Planning for Growth and Open Space Conservation

This webinar series is sponsored by:
USDA Forest Service
State and Private Forestry - Cooperative Forestry

Organized by
Rick Pringle, Susan Stein, Sara Comas, Susan Guynn (Clemson University)
and the
Forest Service National Open Space Conservation Group

This webinar is being recorded

Audio is Streamed Through the Computer
Learn About the Series

Listen to past webinars!

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Learn about future topics!

Future Topics:

Please register in advance if you would like to attend these presentations.

| Session #11: An All Lands Approach to Ecosystem Services for Water |

Submit feedback about the series!

Please submit your feedback here
Learn About the Series

Listen to our past webinars:

Session #13: City and County Open Space Programs

This program presents growth and open space conservation planning for cities and counties. Speakers will present the Trust for Public Land’s Conservation Almanac and LandVote resources that are available online for researching conservation activities, and public funding for land conservation. We will also learn about open space conservation planning processes, ordinances, funding mechanisms, and partnerships employed in Missoula, Montana, and Baltimore County, Maryland.

- Mary Bruce Alford Trust for Public Land
- Jackie Corday City of Missoula, Montana
- Don Outen Baltimore County, Maryland

Link to video presentation
Link to PDF Presentation
Link to resources from this webinar

Session #12: Greening Grey Infrastructure: Federal Highway Administration’s Eco-Logical Approach and Case Studies from National Forests in Ohio and Washington

Session #11: An All Lands Approach to Ecosystem Services for Water

Session #10: Tools for Conservation Planning

Click on the session titles for more info on recordings, slide presentations, and featured resources
Find relevant resources for each webinar session here!
If you have relevant resources to share please send them to us!
Wildfire, Wildlands, and People (Jan 2013) Forests on the Edge (FOTE) Report Released

FOTE feature in Chapter 4: Urban–Rural Interfaces: Linking People and Nature (Laband, Lockaby, and Zipperer 2012)

Open Space Conservation Strategy Implementation Surveys available at www.fs.fed.us/openspace
- Research and Development
- Washington Office
- Regional Offices
Session #14: Conserving Private Lands in Perpetuity: Forest Legacy, Monitoring and Enforcement of Conservation Easements

Miranda Hutten
USFS Cooperative Forestry
Northeastern Area

Dick Peterson
Forest Legacy Program Manager
Minnesota DNR

Leslie Ratley-Beach
Conservation Defense
Land Trust Alliance
Logistics – Q&A

• **Continuing Education Credits**
  – Attend entire presentation

• **Questions for speakers – chat pod**

• **Technical difficulties – chat pod or email Susan Guynn:** SGUYNN@clemson.edu
Getting to Know You!
Miranda Hutten
USFS Cooperative Forestry
Northeastern Area
Monitoring of Conservation Easements in the Forest Legacy Program

May 2013
Overview

• What is the purpose of the Forest Legacy Program?
• What factors do you need to consider when monitoring?
• Why is conservation easement monitoring important?
To ascertain and protect environmentally important forest areas that are threatened by conversion to nonforest uses.

Connecticut Lakes Headwaters – New Hampshire
Values Protected

Traditional

Wildlife

Riparian

Scenic

Recreational

Cultural
Who Participates?

<table>
<thead>
<tr>
<th>Acres</th>
<th>Total Cost</th>
<th>FLP Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>2,346,554</td>
<td>$1,393,255,270</td>
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</table>
Monitoring and Enforcement

Mount Lebanon Project – New York
Forest Legacy Program Guidelines

“Monitoring consists of visual inspection of the property, documented by a written report to explain the condition of the property at time of inspection.”

“The governmental entity holding title to interests in land acquired under the FLP shall monitor and manage those interests in perpetuity.”

“...shall occur periodically, but not less then annually.”
Monitoring Considerations

• Easement restrictions
• Physical factors
• Geographic factors
• Frequency factors
• Easement holder capacity
• Landowner relations
• Supporting documentation
For Example

Easement Restriction: “There shall be no building, structure or other improvement of any kind, temporary or permanent constructed or placed on the Conservation Area. Existing fences, fords, culverts, drains, power lines, poles, towers, and trails, as noted in Baseline Documentation may be maintained. Structures identified in the Baseline Documentation may be maintained for forest-related uses, but not enlarged or improved.”
Why is Monitoring Important?

- Protect property conservation values
- Cultivate a positive working relationship with landowners
- Detect and prevent easement violations
- Record of land conditions in case of court action
You are invited to:

Large Acreage Conservation Easement Monitoring Roundtable

Hosted by:

The Minnesota Department of Natural Resources &
The Northeastern Area Forest Legacy Program (FLP)

What will you learn?

The Roundtable’s focus is on Large Acre Conservation Easements. Topics identified by FLP coordinators for discussion include:

- A panel discussion on the challenges and opportunities of third party certification for conservation easements through the eyes of those who develop, evaluate, and undergo certification for forest lands.

- An overview of best practices for developing baseline documentation for large acre conservation easements. Presenter will be highlighting work done on the baseline of the 248,000+ acre Northern Great Lakes Forest to demonstrate the importance of crafting a thorough baseline for monitoring in perpetuity.

- Field topics will cover the best monitoring practices for large acre conservation easements with a special focus on lands with leases, recreational motorized access, and established rights of way.

Presenters & Panelists

- US Forest Service
- Minnesota Department of Natural Resources
- The Nature Conservancy
- Michigan Department of Natural Resources
- Blandin Paper Company
- Rainforest Alliance

Date, Time, & Location

Meeting Portion:

Date: Wednesday, September 19th
Place: Superior National Forest Headquarters
8901 Grand Avenue Place
Duluth MN 55808
Time: 9 AM-12 PM and 2 PM-4PM (CT)

The meeting portion can be accessed remotely.

Field Portion:

Date: Thursday, September 20th
Place: Lobby of Radisson
505 West Superior Street
Duluth, MN 55802
Time: 9AM to 4 PM (CT)
Thank You

http://www.na.fs.fed.us/legacy/
Dick Peterson
Forest Legacy Program Manager
Minnesota Dept of Natural Resources
Monitoring Conservation Easements
A State Perspective

May 29, 2013

Richard Peterson
Forest Legacy Coordinator
MN Department of Natural Resources
Forestry Division
1810 – 30th St. NW
Faribault, MN 55021
507/333-2012 x222
richard.f. peterson@state.mn.us
Easement Profile for Minnesota

Parcel size: 38 easements – range from 20 acres to 188,000 acres; acquired from 2001-2012.

- Small - 24 parcels <1000 acres
- Medium - 5 parcels 1000-5000 acres
- Large - 6 parcels 5000-25,000 acres
- Very Large - 3 parcels > 25,000 acres

Parcel Ownership: Most are 1st generation owners, but also a few 2nd generation owners

- Family Forests owners - 25 1% of acres
- TIMOs, REITS or Industry – 11 96% of acres
- Local Units of Government – 2 3% of acres
Long-Term Monitoring Plan

- Our easement monitoring plan has evolved and grown over the years as different sections were needed.
- Contains our policies and procedures that guide our program.
- It doesn’t have to be fancy, it just needs to fit your organization’s needs.
- Plan templates are available from various organizations. I borrowed and adapted Minnesota’s from a local land trust early on and have adapted it to fit my needs.
- Plan covers Baseline Reports, Monitoring, Records, Violations, Amendments, and Staffing.
Baseline Reports – Policies and Procedures:

- This is the foundational document for monitoring.
- A signed report containing text, tables, maps and photos that documents the condition of the property in relation to the conservation values and existing conditions is completed prior to closing.
- Prepared by coordinator or partner. Involve the landowner.
- Developing a baseline template can be challenging. GIS map templates can help.
- Our current template was developed by a DNR easement stewardship work group.
- Update the baseline if conditions change – with annual monitoring reports or supplements.
Monitoring 1: Policies and Procedures

- Annual Meeting: A high priority is to meet, talk, and walk the land with the landowner every year.
- Staffing, Scheduling & Frequency of Monitoring
- Site Monitoring Plan: Develop a monitoring plan for each property that considers it’s uniqueness, values, and restrictions (Monitoring workbook – 3-ring binder format – contains: owner contact; directions to property; monitoring protocol; previous year’s monitoring report; baseline; recorded easement; management plan; & maps).
- Getting prepared: Pre-work, forms, tools and equipment, notifications, safety issues.
- Piggy-back: 3rd party certification, BMP audits.
Monitoring 2: On the Ground

- Ground monitoring is standard; some use of satellite and aerial also.
- Map your route, document where you go & what you see with camera, GPS, forms. I pay particular attention to:

<table>
<thead>
<tr>
<th>Boundaries</th>
<th>Timber management</th>
<th>Structures</th>
<th>Roads &amp; Trails</th>
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<tr>
<th>Gravel Pits</th>
<th>Public Recreation</th>
<th>Garbage/Dumping</th>
<th>General Conditions</th>
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- Boundaries
- Timber management
- Structures
- Roads & Trails
- Gravel Pits
- Public Recreation
- Garbage/Dumping
- General Conditions
Monitoring 3: Due Diligence and Follow-up

- Attempt to balance what is sufficient and necessary with what is reasonable, practical, and affordable.
- May not visit all parts every year, but at a minimum I try to cycle through entire property every 3-4 years.
- Spend extra time where more landowner activities are occurring.
- Revisit areas where issues were found previously.

Reporting and Follow-up
- Complete Monitoring records and reports.
- Timely follow through with landowners as needed.
Key Records in the Monitoring File:

- Landowner names and current contact information
- Baseline reports and any updates
- Current management plan
- Copy of the recorded easement
- Records of communications and correspondence
- All Grantee requests and approvals as per the easement terms
- Photographs, maps, surveys
- Violations and results of enforcement actions
Violations: Be Prepared

Our violations protocols include assessment and documentation, resolution, and reporting (3 violations to date – administrative and minor in scope)

**Note:** Resolution and response should be proportional to the level of violation severity:

- **Administrative violations:** No tangible physical impact on the conservation values.
- **Minor:** Limited, localized impact on the conservation values.
- **Major:** Impacts on the conservation values are widespread and long-lasting.
Amendments:

• In general, our policy is that we will only amend if the change will strengthen or at a minimum be neutral in relation to protecting the conservation values.

• To date, we’ve had 2 requests to amend or change an easement’s terms. One request has been denied and one request is under consideration, but we are leaning towards denial.
Funding and Staffing:

- General fund
- Easement Stewardship Account

<table>
<thead>
<tr>
<th>Project Size</th>
<th>Small Projects Up to 1,000 acres</th>
<th>Med. Projects 1,000-5,000 acres</th>
<th>Large Projects 5,000-25,000 acres</th>
<th>Very Large Projects More than 25,000 acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Numbers and estimated annual hours</td>
<td>24 Projects 288 hours annually. (12 hrs/project)</td>
<td>5 Projects 100 hours annually (20 hrs/project)</td>
<td>6 Projects 192 hours annually (32 hrs/project)</td>
<td>3 Projects 150 hours annually (50 hrs/project)</td>
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Annual budget
- Annual budget sufficient to cover a 0.35 – 0.40 FTE plus overhead.
- Overhead costs include fleet, office, travel, supplies.
- Remote sensing (including satellite and fixed wing imagery, analysis, mapping etc) are not included.

Staff
- Primary monitoring responsibilities are the Forest Legacy Coordinator (95%+).
- Secondary monitoring responsibilities are the 2 regional forestry lands staff and occasional assistance by field staff (5% or less).
Summary: Cornerstones of Monitoring

1. Policies & Procedures
2. Regular Monitoring
3. Good Records
4. Commitment to Funding and Staffing
5. Owner Relationships
Leslie Ratley-Beach
Conservation Defense Director
Land Trust Alliance
Common Challenge Types

- **Forest Land**
  - Logging not following approved plans
  - Public access
  - Timber Trespass
  - Other Trespass
  - Change in owner investment objectives

- **Farm Land**
  - Changes in farming operation
  - Housing for family and employees
  - Boundary issues
  - Other structures and commercial activities
Changes and Violations

- Understand the business of the landowner
- Practical appropriate CE interpretation
- Creative responses
- Annual visits and Successor owner visits
- Draft with stewardship in mind
- Learn from experience
- Trusting and helpful relationships
- Outreach tools and services
- Alertness and skilled listening
Third Party Trespass

• Rate of violations high by trespassers
• Draft for explicit right to enforce against trespass
• Draft to include landowner involvement
• State enabling acts and standing for land trust
• Pursuing the trespasser or the landowner
• Depends on knowledge and involvement
• What judges will look at
Dealing with the Public

Don’t attempt to generate adverse public opinion
Do correct serious errors in reporting
Do not indulge in quips, sarcasm or flippancy
Decide when to talk, what to say, who and how
Know your facts
Be accurate
Do not speculate
Have a media policy
Prevention and Remedy

• Support good people on the ground
• Prevent as many problems as possible
• Address *every* violation and legal challenge
  • Proportionally
  • Promptly
  • Policy
• Have capacity, resources, skills and resolve
  – Expertise to address issues before they explode
  – Triage to prevent, minimize, resolve and mitigate
  – Assume good faith until proven otherwise
Easement Violation Responses

- Education
- Negotiation
- Friendly third party intervention
- Mediation
- Arbitration
- Litigation
- Attorney General
- Government regulatory response
- Other unique to circumstances
Additional Suggestions

• Talk before you write
• Try voluntary first
• Track statute of limitation
• Cool rancor
• Listen carefully
• Avoid accusations
• Stay calm
• Unresponsive or hostile landowners are rare
Judicial Remedies

- Last Resort
- Uncertain Result
- Expensive
- Time consuming
- Distracts from other work
Judicial Remedies

- Criteria and Questions
  - Emergency
  - Damage
  - Uncooperative landowner
  - Integrity at stake
  - Likely to prevail
  - Judge sitting not disinclined to conservation
Costs of Violation Resolution

- Projected cost of major litigation in an average jurisdiction = $300,000
- High cost so far in excess of $1,000,000
- Median actual legal expenditure/year/land trust = $5,600
- Average cost of $38,000 for all types
• Base premium $60 per year per conservation easement or fee-owned land
• A maximum limit of $500,000 per claim
• A $5,000 deductible per claim
• Discounts available
• No coinsurance (co-payment)
• Land trust owned and operated captive insurance
• $4 million in capital
• Not available to government agencies
Be prepared; not scared

- Conservation is forever (a very long time)
- Stewardship is the means to accomplish that
- Friendly, fair and firm
- Proportional
- Integrity in all dealings
- Learn from others
- Articulate and live by your guiding values
Elements of Successful Enforcement

- Sound drafting
- Clear complete baselines
- Excellent records
- Consistent annual visits
- Strong trusting relationships
- Written policies sized to fit capacity
- Safety nets: insurance, reserves and back-ups
- Consult legal counsel regularly
- Invest in your people and in sensible systems
Worth the Effort
Questions and Answers

Ask questions through the chat pod
Session #15 – National Forest Plan Revisions and the New Planning Rule: Addressing all lands and open space in planning efforts

Wednesday, June 5th at 2:00 pm Eastern

Ken Landgraf
George Washington National Forest Plan Revision

Bill Connelly
USFS Planning Staff, Washington D.C.

Jo Ann Fites-Kaufman
Southern Sierra Nevada National Forests Plan Revision
Future Webinar Topics

- **July** - Strategic Conservation Planning and Partnerships
- **August** - More Conservation Planning Tools
- **September** – Climate Change Adaptation
- **October** – Collaborative Forest Landscape Restoration
- **November** – Community Wildfire Protection Planning
- **December** – Planning for Urban Forests
Give us your feedback!

www.fs.fed.us/openspace/webinars

Or Contact
Susan Stein – sstein@fs.fed.us
Sara Comas - scomas@fs.fed.us
Rick Pringle – rpringle@fs.fed.us