

June 15, 2016

To: Homeowners with Homes Bordering the Pond

Re: The Detention Ponds / Access Easements

Dear Homeowner:

We have posted information on the detention ponds / access easements on the HOA website; however, the Board wants to provide information directly to you and other owners of lots subject to detention pond access road easements.

History:

As you know, there are ponds in our community that are supposed to collect and handle water runoff in order to prevent flooding and damage to properties. For many years, the HOA was led to believe through the City's comments and maintenance of the ponds that the City of North Bend was responsible for maintenance of these ponds. In fact, some owners recall being told by City personnel long ago that the ponds were the city's responsibility. In 2008, when Dennis Howard became the HOA Manager, he was informed by the Board at the time that the City of North Bend was responsible for the ponds. During this period, the ponds were functioning well, and the HOA and the City worked together on the ponds' maintenance: the HOA continually cleared the vegetation around the ponds at the cost of \$5,000 a year, and the city cleared the drains to insure outflow, as well as, removed the vegetation around the drains that the HOA could not reach. In 2009, the City informed Dennis Howard that the HOA landscapers were not to enter the ponds when removing vegetation because of the dangerous, steep, slippery slope of the lining of the deep ponds. This dictate substantiated the HOA's belief that the City was responsible for maintenance of the ponds. In 2015, during a flooding episode, the City unclogged the outtakes that had clogged, further implying the presumed City's responsibility for maintenance of the ponds. In addition, Mark Rigos, the Public Works Director for the City of North Bend, affirmed his belief at the time to Dennis Howard that the City was responsible for the ponds. Therefore, in summary, during these last eight years, the HOA's maintenance of the ponds focused on the management and removal of vegetation around the ponds in coordination with the City's care and maintenance of the outflow drains.

Unfortunately, this last winter the ponds failed, resulting in flooding across roadways and other parts of the community. The City came out at that time and helped with flood control, but unfortunately, the HOA was soon presented with documentation that was signed by the developer and the City on September 21, 1998 and recorded with King County on March 1, 1999 that implies that the HOA is responsible for the maintenance of the ponds. All HOA members want the City to assume the responsibility for maintaining and repairing the ponds. The City of North Bend has not promised to assume responsibility for the maintenance of the ponds; however, the Board is diligently working to convince the City to take over the maintenance. Indeed, Mark Rigos informed the HOA and restated at the Annual HOA Meeting on March 31, 2016 that Forster Woods is the only community within North Bend whose detention ponds do not belong to and are not maintained by the City.

In concert with the HOA efforts, the Board has asked Mark Rigos to provide the HOA in writing with a list of exactly what repairs and restorations need to be completed on the ponds before the

City will consider taking them over. Mark Rigos informed the HOA that to increase the likelihood of the City assuming maintenance and repair, the ponds must be brought back to certain standards, including: making sure that the easement access roads are secured, their boundary lines are surveyed, and locations are marked.

The HOA has also been informed by Mark Rigos of the City that the City will not even consider taking over maintenance of the ponds unless the access easements are properly located, marked, open and useable. Therefore, surveys of the easements are the first step towards addressing the deteriorated condition of the ponds and thereby increasing the likelihood of the City assuming maintenance.

#### Access Easements:

There is an easement on part of your property for access to the one of the ponds. These access easements, required by the City at the time of development, were put in place and recorded on certain lots near or abutting the ponds before anyone purchased lots.

An easement is the right to use part of land owned by another. The affected owner owns the land on which the easement applies, but the easement grants a right to someone else (here the HOA) to cross over the easement land in order to, in this case, access the ponds for maintenance purposes. As the owner, you can use the portion of the land subject to the easement, but only to the extent that the use does not interfere with the ability of maintenance crews to cross over the land with equipment and vehicles in order to conduct pond maintenance. Permanent improvements that interfere with access use are not supposed to be installed; only improvements that do not block access use across the easement are permitted under easement rights.

#### Surveying:

Surveying the boundary lines of the access road easements is a necessary part of the HOA's due diligence in handling the issues surrounding the ponds. Mark Rigos of the City expressly stated that the HOA had to survey the easement boundaries for these purposes.

Thus, to initiate the required first step in the pond restoration process, and as noted in the recent Board Updates, the HOA hired a survey company, Encompass Engineering and Surveying, to locate and mark the easement access roads to the ponds. Dennis Howard, the HOA Manager, specifically told the representative of the company to let him know when the surveying would commence and to be sure to knock on doors and let the owners know what they were doing before going onto their properties. The surveyors, however, did not follow the HOA's protocols. The surveyors did not inform the HOA that they would be coming out; they just showed up, and apparently, they did not even try to give owners advance notice that they would be on their property or for what purpose. The Board also heard that some of the surveyors were rude to owners when the owners asked what the surveyors were doing. The Board was shocked by the unprofessionalism of the surveyors, and Dennis Howard promptly lodged a formal complaint with the survey company regarding their conduct and failure to follow the HOA protocols.

#### Summary:

Regardless of whether the City takes over responsibility for the ponds, in order to try to protect the community of Forster Woods, it is still necessary to re-condition the ponds before this fall. The National Weather Service in its Seasonal Weather Outlooks has consistently predicted for

the last six months that September, 2016 thru May, 2017 will be a period of cooler and wetter weather, (70%+ probability of greater than normal precipitation). Thus, restoration of the ponds is a timely issue. The ponds are in poor condition, and the HOA wants to try to prevent another pond failure event, similar to or even worse than the one that happened this past winter.

The HOA will do everything possible to work with homeowners to minimize the disruption caused by the restoration process. Please understand, however, that the HOA must make the access easement roads usable for moving equipment across them to re-condition the ponds in order to bring the ponds back to the condition that the City will require to assume responsibility for their maintenance.

The Board and/or Dennis Howard, Association Property Manager, will be in contact with you in the near future to discuss whether the surveys identified any improvements on your lot's access easement need to be changed or removed. If you have installed a permanent improvement, which blocks access use, it must be removed. Whether or not the City later takes over maintenance, the HOA has to restore the usability of the access easements in order to repair the ponds to avoid another pond failure and flooding, similar to the event we experienced last winter or potentially a worse scenario. Mark Rigos cautioned the HOA that unless the ponds are restored, the HOA could experience far worse flooding scenarios than it has experienced thus far. The Board is working diligently with the HOA's legal counsel to address these issues, and the Board will schedule a meeting soon with homeowners of properties bordering the ponds.

Please note:

One of the HOA owners, whose house borders the pond, has secured legal counsel to challenge the existence of an easement on their property and/or the exercise of the easement to repair and restore the ponds. As part of this process, the owner, at their own expense, resurveyed the ponds and the surrounding area on May 28th. This survey was conducted without the knowledge of the HOA. Unfortunately, this legal engagement has necessitated a legal response by the HOA and has temporarily halted the HOA's critical progress in repairing and restoring the ponds before the fall storms.

If you have any questions, please submit them to Dennis Howard, the HOA Property Manager, using the "Contact" option on the HOA Website ([www.fwhoa.com](http://www.fwhoa.com)).

Thank you for your patience as the Board sorts through and handles these difficult issues.

Sincerely,  
The Board of Directors  
Forster Woods HOA

cc: Mr. Dennis Howard  
Property Manager

Washington Association Management Services, LLC