

BEAR CREEK LAND OWNERS' ASSOCIATION



82 East Coach Drive, Antonito, Colorado, 81120

QUESTIONS AND ANSWERS REGARDING BEAR CREEK For Owners, Real Estate Brokers, and Agents.¹

Q1. *What is Bear Creek?*

A1. Bear Creek is a beautiful subdivision surrounded by the Rio Grande National Forest located in Conejos County, Colorado, near the New Mexico border. It is named after a small creek that runs north out of the mountains and into the Conejos River at a point roughly in the middle of the subdivision.

Q2. *How old is the Bear Creek Community?*

A2 Bear Creek was developed 1991. In 1997 the governance of Bear Creek was turned over to the members who had purchased lots. Today there are 137 privately owned lots owned by 126 individuals (some owners own 2 or more lots), and 86 homes within the Bear Creek Subdivision. The Association owns 4 lots, which are considered part of the Common Area. More than a dozen owners are full time residents, and many of the other residents use their cabins on a part-time basis throughout the entire year. It is an active and secure community.

Q3. *How is the BCLOA Governed?*

A3. The Bear Creek Land Owners (BCLOA) is a Colorado nonprofit corporation and a common interest community, as defined by the Colorado Common Interest Ownership Act (CCIOA). Under Colorado law, a common interest community is also known as and operates as a HOA. All lot owners within the Bear Creek subdivision are voting members of the nonprofit corporation and the Association. Membership in the BCLOA is required of all lot owners.

Pursuant to its Bylaws, Bear Creek is governed by a five member Board of Directors elected by the members. Each member of the Board of Directors of the BCLOA is elected for staggered terms on a 2-1-2 rotational basis at the annual meeting, which is held the last weekend in July. Starting with the 2020 annual meeting, the Architectural Committee, which is charged with the duty of enforcing the architectural standards and many of the covenants contained in the *Declaration of Covenants, Restrictions, Easements, Charges and Liens for Bear Creek a Conejos County Subdivision* (Declaration), will be appointed to 3 year staggered terms by the Board of Directors. Those covenants that are not enforced by the Architectural Committee are enforced by the Board of Directors.

Changes in the Association's Bylaws require only a majority of those who vote. Changes to the Declaration, however, require a majority of all lot owners, and if a vote is taken and an owner does not cast a vote, the failure to vote represents a vote against the change.

¹ ***This Q&A has been approved by the Board of the Bear Creek Land Owners Association and may not be modified by any person or entity.***

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At the present time, Bear Creek does not employ the services of a management company. It has agreements with qualified individuals who act as operations manager and Water Technician. It contracts with a well know local construction company to maintain the roads within Bear Creek.

All members, their families, guests and contractors must comply with Declaration, as well as Policies and Procedures and General Rules of the Association promulgated by the BCLOA Board. The Bylaws, Declaration, Polices & Procedures, and Rules can be found on the Bear Creek Website, Bear Tracks at (<http://bearcreekcolorado.com/>) under the Governance Tab.

Q4. *May Members of the Association attend Board meetings?*

A4. Yes. Board meetings, which are held quarterly, are open to the members. An agenda is published in advance and a Member's Forum allows members to discuss topics on the agenda or concerns they may have that are not on the agenda. Members may also participate via video conference. A link will be provided in the meeting notice.

Members are encouraged to communicate with the Board individually or by email, but no director or officer of the Board is empowered to commit the Board to a position unless a majority of the Board concurs.

Q5. *What is required financially of a member of the BCLOA?*

A5. Members are required to pay an Annual Assessment, which is set by the Board in June of each year based on the budget for the next fiscal year, (The BCLOA's fiscal year runs from August 1 to July 31). The Annual assessment covers general maintenance of the common areas, the roads, the buildings owned by the association, removal of snow from the main roads in winter, trash removal, and the production and delivery of water. The Annual Assessment is due 60 days after the Notice of Assessment is received. It is paid in a lump sum, although the Board has the discretion to accept installments.

There are other charges and fees, which are set forth in the List of Assessment Charges and Fees. They include the cost of water meters and hook up expenses, security gate openers, post office boxes, and other charges.

Q6. *Does the BCLOA have a Reserve Fund?*

A6. Yes. At the time of a sale of a lot within Bear Creek, The Declaration requires that the Buyer must pay an initial contribution, in the form of a lot transfer fee, to the Reserve Fund in an amount equal to the Annual Assessment then in effect. All Seller's agents and brokers, and the selling member must immediately notify the Board of a pending sale, and this initial contribution should be paid by the Buyer or the escrow agent to the Association. Both the Annual Assessment and the contribution may vary. Any year end budget surplus that is not committed to a project is placed in the Reserve Fund. More information regarding the Reserve Fund can be found in the Policy "*The Bear Creek Reserve Fund and Contingency Fund Policy*" in the Governance Section of the Bear Creek website. Edit following revision of the Reserve Fund Policy.

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Q7. Are there other assessments and charges an owner must pay?

A7. Yes. A list of Assessments and Charges can be found on the Website, or obtained from a lot owner's listing agent, or Meneke Title & Abstract. The Declaration also allows for the members to approve a Special Assessment, which is a one-time assessment for an expense that cannot be covered by the Reserve Fund or through the annual budget. While the Board of Directors can call for a Special Assessment, 2/3 of the lot owners eligible to vote must approve it.

Q8. How are the Covenants and the Rules of the Association Enforced?

A8. The Association has the authority to impose fines, which if unpaid after sixty days constitutes a lien on the property of the offender. The Association can file a small claims case, file a lien, and foreclose on the lien, if necessary. The General Rules and the Enforcement Policy can be found on the Bear Creek Website under the Governance Section. This being said, the members of Bear Creek are friendly people who prefer to work things out with their neighbors. The Board relies on warnings before fines are assessed. Violators are provided with an impartial hearing as required by the CCIOA.

Q9. If I only own a lot, what are my rights and obligations?

A9. All lot owners are members of the BCLOA, and as such they must pay any Annual Assessment set by the Board and any Special assessment approved by the members. Lot owners, in good standing with the BCLOA, have the right attend annual meetings and vote on all issues presented to the members. They may run for positions on the Board or the Architectural Committee. They have access the common areas, may utilize the fishing easement, and they may camp temporarily on their lot; but tents, campers, trailers, mobile homes or other structures may not be left on the lot. No lot or a portion of a lot may be fenced, without the permission of the Architectural Committee. No spring or stream may be impaired or impeded in any manner. Nothing may be dumped or burned on a lot. When present at Bear Creek, lot owners must comply with BCLOA Policies and General Rules, and a failure to do so may subject lot owners and their guests to fines and penalties.

Q10. Are utilities available within Bear Creek?

A10. Yes. Underground electricity provided by Xcel Electric is available at each lot.

Phone and Internet Service. High Speed fiber optic internet and phone service are available from Jade Communications in Alamosa. Cell Phone service is not available in the canyon where the subdivision is located. Satellite TV and internet are available. Natural gas service does not exist in Bear Creek. Homes are heated with propane, electricity, fire wood, or a combination all three. Lot owners must arrange and pay for these services

Trash Service: The Annual Assessment includes trash service, but all members are required to place their trash and cardboard boxes in assigned dumpsters in the Trash Containment area next to the Maintenance building near the entrance to the subdivision. Trash is not picked up at each residence. The

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enclosed dumpsters are for food related garbage only. There is a trailer for cardboard recycling. Cardboard must be flattened before being placed into the trailer. We have a roll-off container for other types of garbage. The association owns a wood chipper and periodically chips cut branches for members. If there are tree branches too large to be chipped, the owner must haul the material away. The owner must do this or hire someone to handle it. See Question 14.

Water: Bear Creek operates its own a community water system, which is regulated by the State of Colorado and is subject to a state approved Water Augmentation Plan. Because of this regulation, the cost associated with the production and delivery of water represents the largest single portion of each budget. Information regarding the water delivery system water available on the Bear Creek Website, and every person interested in owning a lot within Bear Creek is encouraged to read it. At the present time, the cost of water is included in the Annual Assessment and there is not a separate charge for water use. Provisions of the Water Augmentation Plan and the Declaration prohibit the use of water outside a residence. Therefore, water produced by the Bear Creek water system cannot be used to water gardens, lawns, or shrubbery. Additional Guidance can be found in the General Rules and Regulations available in the Governance Section of the Bear Creek website. Water use is metered using a remote reading system.

The Water Augmentation Plan was premised on the assumption that when all lots eventually contain residences and septic fields, each residence will house 3.5 people, each of whom would use 75 gallons of water a day. This formula was used to calculate the total consumptive use of 5.44 acre feet of water, all of which is limited to household use.

Lot owners who own homes in Bear Creek are able to monitor their water use over the internet 24 hours a day, seven days a week from their homes or hand held device. This will allow absentee owners to determine if they have a water leak.

The Bear Creek water system currently lacks the capacity to be used effectively to fight a forest fire. Two storage tanks located at the upper well house provide water, but they cannot handle the requirements of a prolonged fire. Homes on the upper levels of Bear Creek are located at about the same elevation as the upper well house and storage tanks. As a result, the water pressure in homes on these levels is very low and the homes require holding tanks and pumps to maintain water pressure.

Q11. *What must be done to build or remodel a residence?*

A11. *New construction and remodeling cannot commence without prior review and approval by the Bear Creek Architectural Committee. (See "Q&A 3: How is Bear Creek Governed?" above). The Declaration imposes specific requirements on size and the general construction of a house. The Architectural Standards, which are posted on the Bear Creek Website, provide greater detail regarding what can and cannot be done, including where upon a lot a home may be placed.*

Conejos County Requirements. Construction must also comply with the zoning and building requirements of Conejos County, including the requirements for septic tank systems. Purchasers are

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encouraged to review the Declaration and the Architecture Standards *before* they commit to purchasing a lot, and before they retain a contractor. County approval of plats within Bear Creek does not guarantee that the size or soil conditions on any lot are such that a building permit may be issued.

Lot lines and easements. Given its age and mountainous terrain, care must be taken to identify property lines. The initial developer may have granted easements which although recorded, may not be shown on plats. Therefore, a title search is recommended. Purchasers may want to obtain a survey where older survey markers may be missing or impossible to find. The roads in Bear Creek are the platted property of the Association.

Q12. *May I rent my home in Bear Creek when I am not using it?*

A12. The Association has a *Property Rental Policy*, which must be strictly followed. Bear Creek is intended for single family homes. No owner may advertise his residence as a vacation rental for periods less than 30 days in the newspaper or on the internet, unless the owner has previously secured a *special use permit* for this purpose from the County. Owners must comply with the notice requirements of the policy for rentals that are for 30 days or longer. The policy is available under the Governance Section of the Bear Creek Website.

Q13. *What Common Areas are available to Bear Creek lot owners?*

A13. The Association stocks a pond, which is available for use by owners and their guests. Limits on the catching of fish are posted at the pond and within the Rules of the Association. There is a gazebo, which can be reserved by members for large parties and other occasions. The Association owns tables and chairs, which are kept in the Maintenance building and may be checked out and used. Although it is not designated as a common area, there is a 25 foot wide fishing easement that runs from the edge of the stream on each side of the Conejos River. Members can fish either side of the river, but they need to ask for a lot owner's permission to cross a lot to access the easements. Colorado Game & Fish regulations apply to fishing on the River and on Bear Creek.

Q14. *There is a sign at the entrance that says Bear Creek is a Firewise Community. What does it mean?*

A14. Bear Creek was the first community in Conejos County to receive **Firewise** Recognition. Firewise recognition is awarded by the National Fire Protection Association (NFPA) to communities which actively promote the mitigation of wild fire risk. Being a Firewise community has benefits of protecting our properties and obtaining insurance discounts from some providers. Regardless of the fire alert status in the surrounding national forest, no open fires are permitted in Bear Creek. Owners are encouraged to develop defensible space around their homes, and remove dead branches and trees from their property. The Fire Protection and Safety Committee can work with any owner who is interested in mitigating the risk of fire on their property. Through a Colorado State grant, the Association has purchased a commercial sized wood chipper that is used by our employees for chipping dead fall and or removed trees up to nine inches in diameter. Participation in these programs is encouraged, but voluntary.

Q15. *Are there Community Events within Bear Creek?*

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A15. Yes. The largest event is the annual meeting held the last weekend of July. Following the annual business meeting there is a picnic and an auction, which provides funds to the Bear Creek Scholarship Fund. In the summer there are open houses hosted by various members, which are open to all residents of Bear Creek. Members are encouraged to host an open house. Occasionally the members will organize hikes, river rafting trips and other events.

Q16. *What is the Bear Creek Scholarship Fund?*

A16. The Bear Creek Scholarship Committee is a qualified IRS 501(c) (3) entity, controlled by the BCLOA. The Committee raises money for its scholarship fund, which provides scholarships each year to graduating seniors from each of the high schools in Conejos County. Contributions to the fund are tax deductible.

Q17. *May I operate an ATV or snowmobile within Bear Creek?*

A17. Yes, but ATVs and snow mobiles must comply with the 15 mile per hour speed limit, stay on roads, and not trespass on another owner's property. As Off Highway Vehicles (OHVs), ATVs and snow mobiles must comply with the regulations of the Rio Grande National Forest, and any resident of Colorado should determine whether their OHV must be licensed under Colorado law.

Q18. *May I cut trees on my lot?*

A18. The primary answer is no. No lot owner can cut down a living tree without the prior consent of the Board. If trees must be cleared to build or remodel a house, the Architectural Control Committee must approve the site plan requiring removal. An exception exists when trees need to be removed to create a defensible space under the Colorado Fire Wise Guidelines pursuant to good conservation guidelines. As a designated Fire Wise Community, the Association encourages members to have a Fire Wise Evaluation of their home conducted by person or team recognized by the state to conduct such evaluations.

Q19. *Will I be able to Use my residence in the winter?*

A19. Generally, yes, but it depends on the construction of your residence. While Highway 17 and the primary roads within Bear Creek are plowed, you will need to make separate arrangements with Robins Construction (the company that plows the main roads), or some other snow plowing service, to plow your drive way. Vehicles are not allowed to park on plowed roads, and snow accumulation within driveways can make the driveway impassable. Winters in Bear Creek are cold and below freezing temperatures occur between September and as late as early May. In January and February temperatures have been known to drop to -20 degree F. Owners are responsible for protecting their homes from leaks. If there is a water leak within a residence, the Association may be able to determine that leak may exist, but it cannot and does not guaranty that it will. The Association has a Policy concerning Water Leaks, and a member can be fined for a leak that goes undetected and results the loss of a large volume of water. The Policy is available for review under the Governance Section of the Bear Creek website.

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Q20. What is the Peninsula?

A20. At the end of Quail Ridge Road, are four lots, which are platted as part of the Sheep Creek, the development to the West and upstream of Bear Creek. Three homes currently exist within this area. The owners have access to their homes only through Bear Creek, they utilize the Bear Creek water system, and they pay the Bear Creek Annual Assessment. While they currently are not voting members of the Association, they can have a representative on the Board, and they are active in all Bear Creek activities.

Q21 Will I have to pay property taxes on my lot or home in Bear Creek?

A21. Yes, whether you own just a lot or a lot with improvements, you will be assessed a property tax by the Conejos County Assessor. If you know your lot number (as opposed to the street address), you can find out what last value the assessor placed on the lot. Go to the County Assessor's webpage at <http://www.slvgis.info/conejos/parcelviewer.htm> Click on "I Agree" in blue at the bottom of the page and you will be taken to a map. Click on the orange area underneath Fox Creek and begin to zoom into the map. Move the mouse to the left (West) and the second subdivision along Highway 17 will be Bear Creek and Sheep Creek. Continue zooming in and you will see lot numbers. Click on a lot and you will be given the owners' current name and a legal description for the lot. Click on "Full Property Description" in the box and you will be taken to a page that shows the previous owners and the values *set for assessment purposes* during the last cycle. *The values shown on this page are not necessarily the "full market value" or "fair price" for the lot and improvements. It is only the value at which the county has assessed the property.* It is not unusual for the County to reassess a property after there has been a sale. There is a process an owner can follow to challenge a property tax assessment.

Q22. How can I get into Bear Creek to look at lots?

A22. Bear Creek is a controlled-access community and there is a security gate. The best way to gain access is to call a local realtor and ask to be shown properties that are for sale. Their names and numbers can be found on the internet. If you know a resident of Bear Creek, you can call them from the call box at the gate and they can open the gate to let you in. If you plan ahead, a member of the Board may be willing to allow you in. If the gate is up, you can enter and exit the development. Remember, the speed limit is 15 MPH.

Q23. Is a Lot in Bear Creek a good investment?

A23. ***The BCLOA does not have an opinion regarding the opportunity for financial investment, gain or loss, of property within Bear Creek.*** It is in a rural, agricultural area, and while it is covered with beautiful forests and has abundant streams and creeks, it does not have quick access to "resort" type areas. Persons interested in purchasing property within Bear Creek should conduct their own due diligence inquiries and confer with a knowledgeable broker or financial advisor. **The BCLOA has not authorized any third party to act as its agent regarding any representation related to the investment potential of property within the Bear Creek subdivision.**

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