Land Trust Alliance
Together, conserving the places you love

Conservation Easement Stewardship

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STANDARDS AND PRACTICES CURRICULUM

Conservation Easement Stewardship

Conservation Easement Stewardship

Practice 11B: Baseline Documentation Report

Practice 11C: Easement Monitoring

Practice 11D: Landowner Relationships

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The Land Trust Alliance

The Land Trust Alliance's mission is to save the places people love by strengthening land conservation across America.

Land Trust Alliance course materials are furnished as tools to help land trusts implement *Land Trust Standards and Practices*. They are provided with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting or other professional counsel. If legal advice or other expert assistance is required, the services of competent professionals should be sought. The Land Trust Alliance makes no assurances that land trusts attending or completing these courses will be granted accredited status by the Land Trust Accreditation Commission. The Land Trust Alliance is solely responsible for the contents of this book.

First Edition

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10 9 8 7 6 5 4 3 2 1 08 09 10 11

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ISBN 978-0-943915-25-8

Design · Robert A. Yerks · Sterling Hill Productions

Printed in Canada

Mixed Sources
www.fsc.org Cert no. SW-COC-001271
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Acknowledgments

The author gratefully acknowledges the assistance provided by the Land Trust Alliance, especially Mary Burke and Sylvia Bates, contributing author, Brenda Lind, peer reviewers, Laurel A. Florio and Shelton Douthit, pilot instructors Leslie Ratley-Beach, Chris Rodstrom and Kathy Sferra and research assistant Caroline Raisler. She is also thankful for the support of Judy Anderson, Jane Ellen Hamilton, Esq., and the staffs of the Agricultural Stewardship Association and the Columbia Land Conservancy.

The author would also like to thank the numerous individuals and land trusts that shared information, examples and "lessons learned" that made this curriculum possible: Agricultural Stewardship Association, Arizona Open Land Trust, Ausbon Sargent Land Preservation Trust, Bay Area Open Space Council, Big Sur Land Trust, Brandywine Conservancy, Hunter Brawley of Brawley Consulting Group, LLC, Colorado Cattlemen's Agricultural Land Trust, Colorado Open Lands, Columbia Land Conservancy, Columbia Land Trust, CorLands, Andrew Dana, Esq., Door County Land Trust, Dutchess Land Conservancy, Gallatin Valley Land Trust, Grand Traverse Regional Land Conservancy, Iowa Natural Heritage Foundation, Jackson Hole Land Trust, Lancaster Farmland Trust, Land Trust of the Eastern Panhandle (West Virginia), Legacy Land Trust, Robert Levite, Esq., Liberty Prairie Conservancy, Lincoln Land Conservation Trust, Lowcountry Open Land Trust, Maine Coast Heritage Trust, Marin Agricultural Land Trust, Massachusetts Audubon Society, Massachusetts Easement Defense Subcommittee, Minnesota Land Trust, Mojave Desert Land Trust, Monadnock Conservancy, Montana Land Reliance, Mountain Conservation Trust of Georgia, Natural Lands Trust, The Nature Conservancy – Chapters of Maryland/District of Columbia, Michigan, New Hampshire, Rhode Island and Wyoming, New England Forestry Foundation, Open Space Institute, Ozark Regional Land Trust, Peconic Land Trust, Peninsula Open Space Trust, Piscataquog Watershed Association, Potomac Conservancy, River Fields, Rocky Mountain Elk Foundation, Brian Rod, San Juan Preservation Trust, Scenic Hudson, Society for the Protection of New Hampshire Forests, Sonoma Land Trust, Sudbury Valley Trustees, Tall Timbers Land Conservancy, Taos Land Trust, Teton Regional Land Trust, The Trustees of Reservations, Upper Valley Land Trust, Vermont Land Trust, Western Reserve Land Conservancy, Wood River Land Trust, Elizabeth L. Wroblicka, Esq., attendees of the pilot course and any and all that may have been unintentionally omitted.

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A Note on the Standards and Practices Curriculum and Accreditation

Conservation Easement Stewardship is part of the Land Trust Alliance's Standards and Practices Curriculum and is designed to provide you with guidance and tools to implement Practices 11B, 11C and 11D.

This course will:

- Help you understand the practices
- Provide you with tools to implement the practices in your organization
- Inspire organizational change
- Help you save more land for the long term

The Standards and Practices Curriculum is made up of 15 courses that cover the accreditation indicator practices. Indicator practices demonstrate that a land trust is operating in an ethical, legal and technically sound manner and ensure the long-term protection of land in the public interest. Voluntary land trust accreditation will provide independent verification of these practices.

The evaluations contained in this book are for training purposes only. They are not designed or intended to determine if your land trust is ready for accreditation.

Completing a course does not necessarily demonstrate that an organization is actually carrying out the practice. Therefore, the Land Trust Accreditation Commission, an independent program of the Land Trust Alliance, will examine documents and information in project files to verify that each indicator practice is being carried out in the land trust applying for accreditation. For specific guidance on how to interpret Practices 11B and 11C for land trust accreditation, see the guidance document posted on www.landtrustaccreditation.org. This course and others in the curriculum are designed to help your land trust understand how to implement the practices.

Please note:

- The curriculum is *not* required for accreditation
- Completing the curriculum will *not* guarantee accreditation

For more information on accreditation, visit www.landtrustaccreditation.org. To learn more about the Land Trust Alliance's training and assistance programs, visit www.lta.org.

Sylvia Bates
Executive Editor, Standards and Practices Curriculum
Director of Standards and Research, Land Trust Alliance

Summary

Being entrusted to uphold a landowner's conservation vision for a special property is an honor. Upholding that vision in perpetuity is an obligation.

The use of conservation easements (also known as conservation restrictions) as a land protection tool is more prevalent today than ever before. Easements are used to protect everything from the smallest of wetlands to working agricultural lands to forest parcels comprising hundreds of thousands of acres. The number and complexity of easements and the number of easement holders have grown at a startling rate during the past few decades. It is easy to understand why. Conservation easements empower landowners to protect their property's important conservation values and leave a legacy to future generations, as well as utilize tax benefits for donated gifts or receive financial consideration for selling development rights.

If the conveyance of an easement is the first step in conserving a property, then the second step, an ongoing one, is easement stewardship. Easement holders have a legal and ethical responsibility to ensure that landowners comply with the terms of their conservation easements to uphold the public benefit. As land trusts acquire more experience with easement stewardship and gain a better understanding of the breadth of stewardship challenges, they recognize the need for a sound easement stewardship program and sufficient resources to meet its demands.

If a land trust fails to meet its basic stewardship obligations, the consequences can be disastrous for the organization and the land trust community. For example, insufficient monitoring, or a lack of it entirely, can jeopardize the land trust's legal ability to enforce a conservation easement. Without a track record of consistent monitoring, other landowners may decline to move forward with easement conveyances, and monetary donors may give to other charitable organizations, causing

Important conservation values: The key values or attributes on the property that are the focus of protection efforts. Important conservation values are determined during the property evaluation and project planning process.

Conservation easement stewardship: All aspects of a land trust's management of a conservation easement after its acquisition, including monitoring; landowner relations; recordkeeping; processing landowner notices, requests for approval and amendments; managing stewardship funds; and enforcement and defense.

financial hardship for the organization. Additionally, other land trust supporters may develop concerns about the organization's ability to operate in the public benefit. Over the long term, such a situation will damage the land trust's working relationships with current easement owners, their neighbors and community members who may no longer support or work with the land trust to fulfill its mission and goals. Finally, consistently poor stewardship may have a ripple effect on the larger land trust community nationally and the future use of conservation easements as a viable land protection tool.

The foundation of an effective easement stewardship program is based on good working relationships with landowners, thorough baseline documentation reports and annual monitoring. Allocating time and financial resources to these critical components will be time and money well spent. These activities will allow land trusts to be proactive in their stewardship responsibilities, rather than reactive. Land trusts can then become partners with easement landowners to ensure that protected land remains protected for the long term.

This course covers the essentials of an effective stewardship program. Chapter 1 discusses how to create an appropriate stewardship approach that will help your land trust meet its mission. Chapter 2 offers strategies for building strong landowner relationships. Chapter 3 covers using and updating baseline documentation reports, and chapter 4 discusses how to monitor easements and includes a template for creating a monitoring policy unique to your land trust.

Introduction

This course is part of the Land Trust Alliance's training series on implementing *Land Trust Standards and Practices*. This curriculum focuses on those practices that indicate a land trust is operating in an ethical, legal and technically sound manner. Participation in the training curriculum will help land trusts ensure the long-term protection of land in the public interest.

A strong stewardship program is critical to ensuring that the land saved today is protected tomorrow. This course will teach you how to create a partnership with landowners that will shift your land trust's focus from enforcement to prevention, saving time and money, and avoiding potentially bad publicity. In this course you will learn how a strong stewardship program defends a property's conservation values and the components of such a program. The course covers how to establish strong landowner relationships, how to use and supplement baseline documentation reports and how to develop a successful program for easement monitoring. The course concludes with a template that will help you develop an easement monitoring policy appropriate for your land trust.

Audience

This course is appropriate for land trust staff, board members and volunteers who participate in the administration and stewardship of conservation easement properties, including handling landowner requests and monitoring easement properties. Although the book is written with land trusts in mind, it is also useful for public agencies that hold conservation easements and are responsible for their long-term stewardship.

The course materials are designed for a wide range of learners, including those new to the subject or seeking a refresher or overview on important topics. However, learners should have a basic understanding

of conservation easements and baseline documentation reports. Those topics are addressed in the Land Trust Alliance course "Conservation Easement Drafting and Documentation." To understand fully the scope of topics involved in conservation easement stewardship, learners may find it helpful to review the following Alliance courses: "Determining Stewardship Costs and Raising and Managing Dedicated Funds" and "Managing Conservation Easements in Perpetuity."

Using the Student Guide

You may use the student guide in the following learning situations: an instructor-led training, self-study program, in-house board or staff training, or for review and reference. It can be used at home, in the office or in class.

If using the student guide for self-study, you should refer to the Sample Documents and Additional Resources for more information. Also, you will find additional resources and discussion forums on The Learning Center, the Alliance's online learning resource, at http://learningcenter.lta.org. Case studies and Putting It into Practice exercises demonstrate how implementing and applying those practices described in the narrative can help your land trust achieve its mission and goals. Discussion questions and answers to common questions about the case studies and exercises have been included to assist in self-study.

The Conservation Easement Handbook provides important information about the development of a conservation easement stewardship program. This course is intended to be used in conjunction with *The Conservation Easement Handbook*, not as an alternative to the book.

For those who prefer classroom training, this course will be delivered on a regular basis by qualified trainers at conferences and special events sponsored by the Land Trust Alliance, land trust service providers and coalitions, and others.

Learners can use the summaries provided at the beginning of this book and at the start of each chapter in presentations to board members and other interested parties. They are useful tools to help explain why adopting and implementing these practices will help ensure that the land trust has a comprehensive and successful conservation easement stewardship program.

Resources

This course includes the following resources:

- Sample land trust documents
- Templates to guide learners in drafting their own policies
- Case studies to demonstrate how land trusts have implemented the practice
- Lists of additional resources for further study
- A glossary of key terms
- An index for easy reference

The course also includes Putting It into Practice exercises that you may take back to your land trust for your use in providing in-house training and discussion among your land trust board, staff and volunteers.

Chapter One • Conservation Easement Stewardship and Capacity: An Overview

Standard 11: Conservation Easement Stewardship
The land trust has a program of responsible stewardship for its easements.

A land trust that accepts and holds conservation easements commits itself to their annual stewardship in perpetuity, to enforcement of their terms, and to building positive landowner and community relationships to support the land trust's conservation programs and enforcement actions. A land trust that fails to do so may eventually lose its credibility, could cause its easement program to be invalidated, may erode public confidence in easements, and ultimately risk the protection of the land. Not all land trusts have the capacity to hold easements in perpetuity and may achieve their conservation goals through partnerships with other organizations, fee ownership or other conservation methods. These practices will help ensure that the conservation values protected by conservation easements are sustained over time.

— From the *Background to the 2004 revisions of* Land Trust Standards and Practices

Learning Objectives

After studying this chapter, you should be able to:

- Explain the importance of identifying the philosophy or guiding principles that will govern your conservation easement stewardship program
- Describe how this philosophy will be demonstrated in matters relating to the conservation easement stewardship program and by the land trust as a whole
- Explain why understanding a land trust's capacity is important in establishing a conservation easement stewardship program
- Describe the importance of having policies and procedures in place to ensure the integrity of the easement stewardship program

Summary

A conservation easement (also referred to as a conservation restriction) can be an effective legal tool in protecting significant natural resources for the benefit of present and future generations. However, a conservation easement does not in itself protect land but, rather, it authorizes the land trust, in partnership with the landowner, to ensure the long-term protection of the property. Therefore, the ultimate protection of the land lies with the ability of the land trust to do its job as steward of the land and to do it well.

Conservation easements are for public benefit, so it is paramount that the public has confidence in the land trust's ability to fulfill its long-term easement stewardship responsibilities. How a land trust administers its conservation easement stewardship program will have a direct effect not only on easement landowner relations but also on community relations. Given the nature of our culture and the easement tool itself, the credibility of a land trust as an easement holder and the integrity of conservation easements as a land protection tool will always face scrutiny. If a land trust takes its stewardship role seriously, it should be able to demonstrate clearly how it fulfills its role and operates with transparency.

It is prudent for land trusts to identify the principles that will guide their easement stewardship decisions and give careful consideration to how those principles are implemented in all aspects of their conservation work. Land trusts also need to weigh their easement stewardship approach against their capacity, and they must be willing to evaluate and adjust their program periodically. Routine conservation easement monitoring, management and landowner relations cost money; however, defending easements against legal challenges costs even more. Land trusts need to plan for the costs of monitoring and enforcement to ensure that the integrity of their easement stewardship program is not compromised.

Capacity: The ability to perform all the actions required to manage conservation easements by having adequate human and financial resources and organizational systems in place.

Evaluate Your Practices

Conduct a quick evaluation of your organization's conservation easement stewardship philosophy and capacity, giving your organization one point for every "yes" answer. Scores are shown at the end of this evaluation and guidance on the importance of the issues raised in the questions follows.

Does your organization:

1. Have a statement about its conservation easement stewardship philosophy or guiding principle(s)?
2. Convey its stewardship philosophy and policies and/or practices to its easement landowners and the public?
3. Understand the relationship between the terms and conditions of the conservation easement and perpetual easement stewardship obligations?
4. Have a dedicated easement stewardship fund or strategy to secure such funding for every easement it holds?
5. Have written easement stewardship policies and procedures for land trust representatives and easement landowners?

If your organization scores**:**

5: Great! This course may increase your knowledge of conservation easement stewardship, but your land trust is well on its way to excellence. Share your knowledge by sending your documents to the Land Trust Alliance for posting in the online library (e-mail learn@lta.org).

3–4: Good, but there is room for improvement. Your organization may need to dedicate more time to planning for long-term stewardship needs and implement policies and practices.

0–2: Taking this course is a good first step. Your organization should spend time evaluating its easement program from project selection through easement stewardship. Doing so will help you manage your easements more effectively *and* efficiently.

Guidance

1. Land trusts should define their approach to easement stewardship. Doing so will help each land trust meet its legal and ethical obligations for long-term stewardship (see pages 20–22 of this chapter).
2. Land trusts' practices should be transparent, fair and consistent to instill confidence in easement landowners and the public about the ability of the land trust to monitor, defend and enforce easements as well as the overall use of conservation

Policy: A specific course of action to guide and determine present and future decisions. In this context, refers to a written, board-adopted policy.

Stewardship fund: A separate, dedicated fund established by a land trust to provide financial resources for easement stewardship costs. If the fund is not a true endowment, the principal as well as the earnings of the fund may be withdrawn.

easements as an effective land protection tool (see pages 25–26 of this chapter).

3. A land trust should only accept easements that contain restrictions that it has the capacity (both human and financial) to monitor and enforce in perpetuity (see pages 22–24 of this chapter).
4. Land trusts have a perpetual responsibility for ensuring landowners comply with the easement provisions. Checking for compliance, handling landowner requests, resolving violations, dealing with litigation and good recordkeeping all take human and financial resources. The IRS requires that land trusts have the resources to monitor and enforce their conservation easements to maintain their status as "qualified" easement holders. Therefore, dedicated funding to carry out these responsibilities is essential (see pages 24–25 of this chapter).
5. Land trusts need to treat all landowners fairly and consistently when handling easement stewardship issues. They should be able to convey how they operate to landowners. Written policies and procedures also help ensure that land trust personnel take the same professional and consistent approach to handling all stewardship-related tasks. Written policies and procedures provide important information to new land trust personnel and new easement landowners. Written policies and procedures are also essential if the land trust ever has to go to court to defend an easement (see pages 25–26 of this chapter).

Guiding Principles for Stewardship

Importance

A land trust's easement stewardship program should begin with the organization's mission. Easement stewardship is an important component of how land trusts implement their mission. For example, an organization with a mission to protect wetlands, waterfowl and water quality will have very different needs in terms of resources, monitoring techniques and so forth than an organization that protects open space and scenic views. What approach will the land trust take to uphold its easements? How does the land trust want to be viewed by its easement landowners and the community it serves? What role does the land trust see the landowner playing in fulfilling the land trust's mission (see chapter 2 for more detail on this subject)? The answers to these questions will help establish the land trust's stewardship philosophy or guiding principles. All aspects of the stewardship program

will be based on this philosophy and will guide future decisions of the organization.

Land trusts should routinely evaluate their easement stewardship programs, goals and activities to check for consistency with their mission. Some land trusts need only look to the changes in their easement drafting over time to understand how their stewardship philosophy has evolved.

A land trust's easement stewardship program should be based on a clear understanding of the organization's legal and ethical responsibilities, desired outcomes and principles, and mission.

A land trust's easement stewardship program should also be based on a clear understanding of the organization's legal and ethical responsibilities, desired outcomes and principles. The land trust should understand what it is trying to accomplish by holding conservation easements and then identify the best approach to achieve the desired outcome.

Some land trusts have found it difficult to fulfill their stewardship role when the approach and principles are undefined and unarticulated to those charged with implementing the program. In discussing easement monitoring, a senior staff member of a land trust anonymously remarked:

> We got most of our monitoring training at the Land Trust Alliance Rally and read *The Conservation Easement Handbook*. The land trust's monitoring policy is very specific and the form is pretty self-explanatory, but what is missing is the general philosophy and approach to easement monitoring. The people who draft easements are not the same people who monitor. There are efforts to talk and involve stewardship staff in looking over easement documents to make sure they are reasonable to monitor and getting protection staff to come along on baseline or monitoring visits, but it is not required. It's very informal and to some extent dependent on personal relationships among staff.

Example

The Vermont Land Trust is a good example of a land trust that took the time to develop, articulate and implement guiding principles for its stewardship of conservation easements, a copy of which is included on page 35.

VLT believes the best approach to ensure the integrity of its conservation easements is to focus on establishing good landowner relationships. This vision is articulated on its website:

> From [landowners' and the communities'] perspective we want to be viewed as: accessible, efficient, and trustworthy. As a result of holding this view, we hope owners of conserved land will understand their conservation easement, feel part of a land conservation community, and act as ambassadors of conservation.

One family's situation exemplifies the success of VLT's nonconfrontational approach. For five generations, this family had dumped household waste over a ravine on their property, which was later placed under easement by VLT. The dumping violated both the easement and state regulations. The land trust addressed the issue by compiling a list of recycling places, scrap metal dealers and low-cost dumpsters and offering to help the family clean up the dump. Leslie Ratley-Beach, stewardship director at the time, noted: "The situation resolved very nicely. The family hired a monthly dumpster and stopped dumping down the ravine. They were delighted with how VLT handled the issue. They felt it raised their awareness about land use. As the dumping had been a five-generation habit, they just had never thought about it."

By treating the landowners as allies, instead of as adversaries, the Vermont Land Trust addressed the easement issue, strengthened its relationship with the landowners and deterred future violations.

Capacity

Capacity and Easement Restrictions

Practice 7A of *Land Trust Standards and Practices* requires land trusts to evaluate their capacity to conduct easement stewardship:

> **Practice 7A: Capacity.** The land trust regularly evaluates its programs, activities and long-term responsibilities and has sufficient volunteers, staff and/or consultants to carry out its work, particularly when managing an active program of easements.

Administering and managing a conservation easement stewardship program requires both human and financial resources. Although easement monitoring is an essential part of any stewardship program, many land trusts have realized that monitoring is the easy part, relatively speaking, compared to the program's other components. In addition to monitoring, land trusts must respond to landowner inquiries

and requests for approvals or amendments. They often address questions from prospective buyers of easement properties, as well as meet with new owners of easement properties to discuss the terms of the easement and the land trust's stewardship program. Land trusts must take the time to maintain thorough files on each easement property and supplement their baseline documentation. All of these tasks are important parts of easement stewardship. The land trust must determine what it can realistically accomplish given its human resources (volunteers, staff and/or consultants and their level of knowledge, skills and expertise), funding resources and time constraints.

Land trusts should draft easements with perpetual stewardship in mind.

The contents of an easement will dictate the level of funding, time and skills needed to manage and defend the easement in perpetuity. For this reason, land trusts should draft easements with perpetual stewardship in mind. To ensure that project staff and easement drafters comprehend the stewardship implications of the easement terms, some staffed land trusts have their project staff monitor easement properties. Other land trusts work closely with their stewardship staff during the drafting phase, so they can understand the stewardship implications and negotiate and draft the easements accordingly.

Every restriction contained in a conservation easement must be monitored and may be subject to an enforcement obligation. When considering whether to place certain restrictions in a conservation easement, analyzing the time and costs necessary to monitor and defend these restrictions is part of the easement drafting process. If your land trust has a model easement template, it may be able to confine this analysis to those restrictions that are new or different from those in the model easement (presumably the model easement was adopted by the land trust with an understanding that it has the capacity to monitor and defend the restrictions in the template).

Land trusts should also be careful about incorporating easement restrictions that are difficult to monitor or require outside expertise, such as experts in land management issues or water quality evaluation. These restrictions may require the land trust to increase existing capacity (recruiting more monitors or increasing monitor training, for example) to fulfill its obligations.

Each easement term has an impact on the stewardship of that easement, and many provisions bring increased obligations and costs. Land trusts need to understand the stewardship implications of easements

that contain affirmative rights or obligations, use prescriptive standards versus performance standards, have prior approval requirements, permit limited development or other uses upon notification and approval of the easement holder, and/or include discretionary approvals. They also need to factor in the additional time and expense of considering conservation easement amendments and/or issuing letters of interpretation. All these factors add to the stewardship burden assumed by the land trust and must be considered in evaluating a land trust's stewardship capacity. For more information on drafting conservation easements, see the Land Trust Alliance course "Conservation Easement Drafting and Documentation" and *The Conservation Easement Handbook*. For more information on determining land trust capacity, see the Alliance course "Mission, Planning and Capacity." For more on estimating personnel capacity for easement stewardship, refer to the Land Trust Alliance's research report *Conservation Capacity and Enforcement Capability: A Research Report*, listed in the Additional Resources at the end of this chapter.

Affirmative rights or obligations: Easement provisions that require the landowner to maintain the resources protected by the easement (e.g., mow a field to keep open a view) or that the land trust must maintain if the owner does not; or rights granted to the land trust to perform physical acts on the property (e.g., build a trail or access the property for monitoring).

Prescriptive standards: The restrictions in a conservation easement that forbid or limit certain activities, which are usually absolute and often quantifiable, such as the prohibition of construction within 300 feet of a body of water.

Performance standards: The requirements in a conservation easement for limiting permitted land use activities that are based on the likelihood of achieving a desired outcome or goal, rather than mandating specific actions or prohibitions. For example, "the water shall not contain sediment."

Funding Easement Stewardship

For an easement to qualify as a charitable deduction, the IRS requires that the land trust have the resources to monitor and enforce the easement's restrictions. Land trusts should be able to demonstrate this ability to landowners, particularly because landowners are responsible for proving that they are working with a "qualified holder." However, every easement, whether donated or purchased, requires some level of stewardship by the land trust. Adequate stewardship funding is vital to ensure that a land trust's long-term stewardship obligations can be met. For an example of how to calculate stewardship costs, see the Colorado Open Lands easement costs spreadsheet on page 45.

Land Trust Standards and Practices requires a land trust to ensure it can adequately fund its easement stewardship program:

> **Practice 11A: Funding Easement Stewardship.** The land trust determines the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose. (See 6G.)

As part of determining its funding requirements, a land trust should also consider its priorities with respect to the easement stewardship program. Does the land trust want to spend its time handling approvals? Being a resource for land management issues? Enforcing easements through litigation? Building landowner relationships? The level of easement stewardship funding should correspond to the level of stewardship commitment necessary for the land trust to monitor regularly, handle landowner requests promptly, implement appropriate recordkeeping practices and defend and enforce the organization's easements to maintain the public's trust. For more information on determining stewardship costs, see the Land Trust Alliance course "Determining Stewardship Costs and Raising and Managing Dedicated Funds."

Ensuring Integrity

Using written policies and procedures will help land trusts handle and track landowner requests more efficiently, and serve as a reminder of an organization's array of responsibilities as an easement holder. Written policies and procedures are also an invaluable resource to new board, staff, consultants or volunteers, helping ensure that they follow proper protocols and communicate consistently with easement landowners. A land trust should create:

- Procedures for monitoring
- Procedures for updating and supplementing baseline documentation
- An overall easement monitoring policy (see the monitoring policy template exercise on page 246)

By creating policies and procedures to address stewardship demands, land trusts will be better prepared to respond to landowners promptly and treat them fairly and consistently. Having this level of transparency will build trust and respect for the organization and ensure the integrity of the easement program. Therefore, it is important for land trusts to review and modify templates and policies, as necessary, on a regular basis.

Good recordkeeping practices, whether your land trust is "strictly paper" or "all digital" will help the organization easily provide documentation on how it conducts easement stewardship. The land trust should have a formal, board-adopted records policy to assist with managing the documents needed for long-term easement stewardship

and defense. For more information on developing and implementing a recordkeeping policy, see Practice 2D, Records Policy, Practice 9G, Recordkeeping and the Land Trust Alliance course "Nonprofit Law and Recordkeeping for Land Trusts, Volume II: Recordkeeping Essentials for Land Trusts." For information on specific issues regarding easement recordkeeping, see the Alliance course "Managing Conservation Easements in Perpetuity."

Drafting a Stewardship Principles Statement

This exercise may be conducted in an instructor-led training or as an exercise with your board or stewardship staff or volunteers. Guidance on the exercise follows.

Directions

Part 1: Spend a few minutes reviewing the Vermont Land Trust and Minnesota Land Trust conservation easement stewardship philosophy documents (pages 35–44) to compare themes and approaches to easement stewardship.

Part 2: Spend five minutes drafting a brief statement (no more than three to five sentences) that describes your land trust's guiding principles for easement stewardship. Include a few words or phrases that reflect your stewardship program as it currently exists or how you would like it to be. Consider how stewardship principles can guide or help you manage landowner relationships, utilize baseline documentation and conduct easement monitoring.

Part 3: Partner with another learner in the course or with a board or staff member or volunteer at your land trust. Review your partner's document with the following questions in mind:

1. Does the statement convey the organization's approach to conservation easement stewardship?
2. Does the statement convey the role the land trust wants to play in the community or how it wants to be perceived by landowners and the community?
3. Is the statement compelling? Are the goals realistic and attainable?
4. Do you have any additional thoughts or suggestions?

Share your thoughts with your partner and make plans to revise your statement, if necessary, when you return to your land trust. You can also post your draft on the Stewardship Forum on The Learning Center (http://learningcenter.lta.org) and request feedback from colleagues across the country.

Guidance

There are many similarities between the stewardship philosophies of the Vermont Land Trust and the Minnesota Land Trust, including the following themes:

- Ongoing commitment
- Time and resources (capacity)
- Perpetual land conservation
- Integrity of conservation easements
- Protection of natural resources/land ethic
- How others experience the land trust
- Landowner relationships
- Community perceptions
- Interrelationship of easement drafting with stewardship implementation and interpretation
- Conservation easement monitoring, follow-up and recordkeeping

These themes address the key elements of any successful easement stewardship program. Though each land trust will tailor a statement expressing its own philosophy, there will likely be substantial overlap, as these examples show. At a minimum, a stewardship philosophy should speak to the organization's intentions for upholding easements, maintaining relationships with landowners and the community, and implementing sound practices.

Stewardship Policies and Practices
Maine Coast Heritage Trust

This case study uses the Maine Coast Heritage Trust's experiences to extrapolate trends and issues experienced by many land trusts *in general* as they mature. The case study also serves as a cautionary tale for those land trusts that fail to give careful consideration to easement stewardship demands as they accumulate easements over time. The information below is excerpted from MCHT's "Stewardship Policies and Procedures" (2004), and incorporates some recent updates and corrections.

Background

During its first dozen years, Maine Coast Heritage Trust facilitated land protection but declined to hold interests in properties. That changed in late 1983, when MCHT took on its first conservation easement in Brooksville and began its involvement in stewardship. As the organization's holdings increased, land protection staff monitored the easements in their region and handled any necessary work on preserves. By 1995, it was clear that stewardship efforts needed to be increased, and a new position, stewardship coordinator, was created to organize and cover the growing stewardship responsibilities of the organization. The position was part time and responsible for a portfolio of 12 fee properties and 68 conservation easements when the coordinator was hired in 1996. Since that time, the stewardship program has become a separate department and staffing has increased, as have stewardship responsibilities and budget. In 1998, the board of directors voted to establish a Stewardship Policy Committee that works to develop stewardship policies and review practices. As of June 2007, MCHT owns 86 properties and holds 169 easements.

Stewardship Philosophy

The stewardship arm of MCHT is responsible for continuing the conservation efforts that are begun when a property is acquired or an easement negotiated. The following stewardship philosophy was developed by the Board's Stewardship Policy Committee and adopted by the Board (November 1999, revised February 2006):

> Stewardship is the on-going, long term commitment of time and resources to the conservation of land. Its implementation is essential to MCHT's

> ability to protect land in the future. MCHT will strive to practice exemplary stewardship of its lands, always protecting ecological values and when appropriate and feasible, providing compatible human uses. Important components of our stewardship will include development of a local land ethic, community involvement and a focus on the quality of each visitor's experience at our preserves.
>
> As staff develop and implement conservation plans for fee properties and give input on conservation easements and make our commitments regarding land use, it is important to keep this philosophy in mind.
>
> Stewardship staff work with land protection staff in initial whole place planning efforts and as easements are developed, especially on properties where MCHT will hold an interest. Once an easement or fee property is acquired, stewardship steps in to continue the work. Stewardship coordinates with all other departments as it works with landowners, communities and other organizations to manage MCHT lands.

Jane Arbuckle of MCHT explains that the Stewardship Philosophy informs fundamental decisions about easement management. For example, when a question about public access to an easement property arises, the philosophy guides stewardship staff in considering how ecological values are protected before providing for compatible public use. If natural resources, such as bald eagle habitat, would be harmed by public use of trails on an easement property, then MCHT may decide to close the trails to prevent compromising ecological values. Having the Stewardship Philosophy in place makes it easier to reach and explain these decisions.

Discussion Questions

1. Why do you think the Maine Coast Heritage Trust takes an inclusive approach to stewardship, involving different perspectives both within and outside of the organization?
2. What do you think were the issues facing this land trust that resulted in a decision to establish a separate Stewardship Policy Committee to develop polices and review practices?
3. What are the benefits of establishing such a separate committee?

Guidance

1. Stewardship can be, and often was, an afterthought for land trusts during their early years. The consequences of viewing stewardship as an afterthought can be insufficient or missing baseline documentation reports, inadequate funding and unenforceable easement terms. As the land trust community matures, it is becoming more cognizant of the correlation between easement drafting and easement stewardship. Today, many land trusts acknowledge this correlation and are shifting their focus to stewardship demands early on in the project planning process. Furthermore, to be effective stewards of the land, many land trusts also realize that they need to involve the community in their efforts, both in fostering a land ethic and in building organizational capacity to achieve their conservation goals.

   From its beginning, MCHT was aware of the need for stewardship and consequently did not take any interests in property for some time. Even when the organization began to acquire easements, it proceeded with caution. Its land protection staff was actively involved in stewardship and regular easement monitoring was a well-established program from the start.
2. Land trusts often experience a "growth spurt," during which land protection activities (easements and/or fee acquisitions) will increase noticeably within a relatively short period of time. Sometimes this growth happens so fast that a land trust only realizes after the fact that the stewardship component of its work has not kept up. Often this situation results from prioritizing new projects over capacity building. Some land trusts may take a band-aid approach to alleviate staffing issues temporarily, but this tactic is ineffective over the long term if projects continue to accumulate at a fast pace without the necessary resources. Land trusts need to make stewardship a priority and ensure that it is considered in all aspects of their work.

   For some older land trusts, the lack of policies, incomplete baseline reports and inadequate stewardship funds signify the collective lack of experience with private land conservation at

Land ethic: A perspective on environmental ethics first championed by Aldo Leopold in his book *A Sand County Almanac*. Leopold argued that the next step in the evolution of ethics is the expansion of ethics to include nonhuman members of the biotic community, collectively referred to as "the land."

the time these organizations began holding easements. This particular case study demonstrates that MCHT, on the other hand, recognized the importance of stewardship early on and took proactive steps along the way. In fact, MCHT created the Stewardship Policy Committee in part to emphasize the significance of stewardship and to raise its profile in the organization. In general, the land trust community overall has become more aware of the range of stewardship issues and the necessity for considering both short-term and long-term capacity to address these challenges.

3. As a land trust matures and stewardship becomes a larger component of its activities, a separate board committee can focus exclusively on stewardship matters. Establishing such a board committee creates more visibility for stewardship and helps it escape from its position in the backseat behind other land trust business, such as new acquisition projects. A stewardship committee can be both a voice for the importance of stewardship and a place to develop appropriate policies and procedures and advocate for funding. In addition, the stewardship committee can help steer the ongoing business of stewardship, prioritize tasks and issues, and address problems as they occur.

Conclusion

Experienced land trusts know that written statements presenting their philosophy or guiding principles, policies and procedures are key communication tools. This situation is especially true for easement stewardship, which, in many organizations, may have suffered low visibility relative to new land protection projects. Written statements regarding easement stewardship can:

- Communicate stewardship's importance to audiences both within and outside the land trust
- Help staff, board and volunteers work under common principles toward shared goals
- Help membership and the general public understand easement stewardship goals and operations
- Demonstrate the land trust's commitment to easement stewardship
- Create "institutional memory" to ensure that the land trust is consistent in its actions over time

Each land trust's philosophy, policies and procedures must be tailored as appropriate to the organization and scaled according to organizational capacity. As a land trust grows or modifies its focus, it may need to modify the way it meets its easement stewardship obligations. A land trust may use the sample stewardship principles, policies and procedures provided at the end of this and following chapters to inform its own similar documents. In addition, a land trust may use the monitoring policy template found on page 246 in chapter 4 to design or update its overall stewardship documents. The following chapters will discuss in greater detail the elements of landowner contact, baseline documentation and monitoring that are addressed in these written documents.

Sample Documents

Conservation Stewardship Program Philosophy, Outcomes and Principles, Vermont Land Trust (*page 35*)
This land trust has clearly articulated its stewardship philosophy/guiding principles and identified how these principles will be implemented. As of 2007, VLT holds 1,503 easements totaling 386,293 acres and has a stewardship staff of 10.

Conservation Easement Stewardship Program Overview, Minnesota Land Trust (*page 37*)
This land trust has defined its stewardship philosophy. The overview document identifies the key components of the organization's stewardship program and discusses its practices. As of 2007, the Minnesota Land Trust holds over 340 easements protecting more than 30,000 acres of land and more than 500,000 feet of shoreline. They have five full-time and three part-time staff who have stewardship responsibilities.

Model Conservation Easement Costs Spreadsheet, Colorado Open Lands (*page 45*)
This document, including an explanation of the spreadsheet, details the factors one land trust considers when calculating its long-term stewardship costs. Land trusts should review their specific stewardship program to identify appropriate assumptions and methods of calculations for their long-term needs. As of 2007, Colorado Open Lands holds 194 easements on 165,616 acres with a staff of three.

Vermont Land Trust Conservation Stewardship Program
Philosophy, Outcomes & Principles

Vermont Land Trust believes that good relationships with landowners not enforcement is the best immediate and long-term method to guarantee that the integrity of conservation easements are preserved. To that end, the goal of the Conservation Stewardship Program is to build relations with owners of conserved land. The outcomes of the Conservation Stewardship Program are best described in terms of how we want conserved landowners and communities to experience us. From their perspective we want to be viewed as: accessible, efficient, and trustworthy. As a result of holding this view, we hope owners of conserved land will understand their conservation easement, feel part of a land conservation community, and act as ambassadors of conservation. In addition, we have an obligation to explain to landowners that the conservation easement is a binding legal document that limits how their land is used. We will do our best to accommodate landowner needs, however, there will be some requests that we cannot approve.

To achieve these outcomes, our program is designed to:
1. work with landowners to ensure that the purposes of the conservation easements are achieved
2. establish good relationships with owners of conserved land and serve as a source of valuable information to landowners
3. provide timely, responsive service particularly as it relates to review and approval of landowner requests
4. ensure that violations do not occur or if they do they are voluntarily corrected

Our actions and decisions are guided by the following principles:
1. How we operate is visible. The policies, procedures and guidelines that govern our decisions are written and available.
2. Our focus is on protecting the resource values stated in the conservation easement.
3. We act in service to landowners. Even though providing amendments and approvals is a significant part of our work, we wish to act as partners in problem solving and not be seen as just a source of approvals.
4. Issues and problems are resolved through collaboration to the greatest extent possible. Our goal is to maximize landowner choice and control. We wish to be seen as a source of information and solutions not just a source of approvals or enforcement.
5. Our interactions are based on positive assumptions about landowners: that their actions are in good faith and that landowners have the most knowledge of their property. Unless proven otherwise, these assumptions inform all of our interactions and decisions.
6. Our interactions and decisions are proportional to the resource value.
7. We seek solutions that are the simplest available so that landowner needs are met with a minimum of bureaucratic red tape and conditions while still protecting the resource values explicit in the conservation easement. We understand that over time what is currently understood to be a best management practice will change. As a result, the consistent application of principals is balanced with flexibility and individual treatment. Consistency in and of itself is not a goal, rather precedence only serves as a starting point.
8. We use our and the landowner's time and resources efficiently.
9. We seek to avoid being seen as an entity to be dealt with, or adversarial in our interactions.

10. If the landowner is not prepared to resolve issues that arise cooperatively, then we will explore all other alternatives in order to preserve the resource values of the conservation easement.

Implications of these principles:

1. For Stewardship staffing: We cannot be experts in all aspects of resource management. Therefore, our education efforts are related to conservation easements not land management. In our clearinghouse function our emphasis is on resource referral, not direct technical assistance.

2. For our conservation partners: VLT has a variety of conservation partners. Vermont Housing and Conservation Board and the Vermont Agency of Agriculture, Food and Markets are the two partners with whom we co-hold many conservation easements. We recognize that our partners may have different values and philosophy that may result in different decisions about requests from landowners. We work diligently to keep the effects of these differences from resulting in divergent treatment of similarly situated landowners based merely on who funded the purchase of their conservation easement.

3. For systems and work design: Stewardship is downstream of much of our work. Internally, feedback from Stewardship helps inform Field Team, CCC, and Development and Communications decision making. Our database of completed work is both a tool to help carry out our stewardship work, inform organizational decision making, and to help "tell our story."

4. For communications: The existence of the Conservation Stewardship Program is one of the ways we establish and increase the credibility of our conservation work. To that end, we seek to include the stewardship message in appropriate organizational communications with an appropriate level of emphasis. The stewardship message and the conservation message are not discrete. Our best messages include how the two relate.

5. For the long-term: Our work exists in perpetuity. We do not and cannot fully comprehend the task of our successors. We are open, therefore, to new methods and practices to help develop and share what we believe to be a best practice.

Last revised November 2003

January 2006

Minnesota Land Trust
Conservation Easement Stewardship Program Overview

Stewardship: Working in partnership with landowners and the communities in which their lands are located to preserve the conservation values of those lands protected by Minnesota Land Trust conservation easements.

Conservation easements are forever. With each easement, the Minnesota Land Trust 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 Land Trust is not the landowner or the land manager. We share responsibility for the land with others.
- Ownership of the property will change.
- The Minnesota Land Trust and its staff will change.
- The land and surrounding landscape will inevitably change over time.
- Goals and interests of the landowner and the Minnesota Land Trust 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 any land trust to enforce the terms of an easement—litigation—is costly, time-consuming and often unpredictable.

Stewardship in the Minnesota Land Trust 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 stewardship program.

Goals:
The ultimate responsibility of the Minnesota Land Trust's conservation easement stewardship program is to preserve the conservation values associated with each property protected by an easement. Therefore, the Minnesota Land Trust 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 Land Trust's stewardship program are to:

- Encourage voluntary compliance with the terms of our conservation easements whenever possible.
- Establish and maintain good relationships with our landowners.
- Establish and maintain good relationships with the communities in which our easements are located.
- Provide professional, timely responses and service to our landowners. The Minnesota Land Trust recognizes that it cannot be successful without working in cooperation with the many landowners dedicated to protecting their lands through conservation easements. The Land Trust 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.

Components of a Stewardship Program:
Stewardship in the Minnesota Land Trust starts with a well-drafted conservation easement. Many future problems can be eliminated if the easement itself is drafted with long-term stewardship issues in mind.

That being said, there are a number of specific components to the Minnesota Land Trust's stewardship program. These include:

- creating the baseline property report
- easement administration
- monitoring
- landowner relations
- community relations and finally
- easement enforcement and defense

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.

Baseline Property Reports:
Required by IRS regulations whenever a landowner reserves rights which, if exercised, might interfere with the conservation purposes of the easement, 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 Land Trust, 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 Land Trust. 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.

All property reports will contain:

- A descriptive overview of the property covering vegetation and improvements.
- Maps.
- Photographs.

Each property report will be signed by the landowner conveying the easement and the Minnesota Land Trust 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 which reflect major changes to the condition of the property. Every five years, the staff will closely examine each property report to make sure that it is adequate and up to date.

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.

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 Land Trust for certain activities specified in the easement as requiring Trust approval (e.g. building locations, forestry management plans, etc.) and amendments to the easement itself.

Most easement administration can be handled by staff, with Board of Directors involvement when required. However, it will occasionally be necessary for staff to obtain the advice or assistance of outside experts. The Minnesota Land Trust 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.

Requests for information:
The conservation 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.

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 Executive Director

Formal approvals:
Easements often allow certain activities to take place only with the written approval of the Land Trust. 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 Executive Director of the Land Trust.

All requests are initially reviewed by the conservation staff person responsible for the project 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 are 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 legal staff 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 Executive Director for final review and approval.

All approvals will be given to a landowner in writing, generally signed by the Executive Director.

Requests for approvals, and actions taken, will be tracked and periodically reported to the Board.

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

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 Land Trust to hold and enforce its conservation easements as written. Therefore, amendments are permitted only in exceptional circumstances. All amendment requests require legal review as well as review and evaluation by the conservation staff member responsible for the project. 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 government agency involved with the transaction and major supporters of the project.

All amendments require approval by the Executive Director. Technical amendments may be completed based upon the Executive Director's approval. All amendments that change any substantive terms or restrictions of an easement also require approval by the Board.

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 Land Trust's policy on amending conservation easements.

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

Monitoring plans:
The Land Trust 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.

A monitoring plan will generally include a monitoring map to assist in monitoring.

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 to help the monitor in viewing the property and noting any problems or areas of interest.

Monitoring workbooks:
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 Land Trust monitoring procedures and a current monitoring report form.

Monitoring workbooks will be kept in the Minnesota Land Trust office or in the appropriate regional 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.

Timing of monitoring visits:
It is the goal of the Minnesota Land Trust 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.

Monitors:
The Land Trust uses both staff and volunteers to monitor protected property. All volunteers will be asked to complete a certification program.

Assignments of monitors:
Regional Conservation Directors, in coordination with the conservation programs assistant, 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 a staff member will visit each property. Volunteers will not be asked to monitor particularly difficult or troublesome easements.

Landowner Relations:
The Minnesota Land Trust will be most successful if landowners voluntarily comply with the terms of the easements protecting theirs lands. Therefore, the Land Trust views its relationship with landowners as a partnership. To support this partnership, the Land Trust 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.
- Properly thank each landowner for their contribution through a letter from the Executive Director and an appropriate acknowledgment gift.
- Provide each landowner with signs that note the protected status of their property.
- Provide each landowner with an honorary life membership in the Minnesota Land Trust.
- Ask each landowner if the Minnesota Land Trust may publicize their conservation easement.
- Ask each landowner if they might be willing to provide a testimonial regarding their project or serve as a reference for other landowners.
- Hold an annual landowner appreciation event.
- Distribute an annual landowner newsletter.
- Following the transfer of ownership, make sure that all new landowners receive a personal visit from staff, a copy of the property report, a complimentary membership and an easement packet.

From time to time, the Minnesota Land Trust will also ask landowners to evaluate their experience in working with the Land Trust.

Community Relations:
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 Land Trust 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.
- Identifying and working with selected audiences such as realtors, local government officials, neighbors, or homeowners associations.

Violations and Easement Defense:
In the end, the Minnesota Land Trust must be prepared to correct violations of easement terms. Each suspected violation requires an individualized approach. Whenever possible, the Land Trust will work with the landowner to have the landowner correct the situation without further action.

Any judicial action taken by the Minnesota Land Trust requires approval by the Board of Directors.

Volunteers:
Volunteers play a critical role in the Minnesota Land Trust's stewardship program. They are able to extend the Minnesota Land Trust's presence into local communities 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.

The Minnesota Land Trust has created a certified volunteer monitoring program. This program includes a training component for all monitors. Training sessions for new and returning volunteers will be held at least annually in one or more locations across the state.

An overview of the program, the job description for volunteer monitors and an overview of monitoring for volunteers are set out in the volunteer monitoring guide.

The Land Trust will keep records of all certified volunteers. NOTE: The Minnesota Land Trust does maintain limited insurance to cover a volunteer's accident or injury while monitoring. And as representatives of the Land Trust, volunteer monitors are covered by the Land Trust's general liability insurance while conducting official Land Trust business.

Calculating the Stewardship Endowment

Introduction

The Model CE Costs Spreadsheet has been created by Colorado Open Lands to calculate our Stewardship Endowment for each conservation easement. COL uses this spreadsheet to justify the suggested donation. This worksheet is organized into four parts. Part A, the assumptions, is the hard part. Most cells should be changed to reflect the specific conservation easement. Once the assumptions have been entered for the particular property, the numbers are automatically calculated in Parts B (formulas), C (Annual Expenses), and D (Endowments Needed to Fund Annual Expenses). Each formula in parts B, C, and D list the assumptions that are used for each calculation. As a result, the estimate of the annual monitoring costs and the size of the endowment needed both to produce the income to fund those costs and to maintain funds in the endowment in order to keep pace with inflation is calculated.

Basic Premise

The key to this worksheet is that each land trust has either full or part time staffing and an office. Even if a land trust does not have staff or an office now, it may in the future. If, in the unfortunate case, the land trust does not continue, the easement will be transferred to another land trust that may have staff and an office. Therefore, estimate the costs of monitoring an easement by including the staff and overhead costs.

The Assumptions

The assumptions are the basis for calculating the stewardship endowment. Some of the assumptions are very straightforward, such as annual salary, reimbursement per mile, and hours worked per year. Some involve some experience and additional calculations, such as staff hours to complete post-monitoring record keeping and the overhead per staff member per hour.

Other assumptions can be more complicated. For example, calculating the costs of approving a reserved right or the chances that there will be a potential violation can be done. These events occur infrequently, but they do happen and each land trust needs to budget for them. It is easy to see that the Stewardship Endowment needs to produce a steady income stream to pay for monitoring costs and to account for the effects of inflation. But, if a reserved right costing $300 is exercised in 2004, the Endowment cannot be expected to produce $300 additional in that one year alone. Therefore, it is necessary to take a few extra steps to calculate additional costs.

Risk Analysis

In risk analysis, two things are calculated: the cost of the event and the likelihood the event will happen. For example, a car insurance company will determine from a driver's age, gender, and driving record how often the driver is likely to total a car and what replacing the car will cost. Dividing the cost of replacing the car by the estimated frequency of the accident, they add a specific amount to each premium that, over time, will reimburse the company for the costs of replacing your car.

Explanation of Spreadsheet
Last Updated 2/13/04

The same concept applies to conservation easements. For example, what is the estimated cost of approving a reserved right and how often will the land trust have to do this? Assume that it costs $300 in staff and travel time to approve a reserved right and this event is estimated to occur once in 20 years. For this example, divide $300 by 20 years. Each year, the Endowment needs to produce $15 extra to compensate the land trust for the time and effort expended when that event occurs. When a land trust has enough easements, like the car insurance company with enough automobile insurance policies, the revenues generated from the endowment will average out, because not all easements are likely to need special, time-consuming attention at the same time.

Summary

The Model CE Costs Spreadsheet provides a consistent way to calculate endowment needs. It is tailored to each individual conservation easement and provides justification for a donation request. It should be updated annually for the CPI and 30-year T-bill interest rates (see "Updating the CPI and 30 Year T-bill Interest Rate"). These numbers do not come out until April or May; however, the numbers do not vary too much from year to year so the lag time in updating the spreadsheet should not make a significant difference. The spreadsheet will help calculate the needs of the Stewardship Endowment to ensure a stable conservation easement stewardship and legal defense program over the long term.

Explanation of Spreadsheet
Last Updated 2/13/04

Updating the CPI and 30 Year T-bill Interest Rate

At the end of the Endowment Formula, several items need to be updated annually. The appropriate time to do this is in late April when the federal government has had a chance to publish the needed numbers. Note: when there is mention of the 'previous' year, it refers to the last year not the current year. In other words, if you working on this in April 2001, you want to find the numbers for the year 2000 to plug into the formula. The following outlines what sections of the formula need to be changed and how to change them.

Commentary Section

The first year in the "Year" column should be the changed to the current year. All the subsequent years will automatically change when you hit enter.

Investment Analysis Section

Step 1: Go to the end of the "Year" column and add in a new row, labeling it the previous year.

Step 2: Change all the formulas in the row called "Average" to include the newly added row.

Step 3: Change all the formulas in the row called "Average" to drop the very first row. What you are doing is maintaining the 20 year average by adding the previous year (e.g. adding 2001 just after 2000) and dropping the first year in the table (e.g. dropping 1980) in the formula.

Step 4: Add the numbers for the previous year into the new row. You will need to get the average 30-year Treasury Bond rate of return and the average inflation rate for the previous year. See the directions below to determine these numbers.

Step 5: Remove the first row in the table (e.g. delete 1980 so that the table starts with 1981).

Step 6: At the bottom of this table note the source of the data and when it was gathered.

Average 30-year Treasury Bond rate of return (discontinued in 2002, use 20-year)

Type: www.federalreserve.gov/releases/h15/data.htm

Scroll down: Selected Interest Rates / Historical Data/Instruments / U.S. Government Securities / Treasury constant maturities 30-year / (30-year historical)

Click: Annual

See: tcm30y (look down the column to find the most recent year and always check to see if the last year is still listed as the same as COL's spreadsheet – sometimes they update this number)

Final Number: Plug this number into the 'previous' year spot in the column listed as 30 Yr US Treasury Bond Yield in the Investment Analysis section (section 1).

Updating the CPI and 30 Year T-bill Interest Rate
Last Updated 2/13/04

Average Inflation Rate

Open: Excel

Retrieve: Excel document 'CPI data from BLS Statistics'

Go online: http://stats.bls.gov

Click: Inflation and Consumer Spending

Click: Consumer Price Index

Click: Get Detailed CPI Statistics

Click: All Urban Consumers (Current Series) (located under Most Requested Statistics)

Check box: U.S. All items 1982-84=100

Click on: Retrieve Data. A table will come up that shows the CPI for the last 10 years.

Copy: The number in the Annual column for the year you are adding.

Paste into: Excel spreadsheet "CPI data from BLS Statistics" in the appropriate box.

Formula: The formula should automatically calculate the CPI for last full year.

Final Number: Plug that number into the previous year spot in the column "Consumer Price Index Urban Consumers" in the Investment Analysis section in the Model CE Cost Spreadsheet.

Updating the CPI and 30 Year T-bill Interest Rate
Last Updated 2/13/04

CPI from BLS Statistics

Bureau of Labor Statistics
Series Id: CUUR0000SAO
Not seasonally adjusted
Area US City Average
Item: All items
Base Period: 1982-84=100

Year		2 decimals % change	1 decimal % change
1993	144.5		
1994	148.2	2.56%	2.6%
1995	152.4	2.83%	2.8%
1996	156.9	2.95%	3.0%
1997	160.5	2.29%	2.3%
1998	163.0	1.56%	1.6%
1999	166.1	1.90%	1.9%
2000	172.2	3.67%	3.7%
2001	177.1	2.85%	2.8%
2002	179.9	1.58%	1.6%
2003	184.0	2.28%	2.3%
2004	188.9	2.66%	2.7%
2005	195.3	3.39%	3.4%
2006	201.6	3.23%	3.2%

CPI Statistics
Last Updated 2/10/04

Colorado Open Lands

Worksheet Calculating the Costs of Stewardship and Defense of a Conservation Easement and the Endowment Needed to Support it

Line numbers and column letters have been left in to aid in tracking the formulas if desired.

[Name of] Conservation Easement

A. Assumptions

Commentary: *The numbers in Section A are designed specifically for this easement specifically and are called the Assumptions. These assumptions are estimates drawn from experience.*

1. Staff and Overhead Costs

Annual salary (single parent, two children)	$50,000.00
Hours worked per year (50 wks x 40 hrs/wk less 7 holidays x 8 hrs/day)	1,944
Salary per hour (annual salary / hours worked per year)	$25.720
Overhead / staff member / hour (benefits, rent, typing, phone, computer)	$5.658

2. Travel Costs for a Site Visit

Reimbursement per mile (as of 01.01.07 per IRS)	$0.505
Average miles for a round trip (office to property and return)	100
Average vehicular speed for entire trip	45
Reimbursable travel expenses (lodging, parking, airplane flyover)	$0.00

3. Monitoring Costs

Hard costs	
Film purchase and developing costs (digital photos)	$2.80
Cost of annual supplies	$3.00
Average long distance telephone costs/year	$1.00
Staff time for Monitoring	
Average pre-monitoring time	0.5
Average time spent monitoring	2.1
Average post-monitoring time	2.1

4. Frequency of Exercise of Reserved Rights, Management Plan updates etc.

How often will reserved rights etc. be exercised in a 20 year period?	1
Therefore the likelihood of exercise of reserved right etc. in any one year is:	5%
Average staff hours needed for exercise of reserved rights etc. per time	5
Number of site visits required to review change per time	1

5. Annual Landowner Relations

Staff time needed for annual landowner relations	1
Likely hard costs per landowner per year (e.g. newsletter, postage, etc.)	$5.00

Name of Land Trust

Model CE Costs Spreadsheet
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[Name of] Conservation Easement

6. Easement Violations

Negotiations prior to obtaining counsel	
How often will negotiations be anticipated in a 20 year period?	1
Therefore likelihood of negotiations in a 20 year period is:	5%
Average staff hours needed for negotiations to head off violation	20
Number of site visits required to head off (stop) a violation	1

7. Costs of defending an easement

Commentary: *These numbers are estimates. See Section E. below for explanation.*

Staff time needed to defend an easement	60
Costs of obtaining legal counsel	$40,000.00
Additional costs (e.g. expert witnesses etc.)	$5,000.00

8. Endowment Assumptions

Commentary: *The derivation of these numbers is shown on the last page of this spreadsheet.*

Average 30 year Treasury Bond rate of return	6.62%
Average inflation rate	3.10%
Therefore the Treasury Bond rate less the inflation rate is:	3.52%

B. Formulas

Commentary *: The following computations are used to calculate the overall expenses for certain rates or activities used in the final calculation. Assumptions from Section A above are used in the formulas.*

1. Hourly staff rate (including overhead)

Salary costs per hour	25.720
Overhead costs per staff member per hour	5.658
Total: Hourly staff rate	31.379

2. Travel Costs for Each Site Visit

Commentary: *Only those costs associated with travelling to and from an easement have been calculated here.*

Mileage reimbursement: mileage x reimbursement rate	$50.50
Staff costs for travel time:	
hourly staff rate x (mileage divided by average vehicular speed)	$69.730
Reimbursable travel expenses	$0.00
Total: Travel Costs for Each Site Visit	$120.23

[Name of] Conservation Easement

C. Annual Expenses

Commentary: *The following summary of expenses adds up to the annual cost of monitoring an easement based on the assumptions and formulas above. Please refer back to the assumptions in Section A or the formulas in Section B above for clarification.*

1. Annual Monitoring Expenses

Pre-monitoring staff costs: hourly staff rate x staff time needed	$15.38
Monitoring staff costs: hourly staff rate x staff time needed	$64.33
Monitoring: hard costs	$6.80
Post-monitoring staff costs: hourly staff rate x staff time needed	$65.90
Travel costs for each site visit (see formula #2 above)	$120.23
Total Annual Monitoring Expenses	$272.63

2. Annual Landowner Relations Costs

Costs of staff time: hourly staff rate x hours needed	$31.38
Costs of supplies	$5.00
Total Annual Landowner Relations Costs	$36.38

3. Per Year Cost of Exercise of Reserved Rights

Staff costs: hourly staff rate x hours needed	$156.89
Travel costs for each site visit (see formula #2 above)	$120.23
Costs of exercise of reserved right every 20 years	$277.12
x percentage likelihood of right being exercised within 20 years)	5%
Total: Per year cost of exercise of reserved right	$13.86

4. Per Year Cost of Negotiations Over Violations:

Staff costs: hourly staff rate x hours needed	$627.57
Travel costs for each site visit (see formula #2 above)	$120.23
Cost of one negotiations over violations ever 20 years	$747.80
x percentage likelihood of negotiations within 20 years	5%
Total: Per year cost of negotiations	$37.39

Total Annual Expenses	$360.25

[Name of] Conservation Easement

D. Endowment Needed to Fund Annual Expenses

Commentary: *The following calucation gives the size of the endowment necessary to spin off enough interest to:*

a. pay for the annual monitoring costs

b. reinvest sufficient monies so the endowment will grow sufficiently to compensate for the effects of inflation.

Assume that a secure investment will produce 9.4% in interest each year. In this example, you only need 4.0% interest to fund your monitoring program. The remaining 5.2% interest will be plowed back into your investments in order to compensate for the historical effects of inflation. See attached page for illustration.

Total Annual Costs (see above)	$360.25
divided by the difference between Treasury Bond rate and the interest rate (see assumption above where 4.0% = .040)	0.035
Total: Endowment Needed	$10,229.61

E. Costs of Defending an Easement

Commentary: *The better the relationship between the landowner and the land trust, the less likely the two parties will ever have to go to court. Each land trust must, however, recognize that even with the best efforts, sometimes it is necessary to go to court.*

From the assumptions it costs almost $50,000 to defend an easement. To be on the safe side, the land trust ought to set aside almost $60,000 in the Easement Defense Fund. If a land trust holds 30 easements, then $2,000 per easement ought to be set aside to build up the Easement Defense Fund.

Staff time needed to defend an easement x hourly staff rate	$1,882.72
Costs of obtaining legal counsel	$40,000.00
Additional costs	$5,000.00
Total: Cost of Defending an Easement	
Maximum Defense Fund	$60,000.00
divided by 30 easements	30
Total: Contribution needed to Defend an Easement	$2,000.00

F. Total Funds Needed to Accept, Monitor, and Defend the Easement

Total: Stewardship Endowment Needed to Fund Annual Costs	$10,229.61
Total: Costs of Defending an Easement	$2,000.00
Total: Funds needed to accept, monitor and defend the easement	$12,229.61

Name of Land Trust

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[Name of] Conservation Easement

Commentary:

Demonstration that endowment does not diminish with time.

Average 30 year Treasury Bond rate of return:	6.62%
Average inflation rate for a 20 year period:	3.10%
Difference between average Treasury Bond and interest rate	3.52%
Annual payout needed each year	$360.25

Year	Beginning Endowmnt	Total Annual Earned Interest	Annual Monitoring Costs	Annual Return to Endowmnt	Ending Endowmnt
2004	10,230	678	360	317	10,547
2005	10,547	699	371	327	10,874
2006	10,874	720	383	337	11,212
2007	11,212	743	395	348	11,560
2008	11,560	766	407	359	11,918
2009	11,918	790	420	370	12,288
2010	12,288	814	433	381	12,669
2011	12,669	839	446	393	13,062
2012	13,062	865	460	405	13,468
2013	13,468	892	474	418	13,886
2014	13,886	920	489	431	14,316
2015	14,316	948	504	444	14,761
2016	14,761	978	520	458	15,219
2017	15,219	1,008	536	472	15,691
2018	15,691	1,039	553	487	16,178
2019	16,178	1,072	570	502	16,680
2020	16,680	1,105	587	518	17,197
2021	17,197	1,139	606	534	17,731
2022	17,731	1,175	624	550	18,281
2023	18,281	1,211	644	567	18,848
2024	18,848	1,249	664	585	19,433
2025	19,433	1,287	684	603	20,036
2026	20,036	1,327	706	622	20,658
2027	20,658	1,368	727	641	21,299
2028	21,299	1,411	750	661	21,960
2029	21,960	1,455	773	681	22,641
2030	22,641	1,500	797	703	23,344
2031	23,344	1,546	822	724	24,068
2032	24,068	1,594	848	747	24,815
2033	24,815	1,644	874	770	25,585
2034	25,585	1,695	901	794	26,378
2035	26,378	1,747	929	818	27,197
2036	27,197	1,802	958	844	28,041
2037	28,041	1,858	988	870	28,911
2038	28,911	1,915	1,018	897	29,808
2039	29,808	1,975	1,050	925	30,733
2040	30,733	2,036	1,082	954	31,686
2041	28,911	1,915	1,018	897	29,808
2042	29,808	1,975	1,050	925	30,733
2043	30,733	2,036	1,082	954	31,686
2044	31,686	2,099	1,116	983	32,670

Name of Land Trust

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[Name of] Conservation Easement

Investment Return Analysis

Year	30 Yr US Treasury Bond Yield	Consumer Price Index Urban Consumers	Difference
1987	8.6%	3.7%	4.9%
1988	9.0%	4.1%	4.9%
1989	8.4%	4.8%	3.6%
1990	8.6%	5.4%	3.2%
1991	8.1%	4.2%	3.9%
1992	7.7%	3.0%	4.7%
1993	6.6%	3.0%	3.6%
1994	7.4%	2.6%	4.8%
1995	6.9%	2.8%	4.1%
1996	6.7%	3.0%	3.7%
1997	6.6%	2.3%	4.3%
1998	5.6%	1.6%	4.0%
1999	5.9%	2.2%	3.7%
2000	5.9%	3.4%	2.5%
2001	5.5%	2.8%	2.7%
2002	5.4%	1.6%	3.9%
2003	5.0%	2.3%	2.7%
2004	5.0%	2.7%	2.4%
2005	4.6%	3.4%	1.3%
2006	4.9%	3.2%	1.7%
Average	6.62%	3.10%	3.52%

Sources: Treasury Bond Data: Federal Reserve Board
Consumer Price Index (not seasonally adjusted): Bureau of Labor Statistics

Name of Land Trust

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Additional Resources

Costs of Negotiating and Managing Conservation Easements

Determining Stewardship Costs and Raising and Managing Dedicated Funds, by Paul Doscher, Brenda Lind, Ellen Sturgis and Chris West (Washington, DC: Land Trust Alliance, 2007).

Creating Conservation Easement Stewardship Programs

The Conservation Easement Handbook, by Elizabeth Byers and Karin Marchetti Ponte (Washington, DC: The Trust for Public Land and the Land Trust Alliance, 2005).

The Conservation Easement Stewardship Guide: Designing, Monitoring, and Enforcing Easements, by Brenda Lind (Washington, DC: Land Trust Alliance, 1991).

Research Reports

Conservation Capacity and Enforcement Capability: A Research Report, by Sylvia Bates (Washington, DC: Land Trust Alliance, 2007). Available on The Learning Center, the Land Trust Alliance online training center at http://learningcenter.lta.org.

Cost-Effective Strategies for Conserving Private Land: An Economic Analysis for Land Trusts and Policy Makers, by Dominic P. Parker. This article was written for the Property and Environment Research Center in October 2002 and is available on the PERC website (http://www.perc.org/pdf/land_trusts_02.pdf).

Check Your Progress

Before continuing on to the next chapter, check that you can:

- ☐ Explain the importance of identifying the philosophy or guiding principles that will govern your conservation easement stewardship program
- ☐ Describe how this philosophy will be demonstrated in matters relating to the conservation easement stewardship program and by the land trust as a whole
- ☐ Explain why understanding a land trust's capacity is important in establishing a conservation easement stewardship program
- ☐ Describe the importance of having policies and procedures in place to ensure the integrity of the easement stewardship program

Chapter Two • Landowner Relationships

Practice 11D: Landowner Relationships
The land trust maintains regular contact with owners of easement properties. When possible, it provides landowners with information on property management and/or referrals to resource managers. The land trust strives to promptly build a positive working relationship with new owners of easement property and informs them about the easement's existence and restrictions and the land trust's stewardship policies and procedures. The land trust establishes and implements systems to track changes in land ownership.

Landowner contact has always been a part of *Land Trust Standards and Practices*, but land trusts are increasingly realizing that developing strong relationships with landowners is the best way to help provide for good stewardship of the land and avoid potential conservation easement conflicts. This practice is expanded to address the need to build relationships with existing and new owners of easement land and the managers of such land. Landowner relationships should ideally extend beyond once-a-year contact during a monitoring visit, and may include newsletters and updates, special workshops or other events. Land trusts may refer landowners to individuals who can help with the property's natural resource management. Every land trust should have a person (staff or volunteer) assigned to respond to landowner requests or inquiries about their easements.

— From the *Background to the 2004 revisions of* Land Trust Standards and Practices

Learning Objectives

After studying this chapter, you should be able to:

- Explain to others in your land trust why building strong relationships with owners of easement protected properties is the foundation of conservation easement stewardship
- Explain the techniques and tools used by land trusts to build strong relationships with landowners
- Determine if there are properties where the land trust should

also develop a relationship with the land manager, lessee or other party involved with the easement-protected property
- Describe how annual monitoring of the conservation easement (described in chapter 4) can be used as one of the ways to build strong landowner relationships
- Know how to identify and manage a relationship with a landowner who is also an insider to the organization
- Designate a person in your land trust to respond promptly and knowledgeably to landowner requests for information about his or her conservation easement
- Evaluate whether your land trust should create more formal means of landowner outreach, including newsletters, events, workshops and landowner recognition activities
- Evaluate whether assisting the landowner in securing good land management advice (through referrals, workshops and other means) will help advance the land trust's conservation and public outreach goals
- Create a written description of your land trust's activities or philosophy with respect to landowner outreach and landowner relationships
- Have strategies to work with landowners in difficult situations in ways that do the least harm to the relationship with the landowner
- Choose a way or ways for the land trust to know when an easement property has changed hands
- Know when to meet with a new owner of easement-protected land
- Develop tools (such as fact sheets) for meeting with new owners of easement protected property to explain the terms of the conservation easement and the land trust's monitoring protocols, and to build an ongoing relationship with the new owner

Summary

The long-term protection of conservation easements rests on the reputation of individual land trusts — their diligence and commitment to monitor, defend and enforce their conservation easements, and their professional and positive relationships with landowners.

The same effort that goes into creating a good rapport with a landowner during the project negotiation phase must continue after the easement closes. Experienced land trusts report that time spent

building relationships with easement landowners is time well spent. Positive relationships can foster landowners' appreciation for conservation easements and the stewardship role that land trusts play and can help landowners enact sound management practices for easement properties. When a land trust has a good relationship with an easement landowner, that landowner is more likely to be an ambassador for the organization, promoting good public relations and inspiring neighbors and others to protect their lands. Building relationships with easement landowners, especially successor landowners, will minimize the potential for violations and costly litigation. In turn, the land trust will be able to spend more time being proactive in easement administration, rather than reactive in response to perceived violations.

Successor landowner: An owner who acquired protected property, not the original grantor of the conservation easement.

If a land trust makes strong landowner relations a priority in conservation easement stewardship, this emphasis will extend into other areas of the land trust's work and become a part of the organization's culture. There are many techniques to strengthen landowner relationships, but the most important are those that build trust and a sense of partnership among all parties entrusted by the public to protect the land.

This chapter describes the importance of building strong relationships with landowners. It provides concrete strategies for improving these relationships and discusses the advantages of formal landowner programs, such as newsletters, events and recognition activities. Finally, it suggests tools that land trusts can use when meeting with new owners of easement-protected property.

Evaluate Your Practices

Conduct a quick evaluation of your organization's management of landowner relationships, giving your organization one point for every "yes" answer. Scores are shown at the end of the evaluation.

Does your organization:

1. Understand why building strong landowner relationships is the foundation for conservation easement stewardship?
2. Utilize several techniques and/or tools to build strong relationships with easement landowners?
3. Use its monitoring program as a way to build strong landowner relationships?

4. Know how to identify and manage a relationship with a landowner who is also an insider? Does the land trust have a conflict of interest policy?
5. Provide a formal means of landowner outreach, such as newsletters, events, workshops or landowner recognition activities?
6. Respond to landowner questions and requests promptly and knowledgeably?
7. Provide advice on land management issues or act as a referral service, as appropriate, based on the organization's capacity?
8. Utilize multiple techniques to track ownership transfers of easement lands?
9. Schedule meetings with every new owner of easement-protected property (successor landowners)?
10. Provide written materials to new owners of easement-protected properties about the easement terms and the land trust's monitoring protocols?
11. Treat difficult or challenging landowners in a respectful manner while taking affirmative steps to enforce the easement terms?
12. Extend its relationship-building efforts to the land manager, lessee or other party involved with the conservation easement property when appropriate?

If your organization scores:

9–12: Great! This course may help you fine-tune your landowner interactions or provide some additional tips to consider, but your land trust is well on its way to creating solid landowner partnerships for long-term stewardship. Share your knowledge with your land trust colleagues by sending your sample documents to the Land Trust Alliance for posting in the digital library (e-mail learn@lta.org).

5–8: Good! Your organization has acquired many of the basic skills of good landowner relationships, but there is room to improve and increase those skills.

0–4: Your organization should adopt procedures and learn techniques that will assist with landowner relations and your perpetual stewardship obligations. It is important to begin now before you acquire additional easements.

Landowner Relationships and Long-Term Conservation

Importance of Good Landowner Relationships

A landowner who feels good about the land trust will be comfortable contacting the land trust with questions, seeking approvals and promoting the organization in the community.

It is a truth universally acknowledged that people like to work with businesses and organizations that are fair, honest and reliable. They want someone they can go to for advice, who will give them answers or who will help them find the answers. The landowner–land trust relationship is no different. A landowner who feels good about the land trust and its role of easement stewardship on his or her property is a landowner who will be comfortable contacting the land trust with a question, seeking approval from the land trust before initiating an activity that may affect the property's conservation values, and promoting the organization in the community.

All conservation easement projects are based on personal relationships that begin with the initial project planning process and continue through the easement closing. However, the relationship does not end when the ink dries on the easement document. Rather, it enters a new phase as stewardship of the easement begins. It's like the old saying, "A wedding is one day, but a marriage lasts a lifetime." Like good spouses, land trusts must continually work on their relationships with landowners. Land trusts need to understand the motivations, concerns and other factors that influenced a landowner's decision to protect his or her land with an easement and how the easement now affects the landowner's day-to-day life.

Most landowners that grant conservation easements or buy protected land believe that they have done something special — and they are right. They are not just owners of a parcel of land but rather charged with a higher purpose to ensure the property's conservation attributes will benefit future generations. Land trusts share this charge and thus should treat landowners as full partners in this effort by:

- Acting professionally
- Adhering to established policies and procedures in a consistent manner so as not to treat landowners preferentially or arbitrarily
- Projecting an image of themselves as the landowner's partner in the land's stewardship, rather than solely as an enforcer

If the land trust's goal is to ensure that the landowner adheres to the easement terms, then it is better to partner with the landowner and build a relationship based on respect rather than regulation. Through such a relationship, the land trust is more likely to achieve voluntary compliance with the terms of the easement. In contrast, acting as the heavy-handed enforcer will create an adversarial relationship that will make any disagreements much more difficult to resolve.

Land trusts must remember that land protection does not occur without willing landowners, both original and successor landowners. An organization's communications with its landowners sends a message to others in the community the land trust may hope to work with in the future. Easement landowners can be the organization's best ambassadors, but only if they trust and respect the land trust. Many conservation projects have originated because good landowner relationships spurred neighbors and others to consider protecting their properties. Conversely, word will travel within the community if a land trust fails to uphold its responsibilities or maintain positive landowner relationships. Land trusts that invest time and resources to build strong landowner relationships are fostering good public relations. With a good reputation, the land trust will be in a better position to respond to negative public scrutiny, if and when it occurs.

A cooperative relationship with landowners can also help a land trust advance its goals for sound land management on easement properties. For example, many land trusts offer landowners support with general land management issues or referrals to programs or organizations that offer assistance with conservation land management. Again, the opportunity depends on whether the land trust has first earned a reputation with its landowners as a reliable and trustworthy partner.

Finally, by building a good relationship, the land trust will also show that it takes its conservation work and easement stewardship obligations seriously. Frequent interactions and correspondence with landowners about their easement properties serve to remind landowners that the land trust is upholding its easement enforcement obligations and is meeting the IRS requirements for donated easements.

Defining Good Landowner Relationships

What constitutes a good landowner relationship, and what does that relationship involve? The answers vary from land trust to land trust

and from landowner to landowner. One land trust may define a good landowner relationship as the willingness of either party to exchange information and ask for assistance or advice. While another land trust may define a good relationship as an absence of easement violations. Land trusts should consider three basic questions as they define their goals for landowner relationships:

- How do they want to be perceived by easement landowners?
- How do they want to interact with landowners?
- How do easement landowners want to interact with the land trust?

Ultimately, the answers to these questions express the organization's easement stewardship philosophy. A land trust should always consider its overarching goals and stewardship philosophy as it develops strategies for sound landowner relationships.

Capacity: Financial and Personnel Implications of Landowner Relationships

Establishing a relationship-based stewardship program will not happen overnight. It takes time to build and maintain good landowner relationships. As easement volumes grow and easement properties change hands, land trusts must allocate more time toward easement stewardship in general and maintaining relationships in particular. Land trusts need to dedicate staff time, consultant time and/or have willing volunteers to implement easement stewardship and to keep pace with growing needs. The easement stewards will need to be trained to identify ways the land trust can partner with the landowner and to serve as a resource or referral and promote good landowner relations. Adequate training is an ongoing commitment of time and money. Thus, easement stewardship capacity often becomes an issue as land trusts take on more easements and as easements age. As a reference point, consider that a 2002 study by the Property and Environment Research Center concluded that one full-time staff member is needed for every 100–125 easements a land trust manages. The Land Trust Alliance estimated this figure more conservatively at 50–100 easements for one trained staff person or volunteer. For more information, see *Conservation Capacity and Enforcement Capability: A Research Report*, available on The Learning Center (http://learningcenter.lta.org).

How do land trusts plan for the added time and expense associated with building and maintaining positive relationships with landowners during easement stewardship? To answer this question, first consider how land trusts prepare for overall ongoing stewardship costs. Most set up a separate, dedicated fund to support stewardship needs. Typically, money is deposited to the easement stewardship fund to accompany each new easement acquisition, in an amount based on the easement's projected stewardship cost. A portion of the easement stewardship fund's annual income is generally used to cover at least a portion of the land trust's annual stewardship expenses. Such funds may also cover legal expenses related to easement enforcement. For more information, see Practice 11A, Funding Easement Stewardship, and the Land Trust Alliance course "Determining Stewardship Costs and Raising and Managing Dedicated Funds."

To estimate per-easement stewardship costs, land trusts use a variety of calculation methods based on the projected costs of monitoring and enforcement. However, costs associated with building and maintaining landowner relationships may be overlooked in these calculations. It is relatively easy to determine costs for routine stewardship, such as monitoring, handling notices and approvals, and conducting initial meetings with new owners of easement-protected land. It can be more difficult to define the ongoing costs of tending relationships, which may require more site visits, meetings, outreach events, publications, additional personnel and so on.

Further, some land trusts choose to enhance landowner relationships and foster a conservation ethic in the community through additional activities, such as special mailings, bulletins, newsletters, services to landowners, workshops, trainings and other events. Additional staff, consultants or volunteers (and supervision for them) may be needed. Costs for these activities may be embedded within other parts of the operating budget, such as outreach, education or development. It is important to ensure that these costs are acknowledged and covered, recognizing that they contribute to the long-term success of the land trust's easement stewardship program.

Building Strong Relationships with Landowners

How a land trust approaches its easement landowners is just as important as the tools or techniques it chooses to build the relationship. By foregoing the "police" or "enforcer" image and instead adopting a problem-solving or partnership mind-set, a land trust will be in a better position to address landowners' needs and its own stewardship responsibilities.

Land trusts usually have a multitiered approach to cultivating landowner relationships. They may have personal interactions, such as meetings and phone calls, correspondence or send information, and/or hold events or give special recognition. Each landowner is different, so a multitiered approach may help ensure that some outreach and partnership building occurs with as many easement landowners as possible. This section covers some of the many different approaches that land trusts use.

Use everyday language when communicating with landowners. Avoid jargon!

Communication Style

Language Use and Tone

In communications with landowners, a land trust needs to ensure that the information or concepts it wants to convey are clearly articulated in everyday language. Using conservation jargon, buzzwords or legal terminology when referring to conservation easement stewardship issues may not resonate with all landowners and should be modified accordingly. By adapting the language to the landowner, a land trust will more effectively convey information about the conservation easement and also, in a more subtle way, demonstrate that the organization understands the community it serves. Likewise, the tone of a message also needs to be considered. How are communications being perceived by easement landowners? Does the message seem authoritative, impersonal or unprofessional?

Language expresses attitude and perceptions. Imagine what a difference the following word choices, adapted from a list created by Leslie Ratley-Beach, Conservation Defense Director of the Land Trust Alliance, may make in how a landowner hears a land trust's message!

Partnership/Problem-Solving Message	or	Policing/Enforcement Message
Annual visit	or	Monitoring
Visit	or	Inspection
Follow-up	or	Enforcement
Resolution	or	Compliance
Checking	or	Policing
Conversation	or	Negotiation
Creative problem solving	or	Litigation
Upholding the conservation easement	or	Conformance
Concerns	or	Violations
Questions	or	Concerns
Deter	or	Prevent
Identify	or	Detect
Scheduled	or	Assigned
Possible	or	Suspected

"Have others at the land trust provide feedback on all or specific correspondence before sending it to landowners," advises Cary Peter of River Fields, which operates in Indiana and Kentucky. Remember that written communications form part of a land trust's permanent record and could potentially be used in a court of law, so all messages need to be clear.

Consider obtaining feedback on all correspondence before sending it to landowners.

Land trust representatives may also need to learn new terminology to interact with landowners in the course of establishing a relationship. For example, if a land trust staff member with little knowledge of working ranchlands is given the task of monitoring agricultural easements, what will be the challenges? Probably the easement steward will have to learn the lingo of cattle management to do his or her job effectively. What sort of training or guidance will be provided? The Colorado Cattlemen's Agricultural Land Trust (CCALT) created a guidance document for land trust personnel who may not be familiar

with ranch terminology (see page 100). With a good grasp of ranching terms, CCALT staff and volunteers can be more effective in establishing working relationships with ranchers and their employees.

In addition to word choice and tone, land trusts also need to be sensitive to what landowners may consider personal information, and be tactful about when and how to broach it. Financial information, including income, tax circumstances, and mortgages and liens, is an obvious sensitive area. Other areas may be less obvious until the land trust really understands its landowners and community. For example, CCALT cautions against starting conversations with ranchers about asking how big their operations are, how many acres they have or about the size of their herd. Those questions are equivalent to asking these landowners how much money they have in their savings account. Because CCALT knows the ranching community well, it understands that those questions may be considered personal or inappropriate for an initial stewardship meeting and will be answered in due time. A better way to start the conservation would be to ask about the landowner's family history or what brought him or her to the area.

Listening carefully to the landowner will help cultivate a dialogue that supports sound land management.

Another key skill for easement stewardship: active listening. By listening carefully to the landowner, an easement steward learns a landowner's wishes, plans and concerns for his or her land and its management. With this knowledge, a land trust can cultivate an easy back-and-forth dialogue that supports a landowner's sound land management practices and addresses potential areas of concern before they become serious issues. "What coaxed me into the business was the thousand cups of coffee you have with landowners. The ability to listen goes beyond any stewardship or enforcement activities," remarks Robert Keller, executive director of the Mountain Conservation Trust of Georgia. For tips on active listening, working with challenging landowners and discussing contentious topics, see the Vermont Land Trust's "How to Truly Listen" on page 103.

Prompt Responses

Land trusts are often surprised to discover how much of their easement stewardship time is spent dealing with landowner questions, requests and associated site visits or meetings. Requests for assistance and easement interpretation may arise from landowners, land managers, surveyors, foresters, farmers, ranchers, real estate agents, appraisers, municipal building inspectors and code officers, as well

as prospective buyers or their agents. In addition, many conservation easements contain provisions that generate landowner inquiries, such as those that require the landowner to notify or seek approval from the land trust prior to activating certain reserved rights or commencing certain activities. Land trusts may see an influx of calls and letters during certain times of the year, such as springtime in the northern states when landowners are considering construction plans for the summer, or winter months for land trusts that work with farmers or ranchers.

Regardless of the source or timing of landowner questions, prompt responses will help establish and cement good working relationships. A land trust should have an identified process for handling landowner requests and inquiries, so that landowners experience the land trust as fair, efficient, timely and responsive to landowner needs.

Landowners expect quick replies, and the land trust should strive for promptness or, if necessary, explain when the landowner can expect to receive a response. For instance, if a land trust receives an inquiry and decides to ask the opinion of an attorney before responding, the land trust usually should explain its plan to the landowner. If the inquiry requires a meeting or site visit, scheduling the visit in a timely fashion demonstrates that the land trust takes the issue seriously and respects the landowner.

Person-to-Person Connection

Land trust should designate a primary contact person for landowners with questions on stewardship.

As land trusts strategize to build strong relationships, they should consider the types of people on both sides of the landowner–land trust relationship. This section covers planning for the mix of people that are involved in easement stewardship.

Establish a Primary Contact

A land trust should carefully consider *who* will represent the organization with landowners: use the right person for the job. When asked about building strong relationships with landowners, Chris Phelps, Lands Manager of the Montana Land Reliance, sums it up by stating, "Hiring personable people who understand the land." The job calls for a broad skill set, including not only the technical skills needed to perform monitoring, recordkeeping and so on but also the knowledge base to understand land management and the people skills to communicate effectively with landowners of all types.

Designating a primary contact person to oversee the stewardship process will help ensure that landowners receive prompt attention. This lead contact should know which staff members, volunteers, attorneys or advisors are most knowledgeable, and manage stewardship issues accordingly. The lead contact should also keep track of who is handling which issue and its status.

Volunteers and Landowners

Many land trusts deal with landowner issues routinely and some have designated staff members who manage landowner relations. Such organizations may be quite experienced and savvy about avoiding pitfalls in the land trust–landowner relationship. For those land trusts that rely on volunteers or experience frequent turnover in personnel, it may be more challenging to maintain continuity and strong person-to-person relationships with landowners. It is especially important for these groups to provide adequate training for their personnel and establish clear policies and procedures that will support good relationships (see chapter 4 for using volunteers in monitoring programs). Volunteers can be a tremendous asset, particularly because they often build on a peer or existing relationship with landowners. However, a land trust will need to invest time and resources to ensure that all its volunteers build relationships that consistently represent the land trust's interests.

Communicating with Land Managers

Although landowners should be kept informed of stewardship issues affecting their easement properties, land trusts may sometimes deal directly with land managers. Prior to doing so, a land trust should obtain permission from the landowner and clarify what authority, if any, the land manager has with respect to making property management decisions. The land trust should ask the landowner who should accompany the monitor on inspection visits, and what information the land trust should share with the land manager, such as correspondence. Knowing this information early on will help the land trust keep information flowing smoothly and avoid entering a potentially uncomfortable "middle man" position between landowner and land manager. In any case, a land trust should not engage the land manager in easement-related issues simply because the landowner happens to be absent at the time.

Land managers may include property caretakers, farmers, ranchers, foresters, gardeners or others. These individuals may have the most knowledge about present conditions on the property, such as day-to-day

agricultural operations on farmland, status of timber harvesting on forestlands, proposed future activities or resource management issues. For some properties with absentee landowners, the land manager may be the only person the land trust routinely meets, so it will be imperative for the land trust to develop a good working relationship with the land manager as well as the landowner.

Often, it's helpful to educate the land manager about easement terms. For example, Florida's Tall Timbers Land Conservancy (TTLC) adapts topographical maps from its baseline documentation reports to show special use areas, inserts a brief description of restrictions on land use, and provides this package to land managers (see TTLC's Conservation Easement Management Maps on page 132). "The maps are 11x17 in size and are placed back to back in protective plastic sleeves that can easily be thrown in the manager's pickup truck. The managers love these maps," reports Christine Ambrose of TTLC. If important decisions about property management are made by a manager, it will be very worthwhile to provide him or her with full information about the easement.

Insiders: Board and staff members, substantial contributors and other parties who have an ability to influence decisions of the organization and those with access to information not available to the general public.

Private inurement: When an insider to the tax-exempt organization, such as a director or an officer, derives a benefit from the organization without giving something of at least equal value in return. The IRS prohibition on inurement is absolute.

Private benefit: When a tax-exempt organization provides more than an incidental benefit to a non-insider.

Working with Insiders

Given the nature of land conservation work, it is inevitable that land trusts will have board members, staff, major donors or related parties or other insiders as easement landowners. Such individuals may already be close friends of the land trust, making the usual relationship building unnecessary; however, the land trust must ensure that these individuals understand the organization's easement stewardship policies. A land trust must follow its conflict of interest policy in dealing with insiders, and be extremely careful to avoid private inurement that may result from choices made in easement enforcement and amendments. As always, the land trust must ensure that all easement landowners are treated fairly and consistently — and doing so may require great diplomacy when working with insiders. For additional information, see the Land Trust Alliance course "Avoiding Conflicts of Interest and Running an Ethical Land Trust."

Dealing with Difficult Landowners

Most land trusts that hold easements know very well that some easement landowners are challenging. There are landowners who periodically violate the terms of their easement, seek waivers or amendments to certain provisions, ignore notification or approval requirements, scrutinize and challenge the land trust policies and procedures, or routinely

approach board members with issues instead of the designated land trust representative. In these cases, land trusts may need to try different tactics to build a better relationship and convey the importance of the easement. See "How to Truly Listen" from the Vermont Land Trust on page 103 for some excellent advice on dealing with these challenges.

Land trusts should treat *all* landowners with respect, consistency and fairness when applying land trust policies.

Regardless of the land trust's efforts, difficult landowners will demand more time and resources with little chance of developing a good relationship. It is especially important to treat difficult landowners like all other landowners; that is, you should treat them with respect, consistency and fairness when applying land trust policies. In doing so, the land trust protects itself as much as possible from escalating challenges from the landowner, legal or otherwise.

Successor Landowners

The Land Trust Alliance's 2004 study of conservation easement violations and amendments found that most violations are committed not by original easement grantors, but by successor landowners. This fact underscores the importance of building relationships with successor landowners. These landowners may be more likely to violate an easement, knowingly or unknowingly, for any number of reasons. They may not be fully aware of the easement terms and how the restrictions affect their use of the property. They may not appreciate the property's conservation attributes and may not be motivated by land conservation ideals. Perhaps the easement is simply too restrictive for how they want to use the property. Or they may not appreciate the land trust's stewardship policies and commitment to easement defense. Therefore, land trusts must invest time with new landowners either before or shortly after the property transfer. When property changes hands, land trusts should meet with new landowners promptly to discuss:

- The conservation importance of the property
- The easement terms
- The land trust's policies and procedures concerning monitoring and other aspects of its easement stewardship program
- The organization, its goals and any services provided by the land trust to easement landowners

One way to save some time is to combine the meeting with the new landowner with a monitoring inspection. Of course, it will take an additional investment of time in early years with the new owner to grow the new relationship. However, investing the time upfront will

almost always save time in the long run. For more information, see the successor landowner materials from California's Bay Area Open Space Council on page 110.

When meeting with new owners of easement-protected properties, consider the following special tips for introducing your organization and the easement*:

- Schedule a meeting; do not drop by.
- Offer to walk the property with the landowner (either as part of the annual monitoring visit or on a different visit).
- Accept their hospitality if offered a beverage or snack.
- If there are multiple owners, engage them equally.
- Be prepared to discuss the easement terms, the conservation significance of the property and your land trust's stewardship philosophy and monitoring protocols.
- Explain what a baseline documentation report is and how it is used, and then review the baseline for the property with the new owners.
- Assume the landowners have an interest in conservation, but may not be familiar with your organization.
- Review the provisions of the easement with the new owners (do not embarrass them by asking if they have read it, assume they have not).
- Provide some history or stories about the property that they may not know and may appreciate.
- Ask the landowners what they love about their new property and if they have any plans for the land (structures, activities, etc.).
- Describe any services your land trust provides.
- Leave them with information about your organization, including contact information. Also, provide a copy of the easement, baseline documentation report and other applicable materials (policies, resources list, etc.).
- Remember to document the meeting in the project file and follow up on any questions or information that was requested during the meeting.

* Thanks to Kathy Sferra, land protection specialist for Massachusetts Audubon Society, for providing her tips.

Cultivate Partners

All contacts with easement landowners are opportunities to strengthen the land trust–landowner relationship. The overarching principle is: cultivate a partnership through easement stewardship activities.

This section discusses some of the many ways that land trusts use monitoring and other activities to support good landowner relations. Most land trusts go beyond fulfilling basic monitoring functions to ensuring that they have face-to-face relationships with their landowners. Most groups practice some form of landowner outreach, such as providing information about sound land management practices. Some provide more focused assistance, perhaps linking landowners with sources of funding or expertise for resource management activities. Others create programs to recognize easement landowners and create opportunities to draw them into land trust activities. See the *Exchange* article "Partners in Stewardship" on page 140, which discusses the range of approaches that land trusts use to cultivate partnerships with easement landowners.

Monitoring visits can be opportunities to build landowner relationships.

Easement Monitoring

Regular easement monitoring offers an opportunity for the land trust to engage the landowner as a partner in caring for the land. It is also an opportunity to build trust by demonstrating that the monitoring process is not secretive or intrusive. Depending on the circumstances, a monitoring visit may be the only time the land trust has such an opportunity to interact one on one with the landowner (or land manager). If the landowner can accompany the easement monitor on the monitoring inspection, or at least meet with the monitor at the start or conclusion of the monitoring visit, the land trust can use that time to:

- Learn about any future plans for the property
- Answer any land management questions or other inquiries the landowner might have
- Query the landowner about how the land trust can better serve easement landowners
- Inform the landowner about recent land trust activities

These site visits can be important opportunities to build both landowner relationships and landowner trust in the organization, so it is crucial that land trusts provide training and guidance to monitors on how to interact with landowners (see chapter 4 for more information).

Example

The Montana Land Reliance (MLR) believes so strongly in the importance of ground monitoring with the landowner (on foot, in vehicles, with ATVs or on horseback) that the organization chooses to forego aerial monitoring even though MLR holds more than 650 easements on 680,000 acres of land. It is unusual for land trusts with so many easements and of such considerable size to take this approach to annual monitoring, but MLR has adapted its methods to its easement volume. The land trust prioritizes the areas visited on a property and rotates which areas are covered from year to year to ensure the properties are monitored in their entirety within a few visits.

If ground monitoring is not feasible and the land trust needs to monitor by air or other means, the land trust should still try to have a discussion with the landowner as part of the monitoring process. A land trust may phone the landowner to discuss the upcoming monitoring inspection or schedule other time for a meeting. Some land trusts ask about the landowner's land management needs as well, either by asking questions or sending a survey or questionnaire along with information about the annual visit. For example, the Columbia Land Conservancy (CLC) usually includes a note in its correspondence to easement landowners (such as with the monitoring notice and monitoring follow-up letters) that invites landowners to contact CLC if they have land management problems or concerns. CLC will try to help any landowner that responds. If CLC does not have the expertise or information, it will try to locate someone who can assist the landowner. CLC also uses a questionnaire to seek information about landowner plans and needs. A copy of this questionnaire can be found on page 265.

Sharing Policies

Landowners are more apt to feel comfortable working with a land trust on easement stewardship if they understand the basis for land trust decisions and have read and understood the organization's policies. Written policies and procedures help ensure that the land trust treats all landowners promptly, fairly and consistently with respect to an organization's easement stewardship program.

Consider providing landowners with copies of policies or summaries of policies regarding:

- The land trust's overall easement stewardship program
- Monitoring

- Amendments
- Easement violations
- Baseline documentation reports
- Stewardship funding
- Easement notices and approvals

Short summaries of land trust activities and services for easement landowners and managers can be effective education tools.

Sharing these policies will help build trust and demonstrate the land trust's professionalism and commitment to its stewardship responsibility. For more information, see Standard 11, Conservation Easement Stewardship, and the sample documents in chapters 3 and 4.

Land trusts may also want to provide a one-page summary of the organization's activities and philosophy with respect to landowner outreach and landowner relationships (see chapter 1). Another handout may include a summary of the services the land trust offers to easement landowners and land managers. These summaries should reflect the capacity and stewardship philosophy of the organization.

Because all land trust representatives, whether staff, board, volunteers or contractors (including attorneys), will interact in some capacity with easement landowners and the community, they should be familiar with the organization's policies and procedures and be able to articulate the land trust's philosophy or approach to landowner relationships.

Outreach: Events and Education

Some land trusts plan special landowner educational activities or fun events, such as picnics or property tours, just for easement landowners. Events and materials tailored for landowners both remind them about their easements and give them a positive reason to stay in touch with the land trust, which, in the long run, will benefit the easement stewardship program. The Monadnock Conservancy in New Hampshire, for example, hosts one or more events annually that are both educational and fun for their easement landowners. These events have included interpretive field trips with experts, such as a local archaeologist, followed by refreshments and social time. Each summer, the Teton Regional Land Trust in Idaho hosts "Stories from the Land." The land trust invites the community to share in stories told by some of the area's old-timers. The intent of the program is to help cultivate a sense of place and rekindle a connection to the land. The stories events are held in a setting revered by local people, such as on a scenic riverbank of an easement property. These events

not only help cement the land trust–landowner relationship but have also brought new easement donors to the land trust.

Posting information or links on a land trust's website is a cost-effective way to provide referrals. When providing referrals for assistance with land management issues, land trusts should try to provide at least two, so landowners have a choice.

By working with easement landowners, land trusts have a unique opportunity to improve as well as protect the resources on a property. Providing good land and resource management advice can go a long way toward building partnerships with landowners. However, land trusts first need to consider their capacity with respect to resource management. Does the land trust have sufficient staff, volunteers or consultants to service the resource management needs of the landowner? Can the organization provide information or referrals regarding specific landowner needs? Will the land trust be duplicating the efforts of other local or regional organizations or agencies? Should the land trust offer special landowner workshops or trainings? Should the land trust sponsor, partner or promote workshops of other resource organizations to its landowners? Might the land trust serve as an intermediary between state or federal land management programs and certain landowners who are wary of government agencies and bureaucratic processes?

A great way to reach easement landowners is to provide materials that will be useful to them. Many land trusts send out a periodic newsletter with stewardship-related articles to their easement landowners (see examples from The Nature Conservancy and the Vermont Land Trust on pages 128 and 136).

Some land trusts also post information or links just for landowners on the land trust website. Doing so is a cost-effective way to provide referrals for landowners (as long as people are well-informed about the existence of the organization's website and you have the permission of the organization or person being referred). Some land trusts also provide a list of recommended books or website addresses on land management issues. For example, the Vermont Land Trust's website includes extensive information for landowners. Fact sheets, publications and referrals are offered on topics such as woodlot management, riparian buffer management for agricultural lands and federal assistance programs for specific management activities.

Land trusts can also sponsor workshops and trainings on specific land management issues or provide connections with agencies or funding sources for further land management assistance. The Dutchess Land Conservancy in New York designs educational programs specifically

for easement landowners. The land trust runs regular workshops and provides tours of management projects. The Vermont Land Trust also provides educational seminars that introduce new landowners to the range of land management resources.

Example

Building Landowner Relationships: The Brandywine Conservancy

The Brandywine Conservancy in Pennsylvania, which focuses on watershed lands, takes landowner relationships very seriously because it believes landowners are critical to the success of the organization's easement program. As such, the land trust invests time and money in maintaining an online library of resources, creating a newsletter and hosting seminars to inform easement landowners about topics such as managing riparian buffers, invasive species and federal funding programs for riparian management. David Shields, associate director of the Land Stewardship Program, notes: "Maintaining good relationships with the owners of easement-protected land is essential to the success of the Conservancy's easement program. We view these landowners as both our clients and our partners. We want them to be better stewards of their land, and offering evening seminars, sending out a newsletter and maintaining a web library on natural resource management issues and other germane topics is a simple but effective strategy. We very much hope that landowners will consider us their on-call conservation advisors, and we often spend time on-site helping them with land management issues. If we can develop positive relationships with landowners by offering information and staff expertise, they will be more likely to call us before they begin a project and will be less likely to violate the easement."

Some land trusts are even more proactive in helping landowners. Recognizing that easement landowners often need technical assistance to improve water quality and wildlife habitat on their properties, the Potomac Conservancy has developed a partnership program with the Natural Resources Conservation Service (NRCS) to provide that assistance. The partnership helps link landowners to cost-share programs that provide aid with resource conservation projects, as well as NRCS expertise and advice. The Marin Agricultural Land Trust in California also has a small grants stewardship assistance program for landowners of easement properties. The grants mostly focus on water quality issues and have helped the land trust be perceived as a partner and asset to the landowners. The Vermont Land Trust has a forester on staff who can provide forest management assistance to easement landowners. The organization also offers signage for easement properties that prohibits

trespass and all-terrain vehicle use and helps the landowner educate neighbors and others about the easement and the significance of the property.

It is also important for landowners to know that a land trust will be there to assist them in defending their easement, or to assist them if their easement donation is audited by the Internal Revenue Service. For example, a landowner who donated a conservation restriction to the Massachusetts Audubon Society was audited and requested the assistance of the land trust. Audubon worked with the landowner to ensure the IRS received the requested monitoring reports, baseline documentation report and correspondence regarding the easement. The landowners were grateful for the assistance, and Audubon received a letter from the landowner's attorney thanking the organization for standing by the landowner during the audit process.

Landowners as Ambassadors

Conveying a conservation easement is a compelling statement of a landowner's commitment to natural resource protection and to his or her community. Easement landowners can be tremendous ambassadors for conservation and for land trusts.

A landowner that leads by protecting his or her land may be eager to talk with neighbors and recruit them to protect their land as well. For example, one New Hampshire landowner protected 15 parcels of his land over two decades, meanwhile maintaining a steady conversation with neighbors and town officials about his vision of protecting a large contiguous land area. Over time, his vision took shape, as three conservation organizations, two municipalities and numerous landowners and funding sources pieced together a contiguous area of protected land now more than 1,500 acres in size.

There is no more persuasive spokesperson for land conservation than a landowner who has "walked the talk." Land trusts do well to identify and support these landowners; over time, land trusts can grow a corps of ad hoc spokespersons that can discuss easement and land protection issues with other landowners.

Land trusts should consider incorporating landowners into outreach activities by identifying ways in which they can inspire additional conservation. For example, landowners can tell their story in local newspapers, discuss the easement process with friends and neigh-

bors, or host a small gathering of neighbors to introduce the land trust and information about easements and conservation. Remember the successor landowners! Consider featuring an inspirational newsletter story about a new landowner that purchased protected property and is pleased and proud to partner with the land trust.

Remember the successor landowners! Consider featuring an inspirational newsletter story about a new landowner that purchased protected property and is pleased and proud to partner with the land trust.

Treat every easement landowner like you would a major financial donor.

If several land trusts work in an area, consider partnering to hold a landowner recognition event to save on time and expense.

Landowner Recognition

It may seem that a land trust's easement stewardship program has to focus most of its outreach efforts on difficult or new easement owners, rather than on model landowners who are quietly upholding the terms of the easement and promoting conservation in the community. To ensure all landowners receive appreciation for their efforts, a land trust can, for example:

- Hold special thank-you events or gatherings
- Annually honor an easement landowner that exemplifies what it means to be a true partner in easement stewardship
- Acknowledge landowners in newsletters or publications
- Profile an exemplary landowner in the organization's newsletter
- Give landowners special gift memberships to the organization, or provide free or reduced passes to the organization's events
- Send special bulletins specifically for easement landowners
- Send welcome letters to new easement owners
- Offer special walks or tours of conservation lands
- Send a survey to easement landowners to assess their stewardship needs, and tailor educational programs to fit them
- Create landowner recognition opportunities at social events that people would likely attend anyway — you may save resources and the result can be rewarding

Example

The Vermont Land Trust (VLT) produces a membership newsletter four times a year in which it features stories about owners of conserved land, upcoming programs and events, and other topics of interest to VLT members. VLT publishes an additional newsletter, "Stewards of the Land," three times a year that includes a variety of stewardship topics and provides background information and resources on land management issues and techniques. This newsletter may include a feature story about an owner of conserved land and his or her approach to good stewardship. The newsletter rotates focus among farms, forests, recreation land and large residential tracts so that all landowners' interests are represented. Past topics have included public access, forest management, farmers working with NRCS and wildlife habitat

improvement. Through the publication of the two newsletters, VLT hopes that members feel informed and that landowners feel appreciated. These newsletters also promote a culture of sound stewardship standards among landowners. (See a sample newsletter in the Sample Documents at the end of this chapter.)

Permission to Publicize

Land trusts need to be especially sensitive about confidentiality during the acquisition phase of an easement project. For instance, the land trust may inform the landowner during early negotiations that it will only discuss the terms of the proposed easement with the board and staff, the landowner's agents or other professionals involved in the project. If the land trust wishes to feature the easement property, once the project is completed, in its publications, the land trust should inform the landowner from the outset that the easement transaction may be used as an outreach and fundraising tool.

Developing protocols about when to seek landowner permission for publicity about easement properties will help build landowner trust and respect. These protocols should still apply after the easement closing. For example, a land trust may have a policy to seek landowner permission before distributing copies of the easement document to people that ask for it, or a policy not to depict easement properties on maps, even if the easement is a matter of public record, to protect the landowner's privacy. The sensitivity of this issue varies among states and regions, based in part on local culture and varied legal requirements for public review prior to easement conveyance.

A land trust must be fair, objective and consistent in addressing potential easement violations and be prepared to explain its rationale for its response.

Enforcing Easements

Building landowner relationships means building a landowner's trust and respect for the organization. A land trust's enforcement actions can demonstrate the integrity of the easement stewardship program and the land trust's commitment to uphold the easement and protect the public benefits it provides. Such actions can be an opportunity to build trust and respect with the easement landowner (providing the landowner is receptive) and with other landowners in the community, as well as discourage future violations. But to earn these positive outcomes, the land trust must take care to be fair, objective and consistent in addressing potential easement violations and be prepared to explain its rationale for its response.

As the land trust assesses a potential violation, it should consider what mitigating factors may be involved and respond accordingly. For example, the following factors might suggest that a violation could be resolved through discussion with the landowner rather than litigation:

- The landowner demonstrates a legitimate misunderstanding of the easement's terms
- The land trust did not follow its procedures (e.g., failure to give a landowner a timely response to the landowner's written inquiry about a proposed activity)
- A violation was committed by a third party without the landowner's consent
- The landowner is willing to stop the prohibited activity promptly and resolve the violation
- The landowner has no prior history of violating the conservation easement
- The landowner's intent was consistent with the conservation purposes of the easement

To maintain good landowner relations, land trusts should approach possible violations with the assumption that the landowners acted with good intentions.

Ideally, the land trust–landowner relationship could be strengthened in the process of resolving the violation.

Always remember that the landowner relationship is ongoing and certainly will be influenced by how the land trust handles any given situation. Landowners will be more at ease if they feel the land trust considered all aspects of and perspectives on the violation before determining a course of action. To maintain good landowner relations, land trusts should approach all possible violations with the assumption that the landowners acted with good intentions. Even if proven wrong, land trusts should still strive toward maintaining as good a working relationship as possible.

Tracking Land Ownership of Easement Properties

Be sure your easements contain transfer notification clauses.

Because easement violations are more likely to occur after the original grantor transfers the property, it is essential that land trusts establish protocols to track ownership changes of easement properties. First, be sure that the easement contains a transfer notification clause that requires the landowner to notify the easement holder prior to transferring an interest in the property and provide the new owner's contact information. Easements can also contain a provision requiring the

conservation easement to be referenced in the deed to the property itself. Unfortunately, such provisions are often overlooked and a land trust cannot rely on the landowner, title company or the transferee's attorney to review the easement with the new owner before closing.

By using independent methods to track land ownership, land trusts can more effectively stay informed of property transfers and then contact new owners promptly. A land trust should have in place a few methods of tracking ownership, because one method may not work in every case. Some techniques are relatively easy, while others require more sleuthing. Techniques include:

- Periodic research of properties at deed registries or on their websites
- Search local newspapers for real estate transfers and read the obituaries
- Check multiple listing services (MLS)
- Check listings in real estate publications
- Ask landowners about plans to sell during monitoring visits
- Remind landowners about easement transfer notification in various correspondences throughout the year
- Build and maintain good relationships with landowner advisors and land managers, such as attorneys, title companies, real estate agents, appraisers, surveyors, foresters, building contractors, home inspectors and the like
- Use annual questionnaires or phone surveys to ask about land transfers and whether the property is for sale or expected to be for sale within the next year
- If feasible, perform informal drive-by monitoring to look for real estate signs or clues that property is for sale or has been recently sold
- Partner with municipal officials, planning and zoning boards, building code enforcers, assessors and the like who may notify the land trust of a property transfer
- Check auction/foreclosure notices
- Establish relationships with neighbors of easement properties
- Provide estoppel certificates to landowners when they sell their property
- Offer to list conserved properties for sale on the land trust's website
- Examine returned correspondence for new owner information

Estoppel or compliance certificate: A certificate signed by the land trust certifying the condition of the easement property as of the date of the statement.

For example, the San Juan Preservation Trust, which covers a three-county area in Washington, tracks transfers in land ownership by reviewing a semimonthly real estate digest and comparing their database with the counties' tax data.

Another approach land trusts use to track changes in ownership is to incorporate a "transfer fee" requirement in the easement. This fee can also provide the land trust with additional easement stewardship funding. The fee is required to be paid to the land trust when the property changes hands. It is considered a lien on the property, so it will be noticed by title companies and attorneys who review the property for a prospective buyer. The prospective buyer's agents then contact the land trust to pay the fee. The Western Reserve Land Conservancy (WRLC), for example, uses a 1 to 2 percent transfer fee requirement in its conservation easements. When the easement property sells, the buyer must contact WRLC to arrange for the payment, thereby avoiding a potential cloud on title. As a side benefit, WRLC learns of the transfer and can meet the new owner. Another strategy for tracking land sales is to include language in the easement that gives the land trust the right of first refusal when a property is sold. This requirement means that the seller must contact the land trust when he or she puts the property on the market.

Example

The Society for the Protection of New Hampshire Forests includes a provision in its easements that the landowner must notify the easement holder within 10 days of transferring title. The easement stewardship department has found that it actually receives required notice about title transfer roughly one-third of the time. The Society uses a variety of additional strategies to learn about land sales and transfers. For example:

- Realtors often call with a question about the easement when they are representing an easement landowner, thereby unintentionally providing notice of the impending transfer.
- The Society sends an annual newsletter to all easement landowners. Returned mail helps identify properties that have changed hands.
- During the monitoring visit, monitors always ask the landowner about any upcoming plans to sell or transfer the property.
- The routine monitoring contact will also reveal changes in ownership after the fact, if the Society has not been informed.

Managing Land Transfer Information

A land trust also needs a system to track easement property ownership information, especially as the organization matures, easement volume grows and any subdivision and reserved building rights are activated.

A land trust also needs a system to keep track of current easement property ownership information, especially as the organization matures, easement volume grows and any subdivision and reserved building rights are activated. Good easement stewardship systems can keep land ownership records and other stewardship data for each easement and will assist efficient and prompt handling of landowner requests and monitoring needs.

Land trusts need an easement stewardship data tracking system that is sized to match their easement load and financial capacity. Tracking systems might be based in paper files, spreadsheets or digital databases, depending on land trust capacity and preferences. Whatever system is used, land trusts should ensure records management is consistent with their records policy. At a minimum, the stewardship data should include contact information for easement landowners (and their preferred contact method, such as phone, mail or e-mail) and other involved parties, such as land managers, landowner representatives, lessees and so forth. Erler's LandSteward, available from the Land Trust Alliance, is one such database program that can be used for existing properties as well as new projects. See Practices 2D, Records Policy, and 9G, Recordkeeping, and the Land Trust Alliance courses "Nonprofit Law and Recordkeeping for Land Trusts, Volume II: Recordkeeping Essentials for Land Trusts" and "Managing Conservation Easements in Perpetuity" for more information.

Land trusts should also obtain a copy of the deed for each new owner to verify legal ownership and to ensure the property deed does not contain any conflicting statements as it relates to the conservation easement on record. Even though it is unlikely to undermine the validity of the easement, land trusts should address any discrepancies or ambiguities between the property deed and conservation easement with the landowner to alleviate the potential for misunderstandings.

Co-Holding Conservation Easements

If a land trust co-holds a conservation easement with another easement holder, the co-holders should agree to a clear division of labor. For example, the co-holders and landowner should determine:

- Who is the primary contact
- Who handles landowner notices and approvals
- Who answers landowner questions
- Who conducts the annual monitoring and prepares supplemental baseline documentation materials

This information should either be contained in the conservation easement or in a separate agreement, such as a memorandum of understanding, which is provided to the landowner. The same approach should be used if another entity holds a third-party enforcement right in the easement. The organizations should never put the landowner in the middle of any disputes and should have a process for resolving conflicts amongst themselves should they arise. Establishing clear lines of authority helps to avoid uncertainties or potential delays in handling stewardship issues and helps instill confidence in the landowner about the ability of the easement holders to work together to enforce the easement. Any such partnership should be entered into with thoughtful consideration. See the Land Trust Alliance course "Conservation Easement Drafting and Documentation" and *The Conservation Easement Handbook* for more information about co-holding conservation easements.

Working with Easement Landowners

This exercise contains role-playing scenarios and is best suited for an instructor-led training or an in-house board or staff workshop.

Find a partner for this role-playing exercise. Decide who will play the role of the land trust staff member and who will play the role of the landowner. Next, read scenario 1 together. The land trust staff member should start to respond to the situation. The landowner is encouraged to ad lib so a dialogue develops. Repeat for scenario 2, but change roles.

If you are following a self-study program, review the scenarios and answer the questions below. Guidance on possible responses follows.

The purpose of this exercise is to assume the perspective of a recent buyer of protected land, and consider how the land trust presents itself to the buyer. What is the buyer's first impression of the land trust? What can be improved to ensure a good start to the relationship? What can be done to strengthen existing landowner relationships while maintaining the integrity of the easement and stewardship program?

Scenario 1: New Landowners

You were hired a few months ago as a part-time easement stewardship assistant of a three-person staffed land trust, which includes an executive director. To date, your primary responsibilities have been creating maps and conducting monitoring inspections on half of the 36 easements the land trust holds. The executive director is out of the office one day when a couple walks in and states they recently purchased an easement property. The landowners say they are new to the area and are not that familiar with land trusts, but their attorney reviewed the conservation easement for them and she did not seem to have any concerns. The couple then eagerly shows you their plans to construct a new residence, which they anticipate will commence later in the month, and also mention digging up the "wasteland" to create a nice pond. They wondered if you could recommend a good pond builder, someone who can cut through red tape and get the job done.

Questions

1. As the land trust staff member, what would you do in this situation? How would you respond?
2. How would you respond to their request for a recommendation?
3. What would be your next steps?
4. What should you avoid?

Scenario 2: Selling Easement-Protected Land

An easement landowner calls the land trust office and says he has a buyer for his property. He states that he just needs the land trust to tell the buyer that "the easement is in compliance and it's no big deal to buy protected land." The land trust last monitored this easement eight months ago.

Questions

1. As the land trust staff member, what would you do in this situation? How would you respond?
2. What would be your next steps?
3. What should you avoid?

Guidance

There are many ways to handle the scenarios presented in this exercise. The key is having the land trust address the issues with the landowners in a prompt, professional manner and work with them to solve potential problems, as appropriate. The land trust should be helpful in providing advice and guidance to the landowners while ensuring the easement terms are upheld and the integrity of the easement stewardship program is maintained. Below are suggested responses to the questions.

Scenario 1: New Landowners

The initial conversation should be focused on information gathering so the land trust understands the issues and can devise an appropriate response.

1. After congratulating the couple on their purchase, welcoming them to the community and sharing in their general excitement about building their house, you should take the opportunity to discuss the land trust's mission and programs to help familiarize the landowners with the organization. Follow with a general discussion of what a conservation easement is and what the responsibilities of the easement holder and landowner are. You can then mention that easements may contain notification or approval provisions before a landowner may commence certain activities to ensure the protection of the property's conservation values. You can then suggest that the land trust review the specific terms of their easement with them at a follow-up meeting or site visit that would include the executive director.
2. As for the requested recommendation for a pond builder, you should first determine if the easement terms allow for a pond. If construction of a pond is permissible, suggest at least two contractors that have good reputations or were used by other easement landowners. If you cannot provide a few names, you can refer the landowners to another local agency or organization that could help, such as the USDA Natural Resources Conservation Service or local cooperative extension office.
3. You should alert the executive director as soon as possible so the easement can be reviewed (by an attorney, if necessary) before meeting with the landowners again. The meeting should take place promptly, given that the landowners have indicated they plan to start construction within weeks. Also, you should write a memo to the file summarizing the initial meeting and what was stated. The land trust should also evaluate its process for tracking ownership of easement-protected properties to see whether the

organization can learn about potential property transfers earlier (preferably before the sale) and identify ways to remind landowners about providing prior notice to the land trust before transferring the property. The land trust might consider creating outreach materials or standard letters to give to new owners of easement properties to help explain what such ownership entails. Also, the land trust could review how it can best serve as a resource to landowners on land management issues.

4. You should try to avoid getting too specific too quickly (and using too much legal jargon) about the easement terms, because the landowners have stated they lack familiarity with easements and land trusts. Furthermore, as the stewardship assistant, you are relatively new to easement interpretation and should proceed with care when responding to landowner inquiries. Detailed discussion may be better left to the executive director for now. You also should be careful with word choice so as not to grant approval for the construction project inadvertently. You should also be aware of your tone and response to the news of the couple's construction plans so as not to make the landowners feel defensive.

Scenario 2: Selling Easement-Protected Land

1. Start by thanking the landowner for contacting the land trust about his plans to sell the property. You can mention that it is natural for potential buyers of easement property to be more cautious or inquisitive because they did not have the opportunity to experience the process of working closely with the land trust to grant the easement. You can suggest that you would be willing to meet with the buyer (along with the current owner and any real estate agents) to review the terms of the easement and the responsibilities of the land trust and landowner, and answer any questions the buyer may have. As for assuring easement compliance, you can state that the land trust has not recently monitored the property so the organization cannot issue a compliance certificate; however, you can say that as of the last monitoring date no activities were observed that conflicted with the terms of the easement. You can offer to conduct a monitoring inspection and suggest that the buyer come along so that he or she understands the monitoring process and can learn more about the property's conservation attributes. You can then follow up with a copy of the monitoring report or an estoppel certificate.
2. With permission of the landowner, you may follow up in writing with the buyer to document your discussion. Make sure the buyer receives a copy

of the easement, including maps that depict the easement boundaries. Also, remind the owner to notify the land trust if the property sells, and that a reference to the easement should be included in the property deed. Once the property is transferred, obtain a copy of the deed and send the new owner a congratulatory note. Some land trusts send specific materials designed for successor landowners, offer invitations to upcoming land trust events, or give small tokens of welcome (such as a land trust shirt or hat). You should also provide the new owner with a copy of the baseline documentation report and review it with him or her, if you have not done so previously.

3. The land trust should always find time to handle landowner requests and inquiries in a timely manner. Being responsive is especially critical when the request involves a prospective buyer of the easement property. If prospective buyers do not have the opportunity to ask questions about the easement, they may walk away from the deal, causing the current landowner to have ill feelings toward the land trust. Or the buyer may purchase the property without a clear understanding of the easement terms and be upset with the land trust upon finding that a certain activity is not permitted. Or the buyer may purchase the property but already be displeased that the land trust could not be bothered to answer questions regarding the easement prior to purchase. It is often difficult to overcome negative first impressions, so land trusts need to be helpful and strive to build a positive relationship from the onset. Finally, land trusts should avoid making blanket statements about an easement's compliance or downplaying the effect of an easement on a landowner's use of the property.

Landowner and Community Outreach
Dutchess Land Conservancy

Founded in 1985, the Dutchess Land Conservancy (DLC) is active throughout Dutchess County in New York State. The organization holds more than 300 conservation easements on more than 27,000 acres. Its mission is to "preserve the rural character and open lands of Dutchess County, New York," and "foster sound, well-planned development, ensuring the conservation of our natural resources for the benefit of this and future generations." Dutchess Land Conservancy carries out its mission by providing conservation and land planning services, as well as education programs, with a staff of nine. Traditionally, DLC offers several workshops or programs each year that are geared to its members or the public at large.

The Dutchess Land Conservancy offers two to four member-oriented outdoor educational programs each year. These programs are typically designed to be of interest to landowners, especially owners of easement and potential easement properties. Julie Hart, Stewardship and Education Programs Manager, observes:

> While we do craft our programs with easement holders in mind, we advertise most programs to the general public. This allows us to interface with nonmembers (hopefully at least some of them will sign up to become members!), which is of great importance to us because everyone needs to be thinking and learning about good land stewardship, regardless of whether they own an easement protected property, or whether they own any land at all. So although our programs are typically "member-oriented," we encourage the general public to attend as well.

For DLC, ensuring that easement landowners are well-informed about land management issues, as well as the details of their easements, is an ongoing priority. Conducting programs with a practical focus of interest is a useful way to engage and educate landowners as well as the public.

The Conservancy's programs have included information on forest management, ground-nesting bird habitat, vernal pools, stone wall building and wood duck box building. The land trust hopes that providing information and tools for good land stewardship will have a direct impact on the land trust's primary focus — the long-term conservation of natural resources. "Good communication with landowners is an essential part of stewardship, and our letters, phone calls and interactions at

events and education programs all play a part in maintaining good relations with our landowners," Hart notes.

Furthermore, these programs create an opportunity for staff to meet landowners outside of the normal easement monitoring process. One DLC staff member was able to start building a relationship with an easement landowner as a result of participating in a workshop together. Having a good relationship with that landowner proved invaluable later when the staff member had to discuss a violation with him. They were able to resolve the issue in a way that preserved the integrity of the easement and kept the landowner's relationship with the land trust intact.

The Dutchess Land Conservancy has found additional benefits to offering programs and referrals to landowners. When an easement landowner contacts DLC for a referral regarding a land management issue, staff can discuss how the planned activity relates to the conservation easement and whether the landowner may have to provide notification or seek approval before starting. Participants in DLC's education programs are also learning more about the organization and conservation options for their land, including easements.

Discussion Questions

1. What do you think are some of the factors that influenced DLC's decision to offer programs that appeal to landowners, rather than placing a greater emphasis on children's programs or more recreational activities?
2. What do you think are the limitations or challenges in narrowing the focus of an education program? What are some of the opportunities?

Guidance

1. The land trust might have felt it was filling a need that was not being addressed elsewhere in the community. These programs provide an opportunity to educate landowners about good land stewardship practices, and they provide another outreach tool to introduce landowners to the work of the land trust. Gearing education programs toward topics of interest to landowners can also advance the organizational mission by helping to foster a land ethic among easement landowners.
2. Focusing an education program on landowners may limit the audience a land trust reaches and perhaps cause the organization to miss out on opportunities to collaborate with other organizations or stakeholders in educating the next generation of land stewards. However, offering an education program that might be of more interest to easement landowners will provide a venue to build relationships with them and assist the land trust's stewardship efforts.

The purpose of this case study is for learners to begin thinking about how their land trust might provide some level of stewardship education, whether by offering referrals on land management issues, or by running a more established education program. Regardless, the focus should be on carrying out the land trust's mission, and on strengthening existing programs rather than detracting from them.

Conclusion

The more experience easement holders have, the more emphasis they place on cultivating landowner relationships. Positive relations and good communication with landowners save a land trust time and money, probably many times over what is invested in cultivating the relationship. A "partnership" approach to working with landowners is clearly the most effective way to avert violations, promote good land management practices and gain the respect of landowners and other members of the land trust constituency.

There is no single key to developing this partnership, but rather many small techniques that together foster a strong and flexible working relationship between landowner and land trust. This chapter has reviewed many of the common themes and techniques, from basic communication styles to alternatives for fostering sound land management. Land trusts can adapt these techniques to their own needs and capacity, keeping in mind that each landowner, property and land trust is different and the "right" tools and techniques will always be subject to reevaluation according to circumstance.

These landowner relationship concepts are integrated into all aspects of easement stewardship, including not only initial contact with landowners but also responding to landowner questions, dealing with exercise of reserved rights and addressing easement compliance issues. Keep these concepts in mind as well as you read the next two chapters about baseline documentation and easement monitoring.

Sample Documents

How to Speak "Ag": The Dos and Don'ts of Speaking with Agricultural Landowners, Colorado Cattlemen's Agricultural Land Trust (*page 100*)
This useful handout helps staff and volunteers learn about how to interact with certain landowners and manage how the land trust wants to be perceived by those landowners. This particular example is for working ranch landowners in Colorado.

How to Truly Listen, Vermont Land Trust (*page 103*)
This document provides an overview of active listening and some helpful tips for handling difficult landowner situations. It can be a useful document for land trust personnel who are involved in easement negotiations and stewardship.

Model Second Generation Procedures and Forms, Bay Area Open Space Council, California (*page 110*)
This document provides procedures for contacting new easement landowners, establishing landowner relationships and conveying the importance of the easement to the new owner. The document also provides examples of how other land trusts handle issues related to successor landowners.

Land Stewardship News, Fall/Winter 2006/07, The Nature Conservancy, Wyoming Chapter (*page 128*)
This document is a good example of a newsletter specifically designed for easement landowners. This type of publication may not be practical for smaller land trusts, but a simplified version may be adapted for the land trust's website or designed as a flyer to incorporate in a mailing to easement landowners.

Conservation Easement Management Maps, Tall Timbers Land Conservancy, Florida (*page 132*)
These maps were modified from the land trust's baseline documentation report for a specific property to serve as a reference for land managers. They highlight special use areas and provide brief descriptions of the easement restrictions. The maps are small enough to be placed back-to-back in plastic sleeves for easy access by the land manager.

Stewards of the Land, Vermont Land Trust, Winter 2008 (*page 136*)
This newsletter provides articles of interest to easement landowners. The Vermont Land Trust features both landowners and subjects of interest to landowners in this publication. Each year, VLT also produces a special edition that introduces the "Stewardship Crew." All stewardship staff are featured with pictures and short biographies. This newsletter provides an excellent example of how to recognize landowners for their good work, inspire others and provide useful information.

"Partners in Stewardship," by Marty Zeller, *Exchange*, Winter 2004, Land Trust Alliance (*page 140*)
This article reports on the findings of a 2003 Land Trust Alliance advisory panel regarding stewardship and defense of easement-protected land. The article explores the concept of partnering with landowners and the range of activities through which land trusts develop strong working relationships with landowners and enhance land resource values.

How To Speak "Ag"

The Do's and Don'ts of speaking with Agricultural Landowners

Colorado Cattlemen's Agricultural Land Trust

Helpful hints and possible conversation starters:

- *Ask about the challenges landowners face today.* (Impact of growth in area, increase in land values, lower commodity prices, estate taxes, general marketing trends & frustration with marketing system, water issues, public lands, government regulations, neighbors who aren't involved in agriculture, and the all time favorite - the weather.)
- *Express interest in their operations - what crops they raise, what kind of cattle they run, their breeding programs, etc.* (But be careful not to make them feel as if they are being cross-examined or interviewed for the Eco-Terrorist Tattler.)
- *Don't be afraid to compliment them on their land management or stewardship practices.* (Keep in mind that it is important to be genuine.)
- *Ask about their family's history and/or what brought them to the area.*
- *Become involved in the community. Take time to understand the local needs and issues.*
- *Learn the history of the area and what part agriculture played.*
- *Attend ag trade association meetings* (local cattlemen's associations, Farm Bureau, soil conservation, etc.) *Orient yourself to their concerns and issues.*
- *Educate yourself about local ag products and operations.* Ask people about their daily lives!
- *Be totally upfront with your interest - folks will be leery of secret agendas.*
- *Focus on what you both have in common - discover how landowners envision their communities, themselves and their land in the future.*
- *REMEMBER - PEOPLE BEFORE PROJECTS! Get to know individuals and their families - cultivate relationships with them.* (Remember, trust takes time.)
- *Leave your degrees at home.* (People will care more about who you are than what you know. Remember, they have spent a lifetime accruing the knowledge that they possess).
- *Offer to come out and help.* (Show them you are sincere in your willingness to learn but don't be surprised if (a) they don't take you up on it, or (b) they give you really "interesting" jobs to do.)
- *Identify concerned, positive individuals and ask them to join your board, participate in a local community efforts or planning process.* (Encourage them to make certain that agriculture and their point of view is represented in these efforts from the beginning.)

October 2007

Gentle hints about what not to say or do:

- *Don't start conversations by asking how big their operations are, how many acres they have, or how many cows they run.* (This is like someone asking how much they have in the bank.)

- *Don't ask to go hunting or fishing!* (Wait to be invited – keep in mind it may never happen. For many ranchers, this is a source of income.)

- *DO NOT use maps with lines drawn or target areas on them!!!!* (This is the quickest way to lose potentially interested individuals and generate mistrust all in one fell swoop.)

- *Don't push agendas or pre-conceived plans.* (Let the vision form itself by encouraging participation from all interest groups.)

- *Don't assume that ag-oriented people aren't interested in conservation or the environment. Many of them consider themselves to be the original environmentalists!* (Be open-minded about your interest and observations - shelve your pre-conceived notions - both of you just might learn something from one another!)

- *Things you might consider <u>not</u> saying:*

  - *"I'm here to save you."* You might settle for assuring them that you are concerned about the disappearing land base and the impact this has on the surrounding community.

  - *"Do you have any endangered species on your property?"* Be aware that this may be a sensitive topic better left until you have established a firm relationship with them. However, many landowners across the west are participating in collaborative efforts that are attempting to address the concerns set forth in the Endangered Species Act.

  - *"Protect"* It might be more preferable to let them know that your desire is to working with them in *<u>preserving</u>* a working landscape that will ensure the continuation of their livelihood, legacy and heritage.

  - *"Restore"* When referring to recovery of resources, a better alternative might be to address the *<u>enhancement</u>* of existing resources. You might be surprised at what wonderful stewards of the land these people are.

  - "*Educate"* If your goal is to provide educational experiences or alternative management styles, you might offer opportunities to *<u>create awareness</u>*.

  - *"Open Space"* Ranchers and farmers will be more interested in preserving *<u>productive agricultural land</u>* or *<u>working landscapes</u>*.

All that is really required in visiting with these folks is the desire to learn more about them and an interest in their lifestyle and the motivation that keeps them going. Essential to successful communication is the realization that all these things add up to their ability to conduct their livelihood and maintain their way of life - it is not just a job to them! In the face of all these challenges, ask them why they keep on keeping on - their answers may surprise you.

Quick Reference - Laymen's Vocabulary List

Farm (n) - ag operation that focuses on the production of field crops. However, ranchers can *farm (v)* if they raise crops and still be ranchers. Crops they might raise would most likely be dryland (non-irrigated) crops such as grain and alfalfa (which in many parts of the country might also be irrigated.) On the other hand, someone can raise hay (irrigated native grasses w/potential of other introduced species) and be a hay farmer and not be a rancher!

Farmer - one who farms and/or lives on a farm. This tends to apply to all ag operations in the east. (For example dairymen are usually farmers not ranchers, however, ranchers can raise milk cows and still not be farmers.)

Rancher - one who lives on a ranch and raises livestock (cattle, sheep - new, more exotic species may stretch this traditional definition!) But when you get right down to it all ranchers are really grass farmers because their operations depend upon management of this critical crop, whether they are raising grass for forage in their pastures or putting up hay to feed their animals in the winter.

Ranch (v) or (n) - the act of ranching or the physical location where a rancher lives or operates from. Farmers are never considered to be ranchers even if they own livestock - go figure. Maybe it's because of those overalls they wear!

Preg-check - every fall ranchers and/or farmers often have the local vet (veterinarian-Ob/Gyn) come out and physically examine their cows to see if they are open.

Open - not bred, destined to become culled if pregnancy was the intended outcome.

Cull (v) or (n) - destined to be shipped - no longer productive. Despite any emotional attachments the ranchers, farmers, or their families might have to any specific animal, they feel impelled to remind those making the request to "give Bessy one more chance" that the object here is to make money and an animal that doesn't produce merely is consuming resources without any potential economic return.

Ship (v) - not to be confused with ocean going vessels. Shipping is usually done via semi trucks with livestock trailers and is the most commonly accepted method of getting livestock to market.

Cattle - collective generic term for bovine herds. Dairy cattle are bred to produce milk; beef cattle are bred to produce beef. Do not confuse the two with producers!

Bull - male of the bovine species; usually considered to be a nuisance for about 10 months out of the year. They know what their purpose in life is and they pursue it with diligence.

Cow - female of the bovine species; usually signifies an animal that has had a calf. DO NOT get between them and their calves! Holsteins are the breed most often associated with the generic term of "cow". They are black and white spotted and are dairy cattle – not beef!

Calf - Bovine baby or adolescent. Male calves are called bull calves till they are castrated, females are called heifer calves.

Heifer - young female cow; typically refers to one that has either not been bred or hasn't had a calf, even up to the point where they are called "first calvers" meaning they are still referred to as heifers but are either pregnant with their 1st calf or just had it. This term is not to be confused with "Hereford" which is a breed of cattle! Different breeds are a whole other discussion!

Yearling - either a steer or heifer that is a year old. This is most often the age that they are processed as beef and accompanying by-products. Dealing with them can best be compared to trying to direct or discipline wayward teenagers.

Steer - a male bovine that has been castrated (neutered). The hope is here that they will be more interested in eating than continually searching for romantic interludes. This is typically the animal that provides choice dining experiences! However, heifers can be spayed (neutered) and ran as beef animals if they don't make the grade for breeding stock.

"Working" cattle - generic term for getting the cows in for any variety of reasons: vaccination, branding, doctoring, sorting, preg-checking, shipping. It is not meant to imply cattle that are in search of gainful employment or are being farmed out in unfair labor practices.

"Running" cattle - generic term for the act of raising cattle or owning them during one of the aforementioned stages of their life cycle. It is not meant to suggest that the cattle wear spandex and regularly trot down the road with the rest of the joggers, or that this heinous form of exercise is forced upon them. When they run, it is of their own free will.

Moisture – collective term for any type of precipitation, which is most generally welcome and downright necessary for the above-mentioned grass farmers. Ag landowners fear most of all the lack of…but tend to dislike any form in excess; farmers dread hail, mountain ranchers frown on rain during haying season and can become annoyed at city dwelling skiers who proclaim "Good news, it's snowing again in the mountains."

How To Truly Listen

Truly listening involves:

1. Testing the meaning to the other person of what you hear--content and feelings.
2. Probing the other person's perspective so you can understand how they see the situation.
3. Acknowledging that feelings are valid data--content is only half the story.

You test the meaning of what you hear for three reasons:

1. Acknowledgement
   - ◊ It lets people know that their message has been received (though not necessarily agreed with).
   - ◊ When people feel heard they are more likely to risk fully expressing what is on their minds.
   - ◊ When people feel heard they are more likely to be open to hearing you.
2. Accuracy
   - ◊ There is a large margin for error in hearing what another person intended to say.
3. Assistance
   - ◊ Truly listening helps people clarify what they want to say.
   - ◊ Truly listening can help others recognize their own state of mind.

Active Listening Guidelines

Active listening is a specific listening technique. It is most helpful when you are talking with someone who is upset, annoyed or dealing with a problem. Through active listening, you can help the other person gain a clearer understanding of the situation so that he or she can take responsible action. You are trying to avoid solving the problem for that person.

To listen actively you must indicate that the person's words are accepted and understood. This doesn't mean that you must agree with that person; it does mean that you accept their perceptions and opinions as valid *for them.*

Active listening is not appropriate in every situation and can seem patronizing.
It is inappropriate if:

- ◊ it is really your problem to solve
- ◊ the person truly seeks your opinion because they are unable to resolve the problem
- ◊ this is merely an information exchange

What not to do:

Don't interrupt in any way before they finish.

Don't finish their sentences for them.

Don't get into the 'me too' habit.
"I know just how you feel. The other day I ..."

Don't provide snap support or sympathy.
"Oh don't worry about it, everything will be alright." "I'm sure it will all work out for the best in the long run."

Don't give advice or solutions.
Solving someone else's problem for them makes you the responsible one.

Don't ask questions.
Questions are distancing. Make statements. You can get all the information you need by making statements (see next page for examples).

Don't try to change their mind.

Don't generalize.
"Everybody feels that way."

Don't interpret the meaning of their behavior.
"Oh, that's because you feel..."

Don't give false assurances.
"You'll be okay..."

What to do

- ◊ Listen with an open mind.
- ◊ Give feedback of what you hear -- allow for correction.
  It is not important that you are right. The other person will correct you if you're not.
- ◊ Check your perception of what the person is feeling.
  Misunderstood or unexpressed feelings are barriers to agreements that stick.
- ◊ Acknowledge feelings: "You seem angry, happy, confused, etc.. . ."
- ◊ Withhold evaluation--you can get your agenda in after being patient.
- ◊ Create a climate of support and interest.
- ◊ Listen with full attention: look at them, sit forward.
- ◊ Note non-verbal behavior--theirs and yours.

Examples of open-ended statements

- ◊ It sounds like you feel …
- ◊ Tell me about ...
- ◊ Would you tell me about …
- ◊ I'd be interested in knowing …
- ◊ I'm not certain I understand …
- ◊ Tell me more about ...
- ◊ Perhaps you could clarify …
- ◊ Say more about ...

How To Assert Your Own Perspective And Jointly Solve The Problem

1. **Summarize what you have heard.**

   "If I hear you right, you want the situation to be handled like this... is that right?"

2. **Compare it to your view.**

   "I believe I understand your point of view. I have a slightly different perspective. I think the situation needs to be handled like this. . .

3. **Point to the differences to be overcome.**

   "The major difference I see in our points of view is. . ."

4. **Test for their agreement with your summary.**

   "Is that an accurate summary?"

5. **Get their agreement to solve the problem.**

   "It seems to me we can come to some kind of compromise if we both work on it. Would you be willing to try?"

6. **Explore solutions to the problems that serve both sets of interests.**

The Goal Of Communication Is Learning

However, when we give criticism, we either:

- ◊ reprimand
- ◊ unload anger
- ◊ give instruction on how the person should behave in the future.

As a result we. . .

- ◊ generate defensiveness.
- ◊ deny the other person a chance to help define the problem.
- ◊ reduce the likelihood that the other person will be committed to the solution.

The effect of our communication is that we limit learning.

Managing Conflict Summary
The Process of Asserting, Listening, and Problem-Solving

1. **Assert your perspective.**

   ◊ Anticipate that the other person will not listen but will instead counter-assert.
   ◊ Be prepared to listen regardless of what they say.

2. **Truly Listen: Reflect back the feelings/content of what they say to acknowledge and to test your understanding of the meaning.**

   ◊ Avoid disagreeing or agreeing.
   ◊ Avoid raising questions about how to solve the problem. No buts or howevers.

3. **Continue to listen as appropriate to get a full understanding of their perspective.**

   ◊ Avoid abandoning your perspective and getting swept up in theirs.
   ◊ If they bring up other issues, acknowledge them and indicate a willingness to talk about them at a different time.

4. **Present your own perspective.**

   ◊ Summarize what you have heard.
   ◊ Compare it to your view.
   ◊ Point to the differences to be overcome.
   ◊ Test for their agreement with your summary.
   ◊ Get their agreement to solve the problem.

5. **Problem solving**

   ◊ Explore solutions to the problems that serve both sets of interests.
   ◊ Agree to act.
   ◊ Agree to review it at a specific time in the near future to see if it's meeting people's needs and if it works.

Steps In Being Assertive

Self assertive communications involve four elements:

1. A description of what concerns you in concrete, specific and nonjudgmental terms:

   - ◊ Gives others access to the same data that is in our minds and that led to our reactions and conclusions.
   - ◊ Grounds the communication in neutral, observable data and reduces exaggeration.
   - ◊ Unfortunately, we tend to speak abstractly, as if others could "see" the concrete data we have in mind and we therefore are unclear.

2. An expression of your feelings/reactions:

   - ◊ Gives another important set of data: your subjective experience.
   - ◊ Helps the other person understand what is important to you and how important it is.
   - ◊ Focuses on your experience rather than your evaluation of the other's intentions or motives.
   - ◊ We often mix up our reactions with the description. We also censor feelings in the interest of "being emotional."

3. A statement of the objective consequences of the behavior:

   - ◊ Links the data and your reaction to practical issues.
   - ◊ Helps the other person understand your reaction, creates empathy.
   - ◊ Makes clear why you think there is a problem.
   - ◊ It is often so obvious to us why we are upset that we fail to communicate the objective consequences.

4. An inquiry into the other person's perspective:

   - ◊ Defuses blame by signaling openness to learning and inviting disconfirmation.
   - ◊ Reduces defensiveness by conveying respect for their view.
   - ◊ Separates the other person from the problem.
   - ◊ We tend to be so focused on our own perspective that we take for granted its validity and fail to try to get other perspectives.

These steps can be remembered as a simple formula:

When you …
I feel …
Because …

To be Influential
You Must Be Skillful

1. Be assertive.

   Clearly articulate your own wants. Know what you want and be willing and able to express it in a way that can be heard.

2. TRULY LISTEN.

   It is essential to hear and accept others' wants as valid for them. Being able to help the other express his or her wants is also necessary.

3. Present your own perspective.

   Identify areas of agreement and areas of difference.
   Acknowledge both.

4. Agree to solve the problem together.

   Arrive at a solution that meets as many of both parties' needs as possible. Look for ways to integrate and collaborate. Agree to act.

5. Try it, review it, renegotiate it.

   After the agreement has been implemented, review it to see if it's meeting people's needs and if it works.

MODEL Second Generation Procedures & Forms **The Land Trust**
Adapt as Necessary

Introduction

Land Trusts are responsible for protecting each conservation easement (CE), in perpetuity, as specified in the Internal Revenue Service regulations [Treas. Reg. 1.170A-14(c)(1)] and most state enabling legislation. Conservation easements, and the Land Trust's responsibility for stewardship, run with the land beyond the ownership of the original easement grantor. More and more easement-protected properties will be sold, passed on to heirs, or transferred to a new generation of landowners as those easement mature.

It is vitally important to build strong relationships with these new, or "second generation", landowners through early contact. Not only does this provide a valuable opportunity to build a positive landowner relationship, answer questions, and dispel any misunderstandings a new landowner may have; it may also help prevent easement violations from happening in the future.

The following Second Generation Procedures lay out a process for introducing a new landowner to the Land Trust and the conservation easement that conserves their land, as well as starting to build a positive landowner relationship.

We consider ourselves "Partners for Preservation", and believe that building trust and open communication helps prevent misunderstandings and minimize easement issues throughout the lifetime of the landowner relation.

Purpose

The following ***Second Generation Procedures and Forms*** provides an annotated model and samples for addressing the inevitable transfer of easement-protected properties to new landowners.

It is designed to illustrate second generation landowner guidelines and procedures to help organizations make informed decisions about second generation landowner stewardship.

Preparing for Change is written for an audience of land trusts, public agencies, and other conservation easement holders recognizing that these organizations have a wide array of stewardship programs and capacities including staffed and all-volunteer programs and those with staff and/or volunteer monitors.

How to Use This Model

While these Procedures and Forms are intended to serve as a model, easement holders should not blindly copy them for their own use, but should adapt them to meet the particular needs of their own stewardship programs and the particular provisions of their conservation easements (CEs).

The Procedures, Agenda, and other attachments have been annotated to highlight and help explain the second generation landowner stewardship. The explanations and comments are printed on the pages facing the Procedures and Agenda, and are referenced in the report with superscript numbers ([1]).

Related Projects in the Conservation Easement Initiative from the Bay Area Open Space Council

Adapt as Necessary

These models and the associated primer on second-generation landowner stewardship is part of the ***Preparing for Change*** project. *Preparing for Change* looks at advanced stewardship issues, including amendments, record keeping, and contingencies.

In addition, *Preparing for Change* is part of a larger stewardship series from the Bay Area Open Space Council, called ***Improving the Use and Management of Conservation Easements: A Conservation Easement Initiative.*** This is a related series of projects aimed at improving easement stewardship practices through in-depth studies that draw from national models and innovations developed through this Initiative. Other projects in the Initiative include:

- *Ensuring the Promise* (1998) – a critical look at current land trust and public agency stewardship practices in the San Francisco Bay Area
- *Model Stewardship Program* (2002) – an in-depth report on integrated stewardship policies and procedures.
- _____ *CFCP* (2002) – a detailed study of monitoring procedures.
- *Training the Trainers* (2002) – a monitoring training curriculum and study of volunteers and monitoring training.
- *Collective Easement Defense* (2002) – Financial and legal strategies to prepare for easement enforcement and defense.

Preparing for Change integrates many of the lessons learned from these other projects, which include critical and detailed examinations of easement drafting, baseline documentation, monitoring, record keeping, amendments, training, enforcement and easement defense.

Together, these studies illustrate a comprehensive model stewardship program intended to help easement holders make informed decisions about stewardship practices. While it describes a set of ideals, we have tried to be realistic. It also recognizes that organizations have a wide array of stewardship programs and capacities.

While we encourage each easement holder to adapt these models to meet its own needs, we hope to underscore the importance of good stewardship and challenge each organization to improve its stewardship practices.

REVIEWERS, PLEASE NOTE:

- Annotations are included immediately following the referenced element. However, these referenced explanations will be placed on a separate facing page or listed as endnotes in the final product.
- Yellow highlights are notes and reminders for the final draft.
- Blue highlights are questions that need to be answered – some may require an attorney's opinion.

Second Generation Landowner Stewardship Procedures

Purpose

Land Trusts are responsible for protecting each conservation easement (CE), in perpetuity, as specified in the Internal Revenue Service regulations [Treas. Reg. 1.170A-14(c)(1)] and most state enabling legislation. Conservation easements, and the Land Trust's responsibility for stewardship, run with the land beyond the ownership of the original easement grantor. More and more easement-protected properties will be sold, passed on to heirs, or transferred to a new generation of landowners as those easement mature.

It is vitally important to build strong relationships with these new, or "second generation", landowners through early contact. Not only does this provide a valuable opportunity to build a relation, answer questions, and dispel any misunderstandings a new landowner may have; it can also help prevent easement violations from happening in the future.

The following Second Generation Procedures lay out a process for introducing a new landowner to the Land Trust and the conservation easement that conserves their land, as well as starting to build a positive landowner relationship.

We consider ourselves "Partners for Preservation", and believe that building trust and open communication helps prevent misunderstandings and minimize easement issues throughout the lifetime of the landowner relation.

Please remember the following guidelines:

- Begin this process immediately upon finding out about a new or potential landowner.
- Use common sense and follow the Land Trust's policies regarding conflicts of interest, private inurnment and private benefit; and remember to respect the confidentiality of information we handle.
- Strive to build and maintain strong, cooperative landowner relations and open communication. The Land Trust values positive working relationships with the landowners, so remember:
  - A good rule of thumb is to treat every landowner like a major donor.
  - Treat all landowners the same.
- Act in a professional, yet friendly manner.
  - Most of our easements do not allow public access, so you should not enter the property except for official business, nor should anyone other than the Land Trust representatives accompany you.
  - Respect the landowner's right to privacy and ownership goals, and do not harass the landowner with too many questions – "use common sense to ask appropriate questions at appropriate times. Express curiosity and appreciation of landowners' situation whatever it may be." (Bristow *et al.* 1997 p.8);
- It is important to act carefully when dealing with a potential new landowner (i.e., a person interested in acquiring an interest in the property, as opposed to someone who has already completed a transfer of a property interest). The Land Trust should not interfere with a transaction between the existing landowner and another party. Remember:
  - Our first duty is to the existing easement landowner.
  - These guidelines apply similarly to landowner service providers and advisors (e.g., realtors, attorneys, etc.).

Adapt as Necessary

- Do not make conclusions or give approval for anything without following the Land Trust's policies and procedures for discretionary approvals, etc.
  - Do not imply or state that the property is in compliance with the easement's terms.
  - Do not inadvertently imply or give approval or disapproval for any activities *or* future plans the landowner may wish to 'check out' with you.
  - Avoid making conclusions such as "*that sounds alright*" or "*that looks good*" either verbally or in writing, because statements of apparent approval can be misunderstood or interpreted as granting permission.
- Do not answer questions that you are uncertain about or unauthorized to answer.
  - Explain to the landowner that we do not provide legal, financial, or tax advice.
  - If you don't know the answer or if you should not answer a question, simply say that you're not sure and that you will try to find an answer. Immediately write the question down and pass it on to the Land Trust.
- If you suspect a potential problem or easement issue, do NOT accuse the landowner of wrongdoing or inform the landowner that you suspect a violation.
  - Carefully gather information about the issue, including its extent, location, possible source, etc. Document your observations using narrative descriptions, photos, etc. Again, use your discretion in gathering information and asking questions, and do not harass the landowner with questions.
  - Promptly inform the Land Trust, and remember that your observations should be kept confidential. The Land Trust has specific procedures for evaluating and dealing with potential easement issues and landowner requests.
  - Do not carry out any kind of mediation or enforcement action regarding a violation on your own.
- Record all communications (verbal or written) in the Contact Log.[1]

[1] The Contact Log is a tracking sheet used to record all communications from and to the Land Trust and landowners. Include communications from existing and new or potential landowners, their attorneys, etc. The Contact Log should be kept with other stewardship files so it is easily accessible, and in one place so contacts are not recorded in many different places. The Contact Log creates a valuable history of events and decisions.

  - Copies of written communications should also be kept with the Contact Log in chronological order.
  - Supplement the Contact Log with written memos, if necessary.
  - Write legibly.
  - Maintain complete and accurate records.
- Remember to closely follow relevant stewardship policies and procedures, such as for monitoring, record keeping, etc.
- If there are unanticipated problems or issues, it may be appropriate to consult with an attorney.
- Most importantly, your safety and the safety of others always come first.

Contact the Land Trust if you have any questions. Contact _____.[2] And please feel free to stop by our office.

[2] Put a contact name, phone number, fax, email, and address for the land trust here.

Easement Name & ID: _____ Year: _____ New Landowner(s): _____

As Soon As You Find Out About A New Or Potential Landowner…

1. *PLEASE WRITE LEGIBLY* so others can read your comments and fill in the information as it becomes available.

2. Fill in the information at the top of each page before proceeding.[3]

[3] The conservation easement should be clearly identified on each page of the 2nd generation forms, as well as any attachments (maps, photos, etc.). BULLET This helps prevent forms from being mixed up, misfiled, or separated in case pages are copied individually. NEW BULLET Some organizations use an identification code along with the conservation easement name to help with record keeping and to distinguish CEs with similar names, such as different CEs granted by the same grantor. NEW BULLET Include spaces to fill in the year that the form was started and the name(s) of the new landowner(s).

3. Please print your name and date here:[4] _____ _____
   Name *Date*

If anyone else adds something to this form or the agenda they should sign and date each task they complete.

[4] This helps to establish accountability for 2nd generation stewardship tasks.

Names & Contact Information

Try to get as much information as you can about the new or potential landowner. Fill out this form as information becomes available. Contact information can be acquired from the existing landowner, the warranty deed, a realtor, legal notices, etc. It may be necessary to request both a current and new address if the landowner is in the process of moving.

1. New Landowner(s)
   Name: _____
   Current and/or New Address: _____
   Phone (H): _____ (W): _____ (Cell): _____
   Email: _____ Fax: _____
   Physical Address (*ask for directions if necessary*):[5] _____

[5] A physical address is helpful (if different than the mailing address) for delivering documents or if you meet with the new landowner at their residence.

2. Existing Landowner(s)[6]
   Name: _____
   Current and/or New Address: _____
   Phone (H): _____ (W): _____ (Cell): _____
   Email: _____ Fax: _____

[6] Here, and throughout the Procedures and Agenda, the "existing landowner" refers to the current landowner (i.e., the seller). The "new landowner" refers to a landowner who has just completed a transaction and acquired an interest in the easement-protected property; whereas, a "potential landowner" is someone who may soon acquire a property interest (i.e., a buyer).

3. Caretaker: _____
4. Lessee: _____
5. Realtor: _____

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Easement Name & ID: _____ Year: _____ New Landowner(s): _____

6. Attorney: _____
7. Others: _____
_____

8. Is the transfer still pending or has it already occurred? When will or did it occur? _____

9. When did the Land Trust first hear about the pending or completed transfer: _____

10. How did the Land Trust hear about the new landowner?

11. Review the Conservation Easement (CE) Binder including the easement, its purpose, provisions, and the Subsequent Transfers paragraph. List any loose ends here (e.g., existing violations, ongoing restoration efforts, money owed to a stewardship fund, etc.):[7]

[7] The Conservation Easement (CE) Binder refers to a three-ring binder or folder which contains copies of easement files like the conservation easement, baseline documentation report, past monitoring reports and photos, management plans, maps, etc. Using copies instead of original documents and a three-ring binder is part of a recommended easement records management system described in *Model Stewardship Program* (2002). Copies of these easement files may also kept in separate binders or files, while original documents are kept in the office or stored in a secure, on-site fireproof safe or off-site storage facility.

12. Add a note about this to the next Board (and/or Stewardship Committee) meeting agenda.[8]

[8] Adapt this step to the organization's structure and accountability.

Contact the Existing Landowner

Remember to follow the guidelines on talking to new or potential landowners, conflict of interest, etc.

1. Contact the existing/past landowner as soon as possible and ask:
   a) Is the transfer still pending or has it already occurred? _____
   b) When did or will the transfer occur? _____
   c) Does or will the landowner retain a property interest? _____
   d) Is the new or potential landowner a relative or friend? _____

2. Explain that we would like to contact the new or potential landowner directly to introduce ourselves and provide basic information about our organization and conservation easements.

3. *If the transfer has not yet been completed,* also explain that we will ask the potential landowner to direct further questions through the existing landowner, since we don't want to interfere with property transfer.

4. If the existing landowner does not appear to be willing to forward information between the potential landowner and us, then it may be necessary to seek legal counsel.

5. If we don't already have the new or potential landowner's name and contact information, ask the existing landowner for it (*see page 3*).

6. Explain that we would also be happy to answer any questions from realtors or attorneys involved with the transfer; but if the transfer has not been completed, they should correspond through the

Easement Name & ID: _____ Year: _____ New Landowner(s): _____

existing landowner, as well. Ask for the names and contact information of associated realtors, attorneys, etc. (*see page 3*).

7. Try to schedule a monitoring visit (or more thorough property condition report) – *before* the property is transferred, if possible.
   a) This should be a more thorough visit of the property to look for any outstanding issues, so allow extra time.
   b) Encourage the landowner to accompany us during the monitoring visit. Not only is this important for a positive relationship, but the landowner can often provide useful insights about the property.
   c) Date: _____ Time: _____ Meeting Place: _____
   Does the landowner plan to attend? _____
   Land Trust representatives who plan to attend: _____
   d) Once a tentative date is set, the team leader should confirm the date and time with other Land Trust representatives who will participate, and later confirm the date and time with the landowner.

8. Ask if the landowner has any questions or requests, and ask to be kept informed of any changes.

Initial Phone Call to New Landowner

1. Contact the new or potential landowner promptly—call first if possible, otherwise send a letter and invite him/her to call you .[9]

[9] If the land has been transferred, you should meet with or speak directly to the new landowner – do not settle for speaking to the landowner's representative. Underline that you would like to begin building a relationship directly with the landowner.

2. During the phone conversation, a) welcome the new or potential landowner to the area, b) explain who we are and that there is a conservation easement on the property, and c) note that we would like to meet with him/her to explain what the conservation easement means and answer any questions he/she might have.

   If the transfer has not yet been completed, also explain that we don't want to interfere with the property transfer so he/she should direct further questions through the existing landowner

3. Ask if the new or potential landowner knew about the easement or the Land Trust.

4. Ask how he/she heard about the conservation easement.

5. Did the new or potential landowner know about the Land Trust?

6. If the property has already been transferred, ask for a copy of the deed; otherwise ask who exactly (e.g., an individual, a married couple, a partner, a trust, etc.) has or will have an interest in the property.

7. Ask if the new or potential landowner has a copy of the easement; otherwise, we would be happy to send a copy.

Easement Name & ID: _____ Year: _____ New Landowner(s): _____

8. Encourage the landowner to read the conservation easement, and note that we would be happy to go over it together.

9. Schedule an appointment to meet with the new or potential landowner (and possibly meet with the existing landowner together) as soon as possible to introduce ourselves and answer questions.[10]

[10] It is very important to meet in person (as opposed to talking on the phone) with a new landowner, but less critical if the property has not yet been transferred. Meeting with a new landowner can help to avoid confusion or misperceptions about the easement and is important for starting to build a positive landowner relationship. It also allows us to review the easement's provisions.

a) Date: _____ Time: _____ Meeting Place: _____
Land Trust representatives who plan to attend: _____
b) Figure that we will need 45 minutes to review the materials (*though times may vary*) and more time may be necessary to monitor the property, if necessary.
c) In addition, try to plan the visit to walk on the property together. However, do not delay the meeting to be able to monitor or walk on the property (e.g., because of rain or during the winter)—it is more important to meet with the new landowner promptly and discuss the easement.
d) If the property has not been monitored recently, plan to monitor the property. If necessary, schedule the monitoring visit on a separate day.
Date: _____ Time: _____ Meeting Place: _____
If necessary, ask for (or provide) directions.
Does the landowner plan to participate in the monitoring visit? _____
Land Trust representatives who plan to attend: _____
e) Encourage the landowner to participate during the monitoring visit. Not only is this important for a positive relationship, but the landowner can often provide useful insights about the property and his/her plans. This should be a more thorough visit of the property, so allow extra time.
e) Once a tentative date is set, the team leader should confirm the date and time with other Land Trust representatives who will participate, and later confirm the date and time with the landowner.

10. Tell the landowner that in the meantime, we will send some general information on the organization and conservation easements. Ask for his/her contact information if we don't already have it (*see page 3*).

11. Finally, ask if he/she has any questions.

Immediately After Initial Phone Call

1. Immediately document any conversations and written communications in the Contact Log.

2. Find one or more board members or other Land Trust representatives to attend the meeting(s), and confirm the dates and times with them.

3. Send a letter to the new or potential landowner, and existing landowner if applicable, confirming the date, time, and location of the visit (*see Attachment*), and include:
   a) A business card;
   b) A recent newsletter;

Easement Name & ID: _____ Year: _____ New Landowner(s): _____

c) Information on the organization and on conservation easements;[11] and

[11] Think about the kind and detail of information sent to new landowners. It should be informative, but not intimidating. It may be better to provide more general information at this point and more comprehensive material after having an opportunity to introduce and explain the Land Trust's role so the ideas are less threatening.

d) A copy of the conservation easement, if the new landowner does not already have one.

e) Put a copy of the letter in the CE Binder and record the correspondence in the Contact Log.

Before the Meeting

1. Review the CE Binder, particularly the Baseline Documentation Report and the easement itself.

2. If necessary, adapt the monitoring report form and procedures to this more thorough monitoring visit.[12]

[12] See the Monitor's Handbook and Annotated Monitoring Report in *Building Stewardship & Organizational Resources for Agricultural Easements* (2002) for more information about individualized monitoring reports and recommended monitoring procedures.

3. Prepare a copy of the CE Binder to give to the new landowner.[13] Include a business card or page with important contact information at the Land Trust. In addition, we may wish to include information on the landowner services that the Land Trust provides.[13]

[13] Some organizations give new landowners a nice 3-ring binder to hold the easement, contact information, and copies of monitoring reports sent to the landowner in the future, etc. It should look professional and have tabbed sections for easy reference (e.g., the easement, baseline documentation, monitoring reports, aerial photo, etc.). Besides helping landowners keep information about their easement together in one place, it provides information for the many landowners who are interested to learn about the resources and conservation values on their property. For some, it also results in a greater awareness of sensitive areas and overall appreciation for their new property and the easement. [13] This might include restoration assistance, information and help for habitat enhancement grants, contact information for conservation service providers like the Natural Resources Conservation Service, etc.

4. Review the meeting agenda and monitoring instructions before the visit.[14] Add or delete questions to fit the specific easement purposes and provisions. Also highlight any outstanding questions or issues on previous pages, so they can be covered during the meeting.

[14] A model meeting agenda is attached. See the sample Monitor's Handbook in *Building Stewardship & Organizational Resources for Agricultural Easements* (2002).

5. Fill out and print the Conservation Easement Acknowledgment.[15]

[15] The pros and cons of having a CE Acknowledgement are discussed in *Reference* ____. A sample Conservation Easement Acknowledgement is attached. The computer file name of the CE Acknowledgement file or template could be included here as a quick reference so it is easy to find.

6. If necessary, call to confirm the meeting time and place a few days before the scheduled meeting.

7. Discuss or meet with the Land Trust representatives who will participate in the meeting to review the meeting agenda, easement purposes and provisions, monitoring tasks, etc. Please review the

Easement Name & ID: _____ Year: _____ New Landowner(s): _____

guidelines above and any relevant (e.g., monitoring, amendments, etc.) policies or procedures. Feel free to contact the Land Trust if you have any questions.

Materials to Bring

θ Directions to the meeting place
θ These procedures
θ Meeting agenda
θ Land Trust's copy of the CE Binder
θ New landowner's copy of the CE Binder
θ CE Acknowledgment form
θ Materials needed for monitoring
θ Amendment policy information
θ Comprehensive materials on conservation easements, stewardship, monitoring, etc.
θ Selected materials on soil conservation, wildlife habitat protection, etc. as appropriate to the features and uses of the land
θ Recent newsletter[16]

[16] Take a recent newsletter, though the new landowner should have already received a copy.

θ Membership information[17]

[17] Give the landowner membership information whether or not the Land Trust gives new landowners a free membership or not.

θ Pens and paper
θ Business cards

MODEL New (Second Generation) Landowner Meeting Agenda[18]

[18] This is a model agenda for meeting with new landowners after the property has been transferred. This can be modified for potential landowners, if necessary.

PLEASE WRITE LEGIBLY so others can read your comments and remember to mark the checkbox (θ) as each procedure is completed. Fill in the information as it becomes available.[19]

[19] This will help track steps that have been completed and those that need to be done, and it serves as a quality control measure.

θ Fill in the information at the top of each page before proceeding.[20]

[20] The conservation easement should be clearly identified on each page of the 2nd generation forms, as well as any attachments (maps, photos, etc.). BULLET This helps prevent forms from being mixed up, misfiled, or separated in case pages are copied individually. NEW BULLET Some organizations use an identification code along with the conservation easement name to help with record keeping and to distinguish CEs with similar names, such as different CEs granted by the same grantor. NEW BULLET Include spaces to fill in the year that the form was started and the name(s) of the new landowner(s).

θ Fill out the following information about the meeting. Date: _____
Attendees: _____
_____

Break the Ice

θ Where is the landowner from?

θ What attracted the landowner to the area and to this property?

θ Did the landowner know about the easement when he/she bought the property? _____
If **YES**, did he/she see a copy of the easement before buying the property? _____
If **NO**, who was the realtor and attorney? _____
_____
_____

θ Ask about the landowner's family (children, etc.).

Land Trust Introduction & Standpoint[21]

[21] This is the opportunity to explain our standpoint – what our mission and motivations are. This is also a chance to answer legitimate concerns about stewardship, and to dispel any misperceptions about the Land Trust's intrusion on the landowner's rights or schemes to take the landowner's property.

θ Introduce the Land Trust as a non-profit, non-governmental conservation organization. Describe:
- The organization's mission: _____ *(write the mission here as a reference).*
- Describe the conservation values of this property.
- Then talk about the Land Trust's other protected lands and how this property fits into the organization's goals.

θ Describe our conservation goals and the objectives of this meeting.

- To introduce ourselves and to begin building trust and what we hope will be a positive and cooperative relationship with the landowner.
- This is an opportunity to review the easement and answer questions about specific provisions, monitoring, landowner services, etc.[22]

[22] It is very important for new landowners to read and understand a conservation easement's purposes and provisions, especially since new landowners aren't (usually) involved with the easement negotiations like the original easement grantor. Several organizations reported that problems and violations may have been avoided if the landowner had read – and understood – the easement. They pointed out that reviewing the easement with a landowner can minimize confusion that could eventually lead to a violation. Furthermore, reviewing the easement together can head off future plans – before they are carried out – that would be incompatible with an easement's terms. NEW PARA

There was a range of responses about whether new landowners understood, or even read, the easement, from being totally unaware of the easement to asking sophisticated questions about easement provisions. Several noted that some landowners read but don't understand the provisions unless the land trust goes over the terms with them. While a few easement holders said that they reviewed the easement with new landowners, several don't currently, but many of these said that it sounded like a good idea.

The approaches for reviewing easements with new landowners also varied. The Little Traverse provides a copy of the easement and offers to explain the easement. The Brandywine Conservancy meets with new landowners in person specifically in part to make sure that new landowners read the easement and become somewhat familiar with it. Colorado Open Lands uses a different approach – providing new landowners with a short (generally two-page) easement summary, believing that landowners are more likely to read a short summary than a long legal document and more likely to get some understanding of the easement. However, some attorneys have expressed concerns about using summaries in similar situations, because summaries may leave out something that is crucial to a particular case.

In addition to the objectives stated in the instructions, this can be an opportunity to discuss amending the easement to update it, suggest additional restrictions and opportunities for further tax deductions, etc. Both the French and Pickering Creeks Conservation Trust and Montana Land Reliance commented about amendment issues being raised at this time. The Reliance reported that some landowners immediately ask to amend the easement; while the Conservation Trust suggests that this can be an opportunity to discuss updating older easements (see the Amendment Chapter in *Preparing for Change* (2002) for more information on amendment issues).

θ Describe the benefits of having an easement on the property (e.g., potentially lower real estate and estate taxes and other incentive programs, landowner services offered by the Land Trust, etc.).

θ Describe the landowner services provided by the Land Trust.[23]

[23] List landowner services, such as information and contacts for conservation enhancements, invasive plant species assistance, help applying for enhancement grants, etc. Some land trusts also present new landowners with a free membership, landowner newsletters, coffee mugs, etc.

θ Discuss key points about the easement and stewardship, including:

- A conservation easement is a permanent legal agreement (though it can be amended in extraordinary circumstances). Easements have been around for over 100 years. We've held easements since _____ (*year*) and have since protected _____ acres through _____ (*number of*) easements and _____ (*number of*) permanent preserves, so you're part of a much larger and strong conservation effort in this region.

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- That the landowner still owns the land and can still sell it or pass it on to his/her heirs, but that certain property rights have been restricted;
- The Land Trust works in partnership with each landowner to make sure that the Conservation Values of the land are permanently protected. We hope for an open and cooperative relationship, so please feel free to contact us whenever you have a question.
- If there is a designated landowner contact person, say who that is.
- Explain that we will help where we can, but we cannot give legal, financial, or tax advice.

θ Ask about the landowner's intended uses – but don't pry. If applicable, ask about their intentions regarding management plans, caretakers, productive uses, etc.

θ Go over the landowner's copy of the CE Binder, which has descriptions of the property and its conservation values, etc.

θ Review the purposes and provisions of the CE. Ideally you should go through it paragraph by paragraph. Pay particular attention to:
- Conservation values and purposes;
- Grantor's intentions;
- Notice and approval;[24]

[24] Go over the easement's notice and approval requirements. Some easements require the landowner to notify and/or seek approval to exercise certain reserved rights, such as prior to constructing a new barn or residence. If so, remind the landowner that it is a good idea to check the easement beforehand, and that the landowner should feel free to contact the Land Trust if he/she has any questions about this. Also request that the landowner notify the Land Trust if he/she is considering selling or transferring any property interest. NEW PARA

Some easements require communications to be sent by certified mail, etc. This is typically intended for formal communications; however, it can be cumbersome and may set a less friendly tone. Therefore, the landowner and land trust may wish to verbally agree to use discretion when sending normal correspondence.

- Note where protected lands are if the easement does not cover the entire property; and
- If there are special use zones, explain the differences/provisions, and if possible, try to walk to those areas. Remember that some people do not visualize maps easily and may understand better if you physically visit or point out special use areas. This may also spur ideas and discussions about intended uses.

θ Describe the monitoring process and other stewardship activities.[25]

[25] The Vermont Land Trust suggests creating a "comprehensive brochure describing the activities, structure and goals of your conservation easement stewardship program." (Bristow 2000B p.2), but which is "appropriate to their level of awareness and understanding." (Bristow 2000B p.1).

- Explain the monitoring process—that we visit the property generally once a year to monitor its condition and ensure that the terms of the easement are being followed. Explain that we will call or write before we make the inspection, and we always encourage the landowner to join us.
- When we monitor, we look for both natural and human caused changes. We are also interested in problems with trespassers that might affect the easement.
- The landowner is responsible for making sure that anyone using or improving the property under the landowner's direct or indirect supervision, and that they must also abide by the terms of the easement.

- We presume based on our experience that landowners are good land stewards, so we try not to interfere with the landowner's use of the property. Again, our interest is in protecting the conservation values and monitoring is limited to the scope of the easement purposes and provisions.

θ Go over any remaining questions or issues highlighted in the 2nd Generation Instructions.

θ *If there is no easement sign on the property*, ask if the landowner would approve of us placing one there.[26]

[26] Some organizations post a sign on their easements visible to the public saying that this land is protected, etc.

θ Finally, ask if there are any questions.

Sign the CE Acknowledgement[27]

[27] The Brandywine Conservancy asks the landowner to sign a conservation easement acknowledgement form (*see Attachment #___*). This form is a very brief summary of basic elements of easements, most of which are discussed during the meeting. It has little legal weight and does *not* have to be signed, but they believe that it may help demonstrate that it helps demonstrate that the landowner has been notified of the easement.

The counter argument is that it can be somewhat threatening, particularly in light of the fact that it has no legal weight.

Alternatively, the Brandywine Conservancy suggests that sending a letter acknowledging the new landowner and notifying him/her that there is an easement can serve the same purpose, and in fact, the Upper Valley Land Trust does send such a confirmation letter. This may be particularly useful if the new landowner cannot or will not meet with the Land Trust.

θ Ask the landowner to review and sign the Conservation Easement Acknowledgement (*see Attachment #___*). Explain that it has no legal weight and he/she does not have to sign it—it simply documents some of the basic elements that we have discussed—but remind the landowner that they are bound by the easement whether or not they sign the Acknowledgement.

Monitor the Property

θ *If the property has not been monitored recently*, conduct a thorough monitoring visit (or more thorough property condition report) to look for any outstanding issues. This may have been—or need to be—scheduled for a separate day. Encourage the landowner to accompany us during the monitoring. Not only is this important for a positive relationship, but the landowner can often provide useful insights about the property.[28]

[28] See the Monitor's Handbook and Annotated Monitoring Report in *Building Stewardship & Organizational Resources for Agricultural Easements* (2002) for more information about individualized monitoring reports and recommended monitoring procedures. NEW PARA

The Brandywine Conservancy does a "compliance inspection". However, easement holders should be very careful to distinguish when they are monitoring and when they are doing a compliance inspection, because compliance suggests an absolute conclusion. Making absolute conclusions about a property, or compliance with the easement, can estop the land trust from taking future action to correct

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easement violations that they missed in a compliance inspection. This is discussed in more detail in the *Model Stewardship Program* study (2002) and *Building Stewardship & Organizational Resources for Agricultural Easements* study (2002).

Thank the Landowner

θ Thank the landowner and ask if he/she has any more questions. Invite him/her to call the Land Trust, write us, stop by the office, or email us if there are any further questions.

(*End of Agenda*)

Closing Questions and Procedures[29]

[29] This section includes background information about the meeting and important reminders for documenting the visit.

θ **Immediately afterwards,** the land trust representatives should discuss the visit amongst themselves. If necessary, answer the following questions.

Please use these questions to describe any suspected easement issues or other concerns that the Land Trust staff should know about. Use additional pages if necessary. These questions will not be sent to the landowner, but it would be part of the public record in the event of litigation.[30]

[30] These questions can be used to flag issues for the organization to review further. Alternatively, any additional notes or concerns can be written on a blank piece of paper. Again, care should be taken not to make any conclusions. Also note that anything written would be discoverable by a landowner in the event of litigation. Therefore, land trust representatives should be careful about what they write, particularly things about someone's character, etc.

Are there any concerns that you have or unusual circumstances that you would like the Land Trust staff to be aware of?

Please list any recommendations for future visits.

Other questions or comments?

θ Print the names of all the participants (landowners, land trust representatives, etc.)[31]

[31] In addition, the organization may wish each participant to sign his/her name.

_____

_____

_____

θ Discuss who will complete any remaining tasks (e.g., completing the monitoring report, developing and labeling photos) and return all materials to the Land Trust.

θ Label and sign all other attachments such as maps, reports, data sheets, etc. Include the easement name and ID, explanatory comments, and date of the monitoring visit.

Please indicate the number of the following attached to this report:
Additional pages: _____
Photographs: _____
Maps: _____
Other, describe: _____

The Agenda and each attachment on which notes were made should be signed, dated, and labeled with the easement name and ID.

Please return the Agenda and other materials to the Land Trust office _____ (*insert the land trust's mailing address, telephone and fax numbers, and email*) as soon as possible.[32]

[32] The Instructions and Agenda should include explicit information about submitting the report and provide contact information in the event that a land trust representative needs to reach someone at the land trust right away.

θ Promptly return the completed materials and all accompanying documentation to the Land Trust as soon as possible.[33]

[33] This might specify a specific deadline, such as "*within ten days*" instead of "*as soon as possible*".

θ The Land Trust will review the report, and a copy will be stored as part of the permanent stewardship record. Potential issues or concerns you raise will be reviewed and appropriate action will be taken by the Land Trust.

Thank You!!

After the Meeting (As Soon As Possible)

θ Promptly document the meeting in the Contact Log.

θ Update the Second Generation Tracking Sheet (*see Attachment #___*) and add the contact information to the mailing list and/or membership list.

θ If appropriate, complete monitoring report procedures and review.

θ Have the completed meeting Agenda reviewed by the Land Trust.[34]

[34] This may be the stewardship coordinator, executive director, board committee, etc.

θ Make copies of the completed Agenda, CE Acknowledgement, monitoring report, etc. and file copies in their appropriate places.

θ Report findings to the board.

θ Send a follow up thank you letter to the landowner. If necessary, respond to remaining questions, include landowner services information (e.g., contact numbers for the Natural Resources Conservation Service, etc.), a copy of the monitoring report, etc. Record this in the Contact Log with a copy of the letter.

FOR OFFICE USE ONLY[35]

Stewardship Coordinator _____ (Print)
_____ (Signature) Date: _____

[35] (Optional) The Report can include a line for the stewardship coordinator, executive director, board member, or someone with oversight authority to sign after reviewing the completed Procedures and Agenda. This is one way to build in accountability, but there is some concern that it might be used against an organization if the reviewer accidentally forgets to sign off or in fact does not review the material. Thus, it may be better to remove this box and simply make reviewing the materials a part of the organization's regular practice.

The following lists commonly used 2nd generation forms and files and where they can be found for easy reference. The computer files can be found in the _____ directory.

2nd Generation Form	Computer File Name
Second Generation Procedures	*2ndGenProced3_02*
Second Generation Tracking Sheet	*2ndGenTracking1_02*
New Owner Introduction Letter	*NewOwnerIntro2_02*
Second Generation Meeting Agenda	*2ndGenAgenda3_02*
Conservation Easement Acknowledgement Template	*CEacknowledgement*
Introduction to Conservation Easements and the Land Trust	*CEinfo9_01*
Explanation of Monitoring for Landowners	*MonitoringforOwners*
Enforcement Policy	*EnforcementPolicy7_00*

References

Bristow, Preston. 2000. Maintaining Landowner Loyalty: Ideas & Suggestions. Presentation at Conservation Easement Steardship: Making Easements Last. Training Course April 29, 2000 – US Fish & Wildlife Service, Hadley, MA.

Bristow, Preston; McIntyre, Jeanie; and Sternberg, Roger. 1997. *Monitor Training Curriculum & Handbook.* Vermont Land Trust & Upper Valley Land Trust.

Guenzler, Darla. 2002. *Model Stewardship Program.*

Marchetti, Karin and Adkins, Jennifer. 1997. *Advanced Issues in Planning and Managing Conservation Easements.* From the 1997 National Land Trust Rally, Savannah, Georgia.

Rod, Brian. 2000. *Procedures for New (Second Generation) Landowners.* Taos Land Trust.

Rod, Brian. 2002. *Building Stewardship & Organizational Resources for Agricultural Easements.* Bay Area Open Space Council.

Easement Name & ID: _____ **MODEL 2nd Generation Tracking Sheet**[36]

Landowner History	**Parcel ____**[37]	**Parcel ____**[38]	**Parcel ____**
Original Easement Grantor's name, Address, & Phone:[39] Date Easement Acquired:			
Landowner's Name, Address, & Phone: Date Transferred: Date Contacted: CE Acknowledgement Signed: (Yes/No & date):			
Landowner's Name, Address, & Phone: Date Transferred: Date Contacted: CE Acknowledgement Signed: (Yes/No & date):			
Landowner's Name, Address, & Phone: Date Transferred: Date Contacted: CE Acknowledgement Signed: (Yes/No & date):			

[36] The Second Generation Tracking Sheet is used to create a history of land ownership. This is particularly valuable for easement properties with multiple owners and/or different parcels.
[37] Use the same parcel identification as is used in the conservation easement (e.g., A-1, 5566, D, etc.).
[38] Use a separate column for each parcel in the easement.
[39] Start with the original easement grantor(s).

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The Nature Conservancy
SAVING THE LAST GREAT PLACES ON EARTH

Fall/Winter 2006/07—Vol. 1, No. 2

land stewardship news wyoming

Pronghorn herd. © Joe Kiesecker

An ongoing commitment to Wyoming's lands, waters and wildlife

The mission of The Nature Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive.

Dear Wyoming Land Stewards:

As we pass through another fall season, I hope you are doing well. It is November, and the cottonwood leaves have turned color and are quickly falling to the ground in Lander. Fall migration is winding down and many songbirds, waterfowl, shorebirds and raptors have returned south to their winter abodes. Ranchers are moving cattle down from high elevation pastures and shipping calves to market. The last of the hay has been bailed, stacked, and made ready for winter feeding. My evening walks are more pleasant in the cool air of dusk.

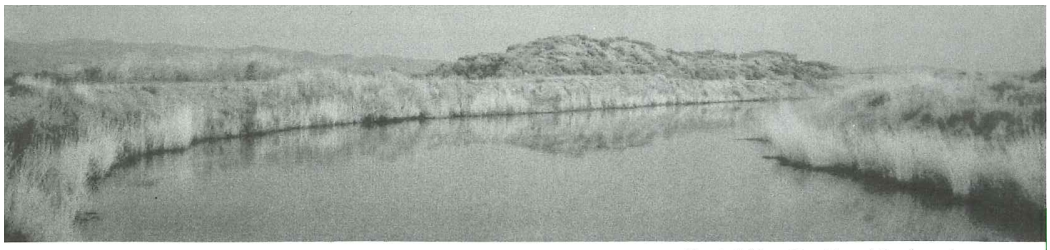
Seasons change, and so do the tools we use to conserve our natural heritage and landscapes in Wyoming. The Wyoming Chapter of The Nature Conservancy has used conservation easements since the late 1980s to help landowners ensure the land they steward is not lost to development. Donating a conservation easement to the Conservancy or other land trust provides ecological benefits to the land and can benefit the donor on his or her annual income taxes. Until this year, a donor could use the value of an easement donation to deduct up to 30% of adjusted gross income. Donors could also spread the deduction over a six-year period. This summer, Congress passed a pensions bill that included Section 1206, a provision increasing the tax benefit for landowners who donate conservation easements. The provision increases the annual deduction from 30% to 50% of adjusted gross income (up to 100% for qualified farmers and ranchers), and increases the number of years over which a donor can take deductions to sixteen. However, this change only applies to easements donated in 2006 and 2007.

If you are considering donating another conservation easement, or if you know of someone considering a donation, please contact our Lander office. We can tell you about the Conservancy's process for accepting easements and provide information about the new law changes. Enjoy the beautiful changes of this fall season!

Yours in Conservation,

Randy

Randy Craft, *Land Conservation Specialist*
rcraft@tnc.org
(307) 335-2128



Riparian habitat at Heart Mountain Ranch. © Will van Overbeek

stewardship issues

Managing Freshwater Systems and Agricultural Land Use: Riparian Grazing at Heart Mountain Ranch

By Maria Sonett, Heart Mountain Project Director

Riparian and wetland areas provide valuable ecosystem services to all of us, from a home for tiny macro-invertebrate bugs, to quality freshwater for people to drink. Freshwater systems are relatively scarce, and are defined by many researchers as "threatened ecosystems." In Wyoming, freshwater systems offer priceless habitat for aquatic and terrestrial wildlife, and support our state's third largest industry, agriculture. But how do we best manage these areas? Are there land-use activities that are clearly incompatible with freshwater health?

Improved Grazing Management

At The Nature Conservancy's Heart Mountain Ranch near Cody, we are working to improve grazing management of the ranch's riparian areas and try new ideas in land use management. Part of our charter at the ranch is to demonstrate agricultural management that is both cow-productive and conservation-minded. We firmly believe a carefully prepared and managed grazing plan can help restore an at-risk system.

The South Fork of Eaglenest Creek is one place where we hope grazing is doing just that. We were concerned about the history of season-long use on this perennial creek that is a tributary to the Shoshone River. With a Farm Bill program grant, the Environmental Quality Incentives Program (EQIP), and the Natural Resources Conservation Service (NRCS), we developed a grazing plan for the creek area. The first step was to assess current soil and plant community conditions, trends, and "desired future conditions" for the riparian and adjacent uplands.

Step-by-Step Process

We worked with range specialists and wildlife biologists to develop management goals including terrestrial and aquatic wildlife habitat improvements, bank stabilization, invasive species control, and increased forage production. We also set objectives and developed a monitoring plan to measure our progress.

University of Wyoming Extension Service staff demonstrate rangeland monitoring on the Conservancy's Heart Mountain Ranch. © Kerry Brophy Lloyd/TNC

Next, the group crafted a grazing management plan that would best deliver the identified goals. In the case of South Eaglenest Creek, our initial action was to rest the pastures for one year from livestock use—a good starting place for many highly-impacted systems. We defined riparian pastures and a new grazing rotation based on estimated forage production and a desired stocking rate, and repaired or installed fencing. Finally, we collected baseline monitoring data to track progress from our initial starting point in future years.

In the second year, grazing was re-established in the riparian pastures on a five-pasture rotation. Each pasture went through a rotation of:

(1) spring use
(2) fall use
(3) rest

Additionally, a different pasture was grazed first each year. Rotating the season of use tends to reduce negative impacts to plant vigor by preventing plants from being bitten off at the same time in the growth cycle each year. In the third year, we used an adjusted rotation. After a fourth grazing season in 2007, three years of monitoring data will be analyzed to evaluate success.

What changes have we seen in the riparian area? Most are not easily noticed, but one that we can clearly see is the young willows. We see a host of newly-established willows on the gravel bars and soil banks that border the creek. Their numbers vary, but a quick count after the first season of rest revealed 12 in one square meter! And, after the second and third years' grazing use, we saw that although some of the two- to three-year-old willows had been nipped off just at the top, over half had been left ungrazed, and grazed plants were still green and growing.

The Nature Conservancy's Wyoming Chapter can work with surface owners and managers to negotiate surface use agreements whenever mineral development on a conservation easement property is eminent.

land stewardship news

wyoming

conservation easement questions

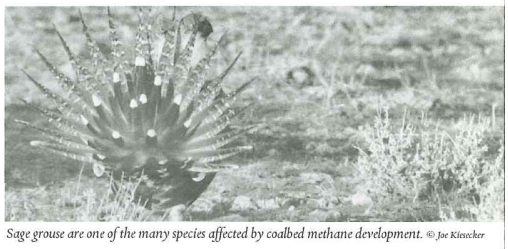
Do conservation easements protect land from mineral development?

Natural gas extraction from coalbed methane (CBM) development is the latest energy boom in Wyoming. Our state has benefited economically with the increased revenue into state coffers. This additional money will fund school districts and provide for improvements to our state infrastructure. However, CBM development will have impacts on our wide open landscapes and habitat needed by Wyoming's wildlife.

Split Estate Situations

Periodically, I'm asked if conservation easements protect land from mineral development. In most cases the answer is "no." If a surface owner also owns the mineral rights, a conservation easement can prohibit surface mining or unacceptable disturbance of the surface in the mining of subsurface minerals, such as oil and gas. But in Wyoming and throughout much of the western United States, mineral rights have been severed from surface rights. A private landowner may own the surface rights, but another entity (e.g. another private party or the federal government) may own the rights to develop the underlying minerals on a given parcel of land. This situation is referred to as "split estate." Mineral rights take precedence over surface rights, meaning that the surface owner cannot prevent the owner or lessee of the minerals (oil, gas, etc.) from extracting those minerals.

Placing a conservation easement on a property does not change the split estate status. In fact, ownership of mineral rights can affect the deductibility of an easement donation. If another party owns part or all of the mineral rights, the surface owner of a prospective easement property will need to obtain a written opinion from a qualified geologist indicating the probability of surface mining is "so remote as to be negligible" if the surface owner intends to take a charitable tax deduction.



Sage grouse are one of the many species affected by coalbed methane development. © Joe Kiesecker

Surface Use Agreements

Though mineral rights dominate over surface rights, this does not mean that a mineral owner or lessee can extract minerals in total disregard of the surface owner. Mineral extraction involves impacts to the surface. Mineral owners and lessees must make a "good faith" effort to negotiate an agreement with the surface owner. A surface use agreement outlines the conditions under which the minerals will be extracted, how the surface will be reclaimed, and how much financial compensation will be provided to the surface owner. Other details in a surface use agreement may include seed mix specifications and control of invasive weeds.

The Conservancy's Wyoming Chapter can work with surface owners and managers to negotiate surface use agreements whenever mineral development on a conservation easement property is eminent. We generally ask mineral companies to draft agreements that minimize the extent of disturbance, provide for reseeding, and specify that invasive weeds will be controlled. We also can ask companies to reference the affected conservation easement in the surface use agreement and honor the restrictions in the easement to the extent possible.

To learn more about mineral development and split estate, please see the Bureau of Land Management website at http://www.blm.gov/bmp/Split_Estate.htm.

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resources

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The following resources for land managers are available on the internet or by calling the agencies and organizations listed. Listing these resources does not imply Conservancy endorsement of any agency, business, non-profit organization, or management practice.

- Best Management Practices. Bureau of Land Management web site with information on "Best Management Practices" (BMP's) for oil and gas development on federal lands. Provides technical information and frequently asked questions. Internet address: http://www.blm.gov/bmp.
- Holistic Management International. Non-profit organization dedicated to promoting land resource management that restores land to health and profitability. HMI offers courses in holistic resource management that can be applied to ranching and farming. Internet address: http://www.holisticmanagement.org. Mailing address: 1010 Tijeras Ave. NW, Albuquerque, NM 87102. Phone: (505) 842-5252
- Land Trust Alliance (LTA). Promotes voluntary land conservation and works with nonprofit land trusts by providing information, skills and resources land trusts need to conserve land. Good source of information about conservation easements. Internet address: http://www.lta.org. Mailing address: 1331 H Street NW, Suite 400, Washington, DC 20005-4734. Phone: (202) 638-4725
- Powder River Basin Resource Council. Grassroots organization in northeastern Wyoming dedicated to preservation of Wyoming's agricultural heritage and rural lifestyle. This organization has dealt with issues involving mineral development, particularly coalbed methane. Internet address: http://www.powderriverbasin.org. Mailing address: 934 North Main, Sheridan, Wyoming 82801. Phone: (307) 672-5809
- Society for Range Management. Professional society dedicated to supporting persons who work with rangelands and have a commitment to their sustainable use. Internet address: http://www.rangelands.org. Mailing address: 10030 W 27th Ave, Wheat Ridge, CO 80215-6601. Phone: (303) 986-3309
- Sustainable Rangelands Roundtable. Promotes social, ecological, and economic sustainability of rangelands through the development and widespread use of the criteria and indicators for rangeland assessments, and by providing a forum for dialogue on sustainability of rangelands. Internet address: http://sustainablerangelands.warnercnr.colostate.edu.
- Wyoming Stock Growers Association. Serves the livestock business and families of Wyoming by protecting their economic, legislative, regulatory, judicial, environmental, custom, and cultural interests. Internet address: http://www.wysga.org. Mailing address: P.O. Box 206, Cheyenne, WY 82003. Phone: (307) 638-3942

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The Nature Conservancy in Wyoming
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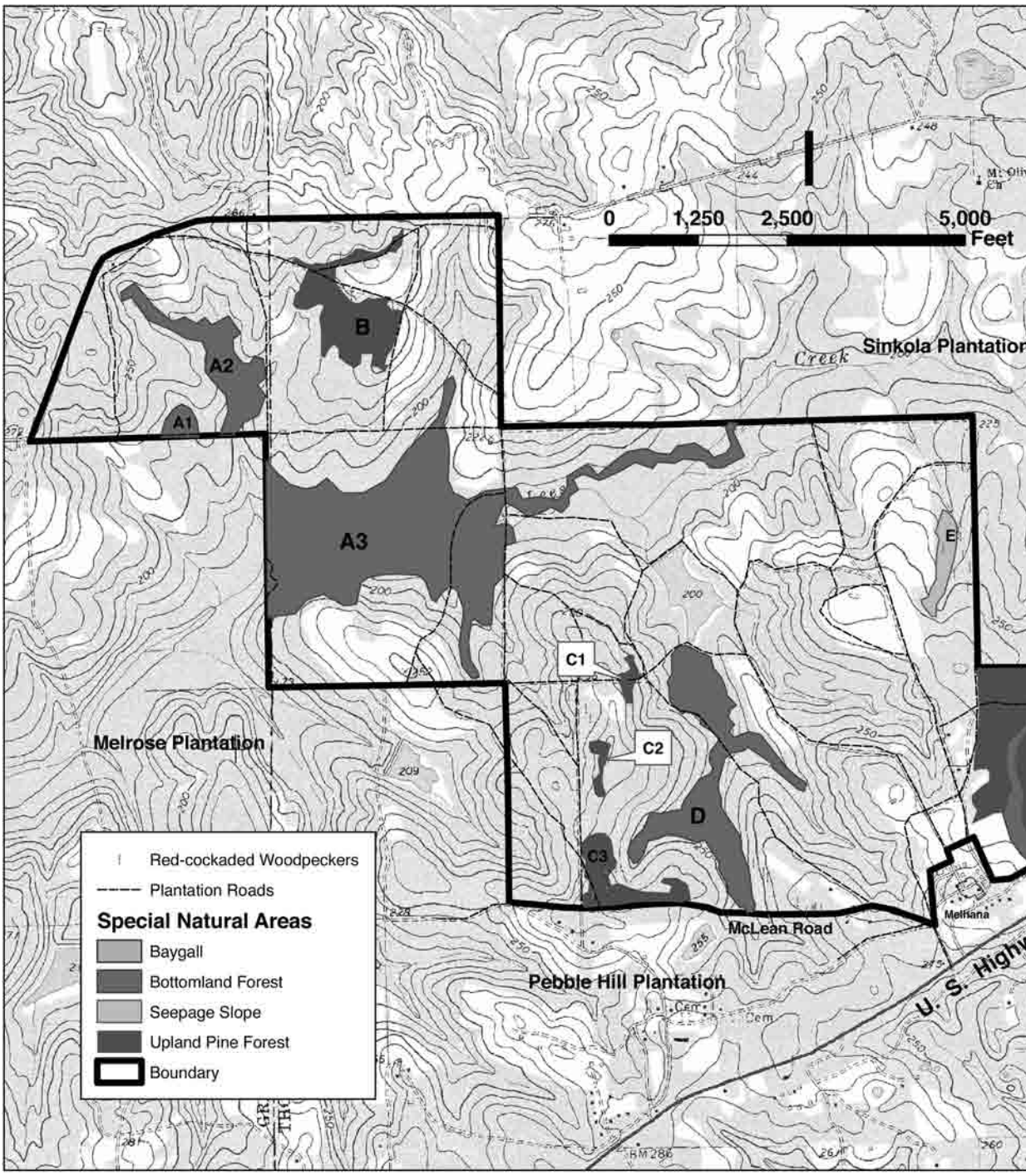
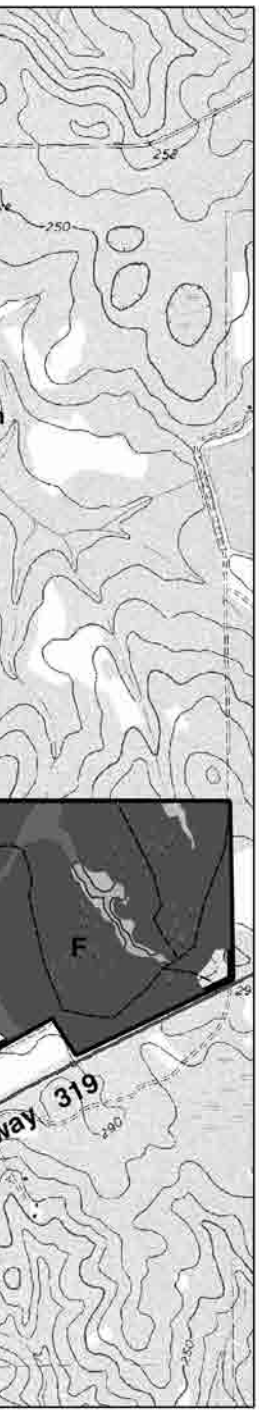
Conservation Management Guidelines





Special Natural Areas

The following shall apply to all the Special Natural Areas.

1. There shall be no removal of sand, topsoil, gravel, rock, peat, minerals, or other material. There shall be no dumping of ashes, trash, garbage, or any other material, nor any mineral activity. There shall be no change in the topography of the land in any manner within 200 feet of any Special Natural Area, excepting the maintenance of existing roads, man-made water channels, and wetland impoundments.

2. Timber harvest operations in Upland Pine Forest SNAs (SNAs B, C, and parts of F) shall be conducted in a manner that causes minimum disturbance to other plant species in the SNAs. Some large-diameter trees shall be retained. There shall be no timber operations in Bottomland Forest SNAs (SNAs A, D, and part of F) except as necessitated by disease or insect damage. There shall be no timber operations in Seepage Slope and Bay Forest SNAs (SNA E and part of F).

3. An upland buffer zone of at least 200 feet should be maintained in the area directly adjacent to rivers, lakes, sloughs, and other major water bodies. Timber management within this zone should follow the selective tree, uneven-aged forest guidelines stated above with emphasis on retaining an old-growth component for wildlife.

4. There shall be no spraying with biocides of any vegetation without the prior approval of Grantee.

5. In Upland Pine Forest SNAs (SNAs B, C, and parts of F), the expansion of existing and installation of new food plots will be prohibited. Fallow areas that have been disked in the past may be used as food plots. Roller chopping, disking, harrowing, and chemicals will not be used where native ground cover exists.

6. In Bottomland Forest, Seepage Slope, and Bay Forest SNAs (SNAs A, D, E, and parts of F), roller chopping, disking, and harrowing will not be used, such that the moist and saturated soils that are sensitive to mechanical disturbance will be protected. Fire should be allowed to creep into these areas from the adjacent uplands. These areas should not be isolated from fire by firebreaks. Existing firebreaks on the periphery of these SNAs and through SNA Seepage Slopes shall be abandoned unless extreme fire danger or liability requires limiting fire in those areas.

Special Natural Areas on Twin Oaks Plantation Are:

Special Natural Area A: The Big Hammock - Bottomland Forest

Special Natural Areas B and C: Upland Pine Forest

Special Natural Area D: Bottomland Forest and Slope Forest

Special Natural Area E: Seepage Slope

Special Natural Area F: East Line Woods - Upland Pine Forest, Seepage Slope, Bay Forest

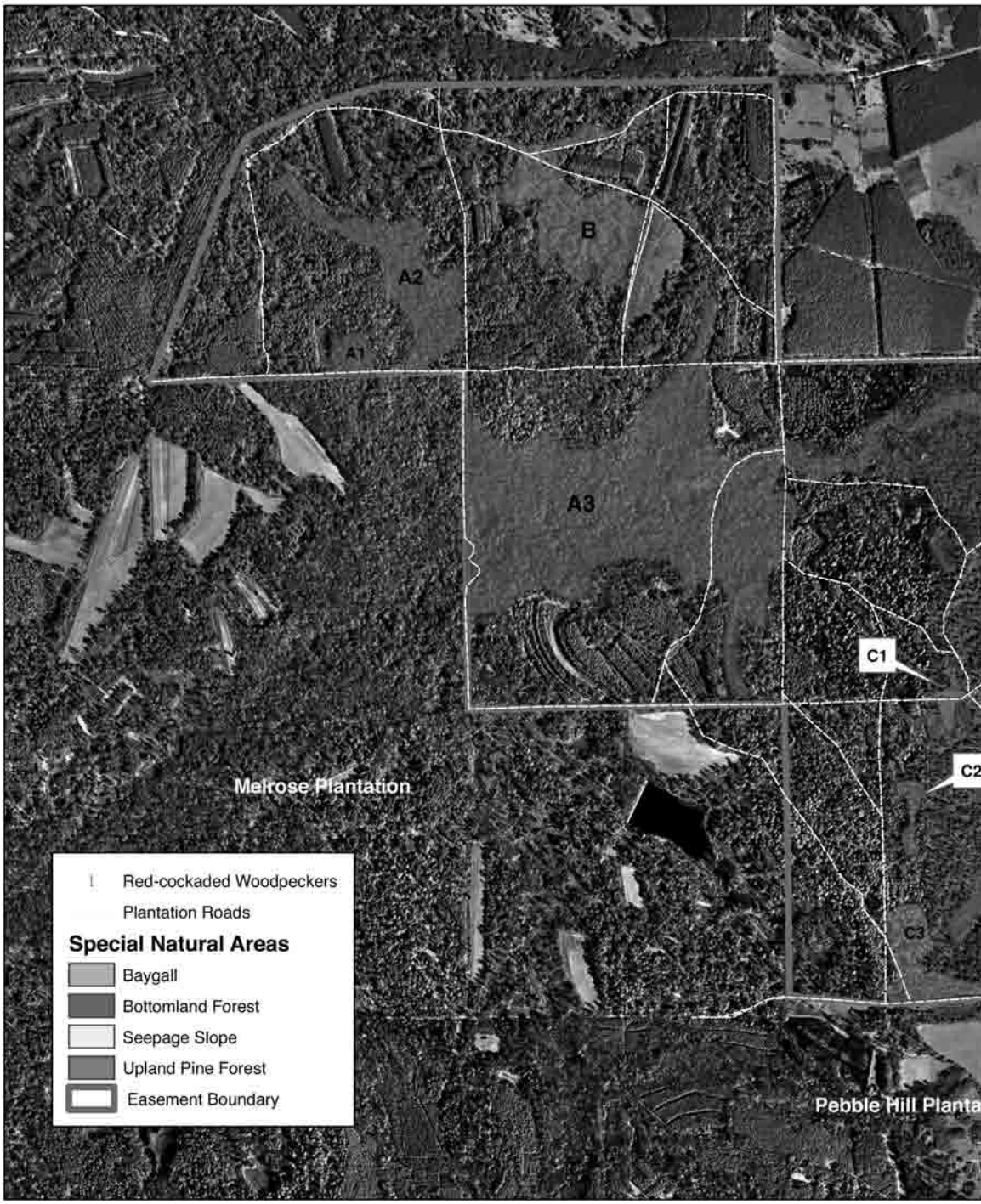
In addition to the above management guidelines, the following shall apply to SNA F:

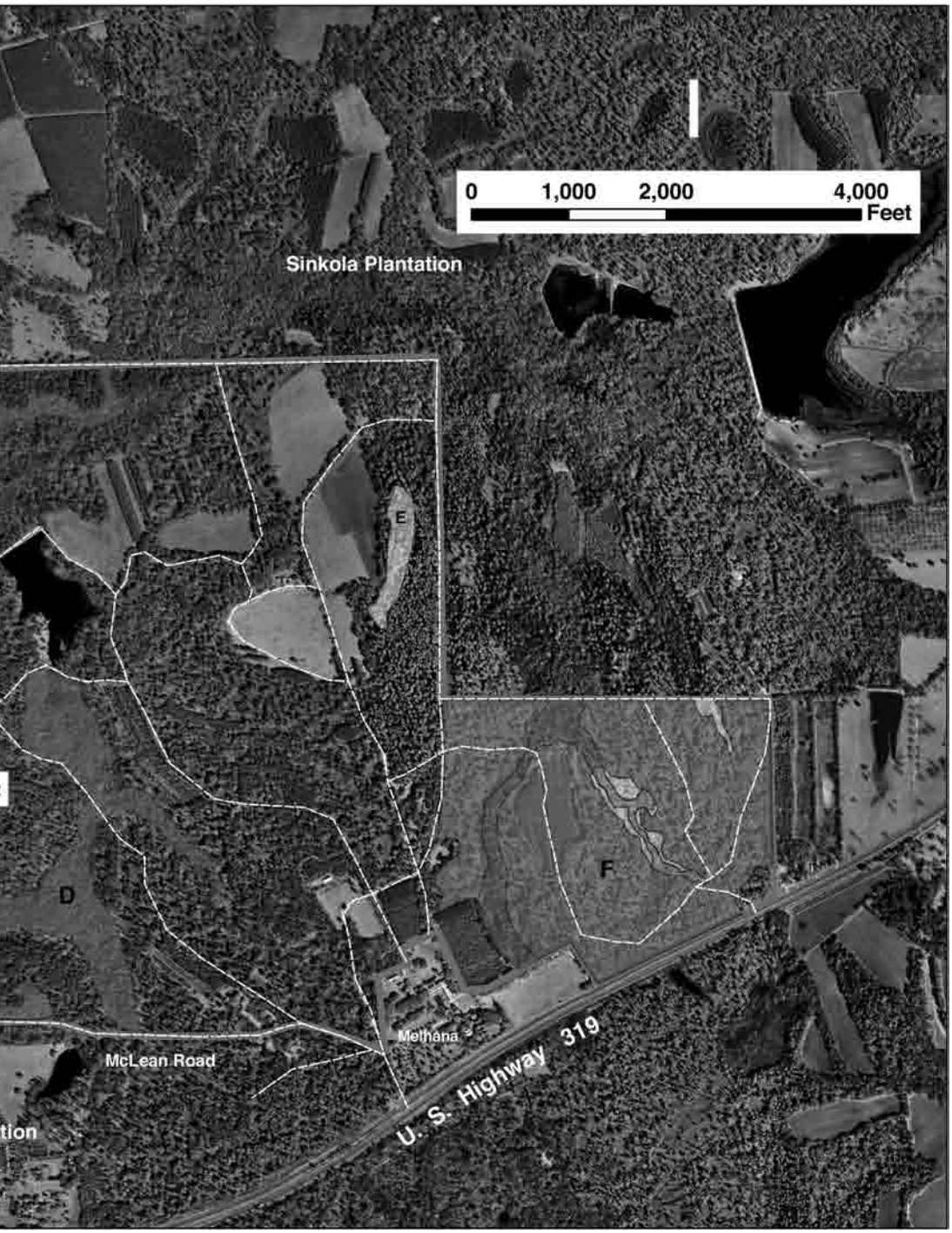
1. Prescribed fire should be applied to maintain and improve the ecological integrity of the forest, including the control of hardwood encroachment, fuel reduction, enhancement of the diversity of native species, and encouragement of longleaf pine reproduction when mast years occur. Most upland areas should be burned annually except for specific ecological purposes. Cool (low-intensity) fires should be used in the maintenance of high-quality longleaf pine areas, especially where young trees exist, and more intense fires should be used only when conditions demand. The timing of fire should be varied according to the ecological needs of the SNA, including occasional late-spring or summer burns to encourage regeneration of wiregrass and other native herbs.

2. No timber harvesting shall occur with the following exceptions. Salvaging of dead or downed trees may occur provided some are left for ecological reasons. Some careful, judicious and parsimonious thinning or cutting may be allowed to accomplish the long-term ecological goals to restore and maintain this forest.

3. Soil disturbance by heavy equipment, harrowing, disking, or other such activities that change or damage the health and condition of the vegetation and soil profile is not allowed anywhere within the SNA. Plowed firebreaks are restricted to the perimeter of the SNA.

Aerial Photo with Special Nature Areas

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STEWARDS OF THE LAND

A quarterly publication for owners of land conserved with the Vermont Land Trust

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Managing Your Land for Birds

By Nadine Berrini

If you're a bird watcher, bird hunter, or an all-around wildlife enthusiast you may have wondered how to improve the habitat for birds on your land.

Two of the most important things forestland owners can do for forest birds are to create vertical structure and to keep dead wood. Vertical structure is the architecture of the forest; it refers to the heights of trees and other plants — from the canopy to the forest floor. Different birds use different parts of this structure for breeding and foraging. Likewise, snags (dead or dying trees) provide roosting, perching, foraging, and nesting sites for about 40 species, from chickadees to woodpeckers.

Grassland birds, which have been in steep decline for decades, populate Vermont's hayfields, meadows, and pastures. Many of these birds build their nests on the ground, raise young, and forage for insects such as caterpillars and grasshoppers in summer months. Mowing earlier or less frequently, when economically feasible, can minimize the impact of haying on nesting birds.

To illustrate specific ways landowners can support bird habitat, we've highlighted three birds that use varying landscapes.

Forestland: Scarlet Tanager

Over 70 percent of the birds found in Vermont forests during the summer are migrants. One of these birds is the bright red scarlet tanager, which comes to Vermont from South America to breed. Scarlet tanagers build nests mostly in deciduous trees 20 to 30 feet above ground. Though fairly common in Vermont, this bird is often overlooked because it prefers the high canopy of mature, interior forestland.

While the scarlet tanager population in Vermont is considered stable, nine other species that are threatened are likely to benefit from improving scarlet tanager habitat; these include the black-and-white warbler, the rose-breasted grosbeak, the veery, and the yellow-bellied sapsucker.

The scarlet tanager and other forest-interior birds require mature forests. These birds don't do well near the edges of forests because predators, including jays, raccoons, and cats, are more likely to be in these areas, as are "brood parasites" — birds that lay eggs in a host bird's nest to the detriment of the natural brood. "For most birds, the edge is the least desirable place to be," said Jim Shallow of Vermont Audubon. "They either like open grasslands, shrubby areas, or forest. Edges tend to be vectors for predators and can have an effect as much as 100 meters into the woods." Vermont Audubon recommends that landowners create irregular edges or "feather" edges. Feathered edges have more trees closer to the uncut forest and gradually fewer trees closer to the harvest area. The shape of a woodlot (e.g. a circle as opposed to a long rectangle) can create more interior and less edge as well.

Bob Hoser

Scarlet Tanager

The value of an individual 50-acre woodlot to the scarlet tanager will vary depending on the surrounding landscape. In a landscape that is 50 percent forested the scarlet tanager needs around 70 acres of habitat. The less forested an area, the more acres are required. "Just because you see a bird doesn't mean it's nesting successfully," said Chip Darmstadt, director of Central Vermont's North Branch Nature Center, about a scarlet tanager he saw in his neighborhood.

Other techniques landowners can use in forested areas are: 1) Designating tracts that will be mature at each stage of the forest management plan; 2) Maintaining corridors between regenerating forest and mature tracts; 3) Placing buildings, camps, and roads near the edge of forested blocks; 4) Maintaining a well-developed understory, which provides food and cover for birds; 5) Preserving old growth stands; 6) Removing invasive plants; and 7) Leaving diverse species of trees when cutting.

The Environmental Quality Incentives Program (EQIP) through the Natural Resources Conservation Service (NRCS) has begun to offer more incentives for forest conservation practices and is expected to continue to expand its offerings in this area.

continued on page 2

Managing Your Land for Birds

continued from page 1

Grassland: Bobolink

The bobolinks that come to Vermont to breed in our hayfields and meadows in the spring have traveled as far as 6,000 miles to get here — all the way from the grasslands of Bolivia, Argentina, and Brazil. A medium-sized songbird, the bobolink lives in the northern U.S. and southern Canada from May to August. During this time the male bobolink displays breeding plumage of a white back-side and black belly with a tuft of straw-yellow on the back of his head.

US Fish & Wildlife Service

Bobolink

The bobolink population is in decline due to troubles on both sides of the migratory journey. While they're thought of as beneficial to U.S. and Canadian agriculture because of the insects they eat, bobolinks are shot as agricultural pests by the rice farmers of South America. Also, development and reforestation have seriously reduced their breeding grounds. And lastly, with earlier haying schedules, bobolink eggs and chicks are often destroyed by mowers. In the past 30 years, populations of grassland birds have fallen over 70 percent. In Vermont, the bobolink population has declined 73 percent in the last 40 years.

The bobolink begins the journey to its northern breeding grounds in early March. Traveling by night, it arrives in Vermont in May, when courtship begins. In early June, clutches of 4-6 eggs are laid in open-cup nests built into depressions formed at the base of clumps of grass. Eggs incubate for 11-13 days and chicks fledge in another 10-14 days.

Farmers often make their first cut in June, when bobolinks are in the midst of incubating eggs and raising chicks. While later mowing would help nesting birds, it often results in nutritional losses in the hay. The Environmental Quality Incentives Program (EQIP) Grassland Bird Initiative offers eligible farmers $100 per acre to mow prior to June 2 and then not mow again for 65 days. The purpose of this program is to give grassland birds a chance to reestablish successful nests while allowing for an early cut of hay. The Wildlife Habitat Incentives Program (WHIP) program also offers delayed mowing incentives.

Mowing patterns may also help. Fledged young and mature birds will have a better chance of escape if mowing starts in less bird-friendly areas, such as near structures, and then moves in rows toward the rest of the field. Likewise, mowing from the center out will allow more birds to escape. If you notice birds coming and going from an area, consider leaving that patch until the next mow. Also, some recommend raising the blade to six or more inches to reduce nest destruction.

Consistency is essential to bobolink conservation. Bobolinks will return year after year to a field where they've had success. It is better to forgo early mowing on one small unproductive field consistently than to change mowing cycles after a couple of years.

Mixed terrain: Wild Turkey

Wild turkeys, historically abundant, disappeared from Vermont as most of the state was cleared for agriculture. In1854, the last native Vermont wild turkey was seen. In 1969, wild turkeys captured in New York were released in Hubbardton and Pawlet. By 1973, there were 600 wild turkeys in Vermont. Today it's estimated that there are 35,000. Other Northeast states did the same, and the reintroduction of the wild turkey is now considered a significant wildlife restoration success story.

Bob Hauser

Wild Turkey

Wild turkeys live in Vermont year-round. They thrive in the southern part of the state and in the Champlain Valley where there's a good mix of hardwood forest and open land. The deep snows found in northernmost Vermont and at higher elevations make these areas more difficult for turkey survival. In addition to being a challenging game

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Incentive Programs

The **Wildlife Habitat Incentives Program (WHIP)** and the **Environmental Quality Incentives Program (EQIP)**, both NRCS programs, are available to landowners interested in managing their land for birds and other wildlife. EQIP applicants must be agricnltural producers while WHIP applicants can be any non-federal landowner. Both programs accept applications from landowners throughout the year. EQIP already has enough applicants for 2008 funds, so any new applications will be considered for 2009 funds. WHIP is accepting applications for 2008 funds until April 1. *Contact Toby Alexander at (802) 951-6796 x229 for more information on WHIP and EQIP.*

The **Landowner Incentive Program (LIP)** is a federally funded program to protect and restore habitat on private land to benefit rare, threatened, and endangered plants and animals as well as state-significant natural communities. In Vermont, the program offers incentives to landowners including payments for conservation easements and/or amendments and cooperative management agreements. LIP also provides technical assistance on the land. While all land in Vermont is eligible for funding, there is currently a priority placed on properties located in the Champlain Valley. *Contact Jane Lazorchak at (802) 479-4405.*

A Landowner Response to our Last Issue

I was pleased to see invasive plants featured in the recent *Stewards of the Land* newsletter. However, I am concerned that failure to acknowledge the possible/probable need for herbicide treatment in large infestations is not helpful to landowners. The purity of manual/mechanical control may be appealing — it is how I started out. But, it is unrealistic to pretend that we can protect Vermont forestland without the use of herbicide treatment.

Five invasive plant workshops have visited our property, which was a test site in 2005 for invasive plant control. Bill Schmidt and I "taught" two of them. Generally, we talk about our experience in successful control using manual methods for smaller plants and the use of a foliar spray or cut stump treatment with glyphosate for larger plants. The use of fire, at least in the many invasive sites I have visited over the past three years, is out of the question.

Attached is a photograph of one large infestation on our conserved property in Dummerston. A dense understory of Japanese barberry occupies six tenths of an acre. This patch is 100 yards long, and in many places barberry occupies all the territory between tree trunks. It is simply not possible to manually pull the hundreds of plants in this area, even if I wanted to. Among other issues, weed wrenches work well on single trunks, such as buckthorn, but are not very successful in pulling large barberry plants that may have 50 or more stems.

I hope this encourages some discussion of this very important issue. When the understory is carpeted with invasive plants, regrowth of the trees in the overstory is not possible. This problem is far more extensive than most people acknowledge, and this certainly holds true for many conservation-oriented organizations and all state agencies.

Importantly, professionals and landowners are still learning about what works and what doesn't. For example, last year at a major invasive plant conference in Springfield, Vegetation Control Services demonstrated basal bark treatment and claimed it was the most efficient method and 95 percent effective. One year later, after the failure of basal bark on the 60-acre site used for the Springfield demonstration project, Vegetation Control Services announced it had "no confidence in basal bark treatment" and recommended foliar spray.

This is as good an example as any of the confusion that still exists about what to do to control invasive plants.

— John Evans
Dummerston, Vermont

Japanese barberry on John Evans' Dummerston land

We would like to thank John for his thoughtful feedback. He is right that there is much more to controlling invasive plants than the information included in our fall issue. Our hope was that interested landowners would gain more advice on invasive control from the factsheets we linked to from our website (www.vlt.org/invasives) as well as from their forester. As for the omission of info on herbicides, we did this in part to heed the state of Vermont's law, which allows only licensed applicators to recommend the use of herbicides.

Invasive plants are of great concern to VLT. As we visit hundreds of land parcels each year we are alarmed at the extent of the problem. We also agree with John that there are many places where mere hand pulling will not be sufficient to eradicate these plants. Application of herbicides, whether through foliar spraying, a basal application, or cut stump application will likely be necessary on more and more sites as these plants continue to spread. It is important that landowners know how to identify the plants, try to control them early in the infestation process, and, if using herbicides, follow manufacturer instructions carefully or contact a licensed applicator. In addition, landowners interested in Forest Stewardship Council (FSC) certification or Vermont Family Forest (VFF) certification should check the standards carefully before applying herbicides.

Our work with owners of conserved land has shown us many valid perspectives on how to manage land and we encourage each landowner to find an approach for invasives that works for their land and their perspective. We also encourage you to keep giving us feedback. It helps us improve our landowner services program.

— Pieter van Loon
VLT Stewardship Forester

Vermont Land Trust
Conserving Land for the Future of Vermont

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Urgent:
The Vermont Housing & Conservation Coalition

Legislative Day

Wednesday, February 27th
9 AM- 3 PM
State House, Montpelier

Please join VLT as we meet with the Governor and legislators about the importance of VHCB funding. The Governor has proposed cutting VHCB's budget by one-third. This day is critical to demonstrate support for conservation. Contact Elise Annes at VLT (262-1206) for more information.

Managing Your Land for Birds

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bird, wild turkeys are an important prey species to coyotes, fox, bobcats, hawks, and owls among many others.

With a home range of about 1,000 acres, wild turkeys require a varied landscape including: forests that provide nuts for food, tall trees for roosting, and conifers for winter protection from deep snow; open fields for insects and cropland for forage; and shrubs and tall grass for food and nesting sites. Because wild turkeys travel so far, individual landowners can't singularly provide improved habitat for turkeys but can manage their land to meet some of the turkey's needs.

Wild turkeys begin nesting in early spring in shrubby areas with sufficient cover remaining from the previous year. To successfully protect against predators, the nesting area needs to be well hidden. After eggs hatch in early June, hens take their young to fields to catch insects. Because the young can't fly for three weeks, it's recommended that hayfields be mowed from the center out. Once young turkeys can fly they begin to roost in trees to avoid predators. To encourage roosting, leave large trees with horizontal branches.

In winter, wild turkeys rely on spring seeps (places where groundwater comes to the surface) as an important food source. When other foodstuffs are buried beneath deep snow, the melt around seeps allows turkeys to forage. Seeps are found in both forests and old fields. Landowners can increase the amount of food provided by seeps by thinning the forest canopy to about 70 percent, leaving mast-producing trees, such as oak, hickory, and beech, and planting fruit-producing trees and bushes, such as crabapple and raspberry. It is also helpful to remove woody stems that don't produce food items, along with invasive species such as the Russian olive and multiflora rose.

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LAND TRUST ALLIANCE

Exchange

Partners in Stewardship

by Marty Zeller

Joe McGovern/INHF

An oak savanna in the process of being restored at Iowa Natural Heritage Foundation's Snyder Farm, one of the demonstration farms they own.

JUDGING FROM ITS BROAD APPLICATION in many different contexts, the word "stewardship" has more resonance today than it ever has. At a basic level, stewardship of land and natural resources means caring for land in ways that ensure the sustainability of conservation values. The word "stewardship" embodies three concepts: responsibility, care of land, and management of land for the benefit of future generations. The key ingredients in whether land is being responsibly cared for are the landowner, and to a lesser extent, the land trust, and their relationship to each other. While for many years the land conservation community has focused on a narrower concept of "stewardship" as monitoring and enforcing actions that are essential to the durability and integrity of conservation easements, in reality, these are part of a broad range of activities that come under the stewardship banner.

Recognizing how pivotal landowner relations are to their long-term stewardship success, many land trusts have substantially enhanced their stewardship outreach and services in the past few years, using an evolving array of approaches. The common thread of all such programs is a desire to strengthen the bond between landowners and land trusts, with the ultimate goal of achieving the best level of land stewardship possible. But how do you create a good, working partnership, in which both the land trust and the landowner understand and take actions to ensure the long-term health of the land's conservation values?

The word "stewardship" has several definitions for land conservation: monitoring and enforcing conservation easements; actively managing lands to encourage and sustain ecological health and diversity; and engaging a community in activities that sustain the natural resources it values or on which it depends. Easement-holding land trusts should be involved in all of these stewardship activities in order to maintain credible easement programs, ensure that the land is well taken care of, and gain community support. For many organizations the challenge of simply doing the deal is hard enough; finding the time and resources for ongoing work with landowners and the community seems like a luxury. But, as some of the most successful land trusts in the country are discovering, these programs are crucial to a land trust's success.

In 2003, as part of its strategic planning process, the Land Trust Alliance (LTA) convened a 27-member advisory committee on Stewardship and Easement Excellence to recommend how to guide land trusts in the stewardship and defense of easement-protected land. Natural resource and stewardship professionals from land trusts and environmental organizations examined the role land trusts can play in managing land and natural resources to sustain ecological values. This article reports on the most important findings of that group, and describes ways that landowners and land trusts are working together to enhance or sustain important conservation values. The advisory panel coined the term "Partners in Stewardship" to refer to a range of activities designed to maintain or enhance land resource values through stronger working relationships between land trusts and landowners.

Partners in Stewardship Activities

Conservation easements are an important, but not the only tool employed to protect or sustain the conservation values and functions of a property. In fact, as legal instruments that only restrict or preclude harmful activities, conservation easements are limited in their ability to influence land stewardship activities positively. Rather, it is the active and adaptable management exercised by countless landowners in response to changing conditions that has helped to sustain conservation values and functions. In addition to monitoring and enforcement of conservation easements, many land trusts are aware of the benefits of assisting landowners with their stewardship responsibilities to maintain or enhance natural resource values.

Recognizing that engaging landowners is the key to both good land stewardship and reduced risk of easement violations, Partners in Stewardship activities and programs focus on improving landowner relationships. Enhanced landowner relationships can take place at every step in the process of creating a conservation easement, or totally outside of a conservation easement.

Building stronger relationships with landowners and with the community requires concerted action by the land trust. To be successful, land trust staff and volunteers need good communications skills and should have the ability to translate scientific information into useful, practical language. Land trusts are also finding that having landowners, researchers and practitioners on their boards can help them build stronger landowner and community relationships.

The following chart identifies the range of Partners in Stewardship activities identified by LTA's advisors. Activities on the chart move from a basic informational level on the left to more active partnerships as the continuum moves to the right. The graphic also illustrates the rising level of landowner interaction and land trust engagement as one moves across the spectrum.

Components of Partners in Stewardship

Each of the categories of Partners in Stewardship programs is described below, with examples of organizations that utilize them. These examples come from an informal survey of 25 land trusts and conservation organizations conducted by Conservation Partners, a land conservation and rural planning firm, and sponsored by the INNW Fund in 2002.

Teton Regional Land Trust

A "Stories from the Land" gathering, hosted by the Teton Regional Land Trust.

Landowner Outreach: Virtually all land trusts practice some form of landowner outreach, usually through the use of informational or educational activities to help landowners sustain conservation values in managing their lands. Outreach activities provide landowners with important basic information about resource management. Land trusts use these activities to initiate or advance relationships with landowners. Information is provided on topics such as weed or non-native invasive species management, forestry practices, restoration techniques, wildlife enhancements, and appropriate land management for living in a particular place (i.e., water law, fencing, nuisances, etc.). Outreach is accomplished through a variety of media including newsletters, publications, Web sites, field trips, tours and special events.

• *Example*

Each summer the Teton Regional Land Trust in Driggs, Idaho, hosts "Stories from the Land." The land trust invites the community to share in stories told by some of the area's old-timers. The intent of the program is to help cultivate a sense of place and rekindle a connection to the land. The "stories" events are held in a setting revered by local people—for example, in an old community hall, or at the historic

Spectrum of Partners in Stewardship Programs

Landowner Outreach	Landowner Relations and Recognition	Landowner Services & Technical Assistance	Active Management	Research

Basic → **Active** ***(greater potential for improved stewardship)***

- Limited land trust capacity
- Engage landowners
- Modest impact on resource conditions

- Enhanced capacity/strong partners
- Partner with landowners
- Major impact on resource conditions

Hollingshead Homestead, or on a scenic riverbank on an easement property. Michael Whitfield, executive director of the Teton Regional Land Trust, says, "We gather as a community, host a potluck, and honor our invited old-timers. Their stories usually precipitate a general sharing of stories from the audience; everyone chimes in, and the tales get tall. These events have gone a long ways toward nurturing a sense of place in our communities, and have brought interested easement donors to the Teton Regional Land Trust."

Landowner Relations and Recognition: Through landowner relations and recognition programs, landowners receive more personalized attention than can be gained from outreach materials, and they obtain support or encouragement for their land stewardship activities. In turn, the land trust benefits from a corps of landowners with a personal connection to the organization whose activities demonstrate good stewardship practices. In addition, the land trust gains a much better understanding of the landowner's perspective on land management issues. Activities might include enhanced monitoring visits, stewardship awards, informational meetings with existing or successor landowners, events focusing on the working landscape, publications for landowners, information on public enhancement and restoration programs, landowner newsletters, videos and training programs.

• *Example*

The Vermont Land Trust (VLT) has fully integrated stewardship into its easement process and views the establishment of personal relationships with landowners as the key to success. For its landowners, VLT provides practical and educational seminars and connections to state and federal resource agencies and cost-share programs. It maximizes the benefits of monitoring visits by providing resources and follow-up if requested. VLT has an electronic database on every landowner with histories of interactions. Through VLT's successor landowner program, staff meet with new owners of conserved land to introduce the land trust to them and to orient the new owners to their conservation easement as well as the resources available to them to manage their land. VLT makes sure that its landowners hear from the land trust regularly. "We put a lot of effort into landowner relations," says Preston Bristow, landowner services coordinator. "We're convinced that if landowners can relate to us on an individual basis, and know that we are fair, honest, decent people who are trustworthy, then they'll be less likely to violate their easements, and they'll see us as a resource that's there for them."

VLT produces a newsletter, "Stewards of the Land," three times a year that has a feature story about an owner of conserved land and his or her approach to good stewardship. They rotate the focus among farms, forest, recreation land and large residential tracts so that all landowners' views are heard. Past issues have covered topics such as public access, forestry management, farmers working with the Natural Resources Conservation Service (NRCS) and wildlife habitat management. "We like to make the landowner feel special, and that's exactly what happens when they see themselves highlighted in the newsletter," says Bristow.

For working farm projects, VLT works with NRCS to produce farm conservation plans that often lead to financial support for better pollution and erosion controls. After the easement transaction, VLT works with NRCS to solve problems observed in the field, such as stream and wetland protection that not only promotes better stewardship but also avoids easement violations. "The simple fact is that improving your landowner relations does take a lot of work, but it's not rocket science; it just takes attention to details," says Bristow.

Landowner Services and Technical Assistance: Increasingly, land trust programs, services and personnel are being dedicated to helping landowners obtain resources, regulatory approval and services that enable them to improve or initiate land stewardship activities. Through these services, landowners receive direct assistance or referral to other capable partners in planning, developing and carrying out stewardship and restoration activities. In the process, land trusts build trust and credibility with landowners and help ensure that management activities are tailored to the conservation values on the site. For example, these activities might include assisting with applications for funding or establishing connections to federal and state agencies such as NRCS; preparing resource management plans; providing contacts to contractors; performing, designing or overseeing management or restoration activities; and providing connections to other landowners for management and leasing of lands.

• *Example*

"The Potomac Conservancy is working to protect lands vital to the health, beauty, and enjoyment of the Potomac River and its tributaries. NRCS field staff provide a critical link to a range of conservation services, including restoration, farm and forest management, and resources for best management practices," says Meredith Lathbury, director of land protection at the Potomac Conservancy in Virginia. "Simply protecting the land with conservation easements may not be

STEWARDS OF THE LAND

Vermont Land Trust sends a newsletter, "Stewards of the Land," to its landowners three times a year to share information, highlight particular landowners and keep the land trust in all of their landowners' minds.

Potomac Conservancy

Bill Whittle of the Virginia Cooperative Extension presents information about the economic benefits of participating in the Conservation Reserve Enhancement Program at a landowner workshop held in partnership between Potomac Conservancy and NRCS.

enough to improve water quality and wildlife habitat," Lathbury explains.

The partnership between the Potomac Conservancy and NRCS helps provide landowners with access to cost-share programs that aid them with resource and conservation improvements. The Conservation Reserve Enhancement Program, for example, offers expertise and financial assistance to farmers and other qualifying property owners interested in restoring their stream- and river-side lands. In turn, the Potomac Conservancy provides training to NRCS staff about conservation easements, including the tax benefits related to easement donations, and opportunities for easement purchase programs. The partnership with NRCS helps provide a framework for targeting land protection efforts along particular tributaries and helps leverage land trust efforts. For many rural landowners, the local NRCS staff are a trusted source for advice and information that can provide an entree for land trusts to discuss permanent protection options.

Active Management: This category includes planning and land management activities undertaken and funded jointly by the land trust and landowner in order to meet common stewardship or land restoration goals. In some cases this includes projects undertaken on land trust-owned or -controlled lands to demonstrate best management practices or experiment with new land management or restoration approaches. Responsibility and risk for implementation of resource stewardship activities are shared between landowner and land trust, and the land trust is an active, contributing partner in the design and implementation of stewardship activities. With active management, land trusts have a greater involvement in stewardship activities and outcomes that are specifically designed to enhance conservation values and functions. Some land trusts find that owning land gives them greater credibility when interacting with landowners, while also giving them firsthand experience in dealing with the challenges of owning and managing land.

Projects for fencing riparian areas for grazing management, reseeding or reforesting lands with native species, and running trials of various restoration techniques are just a few possible activities under active management.

• *Example*

The Iowa Natural Heritage Foundation (INHF) owns seven farms that serve to demonstrate good land stewardship and the results of successful partnering with the Natural Resources Conservation Service to enhance conservation values. As a result of these demonstrations and the partnership with NRCS, INHF has had greater ability to attract easement donations and improve the conservation climate in their region. They find that the power of stewardship services is that they offer a new way to establish landowner relationships that can lead to permanent protection of land. INHF sees the key to successful stewardship in partnerships with a variety of agencies and nonprofits that complement the services that it provides. While owning and managing land is challenging, INHF maintains that it is a manageable burden. Moreover, several land trusts indicate that income from the operation of the properties can be substantial. In INHF's case, the organization receives income from leasing farms to capable operators and from harvesting native plant seeds from prairies that it owns.

Mark Ackelson, president of INHF, says, "Stewardship, demonstrations of conservation practices, natural resource restorations, land ownership and management and partners are all important elements of a comprehensive land protection program. Stewardship is a constant learning—and teaching—opportunity. Stewardship is a powerful tool to demonstrate commitment and understanding of natural resources and land management needs. It brings us closer to landowners and communities, and attracts broader support."

Research: A few land trusts are involved in sponsoring or conducting research in land management techniques or innovations with the objective of evaluating the effectiveness of new approaches for practical application on privately managed properties. These land trusts find that research activities, often in partnership with educational institutions, increase the influence and credibility of the land trust in dealing with landowners on stewardship activities, and help to improve the overall quality of resource management in the area. Typically these programs are related to working forestry or agricultural landscapes where land stewardship is evolving and a combination of knowledge gained by longtime land managers and science come together to experiment with emerging approaches and applications. Maintaining continuous forest inventory plots on various properties, conducting long-term water quality surveys, experimenting with fire applications, and applying various rotational grazing practices to improve rangeland health fall under this category.

• *Example*

The Tall Timbers Research Station that runs the Red Hills Conservation Program was established "…to foster exemplary

land stewardship through research, conservation and education." Focusing on the distinctive 300,000-acre Red Hills landscape of South Georgia and North Florida, the organization, in conjunction with partners, performs basic research on ecosystem functions to guide new approaches for fire, forest and wildlife management. In addition, Tall Timbers holds an international conference each year on pineland forest management that highlights its own research, and another international conference every two years on fire ecology and forest management. This science-driven approach to land management places them at the center of evolving land management approaches, adds credibility to their mission and productively engages scientists in the practical application of research. Kevin McGorty, director of the Red Hills Conservation Program, explains how important the link between land protection programs and research is: "As a regional land trust specializing in natural habitat conservation easements we are dependent on scientific-based adaptative management practices that conserve both working forest landscapes and environmentally significant lands."

Conclusion

Working cooperatively with their landowners to sustain and improve the health of land, more and more land trusts are finding growth in the breadth and impact of their conservation work. They find that enhanced landowner relations build a more effective organization, greater credibility in the community, opportunities for partnering and increased financial support. Land trusts that engage in Partners in Stewardship activities acknowledge that it takes substantial time and resources, but stress that building personal relationships is the best way to advance land management practices and ultimately ensure that conservation values in easements are maintained and enhanced. Increasingly, stewardship activities are becoming central to the missions of many land trusts that believe that the ultimate goal of land conservation is sustaining the health of the land through enhanced relations with landowners.

Marty Zeller is president of Conservation Partners, Inc., a land conservation and rural planning firm specializing in community-based strategies that protect lands with high conservation or natural resource values. The Colorado-based organization works with landowners and land trusts throughout the Rocky Mountain West to develop conservation plans and strategies tailored to financial, family, tax and conservation objectives. Zeller is a frequent presenter at LTA Rallies.

New Publications Available from LTA! For more information go to www.LTA.org

The Nonprofit Membership Toolkit (2003)
by Ellis M. M. Robinson
Membership is the lifeblood of any successful land trust. This valuable resource for managers and executive directors of both new and well-established organizations presents step-by-step information on how to create, manage and sustain a dynamic membership program that will help your organization thrive. 291 pp., plus downloadable sample documents from the Web. Organizational members $35; Others $41.

Conservation Options: A Landowner's Guide
Revised and updated with the 2003 tax information! (2003)
by the Land Trust Alliance
No other publication offers so much information about how to conserve open spaces! Updated in 2003 to reflect the most current tax law, with a slot for a business card, a pocket for your land trust brochure, and a place on the back to affix your land trust logo. This is an effective 'leave behind' piece for prospective conservation easement donors that explains the tools and tax benefits of private land conservation. 57 pp. Quantities of 1-49, Organizational Members $7; Others $8.50.

Conservancy: The Land Trust Movement in America (2003)
by Richard Brewer
A must-read for people interested in land conservation! Written for land trust members, volunteers and supporters, this is the first comprehensive treatment of land trusts that combines a historical overview of the movement with more specific information on the different kinds of land trusts that exist and the problems they face. 348 pp. Organizational Members $20; Others $23.50.

Additional Resources

Books

A Complaint Is a Gift: Using Customer Feedback as a Strategic Tool, by Janelle Barlow and Claus Moller (San Francisco: Berrett-Koehler Publishers, 1996).

The Conservation Easement Handbook, by Elizabeth Byers and Karin Marchetti Ponte (Washington, DC: The Trust for Public Land and the Land Trust Alliance, 2005).

The Power of a Positive No: How to Say No and Still Get to Yes, by William Ury (New York: Bantam Dell, 2007).

Research Reports

Conservation Capacity and Enforcement Capability: A Research Report, by Sylvia Bates (Washington, DC: Land Trust Alliance, 2007). Available on The Learning Center, the Land Trust Alliance online training center (http://learningcenter.lta.org).

Cost-Effective Strategies for Conserving Private Land: An Economic Analysis for Land Trusts and Policy Makers, by Dominic P. Parker (Washington, DC: Property and Environment Research Center, October 2002). Available at www.perc.org.

The Nature Conservancy National Easement Study: Issues, Insights and Tips for Practitioners, by Lynn Lozier, Christine Hall, et al. (2005). Available on The Learning Center's library (search Rally 2005 workshop D19 at http://learningcenter.lta.org).

Check Your Progress

Before continuing on to the next chapter, check that you can:

- ☐ Explain to others in your land trust why building strong relationships with owners of easement protected properties is the foundation of conservation easement stewardship
- ☐ Explain the techniques and tools used by land trusts to build strong relationships with landowners
- ☐ Determine if there are properties where the land trust should also develop a relationship with the land manager, lessee or other party involved with the conservation easement protected property
- ☐ Describe how annual monitoring of the conservation easement (described in chapter 4) can be used as one of the ways to build strong landowner relationships
- ☐ Know how to identify and manage a relationship with a landowner who is also an insider to the organization
- ☐ Designate a person in your land trust to respond promptly and knowledgeably to landowner requests for information about his or her conservation easement
- ☐ Evaluate whether your land trust should create more formal means of landowner outreach, including newsletters, events, workshops or landowner recognition activities
- ☐ Evaluate whether assisting the landowner in securing good land management advice (through referrals, workshops and other means) will help advance the land trust's conservation and public outreach goals
- ☐ Create a written description of your land trust's activities or philosophy with respect to landowner outreach and landowner relationships
- ☐ Have strategies to work with landowners in difficult situations in ways that do the least harm to the relationship with the landowner
- ☐ Choose a way or ways for the land trust to know when an easement property has changed hands
- ☐ Know when to meet with a new owner of easement-protected land
- ☐ Develop tools (such as fact sheets) for meeting with new owners of easement protected property to explain the terms of the conservation easement and the land trust's monitoring protocols, and to build an ongoing relationship with the new owner

Notes

Chapter Three • Using Baseline Documentation Reports

Practice 11B: Baseline Documentation Report

For every easement, the land trust has a baseline documentation report (that includes a baseline map) prepared prior to closing and signed by the landowner at closing. The report documents the important conservation values protected by the easement and the relevant conditions of the property as necessary to monitor and enforce the easement. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulations §1.170A-14(g)(5)(i)] are signed by the landowner at closing.

Baseline documentation reports are critical for establishing the condition of the property at the time the easement is transferred, and are the basis of future monitoring and enforcement. In addition, for certain easements for which a federal tax deduction is granted, some baseline documentation at the time of closing is required. While it is sometimes difficult for land trusts to prioritize or gather all the data required, baseline reports should be completed prior to closing, and signed by the landowner and the land trust at closing. In the event of poor seasonal conditions for documenting the conservation values of the property, an interim baseline report with a finalization schedule can be signed by both parties at closing. The interim report can include all of the data available by the date of closing and should specify when the final report will be completed. The baseline documentation and any interim data should meet the requirements of Treas. Reg. §1.170A-14(g)(5)(i). The use of interim reports with the land trust and landowner's signature and date certain for finalization has proven effective in regions of the country where ground conditions prevent the completion of the full baseline documentation report at closing. In the past, land trusts may have accepted easements without a baseline documentation report. In these cases, the land trust should have a plan for completing documentation for all easements.

— From the *Background to the 2004 revisions of* Land Trust Standards and Practices

This chapter does not present the basics of preparing baseline documentation reports. For detailed information about the contents and preparation of baselines, see the Land Trust Alliance's course "Conservation Easement Drafting and Documentation."

Learning Objectives

As a result of studying this chapter, you should be able to:

- Explain the value and uses of a baseline documentation report with respect to monitoring conservation easements
- Explain who uses the baseline documentation report and when
- Use a baseline documentation report map to locate a property on the ground
- Use a photo point map (and/or GPS coordinates) in the baseline documentation report to locate photo points on the ground
- Explain how land trusts address easement amendments and supplement information in baseline documentation reports

Summary

Baseline documentation reports are a critical component of an easement stewardship program. A report is required by the IRS for tax-deductible conservation easement donations and is an essential tool for the land trust, regardless of whether an income tax deduction was taken by the grantor. A baseline documentation report contains important information that is generally not included in the conservation easement itself, such as photographs and maps, which substantiate the conservation values being protected and illustrates how the easement meets the public benefit. The report helps the land trust understand the changes that occur on the protected property over time and provides a foundation for monitoring and enforcement activities.

Baseline documentation reports are used in a variety of ways. They are an educational resource for the land trust, providing background information to new staff, volunteers or consultants who are charged with monitoring the properties or handling stewardship issues. During monitoring and enforcement, they provide the property's initial condition against which change can be evaluated. They may serve as a communication tool for the land trust when discussing the conservation relevance of protected properties and how they relate to the landscape and other land protection efforts in the area. Furthermore, the baseline documentation report will be needed if and when an easement is violated, particularly if legal action is contemplated.

Given the importance of baseline documentation reports, easement holders should set standards for their contents, ensure their comple-

tion in a timely fashion, understand how to use them, and know how and when to supplement the baseline materials to address their stewardship needs.

Evaluate Your Practices

Conduct a quick evaluation of your organization's understanding of how to use baseline documentation reports, giving your organization one point for every "yes" answer. Scores are shown at the end, along with guidance about these questions.

Does your organization:

1. Understand the reasons why a baseline documentation report should be prepared for every conservation easement the organization accepts?
2. Understand how baseline documentation reports are used with respect to easement monitoring?
3. Understand how to use the baseline documentation report to locate the property and its specific features?
4. Use a photo point map (and/or GPS coordinates) in the baseline documentation report to locate photo points on the ground?
5. Have a policy or procedure on how to address easement amendments and supplement information in the baseline documentation report?

If your organization scores:

5: Great! Your organization clearly understands the benefits of having thorough baseline documentation reports and is well on its way to excellence. This course may help you refine how you use baseline materials. Consider sending the Land Trust Alliance samples of your materials to share with others (e-mail learn@lta.org).

3–4: Good, but there is room for improvement. A complete understanding of baseline documentation reports and the benefits they provide will enhance your organization's already good practices.

0–2: It is time to gain a thorough understanding of baseline documentation reports, why they are necessary, how they

are prepared, what they should contain and how they are used to assure your organization is preparing itself for the perpetual stewardship of its easements.

Guidance

1. The baseline report documents the existing condition of the property at the time of the easement conveyance and therefore serves as a baseline for the land trust to measure all future changes on the property. The baseline report forms the basis for future monitoring and enforcement of the easement.
2. Easement monitoring is a critical part of easement stewardship. The baseline report forms the basis for monitoring and can help the monitor understand what he or she needs to look for on the property. The report will also help the monitor familiarize him- or herself with the location and characteristics of the property, the easement's terms and how the property has changed over time. The content of the baseline report also helps inform the monitoring report.
3. Baseline documentation reports should include directions to the property and/or location maps that provide enough detail that anyone can find the easement property. Baseline reports should also contain photographs and reference maps, including a map that depicts the easement's boundaries and significant features. Maps may include an easement map, baseline photography map, survey or plat map. The materials may also contain Global Positioning System (GPS) coordinates or compass readings to help identify specific locations on the property.
4. To ensure the baseline report contains accurate information, land trusts should have a baseline photo point map that is keyed to where photographs were taken on the property. Land trusts may use a GPS unit, compass readings, reference landmarks or other distinguishing features to assist in locating photo points.
5. Land trust personnel cannot alter the original baseline report, but they can and should correct for mistakes and provide supplemental materials and updates. Over time, land trusts collect additional information (such as photographs) to document the changes occurring on the land, add material relevant to easement amendments and so forth. Some land trusts incorporate these changes in a supplemental baseline report or update; others note them in their monitoring reports.

Personnel should also follow land trust protocols for such documentation. Being consistent, setting standards and maintaining records are paramount given the importance of baseline documentation to easement enforcement.

Overview of Baseline Documentation

Baseline documentation reports may be called by different names — baselines, BDRs, baseline inventories, baseline data, baseline study, baseline packet, or easement documentation reports. Whatever the name, their purpose is the same: to record the condition of the property at the time a conservation easement is granted to form the basis for future monitoring and enforcement, if necessary, of the easement over time. Baseline documentation establishes the initial conditions against which performance under the easement is measured and against which changes (both man-made and natural) to the land are evaluated. A well-prepared baseline report substantiates assumptions set forth in the easement document and provides support for the easement's qualification under the Internal Revenue Code conservation purposes test and evidence of the public benefit the easement provides.

Baseline documentation report: A record of the conservation values identified in the easement and the relevant conditions of the property used to monitor and enforce the easement. It contains maps, photographs and text and is signed by the landowner and land trust at or before closing.

A baseline documentation report is not necessarily the same as the document biologists refer to as a "baseline inventory." A biological baseline inventory is a thorough scientific evaluation and listing of the flora, fauna and sometimes other natural and geographic features of a piece of land. If a conservation easement is intended to protect biological resources on a property, aspects of a biological baseline inventory may be incorporated into a baseline documentation report, but not all easements will require this level of scientific assessment of a property's biological resources.

Biological baseline inventory: A thorough scientific evaluation and listing of the flora, fauna and sometimes other natural and geographic features of a piece of land.

Well-prepared baselines can serve a valuable role in ensuring the perpetuity of the conservation easement it amplifies. A baseline should always ensure that its contents are specific to the property in question and the terms of the easement encumbering the land. The contents of the baseline should be limited to the subject and terms of the easement. The contents should be specific and measurable. In other words, simple conclusions such as the property provides "good habitat" or protects "scenic views" is not sufficient; additional data should be included so that these conclusions are fully substantiated. For example, you may write: "The property contains habitat for elk and bear with two miles of scenic vistas visible from Route 2" and then provide photos, maps,

The contents of the baseline should be limited to the subject and terms of the easement.

A baseline is a living document to be supplemented over time to reflect relevant changes that occur on the land.

wildlife habitat studies and so forth to support your statement. Maps and photo reference points should be easily related to conditions on the ground, and photo points should be replicable over time. The baseline should be understandable and clear, so that a new landowner will easily comprehend why his or her property was conserved.

Anyone preparing or using a baseline should understand that it is a living document, to be updated or supplemented over time to reflect relevant changes that occur on the land. Therefore, baselines must be created, maintained and stored according to established policies and procedures. For more information on storing baselines, see the Land Trust Alliance course "Managing Conservation Easements in Perpetuity."

Baseline Reports: A Communication Tool

Do you think easement landowners would be enthusiastic about reviewing "purposes" statements and "whereas" clauses in their conservation easements? Probably not. If a land trust wants to review the conservation importance of an easement property with a landowner, baseline documentation can be an excellent starting point. This approach is helpful whether the landowner is the original easement grantor, an heir to the original landowner or a successor landowner who is unfamiliar with the original easement conveyance.

Landowners know why their property is special to them, and they may assume that is why the land trust is involved as well. However, the reasons that a land trust holds a conservation easement on a given property may be different from the landowner's reasons for owning and protecting the land. The baseline documentation report can be used as a communication tool to discuss the conservation relevance of the property with the landowner. For example, an easement steward may review the photographs, maps and other baseline documentation with the landowner to break the ice when starting a monitoring visit. Or the land trust may review the baseline materials with the landowner when resolving an easement issue, using the baseline to illustrate how the problem may affect protected conservation values.

In general, the baseline materials can help inform or remind the landowner of the conservation relevance of the property beyond the protection of its scenic beauty. Baseline reports that show proximity to other

protected lands or other important conservation features may also help communicate the land trust's conservation goals to the landowner.

Baselines are particularly valuable as a tool for communicating with successor landowners.

Baselines are particularly valuable as a tool for communicating with successor landowners. In the introductory meeting with a new owner, the land trust may review the baseline report to explain the property's conservation importance. Maps and other material from the baseline report can help the landowner understand the location and physical characteristics of special protected features on the property. Such a meeting can be a great opportunity to build the new relationship on a positive note. Once the landowner understands why the property was protected, then the land trust can review the terms of the easement and show how specific baseline report information relates to the easement's particular terms. The land trust can also explain how this information could be used when the landowner contemplates future land management activities.

Baseline documentation reports include a statement signed by the land trust and original landowner stating that the baseline report represents the existing conditions of the property at the time the easement was granted. These signatures may help convey to successor landowners the significance of the conservation easement and the seriousness of the land trust's stewardship obligation. When reviewing the baseline materials, the land trust can also discuss how it meets *Land Trust Standards and Practices,* how it meets IRS requirements for donated easements, and any additional protocols the land trust has adopted to ensure that the baseline documentation meets its needs. The land trust might consider giving landowners a copy of its baseline documentation policy or a one-page summary to reinforce this message.

A land trust should provide successor landowners with a copy of the baseline documentation report, along with the conservation easement.

A land trust should provide successor landowners with a copy of the baseline documentation report, along with the conservation easement. The baseline report provides information on the property that is generally not contained in the easement, and the baseline may also substantiate statements in the easement. It may be appropriate to provide copies of the baseline report to any land manager associated with the property — caretakers, farmers or foresters. Tall Timbers Land Conservancy in Florida, for example, adapts topographical maps from its baseline reports to show special use areas, inserts a brief description of the restrictions and gives these materials to land managers of the organization's easement properties (see page 132).

It is best to provide the baseline documentation report in a binder or something similar so all the materials are kept together for easy access. Land trusts can provide the information electronically to the landowner as well for general reference.

A land trust should define (with legal advice) its protocol for supplying copies of the baseline report. Is the copy to be provided an exact duplication of the original, complete with, for example, color photographs and maps, or will it contain photocopies of the original materials? Will the copy be in color or black and white? If actual photographic film was used for the original baseline documentation photographs, will the land trust obtain copies of the negatives, or will it photocopy the photographs instead? The land trust should be careful to accurately represent what it is giving to the landowner. If the baseline report is not an exact replica, then the land trust may want to provide a written statement along with the copy explaining how the copy differs from the original kept by the land trust. If the land trust provides a digital copy, it should do so in a way that minimizes the potential for tampering, and the land trust should clarify which copy is the official, original baseline documentation report. For more information, see Practices 2D, Records Policy, and 9G, Recordkeeping, and Volume II of the Land Trust Alliance course "Nonprofit Law and Recordkeeping for Land Trusts."

Baseline Reports: An Information Resource

The baseline documentation report is also a great way to share information about an easement property within the land trust. For a new staff person or volunteer charged with monitoring a property, the baseline report is a "one-stop shop" — it contains all the information about property characteristics, location and conservation importance that the monitor needs to get started. As easement stewardship representatives enter and leave the organization, the baseline report files provide a consistently organized set of records to transfer institutional knowledge, so that newcomers can easily become acquainted with easement properties.

Land trusts should keep all baseline materials together as a complete report, so that maps, photographs, narratives and other materials are all available for reference. The baseline report may be in the form of a binder or packet in a designated filing cabinet. Some land trusts opt to digitize their baseline information. In either case, keeping the

materials together and accessible will save time when easement stewards need to refer to them for monitoring purposes. Original baseline documentation reports must be stored in a separate, secure location from the working file copies.

Original baseline documentation reports must be stored in a separate, secure location from the working file copies.

Handling Additional Property Information

During the easement acquisition process, a land trust usually acquires a wide array of information about the property that is not directly related to the purposes or terms of the conservation easement. Perhaps the landowner has provided some supplementary information about the property that the land trust wishes to keep on hand. It is best to keep information that is useful but not required for baseline report purposes in a separate file, in accordance with the land trust's record-keeping policy. The baseline report meets specific legal requirements and should not be treated as a catch-all information file. Information that is not relevant to the easement terms should not be included in a baseline report. For example, suppose a land trust is protecting a working ranch primarily for agricultural purposes. The landowner provides the land trust with an archaeological inventory of the property that identifies some sites of possible cultural significance. The land trust keeps the archaeological report, maybe to use in the future for a story or educational program about the property's history. However, the land trust should not include the archaeological inventory in the baseline report, because it is not directly applicable to the conservation easement terms. Instead, keep the inventory in an ancillary stewardship file that contains additional information about the property.

The baseline report meets specific legal requirements and should not be treated as a catch-all information file. Information that is not relevant to the easement terms should not be included in a baseline report.

Baseline Reports: A Monitoring and Training Tool

Conducting easement monitoring on a regular basis is an essential component of easement stewardship. Through annual monitoring, a land trust can detect changes over time, identify issues that may lead to a violation, address violations before the damage is irrevocable and provide assistance with land management issues. To monitor successfully, the easement steward must first be knowledgeable about the property's characteristics and conservation attributes; the baseline report is a key tool. See chapter 4 for detailed discussion of easement monitoring.

Prior to visiting an easement property, the monitor can review the baseline report to become familiar with the physical layout and

If baseline reports are incomplete or nonexistent, a land trust will need to create complete baseline reports for all its easements as soon as possible.

characteristics of the property and plan the site visit. The baseline report may also be a used as a guide for creating an appropriate monitoring form for a property. Monitoring is most efficient if the monitor knows exactly how to get to the property, where to find the boundaries and what particular areas of the property need inspection. Spending time with the baseline report prior to the site visit also may obviate the need for additional review of materials following the site visit. Conversely, if the baseline report is incomplete or nonexistent, the monitoring time will increase and monitoring will become even more challenging as the easement property changes over time. In this case, a land trust will need to allocate the resources to address the problem and create complete baseline reports for all its easements as soon as possible.

Finding the Property

Land trust personnel that create maps and materials for the baseline should always keep in mind that future easement monitors will look to the baseline report to find important property features and orient themselves. A good baseline map will include features that assist monitors in locating where they are on the property. In addition to the boundaries of the easement property, a baseline map should include:

- Roads and access ways (provide road names, if applicable)
- Structures (such as residential or agricultural buildings) and improvements (such as fences, utility lines)
- Special use areas and/or protection zones
- Any building envelopes, building development areas or building exclusion zones
- Waterbodies (such as rivers and streams, wetlands, mangroves and bogs, lakes and ponds, ocean shoreline)
- Topography
- Tree lines
- Prominent features near boundary lines (whether on or off the easement property)
- Other notable features, such as survey monuments, caves, rocky outcroppings, cisterns, etc.

A baseline map should also show or reference the important conservation attributes being protected. For example, if the easement protects a specific area for particular wildlife habitat, then the map should depict the area, or the baseline report should contain a separate detailed map

associated with the natural resource inventory, sufficiently detailed so that the monitor can find the habitat.

Finding Photo Points

Baseline photographs document the condition of the property, and the visual information they contain will be useful during monitoring and enforcement. For example, baseline photographs may help a monitor locate property boundaries or resource features, or they may be used as a baseline to evaluate changed property conditions. However, a baseline photograph taken without reference to its location on the property may be useless when it comes to monitoring or defending the easement in court. Although the location and subject of the photograph may have seemed obvious at the time it was taken, properties and landscapes change over time, whether as a result of natural causes or human activities. If you had to find the location of a specific baseline photograph could you do it? How challenging would it be, and how would you do it?

All photographs included in a baseline report should have accompanying text that describes what the photograph is depicting and a baseline map showing the photo point and the direction in which the photograph was taken. Land trusts use several methods to document the location of photo points, and this documentation should be contained in the baseline report so that future easement stewards may find them.

One popular method to document the location of photo points is to utilize a Global Positioning System (GPS) unit to define coordinates of the location from which the photographs were taken. If using a GPS unit, it is best to find one that is reliable, accurate to the degree deemed appropriate for the baseline report and that does not require skills or resources that the land trust cannot maintain over the long term. The GPS coordinates of the photo points can be shown on the conservation easement map or a separate map in the baseline report. Record the coordinates in the baseline report, perhaps in a chart or in the text accompanying the photographs. A monitor should be able to reference a GPS coordinate off the photo point map and locate that exact spot on the property without referring to other materials. For an example of a map with photo points marked, see page 203.

Another method to record photo points is simply to map them, referencing nearby permanent landmarks or other distinguishing features

If using a GPS unit, find one that is reliable, accurate to the degree deemed appropriate for the baseline, and that does not require skills or resources that the land trust cannot maintain over the long term.

For aerial monitoring, provide a few GPS coordinates for each property to the pilot to aid in locating the property from the air. If possible, tie the GPS points into a GIS system on a laptop to auto-track the flight course and auto-locate the photographs.

For quality-control purposes, whether using GPS or another method to record baseline photo locations, have another person verify the accuracy of the locations to catch errors.

on the property to assist in identifying where the photograph was taken. If the photo point is not located next to a landmark, the land trust can document the baseline photograph by measuring the distance and taking a compass reading from the closest landmark on the property. The compass bearings should also be referenced in the baseline report (remember to correct for variations between magnetic north and true north if using compass directions on a topographic map).

Baseline Reports: An Enforcement Tool

Land trusts know that it is not a question of *whether* conservation easements will be violated, but *when*. Although land trusts design stewardship programs to avert problems, violations and challenges to the easement inevitably occur. Land trusts must be well positioned to take enforcement measures when necessary. The baseline report is an important tool, because it establishes the condition of the property at the time the easement was granted and provides a point of comparison from which to evaluate change.

When a land trust is faced with an easement compliance issue, it may use the baseline report to help show the landowner that the problem is a potential violation, and that the landowner must rectify the situation. For example, suppose a land trust discovers signs of an active dump on a property while conducting annual monitoring. The easement clearly states that no new dumping of any kind is permitted. The easement baseline report contains photographs and maps that show the site was an old, inactive farm dump at the time of the easement conveyance. After the land trust reviews the baseline report with the landowner, the landowner may be persuaded that the new dumping is not in compliance with the easement terms and the new waste must be removed.

However, some cases will involve litigation. To help ensure the baseline report can be admissible as evidence in court, a land trust should take appropriate measures to ensure it is creating, maintaining and storing documents in a way that minimizes the potential for tampering. A land trust should have a record policy and baseline documentation report policy or procedure to address this issue. Baseline documentation should be signed and dated and state the affiliation of the signatories (e.g., the title of the land trust personnel or baseline preparation consultant, and the landowner). Having all parties sign off on the contents of the baseline report will help establish the

authenticity and validity of the documents. For more information on this subject, see Practice 9G, Recordkeeping, and the Land Trust Alliance courses "Nonprofit Law and Recordkeeping for Land Trusts" (Volume II), "Conservation Easement Drafting and Documentation" and "Managing Conservation Easements in Perpetuity."

Baseline Documentation Supplements

Because a baseline report's primary purpose is to document the condition of the property as it existed on the day the conservation easement was granted, some land conservation professionals believe the baseline should never change. Although it is absolutely true that the original baseline should always be kept in its original form, without alteration, all baselines should be updated or supplemented over time. Because a land trust uses the baseline to evaluate whether conservation easement terms have been followed, whether reserved rights have been exercised and whether affirmative obligations have been met, the baseline should always reflect the current state of the property. Therefore, land trusts must adopt policies and procedures about how to supplement their baseline reports to reflect changes in the land.

While the original baseline report should always be kept in its original form, baseline materials should be updated to reflect changes in the land.

Changes to the land that should be reflected in baseline updates include natural changes, such as those caused by wildfires, flood or earth movement, as well as human-made changes, including the exercise of rights reserved in the conservation easement by the landowner (such as the right to build a new home or a new road, or subdivide the property), or the fact that certain restoration or enhancement actions were conducted on the property. In other words, a complete baseline documentation report will thoroughly document the condition of the property as of the date of the easement and then reflect all applicable changes to the land since that time. In addition, some land trusts choose to update their baselines whenever the land changes ownership or is subdivided to reflect the new ownership and contact information for the new owner(s). Others choose to record these ownership changes in monitoring reports and/or their stewardship database. Any updates to the baseline report should be described in a narrative that relates to any relevant easement provisions and should be shown on maps and in photographs or a video of the property.

Some land trusts request new owners of conserved property to sign the updated baseline report as an indication that they received a copy and an explanation of its terms. Such records can be important if the

land trust and landowner end up in a dispute about the easement's provisions, because the signature demonstrates that the land trust gave the landowner full information about the easement, its terms and the status of any reserved rights.

The form of the baseline documentation report update is not as important as the fact that the land trust creates one. Some land trusts feel strongly that the baseline itself should not be physically updated, so they view their annual monitoring reports (which they maintain in their stewardship project file) as the official update. At a minimum, the land trust must ensure that the monitoring reports, or any other documents reflecting the current condition of the property, address all of the changes to the land discussed above. The land trust must also store such reports or other documents in accordance with established baseline storage policies and procedures. In other words, these monitoring reports or other documents must somehow be tied to the baseline and maintained as if they were part of an original report. They should not be stored in a separate, unsecured location. Other land trusts prepare a more formal supplement to the baseline documentation to reflect changes to the land over time, attach the supplement to the original baseline and store all supplements in accordance with their baseline storage policies.

Financial and Personnel Implications of Baseline Documentation

When establishing policies and procedures related to baseline reports, a land trust should consider its organizational capacity. Preparing baseline reports takes time and expertise. Because baseline reports reflect easement terms, more complex easements usually require more complex documentation. Keeping baseline reports up to date takes time and resources. If a land trust cannot create and maintain adequate baseline reports for all of its easements, then its easement program is in great jeopardy. A land trust in this predicament should seriously consider declining new easements until these issues are addressed.

A land trust without adequate baselines for all of is easements should seriously consider declining new easements until these issues are addressed.

Consider the following questions as you evaluate your land trust's organizational capacity with respect to baseline documentation:

- Are all existing easements accompanied by a baseline documentation report?
- Are all new easements accompanied by a baseline documentation report at the time of acquisition?

- How does your land trust train new staff, volunteers or consultants to interpret and periodically supplement the baseline, including use of equipment and following prescribed procedures?
- How will your land trust ensure consistency over time with respect to the use and supplementation of baseline reports?
- Has your land trust secured funding to cover current and future expenses related to baseline documentation, such as the cost of maps, photography, travel expenses, staff or consultant time, special reports or inventories, general office materials and expenses, storage and any costs associated with digital baseline reports?

Addressing Baseline Backlogs

Perhaps your land trust did not have the necessary resources to create baseline documentation for all its easements at the time the easements were granted. Or perhaps your land trust has found that some or all of its current baselines are insufficient to support the organization's stewardship obligations. If so, you are not alone!

Land trusts in this situation should devise a plan to address the missing or incomplete baseline reports — the "baseline backlog." For older easements, it may be difficult or impossible to document the condition of the property at the time of the conveyance, and regardless, after-the-fact documentation may not be sufficient for legal purposes. Instead, land trusts should focus on documenting the conditions of the easement property as they *currently* exist. To ensure quality and consistency when addressing a baseline backlog, a land trust should apply the same standards it uses for new easement baseline reports. Remember, a late baseline report is better than no baseline report. For more information on completing baseline documentation after the fact, see the Land Trust Alliance course "Conservation Easement Drafting and Documentation."

Below are some tips to help land trusts address baseline backlogs:

- Hire a consultant or intern(s) or a combination to tackle the backlog. It is imperative for a land trust representative to oversee the process and ensure that established baseline documentation protocols are upheld. Research potential funding sources to cover these expenses. Talk to your major donors, who may

understand the importance of this work and how difficult it may be to secure adequate funding elsewhere.

- Volunteers can prepare baseline documentation, but a land trust should take care to choose volunteers with the right skills. As one land trust staff person explains, "Some volunteers love to run around the property taking pictures, but they are not so good at the gritty detail work required to complete the job." Volunteers need to be willing to follow the standards and protocol for preparing file contents, as well as conducting the field work.
- Depending on the backlog, it may not be feasible to address all baseline reports in one year. Develop a plan and prioritize which ones should be tackled first. Which are the problem easements? Which have challenging landowners? Does it make sense to do two or three at the same time, given the location of the properties?
- Prepare baseline reports at the same time as the annual monitoring of easement properties, review of an amendment request, documentation of significant changes or of activation of reserved rights, or preparation of an estoppel certificate. The same principle applies to easements that need supplemental baseline materials. This approach can save time and money.
- Prepare baseline documentation when there is a change in property ownership. Use the opportunity to explain to the new owner the importance of long-term easement stewardship. Invite the new owner to be part of the process, including reviewing and signing off on the baseline photographs and report.
- Familiarize yourself with what resources may be available to help with costs and provide maps and other materials, such as local soil and water conservation districts, the USDA Farm Service Agency and the USDA Natural Resources Conservation Service.
- If other land trusts in your region are also addressing baseline backlogs, perhaps there is an opportunity to share expenses or resources, or jointly hire a consultant, staff member or intern.

Example

Addressing Baseline Backlogs: Piscataquog Watershed Association

Margaret Watkins, executive director of the Piscataquog Watershed Association (PWA) in New Hampshire, emphasizes: "Addressing baseline backlogs is one of those things you have to just do! You can't say you'll get to it, because it will never happen." PWA has been assembling baseline documentation on its older conservation easements for several years, completing a few each year, and is nearly done. It is difficult for staff to work down the baseline backlog in addition to keeping up with ongoing project work, so the organization hired consultants to complete many of the baselines, while a few well-qualified volunteers completed others. Baselines for new easements are completed at the time of the conveyance, so PWA's baseline backlog problem will soon be a non-issue.

Example

Addressing Baseline Backlogs: Chagrin River Land Conservancy/ Western Reserve Land Conservancy

In 2001, the Chagrin River Land Conservancy (CRLC) had approximately 50 backlogged baselines that needed completion. The organization decided to hire a consultant to conduct the field work for the baseline reports, including the photographs, ecological narratives and inventories, and had a staff person prepare the maps, easement summaries and other materials. CRLC tried to obtain historical maps and information if it was readily available, but most of the data for the reports was new.

To prioritize which baselines should be completed first, CRLC chose easements that still had the original grantors as landowners but who were elderly, properties CRLC anticipated would be transferred in the near future and properties with known stewardship issues that would benefit from a thorough baseline. It took about three years to complete all of the backlogged baselines. CRLC combined some of the baseline work with its annual stewardship visits and worked to obtain landowner signatures for the baseline acknowledgment section of the reports. If the original grantors had already transferred the property prior to the baseline completion, the new owners signed the report acknowledging the condition of the property at the time the report was prepared. These successor landowners were pleased to have a baseline so they could understand their easement and property better.

In 2006, CRLC merged with seven other land trusts to form the Western Reserve Land Conservancy. The new organization found itself faced with 40 backlogged baselines. It has set a goal to complete them all in two years, using the same prioritization method as CRLC, but relying solely on staff to do the work.

Evaluating Baselines for Multiple Users

This exercise is designed for either an instructor-led training or self-study program. If used in a training, divide into small groups to review the easement excerpts and baseline documentation report. Then answer the questions that follow.

Self-study learners should review the excerpts and complete baseline report and then answer the questions. Guidance on answers follows.

The complete baseline report for this sample donated easement is located in appendix A on page 297.

The purpose of this exercise is for learners to evaluate the significance of baseline documentation from different users' perspectives. Take the lessons learned and review your land trust's baseline template to see if there are ways to improve the usefulness of the document.

The baseline documentation report in appendix A was selected specifically for the purpose of this exercise; certain information has been intentionally changed or removed. ***This document is not intended as a model baseline documentation report.*** *Remember that each baseline report must be specific to the easement property, in accordance with the land trust's baseline documentation policies and procedures, and tailored to the land trust's capacity.*

Easement Excerpts

The Protected Property is currently used for low impact recreational use and nature observation. Existing improvements on the Protected Property include an unoccupied house, barn and various sheds, most in disrepair.

The Protected Property has the following natural, scenic and open space qualities of significant importance:

> The Protected Property includes woodlands, wetlands and riparian areas providing habitat for a variety of terrestrial and aquatic species of plants and animals, particularly red oak and, potentially, restored native prairie.
>
> The Protected Property provides important buffer for the nearby wildlife management area located to the northwest.

The terms of this Easement are specifically intended to provide a significant public benefit by:

> Protecting a relatively natural habitat for wildlife and plants.
>
> Creating a permanent buffer for the nearby wildlife management area.

Roads and Trails. Existing roads may be maintained or improved but may not be widened or relocated without prior approval of the Trust.

No activities on or uses of the Protected Property that cause significant erosion or significant deterioration to water quality or purity are allowed.

Total ground area covered by the footprint of existing buildings and structures combined is approximately 4,418 square feet. These existing structures may be expanded, but total expansions shall not exceed the current total ground area covered or footprint by more than 50 percent.

Discussion Questions

1. Does this baseline report document all the conservation values intended for protection and the public benefit as referenced in the easement excerpts? Are there other materials that would be useful to include?
2. What information or materials in the baseline might be of interest to a successor landowner?
3. What information or materials would be useful in this baseline report to new land trust staff or volunteers and why?
4. How will this baseline report assist easement monitors? What information is missing that would assist with monitoring and training land trust representatives?
5. Do you think this baseline would be useful as an easement enforcement tool? Why or why not?

Guidance

1. The baseline documentation report addresses the conservation values being protected through a narrative, maps and photographs. It provides a summary of the property's conservation values and physical characteristics and generally describes which flora and fauna inhabit the different areas. The photographs show various habitats including wetlands, riparian areas, woodlands and fields. The Reference Map and Property Summary reference the nearby Bethel State Wildlife Management Area. The easement states that the property has scenic and open space qualities of significant importance, and there are a few photos showing a public road bordering the property to support that statement. There is some commentary regarding existing water quality in the Property Summary but the section on riparian/aquatic values could be strengthened with water sampling data or reference to other reports.
2. A successor landowner might particularly appreciate:
   - The Property Overview
   - The information on conservation values, to understand why the property is ecologically important and why its protection is in the public interest
   - The Map Overview, which describes the purpose of each map
   - The Reference Map, showing how the property relates to larger conservation efforts in the area (e.g., the wildlife management area and other protected lands)
   - The Property Map, depicting the easement boundary and building envelope
   - The photographs, showing the property at the time of the easement conveyance
3. The baseline report would help new staff or volunteers by providing an overview of the property, including the Property Summary and information on conservation values, and the maps and photographs depicting the physical characteristics of the property. The baseline provides some indication of the existing water quality at the time of the easement and of the flora and fauna found on the property, but this information is fairly general and does not include, for example, measurable benchmarks against which to measure water quality. The maps and photos also allow land trust personnel to familiarize themselves quickly with the easement property and its features.

4. Monitors can review the baseline report to acquaint themselves with the location of the property, its characteristics and the important conservation values being protected. There are several maps, including ones that depict the building envelope. The aerial and on-site photographs provide documentation of existing structures and condition of the property at the time of the easement conveyance. The baseline also records the buildings' dimensions. The Property Summary notes the potential development of a neighboring lot so monitors can look for potential signs of encroachment in the future. It might be helpful for monitors to have a more detailed property map that they can take on the site visit. This more detailed map should state the dimensions of the building envelope and depict the existing structures and improvements, including all driveways, roadways and any other roads and trails located on the property as implied by the easement excerpt, as well as a few neighboring structures or landmarks to assist with orientation and boundary line demarcation. Photographs of any existing roads or trails would also be helpful.
5. Overall the baseline report does a good job of documenting the conservation values and physical characteristics of the land. With regard to enforcement, the baseline could be stronger (remember this baseline has been altered for the purpose of this exercise and should not be adopted as a model). For example, if an expansion of an existing structure resulted in a square footage violation, the baseline provides good documentation of the building dimensions at the time of the easement conveyance and includes aerial and on-site photographs showing the structures accompanied by narrative descriptions. However, there is no signed acknowledgment stating that both parties agree the baseline accurately depicts the conditions of the property at the time the easement was granted. There are no records of who (name and affiliation) took the measurements of the structures, who took the photographs or who prepared the baseline report. Dates are represented inaccurately or incompletely: note that the Photograph Key states that photographs represent the condition of property as of April 15, 2004, and the photo location maps are dated April 20 and August 17, 2004. The baseline documentation might also benefit from the addition to the Photograph Key of either references to GPS coordinates or compass bearings to verify the direction of the photo points.

Catching Up on the Baseline Backlog

This case study describes a real land trust in the western United States serving a four-county rural area, with one staff member and an inactive board of directors. The land trust had no particular focus and would accept easements on a wide variety of lands protecting open space, wildlife habitat, river corridors and scenic lands. The land trust charged landowners for costs associated with easements, including title work and staff time.

In the spring of 2003, the land trust lost its executive director and realized it would take several months to hire a replacement. To assure that its easements were monitored that year, the land trust hired an independent contractor, one familiar with the area and conservation easements, to monitor its approximately 33 easements. Only a handful of easements (five or six) had baseline documentation reports; the others had nothing more in the easement file than a recorded copy of the easement document — no maps, photos, contact information for the landowner, correspondence or other materials.

The majority of the easements described, in general, the purposes of protecting the land's "scenic, agricultural, open space, wildlife habitat, historic and aesthetic conservation values" but gave no further supporting description in the recitals or purpose clauses. All of the easements contained a legal description of the property and had a mailing address for the landowner on the date of the easement conveyance, but none had easement maps attached. Two of the easements that had baseline reports restricted grazing by cattle on the land to "levels as of the date of the easement." However, neither of the easements nor their respective baselines identified the number of cattle grazing on the property as of the date of the easement or used another method to identify the level of grazing at that time. A baseline report for another easement included the results of two years of vegetation transect data, but nothing in the associated easement explained why this data was collected and included in the report. One of the easements lacking a baseline required the landowner to fence a large Ponderosa pine, but nothing in the easement explained why, and the landowner was understandably upset about the requirement to maintain the fence.

The contractor spent many hours trying to locate the properties and the landowners, including searching public records, checking online for telephone numbers and so forth. Without street addresses, maps or directions to the property, many

properties could not be located without landowner assistance. Without baseline documentation, it was challenging to determine whether reserved rights had been exercised, or how the land had changed since the date of the easement's conveyance. This situation could render many of the easements' provisions essentially unenforceable, because the land trust would be unable to prove that the land had been altered from initial conditions. Furthermore, it was impossible to tell exactly what conservation values existed on the properties, because the listing of purposes in the easements were vague and there were no baselines to characterize the conservation values more fully.

The contractor sent a strongly worded letter to the land trust's board urging the land trust to create adequate baselines for all of its easements. To date, the land trust has not yet completed its baseline backlog, but it has ensured that every new easement acquired since 2003 is supported by a complete baseline report. In addition, the land trust asked the contractor to call the baseline preparer to remind him that he must first read the easement document before preparing the baseline report to ensure the baseline contents match the easement's terms.

Questions

1. Besides being problematic for monitoring, what are other potential ramifications from a lack of sufficient baseline reports? What can we infer from this case study about this land trust's easement stewardship program?
2. What would you suggest the land trust do to rectify the situation?

Guidance

1. Missing or insufficient baseline documentation reports will be a challenge to land trusts as they monitor the easement property and try to determine whether or not the easement's terms have been upheld. It will also be difficult for the land trust to interpret the easement and its purposes over time. The same challenges await future landowners. This situation will clearly put the land trust at a disadvantage if there is a violation, because the organization lacks sufficient documentation about the preexisting condition of the property. For donated easements, the land trust did not fulfill the IRS requirement that a baseline be prepared to document the condition of the property as of the date of the easement. Thus, the donor's tax deduction may be endangered. In fact, as of 2008, the IRS challenged at least one donated conservation easement's eligibility for federal tax benefits based solely upon the fact that the baseline for the easement was not created

until a year and a half after the closing of the easement. While this challenge may not succeed, it demonstrates the seriousness with which the IRS regards the date on which a baseline documentation report is prepared. We can infer that the land trust either did not comprehend the importance of adequate baseline documentation at the time of the easement conveyances, or that it lacked the capacity to carry out this critical element of a successful conservation easement stewardship program.

2. The land trust should:
   - Review the relationship between easement drafting, long-term easement stewardship and baseline documentation reports
   - Evaluate its capacity to enforce conservation easements over the long term
   - Delay new easement projects until the stewardship issues are addressed, including completing the baseline backlog and creating baseline documentation policies or procedures
   - Raise or obligate funds to have sufficient personnel to perform baseline and monitoring tasks in a timely manner
   - Create systems, policies and procedures for baseline documentation reports, monitoring and recordkeeping
   - Identify several ways to track land ownership transfers and meet with new owners of easement properties
   - Review the board's role in ensuring appropriate easement stewardship

This case study highlights an extreme, but true, example of what happens when baseline documentation reports and easement files are neglected. It illustrates the critical nature of the information that baseline reports contain. Furthermore, it illustrates that the lack of baselines, annual monitoring reports and correspondence is likely to indicate deficiencies elsewhere in a land trust's easement stewardship program.

Conclusion

Having well-organized, complete baseline documentation for every easement is a must for every land trust. This documentation is needed not only when preparing for easement enforcement but also for more ordinary stewardship activities, including communicating with the landowner and providing information for land trust staff and volunteers. If baseline documentation is lacking or is not kept up to date, its absence wastes the time and resources of the land trust and threatens the easement's permanence.

Land trusts that have a regular protocol to supplement baseline documentation as needed are able to draw on their baseline files to train new monitoring staff or review the information with landowners. If a land trust lacks baseline documentation for easements, it is important to create baseline reports for those properties while, at the same time, keep up with new baselines as easements are acquired. Many land trusts face this problem and are in the process of creating baselines for older easements. Land trusts should remember that it is important to make steady progress toward completion of any baseline backlog.

Good baseline information makes the monitoring component of easement stewardship easier; having the necessary maps, photos and other documentation consolidated in an easy-to-access format is an excellent foundation for monitoring, discussed in chapter 4.

Sample Documents

Criteria for the Preparation of Baseline Inventory Reports, Colorado Cattlemen's Agricultural Land Trust (*page 176*)
This document represents the work of a land trust that understands how it will utilize its baseline documentation reports and what the reports should contain to meet its needs. CCALT sometimes hires consultants to create the baseline reports, and it has designed this document to include information for baseline preparers.

Baseline Documentation Policy, Columbia Land Conservancy, New York (*page 181*)
This document is an example of a baseline documentation policy for a staffed, countywide land trust, founded in 1986, that holds 143 conservation easements totaling 19,970 acres. Note that the policy outlines the organization's guiding principles with respect to conservation easement stewardship and baseline documentation reports and contains timeframes to ensure reports are completed in a timely fashion.

Baseline Report Summary and Checklist, Sonoma Land Trust, California (*page 183*)
This document is an example of a baseline fact sheet that briefly outlines the contents of a baseline report and the steps involved in preparing one. It is suitable for distribution to landowners. This land trust also created a comprehensive checklist to help ensure thoroughness and consistency when preparing baseline reports. Land trusts are encouraged to draft their own checklist tailored to their particular baseline documentation template and procedures. The Sonoma Land Trust is a staffed land trust, founded in 1976, that has protected more than 17,000 acres through both conservation easements and fee ownership.

Orcas Farm Conservation Easement Baseline Present Conditions Report, San Juan Preservation Trust, Washington (*page 186*)
This sample baseline documentation report contains many of the generally accepted attributes of a good report, such as photo points and accompanying maps, directions, acknowledgment section, information on the baseline preparer and documentation of the conservation attributes and man-made features of the property.

Sample Map with Photo Points, Columbia Land Conservancy, New York (*page 203*)

This baseline photo point map is for a conservation easement property that is owned by a municipality for public use and recreation. Using the easement map as a base, the photo points were added to depict the GPS coordinates and compass bearings for the photographs taken on the property. Each number on the map corresponds to a photograph and written description, as well as to a chart containing the GPS coordinates, all of which are found in the baseline documentation report.

Colorado Cattlemen's
Agricultural Land Trust

Criteria for the Preparation of Baseline Inventory Reports
Adopted by the Board: April 27, 2001

I. Purpose Statement:

The monitoring, stewardship and enforcement of the conservation easements held by the Colorado Cattlemen's Agricultural Land Trust (CCALT) are critical to the long-term viability of the organization. Along those lines, the baseline inventory report for each property is the basis from which we will use to monitor conservation easements over time. It is important to CCALT that each of our baseline inventory reports include important information that relates to each individual property and information that will allow CCALT to complete our monitoring and stewardship responsibilities effectively in the future. The following criteria have been drawn up to help the preparers of baseline inventory reports in creating reports that will have consistent formats, information and effectiveness for all of the easements held by CCALT.

Information needs will obviously vary, sometimes quite widely, from property to property. It is also important to reflect the terms of the conservation easement document and not to include superfluous information that is not pertinent to the conservation values being protected by the conservation easement, or to insert conservation values that have not been identified in the conservation easement.

II. Photographic Documentation:

The old saying goes "A picture says a thousand words" and CCALT believes that nothing can describe a property like pictures. We believe that clear, labeled and precisely located photographs are a critical part of any baseline inventory report. Photographic documentation should cover as much of the property as possible and in as much detail as possible. This is particularly true for structures and improvements located on the property at the time the easement is recorded. While photographs of ranch roads and storage sheds are often not very exciting, they can prove to be very useful in our future stewardship responsibilities. Photo points must be clearly labeled on a map of the property and be labeled as to direction and subject so that they can be replicated in the future. CCALT will not accept final baseline inventory reports with photographs showing the property covered by snow. We understand that interim or draft baseline inventory reports may contain photographs with snow due to the timing of easement transactions.

III. GPS Information:

Global Position Systems (GPS) have in recent years become much more affordable and able to produce much more accurate location information. This information will be immensely useful in the future as the land trust changes staff, properties change landowners and landscapes change over time. CCALT highly encourages the preparers of our baseline inventory reports to use GPS coordinates when locating photo points, structures and other important features of a property.

IV. Baseline Inventory Reports Should Contain the Following Items:

A. Table of Contents

Page numbers and information included in each of the following sections.

B. Owner Acknowledgement Statement (see end of policy)

C. Summary information:

1. Grantor's name, contact information, including all relevant phone numbers
2. Names and contacts for local managers
3. Date or proposed date of easement acquisition
4. Detailed directions to the property from the nearest town, including mileage to turns and important local landmarks.
5. General physical property description, including acreage and property address
6. Supporting governmental policies
7. Summary of the conservation values protected
8. Extent of investigation – Who did the work, when was the property visited, who else was consulted for information that is in the report etc...
9. Reference the attached Deed of Conservation Easement in the Appendices. Do not paraphrase the prohibited uses and reserved rights in the baseline document.

D. History of the Conservation Project

This section can be developed through short conversations with the staff of the land trust and the landowners. This section should describe how contact was initiated between the two parties and why, who the key players were in developing the conservation easement, and if funding came to the project, noting who helped pay for the conservation easement.

E. Land Uses and Management

1. **Historic**
   This should include all of the known historical uses of the property. Uses that are of particular interest are agricultural uses different than current uses, as well as past logging, mining and residential/recreational uses.

2. **Current**
   This section should describe what the property is currently being used for including residential and recreational uses. Agricultural uses should be listed and then described in detail below.

F. Inventory of Property Improvements

This section is perhaps the most important in the entire baseline inventory report. Disagreements between landowners and land trusts often hinge on the construction of new buildings or property improvements. For this reason it is critical that all existing improvements be detailed in the baseline inventory. This information should include GPS locations of all improvements. The following need to be listed in this section:

1. Residential buildings, inhabited or not
2. Major agricultural structures such as barns, sheds, riding arenas and corrals
3. Minor agricultural structures such as loafing sheds, stock tanks, fences, windmills and the like should be mentioned in the text, but only located if they are specifically mentioned in the easement.
4. All man-made ponds, stock tanks or reservoirs. Ditches and headgates if possible.
5. Any recreational improvements present on the property.
6. Roads, both public and private, paved and unpaved need to be located on a site map and preferably shown in photographs. This includes two-tracks present on the property. Roads can be located on photo point or vegetation maps.
7. Existing radio towers, cell towers, powerlines, dumps, gas pipelines, oil and gas wells, transfer stations, mines/gravel pits, cemeteries etc.

G. Description of Property and Conservation Values

1. **Physical Description**
   a) Topography
      A general description and notable landmarks referenced in the report
   b) Geology
      Note the underlying geology and any notable features located on the property.
   c) Soils
      Note the major soil types and their locations on the property.
   d) Hydrology
      Note water features found on the property, watershed information and any other information related to water on the property.
2. **Vegetative Communities**
   Description of the main vegetative community types found on the property, ponderosa pine forests, aspen forest, shortgrass prairie or sagebrush

shrublands for example. The descriptions should also include human altered vegetative communities such as hay meadows or pastures. It is important to note the general locations of each community type and include a map showing the locations of the communities if appropriate. It is very useful to note the dominant species in each vegetative community found on the property.

3. **Agricultural Values**

   This section is a detailed description of the current agricultural operation on the property. This should include a description of livestock operations, irrigated land and crop land (including improvements such as ditches, stock tanks and head gates If water rights are part of the property, they need to be specifically described in this section.

4. **Wildlife Values**

   Each property is used in different ways by wildlife and wildlife uses change over time. A description of the notable species found on the property is a minimum for the report. Detailed descriptions of wildlife uses should be included only if there are notable uses described in the easement, such as elk or deer winter range, sage grouse leks or bald eagle nests. The Colorado Division of Wildlife and Colorado Natural Heritage Program have a large amount of mapped information which can be used in this section.

5. **Scenic, Open Space and Historical Values**

   This section should describe the public open space values that are protected by the conservation easement. These can include views from public roads or public lands, community buffers and the general protection of working agricultural landscapes.

   Historical and/or archaeological values are not known for many properties. These values should not be described in detail unless they are mentioned in the easement document.

H. Appendices

Information included in Appendices to the document are generally used for reference and can include a wide array of information depending upon the property. These typically include:

1. **Photographic Documentation**

   Clear color photographs showing the property, with photopoints located on a map (usually a 7.5 minute USGS topographic or similar scale and detail map)

2. **Copy of the Conservation Easement Document**
   If the conservation easement is not completed before the baseline inventory is completed, reference this document in an Appendix and it will be added by CCALT once the easement is complete.
3. **Property Map Locating Significant Improvements**
4. **Wildlife Information from Colorado DOW or Other Sources**
5. **Relevant Historical and/or Archaeological Information**
6. **References Cited in the Report**
7. **Qualifications and Contact Information of the Report Preparer**

V. Final Notes:

CCALT requires three copies of each baseline inventory report for our records. We request that at least one copy of the report be delivered to us unbound. In this way we will be able to update the reports as conditions change in the future.

VI. Sample Owner Acknowledgement Statement

Property Name:

Grantor: Name
Address
Town, State, Zip

Grantee: Colorado Cattlemen's Agricultural Land Trust
8833 Ralston Road
Arvada, CO 80002

Property Description:

[Including acreage, general location, relevant agricultural and natural features, not to exceed more than a few paragraphs]

In compliance with Section 1.170-14(g)(5)(i)(D) of the Federal Tax Regulations this baseline inventory report is an accurate representation of the property at the time of the conservation easement donation.

_____

Grantor Date

_____

Colorado Cattlemen's Agricultural Land Trust Date

APPROVED this 27th day of April, 2001.

COLORADO CATTLEMEN'S
AGRICULTURAL LAND TRUST

_____

President

COLUMBIA LAND CONSERVANCY
BASELINE DOCUMENTATION POLICY
Adopted September 27, 2003

Guiding Principles: The Columbia Land Conservancy (CLC) is dedicated to upholding its legal and community obligations to safeguard the conservation easements it accepts for as long as such easements exist. In recognition of the fact that CLC's conservation easements are perpetual in duration, CLC understands that one of the keys to upholding these easements is its commitment to manage, defend and enforce the terms of each conservation easement on a consistent basis.

In order to meet this obligation, CLC requires a complete and thorough Baseline Documentation Report as it relates to the terms of each individual conservation easement and therefore describes the conserved land and its particular conservation attributes (at the time of the easement conveyance) that will be protected in both words, maps and photographs. Such Baseline will meet the current standards as recognized by land conservation professionals and the Land Trust Alliance. The Baseline Documentation Report will serve as a standard against which to measure whether uses of the conserved property are in accordance with the terms of the property's conservation easement. Because of CLC's belief in the importance of Baseline Documentation, CLC requires that a packet be prepared for every conservation easement it accepts, whether or not the landowner conveying such easement seeks federal tax benefits for its conveyance.

CLC staff shall abide by this Policy as amended from time-to-time by CLC's Board of Trustees. Staff shall adhere to and adopt procedures to implement this Policy as staff finds necessary and advisable in the course of the day-to-day work for the organization and, comply with such procedures as a condition of continued employment with the organization, except in the event of extraordinary or unforeseeable circumstances. At a minimum, staff shall adhere to procedures for completing the minimum contents required for every Baseline Documentation Report at the time of the easement closing, securing the landowner's signature confirming the accuracy of the Baseline Documentation Report, and utilizing methods for preserving the packet in perpetuity. Furthermore, if the conservation easement requires a Supplemental Baseline Documentation packet, staff shall be responsible for the timely completion of such packet following the acceptance of the conservation easement. Staff shall revisit this Policy and its implementation procedures on an annual basis to determine whether the procedures necessary to carry-out this Policy should be amended to reflect changing Land Trust Alliance standards or to otherwise upgrade its contents, and shall make recommendations to the Board accordingly.

Contents of Baseline Documentation Report: Every CLC Baseline Documentation packet shall, at a minimum, meet the Internal Revenue Service and U.S. Treasury Regulation requirements for baseline contents. Staff shall add such contents as are necessary to reflect the current national standards for the preparation of Baseline Documentation and those items that CLC's attorney(s) advise should be included in the packet in order to defend a conservation easement over time. Such items may include boundary surveys, the conservation easement map and photographs.

Date of Baseline Documentation Report: Pursuant to IRS regulations, CLC's completes every Baseline Documentation packet by the date of the closing of the conveyance of a conservation easement. In addition, CLC staff prepares a Supplemental Baseline Documentation packet that

provides additional information, which at a minimum includes ground photographs and supporting written text, to assist present and future staff with monitoring and their other conservation easement management responsibilities, to be utilized as a communication and educational tool for the landowner, and assist with potential legal challenges to the easement document. CLC recognizes that the completion of the Supplemental Baseline Documentation by the easement closing date is usually impossible due to the uncertainty of when easements will close and seasonal changes that may result in poor visibility of the property's features (such as snow cover). However, in such case, CLC staff shall secure a written commitment from the landowner conveying the easement to cooperate with and execute a Supplemental Baseline Documentation. Such supplement shall be given to the landowner for review and signing no later than nine (9) months following the closing of the easement. It is expected that the Supplemental Baseline Documentation will be signed by the landowner and CLC within three months of the landowner receiving the materials.

Preparation of Baseline Documentation Report: It is CLC's policy to create Baseline Documentation packets for every conservation easements it accepts in order to ensure the quality and consistency of the packets, and to bill the landowner for creation of the Baseline Documentation packet.

Updating Baseline Documentation Report: CLC's annual monitoring reports, and any supporting photographs taken during monitoring visits, shall be used to update the Baseline Documentation, as well as any other information that CLC may acquire with respect to the conserved property. Such updated baseline materials will be formatted to be consistent with the Baseline and Supplemental Baseline Documentation packets.

Storage of Baseline Documentation: Staff shall implement all feasible techniques to preserve the Baseline, Supplemental Baseline and updated documentation materials in perpetuity. Such techniques may include the use of professional quality black and white film, acid-free paper, archival plastic sheets, etc. Staff shall archive the original Baseline Documentation in accordance with CLC's Record-keeping Policy and shall only use copies of the original packet for office and field use.

SONOMA LAND TRUST

BASELINE REPORT SUMMARY

What is a Baseline Report?
A baseline report is an integral part of the conservation easement. The report documents the condition of a property at the time an easement is established, providing an information base for future monitoring and stewardship of the property. Using photos, maps, and narrative the report describes the conservation values being protected by the conservation easement as well as key features and improvements. Reports are reviewed and approved by both the landowner and SLT.

In addition, the Internal Revenue Service requires that the landowner provide sufficient baseline data to establish the condition of the property at the time of the gift of the conservation easement. SLT's stewardship staff typically prepares the report, the cost of which varies depending on the complexity and size of the project.

When is the Baseline Report created?
The baseline research is initiated while the conservation easement is being negotiated. The report is completed for approval in concert with the signing of the easement.

Steps for completing a Baseline Report:

- Review property documents such as timber valuation, appraisal, and conservation easement;
- Site visit: hike property, photograph key features and improvements, collect information for report and maps;
- Compile information into narrative and create basic maps of property;
- Landowner review: submit draft to landowner for review and comments;
- Integrate landowner comments;
- Collect signatures on final report;
- File original at SLT office and send a copy to the landowner.

Landowner's role
Our stewardship team may have questions about the property and its conservation values during the drafting of the report. Stewardship staff are included in early property visits; but also need to conduct a more thorough visit to collect specific baseline information. The landowner does not need to join in the baseline visit, but they are welcome to do so if interested.

Baseline contact:
Georgiana Hale
Project Associate
707 526-6930 x106
georgiana@sonomalandtrust.org

BASELINE REPORT CHECK-LIST PROPERTY:

Description	*Complete*	*Date*	*Notes*
SITE VISIT			
Scoping Visit			
Pre-visit meeting			
Site Visit(s)			
Visit checklist (site specific)			
Monitoring map and notes			
TEXT/NARRATIVE			
Landowner(s) contact information			
Parcel information (APN's, acreage)			
Property address			
Directions to property from office			
Project summary			
General description of existing property uses and features (wildlife, vegetation, improvements, hydrology)			
Summary of CE restrictions and rights			
Current land use (include features and history)			
Description of conservation values			
Acknowledgement Page w/IRS phrasing			
EXHIBITS			
Photographs of key features related to the rights and restrictions of the property			
Maps			
Photo Points Map			
Aerial			
Quad			
Location			
Parcel Map w/neighbors			
County Parcel Map			
Key Features Map (include improvements)			
ATTACHMENTS			
Copy of the final CE			

Sonoma Land Trust 4/9/2008

BASELINE REPORT CHECK-LIST PROPERTY:

Resource-specific data for properties			
Sonoma County Soils Map			
Species inventory for property			
Copy of SLT board resolution accepting CE (or resolution #)			
SIGNATURES/FINAL COPY			
Photographer initials			
Draft to landowner(s)			
Revisions made			
Final draft to landowner			
Landowner signature			
SLT's E.D. signature			
Signed copy to landowner			
Original filed at SLT			
Digital files organized			

Italics= additional items, include if necessary and/or available (depending on property)

SLT staff:

Consultants:

Notes:

Sonoma Land Trust 4/9/2008

ORCAS FARM CONSERVATION EASEMENT

BASELINE PRESENT CONDITIONS REPORT

Baseline Date: 9/14/2005 (revised 9/6/2006 & 1/16/2007)

Easement Name: Orcas Farm

Easement Grant Date: 9/14/2005

Location: Crow Valley, Orcas Island

Name and Address of Grantors:

Total Acreage: 322.07

Easement Purpose Statement:

"It is the exclusive purpose of this Conservation Easement to protect the Conservation Values and to limit structures on the Protected Property as provided in Sections 5 and 6 below. To the extent a Conservation Value is in actual conflict with another Conservation Value, such as conducting an agricultural activity that harms wetlands on the Protected Property, Grantors and Grantee shall, cooperatively, in good faith, and utilizing credible scientific and technical information, establish guidelines to avoid, reduce, or mitigate such conflict in a reasonable manner, such as establishing a season of use for grazing. If Grantors and Grantees are unable to develop such guidelines, resolution of such conflicts shall be made in the reasonable discretion of the Grantee based on protecting the open fields, woodlands, wetlands, and scenic vistas over protecting the utility of the Protected Property for agricultural and forestry purposes and its rural character. The foregoing shall not be interpreted, however, to override any express provision of this instrument or to preclude substantially one Conservation Value by another."

San Juan County Auditor's File Number: 2005 0914007

Acreage by Tax Parcel:

Parcel Designation	Owner	Acres	Description
273314001000		114.26	Residential, field, forest and wetland
273432001000		78.36	Optional residence site, field and forest
273334002000		92.24	Field, forest and wetland
260421001000		37.21	Field, forest, ag structures

Conservation Values:

Description of the property condition, including land use and management, unusual ecological, historical, geological, or other features and the condition of any specific property areas or features that may change when the landowner exercises reserved rights.

For this report the land descriptions and photo point maps are divided into two sections: the southern portion of the property on either side of Crow Valley Road and the remainder of the property.

Crow Valley Road South

The area to the west of Crow Valley Road naturally divides into northern and southern sections; these are also separate tax parcels. An old roadbed (Photo Point 1) traverses both sections and, based on its size, grade and the presence of a large old stone culvert (Photo Point 2), may have been the original location of the Crow Valley Road. The northern half is relatively unimpacted, has a few scattered oaks especially near the road, and is fairly steep. A major drainage off of Turtleback Mountain crosses this section west to east and a utility line on poles crosses it north to south. This section is forested except for a couple of rocky, steep grassland remnants which can be seen on the aerial photo. The southern half west of Crow Valley Road is flatter, has a heavily impacted section that was a former cattle feeding area with a concrete trough and silo, but also contains a number of large firs, maples and alders. The large trees are mostly found on the south half of this section. Just north of the silo area is a small shed mostly obscured underneath blackberry and a capped wellhead. This southern half also contains one of the two "Agricultural Building Areas" where agricultural buildings, but no residences, are allowed.

North and south of Nordstrom Lane there are two open fields that are used for haying and pasture. The section of field south of Nordstrom Lane has a perimeter fence, plus another small area fenced off on the northeast corner. The section north of the Lane has a fence on the north side, but not on the south side.

Remainder of Property

On the remainder of the property are two areas with buildings, the residential area and another cattle feeding/hay storage area. This portion contains the two sections designated as both "Agricultural Building Areas and Residential Building Areas" plus a section designated solely as an "Agricultural Building Area" (see DNR Aerial Photo for details). This portion also contains four stock ponds and two wellheads. The main drainage through Crow Valley, a seasonal stream, traverses this section from the northeast to the southwest.

On the northern portion of this section is the property's only residence (Photo Point 7). Near the residence is a large barn (Photo Point 8) with a paddock and coverage for animals (a horse and a mule are the current residents). There is a wellhead between the residence and barn. Just northwest of the barn is a strikingly large old-growth Douglas Fir (Photo Point 10). This section of woods also

contains other large, fire-scarred firs. There are two driveways here. The driveway off of Sunnyside Lane leads to the residence and the driveway off of Crow Valley Road leads to the barn. Between the residence and east property line is a pasture area that becomes very wet in the winter and has a pair of stock ponds that straddle the sides of the creek.

On the eastern portion of this section are two buildings off a short driveway from Orcas Road. There is a metal sided barn used for hay and equipment storage and there is also an open sided, metal roofed loafing/feeding building next to the barn. The barn is in current use but the loafing shed is not being used. Also in this area is an old truck and old living trailer, both apparently being used for storage. The only other structure in this area is a capped wellhead in the field off of Orcas Road.

The forests on the eastern portion of this section are remarkably diverse. The woods on the corner of Orcas Road (the other allowed residential area) would be characterized as wet coniferous. In the center of these woods are many alders, willows, scattered forested wetlands dominated by sedges and rose thickets. Surrounding this wetter area is a ring of Douglas Fir. The woods to the north along Orcas Road are much drier with an open understory and some remnant old-growth firs. In this section of woods there is also a very large rock pile where the rocks cleared from the fields were dumped (Photo Point 16).

The property is currently used for cattle pasturage and haying. The owner has a small herd of her own cattle, but also leases the property to neighboring landowners who rotate cattle on and off the property and hay the fields.

Property Boundaries:

No recent surveys have been done and the only survey markers I could locate were both on the far southwestern portions of the property along Lehmann Levels and the boundary with the Medina Foundation's Turtleback Mountain property. The rest of the boundaries are mostly well defined either by roads or fence lines. The only exception to this is where the property borders the land of (tpn 273334001), here there is no fence line.

Inventory:

Buildings or structures on property, including houses, sheds, barns, man-made ponds, etc. The purpose of each are described below and location of each is shown on attached map.

Type	**# on Map**	**Description**
Buildings:	1	Residence
	2	Barn with animal paddock
	3	Hay and equipment storage barn
	4	Cattle feeding/loafing shed
	5	Concrete silo and concrete feeding trough
Roads:	6,7,8,9	Driveways serving residence
Ponds:	10,11,12	Constructed stock ponds

Attachments:

- DNR Orthorectified Aerial (2004) with property boundary lines and designated use areas
- Present Conditions Map with property lines and inventoried items
- USGS topographical map with property boundary lines
- Aerial photographs from April 2005
- Crow Valley Road South Close-up Map with Photo Points and Vegetation Patterns
- Remainder of Property Close-up Map with Photo Points and Vegetation Patterns
- On-site photographs
- Directions to site

Author:
Dean Dougherty
M.S. University of Washington College of Forestry 2003
Director of Stewardship, San Juan Preservation Trust

ACKNOWLEDGMENT OF PROPERTY CONDITION

The undersigned accept and acknowledge that this Present Conditions Report is an accurate representation of the property at the time of the conservation easement.

Landowner(s):

_____ Date _____

_____ Date _____

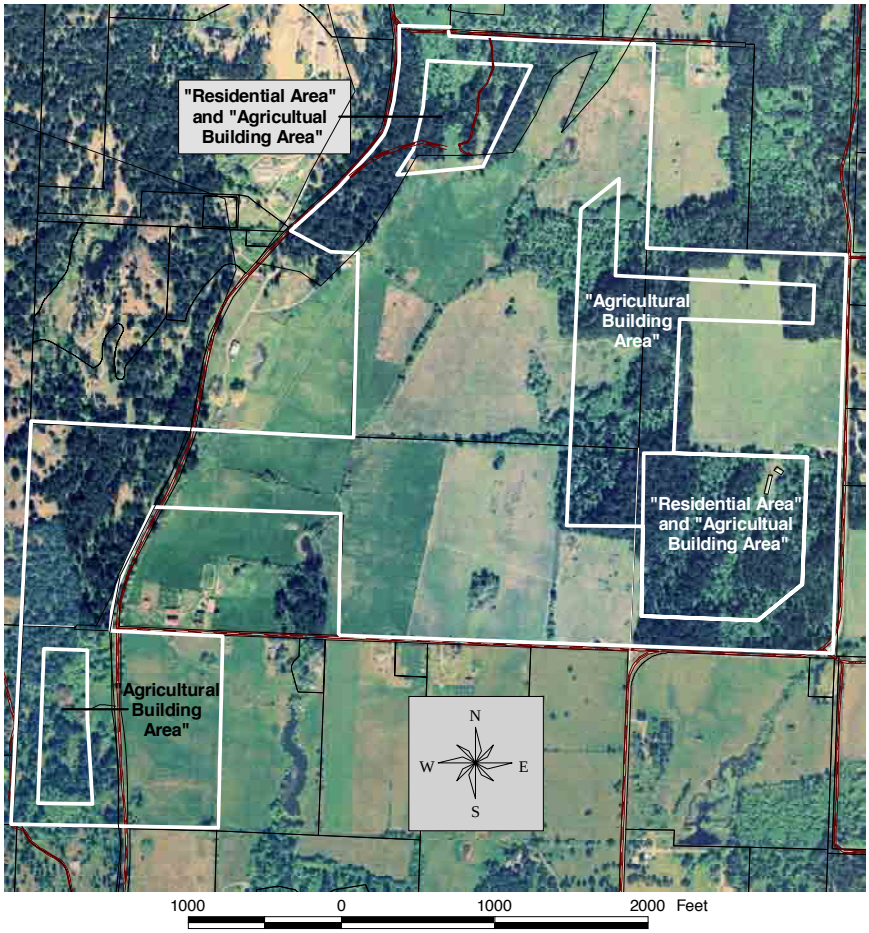
Easement Grantee:

By: _____ Date _____

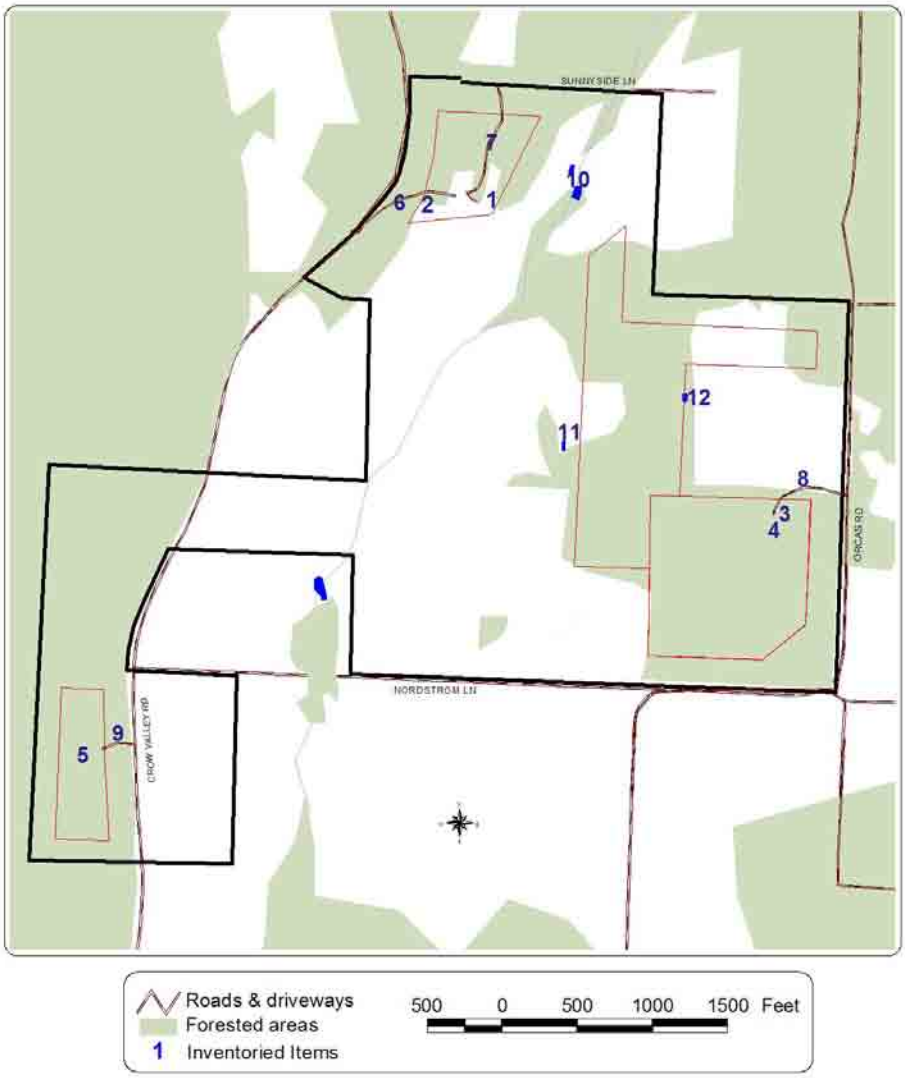
Title: _____

Orcas Farm Conservation Easement
Aerial Photo

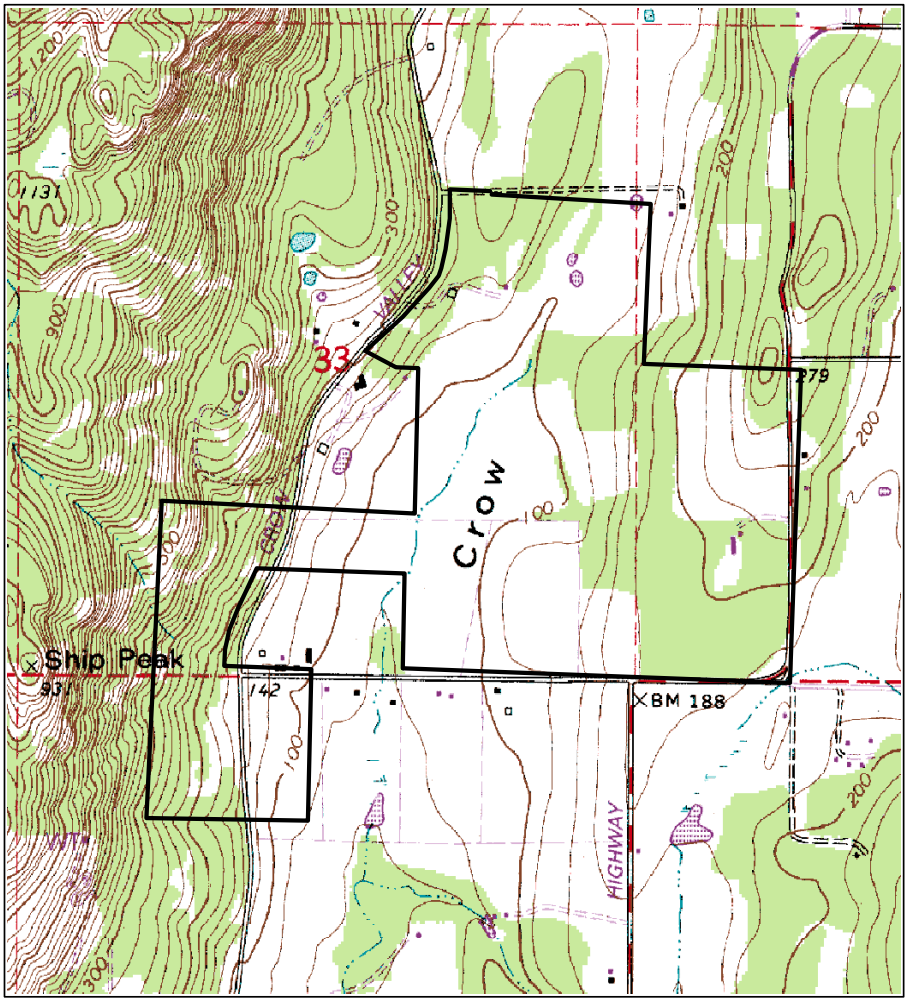
Photograph: 2004 DNR Series



Orcas Farm Conservation Easement
Present Conditions Map with Inventoried Items
& Forested Areas



Orcas Farm Conservation Easement
USGS Topographical Map



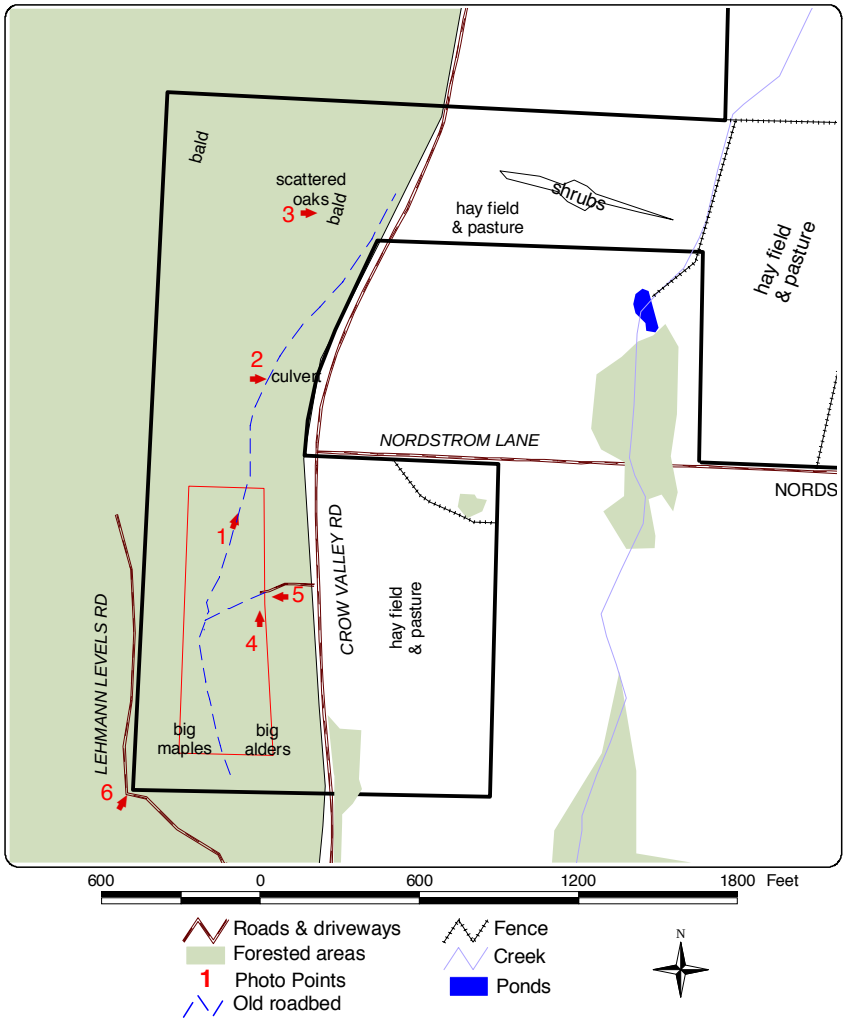
USGS Eastsound Quadrangle 1977 (Revised 1994)
Scale 1:24000
20 foot contours

Orcas Farm Conservation Easement
Aerial Photos taken in April 2005

Aerial showing house, barn and loafing shed (white buildings in foreground).

Aerial looking along Orcas Road and Nordstrom Lane.

Orcas Farm Conservation Easement
Crow Valley Road South Close-up Map with Photo Points and Vegetation Patterns



Orcas Farm Baseline Photographs – July 2005

PP1. Old Roadbed.

PP2. Culvert

PP3. Bald with oak on rightside of photo.

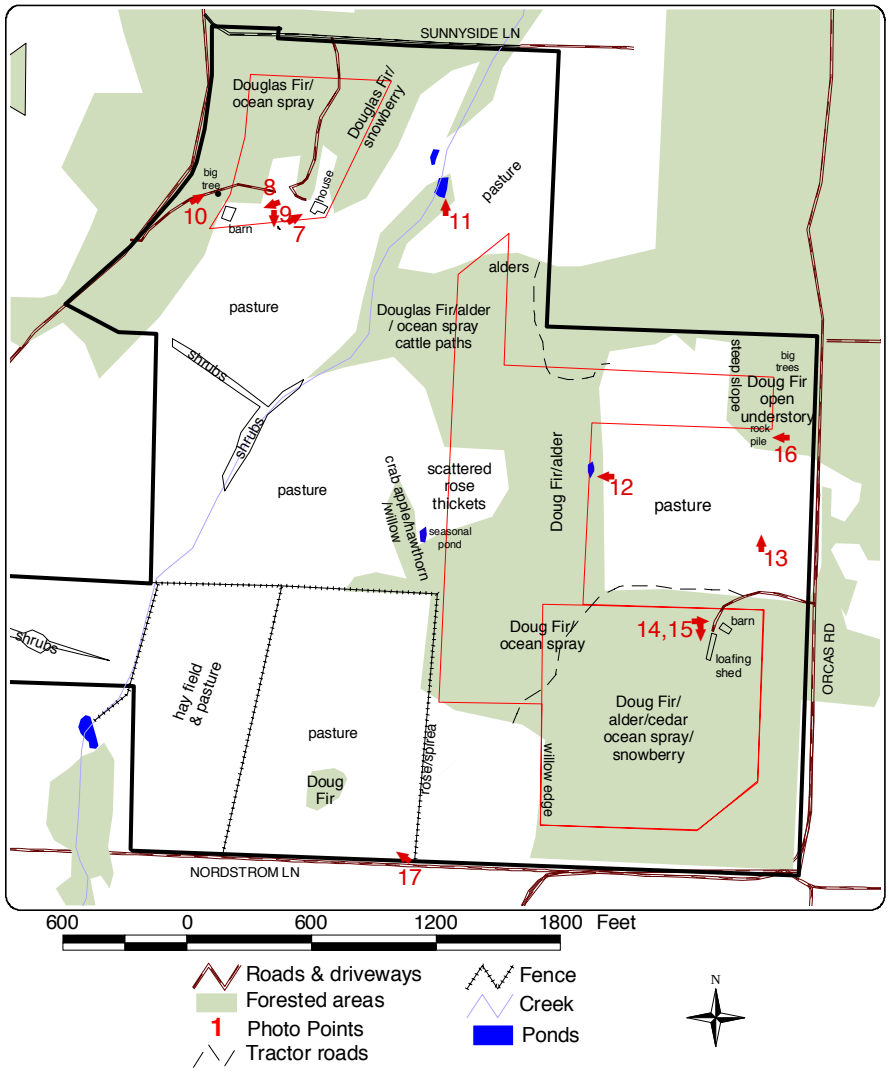
Orcas Farm Baseline Photographs – July 2005

PP4. Cattle feeding trough.

PP5. Concrete silo.

PP6. SW corner of property along Lehmann Levels.

Orcas Farm Conservation Easement
Remainder of Property Close-up Map with Photo Points and Vegetation Patterns



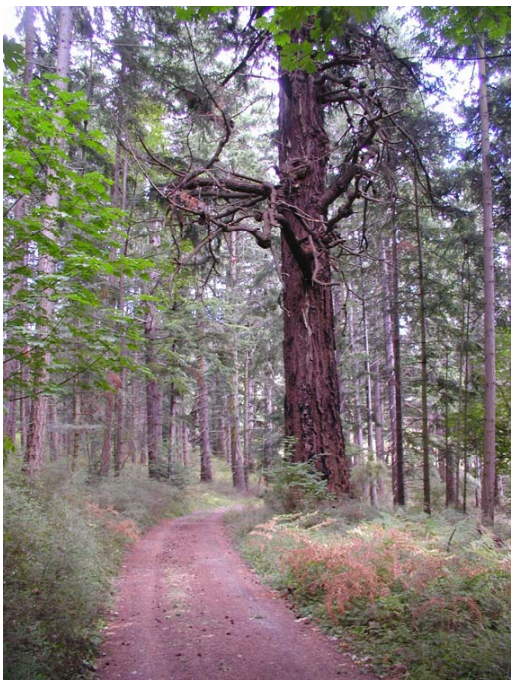
Orcas Farm Baseline Photographs – August 2002

PP7. House.

PP8. Barn and paddock.

PP9 Wellhead and view through property to the south.

Orcas Farm Baseline Photos – August 2006



PP10. Big Douglas Fir tree NW of barn, approximately 8' dbh.

PP11. North end stock pond.

Orcas Farm Baseline Photos – August 2006

PP12. Central stock pond with blackberry hedge.

PP13. Wellcap and field adjacent to Orcas road, view to N.

PP14. East side hay barn.

Orcas Farm Baseline Photos – August 2006

PP15. East side loafing shed.

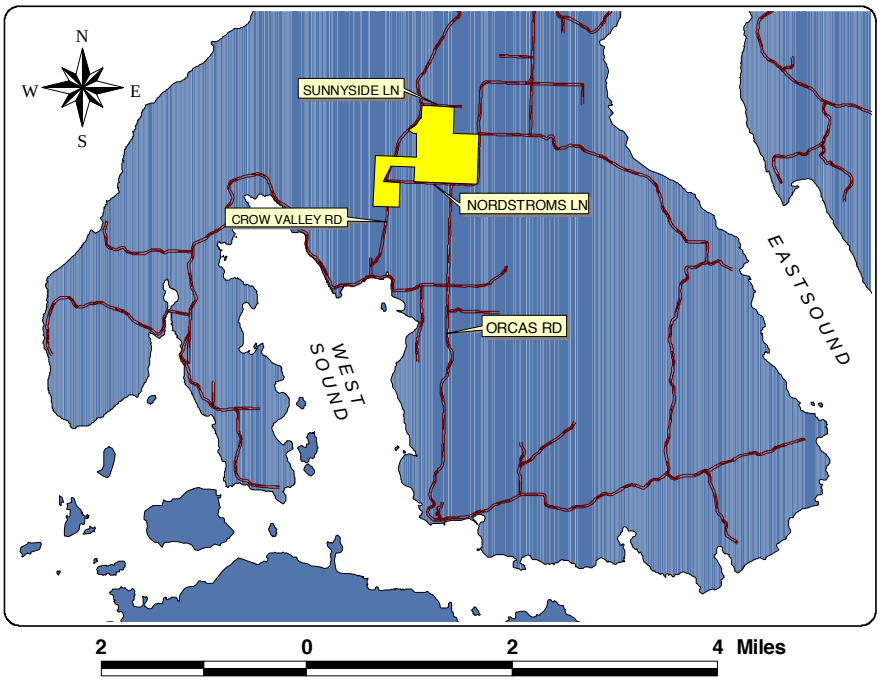
PP16. Rock pile and open understory woods.

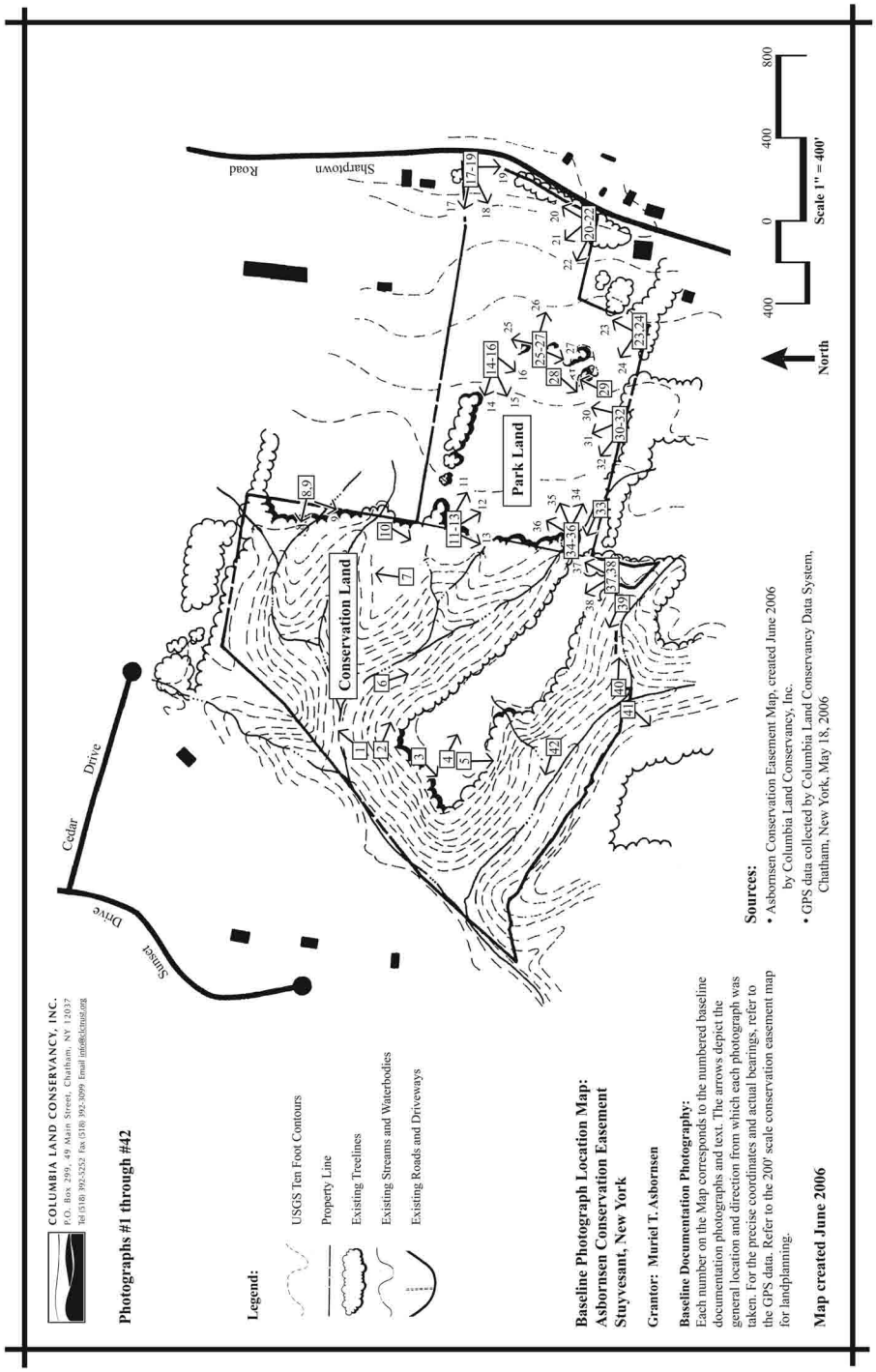
PP17. Oak and fir copse in pasture along Nordstrom's Lane.

Orcas Farm Site Directions

Directions to site:

From the Orcas ferry terminal drive north toward Eastsound on Orcas Road. The property begins at the intersection with Nordstrom Lane (about 3 ½ miles). The residence is reached by going left on Nordstrom, right onto Crow Valley Road and then right on Sunnyside Lane. The driveway is the first right.




COLUMBIA LAND CONSERVANCY, INC.
P.O. Box 299, 49 Main Street, Chatham, NY 12037
Tel (518) 392-5252 Fax (518) 392-3099 Email info@clcnst.org
Photographs #1 through #42
Legend:
USGS Ten Foot Contours
Property Line
Existing Treelines
Existing Streams and Waterbodies
Existing Roads and Driveways
Baseline Photograph Location Map:
Asbornsen Conservation Easement
Stuyvesant, New York
Grantor: Muriel T. Asbornsen
Baseline Documentation Photography:
Each number on the Map corresponds to the numbered baseline documentation photographs and text. The arrows depict the general location and direction from which each photograph was taken. For the precise coordinates and actual bearings, refer to the GPS data. Refer to the 200' scale conservation easement map for landplanning.
Map created June 2006
Sources:
• Asbornsen Conservation Easement Map, created June 2006 by Columbia Land Conservancy, Inc.
• GPS data collected by Columbia Land Conservancy Data System, Chatham, New York, May 18, 2006
Sunset Drive
Cedar Drive
Sharptown Road
Conservation Land
Park Land
North
Scale 1" = 400'
400 0 400 800

Additional Resources

Internal Revenue Code §170(h)
http://www.law.cornell.edu/uscode. In the search boxes insert title number "26" and section number "170(h)" and click on "Go to title and section."

Treasury Regulations §1.170A-14
http://edocket.access.gpo.gov/cfr_2003/aprqtr/pdf/26cfr1.170A-14.pdf

Baseline Documentation Reports

The Conservation Easement Handbook, by Elizabeth Byers and Karin Marchetti Ponte (Washington, DC: The Trust for Public Land and the Land Trust Alliance, 2005).

The Conservation Easement Stewardship Guide, by Brenda Lind (Washington, DC: Land Trust Alliance and the Trust for New Hampshire Lands, 1991).

Massachusetts Conservation Restriction Stewardship Manual: A Handbook for Land Trusts and Conservation Commissions, by Kathy Sferra and Nicholas Holland (Lincoln, MA: Massachusetts Audubon Society, 2006).

Software

Conservation Connections Database: www.conservationconnections.com

Erler's LandSteward Software
A browser-interfaced database program that allows land conservation organizations to better manage the complex information needed to ensure effective stewardship and permanent protection of conserved land (www.lta.org/resources/Publications).

For information on using GIS for land conservation work, including online training: www.landtrustgis.org.

For aerial photographs, try http://earth.google.com and http://maps.live.com.

Aerial photographs may also be available through county Natural Resource Conservation Service offices (www.nrcs.usda.gov) or the local offices of the United States Department of Agriculture Farm Service Agency (www.fsa.usda.gov).

Check Your Progress

Before continuing on to the next chapter, check that you can:

- ☐ Explain the value and uses of a baseline documentation report with respect to monitoring conservation easements
- ☐ Explain who uses the baseline documentation report and when
- ☐ Use a baseline documentation report map to locate a property on the ground
- ☐ Use a photo point map (and/or GPS coordinates) in the baseline documentation report to locate photo points on the ground
- ☐ Explain how land trusts address easement amendments and supplement information in baseline documentation reports

Chapter Four • Easement Monitoring

Practice 11C: Easement Monitoring
The land trust monitors its easement properties regularly, at least annually, in a manner appropriate to the size and restrictions of each property, and keeps documentation (such as reports, updated photographs and maps) of each monitoring activity.

There are several reasons why a land trust should monitor its easements annually. Monitoring helps a land trust develop a relationship with the landowner, helps discover changes in land ownership, enables it to see if the easement is effective, helps uncover violations, saves time and money on enforcement actions, and establishes a record in case of court action. Annual monitoring routinely reminds the landowner of the easement and provides a means for annual landowner contact. With annual monitoring the land trust can promptly document any changes in the property's condition relative to the easement. While some land trusts regularly conduct "drive-by" or informal monitoring activities, the monitoring results should be documented to build a record for future monitoring and in case the land trust must address a violation. Some easements with particularly sensitive conditions, or on land where a landowner is performing management activities, may require monitoring more frequently than once a year. Land trusts use a combination of on-the-ground review, aerial observation and other methods in their annual monitoring.
— From the *Background to the 2004 revisions of* Land Trust Standards and Practices

Learning Objectives

After studying this chapter, you should be able to:

- Explain the value of documented, annual conservation easement monitoring
- Describe the range of monitoring activities land trusts engage in (foot, car, boat, plane, satellite, etc.)
- Describe how the type of property and form of monitoring dictates the frequency of monitoring
- Describe the range of individuals involved in land trust monitoring and the qualifications of monitors (volunteers, staff and consultants)

Conservation easement monitoring: The land trust's ongoing inspection of land to determine compliance with the terms of the easement and the documentation of the organization's findings. Monitoring ensures the protection of the land's conservation values over time.

- Describe the variety of ways that land trusts provide training for easement monitors
- Select a monitoring program that suits the lands your land trust protects and the individuals available to assist with monitoring
- Write, or work with someone to write, a land trust monitoring policy or procedure that includes:
  - Schedule of monitoring (annual or more often)
  - Procedures to follow when monitoring
  - Qualifications of monitors
  - Procedures to follow after the monitoring visit
  - Steps to take in the event of a suspected violation
- Describe the types of activities that go on before a monitoring visit:
  - Informing the landowner
  - Reviewing files and relevant records
  - Gathering material
- Explain the various steps in a monitoring visit:
  - Procedures to follow when monitoring, such as: route of travel; checking boundaries and/or other areas sensitive to encroachment; checking roads and other access ways; and checking where there is recent activity permitted by the easement (building, forest management, etc.)
  - Taking notes at photo points and when to take additional photos
  - Taking notes of any exercised reserved rights
- Explain the various steps after a monitoring visit:
  - Transcription of field notes
  - Labeling of photos
  - Creation of monitoring report or summary of field notes
  - Signatures of report preparers and parties to the easement, if applicable
  - Review of monitoring reports
  - Contact with landowner
  - Maintaining monitoring records and reports
- Briefly describe steps that the monitor should take in the event that he or she suspects there is a violation
- Create a monitoring visit report form
- Have a strategy for moving a land trust with no, or limited, easement monitoring into full implementation of the practice
- Be able to track current and estimate future monitoring costs

Summary

A conservation easement provides the legal means for a land trust and landowner to protect important natural, cultural and historic resources on a property. The responsibility for upholding the easement over time rests with the easement holder. Easement monitoring is the primary method land trusts use to fulfill this stewardship obligation.

Regular monitoring:

- Helps to protect the property's conservation values
- Demonstrates a land trust's commitment to protect the conservation purposes of the easement, thereby meeting IRS requirements for donated easements and maintaining the organization's status as a qualified easement holder
- Helps instill public trust and confidence in the land trust's easement program
- Provides a forum for a land trust to interact with landowners and promote strong landowner relationships
- Provides for early detection of violations that may be resolved before legal action must be taken
- Provides a record in case of court action
- Helps the land trust to understand the changes in the landscape that occur over time

If a land trust fails to fulfill this basic stewardship obligation, the organization will suffer. In addition to the risk of potential harm to a property's conservation attributes, insufficient monitoring may jeopardize:

- The enforceability of the easement
- The community's confidence in easements
- Potential new easement transactions
- Relationships with existing easement landowners
- The land trust's financial stability
- The land trust's ability to fulfill IRS requirements

These consequences may also have a ripple effect on the larger land trust community and the future use of conservation easements as a land protection tool.

A comprehensive monitoring program will help avoid these difficulties and help achieve the goals of the easement in perpetuity. This

chapter provides detailed information about how to set up such a program, including how to:

- Design a monitoring program that is tailored to the needs of the land trust, its easement properties and its stewardship philosophy
- Create a written monitoring policy or procedure
- Create a monitoring form and recordkeeping system
- Plan and conduct a monitoring inspection and complete follow-up recordkeeping

Evaluate Your Practices

Conduct a quick evaluation of your organization's understanding of easement monitoring by giving your organization one point for every "yes" answer. Scores are shown at the end, along with guidance about these questions.

Does your organization:

1. Conduct regular monitoring, at least annually, of all its easement properties?
2. Provide sufficient training and materials to easement monitors?
3. Document every monitoring inspection and have the monitor sign the monitoring report, as well as the landowner, as appropriate?
4. Have a written monitoring policy and/or procedure?
5. Communicate with the landowner during the monitoring process?

If your organization scores:

5: Great! Your organization clearly understands the importance of a good comprehensive monitoring program. This course may help you refine your monitoring procedures. Consider sending samples of your policies and documents to the Land Trust Alliance for posting on its digital library (e-mail learn@lta.org).

3–4: Good, but there is room for improvement. A complete understanding of monitoring will enhance your organization's already good practices.

0–2: It is time to gain a thorough understanding of monitoring, including why it is necessary, the steps involved, the importance of documentation and recordkeeping, and the benefits of policies and procedures to ensure your organization is prepared for the perpetual stewardship of its easements.

Guidance

1. To ensure conservation easement terms are upheld, land trusts must conduct a physical inspection of the easement property at least annually or more frequently if required by the easement restrictions. Insufficient or a lack of monitoring may reduce the enforceability of easements over time, lead to irreparable harm to the conservation attributes of the property and jeopardize the land trust's ability to accept easement gifts.
2. Monitors must understand their role as information gatherers and have the resources necessary to carry out their assignments. Monitoring results are only as good as the monitors, so land trusts need to devote time and resources to training.
3. Land trusts must provide a written record of their inspections to prove that they occurred and to document the results for future use. The monitoring reports will supplement the original baseline report, provide valuable information for the next monitor and provide legal evidence, if needed, for enforcement of an easement violation. The monitor's signature, and other parties' signatures as appropriate, on the monitoring report will help establish authenticity of the document and assist the land trust should it need to use the monitor as a witness in court.
4. Written monitoring policies and procedures will help ensure that your land trust conducts all monitoring consistently and that it has the necessary documentation to defend its easements in perpetuity.
5. Landowners are partners in fulfilling the long-term goals of the easement. Land trusts need to communicate with landowners about their monitoring inspections so landowners know the results and whether or not there are any issues that need to be addressed. This interaction also provides opportunity to build the land trust–landowner relationship and the landowner's confidence in the land trust's stewardship. Further, it provides yet another chance for the land trust to serve as a resource to the landowner as appropriate.

Overview of Easement Monitoring

Conservation easement monitoring is the inspection of an easement property to check for compliance with the easement terms. It is one of the fundamental components of any easement stewardship program. Easement properties should be monitored on a regular basis, at least annually, more frequently if the landowner is activating reserved rights or if the land trust believes there is an above-average potential for a violation to occur. Monitoring can be performed by board members, staff, volunteers or consultants. Depending on the character of the protected property and the resources of the land trust, monitoring can be conducted on foot, by car or recreational vehicle, by horseback or boat, from planes, even through remote sensing or satellite imagery for particularly large properties.

The actual inspection of the property is just one element of easement monitoring. Land trusts also must prepare for the inspection by reviewing files and baselines, and then document the inspection and follow up with the landowner after the inspection. Each land trust's overall monitoring program should be tailored to the organization's easement properties and its capacity and should be written down in its monitoring policy and procedures.

Importance of Easement Monitoring

There are many reasons to conduct easement monitoring — the most important being the protection of the property's conservation values and fulfillment of the commitments contained in the conservation easement. For example, an easement may require that before granting approval for a timber harvest, the land trust will conduct a site inspection to ensure that best management practices are in place and that no trees will be removed from stream banks, to protect water quality. The monitoring visit will help ensure that these requirements are met, thus supporting the long-term protection of the property's resources.

Easement monitoring also demonstrates the land trust's commitment to stewardship and its ability to enforce the easements' terms. This demonstration may be important in case of legal proceedings. The revised IRS Form 990, Return of Organization Exempt from Income Tax, for tax year 2008 (to be filed in 2009 and later years) requires easement holders to note the number and acreage of easements that were monitored by physical inspection or other means during the tax

year. The form also requires the land trust to provide the total staff hours and a list of expenses (legal fees, staff salaries, etc.) incurred for monitoring and enforcing new or existing easements during the tax year. For more information, see the IRS website (www.irs.gov) or Land Trust Alliance website (www.landtrustalliance.org) and the Land Trust Alliance course "Nonprofit Law and Recordkeeping for Land Trusts."

The revised IRS Form 990 requires easement holders to note the number and acreage of easements that were monitored by physical inspection or other means during the tax year, the total staff hours and a list of expenses incurred for monitoring and enforcement.

Another reason to conduct easement monitoring is to ensure easements and the land trusts that hold them are meeting specific legal requirements. For donated easements, Treasury Regulation §1.170A-14(g)(5)(ii) states in part: "The terms of the donation must provide a right of the donee to enter the property at reasonable times for the purpose of inspecting the property to determine if there is compliance with the terms of the donation." Additionally, the land trust must ensure that it meets its requirements as a "qualified organization" under §170(h) of the Internal Revenue Code, and that it maintains its tax-exempt status and ability to accept and enforce easement gifts. Furthermore, the IRS has requested copies of monitoring reports, in addition to baseline documentation reports, when conducting audits of landowners who donated conservation easements.

The IRS has requested copies of monitoring reports, in addition to baseline documentation reports, when conducting audits of landowners who donated conservation easements.

Easement monitoring provides an opportunity for landowners to review the easement terms and discuss their planned activities for the property with the land trust. It also allows the land trust to ask questions and to continue to build a positive, working relationship with the landowner. Land trusts often learn of additional land protection opportunities during monitoring visits. The land trust may also use the opportunity to offer information or resources to landowners about land management concerns (see chapter 2). Although it may not always be feasible for both landowner and land trust to attend the site visit, there are other ways to have interaction, such as a phone conversation prior to the inspection. A notice of the upcoming monitoring visit can also be an impetus for dialogue. Communication during monitoring is especially important for new owners of easement properties. Monitoring is a mechanism to start building a relationship with a new landowner, to prevent future violations and to recruit a new ambassador for the land trust.

Land trusts often learn of additional land protection opportunities during monitoring visits.

Regular monitoring helps to avert easement violations and assists in early detection of potential violations. If a land trust monitors regularly, it is more likely to hear about the landowner's proposed activities and

will be better positioned to resolve any violations promptly. Regular monitoring sends a clear message to landowners and the community at large that the land trust takes its stewardship obligation seriously.

There are several other reasons to conduct easement monitoring. By inspecting a property periodically, a land trust will learn about landscape changes that are occurring over time. This information may help with enforcement of the particular easement, but the knowledge may also help the land trust improve future conservation easement projects. During monitoring, a land trust may learn about which easement provisions are difficult for landowners to understand or uphold, so that future easements can be adjusted.

Finally, monitoring provides a great opportunity to highlight the land trust's successes, whether in person with easement landowners, or in a story in the land trust newsletter or the local paper. Conducting and completing annual monitoring is a great accomplishment, and a land trust can find many creative ways to use these activities in promoting the organization's work and relevance in the community.

Prescription: A long or immemorial use of some right so as to give a right to continue such use, or the process of acquiring a right by uninterrupted assertion of the right over a long period of time.

Laches: Failure to take an action at the proper time, especially such delay as will prevent a party from bringing a legal proceeding.

Conversely, failing to monitor regularly can generate negative publicity that may have a ripple effect on the land conservation community as a whole. Consider, for example, a land trust that does not monitor one of its conservation easements for four years. Suppose that during that time, the land transfers to a new owner who starts to operate a commercial gravel pit on the property, an activity that is clearly prohibited under the terms of the easement and local zoning regulations. The community discovers what is happening on the land and residents complain to local officials about the zoning violation. At that point, the community discovers that the local land trust has a conservation easement on the property that prohibits gravel extraction. The public's trust in the organization and the integrity of the land trust's easement program may be at stake, as well as possibly the land trust's standing as a 501(c)(3) organization.

The consequences of a land trust failing to monitor its easement properties regularly can be great. Lack of monitoring may reduce the enforceability of the easement through exceeding applicable statutes of limitation or the assertion of legal defenses such as prescription, estoppel or laches. It may cause other landowners to decline to move forward with easement conveyances, or donors to withdraw financial support. It could certainly create setbacks in relationships with current

easement owners, their neighbors and community members who may question the land trust's commitment to its mission and goals.

Setting the Protocols for a Monitoring Program

Easement monitoring programs are tailored according to three basic variables: the terms of the easements, the characteristics of the lands and the philosophy and capacity of the land trust. The following questions may help a land trust define its monitoring program requirements:

- *What are the easements' purposes and intent?* For example, if an easement protects rare species, a system to regularly monitor the species presence and health may be needed. If an easement protects water quality, a monitoring system for water quality may be appropriate.
- *What are the easements' restricted uses and reserved rights?* Will special monitoring be needed for certain restrictions? Will the monitoring program need to address frequent requests for approvals of reserved rights to be exercised?
- *Do the easements contain affirmative rights that will require additional stewardship?*
- *What types of properties are protected, and what is the best way to inspect them?* For example, will large size or remoteness require aerial or other special monitoring techniques? Do the properties include working forest- or working farmland, which may need more frequent inspections or communication with landowners?
- *What are the land trust's long-term goals and philosophy for the monitoring program?* Does the land trust wish to influence property management by providing resource management assistance to the landowner? Does the organization wish to cultivate relationships with landowners and future land protection opportunities? What are the expectations and concerns of the community the land trust serves?
- *What are the land trust's available resources for the monitoring program?* Does it have the appropriate personnel, level of expertise, funding and equipment? How can the land trust get the most "bang for its buck" in its monitoring program, given its resources?

For most land trusts, answering these questions is an ongoing process.

As they acquire more easements and more experience, land trusts adjust their monitoring programs accordingly. But once land trusts have a handle on basic program needs and design, they can and should establish policies, procedures and checklists. These written guidelines enable land trusts to better address ongoing monitoring needs and funding requirements, and ensure that they can *consistently* meet monitoring program expectations. Furthermore, a landowner or his or her advisors may request a copy of the land trust's monitoring policy to determine if the organization has the requisite commitment to protect its easements as required by the Internal Revenue Code to be considered an eligible donee for tax-deductible easements. Of course, monitoring policies and procedures that are based on unrealistic expectations or are not carried out consistently can be a detriment to the organization, both legally and in terms of public perception.

Land trusts should evaluate their policies and procedures periodically to ensure they are meeting their internal goals. In addition to looking at similar land trusts for guidance, land trusts should be aware of any requirements or recommendations of the IRS, Land Trust Alliance and any grant programs or funding sources that contribute to the organization's monitoring activities. For more information about the contents of a monitoring policy, see the Monitoring Policy Template on page 246. See also the sample documents at the end of this chapter, which include examples of monitoring policies and procedures.

Land trusts should evaluate their policies and procedures periodically to ensure they are meeting their internal goals.

Following is further information about monitoring program protocols, including:

- What is a monitoring form, and what does it cover?
- Who performs monitoring?
- When is monitoring performed?
- How is monitoring performed?

Land trusts can use this information in designing their overall policy and procedures for monitoring.

Monitoring Reports

An *easement monitoring form* or *monitoring report* is a form that the land trust completes to document the results of the monitoring inspection and any changes on the property. The form also identifies any issues to be addressed. The report is essentially a snapshot in time, because

it captures the condition of the property on a particular day. The form serves as a guide to the monitor during the inspection, and a prompt about what aspects of the property should be evaluated.

Land trusts tailor monitoring forms to the types of properties they protect and the easement terms. Usually the form addresses the key reserved rights and prohibited uses in the easement and notes the condition of the property related to these rights and uses. Also included are basic data, such as the easement name, current landowner, date, time, name of monitor(s), names of anyone who attended on behalf of the landowner, and the means of monitoring (on foot, by car, etc.). The form may include additional information, such as opportunities for the land trust to provide assistance regarding resource management issues (see the sample documents from the Columbia Land Conservancy and the Marin Agricultural Land Trust on pages 261 and 267).

The monitoring form should also contain a signature and date line for the monitor and clearly define the monitor's role with the organization (board member, volunteer, staff or consultant). Depending on the protocols of the land trust, it might also require the review and sign off of another land trust representative as assurance that the property was monitored and any follow-up actions were being addressed. Land trusts are encouraged to implement quality control measures throughout their easement stewardship program. Some land trusts will send the monitoring form to the landowner for his or her review and signature as well. The pros and cons of landowners signing these forms are discussed later in this chapter.

The completed monitoring form serves as written documentation of the inspection and may be a tool in subsequent easement enforcement. It provides testimony about the conditions of the property that were observed by the monitor. As with all documents that may be used in easement enforcement and legal proceedings, completed monitoring reports should be stored in accordance with the land trust's records policy.

Monitoring Personnel

Land trusts can utilize volunteers, board members, staff, consultants or even other land trusts to conduct monitoring of their conservation easement properties. The choice of easement monitoring personnel will depend on the skill level or expertise needed, the resources

available to the land trust, and the land trust's goals for its monitoring program. If, for example, one of its goals is to build ongoing relationships with landowners, then a land trust representative who has continuity with the organization should conduct the visit. But if the goal is to inspect for soil nutrient depletion, then an expert consultant may be needed.

In some circumstances, land trusts may need several different types of monitors. For example, a land trust with an easement that protects both open space and a historic structure may need an architect with historical expertise to monitor the structure and a staff member with open space easement knowledge to monitor the remainder of the property. A land trust that uses volunteers as monitors may choose to have a staff member coordinate the overall monitoring program.

One emphasis of any monitoring program should be to provide thorough training to monitors. A land trust must ensure that volunteers and staff have appropriate training and experience for their responsibilities. These individuals serve a critical role in the organization, both as easement monitors and also as land trust ambassadors. A good monitoring program will support monitors so that they are equipped with the knowledge to feel confident in their assignments, are comfortable representing the organization and feel valued for their contributions to the land trust's mission. For more information on this subject, see Practice 7D, Availability of Training and Expertise.

How can a land trust create and maintain a quality monitor training program? Someone on staff with monitoring experience may coordinate and train the monitors. Perhaps a consulting land trust with extensive monitoring experience can provide a training workshop tailored to the monitoring philosophy and monitoring documents of the client land trust. A land trust should also consider incorporating a field component exercise in the training program to allow the monitors to make a trial run and ask questions. Monitors need to know:

- How to prepare for an inspection
- What materials are available
- What to bring on an inspection
- What to look for while on site
- What information and observations to document
- What to do if they have questions or think they may have identified a potential violation

- How to handle questions from landowners if they accompany the monitor during the inspection
- What follow up is required
- The name and contact information for the monitor program coordinator

A land trust can also obtain training for its volunteers from land trust conferences, such as Rally: the National Land Conservation Conference and training events hosted by regional or state land trust service centers or coalitions. Another source for training may be neighboring experienced land trusts. For example, when the Piscataquog Watershed Association (PWA) was setting up its volunteer monitoring program, it invited the Ausbon Sargent Land Preservation Trust to provide a half-day training session for PWA volunteer monitors.

Most important, remember that all monitors, whether volunteers, staff or consultants, are the land trust's representatives and need to understand the importance of conducting themselves in a professional and consistent manner.

Finding volunteer monitors may be as simple as looking at your membership list or reaching out to a hiking or outing club in the area, but remember that training them is the key to success.

Volunteers

Volunteerism is the backbone of many nonprofits, with land trusts being no exception. Volunteers are willing to donate their time, and often financial resources, to an organization they feel is worthwhile and making a true difference in their communities. A land trust that uses volunteers should have a program to attract, screen, train, supervise and recognize them. This strategy is especially important in easement monitoring because volunteer monitors have significant responsibility in upholding easements and maintaining good landowner relationships. For more information on using volunteers, see Practice 7B, Volunteers.

A land trust may want to select volunteers, or form a team of volunteers, that possess certain skills or knowledge. For example, volunteers may need to know how to read various maps and aerial photos, use a compass or GPS unit, take measurements of structures, operate a camera, walk for an extended period of time over various terrain, operate a boat or recreational vehicle, collect water samples, identify flora and fauna, be knowledgeable about farming operations and improvements and so forth. The land trust will also need volunteers that are comfortable engaging with landowners, if that activity is to be part of the monitoring visit. Volunteers who are observant, conscientious

and trustworthy are best because they will need to report their findings reliably and be discreet about sensitive information as part of the monitoring process.

With an all-volunteer easement monitoring program, a land trust should assign someone to coordinate the program. The coordinator is responsible for ensuring monitors are familiar with the land trust and monitoring protocols, which include:

- Sharing information and providing materials such as maps, directions, landowner names and contact information, a summary of the key easement provisions, and a copy of the baseline to review prior to monitoring.
- Ensuring that monitors know what is expected of them from pre-monitoring preparations though post-monitoring wrap-up.
- Ensuring a clear division of labor, including who is responsible for completing all the assigned inspections on time, who handles any questions or issues raised by the landowner during the course of the inspection, who follows up on any potential easement violations and who completes the monitoring forms.

Some land trusts use volunteers for monitoring with a staff person overseeing and coordinating the monitoring program. For example, the Ausbon Sargent Land Preservation Trust, a regional staffed land trust in New Hampshire, has developed an exemplary monitoring program using this system. A part-time staff person oversees a corps of about 64 volunteers that perform annual monitoring of 82 easements. Volunteers are assigned to specific easement properties, and the coordinator provides each with maps, background information and monitoring training and materials. The volunteers visit the properties and complete the monitoring form, noting any problems or follow-up that is needed, and deliver the materials back to the coordinator. The coordinator reviews the results and routes any problems to the appropriate staff for follow-up. This way, staff ensure that problem areas are addressed consistently.

A volunteer monitor is the face of the land trust, and volunteers must know how to appropriately represent the land trust and field landowner questions.

Of course, good training is fundamental to a volunteer-based monitoring program. A volunteer monitor is the face of the land trust, and volunteers must understand not only how to conduct monitoring tasks but also how to appropriately represent the land trust and field landowner questions. Volunteers may find useful the information and sample documents on landowner relationships in chapter 2, as

well as the information in this chapter. See also the *Monitor Training Curriculum and Handbook: A Guide to the Recruitment, Training and Oversight of Conservation Easement Monitors*, listed on page 291.

The land trust should consider how it will evaluate the volunteer monitoring program. What backup plan does the land trust have if it does not have sufficient volunteers to meet its needs? How does it retain good monitors? How will monitoring quality be evaluated?

Example

The Minnesota Land Trust has a detailed position description for its volunteer monitors, and to participate in the monitoring program, an individual must complete an annual certification program to learn new information about the land trust and emerging conservation issues. In 2007, the land trust used 90 volunteers to monitor its easements, and it typically trains 15 to 25 new volunteer monitors each year. To become certified, new volunteers must complete a half-day training session and then accompany an experienced "mentor" volunteer or land trust staff person on a visit to a protected property.

The Minnesota Land Trust started its certification program in 2000 to strengthen a volunteer program that was cost-effective and geographically diverse. With the certification program, the land trust has been able to ensure consistency and quality control of its monitoring. In speaking about the outcomes of the certification program, Kris Larson, director of conservation, notes: "The program has improved the quality of monitoring and our ability to track issues related to individual projects and individual monitors. It was implemented as part of an overall effort to improve our stewardship program. Having 90 to 100 people around the state who are associated with the land trust has other benefits, including having an ear to the ground on potential projects or community conservation issues. Thus, the program has made other differences besides simply monitoring." Larson offers the following advice to land trusts interested in developing a certification program for volunteer monitors:

- Recruit somewhat experienced volunteers (e.g., Department of Natural Resources personnel, etc.)
- Know exactly how you intend to use them
- Get to know your volunteers
- Have the necessary training materials
- Train volunteers well
- Stay in front of them; communicate
- Be serious about training; stress the importance of monitoring and tracking it accurately

- Treat volunteers as true representatives of the land trust
- Recognize and celebrate their efforts
- Continue to evaluate the merits of using volunteers versus other approaches to monitoring; don't assume you have to use volunteers

Staff

Staffed land trusts often use their staff to conduct easement monitoring for a number of reasons. As part of their daily work, staff members are likely to have learned about conservation easement provisions, the easement conveyance process, legal requirements, organizational stewardship philosophy and the importance of professional conduct and standards. They may have been involved in the easement transaction and so may already be familiar with the property and the landowner. Staff members understand the relationship between stewardship and the integrity of the land trust program, and they may be more efficient at implementing monitoring protocols than volunteers. Staff-based monitoring can provide more consistency in the program and increase the likelihood that a potential violation will be detected early. For example, the Marin Agricultural Land Trust in California uses staff instead of volunteers, explaining that easement landowners are more comfortable knowing someone on staff and like to see the same faces from year to year.

Consultants

Land trusts may also use consultants for easement monitoring. At present, this option appears to be less popular among land trusts, in part perhaps, because of the emphasis that land trusts are placing on building landowner relationships. With respect to cultivating long-term, partnership-oriented relationships with landowners, staff or dedicated volunteers may be better suited to this role.

However, using consultants for certain aspects of monitoring may allow land trusts to free up time for other areas of their work, such as conserving additional land. Consultant Shelton Douthit of California explains that land trusts sometimes hire him for the field component of monitoring. Land trust staff or volunteers do the face-to-face work with landowners, to maintain good continuity in the landowner relationship. The consultant specializes in knowing the land and its boundaries, special features and management. No matter how they employ consultants, land trusts need to invest time and money in find-

ing, contracting and training consultant monitors. A consultant monitor should understand the easements, supporting documentation and the land trust's monitoring policy and protocols. The consultant's role as agent of the land trust must be well-defined, including the extent of the consultant's authority to answer landowner questions, respond to requests for approvals and address potential problems. Because the consultant will be the face of the land trust with landowners, it is especially important that he or she understand the land trust's philosophy regarding landowner relations. Ensure that the consultant knows how to be discreet in discussions with landowners and when to defer landowner questions to others at the land trust.

The contractual relationship between the consultant and land trust should be clearly defined, consistent with federal and state laws and, as appropriate, documented in a signed contract or memorandum of understanding that states terms and compensation. The land trust should also ensure that the consultant is familiar with sections of *Land Trust Standards and Practices* that are relevant to his or her work. For more information on working with consultants, see Practice 7H, Working with Consultants.

As with land trusts that use staff or volunteer monitors, a land trust that uses consultant monitors should be clear about who is supervising the consultants; who is responsible for handling follow-up, landowner questions and potential violations; and who is responsible for overseeing the overall monitoring program.

To locate qualified consultants, contact your regional Land Trust Alliance office, land trust service center or coalition or neighboring land trusts for recommendations.

To locate qualified consultants, contact your regional Land Trust Alliance office, land trust service center or coalition or neighboring land trusts for recommendations. Some local and state government agencies that hold conservation easements use consultants for monitoring and so may be a source of information as well.

Example

Easement Monitoring Using a Consultant: Mojave Desert Land Trust

Mojave Desert Land Trust (MDLT), founded in 2005, employs consultant expertise to help it manage its acquisition program and monitoring responsibilities. Nancy Karl, director of operations, explains that the land trust chooses to work with consultant Shelton Douthit because "the experience and credentials that he brings to the table could not be matched in-house." For MDLT, a relatively young land trust, the knowledge and experience Douthit brings are

essential. He provides assistance on MDLT's preacquisition projects involving inholdings in national parks, managing the field work and certain financial and real estate aspects of these transactions. Douthit also helps put in place the permanent monitoring system that MDLT will use as the land is transferred, with restrictions, to the National Park Service.

Douthit explains that a consultant can bring familiarity with field work and real estate transactions to a land trust and can provide services to complete essential work quickly. This service is especially important for land trusts when they are new and have not yet developed in-house experience and protocols. For other clients, Douthit provides basic monitoring fieldwork services, while the land trusts absorb more responsibility for the landowner contact and relationship-building aspect of monitoring. He explains that, ultimately, the goal is to transfer full monitoring responsibilities to the land trusts as each land trust matures and its stewardship program increases in volume.

An important role for a consultant is to seed best practices for stewardship into land trust operations. Land trusts with newly established easement programs may want to seek experienced consultants to help them design state-of-the-art protocols for easement monitoring.

Example

Swapping Expertise: Liberty Prairie Conservancy and CorLands

To complete monitoring, or other stewardship tasks, a land trust may also be able to barter or swap skills with another in the area. For example, Liberty Prairie Conservancy (LPC) and CorLands in Illinois, which overlap coverage area in Lake County, have at times shared GIS mapping data, creation of high-end GIS maps and technical expertise. CorLands had a staff person with expertise in tree identification, while LPC had someone with expertise in herbaceous plant identification. Each person would assist the other, particularly if information was needed in baseline documentation inventories. When a new staff person joined CorLands and began easement monitoring, LPC representatives accompanied her on a few monitoring visits, because they were more familiar with the properties. These two organizations recognize the value of pooling their skills and knowledge for stewardship purposes. They support each other in whatever way they can, including collaborating on easement drafting and holding easements on each other's fee ownerships.

Especially for land trusts with limited capacity, swapping expertise and resources may be an excellent way to add depth and strength to a stewardship program.

Avoiding Conflicts of Interest

Land trusts should be aware of real or perceived conflicts of interest within their monitoring programs. Guidelines in the monitoring policy and the land trust's conflict of interest policy should address these concerns. Monitors should recuse themselves from conducting any inspection that may be perceived as a conflict of interest, such as an inspection of their own land, or land owned by their family members or partners, employers, neighbors or other related parties as defined by the IRS.

Monitors should recuse themselves from conducting any inspection that may be perceived as a conflict of interest, such as an inspection of their own land, or land owned by their family members or partners, employers, neighbors or other related parties as defined by the IRS.

For example, the Colorado Cattlemen's Agricultural Land Trust (CCALT) prohibits staff, volunteers or board members from monitoring their own or related parties' easements. The land trust's policy states:

> No individual who owns property covered by a CCALT conservation easement, including Board members, staff or volunteers, and approved by the Board of Directors to monitor conservation easements, may monitor an easement on their own property, neighboring properties or any property in which they have a direct interest, financial or otherwise.

For additional information on conflicts of interest, see Standard 4, Conflicts of Interest, and the Land Trust Alliance course "Avoiding Conflicts of Interest and Running an Ethical Land Trust."

Scheduling Monitoring

Like easement terms, monitoring schedules are tailored to the requirements of the landowner, the land trust and the type of easement property. To determine the best time to monitor, consider:

- Provisions of the conservation easement — are there any terms that need particular timing for the inspection, such as restrictions on specific agricultural practices or terms involving specific management for rare species?
- Terms of the inspection clause of the easement, such as limits on times of access to the property or requirements about contacting the landowner prior to monitoring
- Physical factors, such as seasons and weather
- Safety concerns, such as hunting season
- Landowners' schedules

- Land trust scheduling requirements as may be outlined in the monitoring policy

To get the most from a site inspection, monitoring should occur when the property is most visible and accessible, and ideally when the landowners are most available. For example, monitoring in the winter months in the northern United States may not be feasible given snow cover, or areas of the country prone to mudslides may have road closures during spring months or periods of heavy rain. For easements protecting critical habitat for rare, threatened or endangered species, ground monitoring may be timed to observe habitat, such as when rare plants are in bloom or when birds are nesting or present. Land trusts may need to work around landowners' schedules, such as farmers' planting times or second homeowners' availability.

To get the most from a site inspection, monitoring should occur when the property is most visible and accessible, and ideally when the landowners are most available.

As organizations establish annual work plans, it is important to include the monitoring schedule. To ensure adequate time is allotted, land trusts may estimate total time by multiplying the average time for one inspection by the number of easements. Formally scheduling the monitoring will help ensure that it is completed.

Land trusts should conduct inspections regularly, *at least annually*. Violations that are discovered more than a year after commencement of the noncompliant activity may be more difficult to resolve or remediate. This does not necessarily mean the land trust does not have enforcement rights after a year. For more information on this issue, refer to state conservation easement enabling law and land trust counsel. See also the Land Trust Alliance course "Managing Conservation Easements in Perpetuity."

Land trusts should conduct inspections regularly, *at least annually*.

Sometimes more frequent regular monitoring is desirable, depending on the easement terms, the property's location and characteristics, the availability of monitors and monitoring method used, and the capacity of the land trust. For example, a land trust that accepts easements protecting water quality in an agricultural valley may need to monitor farm activities more frequently than once a year. If it chooses to monitor more frequently, the land trust must have commensurate capacity.

Example

Frequency of Monitoring

Brandywine Conservancy annually monitors more than 400 easements. Monitors make additional visits if there are special circumstances that may impact the natural resources on the property, such as home construction or an extended build-out period in a subdivision. In addition, staff members conduct frequent, informal drive-bys of easement properties throughout the year. "We have to be sensitive to the landowners," explains David Shields, associate director of the land stewardship program. "More frequent monitoring could be interpreted by the landowner as a lack of trust, but a 'windshield view' can be informative without being intrusive."

Certain circumstances warrant occasional monitoring outside of the regular monitoring schedule, such as:

- A landowner is executing a reserved right that may impact the conservation values if not conducted in accordance with the easement terms. For example, if a landowner is executing a reserved right to build a residence, then the land trust may want to monitor the property during construction to check for compliance with specific terms of the reserved right. Or, if a landowner is harvesting timber on a working forest easement property, then the land trust may need to monitor the harvest to ensure best forestry management practices are implemented.
- There exists greater than average potential for a violation. For example, easements neighboring residential developments have a greater potential to be abused and violated by trespassers.
- The land has transferred to new owners.
- A significant land alteration project, such as construction of a building or excavation, is occurring on an adjacent property.
- Collection of biological or ecological data is needed in support of the easement terms.
- A landowner requests a statement of compliance (also referred to as an estoppel or compliance certificate), perhaps before a transfer of ownership.

If a land trust conducts occasional monitoring for a specific reason, then it should clarify in the monitoring documentation that the monitoring was outside of the regular monitoring protocol. Regular monitoring involves an overall inspection of the property and addresses all easement terms, while occasional monitoring looks at a specific circumstance and

addresses only the relevant easement clauses. Likewise, documentation of a monitoring visit conducted to address a landowner's request for statement of compliance should be so noted.

Monitoring Methods

Land trusts protect a variety of properties and waterbodies in diverse landscapes across the country. Consequently, monitoring methods vary. For some land trusts, the monitoring method is dictated by the geography and topography of the region. For others, the monitoring method is shaped by ancillary goals of the monitoring program, such as creating an opportunity to work closely with the landowner toward improving resource management. In any case, land trusts should select monitoring methods that match the type of land and resources that they are protecting, the easement terms and the capacity of the land trust. Some common monitoring methods include:

- *On foot.* This method is most common for smaller properties that are relatively accessible and can be walked within a few hours. This method easily allows the landowner to accompany the monitor on the visit. It's the best choice for easements that need close visual inspection. It may be more costly in terms of time and money than some other methods, particularly if using staff or consultants.

  The Piscataquog Watershed Association in New Hampshire annually monitors its 52 easements using volunteers that walk each property.
- *Automobile.* This method is good for monitoring properties that are bisected or surrounded by public roads or have interior roads in good condition. It's a good choice to minimize time spent on larger properties that are highly visible from the car (such as open fields), but not for properties that require a closer visual inspection. Many land trusts also use informal drive-by visits to keep tabs on easement properties between formal monitoring visits.
- *Recreational vehicle.* Using recreational vehicles is a great way to cover a lot of ground, provided there are accessible trails, access ways or open lands and the use of such vehicles will not conflict with the terms of the easement or damage ecological resources. However, this method may not be feasible for certain areas, such as wet or steep properties. There are costs associated with the use, upkeep and transport of these vehicles

if owned by the land trust, and there are also safety and insurance considerations. Some landowners may have these vehicles available for use at their properties, or volunteers or consultants may own their own recreational vehicles, which may lower costs.

- *Horseback.* This method is an obvious and enjoyable way to monitor an equestrian or large ranch property or other types of properties that are suitable for horses. Riders should be experienced and take precautions to minimize the risk of injury.

  The Montana Land Reliance typically monitors by foot or vehicle, but if the stewards or the easement landowners have horses or all-terrain vehicles, they will sometimes ride them during monitoring visits.
- *Boat.* For easements that protect rivers, lakes, islands, shorelines, swamps or other waterbodies or their upland buffers, a canoe, kayak or other boat may be the best (or only) way to view significant portions of the property. Maine Coast Heritage Trust, which holds easements on islands, uses this method for some properties. If the entire property cannot be viewed by boat, additional monitoring is required. If a land trust must own and maintain kayaks, canoes or larger boats for monitoring, this expense should be factored into stewardship costs.
- *Aerial (airplane or helicopter).* Aerial flyovers are a great way to view easement properties or blocks of protected land, particularly if they are large, forested, remote and/or comprised of rigorous terrain. Aerial monitoring can save enormous time for a land trust, and volunteer pilot programs can keep the costs low (see Additional Resources on page 292 for options). However, aerial monitoring may need to be followed by a ground visit to obtain a better visual inspection, to document changes on the property, to investigate a suspected violation and to meet with the landowner.

  The Society for the Protection of New Hampshire Forests previously used aerial monitoring to inspect all of its properties. However, as the Society's roster grew to more than 500 easements, it became impractical to fly over all easements each year. The Society now contracts annually with an aerial imagery supplier to obtain up-to-date aerial images of all easement properties. Easement boundaries are superimposed on the imagery using GIS data, and then Society staff inspect the images to detect changes and potential violations.

- *Remote sensing/satellite.* If a land trust is protecting exceptionally large properties on a landscape-scale, then satellite imaging is a good first step in the monitoring process. The land trust can compare the satellite images to property maps and older aerial photographs to note any changes that would require a follow-up visit (either by air or on the ground). Land trusts are cautioned not to rely solely on satellite images; other forms of monitoring must be used to confirm interpretation of the images and compliance with easement terms.

  The New England Forestry Foundation uses satellite imagery in its monitoring program for a 762,192-acre easement it acquired in 2001. The property's large size makes it impractical to monitor using only traditional methods. The organization starts with annual review of satellite imagery to detect landscape-scale changes, such as those resulting from forest harvest. Then finer-scale monitoring methods, including site visits and inspection of aerial photography, are used in selected areas.
- *Combination.* Land trusts may elect to use a combination of monitoring methods, based on property characteristics and available resources. For example, the Columbia Land Conservancy, a countywide, staffed land trust in New York with 143 easements totaling 19,970 acres, conducts aerial monitoring of all easement properties every year. A flight can usually cover all properties in one day. In addition to saving time, this method also is the most effective way to monitor the organization's larger, forested easements. CLC also conducts ground monitoring on half of its properties each year, so that each property is visited on the ground once every two years. The Vermont Land Trust also uses a combination of methods, including ground visits and the review of aerial images obtained from the Farm Service Agency and municipal tax-mapping authorities.

Conducting Ground Monitoring

All monitoring programs include some component of ground monitoring. This section describes how land trusts typically conduct a monitoring visit, from preparation through post-visit documentation and follow-up.

Pre-Monitoring Preparations

Inform the Landowner

Before easement monitoring is conducted, the land trust should contact the landowner to provide notice of its monitoring plans, including the date and method of monitoring. If appropriate, the land trust may ask the landowner or another person, such as the property manager, to accompany the monitor during the visit. The land trust should follow any requirements contained in the easement, such as providing notice of the visit in writing, as well as any requirements of the land trust's monitoring policy.

When calling or sending a letter to landowners about its monitoring plans, the land trust may also remind landowners to contact the land trust if they are planning any activities that require notification or approval (see the sample letter from the Big Sur Land Trust in California on page 285). Some land trusts also send a questionnaire asking about the landowner's potential plans for the property over the coming year. Other land trusts take a more conversational approach and notify the landowners (and managers, as appropriate) of the monitoring visit by phone and inquire about future plans during the conversation.

Example

Heads Up: Columbia Land Conservancy's Questionnaire

The Columbia Land Conservancy sends an annual questionnaire to its easement owners in the late winter to collect information about what activities the landowners may be planning as warmer weather approaches. Their answers help CLC focus on which properties may need extra attention during the monitoring visit or additional staff time to handle notices and approvals. The questionnaire is accompanied by a letter that serves to remind landowners that CLC will be starting their annual monitoring in a few months and to contact them if they have any questions about the easement or the notice and approval processes. CLC reports that most landowners return the questionnaire, which is reprinted on page 265.

Review Files

To be efficient and effective, monitors must do their homework prior to the monitoring visit. This homework includes reviewing, as appropriate:

- Easement terms and subsequent amendments, waivers, clarifications and/or approvals
- The baseline documentation report and any updates or supplemental materials
- Previous monitoring reports
- Correspondence between the land trust and landowner, including notices and approvals
- Maps, including the easement map, survey or plat map and natural resource maps (soils, wetlands, topography, etc.), and aerial photographs
- Management plans (timber, agricultural, natural resource inventories, etc.)

Field Supplies

What to bring for monitoring depends on the type of property and method of monitoring. Following is a typical list of items that land trust monitors may need on inspection trips (see also the list used by the Society for the Protection of New Hampshire Forests on page 284). For further technical information about supplies, see appendix B.

- Directions or location map
- Easement map and/or aerial or other maps that identify the property and depict any special use areas
- Monitoring form or checklist
- Copy of easement or summary of permitted and restricted uses
- Copy of baseline documentation (and updates, if applicable)
- Camera, film (if applicable) and batteries
- GPS unit, compass, binoculars, flagging tape and measuring tape or pole
- Survival gear, including water, food, insect repellant, cell phone, first-aid kit
- Foul weather gear, sleeping bag, space blanket, whistle (if monitoring large, remote properties or where conditions change with minimal warning)
- Special clothing, as applicable (e.g., brightly colored safety vest during hunting season)

Any written materials or maps used in monitoring should be copies so originals do not get damaged or lost.

Remember: Any written materials or maps used in monitoring should be copies, so originals do not get damaged or lost.

Land trusts should carefully consider what easement-related materials are appropriate for the site visit and, if the landowner is to be

present, whether any materials could cause potential problems. For example, suppose the monitor has a copy of the easement in hand when conducting a site visit with the landowner. The landowner asks whether a certain activity can take place on the property. The monitor might feel pressured to review the easement and provide an immediate answer. In fact, depending on the landowner's question and the role of the monitor within the organization (staff, volunteer or consultant), he or she should take time to review the easement, defer the question to the appropriate staff person or even possibly speak with an attorney to confirm interpretation of a clause. If the monitor answers incorrectly during the visit, it will place the land trust in an awkward position and may strain the land trust–landowner relationship or reduce the landowner's confidence in the land trust.

Or suppose the monitor has a monitoring form in hand that includes a list of items on which the land trust hopes to partner with the landowner for better resource management. Perhaps, for example, the easement is silent on the matter of overgrazing, but the land trust wishes to note any signs of overgrazing and provide the landowner with information about proper grazing practices to encourage sounder resource management. If the landowner notices the form, he or she may question why overgrazing is relevant and feel the land trust is inappropriately intruding into his or her land management practices. Again, this would place the land trust in an awkward position and could strain the relationship.

Seize the opportunity to be an informational resource on your monitoring visit. One monitor for the Vermont Land Trust carries a milk crate in his vehicle with information to distribute to landowners based on their interests and questions.

Safety

A monitor should take safety precautions as appropriate. At the very least, a monitor should leave word about his or her whereabouts. If the landowner is at the property but not accompanying the monitor, the monitor usually should let the landowner know he or she is there. Bringing another person along on the visit may be advisable for large or remote properties, or when meeting difficult landowners and a witness to the inspection and conversation may be useful later. Monitors may also want to leave a sign or business card in their car window, notifying landowners and others about the monitors' presence on the property. Monitors should be prepared for the unexpected, including bad weather and difficulties with domestic animals or wildlife. Monitors should always leave a property immediately if they do not feel safe.

Monitoring Hazards

Ask a group of seasoned easement monitors about threats to safety and lively stories are sure to follow. Easement monitors in New Hampshire, like those across the country, have faced dozens of safety issues during monitoring visits in recent years. Top concerns include:

Domestic animals, dogs in particular. One monitor was attacked by a pack of domestic dogs traveling together in the woods and defended herself with a hatchet, which she was glad to have with her. She now routinely carries dog mace.

Stumbles and falls. Such accidents are always a potential hazard, but especially when monitoring alone. Consider, for example, the challenges of walking long distances in rough footing obscured by thick ferns or undergrowth. Open wells are particularly dangerous, because they are often obscured by sticks, leaves and vegetation.

Ground nesting hornets. Monitors allergic to stinging insects should take special care and carry an EpiPen or other treatment for severe allergic reactions.

Wild animals. One monitor, traveling with her dog in a remote location, came upon a black bear. The bear chased the dog and stood tall to challenge her. The monitor also stood tall and backed off, glad that she was knowledgeable about bear behavior and responsive safety maneuvers. In areas where monitors may come into contact with wild animals, land trusts should ensure that monitors are trained about what to do when encountering a dangerous animal.

Illegal agriculture. Monitors on remote properties have found potted plants and even plantations of marijuana, which can pose a serious danger given how growers may guard these areas. Secluded areas nearer to population centers can attract other types of illegal drug manufacture activity as well. Because landowners may know nothing of these activities, they can provide no warning to the monitor.

Inadequate preparation for the weather. Failing to have adequate clothing for wet, cold weather or failing to take bad weather into account when planning a monitoring trip can be potentially fatal.

Dangerous people. Easement stewards can experience unpleasant or threatening encounters in isolated locations with landowners, abutters or members of the public. One monitor, while investigating an encroachment issue, was threatened by a gun-bearing abutter. Other monitors have described harassment of all kinds by mentally unbalanced landowners, some with known criminal histories. One land trust, given a particularly bad history with a certain easement landowner, performs routine annual monitoring on the property with a group of three monitors.

Example

Safety First: Natural Lands Trust

The safety of its employees and volunteers is of paramount importance to the Natural Lands Trust (NLT), as is demonstrated by the organization's establishment of a special committee to address safety concerns. This committee, which is a Pennsylvania Certified Workplace Safety Committee, meets monthly and is composed of both management and nonmanagement staff. The committee conducts safety audits and investigates incidents and proposes actions after these reviews. According to Paul Claypoole, preserve manager and safety and equipment coordinator, the land trust has never had any safety incidents on its easement properties. He attributes this success to the fact that most of NLT's easements are in suburban or urban locations with very few remote easements. He notes: "All of our easement monitors are preserve managers and, as preserve managers, they are required to be first aid and CPR certified. All NLT trucks carry first responder kits, fire extinguishers and flares or emergency triangles. This year, all easement monitors received GPS units to help mark boundary lines, infractions and the like. The land trust also gave all monitors cell phones. All safety equipment and training was initiated to make our jobs as preserve managers as safe as possible." Claypoole stresses that these safety initiatives were put in place across the organization and not solely as an easement monitoring safety initiative.

Personal safety for monitors is paramount. Land trusts would be wise to thoroughly vet all potential hazards in the region with easement monitors, and they should also ensure that monitors can exchange information about experiences and lessons learned to benefit the monitoring program as a whole.

Personal safety for monitors is paramount. Land trusts should thoroughly vet all potential hazards in the region with easement monitors and ensure that monitors can exchange information about experiences.

Focus monitoring on the easement's use restrictions and reserved rights.

The Monitoring Visit

What to Monitor For

The conservation easement terms, baseline documentation report and prior monitoring forms are the documents that guide the monitor on what to look for during the monitoring visit. Focus monitoring on the easement's use restrictions and reserved rights: if buildings are prohibited, observe whether there is new construction; if mining is prohibited, observe whether the land surface is disturbed; if reserved rights have been exercised, document this fact; and so on. Some features that require particular attention include:

- Boundaries or other areas that are vulnerable to encroachment
- Roads and other access ways
- New trails or access points
- Flagging
- Areas of recent activity permitted by the easement
- Signs of disturbance (e.g., excavation, vegetation distress, dumping, tree felling)
- Indicators of property conditions (e.g., erosion, residual dry matter, invasive species, water quality)
- Activity in or around building areas (existing or reserved) if applicable
- Areas heavily used by landowners or by the public
- Stream banks and lake shores, if restricted by the easement

It may not be feasible to monitor the entirety of a property every year, so it is important to keep a record of which areas were monitored to ensure other areas of the property are monitored on the next visit.

A land trust should monitor only for compliance with the easement terms. Although a land trust might notice other land management issues or concerns, it is important to maintain the distinction between easement issues and issues that are not within the purview of the land trust's responsibility. Before a land trust brings noneasement issues to a landowner's attention, it should consider why the issue matters to the land trust, and how the information may be received by the landowner. For example, a monitor may discover a deer-hunting stand in a tree that straddles the easement property boundary. The stand is permitted under the terms of the easement, but the monitor suspects that the structure was erected by the neighbor and the landowner is unaware that the neighbor is hunting on the property. In this instance, the landowner may be grateful to the land trust if the monitor mentions the deer stand, either because the landowner is distressed about the neighbor's trespass or because the landowner appreciates the land trust's concern.

Consider another scenario in which a monitor notices an abundance of noxious weeds on the protected property, but the easement does not require the landowner to minimize or eradicate the weeds. Suppose the monitor tells the landowner that he should address the problem. The landowner may be offended or upset that the monitor questioned his stewardship of the property and feel that the land trust overstepped its legal monitoring authority. In this case, a better approach may be simply to ask the landowner whether he would like some information on controlling invasive species.

Decisions about what to say and how to say it are judgment calls based on the land trust's relationship with the landowner. Land trusts also should carefully consider what observations are in writing on the monitoring form, particularly if the land trust requires the landowner to review and sign the form.

Documentation during Monitoring

A primary purpose of monitoring is to observe and document changes in the condition of the easement property that are relevant to the easement terms. If there is doubt about what changes are relevant to easement terms, err on the side of documentation while in the field, and determine the relevance later, back in the office. In general, it is a good idea to document new activities and changes, whether due to human activity (construction, new land use, etc.) or natural causes (fire, severe wind damage, flooding, etc.). Documentation generally includes taking photographs and keeping a record of photo points on a map for future reference or for any necessary monitoring follow-up. It may also include taking measurements, water samples or other types of analysis implied by the easement terms.

Some land trusts prepare ongoing or periodic updates for the baseline documentation at the time of the monitoring visit. These photographs and other materials may be filed with the monitoring records or stored in a separate, supplemental baseline documentation file. Some land trusts update their baseline photographs at least once every five to ten years. Others do not routinely update baseline materials or photos according to an established timetable. Others prepare baseline documentation updates concurrently with the rerecording of the organization's easements, as may be required by state marketable title act statutes. A land trust's monitoring policy and procedures should include direction on when and how to update the baseline if this activity is part of the land trust's monitoring practice.

Monitoring with Landowners

A bonus of the monitoring visit is that it can provide a venue for the land trust and landowner to meet, talk and build a solid relationship — the cornerstone of effective easement stewardship. This interaction helps landowners feel comfortable about contacting the land trust with questions or requests, thus serving the best interests of both parties. A monitoring visit is a great opportunity for a land trust to informally discuss its goals and its stewardship philosophy and to seek opinions and advice from landowners about the land trust's work.

Although land trusts usually encourage landowners to attend monitoring visits, monitors should consider how the landowner's presence may impact their inspections. For example, a landowner may have a personal preference for driving instead of walking, which may limit the area covered. Landowners may also lead the monitoring visit; therefore, the monitors end up viewing only the areas that the landowners have brought them to see. If a landowner's presence will impede a thorough inspection, then the monitor could meet with the landowner before or after the visit instead, or follow up with a more extensive monitoring visit alone.

Monitors should be cautious about answering landowner questions during the visit if they feel they need additional time to review the easement or contact legal counsel.

Monitors should be cautious about answering landowner questions during the visit if they feel they need additional time to review the easement or contact legal counsel. Landowners may ask for interpretation of easement clauses during the monitoring visit, or ask at the conclusion of the visit, "So, everything's fine, right?" Monitors should expect these questions and be prepared with answers that neither dismiss the landowner's questions nor overstep the monitor's role. If the monitor states or implies that an activity "is fine," then the landowner can assume he or she has received official word from the land trust. If the monitor's response proves later to be incorrect, it may put the land trust in a difficult situation, may strain the landowner relationship and may even affect the land trust's reputation in the community.

It is always better for the monitor to say something like, "I will review the easement terms following today's visit so I can answer your question thoroughly," or "I didn't see anything that concerns me but if my supervisor notices anything from my report, she'll call you." Or, if the monitor thinks there may be a potential violation, he or she may say, "I will review the easement terms and call you if I have any questions," or "I have a few questions I want to talk with my supervisor about first and she'll get back to you." If the land trust is using volunteer or contract monitors, the monitors should be instructed to say that they will relay the landowner's questions to the land trust supervisor, who will follow up with them shortly.

Note that word choice and demeanor are key. Be polite and avoid accusations, so that the landowner does not become defensive or feel scolded. Specific training, including role playing, on responding to landowner inquiries will help prepare monitors. One land trust reported that an inexperienced monitor called and left messages with a landowner, who did not return the calls. Finally, the monitor called

again and left this message: "Unless you call me back, I'll go on your property." This declaration angered the landowner, and the monitor quickly learned better ways of seeking permission to enter a property.

Addressing Possible Violations

Monitors should be instructed on how to handle possible violations. The key message for the monitor: Do not make any determination based on initial observations. Document the suspected violation to the extent practicable at that time. The monitor's job is simply to observe and record findings, not to interpret the easement, opine as to potential violations or offer on-the-spot decisions on behalf of the land trust. If the landowner is attending the monitoring inspection, the monitor may ask general questions to gather additional information, but without acknowledging there may be a possible violation. In general, land trusts should gather information and discuss the issue internally first to determine if a violation exists and what action to take prior to meeting with the landowner to address the problem.

A written conservation easement violation policy or procedure is vital. The policy should outline:

- The roles of all parties involved, including legal counsel
- The sequence of determining, reporting and handling the violation
- Steps to ensure that landowners are treated fairly and consistently throughout the process

Upon discovering a violation, a monitor should carefully document it, both quantitatively and descriptively, for an audience that does not know the property. Typically, a monitor should take photographs (or use a video camera, if appropriate), mark the photo points on the easement or baseline map and take extensive field notes. Land trusts may have different protocols, depending on who is responsible for monitoring. For example, if a staffed land trust uses volunteer monitors, it may ask the volunteer monitor to take photographs and document the potential violation, then report back to staff, who will conduct the required follow-up.

For more information on addressing easement violations, see Practice 11E, Enforcement of Easements, and the Land Trust Alliance course "Managing Conservation Easements in Perpetuity."

The monitor should not do or say anything that may make resolving the violation, should it be confirmed, difficult or more challenging.

Land trusts should gather information and discuss an issue internally first to determine if a violation exists prior to meeting with the landowner to address the problem.

Post-Monitoring Work

Post-monitoring work is needed to establish a record of the visit, update materials for the next monitoring inspection and address areas of concern. The results of monitoring must be documented and saved to build a record for future monitoring and in case the land trust has to go to court over a violation. Establishing a system for post-monitoring work will help ensure the land trust is consistent, efficient and thorough in upholding its easement monitoring and stewardship obligations. Designating a point person or coordinator to oversee post-monitoring work will help ensure that the work is completed.

A monitor should carefully document the violation, both quantitatively and descriptively, for an audience that does not know the property at all.

Transcription of Field Notes

During a monitoring visit, a monitor may take notes or mark maps with his or her observations. The monitor will need to write a separate report containing this information if it is not included on the monitoring form. A copy should be placed in the monitoring files. The monitor should avoid making any conclusions or subjective statements in these notes because these statements become part of the stewardship record.

Remember to include something in the photograph for scale, if helpful.

Photographs

Photographs taken on a monitoring inspection document changes to the property that directly relate to the conservation easement. These photographs may be filed as a supplement to the original baseline documentation report or they may be filed with the monitoring report. If they document a potential violation, the photos are filed with the monitoring records. In any case, all photographs should be labeled and keyed to photo points shown on a monitoring map or, if for baseline purposes, the baseline map. The photos' labels should state what the photograph depicts and why, where, when and by whom they were taken.

Like all easement documentation, photos should be handled so that they will be admissible as legal evidence in court if needed. Photos should be signed and dated by the photographer, and the record should include information on the photographer's role or affiliation (e.g., volunteer monitor or staff position). The land trust can record this information in a format similar to that used for the baseline documentation reports. Some land trusts also have the landowner sign the photos. The photo documentation should comply with established organizational recordkeeping policies.

Monitoring Reports

The completed monitoring report provides a written record that documents the condition of the property with respect to easement compliance and also documents the fact that the monitoring occurred. This record may be used in legal proceedings, if the easement is violated. For tax-deductible easement donations, the IRS requires that the easement include the right for the land trust to enter the property for the purpose of inspecting compliance with the easement terms, and in some easement audits, the IRS has sought proof that the land trust monitored the property. (Of course, all easements must be monitored, regardless of whether they were the subject of an income tax deduction.) A land trust may use its monitoring reports to demonstrate its commitment to protecting the conservation purposes of its easements.

Do not wait to write the report or you may forget important information. Establish acceptable timelines for completion.

The monitoring report should describe only factual or objective information. It should be signed and dated by the monitor and, if applicable, the landowner and other parties to the easement. Because the report may be used in legal proceedings, land trusts should be very thoughtful about what statements are included. If, for example, the land trust is investigating a potential violation, then the report may indicate that an area or issue has been identified that needs additional follow-up. Alternatively, the land trust may wait to complete the report until it has determined whether the concern is a violation and has identified steps needed to resolve the issue.

At a minimum, a monitoring report form should include:

- Name of monitor, affiliation, address and signature
- Date
- Property owner and location
- Presence or absence of landowner or other party
- Comment area for condition of property; notes on condition of specifically restricted areas

Most land trust monitoring forms include space for more detailed observations.

Monitors are advised to complete all sections of the form and leave no blanks (they can write "not applicable," if necessary). If sections are left blank, the form may be deemed incomplete and raise questions in an enforcement or legal action. Some land trusts require a

second person from the organization to review and sign the document to ensure that the form is complete and that any necessary follow-up actions are taken. Another good quality control practice is to maintain a database that can track the monitoring status of the organization's entire easement roster.

Following Up with Landowners

Land trusts should notify their easement landowners in writing that the land trust inspected the property, and address any questions or concerns that arose during monitoring. This follow-up gives landowners certainty about whether the land trust found any issues that need to be discussed and creates a written record for the land trust files. It also builds trust with the landowner and community, demonstrating that the land trust is upholding its stewardship responsibility.

Many land trusts report positive outcomes from sending the landowner two copies of the signed monitoring report, and asking that one copy be signed by the landowner and returned. They follow up with a phone call if the copy is not returned promptly. The signed copy is retained in the monitoring file. Some land trusts prefer to send a monitoring report to the landowner for signature only if the landowner accompanied the monitor during the actual inspection. Other land trusts simply summarize the results of the inspection in a letter. Some land trusts prefer to call all landowners in addition to sending a letter, so they have another opportunity for personal contact. See page 286 for a sample monitoring follow-up letter from the Lancaster Farmland Trust.

Caution is advised when providing the monitoring report to landowners. Although a land trust should be transparent about its practices and findings, the monitoring form may also include information that the land trust does not necessarily intend for the landowner, such as observations about land management concerns or other incidental remarks not directly related to the easement's terms, which can lead to misunderstandings. In both the monitoring report and the follow-up letter, a land trust should give careful consideration to making any statement about easement compliance. It is often unrealistic to observe the entire property on a monitoring visit, so the land trust should avoid a declaration about compliance if there is a possibility that an unnoticed violation exists or that the monitor made an incorrect interpretation of the facts.

If there are issues or concerns that need follow up after monitoring, the land trust may want to consider phoning or visiting with the landowner about those items before describing them in a letter. A well-considered approach can help avoid creating an adversarial situation.

Easement Co-Holders and Contingent Interest Holders

If a conservation easement names another entity as a co-holder or grants contingent interests, such as third-party enforcement rights, to another entity, the land trust that holds the primary monitoring responsibility should keep the co-holder and/or contingent interest holders apprised of the monitoring schedule and outcome. Depending on the specific agreement between the co-holders and/or contingent interest holders, the land trust should keep any such entities up-to-date by providing copies of the monitoring reports, correspondence between the land trust and landowner, the baseline documentation report and associated supplemental materials. Conversely, if a land trust holds a non-primary easement interest behind another easement holder, the land trust should receive a copy of the monitoring report and keep apprised of any stewardship issues. Each party should know and understand its stewardship role in the easement, and, if there is a suspected violation, all parties should be informed.

Updating Baseline Documentation Reports

Monitoring can be an opportunity to catch up on missing or incomplete baseline documentation reports, those that weren't, for whatever reasons, completed at the time of the easement closing. Photos and other data can be assembled following the monitoring inspection and incorporated into deficient baseline reports, or this additional documentation can be filed as supplemental baseline material. For more information, see Practice 11B, Baseline Documentation Report, the section on documentation during monitoring on page 237 and the Land Trust Alliance course "Conservation Easement Drafting and Documentation."

Maintaining Records

Throughout the post-monitoring recordkeeping, land trusts should follow their records policy and copy, file and archive important materials, including correspondence with landowners, completed monitoring reports, additional monitoring notes and maps, photographs and supplemental baseline materials. For more information, see Practices 2D, Records Policy, and 9G, Recordkeeping, and the Land Trust

Alliance courses "Nonprofit Law and Recordkeeping for Land Trusts" (Volume II) and "Managing Conservation Easements in Perpetuity."

Tracking Monitoring Costs

What financial resources are needed to support an easement stewardship program? To help answer this question, a land trust should track actual costs. Consider, for example:

- The cost of conducting annual or more frequent monitoring if required. Many factors influence this cost, including the type of monitoring, use of staff or volunteers, type of easement property and so on.
- The cost of other stewardship tasks, such as responding to requests for review and approval of certain activities, responding to landowner questions and concerns, communicating with interested parties about easement properties and managing any affirmative rights.
- Costs associated with resolving easement violations.
- How costs may change over time as the organization's easement roster grows, its land protection goals change (e.g., a shift in focus to more complex agricultural easements from natural area easements), its stewardship approach changes (e.g., increased focus on building landowner relationships) or as the organization grows (perhaps changing from an all-volunteer organization to one with staff).

On the newly revised IRS Form 990, for tax year 2008 (to be filed in 2009 and later years), land trusts are required to provide the total staff hours and a list of expenses incurred for monitoring and enforcing new or existing easements during the tax year. This requirement provides a strong incentive for tracking stewardship costs. Larger land trusts often have stewardship departmental budgets, making tracking overall costs relatively easy. Smaller land trusts and volunteer-based land trusts may need to develop systems to track actual hours and expenses accruing to easement stewardship activities. A full year of careful tracking can yield useful information about the real stewardship costs of various activities and specific easements. With this information, land trusts can make adjustments in their stewardship funding as needed.

For more a thorough analysis of easement stewardship program costs, see the Land Trust Alliance course "Determining Stewardship Costs and Raising and Managing Dedicated Funds" and Colorado Open Land's Model Conservation Easement Costs Spreadsheet on page 45.

Strategies for Implementing or Improving a Monitoring Program

For most land trusts, the easement monitoring program is a work in progress. As land trusts mature, they continually adjust monitoring methods to be more effective and efficient. If your land trust is at an early point in the learning curve — perhaps just developing a formal program or making adjustments to an older one that is inadequate for current needs — here are some strategies that can help you implement or improve a monitoring program:

- Identify your land trust's goals for the monitoring program and talk to other land trusts in your area of similar mission and capacity to see if they have resources or ideas to share.
- Assess your organizational capacity in terms of funding, labor and time, and develop a monitoring program that both fulfills your stewardship obligations and is sustainable for your organization. For some organizations, this assessment may mean refocusing, for a time, on easement stewardship rather than new land protection initiatives.
- Take the time to write down monitoring procedures and/or to develop a monitoring policy, and then review them once a year to see if changes are needed. It will be a valuable resource and a time-saver for new land trust personnel.
- Invest in people. Put time, resources and thought into training easement monitors—it will pay off.
- Phase in changes to the program by implementing a timeline that allows your land trust to build capacity and fully understand how the changes will affect the stewardship program and the organization as a whole.
- Track and acknowledge the true costs of fulfilling your stewardship responsibilities and create a financial strategy to support your stewardship program over the long term.

Monitoring Policy Template

This exercise is designed for either an instructor-led training or self-study program. However, it will be most useful in an in-house board or staff workshop.

Use the template on the following page to draft (or outline) a monitoring policy. If your land trust already has a monitoring policy, compare your policy with the template to determine if changes are needed.

Discussion Questions for Land Trusts with Monitoring Policies

1. What are the substantive differences between your existing policy and the template?
2. Has your organization considered the implications (i.e., level of capacity) of what it requires in the policy? Does the policy correspond to the types of easements you hold and their restrictions?
3. Do you need to revise your existing policy based on what you have learned in the chapter? If so, what recommendations will you make?

Discussion Questions for Land Trusts Developing Monitoring Policies

1. What are the biggest challenges you face in drafting the policy?
2. Has your organization considered the implications (i.e., level of capacity) of what it requires in the policy?
3. Did you make drafting decisions based on who will read the policy? If so, give examples.

Monitoring Policy Template

Using a template to create your own monitoring policy can provide assurance that the policy includes all the information necessary to conform to best practices. However, it is important to tailor any template to your conservation easements as well as your land trust's capacity.

Part I: Background Questions

Before using the template, consider the following:

1. Who is this policy for (board, staff, volunteers and/or monitors)?
2. Who will read it (land trust personnel, easement landowners and/or the general public)?
3. What is its purpose (provide an overview of the land trust's monitoring program, articulate steps taken in monitoring, demonstrate the land trust's ability to monitor easements, etc.)?
4. Is the policy just for easement properties or also for other lands owned and/or managed by the organization?
5. How will it be implemented, evaluated and updated?

The following monitoring policy template contains sample language, guidance and questions to assist your organization in drafting a policy. The policy's main components are in headings, and directions on what to include in each section are in italics. Sample language is provided for each section. Examples from actual land trusts are also included in various places, however, land trusts are advised to adapt the language to their unique situations, missions and goals. *You should seek the advice and review of experienced legal counsel before adopting your policy.*

Part II: Monitoring Policy

[*insert land trust name*]

[*insert date created or date adopted by board*]

Easement Stewardship or Monitoring Philosophy

Describe why you monitor your easements and your approach to easement stewardship so readers will understand the importance and the need for such a policy.

Vermont Land Trust Example
Philosophy: "Building relationships with and providing services to landowners, not enforcement, is the best immediate and long-term method to guarantee that conservation easements are upheld. Key to these stewardship services is the process of visiting conserved land and the owners of the land every year."

Columbia Land Conservancy Example
Guiding Principles: "The Columbia Land Conservancy (CLC) is dedicated to upholding its legal and community obligations to preserve the conservation easements it accepts for as long as such easements exist. In recognition of the fact that CLC's conservation easements are perpetual in duration, CLC understands that one of the keys to preserving these easements is its commitment to monitor, defend and enforce the terms of each conservation easement on a consistent basis. In addition, CLC from time-to-time owns lands in fee that contain reserved life estates and will become either tradelands or public conservation areas, and CLC understands that regular monitoring of such lands is critical to conserving the conservation attributes of such fee lands."

Definition of Monitoring

Adding a definition is helpful if the policy is going to be distributed outside of the organization; otherwise it may not be necessary. See examples below.

The annual, documented, visual inspection of a conservation easement-protected property to ensure that the terms of the easement are being upheld, with on-the-ground physical inspections as the site warrants.

Or

> The land trust's ongoing inspection of land to determine compliance with the terms of the easement and the documentation of the organization's findings. Monitoring ensures the protection of the land's conservation values over time.

Monitoring Frequency

Conservation easements should be regularly monitored, at least annually, to detect any changes and to ensure the property is being used in accordance with the terms of the easement restrictions. Properties in which landowners are exercising reserved rights may need to be monitored more frequently during the planned activity to ensure that all parties understand and adhere to the restrictions.

Modify the language above as necessary if your organization monitors all properties more than once a year or if there are special circumstances regarding your monitoring frequency.

> **Columbia Land Conservancy Example**
> Each conservation easement held by CLC, and each piece of land owned by CLC that is subject to a life estate, shall be monitored at least annually to ascertain whether the use of the property is in accordance with the restrictions applicable to the land. In certain circumstances, monitoring should be done more frequently (examples include the exercise of a reserved right, such as timber harvesting or construction of a dwelling) in order to identify any actions that may violate the terms of the restrictions as soon as practicable, and thus reduce the organization's chances for significant time and expense in correcting a violation.
>
> **Vermont Land Trust Example**
> All conserved properties are visited at least once annually in person on the ground. More frequently, informal drive-by visits of properties with a greater potential for violation may occur, but landowners can expect one regular visit a year. VLT also views conserved properties annually using aerial imagery.

Monitor Qualifications

Easement monitoring will be conducted by [*list as appropriate—staff, volunteers, contractors, combination or all]* and will be coordinated by *[list staff or board member's title or as appropriate]*.

> **Colorado Cattlemen's Agricultural Land Trust Example**
> Monitoring may be conducted by the Executive Director, Director of Conservation, CCALT program staff members or trained volunteers. Individuals who are to conduct annual monitoring visits must be specifically approved by the Board of Directors in advance of any monitoring activity. Each year, the Director of Conservation will bring a list of monitors to the Board of Directors for approval.

Prior to commencing monitoring, [*insert land trust name*] monitors shall receive adequate training in the methods and importance of the monitoring process, its relation to [*insert land trust name*] overall conservation easement management program and how to conduct the monitoring in a safe and professional manner.

Method of Monitoring

Monitoring will be conducted by [*ground, aerial, boat, etc.*] inspections.

Tailor the above language as appropriate; describe if there is more than one method and what the duration and rationale is for each. If using satellite imagery describe when other methods are needed.

> **Columbia Land Conservancy Example**
> Every easement and life estate property will be monitored by air on an annual basis. In addition, one-half of these properties will also be selected for a ground-monitoring visit. The remaining properties will be ground monitored the following year.

> **Colorado Cattlemen's Agricultural Land Trust Example**
> When practicable, aerial or satellite monitoring shall occur, on average, no more than every other year in order to maintain contact with landowners and familiarity with individual properties. It is the intent of CCALT to have annual personal conversations with those landowners whose properties are periodically monitored by air.

Monitoring Procedures or Process

In this section you can either (1) provide detailed procedures involved in monitoring, if the policy is primarily used by land trust personnel, or (2) present the monitoring process in general terms if the policy will be available to easement landowners or the general public, and write a separate, more detailed protocol for in-house use. Remember, if you are too specific and your protocols change, you will need to revise the policy accordingly.

Steps:

Describe each based on your easement stewardship program.

- Landowner contact
- Review of materials
- Materials and equipment for visit
- Conduct inspection and take photographs and field notes, as appropriate

Post-Monitoring Work

Keep your approach consistent with the monitoring procedures above.

Steps:

Describe each based on your easement stewardship program.

- Complete monitoring report and other documentation (maps, etc.) as appropriate
- Follow up with landowners

Describe whether the follow-up will occur through a letter or phone call. Will landowners receive a monitoring report and will they be required to sign it? Will the follow-up be different for easement properties with suspected violations? If so, refer the reader to the next section and explain further.

- File monitoring report and related materials in accordance with the land trust's recordkeeping policy

Suspected Violations

Easement monitors are to inspect properties and document their observations. Monitors will only document factual information and, in the event of a suspected violation, will follow the [*insert land trust's name*]'s Conservation Easement Violation Policy [*if available, or describe the immediate steps a monitor should take such as reporting their observations to the executive director or designated person to handle suspected violations*].

Conflict of Interest

[*Insert land trust name*]'s Conflict of Interest Policy shall apply to all monitoring activities conducted by the organization. No individual who owns property covered by a [*insert land trust name*] conservation easement, including board members, staff or volunteers [*modify as appropriate based on who is authorized to monitor on behalf of your land trust*] may monitor an easement on their own property, neighboring properties or any property in which they have a direct interest, financial or otherwise.

Modify as necessary to comply with the land trust's conflict of interest policy.

Revising the Policy

From time to time the Monitoring Policy may be revised for the following reasons: (1) to correct errors or clarify ambiguities; (2) to comply with the *Land Trust Standards and Practices* and generally accepted practices in the land trust field; (3) to describe current monitoring procedures of the organization; (4) to recognize changes in organizational capacity or types or numbers of easement properties being protected; or (5) other reasons that the organization deems important to uphold its stewardship responsibility. Any revisions to the Monitoring Policy require the prior vote and adoption by the board of [*directors, trustees*] of the [*insert land trust name*] before implementation.

Monitoring in a Growing Land Trust Agricultural Stewardship Association

The Agricultural Stewardship Association (ASA), founded in 1990 to conserve working farmland in the Washington County region of upstate New York, was an all-volunteer land trust for the first dozen years of its existence. When ASA's board decided to hire its first staff, the conservation easement program was gaining momentum and additional staff soon followed. They were charged to pick up the pace by a major foundation that realized there was an opportunity to protect significant working farmlands in an area rapidly being surrounded by suburban sprawl in adjoining counties. The association currently holds 61 easements on nearly 7,600 acres and has five staff members.

ASA has always relied on volunteer monitors to fulfill its basic stewardship obligation of annual monitoring and has understood that monitoring visits are important, not only to uphold the terms of the easement, but also to put a face with the organization. Several of the volunteer monitors had been conducting the site visits for years and were very familiar with the properties. Over the past few years, more easement acquisitions have created the need for more volunteers. As staff came on board, they assisted with monitoring and designated a staff member to coordinate the volunteer monitoring program and provide oversight and assistance to monitors. The staff coordinator was responsible for ensuring the monitoring was conducted, forms completed, landowners' questions answered, potential violations addressed, and that the monitoring was a positive experience for the both the volunteer and ASA.

ASA decided to hold a special training session with a staff member from a larger land trust in the area. The trainer spoke with the volunteers about the basics of monitoring, everything from what to bring in the field to suggestions on word choice when handling landowner questions. The ASA coordinator then took the volunteers to an easement property to conduct a trial monitoring visit so that they could practice what they learned.

As the number of easements has increased, ASA is finding it more challenging to manage a volunteer monitoring program. It has decided to scale back on the use of volunteers but still uses those that are dedicated and thorough in their approach. It also hired a part-time stewardship associate to help with monitoring. The staff monitors often have other volunteers join them on the visit, helping to cultivate good volunteers.

Discussion Questions

1. Why do you think ASA believes staff monitors, instead of volunteer monitors, will save them time when they are so busy with new land protection projects?
2. How would you propose a land trust evaluate a volunteer monitoring program? What factors would you consider? What factors do you think should be considered in determining whether a staffed land trust should move away from using volunteers as monitors?

Guidance

1. Recruiting, training and managing volunteers takes time. Consider the time spent preparing materials for each monitor (copies of easements, baseline reports, maps, monitoring forms, etc.), holding a monitor training session (advertising, planning and preparing materials for the session), answering monitor's questions, following up to ensure monitoring reports are completed, determining whether landowners had questions or requests, and following up with landowners accordingly. Also, if a volunteer monitor suspects a violation, a staff member usually must visit the site to investigate further. Staff-based monitoring may be more efficient, especially as the easement load grows and economies of scale become more important. Staff monitoring may also save time, because they can deal more directly with any landowner questions or issues.
2. The first step is to consider the goals of the monitoring program and the reasons that the land trust uses volunteers. Perhaps the choice to use volunteers is due to limited staff time, to the desire to encourage active participation from community members, to satisfy landowner preferences, to cultivate and deploy ambassadors to talk about the land trust's good work or other reasons. A combination?

   The next step is to track progress and outcomes. Is there a core of dedicated volunteers that help on an annual basis? Do the volunteers have the appropriate skill sets and attributes? Are the monitors fulfilling their obligations? Are the reports completed correctly and returned in a timely manner? Have the monitors received the necessary training and are they implementing it? Do the monitors understand the materials provided and what to monitor for? What has the response been from the landowners? From the monitors? Does the land trust sometimes have to undo the volunteers' actions? How much oversight does the monitoring program require, and how does this time commitment relate to other organizational priorities? Is it difficult to control or oversee certain volunteer monitors due to their relationship with the organization (are they board members, major funders, community leaders or family members)?

   If there are concerns in these areas, the land trust should ask whether using volunteers is a good strategy. Other factors to consider include organizational capacity, complexity of easement provisions, monitoring requirements and willingness of volunteers to conduct the monitoring. The

organization should ask itself: Are there better ways to use volunteers to further the mission of the land trust?

The purpose of this case study is for learners to consider the actual amount of work that is required to support a comprehensive volunteer monitoring program. Volunteer monitoring programs can be a benefit to the organization but require commitment on the part of the land trust to ensure that there is sufficient program oversight, training and evaluation to meet program goals.

Conclusion

For a land trust that holds easements, monitoring is the primary means by which it fulfills its ethical and legal responsibility to uphold an easement's provisions. Through monitoring, a land trust not only keeps watch for potential easement violations but also learns about the condition of easement properties and stays engaged with landowners. A sound monitoring program can also create good public relations and establish the land trust's reputation for excellence in the community.

Experienced land trusts have developed a variety of approaches for monitoring. This chapter presented the key components of a monitoring program, from pre-monitoring preparation through post-monitoring documentation, but there are many methods to complete the basic tasks. Land trusts that are developing a new monitoring program—or refining an established one—can borrow and adapt from the extensive work that other land trusts have already completed in this area.

Comprehensive conservation easement stewardship is one of the land trust community's most rapidly evolving fields. As land trusts succeed and grow, so do their easement rosters. It is inevitable that over time, successful land trusts will need to devote a higher proportion of their organizational energy and budget to easement stewardship. Land trusts are adapting new methods; for example, most land trusts now recognize the importance of building good relationships with landowners. Baseline documentation has also grown in perceived importance, as the land trusts recognize its value for communication purposes as well as easement defense.

Today's land trusts can work from the solid foundation of easement stewardship knowledge that the land trust community has constructed. This book provides an entry point to easement stewardship activities and requirements that land trusts can use to build and improve their programs. However, the land trust community as a whole is a rich repository and reference for knowledge and ideas. As you develop your land trust's stewardship program, be sure to consider the experience that may be available in other nearby land trusts, particularly statewide organizations and state chapters of national organizations. Pay special attention to new developments; fresh legal challenges to easements often stimulate revised and improved stewardship practices that can better withstand future challenges. Easement stewardship is an evolving and adapting science. Stay tuned to updates in this critically important area of land trust work!

Sample Documents

Annual Ground and Aerial Monitoring Reports, Columbia Land Conservancy, New York (*page 261*)
The Columbia Land Conservancy conducts annual aerial monitoring of all 143 easement properties in addition to ground monitoring half of the easement properties every year. These reports are not viewed by landowners. For quality control purposes, another staff member is responsible for ensuring appropriate action is taken if there are any issues that need to be addressed after the site visit.

Questionnaire, Columbia Land Conservancy, New York (*page 265*)
Columbia Land Conservancy sends this questionnaire to easement landowners in late winter prior to the monitoring season, so that staff members have a heads-up about upcoming landowner plans. CLC reports that most landowners complete the questionnaire.

Easement Monitoring Report, Marin Agricultural Land Trust, California (*page 267*)
The Marin Agricultural Land Trust (MALT) uses only staff to monitor and conducts ground monitoring by foot. This report is tailored to their model conservation easement, which focuses on protecting the agricultural and ranching values of the property and preventing any use that would significantly impair those values. The monitor looks for indicators of range condition, including erosion, weeds, residual dry matter and water quality. To assist in this effort, MALT created a manual to help train staff in monitoring and sampling techniques.

Easement Monitoring Inspection Report, Upper Valley Land Trust, New Hampshire (*page 270*)
This document is used by staff and volunteer monitors to record the results of the monitoring visit. Note that the first section of the form records information from the landowner, who is contacted prior to the inspection visit. This information alerts the monitor to any prior conversations that he or she should be aware of when visiting the landowner.

Monitoring Procedures Guidelines and Checklist for Monitoring Team, Door County Land Trust, Wisconsin (*page 273*)
This staffed land trust uses teams of volunteer monitors to conduct easement monitoring. The land trust prepared monitoring procedures guidelines and a checklist to assist monitors and ensure consistency

in the organization's monitoring program among volunteers as well as from year to year.

Guide to Monitoring Conservation Easements (excerpt from *The Conservation Easement Monitoring Handbook*), The Nature Conservancy, Wyoming Chapter (*page 278*)
This document is another example of written monitoring procedures, which assist the monitor, from pre-visit review of materials through post-monitoring follow-up, and includes some helpful hints to guide the staff.

Stewardship Visit Checklist, Society for the Protection of New Hampshire Forests (*page 284*)
The Forest Society created a comprehensive checklist for its field monitors, including materials and equipment to bring on the visit. The land trust protects working forestlands in various terrains. Land trusts should create their own checklist based on their easement properties and monitoring protocols.

Monitoring Notice, Big Sur Land Trust, California (*page 285*)
Written notification to landowners about upcoming monitoring visits can serve many purposes, including demonstrating the land trust is carrying out its stewardship obligations, reminding landowners to provide proper notice or seek approval prior to commencing certain activities, continuing to build landowner relationships and serving as a resource. This letter contains all of these elements. Some land trusts may prefer verbal communications with their landowners instead. Land trusts should check with the easement document to see if there are any stipulations on the form of communications/notifications between grantor and grantee.

Monitoring Follow-up Letter, Lancaster Farmland Trust, Pennsylvania (*page 286*)
To ensure landowners know the outcome of the monitoring visit, land trusts often send a follow-up letter and/or a copy of the monitoring report. In this example, you see a land trust that sends a copy of the report but also uses the opportunity to reach out and be a resource to the landowner, as well as remind the landowner about contacting the land trust with construction or subdivision plans. If a land trust does not send a copy of the monitoring report, then the follow-up letter should be more explicit about whether anything they observed during the visit was inconsistent with the easement terms.

Monitoring Policy for Conservation Easement, Gallatin Valley Land Trust, Montana (*page 287*)
A monitoring policy can help ensure quality and consistency in a land trust's easement stewardship program. This example contains the key elements (who, what, why, when and how). As with any policy, a monitoring policy should be drafted to the specific organization's easement stewardship program and capacity.

Conservation Easement Monitoring Fact Sheet, Minnesota Land Trust (*page 289*)
This fact sheet is an example of an informational piece that land trusts can provide to easement landowners, members, volunteers and others in the community about the organization's monitoring program. Such a document also helps with ensuring transparency of land trust practices.

2007
Columbia Land Conservancy
Annual Ground Monitoring Report

Easement Name:	
Owner(s):	
Other Contact (if different from Owner):	
Lead Monitor:	Additional Monitor:
Date of Visit:	
Time of Arrival to Site:	Time of Departure from Site:
Did anyone accompany you on the inspection? Specify.	

Pre-Monitoring Questions:

Since last monitored, does CLC have knowledge of:

Yes	No	
___	____	the property or part of the property being transferred, leased or sold
___	____	the property or part of the property being subdivided or boundary lines adjusted
___	____	construction of any structures, ponds, trails and/or any improvements
___	____	active logging
___	____	change in caretaker/manager for the property
___	____	any reserved rights being activated
___	____	any concerns of the landowner to be addressed at this site visit

Comments/Notes:

Monitoring Visit:

Add/Update measurements of structures, improved structures or areas with size limitations, if needed:

Area or Structure:	Dimensions (ft):	Area or Structure:	Dimensions (ft):
_____	_____	_____	_____
_____	_____	_____	_____

2007 CLC Ground Monitoring Form Page 1 of 2

Areas in need of discussion or examination of easement language: (check and describe below)

Ind./commercial activity	Tree/shrub removal or timbering
Home Occupation	Road/driveway construction
Residential structures	Recreational/habitat structures
Depositing/Dumping	Agricultural structures
Wetland or Stream alteration	Fences
Excavation (soil, rock...)	
Pond construction	

Comments/Notes:

Suggested follow-up partnership actions, possible land management areas: (check and/or describe below)

Erosion Eutrophication Over-grazing Encroachment Water Quality

Comments/Notes:

General impression of inspected area:
(i.e. quality of vegetation, biodiversity, well maintained land uses and structures)
Comments/Notes:

Post-Monitoring:

Any follow-up required? Specify (by whom, when, etc.):

Any actions suggested for partnership information? Specify (by whom, when, etc.):

Were photographs taken of the site while monitoring? Yes* No

*Photographs taken during the site visit should have the easement name, date photographed and initials of the lead monitor written on the back of each photo. The supporting text description of each photo, a sketch of the location on a copy of the baseline map and GPS point, if taken, should be included and filed in the updated supplemental baseline packet and in the archives.

Report Completed by:

_____

Monitor Title Date

Report Reviewed and Follow-up Actions Addressed:

_____

Director of Conservation Programs Date

2007 CLC Ground Monitoring Form Page 2 of 2

2007
Columbia Land Conservancy
Annual Aerial Monitoring Report

Easement Name:	
Owner(s):	
Other Contact (if different from Owner):	
Co-Monitor:	**Co-Monitor:**
Flight Date:	**Pilot:**

Pre-Monitoring Questions:

Since last monitored, does CLC have knowledge of:

Yes	No	
___	___	the property or part of the property being transferred, leased or sold
___	___	the property or part of the property being subdivided or boundary lines adjusted
___	___	construction of any structures, ponds, trails and/or any improvements
___	___	active logging
___	___	change in caretaker/manager for the property
___	___	any reserved rights being activated
___	___	any concerns of the landowner to be addressed at this site visit

Comments/Notes:

Aerial Monitoring Visit:

Areas in need of discussion or examination of easement language: (check and describe below)

Ind. /commercial activity
Home Occupation
Residential structures
Depositing/Dumping
Wetland or Stream alteration
Excavation (soil, rock...)
Pond construction
Tree/shrub removal or timbering
Road/driveway construction
Recreational/habitat structures
Agricultural structures
Fences

Comments/Notes:

Suggested follow-up partnership actions, possible land management areas: (check and/or describe below)

Erosion Eutrophication Over-grazing Encroachment Water Quality

Comments/Notes:

2007 CLC Aerial Monitoring Form Page 1 of 2

Post-Monitoring:

Any follow-up required? Specify (by whom, when, etc.):

Any actions suggested for partnership information? Specify (by whom, when, etc.):

Report Completed by:

_____

Date

Report Reviewed and Follow-up Actions Addressed:

_____

Director of Conservation Programs Date

2007 Aerial Monitoring Form Page 2 of 2

Columbia Land Conservancy would appreciate it if you would answer the following questions about your conservation easement property. We have enclosed a self-addressed, stamped envelope for your convenience.

Name of Conservation Easement:

Please make any necessary changes.

Current Owner(s):

Primary Mailing Address:

Telephone:

Email:_____

Do you prefer that we contact you about monitoring by phone or email? (circle one)

Name of Caretaker/Farm Manager or other Contact:_____

Mailing Address:_____

Telephone:_____

Email:_____

Would you like your caretaker to be copied on correspondence regarding the property? Yes/No (circle one)

Yes	No	
☐	☐	Has your protected property, or part of your protected property, been subdivided, transferred, leased or sold within the past 12 months? If so, please provide details: _____
☐	☐	Do you expect to subdivide, transfer, lease or sell your protected property, or part of your protected property, within the next 12 months? If so, please provide details: _____

(over)

Yes	No	
☐	☐	Have you built any structures, ponds, trails and/or made any improvements on your property within the past 12 months? If so, please describe: _____ _____ _____
☐	☐	Do you plan on building any structures, ponds, trails and/or making any improvements within the next 12 months? If so, please describe: _____ _____ _____
☐	☐	Are you actively logging the property?
☐	☐	Do you plan to log the property within the next 12 months?
☐	☐	Do you have a current forest management plan, harvest management plan, or NRCS conservation plan?

Other Questions or Comments:_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

If you have any questions about your easement or the information requested on this sheet, please contact the Columbia Land Conservancy office at (518) 392-5252.

Completed By: _____

Date: _____

Thank you for your commitment to local land protection.

Marin Agricultural Land Trust
Easement Monitoring Report

Easement: _____ Date: _____ By: _____

Landowner: _____ Previous visit: _____ By: _____
If new: Contact _____
Address _____
Phone(s) _____

GENERAL INFORMATION

Special Provisions in Easement? CCA_____ House size_____ Other_____

Meet/Discussion with Landowner? Y N
Comments/Concerns:

Describe any conditions related to natural disasters and provide a map of documented locations.

LAND USE/MANAGEMENT

Indicate any changes in land use. Provide a map or photographs of any changes.

Indicate type and scope of any leases known, including lessee name.

Building Construction?	Y	N	Commercial/Recreation?	Y	N
Water Development?	Y	N	Mining/Excavation?	Y	N
Road Construction?	Y	N	Dumping?	Y	N
Other infrastructure?	Y	N			

Explain:

RESOURCES

Describe erosion problems and any control efforts. Provide a map of newly documented erosion areas.

Describe weed problems and any control efforts. Provide a map showing the location and approximate cover/density of weed infestations.

Provide RDM estimates and describe associated area. Provide a map showing RDM zones or utilization zones if possible.

Describe potential water quality issues and remedies. Provide a map showing the location of documented issues.

COMMENTS AND NOTES

PHOTOGRAPH LOG

Photo #	Subject	Location Description	Focal Lgth	Bearing

Attachments _____

Reviewed by _____

UPPER VALLEY LAND TRUST

Inspection Date: _____

EASEMENT MONITORING INSPECTION REPORT

Project Name: _____
Monitor Name: _____
Volunteer? Yes _____ No _____
Acreage: _____
Location: _____

Current Owner:
Address:
Phone:
E-mail:
Cell:

UVLT #: **Other interest ref. #:**

Landowner contacted prior to inspection: Yes __ No ___

Date: _____

Phone _____ **Voice Mail** _____ **E-mail** ____ **Other** _____

Name of person contacted: __ _____

BY: __ Monica Erhart, UVLT Stewardship Coordinator
___ Pete Helm, UVLT VP, Stewardship
___ UVLT Volunteer _____

Details of conversation/communication:

_____ New Buildings/Construction
_____ Timber Harvest
_____ Public recreation
_____ Renting Fields/Delegating Mgmt
_____ Assistance of UVLT needed
_____ Natural Alterations (flood, erosion, blowdowns)
_____ Change in Ownership
_____ Anticipated Legal Changes
_____ Changes in use of fields or buildings

Please describe:

Observations from Monitoring Visit:

Page 1 of 3

Description of current land use/Site description:

.

Did you meet with the landowner / manager on the day of the monitoring visit?

____ Yes ___ No Name(s):_____

Which activities / changes have taken place since the last monitoring inspection?

____ Timber Harvest ____ Agriculture ____ Field Maintenance ____ Boundary Maintenance

____ Land Clearing ____ Subdivision ____ Trail Work ____ Building

To your knowledge, have any of these recreational activities taken place on the property?

____ Walking ____ Mountain biking ____ Snowmobiling ____ Horseback riding

____ Skiing ____ Hunting ____ Other: _____

List man-made alterations and management activities, conducted or planned. (For example, construction, dredging, filling, trails, timber harvest, clearing new fields, etc.) Describe activity or alteration, noting extent, location, purpose, individual responsible (if known).

List natural alterations/occurrences (erosion, fire, ice, invasives, flora / fauna). Note location and nature and attach maps, photos, and illustrations as necessary.

Is there activity on abutting land? Please describe:

To the best of your knowledge and observation, is there compliance with all restrictions specified in the conservation easement? Please describe.

____ Yes ____ No

Please describe your inspection, including observations/comments, management needs, info requests, boundary condition/needs, plans that may affect property, etc. Attach maps, photos, and illustrations as necessary.

Monitor name & title *(i.e. "Volunteer")*:

_____

Signature: _____ **Date:** _____

CONTACT INFO:

Upper Valley Land Trust
19 Buck Road
Hanover, NH 03755
Ph: (603) 643-6626

Web site: www.uvlt.org
E-Mail: peter.helm@uvlt.org
E-mail: monica.erhart@uvlt.org

Cc (electronic):

Site Name: ***Page 3 of 3***

DOOR COUNTY LAND TRUST, INC.
MONITORING PROCEDURES GUIDELINES

As amended August, 2002

I. *Assemble a Baseline Documentation File for each property:*

(1 original to be stored in Safe Deposit Box; 1 copy stored in office)

This Baseline File should contain the following items:

A. Acknowledgment statement to satisfy the IRS requirement that for tax-deductible easements, both the donor and the donee must sign a statement referencing the baseline file and acknowledging that it is an accurate representation of the property's condition at the time of easement donation.

B. Documentation of property's conservation values:

1. Maps - plat, survey, topographical, aerial, one to be used as a base map of property with photo points marked and numbered.
2. Photographs and photo point descriptions including GPS coordinates and compass bearings.
3. Property Description report

C. Legal documents: recorded easement document, title report if appropriate, any legal encumbrances (e.g. rights-of-way, water rights, etc.)

D. Property owner information (e.g. timeline of owner contacts, history of easement acquisition, correspondence with owner).

E. Stewardship Endowment Contribution Worksheet

II. *Annual Pre-Monitor-Visit Procedure*

A. Prepare a Monitoring Binder for each property. This binder should include:

1. Easement Summary report
2. Property description report from Baseline File
3. Photo Point map with photo point descriptions, GPS coordinates, compass bearings.
4. Topographic map, Plat Book page showing property location.
5. Past monitoring reports
6. Past Biological Surveys

B. Initial annual contact letter to all owners (may need to contact new landowners where a sale or transfer has occurred), anticipating monitoring visit, and referring to DCLT general activity. This letter and subsequent monitoring appointment letters should be consistently from the same staff person.

C. Assemble a Monitoring Team and appoint a Team Leader. All monitoring team members should have received sufficient monitoring training prior to their visits. Property owner should not be a monitor, but may accompany the monitoring crew.

D. Schedule monitoring visit by telephone or letter at least two weeks in advance; invite owner to accompany, and indicate that we would like to review with them the easement document and the baseline documentation, if appropriate. It may be preferable or necessary to plan a meeting with landowner prior to monitoring visit. If so, staff should attend this meeting.

E. Monitoring Team should meet together briefly before visiting sites so as to be prepared and organized. All Team members should review and be familiar with the contents of the Monitoring Binder for the property as well as the Monitoring Procedures document.
F. Assemble all materials needed for visit (Monitoring Binder, and all equipment to be used, with enough for all monitors involved)
G. Equipment considerations:
    1. Camera, clipboard, pencils.
    2. Compass, GPS unit, binoculars, field tape measure, flagging.
    3. Rubber boots
    4. Other equipment may be needed in specific situations.

III. Day of Monitor Visit

A. Arrive at appointment on time, make all introductions. If needed, meet with landowner to review Monitoring Binder, including easement summary, past Monitoring Reports and Landowner Questionnaire to answer any questions.
B. Questions to ask owner may include:
    1. Any changes to land since last monitoring or contact.
    2. Any plans to sell or transfer the land.
    3. Any management issues or concerns.
    4. Any need for assistance
    5. Any new management activities anticipated?
    6. Any building (as set forth in reserved rights) anticipated?
    7. Have you seen any unusual or interesting wildlife.
    8. Have there been any natural disasters or changes to your conserved land due to flooding, droughts, winterkill, wind-damage, or animal damage?
    9. Are there any recreational uses of your land by the public? Have there been any problems?
    10. Have neighbors engaged in any activities that could potentially encroach upon your land?
    11. Are you or any of your neighbors interested in conserving any additional lands?
    12. Update owner about DCLT's recent activities in county; perhaps share latest newsletter. Be positive about the property and its conservation and habitat value to the larger county ecosystem.
    13. Is there anything you'd like to know about the Land Trust or its programs?
C. Preferably, the landowner will accompany the monitoring crew.
D. Using the monitoring report form as a guide, visit all Base Map photo points and take new photos for comparison if significant changes have occurred from the photo taken for the Baseline Report. If new photos are taken, keep a log of all photos with GPS photo point location, direction (compass bearing) photo was taken, notes describing photo and why taken.
E. Visit other portions of the property especially major land use areas, possible problem areas, areas referred to in easement.
F. Take new photos of ANY other changes (mark new photo point on Base Map if necessary) and note whether changes are possible

violations, changes that are well within reserved rights of owner, or natural changes that have occurred due natural causes.

NOTE: Possible things to document by photos and notes include: signs of new roads or worn tire paths, piles of saw logs, slash or stumps, new culverts or piping, piles of fresh dirt or fresh ditches, fencing, clearing, survey flagging, chemical or trash dumping. Details of above must be accurately detailed as to location and content.

G. Note any wildlife sightings or any other special observations.
H. Conduct biological inventory if a Team Member is present to assist in this activity.
I. If possible, summarize observations to and inform homeowner of any changes found.

NOTE: If upon monitoring, possible violations are observed, do not confront landowner. Simply let them know what was observed. After the visit, make note of any conversations that took place with the landowner in regard to these observations. It is the job of staff to look into these matters further at a later time. Team members should never confront or discuss with the landowner whether or not an observation may be a violation. It is the duty of Team Members to observe and document not to resolve!!

J. Record any comments or questions that homeowner has with regard to your observations and changes noted.
K. Make positive comments again - share and enjoy special wildlife or flora sightings together.

V. Post-Monitor Visit Procedures

A. Complete the monitoring form from notes taken. List all changes and special observations. Sheets with descriptions and photos (labeled, signed, dated) of changes can be attached to form.
B. Discuss results with appropriate staff. Any necessary follow-up will be done by staff.
C. If report is consistent with easement, staff should keep one complete report copy for office records and put a copy in the monitor binder.
D. If there are inconsistencies with easement, staff members will take up appropriate follow-up and communication with the landowner. Staff/board will decide on and take appropriate action.

V. Completion

A. File Monitoring Documentation in Safe Deposit Box.
B. Add other monitoring form and information to the Monitor Binder.
C. Update any background information on the property and list any suggestions for future monitoring of the site.
D. If necessary, make updated copies of Base Map for future monitoring visits.
E. Complete information on Master Monitoring Record.

DOOR COUNTY LAND TRUST, INC.
BOX 345, EPHRAIM, WI 54211

Checklist for Monitoring Team

Monitoring Visit Information:

Date of visit:_____

Names of monitors:_____

_____

Name of landowner/property: _____

Name(s), address, and phone number of current owner(s) or legal representative:

_____

Pre Visit:

_____ Review DCLT's "*Monitoring Procedures"*

_____ Review Monitoring Binder, previous monitoring reports and Landowner Questionnaire.

_____ Schedule monitoring visit by letter/telephone with your landowner(s); invite owner to accompany and to review easement and baseline documentation – in advance if necessary.

____ Confirm monitoring date and time prior to visit.

____ Collect necessary monitoring equipment for visit:

___ Monitoring Binder	___ Monitoring report forms	___ Checklist
___ camera/film	___ paper/pen	___ flagging
___ GPS Unit	___ binoculars	___ compass

_____ Meet/talk with other members of monitor crew prior to visit.

- Review Monitoring Binder and Landowner Questionnaire for each property;
- Review and discuss specifics of each easement using Monitoring Summary;
- Decide on best division of monitoring tasks (photography, photo logging, note taking, etc.);
- Provide each monitor with necessary materials (Monitoring summary, monitor report form; maps; notepad/pencil; other necessary equipment; etc.)

Day of visit:

_____If possible, with landowner review purposes for monitoring and how it is done. Ask landowner(s) if they have any questions about the conservation easement. Discuss any changes noted in the Landowner Questionnaire, or ask if there are any land changes since last contact, any changes anticipated, any concerns, any management activities planned.

_____Confirm owner's correct mailing address and telephone number; ask if they are receiving Land Trust mailings. Share recent Land Trust activities and invite questions.

_____Ask landowner(s) about status of adjoining lands.

_____Walk boundaries and interior areas of special concern or high use, with particular attention to areas referred to in ***Monitoring Summary***; fill out Monitoring Report in pencil with observations.

_____Visit previous photo points; only take new photos if major changes have occurred and note the location/details of photo.

_____If possible, discuss observations of the land with the landowner.

_____Take notes throughout visit on the Monitoring Report Form, make specific notes regarding any necessary follow-up action.

Post visit:

_____Legibly fill in the monitoring report form.

_____Detail in writing and on the photo point map with GPS coordinates where any new photos were taken.

_____Discuss the monitoring report with Land Trust staff, discuss appropriate follow-up action.

Post visit procedures for staff:

_____ Complete master monitoring record.

_____ Create baseline notebook pages for new photos or other attachments and revise base map.

_____File all paperwork related to monitor visit in baseline and monitoring files.

The Nature Conservancy—Wyoming Chapter
258 Main Street, Suite 200, Lander, WY 82520

SAVING THE LAST GREAT PLACES ON EARTH

GUIDE TO MONITORING CONSERVATION EASEMENTS

Monitoring procedure: Inspecting the property

Review Materials For The Protected Property

The Easement Monitoring Coordinator will provide a Monitoring Notebook for each property that requires monitoring. The notebook will contain the following:

- A copy of the original easement documents or deed with restrictions.
- A copy of the original Easement Documentation Report or other baseline report, if available.
- Appropriate maps (to locate the property, review boundaries, building envelopes, trails, etc.).
- Past monitoring reports (including information on areas where past monitors noted problems or general changes).
- Documents pertaining to review of the conservation easement (previous violations, approvals, etc.), if available
- Copies of any easement-required management plans for the property, if available.

Before the inspection, the monitor needs to review the information contained in the notebook. If you have any questions about the terms or history of the easement, please contact the Easement Monitoring Coordinator for clarification before your visit.

Note: GPS waypoints for each easement are available for uploading into GPS receivers. Waypoints are displayed on aerial photos included in each easement notebook and indicate photo point locations and property boundary corners.

Scheduling the Visit

Schedule a visit to the property as follows:

- Plan to visit the property sometime between May and October (when there is no snow on the ground.). Some conservation easements have specific dates when it is best to monitor rare plants, etc.
- Contact the landowner well in advance before you plan to monitor in order to schedule a visit. Call to schedule the visit at a time convenient for the landowner to accompany you if possible. If you are unable to make contact, please contact the Easement Monitoring Coordinator.
- Invite and encourage the landowner or manager to accompany you on the visit.
- If the landowner will not be able to join you on the visit, ask questions in the 'Talking with the Landowner' section below at this time.

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The Visit

Every monitoring visit is different but the following guidelines generally apply:

Safety and Security

It is very important that the monitoring visit be a safe and positive experience for both the monitor and the landowner. You should never put yourself or the landowner in any unsafe situation. It is also important for the monitor to remain on good terms with the landowner at the time of the visit. Monitors should be cautious about dealing with the specific details of any possible violations. If, at any time, the landowner appears uncomfortable or defensive, do not press the subject; just continue the monitoring visit or leave. Your job is to complete the monitoring to the best of your ability. The Easement Monitoring Team will deal with any problems at a later time.

Time

The amount of time needed for a visit varies greatly depending upon the size of the property and the complexity of the easement. Even a small property will probably require at least 1-2 hours. If the landowner is not accompanying you, plan on spending some additional time with the landowner before or after inspecting the property.

What to Bring

- Monitoring notebook
- Conservation Easement Visit Form (To be completed)
- One or more maps of the property for noting photo points, problems, etc.
- Camera – Digital (Remember to bring extra batteries!)
- GPS (Remember extra batteries! Load waypoints from server or CD) **COLLECT NEW WAYPOINTS ONLY IF NECESSARY!**
- Cell phone (if available)
- Pen/paper/clipboard
- Monitoring "buddy" (particularly if you feel uncomfortable monitoring the property alone or would like to have "another set of eyes")
- See equipment lists at front of manual.

Talking With the Landowner

- Use questionnaire on monitoring form.
- Invite questions. Listen.
- Collect accurate, up-to-date contact information. If possible, this would include permanent and seasonal postal addresses, phone numbers, and e-mail addresses.
- Are there any plans to transfer, subdivide or sell the land? If the property has been subdivided, request a legal description or map showing the resulting parcels.
- Have there been any changes to the land or buildings on the protected property, either human or natural?
- Any changes in the adjacent lands or waters that may be of concern?

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- If appropriate, find out about any land management concerns or questions the landowner may have. If more information is needed, write these issues down and refer these on to the Monitoring Coordinator.
- Give a new landowner—or any landowner that requests it—information about TNC and conservation restrictions in general.
- If you encounter a possible violation, do NOT confront the landowner about the concern, although you can certainly ask for information or clarification. The decision about whether a violation has occurred and what actions to take will be made later, in consultation with other members of the monitoring team. For more information on how to handle possible violations, see Section 5.

What to Look For

The Conservation Easement Visit Form includes a lengthy list of features that you should be examining during the visit. Pay special attention to the following:

- Property boundaries. Watch for infringement issues.
- Check for new or expanded buildings, roads, cultivation or logging.
- Check any areas where special easement restrictions or reserved rights exist.
- Any areas of special concern mentioned in previous monitoring reports.
- Visit any areas with special conservation features such as rare plants.

Documenting Changes During the Visit

Refer to the Visit Form during the visit to ensure that you are collecting all of the needed information. Take lots of notes!

Take photographs of any **SIGNIFICANT** changes on the property such as:

- Alterations by natural causes (fire, wind, flood).
- Human alterations (possible violations of the easement or for clarification of a situation).
- Progress or status of specific management activities such as prairie restoration.
- Activities subject to any management plans.

If there are no apparent changes, the guidelines suggest taking at least six photos of each property. These should represent the general condition of the property and any building sites. If there are no changes and the property is very small, you may elect to take fewer pictures. There should always be at least two. For more information on the photos needed, see Section 7.

You will also want to take notes or use your GPS receiver to mark the approximate path traveled, the locations where photos were taken and the sites of any special concerns. For more information on mapping or GPS, see Section 7.

Preparing the Monitoring Form, Photos & Map

Complete the documentation of the monitoring visit *as soon as possible* after the visit is completed. It can be hard to remember the details of the visit after even a couple of days.

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Determining Compliance Status

The monitor will need to make an initial determination of the status of the easement on *page 4 of the form, not page 1. Monitoring status information at the top of page 1 will be completed by the Easement Monitoring Team after reviewing the completed report.*

This determination is based on review of the conservation easement or deed restriction, Easement Documentation Report or other baseline report, previous monitoring reports, and the monitoring visit. The monitor will need to indicate if she/he believes that, based on field observations, and in the monitor's best judgment, that the terms of the easement are being met by indicating one of the three answers below:

YES, no violation of easement terms observed. No current violations of the interest terms that were observed by the monitor. No further evaluations will be needed before the next regularly scheduled monitoring visit.

PENDING, unsure due to the need for additional information or evaluation. Monitor's observation(s) suggest that a violation of easement restrictions may have occurred, and that is currently being assessed.

NO, some activities were observed which are believed to be in violation of the easement. There is currently a violation of the interest terms requiring enforcement action.

If the monitor is unsure which category to place the property in, classify it as 'Pending'.

Completing the Text Portions of the Monitoring Form

The visit form can be completed in Word or printed out and filled in by hand. For more detailed instructions for specific fields, see the 'Annotated Conservation Easement Visit Form'. Complete all of the applicable fields in the visit report, except the signature and date. This will need to be filled out in the presence of a notary. See Section 7, Notarization.

Preparing the Photographs

You will want to do the following as soon as possible after the visit**:**

- Download the photos from the visit.
- Number the photos and mark the monitoring map to indicate where they were taken. Use the Word Template.
- Write a caption for each photo. Include information on what is shown, waypoint ID, and what direction you were facing when the photo was taken. If the visit took place on more than one day, be sure to note the day the picture was taken.
- Create a digital document in Word by inserting the photos into the document and then add the photo numbers and descriptions.

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What to Photograph

During a monitoring visit, you will want to take pictures of any significant changes in the property. These have natural or human causes. You'll want to pay special attention to any activity that may involve a possible violation. Some examples include:

- Erosion (wind or water)
- New boundary markers, such as survey stakes or newly planted trees
- A collapsed building
- ATV ruts
- New construction
- A tree blow-down
- Damage done by flood or fire

What NOT To Take Pictures Of

- People (as the main subject)
- Pets (as the main subject)
- Other entities or scenarios that have nothing to do with documenting easement compliance.

Preparing the Maps

Prepare a map of the monitoring visit. This map should include at least the following information:

- Copy one of the maps included in the monitoring notebook or another map you already have. This may be a topographic or aerial photo map. Information from the visit can then be hand-drawn on the map.
- Show the boundaries of the protected property.
- Show the approximate path traveled during the monitoring visit.
- Mark the locations of any concerns or possible violations noted in the report.
- Mark the locations where any monitoring photos included in the report were taken.

You have at least two options for preparing the visit map for the report:

- Enter the data from the visit into a GIS and print out a map.

Notarizing the Report

Do NOT sign and date the monitoring form until all of the previous steps are complete. You will need to sign and date the completed form in the presence of a Notary Public. For more information on notarizing, see Section 7. Two notaries are available at the Lander office.

Sending the Report to the Easement Monitoring Coordinator

Original, signed and notarized copies of all monitoring documents need to be delivered to the Easement Monitoring Coordinator before December 10th each year.

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Visit Follow-Up

- Promptly respond to any landowner requests for additional information. If more research is needed or you refer their request on to someone else, let the landowner know that it's being worked on. Do not overindulge in promising to fulfill a request, keep it to a minimum.

Stewardship Visit Checklist

Easement Name _____ New Owner? _____

Municipality _____ CE Date _____ Acreage _____

Current Owner _____ Phone _____

Local Contact / Property Manager _____ Phone _____

Pre-visit Review and Prep

- □ Prepare CE work file
- □ Review entire CE File
- □ Complete CE Outline
- □ Check Monitoring Inspection Sheet
- □ Scan and print aerial and/or other photos
- □ Highlight Easement (& amendments), make notes
- □ Need Baseline Documentation Report
- □ Need baseline photos / survey / deed (circle)
- □ Schedule monitoring visit & invite CE Landowner

  Date _____ Time _____

  Person(s): _____

  Meeting Place_____

  Directions_____

_____

_____

_____

_____

_____

- □ Confirmation call / letter on: _____

Post-Visit Follow-up

- □ Prepare and File Monitoring Report
- □ Discuss potential problems with Supervisor
- □ Prepare, send and file a Letter to Landowner
- □ Update Monitoring Inspection Sheet
- □ Label and file photos, maps, etc.

Materials & Equipment

- □ this sheet
- □ highlighted copy of CE (& amendments)
- □ copy of CE (& amendments) for landowner
- □ photos of property
- □ topo map copy w/ easement delineated
- □ survey map copies (2)
- □ photo location maps (2)
- □ CE Outline
- □ scanned photo(s)
- □ inspection form & clipboard
- □ camera & film
- □ all-weather notebook
- □ pencils / pens / sharpies
- □ business cards
- □ name tag
- □ script / talking list
- □ Gazetteer
- □ management info pamphlets / sheets
- □ binoculars
- □ lunch / water
- □ compass
- □ flagging
- □ field guides
- □ tape measure
- □ engineering scale
- □ field vest and/or pack
- □ hiking boots and socks
- □ jacket / long sleeve shirt
- □ rain gear
- □ fly dope / net / sunscreen
- □ other _____
- □ other _____

10/99 CE Stewardship

Greeting June 21, 2007
Address
City, State Zip

RE: Project Name

Dear Greeting,

It's hard to believe that summer is almost here, which means that the Big Sur Land Trust is preparing for the annual monitoring of our conservation easement protected properties. As you know, annual monitoring is an important component of the BSLT's long-term stewardship responsibilities. A visual inspection of your property assists the BSLT in fulfilling our commitment to uphold the terms of your conservation easement and to protect the conservation attributes of your property.

If you would like to accompany me on the monitoring visit this summer, please contact me regarding the best dates for you. If you do not wish to be present for the site visit, I will be happy to monitor at a time when you have given me permission to access your property. Our Conservation staff will be contacting you in the next few weeks to schedule a time to visit your property as convenient.

In addition to monitoring, we strive to maintain strong communication ties between BSLT, each landowner, and the managers of protected properties. If you have questions regarding your easement, such as whether a planned activity is permitted under the terms of your easement, or if an activity requires any notice or approval from the BSLT prior to commencement, please contact the office and BSLT Conservation staff will assist you. Furthermore, please feel free to seek input and/or advice of the BSLT for land management issues on your easement-conserved property.

Please contact me at (831) 625-5523 ext. 110 or hbrady@bigsurlandtrust.org if you have questions, or if I can be of further assistance. Thank you for your cooperation with our annual monitoring visit and for your commitment to land conservation in Monterey County.

Sincerely,

Heather Brady
Stewardship Program Manager

LFT Monitoring Follow-up Letter

March 17, 2008

Salutation
Address
City, PA Zip

Dear Salutation,

I would like to thank you for allowing me to visit your farm on March 13, 2008. Enclosed are copies of the Conservation Easement Annual Monitoring Report and Best Management Practices checklist for you to keep on file. Please let me know if there are any errors in the report or the checklist.

As you may have noticed during the monitoring visit, the Trust is becoming more involved with promoting sound soil and water conservation practices. In this regard, we would like to be an educational resource for the landowners that we work with. If you have any questions or concerns with the soil and water conservation practices you employ on your farm, please feel free to utilize the Trust as a resource. We can provide a range of avenues for both technical and financial assistance, and would be happy to help you in strengthening your environmental stewardship.

We would also like to take this opportunity to remind you that if you are considering transferring the ownership of your preserved property you need to notify the Trust. We ask that you provide us with written notice at least 10 days prior to such transfer. By providing us with advanced notice, we can ensure that the terms of the Conservation Easement are followed and understood by the new owner.

In addition, please notify the Trust of any plans to construct an additional dwelling (house) or subdivide a portion of your property. This will help us in conducting our annual monitoring visit and in keeping our records updated, as well as ensuring the proposal is consistent with the conservation easement. *(This is very important because most of our conservation easements do allow for a residential lot to be subdivided off, but place specific limitations on the lot size which may be more restrictive than Local Township Zoning ordinances. For this reason, contacting the Trust before hand can help eliminate any possible violations of the conservation easement.)*

If you have any questions, please feel free to call me at (717) 687-8484.

Sincerely,

Elizabeth Beeman
Land Preservation Assistant

Gallatin Valley Land Trust
Monitoring Policy for Conservation Easements

Philosophy:
A well-written conservation easement with baseline documentation provides the basis for permanent property protection, but monitoring ensures that a property is protected over time. GVLT is committed to regular, documented monitoring for several reasons:

- *To build rapport with the property owner.* GVLT's stewardship program seeks to build successful partnerships and relationships with landowners, and monitoring offers an opportunity to develop a spirit of cooperation with easement owners. Regular monitoring enables GVLT to communicate with each property owner, invite questions, discuss potential problems, define problems before they become serious, and avoid violations. Good rapport can also lead to additional gifts to the stewardship fund or valuable project partnerships that build community and/or enhance habitat.
- *To increase landowner stewardship.* Effective monitoring can build appreciation and increase knowledge levels for sound landowner stewardship of their property (e.g. sustainable grazing, weed control, wildlife habitat improvement, etc.)
- *To save time and money.* Early communication and thorough documentation are important to avoid and resolve potential or actual violations. Monitoring can detect a violation before it becomes so deeply entrenched, and the property owner so committed to an adversarial position, that only legal action can resolve the situation. It can also detect changes in the surrounding area that may threaten an easement.
- *To provide a record of the monitoring visit.* If a violation occurs, monitoring documentation helps establish that GVLT is a responsible easement holder. It also provides a running record of the property's condition, which is essential to determine adequate restoration or resolution of the violation.
- *To discover violations.* Monitoring ensures that GVLT upholds the public trust. Monitoring is a critical tool to discover violations, and it also ensures that the management and development of the easement property is consistent with the terms of the conservation easement.

Guiding Principles:

1. **Frequency.** A site visit to the easement property will be made annually. In some instances, more than one visit to the property yearly may be required to maintain a healthy landowner relationship and/or to address issues that pertain to the easement property. *(E.g.: easements with particularly sensitive conditions; land where a landowner is performing management activities; transfer of ownership.)*

   In the event of the sale of an easement property, every effort should be made to establish a positive relationship between the new landowner, his/her property, and GVLT. This effort should begin prior to the close of any sale, if at all possible (refer to Successive Generation CE Landowner Protocol).

2. **Process**. GVLT's Stewardship staff will ensure that regular monitoring visits are conducted, that reliable and accurate monitoring records are kept, and that property owners are regularly contacted. During site monitoring, Stewardship staff may be assisted by a member of GVLT's board, a volunteer, or another staff person.

3. **Concerns.** If concerns or questions come up during the monitoring visit (or at any time) about interpretation of the easement language or proposed activities, discuss the matter with GVLT's Executive Director (refer to Notice & Approval Policy). Should there appear to be potential violations of the terms of the conservation easement, immediately contact GVLT's Executive Director to discuss the situation (refer to Violation Policy).

This policy is intended to comply with Standards & Practices Standard 11.D.: *Conservation Easement Stewardship, Easement Monitoring.*

Approved by GVLT Board of Directors January 28, 2008

Minnesota Land Trust

Conservation Easement Monitoring

Monitoring is the regular inspection of property protected with a conservation easement. It is the core component of the Minnesota Land Trust's conservation easement stewardship program. It helps the Land Trust build relationships with landowners, allows the Land Trust to discover any problems on the land, provides an opportunity to document any changes in the property or its ownership, and is critical for the Land Trust in order to meet its legal obligations.

Monitoring Visits

It is the policy of the Minnesota Land Trust to monitor each property protected by a conservation easement once a year—and more frequently if necessary. It is our goal to prevent easement violations; frequent contact with the land and the landowner helps us achieve that goal.

The monitoring season typically runs from May through October. Spring and fall are popular times to monitor as sparse vegetation can make it easier to view the property.

Monitoring is most frequently done in person with a Land Trust staff or volunteer monitor walking the protected property. However, in some cases monitors review property by car, by boat or by an aerial flyover. Each conservation easement and each parcel of land is unique so each requires its own monitoring approach.

Working with Landowners

Each year, the Land Trust assigns a monitor to visit every property protected by a Minnesota Land Trust conservation easement. The assigned monitor will then contact the landowner to arrange a time to visit the property.

The Land Trust welcomes and encourages landowners to accompany the monitor during the monitoring visit. Walking the land together can be important for a number of reasons, including:

- Landowners have a more intimate connection to their property than does the Land Trust and their knowledge can make the visit more effective and efficient.

- There is an opportunity for a landowner to raise any questions about the easement or to discuss any future plans or goals for the property, which can help prevent unintended violations.

A landowner may also ask someone else—perhaps a family member or neighbor—to accompany the monitor. Whether or not they are present during monitoring, all landowners are provided with a summary of the monitoring visit.

(over)

Documenting the Condition of the Protected Property
Conservation easements may be perpetual but memories fade and property conditions change over time. The Land Trust asks each monitor to complete a report following each monitoring visit. These reports are kept in the Land Trust's office and provide an important record of the property's condition and its use so that those who come later understand the history of a protected property.

Preventing Problems vs. Discovering Violations
The essence of any conservation easement monitoring program is to make sure that landowners are complying with the terms of their easement. Through periodic monitoring, the Land Trust can often detect potential problems early—before they become serious violations.

However, we also encourage all landowners to contact the Minnesota Land Trust whenever they have a concern or question about their easement rather than waiting for the annual monitoring visit. No matter how thoughtfully drafted, conservation easements can be confusing. Seeking an interpretation early can avoid problems later.

In the end, the Minnesota Land Trust must be prepared to correct any violations of its easements. This is the commitment we make to all landowners who entrust us with the responsibility to protect their land. If a violation is discovered, we will work with the landowner whenever possible to have the situation corrected without further action. Legal enforcement is a remedy of last resort.

Volunteers
Volunteers play a critical role in the Minnesota Land Trust's monitoring program. They are able to extend the Land Trust's presence into local communities throughout the state and personally work with landowners when staff might not otherwise be able to do so.

All volunteer monitors are required to complete a training and certification program so that they can be skilled and informed representatives for the Minnesota Land Trust. Although our volunteers are well-trained, the Land Trust also assigns a staff member to monitor each property at least once every five years so that staff remain familiar with all of the properties we protect.

The Land Trust holds training sessions for new and returning volunteers at least annually in one or more locations across the state. Many landowners serve as volunteer monitors. They are familiar with conservation easements as well as the work of the Minnesota Land Trust and so make great ambassadors for our work.

Interested in being a monitor? Contact the Minnesota Land Trust office.

Minnesota Land Trust • 2356 University Avenue West, Suite 240, St. Paul, MN 55114 • 651.647.9590 • www.mnland.org

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Additional Resources

Internal Revenue Code §170(h)
http://www.law.cornell.edu/uscode. In the search boxes insert title number "26" and section number "170(h)" and click on "Go to title and section."

Treasury Regulations §1.170A-14
http://edocket.access.gpo.gov/cfr_2003/aprqtr/pdf/26cfr1
.170A-14.pdf

Books and Articles

The Conservation Easement Handbook, by Elizabeth Byers and Karin Marchetti Ponte (Washington, DC: The Trust for Public Land and the Land Trust Alliance, 2005).

Cost-Effective Strategies for Conserving Private Land, by Dominic Parker (Washington DC: Property and Environment Research Center, 2002), available at www.perc.org.

Developing a Stewardship Protocol for the Pingree Forest Conservation Easement: Landscape Scale Monitoring, by Frank C. Reed, Steve A. Sader and Keith Ross (Littleton, MA: New England Forestry Foundation Bulletin, 2003), available at www.newenglandforestryfoundation.org.

Massachusetts Conservation Restriction Stewardship Manual: A Handbook for Land Trusts and Conservation Commissions, by Kathy Sferra and Nicholas Holland (Lincoln, MA: Massachusetts Audubon Society, 2006).

Monitor Training Curriculum and Handbook: A Guide to the Recruitment, Training and Oversight of Conservation Easement Monitors, by Preston Bristow and Jeanie McIntyre, 1994. See link at Upper Valley Land Trust website at www.uvlt.org.

Field Techniques

Be Expert with Map & Compass: The Complete Orienteering Handbook, by Bjorn Kjellstrom (New York: Collier Books, 1994).

Maps and Compasses: A User's Handbook, by Percy W. Blandford (Blue Ridge Summit, PA: TAB Books, 1984).

Aerial Monitoring and Volunteer Pilot Services

LightHawk (www.lighthawk.org)

Southwings (www.southwings.org)

Col-East, Inc. (http://www.col-east.com)

Also contact your local flying club or local pilot instructors and aerial photography specialists for assistance.

Check Your Progress

Before completing this chapter, check that you can:

- ☐ Explain the value of documented, annual conservation easement monitoring
- ☐ Describe the range of monitoring activities land trusts engage in (foot, car, boat, plane, satellite, etc.)
- ☐ Describe how the type of property and form of monitoring dictates the frequency of monitoring
- ☐ Describe the range of individuals involved in land trust monitoring and the qualifications of monitors (volunteers, staff and consultants)
- ☐ Describe the variety of ways that land trusts provide training for easement monitors
- ☐ Select a monitoring program that suits the lands your land trust protects and the individuals available to assist with monitoring
- ☐ Write, or work with someone to write, a land trust monitoring policy or procedure that includes:
  - ☐ Schedule of monitoring (annual or more often)
  - ☐ Procedures to follow when monitoring
  - ☐ Qualifications of monitors
  - ☐ Procedures to follow after the monitoring visit
  - ☐ Steps to take in the event of a suspected violation
- ☐ Describe the types of activities that go on before a monitoring visit:
  - ☐ Informing the landowner
  - ☐ Reviewing files and relevant records
  - ☐ Gathering material
- ☐ Explain the various steps in a monitoring visit:
  - ☐ Procedures to follow when monitoring such as: route of travel; checking boundaries and/or other areas sensitive to encroachment; checking roads and other access ways; and checking where there is recent activity permitted by the easement (building, forest management, etc.)
  - ☐ Making notes at photo points and when to take additional photos
  - ☐ Making notes of any exercised reserved rights

- ☐ Explain the various steps after a monitoring visit:
  - ☐ Transcription of field notes
  - ☐ Labeling of photos
  - ☐ Creation of monitoring report or summary of field notes
  - ☐ Signatures of report preparers and parties to the easement, if applicable
  - ☐ Review of monitoring reports
  - ☐ Contact with landowner
  - ☐ Maintaining monitoring records and reports
- ☐ Briefly describe steps that the monitor should take in the event that he or she suspects there is a violation
- ☐ Create a monitoring visit report form
- ☐ Have a strategy for moving a land trust with no, or limited, easement monitoring into full implementation of the practice
- ☐ Be able to track current and estimate future monitoring costs

Next Steps

Now that you have completed the chapters about landowner relationships, baseline documentation and easement monitoring, you may want to revisit chapter 1 and the stewardship guiding principles that you developed in part 2 of the Putting It into Practice Exercise on page 27).

You may also want to begin the next steps, if you have not done so already, to apply what you have learned from this training and improve the operation of your land trust.

Draft or revise, if needed, your organization's easement stewardship philosophy or guiding principles to steer future organizational decisions and to share with landowners.

Choose one or two new ways you can reach out to landowners to build relationships or improve community relations.

Review your baseline documentation report template and see if changes are needed to use it more effectively as a communication, education, monitoring and enforcement tool.

Draft and adopt a monitoring policy and procedures, or review your current policy, based on the materials contained in chapter 4.

Review your easement monitoring training program and make adjustments as needed to ensure your monitors are well prepared for the task.

To Do Sheet

Use this sheet to record any "to dos" that occur to you during the course. Be specific with the action item and date by which you hope to accomplish this task.

To Do	Who is Involved	By When

PROPERTY OVERVIEW

Original Landowner: [redacted]

Property Location: [redacted]

Legal Description: See attached Exhibit A.

Property Summary: [redacted] moved to 80 acres of land with his family when he was 11 years old. He helped build all the buildings on the property with his dad. There is a house, barn, detached garage, two machine sheds, and various other outbuildings as identified on the attached Schedule A. There are machines and miscellaneous items still in the sheds. The property was farmed for many years. Most recently, the landowner and his brother lived alone on the farm and had animals including chickens, pigs, and cattle. His brother tended the pigs, and the landowner mostly worked outside the farm. Corn, beans and hay were also grown on the property. The house and barn are now vacant and most buildings are in disrepair (see photo 10 and photos 31-39). The real estate taxes show the acreage of the protected property to be 68.50 acres. The landowner sold the northwest corner of the original 80 acres, (land not in the conservation easement), to his neighbor's daughter, who plans to build a house there soon.

The property is heavily wooded with numerous wetlands and ponds. There is a stand of red oak on the property with some oak wilt threatening various areas. The agricultural fields are now grown over with native and non-native vegetation. Just 1,500 feet to the northwest of the property, across 237th Avenue, is the [redacted] Wildlife Management Area.

Transaction Summary: The landowner had initial contact with the Land Trust in 2000. In 2002, contact was revived with continual progress toward a conservation easement. The landowner donated a conservation easement, with the Land Trust accepting the easement, in October of 2004. The conservation easement will be recorded in [redacted] County. The Landowner currently plans to donate the property to the [redacted] Conservation District upon his death.

Conservation Values:

> **Habitat/natural area values:** Spring peepers, sand hill cranes, blue herons, deer, pheasant, snakes, wood ducks, turkeys, warblers and the occasional bear have been seen on the property. A beaver has made a hut and several runs in and around the large wetland on the southern property line. The secluded nature of this wetland has made it an ideal spot for a wide variety of local and migrating waterfowl along with wading birds such as egrets.

There is degraded oak savanna on the property along with some white pine. Fruit (apple) trees are located in the farm yard. Many oaks fell from oak wilt disease, opening areas for blackberry briar and prickly ash to spring up. See photos 11 and 17. The habitat on the property is part of a larger group of open space that forms a wildlife corridor connecting the [redacted] Wildlife Management Area to the northwest and the [redacted] Greenway Corridor to the south.

Riparian/aquatic values: There are many ponds and wetlands on the property as shown on the Property Map. The larger wetlands have open water. These areas not only provide habitat for aquatic plants and animals, but help improve and maintain water quality and hold stormwater runoff from the area. Much of the riparian areas adjacent to these wetlands support populations of sedges and have the potential to support the rare lance leaved violet. See photos 12, 18, 26.

Other values: If the property is obtained by a public or quasi-public entity, the general public will have the opportunity to access the property and enjoy the natural features for low impact recreational and education purposes.

Existing Land Conditions (with references to permitted or restricted uses):

Property Uses: The property is currently used for recreational purposes.

Topography: The topography is of generally low relief.

Vegetation (including natural habitat or other land cover type): The property is mainly of the oak-savanna type, (see photos 11, 20) although oak wilt disease has killed off many of the trees, and dense underbrush such as blackberry briar is filling in (see photo 13). There are old fields on the property that may be restored to native prairie grasses. See photos 10, 25.

The landowner has received financial assistance from the Environmental Quality Incentives Program (EQIP), which is administered through the USDA Natural Resources Conservation Service. The U.S. Fish and Wildlife service has also contributed significant funds to the restore the open field to prairie. The contract is from July 7, 2004 to September 30, 2009. The landowner will be working with the [redacted] Conservation District and the Department of Natural Resources Forestry Division to implement restoration of the property including forest site preparation, tree and shrub establishment, restoration and management of declining habitats and prescribed burning.

Water Features (ponds, lakes, streams, wetlands, riparian area): There are several wetlands on the property. The east and south boundaries dissect a couple of large ones. See photos 7, 12 and 18. These wetlands are good quality wetlands and contain perimeter of sedges. Reed canary grass is prevalent on the wetland that borders the north and east of the property. However, the other wetlands on the site are primarily bordered by lake sedge with only sporadic reed canary grass.

There does appear to be a small man-made drainage way running from the western edge of the central wetland into the open field area. This drainage way is surrounded by small willows and contains some sedges.

Structures and Improvements: There are currently several structures located within the building envelope. They include a house, detached garage, barn, a hog/cow shed, and three machine sheds. The footprint of these structures is approximately 4,418 square feet as shown on Schedule A. There are other small, miscellaneous buildings on the property such as: an outhouse, woodshed, shop, boathouse, corn cribs and small pig huts.

There are two shallow wells on the property. One is in the back part of the house in the utility room. The landowner and his brother physically hand-drove the well, which is approximately 40 feet deep with 1 ½ inch pipe. This continues to be in use. The other well is in the big barn. This well was hand driven by the Landowner's brother and is approximately 6-10 feet deep with 1 ¼ inch pipe. This well is not currently used and there has not been a pump on it for years.

The septic facility is located east of the house, about 6-8 feet away from the southern part of the house. In 1961 or 1962 a metal tank was put in. There is no drain field but there is a cesspool. It currently is not being used much since the landowner relocated.

Rights-of-Way: Other than utilities, there are no other rights-of-way on the property.

Boundary or neighbor issues: There is development on both the east and west sides of this property that should be watched carefully for encroachment. The wind blows debris in from the housing development on the west side of the property.

The west boundary of the property is very close to the house and yard of a neighbor, who has questionably encroached with lawn-mowing. See photos 27-30.

Contamination: There is an old dump east of the house and farther east closer to the boundary. See photos 35, 38. There are several old 55-gallon oil drums once used to heat the house and some gasoline drums around the buildings. See photos 34, 41. There does not appear to be disturbed vegetation. Old machinery is located mainly in the building envelope. No other items were noted.

Other: The [redacted] Conservation District has conducted a Phase I (a copy is in the Trust file) and may do a Phase 2 environmental review as part of their restoration work or upon acquiring the property.

EXHIBIT A

Legal Description of Protected Property

Real property located in [redacted] County, [redacted] and legally described as follows:

Tract A: The Northwest ¼ of Northwest ¼ of Section [redacted] Township [redacted] Range [redacted]
EXCEPTING therefrom the following described tract:

All that part of the Northwest ¼ of the Northwest ¼ of Section [redacted] Township [redacted] Range [redacted] [redacted] County, [redacted] described as follows:

Commencing at the Northwest corner of said Northwest ¼ of Northwest ¼; thence South along the West line of said Northwest ¼ of Norwest ¼ a distance of 660 feet; thence East and parallel to the North line of said Northwest ¼ of Northwest ¼ a distance of 660 feet; thence North and parallel to the West line of said Northwest ¼ of Northwest ¼ a distance of 660 feet and to the North line of said Northwest ¼ of Northwest ¼; thence West along said North line a distance of 660 feet and to the Northwest corner of said Northwest ¼ of Northwest ¼, being the point of beginning and there to terminate.

Tract B: Southwest ¼ of the Northwest ¼ of Section [redacted] Township [redacted] Range [redacted] [redacted] County, [redacted].

SCHEDULE A

Building Dimensions [redacted] Property:

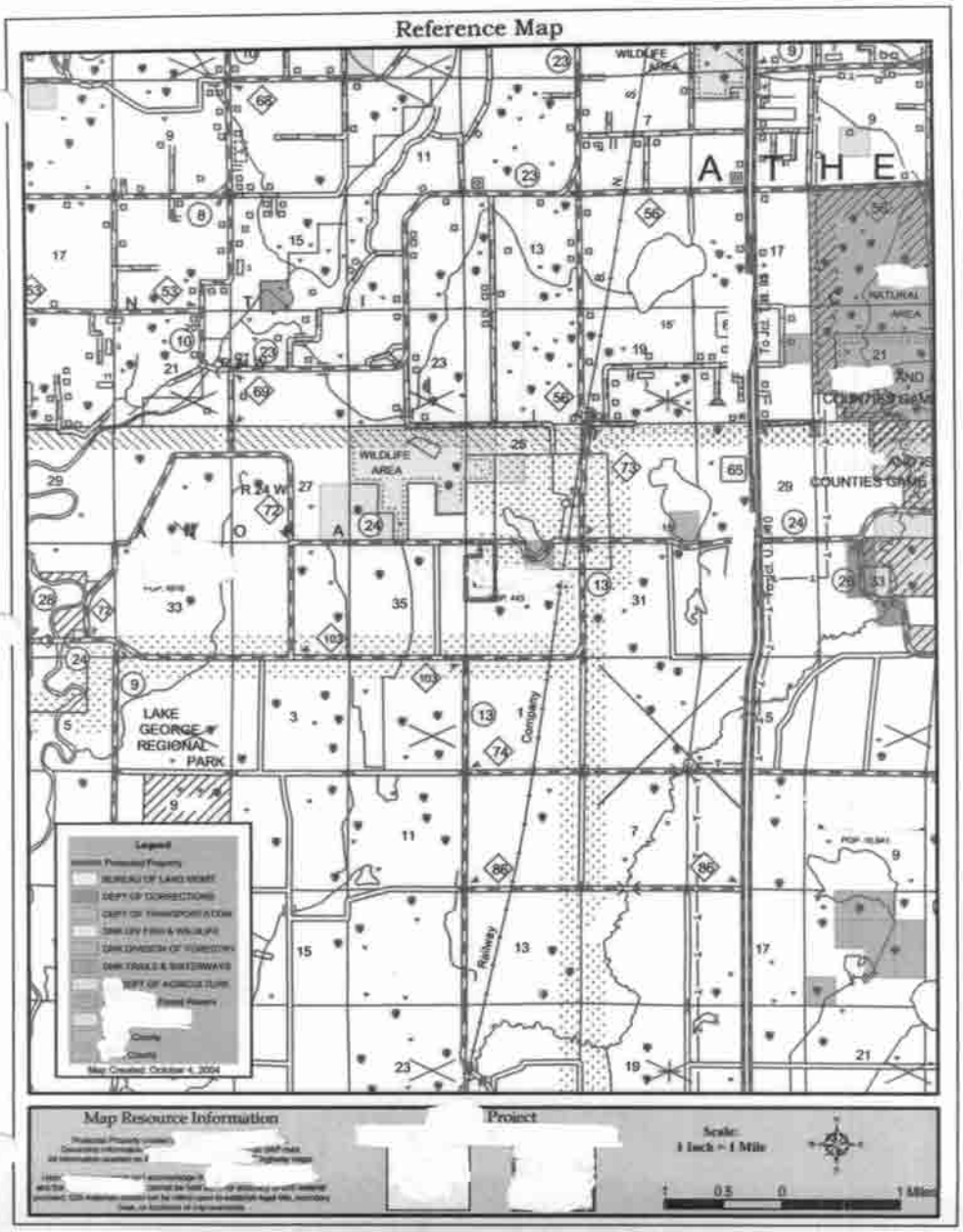
Building:	Size:
House: 28 ½ x 24 ½ , Lean-to on house: 12 x 10	818.0 sq. ft.
Garage: 24 x 22 ½	540.0 sq. ft.
Shed #1 (next to house, used to be the chicken coop): 12 x 18	216.0 sq. ft.
Barn: 29 x 32 ½ , lean-to on barn: 11 ½ x 27	1,253.0 sq. ft.
Machine Shed #1 (closest to barn): 17 x 30 ½	518.5 sq. ft.
Machine Shed #2 (next one west of barn): 16 ½ x 32 ½	536.5 sq. ft.
Cow/Pig shelter (farthest building west of the barn): 16 ½ x 32 ½	536.5 sq. ft.
Total:	4,418.0 sq. ft.

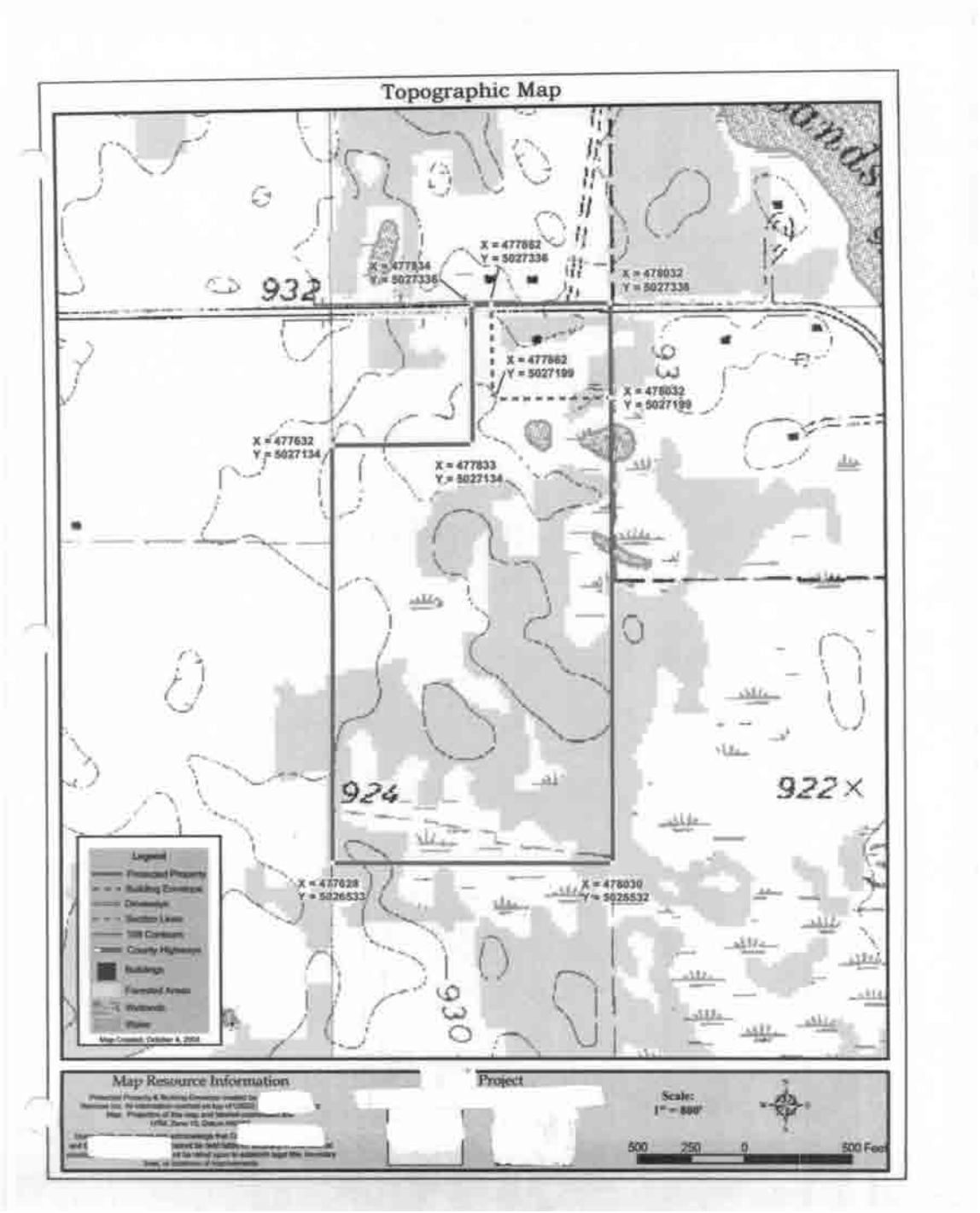
Miscellaneous other buildings such as: outhouse, woodshed (10x14), shop (16x10), corn cribs, small pig huts.

MAP OVERVIEW

This property report includes the following maps:

- Reference Map: The purpose of this map is to help locate the property and to provide the larger context of surrounding lands.
- Topographic Map: This map is a standard USGS topographic map with the property boundaries highlighted. It is intended to provide a sense of the topography, watershed context, and other related features.
- Property Map: A copy of the map attached to the conservation easement as Exhibit B.
- Aerial Photograph Map: This is an infrared aerial photograph of the property overlaid with the boundaries, building envelopes, use zones or other features.
- Aerial Photograph Map: This is a close-up of the building envelope shown on the infrared aerial photograph map described above.


Reference Map
WILDLIFE AREA
NATURAL AREA
COUNTIES GAME
LAKE GEORGE REGIONAL PARK
Railway
Company
Legend
Map Resource Information
Project
Scale:
1 Inch = 1 Mile


Topographic Map
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Y = 5027336
X = 477862
Y = 5027336
X = 478032
Y = 5027336
X = 477862
Y = 5027199
X = 478032
Y = 5027199
X = 477632
Y = 5027134
X = 477833
Y = 5027134
932
924
922
930
X = 477628
Y = 5026533
X = 478030
Y = 5026532
Legend
Map Resource Information
Project
Scale:
1" = 500'
500 250 0 500 Feet

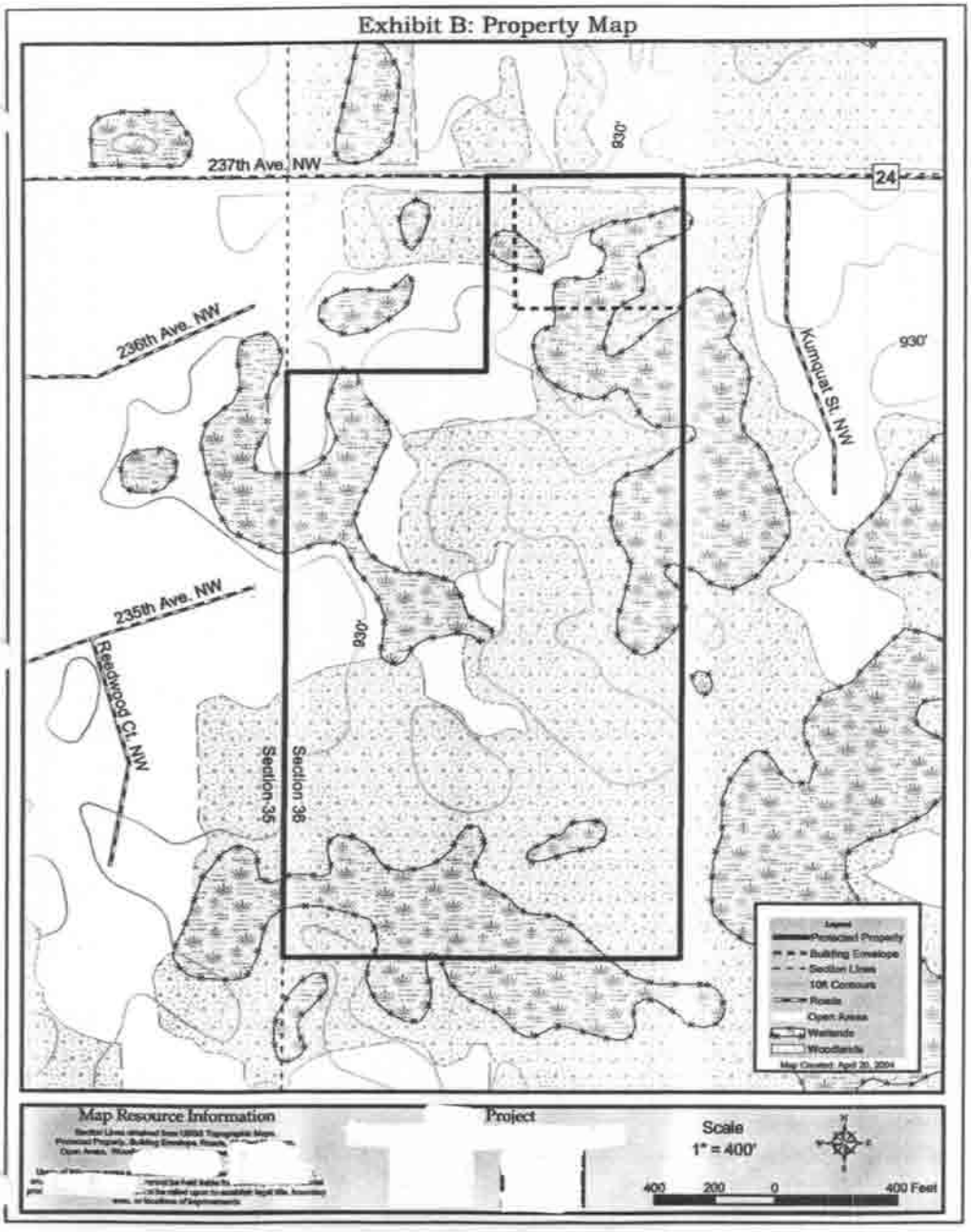


Exhibit B: Property Map
237th Ave. NW
24
930'
236th Ave. NW
Kumquat St. NW
930'
235th Ave. NW
Redwood Ct. NW
930'
Section 35
Section 36
Map Resource Information
Project
Scale
1" = 400'
400
200
0
400 Feet

Aerial Photography Map
24
Protected Property
Building Envelope
Section Lines
Roads
Map Resource Information
Project
Scale
1" = 400'
400
200
0
400 Feet

Aerial Photography Map
24
Building Envelope
Section Lines
Roads
Map Resource Information
Project
Scale
1" = 150'
150 75 0 150 Feet

PHOTOGRAPH KEY

The following photographs are a visual representation of the existing conditions of the property as of April 15, 2004

Each number attached to each photograph corresponds with the number on the Photograph Locations Map showing the location at which the photograph was taken and the direction of view.

Photo #	Direction	Subject	Comments	Negative # R=Roll
1	E	Boundary	Looking east along north boundary (237th Ave. NW) at development from NE corner.	R1 1
2	W	Boundary	Looking west along 237th Ave. from NE corner. The mailboxes mark the entrance to the property.	R1 2
3	S	Boundary	Looking south along east boundary from NE corner of the property.	R1 3
4	NW	6 sow sheds	From east boundary.	R1 4
5	N	Boundary	Looking north along east boundary (237th Ave. in background). Post generally marks boundary.	R1 5
6	S	Boundary	Looking south along east boundary, wetland in background.	R1 6
7	S	Boundary	Same view as photo 6, farther south along east line.	R1 7
8	W	Boundary	Looking west along south line of NW corner owned by another party.	R1 8
9	N	Boundary	Looking north along east line of NW corner owned by another party. There are several bluebird houses located on the property along the boundary line.	R1 9
10	NW	Buildings within envelope	The barn, machine shed, corn crib and house are visible.	R1 10
11		Woodland	An example of the oak woodland on the property.	R1 11
12	S	Boundary and wetland	Looking south at wetland located along south boundary. Photo taken from deer stand.	R1 13
13	W	Woodland	Looking west from deer stand.	R1 14
14	E	Woodland and wetland	Looking east from deer stand.	R1 15
15	SE	Boundary and wetland	Looking SE from deer stand.	R1 16
16	S	Boundary and wetland	A zoom shot from the deer stand looking south.	R1 17

17		Woodland	Another example of the oak woodland on the property. The savanna-like nature of the land here is what the rest of the land looked like before oak wilt killed off the over-story in some areas.	R1 20
18	E	Woodland and wetland	Looking east from west boundary of the property just north of the property's SW corner.	R1 21
19	SW	Boundary	Looking SW from west boundary from same location as photo 18. Post marks general boundary.	R1 22
20	E	Wetland, woodland	Another photo looking east from same location as photo 18.	R1 23
21	S	Boundary	Looking south along west boundary. There is a lot of birch located near this SW corner. Same location as photo 18.	R1 24
22	W	Adjacent land	Looking west from west boundary at development to the west.	R2 1
23	NW	Adjacent land	Looking NW from same location as photo 22. Debris that is sometimes blown over from the neighboring development is shown.	R2 2
24	N	Boundary	Looking north along west boundary. Note stake in the middle of the photo.	R2 3
25	NE	Field	Looking NE at old corn/bean field.	R2 4
26	NE	Wetland		R2 6
27	W	Corner	The northwest corner of the property. This is very close to the neighbor's driveway.	R2 7
28	N	Corner	The northwest corner of the property. Note stake.	R2 8
29	E	Corner	The NW corner of the property. Note stake.	R2 9
30	S	Boundary	Looking south along west boundary from NW corner. The tree line generally defines the boundary. Note stake with the flag at the end of tree line.	R2 10
31	NE	Buildings	Garage and 2 sheds in building envelope.	R2 11
32	E	Buildings	Two corncribs, machine shed #1, barn and a shed.	R2 12
33	NE	Buildings	House and chicken coop.	R2 13
34	N	Fuel tanks	At east side of house.	R2 14
35	E	Household waste	At east side of chicken coop.	R2 15
36	S	Buildings	Barn, small barn and shelter.	R2 16
37	W	Buildings	2 corn cribs, 2 machine sheds. Opposite direction from photo 32.	R2 17

38	E	Farm waste	Mostly machines and wood.	R2 18
39	W	Buildings	Sheds west of house. Plow is still used in winter.	R2 19
40	W	Garage		R2 20
41	W	Fuel tanks	Near garage	R2 21
42	NW	Planks over ditch	Ditch is no longer used.	R2 22

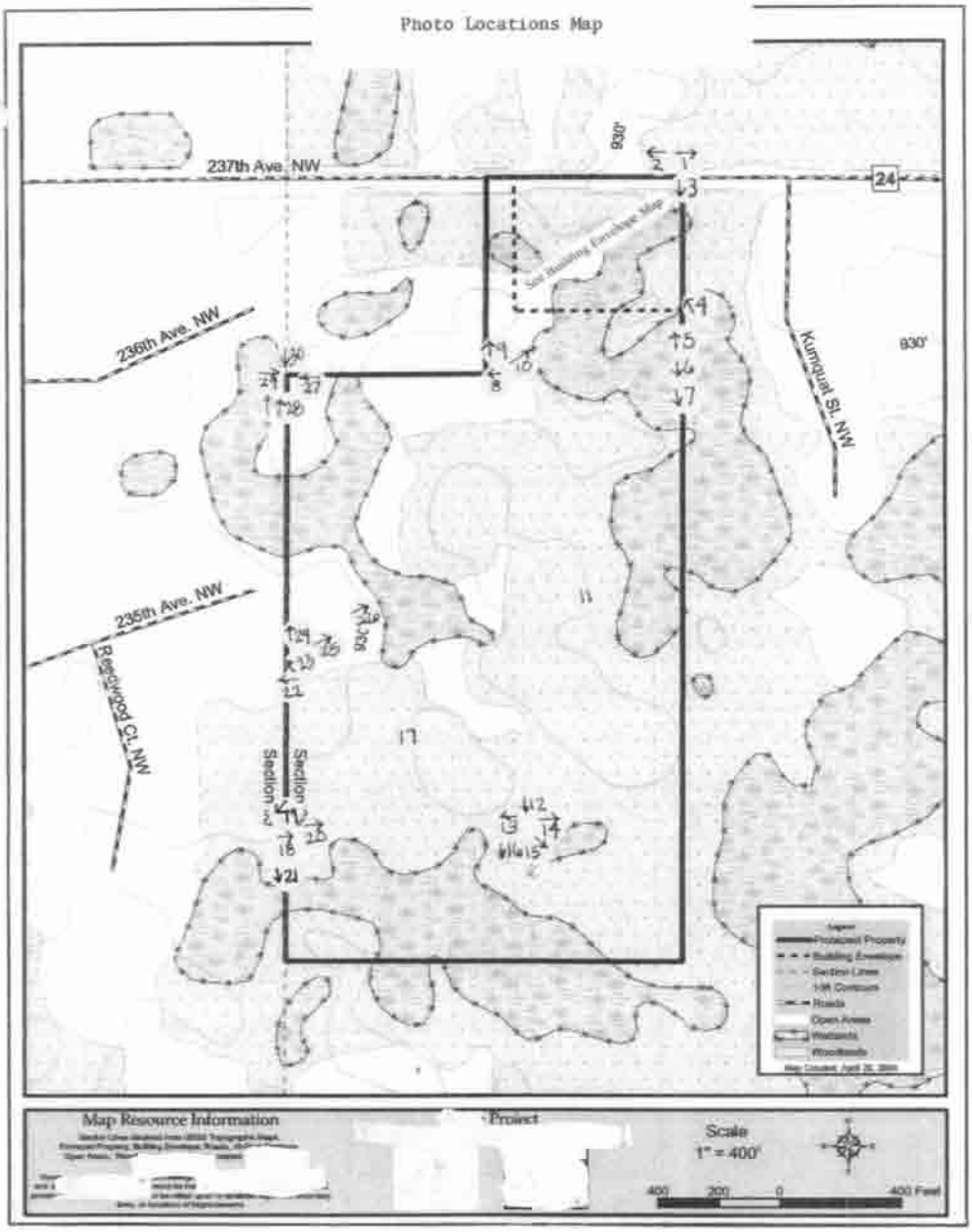
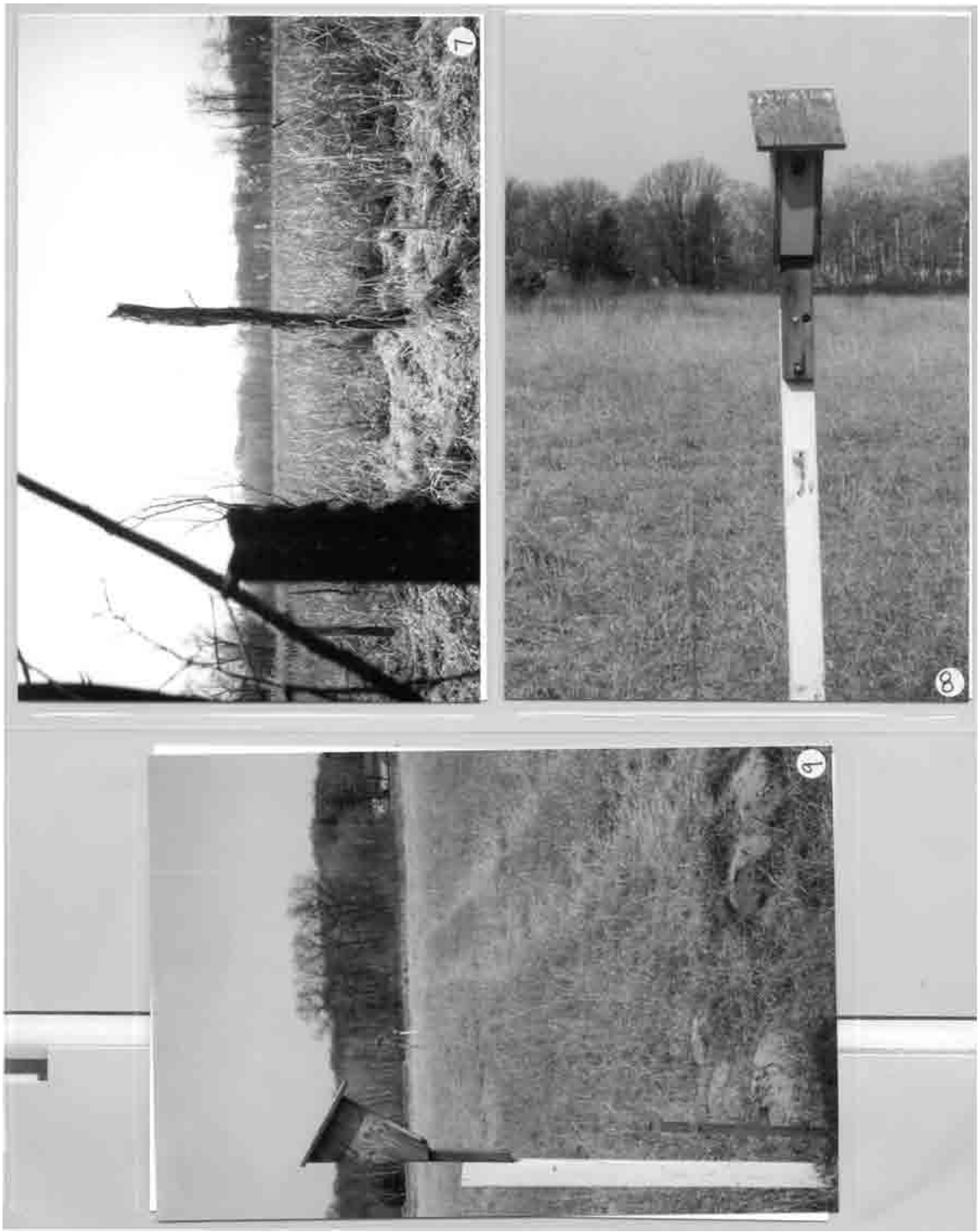


Photo Locations Map
237th Ave. NW
236th Ave. NW
235th Ave. NW
Ringwood Ct. NW
Section
Section
Kumquat St. NW
930'
930'
24
11
17
Map Resource Information
Project
Scale
1" = 400'
400
200
0
400 Feet

1
2
3

4
5
6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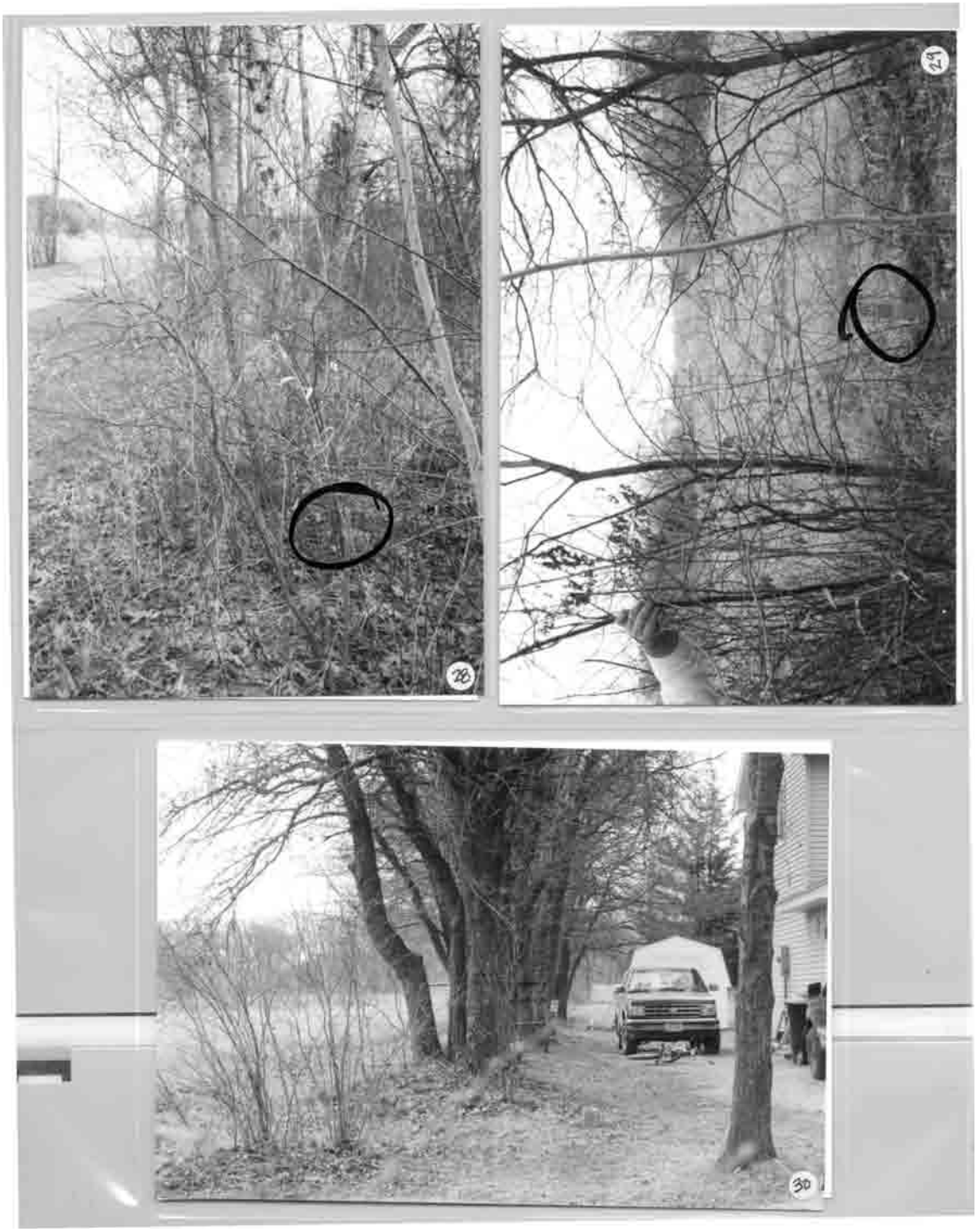
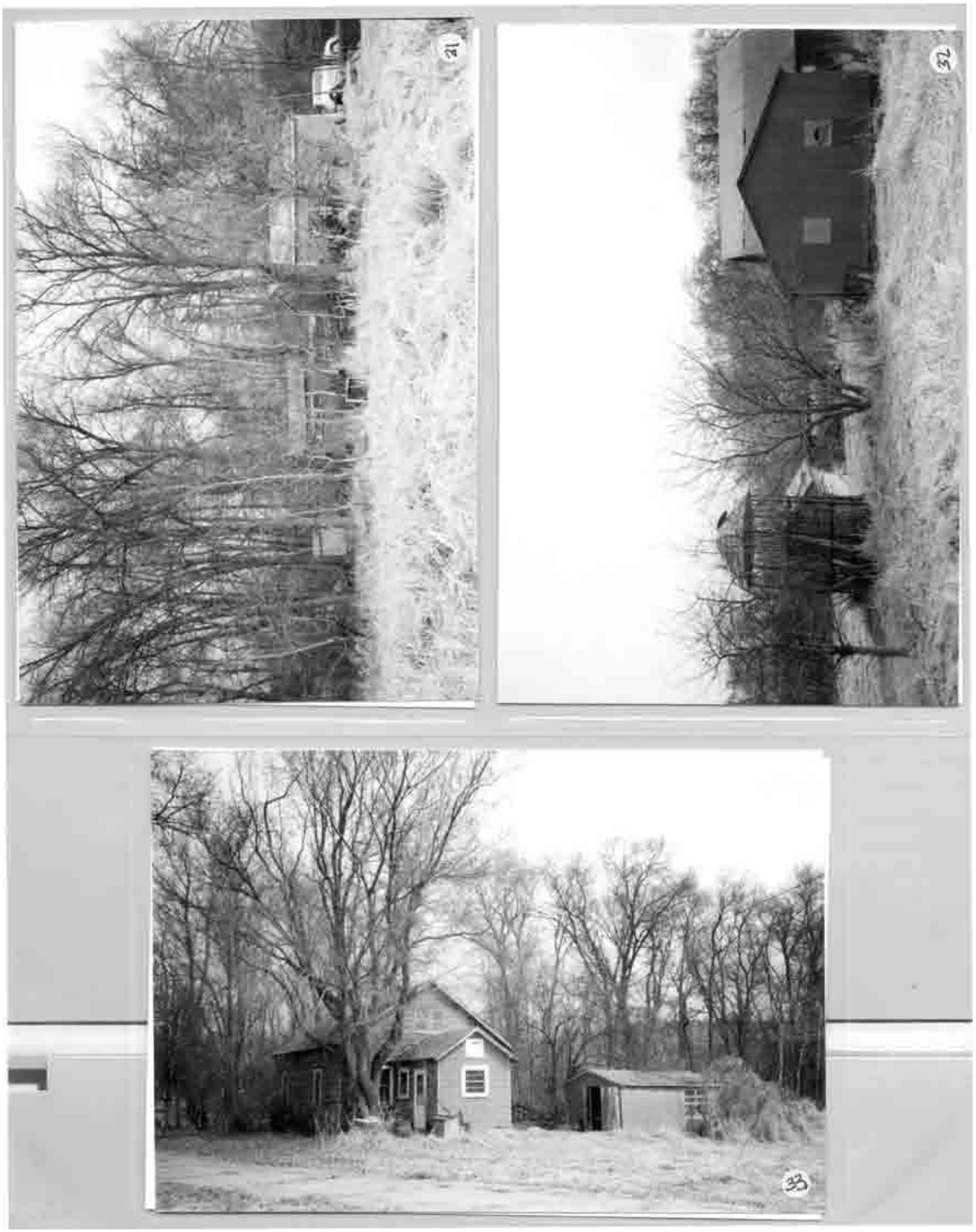
27


28
29
30

Building Envelope Photo Locations Map
24
Chicken Coop
Machine Shed 1
Machine Shed 2
Barn
Cow Shed
Legend
Building Envelope
Section Lines
Roads
Map Resource Information
Project
Scale
1" = 150'
150
75
0
150 Feet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39

Massachusetts Conservation Restriction Stewardship Manual

by Kathy Sferra and Nicholas Holland, Massachusetts Audubon Society

Technical Tools for Conservation Restriction Stewardship

1. Digital Photography

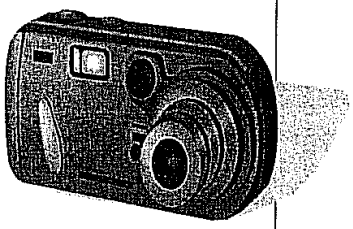
Digital photography has simplified the process of capturing and managing images, and reduced the variable costs of photo documentation by eliminating film processing. Because the originals are stored in digital form, digital photographs are not subject to physical degradation that can render film prints and negatives unusable over time.

Some practitioners have expressed concerns about the use of digital photography in litigation over a conservation restriction violation. The most common concern is that digital photographs can be easily edited, and so may not be admissible as evidence. However, the same technologies that allow digital photographs to be doctored can also be used to modify traditional photographs. In addition, courts have developed rules to deal with digital evidence of all kinds (text files, email, etc.).

A factor that organizations and agencies should consider in deciding to use digital or film photography is their ability to maintain the digital technology and stay up to date, transferring data to new media as needed in a manner that will maintain the usefulness of the photographs over time and their validity as evidence.

See the web references at the end of this Appendix for more on the use of digital photographs as legal evidence. The proper handling of digital photographs for Baseline Documentation Reports (and monitoring) is discussed in Sections 4 and 5.

Digital Camera Features: As with other consumer electronics, the cost of digital cameras continues to decline even as performance and image quality continue to climb. Here are some key features to look for in a camera:



Picture Quality: Digital camera picture quality is measured in megapixels. A 1 megapixel camera will produce pictures with at least one million pixels (square dots), while a 3 megapixel camera will produce a picture with three million pixels. For baseline documentation purposes, a camera with 3 megapixels or more will produce a sharp image even at full-page enlargements.

Display: Liquid crystal displays (LCD) can be difficult to see in bright light or deep shade. In order to accommodate varying field conditions, it is best to use a camera with a traditional viewfinder. Many digital cameras come with both a viewfinder and LCD. The LCD is useful for verifying that the image captured is clear and encompasses your intended field of view.

Storage: Most cameras have removable storage devices (memory cards, memory sticks or disks) that are available in various capacities. A storage device or combination of devices capable of storing more than enough pictures for a day in the field should be selected. To determine the storage capacity needed, consider the size of the property, the length of the boundary, the number of corners, the topography and the number of natural and man-made features that will need to be documented.

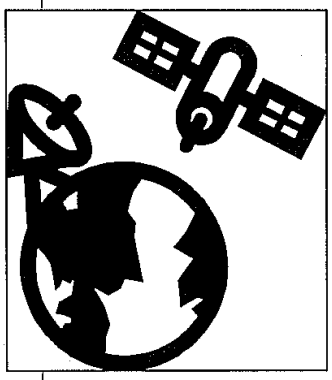
Batteries: Over time, rechargeable batteries are far cheaper than disposables. Most good quality cameras come with rechargeable batteries. A second rechargeable battery may be necessary to accommodate a full day of use in the field, particularly during winter months as battery life declines with temperature.

Sound & Date Recording: Many cameras allow a short sound file to be attached to each photo. Sound doesn't take up much digital storage space, and allows each photograph to be annotated as it is taken saving some time in note-taking. A short narrative description such as "View along boundary wall toward northeast corner, restricted area to the left of the wall" provides a means for verifying the written information accompanying each photograph as the photolog is created. Many camera also have a date stamp. If you are using this feature, make

sure that the date is correctly programmed or it may call into question information in the affidavit if the date on the stamp doesn't match the date that the pictures were actually taken.

2. Global Positioning Systems (GPS)

GPS receivers are used to accurately locate points on the earth by accessing satellites operated by the U.S. Department of Defense. The most common uses of GPS receivers for baseline documentation and monitoring are locating positions where photographs were taken, recording boundary monuments, mapping trails and roads, and locating areas of conservation interest such as vernal pools or unusual natural communities, and recording the route of travel in the field.



Even inexpensive GPS receivers can often locate points more accurately than traditional methods such as compass and pacing. However, even the most expensive GPS receiver can produce inaccurate results if operated improperly. The discussion below provides an overview of GPS and specific suggestions for maximizing the performance of receivers of all types.

Overview of GPS: GPS currently relies on 24 operational Navigation Satellite Timing and Ranging (NAVSTAR) satellites traveling in six evenly spaced orbits. Each satellite orbits the earth every twelve hours. The receiver measures the time it takes for a signal to travel from a satellite to the receiver, and uses this to compute the distance from the receiver to the satellite, assuming that the signal travels at the speed of light. Based on four such distance measurements and the known location of each satellite, the receiver calculates a unique position.

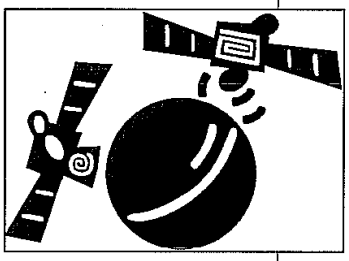
GPS receivers can only access satellites that are above the horizon. The number of satellites above the horizon at a given location and their positions relative to one another — the *constellation* of available satellites — varies throughout the day as the satellites move within their orbits. It may take several minutes for four or more satellites to rise above the horizon and the GPS receiver to calculate a position.

The constellation of available satellites also varies with local site conditions as GPS signals can be weakened by foliage and completely obscured by buildings or terrain. A given receiver may be able to quickly locate the required number a satellites when operated in an open field, but unable to calculate a position under difficult conditions such as under thick tree cover or in a deep ravine.

Sources of Error: There are three principal sources of position errors: 1) poor satellite geometry, 2) atmospheric delays, and 3) multipath error.

Satellite Geometry: The probability of calculating a position accurately is highest when the constellation of satellites is relatively widespread across the sky. When the only useable satellites are grouped closely together in the sky or arrayed in a line, they are said to have a high *Position Dilution of Precision (PDOP)*. A PDOP of 4 or less is excellent, and 7 or greater is poor.

Many receivers will display current PDOP, or allow the user to set a PDOP mask so that positions are only calculated when PDOP drops below a certain threshold. For receivers without this capability, it is possible to predict satellite geometry using desktop planning software and regularly updated information about each satellite's position. Planning software and data are available for download at www.trimble.com. This software will generate a chart showing predicted PDOP throughout a given day at a given location.



Atmospheric Signal Delays: A GPS receiver calculates the distance to each satellite based on the time it takes the signal to travel from the satellite to the receiver, assuming that the signal travels at the speed of light in a vacuum. However, these signals are delayed as they travel through the atmosphere, and these delays create position errors. Many receivers eliminate some of these errors using an equation for signal delays.

Errors caused by atmospheric signal delays can't be avoided, but they can be corrected using *differential correction*. By con-

stantly operating GPS receivers at fixed and known locations, it is possible to precisely calculate the position errors caused by signal delay (by comparing the known location with the calculated GPS location). This information is then used to correct positions calculated by GPS receivers in the field in the region of the fixed GPS receiver. These fixed GPS receivers are known as Continuously Operating Reference Stations (CORS). CORS are operated by government entities, universities and private companies across the United States.

Some receivers have the ability to receive and apply these corrections in *real time* while others allow for differential correction at a later date (known as *post processing*). Correction information is broadcast in real time via satellite to subscribers for a fee, and is available free of charge via the Internet for post processing.

Recently, a number of manufacturers have released receivers that are capable of real time correction using the *Wide Area Augmentation System (WAAS)*. WAAS is a program of the Federal Aviation Administration intended to improve the accuracy of GPS for use in commercial aviation. The WAAS system uses geostationary satellites over the equator to broadcast correction information. The position, low on the horizon in the northeastern United States, means that these satellites are often blocked by hilly terrain. The weaker WAAS signal is more likely to be absorbed by dense forest cover as WAAS satellites orbit at more than 22,000 miles versus the 12,500 altitude of the GPS satellites. As a result, the WAAS signal is often unavailable.

Multipath Error: Multipath errors result from satellite signals that are reflected off of obstacles near the earth's surface before they reach the receiver. These signals are delayed by the longer path and so overstate distance, and also can interfere with the straight-line signals. Some high-end receivers have software that filters out multipath signals. Using an external antenna and a *groundplane* will reduce multipath errors on less expensive receivers. The groundplane is a metal plate that attaches underneath the external antenna, and prevents reflected signals from reaching the antenna from below.

Averaging: Many receivers have the ability to collect more than one position at a given location, and to average these positions to cancel out random errors. Surveyors seeking accuracy of a few millimeters allow their receivers to operate for long periods at a single point. Collecting one to two minutes worth of data at a sampling rate of one position per second should usually be sufficient for documenting photopoints and capturing boundary locations.

Comparison of Receivers: GPS receivers range in price from less than $100 to more than $5,000 for mapping grade units. The best-known manufacturers of receivers in this price range are Magellan, Garmin and Trimble. All receivers have the same core capability: tracking multiple satellites and computing distances based on the signals received.

The more expensive units support differential correction in real time or via post processing, allow the operator to set averaging, PDOP and other parameters, and may have multipath elimination software. The least expensive units may not even accept an external antenna. A good compromise for baseline documentation and monitoring is a unit that will average points, allow for a PDOP mask and accept an external antenna that can be fitted with a backplane.

Additional information about purchasing and using GPS can be obtained from the sources identified in the "Resources" section at the end of this Appendix.

3. Geographic Information Systems

A geographic information system is a set of computer programs designed to manage, analyze and display spatial data. Spatial data may be thought of as points (e.g., a concrete post at the corner of a property), lines (the western boundary of the town of Marshfield) polygons (the outline of Franklin County) or images (an aerial photograph of Massachusetts).

All of the information in the GIS must be spatially referenced ("*georeferenced*") as it is entered, typically by longitude, latitude and elevation. This al-

lows the user to overlay data from various sources to create maps (overlaying the boundary of Marshfield over an aerial photograph, for example) or for analytical purposes.

MassGIS: MassGIS is the Commonwealth's Office of Geographic and Environmental Information, which develops and maintains a statewide database of spatial information for environmental planning and management. MassGIS has a number of datalayers and images that are particularly useful for baseline documentation and monitoring, including

- Hydrography
- Contiguous Natural Lands
- Protected and Recreational Open Space
- Natural Lands Riparian Corridors
- Certified and Potential Vernal Pools
- Biomap Core Habitat & Supporting Natural Landscapes
- Living Waters Core and Supporting Watersheds
- Scenic Landscapes
- Topographic Contours
- Areas of Critical Environmental Concern
- USGS Topographical Maps
- Black and White and Color Orthophotos

MassGIS has created a dataviewer that makes it easy to navigate through the various datalayers. The dataviewer may be used online or downloaded for use with ArcView. These datalayers are also available for download from the MassGIS website or may be ordered on CD-ROM (www.mass.gov/mgis/).

A digitized outline of the conserved property boundary, prepared based on photo interpretation or from GPS locations of boundary points (as described in Subsection 4, below), can be used as an overlay on the various MassGIS datalayers to create maps depicting conservation resources, land uses, topography and soils, and hydrology on the land subject to the conservation restriction.

Importing Data to GIS: All of the data in MassGIS has been

spatially referenced to a common *coordinate system* (the Massachusetts State Plane Coordinate System) and *datum* (the North American Datum 1983). A coordinate system is a means of specifying locations in space, such as by latitude, longitude and elevation. Each coordinate system specifies a *projection*, a mathematical means of representing the curved surface of the earth as a plane. A datum is a simplified model of the earth, either in the form of an ellipsoid or a geoid.

There are many different coordinate systems and datums in common use today. Before datalayers from multiple sources are used together to create maps or for analysis, they must be *reprojected* – converted to a common coordinate system and datum. Most GIS programs have utilities that allow a datalayer to be reprojected into a new coordinate system and datum. Information about a given datalayer's spatial references is typically contained in a "metadata" file available from the data vendor. The metadata contains information on how and when the data was gathered, where it comes from, and any limitations on its use.

Importing GPS Locations to GIS: By importing GPS data into a GIS, it is possible to quickly create maps of photopoints, boundaries, roads and trails. An outline of the conserved property boundary can then be used as an overlay on the various MassGIS datalayers to depict conservation resources.

GPS data must be reprojected to be consistent with other GIS datalayers. Most GPS receivers compute position using the World Geodetic System 1984 (WGS 84)/Geodetic Reference System 1980 (GRS 80) datum, although they may be set to display coordinates in various coordinate systems and datums.

GPS data can be reprojected as it is exported from the receiver, or as it is imported to the GIS program. Trimble software allows the data to be reprojected as it is exported. There are various export programs available for Garmin and Magellan receivers. Some allow for reprojection, while others simply extract the "raw" data in a form suitable for export to GIS. A free utility for Garmin receivers is available from the Minnesota Department of Natural Resources (www.dnr.state.mn.us).

4. Aerial Photography

Aerial photographs are available from public agencies and private vendors in a wide variety of scales, resolutions and formats (e.g., black and white, color, color infrared). In baseline documentation and monitoring, aerial photographs are used to document property conditions at the time the restriction is recorded, identify changes to the property, identify vegetation community types, and as a backdrop in GIS to digitize property boundaries.

Digital Orthophotographs: A digital *orthophoto* is a digitized aerial photograph that has been "orthorectified" so that it is a planar representation of the subject area as if it were totally flat. This means that it has been corrected for the distorting effects of the ups and downs of the topography on the ground. Orthophotos can be used for digitizing property boundaries as described below. A digital orthophoto that is georeferenced using the same datum and coordinate system can also be used with other GIS datalayers.

MassGIS offers a number of digital orthophotographs. The most useful for baseline documentation and monitoring are the statewide 1:5,000 Color Ortho Imagery and the 1: 5,000 Black and White Digital Orthophoto Images, both with ½ meter ground resolution (i.e., each pixel represents ½ meter). The most recent photos are available for downloading from the MassGIS web site or can be used online to make a map using their Online Data Viewer at www.mass.gov/mgis/mapping.htm.

Digitizing Boundaries: Aerial photographs have a number of cues that can be used to digitize property boundaries in GIS. First create a rough polygon of the property boundaries using whatever map or property description is available. Using an aerial photograph as a backdrop, the corner and lines of the polygon may be edited to conform to features such as roads, structures and clearings. The edited polygon can then be used to delineate the property boundaries on topographical maps and aerial photographs for the initial site visit. GPS locations collected during the visit can later be used to correct the polygon.

Note that it is not unusual for parcel lines created on aerial or orthophotos to not fit precisely on topographic maps (and vice versa). Remember that a map like this is an approximation of the boundaries and not a substitute for the actual survey plan.

Other Aerial Photography Sources: The oldest MassGIS aerial photographs date back to 1992. Earlier photos for conservation restrictions granted prior to 1992 are available from The Aerial Photography Field Office of the US Department of Agriculture (www.apfo.usda.gov) and a number of commercial vendors, including Col-East, Inc. (www.coleast.com), Eastern Topographics (www.e-topo.com), James W. Sewall Company (www.jws.com), Chas. H. Sells, Inc. (www.chashsells.com) and National Aerial Resources (www.nar.com).

Most vendors will supply aerial photography in either digital format or hard copy. Hard copy prints can be digitized using a desktop scanner set to the appropriate resolution. Note that while digitized photographs can by imported into a GIS, they cannot be used with other datalayers unless they are georeferenced.

Another sources of very low level oblique aerial photographs can be found on the web at www.local.live.com. New sources are regularly available, so it is worth your time to do some searching for aerials of your area.

Satellite Imagery: Aerial photographs are particularly good for baseline documentation and monitoring as they are taken at relatively low heights (hundreds of feet versus hundreds of miles) and have high resolution. However they are generally taken at infrequent intervals. The potential advantage of satellites is that images of a given area are captured and made available on a regular basis.

Until very recently, commercial satellite images were only available at low resolutions. Resolution is important as it determines the minimum size object that may be seen in an image. A 30-meter resolution satellite image would be comprised of pixels (picture elements) 98 feet square. At this resolution any object smaller than 98 feet on a side would be invisible even if it fell in the center of a pixel.

Now there is high-resolution satellite imagery with ground resolutions of a meter or less, comparable to aerial photographs. On a per acre basis, the costs are quite low ($26.00 per square kilometer for some satellite images from one vendor (www.OrbView.com) However, the individual images are very large and, as a result, so are the minimum order requirements and the cost: the minimum archival order for OrbView is 64 square kilometers, for a minimum order of just under $1,700. This begins to approach the cost of hiring an aerial photography company to fly custom photographs.

5. Topographical Maps

Topographical maps use contour lines (lines of equal elevation) to depict land forms, and show natural and manmade features of the landscape, including areas of vegetation (shown in green), water bodies (blue), developed areas (gray or red) as well as trails, roads, utility lines, and other infrastructure, and major buildings. Topographical maps thus contain lots of information that is useful for determining boundary location in the field, and in characterizing a property in the Baseline Documentation Report.

United States Geological Survey (USGS) topographical maps are available in various scales. The most useful for baseline documentation and monitoring are the 1:24,000 scale maps (or metric versions at a scale of 1:25,000). These maps are also referred to as 7.5 minute quadrangles as each encompasses an area 7.5 minutes of longitude by 7.5 minutes of latitude. One inch equals 2,000 feet on these "large scale" maps. The USGS also produces smaller scale maps at 1:100,000 and 1:250,000.

USGS maps are prepared from a variety of sources including stereoscopic aerial photographs and ground surveys. They are highly accurate: the National Map Accuracy Standards require that 90% of all field-verified points on a 1:24,000 map be within

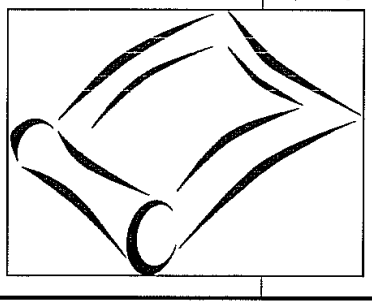
40 feet of their mapped locations horizontally, and within one-half of a contour interval vertically (e.g., within 10 feet if the contour interval is 20 feet).

USGS maps are generally available at many bookstores and outdoor recreation stores. They are also available for downloading from the Mass GIS web site and other commercial online sources such as www.topozone.com.

6. Boundary Location

Boundary Description: The property description in the conservation restriction is generally found at the end of the restriction. It can take many forms, including citation of deeds or plans (by registry book and page numbers or land court document number), reference to town tax maps, or recitation of metes and bounds (i.e., distances and directions). Sometimes a plan is recorded that is prepared specifically for the conservation restriction. This is often done when portions of a property have been excluded from the conservation restriction or if there are building areas reserved within the restricted land.

The property description in the conservation restriction may not be sufficiently detailed to be used for boundary location in the field and additional research may be required. The appropriate county Registry of Deeds or Land Court will have copies of any plans or deeds cited in the conservation restriction. Cited deeds and earlier deeds from prior sales of the subject property may contain useful plan references. Most of the Registries in Massachusetts are now accessible on line, and many allow for viewing and printing of plans and deeds. Town offices frequently have plans on file in the offices of the town clerk, assessor, town engineer or planning department. Note that tax assessor's maps should not be used for boundary location themselves as they are prepared at very large scales, and are often not accurate at the parcel level (see Section 3 of this Manual for more information in researching land ownership).



Metes and bounds property descriptions should be converted into a map for ease of use in the field. This can be done by hand using a protractor and ruler, or

using GIS. The Norcross Wildlife Foundation/Massachusetts Department of Environmental Management Data Editing Extension is a free extension for ArcView that produces maps from metes and bounds descriptions (see http://www.state.ma.us/dem/programs/gis/de/pe.htm).

If there is no map or description of the property, it is possible – but very time consuming – to compile a property map using plans or metes and bounds descriptions of abutting properties where these are available. Use the town tax map to identify abutters by tax map and lot or deed book and page, then search the appropriate Registry, Land Court and town offices for plans.

Boundary Location in the Field: Using whatever property descriptions are available, annotate a copy of a map or prepare a sketch that shows every corner and line monument by type, and the distance and direction from each monument to the next. Monuments will be identified by type in the metes and bounds property description and on the survey plans. The most common types are stone bounds (SB), concrete bounds (CB), iron pipes (IP), or rods (or even musket barrels), stonewalls and rock piles. Rock and concrete monuments often have drill holes to precisely locate a corner or line.

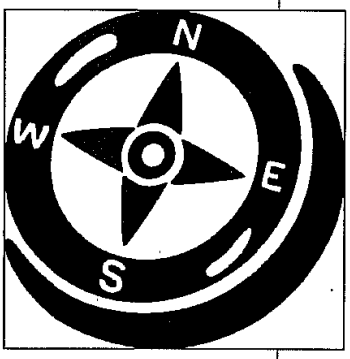
A map may refer to pre-existing boundaries as "found" or "existing" (e.g. "found concrete bound"), and those established or to be established at the time the map was made as "set" or "to be set" ("set iron pin", "iron pin to be set"). It is not uncommon to find that boundaries labeled as "to be set" were never actually put in place.

Wooden stakes near a boundary line may indicate where a permanent boundary was to be set, or could simply be a temporary marker used by the surveying team. Similarly, flagging and areas of cleared vegetation left over from a prior survey may be on or off a boundary line, and may even extend into adjacent properties – particularly in the case of wetland flagging.

The most efficient way to accurately locate property boundaries is to methodically move from one monument to another, following the bearing of the boundary line with a hand compass and keeping track of the distance traveled along the way.

Blazes: Often boundary lines will follow stonewalls or the remains of an old wire fence. Absent these features, it is common to blaze and paint trees on or near the boundary line. A blaze is made by removing a small area of bark with a drawknife or hatchet to expose the wood underneath. The blaze is usually painted to make it visible at a distance.

Trees that are on the property line are blazed in the center on both sides, so that an imaginary line drawn through the blazes would point along the boundary line. *Quartering blazes* are often made on trees that are within three feet of the line. These are similar to the property line tree blazes, but are offset to the side of the tree closest to the line. Trees three to six feet off of the line are blazed once, on the face that points toward the line. Trees are also blazed to indicate corners. Three or more "witness" trees around a corner monument are each blazed on the side closest to the marker. This makes it easier to locate the marker, and makes it possible to replace it if it is disturbed.



Even absent boundary markers, walls, wire or blazes, it is possible to follow boundaries based on cues on the ground. Often there will be a noticeable difference in vegetation on one side of a boundary line due to differing historical uses (e.g. pasture versus cultivated field, managed woodlot versus uncut forest). Other cues include the distinctive mark of healed tree blazes, or persisting scars and burls on trees from fence wire long rusted away.

Following a Bearing: Boundary line bearings may be given in *azimuth* or in *quadrants*. Bearings in azimuth simply use the clockwise angle of deflection from north, with north being 0 degrees, east 90 degrees, south 180 degrees and west 270 degrees. In the quadrant system, the compass is divided into four sections (quadrants): northeast, southeast, southwest and northwest. Directions are given with reference to these quadrants so that northeast is "north 45 degrees east". The table on the next page compares these two systems:

	Degrees	Quadrant
Northeast	45	N 45 E
East	90	N 90 E, or S 90 E
Southeast	135	S 45 E
Southwest	225	S 45 W
West	270	N 90 W or S 90 W
Northwest	315	N 45 W

Compass bezels (the outer ring that turns) are marked in degrees, quadrants or both degrees and quadrants. Using quadrant bearings with a compass marked in degrees is relatively simple. First set the compass to north or south according to the quadrant bearing, and then turn it the specified number of degrees toward east or west. For example, to set a degree compass for the bearing S 45 W, set the bezel to south (180 degrees) then turn it 45 degrees toward the W mark on the bezel (to 225 degrees).

Bearings may be given with reference to *magnetic north* – the direction of the force lines of the earth's magnetic field – or true north – toward the earth's geographic north pole. The difference between the direction of magnetic north and true north is referred to as *declination*. Declination varies from location to location, and over time. The current declination in Massachusetts is approximately 16 degrees west (i.e., magnetic north is 16 degrees west of true north), whereas it is 16 degrees east in Idaho. Current local declination is printed on USGS topographical maps. In Massachusetts, to convert a magnetic reading to true north, subtract 16 degrees. Many compasses can be set to compensate for declination, allowing readings to be made directly in true north.

The polarity of the earth has completely and abruptly reversed itself several times over geological time scales. Magnetic north wanders east and west over much smaller time frames, and so the declination at a given location changes as a result. The table on the next page shows the declination for Worcester

Massachusetts at the beginning of each of the last ten decades, and the annual average change in declination for the decade (calculated using the USGS web site declination calculator).

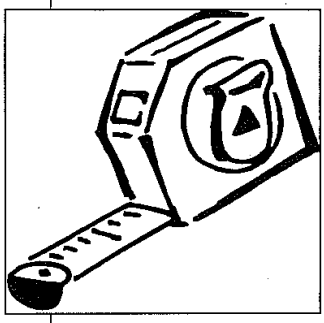
	Declination (west)		Annual
Year	**Degrees**	**Minutes**	**Change (minutes)**
1930	14	20	2 west
1940	14	35	0
1950	14	27	0
1960	14	29	0
1970	14	32	0
1980	14	46	3 west
1990	15	10	2 west
2000	15	11	2 east

This is the reason true north is often used in maps – it is a fixed reference point. If your map is old and the bearings are given in magnetic north, you may need to compensate for subsequent changes. For example, the magnetic north bearings from a 1930 map would be some 50 minutes off of magnetic north in the year 2000.

Note that *Grid north* appears on many recent maps, including most topographic maps. Grid north is the reference north of coordinate systems that depict the curved surface of the earth as a plane, such as the Massachusetts State Plane Coordinate system described in Section C above. While the difference between grid north and true north is significant near the poles, in our mid latitudes the difference is too small to matter when using a hand held compass.

Most professionally prepared maps include a compass rose that indicates the basis for the given bearings. A north arrow with a star is true north, an arrow with an "N" is magnetic north, and an arrow with "GN" is grid north. If the map doesn't specify in writing or symbolically, pick a prominent line feature on the map (e.g., a road or a wall) and compare its given bearing with a compass reading made on site.

Traditionally, bearings found on maps or in metes and bounds descriptions were given in *degrees*, *minutes* and *seconds*. There are 360 degrees on the compass bezel. Each degree is divided into 60 minutes, and each minute into 60 seconds. 45° 12' 50" stands for 45 degrees, 12 minutes and 50 seconds. Bearings may also be given in *decimal degrees*. Decimal degrees express the minutes and seconds as decimal fractions. To convert from degrees minutes and seconds to decimal degrees, the equation is: degrees + minutes/60+seconds/3600. In decimal degrees, 45 12 50" would be expressed as 45.2139 (calculated as 45 degrees +12 minutes/60 minutes + 50 seconds/3600 seconds)



When using a hand held compass, round up to the nearest degree. Minutes and seconds are only meaningful when using a staff-mounted compass or surveying instruments. Set the bezel to the specified direction, then rotate the compass until the arrow aligns with north. Note that large mineral deposits, power lines, electric fences and electronic equipment such as GPS receivers or cameras can cause the needle to deviate from magnetic north. Hold the compass level at about waist height, and well away from electronic devices. Pick a visible landmark (a snag or a tall tree, for example) that is in line with the direction indicated and use it as a guide. When following a boundary line that is not well marked (i.e., no fence or blazes), hang small pieces of flagging at head height periodically, then back sight on these with the compass to maintain the bearing.

Measuring Distance: When setting monuments surveyors use steel tapes and lasers to measure distances to within a small fraction of an inch. Fortunately, following these surveyor's measurements to relocate boundaries doesn't require nearly the same level of accuracy.

Pacing – measuring distance based on stride – is an efficient way to measure distance between boundaries. To determine the length of your pace, measure out a distance of 100 feet on level ground and walk it several times. Divide the distance by the average number of paces (each pace is two steps). Adult paces range from less than 4ft. to more than 6ft.

For Further Reading:

Digital Photography:

The Admissibility of Digital Photographs in Court, Seven B. Staggs— www.crime-scene-investigator.net

Digital Photography as Legal Evidence, Roderick T. McCarve www.seanet/com/~rod/digiphot.html

Mapping Systems General Reference, Trimble Navigation Limited, 645 North Mary Avenue, Sunnyvale, CA 94085

Boundary Research & Map and Compass:

Working With Your Woodland, Mollie Beatie, Charles Thompson, Lynn Levine, 1993, University Press, Hanover, NH.

Legal Aspects of Owning and Managing Woodlands, Thomas J. McEvoy 1998, Island Press. Washington, D.C., Covelo, CA.

GIS, Topo, and Mapping:

Umass Earth Sciences: www.umass.edu/tei/esio

Terraserver: http://terraserver.microsoft.com

http://mac.usgs.gov/mac/isb/pubs/booklets/symbols/index.html

Geographic Information Systems, United States Geological Survey—http://www.usgs.gov/research/gis/title.html

To measure distances between monuments, set off on the left or right foot and count every two steps as 1 pace. Pace varies with slope (shorter uphill and on steep downhills, longer on mild downhills) and conditions (e.g., shorter in snow). With practice, it is possible to adjust for changes in terrain by occasionally adding a full or half pace. Note also that map distances are measured horizontally from one monument to another, and don't take into account the undulations in between. On hilly sites, paced distances will be greater than the map distances.

Where more accurate measurements are required, such as laying out an unmonumented building envelope, a hip chain may be used. A hip chain is a belt-mounted device that contains a spool of biodegradable thread tied to a counter calibrated to measure in feet, meters or other distance units. One end of the thread is tied to an object at the starting point, and the distance traveled is displayed as the thread pays out. A 100' tape measure can also be used, depending on distances, topography and vegetative cover.

Many older maps and metes and bounds descriptions use rods, chains and links. A rod is 16.5 feet, a chain is 66 feet, and link is 7.92 inches (1/100 of a chain). There are 4 rods to a chain. The chain is a useful unit of measurement as 80 chains equal one mile (5,280 feet), and 10 square chains equal an acre (43,560 square feet). For ease of use in the field, these measurements should be restated in feet or paces.

Topographical Maps and Aerial Photographs: Topographical maps and aerial photographs with the property boundaries outlined by hand or using GIS can be very helpful for boundary location. A topographical map may reveal that a corner or marker is near a prominent feature such as an outcrop or a stream. Aerial photographs show variations in vegetation that can be used to locate corners or bounds in the field (e.g., a corner near a small stand of white pines).

Glossary

Affirmative rights or obligations: Easement provisions that require the landowner to maintain the resources protected by the easement (e.g., mow a field to keep open a view) or that require the land trust to maintain if the owner does not; or rights granted to the land trust to perform physical acts on the property (e.g., build a trail or access the property for monitoring).

Baseline documentation report: A record of the conservation values identified in the easement and the relevant conditions of the property, used to monitor and enforce the easement. It contains maps, photographs and text, and is signed by the landowner and land trust at or before closing.

Biological baseline inventory: A thorough scientific evaluation and listing of the flora, fauna and sometimes other natural and geographic features of a piece of land.

Capacity: The ability to perform all the actions required to manage conservation easements by having adequate human and financial resources and organizational systems in place.

Conservation easement monitoring: The land trust's ongoing inspection of land to determine compliance with the terms of the easement and the documentation of the organization's findings. Monitoring ensures the protection of the land's conservation values over time.

Conservation easement stewardship: All aspects of a land trust's management of a conservation easement after its acquisition, including monitoring; landowner relations; recordkeeping; processing landowner notices, requests for approval and amendments; managing stewardship funds; and enforcement and defense.

Estoppel: A legal term meaning that a person is precluded from complaining against a circumstance that he or she caused or contributed to, either by his or her silence, acquiescence or affirmative approval.

Estoppel or compliance certificate: A certificate signed by the land trust certifying the condition of the easement property as of the date of the statement.

Important conservation values (or **conservation attributes**): The key values or attributes on the property that are the focus of protection efforts. Important conservation values are determined during the property evaluation and project planning process.

Insiders: Board and staff members, substantial contributors and other parties who have an ability to influence decisions of the organization and those with access to information not available to the general public. See *Land Trust Standards and Practices* for additional information and the IRS definition.

Laches: Failure to take an action at the proper time, especially such delay as will prevent a party from bringing a legal proceeding.

Land ethic: A perspective on environmental ethics first championed by Aldo Leopold in his book *A Sand County Almanac.* Leopold argued that the next step in the evolution of ethics is the expansion of ethics to include nonhuman members of the biotic community, collectively referred to as "the land."

Performance standards: The requirements in a conservation easement for limiting permitted land use activities that are based on the likelihood of achieving a desired outcome or goal, rather than mandating specific actions or prohibitions. For example, "the water shall not contain sediment."

Photo point: The location where a photograph was taken, shown on a map so as to be easily relocated.

Policy: A specific course of action to guide and determine present and future decisions. In this context, refers to a written, board-adopted policy.

Practice: The land trust's customary action; may or may not be written. Also refers to an element of *Land Trust Standards and Practices*.

Prescription: A long or immemorial use of some right so as to give a right to continue such use, or the process of acquiring a right by uninterrupted assertion of the right over a long period of time.

Prescriptive standards: The restrictions in a conservation easement that forbid or limit certain activities, which are usually absolute and

often quantifiable, such as the prohibition of construction within 300 feet of a body of water.

Private benefit: When a tax-exempt organization provides more than an incidental benefit to a non-insider.

Private inurement: When an insider to the tax-exempt organization, such as a director or an officer, derives a benefit from the organization without giving something of at least equal value in return. The IRS prohibition on inurement is absolute.

Procedure: A series of steps followed in a regular order. In this context, procedures are written for the board, staff and/or volunteers to follow and may or may not be approved by the board.

Reserved rights: The rights to use or develop the property reserved by the landowner under the terms of the conservation easement.

Statute of limitations: A statute defining the period within which an action may be taken on some legal issue.

Stewardship fund: A separate, dedicated fund established by a land trust to provide financial resources for easement stewardship costs. If the fund is not a true endowment, the principal as well as the earnings of the fund may be withdrawn.

Successor landowner: An owner who acquired protected property and was not the original grantor of the conservation easement.

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- Conservation Easement Stewardship
- Managing Conservation Easements in Perpetuity

Strong Organizations

- Building the Foundation for Fundraising Success
- Financial Management of Land Trusts
- Determining Stewardship Costs and Raising and Managing Dedicated Funds

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www.lta.org

Cover photo by Francesca Dalleo.

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