

## **Conservation Easement Enforcement Policy – Appalachian Trail Conservancy**

The Appalachian Trail Conservancy must enforce the terms of its conservation easements in order to protect the conservation values of the land and to ensure the public's confidence in our mission to protect the trail experience. Failure to uphold the terms of the conservation easements it accepts could threaten ATC's legal authority, its ability to accept future donations of easements and its tax-exempt status.

ATC actively seeks to avoid potential easement violations through a variety of preventive actions. It also is prepared to address potential violations and has procedures for when violations occur.

### **Preventing Violations**

In its general operations, ATC takes a number of steps to maintain good landowner communications and avoid potential violations;

- Schedule annual monitoring visits to the protected property, preferably with the easement donor or current landowner.
- Use the monitoring visit to remind the landowner of the restrictions on the property, particularly the requirements for notification of the ATC before the exercise of reserved rights, such as clearing for a house site.
- When a property under conservation easement is listed for sale, provide an AT representative to meet with the listing real estate agent, any serious potential buyers and the buyer's real estate agent, to explain the restrictions on the property and the terms of the easement.
- When a property under conservation easement moves into the hands of the next generation, meet with the heirs of the easement donor or current landowner to explain the restrictions on the property and the terms of the easement.
- Maintain a public outreach program and build community support for ATC and its responsibility to enforce easement terms and protect conservation values.

### **Preparing for Violations**

ATC prepares to address easement violations by the following actions:

- Maintain a Monitoring Fund restricted to easement enforcement and, in tough financial times, easement monitoring.
- Ask every easement donor to contribute to the fund or seek outside sources to endow an easement. ATC policy requires that every easement donor contribute to the fund: the amount of the contribution is calculated to reflect the future monitoring costs as well as possible easement defense costs, based on the activities and subdivisions allowed by the easement.
- Create extensive stewardship records – Exhibit B/Map of the Protected Property, Baseline Documentation Report, annual Monitoring Report – to provide a clear report of the prior conservation values on the protected property in the event of a violation.

- Adopt a stewardship records management policy to provide a foundation for legal defense in the event of a violation.
- Work with easement co-holders or conservation partners to establish a system for evaluating the pros and cons of using arbitration or mediation and/or proceeding to court, as well as the potential pitfalls of permitting settlements (which can give the impression that landowners can “buy” their way out of easement terms).
- Prepare ATC easement monitors, senior staff and board members for discovery of a violation, including what to say to the landowner at the time and how to document the violation.
- Retain the services of a litigation attorney experienced in real estate law and conservation easements for immediate assistance in the event of a violation. ATC may need to identify such counsel in every state in which it holds easements. The time to do so is before a violation occurs.

### **Addressing Easement Violations**

ATC may discover an easement violation on a monitoring visit, through a neighbor or other interested party, or during informal observation. The violation may have been caused by the landowner, an adjacent property owner or a trespasser. We cannot assume that the landowner is the responsible party.

In no case should an easement monitor try to address a potential easement violation during the monitoring visit.

The ATC’s first response must be threefold:

- The easement monitor should immediately notify the Director of Conservation, the Regional Director and the Lands and Resources Coordinator.
- The violation should be thoroughly documented.
- The landowner should be apprised of the situation.

The nature of the action depends on many circumstances, including the extent and willfulness of the violation, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred and the quality of the evidence of the violation.

Relatively minor violations – road-side trash, minor tree cutting – may be addressed in a written monitoring report and a request for a planned response or remediation from the landowner.

Serious violations – prohibited construction or subdivision, excavation, timbering without an approved forest management plan – require a swift and definitive response.

Any serious easement violation must be reported to the Board of Directors, due to the potential for legal and financial impacts.

An easement violation committee will be appointed by the Executive Director to address the potential violation.

The easement violation committee must determine whether:

- the violation is ongoing, requiring a cease and desist order or a restore order, and what restoration steps are needed
- the violation is reversible, requiring review and analysis of restoration required
- the violation is irreversible, requiring compensation or reclamation as restoration is not possible

Staff will provide maps, photographs and the easement document to assist the easement violation committee in preparing its course of action. The easement violation committee will then follow these steps:

#### Landowner Contact

A member of the easement violation committee will be appointed as the main contact for the landowner.

1. The main contact will call the landowner by telephone, explain the situation and the ATC's policy on easement violations.
2. The main contact will request correction of the violation, replacement/and or cessation of the activity, and a deadline for compliance.
3. The call will be followed by a letter reiterating the explanation and request and the need for compliance and further inspection.
4. The easement violation committee will keep the Board of Directors up to date on the situation.

#### Inspection

1. The easement violation committee will inspect the property by the deadline date for compliance.
2. If the matter ends with prompt compliance, staff will send a written acknowledgement to the landowner of compliance and thank the landowner for a quick response.
3. If the landowner does not comply by the set date, staff shall send a second letter citing ATC's vested interest in conservation of the property, restating the required corrections, and establishing a shorter deadline date. This letter will be copied to the ATC land program attorney. The Board of Directors will be informed.
4. The easement violation committee shall inspect the property on the second deadline date.
5. If the landowner complies with the required correction, staff will send a written acknowledgement to the landowner with thanks.

6. If the landowner does not comply by the second deadline date, the easement violation committee will re-evaluate the situation, consult with its attorney, and make a recommendation to the Board of Directors for further action.
7. The Executive Director must approve any legal enforcement actions, such as a letter from the ATC attorney, a cease and desist order from the court, arbitration, mediation or litigation, and will notify the Board.

### **Other Guiding Principles**

ATC will manage easement violations with these additional guiding principles:

- Act quickly and avoid delays in addressing the issue.
- Document the violation with photographs, video, maps, measurements, field notes, comparisons to the baseline and recent monitoring report to demonstrate clearly that a violation has occurred.
- Commit to discuss the matter with the landowner or other violator, preferably in person or by phone, as soon as possible.
- Keep written notes of all conversations with the landowner, by phone, in person and during inspections.
- Appoint one person, a member of the easement violation committee, to act as a spokesperson and manage any public inquiries about the conflict.