

# Conservation Easement Stewardship

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## Overview for Today

1. Introduction
2. Stewardship Obligations and Costs
3. Voluntary Easement Compliance
4. Cost Analysis

## Introduction

### Resources:

1. <http://learningcenter.lta.org>
2. New Course Curricula:
  - Conservation Easement Stewardship
  - Determining Stewardship Costs and Raising and Managing Dedicated Funds
3. Exchange Articles:
  - Tallying Up the Costs of Easements – Spring 2003
  - Easement Stewardship: Building Relationships for the Long Run – Spring 2002



## Stewardship Obligations & Costs

## CE Stewardship

### Easement Stewardship:

Working in partnership with landowners and the communities in which our lands are located to preserve the conservation values of those lands protected by our conservation easements.

## Why good stewardship?

- Ultimate protection of land lies in our ability to steward the land well
- Central to mission
- Instills public confidence
- Required by state law and IRS regs
- Necessary for Standards & Practices and Accreditation

## Stewardship Goals

- Voluntary compliance of easement
- Appropriate defense of easements
- Good landowner and community relations
- Professional, timely responses and services
- Sound documentation of the protected lands
- Accurate, accessible records
- Efficient and effective use of stewardship funds

## Responsible Stewardship

In order to be responsible stewards, a land trust has to:

- Understand the financial implications of our long-term stewardship obligations
- Plan to meet these obligations
- Manage financial resources

## Stewardship Program

A land trust's easement stewardship program should be tailored to:

- Types of conservation easements it holds
- Resources it protects
- Landowners with whom it works
- Capacity of land trust

## Types of Activities

- Baseline Documentation
- Annual Monitoring
- Voluntary Compliance
- Enforcement & Defense
- Recordkeeping/  
Administration



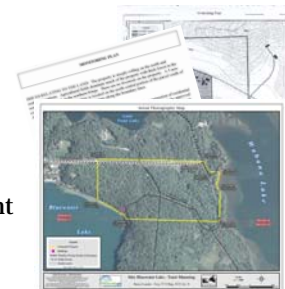
*Stewardship is more than just monitoring!*

## Baseline Documentation

- Documents the conservation values
- Includes relevant conditions of the property
- Required by the IRS for qualified easement donation
- Necessary for Accreditation
- Must be updated over time

## Baselines for Monitoring

- Portability
- Monitoring plan
- Maps
- Past monitoring records
- Document the right things to start



## Monitoring

- How big is your service area?
- How many easements do you hold?
- Staff vs. Volunteers
- Type of monitoring needed: aerial, boat, ORV, on the ground, etc.
- How long is the monitoring season – snow, hunting challenges
- How often? At least annually, as properties change ownership, and as reserved rights are exercised



## Easement Language

*Know what you're monitoring for*

Three categories of stewardship responsibilities:

1. Negative Covenants or Restrictions
2. Affirmative Rights
3. Affirmative Obligations

## Voluntary Easement Compliance

*Prevention is key!*

- Maintaining positive landowner relationships
- Approvals of exercised rights
- Transfers of conservation easements and connecting with new landowners
- Condemnations, Amendments, etc.

## Easement Enforcement

- Responsibility to preserve the conservation values associated with each property
- Be prepared to legally defend and enforce its easements when necessary
- Voluntary resolution
- Legal enforcement is often a last resort
- Enforcement can be costly!

## Recordkeeping/ Administration

- Requests for information
- Formal approvals
- Amendments
- Project tracking
- Funding



## Stewardship is Perpetual

- Accepting a conservation easement is only **the beginning** of the land protection process
- In order for a conservation easement to endure, the easement holder must monitor and enforce the easement – **in perpetuity**
- When a land trust accepts an easement, it promises the landowner, its members and funders, the community, the IRS, and the general public that **it will uphold the easement**



## Voluntary Easement Compliance

## Stewardship Philosophy

Do you....

- Have a statement about your conservation easement stewardship philosophy or guiding principles?
- Convey this philosophy, policies, and practices to your easement landowners and the public?

## Stewardship Philosophy

A stewardship philosophy...

- Begins with mission
- Defines overall approach to stewardship
- Guides future decisions
- Helps membership and general public understand stewardship goals and operations
- Demonstrates land trust's commitment to stewardship

## Voluntary Easement Compliance

**Partnership approach:**

**Land trust and landowner work together to prevent and proactively address issues to avoid costly easement infractions.**



## Landowner Relationships

## Landowner Relationships

- Conservation of private lands will be successful if the communities recognize and value the role of private land conservation
- Enhance landowner relationships:
  - Special mailings
  - Newsletters
  - Services to landowners
  - Workshops and trainings
  - Other events

## Capacity

- Personnel
  - Staff
  - Volunteer
  - Paid consultants (contractors)
- Funding
  - Dedicated funding
  - Operating budget



## Person-to-Person Connection

- Establish primary contact
- Volunteers and landowners as ambassadors
- Communicating with land managers
- Working with insiders
- Working with difficult landowners
- Successor landowners

## Communication Style

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

## Cultivating Partners

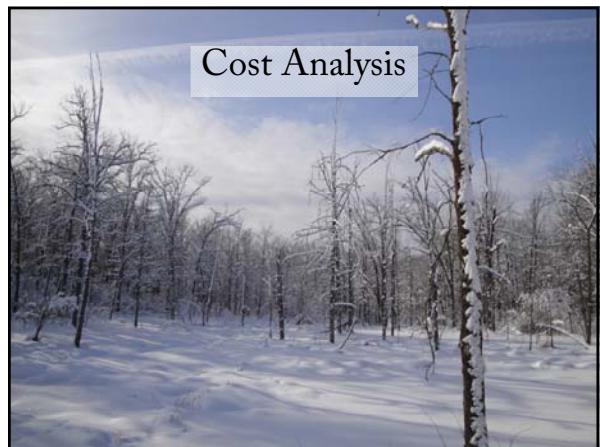


- Sharing policies with landowners
- Including landowner in monitoring visit
- Provide resource referrals
- Publicity
- Outreach events
  - Landowner/volunteer recognition
  - Trainings

## Co-Holders

- Clear division of labor:
  - Who is primary contact
  - Who handles landowner notices and approvals
  - Who answers landowner questions
  - Who conducts monitoring and prepares supplemental baseline documentation
- Easement or MOU

## Cost Analysis



## Be Prepared

What arrangements has your organization made to prepare for stewardship and easement defense costs?

What, if anything, would you like to change about your financial preparedness?

## How to Determine Costs

Stewardship costs can vary depending on:

- Methods used for monitoring
- Whether staff or volunteers are involved
- Complexity of easement restrictions
- Likelihood of violations

*Using data from its stewardship program, a land trust can determine costs for current activities and project those costs into the future.*

## Costs Associated with Easement Stewardship

- Labor for monitoring – staff or volunteer
- Establishing landowner relationships
- Consultants
- Office overhead
- Travel and mileage



## Costs Associated with Easement Stewardship

- Supplies and equipment
- Storage and records management
- Legal costs
- Enforcement costs
- Management
- GIS/mapping



## Methods for Determining Costs

- Case by Case Evaluation
- Flat Fee Calculation
- Hybrid Approach
- Percentage of Value Method

## Case by Case Evaluation

- Project specific formulas are used by a large number of land trusts throughout the country to calculate stewardship fund contribution amounts
- Other land trusts use simple line item formulas

## Case by Case - Example

Annual monitoring and reporting: <i>1 hour staff time @ \$50/hr* + \$25 direct costs + \$10 travel</i>	<b>\$85</b>
Landowner/abutter inquiries, annual average: <i>2 hours staff time @ \$50/hr + \$10 travel</i>	<b>\$110</b>
Added factor for periodic enforcement costs, per year average: <i>2 hours @ \$50/hr + \$10 direct costs</i>	<b>\$110</b>
Total estimated annual cost:	<b>\$305</b>
Invested amount needed to generate \$305 annually at 5% rate of return:	<b>\$6,100</b>

*\*Includes a factor for overhead costs and administrative support costs*

## Flat Fee Calculation

- Flat fee models are based on average easement costs
- A land trust will determine what its overall stewardship expenses are per easement per year
- Could be based on an actual stewardship department budget or line-by-line calculation of cost for an “average” easement

## Flat Fee - Example

Flat Land Trust employs three full-time staff in its easement stewardship department. Counting their salaries, benefits, a factor for overhead costs, legal costs, and other direct costs, FLT has determined the total cost of its stewardship program to be \$250,000 per year.

The land trust holds 500 easements, thus the average expense per easement is \$500 per easement annually. Using a 5 percent rate of return, a stewardship contribution of \$10,000 per easement will be needed to support easement stewardship.

## Hybrid Approach

- “Hybrid” models combine advantages of the case by case calculation model with the flat fee model
- These models start with a base stewardship contribution amount that covers standard stewardship elements for an average easement and then adjusts upwards to reflect factors that make the easement more difficult to monitor over time

## Hybrid - Example

Hybrid Land Trust uses the following formula to calculate stewardship fund requests:

<i>Acres</i>	<i>Base Request</i>
< 25	\$1,250
26-99	\$1,750
100-200	\$2,250
200 or more	\$2,750

- Add \$1,000 per reserved house lot
- Add \$250 per reserved right
- Add \$250 if public access is guaranteed
- Add \$250 if the land is publicly owned

## Percentage of Value Method

- Some land trusts calculate stewardship contribution amounts based on the easement’s value or the overall property value
- In this method, a percentage – often 1% – of the easement or property value is sought as a one-time contribution to the stewardship fund
- In effect, this contribution resembles an “origination fee” for a home loan

## Percentage of Value - Example

**Property A** is 1,000 acres in a rural area, with an easement value of \$300,000. Under the calculation, the stewardship fund contribution would be \$3,000, which would net the land trust \$150 annually, based on a 5 percent rate of return.

**Property B** is 200 acres in a resort area where land is much more expensive, and the easement value is \$2,000,000. This calculation would result in a \$20,000 stewardship fund contribution and would net the land trust \$1,000 annually, based on a 5 percent return.



MINNESOTA LAND TRUST Conservation Easement Project Cost Analysis Worksheet Updated 2009			
<b>A. Initial project costs (one-time expenses)</b>			
	Hours or Miles	Billing Rate or Cost	Project Cost
<b>Property evaluation-site visit</b>			
Staff time at site		50.00	-
Travel costs		50.00	-
Travel costs mileage		0.55	-
other (meals/lodging)			-
<b>Project planning, design, negotiation, review and closing</b>			
Staff time		50.00	-
Legal staff time		65.00	-
Supplies, copying, etc.			-
GIS or other maps			-
Site visit			-
Staff time: at site		50.00	-
Staff time: travel		50.00	-
Travel costs			-
Travel costs mileage		0.55	-
other (meals/lodging)			-
<b>Transactional costs (not including the cost of buying CE or other rights)</b>			
Title work and closing costs			-
Survey			-
Appraisal/documentation of value			-
Environmental assessment			-
Other (consultants, etc.)			-
		<b>Subtotal A:</b>	-

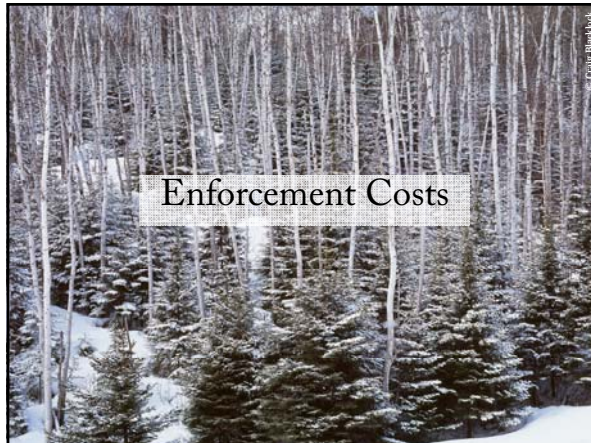
<b>B. Baseline documentation property report (one-time expenses)</b>			
	Hours or Miles	Billing Rate or Cost	Project Cost
<b>Property documentation-site visit</b>			
Staff time at site		50.00	-
Travel		50.00	-
Travel costs mileage		0.55	-
other (meals/lodging)			-
Aerial flight			-
staff time		50.00	-
flight cost			-
<b>Report preparation</b>			
Supplies, copying, etc.			-
Film processing			-
GIS			-
Staff time:		50.00	-
Other			-
		<b>Subtotal B:</b>	-
<b>C. Initial stewardship costs (one-time expenses)</b>			
	Hours or Miles	Billing Rate or Cost	Project Cost
<b>Post-closing materials (signs, landowner pack, etc.)</b>			
Staff time		50.00	-
Other			-
		<b>Subtotal C:</b>	-

<b>D. Monitoring and ongoing easement management</b>			
	Hours or Miles	Billing Rate or Cost	Project Cost
<b>File administration/management (annual expenses)</b>			
Staff time		50.00	-
Supplies, phone, copying			-
<b>Monitoring (1 site visit/year with 2 sites/visit)</b>			
Staff time at site		50.00	-
Travel		50.00	-
monitoring preparation		50.00	-
monitoring follow-up		50.00	-
Travel costs			-
Travel costs mileage		0.55	-
other (meals/lodging)			-
<b>Aerial flights: 1 fly-over every 10 years (costs annualized)</b>			
Staff time		50.00	-
Flight cost			-
<b>Monitoring workbook update: 1 update every 5 years (costs annualized)</b>			
Supplies			-
Film/processing			-
GIS			-
Staff time		50.00	-
		<b>Subtotal D:</b>	-

<b>E. Encouraging voluntary compliance</b>			
	Hours or Miles	Billing Rate or Cost	Project Cost
<b>Landowner relations (annual expenses)</b>			
Staff time		50.00	-
Landowner newsletter			-
Landowner event			-
<b>Community relations/education (annual expenses)</b>			
Staff time		50.00	-
<b>Approval exercises of reserved rights: 1 every 20 yrs (costs annualized)</b>			
Staff time		50.00	-
Legal staff time		65.00	-
Other (consultants, etc.)			-
Site visit			-
staff time			-
at site		50.00	-
travel		50.00	-
travel cost			-
mileage		0.55	-
other (meals/lodging)			-
<b>Monitoring workbook update for every approval exercise (costs annualized)</b>			
supplies			-
Film/processing			-
GIS			-
staff time (1-20 hrs)		50.00	-
<b>Property transfer: 1 transfer every 10 years (costs annualized)</b>			
Staff time (1-10 hours)		50.00	-
Legal staff time (0-2 hours)		65.00	-
Site visit			-
Staff time: at site (0-6 hours)		50.00	-
travel (0-10 hours)		50.00	-
Travel costs			-
Travel costs mileage		0.55	-
other (meals/lodging)			-
Property report reproduction (\$40-\$100, \$50 typical)			-

Amendments: 1 every 30 years (costs annualized)		
Staff time: processing (5-20 hours)	50.00	-
Legal time (5-40 hours)		-
Site visit		-
staff time		-
at site (0-6 hours)	50.00	-
travel (0-16 hours)	50.00	-
travel cost		-
mileage	0.55	-
other (meals/overnight)		-
Monitoring workbook update for every amendment		-
supplies		-
film/processing		-
GIS		-
staff time (1-20 hours)	50.00	-
Recording fees		-
<b>Subtotal E:</b>		-

F. Enforcement—Addressing Potential Violations		
Addressing Potential Violations: 1 every 50 years (costs annualized)		
Staff time: processing (1-24 hours)	50.00	-
Legal time (8-12 hours)	65.00	-
Site visit		-
staff time		-
at site (0-6 hours)	50.00	-
travel (0-16 hours)	50.00	-
travel cost		-
mileage	0.55	-
other (meals/overnight)		-
<b>Subtotal F:</b>		-
G. Enforcement—Legal Enforcement		
Legal Defense Contribution		1,000.00
<b>Subtotal G:</b>		1,000.00
TOTAL PROJECT COSTS		
		Project Cost
A. Initial project costs		-
B. Baseline documentation property report		-
C. Initial stewardship		-
D – F. Monitoring/compliance: initial investment required to cover annual expenses at 3% return		-
G. Legal Enforcement		1,000.00
<b>Total project costs (A-G):</b>		<b>1,000.00</b>



## Easement Enforcement Costs

- When a problem is not resolved through communications with the landowner, a land trust must consider its options and enforce the easement
- Enforcement actions are costly
- Experience shows that easement enforcement actions and litigated enforcement can run into the hundreds of thousands of dollars

## Specific Enforcement Costs

Specific costs include:

- Land trust staff/volunteer time
- Legal fees
- Expert advice

“Conservation Capacity and Enforcement Capability” Report: To fully fund an enforcement action, a land trust needs a minimum of \$50,000.

If the land trusts holds more than 15 easements, it needs an additional \$1,500 to \$3,000 per easement for this fund.

## Funds for Enforcement

Land trusts commonly use one of the two following dedicated funds:

- Combined Stewardship and Legal Defense Fund
- Separate Legal Defense Fund

Two other options may also be available to land trusts to help with enforcement:

- Conservation Defense Fund (collective insurance)
- State Attorney General

How do we pay for stewardship?



## IRS Requirements

In Section 1.170A-14(c) of the Treasury regulations:

*To be considered an eligible donee under this section, an organization must be a qualified organization, have a **commitment** to protect the conservation purposes of the donation, and have the **resources** to enforce the restrictions.*

*The IRS expects land trusts to have the resources to defend their easements!*

## Funding Sources for Easement Stewardship

- Landowner contributions
- Service fees
- Local fund raising
- Major donors
- Bequests and planned giving
- Grant support (foundations and government)

## Additional Funding Sources

- Transfers from a land trust's operational budget
- Transfer fees
- Delayed or future stewardship contributions
- Amendment fees
- Interpretation & legal fees
- Volunteers & pro bono

## Raising Easement Stewardship Funds

- There is no right or wrong way to fund easement stewardship.
- A couple of examples:
  - Little Traverse Conservancy in MI builds strong operational funding to support easement stewardship. They focus on a successful and broad program of individuals giving to the land trust as whole. While they have a dedicated stewardship endowment of a few hundred thousand dollars, they have an operational endowment of more than \$6 million.
  - Minnesota Land Trust rarely accepts an easement without a contribution to the stewardship fund. Has successful history of state funding of stewardship and large fund of \$2.3 million.



How do we manage the funds?

## Importance of Financial Planning

1. Estimate projected costs of easement stewardship and the amount required in a dedicated fund to cover those costs
2. Secure funds for every transaction at the time of acquisition (if this is the policy)
3. Manage the funds appropriately
4. Provide for exceptions to the expectation that funding must be secured at the time of acquisition
5. Clarify who is responsible for seeing that the policy is met, periodically reviewed, revised, and adopted as necessary

## Stewardship “Endowment”

- Proceeds are typically used to cover the land trust’s ongoing expenses of their conservation easements and fee properties
- Because a land trust’s responsibilities are perpetual, the funds needed to meet its obligations must be available for the long term
- At many land trusts, the stewardship endowment does double duty as the legal defense fund and stewardship fund
- A recommended practice is to separate these two so that if litigation drains the legal defense fund, the stewardship endowment is still intact
- It’s very difficult to fund raise for endowments. They don’t have the same appeal as transactions

## Legal Defense Fund

- Many organizations establish a separate legal defense fund
- Research shows that a legal battle could cost hundreds of thousands of dollars
- Current major violation rate is at less than 5%, but concerns that violations will increase with subsequent landowners
- The Alliance estimates that:
  - Litigation costs \$70,000 for trial
  - \$35,000 for summary judgment motions
  - \$150,000 for appeal

## Conservation Defense Insurance

- A land trust’s resources may not be enough to fully protect its easements
- Conservation defense would help land trust build confidence with donors, lenders, the community, etc.
- Captive insurance program owned and managed by land trusts
- Program has flexibility ~ land trust community controls the payment of claims through claims committee of peers
- Claims committee would have latitude to resolve disputes (mediation, creative solutions, etc.)

## What policies support stewardship funding?



## Developing a Fund Policy

- A land trust needs to access the money when they need it
- A fund policy should reflect the perpetual nature of conservation easements
- Stewardship fund policy is tied to the stewardship policies and practices of the land trust:
  - Violation Policy (major vs minor violations)
  - Amendment Policy
  - Approvals & Interpretations
  - Condemnation

## Policy Components

1. Land trust philosophy
2. Purpose of the fund
3. Managing the fund
  - Building the fund
  - Fund management goals and guidelines
  - Authority governing management of the fund
  - Criteria for withdrawals
4. Review

## Review of Policies and Practices

- Implement periodic review of its financial policies, including the fund management and investment policy
- A 5-year review cycle
- Policy should fit the land trust's capacity – level of activity, amount of assets, and skills of board and staff
- Sound management and investment of assets is critical in meeting public expectations and complying with law

## Holding Easements Isn't Easy. . .



. . .But It is a Lot Easier If You Can Pay For It.

## Questions?



## Contact Information



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