



## Conservation Easements

### Key Facts and Findings:

- Both public and private organizations have used state funds to purchase and maintain various types of conservation easements in Minnesota. State-funded conservation easements currently protect about 600,000 acres in Minnesota.
- From 2001 to 2011, the state spent almost \$190 million to purchase conservation easements and restore and monitor land protected with easements.
- Private nonprofit organizations are given wide latitude to select property to protect, negotiate the terms of state-funded conservation easements, and purchase the easements without approval by the state.
- Some key provisions are not routinely included in agreements for state-funded conservation easements. Additionally, terms in some state agency easement agreements we reviewed were not clear, which contributed to enforcement problems.
- State requirements to monitor easements for compliance are not adequate.
- As the result of longstanding inattention, the Department of Natural Resources faces challenges to providing proper oversight of many of its easements.

- Some state officials and legislative staff have expressed concerns about nonprofit organizations holding state funds for stewardship outside of state control.
- Easement holders do not regularly measure the outcomes of state-funded easements.

### Key Recommendations:

- The Legislature should require the Board of Water and Soil Resources or the Department of Natural Resources to review and approve easement agreements with a state investment of \$500,000 or more that are entered into by nonprofit organizations.
- The Legislature should require all nonprofit organizations that hold state-funded conservation easements to be accredited by the Land Trust Accreditation Commission.
- The Legislature should require all state-funded easement agreements to contain certain standard provisions.
- The Legislature should require easement holders to monitor state-funded conservation easements on a regular basis.
- The Legislature should consider different options for ongoing funding of conservation easement stewardship.
- The Legislature should require easement holders to biennially report on outcomes of state-funded conservation easements.

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**More oversight and stronger accountability are needed to help ensure that the public investment in conservation easements will have maximum and sustained impact.**

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**Conservation easements are one method to protect and preserve land.**

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**There are several different types of conservation easements.**

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**State agency staff do not approve state-funded easement agreements entered into by nonprofit organizations.**

## Report Summary

A conservation easement is a set of restrictions a landowner voluntarily agrees to that limits how the land can be used. The landowner is typically compensated for relinquishing these rights and continues to own the land. Conservation easements are one method to protect and preserve land; other methods include zoning and local regulations, state or federal laws and regulations, and public ownership. Currently, organizations in Minnesota hold more than 6,600 state-funded conservation easements, more than half of which were acquired from 2001 to 2011. During that time, the state spent almost \$190 million to acquire, manage, and monitor conservation easements in Minnesota. Currently, state-funded conservation easements protect about 600,000 acres in Minnesota.

There are more than 15 different types of state-funded conservation easements, each with a different purpose. For example, Wild and Scenic River easements protect the scenic qualities of the property and allow no or very minimal building construction; other conservation easements, such as Wildlife easements, focus on maintaining wildlife habitat and may permit buildings in specific areas on the property. State-funded conservation easements are administered primarily by four easement holders: Board of Water and Soil Resources (BWSR), Department of Natural Resources (DNR), Ducks Unlimited (DU), and Minnesota Land Trust (MLT). Among these four easement holders, BWSR received more than 58 percent of the state conservation easement funds from 2001 to 2011; DNR received 40 percent.

Each easement holder has different standards for acquiring and monitoring conservation easements. Based on

these standards, the national literature, and federal and state law, we developed standards for all phases of acquiring and managing conservation easements. We then used these standards to evaluate the performance of the four primary easement holders in the state.

**Nonprofit organizations have significant discretion to select the property to protect and negotiate the terms of state-funded conservation easements.**

In a number of instances, the Legislature has appropriated state funding for conservation easements to DU and MLT based on broad programmatic areas of emphasis, such as “interests in land in fee or permanent conservation easements and to restore and enhance natural systems associated with the Mississippi, Minnesota, and St. Croix Rivers....”<sup>1</sup> Given the broad language in the law, the funding recipient has significant discretion to determine what land to protect. Organizations receiving funding from the Outdoor Heritage and the Environment and Natural Resources Trust funds must provide a list of the proposed properties they plan to protect with conservation easements. However, recipient organizations often revise the list of properties after receiving funding.

Once the property to protect is selected, the organization seeking an easement negotiates the terms of the easement agreement. Due diligence by the nonprofit organizations is especially important because the Legislature, legislative councils and commissions, and legislative and state agency staff do not approve state-funded easement agreements entered into by these organizations. Although staff at BWSR and DNR have the expertise to

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<sup>1</sup> *Laws of Minnesota* 2012, chapter 264, art. 1, sec. 2, subd. 5(b).

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**Most easement agreements we reviewed did not include some key provisions, such as how to handle amendments or termination of the easement.**

review the easement agreements entered into by nonprofit organizations, they do not have the authority to do so.

The two nonprofit organizations that currently hold state-funded conservation easements (DU and MLT) have both been accredited by the Land Trust Accreditation Commission, which requires organizations to follow nationally recognized “gold standards” for conservation easements. Such accreditation is especially important given the level of responsibility the state has entrusted in these organizations. We recommend the Legislature require all nonprofit organizations that hold state-funded conservation easements to have this accreditation. We also recommend additional state oversight for conservation easements with a state investment of \$500,000 or more.

**Easement agreements entered into by state agencies often did not contain key provisions and some included ambiguous terms, which can jeopardize the conservation benefits of the easement.**

We reviewed 127 state-funded conservation easement agreements and found that about 75 percent of them, all held by state agencies, did not address amendments to or termination of the easement. We recommend the Legislature, with the assistance of a taskforce, identify key provisions such as these to include in all state-funded easement agreements.

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**Most of DNR’s conservation easements we reviewed were monitored infrequently or not at all.**

In some easement agreements we reviewed, certain provisions were not clear, which could affect the state’s ability to enforce the agreement. For example, one conservation easement agreement, which was drafted by another organization but held by DNR, prohibited building new roads except for “roads relating to the uses for agriculture, forestry, personal residence, and recreational use...” that are described elsewhere in the

document. The landowner built a road on the property, which DNR and Attorney General’s Office staff initially thought was a violation of the easement terms. However, after reviewing the easement agreement, the Attorney General’s Office determined that the lack of clarity in the agreement made it difficult to enforce the prohibition on building roads. In the end, the landowner was not required to remove the road or restore the property.

**The Department of Natural Resources has not met monitoring standards for the majority of its conservation easements.**

Baseline reports are essential for monitoring conservation easements because they set a benchmark of the initial condition of the land protected by an easement. DNR had prepared baseline reports for only 37 percent of its easements we reviewed.

Minnesota statutes require DNR to establish a long-term program for monitoring Forestry easements. Aside from these Forestry easements and easements acquired with funding from specific sources, monitoring is not required for other state-funded easements. Nevertheless, easement holders have recognized the importance of monitoring and have established standards for the frequency of monitoring easements.

DNR was the only easement holder we evaluated that did not meet OLA’s standards for regular monitoring (at least once every three years) for the majority of its easements. Most of the department’s easements were either monitored infrequently (less often than once every three years) or not at all. We recommend the Legislature require easement holders to monitor all state-funded easements on a regular basis.

One of the conservation easement types DNR had managed poorly until recent years is the Wild and Scenic River

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**There has been little attention paid to measuring the intended outcomes of conservation easements, such as an increase in wildlife or cleaner water.**

easements. Most of the 133 Wild and Scenic River easements were acquired in the 1970s and 1980s (when easement standards were different); no baseline reports were prepared for the easements when they were acquired. For many years, DNR did not monitor most of these easements, and DNR even lost track of the location of many of them.

In 2008, DNR began a systematic effort to improve management and monitoring of these easements. Staff have identified easement locations, contacted landowners, prepared baseline reports, and tracked possible enforcement issues. DNR has found several potential violations of agreement terms and is addressing many as it finalizes the baseline reports. For more serious cases, staff will develop an enforcement strategy.

**Some state appropriations for easement stewardship are held outside of the state's control.**

In recent years, the Legislature has appropriated state funding for stewardship of new conservation easements and, in some cases, directed nonprofit organizations to hold and manage these funds on an ongoing basis. The law requires the organizations to keep this money in a monitoring and enforcement fund and provide an annual financial report on the use of this fund.<sup>2</sup>

Despite these reporting requirements, the Commissioner of the Department of Minnesota Management and Budget and some legislative staff have

expressed concern about dedicated stewardship funds being managed by nonprofit organizations. In particular, concerns about this arrangement include that the stewardship money: (1) is outside of the state's control and subject to less oversight; and (2) has been pooled with the organization's other stewardship funds, leading to less transparency of the use of state money. We set forth several funding alternatives for the Legislature to consider, including establishing a stewardship advisory fund and requiring nonprofit organizations to provide stewardship money as a match for state appropriations.

**Easement holders do not report on the outcomes of state-funded conservation easements.**

All four easement holders we reviewed focused on the number of acres protected by easements; but there was little attention to the ultimate goal of those individual acres, such as an increase in wildlife populations or a cleaner river.

The state has invested more than \$190 million in conservation easements over the past ten years and should have some reassurance of the benefits of this investment. We recommend the Legislature require easement holders to biennially report the public benefits and outcomes of state-funded conservation easements.

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<sup>2</sup> See, for example, *Laws of Minnesota 2011*, First Special Session, chapter 6, art. 1, sec. 2, subd. 15.

## Agencies' Responses

*We received responses from the four primary holders of state-funded conservation easements: Board of Water and Soil Resources, Department of Natural Resources, Ducks Unlimited, and Minnesota Land Trust. Their responses are printed with the full report and are also available on our Web site.*