

## FACT SHEET

# Violations and Enforcement of Agricultural Land Easements

Improving stewardship practices strengthens conservation but navigating the Natural Resource Conservation Service (NRCS) process of enforcing easements and easement plans can be complex. The Land Trust Alliance is here to provide you with the tools you need. In addition to highlighting the relevant Land Trust Standards and Practices adopted by all member land trusts, this document summarizes NRCS policy on violations and enforcement, which is available in full in the Title 440 Conservation Programs Manual, Agricultural Conservation Easement Program (ACEP), (CPM Part 528.92).

## LAND TRUST ROLES AND RESPONSIBILITIES

### STANDARD 11—Conservation Easement Stewardship

#### E. 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

## ADAPTED FROM THE CONSERVATION PROGRAM MANUAL

### 528.92. Agricultural Land Easement Enforcement

- The land trust or other eligible entity has primary responsibility for enforcement of the agricultural land easement and the easement plan.
- NRCS considers a violation to have happened if ANY of the terms of the easement deed are violated. This includes violations of NRCS' minimum deed terms and any violations of the Eligible Entity's customized deed terms. Examples of ALE easement violations may include (but are not limited to):
  - Land is converted to nonagricultural or non-grassland uses inconsistent with the easement
  - Damage or destruction occurs to the resources identified for protection
  - Terms of the deed regarding impervious surface caps and building envelopes are violated
  - Legal rights are granted to a third party – utilities, rights-of-way, minerals rights, etc.
  - The easement is subdivided contrary to any relevant deed provision
  - Any other deed term is violated, for example:
    - A custom deed clause that prohibits vineyards on the property, however when a monitoring site visit is conducted a vineyard is found
    - A custom deed clause that prohibits non-agricultural structures, however the landowners wants to add an art studio for the community
- An easement must be returned to its pre-violation condition, and any lost functions or values must be mitigated
- NRCS will not amend easement deeds to cure a violation
- NRCS will generally not join an entity's enforcement litigation but will cooperate as necessary with support enforcement action.

## Procedures when an eligible entity discovers a potential violation

- The eligible entity notifies the landowner, violator (if different from the landowner) and NRCS.
  - The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation, in accordance with the terms of the easement.
  - The eligible entity must provide documentation of their actions to NRCS.
- If the eligible entity fails to enforce the terms of the easement, or if a violation is not addressed or corrected by the landowner and eligible entity, or if the eligible entity attempts to address the violation in a manner that would be inconsistent with the deed terms, NRCS may enforce the terms of the easement through federal or state law.
- Failure to enforce may also result in NRCS taking actions with regard to the entity's status and ability to participate in the program, including but not limited to, decertification of an entity, determining an eligible entity no longer eligible and terminating any active ALE agreements with the entity.

## NRCS Role and Responsibilities

### ADAPTED FROM THE CONSERVATION PROGRAM

#### MANUAL 528.92. Agricultural Land Easement Enforcement

### Procedures when the NRCS discovers a potential violation

- If NRCS encounters a suspected or potential violation, it notifies the eligible entity.
  - The eligible entity must investigate within the time frame specified and document the outcome in the easement case file.
  - If there is a violation of the conservation plan as it relates to the highly erodible land (HEL) or wetland conservation (WC) provisions of the Farm Bill, NRCS will enforce the compliance provisions listed in part 180 of the National Food Security Act Manual (NFSAM).
- NRCS will notify the eligible entity of a potential HEL/WC violation following the initial contact to the landowner.
- NRCS will provide official notification of the HEL conservation plan violation to the eligible entity only after the landowner has exhausted all appeal and waiver rights in 180-NFSAM and CPM Part 510, "Appeals and mediation."



## Legal Action and Cost Recovery

- If NRCS exercises its rights under an agricultural land easement, it must provide written notice to the eligible entity.
  - The notice must describe the noncompliance and provide a 180-day period to cure.
  - If the eligible entity fails to cure within the 180-day period, NRCS takes the action specified under the notice.
  - NRCS may decline to provide a period to cure if imminent harm may result to the
- NRCS reserves the right to enter the easement area:
  - If the eligible entity's annual monitoring report is insufficient or is not provided annually
  - If the United States has a reasonable belief of an unaddressed violation
  - To remedy deficiencies or easement violations in the case of easements enrolled through agricultural land easements (ALE) originally executed under the 2014 Farm Bill
- Every effort should be made to coordinate NRCS onsite monitoring with the easement holder.
- NRCS will give the eligible entity and the landowner advance notice and a reasonable opportunity to participate in the inspection unless the actions are deemed necessary to prevent, terminate, or mitigate a potential or unaddressed violation. The landowner and eligible entity will be notified at the earliest practicable time.
- The landowner is liable for any costs incurred by NRCS as a result of the landowner's failure to comply with the easement requirements as it relates to easement violations.
- If the United States exercises its right of enforcement, it is entitled to recover any and all administrative and legal costs, including but not limited to, attorneys' fees or expenses related to landowner's violations or the eligible entity's violations or failure to enforce the easement. Legal action may include, but is not limited to, civil actions, debt collection, criminal prosecution or other remedies available under state or federal law.