

## STANDARD 11

# Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

### PRACTICES

#### A. Funding Conservation Easement Stewardship

1. Estimate the long-term stewardship and enforcement expenses of each conservation easement transaction
2. Track stewardship and enforcement costs

#### B. Baseline Documentation Report

- 1. For each conservation easement, have a baseline documentation report (■), with written descriptions, maps and photographs, that documents:
  - a. The conservation values protected by the easement
  - b. The relevant conditions of the property as necessary to monitor and enforce the easement
- 2. Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing
  - a. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing
- 3. When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report

### C. Conservation Easement Monitoring

1. Adopt a written policy and/or procedure for monitoring conservation easements that establishes consistent monitoring protocols and recordkeeping procedures
- ▲ 2. Monitor each conservation easement property at least once per calendar year
  - ▲ a. If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years
  - ▲ b. Promptly document the annual monitoring activities for each conservation easement

### D. Landowner Relationships

1. Maintain regular contact with owners of conservation easement properties to maintain relationships and avoid potential easement conflicts
2. Establish systems to track changes in land ownership
3. When the property changes hands, attempt to meet with the new owner or property manager and provide information in writing about the conservation easement and the land trust's stewardship policies and procedures

### E. Conservation Easement Enforcement

- 1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations
- 2. Investigate potential violations in a timely manner and promptly document all actions taken
3. Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution

### F. Approvals and Permitted Rights

1. Respond to landowner required notices or requests for interpretation or approvals in a timely and consistent manner, as specified in the conservation easement deed or in a written procedure
2. Establish written procedures to guide the land trust's decision-making if using discretionary approvals or if conservation easement deeds contain such clauses
- 3. Maintain a permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights

### G. Contingency Strategy

1. Take reasonable steps to provide for the disposition of conservation easements in the event the land trust ceases to exist or can no longer steward and administer them

### H. Amendments

- 1. Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the Land Trust Alliance Amendment Principles
- 2. Evaluate all conservation easement amendment proposals with due diligence sufficient to satisfy the Amendment Principles
- 3. If an amendment is used to adjust conservation easement boundaries (such as to remedy disputes or encroachment) and results in a *de minimis* extinguishment, document how the land trust's actions address the terms of J.1. below

### I. Condemnation

1. If a conservation easement is threatened with condemnation,
  - a. Take steps to avoid or mitigate harm to conservation values and document the actions taken
  - b. Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation easement
  - c. Document the land trust's attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation easement deed

### J. Partial or Full Extinguishment

- 1. In the rare case that it is necessary to extinguish a conservation easement, in whole or in part,
  - a. Follow the terms of the conservation easement with respect to taking appropriate action, and obtain judicial or regulatory review when required by law or specified in the easement deed
  - b. Ensure there is no private inurement or impermissible private benefit
  - c. Take steps to avoid or mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation easement deed
  - d. Consider the land trust's actions in the context of its reputation and the impact on the land conservation community at large