

Conservation Easement Alteration Policy

Version: 4.0

Effective Date: January 1, 2026

Approval: Board Order 25-55

A. Policy Statement

The Minnesota Board of Water and Soil Resources (BWSR) occasionally receives requests to alter or modify an existing conservation easement when a proposed activity will impact the easement area or would not be consistent with easement terms and conditions. The easement alteration policy was created to establish the requirements and conditions necessary for BWSR to consider a request to alter an existing conservation easement.

The Board will only consider a proposed alteration to a conservation easement when the outcome will fulfill a public need, improve public health or safety, result in additional natural resource protection or further enhance the original purpose of the easement, and when easement impacts cannot be reasonably avoided.

B. Policy Purpose

The purpose of this policy is to provide direction, clarity and consistency to BWSR staff, Soil and Water Conservation District (SWCD) staff, and entities wishing to request an easement alteration, by outlining the circumstances under which an easement alteration request will be considered by the board, and to ensure that public and natural resource benefits are not lost or diminished if an easement is altered. The policy also outlines the compensation, either monetary or through land exchange, and administrative fees due to the board by the proposing entity when an easement alteration is requested or approved.

C. Applicability

This policy applies to requests to alter existing State Reinvest in Minnesota (RIM), Permanent Wetland Preserve (PWP), Conservation Reserve Enhancement Program (CREP) and Army Compatible Use Buffer (ACUB) easements and future similar BWSR Conservation Easement acquisitions. This policy does not apply to Wetland Bank easements.

An easement alteration request must be approved by the board before any proposed activity occurs within an existing easement boundary that would result in long-term impacts, such that the land would no longer meet easement terms and conditions or be able to be maintained according to the BWSR-approved conservation plan. **Easement alteration requests should only be made if there is no reasonable alternative location for the proposed activity, and in such cases, impacts to the easement should be minimized to the extent possible.**

Certain activities or modifications to land within the easement may be compatible with the terms and conditions of the easement and may not require an easement alteration if the impacts are temporary and the easement area can be restored and maintained according to the BWSR-approved conservation plan after the temporary disturbance. Certain easement land use changes may be allowed through an amendment to the easement's conservation plan.

This policy is not intended to resolve new or existing violations on conservation easements. A request to alter an easement must be approved **before** any activity occurs on the land that would otherwise be a violation of the conservation easement. Landowners or entities who violate a conservation easement may be liable for treble damages or other monetary penalties under MN Statute 103F.515 Subd. 9.

This policy does not apply to easement boundary corrections that are authorized, without compensation, by MN Statute 103.515 Subd. 8.

D. Public Infrastructure, Utilities, and other Public Needs Requests

This section of the policy applies to partial releases proposed for public infrastructure, utilities, and projects that fulfill a public need, have a demonstrated health or safety benefit, and there is no reasonable alternative than to impact the conservation easement. Examples include public road safety improvements, municipal water and sanitation projects, energy facilities or transmission lines, and other projects that fulfill a compelling need to the general public and the State of Minnesota. The entity responsible for the project should submit the easement alteration request.

Public infrastructure, utilities, and other public needs alteration requests will be reviewed and authorized, conditioned or denied by the BWSR Executive Director. If the alteration request is denied

or conditioned, the alteration request may be appealed to the RIM Reserve Committee for a subsequent recommendation to the BWSR board for approval or denial.

Easement alteration requests for public infrastructure, utilities, and other public needs projects to alter a conservation easement are subject to the following conditions for BWSR consideration:

- 1) A non-refundable \$1,000 administrative fee is required at the time a request is submitted. The fee shall be paid by the entity proposing the easement alteration.
- 2) The entity must describe alternatives considered and why there is no reasonable alternative that would avoid impacting the conservation easement.
- 3) When there is no reasonable alternative, entities should minimize proposed impacts to the conservation easement to the extent feasible and practical.
- 4) Compensation due to the state for damages and loss of benefits to the conservation easement, upon BWSR approval of a request, will be as follows:
 - A. For alterations proposed by government entities, for public infrastructure wholly owned, operated and maintained by the government entity, compensation to the board will be:
 - Payment at (1x) the current RIM payment rate for any easement acres released, and
 - Reimbursement of any state funds previously disbursed to establish conservation practices on the land being released.
 - B. For other non-governmental infrastructure, utilities, and public needs alteration requests, compensation to the Board will be:
 - Payment at twice (2x) the current RIM payment rate for easement acres released, and
 - Reimbursement of any state funds previously disbursed to establish conservation practices on the land being released.
 - C. For alterations proposed to install public wells and associated access roads on wellhead/drinking water protection easements:
 - Reimbursement of the per-acre easement payment at the time of easement acquisition, for acres released, and
 - Reimbursement of any state funds previously disbursed to establish conservation practices on the land being released.
- 5) If the proposing entity does not hold a fee title or easement interest in the property at the time of the request, the entity must have written permission from the landowner to request the alteration.
- 6) For utility projects regulated by the MN Public Utilities Commission (PUC), the Certificate of Need and PUC Route Permit must be submitted with the easement alteration request.
- 7) An easement's funding source or partnering agency may have additional requirements for easement alteration and **prior approval from other agencies/councils may be necessary** before BWSR can alter the easement, depending on the easement type.

E. Other Easement Alteration Requests

This section applies to requests to alter a conservation easement that are not included in Section D for public infrastructure, utilities, and other public needs. Approval or denial of these alteration requests is at the discretion of the Board after a recommendation by the RIM Reserve Committee.

Other Easement Alteration Requests must meet the following conditions for BWSR consideration:

- 1) A non-refundable \$1,000 administrative fee is required at the time a request is submitted.
- 2) Landowners must explain why there is no reasonable alternative location for the proposed activity that would avoid impacts to the conservation easement.
- 3) When there is no reasonable alternative, impacts to the conservation easement must be minimized to the extent feasible and practical.
- 4) Landowners (or their designee) may be required to attend the RIM Reserve Committee and/or BWSR Board meeting to address questions related to an easement alteration request. Failure to attend the meeting(s) may be grounds for denial of the easement alteration request.
- 5) The resource protection or habitat benefits for which the easement was originally acquired will be increased or enhanced by the proposed alteration.
- 6) The alteration will not result in restored wetland acres being drained or filled.
- 7) Compensation to the Board shall be replacement land at a minimum of a 2:1 ratio for any easement acres released. Acres released from the easement must be replaced by additional land, as follows:
 - To release acres enrolled at a cropland rate and replace with cropland: A minimum of 2:1 replacement. (Cropland proposed as replacement acres must meet RIM crop history requirements, being cropped at least 2 of last 5 years).
 - To release acres enrolled at the cropland rate and replace with non-cropland: A minimum of 4:1 replacement.
 - To release acres enrolled at a non-cropland rate and replace with cropland: a minimum of 1:1 replacement
 - To release acres enrolled at the non-cropland rate and replace with non-cropland: a minimum of 2:1 replacement

Replacement acres must be adjacent to or as near as possible to the existing easement and be owned in whole by the same landowner(s) of the existing easement lands.

- 8) The ratios above may be modified upon recommendation by the RIM Reserve Committee when the conservation benefits of the replacement acres significantly outweigh those of the land proposed for release. Alternatively, the Board may request additional replacement acres to compensate for natural resource values lost when proposing to release higher value easement acres.

- 9) **Landowners will be subject to an additional \$2,000 administrative fee, after Board approval, to cover SWCD and BWSR staff time to coordinate title review and draft easement amendment documents. Amendment drafting will not begin until the fee is paid.**
- 10) Landowners will be required to pay necessary title insurance and recording fees, and all costs associated with providing clear title on replacement lands. The replacement lands must not be subject to any prior liens or encumbrances that are determined to be objectionable by the attorney general. If the landowner cannot provide title that is free of objectionable encumbrances, the alteration and amendment cannot occur until title issues are resolved.
- 11) Landowners will be required to cover the cost of establishment of conservation practices on replacement acres according to an amended, BWSR-approved conservation plan.
- 12) Landowners will be required to sign an amended conservation easement including the replacement lands that will be subject to all easement terms and conditions.
- 13) An easement's funding source or partner agency may have additional requirements for easement alterations and prior approval from other agencies/councils may be necessary before BWSR can alter the easement.**

History

Version	Description	Date
1.0	Policy for Requests to Modify Easements adopted by Board	4/26/1989
2.0	Conservation Easement Alteration Requests and Board Policy developed by Easement Alteration Subcommittee and adopted by BWSR	5/24/2006
3.0	Conservation Easement Alteration Requests and Board Policy update adopted by board resolution 17-105	12/20/2017
4.0	Conservation Easement Alteration Policy adopted by board resolution 25-55	01/01/2026

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