

Conservation Restriction Violation Response Policy and Procedure

Policy

This policy is designed to assist volunteers and staff who carry out monitoring of parcels on which The 300 Committee (T3C) holds a Conservation Restriction (CR).

As its general goals, T3C should seek to

- maintain the conservation purpose of the CR
- ensure compliance with the terms of the CR
- enhance T3C's reputation both for its ability to achieve its overall mission and for its ability to enforce specific CRs
- protect T3C's legal rights and obligations
- develop and maintain the most constructive working relationship possible with landowners

To effectively achieve these goals, volunteers who are recruited for monitoring must receive appropriate training.

It is inevitable that there will be a violation of one of our CRs. It may be from ignorance or willful malfeasance, but it will happen. It is probably least likely to occur with the originator of the CR and increasingly more likely with subsequent owners. Frequent monitoring usually will catch violations, but it is better to have a good working relationship with the landowner starting with the time he or she obtains the CR or acquires the property. Given time and experience with a particular landowner we can judge whether he is trustworthy and knowledgeable about his CR and its conditions. If a good rapport has been established, then annual monitoring is sufficient. If not, then more frequent monitoring is desirable. Frequent monitoring will also detect violations by abutters.

Legal action must be used as a last resort because litigation can have serious implications for T3C. Legal actions can be costly and consume valuable staff time. It may be advisable in an individual case, if the violation is fairly minor, to permit the violation, negotiate a modification to the CR and require mitigation to correct the violations. The landowner should be required to pay for any legal fees necessitated by any modification and mitigation measures. We should note that any CR modification may result in an increase in the value of the land. In such a case T3C would be obligated to notify the Internal Revenue Service and local taxing authorities. In appropriate cases, arbitration or mediation should be considered as an alternative to costly litigation.

Overall Guidelines for Violation Response and Enforcement

1. No one person should make decisions on violation response – get counsel from staff first. Neither Monitor nor staff should ever give a landowner an on-the-spot opinion about whether or not a violation exists.

2. T3C should always conduct meetings with a landowner as a team of at least two. The team should include at least one staff member, a Board member and may also include a stewardship committee member.
3. All written communications with a landowner should be by staff.
4. T3C 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.
5. T3C representatives should always be courteous and maintain professionalism and integrity. Remember that you and the Monitors are T3C's diplomatic ambassadors.
6. T3C should maintain consistent responses to similar CR violations.

Violation Prevention Strategies

1. In order to maintain good landowner relations an attempt should be made to get the landowner involved 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. The monitoring report should NOT explicitly say "no violations found."
2. When asked, T3C representatives should provide informal services to the landowners such as advice on enhancing wildlife habitat where the representative has the requisite expertise. Also send newsletters and outings announcements, etc.
3. Frequent monitoring of all parcels is critical. Monitoring should occur at least annually, but more frequently as circumstances may warrant.
4. T3C staff should attempt to ensure that we are informed when properties change hands.
5. Staff and prospective Monitor should meet with potential buyers or new owners and provide a "new owner introductory package" to ensure that new owners understand T3C's mission, the CR for their property, and the concept and purpose of CRs in general.
6. T3C should maintain good relations with local officials. Staff should make sure that the conservation agent and conservation commission are aware of properties with CRs.
7. T3C should try to get local real estate brokers to understand conservation restrictions. T3C should 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.
8. T3C should urge brokers to arrange a meeting of a prospective property buyer with a T3C staff member or other representative to explain the CR.

Types of Violations

Staff should notify the landowner when any violations are found. Minor violations might include road-side trash, the cutting of a few tree limbs or a small tree, and minor vandalism. Examples of major violations are construction not allowed by the CR, excavation, pollution, cutting of large trees, and draining or filling of wetlands or other acts specifically prohibited by the CR. These examples are not inclusive. It is difficult to specify the degree of seriousness of a violation out of context and each case will have to be judged on its own merit.

Procedure for Handling Violations

1. The Monitor should describe violation to the T3C administrator in the monitoring report. The administrator should appoint an ad hoc committee of at least two people to investigate the report.
2. The committee will review the CR document.
3. After staff notifies landowner, committee representatives should visit the site and physically inspect the possible violation.
4. The committee should evaluate the violation and specify the required corrections. Except for minor corrections, the Board should be notified and asked for their guidance.
5. A staff member should contact Landowner by telephone explaining the problem and T3C policy. The staff member will then request correction, replacement and/or cessation of activity, and state deadline for compliance (i.e., immediately, 7, 14, 21, or 30 days). The staff member should offer to visit the site with the landowner. Of course, staff should always be courteous.
6. The staff member should follow up the phone call with a letter reiterating oral explanations and requests (i.e., why a violation, corrective measures required, deadline for compliance), offer of assistance, and need for compliance inspection.
7. The committee should inspect site at the deadline date.
8. If there has been prompt compliance, a staff member should send a note of thanks.
9. If non-compliant, a staff member should send a second letter. That letter should be firm, cite T3C vested interests, restate required corrections, and establish new shorter deadline date. A copy should be sent to T3C attorney.
10. The committee should inspect site at the second deadline date.
11. If there has been prompt compliance, a staff member should send a note of thanks.
12. If non-compliant, a staff member should call T3C attorney to discuss legal options. The attorney should be requested to send a letter requesting compliance.

Remedies

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

If the landowner cannot be contacted by phone (pursuant to item 5, above), staff member should send a certified letter --return receipt requested-- that specifies the violation and requests a personal meeting to resolve the situation and specifies a time frame for the meeting. If the meeting occurs then staff should proceed from the appropriate item on the list above. If the letter is rejected, staff should contact the T3C attorney for legal options.