

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.

Contents

Introduction

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.)

- Determining Whether to Accept the Easement

- Determining Potential Stewardship Costs

- How to Calculate Costs

- Raising and Maintaining Stewardship Funds

- When and from Whom to Raise Funds

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

- When to Document

- Preparing Baseline Documentation

- Storing Baseline Documentation

- Creating Baseline Documentation for Existing Easements

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.

- Establishing a Monitoring Program

- Doing the Monitoring

- Completing Documentation

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.

- Building Strong Relationships with Landowners

- Landowner Contact and Easement Monitoring

- Informing Landowners of Monitoring Policy

- Identifying New Owners of Restricted Land

- When, What and How to Tell New Owners

Practice 11E: Enforcement of Easements

The land trust has a written policy and/or procedure detailing how it will respond to a potential violation of an easement, including the role of all parties involved (such as board members, volunteers, staff and partners) in any enforcement action. The land trust takes necessary and consistent steps to see that violations are resolved and has available, or has a strategy to secure, the financial and legal resources for enforcement and defense. (See 6G and 11A.)

- Value of Enforcement

- Costs of Enforcement

- Procedures for Enforcement

- Choosing the Appropriate Enforcement Response

- Notifying LTA of Violations

Practice 11F: Reserved and Permitted Rights and Approvals

The land trust has an established procedure for responding to landowner required notices or requests for approvals in a timely and consistent manner, and has a system to track notices, approvals and the exercise of any significant reserved or permitted rights.

- Managing Permitted Use Notifications

- Review and Approval of Reserved Rights

- Tracking Approvals

Practice 11G: Contingency Plans/Backups

The land trust has a contingency plan for all of its easements in the event the land trust ceases to exist or can no longer steward and administer them. If a backup grantee is listed in the easement, the land trust secures prior consent of the backup grantee to accept the easement. To ensure that a backup or contingency holder will accept an easement, the land trust has complete and accurate files and stewardship and enforcement funds available for transfer. (See 11H.)

- General Backups for Assets

- Backups for Easements

- Stewardship Resources for a Sound Transfer

Practice 11H: Contingency Plans for Backup Holder

If a land trust regularly consents to being named as a backup or contingency holder, it has a policy or procedure for accepting easements from other land trusts and has a plan for how it will obtain the financial resources and organizational capacity for easements it may receive at a future date. (See 11G.)

- Responsibilities of Backup Holders

- Planning Ahead

Practice 11I: Amendments

The land trust recognizes that amendments are not routine, but can serve to strengthen an easement or improve its enforceability. The land trust has a written policy or procedure guiding

amendment requests that: includes a prohibition against private inurement and impermissible private benefit; requires compliance with the land trust's conflict of interest policy; requires compliance with any funding requirements; addresses the role of the board; and contains a requirement that all amendments result in either a positive or not less than neutral conservation outcome and are consistent with the organization's mission.

Conservation Easement Amendments
Amendment Policies and Procedures
Practical Considerations

Practice 11J: Condemnation

The land trust is aware of the potential for condemnation, understands its rights and obligations under condemnation and the IRC, and has appropriate documentation of the important conservation values and of the percentage of the full value of the property represented by the easement. The land trust works diligently to prevent a net loss of conservation values.

Condemnation for Public Purposes

Practice 11K: Extinguishment

In rare cases, it may be necessary to extinguish, or a court may order the extinguishment of, an easement in whole or in part. In these cases, the land trust notifies any project partners and works diligently to see that the extinguishment will not result in private inurement or impermissible private benefit and to prevent a net loss of important conservation values or impairment of public confidence in the land trust or in easements.

When Can an Easement Be Extinguished?

Introduction

Acquiring a conservation easement is often such an intensive and climactic experience that future care of the property may seem of secondary importance. Nonetheless, stewardship of its conservation easements must be a top priority of a land trust. Effective stewardship has many benefits for the land trust.

- **It defends the property's conservation resources.** Sound stewardship ensures the land trust meets its responsibility to protect conservation resources in perpetuity.
- **It fosters good public relations.** Members, past and future donors, and the general public all scrutinize how well a land trust cares for its conservation easements. Ultimately, healthy public support and healthy finances depend on a sound stewardship program.
- **It minimizes the impact of inevitable stewardship problems.** A land trust that regularly monitors its easements and maintains a working relationship with the landowner will frequently spot and resolve potential easement violations before they become serious. Time, money and positive public relations are preserved along with the integrity of the land.

Inadequate stewardship risks the conservation values of the property and the land trust's reputation. To illustrate: A land trust is negligent in monitoring an easement that protects old growth habitat and associated threatened species. A timber-cutting violation, unchecked by the land trust, destroys irreplaceable habitat—and the trust's credibility.

Even one mishandled stewardship issue can haunt a land trust for years into the future.

Inadequate stewardship risks the credibility of conservation easements generally. If land trusts are perceived as not adequately safeguarding the resources protected by easements they hold, public confidence in conservation easements may be eroded. Land trusts owe it to the public, to themselves and to each other to operate sound stewardship programs.

Effective stewardship includes thoughtful easement drafting, good landowner and community relations, regular and documented monitoring, a commitment to enforce the easement, contingency planning, and strong financial planning. These are discussed in the practices that follow. For further information, see *The Conservation Easement Stewardship Guide*, by Brenda Lind and published by the Land Trust Alliance.

Links to Other Resources from LTA

- ["Law Update: The Legal Case for Conservation Easement Stewardship"](#), *Exchange*, Summer 2002 (Vol. 21 No. 3)

Related LTA Publications

- [*The Conservation Easement Stewardship Guide: Designing, Monitoring and Enforcing Easements*](#), by Brenda Lind, 1991.

Other Helpful Resources

- Avoiding Conservation Easement Violations Through Adoption of Good Stewardship Practices – prepared by Jane Ellen Hamilton, 2003.
- Conservation Easements Over Time: Amendments, Condemnation, Mortgages, Minerals & Merger – prepared by Camilla Herlevich, Esq.
- Examples of What Some Land Trusts Across the Country Are Doing, or Considering Doing, to Prepare Themselves for their Long-Term Easement Management Responsibilities

Sample Materials from Land Trusts

- Colorado Open Lands – Conservation Easement Program Manual
- Columbia Land Conservancy (NY) – Conservation Easement Stewardship Guidelines
- Lowcountry Open Land Trust (SC) – Easement Stewardship Growth as of February 2003
- Minnesota Land Trust – Conservation Easement Stewardship Program
- Open Space Institute (NY) – Conservation Easement Policy Statement
- The Nature Conservancy of Canada – Stewardship Manual

- Vermont Land Trust – Executive Limitations: Conservation Easement Stewardship
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