

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR SAN JUAN COUNTY

CLARE LINN WELKER and ABIGAIL  
METZGER WELKER, Trustees of the Big  
Sky Trust UDT 11-14-2002

Plaintiffs,

v.

MOUNT DALLAS ASSOCIATION, a  
Washington non-profit corporation;

Defendants.

NO. 15-2-05069-0

PLAINTIFFS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT

**I. INTRODUCTION**

Clare and Abigail Welker, as trustees of Plaintiff Big Sky Trust UDT 11-14-2002, respectfully request that the Court exercise its equitable power to establish a method for allocating road maintenance expenses for Mount Dallas Road (the "Road"). As set forth below, no agreement on a method for allocating Road maintenance expenses exists between all of the owners (the "Benefitted Owners") of the properties (the "Benefitted Parcels") accessed by the Road.

Furthermore, and as addressed in Plaintiff's first Summary Judgment Motion, Defendant Mount Dallas Association (the "Association") has no beneficial interest in the Road and lacks the authority to establish a method for allocating Road maintenance expenses among the Benefitted Parcels or to impose road maintenance expenses on the Benefitted Owners without their consent or approval. Also, given that the easements creating the Road grant each Benefitted

1 Parcel only limited access to a certain portion of the Road (as opposed to the entire Road), the  
2 Benefitted Parcels (and the Benefitted Owners) cannot be required to share such Road expenses  
3 equally. Instead, the method for allocating Road maintenance expenses must reflect the limited  
4 access and limited legal easement rights of the Benefitted Parcels to the Road. The Plaintiffs  
5 believe that the method must allocate expenses either based on the Benefitted Parcels' actual  
6 usage of the Road (referred to as the "Actual Use Method"), or the Benefitted Parcels' legal right  
7 to use the Road (referred to as the "Legal Use Method").<sup>1</sup> As opposed to other private easement  
8 road situations in which easement use rights within the development are non-exclusive and equal  
9 (and most often legally established through recorded covenants), here there is simply no legal or  
10 equitable basis to support any method of allocating Road maintenance expenses on an "equal"  
11 basis, as there is no legal or equitable right to use the Road on an equal basis.

12 Given these issues, the Plaintiffs retained San Juan Surveying to prepare two surveys of  
13 the Road illustrating the actual access point to each Benefitted Parcel (referred to as the "Actual  
14 Use Method Survey") and the legal extent of each Benefitted Parcel's right to use the Road  
15 (referred to as the "Legal Use Method Survey"). Declaration of Robert J. Wilson ("Wilson  
16 Decl.") Exs. A & B, respectively (collectively the "Surveys"). The surveyor also prepared a  
17 spreadsheet comparing the results of the two Surveys. Wilson Decl. Ex. C (the "Spreadsheet").

## 18 II. STATEMENT OF FACTS

19 The Plaintiffs' previously-filed a Motion for Summary Declaratory Judgment contained  
20 a lengthy statement of the underlying undisputed facts of this case. As such, the Plaintiffs do not  
21 repeat those undisputed facts here, but incorporate them by this reference and attach as an  
22 addendum to this Motion the section of that Motion containing the undisputed facts. The  
23 undisputed facts pertaining specifically to this Motion are as follows.

### 24 A. The Segmented Easements Creating Mount Dallas Road Limit the 25 Benefitted Owners' Access Rights to the Road

26 <sup>1</sup> As discussed later in this Motion, the Plaintiffs believe that of the two methodologies, the Legal Use Method is  
the more legally and equitably appropriate method for allocating Road maintenance expenses.

1 The main Mt. Dallas Road easement that runs end-to-end beginning at West Side Road  
2 was established under AFN 58585. Wilson Decl. ¶ 8. The AFN 58585 easement originally  
3 benefitted only the Southwest Quarter of the Northeast Quarter of Section 24 at the end of the  
4 Road (as outlined in cross hatched red at the lower right hand corner of the Legal Use Method  
5 Survey. *Id.* A copy of AFN 58585 is attached as Exhibit D to the Wilson Decl. Although AFN  
6 58585 set forth the legal description and location of the Road from its beginning at West Side  
7 Road to the end, it did not grant easement rights to use the Road to the properties over which it  
8 ran. *Id.* Instead, easement rights to access West Side Road from the remaining properties  
9 adjoining the Road and on Side Roads were primarily created by the six additional segmented  
10 easements which (i) specifically benefitted certain designated Benefitted Parcels and (ii)  
11 provided access from the Benefitted Parcel to West Side Road.<sup>2</sup> *Id.* ¶ 9. Copies of these six  
12 segmented easements are attached as Exhibits E-1 through E-6 to the Wilson Decl.

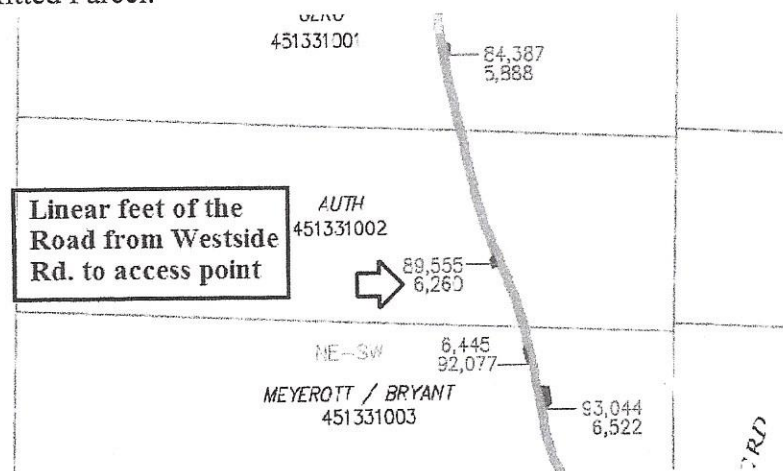
13 As a result of the manner in which legal access to the Road was created through this series  
14 of segmented easements overlaying the original AFN 58585 Road easement starting at West Side  
15 Road, Benefitted Parcels closer to West Side Road have the right to use only a shorter portion of  
16 the Road than Benefitted Parcels further from West Side Road. *Id.* In other words, each  
17 Benefitted Parcel along the Road typically possesses a non-exclusive right to use the Road to  
18 travel to and from West Side Road, but possesses no legal right to travel on the Road beyond the  
19 legal limit of such Benefitted Parcel's easement. For some, the easement end point is the end of  
20 their property, and for others, it is further up the Road. It all depends on where the particular  
21 Road easement benefitting a particular Parcel ends. *Id.* The Legal Use Method Survey  
22 specifically designates the end point of each of these several segmented easements. *Id.* Ex. B.

23 As noted, the easements for some of the Benefitted Parcels do not end at their respective  
24

25 <sup>2</sup> The legal right of all of the Benefitted Parcels to use the Road is governed by either (i) one of the seven  
26 easements referenced in this Motion or (ii) separate easements that overlap and/or incorporate a portion or all of  
the legal metes and bounds easement description set forth in AFN 58585. Wilson Decl. ¶ 9.

1 property lines, but instead extend some distance up the Road. For instance, the recorded easement  
2 (AFN 58559) benefitting the Auth property, located approximately 1.2 miles up the Road, does  
3 not end at the Auth's property line. *Id.* Ex. B. Instead, that easement provides the Auths with  
4 legal access across two additional properties further up the Road. *Id.* As a result, the length of  
5 the Road the Auths may legally travel beyond their property differs from the length of the Road  
6 they are required to travel to access their property by approximately 600 feet.<sup>3</sup> *Id.*

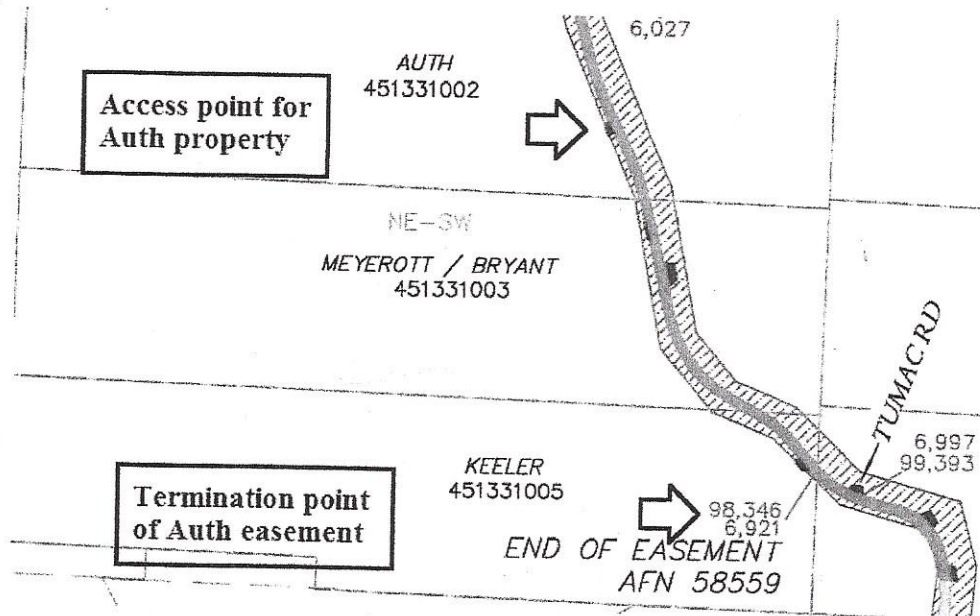
7 The Actual Use Method Survey illustrates how far up the Road each Benefitted Owner  
8 *must* travel in order to reach the access point for his or her property. *Id.*, Ex. A. (The Actual Use  
9 Method Survey includes the linear feet from West Side Road to the access point for the particular  
10 Parcel in green, with the square footage of the Road to that access point in red. The actual access  
11 point is a blue mark in the Road.). For instance, and again using the Auth Parcel as shown below,  
12 the Auths must travel 6,260 linear feet up the Road to reach the access point to their property. *Id.*  
13 Typically, the access point is a driveway, but for most of the properties on the Side Roads, it is  
14 typically the point at which the Side Road meets the Road. *Id.* The Actual Use Method Survey  
15 thus illustrates the *minimum* length of the Road a particular Benefitted Owner must use to reach  
16 his or her Benefitted Parcel.



24 Detail from Wilson Decl., Ex. A (explanatory text supplied).

25  
26 <sup>3</sup> For example, and for comparison, the spreadsheet attached to the Wilson Decl. as Ex. C, line 43, reflects the difference between the length of the Road the Auths use to access their property (6,260 linear feet [LF]) and the length of the Road the Auths have the right to access under the easement (6,921 LF).

1 In contrast to the *access point* shown on the Actual Use Method Survey, on the Legal Use  
2 Method Survey the *termination point* of each segmented easement is indicated by the legend  
3 “End of Easement”. *Id.*, Ex. B. As shown below for illustrative purposes, the easement benefitting  
4 the Auth property terminates at the “End of Easement” point of AFN 58559, which is 661 linear  
5 feet further up the Road than the Auth’s access point. *Id.* Other Benefitted Parcels similarly have  
6 their easements extend well past their access points. *Id.* The Legal Use Method Survey thus  
7 illustrates the length of the Road over which each Benefitted Owner *may* legally use/travel, which  
8 is not necessarily the same as the length of the Road that they *actually* use/travel to their particular  
9 access point. *Id.*



10  
11  
12  
13  
14  
15  
16  
17  
18  
19 Detail from Wilson Decl., Ex. B (explanatory text supplied).

20 Although the length of the Road actually used by Benefitted Owners in the Actual Use  
21 Method Survey is sometimes very similar to the length of Road that Benefitted Owner  
22 legally use in the Legal Use Method Survey, in other cases it varies. *Id.* ¶ 10; Ex. C. That variation  
23 results from the location of the access point on a particular property, the shape of the property,  
24 or as with the Auths, the particular easement at issue granting the right to use the Road. *Id.*  
25  
26

1 An exception to this variation exists for most of the Benefitted Parcels located on Side  
2 Roads.<sup>4</sup> For most of those Benefitted Parcels on the Side Roads, the length of the Road that the  
3 Benefitted Owners actually use to access their properties and the length of the Road that their  
4 respective Benefitted Parcel may legally use is identical. *Id.* ¶ 9. This results from the easement  
5 rights of the Benefitted Parcels on the Side Roads to use the Road typically extending only to  
6 the points at which the Side Roads meet the Road. *Id.* In other words, most Benefitted Owners  
7 of properties on Side Roads may only legally use the portion of the Road to the Side Road  
8 access point, which is the same portion of the Road they actually use to access their Benefitted  
9 Parcels. *Id.* An example of a Benefitted Parcel on a Side Road that does not follow this general  
10 rule is the Hill Parcel (452412001). The Hill Parcel accesses the Road via Skylark Lane, but  
11 the easement for the Hill Parcel includes the AFN 58585 description. *Id.*

12 The Spreadsheet sets forth a comparison of the results from the two Surveys. *Id.* Ex. C.  
13 That Spreadsheet calculates the allocated percentage of each Benefitted Parcel's Road  
14 maintenance obligation based on both the Actual Use Method and the Legal Use Method. *Id.*  
15 These two percentages reflect the potential pro rata allocation of maintenance expenses to each  
16 Benefitted Parcel, with the "To Access" percentage corresponding to the Actual Use Method and  
17 the "To End of Easement" percentage corresponding to the Legal Use Method. *Id.*

18 **B. The Court Previously Ruled That the Mount Dallas Association Does Not**  
19 **Have Authority to Impose Road Maintenance Assessments**

20 Following a hearing on the Plaintiffs' prior Motion for Summary Judgment on October  
21 30, 2015, the Court confirmed and ruled that no agreement or covenant exists giving the  
22 Association legal rights or interests in Mt. Dallas Road. As a result, the Court also ruled that the

23 \_\_\_\_\_  
24 <sup>4</sup> The two Surveys indicate only the point at which these Side Roads meet the Road; the Side Roads were  
25 established by separate easements that typically grant access to the Road only to the point the particular Side Road  
26 meets the Road. Accordingly, most Benefitted Owners on a particular Side Road typically have the same right of  
access to the Road. The Side Roads were not, however, separately surveyed because the scope of this Motion  
relates only to the use of the Road by all Benefitted Parcels, including those on Side Roads. Therefore, the use of  
the Side Roads by Benefitted Parcels on the Side Roads (or the legal right to use the Side Roads) is not relevant to  
this Motion.

1 Association lacks the legal authority to manage the maintenance of the Road on behalf of the  
2 Benefitted Owners—including a lack of authority to establish an expense allocation method, or  
3 to assess, or collect maintenance expenses from all of the Benefitted Owners using any allocation  
4 method. As set forth below, only the Court possesses the authority to determine the proper  
5 method by which maintenance expenses for the Road will be allocated among Benefitted Owners.

### 6 III. STATEMENT OF ISSUE

7 Whether Court should, under its inherent equitable authority, establish a methodology for  
8 allocation of road maintenance expenses using the Legal Use Method when

9 (1) the Association lacks authority to either establish a methodology for allocation of  
10 Road maintenance expenses, or to impose assessments for Road maintenance expenses,  
11 regardless of the methodology;

12 (2) no agreement or covenant exists among all of the Benefitted Owners that allocates  
13 Road maintenance expenses between the Benefitted Parcels; and

14 (3) the segmented easements that provide legal access to the Road give each Benefitted  
15 Parcel unique and limited legal access rights to the Road aside from their actual use of  
16 the Road for access.

### 17 IV. EVIDENCE RELIED UPON

18 The Plaintiffs rely on the evidence and authorities cited in this Motion and the attached  
19 Addendum; the Declaration of Robert J. Wilson and the exhibits attached to that Declaration;  
20 and the pleadings and documents on file with this Court.

### 21 V. ARGUMENT

#### 22 A. Summary Judgment Standard

23 Under CR 56(c), summary judgment is appropriate when the evidence in the record  
24 demonstrates that no genuine issue as to any material fact exists and the moving party is entitled  
25 to a judgment as a matter of law. CR 56(c); *Int'l Ass'n of Firefighters, Local 1789 v. Spokane*  
26 *Airports*, 146 Wn.2d 207, 223, 45 P.3d 186 (2002). “[W]here the facts are undisputed and

1 reasonable minds could not differ, [a court] may determine the issue as a matter of law.” *Dice v.*  
2 *City of Montesano*, 131 Wn. App. 675, 687-88, 128 P.3d 1253 (2006). For purposes of summary  
3 judgment, a “material fact” is “one upon which all or part of the outcome of the litigation  
4 depends.” *Id.* In other words, a court should grant the motion “if, from all the evidence,  
5 reasonable persons could reach but one conclusion.” *Denaxas v. Sandstone Court of Bellevue,*  
6 *L.L.C.*, 148 Wn.2d 654, 662, 63 P.3d 125 (2003).

7 Here, no genuine issues of material fact exist with respect to the issue to be decided in  
8 this Motion: the parties agree that the segmented easements grant the Benefitted Owners non-  
9 exclusive rights to access only part of the Road. The parties also agree that, under this Court’s  
10 prior ruling, the Association cannot impose an allocation method or actual expenses on Benefitted  
11 Owners because no binding covenant exists providing the Association with that power.

12 As detailed below, and absent a binding agreement between all the parties, only the Court  
13 possesses the authority to establish a method for allocating maintenance expenses for the Road.  
14 And, given that each Benefitted Owner can only legally use a certain portion of the Road, the  
15 only equitable methods for allocating those expenses are the Actual Use Method and the Legal  
16 Use Method.

17 **B. The Court Possesses Inherent Authority to Establish a Fair and Equitable**  
18 **Methodology for Allocation of Road Maintenance Expenses, But Cannot**  
19 **Expand the Scope of the Easements in Establishing Such a Methodology**

20 In the absence of an agreement or covenant to share road maintenance expenses, the  
21 courts possess “inherent equity power to resolve a cost-sharing dispute between users of a shared  
22 driveway, premised on basic rules of fairness.” *Buck Mountain Owner's Ass'n v. Prestwich*, 174  
23 Wn. App. 702, 716, 308 P.3d 644, 652 (2013). In *Buck Mountain*, the court noted that courts may  
24 exercise their “equity power to impose reasonable road maintenance obligations where no  
25 agreement exists.” *Buck Mountain*, 174 Wn. App. at 716-17 (citations omitted).

26 However, that equity power is limited by the actual covenants that created the shared  
roadway: as the “extent of the right acquired” in an easement is “determined from the terms of



1 the grant,” courts cannot expand the scope of an easement. *Visser v. Craig*, 139 Wn. App. 152,  
2 160, 159 P.3d 453 (2007) (citations omitted). That restriction arises from the rule that when an  
3 easement is appurtenant to a specific parcel, extending that easement to other parcels “is a misuse  
4 of the easement.” *Brown v. Voss*, 105 Wn.2d 366, 371, 715 P.2d 514 (1986) (citations omitted).

5 When owners of properties subject to easements have legal rights and obligations to only  
6 certain roads or portions of a road, courts may allocate a pro rata share of maintenance costs  
7 based on usage. *Nw. Properties Brokers Network, Inc. v. Early Dawn Estates Homeowner's*  
8 *Ass'n*, 173 Wn. App. 778, 797, 295 P.3d 314 (2013) (citing cases) (“*EDE*”). Requiring parties to  
9 “pay an equal amount” is the “proper result” only when parties make equal use of a road. *EDE*,  
10 173 Wn. App. at 797 (citing cases). By contrast, when the parties neither make equal use of road  
11 nor have equal legal rights to use the road, the trial court possesses discretion to order the parties  
12 to pay their pro rata share of actual maintenance costs incurred. *Id.* at 797-98.

13 For instance, in *EDE*, the property owners lived in a 37 lot private development with a  
14 homeowners association. *Id.* Of those 37 lots, six were accessed only through a single road, in  
15 contrast to the remaining 31 lots, which were accessed through both that single road and other  
16 roads. *Id.* The owners of one of the six lots refused to pay the homeowners association’s annual  
17 road maintenance assessment because it included fees for the other additional roads to which  
18 those owners’ legal obligations did not extend. *Id.* The trial court agreed that the owners were  
19 not required to pay the assessment for the same reason the owners had refused to pay, instead  
20 requiring that the owners pay 1/37 of the maintenance cost of the single road. *Id.* In affirming the  
21 trial court’s decision, the appellate court noted that the trial court acted within its discretion in  
22 ordering only a proportional share of the maintenance cost based on usage. *Id.* at 798.

23 Here, the segmented easements that create the legal access and use rights to the Road,  
24 combined with the lack of a binding road maintenance agreement, has resulted in Benefitted  
25 Parcels with different and limited rights in the Road and no proportionate method for allocating  
26 Road expenses. Unlike a typical situation in which the covenants provide all owners a non-

1 exclusive easement right to use the road and equally allocate road maintenance expenses,<sup>5</sup> the  
2 Benefitted Parcels here (1) do not have any legal or equitable right to use portions of the Road  
3 beyond the segmented portion and/or limited easement rights relative to such Benefitted Parcels  
4 and (2) have not previously agreed to share the maintenance costs for the Road equally, or in any  
5 other specific or binding manner. Stated otherwise, no nexus exists between the Benefitted  
6 Owners' actual legal rights in the Road and the past allocation of maintenance expenses among  
7 the Benefitted Owners. It is that equitable apportionment methodology that is lacking and what  
8 the Plaintiffs are relying on the Court to provide.

9 **C. The Two Methodologies Proposed by the Plaintiffs Provide Reasonable and**  
10 **Equitable Alternatives to the Potential Methods for Allocating Road**  
11 **Maintenance Assessments**

12 The two methodologies proposed by the Plaintiffs recognize this inherent difficulty and  
13 thus provide the alternatives within which the possible equitable solutions exist. First, as the  
14 existing easements provide each Benefitted Parcel with the right to use the Road to access only  
15 a portion of the Road, the Actual Use Method represents the minimum percentage of Road  
16 expenses for which each Benefitted Parcel should be responsible. Wilson Decl. Exs. A & C. That  
17 method recognizes that, as each Benefitted Parcel typically uses only as much of the Road as  
18 necessary to reach the access point of such Benefitted Parcel, that Benefitted Parcel will  
19 contribute to the wear and tear almost exclusively to the portion of the Road actually used (and  
20 should be proportionally responsible for maintenance of that portion of the Road). Under this  
21 Actual Use Method, actual use defines proportional use, and correspondingly, proportional use  
22 defines the proportional obligation for maintenance.  
23

24 <sup>5</sup> See, e.g., *Fawn Lake Maint. Comm'n v. Abers*, 149 Wn. App. 318, 321, 202 P.3d 1019 (2009) (covenants required  
25 assessments to be "levied in equal proportions against each and every residential lot, or in accordance with service  
26 rendered directly to each such resident..."); see also *Nw. Properties Brokers Network, Inc. v. Early Dawn Estates  
Homeowner's Ass'n*, 173 Wn. App. 778, 797-98, 295 P.3d 314 (2013) (requiring each party to pay equal amount of  
maintenance costs was proper when the parties made equal use of the road at issue); *Bushy v. Weldon*, 30 Wash.2d  
266, 268, 191 P.2d 302 (1948) (two adjacent parcels sharing driveway required to share maintenance costs equally).

1 Second, the Legal Use Method represents the maximum amount of proportional Road  
2 expenses that the Court could allocate without a *de facto* extension of the scope of the Road  
3 easements. Wilson Decl. Exs. B & C. The Legal Use Method recognizes that, as the easements  
4 limit the portion of the Road to which the Benefitted Parcels have legal access, they should  
5 similarly limit the portion of the Road such Benefitted Parcels should be required to maintain. In  
6 other words, no Benefitted Parcel should be obligated to pay to maintain portions of the Road  
7 that the Benefitted Parcel does not possess the legal right to use.

8 The Plaintiffs commissioned the Surveys and related Spreadsheet to provide the Court  
9 with the necessary information to exercise its equitable power to choose one of these allocation  
10 methods. Wilson Decl. Exs. A-C. Based on *Visser* and *Brown*, and existing case law, the rights  
11 of use cannot legally or equitably extend beyond the scope of the respective segmented  
12 easements. Accordingly, the Court is limited to the two allocation methods set forth by the  
13 Surveys.

#### 14 VI. CONCLUSION

15 Ultimately, the fundamental premise of any allocation method must be that none of the  
16 Benefitted Owners should be required to pay for maintenance expenses for a part of the Road  
17 that such Benefitted Owner possess no legal right to use.

18 Indeed, the Plaintiffs' two proposed allocation methods simply set the alternatives within  
19 which any allocation method must operate: at a minimum, under the Actual Use Method,  
20 Benefitted Parcels should pay for the portion of the Road they *actually* use. At a maximum, under  
21 the Legal Use Method, Benefitted Parcels should pay for the portion of the Road they have the  
22 *legal right* to use. Arguments exist in favor of both of these methodologies for allocating Road  
23 maintenance expenses.<sup>6</sup> And, as the Spreadsheet illustrates, no significant percentage or financial  
24

25 \_\_\_\_\_  
26 <sup>6</sup> Equal allocation of maintenance expenses is neither a legal nor practical alternative given the unique structure of  
the Road easements that exist here. In order to be equitable, the allocation method must be one of the two  
presented here.

