Connecticut Land Conservation Council
Land Trust Board Boot Camp

Session 4
Stewardship Bucket
12 Standards
1-7 common to all non-profits
8-12 specific to land conservation

Stewardship practices are found in Standards 11 & 12
Conservation Easements (Std 11)
Fee Properties (Std 12)

We’ve protected it…
Forever...
What now?

How are they different?
Easements: contracts to which trust is a party
• Stewardship is about ensuring Landowner’s compliance, and
• Satisfying obligations to the IRS, and

Fee Lands: owned assets
• Stewardship is about ensuring use & management protect the asset, and
• Land is used for public good/mission consistent
• Flexibility and evolving/changed strategy

And how the same?
For each the concerns are
• Protection of Conservation Values
• Protection of the Land Trust’s interest

How can we do this:
1. Monitoring
2. For fee properties - land management
3. For easements - enforcement
What will you need to do Stewardship?

- Monitoring
- Enforcing
- Managing

- $$
- Personnel
- Policies & Procedures
A. Funding Conservation Easement/Fee Land Stewardship

Estimate the long-term stewardship and enforcement expenses of each conservation easement transaction. Determine the immediate financial and management implications of each conservation property acquisition and estimate the long-term implications:

- Legal Defense Calculator
- Accreditation requirements ($3500/easement for monitoring)
- Analysis and estimates made during project planning

Track stewardship, enforcement & management costs
Easements:
1. Adopt a written policy and/or procedure for monitoring conservation easements that establishes consistent monitoring protocols and recordkeeping procedures
2. Monitor each conservation easement property at least once per calendar year
   a. If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years
   b. Promptly document the annual monitoring activities for each conservation easement

Fee Lands:
1. Determine the boundaries of land trust properties and physically mark them to the extent possible or necessary
2. Inspect properties at least once per calendar year for potential management problems and promptly document the inspection
3. Address management problems, including encroachments, trespass and other ownership challenges, in an appropriate and timely manner and document the actions taken
Monitoring Easements and Fee Properties

Process:

1. Once per year or more often as necessary. Examples:
   a. Reserved rights exercised on an easement
   b. Fee property is having issues with ATV trespass

2. Monitor prepares for visit
   a. Review BDR/Management Plan, prior years’ monitoring & activities, map
   b. Brings along: map, flagging tape, camera, ID

3. Monitoring report

4. Review & necessary follow up
Conservation Easement Monitoring Report

Easement Name: ____________________________ Lot #: ________
Easement Location: ________________________
Current Owner(s): _________________________
Owners Phone: ____________________________ E-mail ________________________________
Other Contact (if different from Owner): ____________________________
Monitor Name(s): _________________________ / ____________________________
Date of visit: __________/ ______/ ______  Owner contacted? Y / N  By: phone / letter / e-mail
Accompanied by: ____________________________

Summary of Restrictions / Reserved Rights: ________________________________________

________________________________________

Are the easement boundaries accessible (Y / N)  -  Was the entire perimeter surveyed (Y / N)

Description of Property / Current Land Use:

Is there evidence of the following within the easement:

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>___</td>
<td>___</td>
<td>___</td>
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<tr>
<td>A residence or other dwelling within the easement?</td>
<td></td>
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<tr>
<td>The property or part of the property being transferred, leased or sold?</td>
<td></td>
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<td>The property being subdivided or lot lines changing?</td>
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<tr>
<td>Construction of any new structures, ponds, trails or other improvements?</td>
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<td>Active logging?</td>
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<td></td>
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<tr>
<td>Alterations to buildings/dwellings</td>
<td></td>
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<tr>
<td>Any Reserved Rights being activated?</td>
<td></td>
<td></td>
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<tr>
<td>Any concerns of the landowner that need to be addressed?</td>
<td></td>
<td></td>
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</tbody>
</table>

Comments / Notes re: landowner contact, access, etc.

________________________________________

VIOLATIONS

Did the Monitor note any possible violations of the terms of the easement? _____ YES _____ NO

Suspected Violations (check all that apply): Dumping __ Structure(s) __ ATV/ORV use __

Timber harvesting __ Land clearing __ Boundary encroachment __ Mining/ excavation __

Other __ Briefly explain suspected violation (attach supporting documentation, maps, photos, etc.)

________________________________________

Monitor signature: __________________ Date: ____________

Monitor signature: __________________ Date: ____________

Follow-up required: YES ______  Time in: _______ Time out: _______ Total: _______ hrs
### ABC Land Conservancy

#### Property Inspection Form

**Property Name:**

**Date of Inspection:**

<table>
<thead>
<tr>
<th>REVIEWED PRIOR TO INSPECTION</th>
<th>Date of Inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Copy of deed</td>
<td>□ A2 Survey</td>
</tr>
<tr>
<td>□ GIS maps</td>
<td>□ Management Plan</td>
</tr>
<tr>
<td>□ Other (e.g. correspondence</td>
<td>□ Other (e.g. correspondence, photos)</td>
</tr>
</tbody>
</table>

**PROPERTY INSPECTED**

- Using aerial technology
- Drone Photography
- Aerial Photo
- Note source and date of aerial documentation and attach representative photo(s)
- Physically (on foot)

**PREPARE CONDITION**

Poor / Good / Excellent Comments:

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**SIGNAGE / BOUNDARIES**

- Boundary markers: All Marked? Y N Need Replacement? Y N Notes:
- Were all boundaries walked during this monitoring visit? Y N Notes:
- Property signs: Y N N/A Notes:
- Trail markers: Y N N/A Notes:

**ADJACENT PROPERTIES**

- Use Impacting Property Management? Y N Notes:

**PREPARE ACCESS AND PARKING**

- Location:
- Adequate / Not / N/A
- Notes:
- TRAILS (If applicable)
- Condition:
- Number of Visitors (If known):
- Kiosk/Trailhead needs:

**INVASIVE PLANTS**

- Problem is: Minimal / Moderate / Severe
- Japanese Raspberry
- Multiflora Rose
- Purple Loosestrife
- Phragmites
- Japanese Knotweed
- Garlic Mustard
- Asiatic Bittersweet
- Autumn Olive
- Other

**WILDLIFE HABITAT**

- Dominant Vegetation:
  - Grassland
  - Shrubland
  - Wetlands
- Notes / Species Observed:
  - River/Stream course
  - Vernal Pool
  - Talus Slopes
  - Grassy Banks
  - Mast trees
  - Snags

**Sample Monitoring Form – Fee Property**

**Impacted by:**

Name/Title or Relationship to ABC/Signature

Date of Report:

Hours Spent Monitoring:

**Please make additional comments on back of form. Photos, if any, should be submitted and retained along with form**
What’s on the Monitoring Form?

Name of monitor(s), anyone accompanying
Date of visit
Duration of visit / method (e.g., on foot, aerial/drone)
What was reviewed prior to visit
Area examined (perimeter, interior, special areas)
Condition of conservation values
Examination of risks to conservation values
Condition of management infrastructure (signs, kiosks, trails)
Any suspected violations/encroachments
Photos of suspected violations/changes to conditions
Follow up needed?
1. For each conservation easement, have a baseline documentation report, with written descriptions, maps and photographs, that documents:
   a. The conservation values protected by the easement
   b. The relevant conditions of the property as necessary to monitor and enforce the easement

2. Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing
   a. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing

3. When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report
   a. Examples: landowner leases field (a permitted use) to a new farmer, pond dries up after beavers leave the area, reserved right to build a barn is exercised
1. Develop a written land management plan for each conservation property within 12 months after acquiring to:
   a. Identify the property’s conservation values, including any significant cultural and natural features or those that have significant community value
   b. Identify the overall management goals for the property
   c. Identify activities to achieve the goals and to reduce risks or threats to the conservation values
   d. Specify the uses that are appropriate for the property, in keeping with the property’s conservation values, any restrictions and donor or funder requirements
      i. Provide public access opportunities as appropriate to the property and the land trust’s mission

2. Manage each conservation property in accordance with its management plan, and review and update the plan as necessary

3. Perform administrative duties (such as paying insurance, filing required forms, keeping records) in a timely and responsible manner

4. Maintain the property in a manner that retains the land trust’s public credibility, manages community expectations and minimizes risk
What feels muddy?
Conservation Easements (Std 11)  
Practice E: Conservation Easement Enforcement

1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations.

2. Investigate potential violations in a timely manner and promptly document all actions taken.

3. Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution.
Conservation Easements (Std 11)
Practice D: Landowner Relationships

1. Maintain regular contact with owners of conservation easement properties to maintain relationships and avoid potential easement conflicts

2. Establish systems to track changes in land ownership

3. When the property changes hands, attempt to meet with the new owner or property manager and provide information in writing about the conservation easement and the land trust’s stewardship policies and procedures
Conservation Easements (Std 11)
Practice F: Approvals and Reserved Rights

1. Respond to landowner required notices or requests for interpretation or approvals in a timely and consistent manner, as specified in the conservation easement deed or in a written procedure

2. Establish written procedures to guide the land trust’s decision-making if using discretionary approvals or if conservation easement deeds contain such clauses

3. Maintain a permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights
AMENDMENTS SHOULD BE RARE

1. Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the Land Trust Alliance Amendment Principles (most land trusts in CT developed from same template)
   
   a. No net loss to conservation values
   
   b. No private inurement or impermissible private benefit to LO

2. Evaluate all conservation easement amendment proposals with due diligence sufficient to satisfy the Amendment Principles 3. If an amendment is used to adjust conservation easement boundaries (such as to remedy disputes or encroachment) and results in a de minimis extinguishment, document how the land trust’s actions address the terms of J.1. below
Conservation Easements (Std 11)  
Practice J: Partial or Full Extinguishment

In the rare case that it is necessary to extinguish a conservation easement, in whole or in part,

a. Follow the terms of the conservation easement with respect to taking appropriate action, and obtain judicial or regulatory review when required by law or specified in the easement deed

b. Ensure there is no private inurement or impermissible private benefit

c. Take steps to avoid or mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation easement deed

d. Consider the land trust’s actions in the context of its reputation and the impact on the land conservation community at large
Take reasonable steps to provide for the disposition of conservation easements in the event the land trust ceases to exist or can no longer steward and administer them.

Take reasonable steps to provide for the continuing protection of conservation properties in the event the land trust ceases to exist or can no longer own or manage them.
CEs (Std 11) Practice I & Fee Lands (Std 12) Practice E: Condemnation

If a conservation easement is threatened with condemnation,

a. Take steps to avoid or mitigate harm to conservation values and document the actions taken

b. Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation easement

c. Document the land trust’s attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation easement deed

If a conservation property is threatened with condemnation, take steps to avoid or mitigate harm to conservation values and document the actions taken
Top Five Takeaways for new Directors

1. Regular monitoring is essential to the protection of conservation easements and fee lands.

2. Management plans provide helpful guidance for a land trust’s actions and interventions concerning their fee-owned properties. They guide annual workplans and budgeting, long-range strategy, and can be revised when appropriate.

3. Maintaining good relationships and communications with easement landowners and property neighbors can head off problems such as violations and encroachments.

4. Good documentation provides the land trust with evidence in the event that enforcement requires legal action. Documentation will also be helpful if the land trust ever transfers the property to another conservation organization.

5. Easement amendments should be avoided, but in rare circumstances may be considered pursuant to written policy incorporating national guidelines.
Questions/comments

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Thanks!