

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. The easement for the division roads are part of each property’s deed and title.

Maintenance of these roads are governed by *California Civil Code #845*. This code section covers the obligation of individual property owners under such easements in the maintenance and repair of the 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. Association maintenance and assessments for our roads began in 1980.

The association for road maintenance created for the Willowbrook and Sherwood Forest Hills Division sought a 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. The resultant Final Judgment, known by its number *61092*, was endorsed by Mendocino Superior Court, June 1st, 1992.

SWARM itself is governed by its Bylaws and Articles of Incorporation (executed in 1986 and 1988 respectively). Both of these documents come from the standard templates the state provides (derived from the California Civil Code). 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 covers. It also affords our community with the cost benefit and consistency of maintenance that a single point of collections, contracting and maintenance provides.

What is the State of Our Community's Roads?

There are 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]).

Our roads are underfunded, but we are working to stretch every dollar we receive. Presently, the average annual assessment for our members is roughly \$275, which varies based on the distance your property is from the entrance to your Gate (it is *not* based on the number of people or cars).

As a comparison, Sherwood Ranch annual assessments are \$675 and Walker Lake's *base* assessments are \$600. In both cases, this is regardless of where you live. As you can see, your current fees are a good deal comparatively.

Due both to legal challenges (from one of our members) and to increasing state and Federal regulations, the Board is currently interviewing prospective road maintenance firms to take over the Gate's maintenance. We expect that the purchasing power of such a firm will reduce our aggregate cost, while their skills will ensure a better surface and thus a longer life. Regardless, our annual assessments will have to increase at some point in the future (beyond annual cost-of-goods increases) to ensure we can maintain the roads at a constant level rather than the decline we currently have (ref. the current degradation into the bedrock).

The Board is also making inquiries into potential matching grants to address the road base buildup and culvert replacement, but there is no guarantee that we will be successful.

For your reference, current rock prices work out to over \$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 \$1,000 each (40' culvert, contractor time & machinery). Maintenance of a road to a constant state, based on contractor estimates and our expenditures over the years, runs a minimum of \$3,500 per mile (this does not include culvert problems and replacements, etc.). Our total road assessment collections across the 3 Gates come to roughly \$27,000/year, of which part goes toward covering insurance, the accountant, etc.

What is the State of Collections of Delinquent Property Owners?

Several comments from the membership surveys we sent out in January of 2009, the letter requesting input on dissemination of member information in May of 2011 as well as comments we've received by email and by letter, stated a concern over the property owners that are severely delinquent since it impacts the ability of SWARM to maintain the roads.

As we described in the May 2011 letter to SWARM members, we have contracted with a professional property owners collection agency. They are currently working with our most severely delinquent members to try to work out payment plans. Costs for the Collection Agency is borne by fees to the delinquent members, not by the association as a whole. As of this July 2011, the amount owed in unpaid assessments is around \$80,000.

The hiring of the Collection Agency came about after one property owner initiated a series of lawsuits against the Board (following our notifying them of collections actions), resulting in over \$10,000 in legal bills. Thankfully these expenses were covered by the Directors & Officers Liability Insurance we are required to carry, with the cost to SWARM being only the \$1,000 deductible. In accordance with the Bylaws, the costs back to SWARM are now being billed to that property owner. This will ensure we recover costs that should have gone to road maintenance.

Per the California Civil Code, members that exceed \$1,800 in delinquent assessments will be sent to the Collection Agency. However, this follows roughly 2 years of notices from the Board requesting the establishment of a payment plan. Of the 19 properties that were delinquent when this effort began in 2009, over half are now making payments under such a plan.

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]

Elections of Board members are held in accordance with the Bylaws, with one ballot provided to the owner of each property in the community. Ballots may be mailed in or handed over in person at the Annual Meeting.

Any member may voice a concern or complaint by writing to the SWARM Board. 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 'regular' 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 Bylaws contain special circumstances on which a specific percentage of members must vote (such as turning over the roads to a government agency). But in general, the basis for a vote is a quorum of those regular members who choose to be present.

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

The SWARM Board of Directors

The Board is elected from paid-up members within the community. They are volunteers who receive no compensation for their time, having to follow often convoluted government regulations in their elected duties.

Board members pay the same level of road assessments as every other member. If anything can be said, it is that the Board members expend many hours a year in their volunteer effort to ensure our roads are in good shape, to create the reports the government agencies require, to answer member questions and concerns, etc. In the case of this past year and the litigation brought on by one property owner, the figure jumps to hundreds of hours (and undetermined out-of-pocket expenditures) put into our service of our community.

In order to make it easier for other community members to be on the Board, this Board has undertaken the creation of Policies and operating guidelines to hopefully answer and guide future Boards based on our experience.

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

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

[Aug 2011]