

**FISH AND WILDLIFE SERVICE  
REAL PROPERTY**

**Real Property**

**Part 340 Real Property Management**

**Chapter 4 Adverse Property Claims and Trespass**

**340 FW 4**

**4.1 What is the purpose of this chapter?** This chapter provides background information and guidance to help employees prevent and resolve instances of adverse property claims and trespass on U.S. Fish and Wildlife Service (Service) lands.

**4.2 What is the authority for this chapter?** The authority for this chapter is the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd).

**4.3 What is an adverse property claim?** An adverse property claim is any claim to Service property that is incompatible with another's right or claim to that same property. Adverse property claims:

**A.** Typically arise in conjunction with disputes over the location of refuge or unit boundaries, and

**B.** Are often the result of:

**(1)** A mistake, conflict, or ambiguity in the written legal description of Service lands or in the written legal description of the adjoining non-Service lands,

**(2)** A mistake in locating boundaries on the ground, or

**(3)** Landowner(s) changing boundaries or using property in a way that is not consistent with the written title record (see section 4.4).

**4.4 How do the actions of landowners prior to Federal acquisition affect the location of property boundaries?** Although conveyances of real property generally are based on a written description of the property, sometimes there are discrepancies. We can only acquire land that the seller owns, regardless of the description. When the location or nature of property ownership is changed by the actions of landowners and that change is not reflected in the written description, it is called an "unwritten conveyance." There are many subtleties involved with unwritten conveyances, and they vary from State to State. A few ways landowners may change the location and nature of property ownership are by:

**A. Acquiescence**—when adjacent landowners accept a boundary that they are uncertain of by actions that substantiate an unwritten and sometimes unspoken agreement (e.g., by accepting that a fence line, hedge row, tree line, ditch, road, or any other line of occupation is the property line).

**B. Location by common grantor or practical location**—when adjacent landowners mutually agree on a boundary they assume to be correct by mutual designation (e.g., by recognizing that a fence line, hedge row, tree line, ditch, road, or any other line of occupation is the property line).

**C. Adverse possession**—when someone meets the State law requirements for occupation and period of possession of another's property, and such occupation gives them fee title to the property.

**D. Prescriptive easement**—when someone uses another's property in a specific way and for a specified minimum period of time, State law may give them the right to continue using the property in the same manner despite objections from the rightful landowner. The occupant may acquire an easement right to the property, but does not acquire fee title to the property.

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**4.5 Is it possible for the Service's land boundaries to change by unwritten conveyance after acquiring the land?** No. Land belonging to the United States cannot be lost by adverse possession or other type of unwritten conveyance. After we acquire the land, later actions of adjoining landowners or other private parties cannot change the boundaries of our property. Unauthorized use or occupation of our property cannot lead to valid use or ownership rights. However, an adverse action that occurred before we acquired the land can have an effect on the boundaries of the land acquired.

**4.6 What is trespass?**

**A. Trespass** includes, but is not limited to, the unlawful entry onto, use of, presence on, or occupation of Service property. Trespass:

- (1) Often arises in conjunction with questions about land ownership or boundary disputes;
- (2) May occur:
  - (a) Because of unmarked boundaries or mistakes in marking boundaries,
  - (b) Whether or not the offending party believes he/she owns the land, or
  - (c) When someone attempts to commit an unlawful act or wants to establish a claim to Service lands; and
- (3) May involve others unlawfully entering Service lands or the Service unlawfully entering others' lands.

**B. Common types of trespass we encounter include:**

- (1) **Timber depredation or timber trespass**—when someone cuts down timber on Service property without permission.
- (2) **Unauthorized construction**—when someone constructs a road, building, or other improvement on Service property without permission.
- (3) **Farming or grazing**—when someone farms or grazes animals on Service property without permission. This often happens in conjunction with building fences outside of legal boundaries.
- (4) **Resource management**—when someone floods, thins vegetation, or ignites a prescribed fire on Service property without permission.

**4.7 What steps should Service employees take to avoid adverse property claims and trespass?**

**A. Regional Realty Specialists** must:

- (1) Acquire land in accordance with existing authorities and policies, including, but not limited to:
  - (a) Federal and State laws and regulations,

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(b) Applicable Executive Orders,

(c) This and other policies and pertinent chapters in the Service Manual and the Departmental Manual, and

(d) The Department of Justice Title Standards 2001 (for guidance on the preparation of title evidence in land acquisitions);

(2) Acquire land with known boundaries and that is free of adverse property claims. To accomplish this, Regional Realty Specialists must:

(a) Obtain and examine the written legal description and the survey history of the lands proposed for acquisition and the adjoining lands;

(b) Provide copies of the written legal description and relevant documents to the Regional Land Surveyor for his/her review;

(c) Ensure that a Service employee who has the Regional Realty Officer's authorization (this authorization does not need to be formalized):

(i) Inspects the land proposed for acquisition for evidence of occupation or any use that does not appear in the written description, and

(ii) Documents in writing the inspection checklist (see section on Certificate of Inspection in 342 FW 4); and

(d) Arrange, through the Regional Land Surveyor, for a survey of the boundaries of the land proposed for acquisition if the Regional Realty Officer requests it.

**B. The Regional Land Surveyor must:**

(1) Conduct a Survey Tract Review of all tracts proposed for acquisition, exchange, or disposal to identify possible anomalies that could impair clear title and to avoid adverse claims;

(2) Determine if a survey or boundary marking/posting is needed for positive on-the-ground boundary identification; and

(3) Survey, monument, and post the boundaries of Service lands in accordance with 343 FW 1, as requested and funded by the Regional Realty Officer, Project Leader, or Facility Manager.

**C. Project Leaders and Facility Managers must:**

(1) Ensure they understand where the boundaries of their lands are located on the ground;

(2) Promptly address potential encroachment or unauthorized use of refuge or unit lands;

**05/22/13**

**Supersedes 340 FW 4, FWM 075, 03/18/1993**

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**(3)** Consult with the Regional Land Surveyor to verify that:

**(a)** There has been an official survey of the refuge and unit boundaries if the Regional Land Surveyor recommends it, and

**(b)** The monuments and boundaries are unchanged from the official survey;

**(4)** Ensure identification and maintenance of official boundaries as Table 4-1 describes:

**Table 4 1: How to identify and maintain our boundaries**

- Post boundary lines according to the standards in 343 FW 2, Cadastral Surveys and Maps – Standards and Procedures, and our *Land Survey Handbook*.
- Consult with the Regional Land Surveyor before posting any boundary.
- Inspect and document the location and condition of boundary monuments and posted boundary lines at least once every 5 years.
- Submit a survey request to the Regional Land Surveyor to reestablish missing corners and locate boundaries as needed.
- Preserve boundary monuments and posts during construction, maintenance, and land management activities both on our lands and adjoining lands according to 343 FW 2 and the *Land Survey Handbook*.
- Take photographs of boundary corners at the time they are set and at each inspection.

**(5)** Ensure that management activities and public use on our lands take place within posted boundaries and without negatively impacting neighboring landowners.

**4.8 What must Service employees do when someone makes an adverse property claim?**

**A. Service employees** who learn of an adverse property claim must promptly inform their supervisor, who must then inform the Project Leader/Facility Manager of the adverse property claim. They must not make a commitment to the adverse property claimant about land ownership or boundary locations until the Regional Director agrees with what the final action will be.

**B. Project Leaders/Facility Managers** must inform the following people about adverse property claims:

**(1)** Their supervisor,

**(2)** The Regional Realty Officer, and

**(3)** If necessary, the appropriate Federal Wildlife Officer.

**C. The Regional Realty Officer** must

**(1)** Consult the Regional Land Surveyor if the adverse claim involves a question of boundary location;

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- (2) Identify the options to address the issue and propose a course of action to the Regional Director;
- (3) Advise the Headquarters Division of Realty about the adverse property claim; and
- (4) If necessary, refer disputes to the Regional or Field Solicitor for legal guidance.

**D. The Regional Land Surveyor** must:

- (1) Work directly with the appropriate Service employees to assist Realty in resolving the dispute;
- (2) Establish relevant facts or issues regarding the location and extent of the adverse property claim by researching records and performing field investigations;
- (3) Advise the Chief Land Surveyor in Headquarters about the adverse property claim; and
- (4) After completing the research and investigation, present findings and recommendations to the Regional Realty Officer.

**E. The Regional Director** decides what course of action to take.

**4.9 What must Service employees do when there is a trespass incident?**

**A. Service employees** who discover a trespass incident must promptly inform their supervisor, who must then inform the Project Leader/Facility Manager of the trespass incident.

**B. Project Leaders/Facility Managers** must inform the following people about a trespass incident:

- (1) Their supervisor,
- (2) The appropriate Federal Wildlife Officer, and
- (3) If necessary, the Regional or Field Solicitor.

**C.** If the trespass involves a boundary dispute or question of ownership, the procedures in section 4.8 also apply.

/sgd/ Stephen Guertin  
DEPUTY DIRECTOR

Date: May 22, 2013