



# GREAT POND MOUNTAIN CONSERVATION TRUST

## Conservation Easement Enforcement Policy

Author: David Gross

Adopted: 4/11/11

Revised: \_\_\_\_\_

Due for Review: \_\_\_\_\_

See Also: Recordkeeping Policy

### **Land Trust Standards and Practices**

This policy complies with the LTA Standard 11, Practice 11E.

### **Introduction**

**Purpose of Policy:** On principle and to fulfill our mission to permanently protect those properties on which we hold conservation easements, the Great Pond Mountain Conservation Trust (GPMCT) will rigorously enforce protection of the Trust's conservation easements. Further, GPMCT will fulfill its obligations to enforce its conservation easements under the requirements of U.S. Treasury Regulations 1.170A-14(c) concerning qualified conservation easement holders.

**Responsible Committee:** Stewardship Committee

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### **Policy**

1. GPMCT's enforcement practices begin with good relations with the owners of lands under conservation easement. The best way to deal with violations is to prevent them from occurring in the first place by maintaining clear, open, and continuing dialogue with land owners about GPMCT conservation properties and practices. Appropriate volunteers and staff will engage in such dialogue with land owners and the public to prevent violations from occurring.
2. Specific practices for avoiding potential violations:
  - a. Properly mark boundaries and post signage: Marking boundaries and posting signs helps maintain community awareness about the existence and purpose of the conservation easement.
  - b. Educate brokers: To improve conservation easement compliance, GPMCT will contact the listing brokers of easement properties and inform them about easements in general and specific limitations of the subject easement.
  - c. Meet with the new owners: GPMCT representatives will meet with new buyers of easement properties prior to or shortly after the transaction in order that they may properly understand the terms of the conservation easement.
3. Investigating Potential Violations: Monitors will report and describe potential violations to GPMCT. It is very important, no matter how unreliable the source, that all potential violations be communicated directly to GPMCT. Volunteers should not be involved in communicating with landowners about potential violations. The following steps will be taken in order to address potential violations efficiently and effectively:
  - a. Visit site, physically inspect potential violation/infraction
  - b. Document all details in narrative and photographs
  - c. Evaluate potential violation

- d. Inform Stewardship Committee about potential violation
- e. Call and request a meeting with landowner
- f. Send a letter only if unable to get an appointment by phone

Prepare for meeting: review all relevant documents—conservation easement, boundary survey, property history, baseline documentation and monitoring records—and obtain professional analysis and interpretation if necessary.

3. Violation Evaluation: When GPMCT has determined that a conservation easement violation seems to have occurred, the Executive Director and the Stewardship Committee chair will confer in order to evaluate the violation and develop a plan of action. The Stewardship Committee will meet as soon as feasible to evaluate information collected about the violation, review the conservation easement language, and consider all available facts about the violation.
4. Response to Violation: The Committee will recommend appropriate action to the Board to address the violation and seek restoration of the degraded condition of the subject conservation land. Such responses might include directing the Executive Director to attempt to resolve the violation through negotiation with the violating party; or to engage an attorney to negotiate or litigate a resolution to the violation, including potentially seeking an injunction to prevent further damage to the conservation values degraded by the violation.
5. Designation of GPMCT Representative for Violation Resolution: Unless otherwise specified by the Board, the Executive Director will act as the spokesperson with all parties concerning violations, including any attorney engaged by GPMCT, the press, the landowner, or the party responsible for the violation.
6. Determining the Outcome of the Violation: The Board will determine whether to pursue a violation in court or to resolve a violation through mediation, arbitration, or negotiated settlement, after receiving recommendations from the Executive Director and other appropriate staff members, the Stewardship Committee, and its attorney, if one is engaged. This determination will be based without limitation on an analysis of GPMCT's legal responsibilities under the conservation easement, the impacts of the violation on the conservation values of the conservation easement, the potential of the violation to set an unfavorable legal precedent for conservation, the impact on the perception of the public of the violation and the enforcement methods chosen, and the likelihood of prevailing should the matter come to court for decision. In no event should a violation be ignored.

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## **Finance**

Expenses of responding to an easement violation will be covered by the Easement Defense Fund, to the extent that sufficient funds exist in that account, or by the GPMCT program budget.

## **Documentation**

Records of Violation: Staff will keep all correspondence and other material related to violations in appropriate files as described in the GPMCT Record Keeping Policy, section 2. Records of Conservation Acquisitions.

## **Adoption**

This policy was adopted by the Board of Directors of Great Pond Mountain Conservation Trust on the 11th day of April, 2011 at a duly constituted meeting at which a quorum was present.

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Signature of authorized officer

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Date