



**COUNTY OF MENDOCINO
DEPARTMENT OF TRANSPORTATION**

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To: Public Resource Committee

From: Howard N. Dashiell Director of Transportation
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Re: Private Road Association Maintenance Preliminary Feasibility/Practical Factors Study

Introduction

In September, the Board of Supervisors authorized the Public Resource Committee to investigate potential funding mechanisms to provide for County maintenance of private roads. The following is a joint memorandum from the Department of Transportation and County Counsel in response to the inquiry. This memorandum is not intended to be an exhaustive discussion of all possibilities or a recommendation as to which procedure to utilize but rather for discussion purposes only.

Traditionally, roads to be maintained by the County are accepted into the "County Maintained Road System" where restricted road funds from state and federal sources are used. In an effort to avoid an increase in maintenance expense, the County has not accepted new roads into the system unless the roads were constructed or improved in accordance with county standards. Developments that have been approved with less rigorous private road standards are not accepted into the system.

Discussion

The Mendocino County maintained road system consists of 1019 miles of road, 352 of which are not surfaced. Much of the 667 miles of surfaced roads are not up to the standards that would be required of new roads accepted into the County Maintained System today. Most of the roads in the system are legacy roads which were actually old wagon roads made part of the system in the 1800's. Some of the road system has been reconstructed using federal and state transportation grant funds based on their importance to the overall Federal Highway Administration (FHA) Road System. Some of our county roads are considered "on system" by the FHA and receive more capital improvement funding opportunities than the majority of our local roads. Unfortunately,

the little money afforded to local roads from the federal and state programs is based on population more than maintained miles. Thus, the Mendocino County Department of Transportation traditionally avoided accepting new roads into the system unless they were built to departmental standards. The benefit of the smaller capital investment has been the reason developers have formed private road associations.

SELECTION OF A FUNDING MECHANISM

The following are three specific funding mechanisms that potentially can be utilized.

1. County Service Area (CSA) County Service Areas are established pursuant to Government Code Section 25210.1 et seq., for provide funding for expanded police, fire, park, library and road maintenance services. Proceedings for the establishment of a CSA may be instituted by the BOS on its own initiative, or by written request by 2 Board members, or a resolution adopted by a majority vote of any city in the County, or by a petition signed by at least 10% or registered voters residing in the territory proposed to be included in the CSA (See Sections 25210.11 and 25210.12) **No proceedings for the establishment of a CSA may be instituted until approval by LAFCo.** The Board may allocate property taxes to the CSA. The Board may also levy and collect a special tax in any CSA to fund any of the specified services and for any appropriation for contingencies to be used for expenses for maintenance and operation of any services within a CSA. Any tax would be subject to 2/3 approval of the voters in the designated area and the roads would be funded and maintained by CSA tax revenues. The roads do not have to become part of the County maintained system.

The County currently has a one CSA (CSA 3) that covers **all** unincorporated areas of the County. According to Dennis Huey this CSA has only been used twice in the past for specific area projects. It has never been funded and the projects he recalls occurred prior to 1996 (pre Prop. 218). It is currently not funded.

2. Community Services District (CSD) The Community Services District Law is set forth in Government Code Sections 61000 et seq. Essentially, citizens of any unincorporated territory within a county may form a District via petition to the Board. The petition shall state the number of members (3 or 5) that the board of directors of the District shall have (or alternatively state that the County Board of Supervisors serve as the board of directors). The Board of Supervisors then holds a hearing on the petition. If 80% of the registered voters within the proposed CSD have signed the petition and there are no written or oral protests the Board of Supervisors may by resolution declare the CSD duly organized The Board of Supervisors must also determine that the CSD is in the public interest and economically feasible.

If an election has been called, the Board of Supervisors must notify LAFCo's executive officer that will then submit an analysis to LAFCo of the proposed CSD. LAFCo thereafter either will approve or modify the analysis and submit it to the officials conducting the election. If a majority of votes cast at the election is in favor of forming the

CSD, then the Board shall by resolution declare the CSD duly organized. Like a CSA a CSD may also levy and collect taxes for the purpose of carrying on the operations and paying its obligations. A CSD may also authorize, issue and sell revenue bonds under certain specified conditions. It may also incur bonded indebtedness via a resolution of necessity by its District Board and related procedures.

3. Special Benefit Assessments An assessment is a measure that raises funds from specific property with the proceeds being used in relation to the property from which the funds are derived. Assessments are distinct from parcel taxes, in that assessments are imposed in direct relation to an improvement that provides a particular, measurable benefit to the specific property. A determination must be made as to the zone of benefit and the specific benefit to each parcel. Prop. 218 also requires the preparation of detailed engineer's report prior to any assessment to determine the special benefit conferred on the parcel. (This is an upfront cost that can be extremely expensive) Property assessments are done by a majority vote of the Board of Supervisors and cannot be approved if there is a majority protest by the affected property owners.

Some factors to consider and discuss for either option are:

- A.** Roads under County maintenance can subject the County to liability exposure.
- B.** Roads subject to County maintenance can be required to comply with unfunded state and federal government mandates associated with water quality and other environmental challenges. The County has recently gone through the process of compliance with these new regulations in three small areas of its system in Ukiah, Fort Bragg and in the Garcia watershed. The staff time associated with establishing the system for permit compliance amounted to 15 months of time for one person. The only funding help came from the five counties consortium.
- C.** The CSD option could be implemented without use of MCDOT forces. The District Board could simply employ a contractor manager to hire private consultants and contractors to perform the work in the CSD(s). However, the County would need to maintain a resource fund to handle large expenses such as hard winters which produce slides and slip outs, or major structure replacements, etc.
- D.** Whichever mechanism is selected CSA, CSD or Special Assessment, the county needs to have a clear policy as to what roads are eligible for the program. Quite possibly an initial "capitol investment" might need to be made to bring the road up to such a standard. This will likely require an initial investment on the part of the prospective CSA or CSD applicants in an engineering study with a survey of existing road profiles, widths, cross sections, and drainage features. The County could then assess whether the road was eligible and if so what capital improvements are necessary. It does not matter that the public will point out that some of the County's old legacy wagon trails don't meet the standards. These roads already present a burden to the County, which will eventually require investment to correct, and we don't need to add to that burden.

- E. MDOT has analyzed twelve very low volume local roads in its present system, which would be comparable to existing private road association roads. The samples were taken throughout the last 5 years. The average cost of maintenance per year is between \$3000 and \$6000 per mile. The variation is likely due to the effects climate, periodic special projects, and the required attention from year to year.
- F. If the public within a private road association desires to remove the burden and risk of safety liabilities, environmental liabilities, storm liabilities and capital improvement liabilities then the county must be prepared to accept those liabilities. If the CSD option is selected then it is uncertain that restricted road funds could be use to ease the burden. It is uncertain whether FEMA or FHA funds could be obtained for CSD roads. In other words the CSD would have to pay all the related expenses for the road maintenance. That would mean building a reserve or increasing taxes if there was a major expense.

Conclusions

- 1) Regardless of the funding mechanism, it must be well defined, fair and consistent countywide.
- 2) The county must realize and acknowledge that more liabilities and routine maintenance will be incurred. Actual maintenance may need to be contracted out but responsibility for safety, environmental compliance will remain with the County of Mendocino.
- 3) Formation and funding of either a CSA or CSD is complicated and will require consultants in the legal, financial and engineering areas. Existing county staff does not have the resources to perform these functions in house.

The Mendocino County Department of Transportation (MDOT) desperately needs more resources in the form of staff and consultants to meet the present demands. MDOT presently has a 17% vacancy rate in positions because qualified staff cannot be hired. At this time it would be impractical and daunting to say the least, for MDOT to assume responsibility for maintenance of private roads.