

Maine Coast Heritage Trust staff uses this document in its land conservation efforts. It is designed for internal MCHT use and is provided here as a reference or guide. Each land trust has its own mission, priorities, and organizational characteristics that should direct how it does its work and what documents it uses. Please feel free to use the ideas, processes, and even specific text contained in this document, but be sure to tailor them for your organization. Land trusts should always consult a lawyer and exercise due diligence in cases of legal significance. MCHT does not guarantee or provide advice as to the tax consequences of any project or action.

#### CONSERVATION EASEMENT VIOLATIONS POLICY (4/3/2009)

Violations of easements can be major or minor, and often are the result of a misunderstanding of easement restrictions, forgetfulness, or ignorance. Violations may be observed on monitoring visits, reported by a third party, or reported by the landowner. They may be caused by a landowner, an agent of the landowner, or by a third party over whom the landowner has little or no control. In general, because MCHT has a long-term relationship with the landowner and has the best interests of the land in mind, it is important to work with the landowner to achieve a solution to an easement violation that preserves and upholds the conservation values being protected by the easement. Ideally, mitigation for the violation should be required, which may involve landowner activities such as planting trees, reseeding areas, tearing down a structure, or other compensatory measures that restore the conservation values of the easement. An amendment to the easement might be required to make the remedial measures binding in the future. Every easement and every violation are different, so differing solutions are necessary. MCHT will take action on every violation. If it proves impossible to work with a landowner, then MCHT will consider legal action, including litigation. All initial investigation and documentation of the violation will be conducted carefully, as though in preparation for litigation.

The following procedures will be followed:

1. When a violation is suspected or ongoing, the site will be visited by the regional steward to document conditions in writing and possibly with photos. A review of the easement and consultation with MCHT's attorney and Director of Stewardship will be completed before addressing the issue with the landowner.
2. If stewardship staff and attorney determine that there has been a violation, or that one is imminent, staff will talk to the landowner to learn more about the cause of the violation, the landowner's perception of the issue, and any other circumstances. It is imperative that written notification of a "violation" will not be sent to the landowner until there has been personal contact, unless repeated efforts to contact the landowner fail.

3. The Director of Stewardship and regional staff will reconvene and determine what course of action to take, possible ways to reclaim any lost conservation values, whether or not legal action is required, etc.
4. A letter signed by the Director of Stewardship will be sent to the landowner describing the condition and stating why it is considered “non-compliance” with the easement.
5. Stewardship staff will work with the landowner to find a solution to the violation.
6. Action will be taken by the landowner to rectify the violation and will be encouraged and monitored by the stewardship staff while always consulting with MCHT’s attorney.
7. If litigation is required, the Executive Committee of the Board must first authorize, and MCHT’s attorney will assist with hiring and supervising litigation counsel.
8. If, however, the violation or threat of violation requires immediate action (i.e. a court order to stop harmful or prohibited activities, or owner is likely to hide the evidence), staff will seek authority from the executive committee to seek a temporary restraining order “*ex parte*,” and may proceed, if advisable, before speaking with the landowner.

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**NOTE:** MCHT participates in the Land Trust Alliance’s conservation defense program, Terrafirma. All of our conservation easements are covered in the event of a violation. Terrafirma covers attorney’s fees and expert fees for lawsuits and mediation for the enforcement and defense of our conservation easements. It is critical that Terrafirma receives timely notice of a potential claim – so as soon as you become aware of a potential violation, even if you think it can be resolved, discuss it with the Director of Stewardship and notify the Assistant to the Director of Stewardship that a placeholder claim should be submitted. In addition, Terrafirma asks for quarterly status updates, so please let the Director of Stewardship and Assistant know of any changes or potential resolution.