

## Trespass Part II: Boundary Monitoring for Early Identification and Intervention

*Land Trust Standards and Practices* state that land trusts must be able to ascertain all property boundaries (see [Practice 9D: Determining Property Boundaries](#)) and resolve any violation or encroachment related to boundaries (see [Practice 11E: Conservation Easement Enforcement](#), [Practice 12B: Land Management and Stewardship](#), [Practice 12C: Inspecting Land Trust Properties](#)). Develop written policies and procedures for resolving encroachments, access demands, adverse possession and other extinguishment claims by third parties. Early identification and intervention can save time and money, stress and increase the land trust's chances of success in defending against a trespass or even preventing one with great boundary marking.

Establish strong monitoring practices for both easements and preserves. For annual monitoring reports this includes property boundary identification, marking and documentation of the condition of the boundary line directly observed that year. Practices also include steps for determining, analyzing and reporting potential trespass or encroachments. Well-marked boundaries put third parties on notice and aid land stewards in finding the boundaries resulting in early detection of acts of trespass, encroachments and other boundary disputes.

- Mark property boundaries especially near human activity including homes, camps, and forested properties to inform others of the land trust's property or easement. Some creativity may be required to avoid anger or litigation with neighbors. In cases where placing signs or T stakes along the property line may not be well received, consider plantings of some kind to mark the line or an electronic means like burying a cable that can be registered by monitors with equipment, or other means that are not visually intrusive.
- Ensure that all documentation of boundaries are consistent with each other. Address promptly any discrepancies.
- Checking boundaries with sufficient tools and documentation to be 100% certain of boundary location and supporting with documentation showing your direct observations on the condition of the boundary line. If the boundary line continues to be obvious, be sure to state that as well. Compare surveys, plats and maps with on-the-ground findings and photos. Take note of where property boundaries are and any structures and activities that are occurring near or on the boundary line. Bring something to measure areas identified in the survey as having distance restrictions, such as rights-of-way. Monitors need to independently confirm the measurements of such restrictions in order to identify unauthorized expansions. This also applies to any licenses or agreements granted. You also need to be able to measure the dimensions of existing encroachments.
- To mitigate third party disputes, train monitors on how to identify existing and incomplete boundaries, historic encroachments or acts of trespass, rights of others in and to land, and when to notify senior staff of incomplete boundary lines, potential trespass/encroachment, or impermissible expansions of third party uses.
- Checking any rights of others in and to the property for expansions or violations. These include leases, license agreements, rights-of-way and mineral rights. Understanding how the property can legally be used by others allows monitors to prevent, identify and halt expansions thereof.
- Written procedures for identifying, documenting and responding to potential trespass or encroachments. The procedures should describe the internal steps for decision making and

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the requirement to document or retain communications and correspondence with trespassers.

- Having such procedures in place helps your land trust assess the extent of trespass and respond proportionately to the circumstances, consistent with the law.
- See Practice Elements 9D, 11C and 11E, 12B and 12C for more information.

Terraforma has seen an increase in boundary-related claims such as encroachment, trespass and adverse possession. Two recurring themes are that the land trust suspected the violation was occurring for years but had not verified the property boundary line or thought the nominal trespass did not merit filing a Terraforma claim. Many of these claims, unfortunately, were denied coverage due to being untimely filed. Some of the problems could have been stopped or abated earlier if the land trust had identified the boundary lines and acted promptly. Monitoring forms can include these explicit instructions for monitors:

- If one or more encroachments is noted or possible, are there other potential encroachments?
- Can you 100% verify the precise location of the property boundary? Yes or no. If no, then this must be flagged for senior staff to visit the site the same year to determine the location.
- If a potential encroachment is identified and staff cannot determine the boundary after senior staff visits the site in the same year, then file a Terraforma claim and consider next steps.
- Is there new or recent construction on either side of the boundary? If yes, flag for senior staff to visit that same year to determine precise property boundary and any possible encroachments. Remember to file a Terraforma claim if there is any encroachment or any unresolved question.
- Convene a landowner meeting to determine the line.
- Use GPS to arrive at a shared understanding of the boundary and mark it by legal means with the landowners if there is no survey.
- Ask landowners to share line flagging costs by a surveyor if there is an existing survey.
- Consider a boundary agreement where there is no survey.
- As last resort, obtain a survey of the line in question but be sure to have filed that Terraforma placeholder claim in the policy year in which the doubt first arose.
- Compare surveys, plats and maps with on-the-ground findings and photos. Take note of where property boundaries are and any structures and activities (like mowing lines and debris piles) that are occurring near or on the boundary line.
- Bring something to measure areas with distances, square footage, dimensional and other measured restrictions set forth in rights-of-way or other agreements. Terraforma has seen violations of square footage limitations missed by staff and staff assuming the landowner's measurements are correct. Land trust staff need to independently confirm measurements restrictions.
- Investigate any lease and license arrangements including verbal agreements to understand the arrangement's duration, renewability, and the parties' current understanding of the arrangement. If an adverse possession claim results, consult a trial attorney immediately for next steps and inform Terraforma. If the Terraforma claim was not timely filed when the encroachment first started there may not be coverage.

**Contact us:**

- Leslie Ratley-Beach (802) 262-6051 | [lrbeach@lta.org](mailto:lrbeach@lta.org)
- Ailla Wasstrom-Evans (202) 800-2249 | [awasstrom-evans@lta.org](mailto:awasstrom-evans@lta.org)

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