

Types of Conservation Easement Violations

Most land trusts adopt at least three categories of violations: minor, moderate and major. Some land trusts separate technical deficiencies (for example, paperwork lapses) from minor violations that cause actual negative resource damage and thus have four categories of violations: technical, minor, moderate and major. Other land trusts simply adopt two categories of violations: minor and major. Your land trust should determine which approach best serves your mission, will work for your land trust procedurally and is most acceptable to your landowners and your community. Your land trust's violation policy should describe what criteria demarcate each violation category.

When structuring and defining the severity rankings, you may also want to consider public perception of reporting violations. Reporting a major violation is a significant event; therefore, you should be certain that the resource damage truly is major in scope, scale, severity and duration before ranking the violation as major. Because some violations are worse than minor but not major in terms of their severity, many land trusts adopt an intermediate category of violations.

Without a third category, accurate classification of a violation can be difficult and misleading to an outside person.

Easement violations that are classified as moderate and major should be limited to those serious violations that go to the heart of the property's conservation attributes and the easement's purposes. If you define these types of violations differently, you may be in a weak position to insist that a landowner correct the violation.

Land trusts that adopt a fourth category (technical lapses), generally only label (and track) as violations those incidents that result in resource damage. Land trusts should be careful about appearing overly bureaucratic in labeling paperwork lapses as violations when no resource damage occurs on the property because of the incident.

These brief descriptions show how many land trusts define categories of easement violations (your land trust's definition may be different, depending upon your own unique circumstances):

Technical Lapses or Deficiencies. Such deficiencies are technical in nature and do not adversely affect the conservation attributes of the conserved land or conflict with the conservation purposes of the easement. Technical lapses may include failure to give notice before transferring an interest in the conserved property (generally acknowledged as the most frequent form of easement violation) or failure to seek approval prior to exercising a reserved right (such as constructing a permitted structure) when the activity is conducted consistently with the easement. Other land trusts consider these types of actions minor violations.

Minor Violations. Land trusts typically define minor violations as actions that have a measurable, negative effect on the conservation attributes protected by the easement and/or violate the conservation purposes and/or certain terms of the easement. These violations may be remediated through restoration, an amendment or other solution. Examples of minor violations may include construction of a building in such a way that a small portion extends outside the building envelop, or third-party trespass with negligible or transitory damage (such as prohibited ATV use, trash dumping or sometimes timber trespass).

Moderate Violations. Moderate violations are actions that cause significant negative damage to the conservation attributes protected by the easement and violate one or more of the explicit conservation purposes and easement terms. Moderate violations can be transitory and severe, or permanent and less damaging to the resource, or

affect a smaller area of the conserved land. As with minor violations, many moderate violations can be remediated, and often the solution includes a large component of landowner education. Examples of moderate violations may include construction of prohibited improvements, such as roads, ponds or utilities; the extension of utilities to structures allowed by the easement but for which no utility service is allowed, such as for hunting cabins or gazebos; timber harvests that were not conducted according to required best practices but do not rise to the level of a major violation; third-party construction of structures, such as wells and cabins; and boundary encroachments from clearing or other activity.

Major Violations. Major violations are actions that have a serious and often permanent negative impact on the conservation attributes protected by the easement; they also violate one or more of the express conservation purposes and terms of the easement. Major violations can negatively affect a large area of the protected property and can be difficult or impossible to mitigate or remediate. A major violation can also drastically affect a small area of the conserved land. Sometimes an action is defined as a major violation only because the landowner refuses to cooperate in halting and resolving a lesser violation. Examples of major violations include construction of houses not permitted by the easement; construction of commercial or industrial structures; subdivision of the land when subdivision is not permitted by the easement; surface mining; forest harvests in violation of the management plan that affect a large area or a clear cut on a smaller area; clearing vegetation from large portions of riparian buffers or other sensitive, designated ecological or scenic areas; or activities that lead to a significant or continued degradation of protected resources.

Your land trust may want to assign different rankings to these examples depending upon your mission, philosophy, values and the explicit restrictions stated in your conservation easements. Be sure to obtain the advice of legal counsel to ensure that the ranking you assign is supported by and consistent with the explicit language of the conservation easement.

Excerpted from *Managing Conservation Easements in Perpetuity* by Leslie Ratley-Beach; Sylvia Bates, editor (Land Trust Alliance, 2009).

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