



LINCOLN LAND CONSERVATION TRUST
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LINCOLN LAND CONSERVATION TRUST Enforcement Policy

07.06.11

Investigation and enforcement of apparent violations of conservation land or land with Conservation Restrictions (CRs) is a fundamental activity of the Lincoln Land Conservation Trust. Stewardship of our real estate and our obligations as holders (or subordinate holders) of CRs is vital to protect the land, to sustain the confidence of our donors, and to maintain the credibility of all conservation organizations and efforts in Lincoln. While each situation will vary, such investigation and enforcement should be vigorous, comprehensive, fair, and carefully adapted to the situation to which it is applied. This Enforcement Policy outlines a process and considerations to be applied to investigation and enforcement of apparent violations.

I. ENFORCEMENT PRINCIPLES

Preparation for Enforcement

- Structure original acquisition to facilitate monitoring and enforcement
- Maintain relationship with landowners
- Monitor regularly and maintain CR and monitoring documentation
- Identify resources necessary to monitor and enforce CR, including financial resources, backup CR holders, other stakeholders, etc.
- Maintain procedures to prevent, discover and resolve potential violations, including monitoring procedures, response checklists, documentation and decision-making protocols
- Adopt a financing plan for long-term stewardship and enforcement

Objectives of Enforcement

- Defend the terms of the CR, the intent of the grantor, and the conservation values of the property
- Prevent or stop ongoing environmental harm from a violation
- Remediate and restore land to extent feasible

- Discourage any windfall accruing to the perpetrator of a violation
- Maintain and enhance public/donor confidence in organization and land conservation
- Avoid negative precedent
- Strive to maintain good relations with landowner

II. ENFORCEMENT PROCEDURES

- Evaluate report of violation for accuracy and determination of extent of violation.
- Emergency assessment for emergency action, considering ongoing damage, credible allegation source, low risk to action
- Initial determination of violation, relevant facts, and CR terms
- Contact an authorized LLCT trustee (Chairman, President and Stewardship Coordinator, as available)
- Prepare Incident Report and compile background and current factual information to consider enforcement action
- Contact owner (and violator if different) and any necessary public authority (e.g., Conservation Commission) to gather information and alert them of the apparent problem
- Document facts (sources, photos, reports) and opinions (interpretations, excuses, assessments) with attention to maintaining credibility and possible evidentiary needs
- Assess reported violation including the following considerations: clear violation and violator, willfulness, significant impact or precedent, strength of case, proof, potential defenses
- Assess actions including the following considerations: resources available to seek redress, violator's resources and defenses, precedential impacts, danger of private inurement, public relations, others available to help enforcement (including EOE, the Attorney General, MLTC, neighbors, etc.)
- Consider resolution alternatives including written warning, statement of apology and remediation, CR amendment or formal interpretation, pre-litigation settlement (by agreement, mediation, or arbitration), settlement filed with a court, or litigation commenced.
- Evaluate remediation goals, as feasible and achievable, including remediation of the violation, alternative improvements of parcel to offset damage, alternative conservation benefits (land, program, finance), clarification or amendment of CR (with due consideration for accountability and future enforcement, avoiding private inurement, precedent, and public opinion)

- Coordinate with Conservation Commission where wetlands or public conservation interests affected, and coordinate where appropriate with other conservation organizations
- Implement the final action, including as necessary final documentation and archiving, legal approval of documentation, ratification by the Board, public relations statement, etc. Any final resolutions must be by an individual with delegated authority, and shall require Board approval if any material conservation interests are affected.
- Complete the Incident Report, including final resolution, follow-up actions, different monitoring regimes, etc.; file Incident Report with Stewardship File for the Property and in the Incident Report file.