

VES Land Trust Conservation Easement Enforcement Policy

The Virginia Eastern Shore Land Trust must enforce the terms of its conservation easements in order to protect the conservation values of the land and to ensure the donor and the public's confidence in the Land Trust's mission of conserving land *forever*. Failure to uphold the terms of the conservation easements it accepts could threaten the Land Trust's legal authority, its ability to accept future donations of easements and its tax-exempt status.

VES Land Trust actively seeks to avoid potential easement violations through a variety of preventive actions. It also is prepared to address potential violations and has procedures for when violations occur. *VES Land Trust acknowledges that it must address all easement violations in partnership with its easement co-holders.*

Preventing Violations

In its general operations, the VES Land Trust takes a number of steps to maintain good landowner communications and avoid potential violations;

- Schedule annual monitoring visits to the protected property, preferably with the easement donor or current landowner.
- Use the monitoring visit to remind the landowner of the restrictions on the property, particularly the requirements for notification of the Land Trust before the exercise of reserved rights, such as clearing for a house site.
- Hold an annual stewardship workshop for all Eastern Shore easement donors.
- Take consistent and regular steps to educate local attorneys, realtors, title companies, county planning staff and staff in the clerk of the court's office about conservation easements on specific properties in their county.
- When a property under conservation easement is listed for sale, meet with the listing real estate agent, any serious potential buyers and the buyer's real estate agent, to explain the restrictions on the property and the terms of the easement.
- When a property under conservation easement moves into the hands of the next generation, meet with the heirs of the easement donor or current landowner to explain the restrictions on the property and the terms of the easement.
- Maintain a public outreach program and build community support for the Land Trust's responsibility to enforce easement terms and protect conservation values.

Preparing for Violations

The VES Land Trust prepares to address easement violations by the following actions:

- Maintain an Easement Endowment Fund restricted to easement enforcement and, in tough financial times, easement monitoring.

- Ask every easement donor to contribute to the fund or seek outside sources to endow an easement. VES Land Trust policy requires that at least five percent of all operating funds raised each year be contributed to the fund.
- Create extensive stewardship records – Exhibit B/Map of the Protected Property, Baseline Documentation Report, annual Monitoring Report – to provide a clear report of the prior conservation values on the protected property in the event of a violation.
- Adopt a stewardship records management policy to provide a foundation for legal defense in the event of a violation.
- Work with easement co-holders to establish a system for evaluating the pros and cons of using arbitration or mediation and/or proceeding to court, as well as the potential pitfalls of permitting settlements (which can give the impression that landowners can “buy” their way out of easement terms).
- Prepare staff and board members for discovery of a violation, including what to say to the landowner and how to document the violation.
- Retain the services of a litigation attorney experienced in real estate law and conservation easements for immediate assistance in the event of a violation.

Addressing Easement Violations

VES Land Trust staff may discover an easement violation on a monitoring visit, through a neighbor or other interested party, or during informal observation. The violation may have been caused by the landowner, an adjacent property owner or a trespasser. We cannot assume that the landowner is the responsible party.

The Land Trust’s first response must be threefold:

- Contact the landowner to discuss the situation
- Discuss the violation with the easement co-holder.
- Thoroughly document the violation.

If VES Land Trust staff, in consultation with the easement co-holder, determine that restrictions imposed by an easement have been violated, the Board of Directors must be notified.

The board President will designate an **easement violation committee**, consisting of one to three members of the board, such as the director who worked to secure the particular conservation easement, as well as a representative of the easement co-holder, to work with VES Land Trust staff to address the potential violation.

The nature of the action depends on many circumstances, including the extent and willfulness of the violation, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred and the quality of the evidence of the violation.

Relatively minor violations – road-side trash, minor tree cutting – may be addressed in a written monitoring report and a request for a planned response or remediation from the landowner.

Serious violations – prohibited construction or subdivision, excavation, timbering without an approved forest management plan – require a swift and definitive response.

The easement violation committee must determine whether:

- the violation is ongoing, requiring a cease and desist order or a restore order, and what restoration steps are needed
- the violation is reversible, requiring review and analysis of restoration required
- the violation is irreversible, requiring compensation or reclamation as restoration is not possible

Staff will provide maps, photographs and the easement document to assist the easement violation committee in preparing its course of action.

The easement violation committee will then follow these steps:

Landowner Contact

1. A member of the easement violation committee will be appointed as the main contact for the landowner.
2. The main contact will call the landowner by telephone, explain the situation and the Land Trust's policy on easement violations.
3. The main contact will request correction of the violation, replacement/and or cessation of the activity, and a deadline for compliance.
4. The call will be followed by a letter, signed by the board President, reiterating the explanation and request and the need for compliance and further inspection.
5. The easement violation committee will keep the Board of Directors up to date on the situation.

Inspection

1. The easement violation committee will inspect the property by the deadline date for compliance.
2. If the matter ends with prompt compliance, the board President will send a written acknowledged to the landowner of compliance and thank the landowner for a quick response.
3. If the landowner does not comply by the set date, the board President shall send a second letter citing the Land Trust's vested interest in conservation of the property, restating the required corrections, and establishing a shorter deadline date. This letter will be copied to the Land Trust's attorney. The Board of Directors will be informed.

4. The easement violation committee shall inspect the property on the second deadline date.
5. If the landowner complies with the required correction, the board President will send a written acknowledgement to the landowner with thanks.
6. If the landowner does not comply by the second deadline date, the easement violation committee will re-evaluate the situation, consult with its co-holder and own attorneys, and make a recommendation to the Board of Directors for further action.
7. The Board of Directors must approve legal enforcement actions, such as a letter from the Land Trust attorney, a cease and desist order from the court, arbitration, mediation, litigation.

Other Guiding Principles

The VES Land Trust will manage easement violations with these additional guiding principles. The Land Trust will:

- Inform the easement co-holder immediately for their professional analysis and advice on the issue before contacting the landowner.
- Take no action without consulting with the co-holder (as required by the easement terms).
- Act quickly and avoid delays in addressing the issue.
- Document the violation with photographs, video, maps, measurements, field notes, comparisons to the baseline and recent monitoring report to demonstrate clearly that a violation has occurred.
- Schedule a meeting with the landowner or other violator in person as soon as possible.
- Keep written notes of all conversations with the landowner, by phone, in person and during inspections.
- Appoint one person, the board President or a member of the easement violation committee, to act as a spokesperson and manage any public inquiries about the conflict.

Approved by the VES Land Trust Board of Directors, _____, 2005.

Price Mears Clarke, Secretary