Be prepared; don’t be scared. How Terrafirma helps meet risk.

Six Years of Terrafirma Risk Balancing

Friday October 18 | Session B02 | 1:30 p.m. - 3 p.m.

Carl Silverstein, Executive Director, Southern Appalachian Highlands Conservancy (SAHC)
Sarah Sheeran, SAHC Stewardship Director
Leslie Ratley-Beach, Vice President, Alliance Risk Management Services LLC, Manager for Terrafirma Risk Retention Group LLC, and Conservation Defense Director, Land Trust Alliance

CLE and Qualifies for the Terrafirma risk management discount if senior staff or board attends

#Rally2019

Southern Appalachian Highlands Conservancy

Conserving unique plant and animal habitat, clean water, farmland, scenic beauty, and places for people to recreate in the mountains of NC & TN, for present and future generations.
About Us

- Founded in 1974 - over 75,000 acres protected in the Southern Appalachians
- Service 10-county region in Western NC
- 14 staff members
- Accredited in 2010, Accreditation renewal in 2015 & 2020
- Joined Terrafirma in 2013
- SAHC stewards 165 conservation easements and 78 fee simple properties

Willow Cove CE

- 517 acres of forestland and pasture
- Conservation easement closed in 2008
- Part of contiguous network of protected lands
- Conservation values include: scenic values, open space, diverse forest types, plant & animal habitats, agricultural use, water resources
Timeline - 2017

- Terrafirma claim submitted and coverage approved
- CE landowner does not join SAHC in pursuing violation
- SAHC decides to enforce violation to uphold CE, mitigate future risk of ongoing viewshed maintenance and ensure restoration of cut trees
- SAHC meets directly with encroaching neighbor, Ms. Mullinax, who accepts responsibility
- Stump cruise performed by consulting forester who also assessed restoration costs
  - $2,400 for timber, $1,800 initial restoration costs, 10 year annual upkeep costs are $2,500 and fence repair is $800
**Timeline - 2017**

- Terrafirma claim submitted and coverage approved
- SAHC attorney sent letter to Ms. Mullinax, suggesting she make a claim on her homeowner’s insurance
- Ms. Mullinax files claim with insurer
- SAHC learns Mullinax property is under contract
- SAHC attorney works to secure access through Mullinax property in order to restore site before property transfers
- SAHC receives $10,000 settlement payment
- Access agreement executed

**Timeline - 2017**

- Ms. Mullinax sells property
- Fence line is repaired and marked with boundary signs
- SAHC sends letter to new neighbors with survey, explaining they cannot cut for view on CE property in future

**Lessons Learned**

- Post boundaries!
- Keep records showing that boundary lines continue to be obviously marked
- Demand that neighbor encroacher file a claim with homeowner’s insurance carrier
- Remember that such a claim is negligence based, not intentional, so use care when phrasing the demand letter
- Navigating financial settlement awards with CE landowner difficult given landowner chose not to pursue violation
- Reconciling violations can take a long time and ownership is (sometimes) short
- There are many ways to assess damages to CE and enhancements to adjacent tract as a result of encroachment

**Boy Scout Fee Simple**

- 103 acres of forestland
- Purchased in 2002 from Daniel Boone Council, Inc. Boy Scouts of America
- Part of contiguous network of protected lands
- Located in historic farming community
Timeline - 2015
• Violation discovered & larceny report filed
• SAHC pursues criminal and civil charges
• SAHC attorney reaches out to DA
• Terrafirma claim submitted and coverage approved
• Stump cruise performed by consulting forester
  – $33,000 for value of timber, value doubled under NC statute to $66,000
• Arrest warrants issued for trespass and larceny

Timeline - 2016
• Consulting foresters and engineers assess restoration costs
  – 10 years of ongoing rehab = $46,000
  – Decommissioning logging roads = $83,000
• Civil complaint and summons served
• Turner files Motion to Dismiss
• Criminal trial set
• DA drops criminal case due to inability to prove Turner was actually on SAHC’s property
• Court denies Motion to Dismiss, Turner does not respond to discovery request

Timeline - 2017
• Turner does not appear for hearing on Summary Judgment
• Court grants SAHC motion on both liability and damages
  – Final judgment is made in the amount of $194,647.88 (2X value of timber + restoration costs), not including pre-judgment interest since date suit was filed
• Turner fails to file appeal and SAHC proceeds with collection efforts
• Turner claims no exemptions
• Motion to Show Cause granted
• Court issues arrest of Mr. Turner until he agrees to appear for the judgment debtor hearing he failed to attend
Timeline - 2018

- Order in Aid of Execution ordered and Turner to be questioned under oath regarding his assets
- Turner fails to appear for Examination Under Oath and SAHC proceeds with Order of Contempt
- Turner taken into custody and complies with Order in Aid of Execution
- Turner examined and no substantive assets are identified

Timeline - 2019

- Turner files for Chapter 13 Bankruptcy
- SAHC submits Proof of Claim to ensure claim is included in those getting paid through the bankruptcy process
- Turner failed to make payments to Chapter 13 Trustee
- Turner files for Motion to Modify Chapter 13 Plan and plan is confirmed by Court

Lessons Learned

- Post boundaries!
- Keep records showing that boundary lines continue to be obviously marked
- Cultivate relationship with neighbors
- Pursuing a violation can take time, patience and persistence
- Financial payoff, if any, may be low but public perception is valuable

Lessons Learned

- Different burden of proof for criminal vs. civil
- District Attorney dropped criminal charges due to
  - Lack of land trust survey
  - Lack of sufficient proof of boundary marking
  - Difficulty obtaining criminal charges without extremely clear and recent boundary posting
  - Lack of witness proving the logger was on the property despite logging trucks being seen entering and exiting
- Land trust successful in civil prosecution
  - Default judgment, however more than sufficient proof
Six Points About Terrafirma

- Owned by the insured member land trust only.
- Covers preserves, trails, covenants and easements.
- Provides conservation defense liability insurance.
- Serves as a safety net for all costs of covered claims.
- Organized as a Risk Retention Group.
- Nothing else like it in the world.
Current Operations And Finance

• Summary
  – Operations and finance sound
  – Membership, acres and parcels increasing
  – Premium revenue and claims increasing
  – Effective interconnection with Land Trust Standards and Practices
  – Break even budget

Financial Stability

• Exemplary management collaboration.
• Positive cash flow from operations.
• Over $4 million capital.
• Total market value all assets $7,539,994.
• Gross written premium $1.5 million.
• Actuary certified reserves over $2,197,417

Regulatory Standing

• Complying with all statutory and regulatory requirements.
• Timely accurate filings in 49 states and DC
• Fully insured.

Membership by state in 2019

Currently Terrafirma insures land trusts in all but 2 states (North Dakota and Oklahoma).
Land trust membership has increased every year. Terrafirma now insures 25% more land trusts than it did in its first year.
Currently Terraforma insures fee parcels in all but 5 states (Oklahoma, Kansas, Nebraska, North Dakota and South Dakota).

Fee parcel enrollment has increased every year. Terraforma now insures twice as many fee parcels as it did in its first year.

Levels of coverage by property in 2019

Levels of coverage in acres in 2019
Current Claims Trends

• Summary
  – Strong retention of 99% and satisfied customers
  – Excellent knowledge sharing
  – Number and cost of claims is proportional
  – Resource issues are as expected
  – Well funded successor owners, trespassers generally the most challenges
  – Now seeing original grantors violating
Minimize Risk and Increase Success

• Meet with ALL the new owners of conserved land
• Make sure your attorney’s perspective aligns with land conservation
• Use careful drafting and documentation
• Have thoughtful pre-closing systems
• Take proactive, thorough steps in stewardship and monitoring practices
• Emphasize ongoing interaction with landowners
• Employ techniques to timely discover prohibited divisions, timbering, earth moving and other violations or trespass

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**Claims as a proportion of insured parcels up to 2019**

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<th>Year</th>
<th>Parcels with claims</th>
<th>Total Parcels</th>
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<td>2013</td>
<td>36</td>
<td>29,424</td>
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<tr>
<td>2014</td>
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<td>25,665</td>
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<td>25,544</td>
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<tr>
<td>Total</td>
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Thank you for your dedication to lasting conservation!