

**Santa Fe Conservation Trust****EASEMENT VIOLATION POLICY**

Policy 4.07, 2011-11 - 02

Adopted on: April 17, 2012

Updated: December 4, 2018, October 22, 2024

**Philosophy Statement**

The Santa Fe Conservation Trust (SFCT), as a holder of conservation easements, must enforce the legal agreements for which it is responsible.

SFCT recognizes that landowner education and relationship building, not litigation, are the best immediate and long-term methods to guarantee that conservation easements are upheld. SFCT strives to educate its landowners to be good stewards of both the land and the conservation values protected by the conservation easements. These efforts minimize potential conflicts, but easement violations inevitably occur. Good stewardship allows violations to be discovered and addressed in a timely manner. SFCT uses this philosophy to determine what is a violation of a conservation easement and what is the appropriate response to that violation, and we apply the following principles and considerations. SFCT strives to promptly and diligently pursue the resolution of violations and ensure the integrity of the conservation easements that it holds.

Additionally, SFCT will follow these principles when addressing violations:

- Addressing every violation proportionately to its scope, scale, severity of resource impact, and duration
- Taking immediate and appropriate action
- Complying with all laws
- Upholding the land trust's mission
- Preserving the purposes and intent of the conservation easement in perpetuity
- Using a compassionate approach to landowners
- Maintaining public confidence in the land trust and conservation easements
- Preserving the land trust's tax-exempt status
- Preventing private inurement or impermissible private benefit in violation resolutions

In addition to protecting the conservation value(s) of an easement grantor's property, the ability of SFCT to enforce the terms of the agreement is directly related to the public's confidence in SFCT's mission to conserve open space, to uphold SFCT's legal authority to enforce its conservation easements and to maintain SFCT's ability to accept future donations of conservation easements and maintain its tax-exempt status.

## **Discovering and Assessing the Nature and Extent of the Violation**

Immediately following a monitoring visit, or other circumstance by which SFCT becomes aware of a possible violation of one of its conservation easements, the Executive Director shall meet with the Land Program Manager (and the monitor, if that was a different person) to determine the following:

1. Whether a violation has occurred, and its nature.
2. The extent and likely timing of the violation, which shall be assessed by comparing current documentation, including photographs, with the original terms of the conservation easement, any amendments to the conservation easement, the baseline documentation report, and any past monitoring records including maps and photographs of the property.
3. The extent of the impact upon or consequences to the conservation easement's purpose or protected conservation values and resources, and in particular whether the violation appears to be merely technical or minor, or is moderate or major, as those terms are defined below.

If there is any doubt or uncertainty as to whether a particular circumstance actually constitutes a violation of the conservation easement, or as to the nature, extent or seriousness of the violation, the Executive Director and the Land Program Manager will jointly re-inspect the property, and engage in such other data gathering relative to the matter as they deem necessary to make a determination. If the uncertainty involves a question of interpretation of the easement, staff will contact legal counsel and seek an interpretation of the relevant language.

Once the fact and character of the violation has been established to the satisfaction of the Executive Director and the Land Program Manager, staff will draft a memo to that effect, setting forth the facts and circumstances as SFCT is then aware of them, to be placed in the easement file. Copies of the memorandum will be provided to the members of the Land Review Committee. Staff will also file a placeholder claim for the violation with Terrafirma (easement insurance).

A **"technical"** violation is defined as a "paper" violation with no impact upon or consequence to the conservation easement's purpose or protected conservation values and resources.

A **"minor"** violation is defined as a violation with nominal impact upon or consequence to the conservation easement's purpose or protected conservation values or resources

but slightly more than no impact, or the impact is transitory.

A "**moderate**" violation is defined as either (1) a violation with moderate physical impact on those resources protected by the conservation easement, or (2) a violation that would otherwise be considered minor but which the landowner has declined to address as SFCT requires (see below).

A "**major**" violation is defined as violation with significant impact on those resources protected by the conservation easement.

### **Responding to a Violation**

Any decisions made by staff or the Land Review Committee or BOD regarding violation resolution must uphold the purpose of the conservation easement and comply with all applicable laws.

For all violations, regardless of the degree of seriousness, SFCT will pursue landowner education and relationship building, if feasible, as a way to minimize the impact of the violation on the conservation values.

In the case of a violation that has been determined to be merely technical or minor, the Executive Director, in consultation with the Land Program Manager, will prepare and send a letter to the landowner, within no more than two weeks after the violation has been established, explaining the nature of the violation and citing the provision of the conservation easement involved. The letter will specify any measures that the landowner should take to correct the violation or to avoid any similar violations in the future, and it will request the landowner to contact SFCT to confirm his or her acknowledgment of the situation. If no response has been received within ten days, the Executive Director or Land Program Manager will follow up with a telephone call to the landowner, or, if necessary, a face-to-face visit. All unwritten contacts will be documented in the file by written memo.

If the landowner fails or refuses to acknowledge the violation, and/or to take corrective measures deemed necessary by SFCT, within a reasonable time, the Executive Director will refer the matter to the Land Review Committee, for a determination of whether the violation should be re-categorized as "moderate," and handled as such.

In the event of a violation that is deemed moderate or major, the matter will be referred to the next meeting of the Land Review Committee, and each member of the Committee shall be provided with a complete copy of documents relative to the violation. In the event of a particularly serious violation, or one (such as a construction project) that is ongoing, the Executive Director may convene a special

meeting of the Committee, by telephone if necessary. The Executive Director shall seek legal counsel about its determination of a violation's existence and its possible available remedies in all cases where a violation is deemed either moderate or major in scope.

The Land Review Committee shall decide on a plan for responding to the violation and shall establish threshold parameters for what constitutes correction of the violation and compliance with the easement. The plan and the threshold shall be set forth in writing. The plan should in every instance involve a letter to the landowner to notify him or her of the violation and explaining the basis for that determination (which letter should be sent by no later than ten days after the Committee meets), and may, depending on the circumstances, involve a telephone call, a face-to-face meeting with the landowner, a letter from legal counsel, or the immediate institution of litigation, or such other steps as the Committee decides is necessary to achieve compliance with the easement; but provided that under no circumstances will litigation be undertaken without prior, express authorization of the Board of Directors, or the Executive Committee. If that is the Land Review Committee's recommendation, the Executive Director will promptly transmit the Committee recommendation to the full Board, and request the chairman to convene a meeting of the Board or of the Executive Committee at the earliest practicable time to consider the recommendation.

In the event the Committee's plan for the response to the violation does not, at that stage, involve litigation, the Executive Director and the Land Program Manager, and such other persons as the Committee decides it is appropriate to involve, will proceed in accordance with the plan forthwith. If the violation is not corrected to the satisfaction of the Executive Director in accordance with the plan, the matter will be referred back to the Land Review Committee for further steps to achieve compliance.

In every instance, SFCT shall continue its efforts to achieve correction of the violation until full compliance, as set forth by the Land Review Committee, is achieved, or until the Committee concludes that no satisfactory result is reasonably achievable, in which latter case the matter shall be referred to the Board for resolution.

### **Documenting the Violation**

SFCT shall document the violation and the remediation process in detail, including all contacts with the landowner. Documentation shall continue throughout the violation process until the violation is resolved and until a positive relationship with the landowner is restored and any community outreach is concluded. All documentation will be uploaded to TerraFirma until the claim is resolved.

### **Third-Party Violations**

SFCT views its relationship with owners of conserved land as a partnership. This relationship is based on the belief that we share a common interest in good stewardship. When third parties trespass on and damage the resources that both the landowner and SFCT have conserved, then SFCT will offer whatever assistance it can provide to the landowner to determine the appropriate remedy for the landowner to pursue.

### **Post-Enforcement Assessment, Education and Policy Review**

Once the violation has been completely resolved; SFCT shall review its response to the violation and all the pertinent factors which led to the violation. SFCT shall implement any insights gained from this review of its actions in future actions.

Adopted on the 22<sup>nd</sup> day of October 2024.



Brant Goodman, Secretary



# Sample Terrafirma Claim Form

**Status:**

**Land**

**Trust**

**Policy Number**

**Property**

This challenge is a: (ex. Trespass or Encroachment) Date first learned of problem:

Date of report:

Person preparing report:

Email address:

Phone #:

**Description of claim or incident**

**Has litigation commenced, including any notice of a complaint filed**

**Description of damage to any property**

**Description of challenge**

**Insurance**

Other insurance coverage:

Title insurance:

**Other party's information**

Name:

Phone #:

Address:

City & State:

Zip code:

**Other party's attorney information**

Name of opposing party

attorney: Phone #:

Address:

City & State:

Zip code:

Email:

**Additional Comments**