Setting up and Easement Monitoring Program

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Easement Monitoring Process

Phase 1 – Gather baseline data

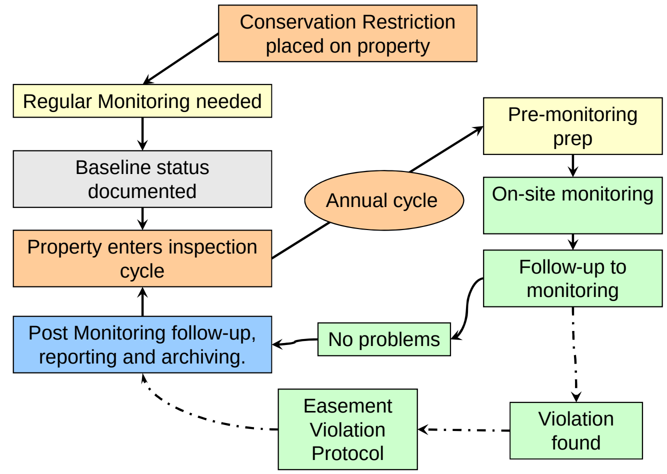
Phase 2 – Organize and prepare easement documentation

Phase 3 – Monitor easement status

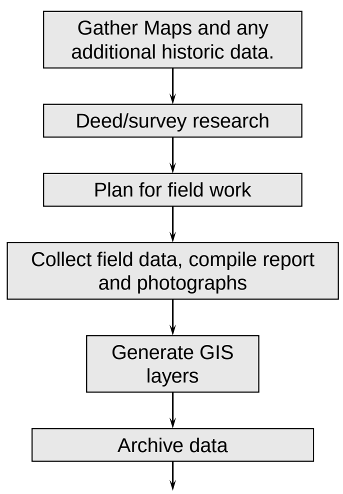
Phase 4 – Create final report, archive monitoring data, follow up with landowner or other parties regarding violations or other ongoing issues.

Phase 5 – Establish permanent monitoring and stewardship schedule.

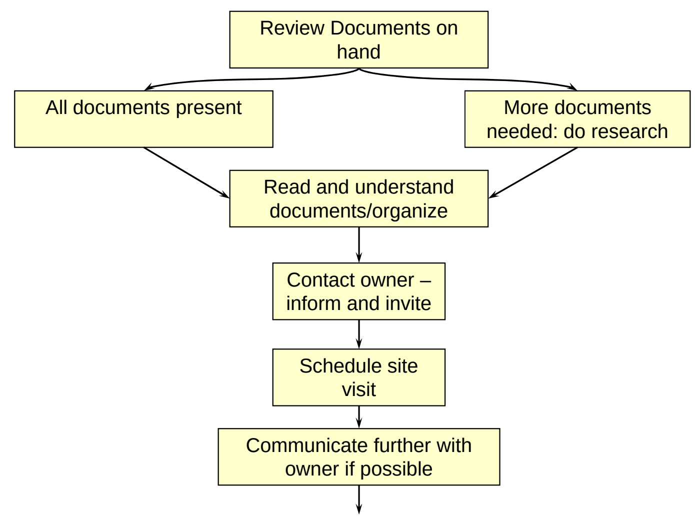
Typical Easement Monitoring Flow



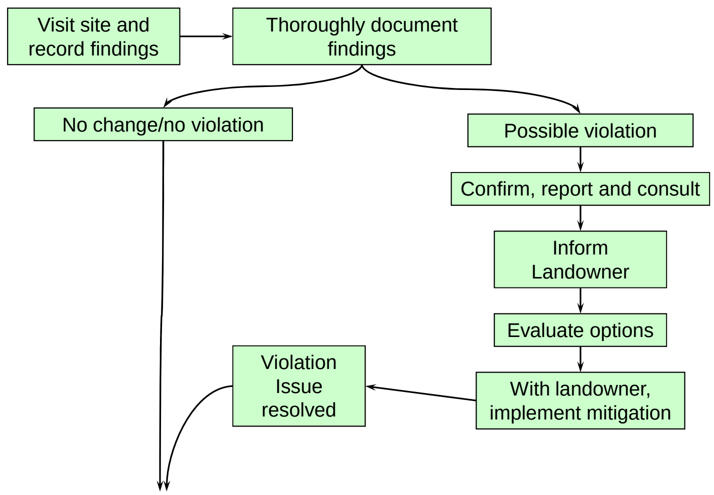
Baseline Data Gathering



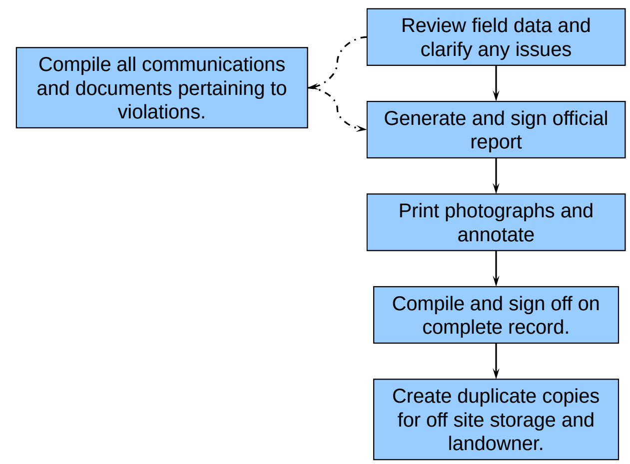
Pre-Monitoring



Monitoring



Post Monitoring



Chapter 9 Checklist
MONITORING

To ensure a strong monitoring program, an easement holder should:

- ❑ Establish monitoring policies and procedures to cover:
- ❑ Purpose, frequency, and method of monitoring.
- ❑ Steps to take before, during, and after a monitoring visit.
- ❑ Documentation techniques.
- ❑ Recordkeeping.
- ❑ Who should monitor.
- ❑ How monitors should be trained.
- ❑ Prepare standard easement monitoring reports and checklists.
- ❑ Train monitors.
- ❑ Identify properties where monitoring more frequently than annually is required.
- ❑ Inform new owners of monitoring policies.
- ❑ Develop policies and procedures for permitted-use notices and approvals.
- ❑ Establish a process for tracking the exercise of reserved rights.
- ❑ Designate a contact person to address landowner questions.

Chapter 8 Checklist
DEVELOPING A STEWARDSHIP PROGRAM

To institute a strong stewardship program, an easement holder should:

- ❑ Establish policies or procedures for calculating, obtaining, and man-aging stewardship funds, as well as for recordkeeping, monitoring, enforcement, easement amendments, and landowner relations.
- ❑ Plan for stewardship when the easement is being drafted.
- ❑ Seek stewardship funding for every easement.
- ❑ Practice excellent recordkeeping.
- ❑ Develop a comprehensive system for tracking all its easements and learning when its easement properties change ownership.
- ❑ Perform regular monitoring.
- ❑ Maintain relationships with landowners who grant easements and develop relationships with new landowners of easement properties.
- ❑ Educate the community about easement properties.
- ❑ Enforce conservation easement violations.
- ❑ Establish a process for reviewing, responding to, and tracking permitted-use notifications and approvals.
- ❑ Re-record its easements periodically if located in a state with a marketable title act.
- ❑ Evaluate opportunities for providing land management assistance to landowners.
- ❑ Periodically review and update its stewardship program.

Chapter 10 Checklist
ENFORCEMENT

To prepare for enforcement, an easement holder should:

- ❑ Plan for the costs of enforcement by setting aside enforcement funds.
- ❑ Develop enforcement procedures to clarify:
    - How violations are documented.
    - Who has the authority to contact and discuss the violation with the landowner and negotiate a resolution.
    - How to respond to minor violations.
    - When an attorney will be consulted.
    - The role of the board.
    - When to involve project partners or co-holders.
- ❑ Draft conservation easements clearly, complete baseline documentation, and carefully document ongoing monitoring.

Pre-monitoring Checklist

From the files:

- ❑ Make copies of each property info sheet and easement you will be monitoring
- ❑ Read through the office file and copy any correspondence that seems pertinent.
- ❑ Copy maps if possible – photograph and print if not
- ❑ Copy from the file information that will assist you in finding the property (note – do not confuse owner address with property address – they are not always the same). This process may likely involve some clue searching and computerized mapping service (maps.google.com and terraserver.microsoft.com/)
- ❑ Take notes on any previous monitoring issues and/or violations.
- ❑ Read and abstract each conservation easement for quick reference in the field
- ❑ Confirm current ownership using most current contact information and file notes. This process will likely involve town hall research. If so:
    - First check the town hall website to see if any information can be found on line. Follow general information below to do on-line searches).
    - Take deed and any location information to the town hall
    - Find property on tax map if possible
    - Use map/lot numbers to find assessors index card. This card should have the current owner info and the book/page of the latest deed. Find and copy latest deed (and previous deed if not same as the conservation easement grantor).
    - If you cannot locate the property on the tax map even with trial and error, use the town's search options to look up the last known owner and forward reference new ownership (ask town clerk for assistance).
    - Use town search options to look for new property surveys or plats of the location (surveys are often referenced from the deed). If the property likely borders new development or potential problem area, try to find a copy of the survey plat of that development.
    - Remember to take a check book or small change to pay for copies and blueprints. (copies are usually $.50-$1 – blueprints more).
- ❑ Contact current owner (preferably via postal mail) and inform them of the upcoming monitoring visit.
- ❑ Invite the owner to set the date, or give them your expected date and invite them to join you. Landowner presence is not necessary.
- ❑ Follow up with the owner before you visit – use that time to get any information from them that they think you should know (i.e. – "have there been any issues out there?" or "is there anything I should know before we meet?"
- ❑ Use the 'Equipment and Skills Checklist' to prepare for the field visit.

Easement Monitoring Visit Equipment and Skills
Connecticut Forest & Park Association

You will need:

Good compass
Field sketch book and pencil
Camera (digital preferred)
Map of the property
Flagging tape
Copy of conservation restriction and/or conservation restriction abstract
Blank monitoring form
Carry a cell phone for safety
Check local hunting seasons and wear blaze orange if necessary
Directions to the property
Clip board

Also very useful:

GPS unit
Additional maps
100’ measuring tape or measured line.
Past monitoring reports

Skills - You should know how to:
Use a good compass (and account for declination)
Pace a distance
Sight a line
Take digital photographs with consecutive numbers
Sketch a parcel of land and apply a north arrow

Pre-monitoring Checklist - Review of Documents
Connecticut Forest and Park Association – DRAFT

I. Review of documents

a. Available documents
   1. Minimum needed
   2. Conservation easement
   3. Map (survey, sketch or tax map)
   4. Air photo if at all possible.
   5. Pertinent correspondence
   6. Current owner info and directions to the site
   7. Record of unresolved or possible violations or issues

b. Helpful extras
   1. Photos of the property
   2. Dated air photos
   3. Descriptions of easement history
   4. Letters showing grantor intent
   5. Historic correspondence
   6. Internal memos and letters
   7. Tax information.
   8. Past monitoring forms

II. The conservation easement document

a. Outline of a basic document
   1. Grantor/grantee
   2. Conveyance of portion or whole
   3. Area covered (meets/bounds or exhibit “X”)
   4. Land Use provisions/recitals
   5. Administrative provisions/boilerplate

b. Reading and interpreting a conservation easement
   1. READ CAREFULLY – it will take several passes to absorb it completely.
   2. Read for overall intent <u>and</u> the fine print
   3. You will not be able to say with 100% confidence what is and is not allowed to occur on the property. “Recreational use” can have many meanings.
      - Leave the fine interpretation up to the lawyers – know enough detail to recognize potential violations.
   4. Note if the document pertains to the entire parcel or only a portion.
   5. Note the general restrictions.
   6. Note exempt activities – i.e. firewood harvest or road improvement.
   7. Note exception areas and allowances (i.e. – one subdivision of 10 acres or more, house lot “A” allowed for family, two additional barns may be built. Etc) Exceptions are usually present.
   8. Note any additional allowances, clauses or conditional approvals – i.e. “may cut timber if CFPA approves harvest plan”
   9. Practice on a real document
   10. Abstract/outline the document in a way that makes sense to you.

{Date}

{Name}
{Address}
{Address}

Dear {Name},

Every year, the Connecticut Forest & Park Association monitors each conservation easement that has been granted to us in order to fulfill our responsibility to ensure that these properties are protected as the easement grantors wished, and that they are in compliance with the terms of the conservation easement.

As CFPA's conservation coordinator I will be monitoring your easement this year would like to do so in the next couple months. I will call the week or two prior to the visit in order to set up an agreeable time. Because this will be my first visit to your property, it would be great if you could join me for the visit. Please feel free to contact me now if you have an ideal date in mind. I hope you will be available for the visit, but understand if you are not available to do so.

In addition to our review of the easement lands, these monitoring visits also provide you an opportunity to ask any questions about your conservation easement, and to discuss any changes that have occurred on the property, your plans for the property, or activities that may require the Land Trust's notification or approval. I have a background in land management and would be happy to discuss any management issues as well.

If you have any questions or issues to discuss at this time, please feel free to contact me at (860) 346-2372 (office) or (860) 575-8848 (cell).

Finally, please inform ahead of time anyone on the property who should be made aware of the visit, and restrain dogs or other animals that do not respond well to visitors. I look forward to seeing you.

Sincerely,

Damon Hearne
Conservation Coordinator
Connecticut Forest & Park Association

On-site Monitoring – Checklist

- ❑ Use the ‘Equipment and Skills Checklist’ to prepare for the field visit.
- ❑ Check in with owner or others present when arriving.
- ❑ Set up camera; date and sign report form.
- ❑ While on site, interview the land owner regarding changes that have been made, concerns about management, issues with public access, erosion, or other concerns. If the landowner is not available, interview them by phone after the visit.
- ❑ Traverse property such that full coverage is ensured. Pay special attention to areas along property boundaries and any areas that have been disturbed. If with the property owner, it is often best to let them ‘take you on a tour’, and then re-visit areas that are of special concern.
- ❑ Describe changes in land ownership, land use, status of leases, and conditions as required by the monitoring form.
- ❑ Examine improvements and facilities. Photograph and note all structures and improvements including houses, barns, sheds, outhouses, gravel or paved roadways, man-made ponds, gardens etc. Attempt to sketch these improvements on the map as accurately as possible.
- ❑ Describe any questionable practices (excavation, dumping, off-road use, tree cutting) that are not explicitly allowed in the easement documents.
- ❑ DO NOT tell the land owner that there is a violation or that something will have to be torn down, changed, filled in, planted or otherwise altered. Notification of violation should only be communicated after following the easement violation protocol and allowing consideration by the easement stewardship committee.
- ❑ You may discuss possible issues with the owner if they ask, or if you need clarification on a land use practice or date of construction. Getting their perspective on the issue can be important.
- ❑ Describe cultivation practices. Describe generally disturbances in natural plant communities and apparent causes (based on observed evidence, not presumption).
- ❑ Describe the presence and extent of invasive/noxious weeds if easily noted.
- ❑ Indicate whether erosion problems are static, worsening, or stabilizing and describe control efforts. At a minimum, significant erosion sites and those exhibiting changes should be photographed and located on the field aerial.
- ❑ Describe and photograph activities that may have an impact on water quality. Do not conclude that water quality is being degraded on the report

Photographs:

- The first photograph for each property should be of a dry-erase or piece of paper clearly marked with property name and date.
- Be concise to minimize the number of photographs required while assuring sufficient documentation.
- For each photograph taken, record photograph number, subject, location description, focal length (wide vs. zoom) and azimuth bearing on the report form. Mark the location of each photograph on the aerial.
- Describe photograph location in relation to permanent or semi-permanent landmarks (rock outcrops, fence corners, trees) that can be easily identified.

When finished, inform landowner that you are leaving and thank them for their hospitality. If an additional visit will be required, set up a mutually agreeable time within a week.

Project Name: ______________________________ Property ID #___________

Date of Visit: _____________

Stewardship File Name (exactly as it appears on the Stewardship database):______________________________

Ownership / Address Verification

Has the property been transferred, or a portion of the property subdivided or transferred (including family conveyances) since the last monitoring visit? **N / Y:** Provide details in notes.

Is the property currently being marketed for sale? **N / Y/** Considering sale

Have any easements or rights of way (for driveways, roads, septic) been granted? **N / Y:**

Current Owners: ______________________________Primary Contact? ☐ Yes

Address: ______________________________☐ Check If New

Phone 1: __________ Phone 2: __________ e-mail:______________________

Current Managers / Other Contacts: ______________________________Primary Contact? ☐ Yes

Address: ______________________________☐ Check if New

Phone 1: __________ Phone 2: __________ e-mail:______________________

Landowner Contact

Was the landowner contacted prior to the monitoring visit? ☐ Yes After the visit? ☐ Yes

How was the owner/representative contacted? ☐ Phone ☐ Mail ☐ e-mail ☐ other:______________

Did owner or owner's representative (check one): ☐ Met the monitor only ☐ Accompanied the monitor on the visit ☐ Did not meet or accompany the monitor

Names of all present at visit:

Construction / Planned Activities

Have there been any new residential or other buildings constructed since the last monitoring visit? **N / Y**

If *Yes*, describe type of structure: ______________________________

______________________ and location: ______________________________

If *Yes*, is structure: ☐ Within / ☐ Outside Farmstead or Homestead Complex

Are there plans to construct new buildings in the next year? **N / Y:** (type): ______________________

Driveways or residential roads established in last year? **N / Y:** ______________________________

Has there been any pond construction, excavation or mining since the last monitoring visit: **N / Y:**

____

Boundaries/Encroachment

Did the monitor walk the boundaries? **N / Y / Some:** ______________________________

____

Encroachments found? **N / Y**: ______________________________

______________________ location: ______________________________

Agriculture

Crop/field agricultural activity: ______________________________

Animals raised or grazed:

____

Project Name: ________________________________ Property ID #____________

Forestry

Is the woodland under the guidance of a forest management plan? N / Y: ________________________________
Name of consulting forester ____

Has any timber harvesting occurred on the property since the last monitoring visit? N / Y:
If *Yes*, type of harvest: ☐ Intermediate ☐ Regeneration ☐ Firewood ☐ Other: ____________________

Have any timber access roads and/or landings been constructed? N / Y: ________________________
Other forest uses (eg maple sugar):____
Any forest clearing for other reasons since last visit? N **/** Y:______________________________
If *Yes*, describe location/acres/etc cleared: ____

Public Access / Recreation

Authorized public access (hiking/horses/snowmobiles/atv/etc):________________________________

Unauthorized access issues?

Comments

Specific points of interest for staff or suggestions for next year's monitors pertaining to landowner contact, access to the property or other useful information (if any):

____

____

Violations

Did you note any possible violations of the terms of the conservation restriction? **N / Y:**
Suspected violation (check all that apply): ☐ Dump ☐ Structure ☐ Timber harvest ☐ ATV/ORV use
☐ Pond ☐ Mining/excavation ☐ Tower/antenna ☐ Other: ______________________________
____

Briefly explain suspected violation (attach supporting documentation, maps, photos, if appropriate):

____

____

____

Signature Block

Monitor's Name: ____________________Signature:________________________Date:______________

Approved by: ___________________________Signature:__________________ Date:______________

*This form was adapted by Damon Hearne/Slabcreek Consulting/CFPA from originals designed by various land trusts which were provided to the Land Trust Alliance for distribution in their *Land Trust Standards and Practices 2004 Appendix 11C: Easement Monitoring* document and also distributed electronically at http://www.ltanet.org.

PHOTO POINT DATA FORM

Connecticut Forest & Park Association

Property:__________________ Investigator's name:________________ Date:__________

Photopoint Number	Photopoint Bearing	Comments

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- Describe changes in land ownership, land use, status of leases, and conditions as required by the monitoring form.
- Examine improvements and facilities. Photograph and note all structures and improvements including houses, barns, sheds, outhouses, gravel or paved roadways, man-made ponds, gardens etc. Attempt to sketch these improvements on the map as accurately as possible.
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- For each photograph taken, record photograph number, subject, location description, focal length (wide vs. zoom) and azimuth bearing on the report form. Mark the location of each photograph on the aerial.
- Describe photograph location in relation to permanent or semi-permanent landmarks (rock outcrops, fence corners, trees) that can be easily identified.

When finished, inform landowner that you are leaving and thank them for their hospitality. If an additional visit will be required, set up a mutually agreeable time within a week.

Post-visit Checklist

- ❑ Develop film to 4x6 prints and digital format (preferably on CD-ROM).
- ❑ Label photos in archival quality ink with date, property, monitor signature, subject, and photograph number.
- ❑ Transcribe report form if field copy is not legible. Sign it.
- ❑ Draft a follow up letter to the landowner to thank them for the visit and to inform them of general findings. Refer briefly to issues of concern and compliment good practices as appropriate. Include information about CFPA 's intent for the easement if possible.
- ❑ Summarize findings, particularly significant changes or problems that are pertinent to the easement, to the Executive Director. Have him/her initial the report. Amend this to the file and the monitoring report as a memo to the file.
- ❑ Executive Director also reviews the post-monitoring letter to the landowner before posting.
- ❑ If there is a potential easement violation, initiate Easement Violation Protocol.
- ❑ Place the report, field aerial with notes, and original photographs in the property's monitoring file in the office. Digital photo media should be labeled and stored in the office as well.
- ❑ A copy of the letter is provided to the Chair of the Stewardship Committee and another is placed in the property's correspondence file.

{Date}

{Name}
{Address}
{Address}

Dear {Name},

As you know from the letter that was sent to you in {MONTH}, the Connecticut Forest & Park Association's annual monitoring of its protected properties has been conducted throughout the summer and during the fall. CFPA currently holds over {100} conservation easements throughout Columbia County that we monitor annually.

As part of the monitoring process, I conducted a personal site visit to your protected property on {INSERT DATE}. During my visit, I performed a visual inspection to monitor the activities on the property as they relate to the terms of your conservation easement. This letter will serve as a record that, while I did not see the entirety of your property, the monitoring visit did not reveal any activities that conflict with the terms of your easement. This letter will be placed on file in the Conservancy's office as well as in our archives.

To assist us in our easement administration and stewardship efforts, we ask that you take a moment to notify us of any anticipated changes in land ownership within the coming year (such as a sale, transfer or lease) or if you are planning any building or landscape improvements on your property. Depending on the terms of your easement, certain activities (such as subdivision, residential construction, or timber harvesting) may require notice to, and/or approval by, the Association prior to commencing the planned activity. I will be available to discuss the details of your easement with you.

In addition, feel free to give us a call regarding land management questions regarding your easement property. If we cannot answer your questions directly, we will do our best to put you in contact with the appropriate professional specializing in that area.

And as always feel free to contact me at any time if I can be of assistance. Thank you for your continued commitment to land conservation here in Connecticut. We hope that you are enjoying the {seasonal reference} and wish you and your family the best in the coming year.

Sincerely,

Damon Hearne
Conservation Coordinator

Final March 2009

CFPA Conservation Restriction Violation Response Policy

A. <u>Overall Guidelines for Violation Response and Enforcement</u>

1. Gather as much background information as possible about the circumstances of the CR acquisition and past permitted practices.

2. Document every step in the violation assessment and resolution process, including all communications with the violator.

3. All violations should be evaluated in the context of the following four factors: 1) Furthering CFPA's stated mission; 2) Fulfilling CFPA's legal obligations; 3) Upholding the CR's stated conservation purpose; and 4) Maintaining positive community relations and overall public relations.

4. Maintain CFPA's image as exemplary stewards in terms of its ability to achieve its mission overall and to enforce specific CRs as warranted under the circumstances.

5. Protect the economic value in the CR**.**

6. Maintain the most constructive working relationship possible with the CR landowner.

7. Unless an urgent situation exists requiring the immediate attention of the authorities (such as the local police or environmental police), no one person should make decisions on violation response—get counsel first. <u>Do not give a landowner an on-the-spot opinion about whether or not a violation exists</u>.

8. CFPA staff shall endeavor to conduct meetings with the property owner as a team of two, whenever logistically feasible. The team shall include at least one staff member and may also include a Board or stewardship committee member.

9. Maintain professionalism and integrity at all times.

10. Be flexible as the situation warrants.

11. Maintain consistent responses to similar CR violations to the extent possible and feasible.

12. Generally only use litigation as a last resort and when there is a good chance of success. Under most circumstances, attempt to reach an amicable agreement with the violator while striving for the best possible negotiated outcome.

13. Time is considered of the essence for all violations and responses should be as expeditious as possible and practical.

B. Steps to Take in the Event of a Suspected Violation[1]

1. Site Visit:

Even if this is not a regular monitoring visit (*e.g.*, in response to notice of a potential violation or otherwise), all applicable annual monitoring procedures should be followed.

If an CFPA staff person or volunteer is on site with the landowners, ask questions for further clarification of the activity or physical modification. Do not state definitively whether there has been a violation. Use polite deferment techniques. Thank the landowners for their time and tell them that you will follow up with them and send them a copy of the monitoring report.

If an CFPA staff person or volunteer is not accompanied by the landowner, simply complete the monitoring with good documentation and report the suspected violation to the Land Conservation Director (LCD).

Note: If a CFPA staff person (but not a volunteer) visits the site and determines that the situation is urgent, the staff person has discretion to respond on the spot as necessary. If a volunteer identifies an urgent situation, CFPA staff must be contacted immediately, if at all possible. *See* B(3)(a), below.

2. Office follow-up:

LCD shall review the Monitoring Report and purpose of the CR with the monitor.

LCD shall carefully review the entire CR, visit the site if necessary, and make an initial assessment of whether a violation has occurred.

If it is determined that there is no violation, the process ends after all documentation is completed.

3. Assessment of the violation:

a. Stewardship staff involved in assessing the violation must first determine whether the situation is urgent: When an urgent situation exists, stewardship staff must have the discretion to respond as needed, with input sought from key staff, stewardship committee and Board members as warranted under the situation. In rare circumstances, it may be necessary to involve the local or environmental police. As soon as possible, stewardship staff should notify the LCD and the Executive Director, and the Land Committee

[1] Document every step in the violation assessment and resolution process, including all communications with the violator. Contemporaneous notes or file memoranda shall be dated and kept of all conversations with the violator and others with information pertaining to the violation, site visits and other pertinent events.

Chair as appropriate.

b. <u>For non-urgent matters</u>:

1) As soon as CFPA learns of a violation, stewardship staff (with input from the committee as appropriate) shall evaluate whether the infraction is minor or major. Whether the violation was a one-time occurrence or is ongoing may factor into this evaluation.

2) If the violation is either deemed minor but potentially volatile or major, staff shall immediately bring the situation to the attention of Land Committee members resident in the community and any other key Board members. Stewardship staff (including the ED) and the land committee chair shall then discuss and make a recommendation to the land committee for approval in advance of taking further steps towards enforcement.

4. **Initial response to the violator/legal assessment:**

a. Where appropriate, stewardship staff shall discuss the situation with the violator in an amicable manner in an attempt to reach a mutually agreeable resolution.

b. If a friendly discussion with the violator is either inappropriate or unsuccessful, legal counsel shall be consulted. If, upon consultation with legal counsel, it is determined that the situation is very serious, retaining (or enlisting *pro bono*) counsel to handle the situation directly with the violator or violator's counsel shall be recommended to the Land Committee and the Executive Committee.

5. **Formal response to the violator:**[2]

a. An ad hoc legal committee, stewardship committee and/or Board shall identify potentially acceptable alternatives for remediation and/or compensation by the violator.

b. The LCD shall then send a letter to the violator describing the CR violation and referencing relevant provisions in the CR document. The letter shall request a personal meeting but shall not propose any remedial action.

c. The LCD shall then contact the violator by telephone to arrange for a personal meeting to walk the site and to discuss the purpose of the CR and nature of the violation. If the violator cannot be reached by telephone, the LCD shall draft and send a second letter, but this time by certified letter, return receipt requested, with a copy also sent by first class mail. This letter should again describe the violation and request a personal meeting to attempt to resolve the situation, explaining that attempted telephone contact was unsuccessful. The letter must specify a time frame for contact.

[2] Some of these steps would not necessarily apply if legal counsel were handling the matter.

1) If the certified letter is rejected, have it delivered by a constable.

2) If a response is not received within the specified time frame, reevaluate the situation. Try to visit the property at times when someone is likely to be home and attempt to make contact. If, after repeated attempts, there is no contact, consider litigation if the violation is deemed major. If the violation is minor, evaluate other courses of action (such as more frequent monitoring, follow-up letters at regular intervals, etc.).

6. **CFPA staff/representative's meeting with the violator**:

a. If the CFPA team and violator agree upon the nature of the violation, remedial alternatives shall be discussed. A final resolution may require further visits, research, consultations and meetings.

Each visit shall be followed by a letter documenting the conversation and any discussed alternatives. If an agreement has been reached, the letter shall document the agreed-upon remediation and include a timetable for the proposed action. Where appropriate, the letter may include a memorandum of understanding setting forth the agreement and including signature lines for CFPA and the violator.

b. If the violator either disagrees that a violation has occurred or rejects the proposed resolution, the LCD shall then reaffirm CFPA's position and state that s/he will consult CFPA's legal counsel.

1) The LCD shall then consult with the land committee, legal counsel, and ED to evaluate other approaches towards an amicable resolution. Alternatives may be employed to bring the violator back to the negotiating table. If there is a dispute over whether a violation has occurred, a clearer statement of the CR's requirements or a survey of the CR boundaries may be necessary. A time limit for final resolution shall be set to avoid letting the issue lag over an extended period of time.

2) If CFPA has exhausted *all* reasonable attempts at negotiation:

a) For major violations, Board or Executive Committee approval to initiate litigation shall be sought.

b) For minor violations, CFPA may consider temporary approval (limited term), less than full restoration or another compromise.

7. Discretionary approval[3] of major or minor violations or a CR amendment:

[3] This is similar to a CR amendment but is not signed by the violator and does not go through the formal CR regulatory approval process.

a. Before CFPA may provide a violator with discretionary approval of a violation or a CR amendment to allow the violation to continue, a number of factors must be weighed:

1) There must be an exchange to compensate for any adverse impact. The monetary value of the CR may not be reduced by an amendment (requires an appraisal). Amendments should be either conservation neutral or improve the conservation value of the CR.

2) Consider whether an amendment is likely to be controversial in the community or to incite negative public reaction.

3) Consider the time and expense for a CR amendment to be approved (Conservation Commission, EOEA, and any secured lender).

b. If a CR amendment is to be proposed, seek Board approval before approaching the CR property owner(s). Document and update baseline data immediately. Refer to other land trusts' amendment policies for additional guidance.

C. **<u>Violation Prevention Strategies</u>**

1. **Landowner relations**:

a. Maintain good landowner relations.

b. Get the landowner involved in the site visit and always encourage the landowner to ask questions.

c. If the landowner is unable to walk the property during monitoring, follow up with a phone call and send the written monitoring report (the monitoring report should never explicitly say "no violations found").

2. **Informal services/regular communications with the landowner**:

a. Provide advice on enhancing wildlife habitat, etc.

b. Send newsletters and outings brochures.

3. **Regular monitoring**:

a. Staff to conduct annual monitoring.

b. Volunteer to conduct additional visits, when possible, after appropriate monitoring training.

4**.** **Ensure that CFPA is informed when CR properties are transferred**:

a. Make sure local realtors know about CR properties.

b. Check real estate transactions town-by-town monthly.

5. **Provide a “new owner introductory package”**:

This will assist in educating new owners about CFPA’s mission, the nature of the conservation restriction on their property, and the concept and purpose of CRs in general.

6. **Maintain good relations and communications with the local officials**:

Make sure that the local conservation agent and commissions are aware of CFPA’s CR properties.

7. **Work with Land Protection staff prior to acquisition of a CR**:

Stewardship staff should provide an initial screening of all prospective CRs and assist in their drafting.

** This document was adapted from the original by the Sudbury Valley Trustees (061602) and published by the Land Trust Alliance

A Guide to Conservation Easement Monitoring

by Jennifer A. Adkins

Although no boilerplate conservation easement monitoring system has yet been devised to thwart all easement violations, a sound easement monitoring system—stressing regular monitoring—can save a land trust thousands of dollars in legal costs, help protect the conservation easement system, and maintain good landowner relations.

Every monitoring system must be tailored to the particular needs of individual land trusts. But there are several critical components that should be part of a good monitoring program.

Establishing Inspection Frequency and Method

First, how often and how should monitoring be conducted?

Inspection frequency and methodology must be based on the accessibility to easement areas, size and type of easement areas, level of activity permitted on easements and in surrounding areas, level of isolation of easement areas and, of course, an organization's monitoring budget.

Annual inspections have become the standard because they minimize monitoring costs while maintaining a consistent presence. However, in some cases, conditions require more frequent visits or allow less frequent visits due to the particularities of the easement and surrounding area. The physical features and accessibility of easement areas are perhaps the strongest determining factors in choosing a monitoring method.

Easement areas are commonly monitored by a combination of hiking and driving, but aerial monitoring and monitoring by boat may be required for areas with limited accessibility. Frequency and method of monitoring are matters best decided—and certainly must be supported —by an organization's board of trustees. In every case, they are matters deserving thought, discussion and input from all levels of the organization.

Scheduling

Second, an inspection schedule must be implemented. Two basic approaches can be used.

The first is to allow landowners to schedule a date and time for the inspection of each easement area. This is generally done through a mailing to all landowners, requesting that they contact the organization to set up an appointment for their annual inspection. In smaller programs or programs with extraordinary monitoring resources, this may even be done by telephone and on a case-by-case basis.

This method of scheduling allows maximum flexibility for a landowner and can be very convenient for a land trust when there are relatively few easements to inspect. However, when hundreds of landowners must be contacted, such scheduling is impractical.

The second approach—enabling a land trust to complete a large number of inspections as efficiently as possible while still encouraging landowner participation—is to have a land trust notify landowners in advance of inspection dates. Landowners must be notified of the visit in advance, generally through written correspondence known as an "inspection notice letter." The letter alerts a landowner of the upcoming inspection date, giving at least two weeks advance notice, and encourages him or her to participate.

Inspection notice letters should come from a land trust representative who is known to most landowners—the director, for many organizations.

In this approach, the inspection notice letter may be the land trust's only correspondence with landowners prior to inspection. Therefore, it is important that the letter include a brief explanation of the visit's purpose and a request that all appropriate arrangements be made for the inspection, such as containing unfriendly animals and notifying others on the property about the visit.

Landowners should always be offered the opportunity to reschedule an inspection. Be sure to give landowners the name and telephone number of the individual who will be completing the inspection.

For organizations with a large number of easements, meticulous scheduling is often necessary to maximize inspection efficiency. Moreover, maintaining a general presence year-round in primary program areas can be enormously beneficial to prevent violations and to nip potential problems in the bud. In cases where easements include language regarding grantee inspection rights, care must be taken to insure that the scheduling practice employed is compatible with the easements' language.

Whichever scheduling approach is chosen, keep in mind that communication with landowners is most important and should not be overlooked.

File Review and Preparation

Before inspecting an easement area, an inspector should have a thorough knowledge of the area and the easement that protects it. Specific preparation procedures will vary depending on the size and character of easement area, complexity of the easement, type of materials and information kept on file, and the inspector's level of familiarity with the easement and landowner. Detailed files should be maintained on every easement. Inspectors unfamiliar with an area should thoroughly review all files before inspection. In these cases, thorough documentation of inspections and communications with landowners are absolutely necessary to inspection preparation, since review of the easement, past inspection records, and landowner correspondence records are critical to assisting inspections.

After or during file review, an inspection form and map should be prepared for use during the inspection. Land trusts generally formulate an inspection form or report that includes a checklist reflecting the organization's standard easement provisions. A form should be prepared for each property to be inspected and a photocopy of the easement plan map should be on the back for geographical guidance. During file review, notes regarding past problems, unique easement restrictions, or any other useful information can be made on the form. During inspection, the form serves as a guide to the property's physical features, an easement's provisions, and an easement area's potential problems. The form, along with a clipboard, additional maps/aerials required to navigate the property, and additional supplies needed for the inspection (such as specialized clothing and drinking water in hot weather) should be gathered prior to the inspection.

Taking a camera on inspections is also recommended so photographic documentation of conditions, problems, or violations on the property can be made, particularly when there is high likelihood that conditions may change quickly.

Inspection Procedure

The particulars of an inspection are dictated by the property itself and the easement that protects it. However, there are several key components to a thorough, efficient inspection.

First, elicit assistance from those on the property whenever possible. Landowners, managers, farmers, or tenants can be immensely helpful to an inspector by providing information on property lines, land management practices, and other activities on the property. At the very least, inspectors should introduce themselves to anyone on the property at the time of the inspection. Remember, personal contact with property representatives during inspections is another opportunity to promote the organization and enhance communications.

During the inspection, critical attention should be paid to those areas with the most potential for easement violations. Therefore, getting a good look at property lines, protected natural areas such as woodlands, stream corridors and wetlands, past problem areas, and high activity areas such as residential areas, farm building clusters, roadside areas, and trails are critical. Notes and photographs should be taken, as needed, to describe any obvious changes, problems, or possible easement violations.

Inspections should also serve as an opportunity to assess general property conditions. It is important throughout the inspection process to note the conditions present on the property, even when they are not at odds with the easement's terms. Such yearly records may be critical to establishing the property's prior condition in case of a violation. They can also allow land trusts to respond to a landowner's requests for advice throughout the year. Photographs that illustrate the general character and use of the property can be helpful, especially if no recent photographs are on file. All these steps assist in updating documentation and in future inspections.

After completing an inspection, check in with the landowner or other property representatives to let them know that the inspection has been completed or to discuss the inspection's results. The discussion provides an opportunity to bring potential problems to the landowner's attention. It is also an opportunity to praise positive land management practices while suggesting ways in which the property's natural areas can be enhanced.

Inspection Follow-Up

The most important part of an inspection follow-up is to accurately record findings in a way that is easily understood by you and other staff members in years to come. Most inspection forms include a brief description of the property, its resources and uses and a checklist of the organization's standard easement restrictions to be completed by the inspector. Forms also include a section for noting land management practices and natural resource conditions of the property.

Completed inspection forms should be kept on file for future reference and as updates to the easement's original documentation report. Files should be updated to reflect any changes noted during an easement inspection to assist future management. Computer files and databases can also be used to record inspection findings, although printed copies of inspection reports should also be kept on file.

Taking the appropriate action when problems or violations are detected is part of the follow-up procedure. Clear and serious violations must be acted upon immediately. If the landowner is present during the inspection, he or she should be alerted to the problem while touring the property. If the landowner is not present and time is of the essence, every effort should be made to contact the landowner by telephone as soon as possible.

If the harm done by the violation is unlikely to worsen with the passage of time or if telephone contact is not an option, written correspondence should be used. In some cases, written correspondence may be preferable because it provides a written record of the organization's response to the violation.

Developing a clear and consistent policy for responding to easement violations will increase the comfort of all parties involved. Such a policy should be created with input and support from all levels of the organization. Violation remediation procedures may even be included as part of the easement agreement.

As conservation easements are put to the test of time, violation resolution becomes one of the most critical issues facing land trusts and deserves examination beyond the scope of this article. However, avoiding violations altogether (and the costs associated with them) also becomes more important with the growth of conservation easement programs. Although not every easement violation is avoidable, creating an effective easement monitoring system can deter violations, saving the land trust valuable resources and preserving the strength of conservation easements across the country.

Jennifer A. Adkins is a planner with the Brandywine Conservancy, Chadds Ford, PA, whose earliest easement dates back to 1969.

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.

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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