

# Timber Cove

# March 2021

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## Catching Up: Summary Adjudication on Trails

It's been over a year since our last newsletter reporting on our action to save our Timber Cove Trails. At a hearing on a motion by defendants to continue the trial on February 21, 2020, Judge Jennifer Dollard suggested that there be a motion asking for summary adjudication on the issue of the legality of the pedestrian easements (quiet title, declaratory relief, etc.), separate from the other issues of nuisance. Although all parties agreed to proceed as suggested, all motions and trials were thereafter suspended due to the COVID-19 crisis.

After a six-month delay, on October 18, 2020, our attorney Lewis Warren submitted a new group of documents, including the following:

[Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Summary Adjudication](#)

[Separate Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Summary Adjudication](#)

[Declaration of Plaintiff Hannah Marie Clayborn in Support of Motion for Summary Adjudication](#)

Not adhering to the agreed upon motion described above, defendants **One and Two** submitted their own *Alternate Motion for Summary Adjudication* that recombined all elements of the complaint, including **One and Two's** claims. They filed their opposition to our *Motion for Summary Adjudication* over a week late. A hearing on our MSA was set for January 27, 2021. A hearing for Defendants' Alternate MSA was set for February 3, 2021.

At the hearing on January 27, 2021, at Sonoma Superior Court, Judge Dollard declined to rule on the issues surrounding the legality of the trails, denying our *Motion for Summary Adjudication*. Although this in no way rules *against* the legality of our pedestrian easements, it does mean that we must wait for these rulings at trial along with other issues, currently set for **June 25, 2021**. By that time we hope no COVID restrictions will be in place.

For more information about the background and history of the trails issue, please see the *Facts and Issues* page of the website below.

## Positive Outcomes from Hearings

There were two very positive outcomes of Judge Dollard's rulings: at our hearing January 27, Judge Dollard **concurred** with all of our points of law, and she **overruled** all of the opposition points of law submitted by defendants **One and Two**.

The only item of opposition that was not overruled, raised by the attorney for defendants Black and McCabe, was the issue of the intent of the developer, something that would require evidence at trial, and therefore could not be summarily adjudicated. Our attorney, Lewis Warren, argued that intent is not legally relevant to this case. Nevertheless we are very confident we can demonstrate intent at trial if necessary.

At a hearing on February 3, 2021, Judge Dollard **denied** Defendants **One and Two's** Alternate Motion for Summary Adjudication. And in so doing she **overruled** all the points of law contained therein. Further Judge Dollard determined that plaintiffs' claims of nuisance and despicable behavior by defendants met the criteria of the law to submit at trial.

It is important to note that while our arguments in favor of the trails have remained consistent, the defendants' arguments against them have changed several times. Originally relying on document fragments taken out of context, and undated, unsigned memos from PRMD personnel (later contradicted by County Counsel), they moved to other arguments, citing an unrelated California Street and Highway Code and the Board of Supervisors action in 2016.

Defendants have tried several times to introduce the confused and conflated documents authored by John Gray and Robert Leichtner in March 2018 and 2019, as the designated Timber Cove Homes Association "Legal Committee". These documents pretended to make a legal ruling abolishing the trails and forbidding members to use them. These concoctions are not seriously regarded by the judge, and they were stricken from the exhibits as having **no foundation in fact**.



### Every Fire Season our Lives and Homes are at Risk

None of the cul-de-sacs in Timber Cove allow access for emergency vehicles. If a fire cuts off road access to a street like Koffinow, the only escape for residents would be the northern pedestrian easement to Timber Cove Road. Restored trails would also allow access for fire crews on foot to battle blazes and set backfires.

What's it worth to be able to walk out your front door and hike a mile or more through the woods? Soon we'll be able to walk six miles, without fear, if you help. The trails belong to every Timber Cove property owner.



To find out more about our efforts to restore and preserve our trails, visit our "Facts and Issues" page at the site below.

[timbercovetrails.org](http://timbercovetrails.org)

### Trails and Fire Abatement

The town of Windsor had the foresight to incorporate a park with seven miles of hiking trails around its new developments. The Press Democrat newspaper reported that these trails were a crucial factor in saving the town from the Kincade Fire last year.

The trails allowed fire crews access behind homes to set backfires.

Read more:

<https://www.pressdemocrat.com/news/10254057-181/foothill-and-shiloh-ranch-regional>



A picture really is worth a thousand words. The photograph above was taken at Annadel State Park by Jeremiah Kahmoson on October 5, 2020. The fire crews were able to get their hoses and equipment in on the trails in this rugged terrain not unlike our own, to stop the fire.

**Have you done your part to safeguard  
Timber Cove's future?**

**Please make your tax-deductible  
donation either by check to:**

**Timber Cove Foundation**

**Lorrie Uribe, Treasurer**

**22142 Amanita Circle**

**Timber Cove, CA 95450**

**or by Paypal by clicking the link below.**

**[DONATE](#)**

### Message from our neighbor Claudia Giacinto

Dear Neighbors:

Our epic effort to secure our community's trails, which are crucial cornerstones of Timber Cove's fire defense, will come before the courts on June 25th. Trails are fire breaks--as recent fires prove—primary passageways for dragging fire hoses, equipment, and providing escape routes that save lives and property. The picture above from Annadel Park's Glass Fire, shows the trails firefighters used to stage their defense. Minus trails, access routes must be dug *during the fire*.

Fortunately, we already have these easements in Timber Cove. And just as our CCR's mandate the trails' maintenance, the TC Fire Abatement Ordinance mandates that we maintain fire-safe properties...a two-pronged protection.

TC's founder, Richard Clements, devised our trail network to give us forest access, and secured them in the form of legal easements that were created to survive the challenges and whims of individual property owners. A half century later, in 2014, the community faced its first (and only) trail challenge, which Timber Cove tried for four years to resolve through compromise. But as this challenge escalated and negatively impacted the community, no alternative remained but to secure our trail asset, legally.

My family lives on the far northern outskirts of Timber Cove, beyond where the TC trails system reaches. But we still joined in the Trail preservation effort, understanding that this six-mile network, which gives our community value, is being washed away by weather under its present threat. Our village will not be able to glow in full force until this issue is resolved, and we can again walk our

historic trails in peace.

Like the story of the finger in the dike, just a few TC families have financially supported this trail defense out-of-pocket, for the community's sake. It's a costly, taxing undertaking. To finish this, we need the full force of the community behind this last push. Please join us financially to settle this legally once and for all. The moment that decides whether the Trails/fire breaks survive is now. We need your help.

### Message from a former neighbor Susan Moulton

Dear Neighbors:

I first hiked the Timber Cove hills in 1958 with my father and brothers, falling in love with it then and coming back often over the years. As a young art student staying with my parents at the Timber Cove Inn I spent an evening and a day with Benny Bufano who was working on his sculpture there. In 1966 I honeymooned at the Inn and walked both the hill trails and alongside the cliffs again transformed by the beauty of the place. I was fortunate to be able to purchase a magical piece of property in 1994, planning for a long personal relationship with a place I had loved for decades.

I began working with others to create a collaborative, respectful community in the spirit of Ansel Adams and other

founders, and to make our beloved forest healthy and safer for us all. I was asked to join our governing Board in the late 1990s, and again ten years later, supporting their primary focus on the welfare of the whole community and the health of our forest. In this spirit, working with long-time residents like the Giacintos, the Lopez family, Hannah and John Howland, the Todds, Lorrie Uribe, Bob Ferguson, Tim McKusick, and others.



Benny Bufano Totem  
Timber Cove Inn

From the outset, to protect this vision we respected and worked within our founding CC&Rs, which prohibit commercial uses, unsightly buildings, over-built lots, trailers, and fences. We didn't want our community to look like Salmon Creek.

We accomplished a great deal on these early governing boards: created a functioning Water District, built the Reservoir, built out a network of roads, established a Club House/Office to be the hub of community activities, and commissioned road and entrance signage. On weekends we cleared our deeded trails for recreation and fire safety purposes, and made them occasions for potluck dinners. In our community we had musical performances, book club readings, and weekend spiritual events.

Later, starting in 2015, we created a Capital Improvements 5-10 Year Plan, developed a quarterly newsletter, a website, surveyed our easements to facilitate use of our deeded rights to our trails, created a Strategic Plan with Core Values to streamline bureaucratic procedures, a Dispute Resolution Process for resolving problems, improved and reorganized accounting procedures, completed the restoration of the John Sperry Memorial Trail and one third of the Smith Court Loop trail, and planned on-going work to completely restore all the trails within the HOA, expanded the mailbox areas with donated land for greater safety, and held Town Halls to share ideas and plan for the future.

Two very important achievements of the TCCWD were the creation of a celebrated Forest Management and Fire Abatement Plan and a 501(c)3 nonprofit, The Timber Cove Foundation, to support it. The Fire Abatement plan took a decade

to research and was designed and highly praised by professionals.

Since 2018 many of these past achievements and dreams have been neglected or attacked. Both our deeded trails and our Forest Management and Fire Abatement Ordinance were removed without public notice or open discussion. Those of us who had invested decades of hard work and money to build our community, have been publicly maligned, defamed and targeted for abuse over the past five years.

I am one of those. That abuse forced me to give up my lifelong dream and sell my beloved property.

Nevertheless, I still love Timber Cove and treasure my friendships with the many truly dedicated people who continue to endure the self-serving, despicable behavior of those now in power.

I hope that our wider community, including those of you who are new to the area, will want to insure a bright, mutually respectful, safe future for Timber Cove, just as we do. Of over-arching concern is the

significant and very real fire risk that continues to loom over us. Re-implementation of our Forest Management/Fire Protection Plan is essential, and our trails are integral to that fire safety. At no time have the trails been more needed than they are now, as safe recreation, firebreaks, and emergency evacuation routes. Please give your time and funds to help make that happen.

If you would like to host an outdoor, safely distanced and masked reception, let one of us know. We are moving into one of the most beautiful seasons here on the coast and would love the opportunity to renew old friendships and meet new neighbors.



*Storm Surf, Timber Cove, by Ansel Adams*