LTA S&P Reference: 11E Policy No. 11.3

Enforcement of Conservation Easements

PURPOSE:

This policy guides enforcement of conservation easements ("easements"), including violation prevention.

POLICY:

The long-term effectiveness of easements to protect conservation values depends on the Land Trust's ability and commitment to enforce the terms of each easement. Moreover, in order to accept tax-deductible gifts and qualify for tax-exempt status, Internal Revenue Service (IRS) regulations require that easement-accepting organizations have a commitment to protect the conservation purposes of the donation and to enforce the restrictions. (Treas. Reg. 1.170A-14(c)(1).)

The Land Trust promptly and diligently pursues violations to assure integrity of the conservation easements that we hold. Each easement represents a unique situation and a breach of the easement terms requires a tailored approach. The goal in every case is to protect the conservation values, correct the infraction and prevent a reoccurrence with as much cooperation and minimal expense as possible. The Land Trust shall consider mitigating circumstances when evaluating a potential violation.

Staff time and attorney costs represent a significant financial commitment, and even minor violations handled by staff will have a financial impact. The Land Trust shall have the resources to handle violation enforcement, according to *Policy 11.2 Conservation Easement Funding.*

1. **Violation Prevention** - Landowner education and relationship building, not litigation, are the best strategies to minimize the need for enforcement actions. The following strategies help reduce potential violations:
    a. Create precise and clear conservation easements that are easily understood.
    b. Establish and maintain good relationships with landowners.
    c. Create accurate baseline information when the easement is acquired.
    d. Monitor each easement property regularly and update baseline information as appropriate.

2. **Enforcement Principles**
    a. Maintain the easement's conservation purpose(s) and values.
    b. Protect the Land Trust's legal rights.
    c. Maintain the most constructive working relationship possible with the landowner.
    d. Document each step in the violation assessment and resolution process, including all communications.
    e. Be as consistent as possible in response to similar easement violations.
    f. Decisions regarding whether or not a violation has occurred shall not be made by a single individual.

g. Decisions about major violations will involve Board, Stewardship Committee and staff. Decisions about minor violations will be made by staff, who will then keep the Board and the Stewardship Committee informed.

h. If there are co-holders to the conservation easement, all co-holders will be notified as per the terms of the easement or the current cooperative agreement held by the co-holders.

i. The landowner is responsible for all costs, including legal costs, associated with the negotiated remedy for a violation, unless otherwise determined by the terms of the easement. The Land Trust may, however, negotiate to share costs if the landowner does not have sufficient funds to cover the associated costs, even if the easement requires the landowner to pay all costs.

j. When a violation is caused by a third party, the landowner is still responsible for the violation. The Land Trust shall, however, work collaboratively with the landowner to remedy the violation.

3. **Types of Violations** –There are two general types of violations. See *Procedure 11.3A Enforcement* for examples and evaluation criteria.

   a. **Minor or Technical Violations:** Actions that technically violate the language of the easement but do not degrade the conservation values protected. They can be easily remedied.

   b. **Major Violations:** Actions that violate the specific language of the easement and significantly degrade the conservation values protected, whether or not they can be remedied.

4. Enforcement Strategies

Enforcement strategies range from education, mediation, remediation and mitigation to injunctions, litigation and criminal charges. The appropriate strategy depends on the type and severity of the violation and mitigating circumstances.

Court enforcement strategies such as litigation are expensive and time-consuming, may produce an undesirable outcome, and may irreparably damage the relationship between the landowner and the Land Trust. As such, they should be pursued only after careful consideration. Nevertheless, if court enforcement is necessary to defend an easement, prevent or stop damaging activities, or obtain restoration, the Land Trust shall work closely with legal counsel to prepare and present the strongest possible case.

Approved: May 3, 2010

President, Board of Directors