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Afoot in the Field

RESOURCE FOR CONSERVATION LANDOWNERS



CONSERVATION EASEMENT PROPERTIES IN ELMIRA; STEFANIE DELANEY

A GENEROUS easement property owner (thank you, Wayne!) kindly gifted a copy of “Land” by Simon Winchester to FLLT. I have been enjoying reading it lately. It contains a lot of information and interesting history about how people around the world have viewed, treated, managed, conquered, defended, and divided land. In the U.S., we have a system of deeded property ownership, with laws governing the exclusive use and enjoyment of that title. Private property rights are ingrained in our society.

Conservation easements, of course, add a layer of complexity to the legal treatment of rights associated with real property. Rights to limit or eliminate development and various land uses, for the protection of conservation values, are enforceable by a land trust or municipality. Part of “protecting land” means monitoring and defending boundary lines and dealing with encroachments by neighbors. This is important because a neighbor’s use of land that doesn’t belong to them could violate a conservation easement or even threaten the legal ownership of the land being used through a potential claim of “adverse possession.”

Encroachments are the biggest category of challenges related to conservation easements for FLLT and land trusts across the country. Our conservation easement stewardship team is grateful to all easement landowners who monitor and defend clearly marked property boundaries, and work with us cooperatively when communicating with neighbors to resolve encroachments.

Chris Olney
Director of Stewardship



Boundary Encroachments

OVER THE LAST FEW YEARS, we've seen a significant increase in neighbor encroachments. We've seen activities as minor as a compost pile or as significant as trees being bulldozed. The impact of these encroachments is quite different; however, any threat to the property boundary line and your

conservation easement property is important. Whether a neighbor is your best friend or unfriendly, protecting and enforcing your boundary is a role requirement for a conservation easement landowner.

WHY IS THIS A PROBLEM?

- After years of uninterrupted, uncontested use of your property by a neighbor, the neighbor could make a claim of adverse possession, arguing in court that they now own the land!
- Actions conducted by a neighbor could degrade the natural resources on your land and/or violate the terms of the conservation easement on your property. As the landowner, you are responsible for ensuring compliance with the conservation easement agreement.



From top: FLLT CE boundary sign on tree; Hailey Nase. Flagging from surveyor along CE boundary; Hailey Nase.

- The neighbor's use of your land could undermine the value of your property, and complicate your ability to sell your property in the future.
- You could be subject to a legal claim if a neighbor gets hurt on your property.
- It may seem the “friendly thing to do” to allow a neighbor to use your property in small ways, but encroachments can lead to disagreements and bad relationships.

WHAT TO DO ABOUT AN ENCROACHMENT

In some cases, you may wish to permit a neighbor to legitimately use a portion of your property, for an activity that you do not object to, and which is permissible by the conservation easement. This can be done in a way that protects you from adverse possession and limits your liability, by using a formal lease agreement or a recorded license agreement. The Land Trust can provide more information about this.

In most situations, however, it is preferable to eliminate a neighbor's unapproved use of your property and establish a marked and respected boundary line. Communication with the neighbor, and good boundary markings based on professionally surveyed lines, are key.



HAILEY NASE

GLOSSARY

Encroachment

intrusion on a person's property, rights, etc.

Adverse possession

a legal mechanism in which a person who does not have legal title to a piece of property may acquire legal ownership due to occupation without permission

License agreement

a legal contract that grants permission for someone to use another person's property with specific parameters

Survey map

a detailed drawing of a land parcel created by a licensed surveyor

Survey pin/pipe

a metal pin/pipe or monument set by a licensed surveyor to mark a property location

Property's legal description

a detailed written description of a land parcel that serves as the official and legal definition of its boundaries

Steps to Protect Your Property

CLEAR PROPERTY BOUNDARIES are essential for neighbors as well as for communication with where the boundary lies. This clarity also benefits future property owners, ensuring the property is properly maintained. Having clear signage along the boundary helps communicate where your property boundary is.



POSTED & FLLT CE BOUNDARY SIGNS ON U-POST; HAILEY NASE



ORANGE FLAGGING AT SURVEY PIN; HAILEY NASE

BOUNDARY SIGNS

FLLT CE Boundary Signs

FLLT has square 7.5 x 7.5-inch aluminum boundary signs and small disc markers. We primarily use the square signs as they provide more information about the property and FLLT. In areas without trees, we sometimes use metal u-posts to install the signs.

Posted Signs

Use both FLLT CE boundary signs and private property posted signs to deter trespassing. New York requirements for posting private property include that signs be at least 11 x 11 inches, list the name and address of the owner, and should not be more than 660 feet apart along the property boundary. See the NYS DEC website for more information.

WHEN TO HIRE A SURVEYOR

Depending on the type and extent of an encroachment, a licensed surveyor might need to be hired to find the exact location of the boundary.

A Licensed surveyor can:

- determine the boundary line through thick vegetation.
- flag/mark a boundary with flagging or wooden lathes to provide clarity.
- determine if a structure is on or off the CE property, if a structure is constructed near a boundary.
- find and reset missing survey pin/pipe.
- produce a property's legal description.
- create a survey map.

Boundary

tractors, landscapers, loggers, and other hired personnel who may be unfamiliar with that everyone is aware of the boundary location even after ownership changes. The boundary is located.



INSTALLING FLLT CE BOUNDARY SIGN ON U-POST; MARGARET ROYALL



FLLT CE BOUNDARY SIGN MAINTENANCE; GIOVANNI CARRERO

COMMUNICATION

Getting to know your neighbors

- Know their name and contact information.
- Building a relationship with your neighbors can be beneficial.
- Talking can help catch issues beforehand, such as your neighbor saying they are going to do a timber harvest soon or are planning to sell their property. This is good information to share with FLLT so we can check those shared boundaries and add signs if needed.

Tell them about FLLT

- You can tell your neighbors about the conservation easement and that FLLT staff visits the property every year.

MAINTENANCE

- Check your boundaries at least once a year, specifically in areas with houses and lawns.
- Conduct maintenance for boundary signs every other year. Add nails to signs and make sure the tree has room to grow.
- Refresh flagging at survey pins to make them easier to find.
- FLLT CE stewardship staff can help with monitoring the boundaries and installing signs.
- Let FLLT know if you have concerns about a specific section of your property boundary.

Examples from CE Properties

To protect the privacy of landowners and their neighbors, these examples of encroachments on conservation easement (CE) properties do not reveal any identifying details. These are real situations that FLLT and CE landowners have faced in recent years.

EXAMPLE 1: NEIGHBOR BUILDS FENCE ON CE PROPERTY

Status: Resolved **Timeframe (from discovery to resolution): 8 months**

A neighbor of a CE property built a wooden fence 10-20ft onto the CE property. FLLT staff found survey pins along the boundary, but the landowner ended up paying a licensed surveyor to flag the line so the neighbor knew where to move the fence. The landowner and FLLT communicated to the neighbor via phone, text, and letter to move the fence. In the end, the neighbor moved the fence back onto their property.

Lessons: Be persistent, be patient, and know when to hire a surveyor.

EXAMPLE 2: NEIGHBOR MOWING ONTO CE PROPERTY

Status: Resolved **Timeframe: 1.5 years**

A neighbor who was friends with the CE landowners recently passed away. When the neighbor was alive, the CE landowners did not mind that he

occasionally mowed slightly onto their property due to their friendly relationship. The neighboring property has since been transferred to younger family members, who now operate it as a short-term vacation rental. To maintain the rental, they hired a landscaping company, which began mowing even further onto the CE property. The CE landowners requested that the neighbors stop mowing.



Mowing onto a CE property with FLLT CE signs and posts along the boundary; Margaret Royall.

To address the issue, FLLT first installed wooden stakes at the property corners, but these were removed by the neighbor. For a more permanent solution, FLLT installed metal U-posts with “No Mowing” signs. After the signs were installed, the neighbor called FLLT to complain about the signs. FLLT took the time to explain the reasoning behind the signs, leading to a productive conversation in which the neighbor ultimately agreed to refrain from mowing.

Lessons: Clearly marked boundaries help during ownership changes.

EXAMPLE 3: NEIGHBOR’S SHED ON CE PROPERTY

Status: Resolved

Timeframe: 2 years

A neighbor placed a shed partly on the CE property. FLLT staff, the landowner, and the neighbor all assumed that the old wire fencing was along the boundary; however, FLLT encouraged the landowner to hire a licensed surveyor to verify the property’s location. The surveyor verified that the neighbor’s shed was indeed situated on the CE property. After receiving this information, the landowner and FLLT communicated with the neighbor about the surveyor’s marked boundary line, and the neighbor removed the shed from the CE property.

Lessons: Hire a surveyor when the boundary isn’t 100% clear.



From top: Fence and mowing on CE property; Margaret Royall.
Shed on CE property; Margaret Royall.

When Should I Call FLLT?

Contact us anytime with questions about your conservation easement property. Some activities will require the FLLT's input or approval. It is always better to ask before starting your project! Specifically, please contact us...



Before **selling** your property



Before **building** on your property



Before **cutting trees** or harvesting timber



Anytime you have a **question** or are unsure what your conservation easement allows

You can call the FLLT office at (607) 275-9487, or email us:

Chris Olney, Director of Stewardship, chrisolney@fllt.org

Hailey Nase, Conservation Easement Stewardship Manager, haileynase@fllt.org

Margaret Royall, Conservation Easement Steward, margaretroyall@fllt.org

Afoot in the Field is provided for landowners in the Finger Lakes region who own conservation easement properties or who are otherwise committed to land conservation and wildlife habitat protection.

The Finger Lakes Land Trust is a member supported non-profit conservation organization that works cooperatively with landowners and local communities to "conserve forever the lands and waters of the Finger Lakes region, ensuring scenic vistas, local foods, clean water, and wild places for everyone."



FINGER LAKES LAND TRUST

202 EAST COURT STREET • ITHACA, NEW YORK 14850

P (607) 275-9487 F (607) 275-0037 E INFO@FLLT.ORG

FLLT.ORG **FB/IG** @fingerlakeslandtrust

GOFINGERLAKES.ORG **FB/IG** @gofingerlakes