

Minimum Standards for
Conservation Easements Acquired with
Public Money in Minnesota



A report

by

The Minnesota Department of Natural Resources

February 1, 2008

Introduction

The purpose of this report is to identify and recommend a set of minimum standards acquired with public funds for conservation easements.

In 2007, the Minnesota Legislature recognized an increased use of conservation easements as a tool for land management. Particular concerns heard during the session were whether the public acquired easements should include the rights of the public to access lands for recreational purposes and the relationship between non-governmental entities with governmental entities in the acquisitions of easements. Based on the concerns discussed, the Minnesota Legislature requested the Department of Natural Resources formulate a set of minimum standards for conservation easements. The directive comes from Laws 2007, Chapter 57, Art. 1, Sec. 161, which states:

The commissioner of natural resources must report to the house and senate committees with jurisdiction over environment and natural resources finance with proposed minimum legal and conservation standards that could be applied to conservation easements acquired with public money.

For the purpose of this report, the term “public monies” is defined as appropriations by the Minnesota Legislature and any additional funds available to state agencies. The term “minimum standard” is used in this report. A “minimum standard,” is defined in this report as a structured practice with specific components to achieve an identified outcome. The term “conservation easement” is described as “A nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreation, or open-space use, protecting natural resources, maintaining or enhancing air quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.” (Minn. Stat. § 84C.01, Subd.1)

In some instances, a conservation easement is gifted to a public entity rather than purchased by the governmental entity. Since monitoring and enforcement of the easement by the governmental entity will require public monies, gifted conservation easements to governmental entities are also considered within the scope of this report.

The first segment in this report provides general information related to conservation easements. Then the proposed minimum standards are presented. There are four separate sections of minimum standards. Each standard will include detailed information highlighting the purpose of why it was chosen as a proposed minimum standard.

The first minimum standard identifies the organizational structure any entity should meet prior to acquiring conservation easements. The second standard addresses the key features of a formal, defined acquisition process. The third minimum standard addresses the minimum features a comprehensive stewardship plan should have when conservation easements are acquired with public monies. The fourth minimum standard addresses the relationships between governmental and non-governmental organizations when acquiring conservation easements. An addendum of definitions and external references are provided at the end of the report.

Conservation Easements

Conservation easements are an interest in real property that places certain restrictions on the use of the property for conservation purposes. These easements are also an agreement between the landowner and the easement holder.

The term “conservation easement” has specific meaning under Minnesota law:

“A nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreation, or open-space use, protecting natural resources, maintaining or enhancing air quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.” (Minn. Stat. § 84C.01, subd. 1)

Conservation easements in Minnesota can be acquired and held by (1) governmental entities otherwise authorized to hold real property and (2) charitable organizations whose purpose meets the statutory definition of conservation easement.

Historical use of Conservation Easements

Deed restrictions have been used since the 1800s to limit the development of neighboring property rights. Minnesota Conservation Easement law (Minnesota Statutes, Chapter 84C) was enacted in 1985, following a growing national trend to recognize this property interest. Earlier, in 1974, the Minnesota Legislature had authorized the creation of “conservation restrictions” in deeds, wills, or other instruments. The conservation restrictions were for the purpose of restoring land or water in natural condition or as suitable habitat for fish and wildlife by forbidding or limiting activities such as improvements to the land, dumping on the land, removal of trees and vegetation, excavation of soil and rocks or surface use or activities detrimental to preservation. The conservation restriction could be acquired by the department of natural resources, a city, or a nonprofit or charitable organization whose purposes include conservation of the land or water. (See Minnesota Statutes, sec. 84.64-84.65)

Purposes of Conservation Easements

Conservation easements are a commonly used as a tool to protect land for natural, scenic, or open-space values. They are also used to protect natural resources, such as forests, in which harvesting may occur. Conservation easements are often used when the acquisition of the land in fee simple is not possible, as an alternative method of land protection.

Many times landowners are not interested in selling the land in fee, but are willing to sell some of their rights to the land. Entities acquiring conservation easements are able to protect resources for the benefit of the public and meet the mission of the organization. Conservation easements provide flexibility to accommodate a landowner’s interest in protecting the land while still retaining ownership.

Conservation easements are a means of accomplishing the mission of an entity by managing lands where you don’t have complete control of the land. By acquiring, or accepting a conservation easement, the end-holder agrees to preserve and protect in perpetuity the conservation values of the easement for the benefit of this generation and generations to come. By agreeing to the conservation easement, the landowner consents that the conservation values of the easement area shall be preserved, protected and maintained in perpetuity, and that the landowner and his/her successors will limit their use of the land in perpetuity.

The State of Minnesota has many programs to purchase conservation easements for environmental protection. The Forest Legacy program, Metro Greenways, Scientific and Natural Areas, Native Prairie Bank, Aquatic Habitat/Trout Stream, Nongame Wildlife Fund, the Water Bank program are all examples of Department of Natural Resources' programs that use conservation easements as one method of land protection. The Board of Water and Soil Resources and the Army Compatible Use Buffer at Camp Ripley are also involved with the acquisition of conservation easements.

The following Minimum Standards are proposed for conservation easements acquired with public monies.

Minimum Standards Discussion

THE BASICS

Four specific standards should be met by entities looking to acquire conservation easements prior to the transaction occurring:

I. Every entity acquiring conservation easements with public monies has a mission statement that reflects the purpose of conservation easements as established in Minnesota Statutes, chapter 84C and consistent with the purpose for which the public money was appropriated.

The purpose of this standard is to ensure that every entity acquiring conservation easements with public monies has a clear conservation goal. (Minnesota Statutes, chapter 84C outlines what a conservation easement is under Minnesota state law.) The mission statement, or other documentation should identify how the organization meets the conservation requirements set forth by chapter 84C.

II. Every entity acquiring conservation easements with public monies has the legal authority to acquire and hold the easements.

The purpose of this standard is to make certain that all entities acquiring and holding conservation easements with public monies have the legal authorization to acquire and hold conservation easements.

III. Every entity acquiring conservation easements with public monies has an established project selection process that includes necessary project criteria and a decision making process to sort/rank projects.

This proposed standard identifies the importance of having a conservation easement project selection process. Information outlining the project selection process should include the necessary project conservation criteria as well as level of priority the project ranks within the entity. An entity purchasing a conservation easement with public monies should have an organized method to select and prioritize the conservation easement projects they are interested in acquiring. The project selection process could allow flexibility so priorities could change when unexpected acquisition opportunities arise. All acquisitions including gifts should meet specific project entity criteria.

IV. A conservation easement being considered for acquisition with public monies must meet a minimum level of public benefit.

All acquisitions (including gifts) being considered must be vetted to determine if they will meet an established minimum threshold of benefits. An easement should have an identified level of benefit. The minimum threshold should be established before specific proposed easements are considered. For instance, allowing the public access to the easement area could be a public benefit. Only projects that fit the criteria constituted by a minimum threshold of public benefits and program needs would be considered.

ACQUISITION PROCESS

The key features outlined below in the acquisition process are considered to be the basic elements that should exist when acquiring conservation easements with public monies.

Every entity acquiring conservation easements with public monies has a formal, defined acquisition process that includes these key features:

- I. Site assessment.*** A physical inspection determines if the property meets the goals or mission statement of the agency acquiring the easement. This step involves gathering of information related to the condition of the property including the potential of environmental hazards. An example of information that could be gathered is: documenting the natural resource values that are to be protected and their location on the property; an environmental records search and a review of air photos and maps. On occasion, a Phase 1 Environmental Assessment may be needed, with further follow-up as advised.
- II. Management Plan.*** Each program decides the necessity of incorporating a management plan as a term in the conservation easement. A management plan includes and describes what limited changes in land management practices may be allowed, with mutual agreement between property owners and the holder of the easement. This document may be modified over time with the mutual consent of the involved parties. Typically, a management plan is used in more complex conservation easements that limit the exercise of many landowner rights. Some conservation easements do not need management plans.
- III. Preparation of legal description and maps.*** A conservation easement that is to be purchased with public money should have a legal description along with a map showing the easement. Any person who is familiar with legal descriptions should be able to locate the conservation easement with the legal description. All parties involved should agree to the final legal description prior to an appraisal being performed.
- IV. Baseline Property Report.*** As a foundation for enforcing conservation easement restrictions, a detailed inventory of the conditions and values of the property should be prepared for the easement being acquired with public money. The Baseline Property Report should be prepared before closing whenever possible. It provides information on the condition of the property (as it relates to the terms of the easement) and documents the location of buildings or other manmade structures on the property at the time the easement is conveyed. The Baseline Property Report is recommended to include results from a historical and cultural records search and a natural heritage records search. The report should be tied to the terms of the conservation easement so that it may be used as the basis for documenting changes in the conditions of the property over time, and could be used for both monitoring and enforcement activities.

- V. *Conservation Easement negotiations and drafting.*** Easement language must be clear and unambiguous. A person who reads the recorded easement document should be able to understand what conservation elements are being preserved, uses restricted, and activities allowed. The conservation easement should be drafted in a way that identifies how the public benefits are being met, such as the conservation attributes and elements that are being acquired. Rights that are reserved by the landowner should not interfere with the public benefits being preserved by the conservation easement. The easement document should address the rights of the easement holder to enter the property for monitoring and enforcement procedures of the conservation easement. Language used should allow the easement holder rights to enforce any violation of the easement. Since the easement is a legal, binding contract, it may contain some legal terms and structure to meet the requirements of law.
- VI. *Landowner payments.*** Each program should establish a process for determining easement value. Such methods may include the use of appraisals or formulas, as specified in statute, for calculating the value of the easement. For example, BWSR has a statutory formula for its conservation easement. If federal aid is used, the appraisal must usually conform to the Uniform Appraisal Standards for Federal Land Acquisitions, also known as the “Yellow Book” standards.
- VII. *Title.*** A review of title shall be conducted to ensure the landowners claiming ownership are the legal owners and have marketable title. The review of title also determines the presence of any mortgages, liens, easements, or other encumbrances that may affect or prevent the transaction. It may be necessary to have the mortgage interest modified to be subordinate to easement interest and to have some other interests released.

The above-mentioned features may need to be sequenced to accommodate individual easements. The acquisition process needs to adhere to the appropriate statutes, policies, and guidelines as required by the State of Minnesota, the Minnesota Department of Natural Resources, and other agencies or organizations acquiring an easement.

CONSERVATION EASEMENT STEWARDSHIP

The long-term management rights of conservation easements must be considered for all conservation easements acquired with public monies. A management strategy must include the fee owner and the end-holder of the conservation easement. Some non-governmental organizations involved in the acquisition process of conservation easements are not the end-holder of the easements. Long-term management must address basic issues of trespass, dumping, and misuse, similar to long-term management strategies necessary for any land owned in fee title.

Every entity, who is the end-holder in acquiring conservation easements with public monies has a comprehensive easement stewardship program that includes these key features:

- I. Baseline property report policy.*** Each program develops a written baseline documentation policy that includes the minimum requirements the program will be incorporating into the baseline reports that are prepared for easements being acquired with public monies.
- II. Landowner relationships.*** Each program assigns a primary landowner contact for each easement purchased. A key to successful stewardship over time is the maintenance of positive relationships with successive landowners. The assigned landowner contact will maintain regular (annual or more often) contact with the landowner, and will be the person the landowner can contact for questions regarding the easement. Maintaining an up-to-date landowner list is recommended for all properties with conservation easements. Easement holders should maintain a periodic schedule for making contact. For some types of easements, contact every three years would be sufficient, while for others annual contact would be advisable.
- III. Monitoring.*** All programs shall provide for the monitoring of easements. Regular monitoring shall be adapted to fit the needs of the particular conservation program holding the conservation easement. Some programs may require more frequent monitoring and some may allow less frequent monitoring due to the nature of the easement, the property, or the owner. Each easement property should have a monitoring plan that assigns an individual to be a monitor, and specifies frequency of monitoring, monitoring procedures, and other pertinent information related to the conservation easement.
- IV. Record keeping.*** Each program shall institute a policy for keeping records of all easements purchased with public monies. The policy should address what records are kept, where they are kept and how they are kept. Key records include the baseline documentation, monitoring reports, violations, landowner correspondence and any other information particular to the conservation easement.
- V. Enforcement.*** Each program shall institute a written policy on responding to a violation of the easement terms. The policy should address the steps to follow when a violation is suspected or detected and should include guidance on how to determine if a violation has occurred. Each program should have a follow-up procedure for confirmed violations; this may require legal counsel.

- VI. Easement amendments.** Each program shall have a policy to address circumstances and procedures for amending easements. Although most easements are intended to be perpetual, conditions may change in such a way as to justify changes in the conservation easement. (A particular concern expressed by stakeholders was that amendments not be used to diminish the conservation values for which the easement was acquired.)
- VII. Public information.** Each program shall maintain an up-to-date list of easement properties under its administration that have been acquired with public monies. This information should be made available for public inspection. Governmental entities are subject to the requirement of the Minnesota Data Practices Act that makes most data available to the public, except for specific exceptions. Each program should have a policy regarding public information. For example, signs, brochures, and web sites may be part of a standard public information practice for easements that have been purchased using public monies or a list of easements that authorize access to the public. For non-governmental entities which acquire conservation easement with public funding, their easement information may need to be in a less public format, although when recorded, the easement will be of public record.
- VIII. Funding.** Every program shall establish a budget for easement stewardship. Once a conservation easement has been acquired, there will be a continued need for the stewardship of the easement. Maintaining records, landowner contact, and monitoring of the easement are examples of the required continued effort, which needs to be taken into account when conservation easements are purchased with public monies. Each program shall be able to demonstrate the existence of funding to be used for the stewardship of the conservation easements which have been acquired with public monies. Some entities have a specific endowment fund for monitoring and enforcement. Governmental entities generally recognize the funding as a part of their core mission.
- IX. Dissolution of entities.** In the event of a non-governmental entity's dissolution, every entity acquiring conservation easements with public monies has an established policy to transfer easements their easements to a willing entity. The entity that is to receive the easement(s) must be willing to accept the responsibilities of continuing the stewardship of the easement(s). This would also apply to entities that may not have the funds or ability to monitor and enforce the easement.

RELATIONSHIPS BETWEEN GOVERNMENT AND NONGOVERNMENTAL ORGANIZATIONS

The purpose of these standards is to highlight how relationships should be conducted between governmental and nongovernmental organizations that are working together to acquire conservation easements when using public monies.

I. When conservation easements are acquired with public monies, there will be transparency between the activities of the governmental units and nongovernmental organizations.

When there is more than one organization involved in the acquisition of a conservation easement, the relationships between the parties should be clear, open, technically sound, and ethical. These activities will include a determination that:

- 1.) The acquisition of the conservation easement is for the public good.
- 2.) Funds spent benefit the public good.
- 3.) The transaction is legally sound.
- 4.) Management and stewardship goals are met.
- 5.) Transaction activities are documented.

This standard is about being open to the landowner and the public, to ensure each transaction is clearly and readily understood.

II. When nongovernmental organizations are working with units of government; there is up-front documentation of the roles, responsibilities and transaction costs.

The roles, responsibilities and payments involved in acquiring conservation easements with public monies should be agreed to by all parties involved in the transaction. The resource values and acquisition costs of the conservation easement must be documented. Written documentation, which may be a contract or letter agreement must include:

- 1.) A legal description of the easement that is agreed to by all parties involved.
- 2.) Purpose and public benefits to be acquired.
- 3.) How the purchase price will be shared by entities involved in the acquisition.
- 4.) How the costs and fees of the acquisition are to be split between the involved parties.
- 5.) Roles and responsibilities of each entity involved.

III. If a governmental unit is an end-holder of an easement being acquired by or through a nongovernmental organization, the governmental unit must be involved in the negotiations and drafting of the easement.

The governmental unit must be involved in drafting the terms of the conservation easement being acquired if the governmental unit will be the end-holder. The best-case scenario is for the governmental unit to provide the basic terms of each easement and then be actively involved in negotiating any additional terms of the conservation easement. At minimum, the governmental unit must review and approve the easement language before granting approval of becoming the end-holder of the easement.

IV. When a nongovernmental organization is acquiring conservation easements that are to be transferred to a governmental organization, the landowner protection features of a governmental unit shall be used by the nongovernmental organization.

Organizations actively working in partnership with governmental units should be provided a copy of each governmental unit landowner protection and requirements. If it is known that a governmental unit program will be the end-holder of an easement being acquired with public monies by a nongovernmental organization, that organization should use the landowner protection features specified by the governmental unit. This removes a possible argument that the governmental entity may be using the nongovernmental entity to avoid compliance with laws protecting landowners in governmental transactions. (For example, the DNR must provide the landowner a “landowner bill of rights letter” and have the letter acknowledged.) This standard assures the protection of the landowner when there is third party involvement

Proposed Minimum Standards Checklist

THE BASICS

The organization has:

- I.** A mission statement is consistent with Minnesota Statutes, chapter 84C
- II.** Legal authority to acquire and hold the easements
- III.** An established project selection process (including project criteria and decision making process to sort/rank projects).

ACQUISITION PROCESS

A formal defined acquisition process that includes these key features:

- I. Site assessment.** The proposed easement property has been physically inspected and screened for potential environmental hazards.
- II. Management Plan.** A decision has been made as to whether to include a management plan as a requirement of the easement.
- III. Preparation of legal description and maps.** The easement has a well-defined legal description and maps.
- IV. Baseline Property Report.** A detailed inventory of the natural and man-made features found on the property was completed at the time the easement was acquired.
- V. Conservation Easement negotiations and drafting.** The easement document is written in clear and unambiguous language.
- VI. Landowner payments.** The program has an established process for determining easement value. The method(s) used has been outlined.
- VII. Title.** The grantors have marketable title.

EASEMENT STEWARDSHIP

A comprehensive easement stewardship plan that includes these key features:

- I. Baseline property report policy.** A written baseline documentation policy has been completed. This includes the minimum requirements to be included in the baseline report.
- II. Landowner relationships.** A primary contact for the easement has been made.
- III. Monitoring.** An established program for monitoring the easement has been made.
- IV. Record keeping.** A policy for keeping records of the easements has been made.
- V. Enforcement.** A written policy addressing the issue of violations has been made.
- VI. Easement amendments.** A policy addressing circumstances and procedures for amending the easement has been made.
- VII. Public information and notification.** An up-to-date list of easement properties under the easement holder's administration has been made. This information is available for public inspection. The easement has been placed on the list.
- VIII. Funding.** A budget for the stewardship of the easement has been made.
- IX. Dissolution of entities.** A policy addressing how easements will be transferred upon the dissolution of a non-governmental entity has been made.

RELATIONSHIPS BETWEEN GOVERNMENT AND NONGOVERNMENTAL ORGANIZATIONS

- I.** The activities between governmental units and nongovernmental organizations acquiring conservation easements are transparent and are clearly understood by all involved parties.
- II.** Up-front written documentation of the roles, responsibilities, and payments to be made has been completed.
- III.** The governmental unit is involved in the drafting and negotiation of the easement, if that unit is the end-holder of an easement being acquired by or through a nongovernmental organization.
- IV.** The nongovernmental organization uses the landowner protection features of a governmental unit when the acquired conservation easements are to be transferred to a governmental organization.

Appendix A. Statutory Requirements

MINNESOTA STATUTES CHAPTER 84C CONSERVATION EASEMENTS

84C.01 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Holder" means:

(i) a governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(ii) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

History: 1985 c 232 s 1

84C.02 CREATION, CONVEYANCE, ACCEPTANCE, AND DURATION.

(a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in section [84C.03](#), clause (b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

History: 1985 c 232 s 2

84C.03 JUDICIAL ACTIONS.

(a) An action affecting a conservation easement may be brought by:

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third-party right of enforcement; or

(4) a person authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

History: 1985 c 232 s 3

84C.04 VALIDITY.

A conservation easement is valid even though:

- (1) it is not appurtenant to an interest in real property;
- (2) it can be or has been assigned to another holder;
- (3) it is not of a character that has been recognized traditionally at common law;
- (4) it imposes a negative burden;
- (5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) the benefit does not touch or concern real property; or
- (7) there is no privity of estate or of contract.

History: 1985 c 232 s 4

84C.05 APPLICABILITY.

(a) This chapter applies to any interest created after August 1, 1985, which complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before August 1, 1985, if it would have been enforceable had it been created after August 1, 1985, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

History: 1985 c 232 s 5

Appendix B. Examples

Easement Stewardship Example

The DNR Metro Greenways Program developed and put into use a conservation easement management, stewardship and monitoring protocol, and procedure that is simple to administer and adaptable to nearly every type and size of conservation easement. This system has proved effective and efficient in addressing and resolving easement issues early.

The strength of this Metro Greenways effort has been found in maintaining a strong relationship with the landowner. Before closing, each conservation easement is inspected with the landowner, a representative of the managing agency, and the individual responsible for the real estate transaction.

The site inspection includes walking the boundary of the conservation easement and documenting all important land or development features. The documentation is recorded and dated on maps, surveys and air photos. Additional documentation is recorded with photos taken and dated the day of the inspection, which includes of all property lines and specific features. This documentation becomes a permanent part of the conservation easement file.

The landowner is contacted once a year, or at a time established in the management plan, to accompany the Metro Greenways representative or Department of Natural Resources land manager on a site inspection that follows the original site inspection protocol. The recorded data is used as a base to measure changes or modification to the conservation easement area. Any issues that are of concern or may be in conflict with the terms of the conservation easement are addressed in the field, on site, at the time of the periodic inspection with photo documentation in hand.

The Metro Greenways Program is consistent with the established protocol of both The Minnesota Land Trust and The Nature Conservancy conservation easement follow up programs.

Project Selection Example

The Minnesota Department of Natural Resources Division of Fisheries has a selection process used to prioritize prospective Aquatic Management Areas. In this program, various points are given to the project for meeting specific levels of criteria.

Aquatic Management Areas Acquisition Prioritization Criteria

1) Critical habitat criteria as defined in MS 86A.05 and MR 6270.0200

- Premise: meeting multiple habitat criteria provides a higher degree of resource protection.
- a. Fully meets most AMA habitat criteria (3)
- b. Meets more than one AMA habitat criteria (2)
- c. Meets only one AMA habitat criteria (1)

2) Proximity to other protected habitat

- Premise: creating habitat corridors is beneficial to fish and wildlife species
- a. Immediately adjacent to protected habitat (3)
- b. Within one mile of other protected habitat (2)
- c. Greater than one mile, but still significant habitat (1)

3) Donation of land value

- Premise: donations extend our spending capability and consequently our ability to protect additional critical habitat.
- a. Full donation of value – willing to complete RIM donor form (3)
- b. Partial donation of value – willing to complete RIM donor form (2)
- c. No donation of value (1)

4) Partner involvement

- Premise: partner involvement garners public support at all levels. Fundraising fosters local “ownership” in the acquisition. Partner involvement extends spending capability and consequently our ability to protect additional critical habitat.
- a. Partners – Multiple partners with goal of raising 50% of value (3)
- b. Partners – Willing to initiate local fundraising activities (2)
- c. Partners – local support but no money (1)

5) Public access

- Premise: higher levels of public access increase public support of the program
- a. Light use including angling, bow hunting, and firearms hunting (3)
- b. Light use including angling and/or bow hunting (2)
- c. Water access only or no public access (1)

6) Willingness of potential seller

- Premise: higher degree of willingness increases the likelihood of a successful acquisition
- a. Willing seller motivated by resource protection at some personal cost (3)
- b. Willing seller motivated by resource protection, but needs our best offer (2)
- c. Seller looking for highest bidder, and possible free appraisal (1)

7) Professional judgment

- Premise: sometimes decisions should be based on more than data alone.
- 7A. 'Window of opportunity' rating (e.g., if a project is within reach but is likely to become a missed opportunity if not done quickly)
- a. Now or never (3)
- b. Timing is semi-important (2)
- c. Project is not time critical (1)
- 7B. Likelihood of project coming to fruition
- a. Probability is near 100% (3)
- b. Probability is at least 50% (2)
- c. Probability is below 50% and may not be good risk (1)

8) Available Dollars

- Premise: potential funding needs to be available
- a. Funding is readily available (3)
- b. Funding not immediately available but will likely be available by closing (2)
- c. Funding is questionable, but may come together by closing (1)

Current use of other Standards and Practices related to Conservation Easements

While very few governmental agencies have developed minimum standards that are geared directly towards conservation easements, there are nongovernmental organizations that do follow specific guidelines and practices when acquiring conservation easements. One such organization is the Land Trust Alliance who created the *Land Trust Standards and Practices* guide. This guide was originally created in 1986 by nongovernmental organizations to be used by other nongovernmental organizations. “While *Land Trust Standards and Practices* are designed primarily for nonprofit, tax-exempt land trusts, they also provide important guidance for any organization or government agency that holds land or easements for the benefit of the public” Land Trust Alliance. Land Trust Standards and Practices. Washington, D.C., 2004.

As conservation issues emerge, the Land Trust Standards and Practices guide is updated. The issues addressed are guidelines for both the acquisitions of fee interest and conservation easements as well as the elements that support those acquisitions. This guidebook is designed to be a manual on “how to” establish an organization that will fund land protection work, select the most important sites, acquire the property, manage the resource and be good stewards of the property. There are two organizing themes to the manual. The first theme discusses a set of seven standards to help to provide organizational strength. These themes include, having a Mission, Compliance with the law, board accountability, conflicts of interest, fundraising, financial and asset management, and staffing. The second theme describes a set of five land acquisition standards: project evaluation and selection, sound transaction practices, tax benefits, conservation easement stewardship, and fee land stewardship. *The Land Trust Standards and Practices* guide covers a much greater scope of standards than the minimum standards proposed in this report.

Several of the organizations that were consulted for this report emphasized the importance of *The Land Trust Standards and Practices* guide.

Stakeholder Organizations

The following organizations provided input to this report:

<u>Governmental</u>	<u>Nongovernmental</u>
Minnesota Board of Water and Soil Resources	The Conservation Fund
Dakota County – Farmland and Natural Areas	Ducks Unlimited
Hennepin County Environmental Services	Leech Lake Area Watershed Foundation
Natural Resources Conservation Service	Minnesota Land Trust
Redwood County Soil and Water Conservation District	The Nature Conservancy
Renville County Soil and Water Conservation District	Parks and Trail Council of Minnesota
Washington County	Pheasants Forever
United States Fish and Wildlife Service	Trust for Public Land
United States Forest Service	

Report preparation costs

The report cost about \$32,000 to prepare. The legislature appropriated \$15,000, and the remainders of the costs were absorbed by the agency.

References and other Resources

Diehl, Janet, and Barrett, Thomas. The Conservation Easement Handbook. Alexandria, Virginia: Land Trust Exchange and Trust for Public Land, 1988.

Land Trust Alliance. Land Trust Standards and Practices. Washington, D.C., 2004.

Minnesota Land Trust. Conservation Easements 101, Resource Manual. St. Paul, Minnesota: Minnesota Land Trust, 2005.

Web-based Resources

1000 Friends of Minnesota, conservation easement web page: <http://www.1000fom.org/lctools3.htm>

Board of Water and Soil Resources, Easement Handbook:
<http://www.bwsr.state.mn.us/easements/handbook/index.html>

Conservation Easements: The Evolution of Conservation Easements. The Nature Conservancy:
<http://www.nature.org/aboutus/howwework/conservationmethods/privatelands/conservationeasements/about/>

Dakota County, Farmland and Natural Areas Program:
<http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/default.htm>

Ducks Unlimited, Minnesota Land Conservation Strategies web page: <http://www.ducks.org/Page2555.aspx>

Helland, John. *Conservation Easements*, Information Brief. Minnesota House of Representatives: Research Department. Jan 2005. <http://www.house.leg.state.mn.us/hrd/pubs/conease.pdf>

Land Trust Alliance, web page:
<http://www.lta.org/>

Legislative-Citizen Commission on Natural Resources - Minimum Standards and Guidelines for State Forest Legacy Easements in Minnesota:
<http://www.lccmr.leg.mn/abstracts/2007abstracts/ForestLegacyStandards.pdf>

Marrone, David. *Conservation Easements: Protection In Perpetuity*. Ducks Unlimited, Conservation Lands Program.
http://www.ducks.org/media/Conservation/Conservation_Documents/_documents/ConservationEasementBrochure.pdf

Minnesota Land Trust, conservation easement web page: <http://www.mnland.org/prog-ce.html>

Natural Resources Conservation Service, easement program web page:
<http://www.mn.nrcs.usda.gov/programs/wrp/index.html>

Trust for Public Land, Minnesota Homepage: http://www.tpl.org/tier2_rl.cfm?folder_id=482

U.S. Fish and Wildlife Service, Glacial Ridge Refuge information web page:
<http://www.fws.gov/refuges/generalInterest/GlacialRidgeNWR.html>