



THE SAKONNET PRESERVATION ASSOCIATION, INC.

CONSERVATION EASEMENT VIOLATION RESPONSE & RESOLUTION POLICY

1. General Principles for Violation Response and Enforcement

- 1.1. The Sakonnet Preservation Association, Inc. (Association) must be ready to both enforce the terms of the conservation easement (easement) restrictions and defend an easement if the landowner or another entity with standing sues to challenge it. By accepting the deed of the easement, the Association has legally committed to uphold its restrictions.
- 1.2. The Association recognizes that strong enforcement engenders public confidence in the Association's easement program, helps maintain the Association's legal authority to enforce the easement, maintains the Association's tax-exempt status and its ability to accept tax-deductible gifts, and ensures the continued viability of conservation easements as a land conservation tool.
- 1.3. The Association shall take all reasonably necessary steps to ensure any decisions or actions shall best uphold the conservation purposes of the conservation easement and maintain the overall ability to achieve its mission and to enforce specific conservation easements now and in the future.
- 1.4. The Association shall maintain the most constructive working relationship possible with the landowner and adhere to the belief that educating and building a relationship with the landowner, not litigation, are more likely to guarantee that conservation easements are upheld. The cooperation of the landowner or lack thereof, as well as the likelihood of future violations, should be considered in pursuing a course of action.
- 1.5. The Association's representatives shall never give a landowner an on-the-spot opinion about whether or not a violation has occurred.
- 1.6. The Association shall be as flexible as the situation warrants and use litigation as a last resort. All reasonable non-litigation based attempts for compliance shall be first employed whenever possible.
- 1.7. The Association shall be consistent and fair in responding to violations, providing a similar level of response for similar degrees of violations.
- 1.8. Because enforcement expenses may include special documentation, court costs, and fees for consultants, attorneys and expert witnesses, the Association

shall budget to fund its annual stewardship costs and have enough reserve funding, and legal defense and liability insurance in place to initiate and maintain any necessary enforcement actions should its unrestricted funds for stewardship be exhausted.

- 1.9. The Association recognizes that each easement violation represents a unique situation and requires a tailored approach. By adhering to the following guidelines, the Association shall help ensure appropriate steps are taken to document violations, notify the property owner, Board members and legal counsel of violations, and determine the most appropriate response to violations.

2. Violation Prevention Strategies

The Association shall:

- 2.1. Monitor all properties at least annually.
- 2.2. Maintain regular contact with owners of easement properties and follow the Association's Successor Landowner Policy and Procedure to ensure changes in land ownership are tracked.
- 2.3. Annually, remind landowners to check their easement agreement before altering the property in any way and ask them to notify the Association if they are planning to sell their land.
- 2.4. Meet with new owners to discuss easement terms and conservation purposes as soon as possible after purchase or transfer of a conservation easement property.

3. Defining Violations

Violations may fall into one of the following four (4) categories:

- 3.1. **Technical Violation:** a procedural violation that has no impact upon or consequence to the conservation easement's purpose or the protected conservation values and would take less than \$5,000 to resolve (cost includes human resources and other direct costs).

Examples of "Technical" violations:

- Failure to give the required notice of an approved use on the protected property
- Discovery of a pre-existing condition upon the property
- Failure to give the required notice of sale or transfer of conservation easement property

- 3.2. **Minor Violation:** a violation that has negligible impact upon or consequences to the conservation easement's intent, purpose and/or protected conservation easement values and would take less than \$5,000 to resolve (cost includes human resources and other direct costs).

Examples of “Minor” violations:

- Minor ground disturbance
- Minor tree cutting on the property (not in sensitive areas)
- Minor dumping (e.g. area impacted is small or dumped materials are non-toxic)
- Undertaking a reserved permitted activity that requires pre-approval without seeking that pre-approval (in cases where the Association would have granted approval)
- Minor road construction (e.g. small paths, or trails in cases where the Association would have granted approval)

3.3. Moderate Violation: a violation that has moderate impact upon or consequences to the conservation easement’s intent, purpose, and/or protected conservation values and would take more than \$5,000 to resolve (cost includes human resources and other direct costs).

Examples of “Moderate” violations:

- Construction of small prohibited structures (e.g. small shed, tree stands, small concrete pads, etc)
- Dumping on a larger scale (e.g. area impacted is large or dumped materials are numerous and not biodegradable)
- Minor tree cutting in riparian buffers or other sensitive areas
- Construction of permitted structures outside of but reasonably close to the designated building area
- Moderate road construction involving some grading or excavating

3.4. Major Violation: a violation that has significant impact upon or consequences to the conservation easement’s intent, purpose and/or protected conservation values and would take more than \$5,000 to resolve (cost includes human resources and other direct costs). The Association shall determine whether the violation has occurred in an area under the jurisdiction of any local, state or federal regulations/agency such as local zoning ordinances, DEM or CRMC in order to evaluate the appropriate course of action.

Examples of “Major” violations:

- Construction of significant prohibited structures (e.g. residential structures, buildings)
- Wetland filling or drainage
- Significant excavation in sensitive areas (buffers, wetlands)
- Large clear cuts or damaging timbering activities not in accordance with the approved management plan
- Major road construction involving large scale grading, excavating and reshaping of the topography, and/or paving of significant amounts of existing unpaved roads
- Dumping of toxic materials

4. Learning of a Possible Violation

A possible violation may have been discovered on a monitoring visit, through a neighboring landowner or other interested party, or during informal observation and may have been caused by original owners, new owners, guests, contractors, abutters or trespassers. The Association shall first document the suspected violation and review it internally, according to its Conservation Easement Response & Resolution Procedure, before discussing the situation with the landowner. If the landowner is present at the time the possible violation is first observed, the monitor may ask questions but must not make any determinations about whether a violation has occurred.

5. Documenting the Possible Violation

As a thorough record of the possible violation is essential to any future legal action, it shall be carefully documented as described in the Association's Conservation Easement Response & Resolution Procedure, using both the property's baseline documentation and the reserved rights and prohibited uses sections of the conservation easement as guides.

6. Reviewing the Documentation

- 6.1. The Association shall thoroughly review the property's monitoring inspection report, easement and baseline documentation report.
- 6.2. The Association shall interpret the terms of the easement and the effects of the questionable activity on the conservation values being protected.
- 6.3. The review shall be completed and an initial conclusion reached before formal contact is made with the landowner to discuss the possible violation.

7. Determining if it's a Violation

In determining whether a violation has occurred and the severity of any violation, the Association shall consider the following:

7.1. Primary Considerations include:

- 7.1.1. the intent of the easement donor at the time of the original grant,
- 7.1.2. the purpose of the conservation easement, and
- 7.1.3. the terms of the easement and the effects of the questionable activity on the conservation values being protected as outlined in the conservation easement document.

7.2. Secondary Considerations may include:

- 7.2.1. the identity of the violator (i.e. landowner or third party)
- 7.2.2. the intent of the violator of the property (i.e. accidental or deliberate).

- 7.3. If it is determined that a minor violation has occurred, an attorney may need to be enlisted to help assess the severity of the violation and the Association's course of action and to brief the Association on proper procedures, conduct, correspondence and other communication to protect the Association's interest.

7.4. If it is determined that a moderate or major violation has occurred, the Association shall be thoroughly briefed by its legal counsel on proper procedures, conduct, correspondence, and other communication to protect the Association's legal interests and obligations.

8. Third Party Violations

- 8.1. The Association shall view its relationship with owners of conserved land as a partnership, based on the belief that they share a common interest in good stewardship of the conserved land.
- 8.2. When third parties trespass on the conserved land and damage the resources that both the owner and the Association have conserved, the Association shall seek to engage the cooperation of the owner in working collaboratively to stop the trespass and have the trespasser fix any damage caused.
- 8.3. The Association shall review each third party violation of an easement on a case-by-case basis when deciding what education measures and remedies are necessary.
- 8.4. If the resource damage is significant and if the owner or trespasser are unwilling to cooperate with the Association, the Association shall explore judicial remedies for the situation.

9. Meeting with the Landowner

- 9.1. Once it has been concluded that a violation has occurred, the Association shall contact the landowner and arrange a meeting.
- 9.2. Two members of the Association shall meet with the landowner to view the land, review the purposes of the easement and the relevant restrictions, and discuss possible reparations or other acceptable compliance or amendment alternatives, being circumspect with the information communicated in case the matter remains unresolved.
- 9.3. If a third party, such as an adjacent landowner, caused the violation, the Association may arrange another meeting to bring together all parties and discuss correction.
- 9.4. The parties shall attempt to agree on a course of action to correct the violation and set an appropriate date(s) for compliance.

10. Choosing the Appropriate Enforcement Response

- 10.1. To help it elect the correct response, the Association shall evaluate both the level of the violation and the mitigating circumstances outlined in the Association's Easement Violation Response and Resolution Procedure.
- 10.2. The Association shall focus on protecting the land and the integrity of the easement and start by seeking a voluntary solution, with legal action as a last

resort. The Association may seek the assistance of a mediator but shall always preserve its right to seek court enforcement.

- 10.3. The Association shall seek voluntary reparation by the landowner until it is clear that it is not workable, or the property's conservation values face imminent harm or are already endangered by activities on the property that violate the easement.
- 10.4. The Association shall keep careful documentation when working with the landowner toward reparation and consult with an attorney to be sure it is following proper legal procedures.
- 10.5. The parties shall agree in writing on a course of action to correct the violation and set a deadline for compliance.
- 10.6. The Association shall initiate legal action if agreement cannot be reached, if the voluntary reparations are not proceeding according to schedule or if negotiation of adequate reparation to complete restoration is impossible or is not working.
- 10.7. If the violation is minor, or if the landowner suggests a solution which on the whole will strengthen the conservation values of the affected property, the Association may consider an amendment request from the landowner that is consistent with its amendment and other policies and does not compromise the property's conservation values.
- 10.8. If a dispute arises between the landowner and the Association that they cannot resolve, the Association shall try to reach an agreement with the assistance of legal counsel. The Association shall always reserve the right to pursue litigation in the event of imminent danger or threat to conservation values or if it is unable to otherwise resolve the violation. In such event, the Association shall consider an assessment of the risk of not following through on its commitment to enforce, the time and effort required to enforce, the extent and nature of the violation, and the probability of success, together with any other input received.

Revision History

11/18/2009 – Adopted by SPA Board of Directors

10/17/2012 – Amendments Approved by Stewardship Committee

4/24/2013 – Revisions Adopted by SPA Board of Directors