

VERMONT RIVER CONSERVANCY

CONSERVATION EASEMENT VIOLATION POLICY

Adopted by the Board of Trustees on February 6, 2013

Vermont River Conservancy (VRC) believes that landowner education and relationship building are the best immediate and long-term methods to guarantee that conservation easements are upheld. We work with owners of conserved land to help them understand the rights and restrictions of their conservation easement and to continue to be good stewards of their land. Our assessment of easement violations is rooted in this philosophy and is used to determine the appropriate response to a violation.

As a holder of conservation easements, VRC must promptly and diligently pursue all potential violations and enforce the terms of these legal agreements. In addition to protecting the conservation values of the protected property, enforcement is needed to generate public confidence in VRC's mission and to assure integrity of the conservation easements, to uphold VRC's legal authority to enforce the terms of its conservation easements, and to maintain VRC's tax-exempt status and its ability to accept future donations of conservation easements. VRC's failure to enforce the terms of its conservation easements could jeopardize its §501(c)(3) tax exempt status if it were shown that VRC did not live up to its enforcement obligations.

VRC may discover a violation any number of ways, including during a regular 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 another third party. VRC must (1) thoroughly document the violation, (2) contact the landowner to correct the violation, and (3) expeditiously contact easement co-holders to inform them of the potential violation. VRC's response to a violation will match the severity of the violation.

Conservation Easement Co-Holders

Vermont River Conservancy co-holds a portion of its conservation easements with conservation partners, including the Vermont Housing & Conservation Board (VHCB) and the State of Vermont Agency of Natural Resources.

VRC has a Memorandum of Understanding (MOU) with VHCB that designates VRC as the "primary steward" of all co-held easements with VHCB. The MOU should be referenced for information about communicating with VHCB if an easement violation is suspected.

VRC holds numerous "River Corridor Conservation Easements" with the State of Vermont Agency of Natural Resources (ANR) as a "third party beneficiary." The ANR has equal and severable rights to enforce the easement restrictions.

Levels of Violations

- A) Minor: Violations that have no tangible physical impact or only a minor resources impact. This includes technical violations, such as failure to give notice of a sale of the

conserved land. These violations are not central to the conservation purposes of the conservation easement.

- B) Moderate: Violations that have a moderate physical impact on those resources protected by the conservation easement and are central to the conservation purposes of the conservation easement. For example, a timber harvest operation that does not conform to the Forest Management Plan for the property may constitute a moderate violation depending on the degree and extent of the cut.
- C) Major: Violations that have a major impact on those resources protected by the conservation easement and are central to the conservation purposes of the conservation easement will be classified at this level. This includes violations that have immediate and/or irreparable harm to the protected resources and may require court intervention to limit the violation impact; for example, unauthorized buildings or construction, road development or running of utilities that are not previously authorized.

Principles and Considerations

When assessing the extent of the violation, and determining possible solutions, several factors are taken into account:

1. Intentional or accidental action causing the violation;
2. Landowner's response in halting the action and willingness to fix the violation;
3. Necessity of injunctive relief or other court action;
4. Impacts on resources and potential for remediation;
5. Violations history and recurring violations;
6. Third party involvement in the violation.

Procedures for Enforcing Conservation Easements

1. After discovery of a potential violation, regardless of the degree of mitigating circumstances, we pursue landowner education and relationship building. VRC Executive Director or designated VRC staff shall conduct a site visit to the property to evaluate the potential violation, document the extent of resource impact, and review the conservation files to determine the Level of Violation. The Executive Director shall inform the Board of Directors of all confirmed violations and communicate to the Board, as appropriate, actions required to correct the violation.
2. Minor violations may not require a site visit. VRC will send the landowner a letter informing them of a violation, and reminding them that in the future, they must contact VRC regarding prior approvals required in the easement, or questions about appropriate use of the property and conformance with the conservation easement.
3. Moderate or major violations shall follow the following procedure or the procedure required as written in the conservation easement. In accordance with the conservation easement, VRC shall send an initial letter to the landowner that gives notice and description of the violation. VRC and the landowner will work together to discuss corrective action and to ensure the corrective action would be permitted under the current easement.

4. Learning from violations and feedback from landowners is valuable to the future of the conservation easement. VRC will document the violation with photographs keyed to a photo map of the subject property signed and dated by the photographer, document and measure the damage to the affected resource (VRC may consider consulting with experts to measure resource damage), develop signed and dated field notes, and perform an explicit comparison with the baseline data. A thorough record is essential should VRC need to pursue legal recourse. The violation should be carefully documented for an audience that is unfamiliar with the property.
5. The dynamic among all the factors in determining extent and response to violations makes each response unique for each landowner's circumstances and willingness to correct the violation. For all violations, VRC shall work with the landowner to determine an appropriate remediation plan by mutual agreement in a timely manner. Moderate or major violations might also involve other forms of mitigation, including remediation and restoration to the extent feasible and may involve a written remediation agreement.
6. If the landowner has not been responsive to cooperative efforts VRC is entitled to bring an action in court to enforce the terms of the easement and to recover any damages arising from the violation. Court orders may be necessary in some circumstances to prevent irreparable harm if the landowner does not halt the activity. If the violation is severe or significant enough or, if there is major irreparable damage to a resource that is central to the conservation purpose, court action or litigation could be the first response.
7. Upon successful completion of the corrective actions required to address the violation a confirmation letter will be sent to the landowner.

Third Party Actions

When third persons trespass on the conserved land and damage the resources that both the owner and the VRC have conserved, VRC seeks to engage the cooperation of the owner in working collaboratively to stop the trespass and have the trespasser fix any damage caused. If the damage to the resource is significant, and if the owner is unwilling to cooperate with VRC, the VRC may have to explore judicial remedies for the situation. VRC reviews each third-party violation of a conservation easement on a case-by-case basis using the principles and considerations above. In addition to earlier considerations, several factors are taken into account:

1. The relationship of the landowner to the third party who violated the conservation easement;
2. Landowner actions or inactions that might be construed as granting permission to a third party;
3. Willingness of the landowner to prevent future damage.

Costs Associated with Remediation

Costs associated with remediation and enforcement shall follow the terms of the specific conservation easement. These costs can include:

1. Costs associated with the MOU's of co-held easements with VHCB, State, or other third party co-holder.
2. The costs associated with violations caused by abutting landowners or third parties and any recurring violations.
3. The extraordinary costs incurred in investigating and securing a correction to the violation. Costs associated with investigating the violation and securing a correction include but are not limited to; staff time, labor/equipment/materials for repair, tax consequences and legal costs.
4. Costs of legal action. If the court determines that the landowner has failed to comply with the easement, the landowner shall reimburse VRC for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that the court determines that the landowner has not failed to comply with the easement, then VRC shall reimburse the landowner for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees.