

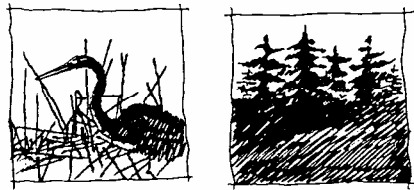
# **Bainbridge Island Land Trust Conservation Easement Stewardship & Monitoring Guide**

**Section 1: Monitoring – What is it? Why is it important?**

**Section 2: Monitoring Process**

**Section 3: Violations**

**Appendices**



Bainbridge Island Land Trust

Revised February 2007

## **Section 1: Monitoring – What is it? Why is it important?**

### **Definition of monitoring:**

The regular, systematic, reliable and well-documented inspection of a protected easement property to detect changes and to ensure the property is being used in accordance with the legal restrictions placed upon it

### **Purpose of monitoring:**

Regular inspections of the land, documentation of existing conditions and changes, and the nurturing of cooperative landowner relationships are essential to effective stewardship. Monitoring serves a number of important functions:

#### **1. Satisfy the Land Trust’s legal obligations.**

- As holder of conservation easements, the Land Trust is **accepting the responsibility** of ensuring that the conservation values of the property are protected according to the terms outlined in the conservation easement.
- In order for the Land Trust to maintain its legal capability to hold easements and to assure compliance with the conservation easement document’s restrictions, the organization **must monitor at least annually** the protected lands and enforce easement terms.
- With regards to donated conservation easements, **IRS regulations require** that an organization must “have a commitment to protect the conservation purposes of the donation” Treas. Reg. 1.170-A-12 c (1). Regular monitoring of easement properties is one way the Land Trust demonstrates this commitment.

#### **2. Maintain a positive working relationship with the landowner.**

- Provides an important opportunity to continue building a rapport with the landowner.
- Offers the landowner a chance to ask questions or raise concerns about the easement.
- Offers the opportunity for the landowner to share with the Land Trust any changes that have occurred on the portions(s) of the property covered by the easement (if any) – both intentional and natural.
- Gives the landowner an opportunity to discuss anticipated changes or modifications to the as they relate to the property and the easement, such as selling the property, exercising retained rights, or constructing buildings, roads, fences, etc.
- Through dialogue it is possible to iron out inevitable bumps and potential problems that may arise, and thus reducing the possibility of future violations.

#### **3. Build relationship with new landowners (in the event the property has been transferred).**

- Provides an educational opportunity to introduce the Land Trust, review the conservation easement terms and the monitoring process with the new owner.
- Provides an opportunity to discuss the landowner’s future plans and goals as they relate to the property and the easement.

**4. Discover any possible violations to the conservation easement.**

- Detect potential problems before they become violations.
- Assess current uses against existing legal restrictions in the easement.

**5. Provide written records**

- Monitoring documentation/reports demonstrates the Land Trust's commitment and competency as a responsible easement holder.
- Documents a running record of the property's condition and use.
- Records are extremely important in the event of a violation and court action.

**What is the Lead Steward's role?**

**1. Perform on the ground inspections on the easement property.**

**2. Be trained annually on Land Trust procedures for easement monitoring.**

**3. Guide volunteers to assist in monitoring per up to date procedures.**

- It is recommended that the Lead Steward and at least one other Land Trust representative or volunteer be present with the landowner on all monitoring visits to provide perspectives and observations helpful in completing monitoring reports.
- Utilize volunteers for specific tasks you need assistance with. For instance, taking measurements, taking pictures, marking site plans, and taking notes of conversations with the landowner are all good roles volunteers can assist with.

**4. Be an Ambassador of the Land Trust**

- Convey appreciation of the protected property and the landowner's role in conserving and/or caring for it.
- Respond to questions about the Land Trust's stewardship program (be a friendly face who can direct landowners to the appropriate staff member.)

**5. Eyes and ears for the Land Trust**

- **Look** for positive, negative, neutral changes
- **Listen** to concerns/ideas of the landowner
- **Relay** this information back to the Land Trust

**6. Complete monitoring reports and supporting documents and turn them into the Land Trust office.**

**7. What you are NOT responsible for (and should not do)**

- **Interpret** the conservation easement for the landowner. Direct them to the staff and alert the staff that the landowner had a question.
- **Approve or disapprove** of any future plans. Direct them to the staff.
- **Inform** the landowner that a violation is suspected. Direct them to the staff.
- **Enforce** any action regarding a suspected violation.

## **Section 2: Monitoring Process: Doing the Inspection**

- A. Review property monitoring notebook (white) and/or Black Field Folders prior to performing a monitoring visit** – These materials are available in the BILT office. White easement notebooks are available through a sign-out procedure for your reference. The monitoring notebooks contain:
1. Past Easement Monitoring Reports - – look for any past problem areas or comments on areas to pay special attention to.
  2. Copied sections of the conservation easement.
  3. Maps of the property.
  4. Photographs
  5. Black field folders (typically stored inside the white easement notebook) are available to take out with you on the monitoring walk. These contain:
    - The above mentioned materials, aerial photos, monitoring forms, etc.

### **B. Schedule the monitoring visit well in advance**

1. Plan to visit the property between March through June. There may be certain properties where another time is preferred. This will be noted in the monitoring workbook.
2. Contact the landowner to schedule the visit. If you are unable to make contact, leave a message with the date and time of the planned visit, an invitation for them to join you and for them to call you if this is not acceptable.
3. Contact the number of volunteers determined to be needed to assist with mapping, photographs, measuring, wildlife observation, etc.
4. If the landowner will not be joining you on the visit, leave a notice for them at their residence. You will need to speak to them before and/or after the visit to inquire about the following so that you can complete the monitoring report (also, see Monitoring Report Form and Monitoring Checklist for assistance):
  - a. Current property status: plans to transfer or sell, correct address
  - b. Present land uses or changes that have occurred to the land—natural/human-made
  - c. If public use, any problems, neighbors encroaching or problems, neighbors interested in conserving their land
  - d. Do they have questions about their easement, property or need information on land management (Cooperative Extension or forester, etc. referrals)
  - e. Questions about BILT or the easement program
  - f. Any wildlife observed on property
  - g. Invasive plant species observed on the property

If you are unable to reach the landowner and your messages are not being returned please contact the BILT Stewardship Coordinator to discuss how to best obtain the information that you need to complete your report.

### **C. The Stewardship Monitoring Visit**

1. Review the Monitoring checklist located in black field folder.
2. Materials to bring on the visit:
  - a. Black field folder
  - b. Site Map
  - c. Monitoring report form
  - d. pen/paper/clipboard
  - e. measuring tape and compass
  - f. camera, binoculars
  - g. directional signs (to include in photographs)
  - h. Invasive plants handout
  - i. BILT Membership Brochure
  - j. BILT “Sorry we missed you” cards/envelopes
  - k. BILT Signs (if needed)
3. Walk the property and view it through “the eyes of the conservation easement”:
  - a. Conduct work as needed per easement summary report (photos, put up signs, take measurements, etc.)
  - b. Check boundaries where practical
  - c. View the parts of property that contain the conservation values outlined in the easement document (riverfront, shoreline, woods, etc.)
  - d. Visit any areas of special concern
    - i. mentioned in previous monitoring reports
    - ii. new roads or worn tire paths
    - iii. slash piles, stumps
    - iv. new culverts or piping
    - v. piles of dirt or fresh ditches
    - vi. fencing or clearings
  - e. Check any areas where special easement restrictions or reserved rights exist
4. Photograph and measure (if appropriate) any significant changes
  - a. Alterations by natural causes (fire, wind, flood)
  - b. Possible violations of the easement
  - c. Mark on the map locations of any changes and of photos taken.
  - d. Update photos at least every 5 years in the absence of any changes
  - e. Refer to BILT Photo Documentation Procedures. These are available in the BILT office and in your training materials.
  - f. A photo documentation form is available for keeping track of photos if preferred.

## D. Complete documentation

1. Complete the monitoring report as soon as possible. Each landowner's property in a conservation easement is separate and distinct. If an easement is in more than one parcel ownership, individual reports must be completed for each owner. If a single entity owns multiple parcels covered by a single easement, one report suffices for the multiple parcels.
  - a. Property status – update with any changes
  - b. Record any significant changes or areas of concern
  - c. Note present conditions even when they are not at odds with the easement terms. Such yearly records may be critical to establishing the property's prior condition in the case of a violation.
  - d. Report any problems, potential violations or any actions needed to the Executive Director or Stewardship Coordinator.
  - e. Sign and date the completed form.
  - f. Attach any maps, photos, etc.
  - g. Turn in all documents into Land Trust office.
  
3. Develop photographs or put onto a labeled CD-Rom if digital.
  - a. Label every photo with name of easement name, date, direction (i.e. SE, N, etc.), photo number page and include a narrative that describes specific location information. This can be done on BILT's photo document form or your own sheets.
  - b. Number photos, mark corresponding locations on site map
  - c. **Copy photos and photo documentation documents on easement CD.**
  - d. Make 1 color copies of photos and/or photo documentation or proof sheet for permanent file.
  - g. Turn in materials with monitoring report
  
4. Return the black field folder(s) and white easement notebook (if borrowed) to the BILT office. These require regular updating. If you see something in them that looks incorrect or is missing let staff or the stewardship chairperson know. It will be added or corrected for next year's monitoring.
  
5. All monitoring reports, photos and associated documentation should be placed in the Stewardship file holder in the BILT office for processing and filing.

## Section 3: Violations

### What constitutes a violation?

It is often difficult to determine if a violation has occurred. Situations can be ambiguous. Sometimes undesirable activities are not clearly addressed by the easement. The cause of the problem could be from a number of different possibilities e.g.; force of nature, a third party or the landowner. Because of the many variables it is important for volunteers not to confront or charge the landowner with any wrong doing. So what action should you take?

#### 1. Listen to the landowner

If the landowner is present you may ask about the **problem** (not violation). “What happened here?” “What caused this to occur?” Answers will certainly vary. The landowner may identify the cause, offer an explanation or ask for assistance to correct the problem. Write down what was said, either at the time of the conversation or immediately after the visit is completed. Avoid referencing the possible violations with the landowner. The staff will need to review the situation and contact the landowner to determine if in fact a violation has occurred. Staff will make every effort to keep you informed of the situation. (Refer to Stewardship Monitoring Policies).

#### 2. Determine the cause, if possible.

- A. Force of nature
  - 1. wind damage
  - 2. water erosion
  - 3. fire
  - 4. insect
  - 5. other
- B. Third party or neighbor
- C. Landowner
- D. other

#### 3. If possible, determine landowners intended course of action/repair.

For example if the landowner is planning to a) “clean up” fallen trees from a windstorm; b) work with a local agency to deal with erosion problems; or c) ask the neighbor to stop dumping garbage on the easement land.

#### 4. Document the damage

- A. Take photographs and mark the locations on a map
- B. Record observations of potential problem
- C. Notify your stewardship coordinator and staff immediately and send in your report and photos

It is very difficult to draft a guide for how stewards should respond to a possible violation. Situations, landowners and problems will vary greatly. However, if at any time the landowner appears uncomfortable or defensive, do not press the subject; just continue on with the monitoring or leave. It is very important to stay on good terms with the landowner. Report any concerns that you have to the stewardship chairperson and/or staff as soon as possible.

# Appendices

## Bibliography

Barrett, Thomas and Diehl, Janet, *The Conservation Easement Handbook: Managing Land Conservation and Historic Preservation Easement Programs*, Land Trust Alliance and Trust for Public Land (1988)

Lind, Brenda, *The Conservation Easement Stewardship Guide: Designing, Monitoring and Enforcing Easements*, Land Trust Alliance and Trust for New Hampshire Lands (1991).

Howe, Tom, *Skills for Monitoring Conservation Lands*, Society for the Protection of New Hampshire Forests, Land Trust Rally presentation, 1997.

## Definitions

**What is a conservation easement?** It is a voluntary, legally binding agreement between a landowner and a land trust (or a governmental organization) in which the landowner agrees to limit the uses that may be made of his/her property to protect its conservation values. The restrictions placed on the land are permanent and “run with the land” –i.e., they stay with the land forever and are binding on all subsequent owners of that property. A conservation easement does not require public access to the land. The land trust accepts the responsibility to monitor the property regularly (at least once a year) to ensure that the land is used in accordance with the terms of the conservation easement. Conservation easements offer landowners the opportunity to retain and enjoy their land while knowing it will be safeguarded for future generations.

**What are conservation values?** The physical and/or ecological features of the property that the conservation easement is designed to protect. Examples include the natural, scenic and open space qualities of the property. These will usually be identified in the beginning of the conservation easement document.

**What are reserved rights?** A conservation easement is designed to protect the conservation values of a property by prohibiting activities that would negatively impact those values. Reserved rights pertain to the activities that can occur on the protected property as long as they do not negatively impact the conservation values.

**What kinds of land does the Land Trust protect?** The Land Trust’s Mission Statement outlines the types of lands that the Land Trust considers a priority for protection. Land Trust priorities are lands that are water related, open space, working farm or forestlands, or passive recreational lands. Also taken into consideration are whether the land is adjacent to other protected lands, there is community support for the project, what is the threat to the conservation values, what is the potential for funding and for partnerships and also what would the long term stewardship obligation be to the Land Trust.