



Support Your Trail System by Developing a Trail Organization: A Case Study By Dot Moyer

In 2001, my quest was to find horse paradise. I moved myself and my horses south, to an equestrian area, tempted with miles of trails advertised by realtors.

What the realtors failed to mention was that there used to be many more miles of trails, and these unprotected trails were disappearing rapidly.

My first step was to volunteer with a trail organization that had made progress in slowing the loss. Subsequently, our trail mileage has increased, our trails are more connected, our number of landowners has doubled, and permanent trail protection has been established on important “hub” trails.

Given the dismal national trends, the question often asked is, “How did you do that?”

There are many ways to build a successful trail system and organization, but this is how we did it.

Recruit Strong Leaders.

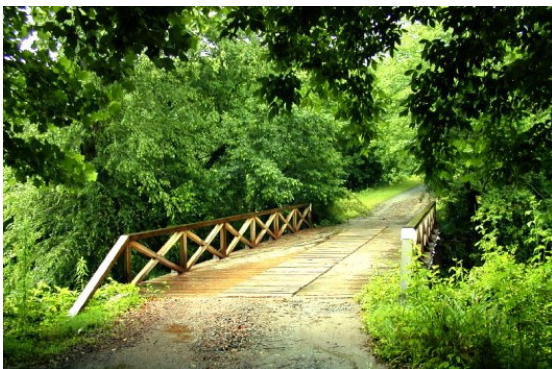
It takes committed, talented, positive people to make a trail system work, especially in its early stages. Be ruthless about who you get and keep on the board. Good people do not like to waste time. They want to see results, not listen to complaints and gossip or handle minor issues.

Everyone on the Board should be there for a purpose. Do they have good local connections? Are they well respected, effective and resourceful? Can they represent large landowners and/or different areas of the trail system? Do they have heavy equipment and know how? You need lawyers, financial people, insurance professionals, realtors, large landowners, business people, donors, writers, graphics people and techies.

Choose people who share the vision, can work together as a team, disagree without being disagreeable and come to consensus and keep moving forward. They need to be passionate about it and most need to be able to devote a lot of time. Effective people are usually busy and in demand, so get on their dance card early, and be willing to wait for them to have time for a board position. Large landowners should always be invited if willing.

Your people make it happen, so do not put whiners, complainers or negative people on your board in the hopes of making them happy. People with negative attitudes will bring things to a crawl or a stop, and should be avoided.

Decide what you want to be. Every organization has to have a vision of what it wants to be before it can “sell itself.” Find that vision first, and stick with it. Our original founders wanted to preserve the area’s tradition of friendliness and open riding. This vision guided the decision to create a non profit organization where landowners are voting members, but riding membership is open to anyone willing to make a relatively small contribution and follow our simple rules. I cannot imagine our system working any other way. But other models do work, and should be researched.



Make Your Landowners Happy. It is ALL about your landowners. It is their land, and NOTHING happens without their cooperation. Recognize that their interests and concerns are the most important thing.

If you provide good service to your landowners, most everything else will follow. Building trust is essential. Landowners generally have three main concerns you must address:

1. *How will their land and the people and animals on it be impacted by riding?*

Even if they have horses and ride elsewhere, landowners have legitimate concerns about their property, damage, litter, animals and people and that they will be treated with courtesy and respect.

The best way to ensure this is to establish reasonable, understandable usage rules and enforce them fairly, uniformly and consistently. Having the landowners' participation in developing the rules and their continuing input as situations arise will help a great deal as it unifies them, helps them realize that they retain control over their land and gives them "ownership" of the system as a whole.

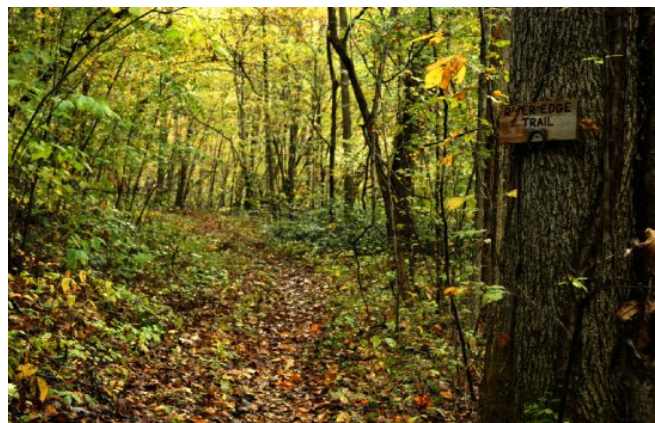
The riders must be convinced of the importance of putting the landowners' interests above their own. A rider's failure to live by the landowners' reasonable requirements is the fastest way to lose trails. The violators are a small minority, but they need to be brought around quickly or the consequences can be catastrophic and permanent.

2. *"Why would I want to allow these people on my land?"*

Reasons will vary depending on the individual landowner. You will have to be prepared to answer that question differently for each landowner. Focus on their interests and concerns. Some arguments to support the trail system which have been convincing in our area include:

- Preserving Tradition and a Providing a Community Asset. Providing a place to enjoy a traditional hobby and maintaining a "horse" culture can be important to the community.
- Economic Impact. Trails are a huge amenity to real estate, generally raise property values, and can be a big draw to the area, creating lots of jobs.
- Impact on other Users/Institutions: The Carriage Club, the Hunt Club, the Hunter Pace beneficiaries, the neighbors who walk in the area and other people who depend on the trails will be impacted if the trails disappear.
- Quality of Life and Future Land Use. If the trails disappear and the horse people leave, the type of community you have will change, and land may be more likely to be developed. Having a community asset like a trail system preserves the low density for everyone's benefit.

3. *What is their legal liability?* In an era of rampant litigation, enormous damage awards, refusal to take



personal responsibility, and computers making insurance subrogation commonplace; legal liability is the single biggest obstacle to creating and maintaining a trail system. This is a very serious consideration for every landowner and should be treated with great respect. You must listen to the landowner's concerns and respond, even if it is to say "I don't know."

Because laws vary by state, you need to get your own attorney. If you are in preliminary discussions with landowners, explain to them that it is a work in progress. Make sure they understand that you are working on getting the maximum possible legal protection for them, and will not expect any commitment from them until you have a good plan in place.

We use a three pronged strategy of Prevention, Legal "Savvy" and Insurance to limit our landowners' liability to the extent possible.

Prevention:

Good risk management is key. Look at your highest risk factors and limit them effectively. **Usage rules can reduce risk dramatically.** Helmet use is a must, and the easiest, most cost effective way to avoid catastrophic injury. Closing trails when they are dangerous (poor footing, storm damaged trails, potentially dangerous alternate uses like a foxhunt, deer hunting season, fly a kite day, etc.) and notifying riders about problem areas from subsurface conditions, damaged bridges and other hazards, will all limit the opportunity for accidents and injuries.

We would not have a trail system if we did not maintain it. Therefore, we work hard to keep the trails as safe as we reasonably can. If we know there is a problem, we notify riders, close the trail and fix the problem. Our standard is that an advanced beginner ought to be able to safely navigate our trails, and if they are dangerous and we cannot fix them, they do not need to be on the system.

Risk management not only prevents accidents but demonstrates that we have acted with "due care" for expected users, if we were involved in a liability suit. It is best to have an effective way to communicate these risk management decisions to the riders. We use our website and phone answering machine. Alternately, you can establish phone trees, put up a status notice or message in a popular place or on another organizations' message system, or set standards (e.g., no riding when trails are wet) that make people responsible to determine for themselves.

Legal "Savvy": Again, specialized professional help is a must, but in a nutshell, legal liability for accidents/injuries depends on whether the landowner was negligent. Negligence depends on a determination of (1) What law applies; (2) What is the legal duty of care is to the injured party under the law; (3) Has the duty been met; and (4) (in some states) Did the injured party cause or contribute to the accident?

This is how we deal with these legal issues:

We try to **identify and understand applicable law**.

- We strive to comply with the language and court rulings relating to the Recreational Use Statute, which establishes a much lower duty of care by uncompensated landowners to public recreational users. These statutes can be deceptively simple; but are intended promote the public interest in making private land available for recreation to the general public, and have not been applied to protect landowners from injuries to private guests or severely restricted users.
- Our goal is to meet the requirements of the Equine Activity Statute, even if we are not sure it applies to landowners or how to meet the posting requirements. We send it in the annual membership package and post on important trailheads, and when possible, at boundary lines.
- We hope that the general law of negligence will be applicable and apply its standards and maximize its defenses (the specific laws may pre-empt it in some future court case). Our Rules Agreement and Waiver stipulate that rules violations are contributory negligence by the rider, and accidents resulting from violations are foreseeable risks assumed by the rider.
- We move the relationship from the jurisdiction of negligence law to contract law by requiring all members to sign an inclusive liability release each year, and guests each time they ride. This releases for liability for negligence, holds harmless and indemnifies the landowner, the trail system, the officers and directors, contractors, etc. and accepts the standard care provided by the Recreational Use Statute as the applicable level of care required.



We **reduce the duty of care** to the rider:

- Riders only have landowner's permission if they abide by the

Rules Agreement. Breaking the rules “downgrades” their status from authorized user into trespasser. Trespassers are owed little duty of care.

- We do not allow members to request “special permission” to break the rules. Granting special permission can eliminate the landowner’s protection by “upgrading” the rider’s status from a general member like everyone else to a personal invited guest. Usually the special permission is sought to ride when the trails are closed and dangerous, making a negligence finding even more likely, and limiting the contributory negligence defense available in our state.

We fulfill the duty of care:

- We require riders to sign and return a Rules Agreement which establishes reasonable rules for their safety. If they break them, that is their choice, and they are trespassing.
- We monitor trail conditions and correct problems as much as reasonably possible. Members are encouraged to report problems, and warned that this is the great outdoors and conditions can change constantly and they are responsible to be careful of conditions at all times.
- We communicate with expected users through a website, phone answering machine and periodic newsletters.
- We educate members to risks associated with trail riding and refer riders to other resources to learn safety.

Insurance. Good liability coverage in adequate amounts is expensive and difficult to find. If individual coverage for landowners is unattainable, there are other things that can be done. First, see what that lawyer or insurance person on your board can do. At the very least, consider club insurance to pay your landowner’s legal defense fees and get Directors and Officers’ insurance (if you incorporate) to protect Board members.



Dot Moyer is a lifelong equestrian and trail rider, and cannot imagine life without beautiful, quiet trails. She is on the board of directors of a non-profit trail association formed in 1993 to preserve her area's equestrian trails. The association, located in a growing area of western North Carolina, faces the typical problems causing trail losses everywhere. This is the first of two general "survey" articles discussing the association's strategy to preserve and renovate the equestrian trails. Currently, the association's 180 plus voting landowners host approximately 400 riding members on 150 miles of trails connecting about 1,500 acres of private property.

This article and the information in it is intended for the sole express purpose of providing educational information to landowners and equestrians regarding issues and solutions related to sustaining horse trail systems and organizations. ELCR is not engaged in rendering legal, tax, accounting or other professional service. Consult a professional to assist with your particular situation.