



Michigan Department of Natural Resources
POLICY AND PROCEDURE

26.28-01- Stewardship of Conservation Easements
(ISSUED: 08/15/2011)

Supersedes:

None.

Issue/Purpose:

Staff of the DNR is responsible for the administration and stewardship of the conservation easements held by the Department. In order to ensure that the integrity of the conservation easements are upheld and that all requirements are met, the principles that guide conservation easement stewardship within the DNR must be established. This policy and procedure will establish those principles, as well as provide the tools necessary to build strong relationships with landowners to ensure easement compliance.

Definitions:

Local Manager:

FMD – Forest Unit Manager

PRD – Park/Unit Supervisor

WD – Area Wildlife Biologist

Conservation Easement (CE) Administrator:

Staff person identified by each Land Administering Division (LAD) as the individual responsible for implementing and adhering to the principles established by this policy and procedure. This individual is also recognized as the central point of contact for the administration of conservation easements; a resource for LAD staff; and the point of contact for landowner relations.

Grantor:

Landowner who donates or sells a conservation easement to the State of Michigan for conservation purposes or their successor in title.

Office of Legal Services:

Appropriate staff, as assigned, in the Office of Legal Services (OLS).

Monitoring:

The regular, systematic, reliable and well-documented inspection of a protected easement property to detect changes and to ensure the property is being used in accordance with the legal restrictions placed upon it.

Policy:

The Department shall administer Department-owned easements in a manner that protects and enhances the public trust.

Explanation:

The Department will engage in easement stewardship. This includes easement administration; the development and approval of baseline documentation; compliance monitoring of easements; recordkeeping; enforcement and defense of easements; and landowner relations as detailed in the Procedures portion of this document.

Easement administration includes such items as handling routine requests for information or interpretation of easement language, formal requests for approval of activities as specified in an easement, and other activities associated with ensuring compliance with the principles established by this policy and procedure.

The Department will only consider amendments to easements in exceptional situations and when the proposed amendments will serve to benefit the State of Michigan and will strengthen the natural resources protections of the easement. For easements that are purchased, there may be a requirement for approval from the funding source used to purchase the easement prior to executing an amendment.

Requirements:

Baseline Documentation:

Baseline documentation is required for every easement in order to record the condition of the property at the time an easement is granted. This record forms the basis for future monitoring and enforcement of the terms of the easement over time. The baseline document establishes the initial conditions against which the terms of the easement are measured and against which changes to the land (human-caused and natural) are evaluated. Baselines must be developed and approved prior to the closing of the easement. The following are the requirements of the baseline documentation:

1. The baseline documentation must contain the following components:
 - a. General Objective or Purpose Statement of Baseline Document
 - b. Description of the Conservation Values to be Protected
 - c. Maps
 - d. Natural Features
 - e. Constructed Features
 - f. Roads (including granted easements)
 - g. Mineral Development (metallic and nonmetallic)
 - h. Photos and Photo Points
 - i. Exclusion Zones (portions of the property not covered by the easement)
 - j. Legal Description
 - k. Copy of Final Recorded Easement
 - l. Notarized Approval of Grantor & Grantee
 - m. Summary of Grantor's Reserved Rights and/or Prohibitions

2. Maps and photos (with photo points) are required to clearly show the current condition of the property. Photos must be date/time stamped and cannot be edited.
3. The baseline documentation must be developed by the Department or a qualified third party and approved by Department LAD staff prior to the transaction closing.

Detailed suggestions on the components included in this section can be found in the "Conservation Easement Stewardship Guidebook."

Conservation Easement Monitoring:

Regular easement monitoring is essential to ensuring compliance with the terms of an easement. In addition, monitoring also assists in building relationships with the landowners; provides an opportunity for the Department to discover problems or issues with the easement; provides an opportunity to document changes to the property (both natural and human-caused) over time; and is required in order for the Department to enforce and defend the easement. The following are requirements of easement monitoring:

1. At a minimum, the Department will monitor easements every three years. However, there may be circumstances that require annual or more frequent monitoring, such as a funding source requirement or a landowner acting on reserved rights. In those instances, the Department will monitor easements accordingly.
2. Department staff will use standardized forms when monitoring easements.
3. A monitoring plan must be developed for each easement.
4. Post-monitoring reports must be completed after each monitoring visit and submitted to the CE Administrator for recordkeeping.

Additional details and recommendations for monitoring are provided in the "Conservation Easement Stewardship Guidebook."

Recordkeeping:

Conservation easements are perpetual. In order to ensure that the Department can properly enforce and defend the terms of an easement, records must be preserved. All required documents must be retained permanently and stored in a fireproof and flood-proof location, such as the State Archives. Recordkeeping must comply with funding source requirements.

The CE Administrator is responsible for ensuring that all required documents are stored in a manner that adheres to this policy. Detailed information and a list of required documents can be found in the "Conservation Easement Stewardship Guidebook".

Enforcement and Defense:

It is the policy of the Department to enforce and defend violations against easements that are held by the Department on behalf of the State of Michigan.

Landowner Relations:

A strong relationship and solid partnership with the landowner is the best insurance against future easement violations. In order to maintain these good relationships, the Department will:

1. Require an annual landowner meeting in all easements.
2. Provide each landowner with a completed easement packet. This packet will include, at a minimum, a copy of the final easement, the approved baseline documentation, and contact information for the CE Administrator.

Additional details for creating and maintaining good landowner relations are provided in the "Conservation Easement Stewardship Guidebook".

Administering Divisions:

Forest Management, Wildlife, and Parks and Recreation

Procedures:

CONSERVATION EASEMENT ADMINISTRATION	
LAD	<ol style="list-style-type: none"> 1. Will appoint staff person(s) to serve as the central point of contact for each easement. This individual will be responsible for easement administration and will be referred to as the CE Administrator.
CE Administrator	<ol style="list-style-type: none"> 2. Oversee the development of the baseline documentation. <ul style="list-style-type: none"> Review the baseline documentation. Oversee the standardized forms utilized for easement monitoring. Ensure that easement monitoring occurs and process (review and file) monitoring reports. Provide interpretation of the terms of an easement or contact appropriate staff for further interpretation as necessary. Review and obtain approval (from other Department staff, as appropriate) for activities and documents, as required by the easement (forest management plans, for example). Ensure that recordkeeping occurs, as required by this policy and procedure. Serve as the point of contact with the grantor if a violation of easement terms is determined and serve as the point of contact for violations in the event that legal services are required. Work on amendments to easements, as necessary.

BASELINE DOCUMENTATION	
CE Administrator	<p>3. Reviews baseline document to ensure that all required components have been included and policy requirements have been met.</p> <p>4. Submits baseline document to Local Manager for review.</p>
Local Manager	<p>5. Visits or designates staff to visit the property and reviews baseline documentation to ensure accuracy of condition of property.</p> <p>6. Submits recommendation for approval or necessary changes to CE Administrator.</p>
CE Administrator	<p>7. Ensure recommended changes are made, if necessary.</p> <p>8. Submits to OLS for review.</p>
OLS	<p>9. Completes review of baseline documentation to ensure it meets necessary requirements as part of the legal record.</p> <p>10. Submits recommendation to CE Administrator.</p>
CE Administrator	<p>11. Obtains necessary notarized signatures from authorized Department staff and Grantor or Seller.</p> <p>12. Notifies Real Estate Services that baseline documentation has been developed and approved and that transaction can close.</p> <p>13. Reviews baseline documents every ten years to determine if an updated baseline report, photos or maps are necessary due to changes over time.</p>
ENFORCEMENT AND DEFENSE	
Monitoring Staff	<p>14. Reports all violations to the CE Administrator.</p>
CE Administrator	<p>15. Will utilize the "Conservation Easement Stewardship Guidebook" (IC4805) to determine if the violation is a minor or major violation and notify the landowner.</p> <p>16. May resolve minor violations with the landowner by notifying them of the violation via certified letter. The letter will include a specific timeframe for the landowner to rectify the violation to the approval of the Department. Failure to do so will result in the CE Administrator contacting Office of Legal Services for assistance. The CE Administration will contact OLS for assistance with major violations.</p>

Related Reference:

Conservation Easement Stewardship Guidebook, IC4805

Landowner Questionnaire, PR4806

Conservation Easement Monitoring, R4807

26.28-01 - Stewardship of Conservation Easements is hereby approved.



Rodney A. Stokes, Director

8-15-11

Effective Date