



**Santa Lucia Conservancy
Conservation Easement Stewardship and Compliance Policy**

Approved July 20, 2012

Amended November 7, 2014

Updated August 24, 2022

Conservation easements are an essential part of the Santa Lucia Preserve design, ensuring the protection of its natural beauty and ecological health. The Santa Lucia Conservancy (SLC) is responsible for monitoring, maintaining and enforcing the terms of these easements for the benefit of the public trust, the natural values of the Preserve, and the integrity of the Preserve community. SLC currently holds 14 conservation easements within the Santa Lucia Preserve. Seven (7) Openlands Conservation Easements affect a total of approximately 7,750 acres encompassing 296 market-rate residential lots and 24 employee housing lots. An additional seven easements known as the Archeological/Wetlands/Conservation/Scenic Easement Deeds encumber lands owned by the Golf Club, Ranch Club, Community Services District, and several private residential landowners.

Well-drafted easement language and good landowner relations are essential in promoting the integrity of conservation easements and laying the foundation for easement defense. Discussions with landowners during management plan creation and routine contact through regular visits help build familiarity and positive relations. Offering assistance and consultation on conservation projects further helps establish the landowner's trust in SLC and interest in their property while supporting the purposes of the easements.

It should be recognized that despite a land trust's best efforts, violations of varying degrees of severity may inevitably occur given the perpetual term of the easements. It is imperative that SLC address these issues promptly, justly, and fairly to maintain good relationships with all our landowners, protect our tax-exempt status, preserve our legal authority to enforce our easements, strengthen public confidence in our work, and most importantly protect The Preserve's Protected Values.

The following principles, policies and procedures are intended to guide resolution of any suspected or potential violations of our conservation easements.



A. Conservation Easement Monitoring Policy and Procedures

SLC's conservation easement monitoring program is intended to ensure that the organization regularly monitors its conservation easement properties to ensure the easement terms are upheld and designated 'Protected Values' are sustained over time. These visits are essential for building rapport with the property owner, saving time and money by detecting issues early, documenting and addressing activities or conditions that are inconsistent with the easement terms, providing a record of property conditions, and satisfying the Monterey County Conditions of Approval for the Preserve and IRS requirements for organizations holding conservation easements.

Methods of Monitoring: SLC uses a combination of both ground and aerial monitoring to meet its obligations to ensure compliance with all the easements it holds while also responsibly sustaining its staff and financial resources. SLC monitors all conservation easement and deed restricted lands on an ongoing basis as follows:

- Every easement and fee-owned property is monitored by air and/or through review and analysis of high-resolution aerial imagery regularly, and no less than an annual basis. On-the-ground follow-up is promptly initiated if the aerial monitoring identifies any concerns that may constitute, or may lead to, easement violations.
- To maintain relationships with conservation easement property owners and avoid potential easement conflicts, on-the-ground Openland visits will occur at least every five years.
- A system to track changes in land ownership will be established. When the property changes hands, information about the conservation easement and the land trust's stewardship policies and procedures will be provided to the new owner or property manager.

Throughout the year, all individual properties where construction activities are located within or immediately proximate to areas protected by conservation easements or deed restrictions are monitored frequently (no less than once every two weeks and often more frequently) to prevent short- and long-term impacts to Protected Values.

Stewardship staff members who are highly trained in easement terms and property boundaries are present on the land on a daily basis and are alert to issues or concerns.



A report of all monitoring and compliance activities is provided to the full Board of Trustees at least once per year.

B. Easement Resolution Principles. Resolution of easement matters must meet all of the following principles:

1. SLC will respond to all suspected or alleged violations or potential violations promptly. Time is of the essence. Each step in the process will be carefully considered but will be taken without undue delay. Further, any schedules for remediation will be agreed upon and must be timely in order to minimize potential damages resulting from the violation.
2. SLC's response to a violation will be proportional to the severity of the violation.
3. SLC will communicate promptly and honestly with landowners and third-party violators, as appropriate.
4. SLC will vigorously defend its easements but will seek to resolve violations amicably before resorting to legal action whenever feasible and appropriate.
5. SLC staff will take special care in the investigation and resolution of suspected or potential violation cases involving insiders (as defined in SLC's Conflict of Interest Policy) to avoid private inurement issues.
6. SLC staff will carefully craft any resolution of a violation to ensure that it does not convey to the landowner an impermissible private benefit. Any resolution has the potential to benefit the landowner as well as the protected values, however the benefit to the landowner must be incidental and should be clearly outweighed by the benefit to the protected values (see **Attachment A**).
7. SLC staff will endeavor to recover from the landowner the costs associated with all moderate and significant violations, including staff time, whenever feasible.
8. SLC will keep all pending or outstanding violation proceedings confidential, except as required to satisfy insurance or funder requirements, or as required by law.
9. SLC will record and retain thorough and accurate written and visual records of all acts, communications, conditions, and events related to potential violations in the regular course of business.

C. Easement Violation Policy. In determining whether a violation has occurred and the severity of any violation, SLC will primarily consider: 1) the intent of the easement grantor in granting the easement, 2) the purpose of the conservation easement, and 3) the protected values of the property as shown in the easement. Secondary considerations may include the landowner's relationship with SLC



(e.g., landowner or third party) and the intent of the landowner (e.g., accidents, honest misunderstandings, deliberate violations.)

1. Types of Violations. Suspected or potential violations may not always follow a bright line rule. Violations may vary in severity, may involve mitigating or extenuating circumstances, or may evolve into more severe violations over time. These descriptions are meant to illustrate the range of violations staff may encounter.
 - a. Minor violations: a violation that have a measurable, but minor impact upon or consequence to the conservation easement's purpose or the protected values. Or a violation that has a negligible impact upon or consequences to the easement's intent, purpose or protected values. Examples include:
 - i. Undertaking a reserved permitted activity that requires pre-approval without seeking that pre-approval, but which SLC would have approved.
 - ii. Discovery of a pre-existing condition upon the property not recorded in the baseline.
 - iii. Minor ground disturbance, tree cutting, dumping that causes only temporary and incidental impact to the protected values and can be easily remediated.
 - iv. Landscaping along driveways
 - b. Moderate Violations: a violation that has moderate impact upon or consequences to the conservation easement's intent, purpose, or protected values.
 - i. Construction of ≥ 400 square foot prohibited structure, or prohibited use when it only incidentally negatively impacts the protected values and directly or incidentally supports the intent and purpose of the easement;
 - ii. Unpermitted surface alteration or ground disturbance that has a moderate negative impact on the protected values but which supports the intent and purpose of the easement;
 - iii. Removal of a mature tree in the Openlands, structural improvements such as grading, construction of fences, gazebos, or surfaced trails, or other material impacts to the Protected Values.
 - c. Major Violations: a violation that has significant impact upon or consequences to the conservation easement's intent, purpose, or protected conservation values.



- i. Construction of prohibited structures or undertaking a prohibited use when it significantly impacts the protected values and/or does not support the intent and purpose of the easement.
 - ii. Unpermitted surface alteration that has a demonstrable negative impact on protected values, requires planning and effort to remediate in a timely way, and/or does not support the intent and purpose of the easement.
 - iii. Significant incursions into zones identified for heightened protection which has a more than negligible impact on protected values, including natural resources, and/or requiring significant restoration and remediation.
 - iv. Any Technical or Moderate Violation that is repeatedly or frequently perpetrated by the landowner or third-party violator.
 - v. Any violation for which staff are unable to successfully negotiate an appropriate resolution with the landowner or third-party violator.
2. Types of Resolutions. The resolution sought should be in proportion to the severity of the violation. This list is meant to illustrate potential avenues of resolution that may be appropriate in a given violation case.
 - a. Letter of Interpretation (minor or moderate violations). A letter of interpretation may be appropriate where the easement is ambiguous as to the permissibility of a condition, use, or activity or notice requirement and which has not resulted in damage to the Protected Values or promotes the preservation of the Protected Values. This letter should explain staff's interpretation of the Easement as it relates to the current potential violation and whether the condition, use, or activity at issue may continue.
 - b. Letter Requesting Action (minor or moderate violations). A letter requesting action may be appropriate when a landowner has failed to provide required notice to SLC of exercise of a reserved right, sale of the property, or the undertaking of a permitted use requiring prior SLC approval without having sought SLC's approval. This letter should explain what is required by the easement, what staff observed, and what action the landowner must take to avoid the violation being elevated. Staff may create and use a template letter, adding the appropriate information and facts.
 - c. Temporary license (moderate violations). A temporary license may be appropriate where the easement is ambiguous as to the permissibility of the condition, use, or activity in question or where it is prohibited but has not harmed, has only nominally and temporarily



- harm, or has enhanced, the Protected Values, and also when extenuating circumstances (such as age, disability, illness, death, natural disasters, severe economic pressure, legal or regulatory action, etc.) make it desirable for SLC to allow the condition, use, or practice to continue for a set amount of time. The license should describe the condition, use, or activity in detail, explain that it is not consistent with the easement, the duration, any conditions upon which SLC will refrain from elevating the violation, and what will happen when the license expires.
- d. Amendment of Easement. This is a course of action that should only be undertaken when the potential violation has been addressed and an amendment is necessary in order to mitigate or remediate damage to the Protected Values. Any proposed amendment must provide greater protection for Protected Values, align with the intent of the easement grantor, and must qualify for amendment under SLC's easement amendment policies and procedures.
 - e. Petition court for equitable and legal relief (any type of violation). Filing legal action against a landowner or third-party violator in court should be a course of last resort, undertaken only after attempts to negotiate an appropriate resolution have failed.

D. Easement Violation Procedures

1. Document the practice or condition. If observed during a monitoring visit, follow the procedures described in the Conservation Easement Monitoring Policy and Procedures (see below). If information is received from another source, prepare a memo that includes the pertinent data. Contact the landowner and schedule a site visit to establish the validity and nature of the issue. During the visit thoroughly document the potential violation as described in the Monitoring Program Guidelines.
2. Discuss the matter with the landowner. Whether discovered during a monitoring visit or through other means, staff should discuss the potential violation with the landowner to learn more about what has occurred and why. Generally, the initial conversation is not the time to state unequivocally whether a violation has occurred. The most important objective at this time is to acquire information on the extent, purpose, cause, or planned remediation of the potential violation. Staff should document the potential violation and the discussion with the landowner with photos, maps, and written descriptions.



3. Establish whether a violation has occurred
 - a. Stewardship Manager (SM) and Stewardship Associate (SA) review the easement, baseline documentation, staff observations and communications with the landowner, records of previous monitoring visits, and correspondence.
 - b. SM prepares a memo detailing findings and recommendations regarding whether a violation has occurred, the severity of the violation, and potential resolutions. If no violation has occurred, this determination is documented in the stewardship files. If a Technical Violation or Moderate Violation has occurred, SM directs staff on how to pursue resolution, in accordance with this policy and procedure. If SM determines that a Major Violation has occurred, SM forwards the memo and associated documentation to the Executive Director for consideration.
 - c. Executive Director (ED) reviews the memo and any associated information. The ED must concur that a Major Violation has occurred before proceeding.

4. Staff Report and Recommendation to Executive Committee
 - a. For Moderate and Major Violations, when staff has completed its evaluation, including necessary documentation, it will make a written report to the Executive Committee describing the facts of the case, the severity of the suspected violation, and the proposed resolution, if any. A summary of any Moderate Violations should be reported to the Executive Committee annually.
 - b. All proposed resolutions to Major Violations should be brought before the Executive Committee in the form of a staff recommendation.
 - c. Any proposed resolution should address the Easement Violation Principles, and, if compliance with any of those principles is uncertain to any significant degree, staff will provide sufficient information to the committee so that it can gauge the appropriateness of the proposed resolution and any risks to SLC that may be involved.
 - d. After deliberation, the Executive Committee will vote on a proposed course of action for Major Violations. For Major Violations, the Executive Committee will recommended its proposed course of action to the full Board of Directors at its next regularly scheduled meeting.

5. Board Oversight of Resolutions for Major Violations.
 - a. All resolutions proposed for Major Violations should be brought before the Board in the form of a recommendation by the Executive Committee.



- b. Any proposed resolution should address the Easement Violation Principles, and, if compliance with any of those principles is uncertain to any significant degree, staff will provide sufficient information to the Board so that it can gauge the appropriateness of the proposed resolution and any risks to SLC that may be involved.
 - c. After deliberation, the Board will vote on the proposed course of action as recommended by the Executive Committee or may revise the proposal and/or add other terms and conditions.
 - d. In urgent cases where time is of the essence, the Executive Committee Chair and/or ED will request an emergency joint meeting with the Executive Committee where appropriate action can be authorized.
6. Notify Insurers. SM will inform any insurers within 30 days of establishing that a significant violation has occurred unless an earlier deadline is prescribed by the insurance policy. SLC staff will keep insurers updated as to the progress of any negotiations or the hiring of outside legal representation.
7. Send a letter to the landowner detailing the violation
 - a. For Technical Violations, the Stewardship Manager writes a letter to the landowner describing the activity or conditions and how they relate to the easement, what action SLC suggests for resolution of the technical violation, and what steps the landowner needs to take to bring the property or its use back into compliance. This letter is subject to approval by the ED.
 - b. For Moderate Violations, the SM, aided by the ED, writes a letter to the landowner describing the activity or conditions and how they relate to the easement, how it/they violate the easement, and requesting a meeting to discuss potential resolutions. This letter is subject to approval by the ED and the Executive Committee is informed/updated at their next meeting.
 - c. For Major Violations, the ED, aided by staff, writes a letter to the property owner describing the activity or conditions and how they relate to specific provisions of the easement, how it/they violate the easement, and requesting a meeting to resolve the situation. The Chair and Vice Chair of the Executive Committee receives a copy of the letter when it is sent to the landowner and the Executive Committee is informed/updated at their next meeting.



8. Negotiating Resolution of Moderate and Major Violations

- a. ED and other appropriate staff will meet with the landowner and/or third-party violator to discuss the violation and to negotiate a resolution, including what action SLC suggests for restoration or any terms (including duration) upon which the activity or condition will be permitted to continue, and how SLC intends to monitor compliance.
- b. If a plan of remediation has been agreed to by the landowner, ED will write a letter to the landowner describing it and including a schedule for implementation. If a plan of remediation has not been agreed upon, the letter should include a request to meet with the landowner again and provide 2-4 specific dates and times to choose from. If a third party caused the violation, the letter should include a proposal to bring that third party into the discussion.
- c. ED and staff should make it clear that no final resolution can be approved without the recommendation of the Executive Committee and authorization from the Board of Directors.

9. Litigation for Major Violations

- a. When the ED believes that litigation may be necessary, ED and SM will consult with experienced legal counsel and will write a report to the Executive Committee recommending a course of action.
- b. The Executive Committee, by a vote of a majority of Committee members, may recommend the proposed course of action, or reject the proposed course of action and direct staff to continue negotiation with the landowner, or recommend the proposed course of action subject to stated terms and conditions. The Committee will report its recommendation to the Board.
- c. After deliberation, the Board will vote on the proposed course of action as recommended by the Executive Committee or the Board may revise the proposal and/or add other terms and conditions.
- d. When the Board has acted, the ED shall thoroughly document the specific reasons for its action. The ED will communicate to the landowner in writing the Board's decision. The letter will explain that SLC's decision was based on applicable laws and this Easement Violation Policy and that the policy is applied fairly to all violations. SLC will also communicate its decision to the other parties with an interest in the property, as necessary and appropriate.



Attachment A
General Description of Private Benefit and Private Inurement

- I. The IRS places limits on “private inurement” and “private benefit” actions taken by a charitable organization. The organization has a duty to protect its non-profit, charitable tax status by limiting risks associated either of these outcomes.
- a. **Private Inurement**: Private inurement occurs when assets or income from a non-profit organization flow to an ‘insider,’ such as a trustee, staff member, or trusted advisor. The law defines an insider as any person who was "in a position to exercise substantial influence over the affairs of the organization" during the past five years. Insiders include key executives and voting members of the board. For example, if SLC approves a structure on the Openlands of a trustee-owned lot, that action could constitute private inurement.

No private inurement is permissible by law, even incidentally, and may result in loss of the organization’s tax-exempt status.

- b. **Private Benefit**: In contrast, a private benefit occurs when benefits accrue to disinterested persons, i.e., those unrelated to the organization’s insider operations. For example, if SLC licenses a private company to erect a private structure on the Wildlands, and that company is unrelated to any insider but would profit from the use of the building, that raises private benefit concerns.
- II. Whenever a conflict of interest arises, in addition to documenting the nature of the disclosure of the conflict and the board’s proceedings to evaluate the conflict, related party transactions may need to be disclosed in the notes of the corporation’s audited financial statements, and its annual tax filing to the IRS.