

Update on Friends of Banner Mountain's (FBM) Efforts to Remove Lower Cascade Canal Trail Gates

The following is the history of the gate(s) blocking access to the Lower Cascade Canal Trail at the Gracie Road trailhead, and the latest information on FBM's efforts to restore public access to that portion of the trail.

- In 2016 a new landowner acquired the property near the trailhead of the Lower Cascade Canal Trail along the Nevada Irrigation District (NID) ditch. In spring of 2017 the landowner put up two gates, one at the trailhead and another about one-quarter mile upstream.
- FBM, a non-profit, all-volunteer organization whose mission is to: "*to protect Banner Mountain and its natural and cultural resources for the benefit of residents, visitors, and future generations*" met with the landowner, and offered to assist with building a fence to address the landowner's concerns about privacy and security. The offer was rejected.
- In September 2017 FBM filed a complaint with the Nevada County Superior Court challenging the landowner's right to exclude the public from this portion of the trail.
- In April 2018 FBM engaged the services of a professional mediator in an attempt to reach an amicable solution that would not involve going to trial.
- After mediation failed, several FBM board members met with the landowner on numerous occasions to offer solutions. All of FBM's efforts at settlement have been unsuccessful.
- Trial is set for March 20, 2019, and will be held at the Nevada County Superior Court at 201 Church St, Nevada City, at Department 6 with Judge Tice-Raskin. The public is welcome to attend the trial.

FBM is optimistic about reaching a favorable ruling at trial – the complaint is very similar to two other cases on NID trails where non-profit organizations like FBM successfully demonstrated the public has a legal right to use a trail based on a long history of use.

FBM would like to thank the many witnesses who have provided statements affirming use of the trail before 1972 (which is the date when a state law was enacted that greatly limited prescriptive easements). FBM is also very grateful to the generous people who have contributed funds to support efforts to restore public access to the trail, but additional financial support is needed to bring this to trial.

FBM is represented by Haley & Bilheimer, a local law firm that successfully litigated the other two NID trail access cases. They are providing services at reduced rates, but even with reduced attorney's fees, a trial is an expensive undertaking. FBM needs help from all of you who care about preserving access to this beloved trail. Any amount is greatly appreciated.

If you would like to make a donation or want more information about FBM please see its webpage <http://bannermountain.org/>

Frequently Asked Questions about FBM's Efforts to Protect Public Access to the Lower Cascade Canal Trail

FBM has received many members' comments and questions about the new Lower Cascade Canal Trail gates. The following are responses to those questions below. We welcome additional questions and comments – contact information is provided below.

Question: Why shouldn't a canal-side landowner have the right to block access to a trail on privately-owned land, to protect himself/herself from liability, litter, and vandalism?

Answer: The public has used the trail for over half a century, without challenge and without obtaining permission from landowners. Therefore, FBM believes the public has established a right to use the trail. The purpose of FBM's legal challenge is to affirm that right.

Public use of the trail does not expose landowners to additional liabilities, which is one of the concerns expressed by the landowner who put up the gates. California law affords protection to landowners from trails users on a landowner's property, as long as the landowner does not charge a fee for access. Civil Code Section 846 immunizes the landowner from liability in those circumstances, and Section 846.1 provides reimbursement for attorney's fees incurred in some situations. Links to download both statutes are provided here: <http://codes.findlaw.com/ca/civilcode/civ-sect-846.html>

FBM members who frequently use the trail have not observed evidence of significant litter or vandalism. Trail users have partnered with the Bear-Yuba Land Trust for years as volunteer stewards of the trail, picking up litter when they see it and otherwise maintaining a clean and safe environment. The Nevada County Contractor's Association established waste receptacles at the Lower Cascade Canal trailheads, and has kept the trailheads stocked with doggie waste bags for over 10 years now. Waste Management cleans these receptacles weekly.

The vast majority of trail users are considerate and respectful of each other and of canal-side landowners. Public access to the trail has contributed to its safety and cleanliness. The infrequent poor conduct of a few persons provides no legal justification for shutting off the access for the many law-abiding users.

Question: A publically accessible parking area makes the trail available a few hundred yards down Gracie Road and provides an alternative trailhead. Why can't the public access that trailhead to reach the Lower Cascade Canal Trail, and avoid this litigation?

Answer: If one landowner is allowed to exclude the public, unchallenged, what is to stop others? FBM wants to prevent other property owners from establishing gates and excluding the public for other portions of the Lower Cascade Canal Trail which could fragment the trail and make much of the 4.7-mile trail inaccessible.

For Banner Mountain residents who walk rather than drive to the trail, the narrow and rough path down Gracie Road to the alternative trailhead is unsafe and exposes pedestrians to traffic hazards. Furthermore, the alternative trail access down on Gracie Road includes a relatively steep uphill portion creates undue hardship for walkers in poor health or with mobility issues.

Question: What are FBM's reasons for working to restore full access to the Lower Cascade Canal Trail?

Answer: FBM has heard from so many Banner Mountain homeowners and residents about the benefits of the Lower Cascade Canal Trail. The organization cannot allow those benefits to be lost. Walking, running or biking on the Lower Cascade Canal Trail is an extraordinary experience – where else can you find a level, traffic-free path winding through forest alongside flowing water, and where you can regularly meet your neighbors and friends? This is an experience that has been available to Banner Mountain residents for half a century, and now this public use is threatened. Based on comments from FBM members, the following are just some of the benefits of the public use of the Lower Cascade Canal Trail, and the reasons we are working to maintain full access to this trail:

- Studies show property values are enhanced by having ready access to public walking trails. Some landowners have expressed concern that reducing access to the Lower Cascade Canal Trail might diminish the value of their property. Many homeowners also feel that trail use prevents vandalism or theft from occurring since there are people using the trail daily who are vigilant in looking out for suspicious activity that might affect their neighbors.
- Save Our Historic Canals (SOHC) members invested 15 years (2001 through 2016), and considerable resources to protect and enhance the Lower Cascade Canal Trail. SOHC worked with NID to maintain flows in the Lower Cascade Canal, and on other projects such as cleanup efforts, installation of milemarkers, and securing recreational easements from canal-side landowners. The extensive efforts of SOHC, which recently dissolved as an independent non-profit organization and is now a committee of FBM, were focused on the public benefits provided by this historical canal and trail. These efforts would be wasted if the trail eventually becomes fragmented and inaccessible to the public.
- Trail use builds community and maintains bonds between local residents and friends. Banner Mountain has always been a neighborhood of families and friends – we don't want it to become a gated community.
- Cities and counties across the country are spending thousands of dollars to build public trails because they recognize the healthy recreation opportunities provided by trails in promoting physical activity to improve fitness and mental health (see <http://www.americantrails.org/resources/benefits/index.html> for more

information about the many benefits of trails). Here our community has an existing beautiful trail that is much loved and used, and which should remain as a publically accessible resource.

Question: What are the FBM's chances of success with this litigation?

Answer: FBM believes it has a good chance of prevailing with this challenge. As mentioned previously, FBM has engaged Haley & Bilheimer, a local law firm with a successful track record representing non-profit organizations on similar cases that involved preserving access to public trails.

One of their cases which involved NID's Rattlesnake Ditch off Burma Road went all the way to the Court of Appeal in Sacramento and resulted in a published decision in favor of public access to the trail. A copy of the decision, Friends of the Trails v. Blasius (2000) 78 Cal.App. 4th 810, 93 Cal.Rptr.2d 393, which sets out the legal principles involved, can be downloaded from this link:
http://scholar.google.com/scholar_case?case=11405914244229790095&q=friendsd+of+the+trails+v+blasius&hl=en&as_sdt=2006

Haley & Bilheimer also recently settled another similar case involving NID's Snow Mountain Canal, resulting in removal of gates that a landowner had established to block public access.

Answer: How can I assist with the effort to restore public access to the Lower Cascade Canal Trail?

You can contribute funds to FBM to support the legal challenge and our mission protect Banner Mountain and its natural and cultural resources for the benefit of residents, visitors, and future generations. FBM has accumulated a little less than half of the funding anticipated to sustain a legal effort that is likely to take more than a year. FBM is a 501(c)(3) organization and contributions are tax-deductible to the extent allowable by law.

You can also help by identifying people who used the trail before 1972, which is when a state law was enacted that greatly limited prescriptive easements. FBM has gathered statements from numerous local residents who walked, biked, fished and otherwise used the trail before 1972, but the more witnesses located the better are the chance of success in this litigation. If you or someone you know used the trail before 1972, please contact FBM at the link below.

Please contact the organization if you want to become engaged with FBM efforts to protect public access to the Lower Cascade Canal Trail. FBM welcomes all assistance.

To contact FBM and for more information about our organization please see our webpage:

<http://bannermountain.org/>

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