People Institutions & Ecosystems Lab

at University of Wisconsin-Madison

Managing Landowner Succession on Conservation Easements

Recommendations for Conservation Easement Holder Staff

Photo credit: Driftless Area Land Conservancy

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OVERVIEW

INTRODUCTION

One of the emerging challenges facing conservation easement (CE) holder organizations is how to best plan for and manage changes in ownership of conserved lands. New landowners of encumbered properties, whether heirs, friends, or unrelated buyers, are legally obligated to abide by the provisions of the CE as part of the deed. While holder organizations often conduct regular monitoring visits to ensure compliance with CE terms, the sheer number of properties and acres, and constraints of staff time and capacity, lead many to depend upon voluntary compliance rather than active enforcement and monitoring (Colinvaux 2013).

Ensuring landowners clearly understand the terms and obligations of the CE is vital to maintaining the conservation value of the property. In this spirit, it is key to develop a relationship with not only the original conveyors of the CE, but also with the successive landowners who will be responsible for stewarding the land and working with the land trust to resolve any issues with the CE.

This resource outlines recommendations for CE holder staff to consider when developing strategies to address landowner succession. Recommendations resulted from a series of interviews with experts, practitioners, and landowners. Rather than a dogmatic set of policies, we encourage staff to view them as a buffet of choices that can be tailored to fit their organization's unique circumstances.

METHODS

Recommendations are the result of interviews with many relevant stakeholders. We first interviewed 12 key informants, including leaders from national organizations and government agencies, academics, lawyers, and practitioners from leading CE holder organizations. We then used insights from these interviews to develop questionnaires for additional interviews with 14 staff from non-profit and government CE holder organizations, as well as 18 successor landowners with CEs held by four organizations. These interviews were transcribed, coded through NVivo, and analyzed to identify common themes.

After translating these themes into a resource document, we developed an initial set of lessons and recommendations, which we then reviewed in an online workshop with 10 issue experts. Their feedback guided revisions to the document, which we have used to produce this version: a living resource that offers guidance to organizational staff and will be updated as needed to better address the day-to-day realities of CE work.

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RECOMMENDATIONS

This section discusses six major themes and associated recommendations:

- ▢ Tracking change enables proactive outreach
- ▢ Foundations of the relationship
- ▢ Trust fosters robust relationships
- ▢ Monitoring matters for trust
- ▢ Record-keeping as relationship-keeping
- ▢ Stewardship through staffing

TRACKING CHANGE ENABLES PROACTIVE OUTREACH

To effectively navigate changes in land ownership, holder organizations must be aware of potential future changes in ownership and find ways to quickly determine when a change has occurred.

- ▢ **Hold regular conversations with current landowners about succession plans**
  - If possible, learn about landowners' long-term plans for their property. During each monitoring visit, consider inquiring about the potential for a sale in the coming year or who could inherit the property. County Extension offices in many parts of the country have become increasingly involved in succession planning for rural landowners and could be useful resources for landowners seeking information related to this.
- ▢ **Use electronic record searches for land sales**
  - Some states have centralized property record databases that can be used as tools to stay up-to-date on who owns the land. Greg Kidd of NRCS Wisconsin notes that while his organization conducts annual reviews of their conserved properties, they only make in-person monitoring visits to each property once every five years. The agency is able to stay on top of ownership change by running frequent title searches in the state database. You can also set up automatic notifications for sales of CE properties through MLS and some town and county databases to facilitate rapid outreach.

FOUNDATIONS OF THE RELATIONSHIP

The Land Trust Alliance's Standards and Practices Guidelines stress "the need to build trusting relationships with existing ***and new*** owners of easement land" (Seese 2011). Forming new relationships with all successive generations of landowners is as important as maintaining relationships with landowners who initiate the easement agreement. This process often starts long before the official transfer of land, whether with children who will inherit land or potential buyers previously connected to a piece of land. The first step is establishing initial contact with new owners.

▢ **Introduce yourself to new landowners early**

- ▶ Once an organization learns of an ownership change, organizational staff should contact the new owners to introduce themselves and their organization as soon as possible. While moving to a new piece of land and tending to the many associated responsibilities may be time-consuming for a new owner, a small introduction early on may yield outsize benefits later on.

▢ **Provide materials to onboard landowners**

- ▶ Along with a simple introduction, the new landowner will need to know more about your organization, their CE, and their land. Here are several items to consider including in the initial outreach:
  - ✓ Organization one-pager or brochure
    - ▶ Introduce new landowners to your organization by briefly outlining your mission and activities. You might highlight the background of your CE program, the organization's goals, and helpful resources.
  - ✓ A copy and summary of the CE document(s)
    - ▶ To help landowners interpret their original CE document, consider developing and sharing a simple CE summary document that describes what is and is not allowed in their CE. This can be a helpful initial guide for landowners, but legal consultation may also be required. "Frequently Asked Questions" are also useful.
  - ✓ Land descriptions
    - ▶ Help landowners begin to form a relationship with their land by providing information on important or rare species, points of interest on the land, etc. This can kick off conversations with landowners about their goals for the property. Organizational staff can then provide additional information based on those goals through a collaborative process that will foster proactive land stewardship.

LESSONS FROM THE LITERATURE

Two parties are more likely to engage in a continuing cycle of reciprocity when they have developed a positive, interdependent relationship (Cropanzano and Mitchell 2005). This is central to CEs, which depend on the relationship between landowners and CE holding organizations to meet mutual conservation-related goals. In the relationship between landowners and organizations, introductory interactions form the foundation for subsequent interactions that seek to increase the other party's knowledge and build mutual trust. Likewise, the ladder framework of socialization illustrates how each social interaction builds upon the previous one in a virtuous succession (Molm 2003). In these frameworks, the initial stage of relationship-building marks a distinct point at which newcomers must first negotiate their identities and define acceptable roles for themselves within their new environment (Reichers 1987) — underlining the importance of early, positive outreach efforts.

Landowners enter into CEs for reasons that may meet the needs of instrumental or intrinsic values or some combination of the two (Chan et al. 2016), but importantly, their participation in the agreement is generally voluntary. This may be less true for successor landowners. At the time of purchase, successors may or may not be aware of their CE, the full extent of its terms, the costs of compliance, or a host of other factors that might affect compliance. It is also possible that successors might be aware of their CE but choose to ignore it or fail to comply (Seese 2011). For all landowners, it is vital to understand how their values shape their understanding of the land and their relationship to it, and how these views align with their perceptions of the conservation agreement. This understanding may provide fruitful paths forward for CE organization staff in addressing landowners and tailoring approaches to achieve successful outcomes (Stroman and Kreuter 2014).

TRUST FOSTERS ROBUST RELATIONSHIPS

Trust can take many different forms, and is a cornerstone of relationships between landowners and CE holder organizations. Trust is "a psychological state in which one actor accepts some form of vulnerability based upon positive expectations of the intentions or behavior of another, despite inherent uncertainties in that expectation" (Rousseau et al. 1998).

Trust is a key factor in the success of collective action and regulatory compliance, including in conservation (Ostrom 1990). Trust is critical for gaining compliance with conservation initiatives (Stern 2008) and creating successful conservation outcomes (Davenport et al. 2007).

Understanding how to gain a landowner's trust and how trust can improve the relationships and success of CEs is important for new landowner outreach. Stern (2008) identified four types of trust relevant to collaborative natural resource management:

1. **Trust from shared values and personal connections (*Affinitive* trust)**
   - Landowners may perceive staff to have inherent qualities, and will trust them if they feel staff share their values or possess good character. This can be an automatic, subconscious response or one that develops over time (Blackburn 1998). Staff frequently mentioned monitoring visits (see next section) as good opportunities to build this kind of trust.
2. **Trust in a fair and clear process (*Procedural* trust)**
   - This stems from "control systems" (such as CEs) that reduce the need for other kinds of trust by providing clear rules that limit individual decision-making. Whether a landowner perceives the control system as fair and legitimate can affect the degree of procedural trust in the relationship (Mayer et al. 1995).
   - Building procedural trust can be challenging when successors purchase a property without knowing a CE is attached. This can undermine trust (as successors may be wary of the CE's legitimacy) and create problems for CE stewardship, with aggrieved landowners seeking to be unbound by their CE. Conversely, some landowners spoke positively of the CE as clearly defining the bounds of the relationship and assigning roles to each actor.
3. **Trust in reciprocal benefits (*Rational* trust)**
   - This is based on the perceived benefit of a given interaction, where reciprocity is central to the relationship. In this type of relationship, actors expect tangible benefits. If those benefits are not realized or are realized inconsistently or partially, one actor may develop distrust of the other (Larson 2004).
   - Staff mentioned rational trust most frequently in situations wherein organizations and landowners cooperate in active land management projects with each participant receiving a benefit. The organization achieves a conservation benefit on the protected land, while the landowner is rewarded with reduced cost or free habitat improvements to their land.
4. **Trusting inclinations (*Dispositional* trust)**
   - Some landowners may be predisposed to trust others generally, independent of context (Mayer et al. 1995). Others may naturally trust a certain actor in a specific context, such as a citizen who inherently trusts or distrusts their government (Freudenberg 1993). While dispositional trust was less significant in our research findings, it is still important to tailor approaches for people who seem more trusting versus those who seem less trusting.

- ▢ **Other elements of trust**

  - *Differentiation:* It is valuable to differentiate your approach to building relationships for different kinds of landowners who have varying values, concerns, and needs. While all landowners should have annual monitoring, communication should be individually tailored to build trust. Differentiation should still be balanced with procedural consistency to maintain clarity and fairness.

  - *Landowner peer ambassadors:* Staff noted that many successor landowners feel more at ease after talking with peer landowners of conserved properties. Fellow landowners, in addition to staff, can be important in peer networks for building positive, trusting relationships around CEs. CE holders can help cultivate these peer relationships.

MONITORING MATTERS FOR TRUST

Monitoring visits are often the most contact that organization staff have with landowners, and provide great opportunities to build strong relationships between the two parties. In addition to ensuring basic compliance with CE terms, staff can use these visits to make personal connections, learn from landowners, identify and address emerging issues, and celebrate the past year's stewardship activities.

- ▢ **Invite landowners to join monitoring visits**

  - It might not be possible to coordinate monitoring visits with landowner schedules, but staff should make an effort to do so. Moreover, staff can invite landowners to join staff as they conduct annual inspections, adding transparency to the process and boosting landowner trust.

- ▢ **Provide positive feedback on what you found during a visit**

  - Landowners enjoy feeling that their land management practices are consistent with good stewardship. They may take pride in the knowledge that their land is host to rare or interesting species or that vegetation appears healthier. Your feedback demonstrates appreciation and may encourage additional positive stewardship actions.

- ▢ **Memorialize landowner interactions on monitoring reports**

  - Monitoring reports give staff a place to keep detailed records of land cover and structures, but they can also use them to note landowner concerns and preferences. This knowledge is helpful to review before future monitoring visits and provides invaluable information to future staff members who are building new relationships with landowners.

LESSONS FROM THE LITERATURE

A key aspect of the relationship between landowners and organization staff is the amount of discretion displayed by the CE holders in enforcing CE terms. Stewardship staff are, in some sense, "street-level bureaucrats" or "naturecrats," along with foresters, game wardens, and soil conservationists. As providers of access to public programs, they are important actors in policy implementation (Lipsky 1980). Their ability to rely upon relationships and choose to which degree rules should be enforced may be important to the success of CE outcomes (Lin 2000). Enforcement actions can often be achieved through a range of options, from lenient to strict, and staff can intentionally select appropriate options to strengthen relationships and encourage future compliance (Galster and Hesser 1982). Of course, while interpretation is involved, it is not arbitrary or entirely up to the discretion of individual staff.

Reciprocal trust between landowners and staff is key to successful relationships, and monitoring visits provide valuable opportunities to build trust. Research has shown that people who feel regulators trust them to comply with standards are more likely to do so (Braithwaite and Makkai 1994). Likewise, researchers examining compliance with municipal water restrictions in San Francisco found that trust in the fairness of the regulator – that all citizens would be subject to the same restrictions and enforcement – was a significant factor in compliance (Scholz and Lubell 1998).

RECORD-KEEPING AS RELATIONSHIP-KEEPING

The least glamorous – but nonetheless critical – aspect of conservation is the documentation. Each CE can generate a thick file of property records, maps, monitoring reports, land surveys, and more. Finding efficient ways to track and manage these files can reduce the incidence of headaches among staff. Likewise, creating detailed and nuanced records of relationships between organizational staff and landowners can help future staff build upon, rather than restart, lasting relationships.

- ▢ **Utilize electronic record-keeping**
  - Maintaining a database of all relevant CE documents and monitoring reports can streamline CE stewardship. It can also facilitate new staff in on-boarding and learning about CEs they'll be responsible for.
- ▢ **Migrate to CE-specific software and apps**
  - Several recently developed software programs can streamline record-keeping, allowing CE monitors to input data from the field and managers to review reporting from anywhere with an Internet connection. These programs can integrate documentation, mapping, field notes, and other relevant information into one portal, increasing organizational efficiency.

- ☐ **Reconsider CE naming**
  - ▶ Refrain from using landowner names as the CE title. Instead, seek names that transcend ownership through multiple families. This mitigates confusion that can arise from changing owner surnames and encourages new landowners to feel equal claim to the land. For example, consider using the parcel's road name or address, a geographic landmark of the area, or a special geographic or historical feature of the parcel.
- ☐ **Facilitate successor place-making through land history "flame-keeping"**
  - ▶ Help successors connect with their land by acting as "flame-keepers" of stories and histories of the land. This can be done through baseline documentation reports and regular monitoring visits or through more creative avenues, such as the Land Trust for Tennessee's (2004) use of oral histories to memorialize stories and motivations of landowners at the time of easement agreement.

LESSONS FROM THE FIELD

One land trust staff member reflected on the importance of good communication for building trusting relationships with landowners, which comes into play in tricky circumstances such as when interpreting vague easement restrictions:

"One of the requirements of accreditation by the Land Trust Accreditation Commission is good documentation about potential or actual violations of easement terms. This includes written communications to landowners. However, trying to strictly interpret vague easement language can sometimes thwart attempts to build or maintain good working relationships with landowners.

On a recent monitoring visit to a protected property, we noted a new boardwalk crossing about 15 feet of wet soil. The easement, which protects a forested area, is about 20 years old. Like our other older easements, it doesn't provide a lot of clarity about what constitutes an allowable trail. Instead, it defaults to a standard of 'prohibited unless expressly permitted.' This boardwalk actually enhances the conservation values of the eased property by preventing erosion on a preexisting foot trail. But on a strict reading of the easement, the boardwalk is probably a violation.

In the interest of good documentation, my cover letter to the landowner sharing the results of our monitoring visit identified the boardwalk as a likely violation. The landowner's reaction to my letter was that I was attacking their good faith effort to prevent soil erosion. We are in the business of protecting land and water, so why wasn't I on their side?

The backstory is that a few years after this easement was completed, our board adopted policy in favor of outdoor recreation structures (limited in scope) that allow the landowner to enjoy their property when the structures do not harm the property's conservation values. Our board has also adopted policy *(cont. on next page)*

LESSONS FROM THE FIELD, CONT.

that gives staff guidance to interpret vague language with the goal of maintaining or enhancing the conservation values of a protected property. But all of that can be a complicated story to convey to a landowner in a letter.

In hindsight, I might have handled this better if I had spoken to the landowner before sending the documentary letter. It's a reminder to me that more communication with landowners is better than less communication. Given the number of vague restrictions we have in older easements, I am sure that there are more sticky situations like this in our monitoring future. It is also an argument for clearly defining the conservation values of each protected property."

STEWARDSHIP THROUGH STAFFING

Organizational staff and volunteers (herein, "staff") ensure conserved land is maintained according to CE terms. They also form relationships with landowners through years of cooperation and conflict resolution. Developing internal procedures and allocating resources for staff departure and replacement is critical to advancing their good work and ensuring continuity of relationships with landowners. While many factors affect the outcomes of conservation efforts, staff capacity may have an outsize influence on success or failure (Gill et al. 2017), and frequency of contact between staff and landowners is correlated with CE satisfaction (Stroman and Kreuter 2014). Investments in staff capacity are critical for preventing problems.

- ▢ **Maintain appropriate staffing levels for your organization's acre or landowner commitments**
    - ▶ Organizations should carefully account for the amount of time and money it takes to monitor and manage a given number of acres and/or landowners, including costs such as training, travel, and equipment. This information can be used to manage organizational capacity through planning staffing needs and considering future acquisitions.
- ▢ **Manage landowner relationships throughout staff turnover**
    - ▶ Organizations should proactively plan for staff departures. Many landowners develop strong, positive relationships with staff, and staff turnover may feel disruptive to landowners. If possible, outgoing and incoming staff should monitor together to facilitate relationship-building and smooth transitions. Otherwise, new staff should introduce themselves to landowners and indicate availability to address their concerns as soon as possible.

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