

**Upper Peninsula Land Conservancy
Conservation Easement Enforcement Policy
Part of LTA Standard 11E**

Board Approved: 13 June 2016

The Upper Peninsula Land Conservancy (UPLC) **Conservation Easement Enforcement Policy** described below is at the review and discretion of the Board. *Conservation Easement Enforcement Procedures* are provided to support the Board policy as a separate document at the review and discretion of the Executive Director.

Conservation Easement Enforcement Policy

It is the policy of UPLC to uphold the terms of its conservation easements in order to help ensure the perpetual protection of the conservation values of the applicable lands. A willingness to enforce compliance with the land use provisions associated with these lands and waters is critical to ensuring the protection of their conservation values.

It is the policy of UPLC to enforce compliance with the land use provisions of conservation easements by whatever means are appropriate and required by the Internal Revenue Service in order to maintain UPLC's tax exempt status and its ability to accept tax-deductible gifts. UPLC will strive to maintain public confidence in the ability of UPLC to enforce easement provisions in general and to serve as a deterrent to other potential violators.

It is the desire of UPLC to maintain positive relations with conservation easement owners (see UPLC *Conservation Property Monitoring Policy*). It is imperative that the land conservation provisions of those easements be accepted and respected by these owners. If compliance with such provisions as agreed to by the owner at the time of acquisition or as later revised by mutual agreement (per UPLC *Conservation Easement Amendments Policy*) are not adequately enforced, the respective conservation easement is of no value and the environmental attributes associated with the property could be jeopardized.

Conservation Easement Enforcement Procedures are included in this policy.

In the event easement provisions are found to have been violated, UPLC shall:

- Seek to reduce inadvertent or purposeful easement violations through the implementation of violation prevention practices (detailed below).
- Respond immediately to the discovery of the possible violations whether resulting from annual monitoring, inspections, reports from other parties, the owners themselves, or other means. Response time will be appropriate to the nature of the possible violation (detailed below).
- Make efforts to resolve violations by means of voluntary correction on the part of the responsible party which in some situations might not be the owner/donor.
- Initiate action appropriate to the severity of the violation, if initial resolution communications are not successful. Such action may range from a demand letter stating required remedial actions through litigation. Consult legal counsel if necessary.

- Notify the Board when volunteer correction and resolution communications have stalled, and present a recommendation to the Board for the approval of a course of action to be pursued. The Board will consider associated monetary costs to UPLC and will consult with legal counsel to help determine the best enforcement strategy.
- Document all meetings/discussions with the land owner and Board.

Conservation Easement Violation Prevention

Staff will address the Policy's prevention objective by:

- Working to ensure that the text of conservation easements is clear and concise.
- Maintaining open relationships with easement owners through frequent communication.
- Conducting well documented annual monitoring visits - preferably in the company of the easement owner or their representative.
- Encouraging landowners to contact UPLC staff regarding any proposed changes on the property.
- Keeping informed of changes in property ownership.
- Meeting with new owners of the property regarding provisions of the easement and the purpose and mission of UPLC.
- Encouraging real estate brokers to advise prospective new owners of the conservation easement provisions in the event a UPLC related property is offered for sale.

Responding to Conservation Easement Violation

Staff response will be immediate and include, but is not limited to:

- Reviewing easement language to first ascertain if the discovered/reported action or property condition does indeed constitute a violation of easement provisions.
- Reviewing the easement language to determine if unclear or absent text contributed to the easement violation and an amended easement document is required. Any easement document revisions will be undertaken in a manner that complies with UPLC Conservation Easement Amendments Policy
- Documenting the nature of the violation, if one has indeed occurred, noting the severity of the violation.
- Contacting the landowner to discuss the identified violation seeking their willingness to voluntarily correct the violation.
- Documenting all meetings/discussions with the land owner.

If the land owner concurs with a staff finding that a violation has occurred and agrees to remediate the violation, staff will:

- Document the agreed upon action indicating the nature and time frame for the remediation by letter to the land owner.
- Conduct a follow up inspection of the remediation. A letter attesting to satisfactory remediation will be provided the land owner.

If the land owner refuses to remediate the violation in a manner satisfactory to UPLC staff:

- The UPLC Executive Director will notify the Board of the refusal and present a recommendation for Board approval of a course of action to be pursued.

- Efforts will continue to be made to maintain open communications with the land owner in the interest of a resolution satisfactory to both UPLC and land owner.
- The landowner will be advised by letter documenting the decision by the Board of the course of action UPLC has decided to pursue to enforce the provisions of the easement.