

Bear Creek Landowners Association

**Policy Regarding Board's Immediate Response to An Emergency Threatening the Health, Safety or Welfare of BCLOA Common Areas, Lot Owners or their Guests.**

Policy Number 2016-01

1. Bear Creek is an active community with full and part time residents, as well as individuals who own undeveloped lots and who do not reside on either a full or part-time bases within Bear Creek. This policy applies to all BCLOA lot owners.
2. The BCLOA exists for the purpose of maintaining, preserving, and controlling the lots and the Common Area within the Bear Creek development and to promote the health, safety, and welfare of the residents within the development (Articles of Incorporation, Article IV).
3. The BCLOA is also empowered to make and enforce rules and regulations pertaining to the use of Common areas, and the conduct of owners and their guests while they are in residence or visiting Bear Creek (Articles of Incorporation, Article V, Section (a) and (f)).
4. For the purposes of this Policy an "Emergency" or "Emergency Situation" is an occurrence or event that creates a significant risk to the health, safety, or welfare of one or more Bear Creek residents or their guests, and, which given the circumstances, requires an immediate response to mitigate or correct.
5. Each lot owner is responsible for the maintenance and repair of the owner's lot and any structures on the lot.
  - a. This responsibility extends to utilities that extend inside the property from the water meter to the residence, and electrical lines that extend from the meter to the residence.
  - b. It includes any condition on a lot that may create a threat to the health, safety, and welfare of adjacent neighbors or other residents of Bear Creek.
6. It is the Policy of the BCLOA that whenever an Emergency occurs and neither time nor circumstances allow the Board to contact the lot owner to remedy the emergency, the President of the BCLOA, or the President's designee, may declare an Emergency; and, without waiving the BCLOA's right to seek reimbursement from the person or persons responsible for creating the emergency, take whatever action is necessary to remedy or mitigate the emergency.
7. After the Emergency situation is mitigated or removed, the Board of Directors shall meet and determine:
  - a. Whether reimbursement of the costs associated with remedying or mitigating the emergency should be sought from the persons responsible for creating the emergency;
  - b. Whether all, or a portion of, the costs associated with responding to the emergency situation should be the responsibility of BCLOA and its members.
  - c. The Board shall determine the amount, if any, that should be assessed against the lot owners responsible for the creation of the emergency situation;
  - d. The decision of the Board shall be based on a majority vote of a quorum.
8. Notice of the decision of the Board shall be given in writing to the persons responsible for the creation of the emergency.

- a. If the persons upon whom notice is served object to paying the assessed costs, they shall, within 20 days of their receipt of the decision, deliver to the President a written Objection setting forth why the assessment is unjust.
  - b. If notice of an objection is not given within 20 days, the costs assessed shall become due, and if not paid within 60 days shall become a lien against the property owned by the responsible lot owner.
  - c. Any objection shall be handled pursuant to BCLOA Resolution Regarding Dispute Resolution Policy and Procedures.
  - d.
9. Because certain emergency situations do not allow for time to secure bids, the costs incurred to remedy or mitigate the emergency shall not be challenged, unless they were arbitrarily or capriciously incurred.
10. No comment or representation made by an individual director or officer of the Board to any lot owner regarding the director's or officer's opinion concerning the assessment of the costs to remedy the emergency situation shall be binding on the Board.
11. For the purpose of this Policy, an emergency created by a family member or guest of a lot owner, or by contractors acting on behalf of the lot owner, or a third party acting with the apparent authority of the lot owner, shall be the responsibility of the lot owner.
12. The Board shall be responsible for giving notice to any federal or state agency whose acts or omissions caused the emergency situation, within the time period required by federal or state law.
13. When a dangerous, but non-emergent, condition arises that needs to be remedied and time and circumstances permit, the BCLOA Board will contact the lot owner, and ask the owner to take whatever action is necessary, at the lot owner's expense, to remedy the condition. If the condition exists on one or more lots, the owners of the affected lots will be contacted. Any lot owner who believes a dangerous but non-emergent condition exists on an adjacent lot is encouraged to first discuss his or her belief regarding the condition with the owner of the lot, and, if that does not resolve the matter, contact the President of the BCLOA.
14. This Board Policy is not intended to amend or supersede the *Bear Creek Land Owners Association (BCLOA) Emergency Preparedness and Response Plan* issued by Safety and Fire Protection Committee, and as amended from time to time.

By way of illustration only, examples of conditions that might give rise to an assessment of costs include, but are not limited to:

- A fire started on an owner's lot that spreads to adjacent lots or common areas controlled by the BCLOA;
- Trash or debris from a lot that clogs a culvert under a road and creates a flooding condition that makes the road impassable or threatens to harm adjacent property;

- A dead tree that falls across a roadway or a tree that could fall on above-ground power lines or other electrical equipment;
- Damage caused to the bridge on the Conejos River by a careless driver;
- A water leak on the lot owner's side of the meter that causes damage to an adjacent roadway.
- In general, an event that occurs on a lot, proximately caused by the failure of the lot owner to properly maintain the owner's lot and which results in damage to a common area, easement, or another owner's lot or buildings on another owner's lot.

By way of illustration only, examples of conditions that might be the sole responsibility of the BCLOA and all of its members, including but not limited to:

- An emergency that arises on or within common areas or easements controlled by the BCLOA;
- An emergency condition that arises along Highway 17 above Bear Creek, or within the National Park Forest lands surrounding Bear Creek;
- An emergency condition caused by a third party hired by the BCLOA to maintain common areas, including roads and easements;
- An emergency caused by an unforeseen act of nature, the consequences of which were also not foreseeable.