

EASEMENT ACQUISITION

PROCESSING FRAMEWORK

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A. EASEMENT ACQUISITION PROCESS

A.1 The Three Stages To Conservation Easement Acquisition

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

Application

Agreement

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 3-9 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 must 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 local resource protection goals, the next step will be gathering the information required to submit the parcel for funding consideration. Lastly, rank the resource protection priority of the parcel in relation to the other applications.

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.

SWCDs can choose to accept applications for easements on a continuous basis, or they can set specific "sign-up" dates. After the district application sign-up has ended, all eligible sites need to be prioritized and approved for further processing by the district board. Local screening committees can be called upon to assist in the prioritization of individual applications, or the district may use the priorities identified at the annual meeting of the committee. The BWSR will announce the period during which it will accept and review applications for funding consideration.

Applications that the district board approves to submit to the state for funding consideration are forwarded directly to the BWSR board conservationist (BC). BCs will review and regionally prioritize the applications, and make funding recommendations for state board approval. The BWSR Engineering Section will review wetland restoration applications prior to funding approval. SWCDs can generally expect to hear which applications will be funded six to eight weeks after submitting them.

Agreement Stage

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 provide a consent 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 objectionable encumbrances the SWCD must notify the landowner that the funding for the application has been withdrawn (see item B.2 of this section).

Any environmental problems identified in the application stage must be addressed before preparing the agreement 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.

It is advisable to stake the boundaries of the easement area (as delineated in the application aerial photo) and make sure the landowner understands and is comfortable with the easement area boundaries.

If it appears as though clearing the title and cleaning up existing environmental problems will be accomplished, and the easement boundaries area acceptable to the landowner, the SWCD should complete the steps identified in the [Agreement Stage](#) section. The conservation easement agreement documents will be developed by the BWSR upon receipt and review of the agreement package from the SWCD. Once completed, the agreement will be 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.

Developing the conservation plan is a very important part of the agreement stage. The successful establishment of conservation practices is paramount to achieving the desired environmental benefits associated with the easement. In addition, landowners are generally very interested in the plan as it maps out what will be on the land for generations to come. 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 the BWSR upon receipt and acceptance of the title insurance commitment. Once completed, the easement will be sent to the SWCD for landowner signature and recording. The conservation plan will require the principal landowner's signature at this time; however, it does not get recorded. The BWSR will make payment to the landowners upon receipt of the recorded easement, the final title insurance policy, the [Cropping and Grazing Termination Certification](#) form and the signed Conservation Plan (page one of the package only).

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

A.3 Conservation Easement Processing Checklists

Processing checklists have been developed for SWCDs, BCs and the BWSR central office staff. Checklists help 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.

Take time to become familiar with all of the checklists. An understanding of the BCs and central office staff processing roles will assist the SWCD to provide BWSR staff with all the information needed to complete the acquisition process.

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 Form
- ❖ Exhibit "A" - (and aerial photo used to develop Exh. A)
- ❖ Legal Description
- ❖ Deed copy, Abstract legal copy, Govt. Lot Map, etc.
- ❖ Landowner Application to USDA-ASCS for Termination of Contracts

- ❖ Conservation Plan
- ❖ Conservation Easement Financial Worksheet
- ❖ Conservation Plan
- ❖ Conservation Practice Plan
- ❖ Conservation Plan Map
- ❖ Seeding Instructions
- ❖ Construction Plan and Notes
- ❖ Operation and Maintenance
- ❖ Cost-Share Vouchers and Practice Completion Certification

- ❖ 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/PWP Invoice
- ❖ Easement
- ❖ Executed Easement and associated attachments and exhibits
- ❖ Cropping and Grazing Termination Certification (if applicable)

- ❖ 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 the 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 the BWSR of the cancellation, either by forwarding a copy of the landowner's letter or writing a letter on behalf of the landowner.** The 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 the BWSR, along with a recommendation whether or not the applicant should be allowed to cancel. Because the conservation easement agreement is a binding document the BWSR can exercise the right to continue with the easement acquisition process. In most cases the BWSR approves the landowner's request to cancel. If the BWSR has not contacted the SWCD within 30 working days of the date the cancellation request was mailed to the BWSR the application has been cancelled.

SWCD Requests Cancellation

An SWCD may wish to request that the 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 the BWSR approves the cancellation request notify 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 the 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 your board conservationist.

B.3 SWCD Reimbursable Expenses

Some of the 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 an Invoice for Reimbursable RIM/PWP Costs.

Reimbursable Expenses:

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

Potential Reimbursable Expenses (case-by-case BWSR easement coordinator 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).

Other expenses incurred by the SWCD, such as fees to record documents, are not reimbursable. Non-reimbursed expenses should be funded through the RIM/PWP Service grant monies.