

**BOARD OF PARK COMMISSIONERS OF THE
CLEVELAND METROPOLITAN PARK DISTRICT
POLICY STATEMENT**

SUBJECT: Encroachment Policy

EFFECTIVE DATE: November 30, 2017

I. PURPOSE:

When the Board of Park Commissioners of the Cleveland Metropolitan Park District (Cleveland Metroparks) was established on July 23, 1917, the Park District began to acquire lands at a rapid pace under the guidance and leadership of William A. Stinchcomb. Cleveland Metroparks acquired over 14,108 acres of land throughout its founder's tenure and leadership, and has acquired over 23,000 acres of land throughout its 100 year history. The Park District continues to expand as conservation and land protection opportunities become available, and as a result of these preservation initiatives the number of neighbors to Cleveland Metroparks also continues to grow.

Cleveland Metroparks has several hundred miles of property lines shared with adjoining land owners, and therefore has established the attached "Good Neighbor Policy" (GNP) to educate our neighboring landowners and residents that share common property lines with Cleveland Metroparks and convey the conservation mission of the Park District. While the Cleveland Metroparks property lines are respected by many of the adjoining land owners, some private encroachments onto Park District land exist.

Examples of encroachments include the following:

- Buildings or structures such as sheds, garages, fences, decks, playhouses, deer stands, swing sets, or other play equipment.
- Landscaping and private use areas such as patios, gardens, ballfields, sport areas, and parking spaces.
- Storage of belongings such as boats, RVs, cars, firewood, machinery, or tools.
- Waste products and other unsightly items such as trash cans, compost bins, yard waste, junk cars, junk appliances, and other debris or litter.
- Boundary identifying features such as hedges, landscaping, fences and other items that "claim" Park District land or limit the public's use and enjoyment of it.

It is important for Cleveland Metroparks to attentively monitor its boundaries so adjacent land owners do not interfere with Cleveland Metroparks ownership of its land. (See Attachment A, "Property Line Encroachments: Legal Principles")

II. POLICY

Cleveland Metroparks regularly inspects its lands to identify encroachments. These regular inspections are conducted by the Park Manager, or staff designee of the Park Manager, as they regularly manage and maintain the Park and are recognized as the first line of defense against

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property line encroachments. Additional support is provided by the Conservation Program Manager, who coordinates and implements reviews of the property lines and areas of concern using GIS and Remote Sensing technology. The Conservation Program Manager also schedules site walks of each reservation using the pattern outlined within the procedures of this Policy.

As encroachments are identified and verified, a boundary management procedure must be initiated to assure compliance, including a programmed “follow-up” to ensure correction of the encroachment and future compliance. A significant percentage of property line encroachments, including minor dumping of yard waste, are due to misinformation as to property line locations or the negative impacts caused by the encroachment activity. It is, therefore, the Park District’s policy that the first follow-up to correct these types of problems be educational, rather than punitive. This would take the form of personal contact by the Park Manager, the distribution of an informational brochure explaining Cleveland Metroparks conservation commitment, or a warning (perhaps only oral but documented internally) to correct the problem within a reasonable time frame (typically 30 days). At the expiration of that period of time, a follow-up must be made to determine if further action is necessary, including possibly a citation and the initiation of legal action as described below.

Cleveland Metroparks will not sell land, grant easements, exchange land, or grant use licenses to remedy conditions resulting from unauthorized encroachments onto Park District land.

III. PROCEDURES

The following procedures define the role of the Park Manager as the position responsible for park boundary management:

- A. Property line inspection – The Park Manager or designated staff will inspect all property boundaries within their reservation at least once every three (3) years. Inspection logs will be maintained documenting the inspections. Each Park Manager will then proceed to initiate resolution of encroachments pursuant to the procedures below.

Additionally, the Conservation Program Manager, or his/her designee, will provide support by monitoring the Park boundaries in coordination with the Park Manager via GIS technology and strategic property visits of identified encroachment areas. Monitoring of boundaries by the Conservation Program Manager will be conducted in a manner that each reservation is reviewed at least once every three (3) years.

- B. Problem verification – Upon identification or notification of a suspected problem, the Park Manager shall investigate the site to attempt to verify that an encroachment violation exists. The Park Manager shall complete the “Property Line Inspection Form,” Attachment B,

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The Natural Resource Area Managers are available to assist if needed. The Park Manager determines if additional assistance is necessary to make a final judgment (e.g. a survey of the property line, an interpretation on restrictions, etc.) and procures the assistance if needed.

C. Problem resolution

1. In all property line violations, the Park Manager first will talk, then, if necessary, will personally deliver, or mail, a standard letter (Attachment C) to the property owner (with the ability and need to detail the specific infraction and tailor the form letter to the situation), asking for resolution of the problem within a reasonable period of time, (e.g., 30 days) along with the informational flyer (Attachment D). The Park Manager will work with the Conservation Program Manager to keep an inspection log documenting the encroachment, notice, follow-up, and resolution. The Conservation Program Manager will keep the inspection log on file, and monitor follow-up and resolution to ensure that all encroachments are dealt with uniformly across the Park District.
2. The Park Manager shall monitor compliance with the established deadline. If resolution of the problem has still not been achieved and no extenuating circumstances exist, then the problem, with inspection log, will be referred to the Ranger's Natural Resources Enforcement Team for a second letter, with a copy to the Park Manager and the Conservation Program Manager.
3. If an acceptable resolution has not occurred after the fixed period established by the Park Ranger letter, then the problem, with inspection log, will be referred by written notice from the Park Ranger to Cleveland Metroparks Chief Prosecuting Attorney, with written notice also to the Chief Executive Officer, Chief Operating Officer, Park Manager, and Conservation Program Manager. Follow-up, dependent upon the circumstances, will be initially determined by the Chief Legal & Ethics Officer, Chief Operating Officer, and Chief Executive Officer with notice to the Park Manager and Conservation Program Manager, and may include the initiation of civil legal action or criminal prosecution.

*A flowchart is included as Attachment E to assist in following this procedure.

IV. COMPLIANCE WITH POLICY AND PROCEDURES

All neighboring property owners will be expected to adhere to the common legal boundaries between their land and Park District property. Compliance with these boundaries will be the responsibility of the Park Manager to ensure these Policy and Procedures are utilized for addressing encroachments. The Conservation Program Manager will assist the Park Manager by identifying potential encroachments and providing support and coordination as it relates to deed records and real estate information.

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Recognizing that the ultimate goal of this process is to protect Cleveland Metroparks resources and educate the adjoining land owners, and not to “write tickets,” the Park Manager will necessarily have the leeway to be flexible and subjective on a case-by-case basis. This flexibility reflects the educational goal of the enforcement policy. Blatant infractions can and should be pursued immediately.

Some investigations will not be able to identify the absolute parties responsible, i.e., a continual dumping of brush and grass clippings behind a given home, but no direct observation of the dumping. Again, since education is the first step in the process, a “friendly” communication with the suspected homeowner(s) should still accomplish the goal of stopping the action in the future. In cases where foreign materials should be or must be removed from Cleveland Metroparks property and a specific responsible party cannot be identified with certainty, the Park Manager will remove the material as soon as is practical and keep a record, including costs. This will send a very clear message that Cleveland Metroparks is serious about this type of problem.

References:

Replaces and Supersedes: Property Line Encroachment Policy – 12/28/2012

Approved:



Chief Executive Officer-Secretary

11/30/17
Approval Date



Board President

11/2022
Review Date

Attachment A – Property Line Encroachment: Legal Principles

The Cleveland Metroparks is a political subdivision of the State of Ohio that has the power to acquire lands for conversion into forest reserves and for the conservation of the natural resources of the state pursuant to Ohio Revised Code 1545.11.

As the Cleveland Metroparks continues to acquire land and protect its current landholdings, it is necessary to keep in mind the various real property doctrines available to landowners adjacent to Cleveland Metroparks. The following are three legal important to property line encroachment issues:

(1) Adverse Possession

Definition: A party is capable of taking legal title to another's land by proving the party has exclusive possession of the land that is open, notorious, continuous, and adverse for a period of 21 years.

Explanation: Under Ohio law, it would be difficult for an adjacent property owner to acquire Cleveland Metroparks land through "adverse possession." Ohio courts have found that adverse possession typically does not apply to park districts. Courts have determined that park districts cannot be as vigilant in monitoring its property for trespassers as private property owners, as such a burden would be prohibitive and contrary to the public interest. Park districts are created to provide for public use and enjoyment of land and allowing adverse possession would deprive the public of this use.

Overall, Ohio courts tend to disfavor adverse possession because successful actions result in the legal titleholder forfeiting ownership to an adverse possessor without compensation.

Conclusion: Given the Cleveland Metroparks' mission of land conservation, it would be difficult for an adverse party to prove the element of "nonuse" (or that an area did not appear to be open for public use) as the setting aside land for future public use is a valuable use of land resources and the public should not suffer for a government's negligence or inattention to its property boundaries.

Example: An adjacent property owner constructs a fence enclosing both his own property and a portion of Cleveland Metroparks' property owned where such enclosure does not allow for any use by Cleveland Metroparks or the public. Even if the other elements of adverse possession are met by the encroaching landowner, because Cleveland Metroparks owns the land, it would not be subject to adverse possession by the encroaching landowner. However, the encroaching landowner may argue that they are entitled to use of the property (but not a fee interest in the property) under equitable estoppel or abandonment, as described below.

(2) Equitable Estoppel

Definition: A landowner, such as Cleveland Metroparks, may be precluded by conduct (i.e. a promise or a misstatement of fact) or by silence when an encroaching landowner reasonably, and in ignorance, relies upon the truth of a matter to the encroaching landowner's detriment.

Explanation: When Cleveland Metroparks is aware of and continues to allow an encroaching landowner to use the Cleveland Metroparks' property as if it were the encroaching landowner's

private property, the encroaching landowner may claim that Cleveland Metroparks' awareness and silence on the matter caused the encroaching landowner to reasonably believe the property was theirs to use.

However, the general rule is that the principle of estoppel does not apply against the political subdivisions, such as Cleveland Metroparks, in the exercise of a governmental function. Furthermore, one court held that a wildlife preservation was found to be classified as a "governmental function" with regard to the inapplicability of estoppel against political subdivisions, giving a stronger claim to Cleveland Metroparks. However, an encroaching landowner could make a colorable legal claim that they would be entitled to use the land based upon estoppel.

Example: Allowing an encroaching landowner to continue building a structure on Cleveland Metroparks property and delaying any objection until after significant expenditure has been made. The encroaching landowner could argue that it is entitled to compensation for relying on Cleveland Metroparks' statement that it was appropriate or non-statement when the encroachment was obvious.

(3) Abandonment

Definition: Abandonment occurs when an encroaching landowner proves 21 years of nonuse of land, and an intent to abandon land.

Explanation: Abandonment is typically associated with the doctrine of adverse possession of municipality/political subdivision lands. Every recent case involving adverse possession has addressed the notion that it is against public policy to adversely possess land owned by political subdivisions, such as park districts, because the land is for the benefit and enjoyment of the public. In addition, park districts are large and own a lot of land, making it burdensome to require the quality of awareness required by ordinary individuals to monitor their land. Given the dynamics of the functions of a park district, it would be difficult to prove the second element of abandonment – an intent to abandon.

Example: A portion of Metroparks' property is physically isolated from the remainder of reservation through an artificial barrier (i.e. fence) such that it cannot be used by employees or the public. The encroaching landowner is able to use the property because the encroaching landowner is on the other side of the fence. The encroaching landowner may claim that Cleveland Metroparks abandoned the land and that the encroaching landowner is entitled to a fee interest in the abandoned land.

Summary

As noted above, there are clear principles that land owned park districts is afforded some protection against adverse possessors, nevertheless, park employees should be aware of these legal principles and any adverse uses of Cleveland Metroparks' property should not go unchallenged where observed. Sending letters and documenting visits that show that staff notified the encroaching landowner of the unpermitted use of Cleveland Metroparks' property is vitally important. As staff of Cleveland Metroparks, custodians for public, open space should do everything reasonably in their power to assert the park district's property rights against potential adverse possessors.

Cleveland Metroparks Park Operations
Property Line Inspection Form

Reservation: _____

Reservation Manager: _____

Inspected By: _____

Date of Inspection: _____

Address of Property: _____

City/Zip Code: _____

**Name of Property
Owner (if applicable):** _____

Suspected Violations:

- | | |
|--|--|
| <input type="checkbox"/> Structure | <input type="checkbox"/> Organic Dumping |
| <input type="checkbox"/> Mowing | <input type="checkbox"/> Inorganic Dumping |
| <input type="checkbox"/> Tree Removal | <input type="checkbox"/> Drain Tile |
| <input type="checkbox"/> Play Equipment | <input type="checkbox"/> Fence |
| <input type="checkbox"/> Landscaped | <input type="checkbox"/> Garden |
| <input type="checkbox"/> Cleared Underbrush | <input type="checkbox"/> Wood Pile |
| <input type="checkbox"/> ATV Activity | <input type="checkbox"/> Other (explain in comments) |
| <input type="checkbox"/> Path (brick or stone) | |

Observations/Comments: _____

Violations: Yes No If yes, please explain: _____

Action Taken: Yes No If yes, please describe: _____

Property Owner Comments: _____

Verification By: _____ **Date:** _____

Comments: _____

CLEVELAND METROPARKS

established 1917

clevelandmetroparks.com

Administrative Offices | 4101 Fulton Parkway | Cleveland, OH | 44144
Phone 216-635-3200 | Fax 216-635-3286

BOARD OF PARK COMMISSIONERS

Bruce G. Rinker, President
Debra K. Berry, Vice President
Dan T. Moore, Vice President

CHIEF EXECUTIVE OFFICER
Brian M. Zimmerman



Date:

Attachment C

Name
Street Address
City, State, Zip

Dear Cleveland Metroparks Neighbor:

The primary mission of Cleveland Metroparks is the conservation and protection of natural resources as well as provision of education and recreation opportunities for area residents. The Park District is dedicated to a mission of conservation, education and recreation and recognizes the importance of maximizing its 23,000-plus acres of land in 18 reservations, 8 golf courses, and Cleveland Metroparks Zoo.

Cleveland Metroparks has several hundred miles of property lines shared with adjoining land owners. Cleveland Metroparks has established the attached "Good Neighbor Policy" to recognize the goals of those homeowners that share common property lines with Cleveland Metroparks in order to help these neighbors understand the conservation mission of the Park District. While many of the property lines are respected by the adjoining owners, some private encroachments onto Cleveland Metroparks land exist. These range from "mowing as a part of the backyard" on the one extreme to construction of permanent structures on the other.

During a routine inspection of Cleveland Metroparks property lines, an encroachment onto Park District lands (detailed below) was discovered adjacent to your property. As the adjoining land owner, it appears that the problem originated from your property.

Although Cleveland Metroparks realizes that, in many cases, the property lines are not clearly marked so you may not have been aware of the infringement onto Park District property, we bring it to your attention now and request that you remedy the encroachment as soon as possible.

DATE OF INSPECTION:

DESCRIPTION OF PROBLEM:

REQUESTED ACTION:

DUE DATE:

Cleveland Metroparks wishes to remain a good neighbor to the hundreds of adjacent property owners throughout the Park District. Thank you for your attention to the above matter.

If you have any questions about this situation, or feel that there has been a mistake in the determination or location of the problem, please call me.

Sincerely,

Park Manager

CC: Chief Operating Officer
Chief Legal and Ethics Officer
Conservation Program Manager

Celebrating 100 Years

CLEVELAND METROPARKS

established 1917

Good Neighbor Policy

Cleveland Metroparks Mission: “Cleveland Metroparks will conserve significant natural resources and enhance people’s lives by integrating high-quality outdoor education, recreation and zoological opportunities into people’s lives.”

The Park District contains more than 23,000 acres of land and is dedicated to a mission of conservation, education, and recreation and recognizes the importance of maximizing its land within 18 reservations, 8 golf courses, and Cleveland Metroparks Zoo. Cleveland Metroparks has established a “Good Neighbor Policy” to recognize the goals of homeowners that share common property lines with Cleveland Metroparks and to help these neighbors understand the conservation mission and preservation goals of the Park District.

Natural Resources: Cleveland Metroparks takes a proactive approach to managing land, focusing on the long-term goal of maintaining native plant and animal populations, and the forest, streams, wetlands and other wild areas in which those species live. These features make Cleveland Metroparks unique in northeastern Ohio and a treasured resource for its citizens.

Ensuring that these unique conservation areas remain healthy for generations to come is dependent upon achieving the following ecological principles.

- Conservation areas remain healthy only if lands surrounding those parks are hospitable to plants and wildlife, free of aggressive, nonnative plants, allow for the passage of clean, regulated flows of water; and provide “green” corridors that connect to the larger park lands.
- Success of conservation is dependent upon preserving ALL native parts of an ecosystem, no matter how small or large, charismatic or nondescript. The great American conservationist, Aldo Leopold, stated that without all those “cogs and wheels” we can have no hope of a healthy earth.
- Conservation land needs to remain intact and not fragmented into small pieces by roads or other development, or from encroachment from outside park boundaries. As a wild area gets smaller and more fragmented, species are reduced as is the area’s uniqueness and as a place for people to seek solitude.

Good Neighbor Policy: Cleveland Metroparks respects the rights of its neighbors and asks that the conservation mission and preservation goals of the Park District be respected as well. While an appropriate goal for a homeowner may be to maintain a well manicured lawn, garden, and a small patio, Cleveland Metroparks has a goal to maintain park land in a natural condition with trees, native plants, and wildlife.

Cleveland Metroparks has developed the Good Neighbor Policy and inspects its property lines in an effort to eliminate dumping, tree cutting, encroaching structures, and other inappropriate activities and conditions from occurring on or affecting Park District Property. Property line inspections may also identify potential dangerous situations originating on Park District land. The policy is implemented to ensure that the natural resources of the Park District remain intact.

Good Neighbors: Cleveland Metroparks hopes to strengthen its Good Neighbor Policy through communication of its management programs and recognition and understanding of both homeowner and Park District goals. The Park Manager of each Cleveland Metroparks Reservation is responsible for inspecting property lines and implementing the Good Neighbor Policy. If you have questions, please call Park Operations at (440) 331-8111.

Cleveland Metroparks Rangers are available 24 hours a day, 365 days a year. Cleveland Metroparks rules and regulations can be found at <http://www.conwaygreene.com/clemetroparks.htm>. For more information about Park District rules or for non-emergency inquiries, please call (440) 331-5530 or visit www.clevelandmetroparks.com. In case of accident or emergency, call Ranger Headquarters at (440) 333-4911.

Cleveland Metroparks
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**Cleveland Metroparks
Encroachment Policy: Boundary Management Flow Chart**

