



Conservation Easement Monitoring

Protect the land, protect your organization

Conservation easements are arguably one of the most important tools at the conservation community's disposal.

Each easement is written to suit the unique attributes of the land being protected in order to achieve the preservation goals of the land owner and conservation community at large. If everything goes to plan, the land will be protected and preserved for its conservation values in perpetuity. Land trusts, conservation non-profits, and government entities take on the responsibility of entering into conservation easement agreements and stewarding the land to ensure all terms—including restrictions on use, subdivision, and development—are upheld.

Public Use of Easement Property

A common concern from land trust board members is whether they might be held responsible for injury on conservation easement land where the organization is the easement holder, not the landowner. Although the landowner likely shoulders the lion's share of the liability in the event of a bodily injury occurrence on the property, a conservation easement holder could be accused of being partially responsible as well. Conservation easement agreements typically contain provisions such that the easement holder is responsible for physically or visually monitoring the property on a predetermined schedule.

Consider a scenario in which the injured party claims there was an obvious hazard on the property. It is possible for the injured party to sue the landowner as well as the easement holder, claiming that had the easement holder monitored the parcel per the terms required by the easement agreement, the hazard would have been discovered and remedied prior to the injury occurrence.

Whether or not your organization is legally liable is a matter for the courts. Insurance is a land trust's mechanism to provide a defense.

**Insurance implications:**

Whether or not a land trust is legally liable for an injury on easement property can vary by circumstance and jurisdiction. However, even in the case of a frivolous bodily injury suit, your organization may need to engage the services of an attorney. The Conserve-A-Nation® general liability coverage is designed to provide legal defense on your behalf and pay damages if legally required.

Insurance is also necessary to meet contractual requirements of easement agreements in which landowners require proof of basic insurance and request to be included as additional insureds on the easement holder's policies.

**Conserve-A-Nation solutions:**

1. General liability coverage that specifically addresses easement acreage.
2. Umbrella liability to increase limits available in the event of catastrophic claims.
3. Landowners included as additional insureds with certificates provided at no additional cost.

Monitoring Easement Properties

Land trusts and conservancies holding easements are typically required to monitor the parcels for violations one to two times per year. Employees and volunteers use various methods, including walking the properties on foot, riding ATVs or snowmobiles, and even using drones in more remote locations.

**Insurance implications:**

Monitoring activities bring their own set of risks from difficult terrain, wildlife, weather, and equipment. Employees and volunteers risk injury while on foot, or could injure themselves or others while operating motorized equipment. There is also the risk of liability associated with aerial methods of monitoring (such as with drones) that may be excluded from general liability coverage.

**Conserve-A-Nation solutions:**

1. Workers' compensation and/or accident policies for worker injury.
2. General liability coverage that allows use of ATVs, UTVs, and similar motorized equipment.
3. Liability coverage available for drone use, typically excluded from general liability.

Upholding Terms of an Easement

From time to time, land trusts and conservancies may find themselves involved in a dispute over the terms of a conservation easement. It may be that a new landowner disagrees with the organization's interpretation of terms, or perhaps heirs to the property dispute the validity of the agreement in place.



Insurance implications:

Such disagreements can lead to lawsuits, and boards of directors may find themselves in need of legal defense to protect their obligation to uphold the easement. It is important to have coverage available from an insurance company with experience defending such suits.



Conserve-A-Nation solutions:

1. Directors & officers liability (D&O) coverage.
2. The Alliant/Conserve-A-Nation claims team has extensive experience assisting clients with easement dispute lawsuits.

About Conserve-A-Nation

Founded in 1994, Alliant's Conserve-A-Nation Insurance Program is the leading insurance solution for land trusts and other 501(c)3 conservation organizations nationwide. Conserve-A-Nation is proud to be the endorsed insurance partner of the Land Trust Alliance. We work with 1,500 local, regional, and national non-profits across the country. Our team's sole focus lies on understanding and protecting our conservation mission. We are dedicated to understanding relevant and applicable liability protection statutes, we stay current on conservation industry trends, and we have deep experience with common risks and exposures that land trusts and other conservation non-profits face every day.

About Alliant Insurance Services

Alliant Insurance Services is one of the nation's leading and fastest growing distributors of diversified insurance products and services. In the face of increasing complexity, our approach is simple: bring on the best people and invest more deeply in the industries and clients we serve. We operate through a network of specialized national platforms and regional offices to offer a comprehensive portfolio of services to our clients. Our goal is to ensure that they get the most innovative products—and innovative thinking—in the industry.

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