

CENTER FOR NATURAL LANDS MANAGEMENT
CONSERVATION EASEMENT MONITORING, ENFORCEMENT, AND
DEFENSE POLICY

Adopted on September 2, 2008 via Resolution 138-08
Revised on March 30, 2014 via Resolution 218-14

Preamble

The Center for Natural Lands Management (CNLM) both holds and grants conservation easements as part of its mission to conserve native species, their habitats, and functioning ecosystems in perpetuity. Given the strong public interest involved and high conservation values present, these conservation easements merit assertive and stringent protection. These conservation easements typically are granted, accepted, and recorded with a documented natural condition baseline and contain express provisions (a) establishing grantee rights to preserve and protect the conservation values of the property, prevent activities or uses inconsistent with the purposes of the conservation easement, and require restoration of damaged resources; (b) prohibiting a broad range of activities and uses that are inconsistent or incompatible with the purposes of the conservation easement; (c) requiring grantee to undertake reasonable actions to prevent any use or activity that is inconsistent with the purpose of the conservation easement; (d) defining a range of grantor obligations including both landowner and contractual duties; (e) conferring grantee enforcement remedies in law and in equity; (f) recognizing and providing for enforcement cost recovery rights; and (g) providing flexibility in grantee's exercise of its enforcement discretion.

Policy

Consistent with its Mission Statement, CNLM's policy is to ensure compliance with the terms and conditions of each conservation easement it holds or monitors for other public and private parties. CNLM will pursue remedies of actual and/or threatened injury to or impairment of a conservation easement or actual or threatened violation of its terms, as well violations of the conservation easement that are not directly threats to habitat such as landowner failure to pay taxes and assessments and unauthorized transfers of fee interests. CNLM will approach enforcement of conservation easement violations in substantially the same manner across all conservation easements we hold, regardless of the property owner, nature of the conservation resources, or other factors. CNLM will use its enforcement discretion in an equitable, habitat-based manner in consultation with and joinder of third party enforcement beneficiaries.

While CNLM will make every effort to engage conservation easement third party enforcement beneficiaries in the coordinated defense of the conservation

easement to ensure firm, fair, and cost effective conservation easement compliance and habitat restoration,) CNLM independently will assert the rights it has been granted under state law and the individual conservation easement to ensure that the conservation values of the conserved property are protected in perpetuity.

CNLM requires a compliance endowment for all conservation easements that it accepts. Within every initial endowment, CNLM requires a one-time contribution to a legal defense fund which is pooled across all preserves and for investment purposes. This fund may be used to assist in both the prosecution of conservation easement violators and in the legal defense of conservation values.

CNLM will aggressively pursue enforcement cost recovery, including both direct and indirect expenses, from violators.

Purpose

The purpose of this policy is to ensure that the Center for Natural Lands Management fulfills its legal obligations and its commitments to its mission in protecting the natural resources held under conservation easements.

Covered persons

This policy applies to the Board of Directors and employees authorized by the Board of Directors to enforce conservation easements.

Compliance Assurance

CNLM has a cost effective, systematic compliance assurance and enforcement process founded on the following:

- (a) Performing pre-acquisition due diligence including staff evaluation of project background, title and survey matters, historical land use, zoning and current land uses, permit and/or mitigation requirements, property taxes and assessments, government jurisdiction and authorities, site visit and physical inspection, the suite of other legal restriction, financial information, appraisals and market analyses (if not mitigation property), authorities to transfers realty interests, conservation and environmental assessments, landowner disclosures, miscellaneous liabilities and litigation risks, and insurance matters;
- (b) Preparing initial baseline documentation of property condition;
- (c) Preparing annual status reports of conserved property;

- (d) Monitoring of property to identify (i) compliance with the easement document, (ii) changes in status of conserved property that impacts conservation values, (iii) encroachments and trespass, (iv) other potential conservation easement violations, and (v) impacts from naturally occurring events like fire, flooding, and earthquakes;
- (e) Auditing for (i) compliance with county/city tax and other assessments requirements, (ii) attachment of liens, (iii) recording of inferior, unauthorized easements, (iv) existence of other unnoticed and unauthorized encumbrances on the conserved property, and (v) unauthorized transfers of realty interests in conserved property;
- (f) Identifying non-compliance conditions and management system failures, and their causes, if known; documenting potential violations;
- (g) Establishing and maintaining landowner relationships;
- (h) Retaining duplicate copies of all pertinent conservation easement information and documentation with field staff, headquarters, and remote electronic storage; and
- (i) Reporting (internal, landowner, regulatory agencies, and/or local general purpose governments).

Enforcement and Defense Procedures

Consistent with this policy, the Executive Director, in consultation with the General Counsel, Director of Conservation Science and Stewardship, Chief Financial Officer, and other senior staff, shall develop procedures implementing this policy and exercise, in a timely fashion, all available and reasonable compliance and protection remedies through the general conservation easement enforcement and defense procedure outlined here:

- (a) Assign a billing code to an enforcement/defense project and record staff time and expenses;
- (b) Review all pertinent information available relating to the alleged conservation easement violation(s) or threaten condemnation, appropriation, or termination of the conservation asset, whether fee or conservation easement;
- (c) Document violation (e.g., photographs, measurements, affidavits, specimens, and public agency incident reports) or threat to the conservation asset;

- (d) Define range of desired corrective actions to address noncompliance and/or damage to conservation values;
- (e) Evaluate enforcement and resolution options available to CNLM including informal consultation/negotiation with offending responsible party(ies), third party mediation, referral to permitting agencies and/or third party enforcement beneficiaries, and filing a complaint in court;
- (f) Choose appropriate enforcement response; if applicable, follow conservation easement remedy provisions, including, for example, issuing a notice of violation with demand to take specific correction action or cease activity by a date certain; coordinate with third party enforcement beneficiaries as appropriate;
- (g) Prepare an attorney-client privileged written enforcement or defense recommendation and strategy, one supported by both fact and law;
- (h) Execute enforcement or defense strategy;
- (i) Apprise Executive Committee of Board of violation or threat and remedy status;
- (j) Secure Board approval for authority to (i) not pursue any compliance and/or defense action, (ii) initiate unilateral corrective action to protect or restore conservation values, (iii) initiate further consultation with government entities having jurisdiction or presenting the threat, and/or (iv) initiate litigation;
- (k) Resolve noncompliance and threat matter(s);
- (l) Document CNLM response strategy and results; prepare “lessons learned” document, and publish as appropriate; and
- (m) Enter the total number of hours devoted during the tax year to monitoring, inspecting, and enforcing conservation easements on the annual IRS Form 990 (*Return of Organizations Exempt from Income Tax*) filings.

The Executive Director shall determine whether the resolution of a particular easement noncompliance or defense matter would be of interest to parties outside of CNLM, and if so, he/she shall inform the California Council of Land Trusts, the Land Trust Alliance, professional mitigation/conservation banking organizations, and/or other organizations or individuals as appropriate.

Cost Recovery Procedures

Unless otherwise decided by the Executive Director in consultation with the Executive Committee of the Board, CNLM will seek restitution from any and all conservation easement violators, whether grantor or third party, for all damages to conserved property conservation values. Sought recovery will include all costs and expenses incurred by CNLM in enforcing the terms and conditions of the conservation easement. CNLM, individually or in coordination with state and/or federal wildlife/resource and attorneys-general, will pursue both compliant and recalcitrant violators, private or public, directly or in court (at law or in equity), under the terms of the conservation easement, state law (e.g., California Civil Code §815 relating to the conveyance of conservation easements to qualified nonprofit organization), with the state's Attorney General under charitable trust doctrine or other legal authority, and/or the United States Department of Justice for violations of federal law.