

AGREEMENT STAGE

The agreement stage involves the development of two separate, but closely related, documents - the Conservation Easement Agreement and its associated Conservation Plan. The development of these two documents, in part, involves the application of practice specifications for the conservation easement programs and may occasionally require the acquisition of a flowage easement to facilitate the acquisition of the conservation easement. Therefore, the *Agreement Stage section* of the handbook is divided into the following four subsections for ready reference.

- I. The *Conservation Easement Agreement* subsection contains development instructions for the documents required to begin the real estate transaction for acquiring the conservation easement.
- II. The *Conservation Plan Development* subsection contains the instructions and requirements necessary to develop the conservation plan as required by the conservation easement. This plan will identify the installation and maintenance requirements for the selected conservation practices.
- III. The *Practice Specifications* subsection contains program policy information as it relates to cost-sharing, seeding, planting, constructing and maintaining each of the eligible conservation practices.
- IV. The *Flowage Easement* subsection contains information specific to acquiring the real estate rights for an associated flowage easement necessary to ensure feasibility of a conservation easement.

CONSERVATION EASEMENT AGREEMENT

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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* in the order listed and submit it directly to the BWSR.

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.

The BWSR will prepare and send three original "sets" of the agreement documents to the SWCD for signatures.

Step #4 Landowner(s) Sign Agreement Documents

Upon receipt of the three sets of the agreement document 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 all three agreement documents. Upon completion, return all three agreement documents 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 return one of the three signed agreement documents 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 documents instructing the landowner(s) to update their abstract and provide it to the SWCD office. The BWSR will also send a copy of the signed agreement documents 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

The 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 be generated from information previously supplied on the easement application or on an approved Revision Request Form. 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
- ❖ Exhibit A - easement location map

It may also include of any these legal documents:

- ❖ Legal Description (if necessary to separate from Agreement because of size)
- ❖ 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 abstract's legal description
3. Copy of the deed(s) for the land
4. Aerial photo(s) of easement area (original reproductions only)
5. Conservation Easement Financial Worksheet (CEFW)
6. Conservation Easement Practice Payment Worksheet (CEPPW)
7. Copy of statement from landowner to SWCD describing the activities needed to resolve environmental problems/issues
8. Copies of other pertinent ownership/legal documents (e.g. Power of Attorney, Trustee Personal Representative, Guardian, etc.)
9. Copy of Government Land Office (GLO) map identifying any government lots
10. Copy of the survey map if the deed's legal description is in metes and bounds (when boundaries are defined by bearings and distances)
11. Copy of the plat or subdivision map if easement area is part of a platted area or subdivision
12. Registration of Authorized Farm Corporation/Partnership

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 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 state will likely have to discontinue the easement acquisition process.

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 landowner shall provide the SWCD with a signed statement describing the agreed to activities along with the associated time frame for completion. This signed statement should include language indicating that the landowner understands the conservation easement will not be recorded until the agreed to activities are completed. This statement must become part of the SWCD easement file. A copy of this statement should be included with the agreement package sent to BWSR. The state cannot record 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 your Board Conservationist 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 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. The signed statement by the landowner(s) should include a copy of a map identifying the location(s) of building(s) and a removal plan.

B.3 Other Conflicting Property Restrictions

Lands being enrolled in a conservation easement cannot be enrolled in another federal or state government program 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 or the requirement to establish and maintain certain conservation practices. The BWSR easement staff should be contacted to determine if any other identified conservation easements or agreements would affect the acquisition of the RIM or PWP 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 AKA (also known as) or FKA (formerly known as) and then the grantor's name as shown on

the deed. AKA is used in cases of a misspelled name or some other change or mistake. FKA 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.

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, widower
or
Mary J. Jones, widow
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*.

Two corporate officers must sign on behalf of the corporation or partnership, unless the corporation or partnership 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 or partnership. If required, a copy of the resolution(s) must be submitted as part of the agreement package.

Easement Payment Information

The primary payee must be one of the grantors. Include their mailing address and social security number.

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 the federal tax identification number for simple partnerships. List both the state and federal tax identification number for other 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 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 is not required to be a grantor of the easement. A relative, caretaker, renter or other person as designated by the grantor(s) could be listed. If the

recipient is not a grantor, explain the person's relationship to the grantors under *Comments*.

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 Abstract's Legal Description

A property's abstract provides a historical summary of all the legal transactions that have occurred affecting a particular tract of land. Due to the historical nature of an abstract, the legal description shown on the document, usually located on its cover, may not be written the same as the legal description on the landowner's deed for the property. After reviewing the Agreement package submitted, the BWSR may direct the SWCD to request a copy of the legal description(s) from the abstract(s).

D.3 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.4 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, an Affidavit of Survivorship along with 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.

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 judgement.

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.5 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.

D.6 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.7 Registration of Authorized Farm Corporation/Partnership

A partnership or corporation must qualify under the definition of an eligible landowner to be eligible for enrollment into a BWSR conservation easement program. To qualify, a partnership or corporation must be registered as an authorized farm partnership/corporation with the Minnesota Department of Agriculture. A copy of this authorization or other type of verification from the Department of Agriculture must be supplied by the grantor and submitted along with the agreement package.

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

E. 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:

- ❖ Existing legal descriptions from deed, abstract or other surveys for the property
- ❖ Field measurements
- ❖ Measurements of easement area boundary lines
- ❖ Other measurements from good quality maps and photos

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

F.1 Overview

An original reproduction of an FSA aerial photo(s) or shape file (ArcView) with DOQ (digital orthoquad), showing the easement area and other pertinent land features, must be submitted as part of the agreement package. Photocopies of the aerial photo will not be accepted because the scale, accuracy and clarity of the photo are substantially affected when photocopied.

The information provided on the photo will be used by the BWSR to develop the Exhibit A 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 Verification/Marking

Prior to developing the aerial photo for the agreement package, the SWCD should verify the boundaries of the easement area with the landowner. This verification should consist of marking (where appropriate) the easement area boundaries in the field. The marking should normally take place at easement corners or periodically along curved

easement lines. Permanent stakes (steel fence posts) should be used to mark these locations whenever possible. 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 should be established as soon as conditions permit their placement. 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 by the landowner, dimensions of each straight easement line (from corner to corner) should be measured and noted. Distances from well-defined landmarks such as roads or property/fence lines to easement area corners should also be measured and noted (where appropriate). Curved easement lines should be marked and measured as accurately as possible (but do not include a series of dimensions).

F.3 Easement Area Boundary

Using the dimensions and distances measured in the field; neatly draw the easement area boundary on the aerial photo. The line drawn should be in red and as thin as reasonably possible. (Please do not use highlighters.) The dimensions and distances as measured in the field (see above) should also be shown on the photo. If the location of the easement on the photo, darkness of the photo, or quantity of dimension/distance information make it impractical to put this information on the photo, you may include the dimensioning and distance information on a separate sheet of plain paper).

F.4 Other Information

The following physical features (where applicable) should also be identified on the aerial photo if located adjacent to, or within, the same quarter 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. Attempt to verify the widths for each road and right-of-way adjacent to the proposed easement area and indicate on the photo.

Railroads

Identify railroads and label them by name. Determine the actual width of the railroad right-of-way, where pertinent, 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. Refer to [General Criteria of the RIM Reserve](#) or [PWP Eligibility](#) sections in Part 1 of the handbook for more information.

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 grantors are required to sign all three copies of the agreement.

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 identify 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 for the three copies of the agreement 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.

To initiate a revision, the SWCD must complete and submit a Revision Request Form to the BWSR (refer to [Completing the Conservation Easement Revision Request Form](#) of this section).

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 (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 regard 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)

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 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 the original will be returned to the SWCD. If the revisions are not approved, the BWSR will contact the SWCD and explain why.