



POLICY ON MANAGEMENT AND OVERSIGHT OF CONSERVATION EASEMENTS

Approved by the Board of Directors November 20, 1999

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I. General Statement of Policy

The Geneva Lake Conservancy's ("GLC") mission is the protection of water resources, natural areas and working lands on behalf of the residents of, and visitors to, the Walworth County area. That mission is accomplished through a variety of mechanisms, including conservation easements protecting lands and structures.

The GLC recognizes that stewardship of the lands entrusted to its care is among the most significant of its responsibilities. Failure to monitor and enforce the terms of conservation easements could lead to a loss of the GLC's tax-exempt charitable status, and could erode the public trust in GLC's ability to achieve its mission. It is therefore the intention of the GLC to set forth in the following paragraphs a policy to guide its management and oversight of conservation easements, including requirements for baseline documentation, monitoring and reporting, enforcement and stewardship. In doing so, the GLC recognizes there will always be dealings with landowners in which staff's judgment and discretion are necessary. It is beyond the scope of this policy to anticipate or address every contingency.

II. Baseline Documentation Requirements

The GLC shall compile baseline documentation that records conditions of the property at the time of the easement's acquisition. This shall include an overall record of the property's history, how it was acquired, and other specialized information about the property. The baseline data shall provide evidence of resource values, meet the requirement of the IRS for tax deductible easement gifts, summarize ownership history and note legal encumbrances.

If the easement is a tax deductible gift, and if the donor retains rights to the property that, once exercised, could impair the conservation values of the property, the IRS holds the donor responsible for providing the baseline data. As a practical matter, however, the GLC must collect the necessary information and data in an organized and easily referenced format to manage and enforce the easement.

The GLC has adopted a checklist and procedures (Appendix A) for developing a baseline file for property to be held under easement. The goal is to provide a common reference point for future inspections and a baseline of conditions to demonstrate the existence and extent of any

violations. In reviewing and updating these procedures and for purposes of including it in the Easement Policy Statement, IRS regulations on baseline documentation (see Treas. Reg. 1.170A-14(g)(5), the following information should be considered (volume and specificity of the documentation will vary depending upon the particulars of the easement):

- The condition of all scenic, geologic, land use, vegetation, and other property features to be protected.
- Detailed survey maps and plans, photos, landscape plans, architectural depictions.
- Objective and reproducible data points should be used so that those monitoring the property or documenting violations can repeat the baseline methods in the future.
- The GLC's baseline documentation will also contain, as applicable and appropriate, a coversheet outlining contents of the file; directions to the property; base map; one-page easement summary that includes statement of purpose, list of restrictions, ownership, other information useful in the field; legal information, including recorded easement and other related documents; property owner information in form of a narrative or description with "timeline" summarizing the history of the easement's acquisition and contacts with the owner as background for future staff contacts.
- The IRS requires that, for tax-deductible easements, both the donor and donee must sign a statement referencing the baseline file and acknowledging that it is an accurate representation of the property's condition at the time of its transfer.
- Baseline documentation should be held in a safe place, and the easement recorded as required by state and local law. Copies of all relevant documents should be easily accessible to the GLC for reference in monitoring the easement.

III. Easement Monitoring Requirements

The GLC shall conduct a formal monitoring program for each of its easements in order to:

- Document violations
- Build rapport with the owner
- Save time and money by detecting a violation before it becomes entrenched and the property owner is so committed to an adversarial position that only legal action can resolve the situation
- Provide a record in case corrective action or court-ordered remedy is required
- Satisfy IRS requirements for tax-deductible easements

Inspections shall be conducted on an annual basis, more frequently as conditions peculiar to the site (e.g., construction activity) may require. The person in charge, named by the Executive Committee of the GLC, is responsible for property inspections that are thorough, reliable and accurate, and supported by full and detailed documentation. Monitors must be thoroughly trained in the terms of the easement, key points or areas for inspection, conduct for dealing with property owners, record keeping methods and other pertinent details. Training will be provided by the GLC. Inspections shall be headed by a trained GLC representative, and may

be supported by staff members, volunteers and others with special expertise helpful to the monitoring process.

The property owner shall be notified by certified letter, in order to schedule the visit at a time when the owner can personally accompany the monitoring team. Although some landowners may not consider it important or even necessary, given their relationship with the GLC, it is highly desirable that the legal owner of the property or a designated, knowledgeable agent participates in the inspection, particularly where there is reason to believe a violation has occurred.

If the owner is present, a meeting shall be scheduled prior to the inspection to review the easement, monitoring procedure, and encourage participation in the physical inspection. In the event the owner is not present and the inspection reveals a violation or questionable activity, the GLC shall arrange a meeting with the owner as soon as possible to address and resolve these issues.

The GLC shall utilize a standard inspection form for all easements (Appendix B). The form must document that the property was inspected and whether it was found to be in compliance with the terms of the easement. This form provides the legal documentation to substantiate a regular monitoring program. The form shall include:

- Current property owner name and address
- Location of property
- Method of inspection (personal visit, aerial)
- Whether the property appears to be in compliance
- Name of the inspector, including signature and date
- List of all people accompanying inspector
- Description of any man-made alterations to the property
- Description of any alterations due to natural causes
- Other observations or comments
- List of photos and maps

Monitors shall compare the current property condition with the recorded report of the previous monitoring visit with easement terms, and with the baseline report. Special note, including photographs, of any major changes, such as damage from storms, insect infestation, or other natural occurrences shall be made. A written log shall be maintained, and notes and photos shall also be taken of any manmade improvements, changes or disruptions to the property. If a questionable activity or potential violation exists, the GLC representative shall record full quantitative and descriptive documentation of the situation.

Violations are not often blatant or obvious. Detecting and evaluating a violation often requires interpretation of the easement. While violations may vary in degrees of seriousness, none should be ignored or overlooked. All must be addressed, even minor violations. The following steps shall be taken in documentation and follow-up to a suspected easement violation:

- Photographs, signed and dated by the photographer and keyed to the location on a map, are necessary. Video and recording with verbal commentary may be included.
- The affected resource or activity should be measured. For example: if trees are cut in a restricted area, stumps should be counted and photographed and their diameters measured; if there have been major land disturbances, such as bulldozing or excavation, the locations should be mapped, photographed and measured.
- A thorough report of the inspection that includes the easement inspection form, labeled photos and other documentation is required. All notes and photos are to be signed, dated and added to the easement file. All questionable activities, potential violations, and amendment requests must be included in the inspection file.
- The violation should be discussed with the owner immediately. If it is discovered without the owner present, a meeting should be requested as soon as possible. A face-to-face meeting with the owner to view the violation, review easement restrictions, and discuss remediation is the most effective way to encourage a corrective response. If the violation is serious, the GLC representative who meets with the owner should be briefed by an attorney on proper procedures, conduct, correspondence and other communications to assure that the GLC's legal interests are protected.
- The owner shall be sent a letter confirming inspection of property. Monitoring reports or a summary statement may be filed with the recorded easement in order to ensure a public record that the GLC has diligently exercised its fiduciary responsibility in monitoring and managing the easement.

IV. Easement Violation Enforcement Procedures

Strong enforcement engenders public confidence in the GLC and its easement program. Addressing violations proves to the owner and the public that the GLC stands by its easements. Strong enforcement measures discourage future violations and build a reputation of trust and confidence.

A permissive attitude toward enforcement could jeopardize the GLC's ability to enforce easements and its legal status as a tax-exempt, charitable organization. Delayed enforcement could be interpreted as a waiver of the GLC's right to enforce. Failure to enforce could also threaten the GLC's capacity to accept tax deductible easement gifts, as well as its tax-exempt status. Treasury regulations specify that to be eligible to receive tax-deductible easement donations, an organization must "have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions." (See Treas. Reg. #1.170A-14[c] [1].) The GLC's Section 501[c][3] status could also be challenged if it were shown that the organization relinquished enforcement rights to the benefit of private individuals.

Violations may be relatively insignificant (minor tree cutting, dumping of trash), or major (construction, excavation, pollution, timbering). Regardless, each must be dealt with in a manner appropriate to its severity. Failure to follow-up on even the most menial of violations sends a signal to the property owner that the GLC does not fulfill its stewardship responsibilities, and may encourage more egregious behavior.

As a general policy, legal remedies for violations will be spelled out in the easement. The process for curing a violation without resort to legal action is, however, equally important, as staying out of court is always a desirable outcome, conserving monetary enforcement resources and better ensuring a continuing positive relationship with the property owner. The negotiation process in pursuing a voluntary resolution to the violation should be carefully monitored and recorded in the event that it breaks down. A written record is essential.

It is important to impress upon the landowner the GLC's willingness to address any questions or concerns regarding the easement's applicability to the property, and to personally meet to discuss any related issue. It should be made clear that the GLC expects to be consulted on any matter that may affect the easement. This, too, is a valuable procedure to employ in heading off the possibility of an inadvertent easement violation. Consultation time invested upfront may well head off the need for enforcement action later on. In providing interpretive assistance to the landowner:

- Advice should be documented
- If there is any question regarding possible conflict with the easement, consultation with the Board of Directors, outside counsel and the easement grantor, as appropriate, must occur
- It is not the GLC's responsibility to suggest amendment of the easement; easements should be amended in only the most extraordinary circumstances, and in accordance with the GLC's policies and procedures

- If the landowner suggests the possibility of easement amendment, it is appropriate to review the amendment policy with the landowner and advise of the possible outcome should an amendment be requested
- Where advice on a possible amendment request is sought, it must be clear that any final decision will be made by the Board of Directors in accordance with the GLC's policies and procedures

Following the steps necessary to document the violation and the preliminary owner contact, the process of responding to and correcting a violation is as outlined below:

- Evaluate the violation and required corrections (reparations for destruction of irreplaceable conservation values may require professional assistance in determining adequate value).
- Contact the property owner by telephone, explaining the problem, the easement corrective requirements and the GLC policy. Request the appropriate corrective action (replacement and/or cessation of the activity), and state the deadline for compliance (generally found in the easement).
- Follow-up the telephone call with a letter. Reiterate the explanations and request made by telephone, offer compliance assistance and state the need for a follow-on compliance inspection.
- Inspect the property by the deadline date, and document findings.
- If compliance is complete, send a thank you letter to the owner.
- If the violation remains in noncompliance, send a second letter by certified mail, return receipt requested. State the fact of noncompliance, cite the interests of the GLC in seeing that timely correction be made, restate the required corrections, and establish a shorter deadline for compliance.
- Re-inspect the property by the second deadline, and document findings.
- If compliance is complete, send a thank you letter to the owner.
- If noncompliance continues, determine a new response and send a third letter. Notify the owner of pending legal action, per the terms of the easement, if immediate compliance is not achieved.
- Initiate legal remedies specified in the easement.

V. Second Generation Landowners of Conservation Easement Property

Communications with second generation owners of property held under easement by the GLC presents opportunity for expanding the public awareness of the GLC and its mission, but also may present challenges in that the new property owner may not be as zealous in protecting the property as was the original easement grantor. Although the easement document generally specifies that the GLC is to be notified upon sale of the property, the GLC must be vigilant in tracking property ownership changes.

When property held under easement changes hands, the GLC shall pursue extensive introductory and follow up meetings with the new owner to review and explain the purpose of the easement, the existing documentation, the role of the GLC and procedures to be followed for monitoring and enforcing the easement. As soon as the GLC is aware of the transfer of the property, a meeting with the new owner should be held for the purpose of reviewing and explaining:

- The GLC, its mission and the role that conservation easements play
- The easement itself--conditions, requirements and limitations
- The GLC's legal right to inspect the property
- Monitoring procedures
- Baseline documentation
- Policy for dealing with easement violations
- Amendment policy

VI. Stewardship

GLC undertakes and is required to maintain and defend conservation easements accepted by it, by monitoring and enforcement of policies and procedures of the Land Trust Accreditation Commission and of its own.

Effective conduct of GLC's affairs warrants the building of and maintenance of productive relationships with the owners of properties on which easements have been accepted by GLC. Effective stewardship can be expected to create public trust and confidence, that GLC is capable of fulfilling its mission and its undertakings. Effective stewardship requires financial planning and sufficient funds for Easement Maintenance and for Easement Defense.

A. Stewardship Funds

Lack of financial planning for financial stewardship leads to failure to monitor and enforce, loss of easement conservation values, loss of public confidence in conservation easements and in GLC's ability to manage and protect the integrity of property held under easement.

As a general rule, stewardship funds shall be adequate to fund two types of activities:

- (1) Monitoring of compliance with the terms of outstanding easements; and
- (2) Enforcement of the terms of easements, to correct violations, including legal action.

A goal required for Land Trust Accreditation is the creation and maintenance of two funds by GLC, one for the monitoring of easements accepted by it, known as GLC's Easement Maintenance Fund, and one for the enforcement of the terms of easements accepted by it, known as GLC's Easement Legal Defense Fund, each having sufficient resources that the fund will be adequate to accomplish its purposes, set forth above. Each fund is intended to assure that the Easement Stewardship undertakings of GLC will continue into perpetuity.

Typically, the primary sources for stewardship funds are the grantors of easements, often in the form of contributions to GLC of an appropriate amount, based upon the GLC's assessment of the amount needed to assure adequate funding for the purposes of the easement offered to GLC and the property owner's willingness and ability to contribute. The Board of Directors of GLC, on the advice of its Finance, Budget & Audit Committee has determined that, in the aggregate, the minimum amounts required, for these reserves, for LTA accreditation, are not adequate and substantial amounts in both reserves, in addition to those requirements are warranted. Not less frequently than one per year, GLC intends to review the adequacy of those reserves. Upon a recommendation from the Land Protection Committee, While GLC's own minimums may be reduced or waived, in the cause of public service or other charitable goals, expressly authorized by GLC's Board of Directors; however, the LTAC minimum requirements may not be waived, and, if not contributed by or on behalf of the easement grantor, the funding thereof must be obtained by GLC from another funding source or by an irrevocable allocation from its own general net revenues.

B. Investment of Stewardship Funds

Stewardship Funds shall be invested in a manner that can reasonably be expect to protect value of the principal, after an allowance for inflation, and earn reasonable income, taking into account the timing of reasonably likely disbursements, allowing for the risk of inflation of the costs thereof. The custody of these Funds and the investment strategy therefor has been delegated by GLC, based on recommendations from its Land Protection Committee and its Finance, Budget and Audit Committee.

Appendix A

CONSERVATION EASEMENT POLICY

Geneva Lake Conservancy, Inc.

Baseline Documentation Form

GLC Project Number: _____ *Project Name:* _____

Property Information

Owners:

Original Easement Grantor:

Current Owner (attach contact information):

Geneva Lake Conservancy Board / Staff Contact(s):

Location:

Fire #:

Road:

Town:

County: Walworth State: Wisconsin

Directions to Property: From Fontana,

Easement Information Recorded At Walworth County Register Of Deeds:

Volume: _____

Document: _____

Pages: _____

Date: _____

Survey Map: _____

Date of Survey Map: _____

Document No. of Survey: _____

Legal Description of Property:

Total Acreage:

Approximate Acreage By Land Type:

- Woodland:
- Wetland:
- Buildings & Grounds:
- Other: (describe)

Restrictions and Reserved Rights

Restrictions:

Landowner Reserved Rights or Special Conditions:

Land

Zoning:

Physical Characteristics:

Environmental Significance / Valuable Natural Features:

Current Land Use:

Improvements / Structures:

Adjacent Land Uses / Compatibility:

Public Access:

Visible Easements:

Boundary Markers:

Safety Hazards:

Environmental Hazards:

Resource Information

Water Resources:

Natural Habitat:

Agriculture:

Other Open Space:

Aesthetic / Cultural / Historic Features:

Designation on County Land Use Plans:

Maps, Drawings, Aerial Photography:

Maps

Road map with property marked

Plat book map with property boundaries marked, township/section lines

Section Map

Map of buildings and structures with all existing roads, trails and paths

Property survey

Land Use Plan for Walworth County

Environmental corridor map

USGS topographical map with property boundaries marked

Soils map with property boundaries marked

Detailed site map with Photo Point Key of Property

Photos

___ On-site photographs signed and dated

___ Aerial photograph

Report Preparation

6.0 Preparer of This Report:

6.1 Reviewed by: _____, GLC Attorney

Date of Preparation:

CONTACT INFORMATION

Subject Grant of Conservation Easement

Property/Project _____

Property Address _____

Name _____

Address _____

Telephone Work _____

Home _____

Cell _____

Other _____

Fax _____

Email _____

Agent _____

Notes _____

GRANT OF CONSERVATION EASEMENT
Granting Entity:
To
Geneva Lake Conservancy, Inc.

ACKNOWLEDGMENT OF BASELINE DOCUMENTATION
AND PROPERTY CONDITION

This report constitutes the Baseline Documentation referred to in the Grant of Conservation Easement from _____ to Geneva Lake Conservancy, Inc., dated _____ and recorded in the office of the Walworth County Register of Deeds on _____ Volume Number _____ pages _____.

The report consists of _____ pages of text and includes _____ maps and _____ photographs and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of the Grant.

In compliance with Treasury Regulation Section 1.170A-14(g)(5)(i), the undersigned accept and acknowledge that this Baseline Documentation report accurately describes the conditions of the Property subject to the referenced Grant of Conservation Easement at the time of the Grant which may be used as an objective, though nonexclusive, information baseline for determining compliance with said Grant.

For Grantor: _____
Signature of Grantor

Printed Name

Date: _____

Certification of Notary Public

Signature of Notary Public Seal

Seal My Commission expires: _____

Subscribed and sworn before me this _____ day of _____, 20__.

Signature of Grantee

Printed Name

Title

Date: _____

Certification of Notary Public

Signature of Notary Public

Seal

My Commission expires: _____

Subscribed and sworn before me this ____ day of _____, 20__.

CONSERVATION EASEMENT POLICY

Geneva Lake Conservancy, Inc.



Conservation Easement Inspection Report

1. Date (Year): _____
2. Name of Property: _____
3. Location (Address, city or town, county): _____

4. Day and date area inspected: _____
5. Size in acres: _____
6. Date conservation easement acquired (month and year recorded): _____

7. Name and address of owner at that time: _____

8. Name and address of present owner (if different from original donor): _____

9. Length of time in present ownership: _____
10. Names of members of inspection team: _____

11. Did the owner of the land accompany you on the inspection? If not, give the name and address of his/her authorized representative or identify permission giver (whether by letter, telephone, or personally): _____

12. Are the terms of the conservation easement being observed? Describe details of your inspection: _____

13. Did you note any possible violations of the terms of the conservation easement? Be as specific as you can: _____

14. Describe acts or uses permitted by the terms of the easement that have taken place since the last inspection: _____

15. Number and description of photographs accompanying this report. Be sure to identify each photograph: _____

16. Time spent on property: _____

17. Present use of property: _____

18. Uses of surrounding properties: _____

19. Additional Remarks (particularly as to present condition of property): _____

20. Managers name: _____

21. Signature (date): _____