

# ELK STREAM RANCH

A Colorado Common Interest Community  
Located in T36N R13W, T35N R13W, T36N R12W and T35N R12W, N.M.P.M  
Montezuma County and La Plata County, Colorado

**Elk Stream Ranch Property Owners Association, Inc.**  
**A Colorado Non-Profit Corporation**

## POLICIES

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### **POLICY #5-2010: ENFORCEMENT OF COVENANTS AND RULES; NOTICE AND HEARING PROCEDURE**

Adopted 6th Aug., 20\_\_  
Amended 17th Feb., 2021  
Amended 9th March, 2023

The following procedures have been adopted by the Elk Stream Ranch Property Owners Association, Inc., a Colorado Non-Profit Corporation (“Association”) pursuant to C.R.S. §38-33.3-209.5, C.R.S. §38-33.3-308, the Governing Documents of the Association, and the Act, at a regular meeting of the Board.

**Purpose:** The Board has the duty to manage the Association and regulate the use of the Common Elements. The Governing Documents establish rules and obligations of the Owners. This policy sets forth the procedure for enforcing the provisions of the Governing Documents.

**NOW, THEREFORE, IT IS RESOLVED** that the Association does hereby adopt the following policy to govern the enforcement of the Association’s restrictive covenants:

**1. Authority.** The Board has the power and duty to hear and make decisions regarding violations of the Governing Documents and to impose fines or other sanctions against Owners. The Board may determine appropriate enforcement action on a case by case basis, and take other actions as it may deem necessary to assure compliance with the Governing Documents and to create a safe and harmonious living environment.

**2. Violations.** Either the Board, the DRC, the PMC, other duly appointed committees or the Members may bring an alleged violation of the Governing Documents to the attention of the Association. Members and the DRC must submit their concerns to the Association in writing, which shall state the specific provision(s) of the Governing Documents alleged to have been violated and as many specifics as are available as to time, date, location and persons involved.

**3. Violations or Offenses that Constitute a Present Danger.** If, in its sole discretion, the Board deems that any violation or alleged violation is or may be an immediate or substantial threat to the health, safety or welfare of the community or an individual, the Board may impose any appropriate sanction as necessary to abate the threat to health, safety or welfare of the community

or individual without conducting a hearing as provided in this policy. Following any actions of the Association to abate a present danger, the matter shall be addressed as provided in this policy.

**4. Notice and Right to Hearing.** If the Board determines that the allegations are sufficient to constitute a violation of the Governing Documents and that action is warranted, the Association shall send a notice to the Owner alleged to have violated the Governing Documents, by certified mail, return receipt requested, to the mailing address of the Respondent appearing on the records of the Association.

**a. Notice and Demand for Abatement.** The notice and demand for abatement (“Notice and Demand for Abatement”) shall advise the Owner of the alleged violation, the action required of the Owner to abate the violation, and a reasonable time period during which the violation may be abated without further sanction. The notice shall also advise the Owner that if the violation is not abated within the allowed time or if any similar violation occurs, the Board may impose a sanction against the Owner after notice and hearing.

**b. Continuing Violation.** At any time within 12 months of the date of the demand for abatement, if the violation continues past the time allowed for abatement or if the same or similar violation subsequently occurs, the Board shall mail the Respondent a written notice of a hearing (Notice of Hearing) to be held by the Board. The Notice of Hearing shall contain information regarding:

- i. the nature of the alleged violation;
- ii. the time and place of the hearing, which shall not be less than ten days from the date of the Notice of Hearing;
- iii. an invitation to attend the hearing and produce any statement, evidence, and witness on the Owners behalf; and
- iv. the proposed sanction to be imposed.

**c. Statement of Potential Action by Association.** The Notice of Hearing shall contain the following statement: *The Board may determine that the Owners failure to respond or appear at the hearing constitutes a no-contest plea to the alleged violation. If the Owner fails to appear at the specified date and time or otherwise respond to the Association, the Board may proceed with or without a hearing at its discretion to make its determination of the allegations based on all available relevant facts and circumstances and enforce the provisions of the Association’s Documents as the Board deems necessary.*

**d. Satisfaction of Notice of Hearing.** Proof of notice shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered in the record of the hearing by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the hearing.

**5. Hearing.** Each hearing shall be held at the scheduled time, place and date, unless the Owner has failed to respond or appear at the hearing.

**a. Conduct of Hearing.** The Board may grant continuance(s) for good cause. In conducting the hearing, the Board may exercise its discretion as to the specific manner in which a hearing shall be conducted, question witnesses and review evidence, and act as it may deem appropriate or desirable to permit the Board to reach a just decision. Neither the party bringing the matter to the attention of the Association or the Owner must be in attendance at the hearing, but both are encouraged to attend. Any party may elect not to present evidence at the hearing. Action taken by the Board shall be fair and reasonable taking into consideration all of the relevant facts and circumstances. Each hearing shall be open to attendance by all Members of the Association, except those portions of which may necessitate an executive session of the Board.

**b. Opportunity to be Heard.** The hearing shall be conducted in a manner that affords the alleged violator a reasonable opportunity to be heard. If the respondent does not appear but a written response is filed, the Board shall render its decision based on the information contained in the allegation and the written response, considering all of the relevant facts and circumstances. If neither an appearance nor a written response is made, the Board need not conduct a hearing or make any further findings except that it may determine that the Owners failure to appear or respond constitutes a no-contest plea to the complaint, and impose appropriate sanctions or otherwise enforce the provisions of the Association's Governing Documents, or both.

**6. Decision.** If the Respondent does not appear but a written response is filed, the Board shall render its decision based on the information made available to the Board and the written response, considering all of the relevant facts and circumstances. If neither an appearance nor a written response is made, the Board need not conduct a hearing or make any further findings except that it may determine that the Respondent's failure to appear or respond constitutes a no-contest plea to the alleged violation, and impose appropriate sanctions or otherwise enforce the provisions of the Documents, or both. If an appearance is made, after all testimony and other evidence has been presented to the Board at a hearing, the Board shall render its decision(s), taking into consideration all of the relevant facts and circumstances. If the Board does not inform the Respondent of its decision at the time of the hearing, or if no hearing is held, the Board will provide a written decision to the Respondent's address of record via regular U.S. Mail within five (5) days after the hearing or meeting at which the determination is made.

**7. Business Judgment Rule.** The decision of the Board to pursue enforcement in any particular case shall be left to the Board's discretion, subject to the duty to exercise its business judgment, and shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case:

**a. Association Position.** The Association's position is not strong enough to justify taking any further action or that the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law.

**b. Extent of Violation.** Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources.

**c. Best Interests of the Association.** That it is not in the Association’s best interests, based on hardship, expense or other reasonable criteria, to pursue the enforcement action.

**8. Enforcement, Attorney’s Fees, and Fines/Sanctions.** The provisions of this policy shall not limit or be a condition precedent to the Association’s right to enforce the Documents by any means available to the Association, including, but not limited to, commencement of a lawsuit to force compliance or seeking injunctive relief or damages. The Association shall be entitled to reimbursement of all reasonable attorney’s fees and costs incurred by the Association in connection with any enforcement action, including any proceeding under this policy. Without limiting the Association’s remedies under the Governing Documents, the Association may assess fines and suspend membership privileges in accordance with this policy. If the violation involves damage to Association property, the violator shall pay the costs of repair or replacement. The Board may revoke or suspend the violator’s privileges for a period of time equal to the duration of the violation, except that any suspension of voting rights of a Member shall not exceed 60 days following any violation by such Member unless such violation is a continuing violation, in which case such suspension may continue for so long as such violation continues and for up to 60 days thereafter.

**9. Fines.**

**a. Schedule of Fines.** Fines may be levied for violations of the Governing Documents as follows:

**Category 1 Violations:** Excessive Dog Barking, Animals at Large, Nuisances (\* See definitions below)

**Category 2 Violations:** Outside Burning During Burn Bans (County and/or Association), Discharge of firearms contrary to Declaration of Covenants Section 9.05(c)(i) (\* See definitions below)

**Category 3 Violations:** Any hunting activity (\* See definitions below)

**Number of violations in a 12 month period Fine Amount:**

	Category 1	Category 2	Category 3
First violation:	Warning	\$50	\$2000
Second violation:	\$50	\$100	\$3000
Third violation:	\$100	\$200	\$4000
Fourth violation:	\$200	\$300	\$5000

## Definitions:

*Excessive Dog Barking:* Noise from an animal which is sustained for periods of more than thirty (30) minutes or which occurs between the hours of 10 p.m. and 6 a.m., which noise would annoy or disturb a person of normal sensibilities is deemed to be a nuisance.

*Animal(s) at Large Causing Nuisance:* When an Owner or Guest (other than a grazing lessee) turns large or small animals loose to run at large, without the physical or verbal control of the Owner or Guest being present. Examples of this may include, but are not limited to, dogs or horses being allowed to roam free in the canyon. Cats that are household pets and not otherwise causing nuisances are exempt from this restriction due to their value in rodent control in the Elk Stream Ranch.

*Outside Burning During Burn Bans:* The Association has always maintained a more restrictive burn ban than the county, and both are controlling.

*Regarding Discharge of firearms contrary to Declaration of Covenants Section 9.05(c)(i)* [covenant provision]:

(c) *Land Use Limitations.* The following land uses are specifically prohibited in Elk Stream Ranch:

(i) *Hunting.* No hunting, and no discharge of firearms except to protect an Owner or Guest from potential danger.

*Hunting:* “Hunting” shall mean the use of any land within Elk Stream Ranch, including all Parcels and Common Elements, for tracking, spotting or driving (including any activities that attempt to move wildlife either on or off of Elk Stream Ranch), including vehicular activity (such as driving any vehicle on or off of Association roads or any private driveway), and any activity for the purposes of hunting on foot, horseback or small recreational vehicle for spotting, trapping or shooting wild animals and for purposes of locating, tracking or killing any wildlife with any weapon (such as guns, bows, knives, clubs or other devices capable of propelling an object that could cause great bodily harm, or any other device that could be termed an assault weapon) for any purpose, including herd culling not directed by the Association. “Hunting” does not include stalking, attracting, searching or lying in wait for wildlife by an unarmed person solely for the purpose of watching or taking photographs of wildlife. (See Policy #18)

**b. Additional Fines.** A Member or Guest who accumulates more than three (3) violations within a twelve (12) month period will be deemed to be an habitual offender. Without limiting the Board’s ability to fine or suspend Membership and voting privileges in accordance with these policies and procedures, habitual offenders, continuing violations, or violations which have an indefinite commencement or termination date, shall all be subject to a fine of \$100 per month for a Category 1 Violation, \$300 per month for a Category 2 violation, until the violation is corrected, and suspension of Membership and voting privileges as determined by the Board. Further, in the event of a determination by the Board of a willful, wanton or flagrant disregard for the provisions of the Governing Documents, or based on the severity of the violation, the Board may pursue any other remedies at law or in equity against any Owner.

**c. Owner Obligation.** The record Owner of real estate subject to the Declaration shall have the primary obligation to pay fines imposed for their actions and actions of their tenants, family members, and Guests. Fines imposed pursuant to these enforcement policies and procedures shall become an Assessment imposed against the record Owners real estate and enforceable as provided in the Declaration.

**10. Miscellaneous.**

**a. No Waiver.** Failure by the Association to enforce any provision of this policy shall in no event be deemed to be a waiver of the right to do so thereafter.

**b. Additional Remedies.** These enforcement provisions may be in addition to other specific provisions outlined in the Association's Governing Documents, and the Association is not required to follow these enforcement provisions before seeking such other remedies. The Association may choose a legal remedy or seek assistance from other enforcement authorities, such as police, fire, or animal control, as it deems appropriate.

**PRESIDENT'S CERTIFICATION:** The undersigned, being the President of the Elk Stream Ranch Property Owners Association, Inc., a Colorado Non-Profit Corporation, certifies that the foregoing Resolution was approved and adopted by the Board, at a duly called and held meeting of the Board on (date) 3/9/23 and in witness thereof, the undersigned has subscribed his name.

**Elk Stream Ranch Property Owners Association, Inc.,** a Colorado Non-Profit Corporation

By: /s/ David Larsen  
\_\_\_\_\_, President

ATTEST  
By: /s/ Pam Surabian  
\_\_\_\_\_  
Secretary / Treasurer