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## **Conservation Easements**

The use of conservation easements to protect critical natural resource land is a growing trend throughout the country and in Minnesota. This information brief answers basic questions about conservation easements and describes the conservation easement programs and work of governmental and nonprofit organizations. It also summarizes a recent Department of Natural Resources report on the subject and the 2004 effort to enact a federal-state Conservation Reserve Enhancement Program. This issue is likely to come before the legislature again in 2005.

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## **Introduction**

The use of conservation easements to protect critical natural resource land is a growing trend throughout the country and in Minnesota. Basically, a conservation easement is a legal interest in land that allows an easement holder to either restrict a use of the land or gain a use of the land for a specific purpose. The cost of an easement generally is less than if someone were to buy the land in fee title, so at times, it might be cheaper to purchase land with an easement.

An easement is recorded with the deed to the land and, depending on the agreement in writing, may restrict the land in perpetuity or for a limited length of time. It may or may not allow public access to the land. Landowners can sell a conservation easement to a public or private third party, but still retain ownership and certain uses of the land. The basic legal authority on conservation easements in Minnesota is found in Minnesota Statutes chapter 84C.

Substantial tax benefits can be available for the conveyance of conservation easements because the easement restrictions can permanently (for perpetual easements) reduce the value of the land on the real estate market. The U.S. Internal Revenue Service provides a charitable income tax deduction for the donation of a conservation easement in an amount equal to the difference between the value of the land with and without the easement restriction. About 15 states, but not Minnesota, have laws to provide landowners with state income tax credits for gifts of land or easements, or for the costs of habitat management.

## **Conservation Easement Questions**

### **What is a conservation easement?**

A conservation easement is a set of restrictions a landowner voluntarily places on his or her property in order to preserve its conservation values. The conservation values of the property and the restrictions that preserve those values, along with the rights reserved by the landowner, are detailed in a legal document known as a conservation easement. This document is filed with the local county land records.

A conservation easement is conveyed to a government agency or nonprofit conservation organization qualified to hold and enforce easements. Most conservation easements through public or private entities are perpetual. They apply to the current owner and all future landowners, permanently protecting the property.

Each conservation easement is unique, specifically tailored to the particular land being protected as well as to the particular situation of the landowner.

### **What restrictions are included in a conservation easement?**

First, conservation values are defined and then restrictions are created to protect those values. Restrictions may apply to all of a landowner's property or to only a portion of it.

Typically, easements address subdivision, commercial or industrial uses, mining, construction of buildings or roads, utilities, disturbance of the vegetation or topography, and any activities on the property that might interfere with the conservation purpose for the easement.

An easement preserving rare woodland habitat may require that the property be left entirely in its natural state, prohibiting all development. Or, to protect a lake or stream, an easement may allow limited inland construction of buildings or trails while restricting such activities along the more fragile shoreline. Some easements may permit continued farming or limited timbering. Others may provide for enhancement of wildlife habitat or restoration of native prairie.

### **What are the effects of a conservation easement on a landowner's property rights?**

A landowner retains all rights to the property not specifically restricted or relinquished by the easement. The landowner still owns the land and has the right to use it for any purpose that is consistent with the easement; the landowner may also sell, transfer, or leave the land through a will. Typically, landowners also retain the right to restrict public access.

### **What obligations come with a conservation easement?**

The landowner remains responsible for the land—for its maintenance and upkeep, for paying taxes, and for otherwise meeting the typical obligations of landownership. Conservation easements add only a few further requirements:

- ▶ To notify the easement holder of proposed changes to the property
- ▶ To allow annual monitoring visits
- ▶ To notify the easement holder when selling or transferring the property
- ▶ To comply with the restrictions in the easement

### **What are the benefits of a conservation easement?**

Conservation easements can be a cost-effective tool to protect increasingly threatened land and water resources, preserve wildlife habitat, and safeguard waters and shorelands.

Conservation easements can give landowners peace of mind, knowing that their commitment to protecting their unique land will be forever respected and remain an enduring legacy for their family and their community.

Easements may provide financial benefits by reducing a landowner's tax obligations in a number of ways:

- ▶ **Income Taxes:** As with other charitable contributions, the donation of a conservation easement under certain circumstances may allow the landowner to claim a federal income tax deduction for the value of the easement.
- ▶ **Estate Taxes:** A gift of a conservation easement may also reduce federal estate taxes, providing for an easier way to transfer land to the next generation with its natural features intact.
- ▶ **Property Taxes:** An easement that reduces the value of the land may result in lowered annual property taxes.

## **Programs Administered by DNR and BWSR**

### **Reinvest in Minnesota (RIM)**

The program, begun in 1986, is intended to protect water quality, help fund the restoration of land and the retirement of land from agricultural production, and enhance critical habitats of fish and wildlife. The program matches private donations of land and money with state funds. The program has many arms that are administered through the Department of Natural Resources (DNR) and Board of Water and Soil Resources (BWSR). Eligible lands include riparian lands, sensitive groundwater areas, wetlands, marginal croplands, and snow fence lands. Below is a list of the different arms involved in conservation easements.

- ▶ **Reinvest in Minnesota (RIM) Critical Habitat**

This arm of the program is administered by the DNR and administers only a few conservation easements. Acquisition is preferable, as much of the land becomes a Wildlife Management Area (WMA) or Scientific Natural Area (SNA).

The program started in 1986 and allows private groups to help fund critical wildlife and other natural resource land, with a dollar-for-dollar match by the state. Over \$32 million was matched by the end of 2003.

- ▶ **Reinvest in Minnesota (RIM) Reserve**

This arm of the program is administered by the BWSR. The easements are enrolled in one of three programs: RIM Reserve, CREP, or PWP (see below for descriptions of CREP and PWP). The landowners receive a percentage of the assessed value of the land.

### **Permanent Wetlands Preserves Program (PWP)**

This state program, begun in 1982, intends to protect at-risk wetlands. Conservation easements are permanent, and eligible wetlands include wetland types one, two, three, and six as defined by the U.S. Fish and Wildlife Service circular 39. Landowners receive rental payments that are calculated based on a percentage of the assessed value.

### **Conservation Reserve Enhancement Program (CREP)**

This program combines RIM and the CRP (See below).

### **Conservation Reserve Program (CRP)**

A federal program aimed at protecting the environment by protecting sensitive agricultural lands with cover. Eligible lands include croplands and certain marginal pasturelands. Landowners receive rental payments calculated based on a projected value of the land and the amount of revenue lost from nonproduction.

### **Rental Payment Structure**

Regular RIM Reserve	Wetland restoration: \$1,200/acre Riparian and marginal agricultural land: \$1,000/acre As of March 2003: 1,923 easements and 59,587 acres
MN River CREP	Wetland restoration: \$765/acre Riparian (perpetual): \$644/acre Riparian (limited easements): \$350/acre Marginal pasture (limited easements): \$350/acre As of March 2003: 2,449 easements and 100,482 acres
PWP	\$645/acre As of March 2003: 300 easements and 11,803 acres

### **DNR Conservation Easement Programs**

Under all DNR easement programs in the last seven years, there have been 217 easements protecting 7,173 acres of land at a total cost of \$10.4 million.

### **Metro Greenways**

This is a relatively new program that started in 1998 in response to a report by concerned citizens, called *Metro Greenprint*. The program is designed to protect nature from urban growth. It promotes collaboration between local government and nonprofits in the acquisition of fee-for-title property and conservation easements in the seven-county metro area. The program helps coordinate funding sources, provide technical assistance, provide grants, and identify significant natural features. The most common acquisition process involves local and nonprofit entities acquiring the land; then the DNR purchases a perpetual conservation easement on the land. The program has protected about 1,500 acres.

### **Native Prairie Bank**

Started in 1987, this program is designed to protect native prairie (never plowed and less than 10 percent tree cover). The program allows for limited easements but there is a minimum of

20 years, and preference is given to perpetual easements. Landowners allowing a perpetual easement are paid 65 percent of the permanent marginal agricultural land payment rate established by the BWSR; limited easements are paid 65 percent of this rate. In 2003, there were approximately 60 easements.

### **Aquatic Habitat/Trout Stream**

The easements are made permanent by the DNR, and most are on strips of land along a trout stream running 66 feet back from the center of the stream. They are primarily for preserving habitat for fishing. Approximately \$200,000 to \$400,000 is spent annually purchasing five to ten new stream easements. Most are in southeastern Minnesota.

### **Forest Legacy**

This federal program is relatively new in Minnesota. Its purpose is to protect environmentally important forest areas and to promote forestland production. All easements are perpetual, but the easements are tailored to the interests and needs of the landowner. The federal government provides 75 percent of the funding, and the remaining 25 percent of the funding comes from private, state, or local entities. As of June 2003, there were seven completed projects in Minnesota for a total of 620 acres. The total payment received was \$1,037,000.

### **Nongame Wildlife Fund**

*Sugar Lake Conservation Easement:* 78.4 acres in Itasca County valued at \$ 117,200.

This 78-acre tract has more than one mile of natural wooded shoreline, and it was the last large block of undeveloped land remaining on Sugar Lake. The shoreline and adjoining waters are critical fish and wildlife habitat, and the shallow waters are important for fish feeding and spawning. The water and shoreline are also used by bald eagles, loons, herons, ducks, terns, mink, beaver, otters, and numerous other birds and mammals.

By protecting this privately owned shoreland with a perpetual conservation easement, it will always remain in a natural condition. Two sisters gave up 90 percent of the value of their land in one of the first “forever wild” conservation easements in Minnesota.

*Whitefish Lake Shoreline Conservation Easement, Galbraith family:* 108 acres in Crow Wing County valued at \$ 1,080,000.

This property is one of the few remaining large tracts of undeveloped lakeshore located on Whitefish Lake, which is undergoing enormous pressure for lakeshore development. It is an important riparian habitat with high quality woodlands and backwater ponds.

The property provides important habitat for several wildlife species including bald eagles, neotropical migrant songbirds, great blue herons, waterfowl, shorebirds, and a variety of other nongame species. Additionally, this property has extensive pine and maple-basswood old forest that is essentially undisturbed.

*Jean Williams Farm, Conservation Easement: 205 acres in Carver County valued at \$318,756.*

These 205 acres of private land have undergone extensive environmental restoration. The area contains 13 ponds, more than 50 acres of prairie grasses and wildflowers, 30 acres of wetland, and 75 acres of timber.

The area has important ecological values and provides an excellent habitat for white-tailed deer, wild turkeys, woodland songbirds, grassland birds, waterfowl, and a variety of nongame wildlife. It lies within the boundaries of the Minnesota River Watershed and has unique elements of transitional hardwood forest and prairie communities.

### **Water Bank**

This program began in 1976. It was intended to help rural landowners who wanted to drain wetlands for agricultural purposes who felt that conservation efforts had restricted their property rights. There are some records, but the easements were not surveyed. There are still-existing easements that the DNR monitors.

### **Wild and Scenic Rivers**

Currently, this is an inactive state program (last funded for easements in 1989), intended to preserve scenic, recreational, historical, and scientific values of rivers.

## **DNR Working Group Report**

The DNR had a working group of selected staff that looked at its easement programs and made recommendations at the end of 2002. Some the group's findings include the following:

- ▶ Some easement purchases may not be cheaper than buying land in fee; however, under certain conditions, their use may be the only way to accomplish a conservation goal.
- ▶ The biggest challenges in acquiring conservation easements are in the legal documentation, monitoring, and enforcement of the restrictions, including the data collection and records systems, and the management and funding necessary to accomplish these activities, which are part of the true costs of owning the easements.
- ▶ The DNR staff generally is not out working on easement land and must make additional efforts to enforce the terms of the easements. In general, enforcement of easement terms can be very adversarial and sometimes is viewed as counterproductive to relationship building with landowners, which DNR staff is committed to improving. A volunteer easement monitoring program, such as what the Minnesota Land Trust uses, may be useful here.
- ▶ Over a long period of time, the DNR needs to consider whether the extra management burdens that come with conservation easements are worth the resource protection they provide. This comes into play when DNR makes decisions on selling land that

may no longer fit its needs, but where it may want to retain a conservation easement on some of the land to prevent unwanted development.

- ▶ Easements may continue to increase in popularity because of shifting attitudes toward additional state land acquisition. Easements can be an attractive alternative for landowners who want to protect their land but may not want to sell it outright.

The group made the following general recommendations:

- ▶ Easement locations need to be better identified on the ground.
- ▶ The land records base needs to be updated.
- ▶ Existing easements need ongoing monitoring and enforcement.
- ▶ A full-time staff person should be appointed to serve as the centralized coordinator for all conservation easements.

The DNR has begun working on the recommendations and is noticing good progress.

## **BWSR Conservation Easement Programs**

### **Grassland Reserve Program (GRP)**

A federal program authorized in 1995, GRP is aimed at helping landowners protect grasslands (rangelands, pasturelands, and hay land) while maintaining production. The easements can be either permanent or for 30 years. The landowner is compensated with an annual payment that varies with the length of the easement and value of the land. Each county establishes a rental rate.

### **Wetlands Reserve Program (WRP)**

The purpose of this program is to help landowners restore wetlands by offering cost-sharing and conservation easements on marginal lands. The easements can be either permanent or for 30 years. For permanent easements, the landowner receives payment for the easement that is the lowest of three amounts: agricultural land value, established payment cap, or amount offered by landowner. In addition, the U.S. Department of Agriculture (USDA) will pay all costs associated with restoring the wetland. For 30-year easements, the landowner receives 75 percent of the amount listed above and 75 percent of the costs associated with restoring wetland.

### **State Pilot Lakeshore Easement Program**

The Minnesota Lakeshore Easement Program was created by the 1998 Legislature to protect sensitive lakeshore habitats from development and to help preserve lake and groundwater quality. Initially, \$250,000 was appropriated for a pilot study administered by the BWSR. Cass County Soil and Water Conservation District was granted \$250,000 in 2000 to purchase a lakeshore easement of 195 acres, including 4,160 feet of shoreline on Little Boy Lake, near Longville. The property, Camp Olson, is owned by the Rochester YMCA Council, which has no intention of selling any of the land, but wanted it protected because of intense development pressure in Cass County.

In exchange for the easement, Cass County was to pay up to 90 percent of the assessed value of the property. Although it was valued at over \$454,000, the camp accepted the pilot money of \$235,000 for the easement. Under the conditions of the easement, the camp still owns the property, but the county monitors the easement. Funding has not been available in the past four years for more easements.

### **Debt for Nature Program (DFN) or Debt Cancellation Conservation Contract Program**

The program aims at protecting different types of land (such as marginal cropland and other environmentally sensitive lands) by forgiving portions of debt owed to the federal Farm Security Administration (FSA). Landowners can choose from 10-, 30-, or 50-year easements. The payment is calculated by factoring in the market value of the farm, FSA debt, and total number of acres. For landowners who are up-to-date on payments, no more than 33 percent of the loan can be forgiven. For delinquent landowners, the amount can exceed the 33 percent, but may not exceed the appraised value of the land.

## **County Conservation Easement Programs**

### **Dakota County Program**

Dakota County voters approved the sale of \$20 million in bonds in November 2002 to fund the program. Working farmland will be protected through the donation or sale of permanent easements from willing landowners. Natural area protection will involve multiple partners in the donation or sale of permanent conservation easements or fee title from willing landowners. As of 2004:

- ▶ A 34-acre easement in the city of Eagan has been donated to the county.
- ▶ The county has successfully secured \$2.1 million in federal funds for farmland easements, the first county in the state to do so.
- ▶ Appraisals have been completed on ten farmland easements, totaling 1,578 acres, and negotiations have begun with each landowner.
- ▶ Six natural area projects, totaling 632 acres, are in varying stages of progress to be protected.

### **Washington County Program**

In 2000, Washington County received a \$300,000 appropriation from the legislative commission on Minnesota Resources. Called the "Green Corridor Project," the legislative dollars were matched by local units of government money and leveraged to total \$1.3 million. The money protected prime natural areas through conservation easements, totaling 142 acres at an average cost of \$9,373 per acre. Several cities, besides the county, hold the easements.

## Private Groups Administering Conservation Easements

Many private organizations are involved with conservation easements in Minnesota. There are several organizations that partner with others (state or local entities, other organizations) in order to secure conservation easements, however, most organizations play more of an educational role, helping landowners become aware of the various programs available, helping to raise funds, etc. Minnesota Land Trust is the predominant organization in conservation easement work. A few other organizations purchase and manage conservation easements. As of 2000, local, state, and regional organizations operating in Minnesota acquired 16,703 acres under easements (this total does not include national organizations like the Trust for Public Land and the Nature Conservancy).

Below is a list of the various organizations that are involved in conservation easement efforts. More detailed information follows for the Minnesota Land Trust and Nature Conservancy.

- ▶ 1000 Friends of Minnesota
- ▶ American Farmland Trust
- ▶ Ducks Unlimited
- ▶ Friends of the Mississippi River
- ▶ Minnesota Land Trust
- ▶ Nature Conservancy
- ▶ Parks and Trails Council of Minnesota
- ▶ Pepin Bluff Trust
- ▶ Pheasants Forever
- ▶ The Prairie Enthusiasts
- ▶ Trust for Public Land

### Minnesota Land Trust

Number of Acres (as of November 2003): Approximately 23,000

Number of Easements (as of November 2003): 256

Types of Land: Natural habitats, scenic lands, open spaces, lands within developments (suburban lands), a lot of lakeshore because of its natural habitat, scenic and water quality value and very little farmland; primarily land that falls into the IRS tax category for eligible tax deduction.

Types of Easements: Donated (only about a dozen are purchased) and all perpetual.

Compensation: Landowners who donate lands may receive tax deductions, and some have lower property tax values (due to lower land valuation because of easement). Purchased lands are determined on a site-by-site basis through appraisals, not all are purchased at full market value, and some are bargain sales.

**Effectiveness of Program:** Monitoring of compliance is key to program effectiveness. Currently, a portion of funds is kept in a Stewardship Fund to fund monitoring programs. Programs include annual visits and relationship building with landowners. No serious violations have been found in its ten-year history.

**Partnerships:** Occasionally landowners will sell half of the land to Minnesota Land Trust and half of the land to a public entity to add a check and balance into the system and to ensure their desires are kept.

### **Nature Conservancy**

The Nature Conservancy prefers to purchase land, but does some work with conservation easements. It works in specific areas of Minnesota that include northeast forest lands, northwest native prairie lands, Lake Superior shore land, the Brainerd area, and the southeast (Weaver Dunes). Conservation easements are primarily put on grasslands and forestlands. The land must be in one of the areas they work in and show significant biodiversity. The easement is run like many others: appraisals determine easement value, and the Nature Conservancy is responsible for monitoring the easement.

As of 2004, the Nature Conservancy had 12 easement agreements on 15 separate land tracts, comprising 2,053 acres.

## **The 2004 CREP Proposal**

Minnesota has a proposal to enroll 120,000 acres of eligible land in the Conservation Reserve Enhancement Program (CREP) of the USDA. Under the federal farm bill, the federal match of dollars for the acres would be four to one, or \$160 million matched by \$40 million state funding. This has been called "CREP II," after the initial Minnesota River One.

The new effort will target the Red River watershed, which borders North Dakota, the lower Mississippi area of the state, and the Des Moines and Missouri river regions in southwest Minnesota.

### **Issue**

The previous CREP enrollment along the Minnesota River was for perpetual easement enrollment, so that the land would forever provide some conservation benefit and the public dollars would be maximized. An earlier state program, Reinvest in Minnesota, had gone to perpetual easements in 1986 for soil conservation, water quality restoration, and wildlife benefits, and always had more willing landowners wanting to enroll than state dollars available.

However, in the last couple of years, farm groups wanted to ensure that existing farmland would be available to be farmed for future farmers and crop needs. They supported CREP for limited duration easements of 20 years, but they didn't want the program to enroll any more perpetual easements.

Some Minnesota congressmen supported these farm groups and began speaking out for limited duration easements to the U.S. Secretary of Agriculture and the Minnesota governor. A capital investment bill was going to be the vehicle in 2004 to start the state payments for the federal CREP match, with \$20 million slated for easements. The farm interest groups and congressmen convinced the governor that he should only support a CREP limited duration easement strategy.

A compromise by legislators evolved for farm interests seeking limited duration easements and others in the state that wanted to maximize conservation benefits with existing public dollars. Nonfarm interests didn't see the wisdom of paying for land conservation benefits for only 20 years, when funding history showed that perpetual easements were popular with landowners here.

After a number of meetings and discussions with farm interests, the conservation community, the governor, and interested legislators, a proposal began to emerge that most parties could agree on. There would be three options for the CREP conservation easements:

- 1) Limited duration conservation – following 15 years of CRP enrollment, an additional 20 years
- 2) Conservation legacy – after 35 years of enrollment, the landowner may opt to purchase back all or part of the land under contract, provided the water protection element continues on the land adjacent to water
- 3) Perpetual easements for restored or protected wetland areas, to be consistent with our wetland law

### **Conservation Plan**

- ▶ The compromise proposal targets highly erodible land under federal classification for conservation easements that have a cropping history for four of the past six years, and part of the land must be within a river, stream, lake, wetland, or groundwater sensitive area.
- ▶ Before any agreement is signed, a landowner will have to agree on a conservation plan that may include tree planting, wildlife habitat needs, native grasses, wildlife food plots, drainage grass and filter strips, and wetland creation and protection.
- ▶ Haying, grazing, drainage pathways, and water flow management of neighboring properties are to be included in any easement conservation plan.
- ▶ A landowner wishing to buy back all or part of land under a conservation legacy (over 35 years) agreement may do so at the appraised value of the land usage restrictions agreed upon. The provisions for water quality protection must be retained and be able to be maintained before any buyback can occur, and they must be monitored and enforced over time by a public entity. Conservation legacy agreements will have a higher payment rate than the other two forms.

## **Outcome**

The compromise proposal was to be part of an overall state bonding bill in the 2004 session, which didn't emerge from committee for floor consideration. It's fully expected to be revived for possible passage in the 2005 session.

For further information on conservation easements see the House Research Department short subject *Conservation Easements: A Chronology of Recent Law*, November 2003.

*For more information about environmental protection, visit the environment and natural resources area of our web site, [www.house.mn/hrd/issinfo/environ.htm](http://www.house.mn/hrd/issinfo/environ.htm).*