



## 2020 CASE STUDY

This is a middle of the country regional land trust with a wildlife preserve trespass. A local business hosted a motor cross Fest. Neighbors to the preserve contacted the land trust about hearing heavy equipment and trees toppling on the preserve. Staff visited the site immediately to document and assess the situation. Staff found road bulldozing in process for the Fest. They met with the event organizer on site, who appeared apologetic, cooperative, and asked how to correct their damage. The full extent of the violation took time and outside experts to assess, and the damage to the steep site is extensive. The event organizer stated that they would not use the road for the Fest. Terrafirma suggested that all parties notify all insurers.

### Timeline

- 5/1/18 Land trust staff onsite. The group went to look at a boundary on the east side of the property where they found a survey pin and no apparent encroachment. One member had heard large equipment running. She had also been walking near the preserve in the last few days and noticed a bulldozer and road constructed to the south that went down into the woods. They had concerns that this new road was for the upcoming Fest. After walking part of the newly bulldozed road, it was apparent that the road went well onto the preserve.
- 5/2/18 Staff filed a Terrafirma claim and conducted more documentation and outreach. ORLT Board President and Land Conservation Committee chair notified per policy.
- 5/3/18 Event organizer emailed land trust apologizing, confirming that the Fest would not be held on the preserve, and asking how they could repair damages. Staff thanked her for her cooperation and letting her know that she would be receiving a letter from land trust with a summary of damages and how we plan to proceed.
- 5/14/18 Fest held no problems on preserve.
- 5/23/18 Terrafirma claims call to determine coverage.
- 3/31/20 Counsel receives fully signed settlement agreement and check.
- 4/15/20 Land trust receives check and Terrafirma statement of account.
- 5/1/20 Terrafirma receives repayment of all costs.

After sending the letter mentioned above on 5/3/18, the land trust met resistance from the organizer on paying anything to remediate the severe damage. They wanted to do a fast job with volunteers. The organizer started trying to blame the land trust. Trial counsel engaged and agreed to the Terrafirma rates and guidelines. The land trust obtained an initial site overview and some basic stabilization recommendations from a site expert. A board attorney who is a mediator and litigator is serving as liaison with counsel and Terrafirma. They will meet to negotiate restoration with the organizer. Counsel prepared a formal demand letter with chronology and details plus a draft complaint to inspire better cooperation by the trespasser.

More erosion occurring while they engage in documentation and negotiation. Eventually, the bulldozer operator insurer appeared ready to cover the damage. The issue is how much. Getting to this point took one year. The land trust had to restore the property to prevent erosion and more damage. It took another year to obtain payment of \$100,000 and an acceptable release and settlement agreement with the insurer. The land trust restoration, expert and attorney fees and costs fully paid from settlement. Terrafirma reimbursed in full for what it paid as required in the policy subrogation clause.