

## Conservation Easement Stewardship & Climate Change Policy

Adopted by Board of Trustees, 03/24/2022

**Purpose:** The Land Trust of Napa County (“LTNC”) is responsible for the annual monitoring and enforcement of all its conservation easements, in accordance with its Protected Lands Monitoring Policy and Conservation Easement Violations Policy. LTNC also strives to engage all conservation easement landowners with prompt and professional response to landowner inquiries or requests. Changes in accepted best practices for land management and seemingly increasing climate change impacts on Napa County habitats require an updated and adaptive LTNC response to landowner requests. LTNC will assess requests for land management activities with a framework based on current best management practices and sound scientific input.

**History of CE drafting:** LTNC has used a zone classification for its conservation easements since the first donation in 1980. The zone classification designates specific areas on the conserved property based on use and activities allowed within that area. Zones are identified as Residential (or Development or Building Envelope), Agricultural, or Forever Wild. Traditionally, the term “Forever Wild” connoted areas of natural habitat protection where little to no human impact would occur. Common terms in the conservation easements included, but were not limited to, prohibition on native vegetation or tree removal except for disease or safety; prohibition on road construction; limitations on vehicular use on roads and trails within the area; prohibitions on structures or infrastructure; or limitations on interior or mesh fencing.

In 2012, LTNC started using “Natural” in place of Forever Wild, as the preferred identifier for natural habitat areas on conservation easements. This came in response to landowner negotiations that sought more active management activities within these zones. Common terms for Natural Zone areas included, but were not limited to, limited native vegetation or tree removal for safety, health and hazards as well as accepted prescriptions for vegetation management activities; allowing use of wildlife fencing for interior use; allowing grazing for fuels reduction where appropriate; and delineating conditions for trails or other recreational uses.

**History of forest management practices:** Forest management across the western United States has shifted significantly over the last decade, largely based on the catastrophic wildfires occurring every year. Historically, land management for western forests dismissed the role that regular, small-scale, naturally-occurring wildfires played on the life cycles of native vegetation communities. Established during the creation of the United States Forest Service in the early 1900s, Smokey the Bear represented the anthropocentric view that humans were able to control nature and its systems. Over a century passed during which fire was actively removed from healthy forests, and no corresponding mechanical tool was introduced to counteract the missing component. Both of these factors lead to heavily canopied, densely stocked forests in remote locations across the western United States. Changing climate conditions as well as increased human activity in the wildland-urban interface only exacerbated the “explosive” situation within natural habitat lands.

**Climate change impacts:** LTNC has historically seen fire impact on its properties, although prior to 2015, this was rare. Then-current management practices discouraged manual forest management as cost and labor intensive, as well as contrary to best management practices in place at the time. The summer of 2015 was the first year of significant impacts by wildfires on both LTNC preserves and conservation easement land. By the end of 2020 fire season, more than 12,000 acres of fee-owned lands and 85% of conservation easements with Forever Wild or Natural Zones had burned, some multiple times. LTNC

monitoring staff started to receive requests by conservation easement landowners to address fire-impacted properties or to prevent and reduce future fire impact. To date, this totals 39 requests since 2017.

Wildfires, by and large, constitute the primary climate change threat to conservation easement properties in Napa County. They present a significant public safety risk to the residents of the county and can cause immediate negative impacts on the conservation values of wildlife habitat lands. Other climate change events include extreme drought, exacerbating weakened native habitats; and torrential rains, increasing risk of flooding, landslides, or erosion, especially in fire- or drought-affected areas. California is also susceptible to earthquakes, as Napa County experienced in 2014. Less detrimental on natural habitats, earthquakes impact structural uses on conservation easements. Beyond the large-scale climate change events, the long-term effects of changing weather patterns and temperatures are reflected in increased invasive species infestations, shifting wildlife migration, loss of sensitive species habitat, changes to vegetation communities' composition and density, and other long-term impacts.

#### **Guidelines for interpretation:**

1. Proactively provide conservation easement landowners with established and accepted prescriptions for certain proactive wildfire protection activities, e.g. shaded fuel breaks or defensible space parameters. Include information on cooperative partners (i.e. Napa County Firewise Foundation, Napa Resource Conservation District, CalFIRE, local fire districts, etc.) or contractors providing services in these areas.
2. Document each request according to the Notice and Approval sections of the respective conservation easement, including at a minimum a scope of work with narrative text, maps, photographs, timeline, and review of conservation easement terms with context below.
3. Evaluate all requests in the context of the following factors: 1) What is the impact of the proposed project on the conservation purpose(s) and conservation values of the conservation easement, in the affirmative and the negative; 2) What is the impact of the proposed project on public safety and community resources, in the affirmative and the negative; 3) What are LTNC's legal or ethical obligations; and 4) Is our response consistent with activities occurring on LTNC preserves?
4. Maintain consistent responses for climate-related requests of similar nature.
5. Maintain the most constructive working relationship possible with the landowners. To this end, provide landowners with timely, transparent and collaborative responses during all phases of potential project implementation or for project denials.

#### **Definitions:**

Discretionary: subject to the ability or right to decide according to one's own judgment

#### **Procedures:**

1. Violation prevention. Through drafting clear, enforceable conservation easement language and maintaining strong relationships with landowners, lessees and other users of conservation easement property, enforcement issues may be prevented or lessened.
  - a. Careful easement drafting. LTNC should not impose restrictions that it has no interest in upholding or no practical ability to uphold. Poorly conceived, poorly written and vague restrictions can lead to future violations or related investigations. LTNC shall periodically review applicable sections of its model easement template with an eye towards adaptive management practices for climate change.
    - i. In accordance with this policy, LTNC may offer discretionary approval of certain land

management activities, designed to address climate change impacts, when LTNC determines, after staff, board and legal review, that a proposed activity does not negatively impact conservation values, provides public safety benefit, and does not conflict with outright prohibitions of the conservation easement terms and conditions.

- ii. In accordance with its conservation easement amendment policy, LTNC may also offer alternative solutions to landowners when LTNC determines, after staff, board and legal review, that terms and provisions in its existing conservation easements are not enforceable, either legally or because the conservation easement provisions do not serve the conservation purposes of the conservation easement. (See also LTNC's Conservation Easement Amendment Policy.)
  - b. Annual monitoring. Diligent annual monitoring can ensure consistent and accurate interpretation of the easement restrictions and help steer landowners away from activities that may become enforcement issues. (See also LTNC's Conservation Easement Monitoring Policy.)
  - c. Ongoing communication. Regular and open communications with landowners helps to build rapport with property owners, potentially developing a sense of cooperation, enhanced land stewardship practices and deflecting potential enforcement issues.
2. Discretionary approvals. All proposed land management requests, stemming from concerns about climate change impacts, shall be evaluated such that LTNC's response:
- Engenders public confidence in LTNC and its conservation programs;
  - Maintains LTNC's legal authority to enforce easements;
  - Does not jeopardize LTNC's tax exempt status;
  - Discharges LTNC's obligations under the conservation easement; and
  - Addresses identified community and public safety practices for climate change events.

A majority of the requests in which LTNC is asked for interpretation of the conservation easement terms and conditions with regards to a proposed activity arise because the conservation easement language is vague on the proposed activity, is unclear as to specific prescriptions being requested, or outright prohibits the activity based on then-current drafting and management best practices. The following guidelines direct the staff's and Board's responses to climate-change interpretation requests by conservation easement landowners, recognizing that full utilization of every guideline may not be appropriate in every circumstance. LTNC categorizes these requests into two categories (Proactive and Responsive) with two sub-categories each (Major and Minor).

- a. Proactive requests (definition: serving to prepare for, intervene in, or control an unexpected occurrence or situation, especially a negative or difficult one; anticipatory). These types of requests involve land management activities intended to prevent or mitigate existing or anticipated significant or catastrophic impacts to the conservation easement property. Examples may include: creation of shaded fuel breaks or selective forest thinning in forested areas near agricultural or structural development on the property; governmentally required defensible space setbacks for structures on the property or on adjacent properties; installation of internal fencing for rotational grazing pastures; or small livestock grazing to reduce ladder fuels.
- b. Responsive requests (definition: acting in a behavior that results from an external or internal stimulus). These types of requests involve land management activities that have resulted in the aftermath of some climate event; they can be categorized as emergency

(definition: a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action; a state, especially of need for help or relief, created by some unexpected event) when immediate action is needed after such an event or as non-emergency where timing and decision-making may occur with longer lead time. Examples may include: removal of dead trees and vegetation over a large percentage of the property; grading of emergency access roads. Many responsive requests may already be permitted under the Acts of God/Nature sections of a conservation easement, or as a result of dangerous or hazardous conditions present. As such, LTNC response should consider these provisions as well as others that might help to reduce unanticipated impacts to conservation values.

- c. **Major** classification (definition: an activity or use that may not concur with the terms and conditions of the conservation easement AND having, or expected to have, a substantial negative impact on the Conservation Values protected by the easement).
- d. **Minor** classification (definition: an activity or use that may not comply with the terms and conditions of the conservation easement, but which will not have, or is not expected to have, a substantial negative impact on the Conservation Values protected by the easement).

Response policy for minor and major classifications shall include, but is not limited to,

- i. **Site Visit:** all applicable monitoring procedures should be followed, even if this is not a regular monitoring visit.
  - a) This visit should be conducted with the landowner, or the landowner's representative, present. Ask questions for further clarification of the proposed activity, any alternative actions that may be acceptable or unacceptable to the landowner, and rationale. Take any documentation photographs, measurements, markers, etc. Thank the landowners for their time. Indicate likely timeframe for response; consider completeness of request application, urgency of work, review by Protection Committee, if needed.
  - b) If the landowner is not present during the visit, complete the site assessment with good documentation. Send follow-up communication to the landowner to confirm understanding of project on the ground.
- ii. **Office Follow-up:** LTNC monitoring staff shall review the project application. Staff shall carefully review the entire conservation easement, identify and interpret the relevant provisions of the easement and acceptable framework for discretionary approval on climate change-influenced projects, and make an initial assessment of whether the project is viable. If the project exceeds reasonable scope or impact to conservation values, staff may propose alternative work options that meet project objectives. If no such agreement can be reached, the process ends when all documentation is completed and staff must notify the landowner of the project denial.
- iii. **Assess the Request:**
  - a) **For emergency matters:** When an urgent situation exists, LTNC staff have the discretion to respond as needed, with input sought from the Chief Executive Officer, and/or Protection Committee or its chair, and/or Board of Trustees ("Board") members as warranted under the situation. Staff must be responsive to requests when human safety or protection of significant structures is at risk, as governmental agencies with authority may respond

preemptively.

b) For non-emergency matters:

- As soon as LTNC staff learns of a potential request related to climate change incidents, LTNC staff shall evaluate whether the project is minor or major, under the proactive or responsive categories. Whether the project is intended as a one-time occurrence or is ongoing may factor into this evaluation.
- If the project request is either deemed minor but potentially volatile or major, LTNC staff shall immediately bring the situation to the attention of the Protection Committee. LTNC staff and the Protection Committee shall then discuss and make a recommendation to the Board for approval in advance of taking further steps towards interpretation.
- If the project request is deemed minor, LTNC staff shall report on the situation at the next Protection Committee or via email to the Committee.

iv. **Response to an Approved Request:**

- a) Create a thorough and accurate written record of the project, pre- and post-work phases. The implementation should be documented quantitatively and descriptively. The record should include photos with a Digital Chain of Custody form signed by the photographer and keyed to photo points on relevant maps. The record should provide a clear description of benefit to the conservation values and public safety. The record includes detailed and dated field notes and explicit analysis of the impact to conservation easement purpose(s), conservation values, and public benefit.
- b) The appropriate LTNC staff member should contact the landowner to discuss the project in a constructive and collaborative manner; if LTNC recommends modifications to the project as proposed, these should be communicated verbally and then, with written correspondence. A written log of all meetings, correspondence, and other forms of communication is essential. Staff will continue working with landowner and keep Protection Committee apprised of progress.
- c) If an agreement is reached, document the agreed-upon project details and include a timetable for the proposed action. Set a time for follow-up, post-implementation site visit, with the landowner if appropriate.

LTNC approved prescriptions for the following activities, as of March 2022:

Shaded fuel break – extends one hundred feet each side of centerline (200 feet total width); near complete understory removal, particularly shrub or brush vegetation, and trees under 4” diameter; lower limb clearing of trees over 4” diameter to 10 feet in height; identify appropriate action for cut materials (e.g. chipping and scattering material, creating bio-char pile for burning at appropriate time)

Forest management/thinning – identified distance from Zone edge, e.g. 100 feet into forest; selected removal of understory shrubs and brush to allow adequate spacing between species; may include removal of standing trees smaller than 4” diameter and/or trees with compromised integrity or other safety concerns (i.e. lean); lower limb clearing of trees over 4” diameter to 8-10 feet in height; may include selection for tree type (e.g. preserving redwoods in conifer forest or oaks in mixed hardwood canopy, or selectively removing Douglas fir, California bay laurel, or tanbark oak); identify appropriate action for cut materials

Grazing for fuels reduction – short-duration, high-intensity grazing regime implemented with various classes of livestock (e.g. goats, sheep, cows) with intent to remove lower ladder fuels and thick grass build-up in advance of fire season; may include temporary paddock fencing or riparian/sensitive habitat exclusionary fencing in interior of property

Prescribed burns – work with approved agency or company, subject to required governmental permits; input from qualified biologist, forester, or other similar professional regarding pre- and post-burn treatments

Invasive plant removal – generally permitted activity under conservation easements; may include mechanical, manual, or chemical control; as part of larger vegetation management plan, include pre- and post-treatment recommendations for continued response

Post-impact habitat restoration – generally permitted activity under conservation easements, but not obligated for landowners; native tree & shrub replanting under guidance or input from biologist, forester, or other similar professional regarding density, variety, source plants, timing, etc.