

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

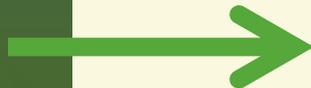
Listen to past webinars!



Listen to our past webinars:

- ▶ Session #9: Private land conservation programs from the Farm Bill: Natural Resources Conservation Service, Farm Service Agency, and US Forest Service.
- ▶ Session #8: Landscape Conservation Initiatives: US Fish and Wildlife Service, Bureau of Land Management, Department of Defense, Natural Resources Conservation Service
- ▶ Session #7: Science to inform Open Space Conservation: Land use changes, forest fragmentation, and the Wildland-Urban Interface
- ▶ Session #6: Facilitating Large Landscape Conservation Efforts: Working effectively across boundaries in the Northeast and Crown of the Continent
- ▶ Session #5: Local and Regional Land Trusts: Essential partners and the tools they provide
- ▶ Session #4: The Forest Service Toolbox: Conservation easement and land acquisition programs
- ▶ Session #3: Green Infrastructure Planning: Connecting partners and greenspaces
- ▶ Session #2: YES YOU CAN! Participating in Growth Planning Beyond the Green Line
- ▶ Session #1: National Forest Management in the Face of Housing Growth

Learn about future topics!

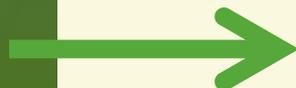


Future Topics:

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



Webinar Resources and Tools



USDA United States Department of Agriculture Forest Service

Open Space Conservation

Forest Service Home | About the Forest Service

Browse by Subject You are here: [Home](#) | Resources

- ▶ National Strategy
- ▶ Loss of Open Space
- ▶ Success Stories
- ▶ What the Forest Service can do!
- ▶ **Resources & Tools**
- ▶ Cooperating Across Boundaries
- ▶ Forests On The Edge
- ▶ Publications

Resources and Tools

The resources and tools shared below correspond with topics from our [Planning for Growth and Open Space Conservation webinar series](#).

Want to add tools to this list? Contact [Rick Pringle](#) with a link

Legal Authorities for Forest Service Engagement in Open Space

- ▶ [Forest Service Handbook 1509 Grants and Agreements](#)
- ▶ [Partnership Guide](#)
- ▶ [Partnership Resource Center](#)
- ▶ [Principles of Ethical Conduct for Government Officers and Employees](#)

Find relevant resources for each webinar session here!
If you have relevant resources to share please send them to us!

Forest Service Open Space News

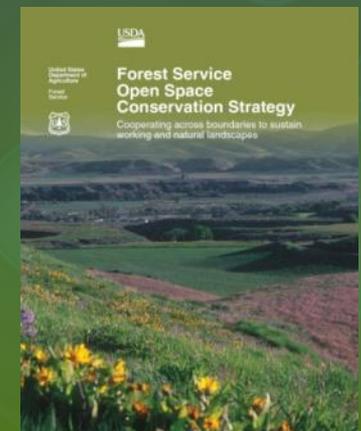
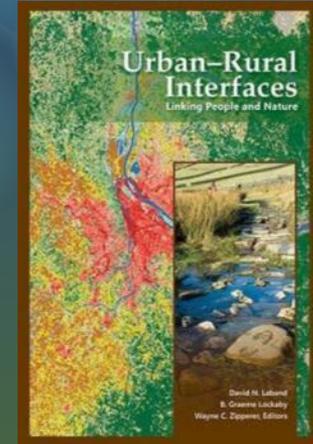
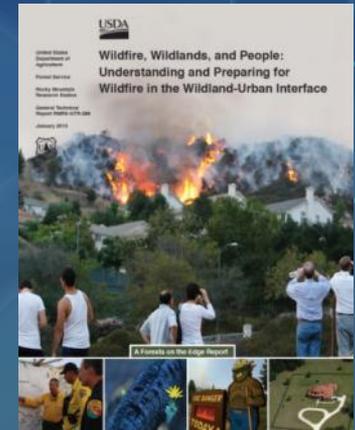
Wildfire, Wildlands, and People (Jan 2013) **Forests on the Edge (FOTE) Report Released**

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

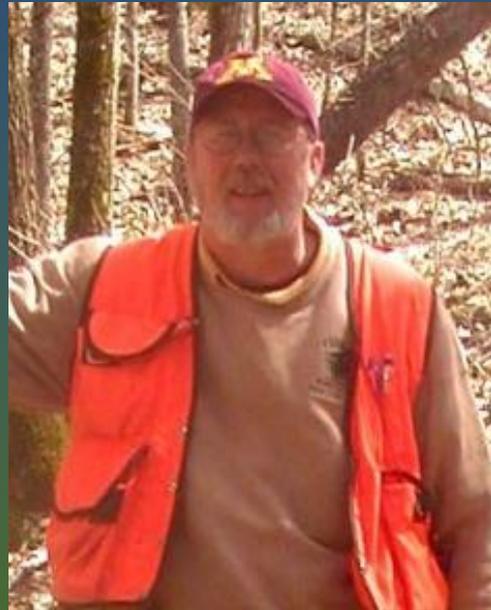
- Research and Development
- Washington Office
- Regional Offices



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

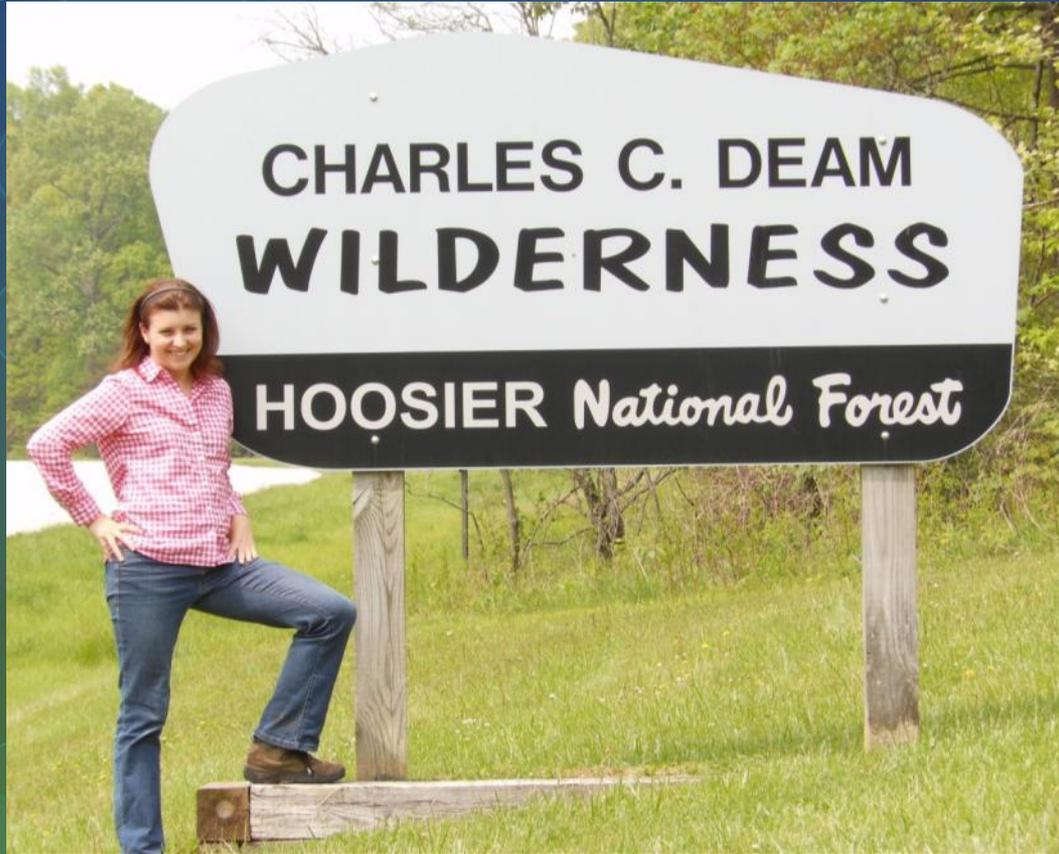


Leslie Ratley-Beach
Conservation Defense
Land Trust Alliance

Logistics – Q&A

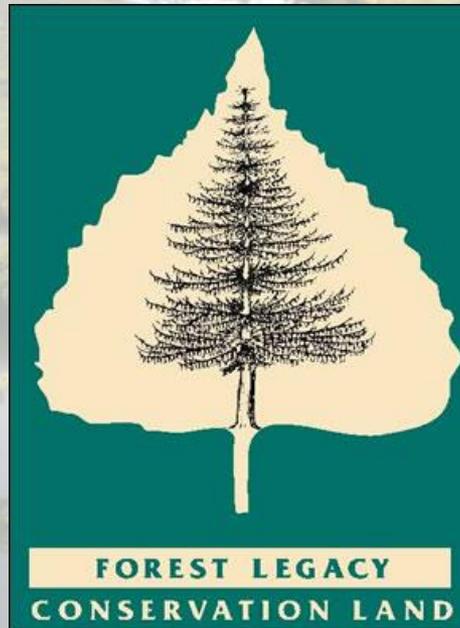
- **Continuing Education Credits**
 - Attend entire presentation
- **Questions for speakers – chat pod**
- **Technical difficulties – chat pod or email Susan Guynn: SGUYNN@clemson.edu**

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?

Purpose of the Forest Legacy Program



To ascertain and protect environmentally important forest areas that are threatened by conversion to nonforest uses.

Connecticut Lakes Headwaters – New Hampshire

Values Protected



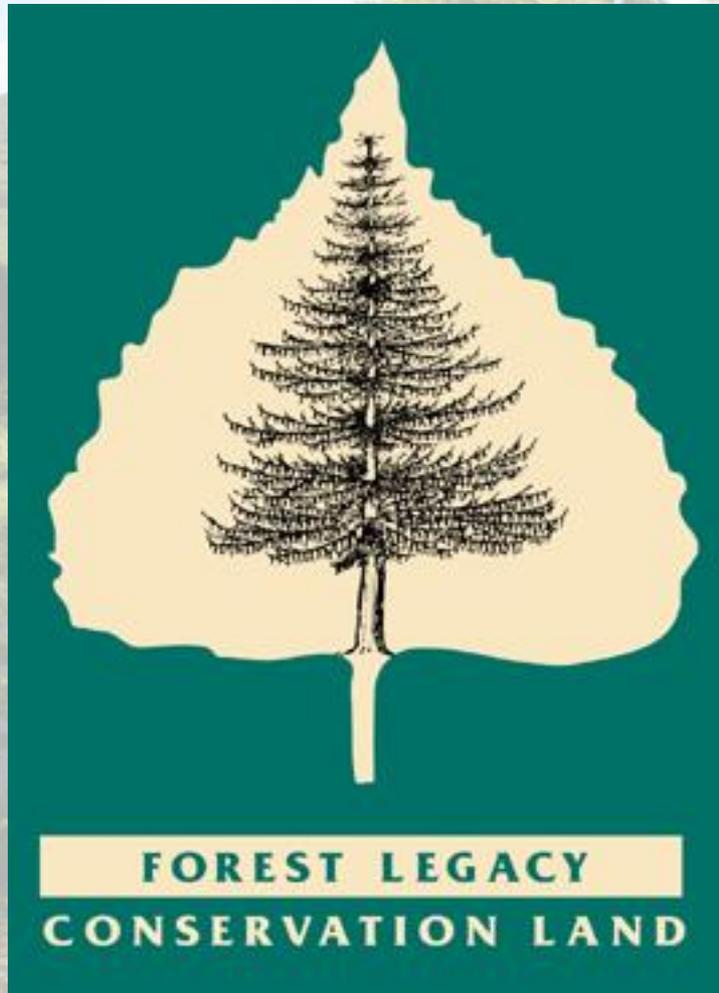
Traditional



Wildlife



Riparian



Scenic

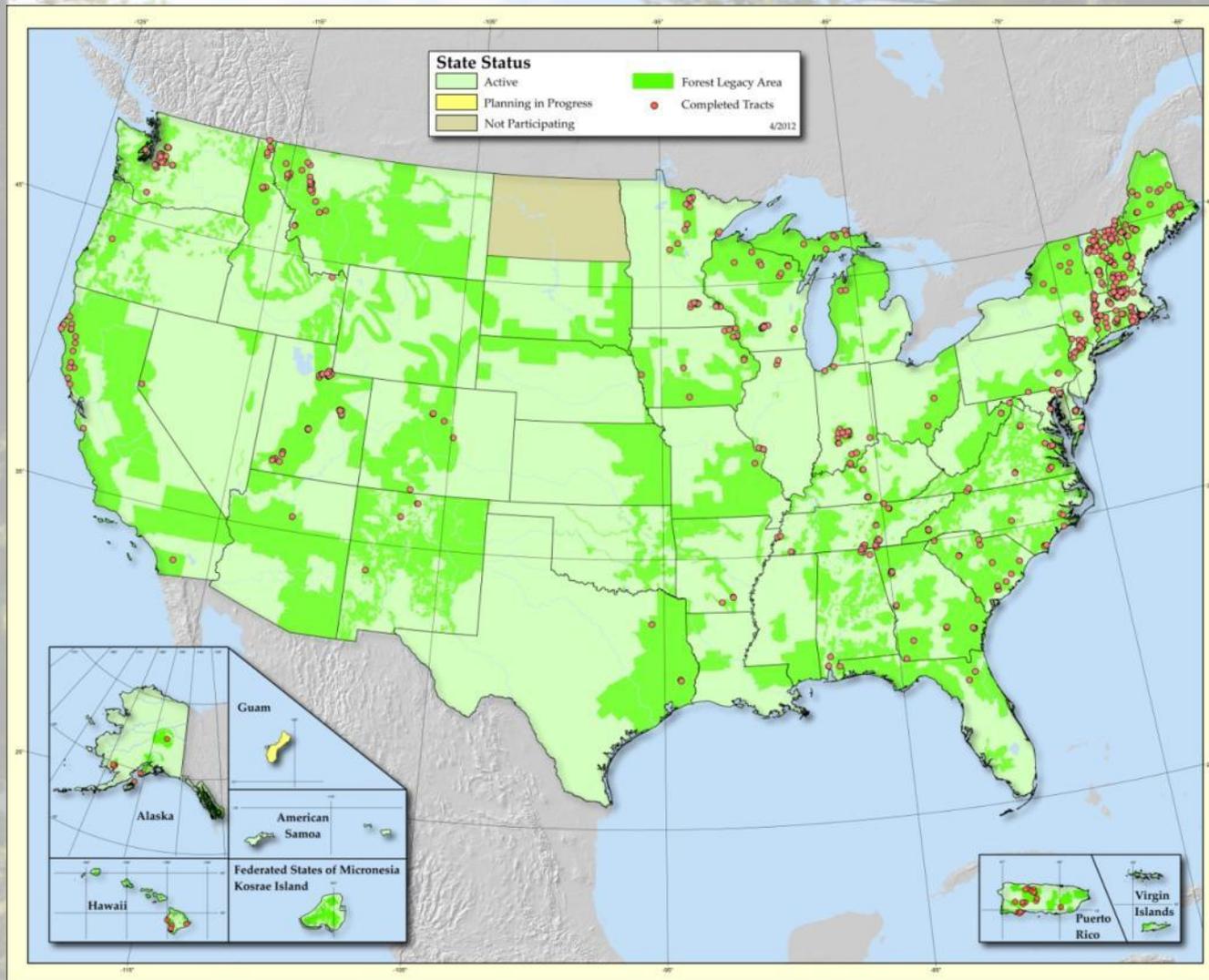


Recreational



Cultural

Who Participates?



TOTAL

Acres
2,346,554

Total Cost
\$1,393,255,270

FLP Contribution
\$612,567,376

Monitoring and Enforcement



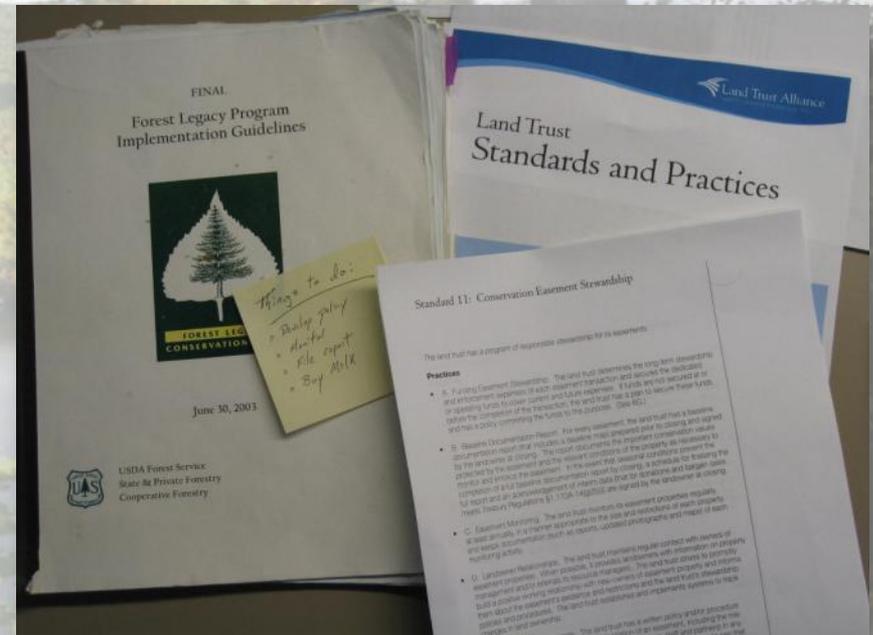
Mount Lebanon Project –New York

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 than annually.”



Monitoring Considerations

- Easement restrictions
- Physical factors
- Geographic factors
- Frequency factors
- Easement holder capacity
- Landowner relations
- Supporting documentation



New York Conservation Easement
Monitoring Training Session

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.

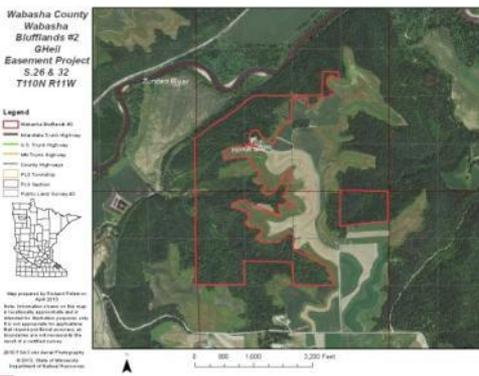
Monitoring 1: Policies and Procedures

- 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 its 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:

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 includes 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

Project Size	Small Projects Up to 1,000 acres	Med. Projects 1,000-5,000 acres	Large Projects 5,000-25,000 acres	Very Large Projects More than 25,000 acres
Project Numbers and estimated annual hours	24 Projects 288 hours annually. (12 hrs/project)	5 Projects 100 hours annually (20 hrs/project)	6 Projects 192 hours annually (32 hrs/project)	3 Projects 150 hours annually (50 hrs/project)
Annual budget	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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

Conservation Easement Enforcement



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

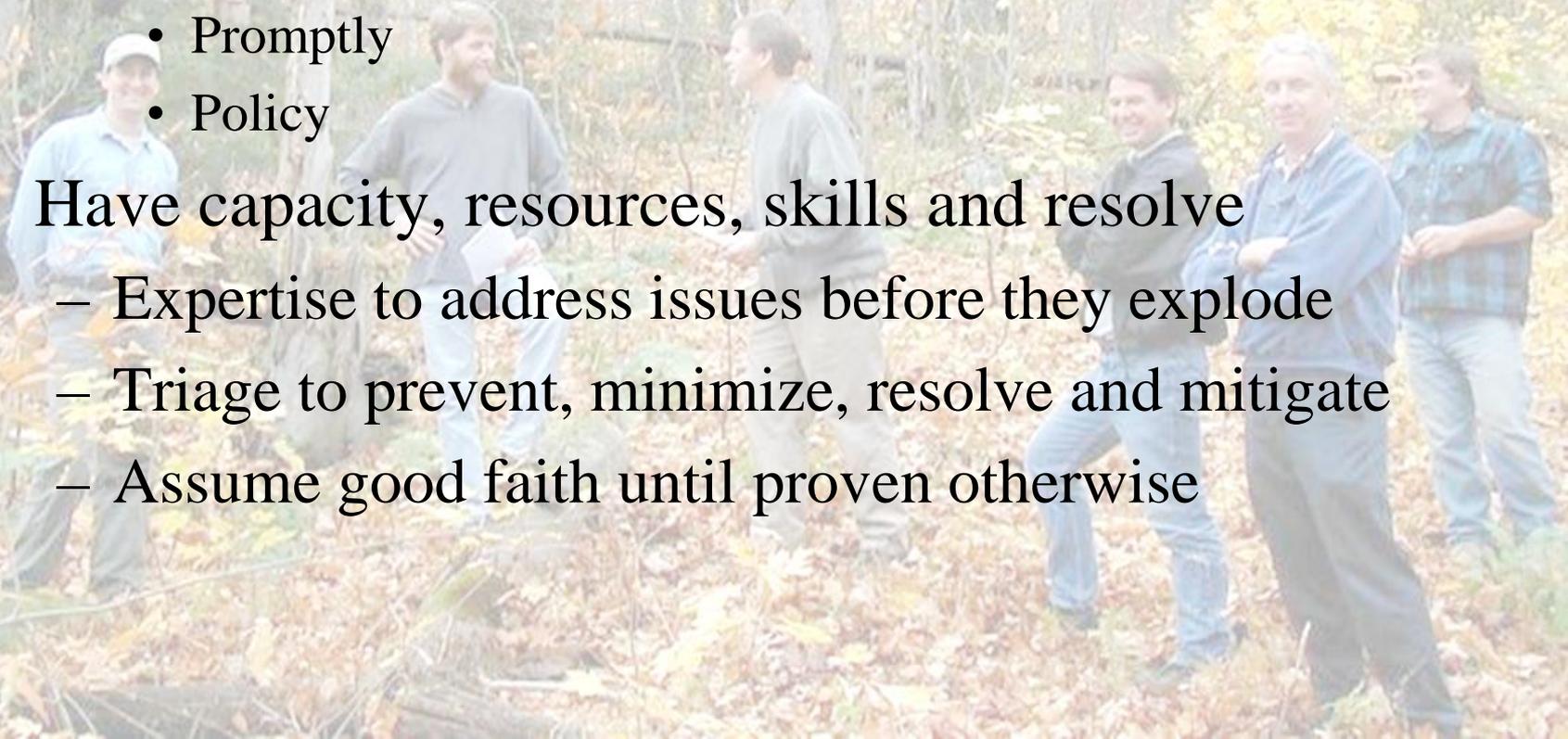
Do not speculate

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

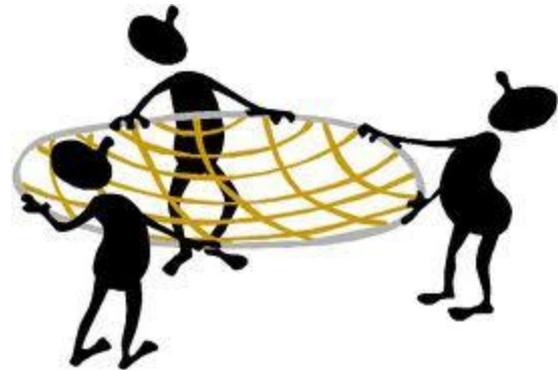
Be prepared; not scared

- 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