

Fact Sheet 7



Conservation Easement Monitoring

Standard 11; Practice C: *The land trust monitors its conservation agreement properties regularly, at least annually, except in exceptional and remote circumstances, in a manner appropriate to the size, restrictions and threats to the conservation values of each property. The land trust keeps written documentation (such as reports, updated photographs and maps) of each monitoring activity to confirm that the present use of the property is consistent with that at the time of donation or acquisition. Monitoring of Ecological Gifts will include confirmation that the present use of the property is consistent with that at the time of the donation and monitoring documentation relating to Ecological Gifts will be made available to Environment Canada upon request. The land trust will determine the capabilities (both human and financial) of its organization to fulfill the short and long-term monitoring responsibilities and will not accept conservation agreements it cannot monitor effectively. If conservation agreements are monitored by volunteers, the land trust shall ensure that they are trained, tailoring the monitoring techniques and requirements to the specific property. - **Canadian Land Trust Standards and Practices (2005)***

The annual monitoring of a conservation easement agreement (CEA) property is an excellent opportunity to build on your landowner relations and engage the landowner more in your organization (see Fact Sheet #6). Your monitoring process should not be secretive and, where possible, should involve the landowner. Involving the landowner in the monitoring of the CEA enables the land trust:



- to learn about the landowner's plans for the property,
- address questions the landowner may have,
- find out ways to support the landowner more effectively,
- and update the landowner on other land trust activities.

Volunteers/Staff

Whether your program is implemented by staff or volunteers, it is important that these individuals are well trained in both monitoring techniques and landowner relations. You can find more information about training volunteers in the OLTA Case Study - Training and Managing Volunteers. When possible, it is best to have consistency in who monitors the property. This will reduce training costs and help the landowner build a rapport with the person monitoring. When a change in staff or volunteers does occur, it is wise to advise the landowner as soon as possible so that you can address any questions they may have. The new person will also need to be well trained on the particulars of the easement, as well as the historic relationship with the landowner.

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The visit

Every easement is unique and the monitoring of each should be guided by three documents:

1. CEA covenants and restrictions
2. The baseline documentation report
3. Past monitoring checklists and reports

Monitoring should focus on the restrictions identified in the CEA, and the person monitoring should avoid stepping outside the parameters of this original agreement. For example, if the restriction in the agreement deals with buildings, the person monitoring should not be surveying or documenting invasive species as part of their monitoring visit. This may be perceived by the landowner as intrusive and the land trust may lose the landowner's trust.

Every visit to the property should be documented. Monitoring checklists that directly address the easement restrictions are a wonderful tool to ensure the person monitoring is collecting the appropriate information to support and inform the monitoring report.

Monitoring reports

Reports should document the annual observations on the status of the property as they relate to the easement restrictions. Each report should include the original checklist or field notes as an appendix. At a minimum, the report should include the following:

- Name and signature of the person monitoring
- Date of the visit
- Property name and location
- Names of any other individual (landowner/manager) that participated
- Comment area and notes on the condition of the property and restrictions
- Photographs that relate back to original photographs
- A signature from the landowner on the final report that recognizes the property status

Some land trusts will provide a copy of the report to the landowner as a way of keeping them informed of the outcomes of their annual visits.

Addressing violations

Addressing *potential* violations can be a touchy subject and the land trust should establish a written policy and procedure on how to proceed when a violation is suspected but not confirmed. When addressing a potential violation, you should go through the information gathering process without prejudice. You can certainly inquire about a particular situation, but do not make any determinations or



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statements about a potential violation. All volunteers and staff should be trained on how to handle a potential violation.

In essence, volunteers and staff should understand that they are **not to make any determination based on initial observation**. As the person monitoring easements, their role is to observe and document the state of the property. If a violation is suspected, they should document the potential violation in as much detail as is practical at the time **without** indicating to the landowner that there may be a violation.

The role of the person monitoring is NOT to interpret the easement, to make decisions, or to offer opinions on potential violations. Once they have completed their annual visit, they should report the potential violation to the appropriate land trust personnel as indicated by the land trust policy and procedure so that it can be discussed internally to determine if a violation exists and how to proceed.

You can find samples of violation policies and procedures in the OLTA Information Library. At a minimum, a violation policy and procedure should identify the following:

- The role of all parties involved (including legal counsel)
- The sequence of determining, reporting, and handling the violation
- The steps to ensure the landowner is treated with respect throughout the process

It should be noted that the documentation of all suspected violations is vital. The land trust must keep detailed records of every step taken, including communications with the landowner, photographs, and reports of the violation and board decisions. This documentation may become important if the land trust has to enforce the CEA in court (see Fact Sheet #5).

The information provided is based on the Land Trust Alliance publication, "*Conservation Easement Stewardship*," Chapter 4. Please refer to this publication for more detailed information and case studies.



This document was reviewed and approved by the Best Practices Working Group on March 16, 2012. To access a copy of the full Land Trust Alliance manual please visit www.landtrustalliance.org.