



The Role of Neighbors in Enforcing Conservation Easements

By Robert H. Levin, Attorney at Law (www.roblevin.net)

As land trusts are well aware, neighbors can play a helpful role in alerting trusts to potential easement violations. But even well-meaning neighbors can misinterpret the terms and intentions of the easement or the role of the land trust, leading to confusion and occasional disputes. So what happens if a neighbor wants to take matters into his own hands by bringing a lawsuit to enforce or challenge an easement? Can a neighbor sue a land trust for failing to enforce an easement? Can a neighbor sue to terminate an easement? If the answer is yes, land trusts are potentially vulnerable to a largely unpredictable litigation threat.

A recent Maine case suggests that land trusts can rest a bit easier, holding that a neighbor has no "standing" (legalese for the right to bring a case in court) to sue a land trust or a landowner for violating a conservation easement. But before we turn to the case, let's start with the Maine Conservation Easement Act. Under the Act, standing to bring an "action affecting a conservation easement" is limited to three classes of persons:

- A. An owner of an interest in the real property burdened by the easement;
- B. A holder of the easement; or

- C. A person having a 3rd-party right of enforcement. [33 M.R.S.A. § 478(1)]

Excepting any highly unusual circumstances, neighbors do not fall into any of these three categories. Based on a plain reading of the statute, it would appear that neighbors do not have standing to bring a lawsuit concerning a conservation easement.

The recent case of *Cluff Miller v. Gallop*, RE-03-022 (*Fritzsche, J.*, York, County Superior Court, July 8, 2003) confirms this interpretation. Based on briefs written by this author, the court dismissed a neighbor's action to enforce a conservation easement by invoking the standing provision of the Maine Conservation Easement Act, quoted above. The neighbor claimed that the land trust was responsible for flooding that had occurred on his property, reasoning that if the land trust had enforced the conservation easement, the flooding would not have occurred. The neighbor also brought a nuisance and trespass action against the owner of the property subject to the easement. The suit against the owner of the easement property remains, but the claims against the land trust were dismissed based on Maine's statutory standing provision.

(continued on page 3)



Friends of Merrymeeting Bay, in partnership primarily with the Maine chapter of The Nature Conservancy, recently protected an additional 67 acres of land with nearly a mile of frontage along the Abbagadasset River in Bowdoinham adding to over 500 acres of already protected conservation land along this tributary of the Bay. This latest effort will be completed with funding from the Land for Maine's Future program in cooperation with the Maine Wetlands Protection Coalition.

Ed Friedman
FOMB

Land Trust Standard 1: Purpose and Goals

Standard 1 states: "A land trust must have a clear purpose and goals."

A land trust has the responsibility to always act in ways that will benefit public rather than private interests. Unless everyone connected with a land trust has a similar understanding of the organization's purpose and goals, the group may be asked to take on programs and transactions that further individual interests but that do not advance the purposes for which the land trust was organized. The land trust's purpose and goals may change over time, but change should be a deliberate decision, not an accident.

Practice 1A: Clear Statement of Purpose and Goals

"The board has adopted a clear, realistic statement of purpose and goals, including the public interest(s) to be served and the beneficiaries of its programs."

A clear sense of purpose and goals helps to keep the organization on track and harnessed to its public purpose. It helps ensure the organization's resources are used effectively. A clear sense of purpose and goals also helps to build cohesion among board, volunteers, members and staff all the while enhancing the organization's image in the community.

The statement of purpose and goals discussed here goes beyond that which is included in an organization's incor-

porating documents, as these tend to be broad and provide little direction. Generally some form of long range/strategic planning, suited to your organization's size and maturity, is required to develop this clear statement.

Practice 1B: Consistency with Purpose and Goals

"The land trust periodically reviews its programs and activities to be sure they are consistent with and supportive of its purpose and goals."

The work of defining the trust's purpose and goals is meaningless if it does not also design programs and activities to achieve them. Unless the land trust has a process for keeping the purpose and goals alive, it still runs the risk of getting off track, making ineffective use of its resources, or saying one thing and doing another. Both the development of an annual work plan and budget and periodic reviews of its strategic plan can help the land trust to remain focused on its mission.

The next article in this series will feature Standard 2: Board Accountability. For more information on the Land Trust Standards and Practices contact the Maine Land Trust Network at (207) 729-7366 or the Land Trust Alliance at (202) 638-4725 or visit www.lta.org. LTA sponsor members can download the full text of the *Land Trust Standards and Practices* from www.ltanet.org.

This is the second article in a series describing the Land Trust Standards and Practices established by the Land Trust Alliance for operating a successful land trust. Many thanks to LTA's Elizabeth Wroblecka and Rob Aldrich for their assistance with this series. For more information on Standards & Practices or the Land Trust Alliance go to www.lta.org. Thanks to the Land Trust Alliance and all who contributed to and wrote The Standards and Practices Guidebook and Assessing Your Organization.

Save the Date!

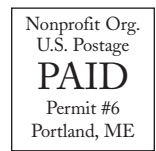
Maine Land Conservation Conference
2004
April 30th & May 1st
Camden and Rockport, Maine

2004 MLTN Meeting Schedule

The MLTN Steering Committee will be meeting on March 10, June 17, Sept. 15 and Dec. 9 2004. Land trust staff and board members are welcome and encouraged to attend. If you would like more information on these meetings, or are interested in joining the Steering Committee, please contact Network Coordinator, Megan Shore, at 729-7366 or mshore@mcht.org.

Maine Land Trust Network
Maine Coast Heritage Trust
1 Main Street, Suite 201
Topsham, ME 04086
(207) 729-7366
(207) 729-6863 (fax)
<http://www.mltm.org>

return service requested



Land Trust News is published four times a year for the directors, officers, and staff of the 75 subscribing members of the Maine Land Trust Network (MLTN). The MLTN is a program of Maine Coast Heritage Trust that seeks to promote voluntary land conservation by building the quality and effectiveness of land trusts and the Maine conservation community through communication, coordination and education. For more information or if you would like to submit an article or news item for publication in *Land Trust News* please contact Megan Shore at 729-7366 or mshore@mcht.org.

printed on 100% recycled paper processed without chlorine
layout: [Headwaters Writing and Design \(www.headwaters.com\)](http://www.headwaters.com)



In August the Trustees of **Monhegan Associates** received a report of a two-year study of forest health indicating that the invasive, non-native Japanese barberry infests almost 40 percent of the island's forest. **Monhegan Associates** is mounting a multi-year project to bring the barberry and three other invasive plants under control. The first phase of this project will begin this winter with an experiment that will determine the relative effectiveness of different eradication strategies.

With the help of a \$20,000 matching grant from the Maine Recreational Trails Program, **Blue Hill Heritage Trust** has been working with partners to restore a severely eroded trail on Blue Hill mountain on land owned by the Town of Blue Hill. In early October, a magnificent 400-foot stone staircase was completed.

With help from the Land for Maine's Future program, **Maine Coast Heritage Trust**, **Friends of Acadia** and more than 200 businesses and individual donors, the **Frenchman Bay Conservancy** is nearing the end of its \$355,000 campaign to protect Indian Point on the Union River in downtown Ellsworth. This project is the Trust's first project in its newly expanded territory. FBC plans to maintain Indian Point as a public park.

The **Georges River Land Trust** acquired title to an important piece of riverfront in Union below the old Sennebec Dam. This one-acre parcel defined the access to the old dam which had been in place for 100 years, as well as a canal that was temporarily used to generate power by Dirigo Power Company. The parcel was donated to the Land Trust by the Sennebec Lake Association.

Earlier this year the **Great Auk Land Trust** hired its first professional staff member, Marty Anderson, as part time Executive Director. GALT has re-invigorated its organization by creating five new committees and is in the process of setting 3-year budget, membership, and land protection goals.

The **Pemaquid Watershed Association** recently accepted a shoreland easement on an 82-acre parcel on the Pemaquid River. The agreement protects the forested shoreline along a portion of the river above Bristol Mills that features extensive wetlands and diverse wildlife.

This summer the **Quoddy Regional Land Trust** announced its first major fundraising initiative. Due to extraordinary efforts this \$500,000 campaign is now near completion and three special properties, Mowry Beach in Lubec, Raft Cove Point in Trescott, and 150 acres along the Englishman River in Roque Bluffs, will all benefit from Quoddy's protection.

Late last year, a 0.4 acre parcel of land adjacent to Stroudwater Park in Portland—a tree-filled vista past which over 35,000 cars travel daily—was in danger of being purchased for development. Realizing the land's critical role as beautiful open space in a historic neighborhood, the **Stroudwater Village Association** (SVA), with the support of **Portland Trails** and the City of Portland, launched the Campaign for the Corner. The SVA met their goal to raise \$80,000 for the purchase and stewardship of this parcel and celebrated the completion of the campaign in September.

An innovative agreement and partnership between area lobstermen and conservationists has successfully protected the 2,290-square-foot Sewall's Bridge Dock and an adjacent parcel of land on the York River in York. The **York Land Trust** bought a conservation easement on the property, ensuring that it will remain as working waterfront property and protecting the property's scenic value. This project marks the first time a land trust in Maine has played a role in protecting a working fishing pier.



In September the **Trust for Public Land (TPL)** and the **U.S. Fish & Wildlife Service** protected 35 acres near **Parsons Beach** as part of the **Rachel Carson National Wildlife Refuge**. The property, which includes forested wetlands, important wildlife habitat, and buffer land for the Little River, is part of a larger effort to conserve critical properties in southern coastal Maine as part of the Refuge.

The Role of Neighbors in Enforcing Conservation Easements

(continued from back page)

Case law from other states, although based on different statutes, supports this result. See *Friends of the Shawangunks v. Knowlton*, 64 N.Y.2d 387, 393 (N.Y. 1985); *Bleier v. Board of Trustees of Village of East Hampton*, 191 A.D.2d 552, 595 N.Y.S.2d 102 (2d Dept. 1993); *Burgess v. Breakell*, No. 95-0068033, 1995 Conn. Super. LEXIS 2290 (Conn. Aug. 7, 1995).

How important is the *Cluff Miller* case? Well, it doesn't prevent a disgruntled conservation easement neighbor from filing a lawsuit against a land trust. But it does mean that the case is likely to be dismissed at an early stage, before the trust has to expend considerable resources on the litigation. Also keep in mind that the case was not decided by the Maine Supreme Judicial Court, and is therefore not binding precedent.

Perhaps more importantly, this ruling should in no way reduce a land trust's emphasis on good stewardship and communication practices. It is certainly in any trust's best interest to prevent violations in the first place and, in the event they do take place, to find a solution that both maintains the conservation purposes of the easement and fosters clear communications with all interested parties to avoid misperceptions. Violations in themselves can cause significant public relations issues. Charges that the trust failed to properly enforce the easement can erode the public's faith in conservation easements, and take a very serious toll on the organization and its ability to meet its conservation objectives. Nothing beats good prevention—baseline documentation, surveys, annual monitoring, and good landowner and neighbor relations.

Thanks !

A new integrated land trust locator map now resides on the Maine Land Trust Network webpage at www.mltn.org thanks to many volunteer hours given by Shannon Scott and Kam Lam at MapIT.

Thanks also to the State Planning Office and Bernstein, Shur, Sawyer & Nelson for providing meeting space for the Maine Land Trust Network.

Legal Guidelines for Advocacy

By Karin Marchetti Ponte, MCHT General Counsel

Land Trusts and other tax exempt charities are absolutely prohibited from supporting or opposing a candidate for public office. Organizations that do so cannot take "deductible" donations from taxpayers. Land trusts are, on the other hand, allowed to engage in "lobbying," as long as "no substantial part" of the group's activities are used "to influence legislation." Supporting or opposing ballot measures, such as bond issues, is treated as lobbying to influence legislation, and is therefore permissible as long as the organization stays within its spending limits.

The "no substantial part" test is obviously a soft definition. It requires land trusts to keep track of how much time and money they spend, including preparation time, staff time, volunteer time, use of facilities and applicable overhead costs, when advocating on proposed legislation. They must also keep track of both time and money spent on their other activities, so that they can demonstrate to IRS that their efforts to influence legislation were "no substantial part" of their organizational activities. In addition, not more than one-quarter of the amount spent for this kind of legislative lobbying may be used for what is known as "grassroots lobbying"—that which encourages people to take action to support or oppose a bill. There are many exceptions for "information" that doesn't include a specific "call to action" (see "Land Trust Lobbying: The New Tax Regulations," by Walter B. Slocombe, *The Back 40*, Volumes 1 and 2, Numbers 8 and 9, [Feb. and March, 1991]).

Organizations can eliminate the uncertainty of the "no substantial part" test by filing IRS Form 5768. Under this election, they will be in compliance as long as they do not spend more than twenty (20%) percent of their total annual expenses on lobbying to influence legislation. This not only provides a bright line for monitoring permissible activities, it removes some of the time element from the equation, since the value of unpaid time isn't counted toward the 20%. This election should be made only with careful evaluation of its impact on the organization, since it will differ based on the scale of its activities, budget, and personnel costs.