

Action Steps Land Trusts Can Take When Faced with an Encroachment

In addition to the regular monitoring of properties and easements, each land trust should develop written policies and procedures for resolving encroachment violations. When faced with an encroachment matter, consider the following:

1. Immediate proportional response
2. Neighbor eyes
3. Proactive mitigation
4. Board liaison and full board authority to manage
 - a. Retain appropriate local counsel
 - b. Confirm insurance coverage
 - c. Have clear goals
5. Exceptional documentation
 - a. Photograph the encroachment;
 - b. Document the encroachment's precise location and aerial extent using GPS/GIS technology;
 - c. Interview neighbors or potential witnesses (a land trust may consider contacting the local police as a part of this process);
 - d. If the encroachment involves significant tree or shrub felling, hire a forester to appraise the loss using *The Guide for Plant Appraisal*, as published by the International Society of Arboriculture, Urbana, Illinois, or a succeeding publisher; <http://www.isa-arbor.com/store/product.aspx?ProductID=93>
6. Send a certified letter to the encroaching party notifying it of the violation and the obligation to restore the property and to inform their insurance carrier of the claim; and
 - a. If the land trust does not receive a response to the letter or the response inadequately ensures the restoration of the property, refer matter to counsel.
7. Strong damages theory
8. In addition to the regular monitoring of land and easements, each land trust should develop written policies and procedures for resolving encroachment violations.
9. Be diligent and resourceful

Related resources:

- *Enforcing Perpetual Conservation Easements Against Third-Party Violators*, 32 UCLA Journal of Environmental Law & Policy 80 (2014) Jessica E. Jay Copyright © 2014
<http://www.escholarship.org/uc/item/75z1t5kp>
- *Land Conservation Law Case Summaries of Trespass on Conservation Land*, March 2015 Excerpts, Rob Levin

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