

THE PRAIRIE ENTHUSIASTS

CONSERVATION EASEMENT AND FEE SIMPLE STEWARDSHIP GUIDELINES, POLICIES AND PROCEDURES

POLICY

The Prairie Enthusiasts (TPE) is a private organization committed to the protection and management of native prairie and savanna of the Upper Midwest. As part of its mission, TPE has chosen to carry out conservation easements as well as the perpetual conservation easement stewardship obligations including monitoring, baseline documentation, and enforcement. The Prairie Enthusiasts is a corporate organization (hereinafter known as “The Prairie Enthusiasts” or “TPE”). Chapters are working groups that carry out the organization's activities within geographic regions within TPE's larger service area. This policy shall set forth the procedures by which The Prairie Enthusiasts shall coordinate and designate responsibilities to successfully conduct conservation easement and fee simple stewardship activities.

PROCEDURES

A. Baseline Documentation

1. Scope.

This establishes the procedure for the collection, compilation, and storage of baseline documentation for both conservation easements and properties owned by The Prairie Enthusiasts.

2. Purposes.

The Prairie Enthusiasts must have baseline documentation for all properties it protects. This information establishes the condition of a property at the time of acquisition, allowing comparisons with findings during subsequent monitoring events. Such information is also required by the IRS for landowners seeking a federal income tax deduction for conservation easement donations. In most cases, The Prairie Enthusiasts will collect this information for the conservation easement donor. Baseline documentation is important in defending conservation properties from threats, including conservation easement violations. The baseline documentation may be relied upon during litigation to establish the condition of a property prior to a conservation easement violation. The Prairie Enthusiasts will collect and store all baseline documentation for both conservation easements and The Prairie Enthusiasts-owned properties in a manner that maximizes effectiveness for enforcement purposes.

3. Designation of Responsibilities.

Baseline data collection and documentation may be conducted by staff, trained volunteers, or paid contractors representing the local Chapter of the region in which the respective property is located. All data collection and documentation conducted by the Chapter shall be in close coordination with and under the direct supervision of TPE Land Protection Committee. The Land Protection Committee may assign a staff person or volunteer to act as coordinator of administrative activities.

4. Baseline Data Collection.

The volume and specificity of the information included in the baseline documentation report may vary depending on the terms of the easement and the conservation objectives for the property. Baseline data will be collected by staff, trained volunteers, or paid contractors. Baseline data collected during a site visit will generally include:

- a. Flora and fauna lists, including rare species, within general natural communities (upland, floodplain, etc.);

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- b. Boundary photos, photos of special features and photos of structures and other improvements;
 - c. GPS data and locations on map of each photo, special feature, structure and other improvement.
- Other baseline data collected for the report will generally include:

- a. USGS topographic map
- b. Soils map
- c. Land use map (showing locations of structures, agriculture, natural areas, roads, etc.)
- d. Plat map
- e. Aerial photographic
- f. Detailed description of the property outlining the landscape, biological composition, historical or cultural features being protected, location and description of all built structures, access roads, current land use, historical land use and restrictions on future land use.
- g. Photos with a photo point location map and descriptive captions indicating subject of photograph as well as compass direction of photograph.
- h. Management issues that warrant future consideration.

5. Baseline Data Compilation and Storage.

Baseline data will be compiled using archival materials. The original copy of the baseline data will be stored offsite at a centrally designated storage facility, and a working copy will be kept with the designated local Chapter and in The Prairie Enthusiasts main office. A copy may also be provided to landowners. Baseline documentation will be reviewed by the landowner. Landowners will certify review of the baseline documentation by signing a designated signature page and initialing all other pages.

C. Enforcement of Terms and Restrictions of Conservation Easements

1. Scope.

This establishes monitoring frequency, acceptable methods to monitor conservation easements, who should conduct the inspection and the protocol to conduct a conservation easement inspection.

2. Purposes.

Federal regulations and grant management contracts require that conservation easements be monitored at least annually. Monitoring inspections are an effective measure to observe current and prevent future easement violations. Informal inspections, such as drive-by monitoring where appropriate, may be conducted more frequently. Conservation easements with greater potential for violations demand an inspection schedule with greater vigilance. Easements whose terms have the following characteristics are among those which could require more frequent monitoring:

- a. Unusually restrictive easements — these easements should be examined often so that violations can be detected early enough to avoid significant damage.
- b. Easements with allowed development — monitoring should occur more frequently during construction.
- c. Easements in heavily used areas — adjacent land use may affect the number of potential violations.
- d. Small easements or those with many abutters — trespass and encroachment – are common problems with these kinds of easements.
- e. Easements with public access — particularly in cases where The Prairie Enthusiasts has accepted maintenance responsibilities, easements with public access require more frequent monitoring for vandalism or improper use.

3. Monitoring Methods

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- a. Ground monitoring is most successful when the easement is small enough to be covered on foot and when the restrictions require close visual inspection (e.g., overgrazing).
- b. Boat monitoring may be appropriate for inspecting shoreline and riparian easements. Ground or aerial monitoring would also be required if the easement extends inland.
- c. Aerial monitoring is potentially cost-effective when there is a very large, remote easement or when there are several easements in a concentrated area.

4. Designation of Responsibilities.

The Prairie Enthusiasts' require annual monitoring of land protected by conservation easement. Monitoring may be conducted by staff, paid monitoring contractors or trained volunteers representing the local Chapter of the region in which the respective property is located. All monitoring conducted by the Chapter shall be in close coordination with and under the direct supervision of TPE Land Protection Committee. The Land Protection Committee may assign a staff person or volunteer to act as coordinator of administrative activities.

5. Volunteer Monitoring Program.

The Prairie Enthusiasts may establish a program to train and coordinate Volunteer Monitors to conduct conservation easement monitoring and reporting for The Prairie Enthusiasts protected lands. Volunteer Monitors may be asked to accept responsibility for one or more properties for a minimum of three years. Responsibilities include a minimum of annual monitoring and careful documentation of activities. The Prairie Enthusiasts shall provide volunteers with training (in the form of workshops, mentoring, refresher courses, and/or easement monitoring manual) and shall provide certification verifying completion of the training program. The Prairie Enthusiasts shall provide Volunteer Monitors with detailed information about their assigned property including maps, baseline documentation report, and previous monitoring reports.

6. Procedures

- a. Monitoring visits will be documented and the data resulting from these visits archived to build a record for future monitoring and to document violations in the event The Prairie Enthusiasts must defend its interest through litigation.
- b. The landowner will be notified in advance to schedule the monitoring visit.
- c. The monitor should complete a TPE Easement Monitoring Form.
- d. Photographs are an essential component of the annual monitoring package. The following establishes the policies regarding photographs:
 - A monitor can use a digital camera or a camera that requires film. If a monitor uses a camera that requires film, the monitor will need to 1) provide one copy of each photograph and 2) have the film processor provide the photos on a CD or other digital storage media. If a monitor uses a digital camera, the monitor will need to 1) provide the photographs at resolutions ranging approximately from 500KB-1MB and 2) provide an electronic document file (in .doc or .pdf format) with photos placed on the page for printing with the following information: property name, date of monitoring event, associated photo point (when applicable), and a description of the photograph.
 - Photographs may be taken at points established by the baseline survey to document changes or current conditions. Photographs do not need to be taken at every photo point on every monitoring visit;
 - Monitors should use photographs only to document management issues directly related to the terms of the conservation easement including but not limited to invasive species, trespass (equestrian, ATV, hunting, dumping, etc.), flora and/or fauna not included in the baseline survey or significant changes in adjacent land use;

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- Photographs should be taken when a monitor suspects a potential easement violation, third party encroachment(s), condition(s) that could be considered a threat to the conservation values, or potential safety hazards;
 - The Prairie Enthusiasts will use archival quality material to print and store photographs.
- e. Inspect significant natural and historical/cultural features, inspect structures and other improvements, update species list and report new findings of rare species to The Prairie Enthusiasts staff.
 - f. The monitor shall replace missing or damaged boundary/preserve signs, if needed.
 - g. Store the documentation. All monitoring records will be kept in a secure location. The original copy will be stored off site at a centrally designated storage facility, and a working copy will be kept with the local Chapter and in The Prairie Enthusiasts main office.
 - h. Following monitoring, The Prairie Enthusiasts will send correspondence to the landowner indicating that monitoring has taken place. The monitoring report is an internal document and need not be sent to the landowner.
 - i. The Prairie Enthusiasts staff will archive any type of communication (written or verbal) regarding the monitoring visit with the landowner.

7. New Owners of Conserved Land.

Most violations of the terms of conservation easements occur after the land has changed hands and is held by new owners. It is important that The Prairie Enthusiasts build and maintain relationships with these new landowners. When The Prairie Enthusiasts learns that a conservation easement property has been acquired by new landowners, the local Chapter will attempt to schedule a meeting to introduce The Prairie Enthusiasts and to review the terms of the easement. The landowner will be provided with a copy of the conservation easement document and a copy of the baseline documentation via certified mail.

D. Conservation Easement Violations

1. Scope. This establishes the procedure The Prairie Enthusiasts shall follow in the event of an easement violation and the assessment of the appropriate enforcement action.

2. Purposes. The Prairie Enthusiasts is legally obligated to enforce the terms of its conservation easements. In addition to protecting the conservation values of the land, enforcement is necessary to generate public confidence in The Prairie Enthusiasts' mission to conserve land, to uphold the organization's legal authority to enforce the terms of its conservation easements, and to maintain the ability to accept future donations of easements and its tax-exempt status. The Prairie Enthusiasts' failure to enforce the terms of its conservation easements could jeopardize its 501(c)(3) status if it were shown that The Prairie Enthusiasts relinquished its enforcement rights to benefit private individuals. The Prairie Enthusiasts may discover a violation on a monitoring visit, through a neighbor or other interested party, or during informal observation. It is important to note that a violation may have been caused by the landowner, an adjacent property owner or a trespasser. The Prairie Enthusiasts' first response must be twofold: thoroughly document the violation, and contact the landowner to discuss and understand the situation. The Prairie Enthusiasts' response to a violation should match the severity of the violation. Minor infractions (i.e., roadside trash, minor tree cutting) may not warrant a written acknowledgement but should be well documented and continually monitored. Minor infractions may need to be formally addressed if such actions continue or escalate. Severe infractions (e.g. construction, excavation, timber harvest) require a formal response.

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3. Procedures for Enforcement

- a. After discovering the potential violation, the Chapter shall review the terms of the conservation easement document. If the Chapter believes the action to be a violation of the easement's terms or if it is unclear whether the action is a violation, the Chapter shall immediately notify the Chair of the Land Protection Committee. If necessary, the Chapter may choose to speak with the landowner in order to gather information regarding the incident.
- b. The Chapter shall immediately generate a written report documenting the violation with photographs, measurements of damage to the affected resource, maps, signed and dated field notes, and explicit comparison with the baseline data. A thorough and detailed report is essential if The Prairie Enthusiasts pursue legal action. The violation should be documented for an audience that is unfamiliar with the property. The Chapter shall immediately submit the written report to the Land Protection Committee for review.
- c. Evaluation and formulation of remedies will be directed by the Land Protection Committee or an assign of the Committee. If the violation is ongoing and response time is of the essence, the Chair of the Land Protection Committee shall evaluate the violation and formulate a plan for remedy.
- d. In order to reduce the propensity for miscommunication, the Chair of the Land Protection Committee may choose to designate a lead person (a TPE staff member, a local Chapter representative, a board member, etc.) to act as the sole communicator with the landowner in all matters regarding the violation.
- e. The Prairie Enthusiasts shall contact the landowner by telephone or by personal visit, explain the situation and The Prairie Enthusiasts' policy on easement violations, request correction of the violation, replacement and/or cessation of the activity, and set a deadline for compliance.
- f. The Prairie Enthusiasts shall follow up the telephone call with a letter reiterating the telephone conversation, the details of the violation, the agreed upon resolution, the deadline for compliance and the need for a follow-up site visit. The Prairie Enthusiasts will send the correspondence via certified mail and shall copy the respective Chapter President on such correspondence.
- g. A designated agent of The Prairie Enthusiasts shall conduct a site visit of the property on deadline date to determine compliance. A written report shall be generated summarizing the findings of the site visit. The report shall function as an internal document to be included in the property file and need not be shared with the landowner.
- h. If the matter ends with prompt compliance, The Prairie Enthusiasts staff shall send a written acknowledgement of compliance to the landowner and shall copy the respective Chapter President on such correspondence.
- i. If the landowner does not comply by the established date, The Prairie Enthusiasts shall send a second letter restating the required corrections and establishing a second deadline date. A copy of the letter will be sent to The Prairie Enthusiasts' attorney and the respective Chapter President.
- j. A designated agent of The Prairie Enthusiasts shall conduct a site visit of the property on the second deadline date to determine compliance. A second written report shall be generated summarizing the findings of the site visit. The report shall function as an internal document to be included in the property file and need not be shared with the landowner.
- k. If the landowner complies with the required corrections, The Prairie Enthusiasts will send a written acknowledgement to the landowner of compliance and shall copy the respective Chapter President on such correspondence.
- l. If the landowner does not comply by the second deadline date, the Land Protection Committee shall re-evaluate the situation. The Committee has the option to recommend to the board that The Prairie Enthusiasts

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Enthusiasts pursue enforcement through formal legal channels (i.e., arbitration/mediation, litigation). Judicial proceedings should be viewed as a last resort. If a violation requires court action, The Prairie Enthusiasts should:

- be certain there are adequate funds to cover legal expenses;
- retain and prepare appropriate legal counsel;
- actively participate in the formulation of the case;
- use The Prairie Enthusiasts' documentation of the violation, baseline and monitoring documentation, and experience on the property to its fullest advantage.

m. There may be occasions when actions (i.e., unauthorized timber harvest, construction, etc.) by a landowner or third party can or will result in a serious threat to the conservation values of the property. To protect the conservation values in such cases, the action(s) must be stopped immediately. If an attempt to rectify the situation by working with the landowner or responsible party is unsuccessful, The Prairie Enthusiasts will use the following protocol for such situations:

- The Prairie Enthusiasts will ensure the action is in fact a violation of the conservation easement;
- notify The Prairie Enthusiasts President, the Chapter President, and the chair of the Land Protection Committee;
- The President should seek the approval of the Executive Committee for an immediate response in the form of an injunction;
- execute injunction process and attempt to re-establish productive communication with the landowner or responsible party.

E. Monitoring and Defense of The Prairie Enthusiasts-Owned Properties

1. Scope. This establishes the procedure The Prairie Enthusiasts will follow in monitoring and defending properties to which it holds title.

2. Purposes. The Prairie Enthusiasts will monitor properties owned in fee for the same reasons conservation easements are monitored – to prevent damage to conservation values, encroachment, trespassing, and other negative impacts to the property. The lack of a resident monitor or landowner can present challenges in detecting and defending against negative impacts to the property, so frequent and regular monitoring can be particularly important. Defense of threats to property owned in fee by The Prairie Enthusiasts will be as vigorous as threats to conservation easements.

3. Monitoring and Enforcement Activities. Monitoring and enforcement activities for The Prairie Enthusiasts-owned properties will follow the same guidelines established for conservation easements. Defense of threats to property owned in fee by The Prairie Enthusiasts will follow the same guidelines established for conservation easements. However, defense of a property owned by The Prairie Enthusiasts will generally involve negotiation, cooperation or litigation with a neighboring landowner or trespasser. Thus, communication with neighboring landowners during monitoring visits will continue to be an important component in avoiding potential threats to the property. Properties that have a state or federal conservation easement (i.e., FRPP) or grant management contract (i.e., Knowles-Nelson Stewardship Fund) may be subject to terms dictated by the State or other third party.

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