

Information about your Roads, their Maintenance and SWARM

Why does SWARM Exist?

The division of a large parcel or ranch, into smaller parcels, carries a variety of concerns, including the prevention of ‘islanding’ or land-locked parcels. This is a concern of Local, State and Federal laws. In order for a land division to be approved, easements of access to each created parcel must exist. In the case of the Willowbrook and Sherwood Forest Hills divisions, an easement of 70 feet was created for the purpose of access by road to each created parcel (35’ from the center line to either side). This, and the creation of the roads themselves, predated the issuing of the *Certificate of Compliance* for the division, as well as the sale of any newly-created parcel.

Maintenance of such roads created is governed under *California Civil Code #845*, also known as the ‘Deering’ Code. This code section covers the obligation of individual property owners under such easements in the maintenance and repair of such roads, as well as the creation of a mutual benefit association to perform the road work in lieu of each property owner individually. It further provides the legal basis for the sharing of the costs, the arbitration of those costs, and the collection from those property owners that do not contribute their share. There are *no* provisions for opting out of participating.

The association for road maintenance created for the Willowbrook and Sherwood Forest Hills Division received a interlocutory court judgment that explicitly assigned the Skyview-Willowbrook Association for Road Maintenance, called out as ‘SWARM’ in the court documents, as the ‘instrument’ to determine and conduct needed maintenance, as well as to collect assessments for such purposes, based on a formula specified by the same judgment. This Interlocutory Judgment, known by its number (#61092), was endorsed by Mendocino Superior Court, January 6, 1992.

SWARM itself is governed by its Articles of Incorporation and Bylaws. Both of these documents come from the standard templates the state provides. The California office of the Secretary of State has oversight over associations such as SWARM, and SWARM is obligated to file periodic reports with the State concerning its operations. Ultimately though, it is the Board of Directors that performs the legal obligations resulting from the creation of the property division. And those directors are your neighbors, which you have elected.

To reiterate. Every property in this community had an easement attached to it, at its creation, for the purpose of mutually beneficial access by the eventual property owners. *The provisions for a Road Association predates the purchase of your property.* The Road Association means that each of us do not have to order rock, grade, maintain culverts, etc. along the common portions of our property the easement covers¹. It also affords our community with the cost benefit and consistency of maintenance that a single point of collections, contracting and maintenance provides.

¹ We, as property owners, still need to keep our driveway culverts and brush maintained regardless.

What is the State of Our Community's Roads?

There are a total of nearly 12 miles of roads maintained by the association within our community (~2 miles each 1st and 2nd Gate [44 properties], 8 miles 3rd Gate [87 properties]).

While 1st and 2nd Gate roads are in relatively good shape, 3rd Gate has experienced reduced maintenance over the last 3 years or so due to the costs of the bridge replacement. Parts of 3rd Gate are into or below the road's original base. The most severe stretches (nearly 3 miles worth) will require roughly 3" of rock.

Current rock prices work out to \$45,000 per mile for a 3" base put down. This does *not* include the cost of the contractor to spread and grade the rock.

Culverts crossing our roads cost roughly \$1000 each (40' culvert, contractor time & machinery).

All available 3rd Gate funds were employed for road maintenance this year (additional funds have come in after the road maintenance season had passed, as is reflected in the financial status of the Gates). However, this was insufficient. Through a one-time arrangement with a member, lower-grade rock was provided at approximately ½ the quarry's cost (credited against that member's future road assessments). Without that generosity, 3rd Gate's roads would be in far worse condition.

We are heading into an El Niño year. Our first focus this fall will be on ensuring good road drainage (culverts, etc.). This will be followed by gravel buildup and road shaping. To be able to accomplish this, we must have funds.

Monies collected for one gate's assessments are not used on any other gate's maintenance.

Several comments from the membership surveys we sent out in January, as well as comments we've received by email and by letter, stated a concern over members not paying as it impacts the quality of roads back to their property...

Sherwood Ranch's road assessments are \$575 per property. Ours average under \$250 – the equivalent of putting aside a year's pocket change...

At the current time, 1 in 6 properties is delinquent in paying their road dues, to an average of \$4550.

In accordance with the Bylaws, the Board began sending notices out last month to those property owners that are delinquent by roughly 2 years assessments. A copy of the letter may be found attached to the Billing Policy on the website. The letter asks owners to contact us to work out payment arrangements; but warns that if we do not hear from them within 6 months (the Bylaws provide for 7 days), we may have to initiate lien actions. Several have already set up payment plans...

The Annual Meeting, Elections and Remedies for Complaints

The Annual Meeting is both a tradition, as well as a required event accorded by the Bylaws. *The 'noticed' purpose of this meeting is the election of officers.* [Bylaws 5.01] Traditionally, it is also a time to allow members to bring forth concerns, comments or announcements to the Board and the community. The Annual Meeting has also usually been held as an open meeting, regardless of membership status ('regular' or 'delinquent', Bylaws 3.01), contrary to the Bylaws. [5.04a]

When there are issues a member wishes to bring up requiring a vote, the community must be notified ('noticed') in advance:

A Members' Meeting with business requiring a vote *must be 'noticed'* to all 'regular' members at least 20 days in advance, with the item to be voted on described within that notice. [Bylaws, 5.04] Like the Annual Meeting, it is usually called by the Board.

A **Special Meeting** is typically employed when a remedy cannot be found concerning a Board action or Community issue (it precedes filing complaints against the association with the Secretary of State's office). It may be called by any member. In order to call a Special Meeting, a written petition containing a *clearly stated purpose for the meeting* as well as *signatures of 5% (or more) of the regular members* must be presented to the Board of Directors. The Board will then 'notice' the regular membership of the meeting, a minimum of 20 days in advance. [Bylaws 5.03]

The key concept throughout the Bylaws is that 'regular'(paid-up) members have the rights of remedy.

Community members who have been asked to serve the community (by being on the SWARM Board, Fire Safe, etc.) should not be subjected to personal attacks. There are procedures for conveying concerns about the organization or Board as a *whole* as we have noted above. Consider that one day it might be *you* sitting here trying to make sense of it all!

Minutes, corporation documents and other useful information may be found at the website: www.sherwoodgates.org

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