Discussion Topics

- Goals for successful mitigation
- Partnerships
- Due Diligence: PAR program, determining stewardship funding & managing endowments
- Examples highlighting partnerships
- In-lieu fees
- Solutions – What is needed to ensure long term success
Center for Natural Lands Management

Founded in 1990

Mission: Perpetual Stewardship of Mitigation and Conservation Lands

Acres Under Mgmt: 58,000+

67 Preserves (3 acres to 29,000 ac.)

Fee title, Conservation Easements, Contract

17 Mitigation/Conservation Banks

Endowment Funds $49,800,000

*An additional $15,800,000 (in-lieu fees)
Goals for Successful Mitigation

• No net loss of species or habitats
• Sustainable functioning ecosystems
• Confidence of resource agencies and public
• Cost effective for project proponent/developer
• Efficient use of public $}
• Sound credible perpetual stewards of these lands
Roadblocks...

Costs $$$
Bidding process
Bureaucracy
Contracting with State
State may not be best habitat manager
Fluctuating State budgets
  Example: California fiscal crisis = $14.5 BILLION
State law regarding investment policies
Negotiating agreements, CE’s between multiple agencies
Mitigation Banking Partner

Several Options for Stewardship Partnerships

- Fee title holder
- CE – Compliance Monitoring only
- CE – with full/partial stewardship responsibilities
- CE – Compliance & Endowment holder
- Contract Manager - no title interest
- Banking Partner/ Investor
- Endowment Manager
Land Trusts 1950-2005

Growth in the Number of Land Trusts (1950-2005)
Roles in Mitigation Banks

Possible Agents

- Private Party
- Non-profit Organization
- Public Agency

Possible Roles

- Fee Simple Owner
- Credit Owner
- Conservation Easement Holder
- Endowment Manager
- Long-term Manager and Steward
- Third-party Enforcer

Possible Agents

- Individual
- Corporation
- LLC
Roles in Long-term Stewardship

Possible Roles:
- Fee Simple Owner
- Credit Owner
- Conservation Easement Holder
- Non-profit Organization
- Endowment Manager
- Public Agency
- Third-party Enforcer
- Long-term Manager and Steward

Private Party
Roles in Long-term Stewardship

- Private Party
- Non-profit Organization
- Public Agency

Possible Roles:
- Fee Simple Owner
- Credit Owner
- Conservation Easement Holder
- Endowment Manager
- Third-party Enforcer
- Long-term Manager and Steward
Roles in Long-term Stewardship

Possible Roles:
- Fee Simple Owner
- Credit Owner
- Conservation Easement Holder
- Endowment Manager
- Third-party Enforcer
- Long-term Manager and Steward
Example: Krayenhagen Bank

Wildlands, Inc. → Fee Simple Owner → Credit Owner

CNLM → Conservation Easement Holder → Endowment Manager

California DFG → Third-party Enforcer → Long-term Manager and Steward
Example: Manchester Bank

- Tchang, Inc.: Credit Owner
- CNLM: Fee Simple Owner, Conservation Easement Holder
- California DFG:Third-party Enforcer
- Endowment Manager: Long-term Manager and Steward
Example: Dove Ridge Bank

- Loafer Creek LLC:
  - Fee Simple Owner
  - Credit Owner

- CNLM:
  - Conservation Easement Holder
  - Endowment Manager

- USFWS & CDFG:
  - Third-party Enforcer
  - Long-term Manager and Steward
Other Ways Non-Profits Assist with Mitigation Projects
PG&E Example

- HCP mitigation for impacts to transmission towers
- Up to 30 years of mitigation needed
- CNLM hired to complete acquisitions for first 5 years
- CNLM can purchase credits in banks, buy fee or CE’s, and manage with an endowment. $2M to start
- PG&E has 7 days to respond to specific property or bank credits
- USFWS has 30 days to respond. If no answer, concurrence is assumed. Yes, it’s in the permit!
- Some species mitigation extremely small: banks are best bargain. As little as $6500/acre at banks (high $324k/ac)
Perform due diligence before acquisition of property interests

Consult with resources agencies on species/habitat requirements and transactional documents

Prepare “Property Analysis Record” (PAR)

Grant third party enforcement rights to resources agencies

Document baseline habitat conditions at acquisition of property interest
Establish stewardship fund:
- pool funds for investment; preserve-specific accounting
- legal fund, R&D fund
- annual independent auditing of accounts

Perform scheduled compliance monitoring and reporting

Use best management practices

Employ adaptive management methodology

Prepare and implement five-year preserve management plans with annual work plans and reports

Confer regularly with resources agencies

Regularly test actions against CNLM mission statement
Property Analysis Record - PAR

- Helps to plan management tasks and costs for individual projects
- Due Diligence
- Becomes the justification for long-term funding
KEY ISSUES
For Entities Holding Endowment Funds

- Fund Accounting
- Segregation of Funds
- Inflation Adjusted Endowments
- Financial Controls and Audits
- Investment Policy
- Trust Docs as an Addendum to Banking Agreements
- Credibility of Investment Mgr
- Escrow Account for Credit Sales
- Conservation Easement
- Careful about use of bonds- too difficult to track/collect
Steward may have no financial investment or profit sharing in banks. Therefore, they have no incentive to assume financial risk.
SOLUTIONS!

- National Standards and Guidelines for all bank stewards. Should be in the Rules!
- Consistent CE’s, MOU’s, Agreements amongst Agencies
- The devil is in the details. Get the deal and the documents right! No place for ambiguity
- Conduct an accurate and thorough due diligence
- Stewardship endowment must be adequate
- Have an experienced endowment manager
Rise Early,
Stay Late and
Take Care of the Land
Roles in Long-term Stewardship

Possible Agents
- Private Party
- Non-profit Organization
- Public Agency

Possible Roles
- Fee Simple Owner
- Credit Owner
- Conservation Easement Holder
- Endowment Manager
- Third-party Enforcer
- Long-term Manager and Steward

CE Holder:
- May only be compliance monitor
- May also conduct long-term monitoring and stewardship

May be:
- Mitigation Provider
- Non-profit Organization
- Public Agency
- Mitigation Broker
- Private party (e.g. mitigation provider)
- Non-profit Organization (e.g. Land Trust)
- Public Agency

May NOT be the fee simple owner
- CE Holder: May only be compliance monitor
  - May also conduct long-term monitoring and stewardship
The PAR facilitates communication by translating biological and protection requirements into the common language of currency.