

Community Questions and Answers Regarding Proposed Governing Document Changes.

Rev. 01/30/13

Thank you to everyone for their (continuing) input!

Q: The amendment of the governing documents appears to be a ‘power grab’ by SWARM.

A: The Bylaws and Articles were last amended 26 years ago (1986). The CC&Rs have not been amended since put in place by the developer in 1975. California legislative changes have been numerous since the last time these documents were changed; and the Civil Code contains several statements that need to be included in the documents to allow us to continue to be able to meet State standards as well as to contract insurance and other services. In addition, and most importantly, the laws require that the documents reference each other. This is to ensure that someone interested in buying a property is aware of the existence of any entity representing the community as well as obligations to that entity.

Specifically, the purpose of the CC&Rs (which are recorded on Title) state the existence of the road maintenance association, SWARM. The CC&Rs, in turn, point to the Articles and Bylaws (unrecorded on Title) which constitute the Association’s constitution (the Articles) and the explicit actions and limits of powers (the Bylaws)¹. In this manner, a prospective purchaser of property can see what they are being subjected to clearly (including obligations to and by SWARM) before purchase – something I am sure we can all appreciate. A careful examination of the revisions will show that there is nothing of merit being added, only restatements of what members already know to exist. The remainders are wording changes or additions required by the Civil Code.

Simply stated, this is not a ‘power grab’, but rather the strengthening of the relationship between SWARM and all of us as property owners. In fact, the new laws bring stronger oversight over SWARMs actions through an explicit block of the California Civil Code (1350 through 1378) that details everything from how finances will be handled and reported to an association’s members, the manner in which balloting must be performed, the availability of Association records for inspection by members and the actions permitted to be taken as far as rate changes and delinquent accounts. Rather than a ‘power grab’, the updating of these documents brings stronger oversight of the Association, to the benefit of the community members. And yes, all 3 documents must be brought up to date and reference each other per the California law.

¹ This is also why all 3 documents need to be voted on together. Civil Code requires each to reference the other.

Q. We've heard that the Board has spent over \$10,000 on the document revisions, wasting money that should be put into road maintenance!

A. Further questioning of the member revealed that the \$10K figure came from the January newsletter (the financial section) where \$8,847.50 was listed as legal expenses. Apparently the note attached to that figure was missed that stated this money was expected to be returned (it was mostly a retainer for legal work). It was also missed that this expenditure was against 3rd Gate, not against all gates.

The truth is, very little money has been spent on the document amendments since your volunteer Board members did most of the entry work under direction (and review) of Counsel. The real costs are only a portion of the \$2,820 figure for legal fees on the line above (in the same financial report). And no, this isn't a waste of money – it is required to comply with current laws and to maintain the necessary insurance that protects all of our properties against accidents and lawsuits.

Incidentally, the same member comments had the connotation that the SWARM Board was squandering money on lawsuits. The Board has indeed been involved in 3 lawsuits, but as a *defendant*; and the Association / community prevailed with a gain to the community's coffers and roads. In fact the issue over Fall maintenance was not money but weather; and by the first week of February, nearly \$20K will have been spent on the maintenance across all 3 Gates.

The Board members are your neighbors who enjoy good roads as much as the rest of the community. Why would we want to waste money on thieving lawyers without a net benefit to the community for the long term?

Q. The proposed CC&R changes speak of Farm & Domestic animals, Trash, and Building appearances. In addition, Section 12 speaks of enforcement by 'person or persons'. What happens if a future SWARM Board member has a beef with me, targeting me for one of these items (or some other nebulous infraction)? What happens if someone doesn't like my compost pile, etc.?

A. You make a very good point regarding the wording in Section 12, although the full wording is '... any person or persons entitled to enforce any such measure or provision hereof...' Discussions have remedied this to '...any entity entitled to enforce...' (underlines added here for emphasis). This removes that ambiguity. There are strong provisions elsewhere that prevent any one Board member from taking prejudicial or self-serving actions (e.g. through the oversight and responsibilities of the Board as a whole, as well as the legal restrictions and remedies in the named Civil Codes).

The Sections on animals, trash and buildings were always problematic and stem from the original CC&Rs. SWARM's Board had a choice of starting anew and developing documents entirely from scratch with Counsel (costly), or amending the existing ones, hence the residual wordings. In discussions, we have reviewed the language there further

and removed the extraneous restrictions, *limiting the concerns to those that might impact you driving down the shared roads*. Please see the updated CC&Rs for the changes in blue.

Q. The CC&Rs, under Section 8, Owner Obligation to Road Easements, have several areas that are problematic to me. For example:

c) "... will not be built within 6 feet of the graded road surface"; The graded road surface isn't particularly constant. If a grader operator makes a wide spot for traffic to pass (such as exist in multiple locations as you start up Second Gate) does this then change your allowable fence? On a personal note, what about an existing fences? Gates?

e) So if a road dead ends on a persons property, and there is no turnaround, who puts it in? What does maintain mean? Gravel and grade?

g) "Owners agree not to maintain businesses open to outside public such that extraordinary traffic occurs or exists"; What constitutes a business? And what is "extraordinary traffic"? Trimmers? Trucks of soil? Does this mean my wife can't see patients out of our home? I know we have several people in our community that repair cars on the side, how about them?

h) "Stunt driving or other unsafe... will not be tolerated and can be cause for enforcement actions" Very Vague. So... speeding? Driving in the "center lane"? This just simply isn't enforceable. Do you really want to turn SWARM into community traffic cops?

A. Allow us to answer each of these by the subsection noted:

c) The road easements were setup by the developer as 35 feet either side of the road centerline (70' total width). Building structures of any kind within this space have the potential to impact maintenance as well as emergency vehicle access. When a grader grades the roads, he or she needs to have a clear line of sight to maneuver the 35' grader, much less the room to push off excess soils. When a culvert needs to be replaced or installed, the easement gives space not only for working the equipment during installation, but also room for developing the in and out pours suitably. In general, existing fences are left alone unless there is a need to move soils or equipment further, and then the fence or other structure is temporarily opened, then repaired. However, everyone should be concerned when a fence or other structure is built next to the road since it narrows the road, and it potentially creates extra work for grader operator (a recent example was that the operator spent 2 hours of the community's money to dig out the water cutouts since the fence blocked the grader from developing the full swing).

e) In recent years, due to road washouts, disputes between neighbors or the like, gates have been installed across the ends of roads. Think about what happens during the rainy months (or during harvest) when someone gets to the end of the road and finds a gate but no turn around, then gets stuck in the ditch trying to turn around. In some cases, this has resulted in that person knocking on doors of nearby dwellings in the wee hours of the night to get help. What about the 35' grader? What about a fire truck or ambulance? Precious time is lost. All we are saying is that if you decide to block the road, make sure enough space exists for someone to turn around (the CC&R meaning of 'maintain'). SWARM will maintain (gravel and grade) that area as long as it is accessible.

g) Maintaining business such that extraordinary traffic exists – here ‘extraordinary’ is the key word and refers to constant in and out of tens of vehicles (and the respective road wear), not one who sees a couple or so patients a day. Should others (your neighbors) pay for large volumes of traffic to your property? Ideally, the way a SWARM Board would handle this would be to ask you to voluntarily contribute a little extra to the road maintenance each year, and such a request should be reasonable since each ‘client’ or worker is helping you to earn money for your personal benefit at the inconvenience of your neighbors. But ideally you consider your impact on your neighbors before making a decision to create a business with high traffic volumes.

h) Stunt driving means non-standard driving like ‘donuts’ in the road, etc. We have seen a pretty regular flow of folks from town and Brooktrails that bring their dirt bikes and carts up here to our dirt roads, using them as an impromptu race or off-road track. You paid for these roads and why should people not living here tear them up? Would your insurance cover it if they sued you after an accident along your property? People in our community enjoy walking on their roads and should be able to feel safe on them without someone careening around a blind corner nearly running over them or their dog. SWARM is not interested in playing ‘traffic cop’ -- your Board is made up of unpaid volunteers that would rather not spend precious time dealing with anything but maintenance. Having this statement in our CC&Rs provides the means to ensure you, as a property owner, have the means to address such issues.

In closing, remember that SWARM is the community. Today I might be elected to serve on the Board, and tomorrow, you. The ‘obligations’ listed here have been well established over the years from those in the community and their placement here is a legal requirement to serve notice to a prospective buyer as well as a tool each of us have to ensure our investments in the road maintenance goes as far as it can.

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