

## **Educational CC&R Letter #1: Board of Directors, Gate Assessments and Road Assessments**

**November 2019 with March 2021 Update on Gate**

Dear Summit Hills Home and Lot Owners

Recently there have been a lot of new owners have moved into our neighborhood - welcome to all new owners!

The purpose of this letter is to provide an educational overview of the HOA (Homeowners' Association) and how it affects all the lots and their owners. For this letter we'll be discussing the role of the Board of Directors, gate assessments, and road assessments. This document does not amend the official Bylaws and CC&Rs (covenants, conditions and restrictions) as written and filed with the State of California.

### **The Homeowners' Association**

The HOA includes all lots in the Summit Hills Subdivision whether before or after the gate. The HOA enforces the provisions that are specified in the Bylaws and CC&Rs in as fair way as possible to all owners.<sup>1</sup>

Our HOA does not own anything of value. It does not own any common areas, roads, gate, or anything else. Everything that we physically share, mailboxes, gate, and roads, are located on private property of one or more of our HOA lot owners. Access to these items are granted by easements<sup>2</sup> that are also registered with the County of San Luis Obispo. Furthermore, access to these easements is limited to only lot owners that require their use to get to and from their lot and mailbox.

Lot owners are responsible for the maintenance for items that are on these easements that they use to access their lot.<sup>3</sup> To facilitate the maintenance of the easements the HOA collects assessments to help pay for the costs and coordinate any necessary work.<sup>4</sup>

To protect the property values for all lot owners, the HOA restricts the use of all lots to the provisions specified in the CC&Rs. It is the responsibility of each lot owner to follow the CC&Rs. All owners were furnished a copy of the Bylaws and CC&Rs during escrow when the lot was sold. If you need a new copy of the Bylaws or CC&Rs, the Board of Directors can provide you with a new copy (paper or electronic).

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<sup>1</sup> Introduction, CC&R, page 1 *"It is the intention of Declarant (HOA) to impose mutual beneficial restrictions under a general scheme of improvement for the benefit of all the property and its owner."*

<sup>2</sup> Article V. Easements and Rights of Way. Page 19 *"The property and its building sites are subject to easements and right of way reasonably necessary for the purposes set forth in this article."*

<sup>3</sup> Article IX. Street Maintenance. Page 29 *"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."*

<sup>4</sup> Article IX. Street Maintenance. Section 2 Method of Levying Street Maintenance Assessments. Page 32. *"Such yearly assessment levied by the Board for street maintenance shall be based on the principle of proportionate use and will, necessarily, be unequal as between the properties assessed. In levying such assessments, the Board shall always be guided by the principles of fairness; however, no distinction shall be made as to whether a given lot is improved or unimproved."*

## The Board of Directors

The Summit Hills HOA is run by unpaid volunteers<sup>5</sup> that are elected annually to a Board of Directors<sup>6</sup>. The Board of Directors are your fellow lot owners and neighbors who are doing their best to follow the Bylaws and CC&Rs and protect property values. It is not some large corporate entity.

The Board of Directors are mainly responsible for enforcement of the CC&Rs, approving building and landscaping plans, coordinating maintenance work, collecting assessments, and filing taxes and other documents.

To help with bookkeeping for the assessments collected and paying expenses the Board maintains 3 bank accounts, General, Gate, and Road. The General account is used for expenses necessary to run the HOA and maintenance of the mailboxes. All HOA owners pay an assessment to the General account. The Gate account is only used to maintain the Gate and is supported by only the lot owners that need to access their lot via the Gate. The Road account is supported by all lot owners that use the private road easements to get to and from their lot. It takes the signatures of 2 Board members to write a check on any of these bank accounts.<sup>7</sup>

## Assessments

The principle of fairness<sup>8</sup> is at the center of how assessments are collected, and expenses are paid. Assessments are calculated proportionally to a lot owner's use. A lot owner should only pay for the maintenance of easements they use.<sup>9</sup> The proceeds from each type of assessment are deposited into their corresponding bank accounts.

The General assessment is the same for all lot owners since every lot owner in the HOA benefits the same. The Gate assessments are the same for all lot owner that use the Gate to get to and from their lot. The Road assessments are based on how far the lot is from the gate. The further away from the Gate a lot is the more the assessment is.

Expenses for an easement are only paid from their appropriate account. General and mailbox expenses from the General account, Gate expenses from the Gate account, and Road expenses from the Road account. If the amount collected by the assessments for an easement is insufficient to cover the cost of maintenance for that easement, then the Board can issue an additional Special Assessment.<sup>10</sup>

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<sup>5</sup> Article III. C. Board Procedures. Page 6. *"Board members shall serve without compensation."*

<sup>6</sup> Article III. A. Board of Directors/Officers. Page 4 *"The Board shall establish reasonable rules and regulations for the conduct its business, including for ... an election of Board members on an annual basis."*

<sup>7</sup> ByLaws of Summit Hills Architectural Planning & Street Maintenance Association. Article IX Officers and Their Duties. Pages 10. *"Unless the Board authorizes otherwise, any check or other negotiable instrument issued by the Association shall require the joint signatures of any two of the following officers: the president, the chief financial officer, and the secretary."*

<sup>8</sup> Article III. C. Board Procedures. Page 8. *"In levying any assessments, the Board shall always be guided by the principles of fairness."*

<sup>9</sup> Article IX Street Maintenance Assessments, page 31. *"Street maintenance assessments and disbursements shall be governed by the principles of equality and fairness, with due regard given to the actual use of any street by any given lot or group of lots."*

<sup>10</sup> Article IX Street Maintenance Assessments, page 32. *"If the funds secured by the annual street maintenance assessment from the lots subject to such assessment prove to be in sufficient for proper street maintenance...the Board is authorized to levy an emergency assessment, to be paid by each affected lot owner."*

The Board does not have the power to place a lien on any lot or any other owner asset.<sup>11</sup> However, the Board can add punitive fines to the assessment, turn over any unpaid assessments to a collection agency, file a noncompliance notice with the County, or take the claim to court.

At no time shall money from one account type pay for an expense from a different assessment type.

### **General Assessments**

The General assessment pays for expenses not allocated to the Gate and Road expenses. All lot owners pay the same assessment. Typically, these expenses consist of insurance, mailbox (electric, water, landscaping), postage, fees, taxes, and office supplies.

### **Gate Assessments**

The Gate assessment pays for all expenses associated to the Gate.<sup>12</sup> They pay for equipment repair and maintenance, electric, water, landscaping, phone, and a Door King gate management service. All the owners above the Gate pay the same assessment since each lot is served equally by the Gate. The lots below the Gate pay nothing.

Currently the Gate is not functional. The Gate's electrical equipment, control electronics, and safety features must be replaced. Since these repairs exceed the amount that the Gate account has, a Special Assessment has been levied by the Board. The Special Assessment was approved by a quorum majority vote at the December 2018 HOA general meeting. Once the current special assessments are collected the gate will be put back in service with its original functionality.

There were discussions about extending the gate functionality with security cameras and uniquely identifiable remote controls and this functionality extension was also approved at the December 2018 HOA general meeting. Getting quotes for the gate security expansion has proved problematic for a variety of reasons including limited availability of the desired technology and gate contractors being unfamiliar and unwilling to quote these higher technology-based systems. This security option will be treated as a second phase and the additional functionality expenses will be brought up to the lot owners for additional input and a second vote.

### **Update on Gate (added March 2021)**

The Gate was repaired in April 2020. The gate has a new gate control system, new gate operators with backup systems for both entrance and exit gates, new non-cloneable remote system for entrance gate, and new strong magnets to securely hold both entrance and exit gates closed. A security camera with solar power was added in the summer of 2020.

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<sup>11</sup> Article IX. Street Maintenance Assessments, page 31. *"Nor shall any unpaid assessment and/or related sums become a lien on the lot owner interest"*

<sup>12</sup> Article X. Automatic Gate Maintenance. Page 34. *"Each lot owner whose lot is serviced by the automatic gate located at the juncture of San Miguel and Palo Verde Roads shall pay an assessment, established, enforced and assessed in the same manner and in accord with the same principles as street maintenance assessments as provided in Article IB, for the maintenance, repair, improvement or replacement of the automatic gate, its adjacent lighting and landscaping and the road area adjacent to gate area. This assessment shall be shared equally by every lot serviced by the gate."*

## Road Assessments

All private roads in Summit Hills HOA are built on easements granted by the lots they cross.<sup>13</sup> The property they sit on is still the private property of the lot owner. The easements grant access for lot owners to travel to and from their lots. The maintenance for the road easements is the responsibility of the specific lot owners that use the easement to access their lots.<sup>14</sup>

For the purpose for calculating road assessments and tracking road expenses we split up all the private roads of the HOA into sections. A road section is defined as any road between a driveway entrance or intersection of two or more roads. Furthermore, for the purpose defining road sections, a driveway is defined as any road that serves only one lot regardless of how many easements it may cross.

There are 3 roads that are explicitly excluded in the CC&R's from road assessments, Spring Meadow, Rocky Point, and Rainbows End. Because of these exceptions those roads are maintained by the lot owners that are served by those roads.<sup>15</sup>

**In summary, road sections are determined by the roads that are shared by more than one lot owner to access their lots. Road assessments are determined by all the road sections that a lot owner uses to get to and from their lot.<sup>16</sup> Lot owners are NOT assessed for road sections that they do not use to get to their lot.<sup>17 18</sup>**

The Summit Hills Shared Road Sections map depicts all lots with a two-digit number and all the intersections/driveways with a single letter. A road segment is noted by 2 letters representing the beginning and end of the road section. The table below shows all the shared road sections in the HOA.

Segment	Length Ft.	Description
AA	42	
AB	174	Gate ↔ Lot17 driveway
AE	1,310	Gate ↔ Lot22 driveway
AP	1,408	Gate ↔ Lot23 driveway
BC	49	Lot17 driveway ↔ Lot16 driveway
CD	710	Lot16 driveway ↔ Lot15 driveway
EF	172	Lot22 driveway ↔ Lot24 driveway

<sup>13</sup> Article V. Easements and Rights of Way. Page 19 *"The property and its building sites are subject to easements and right of way reasonably necessary for the purposes set forth in this article."*

<sup>14</sup> Article IX. Street Maintenance. Page 29 *"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."*

<sup>15</sup> Article IX. Street Maintenance. Page 28-29.

<sup>16</sup> Article IX B. Street Maintenance Assessments, Section 1. Yearly Assessment, page 30. *"Each lot owner subject to street maintenance assessments will pay to the Board an assessment, to be established yearly by the Board, to maintain the streets serving the properties subject to assessment."*

<sup>17</sup> Article IX. A. Street Maintenance. Section A. General Street Maintenance Provisions, page 30. *"The explicit intention of this Declaration is that each lot or group of lots in the entire subdivision shall be liable for the maintenance of the streets that serve such lot or lots, in accord with the principles of Civil Code section 845, so that any given lot is not unfairly required to contribute to the maintenance of streets that do not serve that lot."*

<sup>18</sup> Article IX Street Maintenance Assessments, page 31. *"Street maintenance assessments and disbursements shall be governed by the principles of equality and fairness, with due regard given to the actual use of any street by any given lot or group of lots."*

FG	158	Lot24 driveway ↔ Frog Pond/San Miguel
GH	1,806	Frog Pond/San Miguel ↔ Frog Pond/Mary Austin Ln
HI	161	Frog Pond/Mary Austin Ln ↔ Lot28 driveway
HL	768	Frog Pond/Mary Austin Ln ↔ Frog Pond/Lala Ln
IJ	964	Lot28 driveway ↔ Mary Austin/Thornton
JK	140	Mary Austin/Thornton ↔ Lot30 driveway
LM	462	Frog Pond/Lala Ln ↔ Lot36 driveway
LN	297	Frog Pond/Lala Ln ↔ Frog Pond/Hartzel Court
NO	733	Frog Pond/Hartzel Court ↔ Lot38 driveway
OZ	468	Lot38 driveway ↔ Lot33/Lot38 property line
PQ	1,135	Lot23 driveway ↔ Lot25 driveway
QR	770	Lot25 driveway ↔ Lot27 driveway
RS	135	Lot27 driveway ↔ Smiley Place/County Kerry
ST	621	Smiley Place/County Kerry ↔ Smiley Place/Listowel
TU	550	Smiley Place/Listowel ↔ Lot33 driveway
TZ	436	Smiley Place/Listowel ↔ Lot33/Lot38 property line
<b>Total</b>	<b>13,553</b>	

To calculate the assessment for a specific lot, you use the table above to find all the road segments starting at the gate (A) to the lot. Then add up all the road lengths to determine the total length from the Gate to the lot. If there is more than one way to get to the lot, the shorter path is used.<sup>19</sup> The total length is then multiplied by the current Road Assessment Rate (2019 rate is \$0.276/ft.). The Board cannot raise the amount of the Road Assessment Rate more than 20% annually without a majority vote by all lots that are subject to road assessments.<sup>20</sup> Road assessments have been determined by this system of road sections since 1996 and this is how it is described in the present CC&Rs (recorded in Official Records of San Luis Obispo Co. on Oct 7, 1998).

For example, to calculate the assessment for Lot 28 you would have the following road sections

AA	42	Gate area
AE	1,310	Gate ↔ Lot22 driveway
EF	172	Lot22 driveway ↔ Lot24 driveway
FG	158	Lot24 driveway ↔ Frog Pond/San Miguel
GH	1,806	Frog Pond/San Miguel ↔ Frog Pond/Mary Austin Ln
HI	161	Frog Pond/Mary Austin Ln ↔ Lot28 driveway

for a total of 3,649 ft.(42 + 1,310 + 172 + 158 + 1,806 + 161). The 2019 assessment for

<sup>19</sup> Article IX Street Maintenance. Page 30. "The explicit intention of this Declaration is that each lot or group of lots in the entire subdivision shall be liable for the maintenance of the streets that serve such lot or lots, in accord with the principles of Civil Code section 845, so that any given lot is not unfairly required to contribute to the maintenance of streets that do not serve that lot. A lot is served by that street that affords the most direct access from the private driveway leading from that lot's residence or building site to San Miguel Road or Old Morro Road."

<sup>20</sup> Article III. Page 7. "The Board may not impose an assessment for any fiscal year more than 20 percent above the assessment for the Association's preceding fiscal year."

Lot28 then becomes \$1,007.12 (3,649 x \$0.276). In summary Lot28 pays assessments for the gate area, San Miguel from gate to the Frog Pond/San Miguel intersection (AA, AE, EF, and FG), for Frog Pond Place from Frog Pond/San Miguel intersection to Frog Pond/Mary Austin Lane intersection (GH), and for a portion of Mary Austin from Frog Pond/Mary Austin Lane intersection to the Lot28 driveway (HI). Lot28 does not pay assessments for roads that are not used to access his lot.

This system of assessments ensures fairness for all lot owners. The key points are:

- Lot owners are assessed for the road segments from the gate to their lot.
- The further a lot is from the gate the more they are assessed.
- Lot owners are not assessed for roads they don't use.

### Road Expenses

The doctrine of fairness is also applied to road expenses so that repairs and maintenance for a road section shall only be paid by the owners who use that segment.<sup>21 22</sup> **It would not be fair to take money from a lot owner for repairs to a road segment that they don't use.**

Since we assess lot owners based on the road segments that are used to get to their lot, that assessment should only be spent on road segments they use. The road assessment collected from a lot is distributed to each road section that the lot owner uses proportional to the road segments' length. The longer road sections receive a larger portion of the assessment than shorter ones.

After all the assessments are distributed to all road sections they apply to, each road section has a resulting credit that can be used to pay for maintenance and repairs.

*From the example above, road section FG would receive \$43.61 (158 ft. x \$0.276) from Lot 28. Road section FG has 9 lots (26, 28, 30, 32, 34, 35, 36, 37, 38) that use it to get to their lots. Road section FG would have \$392.49 (\$43.61 x 9 lots) credited to it after all the assessments were collected.*

All road sections use the above method to distribute the assessments.

When a road section has maintenance or repair performed on it, the resulting expense is deducted from the sections' credit. **If a road sections' repair is going to cost more than the sections' available credit, then a special assessment would have to be issued and collected before the repair can be made.**<sup>23</sup> Assigning repair and maintenance expenses only to affected road sections is the only fair way to spend the money that is collected from the road assessments. Below are two examples that show how this system works.

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<sup>21</sup> Article IX Street Maintenance Assessments, page 31. "Street maintenance assessments and disbursements shall be governed by the principles of equality and fairness, with due regard given to the actual use of any street by any given lot or group of lots."

<sup>22</sup> Article IX Street Maintenance Assessments, page 31. "Each lot owner's payments shall, by appropriate accounting procedures, be separately identified."

<sup>23</sup> Article IX Street Maintenance Assessments, page 32. "If the funds secured by the annual street maintenance assessment from the lots subject to such assessment prove to be insufficient for proper street maintenance...the Board is authorized to levy an emergency assessment, to be paid by each affected lot owner."

**Example 1** Culvert Failure on road section FG – San Miguel Road between Lot22 and Lot24.

Continuing the above example, assume road section FG has a credit balance of \$392.49. Assume road section FG needed a repair on its culvert that goes under the road that cost \$5,000 to repair. A special assessment would have to be issued to the 9 lots that use FG. In this case segment FG would be short \$4,607.51 (\$5,000 – \$392.49). Each of the 9 lots would have to split the \$4,607.51 shortfall. A Special Assessment of \$511.95 (\$4,607.51 / 9) would be sent to the affected lot owners of road section FG. The remaining road sections to the gate (AE and EF) would not be charged because those two sections were before the culvert failure. Only the specific lots that use the section of the road with the failure, in this case road section FG, pay the special assessment for repair of that road section.

**Example 2** Seal Coating on road section H-K – Mary Austin Lane Lots 28, 30, 32, and 34

Suppose that Mary Austin Lane decided they wanted to sealcoat their road for \$10,000 for the distance of 1,265 linear feet. Mary Austin Lane has three shared road sections HI, IJ, and JK. In this case, seal coating HI would cost  $(161/1,265) \times \$10,000 = \$1,272.73$ , IJ would cost  $(964/1,265) \times \$10,000 = \$7,620.55$  and JK would cost  $(140/1,265) \times \$10,000 = \$1,106.72$ . The credit balance for road sections HI, IJ, and JK would need to be checked. Assume for the purpose of this example that these road sections only contained the credits for one year of assessments at the assessment rate of \$0.276 per linear foot.

Road Section	Distance Linear feet	Assessment for road section	# lots	Credit Balance per road section
HI	161	$161 \times \$0.276 = \$44.44$	4	\$177.74
IJ	964	$964 \times \$0.276 = \$266.064$	3	\$798.192
JK	140	$140 \times \$0.276 = \$38.64$	2	\$77.28
	Total = 1,265			Total = \$1,053.21

There is not enough money in the credit balances for the specific road sections to cover the cost of the seal coating. A special assessment will be necessary.

The credit balance for each road section is subtracted from the cost for that road section. The following table summarizes information and calculation.

Road Section	Cost of Seal Coating	Credit Balance	Remaining Cost (Cost of Seal Coating minus credit balance)	# lots	Special assessment per lot (Remaining cost/# lots contributing to the road section)
HI	\$1,272.73	\$177.74	\$,1094.99	4	\$273.75
IJ	\$7,620.55	\$798.192	\$6,822.358	3	\$2,274.12
JK	\$1,106.72	\$77.28	\$1,029.44	2	\$514.72

Now the special assessments for the affected lots must be totaled so each lot knows how much it will cost them. The special assessment for Lot 28 would be \$273.75, for Lot 30 would be \$2547.87, for Lots 32 and 34 would be \$3062.59 each.

	HI	IJ	JK	Total
Lot 28	\$273.75			\$273.75

Lot 30	\$273.75	\$2274.12		\$2,547.87
Lot 32	\$273.75	\$2274.12	\$514.72	\$3,062.59
Lot 34	\$273.75	\$2274.12	\$514.72	\$3,062.59
				\$8,946.80

The credit balance for the affected road sections of \$1053.21 plus the special assessment total of \$8946.80 equals \$10,000.01 which is the cost of the repair. The discrepancy of 1 cent is due to rounding errors.

**In summary, road assessments and road expenditures are determined by the road sections that a lot owner uses to get to their lot. Lot owners are NOT assessed for road sections that they do not use to get to their lot. According to the CC&R's it would not be fair for lot owners to have to pay for the maintenance of roads they do not use.**

This is an educational document to help Summit Hills home and lot owners better understand the CC&R's. If you like this document let your Board know and we can write more on other topics covered by the CC&R's.

The Summit Hills HOA Board of Directors

November, 2019

