

EASEMENT ENFORCEMENT

When your organization accepts a conservation easement, it is accepting the responsibility to protect and care for it for a very long time, most often in perpetuity. There are three key components to easement enforcement. 1.) Preventing violations from occurring in the first place. 2.) Having the ability to deal with a proposal to change an easement's restrictions. 3.) Having the means to enforce the restrictions of the easement when violations occur.

Preventing violations from occurring should be your first objective. It begins with a carefully thought out deed. Look to the future. Every easement is different. Are there possible points of contention that could crop up? Don't leave anything to chance. A "well-drawn deed"⁴ is the beginning of a strong defense. A stewardship program that promotes a strong, cooperative working relationship with the landowner and keeps meticulous, consistent and timely monitoring records is your next line of defense. Allow for easy access to your organization and information regarding the easement. Explain to subsequent landowners the details of the easement and its restrictions. Treat them as you would any new donor. State in the deed that if a violation should occur, restoration is a viable remedy.

Proposals to change easement restrictions usually come from subsequent property owners. The easement holder should be wary of changing restrictions included within their easements. Changes should not lessen its conservation value or increase its economic worth. There are times when changes are necessary; when mistakes have been made during the drafting process, or if the goals of the conservation easement become impossible to realize because of changes to surrounding property, or perhaps the property owner wants to change the amount of area the easement covers. Organizations that accept conservation easements should have a clear written policy regarding their stance on changes to the restrictions of an easement.

If a violation does occur and can not be dealt with successfully "in house", arbitration and/or mediation are two avenues to explore before going to court. Arbitration dictates the two parties choose a third unbiased individual who listens to both sides and draws up a solution. Mediation involves a third party only to the extent of helping the two parties with a disagreement between them to come to a solution on their own. When a violation occurs that must be stopped immediately before irreparable harm can be done, contact your attorney to seek an injunction. "An injunction is a writ granted by a court of equity which requires someone to do or refrain from doing a certain act."⁴ If you have to go to court, be prepared and make sure you have the ability to win the case. If you have documented the easement history, you have a much better chance of success.

Going to court should only be done as a last resort. Be sure you have adequate funds available to win the case. It is an expensive proposition and can ruin the partnership created between the landowner and easement holder that has taken time and money to create. Your best enforcement option is to steward your easements properly and remember that your landowner is your greatest asset.
