

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.

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