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To Members of the Middle Crawford Road Association

Sent via electronic mail to Mary Tapp for distribution

RE: Middle Crawford Road Maintenance Payments

Dear Land and Home Owners,

I have been asked by the Board of Directors of the Middle Crawford Road Association to clarify what rights and responsibilities each of the members and/or road users have regarding Middle Crawford Road. As all of you are likely aware, Middle Crawford Road is not a public right of way. This means the County can require certain road quality, width, and standards be met but Island County has no responsibility to provide the work to bring the road into compliance with the quality, width, and standards. The work to bring the road into compliance rests with the land owners who use the road to access their properties.

A little over 2 decades ago a number of owners serviced by Middle Crawford Road got together and formed a non-profit corporation called the Middle Crawford Road Association. These owners all signed certificates that bound themselves and all future owners of their property to be members of the Middle Crawford Road Association. This has allowed for the collective management of the road in an efficient manner. It is my understanding that not all of the land owners who utilize Middle Crawford Road became members and those owners do not wish to become members.

There is no prohibition or responsibility for those that are not members to become members. Membership to those lots that never joined is voluntary. However, the non-members have just as much responsibility to contribute to the upkeep and maintenance of the road. The Washington State Supreme Court decided this very question in a case called *Bushy v. Weldon*. The Supreme Court established that trial courts have the authority to apportion costs for maintaining a commonly used road between those users of the road. This decision was recognized and defended in the Court of Appeals case of *Buck Mountain Owners' Association v. Prestwich*, 174 Wash.App. 702 (2013). In the *Buck Mountain* case the defendants, who did not want to pay, attempted every conceivable defense including "no taxation without representation" (the association required the same assessment amount from non-members who could not vote). Each of the defenses failed and the court upheld the rule that road users must contribute to the maintenance costs of the commonly used road.

The term users include all those individuals who utilize Crawford Road to access their respective property. This includes each owner of any subdivided parcel, commercial property land owners, and any property that has improvements that create vehicular traffic along Crawford Rd. Arguably, vacant land would not be a “user” as the land is not creating any additional traffic or wear and tear upon the road.

Hopefully this opinion letter will clarify some of the rights and responsibilities of those living along Middle Crawford Road. I thank you for your time and attention.

Sincerely,

Matthew R. Walker

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Cc: File

Enclosures: none