

Ice Age Trail Alliance, Inc.

Policy: Easement Enforcement

Approved: Board of Directors

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As Amended Through: April 18, 2024

Related Policies: Record Retention Policy, Easement Amendment Policy, Code of Ethics and Conflict of Interest Policy

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1.0 Background and Purpose

Ice Age Trail Alliance, Inc. (the “Alliance”) is responsible for enforcing all of its conservation easements (including trail easements) through identification and mitigation or remediation of violations. Regular communication with landowners and diligent annual monitoring can result in minimizing violations and help to resolve enforcement issues in a timely manner.

Enforcement of our conservation easements serves the purposes of:

- Preserving the conservation values protected and upholding the integrity of each individual conservation easement held by the Alliance.
- Maintaining the Alliance’s tax-exempt status and ability to accept tax-deductible easement gift donations. Federal regulations specify that in order to be eligible to accept tax-deductible easement gifts, an organization must “have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions.”
- Maintaining the Alliance’s legal authority to enforce its easements. Delayed enforcement of a violation may jeopardize the Alliance’s ability and right to enforce particular conservation easement provisions.
- Building and maintaining public and landowner confidence and trust in the Alliance and its land protection program.

2.0 Role of Parties

- A. The **Board of Directors (the “Board”)** approves any mitigation or remediation activities that would incur materially significant costs, such as with material violations that may require litigation. They will remain apprised of easement

enforcement issues via updates provided by the Executive Director & CEO or other appropriate Alliance staff or committee.

- B. **Staff**, which includes the Senior Director of Land Conservation, Property Steward, a similar position or assignee, coordinates the easement enforcement process, including; (a) investigation of the potential violation on-site; (b) meeting with the landowner and/or easement violator; (c) providing information about the violation to the Board of Directors, the Executive Director & CEO, Land Conservation Committee, and legal counsel; (d) communicating with local volunteers; (e) consulting with various parties to determine whether a violation is material and poses an imminent and/or irreversible harm to protected conservation values, requiring an immediate response from the Alliance, or whether the violation may be addressed over time; (f) compiling information from other, similar violations, both within the organization and from other organizations; and (g) drafting letters and other communications.
- C. The **Executive Director & CEO** is responsible for all final decisions regarding any easement violation and enforcement action, except where Board of Directors approval is required, and is the signatory for all legal communications (i.e. official letters) to the easement violator and to any third parties. Such actions are authorized pursuant to Alliance bylaws. If not done by the Land Conservation Committee, the Executive Director & CEO may provide the Board of Directors with updates of easement enforcement issues.
- D. **Legal Counsel** is consulted when necessary to help the Alliance determine if a violation has occurred, and, to understand the legal implications of the violation and potential legal actions. Legal Counsel will also draft and review letters as appropriate.
- E. **Volunteers** help supply notification of potential easement violations to Alliance staff as soon as suspected, and, will refrain from approaching the landowner regarding a potential violation. If volunteers talk to the landowner, they should not refer to the matter as a ‘violation’.
- F. **Violators** are those individuals whose actions are inconsistent with the easement’s terms and/or purpose. This may be the landowner, a third party such as a utility easement holder or other.
- G. **Landowners** are those individuals and/or entities who hold title to the land on which the easement is located. Third-party landowners are other landowners, most often adjacent to the easement.
- H. **Partners** are organizations that have a vested interest in the easement, and may include easement co-holders and fund providers. Often when public funds are used to purchase the easement, these funds carry with them specific conditions and limitations that must be considered. Partner rights are normally, but not

always, codified within the conservation easement and/or a separate recorded grant management contract.

- I. The **Land Conservation Committee** may review violations and/or remediation options and make recommendations to Alliance staff and/or the Board.

3.0 Policy Statement for Responding to Violations

The Alliance's actions in response to a violation depend on many contextual facts, including, but not limited to, the certainty that a violation has occurred, the severity of the violation, the quality of the evidence of violation, the conservation values protected, the extent and willfulness of the violation, and the willingness of the landowner to resolve the matter amicably and quickly.

The Alliance generally seeks voluntary easement compliance with landowners, giving them the opportunity to remedy violations, unless particular conservation values protected by the Alliance's conservation easements are facing imminent harm or destruction. If such imminent harm or destruction is not present, Staff will address violations by discussing the violation with the landowner, documenting relevant facts and decisions and implementing remedies. The Board will be apprised of material violations and will review, modify, and approve mitigation or remediation activities that would incur materially significant costs. Significant or recurrent violations will require thorough documentation, response and enforcement, in accordance with Section 4.B below, particularly where partner rights in an easement may have been violated.

When available, the express terms of the Alliance's conservation easements frame the specific rights and remedies available to the Alliance if one of its conservation easements has been violated. When there has been a violation, the Alliance will comply with the terms and conditions of the conservation easement. The Alliance's discussions, recommendations and resolutions of all breaches and violations must be evaluated in light of the specific language in each easement at issue. When language is not within the easement, this policy will be the primary guidance for dealing with easement violations.

Staff and the Board are mindful that conservation easement violations may result in legal challenges that are initiated either by the Alliance or by landowners. Litigation costs represent potentially substantial burdens to the organization. The Alliance will therefore seek resolutions to violations that are fiscally prudent, practical and reasonable, provided the Alliance does not compromise its fiduciary responsibilities to the public to protect and preserve and, in some cases, to restore conservation values that are harmed by violations.

4.0 Easement Violation Enforcement Procedure

A. Violation Prevention

Through drafting clear, enforceable conservation easement language and maintaining strong relationships with landowners, lessees and other users of conservation easement property, enforcement issues may be prevented.

1. Careful Easement Drafting. The Alliance should not impose restrictions that it has no interest in upholding. Poorly conceived, poorly written and vague restrictions can lead to future violations while not providing meaningful conservation values. In drafting conservation easement restrictions, the Alliance will consider:
 - Does the restriction further our organizational goals and protect specific conservation values?
 - Will outside experts be needed for monitoring, assessments or creating management plans?
 - Is the Alliance willing to pay the costs of monitoring the restriction or going to court to uphold the restriction?
 - Would excluding the restriction from the easement threaten the Alliance's 501(c)(3) status?

In accordance with its Easement Amendment Policy, the Alliance will also offer alternative solutions to landowners when the Alliance determines, after Staff, Board and legal review, that terms and provisions in an existing conservation easement are not enforceable, either legally or because the conservation easement provisions do not serve the conservation purposes of a conservation easement.

2. Annual Monitoring. Diligent annual monitoring can ensure consistent and accurate interpretation of the easement restrictions and help steer landowners away from activities that may become enforcement issues. (See also the Alliance's Property Monitoring Procedure)
3. Ongoing Communication. Regular and open communications with landowners can help to build rapport with property owners, potentially developing a sense of cooperation and enhanced land stewardship practices, and deflect potential enforcement issues.

B. Enforcement Action

All potential and actual violations will be handled in accordance with the procedures set forth below, and evaluated in the context of furthering the Alliance's mission, fulfilling the Alliance's legal obligations, upholding the conservation easement's terms and stated purposes and maintaining the Alliance's reputation, integrity, positive public image and community relationships. The following guidelines have been adopted to direct the Staff's and Board's responses to suspected conservation easement violations, recognizing that full observation of every guideline may not be appropriate in every circumstance.

As a general matter, Staff will document, in writing, every step in the investigation, assessment and resolution process, including all communications with the landowner. Staff will follow violation notification procedures as provided in the conservation

easement when they exist. The Alliance will consult with partners if a violation involves that partner's legal rights.

The Alliance categorizes its enforcement actions into three categories: compliance issues, technical violations and material violations.

1. Compliance Issues. These types of enforcement actions include activities that are not yet violations, but require the Alliance intervention in order to prevent them from becoming a violation. Examples include: discovering a resource use, such as, for example, decorative rock removal; timberland maintenance or harvest; or riparian habitat improvement that stretches the limits of allowable uses. Failures of landowners to give the Alliance prior notice or to seek the Alliance's prior approval when the easement requires such actions are also typically easement compliance issues when the violations do not result in significant impairment of protected conservation values. The Alliance's response procedures for compliance issues are the same as for technical violations and are listed in Section 4.B.2, below.
2. Technical Violations. These types of enforcement actions are technical violations of the terms of the easement but do not result in significant physical or resource damage to the conservation values and/or are not inconsistent with the overall protection of the conservation values identified in the easement. Examples include: allowing occasional noncommercial firewood collection from the property for use off of the property by neighbors; extending a domestic garden a few yards into the easement area; and misinterpretations of where temporary structures may be placed on the property. The Alliance's response procedures are the same as for compliance issues in Section 4.A.2 above and include:
 - i. Staff will investigate and document the issues in accordance with this policy and the Alliance's Records Retention Policy. As part of the investigation Staff will review the conservation easement document and interpret relevant sections. Legal counsel is consulted, if necessary, to help with interpretation.
 - ii. If the Alliance has insurance for such violations, the carrier will be notified as soon as possible.
 - iii. Staff will attempt to contact the landowner via phone or in person to inform them of the compliance issue or technical violation. Staff will inform the landowner that they will receive a letter from the Alliance that outlines the violation and the requested mitigation or remediation.

- iv. The landowner will be notified by letter of how to resolve the compliance issue or technical violation to keep it from becoming a material violation.
- v. Staff will negotiate a solution, ensure mitigation or remediation and document the outcome.
- vi. The landowner will be notified by letter when the Alliance considers the issue resolved.
- vii. The Land Conservation Committee is regularly updated.

3. Material Violations. Depending on the language in a particular easement, a material violation is an activity that is not specifically authorized under the permitted uses and that impairs, harms, damages or destroys a protected conservation value. Examples may include: unauthorized subdivision; mining; construction of unauthorized permanent structures; commercial timber harvests without the Alliance's approval; manipulation of natural water courses and wetlands; unauthorized road building; and commercial or industrial uses that are inconsistent with protection of the conservation values. Compliance and technical violations, as described above, may become material violations if the Alliance and landowners are unable to reach a negotiated solution. Material violations often fall into one of the following four scenarios:

- After the fact and irreversible
- Ongoing
- Before the fact and reversible
- Conferral of significant private benefit to landowner or third parties, thereby jeopardizing the Alliance's 501(c)(3) status

Responses for material violations will include, but are not limited to, the following actions:

- i. Upon receiving a report of a suspected material violation, Staff will conduct a cursory investigation and, if appropriate, take the following additional actions:
 - a. Staff will report and describe the violation to the Executive Director & CEO.
 - b. If the Alliance has insurance for such violations, the carrier will be notified as soon as possible.
- ii. In cases when Staff determines that the violation must be stopped immediately, Staff and/or the Executive Director & CEO will consult

with legal counsel and convene an emergency Board meeting to review legal options to obtain injunctive relief and thereby protect the conservation values that are in immediate threat of destruction or impairment.

- iii. If the purported violation is not so egregious that it must be halted immediately, Staff will visit and physically inspect the site and take the following additional actions:
 - a. Staff will review the conservation easement document and interpret relevant sections. Legal counsel will be consulted, if necessary, to help with interpretation, classification of the violation and identification of possible remedies
 - b. After the violation has been interpreted and classified as material, Staff will explore the required corrections. A range of alternative actions and remedies will be considered, including, for example, litigation, cooperative restoration, discretionary approval, easement amendment or no action. Staff may seek counsel from the Land Conservation Committee, Board, legal counsel, partner if relevant, and/or the Land Trust Alliance.
 - c. If approved by legal counsel, Staff will attempt to contact the violator by phone or in person onsite and explain the problem and the Easement Enforcement policy, including details such as the impact to conservation values, locations and extent of the violation. The violator will be informed that they will be receiving a letter from Alliance that outlines the violation and the requested compliance action(s).
 - d. Staff will prepare a file memo documenting the violation and describing action steps and options for addressing the violation. The memo will include the written narrative, photographs, and GPS locations. All actions, correspondence and meetings will be documented in a dated timeline, and updated going forward.
 - e. The Executive Director & CEO and/or Staff will submit the file memo to the Land Conservation Committee and that committee will submit to the Board.
- iv. The Executive Director & CEO or its assignee will follow up with a registered letter to the landowner/violator. The letter will describe the compliance action(s) required for complete mitigation or remediation of the material violation, offer a meeting in person to discuss the implications of the violation and to answer any of the landowner's/violator's questions and establish a deadline for

completion of compliance action(s). A copy may be sent to legal counsel and one signed copy will be saved to the Alliance's archive.

- v. Staff will conduct an inspection at the deadline for compliance. If compliance is complete, a thank-you letter will be sent from the Executive Director & CEO.
- vi. If noncompliance continues, a second registered notice/letter will be sent by the Executive Director & CEO establishing a shorter deadline. A copy will be sent to legal counsel and one signed copy will be saved to the Alliance's archive.
- vii. Same as v.
- viii. If noncompliance still continues, a new response will be determined with the help of the Executive Director & CEO, Land Conservation Committee, Board, legal counsel, and any relevant partner. The Executive Director & CEO and/or legal counsel will send a third registered letter that describes the action(s) required of the landowner. If legal action has been approved by the Board, the letter will give notice of impending legal action if compliance by a specified date is not achieved. A copy is sent to legal counsel and one signed copy is saved to the Alliance's archive.
- ix. If the landowner still does not comply, the Board will meet to further discuss legal remedies available and to develop and authorize a strategy to ensure enforcement of the conservation easement's terms and thereby protect the public interest consistent with the Policy Statement in Section 3.

C. Staff conduct. During the course of investigating and following up on any suspected conservation easement enforcement actions, Staff will:

- 1. At all times maintain professionalism and integrity and maintain the most constructive working relationship possible with the landowner.
- 2. Maintain, to the extent possible, consistent responses to similar conservation easement violations with the understanding that the Alliance's response may potentially be perceived as establishing precedent for interpretation and enforcement of other easements.
- 3. Recommend litigation to enforce a conservation easement only after a determination that a negotiated solution is not feasible or that the conservation values face irremediable destruction or imminent harm. Under most circumstances, the Alliance will attempt to reach an amicable agreement with the violator consistent with the Policy Statement in Section 3 above.

4. Remember that time is of the essence for all suspected violations. Responses and enforcement should be as expeditious as possible and practical.