

Conservation Easement Drainage System Maintenance Administrative Policy

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Policy Statement

BWSR's acquisition of conservation easements on private lands may include properties where existing drainage systems are not required to be altered when implementing the easement's conservation plan (hereafter referred to as "pre-existing drainage systems"). BWSR is not responsible for costs related to the future maintenance or repair of these pre-existing drainage systems when maintenance is necessary for the benefit of lands outside of the easement. Potentially exempt from this policy are drainage systems that were realigned or physically altered in some way as part of implementing the easement's conservation and restoration plan (these are not "pre-existing drainage systems" for the purpose of this policy). BWSR will review requests for maintenance assistance of these exempt drainage systems on a case by case basis with funding decisions based on circumstances and funding availability.

The owners of the land encumbered by the conservation easement (hereinafter referred to as "grantors"), and not BWSR, are responsible for addressing any claims made by others regarding maintenance and repair and associated drainage rights of pre-existing drainage systems located within the conservation easement.

Reason for the policy

Conservation easements held by BWSR are a nonpossessory interest that imposes limitations or affirmative obligations on the landowner (see Minn. Stat. § 84C.01). Therefore, the conservation easement gives BWSR the right to enter and use the land for the purposes expressly discussed in the easement document, but it does not obligate or authorize BWSR to take action on the property that is not directly related to the specified purpose of the easement.

For this reason, while pre-existing drainage systems may remain on the land within the area of a recorded conservation easement, BWSR will not contribute to costs for the long-term maintenance of any pre-existing drainage system as the intent of the easement does not authorize such activity.

Applicability

This policy applies to all BWSR conservation easements.

Related Information

BWSR administers various programs that acquire conservation easements on lands throughout the state. The purpose of these easements varies but are often focused on restoring and protecting targeted upland, wetland, and other aquatic resource areas with a goal of providing water quality treatment, flood control, wildlife habitat and reduced soil erosion for conservation or mitigation purposes.

Lands secured under these conservation easements often contain existing surface and/or subsurface drainage systems. These drainage systems can be part of a public drainage system established under Minnesota Statutes Chapter 103E or a private drainage system that may be only on the easement property or may span multiple properties. Where private drainage systems span multiple properties, they may be subject to private drainage easements or legal agreements between multiple properties that benefit from those systems.

As part of restoration efforts within the conservation easement, these drainage systems may be abandoned, blocked, filled, plugged, realigned, rerouted or otherwise altered based on review of the system and goals of the conservation easement's restoration plan and therefore no longer meet the definition of "pre-existing drainage systems" as defined in this policy.

In other situations, drainage systems that continue to benefit adjoining non-easement lands will not be abandoned or altered within the conservation easement. This may occur because manipulation of the drainage system would not provide restoration benefits to the conservation easement and/or its modification would be infeasible or unlawful to consider. For the purposes of this policy, these systems meet the definition of "pre-existing drainage systems."

Guidance on Maintenance Responsibilities for Pre-existing Drainage Systems

Maintenance rights and responsibilities for drainage systems can vary depending on whether the drainage feature is part of a **public** or **private drainage system**. For informational purposes, an overview of the maintenance responsibility for these different types of pre-existing drainage systems on a conservation easement are discussed below.

Grantors should be encouraged to seek the services of a qualified attorney to determine their rights and/or responsibilities with respect to pre-existing public or private drainage systems. They may also wish to consult with a qualified attorney about entering into recorded drainage system agreements with adjoining property owners to better define future maintenance rights and/or responsibilities of private drainage systems within their conservation easement land. In no event shall BWSR, SWCD or other LGU staff give legal advice to grantors on these topics.

Public Drainage Systems

Public drainage systems are managed by a Drainage Authority in accordance with Minnesota Statutes Chapter 103D and Chapter 103E. Chapter 103E defines processes to repair and maintain public drainage systems. The legal rights and responsibilities for maintenance and repair of these public drainage systems lie with the Drainage Authority on behalf of the identified, benefited property owners. The presence of a BWSR conservation easement neither conflicts nor interferes with the rights of a Drainage Authority to maintain and repair public drainage systems. Ditch maintenance or tile repair/replacement are allowed maintenance activities within BWSR conservation easements when conducted by drainage authorities using funds collected through drainage system assessments.

Under Minnesota Statutes section 103E.701, subd. 7, if a public drainage system maintenance or repair disturbs or destroys a perennial vegetative cover or structural practice on conservation easement lands, the perennial vegetation or structural practice must be restored to the terms of the conservation plan and be paid for by the drainage system.

Private Drainage Systems

In some situations, a private drainage system will have a recorded drainage easement or legal agreement. These recorded easements or agreements will pertain to a defined drainage system and associated properties or portions of properties. These drainage easements or agreements are often recorded prior to the BWSR conservation easement and the owner of the conservation easement property will need to fully abide by the terms and conditions of the applicable drainage easement or agreement. These legal documents must be reviewed on a case by case basis by grantors and their legal counsel as the language often varies with respect to future maintenance work and apportionment of costs for the identified drainage system.

When no drainage easement or agreement exists, the responsibilities and/or rights for ongoing maintenance of a private drainage system can vary. It is possible that pre-existing private drainage systems may no longer provide a benefit to the conservation easement property. In those situations, grantors should be encouraged to seek the services of a qualified attorney to determine their rights and/or responsibilities.

Property owners are legally responsible for complying with the terms of a BWSR conservation easement, including ensuring that all perennial vegetation or structural practices damaged during the maintenance or repair of private drainage systems are properly restored upon completion of work. This responsibility and its associated cost should be considered as part of any agreement between landowners when discussing pre-existing private drainage system maintenance or repair activities.

History

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