

CALIFORNIA TAHOE CONSERVANCY

INITIAL STATEMENT OF REASONS

Title 14, Division 5.3 of the California Code of Regulations

Subject: Regulations on the Use of Conservancy Land

INTRODUCTION

The California Tahoe Conservancy (Conservancy) is an independent agency within the California Natural Resources Agency, established in its present form in 1984 (Chapter 1239, Statutes of 1984). The Conservancy's jurisdiction spans the California side of the Lake Tahoe Basin (Basin) and covers approximately 236 square miles. (Gov. Code § 66905.5.) Its mission is to lead California's efforts to restore and enhance the extraordinary natural and recreational resources of the Basin.

The Conservancy has the authority to acquire, hold, and manage real property on behalf of the State for the purposes of "protecting the natural environment, providing public access or public recreational facilities, preserving wildlife habitat areas, or providing access to or management of acquired lands." (Gov. Code § 66907.) During the Conservancy's first dozen years (1985-1996), it devoted extraordinary energy and resources to acquiring environmentally sensitive lands for water quality, wildlife, and recreation. It acquired thousands of undeveloped lots from willing sellers, most of which are less than one quarter-acre in size. As the agency responsible for these state lands, the Conservancy "shall take whatever actions are reasonably necessary and incidental to the management of the lands and facilities under its ownership or control" (Gov. Code § 66907.9) and may "adopt and enforce regulations governing the use of those lands and facilities" (Gov. Code § 66907.9(a)).

PROBLEM STATEMENT

The Conservancy today owns and manages approximately 4,700 properties, totaling approximately 6,500 acres, on the California side of the Basin. Many of these are small parcels scattered throughout urban areas. Staff inspects each parcel once every two years to monitor forest health, identify maintenance needs, and guard against encroachments. The Conservancy also manages approximately 15 properties with public access and recreational amenities, including Eagle Rock, Tahoe Pines, and the portion of Van Sickle Bi-State Park that is within California. The Conservancy must operate and maintain these facilities to ensure public safety and health.

As the population of and visitation to the Basin increase, so does the potential for conflict between conservation uses and residential or recreational uses. In addition, as described in the Conservancy's *Integrated Vulnerability Assessment of Climate Change in the Lake Tahoe Basin*, climate change is amplifying existing stressors on the Basin's natural resources, infrastructure, and communities.

The problem is that to date, the Conservancy has not adopted regulations to facilitate more efficient and effective management of its properties. For example, the Conservancy currently lacks specific procedures to close its lands to public use when there is a risk to public health, safety, or natural or cultural resources. In contrast, public land closures are a tool regularly used by other public land managers during emergencies or unexpected situations. When there are dangerous natural phenomena, risks to public health and safety, resources, wildlife, or habitat, construction or restoration activities, or a declared state

of emergency, it may be important for the Conservancy to limit the interaction between the public and the aforementioned situations. This restriction of public access is in the interest of protecting both public health and safety and the natural environment.

Additionally, there is an existing issue with vehicle parking on Conservancy properties, both for extended periods of time in developed parking areas as well as on undeveloped lands which are not suitable for parking. Vehicle parking on unimproved parcels results in adverse impacts to environmentally sensitive land and species, could mislead the public as to the ownership of Conservancy land, and interferes with the Conservancy's ability to carry out its land management responsibilities. In the case of developed parking areas, the Conservancy has observed and received reports of vehicles parked on Conservancy land overnight and for multiple days or weeks at a time. In winter months, for example, individuals will park in Conservancy parking lots to take advantage of the regular plowing. This presents a problem when there is not sufficient parking for members of the public who want to utilize the Conservancy properties for recreation. Vehicles that are parked long-term reduce available parking and undermine the Conservancy's ability to provide public access to trails, picnic areas, day use areas, and other recreation resources.

Management challenges have also arisen related to nighttime use of the Conservancy's recreational sites. After sunset there is minimal to no lighting on Conservancy properties, significantly less public use, and no staff present to assist in responding to an emergency. Public use of recreation sites when it is dark is potentially dangerous and could result in injuries. In addition, the Conservancy has received reports of illegal campfires, illegal dumping, vandalism and facility damage, wildlife disturbance, resource damage, and other issues occurring during nighttime hours that pose a risk to state property.

Finally, since the early 1990s, the Conservancy has used vegetation management on its lands to achieve multiple benefits, including to maintain forest health, conserve biodiversity, reduce wildfire risk, and protect public safety. To date, the Conservancy has completed at least one hazardous fuels reduction treatment on each of its neighborhood lots. Additionally, at its larger properties adjacent to neighborhoods—for example, the 500-acre Upper Truckee Marsh on the south shore of Lake Tahoe—the Conservancy has completed strategic vegetation and hazardous fuel treatments. The Conservancy will continue to treat fuels on its properties on a regular rotation. However, there have been multiple incidents where the owner of a neighboring property or their agent cut down trees or vegetation on Conservancy land without the Conservancy's knowledge or permission, in such a way that undermined the Conservancy's management objectives for the property.

While the Conservancy may rely on existing state statutes and local ordinances to address certain management issues that arise on Conservancy land, those are not always adequate to protect public health, safety, habitat, or natural resources. The proposed regulations will allow the Conservancy to better fulfill its responsibilities as a public land manager.

OVERALL PURPOSE, ANTICIPATED BENEFITS, AND EFFECT

The purpose of this proposal is to give the Conservancy additional tools to carry out its goals of maintaining a balance between the region's natural endowment and its manmade environment, protecting the natural environment, and preserving the scenic beauty and recreational opportunities of the region.

The proposal will improve the Conservancy's ability to manage its lands and facilities by clarifying procedures for temporary closures and imposing reasonable parking restrictions and hours of use, while still maintaining reasonable and equitable public access to state-owned lands.

The anticipated benefits of the proposed regulations include minimizing risks to public health and safety and protecting state facilities and natural and cultural resources. The overall benefits to state property and to the public outweigh minor limitations on public access and are consistent with the Conservancy's responsibility as a steward of public land.

SPECIFIC PURPOSE AND REASONABLE NECESSITY FOR EACH PROPOSED REGULATION

Amend Article 1, § 12052 (Definitions)

Currently, 14 CCR § 12052 only defines the term "Executive Officer." The purpose of the proposed amendments to § 12052 are to clarify that the definitions set forth in Title 7.42 of the Government Code are applicable to the Conservancy's regulations, and to add new definitions for the terms "Conservancy land," "designated parking area," "person," "recreation site," and "vehicle," which are used in the proposed regulations. Defining these terms is necessary for full comprehension of the proposed regulations and to meet the clarity standard in the Administrative Procedure Act.

Add Article 6, § 12130 (Temporary Closures of Conservancy Land)

The purpose of § 12130(a) is to give the Executive Officer of the Conservancy the authority to close Conservancy land to public entry when it is necessary to alleviate or minimize risk to public health and safety, and/or to protect habitat, wildlife, or natural or cultural resources. Potential reasons for such closure are enumerated in the proposed regulation and include: (i) natural phenomena such as "fire, mudslide, landslide, flood, erosion" that pose a substantial risk, (ii) federal, state, or local disaster or emergency declarations made by any authorized person or agency, (iii) the undertaking or "resource management, restoration, maintenance, or construction activities" that pose a potential risk, (iv) "to prevent or reduce environmental disturbance or damage", or (v) "to protect habitat, wildlife, or other natural or cultural resources." Authorizing the Executive Officer to initiate a closure is necessary because a risk may arise without significant advance notice and the closure may need to be implemented quickly to effectively protect public safety or to effectively protect of the region's natural environment. By enumerating specific reasons that a closure may be implemented, the regulation ensures that public access to Conservancy land is not limited without cause.

The purpose of § 12130(b) is to provide a detailed process for notifying the public of any closures. This section requires the Conservancy to post notice on its website and at the location of the closure, explaining the reason for and duration of the closure. The Executive Officer or designee must also report the closure at the next regular meeting of the Conservancy's governing body, the Conservancy Board. These requirements are intended to ensure that the public is sufficiently informed of any potential risks in the area subject to closure, and to provide transparency as to the Conservancy's reasons for restricting access to public land.

The purpose of § 12130(c) is to clarify that Conservancy employees, designees, or federal, state, or local officers may enter closed properties if they are performing official duties. Conservancy agents or employees, or other public officials, may need to access land that is subject to a closure in order to address and mitigate a risk to public health, safety, or the environment; to complete a construction or resource

management project; or to conduct enforcement. Additionally, this section states that the unauthorized entrance onto closed properties will be considered a “trespass” pursuant to Penal Code § 602. This serves to notify the public of the potential consequence of unauthorized entry.

This regulation is reasonably necessary to give the Conservancy the land management tools to close Conservancy land for the reasons above. It addresses the problem of risk to human health and safety, should the public enter the property, and risk to natural resource damage or degradation without an unreasonable restriction on public access to Conservancy lands.

Add Article 6, § 12131 (Vehicle Parking)

The purpose of § 12131(a-c) is to establish parking rules and restrictions on Conservancy land, consistent with Government Code § 65907.9 and Vehicle Code § 21113. These sections require any parking to conform to posted restrictions, restrict parking to designated parking areas, and provide that the Executive Officer may restrict parking on Conservancy land seasonally or during certain hours, if posted at the property.

This regulation is reasonably necessary to allow the Conservancy to manage the impacts of vehicle use on its land, both on unimproved/undeveloped areas and within designated parking areas. Vehicle parking on unimproved areas can result in adverse impacts to environmentally sensitive land and species, could mislead the public as to the ownership of Conservancy land, and interferes with the Conservancy’s ability to carry out its land management duties. Within designated parking areas, seasonal parking restrictions may be necessary due to snow conditions. Hourly parking restrictions may also discourage individuals from using Conservancy land for long-term parking, and help to ensure that the limited number of parking spaces are available to recreation site visitors.

Add Article 6, § 12132 (Recreation Sites Hours of Use)

The purpose of § 12132(a) is to specify Conservancy recreation sites are to the general public from sunrise to sunset, unless otherwise posted. To ensure that the visitors to a recreation site are aware of the hours that the site is open, the regulation requires that the hours of use be posted at the recreation site and on the Conservancy website.

The purpose of § 12132(b) is to allow for exceptions from the hours set in subsection (a). To that end, subsection (b) provides that individuals may enter or remain at a recreation site after-hours with written authorization from the Conservancy’s Executive Officer or designee.

The purpose of § 12132(c) is to state that unauthorized entry onto recreation sites outside the posted hours of use will be considered a “trespass” pursuant to Penal Code §602. This serves to notify the public of the potential consequence of unauthorized entry.

This regulation is reasonably necessary to give the Conservancy the land management tools to restrict hours of use of Conservancy recreational properties, and specifically addresses the problems of risks to public health and safety and resource damage and degradation.

Add Article 6, § 12133 (Damage to Tree and Plants)

The purpose of § 12133 is to prohibit persons from damaging or removing trees and other vegetation that is growing or standing on Conservancy land, unless they have received authorization from the

Conservancy. This regulation is reasonably necessary to address incidents where nearby property owners or their agents have removed trees or vegetation from Conservancy property without permission. As described above, these incidents undermine the Conservancy's management objectives for its properties. While Tahoe Regional Planning Agency (TRPA) fines help to discourage unauthorized removal of trees of a certain size, the proposed regulation will further protect Conservancy lands from degradation by putting the public on notice that unauthorized damage to or removal of any trees or vegetation is prohibited.

ECONOMIC IMPACT ASSESSMENT – GOV. CODE § 11346.3(b)(1)(A) – (D)

Creation or Elimination of Jobs within the State of California

The proposed regulations are not expected to create or eliminate jobs within the State of California.

Creation of New or Elimination of Businesses within the State of California

The proposed regulations are not expected to create or eliminate businesses within the State of California.

Expansion of Businesses Currently Doing Business within the State of California

The proposed regulations are not expected to encourage or discourage businesses from expanding their business within the State of California.

Benefits to Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations will benefit the health and welfare of California residents, and the State's environment, by providing the Conservancy with additional tools to manage Conservancy-owned public lands. Specifically, the proposed regulation will benefit the health and welfare of California residents by clarifying the procedures needed to close Conservancy property to the public when risk for harm is present. The proposed regulation will benefit the State's environment by protecting natural resources within Conservancy land from damage and degradation. More effective land management by the Conservancy will ultimately result in healthier ecosystems and a more balanced relationship between the natural and manmade environment.

OTHER REQUIRED SHOWINGS

Studies, Reports, or Documents Relied Upon – Gov. Code § 11346.2(b)(2): The Conservancy relied on its decades of experience as a public land manager to draft the proposed regulations. The Conservancy did not rely upon any other technical, theoretical, or empirical studies, reports, or documents.

Reasonable Alternatives Considered by the Agency and the Reasons for Rejecting those Alternatives – Gov. Code § 11346.2(b)(4)(A): The proposed regulations would improve the Conservancy's ability to manage its lands and to protect public health, safety, habitat, and natural resources. The Conservancy considered not pursuing the proposed regulations and continuing to rely on existing local and state regulations to address land management issues, but rejected that alternative because it would be inconsistent with its responsibilities as a public land manager and the purposes for which the Conservancy was created pursuant to Government Code §66905 et seq. The Conservancy welcomes comments from the public regarding any other alternative that may be less burdensome and equally effective.

Reasonable Alternatives that would Lessen the any Adverse Impact on Small Businesses – Gov. Code § 11346.2(b)(4)(B): The proposed regulatory action is not expected to have any significant adverse impact on small business.

Evidence Supporting Determination of No Significant Adverse Economic Impact on Business – Gov. Code § 11346.2(b)(5): Since the proposed regulations do not impose any requirements on businesses and only affect the management of Conservancy lands and actions by the public on such lands, there will be no significant adverse economic impact on business.

Efforts to Avoid Unnecessary Duplication or Conflicts with the Code of Federal Regulations – Gov. Code § 11346.2(b)(6): The Conservancy reviewed the Code of Federal Regulations and based on this review, found that the proposed regulations neither conflict with nor duplicate Federal regulations. There are no comparable Federal regulations applicable on Conservancy lands.