



## *Conservation Easement Handbook*

### *Supplements 601 FW 6 (Administration of National Wildlife Refuge System Conservation Easements)*

National Wildlife Refuge System  
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## **Foreword**

Conservation easements are an effective alternative to fee acquisition that helps the U.S. Fish and Wildlife Service (Service) achieve the mission of the National Wildlife Refuge System (NWRS) while keeping land in private ownership. Delivery of the Service's conservation easement programs across the country takes a connected and collaborative approach, not only within the agency but with our landowner partners. The NWRS Improvement Act emphasizes this need for collaboration by directing the Secretary to "...ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges...." With conservation easements, there can be no closer neighbor than the landowner who owns in fee the land upon which an easement exists.

This unique relationship between the Service and landowners amplifies the needs for "coordination, interaction, and cooperation." We strive to be good neighbors and collaborate with private landowners who share our conservation ethic to safeguard the habitat values the easements were acquired to protect. Our Refuge Managers are tasked with the responsibility of developing and fostering relationships with landowners and are assisted by a cadre of Service employees, including biologists, Regional Realty Officers and Federal Wildlife Officers, to ensure that we responsibly acquire and administer easement contracts.

This handbook was developed to assist employees in the implementation of [601 FW 6](#), Administration of NWRS Conservation Easements. Each Region may provide additional guidance for implementation that incorporates the processes outlined in the national policy and this handbook. Existing Regional manuals should be updated to ensure alignment with national guidance.

### **I. Policy Framework for the Service's Conservation Easement Acquisition Program**

Service Manual chapter [341 FW 1](#), section 1.3A, Policy and Responsibilities, tells us that the Service will acquire lands and waters consistent with legislation, other congressional guidelines, and Executive Orders, for the conservation of fish and wildlife and related habitat and to provide wildlife-oriented public use for educational and recreational purposes. The same policy states that when lands are to be acquired, we are to acquire only the minimum interest necessary to reach management objectives. In addition, all acquisitions must be in alignment with the Service's Strategic Growth Policy ([602 FW 5](#)).

All Service acquisitions of land and interests in land must comply with the policies set forth in 340 FW 1 through 343 FW 5. Additional requirements for acquisition of conservation easements are in [601 FW 6](#); additional requirements for acquisition of minimally restrictive conservation easements are in [341 FW 6](#), Minimally Restrictive Conservation Easement Acquisitions. The Division of Realty is responsible for the acquisition of lands or interest in lands.

### **II. Basic Steps in the Acquisition Process**

The basic steps in the conservation easement acquisition process are:

- a. Planning and prioritization,
- b. Identifying willing sellers,
- c. Valuation,
- d. Preparing and making the offer,
- e. Due diligence (title work and land), and
- f. Closing.

Regions must follow the Strategic Growth Policy, 602 FW 5, as well as the planning guidance in 602 FW 2 (*under development*) and 601 FW 6.7-8. After the planning and prioritization processes are completed, consistent with existing Service policy, the Division of Realty leads the acquisition process, implementing the Regional Refuge Chief's acquisition priorities in accordance with the Land Protection Plan (LPP), while maintaining close communication with Regional Refuge management and the Refuge Manager.

A Service conservation easement may not be a good fit for a particular property or landowner. Before referring a potential acquisition to the Division of Realty, the Refuge Manager must consider whether acquisition of the conservation easement might create management problems because of the location of the property or a neighboring land use. Examples of this might include proximity to farmsteads, barns, feedlots, existing or proposed industrial parks, airports, areas that are zoned for uses that conflict with the Service's conservation interests, gravel pits, and mines. If there are questions about the long-term integrity of a conservation easement, the Refuge Manager should consult the appropriate member(s) of Regional Refuge management.

If we are considering purchasing a conservation easement on land where the condition of the land at the time of acquisition would not meet the terms of the easement, we should either: (1) require that the landowner restore the habitat before we purchase the conservation easement, (2) document an agreement for restoration to take place after we acquire the conservation easement, or (3) exclude that land from the conservation easement.

### **III. Determining if a Conservation Easement is the Right Conservation Tool**

When determining whether the conservation easement is the right tool to help the Service reach management objectives, there are a number of considerations that come into play. These may include:

- a. Science – Does the acquisition meet the Service's conservation targets and goals?
- b. Service Policy – Does the acquisition comply with the Service's policy to acquire the minimum interest to achieve conservation and management goals (341 FW 1.3(A)(1))?

- c. Funding – Is funding available for the acquisition and for operations and management?
- d. Land Use – For what is the land being used? What are the potential future uses of the surface and subsurface estate?
- e. Location – Does the land lie within an approved acquisition boundary (AAB)?
- f. Willing Sellers – Is the landowner a willing seller?
- g. Socio-political Considerations – What is the local community’s view on the Service’s conservation easements? Is there local support or opposition to Federal ownership?
- h. Alternative Acquisition Tools – Is there a tool that would better achieve conservation and management goals? Other tools might include: acquisition of fee title, entering into a lease agreement, and entering into a cooperative agreement.
- i. Coordination with Partners – How does the proposed conservation easement acquisition fit in with the conservation efforts of, and programs offered by, other conservation agencies and our partners?

The Service decides whether a conservation easement is the right tool in two main circumstances: (1) when we are doing conservation planning for a new or existing acquisition area, and (2) when we are working within an existing approved fee title acquisition area where, for the reasons stated in this section, a conservation easement might be the right tool.

#### **IV. Standard Easement Documents Versus Tailored Easement Documents**

When the planning team is developing an easement document for use in a new or existing easement acquisition area within either a new or expanded approved acquisition boundary, Service policy encourages, but does not require, that we use a standard easement document within an easement acquisition area (601 FW 6.9). For additional information on how we consider conservation easement acquisitions during the planning process, see 601 FW 6.7-16.

A standard easement document is sometimes referred to as a conservation easement template. A standard easement document contains terms and conditions that are set and non-negotiable. Easement documents that use the same template will contain exactly the same language. Conversely, tailored easement documents allow the Service and the landowner to choose terms and conditions to fit a target property. Each tailored easement document is unique. Individual situations will dictate the most appropriate choice, a tailored or standard easement document. Both types of easement documents must include certain terms and conditions (see 601 FW 6.10).

- a. Standard Easement Documents

As noted, within an easement acquisition area, a standard easement document is the preferred tool, according to Service policy. The advantages of using a standard easement document include:

- i. Improved public understanding of our conservation goals, which helps us to more easily achieve those conservation goals and attract new landowners to the easement program;
- ii. Simplification of the negotiations with the landowner;
- iii. Once the easement document is approved for use, minimal involvement from the Solicitor is required;
- iv. Potentially a simplified valuation process;
- v. Usually less expensive than tailored easement documents because we typically acquire fewer rights with a standard easement document;
- vi. More streamlined administration, monitoring, and enforcement; and
- vii. Better landowner understanding of the terms and conditions of easement documents, which subsequently improves landowner satisfaction with and trust in the easement program and therefore, easement compliance and the long-term protection of the habitat values the easements are intended to safeguard.

Some of the disadvantages of using a standard easement document include:

- i. Less landowner acceptance because there is no flexibility in negotiations,
- ii. The standard provisions may not address all specific conservation goals or targets, and
- iii. They generally afford us less management control because we typically acquire fewer rights than with tailored conservation easements.

b. Tailored Easement Documents

On the other hand, sometimes a tailored easement document is the preferred easement document. The advantages of using a tailored easement document include:

- i. Greater landowner acceptance because of the flexibility to meet individual landowner needs,
- ii. The ability to address specific conservation goals and targets, and

- iii. They generally afford us greater management control because we typically acquire more rights than with standard easement documents.

Some of the disadvantages of using a tailored easement document include:

- i. Less public understanding of our conservation goals;
- ii. Complication of the negotiations with the landowner;
- iii. More involvement from the Office of the Solicitor because of the need to attain Solicitor approval on every conservation easement we use;
- iv. More complex and time-consuming valuation process;
- v. Usually more expensive than standard easement documents because we typically acquire more rights with a tailored conservation easement;
- vi. More challenging monitoring and enforcement logistics; and
- vii. Potentially less landowner understanding of the terms and conditions of easement documents, which subsequently complicates easement compliance.

Regional Refuge management decides whether to use a standard easement document or a tailored easement document, in consultation with the Refuge Manager, Regional Realty Officer, the planning team, and others with conservation easement expertise. For guidance on developing the easement document(s) that we will use, see 601 FW 6.7-16.

## **V. Language in the Easement Document**

The Division of Realty is responsible for working with the Regional Solicitor (or Field Solicitor, where appropriate) to ensure that the language in every easement document receives Solicitor approval. The Division of Realty should work collaboratively with Regional Refuge management to ensure that the language in the easement document meets management objectives.

As stated in 601 FW 6.10, all easement documents must:

- a. Information in easement documents
  - List the legal authorities for acquiring the conservation easement;
  - State the goals of the project;
  - Include a legal description and, if appropriate, a survey-grade map of the lands encumbered by the conservation easement;

- Define, to the extent possible, the uses, activities, and rights the landowner retains, including landowner activities that require no Service approval;
- Define the uses and activities the landowner must refrain from pursuing without Service authorization;
- Define the uses, activities, and rights the Service acquires. For examples of rights we might want to acquire, see 601 FW 6.7B;
- Include provisions that allow the Service to access the property for monitoring/inspection and enforcement; and
- State that the conservation easement will exist in perpetuity. See 601 FW 6.10B for additional information.

In addition, the following guidance will help ensure a successfully drafted easement document:

b. Legal enforceability of the easement document

All of the provisions of the easement document should be legally enforceable. The Division of Realty is responsible for working with the Regional Solicitor (or Field Solicitor, where appropriate) to this end.

c. Acquiring the minimum interest necessary

When acquiring real property interests, it is our policy to acquire the minimum interest necessary to reach management objectives. (See 341 FW 1A(1).) Thus, when we acquire a conservation easement, the easement document should convey to the Service only the rights necessary to enable us to reach those management objectives. If we acquire more rights than are necessary to reach those management objectives, we risk creating an unnecessary administrative burden for management and enforcement of the conservation easement.

d. Purpose of the conservation easement

The easement document should include language that clearly defines the purpose of the conservation easement.

e. Modification of the easement document

The easement document must not include language that allows the parties to modify the easement document in the future. We may only modify an easement document via the land acquisition process, led by the Division of Realty, in coordination with Refuge management. We cannot modify an easement document without Solicitor approval of the modifications. (See 601 FW 6.15.)



f. Restrictions on uses vs. retained rights

An easement document typically encumbers the landowner's use of the land by placing restrictions on the ways the landowner may use the land. An affirmative or retained right explicitly allows the landowner to use the land in the specified manner. A restriction is easier to administer than an affirmative or retained right.

g. Proceeds of sales

If we intend for the Service to be the recipient of the proceeds from the sale of a natural resource derived from the land subject to the conservation easement, the easement document must explicitly state this intent.

h. Third party uses of the land

The easement document should state that a landowner must inform the Service before they allow a third party to encumber the land subject to the conservation easement. (An example of this would be a request for a third-party right-of-way.) This will help to ensure that the landowner does not convey property rights that the Service acquired through the conservation easement.

i. References to management plans

The easement document should not refer to management plans. Any restrictions on use should be incorporated into the provisions of the easement document.

j. Subsurface minerals

We should, whenever possible, include in the easement document authority for the Service to require and approve a permit to access any associated subsurface minerals. (See 601 FW 6.10C.)

## **VI. Exchanging a Conservation Easement**

The National Wildlife Refuge System Administration Act, as amended, prohibits the Service from divesting real property interests that are part of the Refuge System, including those the Service has acquired through a conservation easement. The Administration Act allows the Service to divest of real property interests that are part of the Refuge System through an equal value land exchange, though land exchanges are only approved in very limited circumstances (see [342 FW 5](#)).

It is Service policy to pursue a land exchange only when we determine the exchange will better contribute to, and not diminish, achievement of the conservation purposes for which the unit was established or the Refuge System's conservation mission.

Land exchanges typically take a minimum of 18 months for the Service to complete and require at least twice the amount of staff time and resources that a standard land acquisition requires. This is because of the increased complexity of the negotiations; the requirement to obtain

appraisals, land surveys, environmental due diligence, and title work for both the land we would acquire and the land we would divest; and the additional approval and notification requirements to the Regional Director, the Director, the Department of the Interior (Department), and Congress, where required.

Our conservation easements are real property interests so they are subject to the same laws, regulations, and policies as any other real property that is part of the National Wildlife Refuge System. Therefore, when exchanging a conservation easement, we are required to follow the same procedures we must follow when exchanging any other real property interest, which are extensive (see 342 FW 3, 342 FW 4, and 342 FW 5 and section 6.15B of 601 FW 6).

These processes include, among other steps, meeting appraisal and just compensation requirements, negotiating to acquire more rights or interests, and ensuring review of the modification or amendment by the Office of the Solicitor. See [342 FW 5](#) for the requirements, steps involved, approval levels, and congressional notification requirements for all exchanges. As with all land transactions, the Regional Realty office is responsible for conducting exchanges and will be familiar with the most current documentation requirements.

As noted in 601 FW 6.15, there are very limited circumstances in which it may be appropriate to exchange a conservation easement (or a portion of a conservation easement) for another real property interest.

We must not use a land exchange to facilitate a refuge use that we did not or would not find to be appropriate or compatible ((see the compatibility regulation ([50 CFR 26.41](#)) and the Compatibility policy ([603 FW 2](#))), or that would not otherwise be permissible.

We also must not use a land exchange to bring an easement violation into compliance unless an exchange is the only way to make the Service's interests whole. Violations should instead be addressed by obtaining restoration of habitat.

If the Refuge Manager has determined that the conservation easement is an appropriate candidate for an exchange, they must discuss the proposal with the appropriate Refuge Supervisor (and any additional Regional Refuge management, as determined by the Region) prior to submitting the exchange request in writing to the Regional Realty Officer.

Refuge Chief approval is required in writing and on a case-by-case basis before the Division of Realty may initiate work on an exchange of a conservation easement that either (1) would facilitate a use that we did not or would not find appropriate or compatible (or that would be otherwise impermissible), or (2) is undertaken to bring an easement violation into compliance and is the only way to make the Service's interests whole. The exchange cannot proceed unless the Refuge Manager and the Regional Refuge Chief concur in writing on the written findings required in 601 FW 6.15D. Also note that these exchange agreements can only be signed by the Regional Director.

## **VII. Conducting Refuge Management Activities (601 FW 6.18) and Allowing Uses (601 FW 6.19-20) on Conservation Easement Lands**

This section provides a brief summary of what refuge management activities are and how they are conducted on conservation easements. It also provides Refuge Managers with an overview of the process for assessing use requests for land subject to a conservation easement.

Refuge management activities are designed to conserve fish, wildlife, and plants and their habitats and are conducted by the Service. Refuge management activities are fish and wildlife population or habitat management actions including, but not limited to: prescribed burns, water level management, invasive species control, routine scientific monitoring, and habitat restoration. When we acquire management rights through a conservation easement (e.g., the right to restore wetlands or grasslands, to inventory or monitor biological resources), those management activities are Federal actions or Federal undertakings and are not considered refuge uses (see [603 FW 2](#)).

We receive use requests from landowners, private third parties (such as farm operators and energy development proponents), and public third parties (such as local, State, and Federal Government agencies).

Examples of the diverse array of use requests we receive include (but are not limited to) requests to:

- a. Clear vegetation,
- b. Plant food plots,
- c. Maintain drainages that existed before we acquired the conservation easement,
- d. Install oil or gas pipelines,
- e. Install rural water lines,
- f. Install electrical or telecommunication transmission lines, and
- g. Install wind or solar energy projects.

Regardless of the requester or the requested use, the Refuge Manager evaluates use requests on land subject to a conservation easement in accordance with the Appropriate Refuge Uses policy ([603 FW 1](#)), the Compatibility policy ([603 FW 2](#)), and other environmental compliance laws and regulations (such as the National Environmental Policy Act (NEPA)) before allowing or disallowing the request.

*HELPFUL HINT: In this chapter, we use “NEPA” to refer to not only the NEPA process, but also other environmental laws (such as the National Historic Preservation Act), regulations, and Executive Orders that we commonly address through the NEPA process.*

## **VIII. Determining What Uses Are Allowed on Conservation Easements (601 FW 6.19)**

a. Applying the Appropriate Refuge Uses policy to use requests on conservation easements

Appropriate use findings serve to ensure consistency across the easement program. The Refuge Manager should initially screen conservation easement use requests using the Service's Appropriate Refuge Uses policy ([603 FW 1](#)). The Appropriate Refuge Uses policy and subsequent Appropriate Refuge Uses guidance memos (Hall 2008 and Guertin 2018) create a process that helps the Refuge Manager make appropriate use findings and determine whether we should further analyze a requested use with a Compatibility Determination (CD) and possibly through a NEPA process. The Refuge Manager should use the *Finding of Appropriateness of a Refuge Use* form ([FWS Form 3-2319](#), 2018). This helps the Service to document appropriate use findings consistently across the Service.

If the Refuge Manager denies a use request during the appropriate use finding, we should complete an [FWS Form 3-2319](#) and file it in the station file for that tract. Findings that deny an existing use or authorize a new use require approval from the appropriate Refuge Supervisor. It is important to maintain complete records of appropriate use findings to inform future Refuge Managers about past use requests and to inform future findings. Screening uses through the Appropriate Refuge Uses policy is particularly important for larger easement acquisition areas, such as those in the minimally restrictive conservation easement acquisition programs in Regions 3 and 6. In these Regions, Refuge Supervisors have typically coordinated appropriate use findings over an area that encompasses several million acres of conservation easement interests. It is critical to the long-term sustainability of conservation easement programs that we treat use requests across a large conservation easement area consistently.

b. Determining jurisdiction – a key component in administering refuge uses on conservation easements

As part of the appropriate use review, it is critical that the Refuge Manager understand what jurisdiction the easement document conveyed to the Service. Our jurisdiction is limited to those rights the Service explicitly acquired through the easement document. We cannot exercise jurisdiction over the use of a property interest if we have not acquired that property interest.

*HELPFUL HINT: Acquired rights are not the same as the purpose for which we acquired the conservation easement. Listing the purposes in the easement document does not typically convey rights to the Service; acquired rights must be specifically listed in the easement document.*

When completing an appropriate use review, the Refuge Manager should be aware that most easement documents contain a "subject to" section that lists any exceptions or reservations to the rights and/or interests that the Service acquired. Reserved rights may include statutory road rights-of-way, mineral rights, and other rights-of-way that pre-date the conservation easement. The interests we acquired are subject to the outstanding rights that are held by a third party or reserved by the landowner. The Service can take proactive approaches to avoiding adverse impacts on our conservation easements by sharing information with private industry such as oil/gas companies, wind companies, telecommunications companies, and other utility companies

regarding the presence of a Service conservation easement, especially when our conservation rights potentially overlap with their acquired rights on the same properties.

Often, the easement document does not list specific exceptions and/or reserved rights. The Refuge Manager can identify reservations by reviewing the title commitment (though we do not always acquire title commitment when we acquire a conservation easement), the pre-acquisition title opinion (previously referred to as the preliminary title opinion), or the post-acquisition title opinion (previously referred to as the final title opinion) from the Regional Solicitor (or Field Solicitor, as appropriate), or through a records search at the courthouse. The Service generally has limited jurisdiction over activities or uses that are covered by a reservation or an assignment in the easement document; hence, they are usually not subject to the Appropriate Refuge Uses policy (or the Compatibility policy) but could under some circumstances require a permit.

Landowners commonly reserve mineral rights in easement documents. While the easement document may not encumber the extraction of certain minerals, the Refuge Manager can and should be involved in conversations with developers who are seeking to exercise their mineral rights. Under most State laws, the owner of the mineral estate has a legal obligation to take reasonable measures to protect the surface estate. Our involvement in conversations with the developer is necessary to protect and minimize impacts to habitat resources. Ideally, the Service, the mineral company, and the landowner would discuss alternatives and options prior to any agreements between two of the three parties. The Service's requests/recommendations must be reasonable and limited to those aspects that affect our conservation easement interests. We should provide our recommendations to the energy/mineral company and the landowner in writing. We should retain and pass the written recommendations on to entities within the mineral company. The written recommendations will help to protect the Service's (and any future landowner's) interests should the land or the company be sold. See [50 CFR 29 subpart D](#) for regulations specific to reserved oil and gas rights.

When a Refuge Manager determines that a proposed use is non-jurisdictional, the Refuge Manager should inform the requester that a permit from the Service is not required. The Refuge Manager should include documentation of these conversations in the station file for that tract.

*HELPFUL HINT: To the extent possible, the Refuge Manager should work with the requester to minimize adverse impacts to the Service's conservation easement interest even if reserved rights are exercised. Requesters, particularly for large projects (such as roadways, oil and gas pipelines, and wind energy development), will often voluntarily avoid adversely affecting a Service conservation easement interest if they are aware of it.*

c. Coordination with the landowner

Before we can find that a request for a third-party refuge use is appropriate, the Refuge Manager should ensure that the landowner is willing to grant the third party the use. Similarly, we generally cannot issue a Special Use Permit (SUP) on a conservation easement to a third party unless the landowner has approved the use (see permitting section).

d. Uses for which the Service has jurisdiction

When a Refuge Manager determines that the Service has jurisdiction over a requested use, they should work closely with the requester to avoid or minimize impacts to the Service's conservation easement interest. Communication and early coordination with the applicant often help us to avoid negative impacts to our conservation easement interests. After a Refuge Manager works with an applicant to reasonably minimize impacts to a conservation easement interest, the Refuge Manager should finalize the Appropriate Use worksheet (in coordination with their Refuge Supervisor) and determine if the use is appropriate or not appropriate.

e. Requiring a written SUP application

It is common for refuge use requests to come up during regular collaborative discussions between the Refuge Manager and landowner. These requests are often conceptual in nature and develop into a formal request after further discussions. In many situations, it may be advisable to defer a written use request until the Refuge Manager and landowner have worked through the details of the request.

For third-party use requests, particularly for use requests where multiple Service programs and other Federal and State agencies are simultaneously coordinating a large project (such as a request for an interstate, buried oil pipeline), development of the use request is often an iterative process. For example, construction details (such as directional boring vs. open trenching), centerline location, and the timing of installation may be flexible, and the use request will frequently be modified during the early planning stages. In such cases, request of a formal SUP application or right-of-way permit application may not be appropriate until the planning process nears completion. However, if a manager suspects that the use will be denied, the Refuge Manager should require that the requester submit a written application early in the process.

f. Special cases when the Appropriate Refuge Uses policy does not apply to conservation easement use requests

As stipulated in the Appropriate Use worksheet, we do not use appropriate use reviews when assessing requests for a right-of-way permit. We evaluate right-of-way requests (see [340 FW 3](#) and [50 CFR 29](#)) through the Compatibility policy and the appropriate level of NEPA. In addition, an appropriate use finding is not required for third-party, non-Federal oil and gas exploration or development outside of Alaska. The regulations on third-party oil and gas permitting are found in [50 CFR 29 subpart D](#). For questions when implementing the regulations found in 50 CFR 29 subpart D, the Refuge Manager should consult the Regional oil and gas coordinator or the national Environmental Contaminants Specialist in the Branch of Wildlife Resources.

**IX. Allowing a Use When We Find It Compatible (601 FW 6.20)**

a. Applying compatibility policy to conservation easement use requests

We apply the Compatibility policy ([603 FW 2](#)) to conservation easements in much the same way we apply it to fee title refuge lands. The Compatibility policy requires the Refuge Manager to consider both how a proposed use would affect refuge purposes and how a proposed use would

impact the mission of the Refuge System. The Refuge Manager must follow the Compatibility policy, including using the specified process, standardized templates, and required forms. A key point in addressing compatibility of requested uses on conservation easements is that we evaluate the impacts of the use in the context of the interests we have acquired.

Before the Refuge Manager completes a Compatibility Determination (CD), they should use the CD flowchart (found in [603 FW 2](#)) to screen out uses that are not compatible. Many parts of the CD flowchart address similar topics covered in the Appropriate Use worksheet; however, the Refuge Manager may be able to screen out and deny permit requests with the CD flowchart before needing to develop a CD. For example, when using the CD flowchart, the Refuge Manager should deny a right-of-way permit request that is not manageable with available resources or that would conflict with resource management objectives before even completing a CD (603 FW 2.12A(7) & 2.15). The Refuge Manager should document any use requests that they deny and file it in the station file. The requester can appeal an SUP or right-of-way permit request that we have denied to the Regional Director/Director, so it is important that the Refuge Manager maintain adequate administrative records to document any decisions on the matter.

If the Refuge Manager finds that a use is appropriate and/or passes through the CD flowchart, the next step is to prepare a CD. We must evaluate any requested use of a conservation easement according to the criteria that it will “not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or purposes of the national wildlife refuge,” but only to the extent that the proposed use affects an acquired interest. Thus, for use requests on land subject to our conservation easements, what we evaluate through a compatibility determination are the potential impacts to the interests we acquired through the conservation easement.

*HELPFUL HINT: Compatibility for the same common uses can be applied to easements with the same authorizing language and the same template easement document.*

b. Refuge management activities

Most commonly, Service conservation easements protect habitats and wildlife through encumbrances that restrict activities (such as wetland drainage, grassland conversion, and timber harvest). While encumbrances make up most of the rights conveyed to the Service through conservation easements, conservation easements may also convey management rights to the Service. Some refuge management activities acquired by the Service through a conservation easement include rights to restore and/or maintain water control structures, manipulate water levels, harvest timber, and maintain grassland vegetation.

When a refuge management activity results in the harvest of a commodity (such as farming, timber, hay, grazing rights) that can be sold or traded, it is referred to as a refuge management economic activity ([603 FW 2.6N](#)). In accordance with the Compatibility policy, these refuge management economic activities require that we complete a CD.

If a refuge management economic activity (e.g., farming, grazing, haying) is conducted on a conservation easement, the landowner should be offered the opportunity to complete that activity. If the landowner does not want to complete the work or, for instance, has no need for hay, a third party may be contracted to complete the work. If proceeds are generated from a refuge management economic activity, those proceeds should be distributed to the landowner. Share-in-kind agreements should not be used to complete refuge management economic activities on conservation easements because the Service does not typically hold the right to any products harvested from a conservation easement.

It is crucial that we conduct all refuge management activities on conservation easements in partnership with the landowner. If the landowner opposes a refuge management activity that the Service determines is necessary to restore and maintain the rights the Service purchased via the easement, the Refuge Manager should work with the landowner to explain the habitat needs and rights the Service owns and try to find compromise. An example might be altering the timing of the refuge management activity so that it does not conflict with the rights retained by the landowner. If the Refuge Manager and landowner cannot reach consensus, the Service still owns rights and can complete the refuge management activity, and the Refuge Manager should notify the landowner in writing of the refuge management activity.

*HELPFUL HINT: Economic use standards associated with [50 CFR 29.1](#) do not apply to conservation easements. This regulation was stepped down from the Refuge Revenue Sharing Act and, as such, only applies to fee title lands.*

c. Compatibility and commercial use requests

Refuge Managers frequently receive refuge use requests for commercial activities that may adversely impact a conservation easement interest. Requests for telecommunication towers, pipelines, or wind energy projects can fall into this category. We cannot issue a permit for a requested refuge use unless we find the use to be compatible.

d. NEPA guidance

All refuge management activities and permitting actions for conservation easements require some level of NEPA compliance and possibly compliance with other environmental laws and regulations (such as the Endangered Species Act). NEPA documentation, in the form of a Categorical Exclusion (CATEX), Environmental Assessment (EA), or Environmental Impact Statement (EIS), is required for refuge management activities and any conservation easement uses authorized through an SUP or right-of-way permit. The Refuge Manager should contact their Refuge Supervisor, Regional NEPA coordinator, and the [NEPA for National Wildlife Refuges Handbook](#) for guidance in applying NEPA to conservation easement administration and permitted uses.

Federal cultural resource responsibilities for limited property interests are different than those for fee title properties. The Service acquires conservation easements from private landowners to protect wetland and grassland habitats, not the cultural resources that may be present on the properties. Even though the Service does not have any rights to cultural resources that may be



present on lands encumbered by a conservation easement, projects on conservation easement lands may be considered a Federal undertaking if the Refuge Manager issues an SUP for the use. Many projects requested by other entities (such as the Department of Transportation or utility companies) will have cultural resource evaluations already completed. The Refuge Manager must ensure that these evaluations are reviewed for sufficiency by Regional archaeological staff. Determination of undertakings and the effects of projects are not authorities that have been delegated to Refuge Managers. Contact the Regional Archaeologist for more information as needed.

e. Authorizing uses on conservation easements (601 FW 6.20)

As outlined in 601 FW 6.20, the only types of permits we can issue for a compatible use of a conservation easement are an SUP and a right-of-way permit. The applicant must submit a formal SUP or right-of-way permit application before we can process the request or authorize the requested use. If the request is substantially different from a request that the applicant has previously submitted, the Refuge Manager may request that the applicant revise and resubmit the request.

i. Special use permits

The issuance of SUPs on conservation easements is specifically outlined in [50 CFR 25.44](#). According to the regulation, the Service can only issue permits to a third party with the landowner's agreement. The Refuge Manager should document landowner consent before issuing a third-party SUP.

If the third-party applicant is a government agency that has acquired a partial interest in the landowner's property, landowner consent is not required (see 50 CFR 25.44(c)). An example of this exception is when a State's department of transportation holds a right-of-way for the construction of a roadway over land that is subject to a Service conservation easement. In this situation, landowner agreement with the requested third party use is not required, and the Refuge Manager should work directly with the State agency to minimize, avoid, or mitigate any adverse impacts that the project may have to our conservation easement interest.

ii. Right-of-way permits

The issuance of right-of-way permits is covered in detail in [50 CFR 29.21](#); less than fee interests, including conservation easement interests, are addressed in 29.21-1.

It is not unusual for easement documents (for example, the wetland easements used in Regions 3 and 6, and Farmers Home Administration (FmHA) easements) to describe a large area (such as a ¼ section of land), even though the encumbrances affect a much smaller area (such as a 20' linear riparian buffer or wetland areas) within the legally defined tract. In these cases, some right-of-way permit requests may occur within the conservation easement, but the use will not adversely affect the Service's conservation easement interest, and the Regional Director can issue a "letter of no objection" (if the use is found compatible) stating that the Service's interest

will not be adversely affected by the activity and a right-of-way permit from the Service is not required under 50 CFR 29.21.

An example where a letter of no objection may be applicable could include the installation of a fiber optic cable through a FmHA easement area with a grassland area. With appropriate stipulations (such as construction methods and timing), the project could be constructed within the easement tract without adversely affecting the easement interest. We would then use an SUP (and associated CD and NEPA documentation) to authorize the use. A right-of-way permit for the use would not be required because the buried fiber optic cable would not result in longer-term impacts to grassland habitat (it would not adversely affect the easement interest). If future unanticipated maintenance of the fiber optic cable became necessary, an SUP would be required. If regular maintenance of the waterline would be required and if we expected this maintenance to adversely affect the Service interest, a right-of-way permit would be required.

f. Considerations for use requests

- i. Determining jurisdiction is a key first step when addressing conservation easement use requests; it is important that the Refuge Manager understand the property interests that the Service acquired, and which property interests may be subject to pre-existing third-party rights.
- ii. Conservation easement use requests should be evaluated using a consistent process through the national framework established by the Appropriate Refuge Uses policy, Compatibility policy, and NEPA.
- iii. The Appropriate Refuge Uses policy ([603 FW 1](#)) and the CD flowchart ([Exhibit 1, 603 FW 2](#)) are valuable tools to screen refuge use requests before we conduct a more thorough evaluation.
- iv. If we deny a request for a conservation easement use, we must document the decision in the station file.
- v. We should coordinate conservation easement use requests with the landowner; conservation easements are an important conservation tool that we should cooperatively manage with landowners.
- vi. If a requested use impacts a real property interest held by the Service, then we will need to develop a finding of appropriateness and CD in order to evaluate the use and to determine whether it is appropriate and compatible.
- vii. We should only issue SUPs or right-of-way permits for conservation easement use requests after the Refuge Manager has ensured compliance with NEPA, the Endangered Species Act, and cultural resource assessments.

**X. Documenting and Recordkeeping (601 FW 6.22)**

The Division of Realty is responsible for the maintenance of all real property records for lands and interests in lands, including original, signed documents. For the recordkeeping requirements that pertain to the Division of Realty, see 342 FW TBD, Realty Records [*in development*] and [342 FW 4](#), Title Curative and Conveyancing). These files are managed by the Division of Realty at the Regional office and include original versions of documents generated during the acquisition process.

We keep a perpetual station file for each conservation easement at the field station responsible for managing the conservation easement. The responsible field station should work with the Division of Realty to ensure that it has the documentation it needs to efficiently administer its conservation easements.

The station file should include the following documentation generated during the acquisition process by the Division of Realty:

- a. A copy of the original easement evaluation (typically generated when acquiring minimally restrictive conservation easements),
- b. A copy of the original recorded easement agreement (and any subsequently recorded exhibit maps or amendments, if applicable),
- c. A copy of the acceptance letter that the Service has signed and a copy of the proof of receipt by the landowner,
- d. A copy of the final title policy (see [342 FW 4](#) for information on these documents),
- e. A copy of the survey of the interest acquired, if applicable, and
- f. A copy of the signed environmental due diligence that we completed before acquiring the easement (see [341 FW 3](#), Pre-Acquisition Environmental Site Assessments, for information on the required environmental due diligence).

The station file should include the following documentation pertaining to management of the conservation easement:

- a. The name of the current landowner;
- b. A baseline report that documents the condition of the subject property at the time the conservation easement is recorded;
- c. Documentation of monitoring/inspection activities, either in individual files or as a collective report;

- d. Landowner contact and correspondence documentation;
- e. Notes to the file and other management information, such as:
  - i. Condition on the ground, both with compliance issues and if no issues are found,
  - ii. Other management issues (such as invasive weeds, posting condition, and fences), and
  - iii. Photographic documentation, including the date/time and who took the photos, of monitoring and inspection activities; and
- f. A map or photo, or both, of the conservation easement at the time of acquisition, including excluded areas or inholdings.

For recordkeeping requirements pertaining to enforcement of conservation easements, see 601 FW 6.30 and 6.37.

*HELPFUL HINT: We must compile and maintain a record of site inspections as part of the station file for each conservation easement. Methods to document compliance visits may vary, but this record should, at a minimum, include a monitoring sheet with date, name of staff conducting monitoring, specific field conditions, and any findings of significance.*

## **XI. Working with Landowners to Promote Compliance of Easement Provisions (601 FW 6.23)**

### a. Value of communication

Frequent communication with landowners, operators, and other stakeholders on the landscape must be a priority for Refuge Managers and others involved in managing conservation easements. During these communications, it is important that we emphasize the terms of the easement document and provide the landowner with copies of the easement document and any maps associated with the conservation easement. We also should ensure that the landowner knows whom to contact if they have any questions pertaining to the easement document.

*HELPFUL HINT: When possible, we should strive to station employees responsible for managing conservation easements within local communities. When employees become part of the community and are not located at a distance, we have found that relationships are more successful.*

For large easement acquisition areas that use relatively standard easement documents, such as wetland and grassland easements that we administer in the Prairie Pothole Region, it may only be possible or necessary to contact landowners every 3-5 years through mass mailings.

Alternatively, for smaller easement acquisition areas or for tailored easement documents, annual face-to-face meetings may be appropriate.

We should notify new landowners of the conservation easement as soon as practical. Often, new landowners are unfamiliar with the terms of the easement document, and it is not unheard of that landowners who recently purchased a tract of land may not even know that there is a conservation easement on their property. Unintentional violations can often be avoided through timely communication with new landowners.

If the Service's conservation easement interests and the habitat values for which the land was conserved are to be successfully maintained in perpetuity, it is essential that the Refuge Manager take proactive steps to reduce the occurrence of actions that are inconsistent with easement provisions. Ongoing communications with the landowner are one of the most effective methods to accomplish this to ensure that there is a mutual understanding of the requirements of the easement. Therefore, Refuge Managers and other Service staff should communicate with landowners frequently using one or more of the following methods:

- i. Face-to-face meetings
- ii. Landowner workshops
- iii. Phone calls
- iv. Direct mailing to each easement landowner with a summary or update about relevant easement information. For example, if a new farming technology might damage our conservation easement interest, we could advise landowners to consult with us prior to changing their operations to include the new technology.
- v. Annual newsletter to each easement landowner in a particular project area. Potential subject matter for the newsletter includes:
  - 1) Pertinent local conservation issues, conservation programs, and wildlife and habitat management issues;
  - 2) Lists of contact information for technical assistance; and
  - 3) Reminders of easement obligations.

b. Communicating the value of the conservation easement

When communicating with landowners, especially new landowners, it is important to explain the purpose of the conservation easement and the importance of working together to protect the integrity of the conservation easement. We must convey that the conservation easement is a partnership between the Service and the landowner that protects important natural resources. An

example would be explaining to a new owner of land that is subject to a Northern Tallgrass Prairie conservation easement how rare this habitat is, and that the native forbs found in the prairie are not weeds and provide important wildlife habitat. Often, the Service can further partner with the landowner by using programs such as the FWS Partners for Fish and Wildlife Program and other funding sources to manage and improve the habitat on conservation easements. An informed landowner is much less likely to conduct activities that are inconsistent with the terms of the conservation easement.

c. Boundary posting

While it is not a traditional form of communication, boundary posting can be an effective way to communicate the presence of a conservation easement. This is particularly relevant for certain Farm Service Agency (FSA, sometimes referred to as the Farmers Home Administration, or FmHA) easements that have irregularly shaped boundaries, such as buffer strips around wetlands or streams. Boundary posting can create an intensive initial and ongoing workload; however, it is one of the more effective means of ensuring compliance with the terms of the conservation easement. There is no Service wide standard or requirement for posting the boundaries of conservation easements ([343 FW 1.4.E](#)) and any posting requirements should be established at the Regional level or field station.

d. Importance of communicating with local units of government

In addition to communication with landowners, it is important that we share information regarding the presence of conservation easements and general restrictions related to Service conservation easements with other agencies or local units of government, such as the Natural Resources Conservation Service, the U.S. Army Corps of Engineers, local watershed districts, county drainage districts, road authorities, and planning and zoning departments. We typically contact these agencies and local units of government early during project planning because of their jurisdiction over wetlands or other natural features. The agency or local unit of government would then have the opportunity to inform the landowner that there is a conservation easement on their property.

*HELPFUL HINT: Familiarity of Service conservation easements by these agencies and local units of government can help prevent violations, particularly if a landowner contacts the agency or local unit of government with questions.*

**XII. Monitoring Conservation Easements (601 FW 6.23-6.26)**

a. Why we monitor conservation easements

Easement monitoring is an opportunity to build positive relationships with landowners, share ideas about land management techniques, and possibly connect landowners with beneficial conservation programs for which they may qualify. Monitoring and inspection of conservation easements also ensures that conservation easements remain in compliance with the terms of the easement document. A properly implemented monitoring plan will not only detect conservation easement violations, but it will also serve as a deterrent for future violations. The Refuge

Manager is responsible for compliance monitoring at appropriate intervals as well as documenting when and how the monitoring was completed. For most conservation easements the appropriate interval for monitoring is annually. Frequent monitoring has many advantages. For example:

- i. Many violations are more easily detected during or shortly after the activity, thus allowing for restoration in a timely manner. This may also discourage the landowner/operator from conducting additional activities that may be in violation of the terms of the easement document.
- ii. If a violation is detected, working with landowners/operators to bring the conservation easement back into compliance is much easier when the violation is recent. Obtaining compliance on old violations or those that may have been conducted by a previous landowner/operator can be very difficult.
- iii. Some activities that are not in compliance with the terms of the easement document, such as trespass farming, may progress slowly over a period of years, so addressing these in a timely manner may avoid larger impacts to the conservation easement.
- iv. Restoring lost habitat following a conservation easement violation is often expensive for the Service and the landowner. Additionally, restored habitat often does not fully replace habitat that was impacted by a violation. An example is if the native prairie on a conservation easement was converted to cropland, the values of that prairie would be lost forever since native prairie cannot be recreated.

While it is highly recommended to monitor easements annually, in some situations this may not be appropriate or achievable. At a minimum, monitoring must occur at least every 3 years, and Regions are responsible for developing specific monitoring guidelines and considering the following:

- i. Number of conservation easements to monitor,
  - ii. When violations normally occur, and
  - iii. Relevant ecological factors (such as leaf cover, water levels, and snow cover).
- b. Types of monitoring

Inspections for the purpose of monitoring easements can take countless forms. The most common inspection techniques to monitor conservation easements include aerial observation and other remote imagery and onsite inspections. Each method has benefits and disadvantages and, since

conservation easements vary across the country, no single inspection methodology will apply to all easement acquisition areas.

i. Aerial observation and other remote imagery

Aerial reconnaissance, current year aerial imagery, or other effective remote sensing technology (e.g., satellite imagery, trail cameras, environmental sensors) are often more practical and efficient to monitor conservation easements across broad geographic scales. Simply put, these methods can be used to rapidly monitor large areas in a short period.

ii. Onsite monitoring

Onsite monitoring provides a thorough way to check on most conservation easements, but it is time consuming and may not be practical when an extensive number of conservation easements or widely scattered conservation easements must be monitored in a relatively short period. For some easement programs, onsite monitoring generally occurs when initial observations from the air indicate a potential violation and a “second look” is conducted (as deemed safe to do so) to determine if restoration is necessary to bring the landowner/operator back into compliance with the terms of the easement document. Prior to any onsite monitoring, the Refuge Manager must conduct a safety risk assessment and must coordinate those activities with a Federal Wildlife Officer.

*HELPFUL HINT: We should also consider the probability of encountering a landowner/operator when we conduct onsite monitoring. When it is likely that we will encounter the landowner/operator during an inspection, the Refuge Manager and Federal Wildlife Officer should together consider the situation and whether or not to contact the landowner/operator prior to entering their property.*

### **XIII. Conservation Easement Enforcement - Responsibility and Safety**

Refuge Managers are responsible for administering and monitoring conservation easements and for ensuring that lost or damaged habitat values resulting from easement violations are restored. Communications with landowners/operators must be led by Refuge Managers. Refuge Managers should maintain proactive positive communication with landowners when possible.

Law enforcement activities must be led by law enforcement officers. Federal Wildlife Officers are tasked with assisting Refuge Managers with monitoring conservation easements for compliance and, if necessary, investigating potential easement violations. They must work with Refuge Managers and Regional law enforcement management to coordinate criminal prosecution of easement violations through the servicing U.S. Attorney’s office when other avenues of compliance have been exhausted.



The safety of our employees is of paramount importance and must be considered during all phases of easement administration and enforcement. Risk assessments conducted by Refuge Managers, in consultation with Federal Wildlife Officers, are an important tool to help identify potential safety concerns. When an identifiable safety risk is present during easement monitoring or compliance management (described below), Refuge Managers must enlist the support of a Federal Wildlife Officer. Importantly, the presence or assistance provided by a Federal Wildlife Officer is not the trigger for a criminal investigation (described below). Their participation in monitoring or compliance management is to mitigate the identified safety risk, not to investigate a violation.

If there is disagreement between the Refuge Manager responsible for administering the conservation easement and the Federal Wildlife Officer responsible for investigating easement violations on how to resolve an enforcement issue, the Federal Wildlife Officer and Refuge Manager should consider and discuss alternatives that would mitigate any concerns. When concerns cannot be successfully mitigated so that both parties agree, they should elevate the matter to the Regional Refuge leadership for resolution.

#### **XIV. Communication and Coordination Regarding Conservation Easement Violations**

Close communication and coordination between Refuge Managers and Federal Wildlife Officers is required throughout the assessment and resolution of conservation easement violations. Refuge Managers must ensure that all restoration requirements are biologically and ecologically sufficient, and Federal Wildlife Officers must ensure that the restoration requirements are within the jurisdiction provided by the easement document and would be supported by the Assistant U.S. Attorney if a court case becomes needed. To ensure that both standards are met, communication and coordination between the Refuge Manager and the Federal Wildlife Officer must be memorialized in an agreed upon method.

Methods for ensuring the close communication and coordination between Refuge Managers and Federal Wildlife Officers may include, but are not limited to, documenting it in the Annual Law Enforcement Management Plan, the development of annual work plans, standard operating procedures, and benchmarks in employee performance appraisal plans. The nature of the specific conservation easement program will help determine the methods of communication and coordination that are most appropriate.

Close communication and coordination between Refuge Managers and Federal Wildlife Officers is ongoing during easement monitoring and continues after easement monitoring occurs and a review of the conservation easement management file is conducted. Communication and coordination must continue throughout the rest of the compliance process regardless of which resolution avenue is pursued.

#### **XV. Conservation Easement Enforcement Process**

When a violation has been detected through monitoring/inspection, our primary goal is to work collaboratively with the landowner/operator, achieve voluntary compliance and restoration, and

foster relationships where landowners trust and understand that the Service takes our conservation mission and partnership with them seriously. Historically, most violations have been resolved this way.

When we become aware of an easement violation, Federal Wildlife Officers and Refuge Managers must have a common understanding of the steps that they should follow. Throughout the enforcement process, the Refuge Manager and Federal Wildlife Officer will discuss potential safety concerns and collaboratively determine how best to proceed. At any time while working with the landowner to achieve compliance with the provisions of the easement, the Refuge Manager and Federal Wildlife Officer may determine a criminal investigation is necessary. The approaches to achieve compliance are explained below, followed by a list of trigger points that would move compliance management to criminal investigation.

- a. Compliance management – Compliance management is a process of easement enforcement where a Refuge Manager (or their designee) works with a landowner/operator to develop and implement a plan to address an easement violation. Our intention is that easement compliance be gained voluntarily as a more collaborative process with the landowner/operator and a more cost-effective way to resolve the violation than taking legal action. Compliance management is the Service’s preferred course of action and should be the default process followed by Refuge staff.
- b. Criminal investigation – Some circumstances require that an easement violation be referred to NWRS Law Enforcement for a criminal investigation. Still, our intention is that easement compliance be gained voluntarily through a collaborative process. A criminal investigation should be pursued only when compliance management has been attempted and was unsuccessful and/or one or more of the criteria below has been met.

An easement violation must be referred to NWRS Law Enforcement for a criminal investigation when, after consultation between the Refuge Manager and Federal Wildlife Officer it is determined that the current easement violation is one that is egregious in nature, or the Service has previously documented and communicated with the landowner/operator regarding a prior easement violation that was egregious in nature, or both.

A Refuge Manager may refer an easement violation to the Federal Wildlife Officer for a criminal investigation when they determine:

- i. The landowner/operator is unwilling to work with the Service through compliance management to correct the easement violation.
- ii. The landowner/operator has failed to complete all restoration activities as agreed to during compliance management, and compliance management is no longer a viable option for the Service to address the easement violation.

- iii. Impacts of the easement violation are egregious in nature, and compliance management is not an appropriate option.

The Refuge Manager should make the Service's formal first contact to the landowner/operator regarding a violation by phone, written correspondence, or in-person meeting at a government office rather than at the site of the violation.

The purpose of making this contact is to:

- i. Formally identify the Service's land interest and inform the landowner/operator that there is an easement interest on the identified property,
- ii. Advise the landowner/operator that there is a violation of the easement agreement between the Service and the landowner/operator, and
- iii. Assess the landowner/operator's intention regarding the violation.

This initial contact with a landowner/operator regarding a violation is not for the purpose of performing tasks associated with a criminal investigation, such as collecting evidence, which are the responsibility of a Federal Wildlife Officer.

Onsite visits to the easement area, when unaccompanied by a Federal Wildlife Officer, should include two Service employees. This allows the employees to take into consideration safety concerns and determine how to address them, and it allows for a witness to the discussion. In some cases where there may not be two Service employees, someone with appropriate legal authority from a partner agency can be invited as a proxy.

The Refuge Manager and Federal Wildlife Officer will discuss the outcome of the initial landowner/operator conversation (i.e., did the landowner/operator agree to restoration to bring the easement back into compliance?) and cooperatively move forward with either compliance management or criminal investigation.

*HELPFUL HINT: In conservation easement programs with long-standing and well-established monitoring and investigatory protocols, that common understanding may take the form of an easement violation log that the Federal Wildlife Officer and the Refuge Manager jointly prepare and maintain. We use the easement violation log to track the stage of each easement violation investigation and ensure that both manager and officer are kept apprised of case status. This system of tracking is especially useful for those programs that typically experience many easement violations that are similar in nature, and for which the investigatory steps are well established.*

## **XVI. Compliance Management**

Our goal with the compliance management process is to work in partnership with the landowner/operator to amicably resolve the violation through proactive communication, restoration (if necessary), and to ensure that the violation does not happen again. The Refuge Manager oversees the compliance management process, and the Federal Wildlife Officer documents it in the Service's approved law enforcement records management system. When the Refuge Manager contacts the landowner/operator, it is not for criminal investigatory purposes of gathering evidence regarding the violation, but rather to confirm responsibility for the conservation easement, notify the landowner/operator of the conservation easement violation, and begin discussion of remedies/restoration.

Sound information collection is also imperative. The Refuge Manager is responsible for ensuring that any notes and other documentation are thorough and included in the easement file. Communication between the Refuge Manager and the Federal Wildlife Officer will ensure that notes and documentation meet a standard that makes it useful if a violation becomes a criminal investigation.

Once a restoration plan is formalized with the landowner/operator and work is completed, it is the Refuge Manager's responsibility to determine if the restoration is satisfactory. If so, the Refuge Manager must contact the Federal Wildlife Officer to close the conservation easement violation case in the Service's approved law enforcement database. If the restoration work is not satisfactory, we must promptly notify and inform the landowner (or responsible party) of additional work that is needed to close the case. If the violation remains unresolved, the Refuge Manager should refer the issue to a Federal Wildlife Officer.

*HELPFUL HINT: A restoration plan may be as simple as a certified letter that reiterates the easement provisions, the offending action, and the required restoration (if applicable).*

## **XVII. Criminal Investigation**

Either during the initial Refuge Manager and Federal Wildlife Officer post-monitoring/inspection discussion, or as non-compliance, or degradation continues during the compliance management process, the conservation easement violation can be referred to Refuge Law Enforcement for pursuit of a criminal investigation.

Only Federal Wildlife Officers (and in some cases, supported by Service Special Agents) may investigate potential easement violations, lead site visits for enforcement purposes, and make investigatory contacts (see 601 FW 6.35). While the goal of a criminal investigation is voluntary compliance and restoration of the Service interest, a Federal Wildlife Officer conducts the investigation to also determine whether the elements of a crime have been met and whether the case should be referred to the servicing U.S. Attorney's office for potential prosecution.

Under the management and direction of law enforcement, Refuge Managers and other non-commissioned staff may assist with an investigation when mutually acceptable to both the Federal Wildlife Officer and the Refuge Manager. For example, a Refuge Manager may assist in a landowner/operator contact, a hydrologist may assist in determining the impact of drain tile, a soil scientist may aid in delineating a wetland area, or a botanist may be necessary to assess the effects of an illegally applied herbicide. Refuge Managers and other staff may also assist a Federal Wildlife Officer in situations where we discover easement violations during easement administration or other work. In these circumstances, it is important that we document the violation and pass the information on to the Federal Wildlife Officer.

The following guidelines apply to criminal investigations:

- a. Ground checks of suspected violations should occur within 30 days of detection.
- b. The Federal Wildlife Officer should:
  - i. Contact the landowner/operator within 30 days of the ground check,
  - ii. Follow up with the landowner/operator within 7 days from the initial contact, and
  - iii. Complete a return compliance check within 1 to 3 days from the established due date for compliance or restoration completion.
- c. If the correction or restoration is inadequate, the Federal Wildlife Officer must contact the landowner/operator again within 1 to 3 days of the initial return compliance check.
- d. Within 7 days after the established compliance date, if the Federal Wildlife Officer determines that the violation has not been corrected, the Refuge Manager or designee, which is often a Federal Wildlife Officer, should sign and mail a followup letter to the landowner or operator explaining the consequences of noncompliance. All correspondence sent to the landowner or operator pertaining to a violation should be certified with a return receipt.
- e. Once compliance is achieved, the Refuge Manager and/or Federal Wildlife Officer should mail a closure letter within 14 days after the objectives are met. The Federal Wildlife Officer must then close the conservation easement violation case in the Service's approved law enforcement records management system.

#### **XVIII. Documenting Easement Violations (601 FW 6.30 and 6.37)**

Easement violations and the way they are discovered are as varied as the conservation easements within the Refuge System. We discover many easement violations through the execution of a routine and deliberate monitoring plan. We may discover other easement violations, especially

those that are incidental to another activity (such as buried infrastructure, road improvement projects, etc.), by happenstance.

Regardless of how we discover a conservation easement violation or who discovers it, the task of documenting all information that may be pertinent and necessary for the successful remediation of the easement violation begins immediately. For example, a biologist conducting a pre-construction bird survey may discover that a landowner/operator has cut hay on a grassland easement before the prescribed date. In this situation, the biologist should prepare to be a good witness if necessary. This may include taking photographs, creating field notes or sketches, or capturing conversations with individuals with notes to the file. Thorough documentation of the violation will be completed later with a ground check, and the information discovered/provided previously by any employee helps with this process. Ultimately, documenting an easement violation in the station file is the joint responsibility of the Refuge Manager and the Federal Wildlife Officer.

Documentation should be thorough and meet evidence collection standards. Depending on the nature of the violation and results of the investigation, documentation may include:

- a. Photographs with date/time and who took the picture (aerial, ground checks, before/after, etc.);
- b. Field notes and sketches;
- c. Survey or GPS data;
- d. Restoration plans;
- e. Notes of all conversations with the landowner/operator, contractor, etc.; and
- f. Copies of correspondence, including the violation letter and closure letter, and return receipts.

Once the Refuge Manager determines that the restoration requirements have been satisfied, the Service may, or may not, issue a violation notice. When deciding whether to issue a violation notice for an easement violation, the Federal Wildlife Officer leading the case will coordinate closely with the Refuge Manager, the Patrol Captain, and when necessary, the servicing U.S. Attorney's office.