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### MEMORANDUM

**DATE:** September 29, 2023  
**TO:** Board of Supervisors  
**FROM:** Christian M. Curtis, County Counsel & Jared Schwass, Deputy County Counsel  
**SUBJECT:** Evacuation Route Pilot Program

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#### INTRODUCTION

The Mendocino County Board of Supervisors (the “**Board**”) has directed staff to develop a pilot program (the “**Pilot Program**”) to establish and maintain vital emergency evacuation, and access, routes to and from high-fire risk areas in the Brooktrails area (the “**Routes**”). The development of the Pilot Program has hit many obstacles and has been ongoing for several years. Below is a simplified approach that could move the creation of the Routes forward without requiring the approval of outside boards or commissions, such as the Mendocino Local Agency Formation Commission (“**LAFCO**”).

#### BACKGROUND

The initial plan for the Pilot Program was to activate and use county service area 3 (“**CSA3**”), which had gone inactive, to establish a zone of benefit within CSA3 (the “**ZOB**”). The ZOB would then be used to establish the area in which a special benefit assessment would be levied. The special benefit assessment would be levied on those properties within the ZOB that receive a special benefit from the establishment and maintenance of the Routes.

As County staff worked to put the Pilot Program together, several roadblocks arose regarding the use and activation of CSA3. Those roadblocks continued to delay the creation and implementation of the Pilot Program. To streamline the Pilot Program and move forward with the creation of the Routes, County staff researched other methods to use in the Pilot Program. One such method is to use a special benefit assessment without the use of CSA3 or the ZOB.

#### DISCUSSION

##### Special Benefit Assessment

Since the inception of the Pilot Program, there has been an effort to utilize CSA3 and the ZOB in order to levy a special benefit assessment. However, the use of such tools has caused roadblocks that have significantly delayed the Pilot Program. As such, we researched other pathways to fund the Pilot Program and whether the use of CSA3 and the ZOB was required to levy a special benefit assessment. Based on that research we have determined that the Board can levy a special benefit assessment without the use of CSA3 and the ZOB.

Government Code § 54710(b) provides that “[a]ny local agency which is authorized by law to maintain streets, roads, or highways may levy a benefit assessment...to pay for the maintenance

of those streets, roads, or highways.” (Gov. Code, § 54710). Government Code § 54705 defines a “local agency” as any “city, county, city and county, special district, or any other municipal corporation or district.” (Gov. Code, § 54705). Thus, the use of benefit assessments is not limited to special districts or zones of benefit and can be used by the Board.

Furthermore, there is no express limiting definition of “road, streets, and highways” and there is no express requirement that the “road, streets, and highways” be part of a regularly accessible network. (Gov. Code, § 5703, et seq.). As such, it is reasonable that the proposed Routes would fall within the meaning of “roads, streets, and highways” for the use of a benefit assessment.

In addressing the use of zones of benefit for a benefit assessment, Government Code § 54715(b) provides that the “legislative body *may* establish zones or areas of benefit within the local agency and may restrict the levying of the assessment to areas lying within one or more of the zones or areas of benefit established within the local agency.” (Gov. Code, § 54715, emphasis added). The use of zones or areas of benefits is not required but can be used to limit the assessment area.

Having a countywide benefit assessment, however, does not mean that the benefit assessment must be levied on all parcels within the County. Rather, Government Code § 54715(c) provides that “[t]he benefit assessment shall be levied on a parcel, class of improvement to property, or use of property basis, or a combination thereof, within the boundaries of the local agency.” (Id.). As such, the parcels levied can be limited to those that are receiving the benefit.

The process of levying a special benefit assessment without using CSA3 requires (1) the Board to approve a resolution to levy the special benefit assessment, (2) the creation of an engineer’s report, (3) a public meeting to be held to hear property owners’ comments on the proposal, (4) that ballots are mailed to the affected property owners, and (5) a public meeting is held to count the ballots. All such requirements are similar to those if CSA3 and the ZOB were being utilized. As such, much of the foundational work has been completed with just some refinements needed.

Based on the above, the Board has the authority to levy a special benefit assessment without the use of CSA3 and the ZOB. Additionally, much of the foundational work has already been completed and the County, if the Board decides to utilize this method, can move relatively quickly with levying the special benefit assessment.

### **License vs. Easement**

Regardless of the method used to fund the establishment and maintenance of the Routes, the County needs to acquire the right to use and improve private property for the benefit of the public. Prior Board direction regarding acquiring such a right was to acquire revocable licenses from the applicable property owners. However, there is still concern in moving forward with revocable licenses over acquiring irrevocable easements.

Revocable licenses are not connected to land and will not survive a transfer of the property, either through a sale, probate, or any other type of transfer. As such, the County will need to acquire another license from the new property owner after it has been transferred. There is a risk that a new owner does not agree to provide the County with a license. If that occurs, all the work completed to establish and maintain the Routes would go to waste because the Routes would no longer be operable.

Whereas if the County pursued irrevocable easements before establishing and maintaining

the Routes, the County would have secured its right to use the Routes in perpetuity. There would be no need to acquire any additional rights when the private property is transferred because any transfer would be subject to the easement.

Based on the above, it is recommended that the Board reconsiders its prior direction to acquire revocable licenses and directs staff to move forward with the Pilot Program by acquiring irrevocable easements.

## **CONCLUSION**

As discussed above, given the roadblocks presented in using CSA3 and the ZOB in the Pilot Program staff has researched a path around those roadblocks. As such, County staff requests that the Board approve the new path and reassess its prior direction to acquire revocable licenses. Specifically, County staff requests the following:

1. The Board provides staff with direction to move forward in developing the Pilot Program without the use of CSA3 and/or the ZOB.
2. The Board provides staff with direction to acquire irrevocable easements when acquiring the land right for the establishment and maintenance of the Routes.

JSS/jc