

Montana Fish, Wildlife & Parks

Conservation Easement Enforcement Policy

[Adapted from Land Trust Alliance/Standards & Practices – Reference 11E/Policy No. 11.12]

PURPOSE:

This Conservation Easement Enforcement Policy (“Enforcement Policy”) establishes the steps that Montana Fish, Wildlife & Parks (“FWP” or “Department”) will take to maintain and strengthen the integrity of its conservation easements by laying the foundation for how FWP will: avoid and/or reduce the potential for violations; evaluate and address actions that result in suspected violations; and resolve established violations of conservation easements in a judicious and consistent manner.

OVERVIEW:

FWP recognizes that:

- The responsible enforcement of FWP easements is necessary to maintain FWP’s legal authority to uphold and enforce easements in the future, to protect public investments in resource conservation and recreational access, to engender public confidence in FWP’s conservation efforts, and to meet federal regulations that specify the ability to accept tax-deductible conservation donations is dependent upon a demonstrated commitment to protect the conservation purposes of a donation and to enforce easement restrictions.
- The best plan for defending against easement violations is to reduce the potential for their occurrence. To reduce this potential, FWP will adopt the following *Violation Prevention Strategies*:
 - Draft well-constructed conservation easement agreements;
 - Coordinate well-researched baseline reports for all easements;
 - Ensure that all conservation easement property owners have full copies of conservation easements, baselines, management plans and related documents;
 - Ensure the proper training of all agency personnel involved in conservation easement proceedings;
 - Maintain cooperative relations with the easement property owner (“landowner”);
 - Maintain open communication both within the Department and between the Department and the landowner;
 - Monitor easements in a consistent, thoughtful and responsible manner;
 - Regularly review easement terms with the landowner, specifically to ensure both parties understand the rights and responsibilities related to prior approval, prior notice, and the status of limited reserved rights; and
 - Ensure that all information related to conservation easements is recorded and filed appropriately and is available to the landowner upon request.

While these Violation Prevention Strategies reflect the Department’s clear intent to minimize conservation easement violations, the Department’s implementation of these strategies, or the lack of such implementation, do not in any way reduce or limit the landowner’s responsibility or liability for compliance with the terms of the conservation easement.

- Each easement violation is unique and requires a tailored approach, with the objective of correcting violations with the greatest degree of cooperation and based on the application of reasonable and effective measures.
- Litigation is not FWP's approach of choice, but is a potential enforcement tool.

POLICY:

It is the Department's policy to reduce the potential for conservation easement violations. However, in the event violations occur, it is the Department's policy to address them fairly and consistently as outlined below. Where FWP discovers potential violations, it is the policy of FWP to protect the associated conservation values and purposes to the best of the Department's ability, and to allow landowners the ability to correct violations themselves, if feasible.

OBJECTIVES:

The objectives of this Enforcement Policy are to:

- Reduce the potential for easement violations;
- Defend the purposes, conservation values, and terms of FWP's conservation easements;
- Protect the public's investment in resource conservation and recreational access in conservation easements held by FWP;
- Upon discovery, immediately terminate any violating action that has caused or may cause environmental harm or compromise ecological integrity;
- Fairly and consistently address violations that negatively impact or compromise the values protected by conservation easements;
- Prevent real or perceived private benefit from actions that constitute easement violations and from actions taken to resolve violations;
- Maintain and enhance public confidence in FWP's conservation efforts;
- Ensure that any resolution to an easement violation is commensurate with the severity of the violation and takes landowner cooperation into consideration;
- Avoid setting negative legal precedent; and
- Seek restoration of damaged conservation values.

CE VIOLATION DISCOVERY, EVALUATION AND RESOLUTION PROCEDURES:

FWP may discover potential violations during a monitoring visit; through communication with the landowner or another party; or through other means or circumstances. In no case should a representative of FWP attempt to address, cite or resolve a potential violation at the point of discovery. Rather, upon discovery of the potential violation FWP's Conservation Easement Land Steward (CE Steward) shall be notified. The CE Steward will then consult appropriate FWP staff. If necessary, the Department, through the CE Steward, will conduct preliminary evaluations of suspected violations by:

- Notifying the landowner of the situation and interviewing the landowner personally;
- Visiting the property in person (or assigning visitation) for the purpose of fully documenting the suspected violation through photographs, GPS recording, and the completion of a narrative report. This documentation will comprise part of the *CE Inspection Report*, which may also

include annual monitoring reports, baseline documentation, interview results, maps, photos of the suspected infraction, a Violation Evaluation Questionnaire (See Appendix A), the written narrative completed by the investigating party, and any other relevant information;

- Consulting with FWP's Legal Unit and Regional Staff to determine if the suspected infraction is indeed a violation of the easement's terms. For these purposes, an easement may be considered to be violated in either or both of two ways:
 - *"Technical Violations" are violations that do not undermine the easement's conservation values or purposes, have no discernible physical impact on resources of concern, or otherwise are not central to the fundamental purposes of the easement.*
 - *"Substantive Violations" are those violations that undermine the easement's conservation values or purposes, have a discernible physical impact on the resources of concern, or otherwise are central to the fundamental purposes of the easement.*
- Technical Violations may be managed directly by the CE Steward, who will document the violation in the easement files and provide notice to those persons the Steward deems appropriate.
- For Substantive Violations, the CE Steward will:
 - Alert the Lands Section Supervisor and either the Parks, Wildlife or Fishery Division Administrator, depending on which program administers the conservation easement.
 - Schedule a meeting of the FWP Conservation Easement Enforcement Committee ("Enforcement Committee") described below.
- Substantive Violations may, at any time, be referred to FWP's Legal Unit for legal action or other resolution.

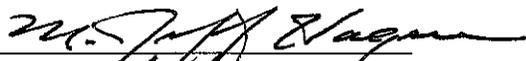
An Enforcement Committee will be established to review all materials relevant to evaluating suspected violations that affect easement purposes, conservation values, or protected resources. Following necessary meeting(s) and thorough review of the issues, the Enforcement Committee will recommend appropriate actions to resolve the violation, taking into consideration the severity of the infractions and the complexity of resolution. The Enforcement Committee will be comprised of the following representatives at a minimum:

- The CE Steward;
- The Lands Program Manager;
- A representative from the FWP Region where the conservation easement is located;
- The Parks, Wildlife or Fishery Division Administrator or designee; and
- A representative from the FWP Legal Unit.

The Enforcement Committee will evaluate all substantive violations based on information gathered for the CE Inspection Report completed by the CE Steward and any other available information. Based on this evaluation, and in consideration of the cooperative nature of the landowner, the Enforcement Committee will develop a proposed resolution. Upon sign-off by FWP Legal and the appropriate Division Administrator, the proposed resolution shall be communicated to the landowner, and FWP shall move forward to take appropriate actions – including any requirements or direction for landowner action – to implement the resolution. Such implementation may include legal action by FWP to protect its conservation easement interests.

Approved by M. Jeff Hagener, Director:

Date:


2/16/2013