



**Minnesota Department of Natural Resources (DNR)
Division of Forestry
Federal Forest Legacy Program and Minnesota Forests for the Future Program
Conservation Easement Stewardship and Monitoring Program Policies**

Stewardship: Working in partnership with landowners to preserve the conservation values of those lands protected by DNR Division of Forestry conservation easements.

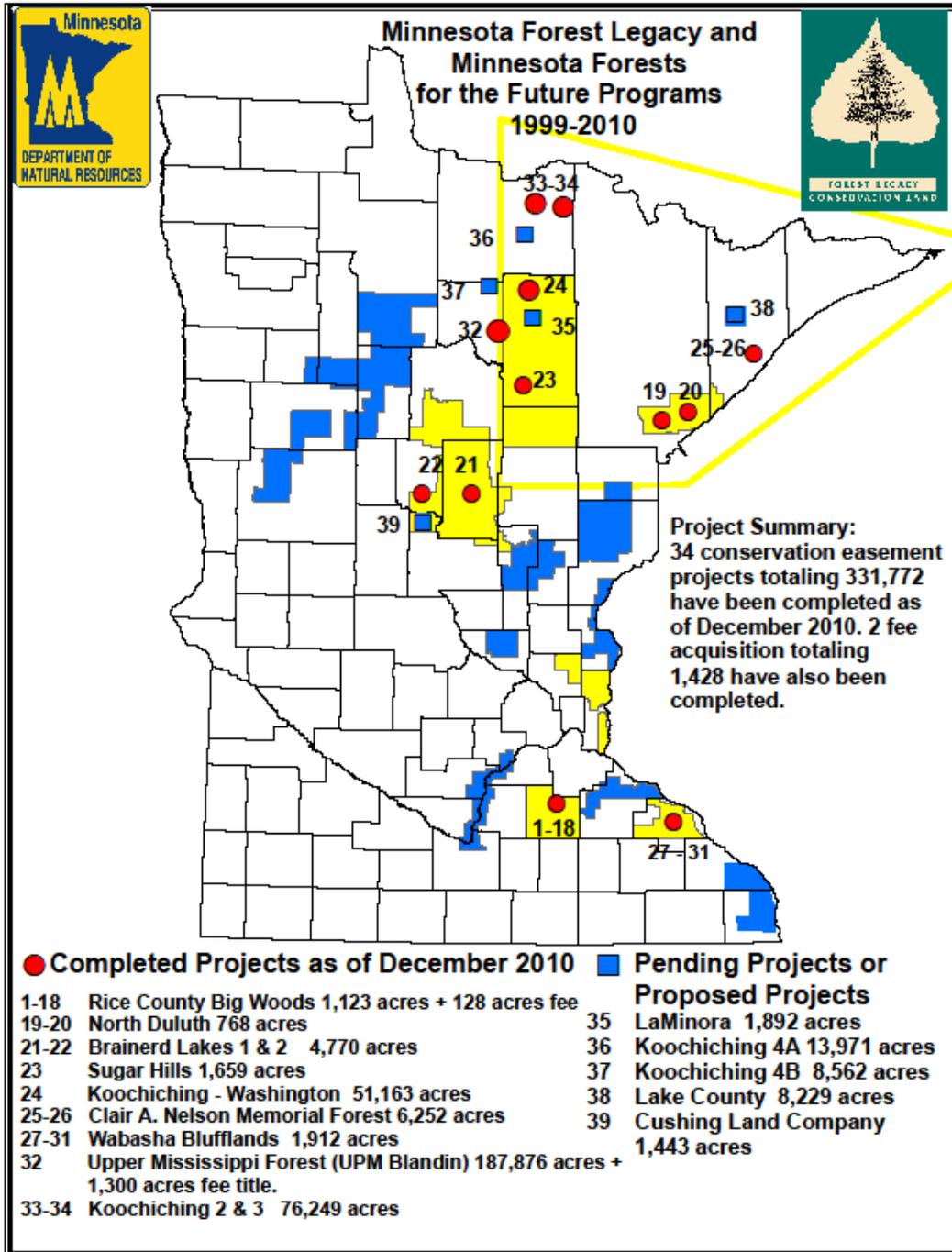
I. Working Forest Easements:

DNR protects working forests with two types of conservation easements, Forest Legacy and Minnesota Forests for the Future. The Minnesota Forests for the Future Program is the overarching Minnesota program for identifying and protecting private, working forests using conservation easements, fee title and other tools.

The Forest Legacy Program is a federal pro-gram created by Congress in 1990 as part of the Farm Bill. The purpose of the program is to prevent con-version of environmentally important forest areas to non-forest uses. The federal program partners with states and acquires interests in land only from willing landowners. Minnesota joined the federal Forest Legacy Program in 2000 and acquired its first Forest Legacy easement in March 2001. This program guided the early successes with forest conservation easements in Minnesota, continues to serve as a funding source for the Minnesota Forests for the Future Program and is an important partner in Minnesota’s private forest conservation efforts.

Forest Legacy projects are funded primarily through federal Forest Legacy grants. The federal funding share is restricted to 75% of total project costs. The required 25% match may be provided by organizations, states, local units of government, corporations or private parties and may consist of funds, donations, land or interests in land, in-kind contributions or direct or indirect costs. DNR classifies all conservation easements acquired with federal Forest Legacy grant funding as “Forest Legacy” easements.

The Minnesota Forests for the Future Program was established by Minnesota Laws 2008, ch. 357, codified as Minn. Stat. sec. 84.66. The purpose of the Minnesota Forests for the Future Program is to identify and protect “private, working forest lands for their timber, scenic, recreational, fish and wildlife habitat, threatened and endangered species, and other cultural and environmental values.” Minn. Stat. sec. 84.66, subd. 1.



Minnesota's first Forests for the Future easement was acquired in July 2010 with an appropriation from the Outdoor Heritage Fund. Minnesota Forest for the Future is a state-level program similar to the federal Forest Legacy Program. The program was developed to address Minnesota's specific protection goals for working forests and to enable DNR to pursue forest protection opportunities beyond what can be acquired with limited federal Forest Legacy funding. The state and federal programs have similar goals, with an important distinction between the two programs being the handling of mineral interests. The federal Forest Legacy Program severely restricts mining on lands acquired under the program and requires mineral interests with potential for extensive surface disturbance to be extinguished on easements acquired with Forest Legacy funds. The state holds severed minerals rights on one million acres of private land in northern Minnesota, with rental and royalty income from these rights going to the Permanent School Fund, the Permanent University Fund, local taxing districts and the general fund. Because of federal Forest Legacy mining restrictions, placement of Forest Legacy easements on such lands could conflict with DNR's fiduciary responsibility to maximize the long-term economic return to the funds. The Minnesota Forests for the Future Program allows for greater flexibility in how mineral interests are addressed. Thus, DNR can protect areas of private forestland with high mineral potential with conservation easements while still meeting its fiduciary obligations. DNR classifies all working forest easements acquired under Minnesota Statutes section 84.66 for which no federal Forest Legacy grant funding was used as "Minnesota Forests for the Future" easements.

II. Easement Stewardship Overview: Conservation easements are forever. With each easement, the Minnesota Department of Natural Resources accepts responsibility to protect that land and its conservation values into the future.

Conservation easements are difficult to draft with perpetuity in mind. But it is even more difficult to make sure that the original purpose of each easement is carried out long after the excitement of completing the transaction has faded:

- The Minnesota Department of Natural Resources is not the landowner or the land manager. We share responsibility for the land with others.
- Ownership of the property will change.
- The Minnesota Department of Natural Resources and its staff will change.
- The land and surrounding landscape will inevitably change over time.
- Goals and interests of the landowner and the Minnesota Department of Natural Resources may diverge.
- Private benefits from the initial transaction may dissipate over time.
- Community support for conservation and conservation easements may change.
- The ultimate tool available to enforce the terms of an easement—litigation—is costly, time-consuming and often unpredictable.

III. Stewardship in the Minnesota Department of Natural Resources Forest Legacy Program is that portion of our program designed to make sure that we do meet our responsibility for each

conservation easement over time--in light of and in spite of these difficulties. The following generally describes our conservation easement stewardship program.

IV. Goals:

The ultimate responsibility of the Minnesota Department of Natural Resources' conservation easement stewardship program is to preserve the conservation values associated with each property protected by an easement. Therefore, the Minnesota Department of Natural Resources is prepared to legally defend and enforce its easements when necessary.

Legal enforcement, however, is a remedy of last resort. And although it may be necessary in certain circumstances, as noted above it is also costly, time-consuming and does not include guaranteed results.

To meet our ultimate obligations effectively with all of the above issues in mind, the goals of the Minnesota Department of Natural Resources' stewardship program are to:

- Encourage voluntary compliance with the terms of our conservation easements whenever possible.
- Establish and maintain good relationships with our landowners.
- Provide professional, timely responses and service to our landowners. The Minnesota Department of Natural Resources recognizes that it cannot be successful without working in cooperation with the many landowners dedicated to protecting their lands through conservation easements. DNR respects the commitment made by these landowners and is dedicated to working with them in a respectful and professional manner.
- Document the condition of lands protected by each easement at the time the easement is completed and monitor that condition over time.
- Maintain accurate records.
- Be efficient and effective with the use of our funds in supporting our stewardship activities.

V. Components of a Stewardship Program:

There are a number of specific components to the Minnesota Department of Natural Resources' stewardship program. These include:

- A. Creating the baseline property report**
- B. Easement administration**
- C. Monitoring**
- D. Landowner relations**
- E. Easement enforcement and defense**
- F. Record keeping**
- G. Volunteers**
- H. Long-term stewardship funding**

Aspects of each component of the stewardship program meet various goals. Activities are often interrelated and not confined to one programmatic area. Major aspects of each area are discussed below.

A. Baseline Property Reports:

A baseline property report documents the physical and biological condition of a parcel of land subject to an easement at the time the easement is granted. It is the background information against which the property is monitored and evaluated over time to determine if there has been a violation of the terms of the easement.

In the event of a controversy between the landowner and the DNR, the property report can be used as a basis for resolving the dispute. The report can also be used to help educate a landowner about the property's natural features and conservation values.

A baseline property report will be created for every conservation easement held by the Minnesota Department of Natural Resources Forest Legacy Programs. The property report should be completed as close as possible to the time the easement is completed. In many instances, however, it may take some time to collect the information needed and complete the report. Much of the information needed to complete a property report will have been gathered earlier as a basis for determining whether to complete an easement. If not, the information on the property will be collected at the time the property report is put together.

The objectives of the Baseline Property Reports are to:

- Objectively and accurately document the physical features, improvements, condition and uses of the conservation easement area as they relate to restricted and permitted uses in the Protected Property.
- Provide information to the landowner and DNR about the conservation values contained within the Protected Property.
- Serve as a guide for future monitoring.
- Foster positive landowner-DNR relationships.

The conservation easement document informs the content of the Baseline Property Report. Each Baseline Property Report will be tailored to the specific conservation values protected by each conservation easement.

All property reports will contain:

- Narratives describing the features of the Protected Property including any developments, structures, and natural resource features.
- Maps.
- Photographs.
- Tables or other summary forest stand/native plant community information.

Each property report will be signed and notarized by the landowner conveying the easement and the Minnesota Department of Natural Resources attesting to the fact that the report reflects the condition of the property at the time the easement was completed.

Property reports will be updated as necessary to reflect changes to the property from the exercise of reserved rights, any amendments to the easement or other factors that reflect major changes to the condition of the property.

Property reports will be entered in the Land Records System at such time as the Land Records System is operational.

More details regarding property reports are set out in the baseline property report guidelines.

A monitoring workbook, based upon the property report, will also be created at the time the property report is created. While the property report captures the condition of the property at the time the easement was conveyed, the monitoring workbook will be used to trace the history of the property over time.

More information on monitoring workbooks is set out below. Monitoring workbooks are also discussed in the property report guidelines.

B. Easement Administration:

Administrative tasks associated with conservation easements include routine requests for information or interpretation about a particular easement, formal requests for approval from the Minnesota Department of Natural Resources for certain activities specified in the easement as requiring DNR approval (e.g. forestry management plans, etc.) and amendments to the easement itself.

Staff, with DNR Commissioner involvement when required, can handle most easement administration. However, it will occasionally be necessary for staff to obtain the advice or assistance of outside experts. The Minnesota Department of Natural Resources will obtain information and opinions from others as needed to make sure that the organization has all the data needed to make an informed decision regarding any aspect of administering or managing a conservation easement.

1. Requests for information:

The DNR Division of Forestry Forest Legacy Coordinator and/or region/area staff person most familiar with the project routinely handles requests for information about an easement or about monitoring or similar matters. Interpretations of ambiguous or confusing language require review by legal staff from the State Attorney General's Office.

All interpretations are set out in writing to avoid later misunderstandings. The most appropriate staff person depending upon the situation will sign interpretations. Questions about who should issue the interpretation should be addressed to the DNR Forest Legacy Program Coordinator.

2. Formal approvals:

Easements often allow certain activities to take place only with the written approval of the DNR. This allows for flexibility and limited accommodation to deal with unknown future conditions.

Formal approvals require an initial written request with appropriate supporting information from the landowner and must be approved by the DNR Forest Legacy Program Coordinator.

All requests are initially reviewed by the DNR Forest Legacy Program Coordinator to make sure that any approvals are consistent with the conservation purpose of the easement and will not adversely impact the conservation values of the land. Staff is encouraged to visit the site and make any independent inquiries necessary before making a recommendation on an approval.

Requests for approvals are also reviewed by the State Attorney General's Office to make sure any approval is in technical compliance with the terms of the easement. Recommendations to grant an approval request are forwarded to the DNR Forest Legacy Program Coordinator for final review and approval.

All approvals will be given to a landowner in writing, generally signed by the DNR Forest Legacy Program Coordinator

Requests for approvals, and actions taken, will be reported in the Land Records System at such time as the Land Records System is operational.

Property reports and monitoring workbooks will also be updated or amended as needed to reflect the approval.

3. Amendments:

Amendments to conservation easements are less common and more serious but may be necessary in a number of situations.

Technical amendments may be necessary to correct an error or ambiguity in an easement. This might include a correction to a legal description or map, inclusion of language unintentionally omitted, or clarification of ambiguous language needed to avoid future problems over interpretation.

Other requests for amendments involve changing the terms or restrictions of an easement. These requests may have more serious implications for the land and its conservation values and may raise a number of financial and tax issues.

It is the policy of the Minnesota Department of Natural Resources Forest Legacy Program to hold and enforce its conservation easements as written. Therefore, amendments are permitted only in exceptional circumstances. All amendment requests require legal review by the State Attorney General's Office as well as review and evaluation by the DNR Forest Legacy Program Coordinator. A site visit will often be necessary.

In appropriate circumstances, efforts should be made to contact the principal parties of the original transaction including the landowner, any organization or agency involved with the transaction and major supporters of the project.

All amendments require approval by the DNR Commissioner.

Following an amendment, the property report and monitoring workbook for the property will be amended or updated as needed. Requests for amendments, and actions taken, will be tracked and periodically reported to the Board.

See also the Minnesota Department of Natural Resources' policy on amending conservation easements.

C. Monitoring:

Monitoring is the core component of any conservation easement stewardship program. It helps build relationships with landowners, allows the DNR to discover any problems, provides an opportunity to document changes in the property or its ownership, and is critical for the DNR to meet its legal obligations.

1. Monitoring plans:

The DNR Forest Legacy Program Coordinator will create a monitoring plan for each property on which it holds a conservation easement. These plans will be based on terms of the conservation easement itself and on the property report created to document the condition of the property at the time the easement was completed. The monitoring plan will suggest how and when the property should be monitored and identify those areas of particular concern or requiring special attention.

Conditions on the property may change over time and monitoring plans will need to be updated to reflect these changes.

A monitoring plan should be accompanied by a monitoring map(s) to help the monitor in viewing the property and noting any problems or areas of interest.

The monitoring plan will be entered in the Land Records System at such time as the Land Records System is operational.

2. Monitoring Workbook:

A monitoring workbook will be maintained on each protected property. NOTE: While a property report will be created for each easement, for ease of monitoring a monitoring workbook might cover more than one easement or only part of the land covered by an easement. For example, land at a site may have been protected overtime by the same owner with separate easements. Each easement will have a property report but might be covered by a single monitoring plan and workbook. Or a property that has been subdivided might be covered by a single official property report but two separate monitoring plans and workbooks.

Unlike a property report that is intended to capture a “moment in time,” the monitoring workbook will be a dynamic tool tracking changes in the condition and ownership of the property. The monitoring workbook will include:

- Current ownership, contact information and directions to the property.
- Copy of the property report including maps and photographs.
- Monitoring plan for the property, with monitoring map.
- Past monitoring reports.
- Copy of the conservation easement (and in some instances a summary of its terms.)
- Copies of any amendments, approvals or interpretations of the easement.

The workbook will also include a summary of Minnesota Department of Natural Resources Forest Legacy Program monitoring procedures and a current monitoring report form.

Monitoring methods could include ground, aerial, boat inspections. Satellite imagery and other technologies may supplement other monitoring methods.

Monitoring workbooks will be kept in the DNR Forest Legacy Program Coordinator’s office or in the appropriate region/area office and will be updated as needed and distributed to monitors before each monitoring season.

Because monitoring workbooks are used in the field, all documents included should be copies rather than originals.

3. Monitoring Procedures:

Monitors will follow the general procedures for monitoring each property as described in the Monitoring Guide and as further detailed in each monitoring plan.

4. Timing of monitoring visits:

It is the goal of the Minnesota Department of Natural Resources Forest Legacy Program to monitor each property annually or more often if needed such as at time of construction, amendment of the easement, or approval of the exercise of a reserved right. Circumstances preventing an annual monitoring visit will be documented.

5. Monitors:

The DNR Forests for the Forest Legacy Program uses Division of Forestry staff to monitor protected property.

6. Assignments of monitors:

Regional Forest Supervisors, in coordination with the Area Forest Supervisors will make monitoring assignments for properties in their region. Efforts will be made to use the same monitor for a property for several years. However, at least once every 5 years the DNR Forest Legacy Program Coordinator will visit each property.

7. Monitoring Reports:

Monitoring reports will be kept according to the records policy. The monitoring report will be entered in the Land Records System at such time as the Land Records System is operational.

D. Landowner Relations:

The Minnesota Department of Natural Resources Forest Legacy Programs will be most successful if landowners voluntarily comply with the terms of the easements protecting their lands. Therefore, the DNR views its relationship with landowners as a partnership. To support this partnership, the DNR will:

- Send each landowner a completed easement packet that will include a copy of the recorded easement and information on monitoring and other matters of concern to most landowners regarding their conservation easement.
- Provide each landowner with signs that note the protected status of their property.
- Ask each landowner if the Minnesota Department of Natural Resources Forest Legacy Program may publicize their conservation easement.
- Following the transfer of ownership, make sure that all new landowners receive a personal visit from staff, a copy of the property report and an easement packet.
- Maintain up-to-date records of landowner contact information.

Conservation of private lands will be successful if the communities in which these lands are located recognize and value the role of private land conservation in creating a livable community.

The Minnesota Department of Natural Resources will work with local communities by:

- Hosting appropriate events to educate a community about conservation easements and activities in the area.
- Working with local media to inform and educate the community about conservation easements and program activities in the area.

E. Violations and Easement Defense:

In the end, the Minnesota Department of Natural Resources must be prepared to correct violations of easement terms. Each suspected violation requires an individualized approach. Whenever possible, the DNR will work with the landowner to have the landowner correct the situation without further action.

Any judicial action taken by the Minnesota Department of Natural Resources requires approval by the Commissioner of Natural Resources. The Department will work with the State Attorney General's office when exercising any legal action regarding a potential easement violation.

1. What is a violation?

A violation is the use of the protected property that is contrary to the terms of the conservation easement. Violations are not always obvious, and many situations are ambiguous or not well defined by the conservation easement. There are many potential violations that can vary from very minor issues to major issues. The following working definition of minor violations and major violations may be helpful:

- **Minor violation:** A technical violation of the terms of the easement or an act or activity that is expressly prohibited by a conservation easement but does not cause substantial harm or diminishment of the conservation values protected by the easement. Some examples include: Conveyance of the land without prior notification to the State; unauthorized use of motor vehicles on the property but no apparent damage to conservation values; minor trash dumping; etc.
- **Major violation:** An act or activity that is expressly prohibited the terms of the easement and has or will, if allowed to continue, substantially impair or diminish the conservation values protected by the easement. Some examples include: Unauthorized construction of a building; wetland drainage or filling; unsustainable timber harvest practices; etc.

Some violations are discovered after the fact - some are ongoing. Potential violations do require a response. What is the proper response when discovering a potential violation?

2. Violations Procedures:

- a. Determine if there is a violation.** There are many potential explanations for what has occurred on the site so it is important not to accuse the landowner of any violation. Ask the landowner questions about what has occurred. It may not be possible to resolve the issue immediately. If the landowner appears defensive or uncomfortable with the situation, simply document the situation and move on. Always try to be courteous and maintain good relations with the landowner.
- b. Document:** Document the occurrence and take pictures. Take measurements, GPS the site, and collect other information as appropriate. Make sure you keep careful notes, including dates, and other information for future reference.
- c. Determine the cause if possible.** The cause may be from third parties, or from natural events.
- d. Review the easement document.** There may be prescribed procedures to follow when a violation is suspected. If so, be sure to follow the procedures according to the easement terms. Also, ambiguities may occur in the easement terms that create uncertainty about a possible violation. Seek legal counsel to clarify if in doubt.
- e. Contact the Forest Legacy Program Coordinator and/or Supervisor and forward on the monitoring report with documentation of potential violation.** The Forest Legacy Coordinator will follow up with appropriate Division of Forestry staff and determine a course of action. Most violations will likely be handled within the Division of Forestry but certain violations may require Department input and review to determine a course of action.
- f. Follow up.** There may be a follow up visit to determine if a violation has occurred. If it is determined that a violation has occurred, a corrective action may be required. This

determination will be conveyed to the owner by letter and usually includes a phone call or visit to further discuss the violation and the proposed corrective action, usually with some deadline for correcting the violation. A site visit and inspection will be scheduled to determine if compliance has occurred. If in compliance, a letter will be sent stating so. If no response, a second letter will be sent followed by a second inspection. If still no response, we will work internally within the Department to determine a course of action including working with the Attorney General's Office to pursue legal action. Remember, litigation is expensive and the outcome is not guaranteed and should be considered a remedy of last resort. **Voluntary compliance is our remedy of choice!**

- g. Learning from violations:** Determine if better baseline documentation, landowner communications or conservation easement drafting could have helped the situation. Learn from the experience.

F. Record Keeping

Since all forest legacy acquisitions are perpetual, record keeping is important. The following records are maintained by the Forest Legacy Coordinator:

- Landowner information (name, address, phone #);
- Application;
- Baseline documentation;
- Forest Management Plan;
- Landowner monitoring records;
- miscellaneous materials such as press release/newspaper clippings, landowner correspondence; photographs.

All other acquisition records including appraisals, appraisal reviews, option agreements, deeds, closing statements and copies of checks or other payment records are kept in St. Paul in the Lands and Minerals Division secure land records system. The Attorney General's Office maintains the title insurance policy and/or title opinion records. The land records system (in development) is expected to become the primary repository of all forest legacy records when it is fully functional.

G. Volunteers:

Volunteers may play a role in the Minnesota Department of Natural Resources' stewardship program. They are able to extend the Minnesota Department of Natural Resources' presence into throughout the state and personally work with landowners when staff might not otherwise be able to do so. Volunteers should be provided with adequate resources and training to fulfill their roles and be treated professionally and respectfully as they carry out their responsibilities. At such time as volunteers are utilized in the program, training and other resources will be provided to adequately prepare volunteers.

H. Conservation Easement Monitoring and Stewardship Funding.

Soon after the establishment of the Forest Legacy Program in 1999, program responsibilities for the Minnesota Forest Legacy Program were assigned to the Area Forester in Faribault. In 2005, the Forest Legacy Coordinator position was established as a full-time position with funding provided by federal Forest Legacy Program grants and with additional funding provided by the state’s general fund. General funds have supported the Division’s monitoring and easement stewardship efforts to date, which have largely been carried out by the Forest Legacy Coordinator. An easement monitoring account (“monitoring”) has been established and funds appropriated to the account to help support Minnesota Forests for the Future easement monitoring. The Division utilizes both general fund and “monitoring” funds to carry out monitoring and other easement stewardship activities.

The Minnesota Forests for the Future law requires the Commissioner to “establish a long-term program for monitoring and enforcing Minnesota Forests for the Future easements.” Minn. Stat. sec. 84.66, subd. 11. The law also states: “The program must require that a financial contribution be made for each easement to cover the cost of managing, monitoring, and enforcing the easement.”

Easement monitoring and other conservation easement stewardship activities should be part of the biennial Division of Forestry budget process. The following should be considered when developing the budget: Staff time to conduct pre-monitoring activities, monitoring fieldwork, and post-monitoring office work; Staff time to respond to requests for information, formal approvals from landowner; travel (per diem, lodging, fleet, possible fixed wing flights); remote sensing (fixed wing and satellite imagery); GIS applications including mapping; office overhead including phone, etc;

Project Size	Small Projects Up to 1,000 acres	Med. Projects 1,000-5,000 acres:	Large Projects 5,000 –25,000 acres	Very Large projects: Greater than 25,000 acres
Project Numbers and estimated annual hours	24 Projects 288 hours annually.	5 Projects 100 hours annually	6 Projects 192 hours annually	3 Projects 150 hours annually
Annual budget	Annual budget for the current easement stewardship and monitoring should be sufficient to cover a 0.35-0.4 FTE plus overhead. Total acres needing monitoring are approximately 351,000 acres and 35 projects annually. The estimated annual staff costs would be approximately \$33,000. Additional costs for fleet, office, travel etc. are not included. Remote sensing (including satellite and fixed wing imagery, analysis, mapping etc) can add \$5,000-\$10,000 to the costs.			
Staff	Primary monitoring responsibilities are the Forest Legacy Coordinator.			