

Sutter Buttes Regional Land Trust

Enforcement Policy

Purpose

This policy guides the enforcement of conservation easements, including violation prevention and response to violations that have already occurred.

Policy

The long-term effectiveness of easements to protect conservation values depends on the ability and commitment to enforce the terms of each easement. Moreover, in order to accept tax-deductible gifts and qualify for tax-exempt status, Internal Revenue Service (IRS) regulations require that easement-accepting organizations have a commitment to protect the conservation purposes of the donation and to enforce the restrictions (Treas. Reg. 1.170A-14(c)(1)).

Sutter Buttes Regional Land Trust (SBRLT) will promptly and diligently pursue violations to assure integrity of the conservation easements that we hold. Each easement represents a unique situation and a breach of the easement terms requires a tailored approach. Our goal is to protect the conservation values, correct the infraction, and prevent a reoccurrence. SBRLT shall consider mitigating circumstances when evaluating a potential violation.

Staff time and attorney costs represent a significant financial commitment, and even minor violations handled by staff will have a financial impact. The SBRLT shall have the resources to handle violation enforcement.

1. Violation Prevention - Landowner education and relationship building are the best strategies to minimize the need for enforcement actions. The following strategies help reduce potential violations:

- a) Create precise and clear conservation easements that are easily understood.
- b) Establish and maintain good relationships with landowners.
- c) Create accurate baseline information when the easement is acquired.
- d) Monitor each easement property regularly and update baseline information as appropriate.

2. Enforcement Principles

- a) Maintain the easement's conservation purpose(s) and values.
- b) Protect SBRLT legal rights.
- c) Maintain the most constructive working relationship possible with the landowner.

- d) Document each step in the violation assessment and resolution process, including all communications.
- e) Be as consistent as possible in response to similar easement violations.
- f) Decisions regarding whether or not a violation has occurred shall not be made by a single individual. Decisions about major violations will involve Board, Stewardship Committee and staff. Decisions about minor violations will be made by the Stewardship Manager and Stewardship Chair who will then keep the Board and the Stewardship Committee informed.
- g) If there are co-holders to the conservation easement, all co-holders will be notified as per the terms of the easement or the current cooperative agreement held by the co-holders.
- h) The landowner is responsible for all costs, including legal costs, associated with the negotiated remedy for a violation, unless otherwise determined by the terms of the easement. The Land Trust may, however, negotiate to share costs if the landowner does not have sufficient funds to cover the associated costs, even if the easement requires the landowner to pay all costs.
- i) When a violation is caused by a third party, the landowner is still responsible for the violation. SBRLT shall, however, work collaboratively with the landowner to remedy the violation.

3. Violation Response Protocol

Step 1: Identify the Potential Violation

- a) Violations may be discovered during an annual monitoring visit or informal observation by a neighbor, Land Trust representative or interested public.
- b) No Land Trust representative shall give the landowner or third party an on-the spot opinion about whether or not there is a violation.

Step 2: Document the Potential Violation

- a) Document the potential violation as thoroughly as possible. This includes photographs with corresponding GPS points, measurements of damage to the affected resource, and any other pertinent field notes. Date all observations.
- b) Document all phone calls, meetings, and correspondences regarding the potential violation. A thorough record will be essential should the Land Trust need to go to court.

Step 3: Determine If There is a Violation

- a) The Stewardship Manager shall review the terms of the easement, the Baseline Documentation Report, and annual monitoring reports. The Stewardship Manager will then discuss their findings with the Stewardship Chair and Executive Director or Board President/CEO.
- b) The Stewardship Manager, Stewardship Chair and Executive Director or Board President/CEO shall review the evidence and determine if they think there is a violation.

Step 4: Determine the Severity of the Violation

- a) If a violation is believed to have occurred, the staff and Executive Director or Board President/CEO shall determine whether it is a minor or major violation by considering the following questions and characteristics:

- i. Is it a "paper" violation, such as failure to provide notice?
- ii. Is the damage transitory, such as littering or dumping debris?
- iii. How much of the parcel is affected?
- iv. How significant is the impact?
- v. How easy is it to fix?

Violation Type	Characteristics
Minor	<ul style="list-style-type: none"> • Violation is only a paperwork issue, such as a failure to notify about a permitted activity. • Violation does not have a permanent negative effect on conservation values. • Violation may be remedied through simple restoration or other agreed upon solution. • May include a landowner education component. • Examples: Failure to provide required notice of permitted activity such as construction in the building envelope or permitted timber harvest, minor tree pruning, minor dumping, third party trespass with transitory damage (AN uses, trash)
Major	<ul style="list-style-type: none"> • Serious and probably long-term or permanent negative impact on conservation values. • Negatively affects a large area. Difficult or impossible to restore to original values. • Landowner refuses to halt or resolve a lesser violation. • Examples: Construction of roads, ponds, houses or utilities; construction of sheds or gazebos; timber harvests not conducted according to required best practices; subdivision of land; clearing large areas of vegetation; etc.

Step 5: Identify Potential Mitigating Factors

- a) Mitigating factors shall be part of the evaluation process and shall be documented in writing.
- b) The following table lists some possible mitigating factors.

Positive Mitigating Factors	Negative Mitigating Factors
Landowner demonstrates a legitimate misunderstanding of the	The Land Trust can demonstrate that the violation was intentional.
Land Trust did not follow its own procedures, thereby contributing to the violation.	Landowner has a documented history of violating the easement.
The violation was committed by a third party without landowner knowledge.	The violation was committed by a third party with landowner

Vague easement language.	Landowner violated local, state, or federal laws.
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Step 6: Document and Determine Appropriate Enforcement Response

- a) After reviewing circumstances, severity, and mitigating factors, a recommended course of action shall be identified, including required remedies and a deadline for compliance,
- b) Violation remedies may include one or more of the following:
 - i. Voluntary reparation by the landowner.
 - ii. Discretionary approvals by the Land Trust as allowed in the easement.
 - iii. Amendments to the conservation easement (Refer to *Amendment Policy* if this is the case).
 - iv. Legal actions (i.e., arbitration, mediation, litigation).
- c) If the violation is minor the Stewardship Manager and Stewardship Chair shall inform the Stewardship Committee and board via email of the action to be taken and then complete corrective actions. If needed, the Board will discuss at the next scheduled Board meeting.
- d) If the violation is major (whether or not there are mitigating factors), the Stewardship Chair and Executive Director or Board President/CEO shall be notified immediately, before any action is taken. The Executive Director or Board President/CEO will determine if the Land Trust attorney needs to be contacted for advice on appropriate actions to protect the Land Trust's interests. Staff, Executive Director or Board President/CEO and representatives from the Stewardship Committee will meet to develop recommended corrective actions to be implemented by the Stewardship Committee and/or landowner.
- e) If time is not of the essence, the recommendations from section (d) above will be presented to the full Stewardship Committee for approval. The Stewardship Committee will then take recommendations to the Board of Directors for approval before action is taken.
- f) If the violation is major and imminent, has just begun, or is on-going, then response time is of the essence. The Stewardship Manager, Stewardship Chair and Executive Director or Board President/CEO will consult with the Executive Committee to determine immediate course of action and the Stewardship Committee and Board of Directors will then be notified of the actions taken.

Step 7: Work With the Landowner to Address the Violation

- a) Staff shall contact the landowner and discuss the easement violations and recommended corrective action. If it is a third-party violation, the third-party will be invited, if possible, to be part of the violation resolution.
- b) All conversations with the landowner or third-party shall be confirmed in writing.
- c) Stewardship Manager and at least one member of the Stewardship Committee shall inspect the property soon after the compliance deadline.

- d) When the landowner has complied with all requested actions, a written confirmation and thank you shall be sent to the landowner.
- e) If the landowner does not comply by the set date, staff shall send a second letter restating the required corrections and establishing a new deadline date.
- f) Stewardship Manager and at least one member of the Stewardship Committee shall inspect the property soon after the second deadline date.
- g) If the landowner does not comply by the second deadline date, the Stewardship Manager, Stewardship Chair and Executive Director or Board President/CEO shall re-evaluate the situation and recommend to the Board additional actions that may include mediation, arbitration or litigation.

Step 8: Record the Final Resolution

- a) Ensure that all associated documents, meeting minutes and maps are clearly dated and filed in the proper location. These will provide valuable reference material for the future.
- b) Review the violation and resolution with staff and Stewardship Committee to determine lessons learned through the experience.