

# Delineating Conservation Easement Boundaries and Protection Areas



*Properly delineating the boundaries of conservation easements and their different protection areas is crucial to easement stewardship and enforcement. Conservation restrictions are difficult, if not impossible, to enforce unless tied to physical locations on the ground. This guide discusses the delineation of boundaries and protection areas using physical markers, verbal descriptions, and visual depictions.*

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- addresses the reliability and legal acceptability of approaches to identifying conservation easement boundaries and protection areas internal to the easement, namely reliance on old descriptions, survey, and GPS (global positioning system)
- reviews the methods for describing in an easement document the conservation easement’s boundaries and the protection areas internal to the easement:
  - Verbal descriptions based on compass bearings (sometimes called courses) and distances beginning with a starting point and ending at the same point
  - Visual depictions annotated to show points of reference, courses, distances, and relationships to natural features or installed physical markers
  - Longitude and latitude coordinates based upon information from GPS

## Introduction

For millennia, people have been developing means to delineate land to evidence their ownership, possession, or other interest in it. This guide addresses the delineation of the boundaries of a conservation easement and the borders of the different protection (restriction) areas that may be designated within an easement. The guide:

- describes the need for and approaches to establishing physical markers on the land—either natural features such as trees and rocks or installed items such as iron pins and monuments.

## Physical Markers

Physical markers were the first, and continue to be an excellent and oftentimes essential, means of land delineation. Surveyed legal descriptions and other written means are very important but physical markers on the ground are fundamental to both practical and legal understandings of boundaries.

From a practical standpoint, it is easy for a landowner or even the representative of the easement holder to mistake where the location of a boundary is on the land when their only guidance is described on paper and physical markers on the ground are absent. Conversely, the more

clearly visible or findable physical markers that are present on the ground, the better everyone's understanding will be and fewer opportunities for conflict will arise.

## Physical Markers Take Precedence Under Law

Physical markers have their drawbacks but, under Pennsylvania law, the location of a reference point's physical marker takes precedence over a number of other delineation methods, including written descriptions and visual depictions of courses and distances or quantities of land.

## Physical Markers and Surveys

A surveyor tasked with establishing a surveyed legal description for the first time examines existing descriptions and then tries to locate on the ground points of reference in those descriptions, whether natural features such as trees, streams, or rocks, or physical markers such as a stake, iron pin, or concrete monument in the ground, an etched symbol on a rock, or a paint slash on a tree.

Sometimes surveyors have to use their best judgment and evidence from deeds of neighboring properties to reconstruct what the parties intended to convey by a deed recorded many years ago. Boundary disputes arise when different owners reconstruct conveyances in their chain of title differently. Often this occurs because physical markers have become unreliable over time. For example:

- A tree used as a reference point in a decades old description has since died and rotted away.
- A rock pile may have been disassembled or the etching on a rock may have worn off.
- Roads and streams may shift location.

## Recommendations Regarding Physical Markers

### Always Mark Reference Points with Physical Markers

The law gives precedence to physical markers in case of ambiguity or dispute, and visible markers make clear to

everyone the boundaries of the easement and the internal borders of areas subject to different restrictions. Examples:

A structure permitted and being constructed in a Minimal Protection Area is less likely to cross the line into an area where it is not permitted if the reference points indicating the location of the dividing line are physically monumented on the ground.

Conformance to rules pertaining to a timber harvest may be improved if the dividing line between the Highest Protection Area (where logging is allowed only in narrow circumstances) and the Standard Protection Area (where sustainable timber production is permitted) is clearly marked with bright orange paint slashes on trees.

### Use Other Means of Delineation in Addition to Physical Markers

Physical markers as a means of delineation may become less reliable over time (e.g., trees die, paint wears off, etchings on stones weather). Also, physical markers may be purposely moved.<sup>1</sup> For example, a landowner may try to cover up an easement violation by moving the iron pin or physical marker forming a protection area border. To provide backup to the physical markers, you can memorialize the locations by annotated aerial or other photographs, GPS coordinates or, ideally, reliable survey information.

## Verbal Descriptions and Survey

A verbal description—sometimes called a legal description or metes and bounds description—of a property boundary is, in modern times, usually based upon readings of compass directions and distances beginning with a starting point and ending at the same point.

### Not All Verbal Descriptions Are Surveyed

Not all descriptions are surveyed descriptions or accurately reflect the boundary and acreage of the property. Caution and good judgment are needed to evaluate the

<sup>1</sup> Destruction or moving a survey monument is a misdemeanor and the perpetrator is liable to restore the monuments including survey costs and attorneys' fees. 18 Pa. Stat. §3312.

sufficiency of an existing legal description for easement purposes.

Sometimes review of a legal description indicates that it is derived from a survey in the field by a licensed surveyor using a device known as a transit to measure horizontal and vertical angles. If that is the case, the description usually begins with an identification of the surveyor and the date of the survey and, often, refers to the survey plan prepared as a result of the survey.

### Sufficiency of a Description

Do not assume that a metes and bound description is based on a survey or anything more than the roughest understanding of a property's boundaries. There is no bright line test to determine, by simply reading it, that an existing legal description of property is sufficient for purposes of the grant of easement. Be cautious when dealing with descriptions of unknown origins.

#### Indications That the Existing Description Is Sufficient:

- The description refers to a recorded subdivision plan approved in accordance with applicable law; for example, “The following described premises being Lot 2 as shown on the Plan of Subdivision dated \_\_\_\_, approved by \_\_\_\_ Township and recorded on \_\_\_\_ in \_\_\_\_.”
- The description conforms to a survey prepared in accordance with recognized professional survey standards. The most detailed and rigorous of these standards are the *2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys*. Another standard available in Pennsylvania is the *Manual of Practice for Professional Land Surveyors in the Commonwealth of Pennsylvania* adopted by the Pennsylvania Society of Land Surveyors in 1998.

#### Indications That the Existing Description May Be Inadequate or Unreliable:

- *A description relying solely on boundaries of neighboring properties.* For example, “all that certain tract of land containing 50 acres more or less bounded on the

north by lands of A, on the east by lands of B...” and so on.

- *A description based on an unverifiable direction.* For example, “thence in a northeasterly direction along lands of Brown” requires more definition such as “North 30 degrees 00 minutes East”.
- *A description based on vague or outdated measurement.* For example, distances measured in paces, chains, or no measurement at all—“from marker A to marker B (for example, from a pile of stones to an oak sapling).
- *A description with no verifiable beginning or ending point.* For example, “beginning at a point in line of lands of Brown, thence North 30 degrees 00 minutes East.” This is not adequate without additional information describing how to find that beginning point, for example, “such point being a distance of 150 feet from a steel pin situated in the center of the intersection of ...”
- *A description that fails to close.* When the parcel is plotted out, the ending point and beginning point of the description do not match up. Deed plotting software programs are available to perform this task. A failure to close may be the result of an easily correctable error in transcription or it may disclose that the description is based on an unreliable survey or no survey at all.
- *Discrepancies in acreage.* Deed plotting programs can also compute acreage within the parcel. Material discrepancies in acreage between that recited in the legal description, disclosed by deed plotting, or evidenced in property tax records raise the possibility that the description may be based on inaccurate information.

#### Questionable Descriptions

If a review of the factors indicates that the legal description in question is neither clearly sufficient nor clearly deficient, a less expensive alternative to a new survey may be to have the existing description checked by a licensed surveyor or other professional to confirm the following:

- The description, when plotted out, begins at a verifiable point of beginning and ends at the same point;
- The description accurately reflects the property ownership reflected in the title report; and

- The description correctly states the acreage recited in the description.

## GPS Readings

GPS readings have not gained acceptance in Pennsylvania for purposes of legal descriptions in deeds of conveyance and, thus, are not recommended for property boundary descriptions in grants of easements. On the other hand, GPS readings may furnish useful support to delineate protection areas having different levels of restrictions within the overall easement.

## Requirements for Describing Boundaries

### Conservation and Preservation Easements Act

Subsection 4(b) of Pennsylvania's [Conservation and Preservation Easements Act](#) (Act 29 of 2001, Pub. L. 390) states that:

A conservation easement may encompass an entire fee simple interest in a parcel of real property as described in the deed to the property, or any portion thereof or estate therein. Except when referencing an easement's boundary using setback descriptions from existing deed boundaries or natural or artificial features, such as streams, rivers or railroad rights-of-way, a metes and bounds description of the portion of property subject to the easement shall be provided in the easement document.

In other words, the Act requires that a metes and bounds description of the property subject to the easement be provided in the easement document except when setback descriptions from deed boundaries and features of the land are used, e.g.:

- 75 feet from the northern border of the property
- 100 feet west of the road
- intersection of two stone walls
- 50 feet from the center of a stream on its easterly side

While the latter examples conform with the Act, they contain potential for ambiguity; streams especially can shift location over time.

The question arises as to whether the [Conservation and Preservation Easements Act](#) requires a survey of the property. The short answer is "no." Even if a metes and bounds description will be used to satisfy the Act's boundary description requirement, this does not immediately necessitate a survey. With that said, depending on circumstances, a survey may be highly desirable or essential for effectively conserving the land. This issue is explored at greater length below.

## Standards and Practices

[Land Trust Standards and Practices](#) address "Determining Property Boundaries" in Practice 9.D.:

1. Determine both the legal description and physical boundaries of each property or conservation easement
2. If a conservation easement contains restrictions or permitted rights that are specific to certain zones or areas within the property, include the locations of these areas in the easement document so that they can be identified in the field

## Model Grant of Conservation Easement

WeConservePA's [Model Grant of Conservation Easement and Declaration of Covenants](#) includes attachment of a legal description of the property as exhibit A to the grant. The legal description is incorporated into the grant as a material term of the easement.

Absent a reliable legal description of the property incorporated into the grant, landowners may dispute whether or not their property or portions of their property are subject to the conservation easement; thus, incorporation of an accurate legal description is a crucial element supporting good easement stewardship.

As required by Pennsylvania law, the model also includes insertion of the identification of the property per the tax map or uniform parcel identifier map of the municipality in which the property is located. These maps are generally not based upon surveyed legal descriptions.

## Describing Protection Areas

### Different Restrictions in Different Areas

Many conservation easements apply different sets of restrictions to different areas of the property subject to the conservation easement. The [Model Grant of Conservation Easement and Declaration of Covenants](#), whose terminology will be used here, provides for three major zones of protection: Highest Protection Area, Standard Protection Area, and Minimal Protection Area. Identifying the borders of these areas on the ground and describing them in the easement document are crucial to easement administration.

In the Model Grant, these areas are described in an easement plan, which is attached to the document as exhibit B.

### Survey Protection Areas?

Some organizations survey all protection areas—Minimal, Standard, and Highest—to minimize the chance that lack of a formal survey would result in an adverse result for the holder in the event of a dispute over an easement matter that turns on the *precise* location of the boundary. Many organizations survey Minimal Protection Areas but may, depending on the circumstances, rely on less formal means to delineate the boundaries of Standard and Highest Protection Areas.

Surveys of Highest Protection and Standard Protection Areas generally come at higher cost—perhaps prohibitively so—as compared to Minimal Protection Areas, because (1) they are usually much larger in size and (2) their terrain may be much more difficult to traverse (e.g., thick forest and steep slopes). Surveys also take time, which may not be available, and can be delayed by adverse weather.

Is it okay to not survey the Minimal Protection Area?

There is no simple answer. Opinions on relative risk and the costs versus the benefits of surveying versus foregoing surveying vary among organizations and their legal counsel (as they do in regard to surveying the other areas).

There is no definitive rule.

In any case, if one or more protection areas are not to be surveyed, it is crucial to easement stewardship to use other means to achieve reasonable certainty of protection area boundaries. Care must be taken to avoid creating the potential for easement stewardship problems in the future.

### Visual Depictions and Reasonable Certainty

Visual depictions of land are useful tools for identifying protection areas within an easement. (They are also useful for providing visual evidence of the easement’s boundary that is described in the verbal description.) Visual depictions come in many varieties, examples including:

- a rough sketch noting physical markers, such as trees and streams, with penciled-in lines between them
- a tax map
- an aerial photograph with the location of the property outlined on it
- a survey of the property and each protection area within it

A plat, plan, annotated aerial photo, tax map, survey, or other visual depiction is only worthwhile as a reliable boundary delineation if it describes the area with *reasonable certainty* such that it may be identified by a competent surveyor on the ground. The *reasonable certainty rule* is by its nature applied only in hindsight. There is no certainty that a depiction meets the standard until, at a later date (perhaps when a dispute has arisen), a competent surveyor goes into the field and either identifies the area on the ground (in which case the depiction provided reliable information resolving the dispute) or the surveyor is unable to confirm the boundary solely on the basis of the depiction (in which case the parties find too late that the depiction was worthless as a boundary delineator).

### Delineating Protection Areas by Survey

This discussion focuses on Minimal Protection Areas because Minimal Protection Areas are typically smaller than other protection areas and they tend to be located around existing improvements often near public rights-of way.

The most common location for stewardship problems to occur may be along the dividing line surrounding a Minimal Protection Area (pools, garden sheds and the like tend

to stray across the dividing line). For these reasons, the investment of cost and time to survey a Minimal Protection Area is, in most cases, a reasonable investment that reaps a significant benefit by avoiding future stewardship problems. A dispute that can be resolved by surveyor confirmation based upon clear and objective evidence is a dispute that need not be litigated. Listed below are the steps to achieve that end:

### **Physical Markers**

Locate the corners of the Minimal Protection Area on the ground with permanent markers (for example, iron pins) hammered into the ground.

### **Visual Depiction with Courses and Bearings**

Survey the Minimal Protection Area and incorporate the courses and distances calculated by the surveyor into the depiction of the Minimal Protection Area on the easement plan. Choose a beginning point (preferably a point closest to an identified reference point on the property boundary) and indicate the bearing, direction, and distance of each point thereafter to the next until ending at the beginning point. Tie the beginning point of the Minimal Protection Area by a line indicating the course and distance from the reference point on the property boundary to the point of beginning.

### **Verbal Description with Courses and Bearings**

In addition to the courses and distances delineating the Minimal Protection Area on the easement plan, a legal description of the Minimal Protection Area, prepared by the surveyor, can be added as an exhibit to the grant or incorporated into the baseline documentation.

## **Delineating Protection Areas by Other Means**

### **Delineation by Physical Markers**

The first step, as always, is to mark the dividing line between protection areas on the ground. Although pins, concrete monuments, and other relatively permanent markings are much preferred, rudimentary physical markers (paint on trees at regular intervals, etchings on rock) are better than none at all.

### **Delineation as Within a Certain Distance from a Defined Feature**

Some protection areas may be described with reasonable certainty by reference to natural features or property boundaries. Examples:

The Highest Protection Area consists of an area extending 100 feet, on both sides, from the centerline of Marsh Creek.

The Standard Protection Area is the area located within 300 feet of the public right of way line of State Road.

### **Delineation by Visual Depiction**

Delineating a protection area with reasonable certainty becomes challenging when the location is not easily described verbally and a survey is prohibitively expensive. Listed below are some methods which, in combination together with physical markers, may meet the standard of reasonable certainty.

#### *Photographic Evidence*

Include in the baseline documentation the following:

- A photographic record of each physical marker.
- An annotated aerial photograph indicating the location of each physical marker.

#### *GPS Readings*

Record on the easement plan and include in the baseline documentation, the latitude and longitude of each physical marker furnished by GPS readings. For purposes of delineating a Highest Protection Area from a Standard Protection Area, the margin of error (if any) in delineation based upon GPS information may, in the reasonable judgment of holder, be found immaterial given the size and location of the protection areas and the possibility that a field survey is not an option.

#### *Compass Readings and Distance Measurements*

If GPS information is not available, keep a record of distance (perhaps approximate) and compass readings from one physical marker to the next and from a reference point on the property boundary to the beginning point of the protection area description. Doubtless this is the least accurate method; however, combined with physical markers and photographic records discussed above, it may be

sufficient to apprise the landowners of the location of the protection area and, in the event of a dispute, enable a surveyor to delineate the location of that area on a survey plan.



The latest version of this guide and related resources are posted at [WeConservePA.org](https://www.WeConservePA.org).

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