

# Scenic Rivers Land Trust (SRLT)

## Conservation Easement Violation Resolution Policy

Adopted: 6/13/2017

### **Objective**

The objective of this policy is to establish a method of treating violations of the terms of conservation easements. It is intended to cover both Minor (minor ground disturbance, minor tree cutting, minor dumping, etc.) and Major violations (construction, excavation, timbering, pollution, wetland filling or draining, etc.). Maintaining good landowner relations is a good strategy to prevent violations. Regular communication and property monitoring result in violations being found and corrected in a timely manner.

Enforcement is needed to:

- 1) Uphold our mission to protect natural and scenic land.
- 2) Engender public confidence in SRLT and SRLT's conservation easement program. Public confidence in the SRLT's commitment to stand by its easements is built with each easement.
- 3) Maintain SRLT's ability to accept tax-deductible easement gifts and its tax-exempt status. Federal regulations specify that the eligibility of an organization to accept tax-deductible easement gifts must "have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions."

SRLT may discover a violation on a monitoring visit, through a neighbor or other interested party, or during informal observation. This may occur during a formal or informal inspection, or as a gratuitous coincidence. It is important to note that a violation may have been caused by the landowner, an adjacent property owner, or a trespasser. Despite who caused the violation, the responsibility lies with the landowner to take actions to correct the violation.

This policy shall be reviewed and approved by SRLT's Board of Directors no less than every three years.

### **Approach**

SRLT's first response must be twofold: (1) thoroughly document the violation and (2) contact the landowner to discuss the situation. In general, the end response required of SRLT will be to establish a cease-and-desist order in all cases; to require restoration if the damage is reversible; and, if irreversible, to obtain compensation for the damage incurred. SRLT's response to a violation should match the severity of the violation.

## Procedures for Enforcement

If a violation is suspected, the ultimate remedy will be pursued via the following steps:

1. Thoroughly document violation(s) with photographs, maps and a written report. The report should include photos, signed by the photographer and keyed to photo points on a map, or a videotape with verbal commentary. The violation report cites the conservation easement for specific violations. The violation report includes field notes that are dated. If the violation is considered major, the report includes explicit comparison with the baseline assessment.
2. For a major violation, report finding to the Board. For a minor violation, report finding to SRLT's Executive Director. If appropriate, notify Terra Firma of violation. (Terra Firma is the easement enforcement insurer for SRLT)
3. Contact the landowner by phone. Explain the nature of the violation, citing the pertinent terms of the easement. Require that the violation be corrected, identifying the measures required. Establish a reasonable deadline (minimum of 30 days), and advise that an inspection will be performed thereafter. If appropriate, offer available assistance. If desirable, arrange a meeting with the landowner, preferably on site.
4. Follow up the phone call with a letter, covering the same material.
5. Immediately after that deadline, one staff member and one volunteer, board member, or staff member shall inspect the area of the violation, and depending on the response, either:
  - a. If corrected, thank the landowner for her/his cooperation in a letter, or –
  - b. If not corrected, in a letter, restate the requirements for correction, advising of the failures to date, citing the damage to SRLT, establishing a second, shorter deadline (30 days) and warning of the possibility of legal action. Send a copy to SRLT's attorney. Notify the Board of findings for a major violation, Executive Director for a minor violation. Notify Terra Firma as appropriate.
    - i. Immediately after the second deadline, one staff member and one volunteer, board member, or staff member shall inspect the area of the violation, and depending on the response, either send a thank you letter for his/her cooperation, or proceed to Step 6.
6. If the violation continues to be uncorrected, notify the Board, seek the council of SRLT's attorney, and proceed with the attorney's recommended legal action (i.e., arbitration, mediation, litigation), with the approval of the Executive Committee. Judicial proceedings should be viewed as a means of last resort. As appropriate, communicate with Terra Firma.