



Conservation Easement Violation Response Policy

Approved by Board of Directors March 10, 2009

The enforcement of conservation easements is essential for the Trust to fulfill its goals of protecting special lands for their habitat, water quality, and scenic values. Enforcement is necessary to protect the identified public benefits and conservation values and to maintain a positive image before the Trust's supporters, donors, and the general public. Treas. Reg. 1.170A-14(c)(1) states that to be eligible to receive tax-deductible easement donations, an organization must have a commitment to protect the conservation purposes of donations and have the resources necessary to enforce easement restrictions. Failure to enforce its easements could be construed as provision of a private benefit, and thus could be used to disqualify the Trust as a 501(c)(3) organization. In light of these considerations, the Board has adopted the following Conservation Easement Violation Response Policy.

General Policy

1. Maintain constructive, regular, face-to-face and written contact with landowners of each conservation easement held by the Trust.
2. Maintain the Trust's legal obligations and positive public image by enforcing easement restrictions.
3. As part of closing due diligence, ensure grantors clearly understand the implications of the terms of easements, and provide them with a "Landowner Packet" related to their easement with the following:
 - a. The Conservation Easement, including any maps and photos of relevant features.
 - b. A "layperson's" translation of the conservation easement, making it clear that this is a summary and not applicable legal interpretation.
 - c. The Baseline Documentation Report.
 - d. The Trust's Conservation Easement Amendment and Conservation Easement Violation Response Policies.
 - e. Other relevant information that may be of use to the landowner.
4. Periodically review easement deeds for vagueness, ambiguity and other weaknesses, and amend deeds if warranted.
5. At a minimum, annually monitor and document the conditions on properties subject to conservation easements held by the Trust. If a landowner is unable to walk the property during a monitoring visit, follow up with a phone call. In all cases the landowner should be provided a written report.
6. If a property subject to an easement held by the Trust changes hands, meet with the new owner to review the terms of the easement as soon as feasible.
7. Always respond to actual or possible violations in a professional manner. Respond consistently to similar violations.
8. Maintain adequate funds in our Conservation Easement Fund for enforcement and defense related to easement violations or hold adequate group insurance for enforcement and defense offered by the Land Trust Alliance.
9. Make all reasonable efforts to work with landowners to cure violations outside of court.

10. Employ litigation only as a last resort and only if there is a good chance of success, as the integrity of the Trust is at stake. The Board of Directors will make the decision to litigate.
11. The Trust will decide for each case to use available funds for enforcement and defense of easement violations or implement a strategy to raise funds.

Procedure for Responding to Suspected/Actual Violations

Suspected Violations

1. If a staff member of the Trust discovers a suspected violation while on site with or without a landowner, the staff member should seek clarification regarding the activities responsible for the condition and the nature of the modification, and document the suspected violation as described in step 3. The staff member should describe the conditions found but decline to state definitively to the landowner whether the modification does or does not constitute a violation.
2. If the Trust is notified of a possible violation by a third party, the Trust should notify the landowner in writing of the Trust's intent to enter the land pursuant to the terms of the easement deed and follow-up with a phone call inviting the landowner's participation in the site visit. A staff member of the Trust should thus enter the land and document the suspected violation as described in step 3.
3. In all cases the Trust should carefully document possible violations using photographs (signed, dated and keyed to a location), maps, measurements of damage to the affected resource, extensive detailed field notes (signed and dated), explicit comparisons to baseline documentation, and other aids as are appropriate.
4. Upon learning of a suspected violation, review the enforcement terms of the easement with the assistance of legal counsel and assess their likely interpretation in the courts in which a case may be heard. Trust staff and counsel should also review the procedures, conduct, correspondence, and other means of communication that should be employed with respect to the landowner and develop a plan appropriate to each easement violation.

Actual Violations

1. If the Trust concludes that a violation has occurred, the Trust should determine whether the violation constitutes an emergency, or threatens an emergency that justifies prompt enforcement, pursuant to the terms of the easement deed. If the violation is deemed to constitute an emergency, or to threaten an emergency, the Trust should invoke its emergency enforcement powers under the easement and cure the violation.
2. The Trust should send a notice to the landowner that specifies the nature of the violation and requests a personal meeting in order to walk the site, review the easement restrictions, agree on the work needed to cure the violation, and acknowledge the 30-day deadline for compliance pursuant to the easement deed (or the relevant time period in the easement). The Trust should follow up on the letter by calling the landowner to arrange the meeting.

- a. If the landowner cannot be contacted by telephone, the Trust should send a certified first class letter that specifies the nature of the violation and requests a personal meeting in order to walk the site, review the easement restrictions, agree on the work needed to cure the violation, and acknowledge the 30-day deadline for compliance pursuant to the easement deed (or the relevant time period in the easement). The letter should request that the landowner contact the Trust upon its receipt.
 - b. If the landowner rejects the certified letter, the Trust should have it served on him/her by a process server.
 - c. If no response is received from the landowner, a staff member and board member of the Trust should visit the property at times when it is likely that someone will be present. If reasonable attempts along this line fail, the Trust should consider seeking injunctive relief.
3. If the landowner agrees that a violation occurred, the Trust should send a written summary of the meeting to the landowner and thank the landowner for his/her continuing cooperation. A staff member and board member of the Trust should accompany the landowner on an inspection of the site on the day of the 30-day compliance deadline.
 - a. If the landowner fails to cure the violation within 30 days (or the relevant time period in the easement) after receipt of notice of violation from the Trust, or under circumstances where the violation cannot reasonably be cured within 30 days, fail to begin curing the violation within the 30 day period, or fails to continue diligently to cure the violation until finally cured, the Trust should consider whether to seek injunctive relief or other remedy, pursuant to the terms of the easement deed (if applicable).
4. If the landowner does not agree that a violation occurred, the Trust should reaffirm its position in writing and state that it will seek the advice of counsel.
5. Whether or not the landowner agrees that a violation occurred, and whether the violation is a major or minor one, the Trust should consider the use of a written interpretation of the easement to resolve the matter, a discretionary approval letter, or, in the case where there is an obvious need determined by the Lands Committee, an amendment to the easement.
 - a. The Trust should carefully weigh the possible consequences of any formal and written interpretation of an easement deed. Interpretation should be stated in letters to landowners. The Board should be made aware of any interpretation or reinterpretation of the easement.
 - b. Any discretionary approval must not set an adverse precedent for future enforcements, and must not jeopardize the deductibility of the easement or the Trust's standing as a 501(c)(3) organization. Any discretionary approval must be approved by the Board.
 - c. Any amendment must satisfy the conditions established by the Trust's Conservation Easement Amendment Policy
6. If all attempts at negotiation fail, the Trust should consider commencing arbitration, pursuant to the terms of the easement deed (if applicable).