify ownership. If the legal description is expanded, the title insurance request (if already prepared) will have to be modified to include the new area (refer to Title Insurance in the [Easement Stage](#) section).

### **H.4 Completing the Conservation Easement Revision Request Form**

The BWSR requires that an SWCD submit the following information when requesting a revision to the conservation easement information:

- 1) An amended [CEFW](#) and/or [CEPPW](#)
- 2) An original copy of an aerial photo showing revised easement area boundaries (if applicable, see E of this section)
- 3) A revised ArcGIS shapefile
- 4) Completed [Revision Request Form](#)

There are four major components to the agreement that are subject to revisions. These four components are reflected on the [Revision Request Form](#). They are:

- 1) Total easement acres
- 2) Total easement payment
- 3) Total conservation plan cost-share funds requested
- 4) Total noncost-share funds required

Please complete the entire form including a response in all eight boxes in part B.

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. The 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.

The revision request will be acted upon by the BWSR. If the request is approved, it will be signed and a copy will be returned to the SWCD. If the revisions are not approved, the BWSR will contact the SWCD and explain why.