

CONSERVATION EASEMENT VIOLATIONS

1. Scope

This establishes the procedure TPE follows in the event of an easement violation and the assessment of the appropriate enforcement action.

2. Purposes

TPE is legally obligated to enforce the terms of its conservation easements. In addition to protecting the conservation values of the land, enforcement is necessary to generate public confidence in TPE's mission to conserve land, to uphold the organization's legal authority to enforce the terms of its conservation easements, and to maintain the ability to accept future donations of easements and its tax-exempt status.

TPE's failure to enforce the terms of its conservation easements could jeopardize its 501(c)(3) status if it were shown that TPE relinquished its enforcement rights to benefit private individuals.

TPE 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. TPE's first response must be twofold: 1) thoroughly document the violation; and 2) contact the landowner to discuss and understand the situation. TPE's response to a violation should match the severity of the violation. Minor infractions such as roadside trash or minor tree cutting) may not warrant a written acknowledgement but should be well documented and continually monitored. Minor infractions may need to be formally addressed if such actions continue or escalate. Severe infractions (such as construction, excavation, timber harvest) require a formal response.

3. Procedures for Enforcement

a. After discovering the potential violation, the chapter reviews the terms of the conservation easement document. If the chapter believes the action to be a violation of the easement's terms or if it is unclear whether the action is a violation, the chapter immediately notifies the chair of the Land Protection Committee. If necessary, the chapter may choose to speak with the landowner to gather information regarding the incident.

b. The chapter immediately generates a written report documenting the violation with photographs, measurements of damage to the affected resource, maps, signed and dated field notes, and explicit comparison with the baseline data. A thorough and detailed report is essential if TPE pursues legal action. The violation should be documented for an audience that is unfamiliar with the property. The chapter immediately submits the written report to the Land Protection Committee for review.

c. Evaluation and formulation of remedies are directed by the Land Protection Committee or an assign of the committee. If the violation is ongoing and response time is of the essence, the chair of the Land Protection Committee evaluates the violation and formulates a plan for remedy.

d. To reduce the propensity for miscommunication, the chair of the Land Protection Committee may choose to designate a lead person (a TPE staff member, a local chapter representative, or a board member) to act as the sole communicator with the landowner in all matters regarding the violation.

e. TPE contacts the landowner by telephone or by personal visit, explains the situation and TPE's policy on easement violations, requests a correction of the violation and/or a replacement and/or cessation of the activity, and sets a deadline for compliance.

f. After the call or personal visit, TPE follows up with a letter reiterating the telephone conversation, the details of the violation, the agreed upon resolution, the deadline for compliance, and the need for a follow-up site visit. TPE sends the correspondence via certified mail and copies the respective chapter president on such correspondence.

g. A designated agent of TPE conducts a site visit of the property on deadline date to determine compliance. The agent generates a written report summarizing the findings of the site visit. The report functions as an internal document to be included in the property file and need not be shared with the landowner.

h. If the matter ends with prompt compliance, TPE staff sends a written acknowledgement of compliance to the landowner and copies the respective chapter president on such correspondence.

i. If the landowner does not comply by the established date, TPE sends a second letter restating the required corrections and establishing a second deadline date. A copy of the letter is sent to TPE's attorney and the respective chapter president.

j. A designated agent of TPE conducts a site visit of the property on the second deadline date to determine compliance. The agent generates a second written report summarizing the findings of the site visit. The report functions as an internal document to be included in the property file and need not be shared with the landowner.

k. If the landowner complies with the required corrections, TPE sends a written acknowledgement to the

l. If the landowner does not comply by the second deadline date, the Land Protection Committee re-evaluates the situation. The Land Protection Committee has the option to recommend to the board that TPE pursue enforcement through formal legal channels (such as arbitration, mediation, and/or litigation). Judicial proceedings should be viewed as a last resort. If a violation requires court action, TPE should:

- Be certain there are adequate funds to cover legal expenses.
- Retain and prepare appropriate legal counsel.
- Actively participate in the formulation of the case.
- Use TPE's documentation of the violation, baseline documentation of the property, and monitoring documentation, as well as experience the property to its fullest advantage.

m. There may be occasions when actions (such as unauthorized timber harvest or construction) by a landowner or third party can or will result in a serious threat to the conservation values of the property. To protect the conservation values in such cases, the action(s) must be stopped immediately. If an attempt to rectify the situation by working with the landowner or responsible party is unsuccessful, TPE uses the following protocol for such situations:

- TPE ensures that the action is, in fact, a violation of the conservation easement.
- TPE notifies the chapter president, the chapter vice president, and the chair of the Land Protection Committee.
- The TPE president should seek the approval of TPE's Executive Committee for an immediate response in the form of an injunction.
- TPE executes the injunction process and attempt to re-establish productive communication with the landowner or responsible party.