

FAQ: Conservation Easements – New Application & Governing Body (County Board) Review

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All conservation easements in Nebraska are subject to review by the Appropriate Governing Body, which is typically the County Board. The Department of Revenue, Property Assessment Division (Division) has developed a [Conservation Easement Application](#) (Application) to facilitate this review and in 2021 has presented education regarding this topic across the state.

Conservation Easement Inventory

1. When will the information be updated?

The information regarding permanent and temporary easements for government programs will be updated once a year, in October.

New conservation easements that are reported to the Division will be updated as they are received.

2. Wetlands Reserve Program (WRP) contracts are permanent, is there anything that can be done to have the easement restrictions changed or removed?

Pursuant to [Neb. Rev. Stat. § 76-2,115](#) conservation easements are perpetual unless otherwise stated in the instrument that created the easement. It is encouraged that property owners do not enter into nor sign permanent conservation easements.

3. Will parcel identification numbers (PINs) be listed on the conservation easement inventory?

PINs will be listed for lands in Natural Resource District (NRD) Easements, WRP, Conservation Reserve Enhancement Program (CREP), and Public Hunting lands. PINs are not available for lands in Conservation Reserve Program (CRP) as the Farm Service Agency (FSA) will not provide legal descriptions.

Conservation Easement Application

4. Will the Conservation Easement Application need a Form 521?

All conservation easements require a Real Estate Transfer Statement, [Form 521](#) (see [Neb. Rev. Stat. § 76-214](#)). There will now be two forms required when a conservation easement is presented for recording, the Form 521 and the approved Application.

5. Will the Conservation Easement Application be recorded? If so, will documentary stamp taxes be charged?

No, the Application will not be recorded in the records of the Register of Deeds and therefore, a filing fee will not be charged for the Application.

6. What documents need to be filed?

Only the instrument creating the conservation easement (contract, warranty easement deed, etc.) will be filed in the records of the Register of Deeds.

7. If the Conservation Easement Application is not recorded, how long will they be kept?

The Division will keep the electronically submitted Form 521 for 10 years. If the Application is submitted to the Division with the Form 521, it would also be electronically archived for 10 years.

8. Does the Conservation Easement Application have to be filled out for existing easements?

No, the Application will be required for any new conservation easements that are presented for recording going forward.

9. Is the Conservation Easement Application necessary for permanent easements or temporary government programs like the Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP)?

Yes, Conservation Easements are defined in [Neb. Rev. Stat. § 76-2,111](#). A conservation easement does not have to be in the form of a conservation easement deed or a specific type of instrument. The definition includes temporary government programs for conservation purposes, including, but not limited to CRP and CREP.

10. Who files the Conservation Easement Application?

Either the landowner or the easement holder can file the Application.

11. How can the landowners be held accountable for filing the Conservation Easement Application?

County Assessors will not inventory the conservation easement acres or consider the conservation easement when determining the assessed value of the property if the conservation easement is not properly approved.

County officials are encouraged to work cooperatively to educate the public regarding these requirements.

12. How do we know if the county board approved the easement?

The Application has a check box for the Appropriate Governing Body to check approved or denied, and a signature of the appropriate governing body member, commissioner, or chairperson is required.

13. For CRP contracts, do we need a copy of the entire contract?

Yes

14. Can a conservation easement roll over to another county/jurisdiction?

Yes, an easement can cover land in multiple counties, in this case the landowner/easement holder would file the Application with the Appropriate Governing Body in each county.

15. Who is telling the landowner that the new CRP easement has to be approved by the county board and filed?

Notifying the public of these requirements will need to be a cooperative effort. The Nebraska Department of Agriculture has been in contact with federal agencies, the Division will provide information to the Department of Agriculture and to the Nebraska Department of Natural Resources and Natural Resource Districts (NRDs) within the state.

County Register of Deeds will need to inform taxpayers or persons presenting instruments for filing if the Application is missing. County Assessors, County Board members, and Planning and Zoning Administrators are also encouraged to educate the public regarding these requirements.

16. If an easement does not have a termination or end date is it a permanent easement?

Yes. See, [Neb. Rev. Stat. § 76-2,115](#).

County Board Authority

17. What can county boards do to prevent a landowner from entering into a contract with the federal government for a temporary program?

County boards have no authority to prevent a landowner from entering into a conservation easement contract. What the county board members should do is send a contract/document (conservation easement) that is presented to them to the planning/zoning commissioner for review and comment. After 60 days, the county board should review comments received and approve/deny the conservation easement based on the criteria listed in [Neb. Rev. Stat. § 76-2,112](#).

18. What if the county board denies the easement?

The conservation easement document and denial will be sent to the county assessor for informational purposes only. The county assessor will not inventory the easement on the subject property when establishing the assessed value of the property.

19. Do County Boards have the right to tell landowners they cannot enter into a contract with the federal government for a temporary program? What happens if land is enrolled into the program, but the easement is not approved?

Again, the county board has no authority to tell landowners not to enter into a contract with the federal government. What the county board can do is approve or deny the Application based on the criteria listed in [Neb. Rev. Stat. § 76-2,112](#).

The County Board cannot prevent a person from entering into a contract, however, the denial of the conservation easement will prevent the instrument creating the conservation easement from being recognized by the county assessor for assessment purposes.

20. When someone sells their water rights, should it be approved by the county board first?

Yes, sales of water rights restrict the landowner's right on property and are conservation easements.

21. Can the county board actually stop the transfer of water rights? The NRD has indicated that we cannot.

The county board cannot control what happens with the application of water on specific parcels. If the county board appropriately denies the conservation easement pursuant to [Neb. Rev. Stat. § 76-2,112](#), the sale of the water right should not be recorded in the records of the Register of Deeds. Also, the county assessor will not recognize the transfer in the assessment records.

22. What statute states, a Register of Deeds can reject a filing for a conservation easement without the County Board's approval?

The Register of Deeds can file a properly completed instrument that is presented for filing. The county assessor will not recognize the conservation easement without the approval of the county board, meaning the conservation easement will not be recognized for assessment purposes. There is a 2017 Attorney General's opinion regarding the [Authority of a Register of Deeds to Refuse to Record and Instrument](#).

23. The FSA, USDA, and the Federal Government do not communicate with counties, how will we know what contracts are being renewed?

The Nebraska Department of Agriculture (NDA) has asked these federal agencies to provide information directly to counties and to the NDA. County and state officials will need to work together to inform the public of these requirements.

24. Will the state be notifying the federal agencies of the new Conservation Easement Application and requirements?

The Nebraska Department of Agriculture (NDA) has asked these federal agencies to provide information directly to counties and to the NDA. County and state officials will need to work together to inform the public of these requirements.

25. How can we get the federal government to be more cooperative?

State government cannot compel the federal government to cooperate, however, several state agencies have been advocates to ensure more cooperative sharing of information. County officials are encouraged to contact members of Congress with their concerns.

26. If someone renews a CRP or CREP contract, is the county board supposed to approve the renewal?

Yes

27. Will the state notify the NRDs of this requirement?

Yes

28. Does this include utility easements, neighbor easements, etc.?

No

29. Why would a county board NOT approve a conservation easement?

Conservation easements are permanent unless stated otherwise. The county board's right to review conservation easements is to ensure that the easement is in the best interest of the public. The county board should ensure that the easement is consistent with the comprehensive plan for the area, any known proposal of a governmental body for use of the land, or any other provisions covered by [Neb. Rev. Stat. § 76-2,112](#).

30. Can a county board deny the Conservation Easement Application without cause?

No, denial of the easement must be for a reason that is allowed under [Neb. Rev. Stat. § 76-2,112](#).

31. Does the county board have to approve the conservation easement before it is approved by the NRCS, FSA, or any other governmental agency?

No, the county board should review the Application after it is signed by the landowner and the easement holder, but before it is presented for recording with the County Register of Deeds.

32. The 60-day turnaround time may not be enough time for review due to the need for multiple boards to provide public notice of meeting dates, what can be done about this?

The 60-day requirement is currently provided in [Neb. Rev. Stat. § 76-2,112](#), contact your state senator or the Nebraska Association of County Officials (NACO) if legislation is needed to modify this timeframe.

33. What about WRP easements prior to 1981?

Any conservation easements that were recorded prior to 1981 were recorded without review by the appropriate governing body, no action should be taken to review these easements.

34. What if the county doesn't have zoning?

Every county should have a comprehensive plan. If you have questions regarding your plan, consult with your county attorney. The [Nebraska Association of County Officials](#) (NACO) also has resources related to Planning and Zoning and may be of assistance.

35. Can the county board ask for maps showing where the easement/program acres lie?

Yes, the county board can request additional information from the taxpayer or easement holder, however the county board cannot deny the easement only because additional information has not been provided.

36. Is it up to the Register of Deeds to determine if the correct governing body signed off on the easement?

No, if a governing body receives an Application for land that they do not have jurisdiction over, they should forward it to the Appropriate Governing Body. (See [Neb. Rev. Stat. § 76-2,112](#))

37. Is it the responsibility of the Register of Deeds to ensure that the legal description for the conservation easement is correct?

No

Valuation

38. I heard that the assessor may be able to lower the value of the assessment if a conservation easement is reported, isn't the value still based on market value?

Yes, however, a conservation easement separates the rights associated with a parcel, with fewer rights, the property usually has a lower market value.

39. If the landowner has an easement with the Federal government is the whole parcel exempt?

No, the land continues to be taxed to the owner of the land, only the easement value is exempt.

40. Is there a notification process if a parcel is not re-enrolled in a temporary program?

No, the county assessor should track the expiration date and contact the landowner to determine whether the program will be renewed or whether the use of the land will change. If the program is renewed, the landowner should file an Application with the county clerk. If the program is not renewed, the county assessor should review the property for current land use and assess it accordingly.

41. If the county board does not approve, then the county assessor cannot change the value?

The county assessor should not recognize a conservation easement that is not approved by the board. County assessors should always value property at 75% of market value for agricultural land and 100% of market value for non-agricultural land.

42. If an easement is taxed, would you create a new parcel for an easement?

The county assessor will need to create a new record to tax the holder of the easement for the value of the easement, consult your vendor for instructions, this would be like an Improvement on Leased Land (IOLL) where a portion of the property is assessed to another entity.

43. If Joe has 140 acres, with 20 acres of easement, do I subtract the 20 acres from his land assessment?

No, conservation easements do not divide land. Joe continues to own 140 acres of land and will need to be assessed for 140 acres. However, 20 of Joe's 140 acres will likely be assessed at a reduced rate and if the easement is taxable, the value of the easement will be assessed to the easement holder.

44. Are you going to provide a course on how to value easements?

Yes, the Property Assessment Division (PAD) will be providing education regarding conservation easement valuation in the future. Information will be provided on the 2022 PAD Education Calendar.

45. If a landowner is getting paid rent for CRP or other programs, how can we not value it like other CRP?

Real property should always be assessed based on its market value; if the property is enrolled in CRP but was not approved or denied by the county board, the county assessor will not classify it as CRP. The county assessor should consider what the present use of the land is, if it is not actively being utilized for agricultural purposes, the land may need to be assessed at 100% of market value.

Government Programs

46. Why did WRP end?

The funding for the WRP program expired. The Agricultural Act of 2014 established funding under a new program, the Agricultural Conservation Easement Program (ACEP). This program contained provisions for Wetland Reserve Easements, which are currently offered and are comparable to the WRP program.

Comprehensive Plans

47. Do you have suggested language for the comprehensive plan?

The Property Assessment Division (Division) does not have suggested language but encourages you to review the resolutions passed by other county boards on the Nebraska Department of Agriculture's website nda.nebraska.gov/30x30, and to work cooperatively with other counties in your area.

48. Do we need to attach the resolution to the Comprehensive plan?

It is recommended that each County's Comprehensive Plan be amended to include any resolution the county board has passed regarding conservation easements.

49. What is the percent of property already in CRP?

Approximately 2% of the agricultural land in Nebraska is currently enrolled in CRP.

Zoning Administrators

50. When the planning and zoning board review the conservation easement, should it be a public hearing?

If the planning and zoning board is required to hold open meetings, then it should be a public hearing. The duty of the planning & zoning board is to review the easement and provide comments to the county board regarding the conformity of the proposed easement to the comprehensive planning for the area. (See [Neb. Rev. Stat. § 76-2,112](#))

51. Is there a fee for the Conservation Easement Application?

No

52. Is there an ability to charge for the Conservation Easement Application/review/or hearing?

No, the county board's authority to fix a schedule of fees for the issuance of permits is covered under [Neb. Rev. Stat. § 23-114.04](#) and is specifically for the issuances of permits prior to the erection, construction, reconstruction, alteration, repair, or conversion of any nonfarm building or structure within the zoned area.