



אלי גבול

The declaration of Government Property
around the settlement of 'Eli' On 3/30/2017

January 2018



המנהל האזרחי לאזור יהודה ושומרון
הממונה על הרכוש הממשלתי

الإدارة المدنية لمنطقة יהودا والسامرة
المسؤول عن الاملاك الحكومية

אדמות מדינה
אין להסיג גבול

اراضي دولة - ممنوع التعدي



On March 30, 2017, Yossi Segal, an official in the Civil Administration responsible for 'abandoned government property' in the West Bank, signed a declaration titled 'Eli - Palgei Mayim and Giv'at Haroeh - Declaration of Government Property.' The declared territory includes 977 dunams within the area between the cities of Ramallah and Nablus - land belonging to the four Palestinian villages of: Sinjil, Qaryut, As Sawiya, and Al Lubban ash Sharqiya.

The declaration had two objectives:

1. To retroactively legalize the illegal outpost of Palgei Mayim and the access road to the outpost of Givat Haroeh.
2. To prepare the legal basis for the future expansion of the settlement of Eli and its surrounding outposts.

This document is devoted to an in-depth analysis of how the Civil Administration's land survey team (which is responsible for locating and mapping land to be designated state land), drew the lines defining the current declaration of Eli. To accurately map territory that Israel considers 'state land' in the West Bank, there appears to be vast importance in its near exclusive allocation to settlers, while maintaining that it doesn't harm the private property of Palestinian residents. This issue recently made headlines when Ha'aretz reported that Attorney General Mandelblit approved a plan to allow for the expropriation of private Palestinian-owned land on which settlements were built, on the condition that the expropriation was made mistakenly, in 'good faith.'

We would like to emphasize that the very focus on the detailed manner in which the survey was carried out in preparation for the declaration, does not imply that Kerem Navot recognize the legitimacy of the practice of declaring state land. This is an illegal practice based on a manipulative interpretation of the Ottoman Land Law (1858), which aims to circumvent the system of registration of land ownership that was acceptable until the occupation of the West Bank in 1967, and its implementation in large swaths of the West Bank.

That being the case, in this document we question the legitimacy of the current declaration, and the degree of 'good faith' behind it, based on work methods and principles that were allegedly supposed to guide the land survey team as it mapped the boundaries of 'state land.'



Declaring state land in the West Bank

The State of Israel's mechanism for declaring state land was invented in the early 1980s, after the High Court of Justice rejected the practice of seizing land for security purposes in order to establish settlements (as seen in the case of Elon Moreh). State land was predominantly declared during the 1980s and early 1990s, on the basis of aerial surveys conducted by a team led by Attorney Plia Albeck. These were intended to examine the degree to which land was cultivated, and decide accordingly whether or not it was 'state land.'¹ Over the years, over 655,000 dunams have been declared state land in Area C, to date. The procedure for declaring state land has been used in recent years to retroactively legalize illegal building blocs in settlements and outposts, among other things. The State seized the opportunity to add large swaths of land intended to allow for future expansion.²

Cultivation that grants land rights

Article 78 of the Ottoman Land Law states that an individual who has cultivated land for ten consecutive years without an appeal is entitled to continue doing so ('tasarruf').³ However, this law does not specify the type of agricultural cultivation that grants this right. The law reflects the interest of the Ottoman state, which wanted to encourage people to cultivate land in order to maintain its tax revenues. The British Mandate authorities, followed by the Jordanians, defined agricultural cultivation as 'reasonable cultivation,' in other words, cultivation adapted to the conditions of the cultivated area. Thus, if the soil is rocky, the gauge for reasonable cultivation does not require the clearing of stones, but rather agricultural use of the arable patch of soil. In contrast, the Israeli interpretation of the concept of 'reasonable cultivation' is much more stringent and lacks any previous legal basis, according to which it entails cumulative cultivation of over 50% of the area of each plot, regardless of the type of land. If the total cultivated plot comprises less than 50%, the entire plot is considered state land.⁴

¹ Kerem Navot wishes to thank Hagit Ofran of the Peace Now Settlement Watch team, who assisted in obtaining information required for the composition of this report.

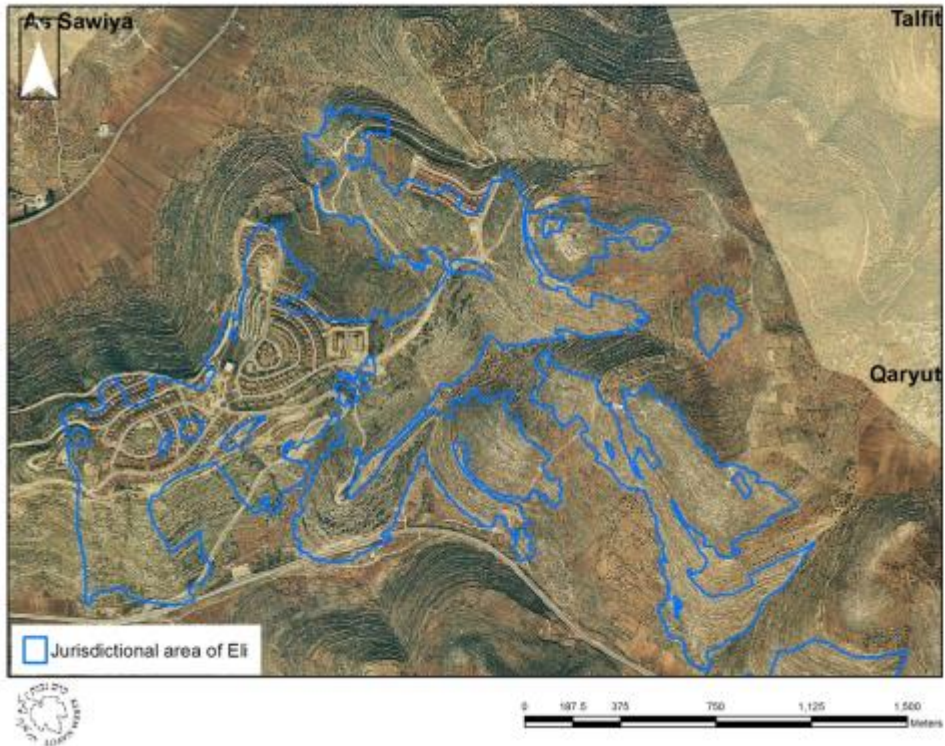
² For this matter, see 'Under the Guise of Legality: Declarations of state land in the West Bank,' B'Tselem Report, March 2012, http://www.btselem.org/english/publications/summaries/201203_under_the_guise_of_legality

³ In June 2011, the state declared an area of 815 dunams east of the settlement of Talmon, to authorize the outpost of Harasha among other things, which sits on territory encompassing approximately 60 dunams. In April 2014, the state declared an area of 1,000 dunams to be state land, among other reasons to authorize the outpost of Netiv Ha'avot, which spans some 80 dunams. In August 2014, the state declared another 4,000 dunams west of Bethlehem as a "punitive measure" for the kidnapping and murder of three students in June of that same year. In March 2016, the state declared 2,342 dunams south of Jericho to be state land.

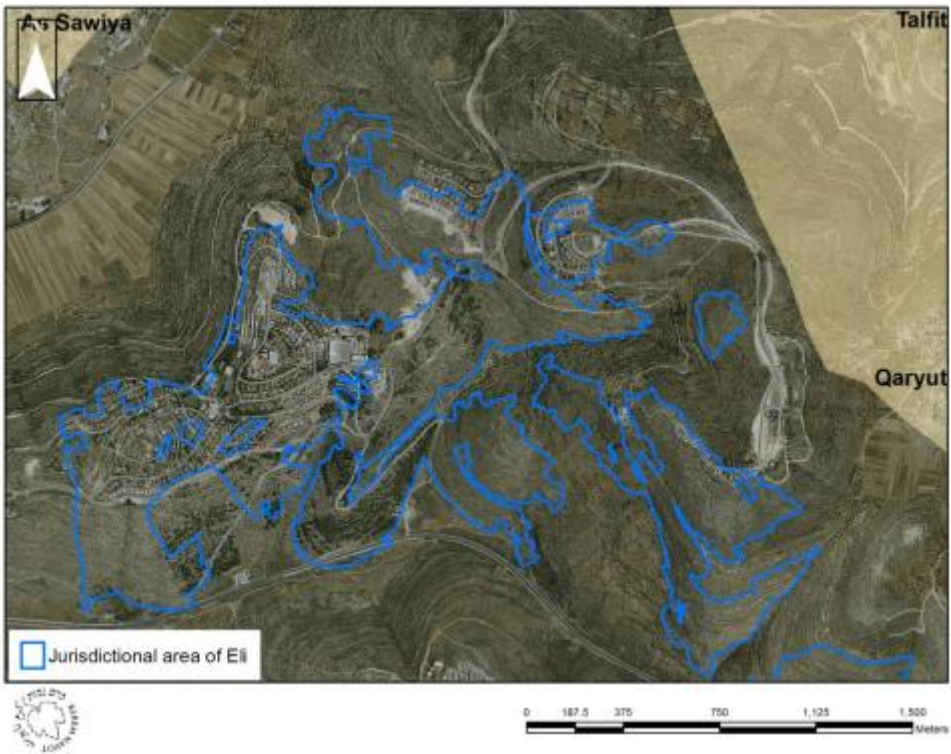
⁴ The term 'tasarruf' entails that individuals have a right to cultivate certain territory while full ownership over the land - rakba - remains in the hands of the State.

The settlement of Eli - general background

The settlement of Eli was established in 1984 east of the old route of Route 60, which connects the cities of Ramallah and Nablus. Today (mid 2017), some 4,200 residents live in the settlement, most of whom belong to radical-fundamentalist settler movements. Several outposts have been built around the settlement of Eli since the late 1990s: Nof Harim, Palgei Mayim, Hayovel; Givat Haroeh was built on the other side of Route 60. These outposts, with 'neighborhoods' added or entrenched over the decades, significantly increased the span of the settlement and greatly reduced Palestinian landowners' ability to access their land around the settlement.



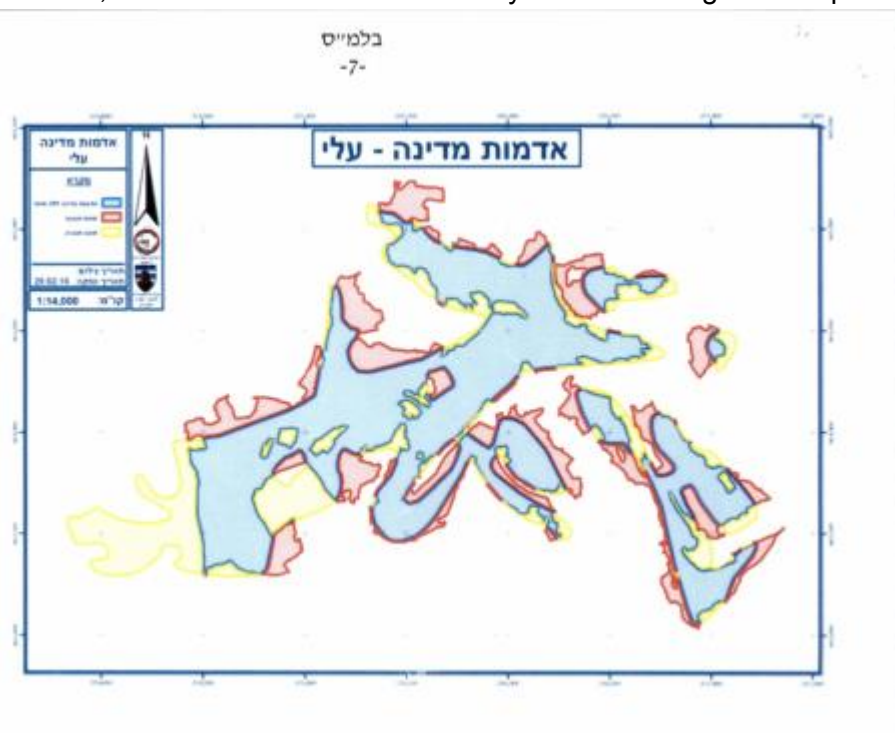
An aerial photograph of Eli in 1997



An aerial photograph of Eli in 2016

To our knowledge, since the establishment of the settlement Eli, its area of jurisdiction has been amended twice. The first amendment was dated June 20, 1992, and was drawn on the basis of declarations made in the early 1980s by the team led by Attorney Albeck. The second amendment was based on the work of the Civil Administration's Blue Line Team, and was signed on July 29, 2012.⁵ The Blue Line team worked on the site following petitions filed from 2005-2011, in which the state was required to stop construction on both private and state-declared land.

In this context, it is worth noting that a master plan was never approved for Eli, and construction was based on building permits issued illegally (apparently by the Binyamin Regional Council).⁶ Following the Blue Line Team's work, the state began a gradual process of retroactively authorizing settlements, and the declaration at hand is yet another stage in that process.



A map of state land published by the Civil Administration on February 29, 2016

⁵ The sources of this interpretation are surveys conducted by Israel in the 1960s on land in the Galilee, to Judaize the area that lies within the sovereign territory of the State of Israel. See Jeremy Forman, 'A Tale of Two Regions: Diffusion of the Israeli "50 percent rule" from the Galilee to the Occupied West Bank,' *Law and Social Inquiry* 34, 3 (Summer 2009), pp. 671-711.

⁶ For a report on the Blue Line Team's work see 'Blue and White make Black: The Blue Line Team's Work in the West Bank,' November 2016, <http://www.keremnavot.org/blueandwhitemakeblack>

⁷ See an article by a resident of the settlement of Eli, Netanel Elyashiv, who describes the method: 'To Marry the Mistress,' 26.3.3012, <http://www.nrg.co.il/online/1/ART2/350/355.html>

Following the Blue Line Team's work, since 2012 the settlement's area of jurisdiction is approximately 2,380 dunams. Yet Eli's actual area is determined by the construction line in the settlement and the peripheral road system that Palestinians are not permitted to enter. This brings to light that the connection between the Blue Line, or 'state land' on site and the actual area of the settlement, is very flimsy and in fact sprawls over 4,400 dunams.⁷

With the neighboring settlements and outposts - Shiloh and its outposts, Ma'ale Levona, and Givat Harel - a bloc of tens of thousands of dunams of land has been created in which settlers do as they please, though only a small portion has been officially allocated to them by Israeli authorities.

Outposts surrounding the settlement of Eli

Eli was founded on land belonging to the Palestinian village of Jabal Rahawat (600 meters above sea level), whose land is shared by residents of the villages of As Sawiya and Al Lubban ash Sharqiya. In the first decade following its establishment, the construction of its physical nucleus was completed. In the second half of the 1990s, the settlement began to sprawl through a system of roads and outposts built on the surrounding hills. As a result of a concentrated and well-subsidized effort, within a few years the area of the settlement grew by thousands of dunams in practice, including large swaths of land that had previously been cultivated by Palestinians from adjacent villages (primarily cultivation of field crops and olive groves).

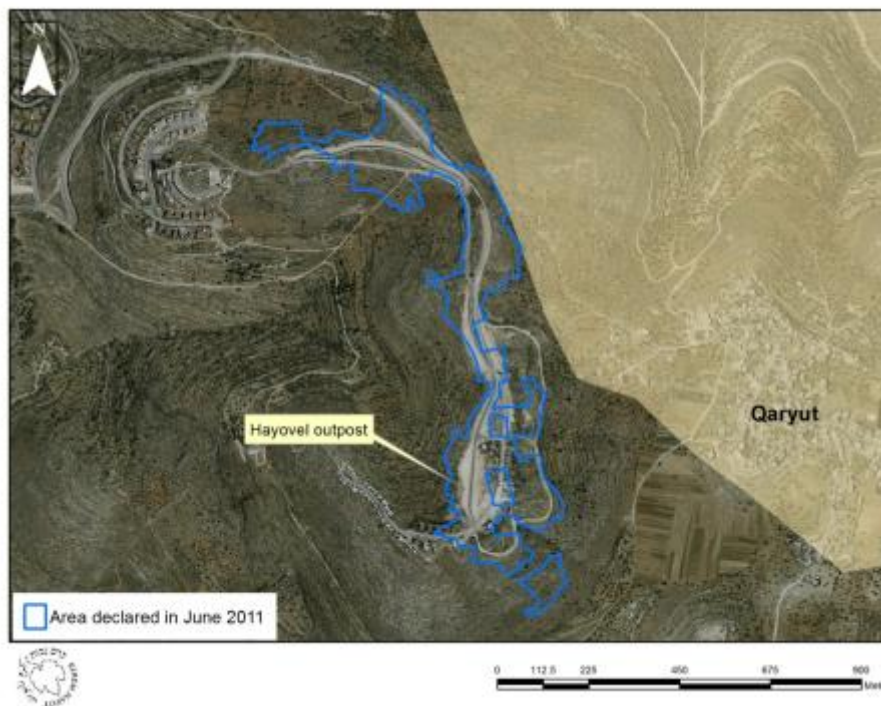
In the second half of the 1990s, the outposts of Nof Harim and Hayovel were built on land belonging to the village of Qaryut, one kilometer and a half east of the nucleus of the settlement. In 1999, an outpost was built on a hill about two kilometers north of the nucleus of the settlement, on land belonging to the village of As Sawiya. At the end of 2002, the outpost of Givat Haroeh was established south of Route 60 on land belonging to the village of Sinjil, over a kilometer from the nucleus of the settlement. This outpost technically belongs to Eli, though physically detached and distant (and in fact closer to the settlement of Ma'ale Levona).

⁷ Chaim Levinson, Civil Administration: At least 166 homes in Israeli settlement built on private Palestinian land,' Ha'aretz, January 28, 2013, <http://www.haaretz.com/israel-news/at-least-166-homes-in-israeli-settlement-built-on-private-palestinian-land.premium-1.496872>

Declaration in the area of the outpost of Hayovel, dated June 26,

In July of 2005, the Peace Now movement petitioned the High Court of Justice against 12 structures built by the Amana settlement movement in the outpost of Hayovel (HCJ 9051/05). Although the state, in its initial response to the petition, undertook to demolish structures that were illegally constructed, it later withdrew and decided to legalize the outpost. A few

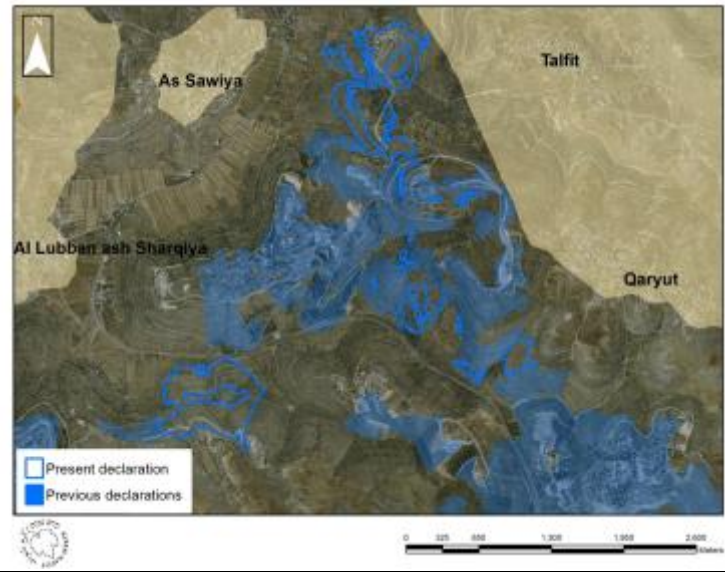
years later, in early 2009, the settlers began building another access road, which was supposed to connect the center of the settlement to Hayovel. Following an urgent petition (HCJ 2759/09) submitted by the villagers of Qaryut, construction was halted prior to its completion, and settlers were forbidden from using it. Following these two petitions, on June 26, 2011, the state declared 189 dunams in the area to be state land, with the aim of authorizing the road and the outpost of Hayovel.⁸



189 dunams declared state land on June 26, 2011 to authorize the outpost of Hayovel

⁸ Both petitions were merged in the hearing before the High Court of Justice. They were rejected in August of 2014, but the High Court ordered the state to enforce all stop-work and demolition orders issued for work on privately-owned Palestinian land.

The declaration from March 30, 2017



977 dunams declared state land on March 30, 2017

The current declaration is the second state declaration regarding the settlement of Eli in the past six years. This fact indicates the great importance attributed to Eli by architects of the settlement enterprise, in developing the area between the cities of Ramallah and Nablus. From a broad geopolitical perspective, it is clear that Eli's growth and establishment is further evidence that recent Israeli governments have no intention of allowing the establishment of a contiguous Palestinian state in the West Bank.

Palestinian villages harmed by the declaration

As noted, the declaration itself includes 977 dunams, divided into 18 sections spanning the lands of four Palestinian villages:

- As Sawiya - 390 dunams
- Al Lubban ash Sharqiya - 240 dunams
- Sinjal - 178 dunams
- Qaryut - 169 dunams

Objectives of the current declaration

The 977 dunams included in the declared territory are divided into three main sections and a fourth smaller area. The location of the four sections indicates the goals of those who drew the map of declarations:

1. 393 dunams were designated to authorize the outpost of Palgei Mayim and take over territories that connect it with the center of the settlement of Eli.
2. 163 dunams were intended to create contiguity between Hayovel and the southern part of Eli, as well as between Hayovel and the settlement of Shiloh.⁹
3. 410 dunams were intended to create contiguity between the outpost of Givat Haroeh, Route 60, and Eli, although Givat Haroeh is not included in the territory of the current declaration.¹⁰
4. 11 dunams are intended to entrench the outpost of Nof Harim.

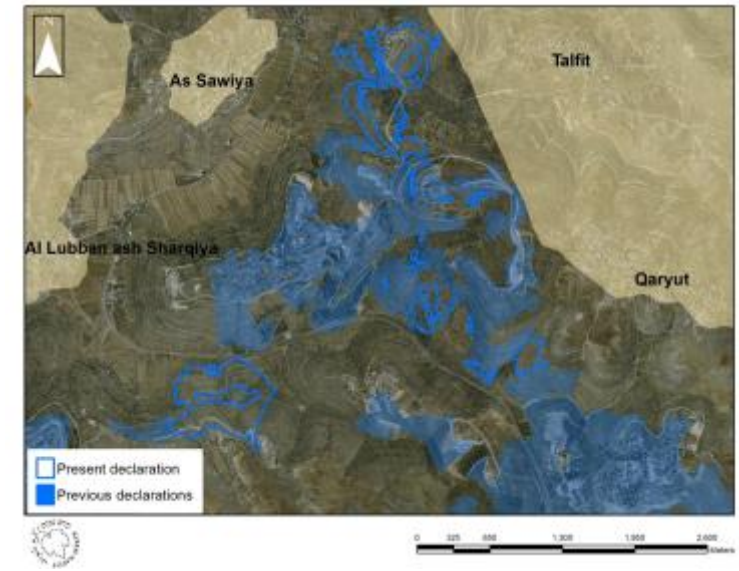
The work of the land survey team - the jigsaw puzzle method

As stated, the land survey team is responsible for locating and mapping new territories that the state wishes to declare state land. In order to understand the logic that guided the team in choosing places that were declared around the settlement of Eli, the present declaration should be examined against the background of previous declarations in this area. As such, the main characteristic of the current declaration is the attempt to complete parts of the jigsaw puzzle that will create geographic contiguity and prevent, as much as possible, a situation (often through settlements whose territory was declared state land) in which there are enclaves of state land but no legal means of access.¹¹ Indeed, an examination of all 18 sections that comprise the declaration, indicates that all of them were drawn in such a way that they would interface in at least one direction with sections previously declared, to create continuity.

⁹ Settlers have been trying to take over land in the Jabal Tantur area of the village of Qaryut for over a decade, to create continuity between the two settlements.

¹⁰ The declaration includes the road leading to the outpost of Givat Haroeh, which was paved privately approximately two years ago and was intended to replace two older roads that were blocked by an order from the High Court of Justice as they were built on privately-owned Palestinian land.

¹¹ Regarding the phenomenon of the contiguous jurisdictional areas of the settlements, see 'Blue and White make Black' (supra note 5), p. 31.



A jigsaw puzzle of sections included in the current declaration, entwined with previously declared sections

"God is in the details"

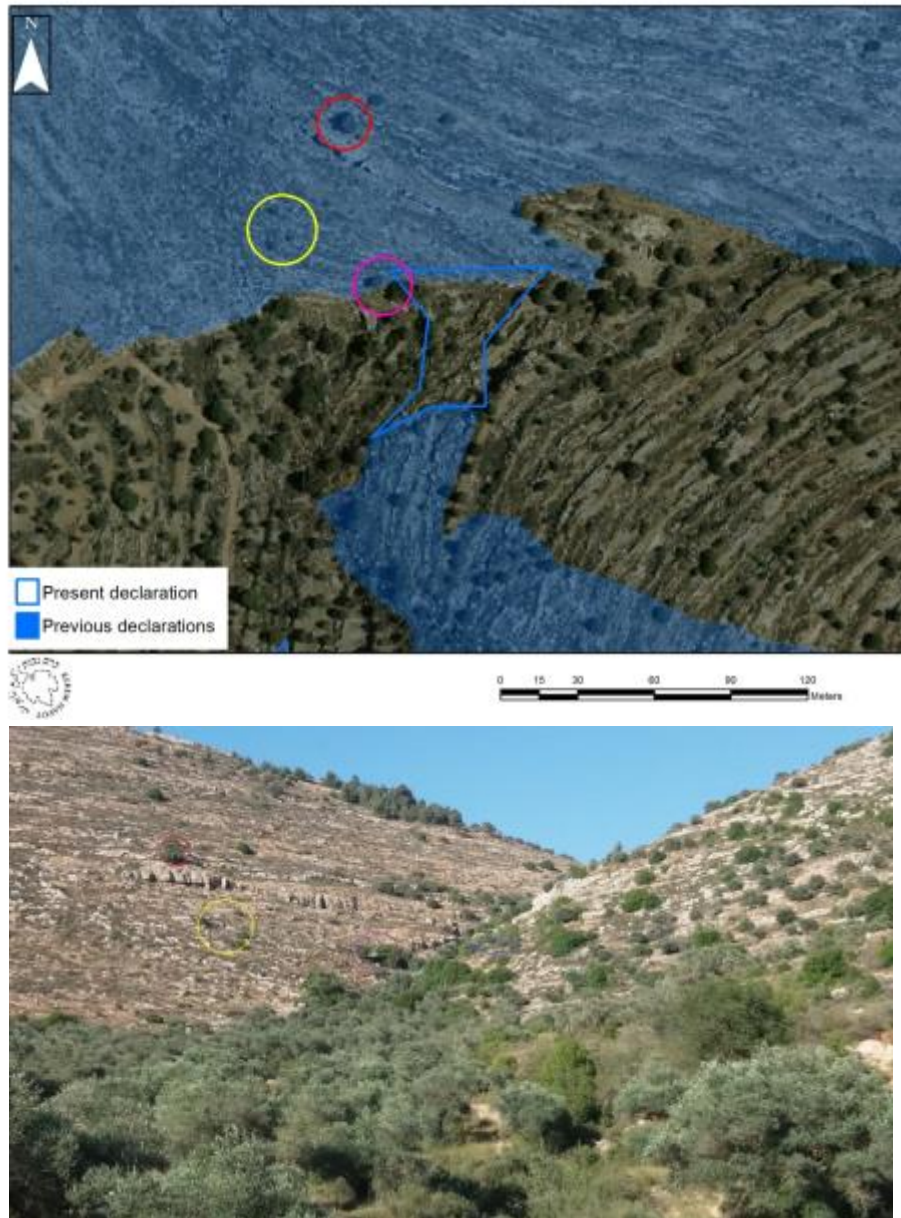
When the declaration includes a large number of sections of varying sizes, it is worth paying attention to the small sections, first and foremost. Particularly the sections that connect the two larger sections, as their inclusion indicates that they were of particular interest. These sections are sometimes used as bridges to connect larger sections, or as patches intended for annexation of small enclaves not included in previous declarations. The aerial photograph of the declared section around the outpost of Hayovel, depicts how small segments are used for both these functions.

In addition to these smaller sections, there are larger sections whose function is to prepare the statutory infrastructure for future expansion of settlement construction.

"Bridging" between two previously declared sections

Aerial and ground level photographs depict the area included in the current declaration (approximately 1.9 dunams).

To assist in identifying the site, we circled trees that can be easily identified in both photographs. Each tree is marked with a special color in both photographs for visibility. The arrow on the ground level photograph marks the 'bridge' marked in blue in the aerial photograph. The ground level photograph depicts how the land survey team ignored the fact that there are olive trees in the wadi, so that it could create continuity between two previously declared sections.



Name of the game: preventing access - 'hovra' - declaration

(Hovra' is the process of turning cultivated land into fallow unworked land)

An examination of all 18 sections included in the declaration indicates that significant portions were previously cultivated. In order to assess how things evolved over time, we examined the state of land cultivation in 1980 (four years before the establishment of the settlement) and again in 1999, 15 years after the establishment of the settlement, when the process of establishing outposts in the area was still in its infancy.

Aerial photographs from these years indicate that in 1980 over half of the area included in the current declaration was cultivated, and in 1999 over one third was still cultivated.¹²

Area cultivated in 1980	Area cultivated in 1999
517 dunams	358 dunams
53%	37%

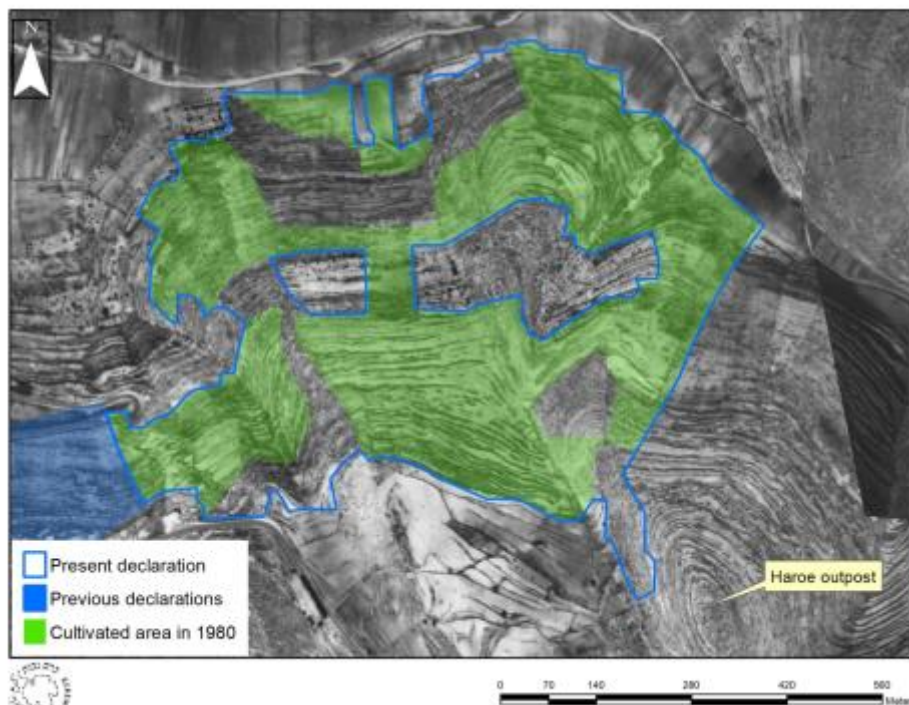
In the following pages, there appears to be a direct link between the expansion of the settlement and Palestinian landowners' ability to access and cultivate their land.

¹² It can be asserted with a high level of certainty that the percentage of cultivated land in 1980 was even greater, as the aerial photograph in our possession does not include the eastern part of the area that was declared around the outpost of Palgei Mayim, which was visibly cultivated in 1999.

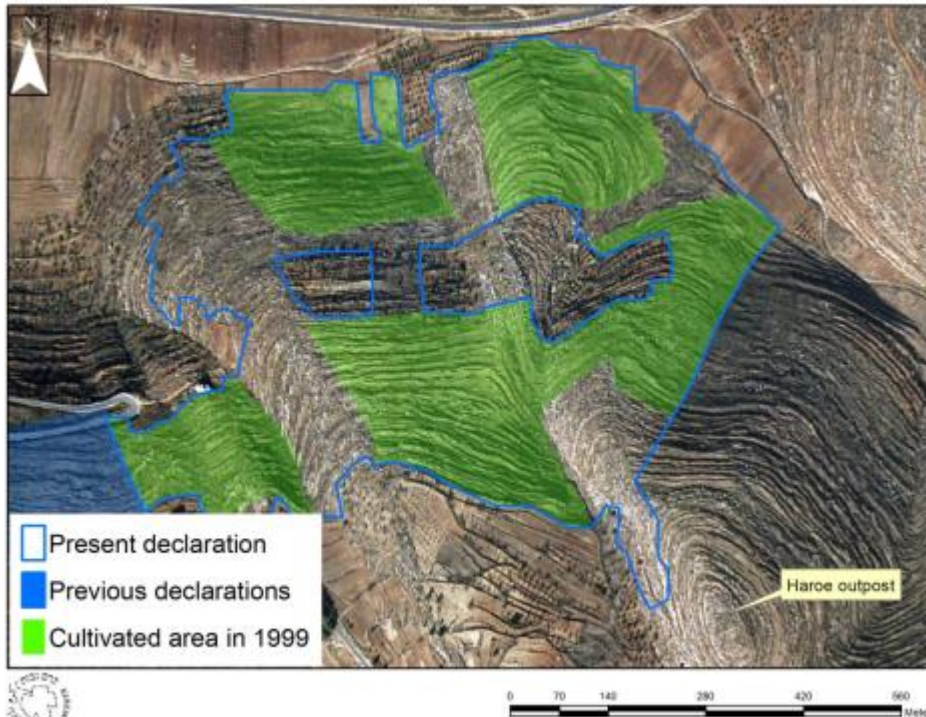
A detailed analysis of the land survey team's work in the three

The Givat Haroeh outpost

As mentioned, 410 dunams were included in the current declaration to create continuity between Givat Haroeh and Route 60. An aerial photograph from 1980 indicates that most of the incline (380 dunams) was cultivated. An aerial photograph from 1999 indicates that several parts were not cultivated, but most of them (265 dunams) were still being worked. It should be noted that even in this case within the declared bloc, there are two enclaves that were excluded from the declaration. Experience from many similar places indicates that if there's construction on site, access to these enclaves will also be blocked.

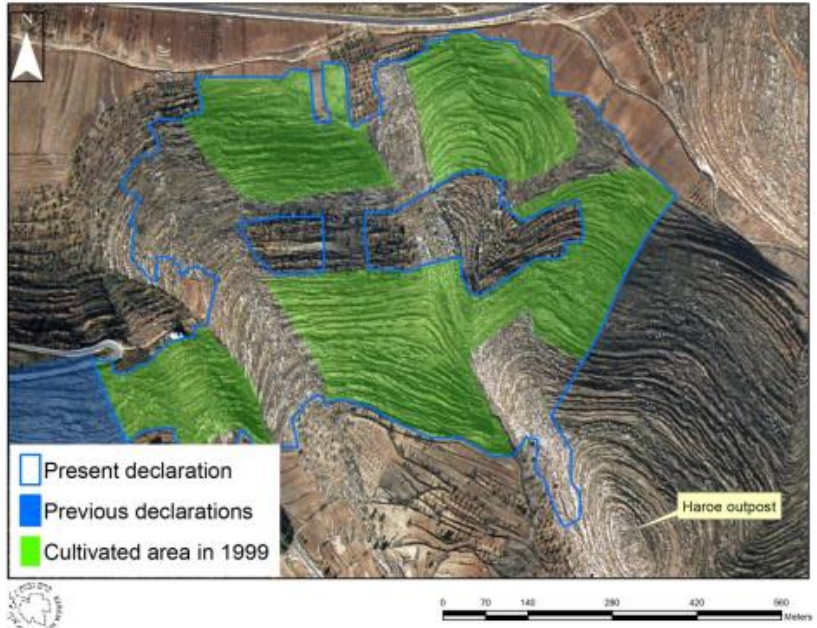


Givat Haroeh 1980

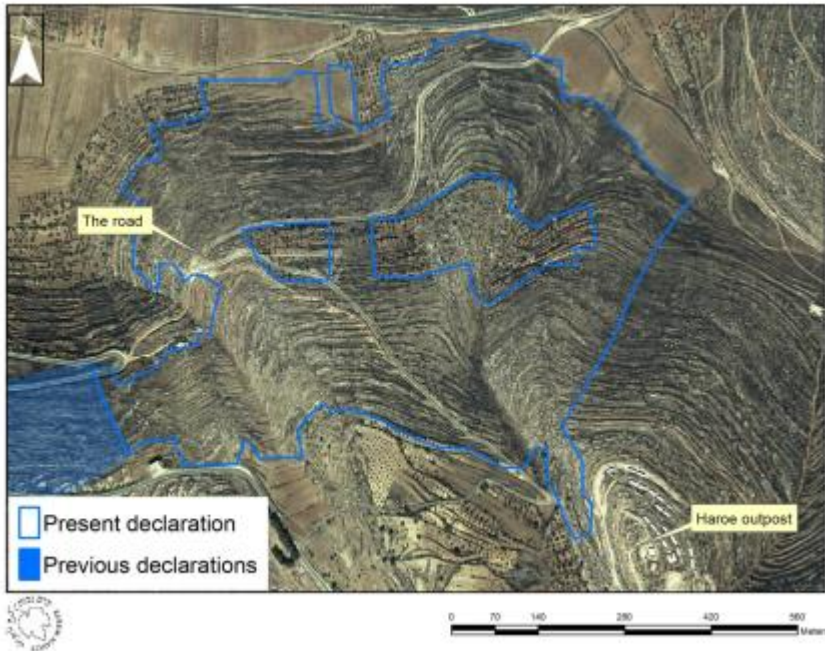


Givat Haroeh 1999

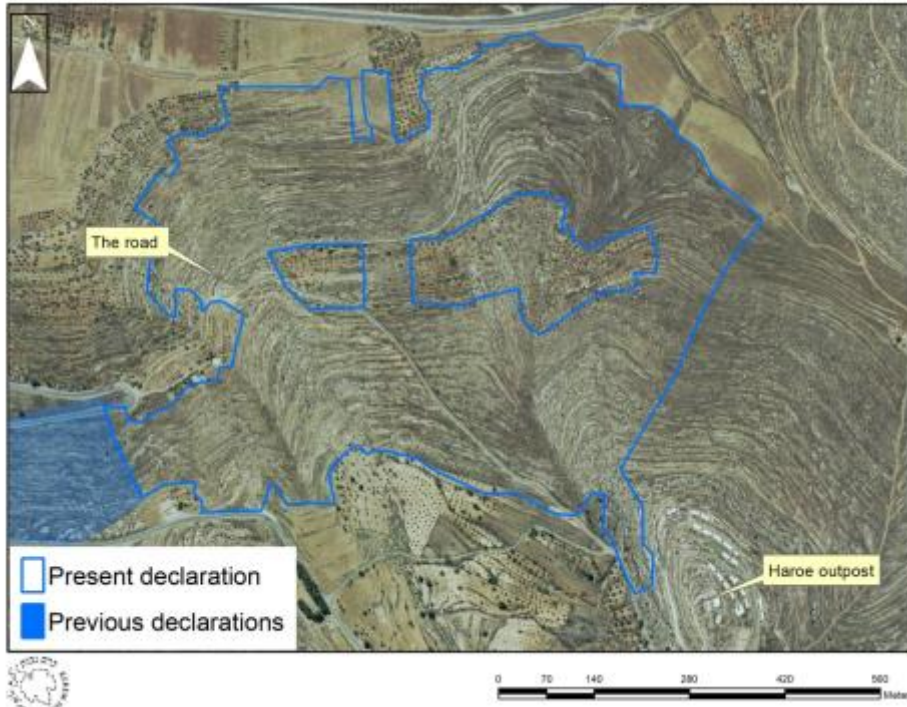
The year 2002 was a fateful year in this area, upon which work began in establishing the outpost of Givat Haroeh, inasmuch as a road was built connecting the outpost to Route 60. Building the road up the steep winding incline and establishing the outpost brought about increased restrictions on Palestinians' access to their land, naturally accelerating 'hovra' while paving the way for the current declaration. The next sequence of aerial photographs indicates that 'hovra' in this area took about a decade, over the course of which Palestinian landowners tried to hold on to their land until they were completely dispossessed.



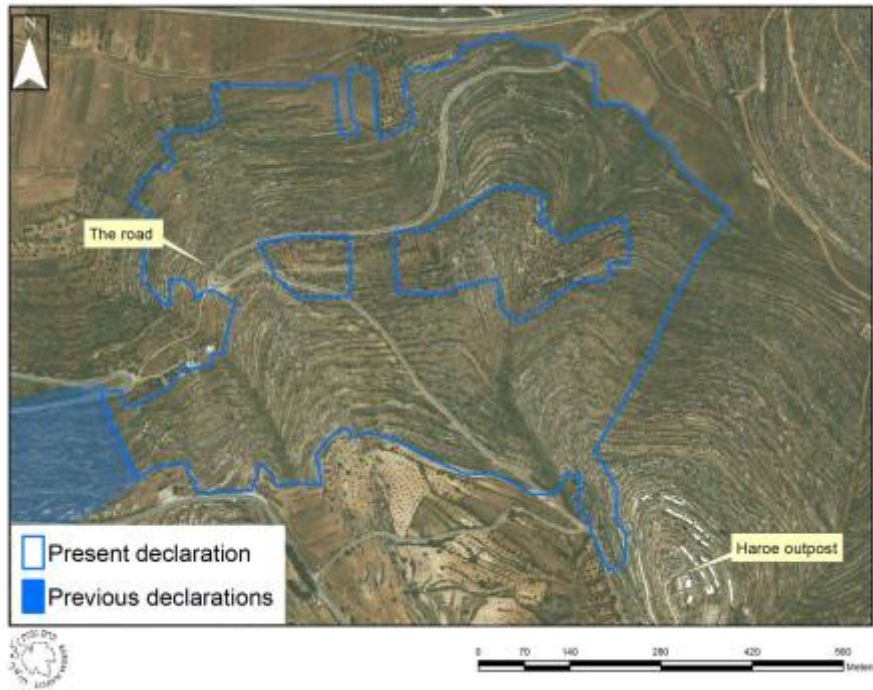
Givat Haroeh 2002



Givat Haroeh 2005



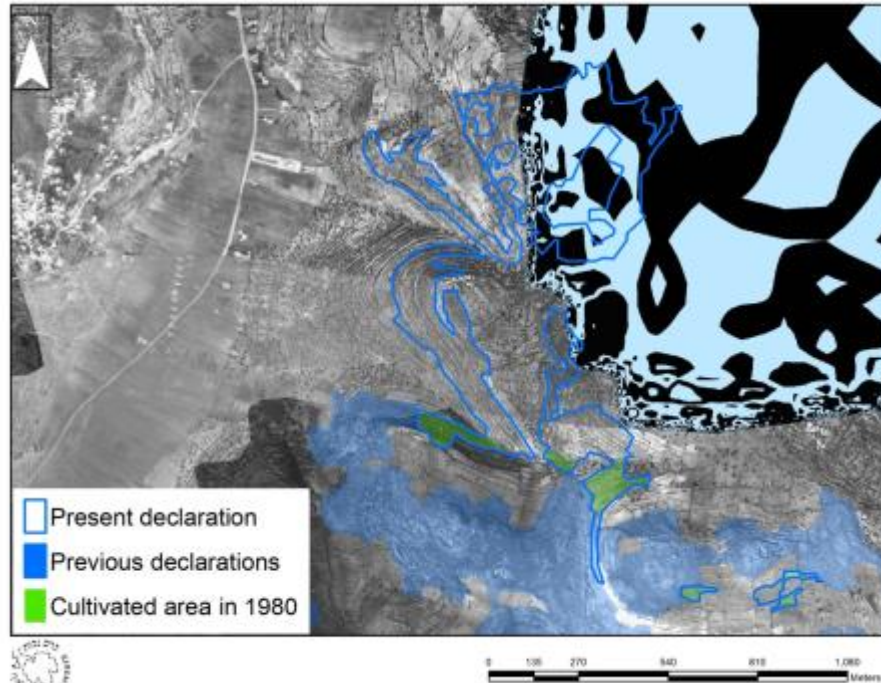
Givat Haroeh 2008



Givat Haroeh 2010

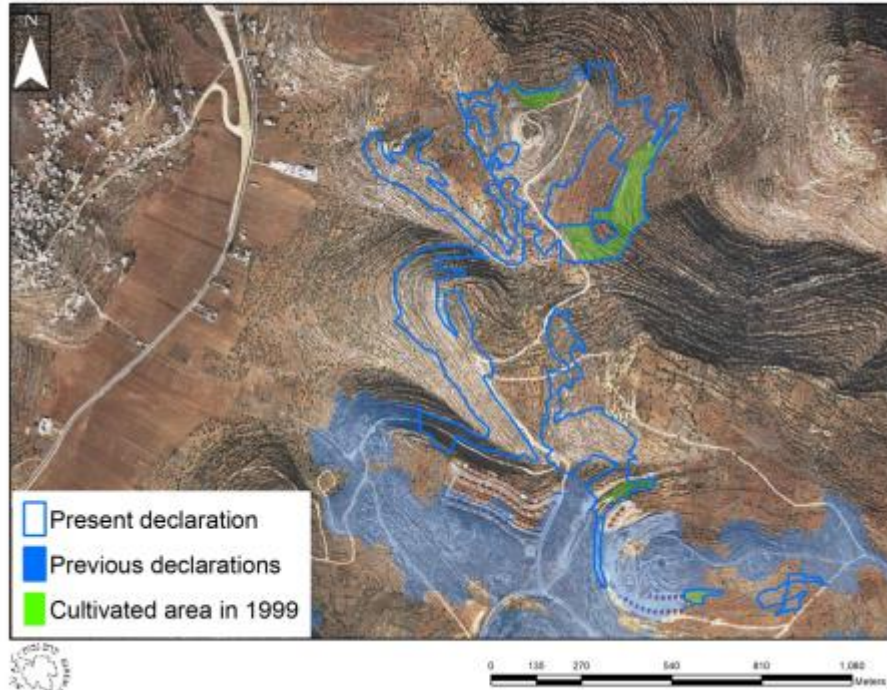
The Palgei Mayim outpost

223 dunams are included in the area declared adjacent to the outpost of Palgei Mayim. In an aerial photograph from 1980 this territory appears only in part. As such there's no way of determining which area was cultivated. Yet in an aerial photo from 1999 it's visible that the eastern incline, and part of the northern slope that was included in the declaration from March of this year, clearly indicate that the total area of field crop cultivation encompasses 43 dunams.¹³



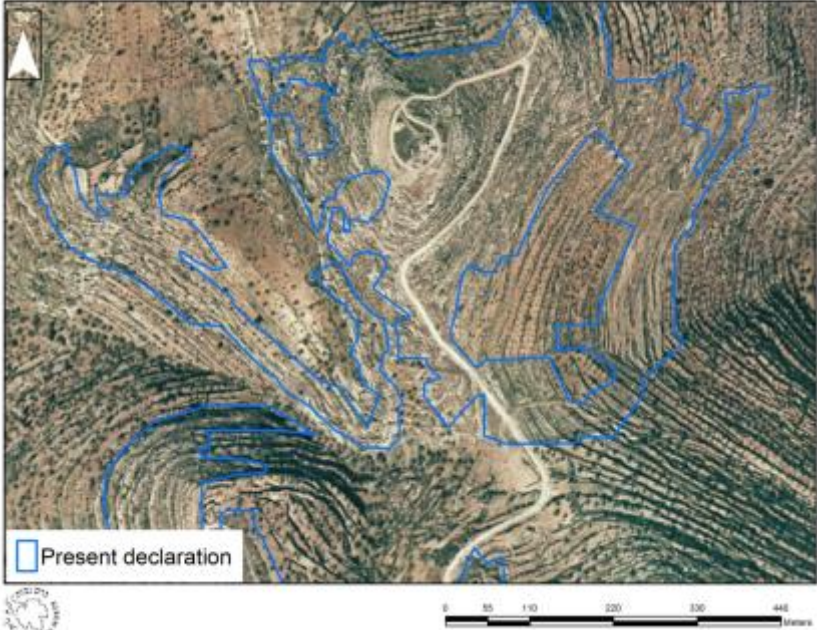
Palgei Mayim 1980

¹³ It is thus highly likely that these areas were also cultivated in 1980.

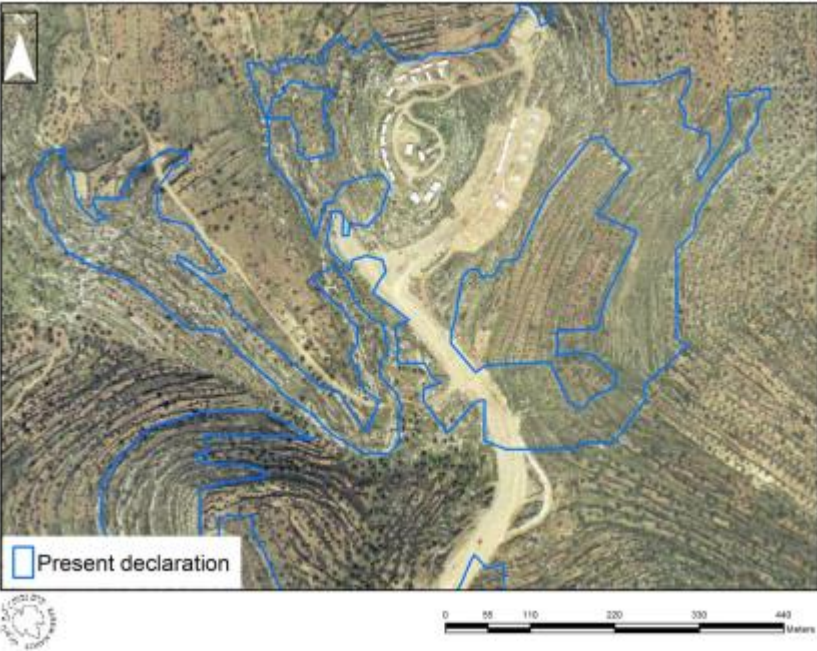


Palgei Mayim 1999

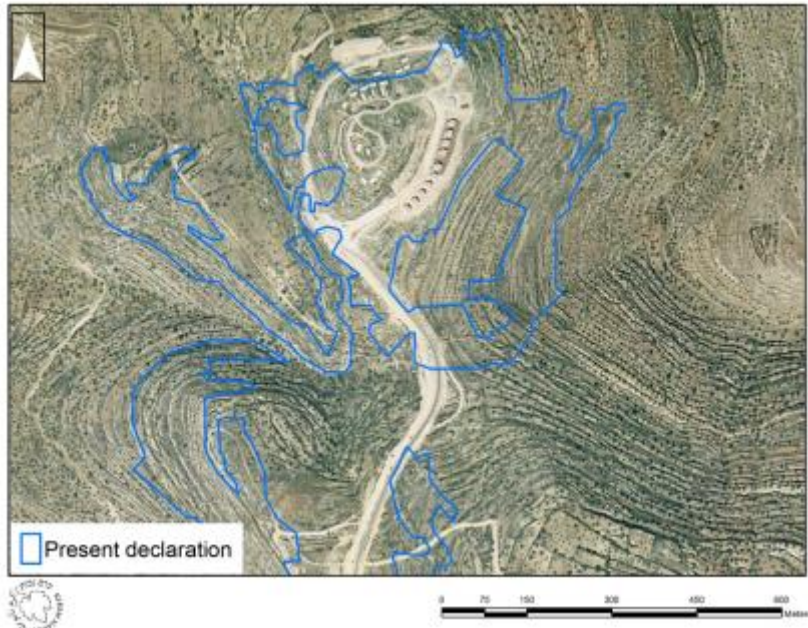
An examination of aerial photographs from 2001-2004 depicts how the development of the outpost of Palgei Mayim during the initial years of the Second Intifada (which was an important milestone in many Palestinians' ability to reach their lands near settlements), led to reduced cultivated of these sections, which have now been included in the declaration.



Palgei Mayim 2001



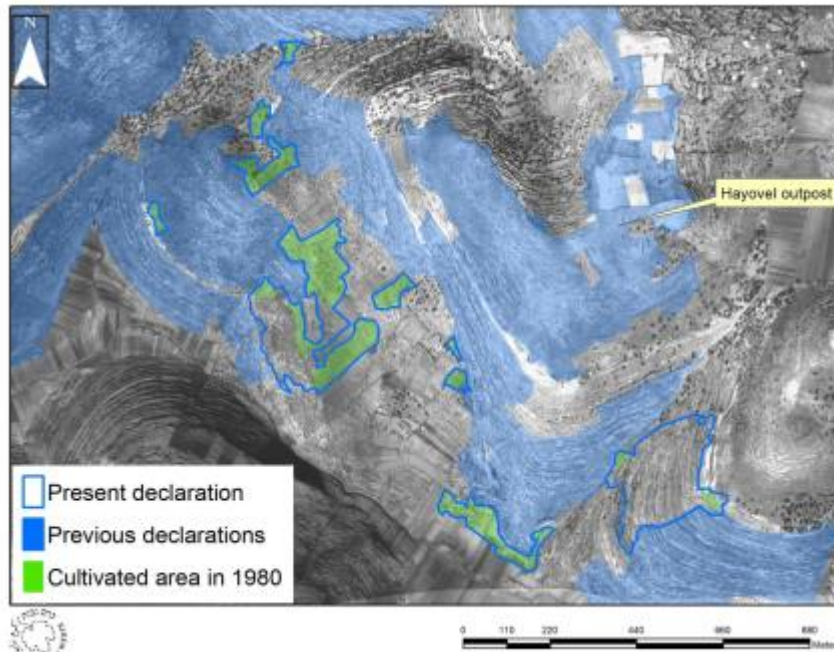
Palgei Mayim 2003



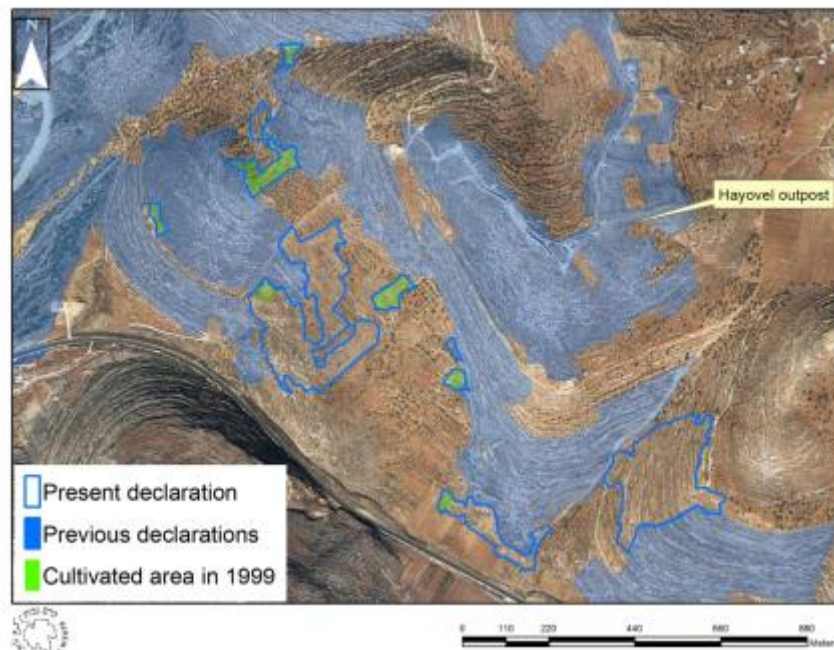
Palgei Mayim 2004

Hayovel outpost

As noted, 163 dunams of the current declaration are scattered throughout the outpost of Hayovel. Of the total area, in 1980 approximately 95 dunams were cultivated, and in 1999 about 36 dunams were still being cultivated.

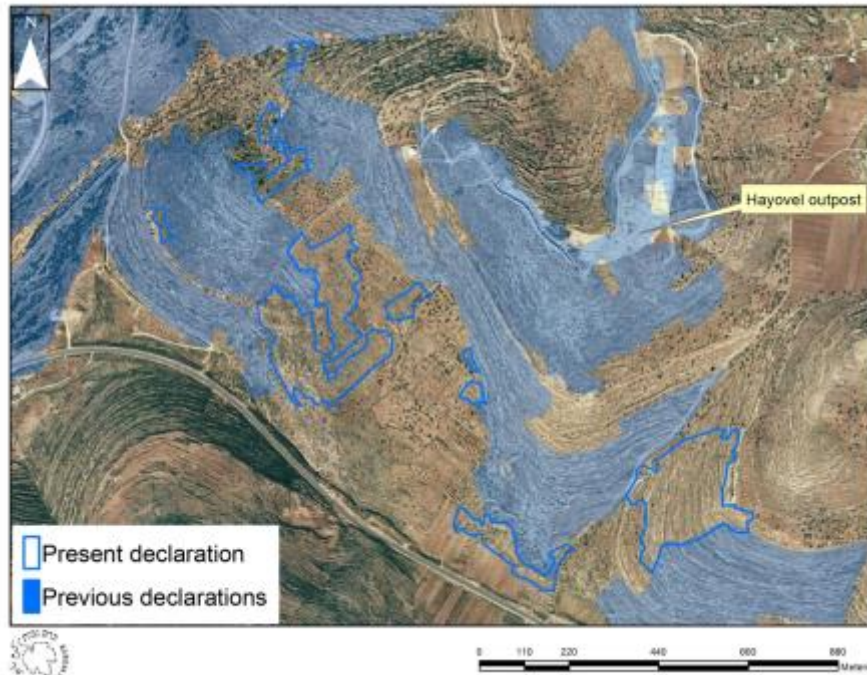


Hayovel 1980

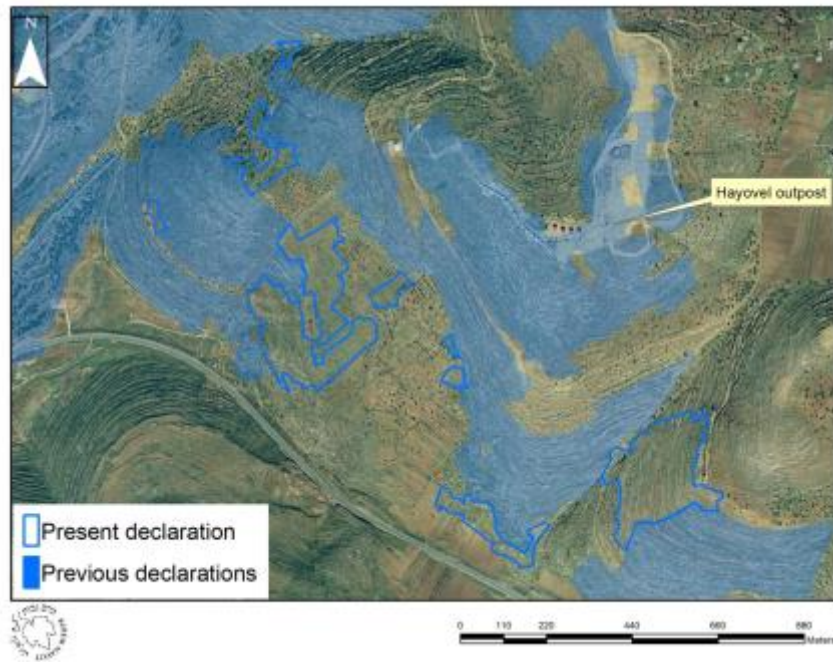


Hayovel 1999

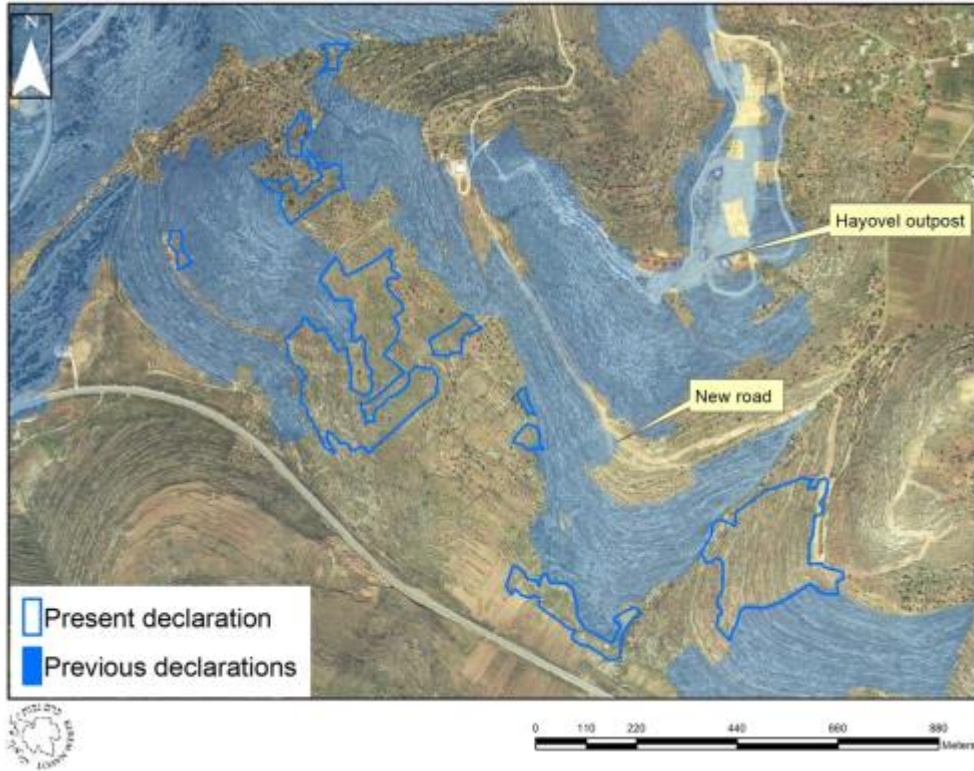
The land on the incline southwest of Hayovel also shows how the process of 'hovra' was accelerated as a result of the expedited expansion of the outpost, which began in 2001 and included the creation of a system of dirt roads from the years 2003-2004. This road system is what enabled local settlers to prevent Palestinians from accessing their land.



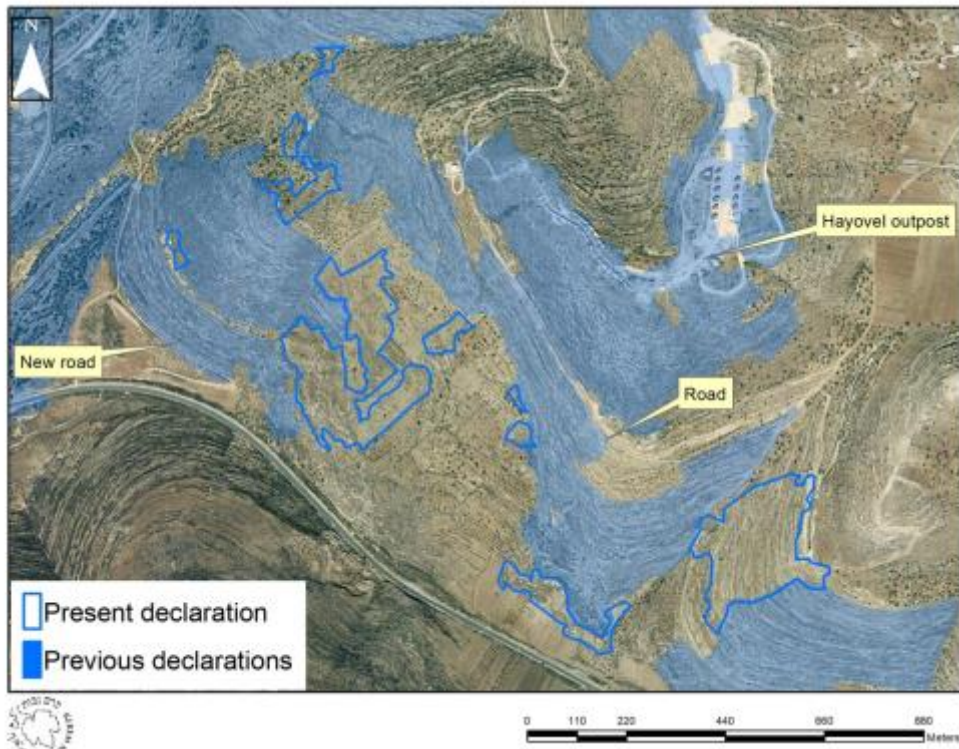
Hayovel 2001



Hayovel 2002



Hayovel 2003



Hayovel 2004

Summary and Conclusion

Aerial photographs from the area of the settlement of Eli, indicate that in 1984, before its establishment, over half of the areas included in the March 30, 2017 declaration were cultivated, and over one third remained cultivated 15 years following its establishment. In the late 1990s, a well planned and budgeted initiative furthered by the state and local settlers, aimed to take over large areas around Eli. This plan included building roads and outposts on the surrounding hilltops and severely restricted Palestinian landowners' ability to access and cultivate their lands. The outbreak of the Second Intifada in late 2000 was also a significant milestone in everything related to Palestinian landowners' ability to access and cultivate land near settlements and outposts in general, particularly surrounding the settlement of Eli.

Prevention of access had a decisive effect, first and foremost, on field crops that require meticulous and ongoing cultivation, and naturally also on free and secure access. The cumulative effect of preventing access was waning cultivation of the territories, which paved the way for declaring them state land. In contrast, the olive groves surrounding the settlement, which are harder to conceal even after years of preventing their owners from reaching them, were excluded from the current declaration. In the meantime, the state continues to recognize (primarily through lip service) their owners' possession of them.

It is clear, therefore, that in this case the land survey team acted with extreme lack of good faith through cynical exploitation of a reality in which Palestinians were denied access to thousands of dunams of land around the settlement of Eli and its outposts, for many years. Prevention of access to these areas inevitably impeded their cultivation and paved the way for their declaration as state land, and their annexation to the settlement of Eli and its future outposts.