



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 parcel of land subject to a lien or charge such as, but not limited to, a mortgage or delinquent taxes.

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; and
- 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, and
- 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 the 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 the BWSR realty 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 realty 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, the 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.
- The 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 the BWSR realty 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 (see [Agreement Stage, Conservation Easement Agreement](#) section). Upon receiving the commitment the SWCD should check the Schedule B exceptions and make sure that each mortgage loan listed as an exception has a consent or subordination from the lender that made the loan. The BWSR has drafted a Mortgagee's Consent Form for a Conservation Easement for the lender to fill out and sign. There are three versions of this form. Most mortgages are held by corporations. Therefore, the [Consent to Conservation Easement, Corporation](#) version of the form is the one most frequently used. The other types of this form are the Consent to Conservation Easement, Individual and the Government Body Mortgage Consent. The Individual form is for use when a mortgage is between two individuals. The Government Body Mortgage Consent Form is for use when a mortgage is held by USDA FSA, for example.

If the lender has provided a consent 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.

The central office cannot proceed with developing the easement if a consent is missing. ***Consents are recorded by the title agent, along with the easement. Retain the original for recording and send only copies to the BWSR easement staff.***

A Schedule B exception for a contract for deed does not require a consent. 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.

If there is difficulty obtaining signatures from a bank on the State's Mortgage Consent document, please refer to our [Mortgage Subordination Fact Sheet](#) found under "Handbook and Forms/Consents". This sheet 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 a consent is needed in order for the State to continue the processing of an easement.

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 the BWSR. The realty 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 the 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. The BWSR will in turn except them from the written legal

description of the conservation easement. The BWSR office 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 the 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 the BWSR’s review so that a determination can be made about how or if the utility easement will adversely affect the conservation easement. The 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 the 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 the 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 consent 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 subordinated 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. 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 “General Forms”. SWCD personnel may periodically submit this form to the BWSR for reimbursement payment.

The state cannot reimburse the SWCD for title insurance expenses unless the final title insurance policy has been received and approved at the BWSR.

When completing the invoice please keep in mind the following:

- Attach copies of all receipts indicating the expenses that have been paid.
- Indicate the easement ID # and the landowner name for that easement.
- Sign and date the request (invoice) in the lower left corner.

(For more information on SWCD reimbursable expenses refer to the [Processing Framework](#) section of the handbook.)

D. EASEMENT RECORDING AND PAYMENT

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

D.1 Signing and Recording

The SWCD should review the conservation easement document upon receipt from the 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 consents) 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 the 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 the 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.

D.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, an IRS Payment Distribution 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 payment distribution form will result in the easement payment being withheld. Therefore, the distribution forms must be submitted to the BWSR with the recorded easement.

D.3 Submitting for Payment

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

- Recorded easement showing the recording information, and any other recorded documents, such as mortgage consents.
- Final title insurance policy.
- Final signed [conservation plan](#) (only page one, unless the practice plan and plan map have been amended since the one submitted previously).
- IRS 1099S Payment Information form (for multiple grantors only).