
Procedure Title: **ENFORCEMENT OF CONSERVATION
EASEMENTS**



Procedure Number: **Q16-LTA11E**

Related Policy Number: **P16-LTA11E**

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Possible violations may be discovered in the course of annual monitoring inspections, reported by neighbors or other third parties, or during informal observation. Possible violations should be reported as soon as is feasible to the chair of the Stewardship Committee, who will determine what further steps to take depending on the level of violation. No one person shall give the landowner an on-the-spot opinion about whether or not a violation exists. The committee is responsible for responding to the possible violation and for documenting the response. The response shall include appropriate feedback to the person(s) who first identified and reported the possible violation.

All violations must be interpreted with respect to the specific language of the conservation easement. Violations may fall into one of the following categories:

1. **Technical Violation:** a violation that has no impact upon or consequence to the conservation easement's intent, purpose and/or protected conservation values.

Examples of technical violations:

- Discovery of a pre-existing condition upon the property where the pre-existing condition poses no risk to the conservation values being protected by the easement
- Failure to give the required notice of an approved use on the protected property if required
- Failure to give the required notice of sale or transfer of land, if required by the deed

2. **Minor Violation:** a violation that has negligible impact upon or consequences to the conservation easement's intent, purpose, and/or protected conservation values.

Examples of minor violations:

- Minor dumping of non-toxic materials, i.e., leaves or brush, where the dumping poses no risk to the conservation values being protected by the easement
- Undertaking a reserved permitted activity that requires pre-approval without seeking that approval (in cases where Avalonia would have granted approval)
- Creation of small paths or trails
- Minor digging

3. **Moderate Violation:** a violation that has moderate impact upon or consequences to the conservation easement's intent, purpose, and/or protected conservation values

Examples of moderate violations:

- Construction of small prohibited structures, e.g., small shed, tree stand, or concrete pad
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- Dumping on a larger scale (area impacted is large or materials are toxic)
 - Minor tree cutting
4. Major Violation: a violation that has significant impact upon or consequences to the conservation easement's intent, purpose, and/or protected conservation values.

Examples of major violations:

- Construction of significant prohibited structures, e.g., residential structures
- Modification of wetlands
- Significant excavation
- Significant cutting of trees
- Road construction or paving of existing roads

STEPS TO TAKE IN THE EVENT OF A POSSIBLE VIOLATION

The Stewardship Committee shall take the following actions:

Review the Conservation Easement Terms. Review the conservation easement document, baseline inventory, and monitoring reports to determine if a violation has occurred, its exact nature, and when it took place. Consult legal counsel for interpretation if necessary.

Document the Violation. At least two Avalonia representatives should visit the site to inspect and carefully document the violation. The violation must be described in detail, including location and extent. Photos should be taken, signed, and dated by the photographer. Quantitative measurements of the violation should be noted as appropriate, e.g. area of impact, number of trees damaged. Field notes should be signed and dated by the people conducting the inspection. The narrative should include an explicit comparison with the baseline document. Note that the site visit may, in some instances, be more appropriate after or at the same time as meeting with the landowner to discuss the possible violation. If the landowner does not grant Avalonia permission to enter the property, consult with legal counsel on how to proceed.

Contact the Landowner. Meet with the landowner in person if possible to discuss the violation. Listen to the landowner's explanation, ask questions, take notes, and ask the landowner to voluntarily correct the violation or, at least, cease any further work until the matter can be further reviewed and discussed.

If the landowner cannot be contacted by telephone, send a certified letter that specifies the violation and requests a personal meeting to resolve the situation. A copy of the certified letter should also be sent by first class mail. Specify a time frame for contact in the letter. If a response is not received in the time period identified, re-evaluate the situation. If there is no success with repeated attempts at contact and it is a major violation, have the letter served upon the landowner.

Document all meetings and write a follow-up letter to the landowner, recording the discussion and confirming any agreements made. In many circumstances it



may be appropriate to send this letter by certified mail so there will be proof of receipt.

Note: Third Party Violations

Avalonia views its relationships with owners of conserved land as partnerships, based on the belief that we share a common interest in good stewardship of the conserved land. When third persons trespass on the conserved land and damage the resources that both the owner and Avalonia have conserved, Avalonia seeks to engage the cooperation of the landowner in working collaboratively to stop the trespass and have the trespasser repair any damage caused.

Avalonia reviews each third party violation of a conservation easement on a case-by-case basis when deciding what responses and remedies are necessary. If the trespasser is unwilling to cooperate with the owner and Avalonia, then Avalonia may explore judicial remedies for the situation.

ENFORCEMENT RESPONSE STRATEGIES AND REMEDIES

The Stewardship Committee shall attempt to work out a voluntary reparation plan with the property owner. All reparation plans for major violations require approval of the Board of Directors.

Voluntary Reparation by the Landowner. A voluntary, negotiated resolution to a violation is the most common, and highly preferred, solution. Conservation easement violations may be caused unintentionally by landowners, abutters or other parties who were unaware of, or did not understand, the conservation easement. Violators are often willing voluntarily to make reparations. Avalonia will pursue this route until it is clear that it will be ineffective. Avalonia representatives should not take it upon themselves to make reparations.

If the landowner agrees to make reparations, Avalonia shall send a follow up letter as soon as possible reflecting the nature and extent of the reparation work and the agreed-upon timetable for completion. The site should be revisited on the deadline date and the reparation should be documented with photographs, narrative description, and quantitative measurements. Avalonia shall send the landowner a follow-up letter attesting to the satisfactory completion of the work, or otherwise as appropriate.

Discretionary Approval or Amendment

In limited circumstances, Avalonia may consider the use of discretionary approval to resolve the violation: In all cases, the violation must not substantially change the baseline documentation information (e.g., adding a permanent structure or causing permanent or lasting change to the parcel's topography or habitat), and the violation must not substantially change the parcel so as to nullify or render impracticable or meaningless the purpose, permitted uses, reserved rights, Grantee rights, or any other material provision within the easement agreement.



In limited circumstances, Avalonia may consider an amendment to the easement agreement, provided that any amendment must strictly conform to Avalonia's Conservation Easement Amendment policy.

Discretionary approval or amendment may only be considered if there is no significant adverse impact to the conservation values, if the approval or amendment will not terminate the perpetual nature of the easement, and if the economic value of the easement is not reduced by the change. Any amendment used to cure a violation which results in an increase in the amount of land under easement must not be used by the owner to justify a charitable contribution tax deduction. Avalonia must also consider whether the approval or amendment would be controversial within the community or incite negative public reaction.

Litigation. Court enforcement is expensive and time consuming, may produce an undesirable outcome, and will likely irreparably damage the relationship between the landowner and Avalonia. As such, it should be pursued only as a last resort. Nevertheless, court enforcement may be necessary to defend a conservation easement, prevent or stop damaging activities, or obtain reparation. In such instances Avalonia shall retain counsel to prepare and present the strongest possible case.

BOARD REPORTS AND APPROVALS

The Stewardship Committee reports to the Board of Directors at each regular Board meeting, reviewing the status of current violation investigations and enforcement matters and actions taken in response. For all major violations the Board of Directors must affirm the proposed remedy or response before it is implemented.

LTA NOTIFICATION OF MAJOR VIOLATION

In the interest of sharing information on enforcement outcomes, Avalonia may, at its sole discretion, inform Land Trust Alliance staff of major conservation easement violations that may require litigation or assist other land trusts to manage violations.
