

TWO STORIES OF DILIGENCE AND SUCCESS

San Juan Preservation Trust prevails with TerraFirma's help

The San Juan Preservation Trust (WA), with TerraFirma's backing, obtained payment of a \$100,000 settlement from a neighboring landowner who cut a wide swath of conserved trees to get water views for a bed and breakfast. The payment will help replant the trees on a waterfront nature preserve on Fidalgo Island in the San Juan Islands of Washington State.

The nature preserve owned by the San Juan Preservation Trust, a private land trust that protects open space throughout the San Juan Islands, includes a steep slope between the bed & breakfast and the shoreline. The tree cutting removed materially all trees from a one-quarter acre area extending from the top of the bank down to the beach enhancing water views from the establishment. The cuttings damaged important shoreline wildlife habit, destabilized the steep bank by eliminating native vegetation and undermined its natural water drainage patterns. The bed and breakfast advertised to the public substantial water views of Burrows Bay and Puget Sound as part of the accommodations and surroundings available at the Ship House Inn.

The clear-cut property is part of the Preservation Trust's 1.25-mile long "John H. Geary Shoreline Preserve," a 38-acre collection of 22 contiguous parcels along the west side of Fidalgo Island that was permanently conserved in 1992 by a coalition of neighbors concerned about a proposed development along this steep hillside. The preserve follows Fidalgo's western shoreline beginning north of Sunset Lane, around Edith Point, and then south toward Biz Point. The Geary Preserve is managed as an undeveloped wildlife habitat and scenic view-shed. The SJPT's property runs along the shoreline, and encompasses a steep bank declining to the water.

"No one likes to embark on litigation, but this community worked very hard to protect this shoreline," said Keith Gerrard, president of the San Juan Preservation Trust's Board of Trustees. "We have a responsibility to defend all of our nature preserves in perpetuity, and we won't shy away from that commitment." We were pleased that our insurer, TerraFirma RRG worked with us, and selected our preferred counsel to prosecute an injunctive relief and damage civil action.

According to Mr. Gerrard, "we were happy to report that the settlement was also able to reimburse TerraFirma's litigation costs, as well. By the terms of TerraFirma's insurance policy, the member-based insurer funded the litigation and was entitled to recover those costs. Funds recovered will be used to help fund future legal challenges to land and conservation easements for TerraFirma's member organizations. The Preservation Trust, which has agreed to drop the pending lawsuit, intends to use the remaining recovery (approximately 87.5% of the settlement) to restore lost vegetation, re-stabilize the steep bank, educate upland neighbors about the nature preserve, and implement new strategies to avoid future violations.

There are over three dozen homes adjacent to the Geary Preserve. While some of the neighbors that fought to establish this preserve in 1992 still remain, many of these homes have changed hands. The Trust used some of the settlement funds to increase neighborhood outreach.



Bear Yuba Land Trust vs. Michael Nudelman et al, Case No. CU15-081153, Nevada County Superior Court of California.

A Grant Deed (donation) from Saving Special Places, LLC to BYLT dated December 20, 1999 conveyed 28.23 acres total to BYLT that constitutes the Woodpecker Wildlife Preserve. A portion of Woodpecker Wildlife Preserve is a high elevation and steep sloped forest heavily used by the residents of the neighboring developments for pedestrian recreation. The Preserve is of a mixed forest largely dominated by Ponderosa Pine, incense cedar, Douglas Fir, maple and black oak. Dogwood and a few isolated madrone are also found on the Preserve.

Above and to the south of the Cascade Canal on the Preserve, there are many five to 12 foot high Douglas Fir that will eventually transition the current mixed forest ecology into a Douglas Fir late succession forest. The Preserve provides essential habitat to Pileated Woodpeckers and many other species and is within the winter range for the Nevada City deer herd. Steep erosion cuts are a continual challenge with the site. The slipping land and erosion require continued monitoring and some investment to repair and stabilize.

One of the neighboring house owners, Michael Nudelman, appears to have authorized the cutting of a swath of trees from his house down a steep slope to the seasonal creek gully. The area cut was about .25 acres. The BYLT stewardship team visited the Woodpecker Wildlife Preserve on July 29, 2014 for annual monitoring and discovered several large trees cut down. The fallen trees, left lying in the ravine and clogging the natural stream runoff route, may also be jeopardizing slope stability.

BYLT staff by an exchange of emails dating from July 22, 2013 through December 12, 2013 had previously denied permission to Michael Nudelman to cut down these same trees. These emails are now part of the pleadings. BYLT investigation to date shows that Mr. Nudelman contracted a local tree removal company to fell trees to create a better view for his home. He appears to have cut four large trees (one Douglas Fir and three incense cedar) and knocked down another during the apparent trespass. The trees ranged in age from 110 to 159 years and in diameter at breast height from 14 to 46 inches. The largest was a Douglas Fir that measured 140 feet high with a stump diameter of 50 inches and 13 feet in circumference weighing an estimated three to four tons. All the trees will have to be removed to stabilize the vertical and near-vertical slope. BYLT filed a report with the County Sheriff's office on advice of counsel. The land trust filed a Complaint, answers and cross motions ensued. Mediation was attempted and failed before the first meeting. Discovery ensued and finally after three years of court room drama and trespasser obfuscation, the land trust achieved a settlement and payment of \$37,000.



Solano Land Trust (SLT - CA) (Preserve trespass.) Staff members Sue Wickham and Samantha Penko found excavation equipment and at least four very large open trenches and one trench partially filled in on SLT's King Ranch Property on Monday May 4, 2015 SLT was not contacted by anyone to allow any equipment or personnel to be onsite. Trespasser did not have any monitoring personnel but he was aware that this was California red-legged frog habitat. SLT also noted that endangered butterflies are on site to the ENGEO staff. They need to get the ground fixed before rainy season so we all agreed to an interim step although it is extremely likely to jeopardize payment of costs given external counsel attitude. Standing the ground that this was a deliberate trespass and must be compensated. The land trust did finally obtain a detailed restoration agreement and a substantial payment.

1. **Kongscut Land Trust** (fee simple property with neighbor trespass by dock). The Deed of the Preserve dated November 25, 2008 conveyed the southerly end of Diamond Lake (this is the actual lake bottomland under water) plus a 25 foot wide shoreline buffer and a small parcel south of the swimming beach located in Glastonbury, CT to the Land Trust. The disputes underlying the **Claim** consist of the neighbors', Dr. & Mrs. Schwartz, installation and expansion of the dock on lake bottom land owned by The Kongscut Land Trust, Inc. The boundary of the portion of the Fee Preserve abutting the Schwartz lot is the approximate high water line. First two new developments:
 - a. The neighbor produced a photo of a pre-existing wooden dock that had a low profile to the water and barely extended past the vegetation.
 - b. The land trust confirmed that the neighbor removed that at some point after purchase of the neighbor's lot in the summer of 2012.
 - c. The land trust is confident that the new substantially larger dock did not appear until May of 2013.
 - d. July 2013 they start conversations with the neighbor.
 - e. Summer 2013 at some point the neighbor substantially expanded the new dock that he had previously installed which has a high water profile, is plastic and T shaped extending beyond the vegetation. The T section float has doubled in size since the last photo taken in early July. The dimensions in July were 6'6" x 19'3". The dimensions today are 13' x 19'3", The dimensions of the "stem" connection to the shore are unchanged: 3'3" x 19'3". The original wood dock now removed did not have a T.
 - f. All three photos are in the file.
 - g. October 2 the land trust board meets and votes to require full removal; the land trust attorney gave the neighbor email notice of this and drafted a longer explanatory letter.

Still in process and we hope moving to voluntary resolution. They are working on a solution but the board is very skeptical. KLT is still working on negotiating a compromise resolution. Schwartz's attorney gave KLT a final and best offer which the Board of Directors accepted. We have the signed the final agreement but encountering problems with implementation and payment of the settlement amount. *Did receive full payment of \$6500 payment. Terrafirma portion of settlement received.*