

Aquidneck Land Trust

Violation and Enforcement Policy

This policy establishes the procedure that the Aquidneck Land Trust ("ALT") shall follow in the event of a violation of a conservation easement.

A core philosophy of ALT's stewardship program is maintaining good relations with the landowners of its conserved lands. However, as a holder of conservation easements, ALT must now and again enforce the terms of these legal agreements. In addition to protecting the conservation values of the subject property, enforcement is at times needed to generate public confidence in ALT's mission to conserve open space, to uphold ALT's legal authority to enforce the terms of its conservation easements, and to maintain ALT's ability to accept future donations of conservation easements and its tax-exempt status. ALT's failure to enforce the terms of its conservation easements could jeopardize its 501(c)(3) status if it were shown that ALT relinquished its enforcement rights to benefit private individuals, etc.

ALT may discover a violation on a monitoring visit, through a neighbor or other interested party, or during informal observation. It is important to note that a violation may have been caused by the landowner, an adjacent property owner, or a trespasser. Thus, ALT will not automatically assume that the landowner is the responsible party. ALT's first response will be twofold: (1) thoroughly document the violation and (2) contact the landowner to discuss the situation.

ALT's response to a violation should match the severity of the violation. Minor infractions (e.g., litter or minor cutting of vegetation) may warrant a discussion or written acknowledgement of the violation from ALT's "designated staff" (Executive Director and/or Stewardship Director as appropriate) to the landowner. More egregious transgressions (e.g., construction of a permanent and unpermitted building or substantial excavation) shall require a swift and formal response.

Procedures for Enforcement

1. After discovering the potential violation, ALT's designated staff shall review the conservation easement document, survey plans, and any other pertinent documents.
2. ALT's designated staff shall document the violation with photographs (photographs should be keyed to a photo map of the subject property and each should be signed and dated by the photographer), measurements of damage to the affected resource, signed and dated field notes, and explicit comparisons with the baseline data. Written notes will be kept of all conversations with the landowner, by phone and in person. A thorough record will be essential should ALT need to go to court. The violation should be carefully documented for an audience that is unfamiliar with the property.
3. ALT's designated staff shall evaluate the violation and formulate the required remedies. If the violation is egregious, evaluation and formulation of remedies will include consultation with the

Stewardship Committee, the Legal Defense Committee, the Executive Committee and ultimately the Board of Trustees.

4. If the landowner does not comply in a timely manner with requested remediation steps that come out of the process above, the designated staff shall re-evaluate the situation and consult with the Stewardship Committee, the Legal Defense Committee, the Executive Committee and ultimately the Board of Trustees when the situation involves an egregious violation. If appropriate, the Executive Director, the Board Chair and/or the Executive Committee shall recommend to the Board of Trustees that ALT pursue enforcement through more formal legal channels (i.e., arbitration, mediation, litigation). Judicial proceedings should be viewed as a means of last resort.
5. If a violation requires court action, ALT should:
 - hire and prepare the best legal counsel it can find;
 - actively participate in the formulation of the case;
 - use ALT's careful documentation of the violation, baseline and monitoring documentation and experience on the property to its fullest advantage;
 - keep its Legal Defense Committee, Executive Committee and Board of Trustees informed and up to date throughout the proceedings including seeking input on all key decisions; and
 - inform and seek guidance from the Land Trust Alliance (LTA) where appropriate.

Approved by Board of Trustees: September 2, 2008