

# WORKING DIRECTIVES OF SHERWOOD/WILLOWBROOK ASSOCIATION FOR ROAD MAINTENANCE

## California's Deering's Civil Code #845:

("Maintenance of right of way: Sharing costs by co-owners: Petition for arbitration: Action for contribution: Application of section.)

The owner of any easement in the nature of a private right of way, or of any land to which any such easement is attached, shall maintain it in repair. (Underlines are editor's.)

If the easement is owned by more than one person, or is attached to parcels of land under different ownership, the cost of maintaining it in repair shall be shared by each owner of the easements or the owners or the parcels of land, as the case may be, pursuant to the terms of any agreement entered into by the parties for that purpose . . .

In the absence of an agreement, any owner of the easement, or any owner of land to which the easement is attached, may apply to the superior court where the right of way is located for the appointment of an impartial arbitrator to apportion such cost. If the arbitration award is not accepted by all the owners, the court may determine the proportionate liability of the owners, and its order shall have the effect of a judgment.

If any one of the owners of the easement of parcels of land fails, after demand in writing, to pay his proportion of the expense, action may be brought against him or her in a court of competent jurisdiction by the others owners, either jointly or severally, for contribution."

*In 1991 the group of individuals who had been serving as board members for the nonprofit organization called SWARM did go to Superior Court to establish SWARM's legal right to assess and collect the funds from landowners within the area with which to maintain the roads . The following is a quote from INTERLOCUTORY JUDGMENT, No. 61093, dated Dec. 20, 1991, ENDORSED-FILED Jan. 6, 1992, Mendocino Superior Court Clerk:*

## Mendocino County Superior Court Case Outcome:

"The Willowbrook-Skyview Road Association, a California nonprofit public benefit corporation, (also known as and referred to hereafter as "SWARM") is hereby designated as the instrumentality to determine what maintenance is necessary to keep the said rights-of-way in repair, including the frequency and method of such maintenance, to perform such maintenance, and to assess the above-cited owners or their successors for

the cost thereof in conformance with the formula to be set by the court. All such assessments shall be paid by the owners within 6 months of the date of mailing notice of the assessment to the mailing address of the owners, according to the Mendocino County Tax Collector. If any such assessment is not paid within said 6 month period, SWARM is hereby authorized to take any legal action it deems appropriate to collect that assessment and the delinquent owner shall be liable for that assessment.

Signed: Ronald Combest, Judge of the Superior Court"

*The court-appointed arbitrator and judge then set the formula for determining the assessments and SWARM holds to that formula in spite of the fact that maintenance costs have risen considerably since 1992. You may have noticed that your assessment has risen only slightly over the years and that is because it is written into the formula and SWARM complies that:*

"All fees shall be adjusted upward or downward every year . . . by the amount of increase or decrease in the United States Consumer Price Index for all Urban Consumers during the month prior.

Signed: James W. Luther, Judge of the Superior Court"

## **The Assessment Formula Set by the Court:**

*The board of directors, at the time of the court case, had come up with what they considered to be a fair and reasonable assessment formula and the court-appointed arbitrator found for the same formula. That became the fixed rate of assessment and can rise only as much as the cost of living index yearly which is usually between 2 - 3.5% Each parcel owner is responsible for a basic ownership assessment which started out in 1992 as \$100. In addition to that, owners who reside at their 1st, 2nd or 3rd Gate properties are assessed a 'resident fee" which started at \$3.50 for each tenth of a mile the resident's driveway is from Sherwood Road and nonresidents pay \$1 for each tenth of a mile. A late fee of 5% is attached in January to the new year's billing of any previous unpaid balance in January. In July another 5% is attached if payment has not been received by July 1. In July a second billing goes out as a reminder that the assessment has not yet been paid.*

## **Membership in SWARM:**

*All property owners are "members" as spelled out in the California Civil Code #845. SWARM by-laws state: "There shall be two classes of membership in this corporation, which shall be called "regular member" and "delinquent members. Except as to voting rights, the property rights and other rights, interests, privileges and duties of each member, regular or delinquent, shall be equal".*

M.G.