

# CENTER FOR NATURAL LANDS MANAGEMENT

## CONSERVATION ASSETS ACQUISITION AND TRANSFER POLICY

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### Preamble

The Center for Natural Lands Management (CNLM), a public benefit organization, acquires interests in real property as part of its mission to conserve natural lands, native species, and their habitats in perpetuity for the public benefit. These CNLM-acquired properties must possess listed species, important habitat, or other significant conservation values. These CNLM acquisitions can result from exactions by and/or dedications to public agencies as part of a development approval process, (“mitigation-associated conservation properties”) or through purchase and charitable donations (“non-mitigation-associated conservation properties”). While CNLM’s focus is on the acquisition of fee title to or conservation easements over conservation property, real estate interests covered by this policy include not only such interests but also access easements, rights-of-way, temporary constructions easements, leaseholds, mineral/water/timber rights, conservation/mitigation bank credits, and restrictive covenants.

CNLM holds conservation assets, both realty interests and financial, in trust for the benefit of the public and has made the commitment to protect the biological, aesthetic, recreational, and scientific assets of natural lands -- conservation values -- in perpetuity.

### Policy

#### 1. Real estate interest assets, generally.

In all transactions relating to the acquisition or transfer, including exchange, of conservation interests in real estate CNLM will do the following:

- a. Obtain appropriate legal review and counsel;
- b. Obtain appropriate technical expertise;
- c. Perform appropriate-to-the-transaction due diligence including a Property Analysis Record (PAR);
- d. Protect conservation property with appropriate legal instruments,

including conservation easements (as that term is defined under applicable state law);

- e. Secure sufficient funding to provide for (1) perpetual monitoring, enforcement of restrictions, and defense of the conservation property and (2) stewardship obligations if assumed for the conservation property in perpetuity;
- f. Prepare documentation of baseline conditions reasonably contemporaneous with acquisition;
- g. Conduct acquisition through an escrow;
- h. Identify and manage risks, in part, by obtaining appropriate insurance, including liability insurance and policies of title insurance at an amount appropriate to the acquisition circumstances, and secure indemnification and hold harmless protections;
- i. Secure appropriate boundaries delineation;
- j. Secure practical and legal access to conservation property;
- k. Discharge or subordinate encumbrances that could adversely impact the conservation values of the conservation properties that are the subject of the conservation easement;
- l. Subject the realty interest acquired to periodic compliance and systems management auditing;
- m. Communicate with state and federal wildlife agencies and state Attorneys General (charitable trust section) as prudent and/or as necessary; and
- n. In the case of real property transfers or exchanges, ensure that conservation values, in addition to acreage, are considered.

2. Non-mitigation conservation properties with suboptimal stewardship funding, specifically.

In addition to satisfying the conditions above in Part 1, all fee title non-mitigation conservation property acquisitions, whether by purchase or through donation, that have suboptimal stewardship funding when acquired must satisfy the following five (5) conditions precedent:

- a. Funding of a stewardship endowment, as calculated through CNLM's standard PAR process, must be reasonably achievable within a period of no more than five (5) years from acquisition;

b. Acquisition must not result in the CNLM aggregate inventory of the unfunded portion of underfunded stewardship endowments for non-mitigation-associated conservation properties exceeding 5% of CNLM's aggregate endowment balance;

c. Acquisition must provide an additional incentive over-and-above CNLM mission goals;

d. There exists no prohibition against transfer or exchange of the property if endowment objectives are not fulfilled, and

e. There is documented (1) a reasonable belief that, within five years of acquisition, there will be sufficient funding for perpetual stewardship, and (2) an interim management funding plan to assure stewardship sufficient to prohibit degradation of or damage to the conservation values extant on the property during the period in which the stewardship endowment remains underfunded;

## **Procedures**

### 1. Legal Review

CNLM shall obtain legal review, with executed acknowledgements as to form by the General Counsel of transactional documents, for every conservation property transaction. The scope of such legal review shall include, but is not limited to, transactional documents including escrow instructions, evidences of transfer, endowment funding and management agreements, conservation/mitigation banks documents, and subordination agreements.

### 2. Technical Expertise

CNLM shall secure appropriate expertise in financial, real estate, tax, scientific, conservation, geophysical, construction, land use, and stewardship management in every conservation property transaction. Technical review shall include evaluation of legal descriptions, title reports, and, if applicable, environmental, planning, and engineering reports pertinent to specific property.

### 3. Due Diligence

CNLM shall conduct appropriate due diligence for each real estate transaction. The basis of this due diligence is the PAR and shall include consideration of the following matters:

- a. Project background;
- b. Title and survey matters;

- c. Historical land use, including a Phase 1 environmental assessment;
- d. Zoning and current land uses;
- e. Property taxes and assessments;
- f. Jurisdiction of special purpose governments;
- g. Site visit and physical inspection;
- h. Other legal restrictions including for example leases, fuel modification requirements, and common interest development association rules (CC&Rs);
  - i. Financial information including transferor/transferee financial health;
  - j. Appraisals and market analyses;
  - k. Legal authority to transfer;
  - l. Conservation and environmental assessments;
  - m. Landowner disclosures;
  - n. Potential liabilities and litigation risks;
  - o. Insurance requirements;
  - p. Consultation with private and public data sources;
  - q. Structure and complexity of the proposed transaction;
  - r. Site characteristics;
  - s. Document preparation and review;
  - t. Appropriate legal access to property;
  - u. Sustainability of conservation values;
  - v. Financial risks and risks of damage to CNLM's reputation; and
  - w. PAR-based perpetual stewardship analyses to identify tasks, costs, and long-term funding mechanisms and/or endowments.

#### 4. Conservation Easements over Mitigation-Associated Conservation Properties

CNLM shall have as an objective that every mitigation-associated conservation property transaction include the recording of a conservation easement (in the official records of the appropriate county), whether CNLM is the grantor or the holder. The conservation easements shall be re-recorded when appropriate.

For mitigation-associated properties, CNLM shall whenever possible grant, or require the granting of, third-party beneficiary enforcement rights to those wildlife resource agencies and general purpose governments under whose authority the conservation easement exaction was required.

Where CNLM is the owner of fee title to mitigation-associated conservation property and qualified conservation easement holders are not reasonably available, CNLM shall record a restrictive covenant (deed restriction) over the conservation property in a form that includes the relinquishment of development rights and other appropriate use prohibitions such as contained in a contemporary wildlife agency conservation easement template. Such deed restriction shall provide for third-party beneficiary enforcement rights to one or more government agencies and acknowledge that the Attorney General of the state in which the conservation property is located may exercise its authority under charitable trust authority to protect the conserved habit for the beneficial use of the people of the state.

#### 5. Stewardship and Conservation Easement Compliance Assurance Endowments

CNLM shall require as a condition precedent to any acquisition of a real estate interest in conservation property that a perpetual stewardship endowment be established in an amount as calculated by a CNLM-prepared PAR and held in trust for that property by the CNLM.

For those situations where CNLM is holder of a conservation easement but not management steward under contract to landowner, e.g., compliance-only conservation easements, CNLM shall make best efforts to ensure that (a) the grantor stewardship endowment is both adequate and held by CNLM and (b) CNLM holds a dedicated endowment adequate to ensure CNLM can discharge in perpetuity its obligations under the conservation easement to monitor for compliance and enforce its terms.

CNLM shall insist upon public recordation of a memorandum identifying the parties and general terms of stewardship funding and management agreements to which CNLM is a party to ensure that the parties who may seek to acquire or finance the affected property receive notification of the existence of these documents.

6. Property Field Check and Baseline Documentation

CNLM shall require, as a condition precedent to any acquisition or transfer of a realty interest in conservation property, that a field check be initiated prior to the transfer of legal interests to CNLM and that a baseline documentation be prepared by CNLM and, for mitigation associated properties, agreed to by the other party(ies) prior to recording of the realty interest.

7. Escrow

Except as provided below, all real estate transactions shall be conducted through an escrow account by a licensed title insurance company.

8. Risk Management

a. Liability insurance. As a condition precedent, CNLM shall ensure that the conservation property is covered by a commercial general liability policy at all times. The policy limits shall be adequate to cover reasonably expected risks and shall be increased from time to time based on changes in the Consumer Price Index as published by the Bureau of Labor Statistics of the U.S. Department of Labor and/or appropriate construction cost indices published by *Engineering News Record Magazine* or successor publication, or as conditions may otherwise warrant.

b. Title Insurance. CNLM shall obtain a policy of title insurance in an amount and form (and with exceptions) acceptable to CNLM for all interests in conservation property acquired by it, whether by exaction, purchase, or charitable donation. CNLM shall be the insured party on each policy of title insurance and the liability amount shall be, at a minimum, the fair market value of the acquired interest. CNLM shall consider the credit rating of the title insurance underwriter in selecting the insurer.

c. Hold harmless/Indemnification. When permitted by law, CNLM should require that other parties to a conservation property acquisition transaction agree to hold CNLM harmless and to fully indemnify CNLM to make good financial losses it incurs not resulting from its own negligence or willful misconduct. If CNLM indemnifies, it should be limited to damages caused by CNLM as direct consequence of CNLM's negligent act, error, or omission.

9. Boundary Delineation

CNLM shall require as a condition precedent to any acquisition of a realty interest in conservation property that legal boundaries, easements, and reservations have been identified by survey or by Global Positioning System (GPS) coordinates and marked on the property in a manner acceptable to CNLM.

10. Access

CNLM shall ensure that there is both legal and practical access to the conservation property being acquired and, if necessary, require as a condition precedent to such acquisition the recordation of access easements and/or rights-of-way in favor of CNLM.

11. Liens, Use Agreements, Easements

CNLM shall require as a condition precedent to any acquisition of a realty interest in conservation property that all encumbrances be identified, including deeds of trust, mortgages, judgment liens, tax liens, and other liens.

Any encumbrance on the conservation property which could result in the extinguishment of a conservation easement (whether or not held by CNLM) or a significant diminution or impairment of conservation values must be discharged or subordinated to the rights of the CNLM (and any third party enforcement beneficiary of a conservation easement) to enforce the conservation purposes and protect the conservation values of the conservation property.

12. Auditing

On a schedule set by the Board, CNLM shall perform a management systems audit of its conservation property acquisitions.

**Exceptions**

All material exceptions ("Material Exceptions") to this policy shall be approved in writing by the Executive Director as acknowledged by the General Counsel and approved by the Board of Directors.

**Guidelines**

The Executive Director shall ensure that any necessary implementing guidelines, including guidance on due diligence, PAR analyses, title insurance, escrow, and auditing, are prepared and distributed, as appropriate.