



GUIDE TO MONITORING PROTECTED PROPERTIES



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Minnesota Land Trust

Monitoring:

What is it? Why is it Important? How does the Minnesota Land Trust monitor?

Section 1

Definition

Monitoring is the regular inspection and documentation of the condition of a property protected with a conservation easement or land owned in fee title.

While the Minnesota Land Trust (“Land Trust”) may own some properties in fee title, the majority of the Land Trust’s protected properties are conserved with conservation easements held by the Land Trust. Therefore, this guide will focus on conservation easement monitoring, though many of the instructions may be applied to fee land monitoring as well.

Monitoring is usually done in person by walking the protected property, but in some cases monitoring can be accomplished through viewing the property by car, boat, or aerial flyover, or even with satellite or aerial imagery. However, only personal visits meet some of the purposes outlined below. Monitoring visits are documented in writing and with appropriate photographs.

Purpose

Monitoring protected properties is one component of the Minnesota Land Trust’s stewardship program. Our policy is to monitor every protected property once every calendar year. The primary objective of our stewardship program is to work in partnership with landowners – and the local communities in which our protected lands are located – to preserve the conservation values of those lands protected by conservation easements or in fee title. Ensuring compliance with the terms of each conservation easement is critical to meeting this objective. The Land Trust’s conservation work is most successful when conservation easement compliance is voluntary.

Along with interpreting easement terms and reviewing requested approvals, inspecting protected properties regularly and nurturing cooperative landowner relations are essential components of our stewardship program. The Land Trust must also make sure that it is meeting its legal obligations. The monitoring visit, therefore, serves a number of important functions:



1. Satisfy the Minnesota Land Trust’s legal obligations.

As a holder of conservation easements, the Minnesota Land Trust accepts a number of legal responsibilities:

- With each conservation easement comes the legal right—and responsibility—of ensuring that the conservation values of that property are protected according to the terms outlined in the easement in perpetuity. Failure to exercise these rights and responsibilities conscientiously may jeopardize the validity and enforceability of the easement.
- Failure to maintain a program that consistently inspects properties protected with conservation easements may jeopardize the use of conservation easements as an effective protection tool.
- In order for the Land Trust to maintain its legal capability to hold easements, the organization must monitor the protected lands and enforce the easement terms. IRS regulations require that an organization must “have a commitment to protect the conservation purposes of the donation”—Treas. Reg. 1.170-A-14(c)(1). Regular monitoring of protected properties is one way that the Land Trust demonstrates this commitment.

2. Maintain a positive working relationship with the landowner.

Protecting land in perpetuity through a conservation easement requires strong cooperation between a landowner and the Minnesota Land Trust. A personal visit with a 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 or the Minnesota Land Trust. Easements are complicated documents and are often misunderstood. The monitoring visit is an opportunity to make sure the landowner and the Land Trust are on the same page.
- Gives the landowner an opportunity to discuss future plans and goals as they relate to the property and the easement. Through dialogue, it is possible to iron out the inevitable bumps and potential problems related to the easement that may arise, and to reduce the possibility of a future violation.

3. Build relationships with new landowners in the event that property has been transferred.

Not all new landowners are aware of the precise terms of the conservation easement covering their property. Nor do they necessarily understand what the Land Trust does. A personal visit:

- Provides an educational opportunity to introduce the landowner to the Minnesota Land Trust and to review the conservation easement terms and the monitoring process with the new owner. (Note: A volunteer who discovers a "new" landowner should relay this information to Land Trust staff. The staff



will arrange for another visit to go over the easement with the landowner in detail.)

- Provides an opportunity to discuss the landowner's future plans and goals as they relate to the property and to the easement.

4. Discover any possible violations of the easement.

The essence of any monitoring program is to make sure the landowner is complying with the easement. Through monitoring, the Land Trust can:

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

(Note: Volunteer monitors should make sure that they refer any suspected problems to Land Trust staff immediately.)

5. Provide accurate, written documentation of the condition of the protected property over time.

Conservation easements are perpetual. Memories fade over time. Property conditions will change over time. The condition of the protected property is accurately documented through written records following each monitoring visit. This documentation:

- Demonstrates the Minnesota Land Trust's commitment and competency as a responsible conservation easement holder
- Provides a running record of the property's condition and use
- Allows those who come later to understand the history of a protected property
- Becomes extremely important in the event of a violation and court action

The Minnesota Land Trust's Monitoring Program

The Minnesota Land Trust takes its monitoring obligations and program seriously. The following briefly outlines the Land Trust's monitoring program:

Partnership with landowners: The Minnesota Land Trust recognizes that it cannot be successful without working in cooperation with the many landowners dedicated to protecting their lands through conservation easements. The Land Trust respects the commitment made by these landowners and is dedicated to working with them in a respectful and professional manner.

Monitoring plans: The Land Trust will create a monitoring plan for each property over which it holds a conservation easement. These plans will be based on the terms of the conservation easement itself and on the baseline property report created to document the condition of the property at the time the easement was completed. The monitoring plan will suggest how and when the property should be monitored and will identify those areas of particular concern or those that require special attention. Monitoring plans will often be accompanied by a



monitoring map to aid in walking the property. Please see Appendix B for more information on monitoring plans.

Landscape Conservation Software: Monitoring workbooks are no longer being maintained, and MLT has moved to Landscape Conservation Software that allows access to record and document information for each protected property. Unlike a baseline documentation report, which is intended to capture a “moment in time,” Landscape Software is a dynamic tool that allows monitors to access historical information using their desktop or mobile phone. While monitoring, the Landscape Mobile App uses your phone’s satellite GPS to track your site visit to then be recorded for completing the report and future monitors. Landscape desktop allows us to easily document changes in the condition and ownership of the property, and complete and finalize the monitoring report (unlike the mobile app). Landscape Conservation Software will be maintained by the Stewardship and Land Protection staff and will provide limited access to select information on the property. Landscape Software will include a summary of monitoring procedures and the following:

- Landowner contact information
- Directions to the property and ownership information
- Monitoring plan
- Maps of the property
- Past monitoring reports and visits
- Baseline Documentation Report and any updates (including an overview of the property and the project, maps, and photos)
- Conservation easement and any amendments
- Any relevant approvals or interpretations given to the landowner
- Any current management plans for the property
- Notes on property

Timing: The Land Trust’s goal is to monitor each property protected by a conservation easement or owned in fee title at least once annually. Circumstances preventing an annual monitoring visit will be documented. Some properties may require more frequent monitoring (such as land with public access or properties where there has been a concern with past compliance) or a visit following an authorized activity (such as construction of a building).

A monitoring visit can take place anytime of the year; however the Land Trust’s active monitoring season is March through September. Check the monitoring plan of each property for details as to the timing of the monitoring visit. Monitoring during fall hunting seasons should be avoided if possible. It may be important to visit in the summer if the owner is a seasonal resident.

Personal visits: Although many properties can be monitored from a distance, the Land Trust encourages annual personal visits with landowners to help maintain positive connections between the Land Trust and each landowner.



Monitors: The Land Trust may use staff, volunteer, and/or contractor monitors. All staff and contractors will be trained annually. All volunteers will be asked to complete a certification program that includes annual training sessions following initial certification. The Land Trust recognizes the commitment made by its volunteer monitors and will treat volunteers in the same professional manner that it treats paid staff.

Assignments: Stewardship staff will make the monitoring assignments. Continuity is important, so the Land Trust will attempt to assign one monitor to visit the same property for several years, if appropriate. At least once every five years, a Land Trust staff member will visit each property in person or using remote satellite imagery.

Confidentiality: Land Trust monitors will keep any sensitive information learned about a landowner or a land transaction during the course of a monitoring visit in confidence. This includes any information regarding a potential violation.

Safety: First and foremost, the Land Trust is concerned about the safety of its staff, volunteers, and landowners. All aspects of monitoring should be viewed with this in mind.





Minnesota Land Trust

Monitoring Procedure Summary

Section 2

It is very important that the monitoring visit is a positive experience for both the landowner and the monitor. Never put yourself (or the landowner) in an unsafe or uncomfortable position. Your job is to complete the monitoring visit to the best of your ability. The Land Trust staff will deal with any problems.

This document provides an overview of the procedure for monitoring a protected property. For more details, review your Volunteer Monitor Training Guide or call the Conservation Stewardship staff at the Land Trust's St. Paul office at (651) 647-9590.

1. Review materials on the protected property.

Landscape Desktop Software & Mobile App contains the information necessary to conduct a successful monitoring visit, including:

- Landowner contact information
- Directions to the property and ownership information
- Monitoring plan
- Maps of the property
- Past monitoring reports and visits
- Baseline Documentation Report and any updates (including an overview of the property and the project, maps, and photos)
- Conservation easement and any amendments
- Any relevant approvals or interpretations given to the landowner
- Any current management plans for the property
- Notes on property

2. Contact the landowner and schedule the monitoring visit well in advance.

Plan to visit the property sometime between April and September. Check the monitoring plan and/or notes on your assignment sheet of each property for details as to the timing of the monitoring visit. All monitoring visits *should be completed by September 30th* of each year.



Please note: If there is any part of the easement or property description that you do not understand or if materials are missing from Landscape, please contact Conservation Stewardship staff before your visit.

- ☐ Call the landowner **two to three weeks** before you plan to monitor to schedule a visit. Schedule the visit at a time that is convenient for the landowner to accompany you, if at all possible. A follow-up call closer to the time of the visit is also recommended.
 - *If you are unable to get in touch with the landowner or the easement contact, please call Conservation Stewardship staff before monitoring the property. Land Trust staff will decide when and how to conduct the monitoring visit.*
- ☐ Invite and encourage the landowner to accompany you on the visit whenever possible. If the landowner is physically or otherwise unable to accompany you, ask if they would like to have someone else come along on the visit on their behalf.
- ☐ Inquire about the following items listed on the monitoring report form:
 - Current ownership status and whether the landowner has any plans to transfer or sell the land.
 - Present uses of the property and any adjacent land uses that may be of concern.
 - Any changes that have occurred to the land or buildings, either natural or human-made or planned changes upcoming
 - Any questions or concerns that the landowner may have about their easement, their property or the Minnesota Land Trust
- ☐ Make sure to get accurate, up-to-date contact information for the landowner and at least one alternate property contact. Inform Stewardship staff via the Monitoring Report Form if there are any changes to the *Contact Information* or *Monitoring Plan* that should be made.
- ☐ Provide information about the Minnesota Land Trust and conservation easements to any landowners, neighbors, or others who request it.

3. The monitoring visit.

- ☐ Give yourself enough time to thoroughly inspect the property and to talk to the landowner. Plan to spend at least 2 hours at the property.



☐ Materials to bring on the visit:

- Monitoring workbook (if using) and/or cell phone with the Landscape Mobile App
- Pen, paper, and clipboard
- Field measuring tape and compass
- Bug spray and water
- First aid kit
- Monitoring “buddy” (particularly if you feel uncomfortable monitoring the property alone, have not visited the property previously, or would like another set of eyes)
- MLT nametag, business card, car sign, or safety vest (if you have it)

☐ Talk with the landowner or the landowner's representative.

☐ Walk the property. Follow the monitoring plan. Be sure to:

- Check the boundaries by walking around the property (or a portion of boundary)
- Generally inspect the interior of the property
- Visit any areas of special concern mentioned in previous monitoring reports
- Visit any areas with special conservation features (such as rare plants, shorelines or wetlands)
- Check any areas where special easement restrictions or reserved rights apply
- Check for any new buildings or construction activities

☐ Photograph and measure (if appropriate) any significant changes on the property or any conditions that will help describe observations made on the property or help interpret your Monitoring Report such as:

- Any alterations to the land from natural causes such as fire, wind, flood, or erosion
- Other alterations or changes to the land
- Changes to shorelines
- Any new or remodeled buildings
- Progress or status of specific management activities

Be sure to note the location and extent of any changes using the Landscape Mobile App or by hand drawing locations on a map of the property. Take notes so that you may provide descriptions or explanations.



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- Problems. Call the Conservation Stewardship staff immediately if you have any concerns or questions about the property or the landowner. It is important to deal with potential problems as soon as possible. Do NOT confront a landowner about a concern, but you can certainly ask for information or clarification. **In case of emergency, dial 911.** Monitoring visits are not “complete the visit at all costs” events under any circumstance.

4. Field Safety Guidelines. General field safety considerations:

- Trust your intuition and act on it – if you feel unsafe, leave immediately!
- Prepare for:
 - Inclement weather (rain jacket, appropriate footwear, warm clothing, etc.)
 - Biting insects – take precautions including repellent or Permethrin treated clothing, avoid skin exposure, and tuck socks into pants. Following your visit, a shower and thorough examination for ticks is highly recommended- early detection is key!
 - The terrain and conditions you will encounter. Be aware of both your physical limitations as well as individual risk factors, including exposure to allergenic plants and insects.
 - Emergencies. Carry a cellphone with you and dial 911 in case of an emergency. For non-911 emergencies, carry numbers for the landowner, the Land Trust, and your emergency contact. Be aware that cellular coverage may be lacking in certain areas regardless of your provider.
- Make sure someone knows where you are and when you expect to return. Leave a detailed itinerary with someone you can count on that provides your whereabouts, contact information for yourself, the landowner, and the Land Trust, and your anticipated time of return.

5. Documenting the monitoring visit.

Please complete the Monitoring Report form and any other documentation of the monitoring visit ***within two days after the visit.***

- Monitoring report form: Document your visit with the online monitoring report form in Landscape Desktop (<https://landconservationsoftware.com/ls/#/>) or Landscape Mobile App.
- Monitoring documentation: Email/Upload into Landscape any monitoring maps or relevant correspondence with the landowner to Conservation Stewardship staff



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- Photographs: Follow Landscape Mobile App training guidelines to take pictures using the mobile app. If you are not using the Mobile App, email any photos and their descriptions to Conservation Stewardship staff; note where photos were taken and the direction of view on a monitoring map.

6. Reimbursement.

If you would like to be reimbursed for postage, mileage, or any other expenses you incur, please return the expense reimbursement form included with the monitoring materials to our office in St. Paul.

7. Thanking the landowner.

Please send the landowner a brief, thank you note after the visit. The results of the visit should NOT be addressed. Land Trust Stewardship staff will follow-up on any observations, to determine if any additional action is needed. A formal follow up letter will also be sent to the landowner by Conservation Stewardship staff.





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Violations

Section 3

What constitutes a violation?

Technically, a conservation easement violation involves the use or development of the protected property contrary to the terms of the easement. The Land Trust views all potential violations seriously and is prepared to enforce its easements if necessary.

It is often difficult to determine if a violation has occurred. Situations can be ambiguous, and sometimes the easement does not clearly address undesirable activities. The cause of the problem could be from a number of different possibilities. Therefore, it is important for monitors – particularly volunteers – not to confront or accuse the landowner of any wrongdoing at the time of the visit.

If a monitor does encounter a possible violation:

1. Listen to the landowner.

If the landowner is present, you may ask about the problem. For example, you may say: “What happened here?” or “What caused this to occur?” Answers will certainly vary. The landowner may identify the cause, offer an explanation, or ask for assistance with the problem. Write down what was said, either at the time of the conversation or immediately after the monitoring visit has been completed.

2. Determine the cause, if possible.

Identify possible causes of the problem:

- Force of nature such as wind damage, erosion by wind or water, fire or insects.
- The landowner
- Third party violation: Violations may be caused by neighbors or an unknown source
- Other



3. If possible, determine the landowner's proposed course of action or repair.

A landowner may already be working to correct a situation. For example, the landowner may be planning to clean up from a windstorm, work with the DNR to deal with an erosion problem, or ask the neighbors to stop dumping garbage on the protected land. Report whatever the landowner might be considering in as much detail as possible.

4. Document the damage.

Take as many photographs as needed to identify the problem and mark locations on a map. If applicable, determine the area affected or geographic extent of the issue. Be sure to record observations of potential problems on the Monitoring Report form.

5. Stay on good terms with the landowner.

It is important for all monitors to remain on good terms with the landowner at the time of the monitoring visit. Volunteers should not deal with the specific details of any violation or possible violation of an easement. Violations are often complicated and sensitive matters and will require additional consultations with staff. If, at any time, the landowner appears uncomfortable or defensive, do not press the subject. Continue the monitoring visit or leave.

It is NOT a volunteer, contractor, or non-Conservation Stewardship staff person's job to do any of the following:

- Interpret the conservation easement for the landowner. Direct any questions the landowner may have about the easement to Stewardship staff.
- Approve or disapprove of any future plans the landowner may wish to discuss.
- Accuse the landowner of violating the terms of the easement. Conservation Stewardship staff is responsible for making a determination of whether or not the landowner is complying with the terms of the easement.
- Carry out any kind of mediation or enforcement action regarding a violation.

All Land Trust staff should be equally careful and should notify Conservation Stewardship staff and in particular the Conservation Stewardship Director when confronted with a possible violation.

6. Notify the Land Trust staff immediately and complete the monitoring report and photo documentation.

Land Trust staff will review the situation with the monitor and determine what additional steps need to be taken. This will often include reviewing the file, revisiting the property, and discussing the situation with legal counsel. Each situation needs to be reviewed and dealt with on an individualized basis.



Bibliography

Adkins, Jennifer, *A Guide to Conservation Easement Monitoring*, Land Trust Alliance Exchange. Fall 1997.

Bouplon, Renee, *Conservation Easement Stewardship*, Standards and Practices Curriculum, Land Trust Alliance. 2008.

Byers, Elizabeth and Ponte, Karin Marchetti, *The Conservation Easement Handbook: Second Edition, Revised and Expanded*, Land Trust Alliance and the Trust for Public Land. 2005.



Appendix A

Monitoring Plans

Monitoring plans are a key component of the Minnesota Land Trust's monitoring program. A monitoring plan that is tailored to the unique features of a property and to the specific terms of the conservation easement will be created for each conservation easement held by the Minnesota Land Trust. These plans contribute to the effectiveness of the monitoring program for each protected property by directing monitors to the most important features and characteristics of the property to review and by identifying issues related to that particular property and its landowner in advance of the monitoring visit.

The Minnesota Land Trust would like all monitors to make sure that an accurate monitoring plan exists for each property they monitor. If, as a monitor, you find an existing plan to be inadequate, please feel free to suggest updates or comments to Stewardship staff to make the required edits to the Monitoring Plan.

Monitoring plans should be brief, simple discussions including tips for effectively monitoring a property. A monitoring plan should suggest how and when the property should be monitored. It should also identify areas of particular concern on the property or areas requiring special attention. The plan might also point out any easement terms of particular interest for the monitoring visit.

