



THE SAKONNET PRESERVATION ASSOCIATION, INC.

CONSERVATION EASEMENT VIOLATION RESPONSE & RESOLUTION PROCEDURE

The Sakonnet Preservation Association, Inc. (the Association) shall take prompt action in response to a possible violation and follow the provisions of the Association's adopted Easement Violation Response and Resolution Policy (Policy) and this Procedure. It shall address all violations, no matter how minor, and tailor its response to the impacts of the violation on the conservation purposes and other provisions of the conservation easement and to avoidance of future violations.

1. Learning of a Possible Violation

- 1.1. **Landowner Not Present** - If a possible violation has been discovered during a monitoring visit, the monitor shall complete the visit, document with photos and maps if possible, complete and hand in the Conservation Easement Monitoring Inspection Report (Report) as soon as possible, and notify the Stewardship Committee Chair, or if unavailable, the President or Vice-President.
- 1.2. **Landowner Present** - If a possible violation has been discovered during a monitoring visit, the monitor may ask questions of the landowner for further clarification of the activity or physical modification and document the changes with photos but shall not determine or state whether it is or is not a violation. The monitor shall complete the visit, thank the landowner, complete and hand in the Report as soon as possible, and notify the Stewardship Committee Chair or, if unavailable, the President or Vice President of the possible violation.
- 1.3. **Emergency** - If the possible violation is an emergency, (e.g. the bulldozers are rolling and a restraining order or injunction may be needed), the monitor shall take notes and photos, if possible, and directly notify the President or Vice President as soon as possible upon leaving the property.
- 1.4. **Reported by neighbor, other interested party, or observed informally** - If a possible violation is reported by a neighboring landowner or other interested party, or is discovered by informal observation, the individual receiving the information shall notify the Stewardship Committee Chair, or if unavailable, the President or Vice President. If the possible violation is an emergency, as described in paragraph 1.3 above, the individual receiving the information shall immediately notify the President or Vice President.

2. Documenting the Possible Violation

The possible violation shall be carefully documented quantitatively and descriptively for an audience that does not know the property at all. Extensive dated and signed field notes, specific language from the CE that substantiates the possible violation, and comparisons to baseline documentation and recent monitoring reports shall be included in the Report and in the documentation of subsequent visits to demonstrate the possible violation.

- 2.1. **Landowner not present** - If the monitor was not accompanied by the landowner on the visit and was able to take photos, all relevant information about the photos shall be recorded by the monitor according to the Conservation Easement Violation Response and Resolution Procedure. The monitor shall measure, if possible, the damage to the affected resource. For example, if trees are cut in a restricted area, the monitor shall count the stumps and measure diameters, and take pictures of a tape measure on the stumps. If an illegal road was bulldozed, the monitor shall map its position and record what was destroyed. A return visit may be scheduled if necessary.
- 2.2. **Landowner present** - If the monitor is unable to perform fully the above at the time of the initial visit, the President and Stewardship Committee Chair, after contacting, or attempting to contact the landowner for permission to re-visit the property, shall perform the photographing and measuring during a follow-up visit to the property.
- 2.3. **Emergency** - The monitor shall complete his/her Report as soon as possible and notify the officer, (President or Vice President), to whom s/he initially reported the possible violation.
- 2.4. **Communication** - Any officer, other board member or volunteer involved shall be thoroughly briefed by the Association's attorney on proper procedures, conduct, correspondence, and other communication to protect the Association's legal interests. All conversations, phone calls, meetings and correspondence regarding the violation shall be documented, signed and dated by the initiator.
- 2.5. **Record keeping** - All documentation of any violation, regardless of the level of impact, shall become part of the Association's documentation of the property and shall be filed accordingly and stored following the Association's Records Policy. Case specific advice regarding the ongoing documentation of the response to a suspected violation will be provided by the Association's legal counsel and shall be filed and stored as stated above.

3. Reviewing the Documentation (See Policy sections 3.2., 3.3. & 3.4.)

- 3.1. **All suspected violations** - The Stewardship Committee Chair, or designee if not available, shall thoroughly review the Report, previous Reports, the documentation of the possible violation, the terms of the Conservation Easement and the comparison to the Baseline Documentation, visit the property, and make an initial assessment as to whether or not it is a violation. In the case of a suspected moderate or major violation, the Committee's assessment and

recommended corrective action shall be forwarded to the Executive Committee for review before any contact is made with the landowner.

3.2. **Emergency** - The officer, (President or Vice President), shall review the monitor's or other individual's documentation with him/her, in advance if possible, and the other documentation listed in 4.1., visit the property and immediately contact the Stewardship Committee Chair and the Executive Committee members to determine whether or not the activity constitutes a violation and what action, if any, should be taken.

4. Determining If It Is a Violation

4.1. To help determine whether or not a violation has occurred, the Stewardship and Executive Committee members shall evaluate the impact of the suspected violation on the conservation purposes of the property's Conservation Easement using the following criteria:

- Would the activity or action be permitted under the Association's current Conservation Easement?
- How central is the change to the conservation purposes of the Conservation Easement and core resource values?
- How much of the parcel is affected? How large an area?
- How significant is the adverse impact? How easy is it to fix? Does it involve soil loss, affect water quality, scenic attributes or other resources?

4.2. The individuals charged with determining whether or not a violation has occurred and the classification of the violation, shall refer to the Conservation Easement Violation Response and Resolution Policy Sections 3, "Defining Violations," and 7, "Determining if it's a Violation," for guidance.

4.3. When dealing with a possible violation by a third party, the Stewardship Committee members shall review each third party violation on a case-by-case basis when deciding what education measures and remedies are necessary. The following should be considered when determining if it is a violation:

- Severity of resource damage
- Relationship of landowner to the third party that violated the conservation easement
- Did the landowner do or fail to do anything that could be construed as permission
- Cooperation of landowner
- Visibility of damage
- Type of damage
- Ability to remediate
- Third party's knowledge and intentions related to the action
- Prior unsubstantiated reports of a possible violation

4.4. If the Association determines the suspected violation is not a violation, the process ends. The Stewardship Committee Chair shall then send the "Follow-Up

Letter to the Landowner” to inform him/her that the property appears to be in compliance with the terms of the Conservation Easement as outlined in the Association's Conservation Easement Monitoring Procedure.

4.5. If after review it is determined that a violation has occurred, the steps outlined in Section below, “Responding to a Violation” shall be followed.

5. Responding To A Violation

5.1. To help the Association choose the correct response, it shall evaluate the following mitigating circumstances:

- How intentional was the action? Was it a mistake?
- Did the landowner halt the action when first requested?
- Was the landowner willing to fix the violation and generally cooperative?
- Are future violations likely?
- Has the Association had to file an action in court, seek injunctive relief or otherwise file in court?
- What limits are there to the Association's remedies: educational, legal, financial, other?
- What mistakes, if any, did the Association make (delay, miscommunication in drafting a response, lack of clarity and so on) and how significant are they?
- Is remediation possible and effective?
- Are there special circumstances that the Association should consider?
- Does the landowner have a history of violations?
- What degree of relationship benefits would accrue from pursuing education rather than litigation?
- Is it a violation or possible violation of law?
- What was the conserving landowner's intent?
- Was it a third party violation? How do the circumstances rank on the criteria listed above in Section, 5.3?
- How will this activity or response affect public confidence in conservation?
- How much money and time will it take for the Association to resolve the problem?
- Is an amendment a possibility?

5.2. **Technical violations** - If the Stewardship Committee determines that a technical violation has occurred, and a site visit is not required, the Stewardship Committee shall request the President to write a letter to the landowner issuing a reminder about the terms of the Conservation Easement. The letter shall become part of the Association's documentation of the property and shall be stored accordingly. For a technical violation, that is all that shall need to be done. Some technical violations may not require a response.

5.3. **Minor violations** - If the Stewardship Committee members determine that minor violation has occurred, the President shall write the landowners as described in Section 7.1. below.

5.4. **Moderate or major violations** - If the Executive and Stewardship Committee members determine that a moderate or major violation has occurred, the Executive Committee shall enlist legal counsel for help assessing the terms of the Conservation Easement and the effects of the activity on the conservation values being protected; the severity of the violation; any local, state or federal third party with jurisdiction in the area of the violation; and the Association's course of action. Legal counsel shall also thoroughly brief any officer, other Board member or volunteer who is involved on proper procedures, conduct, correspondence, and other communication to protect the Association's legal interests. The Board of Directors shall be apprised of any such violations and shall vote on any course of action.

5.5. **Emergencies** - If the Executive Committee, upon reviewing the officer, monitor and Stewardship Committee Chair's reports, agrees that the violation qualifies as an emergency and action must be taken immediately, legal counsel shall be sought and a special meeting of the Board shall be called, if necessary, to approve any action advised.

6. Contacting and Meeting with The Landowner

6.1. **Minor, moderate, major or third-party violations that are not emergencies** - If it is determined that a minor, moderate, major or third-party violation requiring remediation has occurred, and a site visit is necessary to confirm the activity, the President, unless it is an emergency requiring immediate action, shall contact the owner by phone or email and send the landowner a letter requesting a meeting at the property at the landowner's earliest convenience to address the points listed in Policy Section 9., "Meeting with the Landowner." If the landowner responds and a meeting is scheduled, the President and another Board member shall meet with the landowner. If the landowner does not respond within two weeks, the President shall attempt to reach him/her by phone.

If the landowner cannot be contacted by telephone or email, the President shall draft and send a Certified letter (return receipt requested) and a separate copy by first class mail, enclosing a postage paid return envelope, that specifies the alleged violation and requests a personal meeting to resolve the situation. The letter shall specify a deadline for contact with the Association. If the Certified letter is rejected, it should be re-sent Certified first class, and be hand-delivered by a private process server, constable, sheriff, or other appropriate government agent.

If a response is not received in the time period identified, the Executive Committee shall re-evaluate the situation. The President, together with another Board member, shall try to visit the property at times when someone may be found at home and attempt to make contact. If there is no success with repeated attempts at contact and the violation is active and ongoing, it may be appropriate for the Executive Committee, with the help of legal counsel, to seek an injunction to halt violating activities, while determining appropriate legal actions for the situation.

6.2. Third party violations - If a third party, such as an adjacent landowner, caused the violation, the President shall contact the landowner, following the procedure outlined in 6.1 above, requesting a meeting as soon as possible to discuss the violation and its resolution. Even if the landowner did not cause the violation, s/he should be included in all negotiations since, in most cases the violation is the landowner's legal responsibility. The landowner needs to be given the opportunity to take the lead as there may be issues involved beyond the CE violation. If, as a result of the meeting with the landowner it is deemed necessary to include all parties, the President (or landowner if circumstances warrant) shall contact the violator(s) to arrange a meeting of all parties involved to discuss corrective measures. If there is no timely cooperation on the part of either the landowner or the violator(s), the President shall seek legal counsel to determine next steps toward corrective action.

6.3. Emergency Violations - If the Executive Committee has determined that a violation has/is being committed and is likely to cause immediate or long-term irreparable harm to the conservation values and terms of the easement, the Association's legal counsel shall be contacted by the President or Vice-President to determine the best course of action and options regarding contact with the landowner.

7. Choosing the Appropriate Enforcement Response

7.1. The Executive Committee shall work with the landowner or third party to seek a voluntary, negotiated resolution until it is clear that it is not workable or unless the property's conservation values face imminent harm or are already endangered by activities on the property that violate the easement.

7.2. If during the site visit, the President, other Board member and the landowner agree upon the nature of the violation, they shall discuss alternatives for remediation and attempt to arrive at a solution. This may require further visits, research, consultations and meetings. The President shall write a letter or email to the landowner following each visit, documenting the conversation and discussed alternatives, the chosen remediation, and a schedule of restoration with a deadline of ideally 90 days for compliance and inspection as appropriate.

7.3. The President or Board member shall inspect the site on or near the remediation deadline and document the completion of the corrective actions. If corrective actions have been successfully implemented, the President shall send the landowner an acknowledgement thank you letter.

7.4. If it is a technical or minor violation and corrective actions have not been successfully implemented, the President shall send a second letter with a shorter deadline (30 days).

7.5. The President or Board member shall inspect the site on or near the 2nd deadline and document the completion of the corrective actions. If corrected or completed, the President shall send the landowner an acknowledgement / thank you letter. If not, the Executive Committee shall determine if it is appropriate to involve legal counsel at this time.

- 7.6. If the landowner does not agree that there is a violation or does not agree on a solution to the violation, the President or Vice President will reaffirm the Association's position and state that s/he will consult the Association's legal counsel. The officer(s) shall explore with legal counsel any approaches that may be taken in an attempt to reach an amicable resolution or to enforce the Conservation Easement. Other alternatives may be employed to bring the landowner back into negotiation. The Executive Committee, with the help of legal counsel, shall identify a target date for closure of the case to avoid letting the issue remain unresolved for an extended period of time.
- 7.7. If the violation is very minor, the Executive Committee, with the advice of legal counsel, and upon agreement of the landowner may consider discretionary approval of a change or an amendment that is consistent with its policies and does not compromise the property's conservation values or donor's intent and results in a net neutral effect or conservation gain, such as imposition of further restrictions in exchange for a waiver of the breached terms.
- 7.8. If it is a minor violation that should be remedied, and all attempts at negotiation for removal and restoration have been exhausted, the Executive Committee may consider less than full restoration unless legal counsel advises otherwise.
- 7.9. If it is a major violation and the Executive Committee has exhausted all attempts at negotiation, it shall consider litigation in the event of imminent danger or threat to conservation values while assessing the risk of not following through on its commitment to restore, the time and effort required to enforce, the extent and nature of the violation, and the probability of success, together with any other applicable information.

8. Reporting Violations to the Land Trust Alliance

As part of the Association's commitment to the Standards and Practices of the Land Trust Alliance, it shall report to the national organization any major easement violations, particularly those that involve litigation.

Revision History

12/17/2008 - Adopted by SPA Board of Directors

11/18/2009 – Revisions adopted by SPA Board of Directors

4/24/2013 – Revisions Approved by SPA Board of Directors, (Due to the critical importance of the third party inclusion in this policy, the Executive Committee determined that this procedure should receive approval at the Board level.)