

# Groundswell Conservancy Policy

**Name:** Conservation Easement Violation

**Approval:** Approved by Executive Committee March 9, 2009  
Amended by Stewardship Committee May 20, 2013  
Amended by Executive Committee July 11, 2013  
Amended by Executive Committee October 14, 2020

Land Trust Alliance Standards and Practices 11E. Conservation Easement Enforcement. 1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations. 2. Investigate potential violations in a timely manner and promptly document all actions taken. 3. Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution.
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Groundswell Conservancy enforces the terms of its conservation easements in a way that:

- upholds the conservation purpose and values of the conservation easement;
- maintains Groundswell Conservancy's obligation to its mission, its tax-exempt status, and governing legal principles relating to the establishment and maintenance of conservation easements;
- maintains a constructive relationship with landowners and partners;
- ensures that no private inurement or impermissible private benefit is conferred by resolution of the violation;
- complies with instructions governing notifications and corrective actions contained within the conservation easement.

If Groundswell Conservancy suspects or determines that the terms of a conservation easement have been violated, Groundswell Conservancy takes necessary steps in a timely manner to investigate and resolve the violation.

Groundswell Conservancy first seeks voluntary compliance to resolve violations. Enforcement action that involves litigation, or the threat of litigation<sup>1</sup>, will not be taken without the approval of the Groundswell Conservancy Board of Directors, which may call a special or telephonic meeting when a quick response is necessary.

Through its Easement Enforcement Fund and participation in the TerraFirma Conservation Defense Insurance Program, Groundswell Conservancy maintains the financial and legal resources for the enforcement and defense of its conservation easements.

**Procedures:**

When monitoring a conservation easement, Groundswell Conservancy will base its assessment of compliance on conditions actually observed by Groundswell Conservancy. In

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<sup>1</sup> Threat of litigation shall mean any written communication with the responsible party indicating that litigation is imminent. Communication with the responsible party about the range of possible remedies at the disposal of Groundswell Conservancy, which may include litigation, shall not be considered a threat of litigation.

general, monitors should not give landowners on-the-spot decisions about whether or not a violation exists. Violations or suspected violations should be documented during field visits by photographs and detailed notes about the nature of the violation.

Groundswell Conservancy's response to a violation will depend on many circumstances, including the extent and willfulness of the violation, the willingness of the landowner to resolve the matter voluntarily, the certainty that a violation has occurred, and the quality of evidence of the violation. When investigating and responding to violations, Groundswell Conservancy will review the remedies granted to Groundswell Conservancy under the conservation easement and will consult with easement co-holders (and other partners) as necessary.

In preparing a response to violations, Groundswell Conservancy staff will consult with appropriate board committees and/or the full board. The Executive Director has the discretion to handle violations of limited scope without board consultation, but all violations will be reported to the board not less than annually.

Groundswell Conservancy will document every step of the investigation and response, including all communication with the landowner and/or responsible party. Groundswell Conservancy will review enforcement actions taken on similar violations to ensure that responses are as consistent as possible; however, actions taken concerning one violation do not necessarily determine precedent for future violations. Groundswell Conservancy will report the outcome of significant violations to Gathering Waters: Wisconsin's Alliance for Land Trusts.

<p>Groundswell Conservancy is accredited by the Land Trust Accreditation Commission. Policies may be updated to reflect changing accreditation standards and practices, as well as changing local organizational needs.</p>
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