

Summary of Comments and Responses regarding Draft and Revised Draft BTPOA Rules and Regulations Version 9

January 10, 2012

Acronyms: CSFS = Colorado State Forest Service, FMC = Forest Management Committee, WAC = Water Augmentation Committee

Section	Commenter	Date	Comment	Response/Resolution
4.6 Vehicle Parking	Various	9/15/2011	As is done in nearby subdivisions, vehicle parking covenant enforcement should be handled based on complaints rather than using tours.	Relying on complaints as a method of enforcing the covenants has a significant problem in that the alleged violator often has a pretty good idea who lodged the complaint and may try to intimidate the neighbors or retaliate in one way or another. Another issue with complaint-based enforcement is that those cited with violations will claim discrimination since others with similar behavior are not cited if their neighbors do not complain. Complaint-based enforcement may also lead purchasers to assume that the covenants are not being enforced since they may see numerous covenant violations throughout the subdivision. Based on these considerations, the board decided to continue using tours of the subdivision to address covenant issues in a uniform and equitable manner.
	Nancy Krause	9/23/2011	With complaint-based vehicle parking covenant enforcement, we might as well have no rules and duke it out in our cul-de-sacs. What would be the advantage to that proposal other than for those who would love to bully and intimidate their neighbors?	
4.6.2.6 Overnight Visitors	Various	9/15/2011 and 11/15/2011	Special situations arise in which extra vehicles must be parked on properties for more than two weeks. Removing the possibility of the board granting variances to the parking covenant eliminates needed flexibility to accommodate situations such as caregivers, hospice workers, and college students home for the summer.	The potential of the board granting variances to the parking covenant raises numerous issues including: <ul style="list-style-type: none"> • Who should be notified that a parking variance hearing is to be held? Should it be the adjacent neighbors, everyone within some distance (say 1,000 feet), or all of Bent Tree? Is email notification of an upcoming parking variance hearing adequate or should we mail notices? Do we need to have proof of delivery of the notices? Inadequate notice to other property owners could be an important factor in suits brought against the BTPOA. • What sort of hardship should be considered sufficient justification for a parking variance? Can that be defined clearly in the Rules and Regulations so it can be consistently applied even as the composition of the board changes from year to year? • What weight should be given to objections from the neighbors? If any neighbor objects should that be sufficient to veto the requested parking variance? • If the board were to grant some parking variance requests and deny others, charges of favoritism or inconsistency could be brought. • If the board never grants variance requests then what is the point of having the procedure? • If the board always grants variance requests, then that part of the covenants has been nullified without going through the legal procedure specified in the covenants for making that kind of change. • Covenant restrictions on vehicle parking may be important considerations when prospective buyers are making property purchase decisions. How can the association

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				<p>ensure that purchasers of property in Bent Tree are aware that the parking variance procedure exists?</p> <ul style="list-style-type: none"> Enforcement of the vehicle parking covenants would be made considerably more complicated and expensive. Records would have to be maintained as to who has been granted what variance and for what period. If the variance is for a specific driver of a specific vehicle, who is going to keep track of when someone else is driving that vehicle or if the vehicle is replaced with a different vehicle? If someone is cited for a vehicle parking covenant violation, they may use the variances granted to other property owners as proof that the rules are not being enforced equitably. <p>Based on these concerns, the board decided to eliminate the sentence that suggested that vehicle parking covenant variances might be granted.</p>
4.9 Dead and Diseased Trees	See 6.3 below.	See 6.3 below.	See 6.3 below.	See 6.3 below.
4.10 Animals	Lance Dodd	9/11/2011	What is the purpose of the reference to the county leash law?	The intention of the reference was to define the term “control;” however, the reference raised more issues than it resolved. As a result, the reference to the county leash law has been removed. The requirement is that dogs must be kept under control. Whether a dog was under control or not will be determined on a case-by-case basis. Barking dogs are considered a nuisance covered by Section 14 (15 for Bent Tree IV and V) of the covenants.
6.2 Reporting Needed for Water Augmentation Plan	Various	9/15/2011	Those property owners who have no changes in irrigated area and anticipate no changes in irrigated area should not have to send in the yellow card each year.	<p>The Rules and Regulations require that property owners respond when the WAC requests information.</p> <p>Based on the comment, the WAC may adjust when it requests information and what information it requests.</p>
6.3 Forest Management and 4.9 Dead and Diseased Trees	Elizabeth Woish	9/21/2011	These additional rules are unnecessary since the local forest is healthy. The board and FMC are not qualified to determine who has adequate training and experience to conduct forestry inspections nor to evaluate the results of those inspections. Requiring property owners to hire outside contractors goes beyond what is supported by the covenants.	<ul style="list-style-type: none"> There have been recent incidents where Mountain Pine Beetle killed a significant number of nearby trees. Section 10 (11 for BT IV and V) of the covenants says “Owners are responsible for prompt treatment or removal of trees infected by pine beetle or other insects which can kill trees within a year and might spread to adjacent trees and lots, and to reasonably contain any trees with slow parasitic growth such as mistletoe.” Inspections are necessary to confirm that owners are complying with this section. That is why the board approved Bent Tree-wide inspections by the CSFS. For those lots where permission cannot be obtained for the CSFS inspection, some credible evidence of forest inspection is needed to ensure that all property owners are complying with the covenants. The board decided to require that those who do not permit inspection of their property as part of Bent Tree-wide inspections must “supply the FMC with written confirmation from the Colorado State Forest Service or personnel with equivalent forest inspection experience that their property has been inspected and the outcome of that inspection. This offers the possibility that property owners could self-inspect provided they can demonstrate adequate forest inspection training and/or experience.”

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6.3 Forest Management and 4.9 Dead and Diseased Trees	Paul Young	10/11/2011	The requirement to remove dead and diseased trees by June 1 st goes beyond what the covenants require.	The authority comes from Section 10 (11 for BT IV and V) of the covenants that says “Owners are responsible for prompt treatment or removal of trees infected by pine beetle or other insects which can kill trees within a year and might spread to adjacent trees and lots, and to reasonably contain any trees with slow parasitic growth such as mistletoe.” The wording in Rules and Regulations Section 4.9.3 applies that authority by saying “Owners are responsible for the prompt removal of diseased, dead, or downed trees that are deemed by the CCC or the FMC to be a hazard, a nuisance, or unsightly.” The CSFS recommends June 1 st as an appropriate deadline for removal of beetle-infested trees.
6.3 Forest Management and 4.9 Dead and Diseased Trees	Paul Young	10/11/2011	The proposed rule requires homeowners to comply by May 1 st every year, but only requires the BTPOA to arrange for “periodic” inspections. In the event the FMC is unable to arrange for an inspection each year or is unable to complete this before May 1, you have created liability on the FMC and the BTPOA that homeowners can seek to recover.	Based on your comment, the wording in Section 6.3 has been revised in part as follows: “To insure that the health of the forest throughout Bent Tree is being maintained, the FMC may arrange for periodic forest inspections at no additional cost to property owners. In order to conduct those inspections, the FMC may request permission from property owners for access to their properties. When the FMC requests permission by April 1, then by May 1, property owners who do not respond to the FMC’s request for access or who deny access to their properties, must supply the FMC with written confirmation from the Colorado State Forest Service or personnel with equivalent forest inspection experience that their property has been inspected and the outcome of that inspection.” This wording makes the May 1 st deadline dependent on the FMC making the request by April 1 st . The intention with the revised wording is that in the event the FMC does not arrange for Bent Tree-wide inspections, then there is no requirement for property owners to provide evidence that their properties have been inspected.
6.3 Forest Management and 4.9 Dead and Diseased Trees	Paul Young	10/11/2011	There is no definition of who will perform the inspection, so in the event the Forestry Service is unwilling to provide the service in the future, the forest inspection could be performed by someone with a conflict of interest in potential revenue from the tree removal. There is no definition of the acceptable skills, qualifications, or groups the FMC can contract with. In fact, the FMC is free to use untrained people. This creates the risk of homeowners claiming incompetence; either in not finding infected trees or forcing trees to be removed that do not need to be.	Although the current wording does not require that the Bent Tree-wide inspection is conducted by the CSFS, it is anticipated that the CSFS or personnel with equivalent forest inspection experience would be used by the FMC since that is the requirement with regard to those who do not give permission for their properties to be inspected as part of the Bent Tree-wide inspection. It is anticipated that avoiding potential conflicts of interest of the sort you describe would one of the factors to be considered in selecting the organization to conduct the Bent Tree-wide inspections. Another factor would be the competence of the selected organization to recognize diseased and healthy trees. The liability issue you raised regarding incompetence on the part of the inspector or inspectors selected by the FMC should be addressed as part of the inspection permission form. Elaboration of these aspects of how the FMC selects personnel to conduct the Bent Tree-wide inspections should be considered for future inclusion in the Rules and Regulations.

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6.3 Forest Management and 4.9 Dead and Diseased Trees	Paul Young	10/11/2011 and 11/14/2011	I can find no professional qualification for “trained forestry professionals” in the US that is recognized by the law in the same way a “trained psychology professional” or a “trained legal professional” is recognized. Canada does have a government body that certifies “trained forestry professionals” in Canada, but there is no such process or legal definition in the US.	As a result of your comment, the use of the phrase “trained forestry professional” has been replaced with “Colorado State Forest Service or personnel with equivalent forest inspection experience.”
6.3 Forest Management and 4.9 Dead and Diseased Trees	Paul Young	10/11/2011 and 11/14/2011	The covenants do not give the board the right to force homeowners to employ a third party to meet covenant requirements. The covenants specifically allow the board to raise dues, issue fines, and incur costs to remedy covenant violations that can then be recovered from the homeowner or liened against their property. There is no allowance in the covenants for the board to force homeowners to employ third parties.	Property owners are given a choice. Only those property owners who do not grant permission to inspect their properties are required to provide evidence that their properties have been inspected. This is needed to ensure compliance with Section 10 (11 for BT IV and V) of the covenants, which says in part “Owners are responsible for prompt treatment or removal of trees infected by pine beetle or other insects which can kill trees within a year and might spread to adjacent trees and lots, and to reasonably contain any trees with slow parasitic growth such as mistletoe.” The reworded rule allows that the evidence could be obtained from the CSFS or personnel with equivalent forest inspection experience and offers the possibility that property owners could self-inspect provided they can demonstrate adequate forest inspection training and/or experience.