

To the Courthouse and Beyond

Using nontraditional sources for prior rights research

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Acquiring easements for a new utility project is often time consuming and costly, especially when the names of previous property owners are unknown. In cases where a title search is not necessary, nontraditional sources to identify the individual or entity that granted rights in the distant past may be used.

By directing one's research to government agencies, archival collections and aerial imagery services, source documents not found in a chain of title provide evidence of a location's history beyond the reach of a standard 40- or 50-year search.

An approach using alternative research sources is useful when time and money are short, and a broadly defined description of the easement area is provided with little information with which to pinpoint its location. The ability to tie an existing easement to a specific property allows the utility to either avoid the cost of acquiring a new easement or provides leverage in the



negotiation for a perfected one. While easement acquisition costs are typically a small percentage of the total project budget, having another approach provides some flexibility in determining existing easement rights.

Any experienced land agent is very familiar with the typical sources of evidence needed to document existing easement rights: online public records databases, courthouse records rooms and tax assessor offices. But imagine you have an easement granted in the early days of electrical distribution that places the property in a land lot and district, a militia district, or a township, section or range. The property is also described by bounding ownership. If you're lucky, it will be bounded by a named road; if you're really lucky, you will find a corresponding utility map showing electric facilities and ownership.

Sometimes a series of easements for the same project will contain enough information to place the line, and a line list can then be created. Even so, pinning a specific location may be complicated by the subsequent subdivision of large tracts and road name changes or the easement grantor may have owned hundreds or thousands of acres, including some that were not contiguous.

Short of a full title search — a time-consuming and costly endeavor and unnecessary for certain purposes — other types of primary and secondary data may be used to support an argument that prior easement rights are attached to a specific property. Here are a few recommended nontraditional property rights sources:

Utility Records

Aside from providing an alternative to the public records room, a utility company's land department may contain other records identifying ownership of land affected by an easement. In particular, construction plans and project files indicate ownership and may also contain line lists prepared for rural distribution and transmission lines.

Agency Records

State and county departments of transportation house plans for state road construction. In the state of Georgia, for example, the Georgia Department of Transportation (GDOT) maintains an online database of project documents. Plans for current projects are available, and this database also contains construction documents for roads constructed in the early days of the agency and typically show property ownership, required right of way and existing utilities.



Utilizing a geographic information system, these plans may be overlaid on a current tax layer to determine the limits of property ownership at a specific point in time. These records are especially useful when making a case that a utility's costs to relocate utilities as the result of a new road project are eligible for compensation by the DOT due to the utility's prior rights.

Case in point: A prior-rights researcher used a DOT's own records to help a large southern utility prove that its facilities were constructed on private property and that the utility held easement rights, requiring the DOT to compensate the utility for the cost of moving its poles. In one year, this resulted in approximately \$40 million in recouped expenses the utility wouldn't have otherwise received.

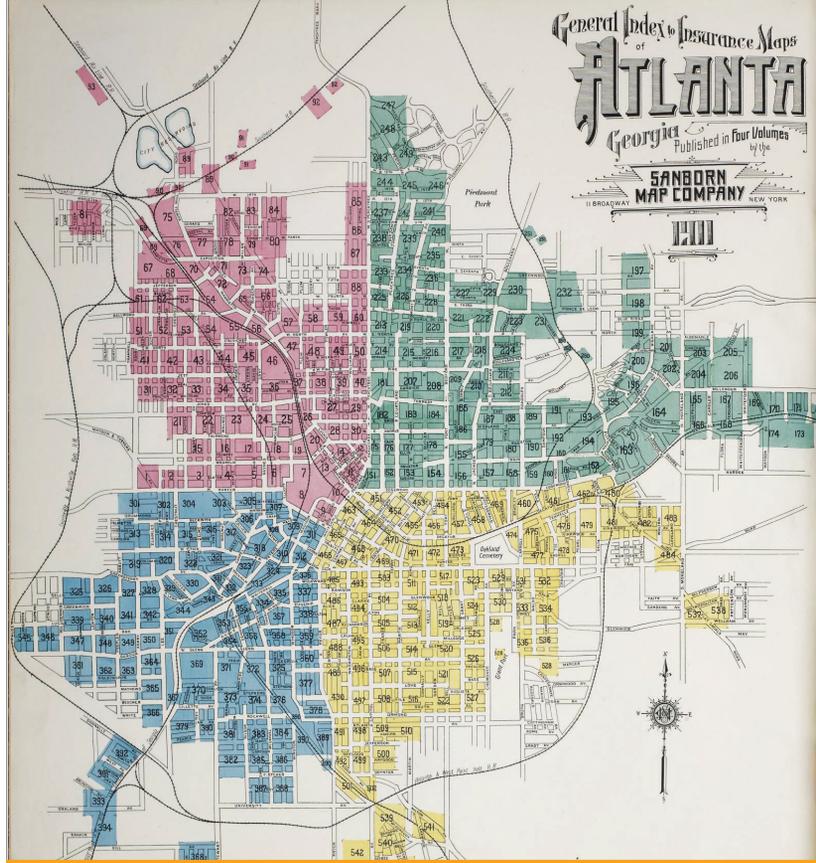
In addition to DOTs, other agencies that house important records, such as maps, are county road offices, county and city clerks' offices, and planning, zoning and development offices. These offices are excellent resources because they include approved subdivision site plans, as well as resolutions to purchase public lands for road right of way.

Archival Records

Historical archive collections are another place, albeit an atypical one, for property rights research. The National Archives, state archives and local repositories — such as historical societies, universities and corporate archives — collect and maintain photographs, maps and other documents containing ownership information.

Access to archive collections is strictly regulated and usually gained in person and by appointment with an archivist. While many archives have documents available online, the amount of digitized material is typically a tiny portion of the total collection. Smaller archives may be maintained by nonprofit organizations and thus operate with limited staff and hours. Larger collections, like state archives, the National Archives and the Library of Congress, serve as great resources for all types of archival property documentation and are available to review more broadly. One significant Library of Congress collection is the Sanborn Fire Insurance Maps, which consist of maps from 1867 to the present for over 12,000 cities and towns in the U.S., Canada and Mexico.

Past editions of local newspapers also provide a wealth of information in the form of articles and legal advertisements that may include details not found in court and more traditional records. During the early days of electricity, city residents were excited about the delivery of power to their towns. As a result, there may be articles about the completion of electric lines, which could provide a project name, allowing for property rights to be searched in a different way.



Library of Congress, Geography and Map Division, Sanborn Maps Collection.

Aerial Imagery and Photography

When determining easement placement, historic aerial imagery can show when roads and transmission lines were built, when the land was subdivided and structures, past and present, that have been on the land. Although these images provide more context than proof, they add another layer of data to the overall analysis. Google Earth and Historic Aerials are two of many sources commonly accessed for historical imagery.

Navigating Property Rights Research

It's important to know that the aforementioned sources will not reveal ownership for every parcel of land. And a single piece of evidence provided by one source may be insufficient proof of ownership on its own. It is often a combination of multiple data points that allows an informed opinion to be made regarding property rights.

Unfortunately, no matter how diligent the property research is when determining if easement rights are needed, keep in mind that a title search will still be essential — in those hopefully rare cases — when legal action is required. Having real estate specialists, researchers, land agents, attorneys and other professionals help navigate it all can make utility projects requiring the acquisition of easement rights more successful. ⚡



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