

# Sample BLM Conservation Easement Violation Policies and Procedures

Recommended by WO 350 Division of Lands and Realty (2005)

(revised 02/2005)

## U.S.D.I. BUREAU OF LAND MANAGEMENT

Field Office  
Street Address / P.O. BOX  
City, State Zip Code  
(phone no. / fax no.)

### **BUREAU OF LAND MANAGEMENT** **CONSERVATION EASEMENT VIOLATION POLICY**

BLM law enforcement authority is derived from 43 U.S.C. § 1733(c)(2) whereby “[t]he Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources.” As a conservation easement falls within FLPMA’s definition of “public lands,” BLM law enforcement personnel may enforce federal law on any lands in which the United States holds an easement that is administered by BLM, to the extent provided for by the specific terms or purposes of the easement. Refer to BLM Manual Section 9230 for further guidance. Without limiting this existing enforcement authority the following guidelines will be used in response to and enforcement of conservation easement violations.

#### **Overall Guidelines for Violation Response and Enforcement:**

1. Maintain the conservation purpose of the CE.
2. Maintain BLM’s image both in its ability to achieve its mission overall and in its ability to enforce specific CEs
3. Protect United States legal rights and investment (asset) value in the CE
4. Maintain the most constructive working relationship possible with the landowner.
5. No one person should make decisions on violation response – get counsel first. Never give a landowner an on-the-spot opinion about whether or not a violation exists.
6. BLM staff will always conduct meetings with the property owner as a team of two. The team will include at least one project staff member familiar with the terms of the easement and may also include a BLM law enforcement or Field Manager.
7. Maintain professionalism and integrity.
8. Be flexible as the situation warrants. Balance the harm caused by the violation with the cost/benefit of the selected enforcement response.
9. Generally only use litigation as a last resort and where there is a good chance of success. Preparing a good case against a property owner can take time; discuss options with your local solicitor if you think you might be headed in this direction.
10. Maintain consistent responses to similar CE violations.

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## I. Violation Prevention

- A. Maintain good landowner relations.
  - 1. Maintain a regular monitoring schedule. Make a point of getting the landowner involved in the site visit. Always encourage them to ask questions.
  - 2. If the landowner was unable to walk the property during monitoring, follow up with a phone call and send the written monitoring report to them. (Monitoring report should not explicitly say “no violations found.”)
  - 3. Provide informal services to the landowner – advice on enhancing wildlife habitat, send the landowner newsletters and outings brochures, etc.
  - 4. Try to use professional staff to conduct annual monitoring; volunteers to conduct additional visits. Any volunteers who are recruited for monitoring must receive appropriate training.
- B. Ensure that BLM is informed when properties change hands.
  - 1. Sellers / listing brokers of easement encumbered properties be contacted and informed about easements in general and the specific limitations of the subject easement. BLM could sponsor a general meeting with area real estate brokers (or those who often deal with easement properties) to explain easements and the BLM's policy for monitoring and enforcement.
  - 2. Check real estate transactions on a regular (monthly) basis.
  - 3. BLM should invite all buyers of eased properties to meet with a BLM staff member prior to settlement. Provide a “new owner introductory package” to ensure that new owners understand BLM’s mission, the conservation restriction for their property, and the concept and purpose of CE’s in general.
- C. Maintain good relations with the local government officials. Make sure that local government agencies, conservation agent and conservation commissions are aware of properties with conservation restrictions.

## II. Sources of Violation Notification

- A. Partners / Volunteers
- B. Random staff observation
- C. Third party informants (i.e., neighbors)
- D. Easement donors
- E. Banks, title companies

## III. Types of Violations

- A. Minor: i.e., road-side trash, minor tree cutting
- B. Major: i.e., construction, excavation, pollution, timbering
  - 1. after the fact/irreversible; requires compensation and/or reclamation
  - 2. on-going; requires cease/desist and restore order
  - 3. before the fact/reversible; requires review and analysis

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- C. Common Violations
  - 1. dumping
  - 2. tree cutting
  - 3. construction without BLM approval
  - 4. property sale without notice
  - 5. draining of wet areas

## IV. Violation Response Policy

- A. If a BLM staff person or volunteer is on site with the landowner, ask questions for further clarification of the activity or physical modification. Do not state definitively that there is or is not a violation. Use polite deferment techniques. Thank the landowner for their time and tell them that you will follow up with them and send them a copy of the monitoring report. Then go to B.
- B. If a BLM staff person or volunteer is not accompanied by the landowner, simply complete the monitoring with good documentation and report the suspected violation to the designated official (supervisor, project manager, BLM Law Enforcement/Ranger, Field Manager).
- C. BLM staff familiar with the project should carefully reread full CE and associated documents, visits the site if necessary, and make an initial assessment of whether or not there is a violation. Consult with the Project Manager, or Field Office Manager and BLM Law enforcement/Ranger and come to a final decision: yes or no.
  - 1) If the decision is no, it is not a violation, the process ends.
  - 2) If the decision is yes, and the violation is on-going, every effort should be made to immediately stop the on-going activity. For other reported violations, the Project Manager and Field Manager, with appropriate input from BLM Law Enforcement/Ranger, determines whether or not it is a minor or major violation, for what reasons, and if a citation is warranted. This determination is used to assist decision-making along the way, gauge level of effort required and level of expectations for remediation and compensation. If it is major, then BLM will put more staff resources into attempting to resolve the issue than may be the case for minor violations. With possible input from Solicitor, BLM Law Enforcement/Ranger, Project Manger and/or Field Manager develop alternative suggestions for citation, remediation and/or compensation by the landowner. Early consultation with Solicitor is recommended.
- D. If the Conservation Easement addresses violations, follow the listed steps in the Conservation Easement. If the Conservation Easement does not have this provision, contact violator by telephone and request a personal meeting. Explain problem and BLM policy; request correction, replacement and/or cessation of activity; state deadline for reply or compliance (i.e., immediately, 7, 14, 21, or 30 days.) BE COURTEOUS.

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- F. Follow up phone call with letter. The letter may again request a personal meeting. Send the letter certified (return receipt requested). Reiterate oral explanations and requests (i.e., why a violation, corrective measures required, deadline for reply or compliance), offer of assistance; need for compliance inspection. A copy of the certified letter should also be sent by first class mail.
- G. If compliance is agreed upon as a remedy:
1. If the BLM and landowner agree upon the nature of the violation, they will discuss alternatives for remediation and attempt to arrive at a solution. This may require further visits, research, consultations and meetings.
  2. The visit(s) is followed by a letter(s) that documents the conversation and discussed alternatives. If an agreement has been reached, the letter will also document the chosen remediation and a schedule of restoration as appropriate.
  3. Inspect site at deadline date. If prompt compliance, send a thank you note.
- H. If non-compliance; If the landowner does not agree that there is a violation or does not agree on the solution to a violation, Project Manager or Field Manager reaffirms BLM position and states that s/he will consult agency's legal counsel.
1. Project Manager and Field Manager may wish to consult again with legal counsel to brainstorm other approaches that may be taken to attempt to reach an amicable resolution. Other alternatives may be employed to bring the landowner back into negotiation. The Project Manager, Field Manger and Solicitor should identify a time limit for closure of the case to avoid letting the issue lag over and extended period of time.
    - a) If it is a major violation and we have exhausted all attempts at negotiation, Field Manager (approving official) will seek approval to take the violation to court.
    - b) If it is a minor violation, and after exhausting attempts at negotiation for removal and full restoration, Field Manager (approving official) may consider temporary approval (limited term) or less than full restoration.
  2. For either a major or a minor violation, BLM may consider the use of an amendment or a discretionary approval (similar to amendment but not signed by landowner) to resolve the violation. However, there are number of considerations that BLM must weigh before pursuing this route:
    - a) There has to be an exchange to compensate for any adverse impact of the amendment. Make every effort to negotiate a mitigation package that is equal or greater in conservation value when compared to the conservation values lost due to the violation (i.e. wetland enhancement,

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provisions for additional public access, forfeiture of permitted development rights that have not been exercised, expanded footprint to conservation easement, etc.). The monetary value of the CE may not be reduced by the amendment (requires an appraisal). Amendments should be either conservation neutral or improve the conservation value.

b) Consider whether or not the amendment would be controversial in the community and incite negative public reaction.

c) Consider the time and expense for the approval process. If an amendment is pursued, get Solicitor approval before informing the landowner. Document and update baseline data immediately. Field Manager should refer to the BLM's CE amendment policy for additional guidance.

- I. If the landowner can not be contacted by telephone, draft and send a certified letter (return receipt requested) that specifies the violation and requests a personal meeting to resolve the situation. A copy of the certified letter should also be sent by first class mail. Specify a time frame for contact in the letter. Upon contact and depending on response, go to G or H.
  1. If the certified letter is rejected, resend the letter certified, first class, and have it delivered by BLM Law enforcement or County Sheriff.
  2. If a response is not received in the time period identified, re-evaluate the situation. Try to visit the property at times when someone may be found at home and attempt to make contact. If there is no success with repeated attempts at contact, go to step H.
- J. Initiate BLM approved corrective measures (optional).