

GEORGES RIVER LAND TRUST
CONSERVATION EASEMENT ENFORCEMENT POLICY

*Reviewed and approved by the Land Protection Committee on July 7, 2010.
Pending Board Approval October 25, 2010.*

1. INTRODUCTION

The Georges River Land Trust (GRLT) intends that its conservation easement enforcement policy conform to all requirements of federal and Maine state law, the Land Trust Alliance Standards and Practices, and all other GRLT policies. The purpose of this document is to formalize the Land Trust's policy for easement violations and guide other related GRLT practices.

The long-term effectiveness of conservation easements in protecting valuable lands depends on the easement holder's ability to enforce the terms of the easements. Strong enforcement builds public confidence in easements as a land protection tool. Moreover, in order to accept tax-deductible gifts and maintain tax-exempt status, Internal Revenue Service (IRS) regulations require that easement-accepting organizations commit to upholding the terms of an easement and maintaining the financial capability to enforce the restrictions. (*See Treasury Regulations 1.170A-14(c)(1)*)

Each easement violation represents a unique situation and requires a tailored approach, with the objective of correcting the violation with the greatest degree of cooperation and the least expense to both GRLT and the easement landowner.

2. OBJECTIVES/GUIDELINES for VIOLATION RESPONSE and ENFORCEMENT

- A. Maintain the conservation purpose(s) of the conservation easement.
- B. Maintain public confidence in GRLT's ability to enforce easement restrictions generally, in part as a deterrent to other potential violators.
- C. Protect GRLT's legal rights and economic investment (if any) in the conservation easement.
- D. Maintain the most constructive working relationship possible with the landowner.
- E. Execute a coordinated decision-making process and response when a violation occurs. No single GRLT-affiliated person should make a decision on whether a violation exists or how GRLT responds. No GRLT staff, volunteer monitor, or any other GRLT-affiliated person should give the easement landowner an on-the-spot response as to whether a violation does or does not exist.
- F. Maintain professionalism and integrity.

- G. Where consistent with the foregoing objectives, balance the harm caused by the violation with the cost/benefit of the selected enforcement response.
- H. Use litigation as a last resort and only when there is meritorious legal basis for judicial action.
- I. Ensure consistent responses to similar conservation easement violations.

3. STRATEGIES for VIOLATION PREVENTION

Preventative measures should be undertaken to help reduce the occurrence of easement violations. To this end, GRLT staff should:

- A. Work to ensure clear and concise drafting of conservation easements.
- B. Encourage landowners to maintain clear boundary lines.
- C. Maintain good relationships with easement landowners through frequent communication.
- D. Conduct annual monitoring and complete the GRLT standard monitoring report.
- E. Make every effort to keep informed of changes in property ownership, including regular review of the Registry of Deeds for both Knox and Waldo County.
- F. Promptly contact new owners to request a meeting to ensure that they understand the GRLT mission, the conservation easement for their property, the requirements to provide notice and/or gain holder approval as per the terms of the easement, the necessity of notifying the land trust of ownership changes, and the concept and purpose of conservation easements in general.
- G. Ensure that real estate agents known to be marketing the conserved property have a copy of the conservation easement. Offer to meet with the prospective new landowners to explain the terms of the easement. Ask the agent to attach the conservation easement to the Purchase & Sales Agreement as a manner of disclosing all encumbrances to the new owner(s).
- H. Encourage landowners to keep GRLT informed of any proposed changes on the property and to provide notice or request a review of any proposed changes whether or not they are contemplated under the terms of an easement.

4. PROCEDURES in the EVENT of a POSSIBLE VIOLATION

Possible easement violations may be discovered in the course of annual monitoring, inspections, or informal observation and reported by GRLT staff, volunteer monitors, board or committee members, neighbors, or other interested third parties, or even the

owners themselves. Steps to be followed by the GRLT staff in the case of a potential violation are as follows:

- A. All concerns should be communicated to the Executive Director and the Stewardship Program Manager.
- B. **Review the Easement Terms:** Review the easement document, baseline data report, and monitoring reports to aid in determining if an easement violation has occurred. Note the nature and extent of the possible violation, its reporting, and the date (or dates) on which it took place. Consult legal counsel at any point when interpretation or appropriate procedure is unclear.
- C. **Document the Violation:** Conduct a site visit and carefully and thoroughly document the violation. Describe in detail, including the location and extent. Photos keyed to a photo map, signed and dated by the photographer or video with commentary and map identification should be completed. Quantitative measurements of the violation should be noted as appropriate (e.g. area of impact, number of trees damaged, etc.). Field notes should be signed and dated by the staff person conducting the inspection. If the landowner does not grant GRLT staff permission to enter the property, consult with legal counsel on how to proceed.
- D. **Contact the Landowner:** Whenever possible and appropriate, the Stewardship Program Manager should meet in person with the landowner to discuss the identified violation. Listen to the landowner's explanation, ask questions, take thorough notes, and ask them to voluntarily correct the violation, or at least to cease any further work until the matter can be reviewed by the GRLT Land Protection Committee and Board of Directors, if necessary. Document all meetings and write a follow-up letter (send certified, return-receipt requested) to the landowner summarizing the meeting and confirming any agreements made on site about the restoration of the property and any compliance dates.
- E. **If the Landowner AGREES to Restore the Property:** GRLT staff should send a follow-up letter as soon as possible, reflecting the nature and extent of the restoration work and the agreed-upon timetable for completion. The site should be revisited on the deadline date, and the restoration work should again be thoroughly documented with photographs, video, narrative description, and quantitative measurements, as the situation dictates. When the work is satisfactorily completed, a letter should again be sent to the landowner (certified, return-receipt requested), attesting to the satisfactory completion of the work or otherwise, as appropriate.
- F. **If the Landowner REFUSES to Restore the Property:** At the first indication that the violation is not likely to be resolved voluntarily, GRLT shall notify the Land Trust Alliance Conservation Defense Insurance (CDI) program.* GRLT staff shall work with the CDI representative and their legal counsel to further discuss the violation and determine the best enforcement strategy. Additionally, GRLT staff, Board of Directors, and appropriate committees shall determine which GRLT fund or

funds will be used to pay for costs not covered by the CDI program, including program exclusions (e.g. mitigation, if necessary) and the deductible.

** The Land Trust has committed to participate in the Conservation Defense Insurance Program. The CDI program is expected to begin no later than December 31, 2013. GRLT staff may also contact their legal counsel and/or outside experts as additional sources of information for the best procedure from this point, including, but not limited to, the national Land Trust Alliance and other regional land trusts, such as Maine Coast Heritage Trust (MCHT).*

5. ENFORCEMENT STRATEGIES and POTENTIAL REMEDIES

There are several enforcement strategies for GRLT to consider in their work toward a violation remedy including: education, mediation, remediation, mitigation payments, injunctions, litigation, and criminal charges.

Prior to engaging in litigation, alternative dispute resolution strategies, such as non-binding mediation, should be pursued where they afford the greatest likelihood of maintaining long-term landowner relations, restoring the property, and upholding the terms of the easement.

Court enforcement is expensive, time-consuming, and may produce an undesirable outcome. It will likely irreparably damage the relationship between the property owner and land trust. As such, it should be pursued as a last resort. Nevertheless, it may be necessary to defend an easement, prevent or stop damaging activities, or obtain restoration. In such instances, GRLT shall work closely with outside counsel and the CDI program to prepare and present the strongest case possible. GRLT will notify the national Land Trust Alliance of its position, as there is potential for legal precedence to be set and the greater land trust community affected.

6. THIRD-PARTY VIOLATIONS

GRLT views its relationship with owners of conserved land as a partnership. This relationship is based on the belief that we share a common interest in good stewardship. When third-parties trespass on and damage the resources that both the landowner and GRLT have conserved, then GRLT will offer whatever assistance it can provide and engage the cooperation of the landowner, working together to determine the appropriate remedy.

***NOTE:** This policy serves as a guide to the Georges River Land Trust (GRLT) staff and Board of Directors in determining how to respond to potential or actual easement violations. GRLT expressly reserves the right to make exceptions or additions to this policy on a case-by-case basis, and this policy is not intended to be construed as a contract by any directors, officers, employees, or members of GRLT, or landowners subject to a conservation easement, not to foreclose alternative methods of dealing with violations on a case-by-case basis.*