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**Avoiding, Enforcing,  
Defending:  
What Should You  
Know About Dealing  
With Conservation  
Easement Violations?**



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- National research supports the fact that conservation easement violations and other challenges increase when properties protected with conservation easements are sold to new owners
- Turnover among land trust board and/or staff members makes it even more important to make sure you have appropriate documentation, policies, and procedures in place
- Stuff happens. Perpetuity is a REALLY long time.

# Avoid Legal Issues with Pre-violation Documentation

## Look to the End Game

- What will I need to prove in an enforcement action?
- What wouldn't I want in my file in an enforcement action?

## Drafting and Recording Tips

- Be careful in relying on an outside source for opinion on violations and impact on conservation values. The source may not be there or may not be willing to give an opinion.
- Give yourself flexibility so that amendment is unnecessary.

## *Avoid Legal Issues with Pre-violation Documentation*

### **Drafting and Recording Tips (continued)...**

- Be careful of using undefined terms that will later be interpreted in establishing a violation.

Ex. No cutting or planting of trees (except for maintenance). What does maintenance mean?

- Be clairvoyant! Try to anticipate evolution of uses.

For instance, in agricultural easements you need to have flexibility to ensure economic viability.

Subdivision, wind turbines or other energy development, reasonable out zones...

- Forebearance Clauses – Allow for flexibility in enforcement without eroding future rights to enforce.

## *Avoid Legal Issues with Pre-violation Documentation*

### **Baseline Documentation Reports & Management Plans**

- Have them! Use them! Know where to find them.
- Complete a BDR for the protected property prior to closing and reference this as an exhibit in your easement.
- Require all parties sign off on the BDR, acknowledging the condition of the property and its conservation values at the time the easement is conveyed.
- If BDRs and MPs are referenced as exhibits to the easement, record them as an exhibit with the easement.

**BDRs are the baseline reference against which your easement will be monitored and enforced in the future!**

## *Avoid Legal Issues with Pre-violation Documentation*



### **Land Trust Policy**

- Create a Violation Policy and an Enforcement Policy
- Be in compliance with them!

# Avoiding Violations

## Maintain Good Landowner Relations

- Don't let annual monitoring visits be your only contact with landowners
- Develop successful strategies for conveyance and generational transitions

## Develop Third Party Relationships

- Reach out to abutters, realtors, and other stakeholders

## Build Credibility in the Community

- Community outreach

# Avoiding Violations

## Regular & Comprehensive Monitoring

- Be a land trust that means business!

## Communication & Understanding are Key

- Lots of bad situations can be avoided when everyone is sharing information and paying attention...

## Amending Conservation Easements

(a workshop in itself...)





# **Enforcing and Defending Violations**

**Enforcement and a Land Trust's Tax Exempt Status**

**Terra Firma & Claims**

**Pros & Cons of Mediation and Arbitration**

**Post-violation Documentation**

- Site Documentation (BDR, Monitoring Reports, violation documentation)
- Other Documentation

# Enforcing and Defending Violations



**Notice of Violation &  
Compliance with all NOV  
requirements of  
Conservation Easement**

**Litigation and Community  
Perception**

- Competing pressure from constituents

# Defending Violations

## State Legislation

### **RIGL 34-39-3 'Restrictions Enforceable'**

- empowers the RI Attorney General's Office to enforce Conservation Easements, regardless of whether the State is a party
- allows for the prevailing party to obtain attorneys' fees and cost (at court's discretion)
- creates a strong incentive to avoid CE violations and a strong tool to defend

# Defending Violations

## State Legislation & the Attorney General

### **RIGL 34-39-5 'Release of Restriction'**

- provides clear framework for CE amendment
- requires AG's participation
- clarity and strict process protects CEs from improper attempts to alter / amend

### **New Legislation Proposed**

- House Bill H7684 would add RIGL 34-20-1.1 "Damages for encroachment on state, municipal or non-profit land..."

# Defending Violations – Role of RIDEM & RIAG



- both important parties in helping to avoid, defend, and enforce
- resource for information on relevant state & federal law and interpretation of the rights and restrictions in a CE
- both act as a ‘backstop’ to help , especially to small land trusts

# Resources

**Rhode Island Land and Water Partnership Resource Library**  
<http://www.landandwaterpartnership.org/library.php>

**Baseline Documentation Report Resources**  
<http://www.rilandtrusts.org/workshops.htm>

**RI General Legislation Chapter 34-39 “Conservation and Preservation Restrictions on Real Property”**  
<http://webserver.rilin.state.ri.us/Statutes/TITLE34/34-39/INDEX.htm>

**RIDEM Division of Planning & Development**  
<http://www.dem.ri.gov/programs/bpoladm/plandev/>

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