

HARWICH CONSERVATION TRUST
Guidelines to Address Land Stewardship Violations
Voted by HCT Board of Trustees on March 27, 2008

Guidelines Overview

These guidelines were created to assist volunteers and staff that monitor Harwich Conservation Trust (HCT) properties owned in fee simple and those under conservation restriction (CR), and are to be reviewed, updated, and amended as needed.

Through the application of these guidelines, HCT strives to:

- Maintain the conservation value of each property and achieve management goals.
- Enhance HCT's reputation for its ability to achieve its overall mission and for its ability to act as an effective steward of its lands.
- Protect HCT's legal rights and obligations.
- Develop and maintain the most constructive working relationship possible with abutters and CR landowners.
- Ensure compliance with the terms of CRs.

To effectively achieve these goals, volunteers who are recruited for monitoring must receive appropriate training, including general orientation to HCT, its mission, history, policies & procedures, as well as identification of land stewardship issues, both natural and man-made.

It is inevitable that there will be a stewardship violation on one of HCT's fee simple properties or CRs, whether intentional or unintentional. Property monitoring will enhance HCT's ability to identify and respond to violations, but it is equally important to foster a positive working relationship with abutters and CR landowners.

Diplomatic resolution (e.g. conversation, meeting, letter outlining issue and solution) should be considered first to solve any problems in a time-efficient, low-cost manner. Legal action should be used as a last resort as litigation can be costly and consume valuable HCT resources. In appropriate cases, arbitration or mediation should be considered as an alternative to litigation. In the case of CR monitoring and/or violations, the specific terms of each conservation restriction should be reviewed and addressed on a case-by-case basis, including remedies.

These guidelines were designed in accordance with the Land Trust Alliance's (LTA) *The Standards and Practices Guidebook* as well as the 2004 revision. The following LTA Practices should be consulted when implementing this policy:

Applicable Practices From *The Standards and Practices Guidebook*

- 15B – Monitoring Land Trust Properties
- 15D – Land Stewardship Administration
- 15E – Community Relations
- 14B – Easement Monitoring
- 14C – Landowner Contact

Applicable Practices From the 2004 revision of *The Standards and Practices Guidebook*

- 12D – Monitoring Land Trust Properties
- 12E – Land Stewardship Administration
- 12F – Community Outreach
- 11B – Baseline Documentation
- 11C – Easement Monitoring
- 11D – Landowner Relations
- 11E – Enforcement of Easements

Note: Portions of the Conservation Easement Stewardship Practices (14B, 14C, and 11B-11E above) have also been incorporated into HCT's *Guidelines to Address Land Stewardship Violations*.

Types of Violations

Staff should notify abutters and CR landowners when any violations are found. Minor violations can include litter, minimal brush dumping, limited cutting or pruning of vegetation, limited encroachment, and minor vandalism. Examples of major violations include excavation, pollution, significant cutting of vegetation, draining or filling of wetlands as well as acts that are specifically prohibited by CRs. These examples are not inclusive. It is difficult to specify the severity of a violation out of context and each will have to be evaluated on a case-by-case basis.

General Violation Prevention Strategies

1. Baseline documentation reports (and photographs) should be prepared for each fee simple property or conservation restriction, prior to closing if possible, and updated every three years or more frequently if circumstances warrant.
2. Regular monitoring of all parcels is critical. Monitoring should occur at least annually, but more frequently as circumstances may warrant.
3. HCT should maintain good relations with local officials. Staff should make sure that the conservation agent and conservation commission are aware of HCT properties and CRs.
4. Periodic outreach efforts should be made to recruit abutters to assist with monitoring.

Additional Violation Prevention Strategies for CRs

1. In order to maintain good landowner relations an attempt should be made to involve the landowner in the site visit. If the landowner is unable to walk the property during monitoring, staff should follow up with a phone call and provide the landowner with the written monitoring report. If no stewardship issues are observed during a monitoring visit, staff or volunteer monitors should record "none observed."
2. When asked, HCT representatives should provide informal services to the landowners such as advice on enhancing wildlife habitat where the representative has the requisite expertise.
3. CR landowners should be sent newsletters, announcements, etc.
4. Staff should meet with potential buyers or new owners of land under CR to ensure that new owners understand HCT's mission, the CR for their property, and the concept and purpose of CRs in general.

5. HCT could try to get local real estate brokers to understand conservation restrictions. HCT could prepare a brief written overview of conservation restrictions and ask (this can be at a face-to-face meeting) the leaders of the brokers' professional association to distribute it to all brokers at least every other year.
6. If solicited by a real estate broker regarding sale of a property subject to a HCT CR, then HCT could encourage the broker to arrange a meeting of a prospective property buyer with a HCT staff member or other representative to explain the CR.

General Guidelines for Stewardship Violation Response and Enforcement

1. No one person should make decisions on violation response – seek counsel from staff first.
2. When visiting the site of a stewardship violation, volunteer monitors and staff should focus on listening to gather information as opposed to giving person(s) presumed or known to be associated with stewardship violations an on-the-spot opinion about cause of circumstances.
3. When possible and/or appropriate, meetings with landowners/abutters should be conducted by a team of at least two HCT representatives. The team could include at least one staff member and an HCT Trustee.
4. All written communications with person(s) presumed or known to be associated with issues should be by staff or official HCT representative (e.g. trustee or contracted professional).
5. HCT representatives should be as flexible as the situation warrants. They should balance the harm caused by the violation with the cost and benefit of the selected enforcement response.
6. HCT representatives should always be courteous and maintain professionalism and integrity. Remember that staff and volunteer property monitors are HCT's diplomatic ambassadors.
7. HCT should maintain consistent responses to similar stewardship violations.

Procedure for Handling Violations

1. Any volunteer monitor will describe the violation in a monitoring report and will notify HCT staff.
2. HCT staff will investigate the report, document the violation (including signed and dated photos) and if possible, determine who is responsible for violation.
3. HCT staff will address the violation, or if warranted, present the information to the Land Stewardship Committee (LSC) for review.
4. The LSC will evaluate the violation and specify the required corrections and deadline(s). Except for minor corrections, the HCT Board of Trustees should be notified.
5. A staff member will contact the party responsible for violation by telephone to explain the problem and HCT policy. The staff member will then request correction, replacement and/or cessation of activity, and state the deadline for compliance (i.e., immediately, or number of days). The staff member will offer to visit the site with the party responsible for violation in a professional, courteous manner.
6. The staff member will follow up the phone call with a certified return receipt letter reiterating verbal explanations and requests (i.e., why a violation, corrective measures required, deadline for correction), offer of assistance, and need for correction inspection.
7. When possible and/or appropriate, a team of at least two HCT representatives will inspect the site on the deadline date.
8. If there has been prompt correction, a staff member will send a note of thanks.

9. If responsible party is non-compliant, a staff member will send a second certified return receipt letter firmly stating HCT vested interests, required corrections, and a new deadline date. A copy will be sent to HCT attorney, who is hopefully also member of HCT Board of Trustees.
10. When possible and/or appropriate, a team of at least two HCT representatives will inspect the site on the second deadline date.
11. If there has been prompt correction, a staff member will send a note of thanks.
12. If non-compliant, a staff member will call the HCT attorney to discuss legal options. The attorney will be requested to send a letter requesting compliance.

If the party responsible for violation cannot be contacted by phone (pursuant to item 6, above), a staff member will send a certified letter --return receipt requested-- that specifies the violation, requests a personal meeting to resolve the situation, and specifies a time frame for the meeting. If the letter is rejected, staff should arrange for a letter to be served by the Sheriff and, if necessary, contact the HCT attorney for legal options.

Remedy scale

1. Before the fact/reversible; requires review and analysis
2. On-going; requires cease/desist order and restore order
3. After the fact/irreversible; requires compensation and/or restoration