

AGENDA ITEM #4.1
December 8, 2009
Action

MEMORANDUM

December 4, 2009

TO: County Council
FROM: Glenn Orlin, ^{Go}Deputy Council Staff Director
SUBJECT: **Action**—resolution to approve Dedicated but Unmaintained (DBU) County Roads Policy

The T&E Committee is taking this up during its December 7 meeting. The Committee's recommendation will be reported either in an addendum or at the Council meeting.

* * *

I. BACKGROUND

For decades there have existed scores of local roads that were dedicated to public use but have never been accepted for maintenance by the County, usually because these roads do not meet County design standards and specifications. They generally have a dirt or gravel surface, no curb and gutter or sufficient stormwater management, and lack sidewalks and other appurtenances. Their maintenance and improvement have been responsibilities of the private property owners abutting them.

The Montgomery County Civic Federation (MCCF) highlighted this matter in their survey of such "orphan" roads a few years ago, and the Council appropriated funds for the Department of Transportation to convene a task force to review the issue and develop a recommended policy. The DBU Road Policy Working Group completed its work a year ago and a report was completed last fall. The Executive transmitted the report in September, and his cover letter is on ©A. A draft resolution adopting the policy is on ©B, and the report—showing changes recommended subsequent to the T&E Committee's initial review on October 12—is on ©1-14. The DOT Director's memo to the T&E Chair describing these later revisions is on ©15-16, which were made after consultation with the Working Group.

II. SUMMARY OF THE PROPOSED POLICY

The policy identifies three possible approaches for improvements along a DBU road: (1) "Self Build/Self Maintain" – residents would collaborate on funding improvements but the road would remain a private road; (2) "Self Build/County Maintain" – residents would collaborate on funding improvements to County standards, at which point it would be accepted for maintenance by DOT; or (3)

“County Build/County Maintain” – residents would fund in equal shares improvements to County standards. Most of the proposed policy pertains to the third approach.

In most ways the proposed policy is modeled on the County’s Highway Noise Abatement Policy. The initially proposed policy would:

- require a super-majority of potential beneficiaries to trigger an improvement;
- require a mandatory additional assessment from affected property owners to fund the improvement;
- require that any needed right-of-way or easements be donated to the County free of charge; if any adjacent property owner refuses to donate what is needed, the potential improvement would cease to be a candidate project;
- rank-order projects according to a scoring system that includes several factors that are spelled out in detail;
- have the Council biennially select among the candidate projects in the rank-ordered list to be funded in the Capital Improvements Program (CIP);
- allow potential projects failing to achieve the super-majority to be reconsidered, but only after six years has passed; and
- allow the Council to reconsider an unfunded candidate project in subsequent biennial CIPs, with its score updated biennially.

Candidate projects would be funded by the County—probably General Obligation bonds—but the cost of the principal and interest on these bonds would be covered 100% by a 20-year-long annual surcharge on the Affected Property Owners.

The initially proposed policy differs in a few significant ways, however:

- The Affected Property Owners—those eligible to vote for the project and required to pay for it—are those with property abutting the right-of-way, or with property whose only access is on the subject road, even if the property does not abut it. Under the Noise Policy the benefited homes that may be required to pay might live a block or two from the wall.
- The super-majority requirement is 67%, compared to 60% under the Noise Policy.
- As noted above, all costs are to be borne ultimately by the Affected Property Owners; under the Noise Policy, up to \$50,000 of the cost/benefited residence is covered by the general taxpayer. (A draft update of the Noise Policy, which is anticipated from the Executive shortly, would increase this to \$100,000/benefited residence.)

Peggy Dennis, who conducted MCCF’s survey of DBU roads and is a long-time resident on one of them, was a member of the Working Group. She has contributed comments on ©17-19. In her remarks on the “County Build/County Maintain” option, she raised the concern that DBU improvements may be such a low priority that they are not proposed for funding. However, the Council has programmed funds for noise walls that also benefit relatively few individuals; there is no reason to assume that the same would not be true for residents on DBU roads, especially if they are paying for much or all of the cost of the improvements through a surtax. Ms. Dennis proposes that DBU improvements be funded through a public/private partnership.

III. ISSUES AND COUNCIL STAFF RECOMMENDATIONS

1. Concurrence. As noted above, the proposed policy would require an affirmative vote of at least 67% of Affected Property Owners. (Owners who abstain or do not vote would be counted as ‘no’ votes.) However, Council staff does not see a rationale for not applying the 60% threshold used in the Noise Policy. *Council staff recommends changing the consensus threshold to 60%.* DOT now concurs with the 60% threshold, but it also recommends that there be two votes: (1) to initiate a study; and (2) to proceed with final design and construction of the improvements and acceptance of financial responsibility. If a project were not approved in one biennial CIP cycle, another vote must be taken prior to the next cycle to assure there is still concurrence with the project and financial responsibility. *Council staff concurs with this further revision.*

Changing to 60% would also necessitate adjusting the ranges for the Community Support (CS) scoring factor (see ©10). *Council staff recommends changing the factor as follows, retaining a maximum score of 30:*

<u>% Property Owners in Support</u>	<u>CS</u>
<60%	0
60% to <67%	5
67% to <74%	10
74% to <81%	15
81% to <88%	20
88% to <95%	25
95% to 100%	30

DOT concurs.

2. Requirement to dedicate right-of-way. As noted, the Noise Policy requires that all necessary land rights for noise walls be donated. Therefore, one property owner could prevent a noise wall by refusing to donate land for it. But the County has little choice: it cannot exercise its quick-take authority for a noise wall (unless it is part of a general road improvement project), so without the donation a wall might be delayed for several years due to a protracted negotiation or court challenge.

Quick-take can readily be exercised to improve DBU roads, however. Given this fact, why should the DBU Policy allow one or more abutting property owners to thwart the will of the supermajority by refusing to donate land? The better course is for the County to acquire right-of-way beyond that which is already dedicated—through quick-take if necessary—and include that cost with the overall cost of the project. *Council staff recommends eliminating the requirement that additional land or easements be dedicated free of charge, and that land costs be included in the overall cost of the project.* DOT now concurs.

3. Public subsidy. The proposed policy states that all of a project’s cost must be borne by the Affected Property Owners. One rationale is that the only beneficiaries are the property owners themselves. Another is that since they (or the original owners) acquired their lots at a discounted price because the developer did not have to spend a higher cost for a road built to County standards, why should the general taxpayer fund the improvement now?

There may be some justification for at least a minimal subsidy, however. Residents are not the only people using DBU roads; they are also used by visitors and repairmen, and for commercial deliveries and emergency response, among other reasons. To the extent that an improvement leads to higher residential property values, this would provide a benefit both for the homeowner and the County (through higher property tax revenue). This is offset, somewhat, by the marginal increase in operating cost due to DOT having to add former DBU roads to its maintenance inventory. Nevertheless, some per-household subsidy may be justified.

Council staff believes that there be a minimal per-household cost that is covered by general revenue: well less than the \$50,000 currently provided for noise walls (for which the government assumes partially responsibility for higher traffic volumes and noise levels which can disrupt the use of one's property), but more than \$0.

DOT recommends that general revenue cover the cost of planning, design, and construction supervision for a DBU improvement, with a limit that the total contributions from general revenue not exceed 10% of the overall cost of the improvement. *Council staff concurs.*

4. Public/private partnership. As reported by the DOT Director, the Working Group had a considerable discussion of this approach and recognized it had significant legal and procurement challenges, so it is not recommended to be included as an option in the DBU Policy at this time.

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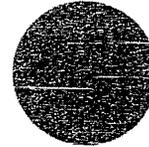


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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM



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MONTGOMERY COUNTY
COUNCIL

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TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Dedicated but Unmaintained County Roads Policy

The purpose of this memorandum is to transmit for your review, the draft Dedicated but Unmaintained (DBU) County Roads Policy developed by the DBU County Road Policy Working Group.

Montgomery County has, for years, recognized the dilemma in dealing with County Roads that have been dedicated to the public but not constructed according to County standards. Therefore, these roads have not been accepted into the County system for maintenance. However, the County has lacked a consistent policy in responding to resident's requests for improvements or routine maintenance to these DBU County Roads.

In recognition of this dilemma, funds were appropriated in the Facility Planning Roads Capital Improvement Program to develop a policy which would provide for a consistent response. The attached draft policy provides guidelines for County officials responding to requests for maintenance of DBU Roads in a consistent manner. It also provides an explanation for residents of DBU Roads and options for resolving the DBU Road dilemma along with clarification of the limitations of County involvement in addressing their concerns.

The composition of the DBU County Road Policy Working Group is listed on the final page of the policy, and includes representatives from various citizen's groups that had shown an interest in the topic along with representatives from the more suburban and rural areas and County Departments and Agencies that also have an interest in the development of this policy.

I recommend that the Council adopt the attached policy to formalize a consistent approach to dealing with these DBU Roads.

Thank you for your consideration of this matter.

AH/je

Attachment

(A)

Resolution No. _____
Introduced: October 6, 2009
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council at Request of County Executive

SUBJECT: Approval of Policy on Dedicated but Unmaintained County Roads

Background

1. Montgomery County has scores of local roads that are dedicated to public use but have never been legally accepted for maintenance by the County, usually because these roads do not meet County design standards and specifications. As a result, their maintenance and improvement have been responsibilities of the private property owners.
2. The Council appropriated funds in the FY 2008 Capital Budget for the Executive Branch to develop a draft policy addressing means to maintain and improve these roads. During FY 2008 a working group of community stakeholders and staffs from the Executive Branch and Planning Board developed such a recommended policy.
3. On September 11, 2009 the Executive transmitted a draft policy to the Council.
4. On October 12, 2009 the Transportation, Infrastructure, Energy and Environment (T&E) Committee reviewed the draft policy and suggested certain changes for further consideration.
5. On December 3, 2009 the Department of Transportation transmitted a revised draft policy that was reviewed by the T&E Committee on December 7, 2009.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The attached Policy on Dedicated but Unmaintained County Roads is approved.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

(B)

Dedicated but Unmaintained (DBU) County Roads Policy

Montgomery County, Maryland

October, 2009

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Introduction

This policy was developed to provide for consistent response to situations involving rights-of-way that are dedicated to public use but that have never been legally accepted for maintenance by the County for different reasons. This policy provides guidance for County officials in responding to requests from residents for improvements to, or maintenance of Dedicated But Unmaintained (DBU) Roads in a consistent manner. The policy also provides an explanation to residents of DBU Roads, of the opportunities for resolving the DBU Road dilemma and the limitations of county involvement in addressing the problem.

A DBU Road is defined as a road that:

- is dedicated for public use, usually by a recorded plat of subdivision,
- was intended to provide public access to multiple privately owned properties,
- was not constructed to County standards,
- was never accepted by the County for maintenance under Executive Order and
- is not maintained by County forces.

A majority of the privately owned properties accessed by DBU Roads are residential, although there are DBU Roads that serve commercial properties. This policy does not address existing private streets or private driveways.

As a result of the dedication to public use, the County has the right to use, and in some cases owns the right-of-way on which the DBU Roads lie. However, because the roads were not constructed to County standards, the County has not accepted maintenance responsibility for the DBU Roads. The maintenance responsibility remains with the property owners until the roads are modified to comply with current County standards. Typically, the County does not repair the road surface or pavement, repair any drainage facilities (side ditches or culverts) or provide snow clearing or ice treatment services.

In addition, the County has declined to construct street improvements in accordance with County standards unless the homeowners agreed to reimburse the County expenditures (as in a Special Assessment). The County's rationale is that the adjoining property owners may have benefited by paying a lower purchase price (and lower taxes) for their home than they would have if the road were constructed to county standards. In addition, it would be unfair to the general public to improve these roads using tax dollars

when improving these roads would mostly benefit the adjacent property owners and would not provide general mobility or relieve congestion for the general public.

There are situations where the residents improved the roads by paving a formerly dirt or gravel (crushed stone) lane, without any engineering and without a permit. In many of these cases, the pavement is developing potholes or otherwise failing. There are also situations where makeshift stream crossings (bridges or culvert structures) carry the DBU Roads across streams. In those cases the environmental impacts associated with such structures were likely never analyzed nor permitted and the maintenance of these structures, when needed, would be a significant financial burden for the property owners or the County.

According to a report prepared by the Montgomery County Civic Federation (MCCF), the residents of DBU Roads have varying opinions of what, if any, measures should be taken to address this issue. According to MCCF, the publicly dedicated unimproved roads can be broken down into three categories:

- Roads on which residents are content with the current conditions or where no discontent is expressed. This includes roads where the MCCF was unable to contact the residents and those on which the residents did not respond to a questionnaire and MCCF assumed that the residents were satisfied with the current situation.
- Roads on which residents seem divided about whether or not future improvements are desired.
- Roads on which a majority of residents would likely seek improvements if improvements were financially and environmentally feasible.

Separately from MCCF, the County has also been contacted by attorneys representing communities where not only there is acceptance of the existing conditions, but also significant opposition to any change to the existing conditions.

It is important to note that the MCCF report on DBU Roads does not provide a complete inventory of all the DBU Roads in Montgomery County.

Relevant Portions of County Code

The construction of roads within Montgomery County is governed by Chapters 49 and 50 of the Montgomery County Code. In instances where a road is constructed by a developer or entity other than the County, Section 50-24 of the County Code requires that "the roads, streets, alleys, sidewalks and pedestrian ways, with appurtenant drainage, street trees, and other integral facilities, in each new subdivision must be constructed by the subdivider or developer as specified in the road construction code or required by a municipality, whichever applies." While this policy considers this language to be applicable to DBU Roads, it should be noted that the DBU Roads are not part of "new subdivisions."

Section 49-38 of the County Code requires that “any accepted road must conform to the standards and specifications of this Chapter and all other applicable laws in force at the time of acceptance.” Section 49-39 of the County Code further requires that “until the County accepts a road constructed under this Article for maintenance, the permittees, their agents, contractors, and sub-contractors and the bond given under this Article remain liable for the faithful performance all requirements.” For the purposes of this policy, the Affected Property Owners, as defined below, are considered successors to the developer or land owner that created the lots.

Therefore, under current law, the County cannot accept maintenance responsibility for a DBU Road until it is brought into conformance with current standards and specifications. The responsibility for causing a DBU Road to conform to current standards and specifications and the responsibility for maintenance of a DBU Road until it is brought into conformance with current standards and specifications lies with the original property owner, developer or its successors.

Approach to Improvements

For purposes of this policy, an Affected Property Owner is defined as follows:

Affected Property Owner (APO) - an owner of property abutting or having their only access provided by a DBU Road is defined as an “Affected Property Owner.” Given that the Affected Property Owners fronting a DBU Road are the successors to the original property developer or creator of the lots, they retain the responsibility for causing a DBU Road to comply with current standards and specifications.

Three approaches exist to undertake the improvements necessary to bring a DBU Road into compliance. These include:

(1) Self Build/Self Maintain: This scenario ultimately results in the DBU Road becoming a private road. Therefore, prior to exercising this option, Affected Property Owners need to petition for the abandonment of the right-of-way in favor of a private road reserving access to all Affected Property Owners. Upon receiving a petition for abandonment of the right-of-way, the County will consider the request consistent with the current procedures, laws and regulations.

After the road is abandoned, the Affected Property Owners of a DBU Road would join to hire an engineer to design improvements to their road including storm water management requirements, obtain the requisite permits to construct the road and hire a contractor to build the improvements. The County recommends that all Affected Property Owners who undertake improvements under the Self Build/Self Maintain scenario enter into a written contract that clearly identifies the initial and long term responsibilities and financial obligations of each Affected Property Owner, including maintenance of the road, pavement repairs, snow and ice removal, drainage and storm water management facilities.

The construction of a private road would not require a right-of-way permit but will require all other permits including stormwater and sediment & erosion control permits. The Department of Permitting Services will encourage that the road comply with geometric and structural criteria for fire and rescue apparatus accessibility. Drainage, sediment control and storm water management design are to be consistent with applicable regulations. All storm water management requirements shall be met as provided in Chapter 19, article II, title "storm water management," Sections 19-20 through 19-35.

(2) Self Build/County Maintain: In this case, the Affected Property Owners of a DBU Road would join to design, obtain all required permits and construct the road. Once the road construction is complete, certified by DPS to have been built in accordance with County standards and legally accepted by the County by Executive Order, the County would then assume maintenance of the road, including the storm water management and drainage facilities. In this scenario, the road must comply with all applicable standards and specifications and the acceptance must follow the process outlined in Chapter 49 of the County Code.

(3) County Build/County Maintain: In this scenario, the County would design and construct the road improvements through a County funded Capital Improvement Program (CIP) project. The County would then assume maintenance of the road, including the storm water management and drainage facilities. The Affected Property Owners, through a deferred payment program such as a Special Assessment, would then repay the Total Project Cost, as defined below, less any County funding participation, to the County, with interest. The County will participate in the funding of the project by assuming the cost of the Planning, Design and Supervision costs, although the County's funding participation will be capped at 10% of the Total Project Cost. Under this scenario, the Total Project Cost shall include all costs associated with the planning, design and construction of the road, including also the necessary rights-of-way and easements. Rights-of-way and easements are to be acquired by the County consistent with current procedures, laws and regulations. Note that by definition, a standard right-of-way width has typically already been dedicated, so it is anticipated that additional right-of-way needs will be minimal.

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Applications from Affected Property Owners

The Affected Property Owners fund both the "Self Build/Self Maintain" and "Self Build/County Maintain", scenarios (1) and (2), without financial assistance from the County. The design and construction is subject to the established permitting procedures for all construction in the County. Therefore, there is no need to implement an application and prioritization process in those instances. However, the "County Build/County Maintain" scenario involves the initial use of County funds that must compete with other countywide transportation needs. Therefore, it is prudent to establish a process by which the residents of DBU Roads might seek county participation in the design and construction of road improvements that are acceptable to the County.

In order to be considered for scenario (3), County Build/County Maintain, a petition signed by at least 60% of the total Affected Property Owners (households) of the subject DBU Road must be submitted to the Director of the Department of Transportation (DOT). The petition must acknowledge that there will be a financial obligation to repay the County as noted under scenario (3), and should note any particular problems or issues that need to be addressed in the design and construction of the road.

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DOT will then evaluate the application and the subject roadway and proceed with the preliminary engineering evaluation of the road as described in the next section. ¹

Evaluation and Prioritization of Applications for Scenario (3)

Upon receiving a petition requesting County funded preliminary engineering evaluation in accordance with this policy, DOT staff will prepare an assessment and evaluation of the subject DBU Road, including:

- a) Background and History: how did the subject DBU Road come into being?
- b) Any issues of public safety as noted in the petition;
- c) Physical parameters: topography (based on field survey), drainage characteristics, environmental features, right-of-way, utilities, etc.;
- d) Easements or rights-of-way needed, if any;
- e) Traffic volumes and pedestrian activity;
- f) Number of Affected Property Owners associated with the subject DBU Road;
- g) Description of the proposed improvements and;
- h) Order of Magnitude Cost Estimate for the improvements.

This information shall be compiled in a report, a copy of which shall be provided to each Affected Property Owner. DOT will then make a ballot (First Ballot) of all Affected Property Owners to determine how many would support the construction of the proposed improvements and make a formal commitment to pay for the cost of completing the improvements. This first ballot should be within a year of the submission of the biennial CIP budget. In order to participate in the next stage of the process, at least 60 percent of the Affected Property Owners must agree to participate in the program. The results of the ballot would be used in ranking community support as outlined below.

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DOT will then request funding for the design and construction of the necessary improvements in the next biennial CIP budget. The funding request would follow established County budgeting processes, and as such is subject to the recommendation of the County Executive and approval and appropriation by the County Council.

There may be situations where the number of projects being considered exceeds the financial capacity in a given biennial CIP budget cycle. For those projects that are not funded for design and construction, there may be a significant time lapse between the

¹ The requirements for public hearings for authorization of construction and for authorization for assessments for construction of roads under §§ 49-53 and 49-54 of the Montgomery County Code are applicable under this process.

First Ballot and the actual funding of the road construction. In that circumstance, and recognizing that there may be turnover in the community and/or changes in financial situation of the APOs, DOT will make a Second Ballot prior to the next budget submission to affirm the APOs intent to proceed with the project. This second ballot should be within a year of the submission of the biennial CIP budget. Again, at least 60 percent of the Affected Property Owners must agree to participate in the program for the project to proceed.

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In the funding request, DOT will rank all applications for which a formal commitment to pay for the construction cost have been received. The ranking will be done for these applications at a given time to coincide with CIP budgetary submissions of each biennial period, and in accordance with the following procedure.

Factors considered will include:

a) Community Support (CS)

This factor has a maximum score of 30. It will be determined in accordance with Table 1. Priority will be given to DBU Roads where a consensus of Affected Property Owners desires the necessary improvements. This will increase the likelihood that improvements will occur first on DBU Roads with broad support of Affected Property Owners. Therefore, applications with a greater percentage of support will receive a higher score.

b) Public Safety Issues (PSI)

This factor has a maximum score of 25. It will be determined in accordance with Table 2. Priority will be given to improving DBU Roads that demonstrate a public safety need.

c) Number of Affected Property Owners (NAPO)

This factor has a maximum score of 20. It will be determined in accordance with Table 3. To ensure that limited funding is deployed to benefit the greatest number of taxpayers, applications with larger numbers of Affected Property Owners will receive a higher score.

d) Cost per Affected Property Owner (C/APO)

This factor has a maximum score of 15. It will be determined in accordance with Table 4. Priority will be given to projects that have lower costs for each Affected Property Owner. Therefore, applications with lower costs per Affected Property Owner will receive a higher score.

e) Complexity of Implementation (CI)

This factor has a maximum score of 10. It will be determined in accordance with Table 5. Priority will be given to projects that will be less complex to implement, considering such factors as:

- Environmental sensitivity of the area
- Topography
- Public control of full right-of-way and all easements.
- Existence and location of utilities

Therefore, projects with fewer complexities will receive a higher score.

DOT will then total the score for each application. The maximum score for any application is 100 points. The total score (TS) for each DBU Road application shall be computed as follows:

$$TS = CS + PSI + NAPO + C/APO + CI$$

All applications will be ranked in the order of most points to least points. Applications receiving identical scores will receive the same ranking (i.e. tied for priority).

Funding of Improvements under Scenario (3)

Private funding for the construction of improvements by Affected Property Owners as in either the Self Build/Self Maintain scenario or the Self Build/County Maintain scenario is beyond the scope of this policy.

Under the County Build/County Maintain, scenario (3), the County will initially fund improvements if expenditures are authorized through the biennial capital budget process. Affected Property Owners must repay the County for the Total Project Costs, as precisely defined, less the County's funding participation. Cost participation by the property owner(s) will be assessed on the property tax of each of the subject properties. The tax assessment will be for a 20-year period and at the same interest rate as the bond rate used for the financing of the subject road improvement project by the County. The option of payment in less than 20 years or one upfront lump sum payment will also be made available to each property owner who has to participate in the cost of the road improvement. The cost participation by the subject property owner(s) shall commence at the completion of the construction of the subject road improvement. The County will

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notify the affected property owners within 30 days of such completion, or shortly after that.

This policy recognizes that there could be many alternative ways to allocate costs to each Affected Property Owner. Different options were considered and the following process was chosen. All Affected Property Owners must pay an equal share of the total cost of the improvements, regardless of road frontage, property size or value. Each Affected Property Owners share shall be calculated on the basis of the Total Project Cost of the DBU Road and any applicable fees, less the County's funding participation, allocated equally between the Affected Property Owners.

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Not all improvements obtaining community approval may be implemented in a given year due to fiscal constraints. The County Council will prioritize which projects will be implemented in a given year, given the budgetary allocations to the DBU Roads program. Funding priority recommendations will be determined by ranking the candidate projects based upon the total scores derived from the sum of the scores for the factors outlined above, but the County Council will make the final determination regarding funding priorities. Their decisions can not be appealed.

In the event that funding for the improvements is not approved by the County Council, it will be reconsidered in the next budget cycle two years later. Resubmitted projects will compete with all then-current projects on an equal basis. The score computation and the cost participation for each community must be updated every two years.

Design and Construction

The design and construction of improvements under the Self Build/Self Maintain or Self Build/County Maintain scenarios would proceed under established County procedures for private construction projects and the applicant(s) would need to obtain plan approvals, permits, and necessary inspection approvals from the Department of Permitting Services and other appropriate agencies. The design and construction of improvements under the County Build/County Maintain scenario for any approved improvement would proceed under established County procedures for Capital Improvements Projects. Regardless of the scenario, the following design standards shall apply.

The design of improvements acceptable for County Maintenance shall be largely context sensitive. It is expected that most DBU Roads will be considered tertiary roads. For current DBU Roads that meet this description, the typical section may vary from the published standards.

Pavement width considerations are driven mainly by access by emergency vehicles. Improvements will be designed with the intent of achieving a standard pavement width of 20'. However, there may be conditions where variance to this width may be permitted for short segments of road on a case by case basis. Such conditions may include a

continuous row of existing significant trees along either side of the roadway that would constrain the pavement width. However, in no case will the pavement be permitted to be less than 18' wide, and the proposed pavement width shall not be any less wide than the existing traveled way. Also, whenever such a waiver of width is granted there shall be a clear zone of 20'. For all DBU Roads, the Director of Permitting Services will have the authority to approve pavement widths between 18 and 20 feet, after review of the applicant's justification for the smaller width and the existence of a 20 ft. clear zone. A list of all waivers granted under this policy will be prepared by DPS and provided to the Director of DOT and the Chief of Montgomery County Fire and Rescue Services at the end of each year.

The minimum pavement thickness shall not deviate from the minimum structural thickness specified in the County's Road Standards. Thicker paving sections may be required depending on soil conditions.

Drainage of the street and tributary areas shall be designed in accordance with current County, State and Federal standards and regulations, including the Montgomery County Storm Drain Design Criteria, dated August 1988 and as amended periodically. Drainage and Storm Water Management design is subject to the Storm Water Management Concept Approval and Sediment Erosion Control Permit processes as administered by DPS. All applicable Storm Water Management regulations shall apply to all improvements. Either open section or closed section roads are acceptable, depending on the local topography. Drainage easements may be required for extensions of drainage structures outside the right-of-way. Any additional right-of-way or easement shall be provided at no cost to the County.

Sidewalks will be considered on a case-by-case basis and with the specific request of the Affected Property Owners. The cost of such sidewalk will be included in the total cost of the project. Installation of streetlights will be considered in the same manner as sidewalks, and its inclusion on a given project will also be made a part of the total cost of the project.

County/Community Coordination

Prior to the submission of applications for this program and upon approval and funding by the Executive and County Council, the Department will send notification of the existence of the program to all known properties that may be eligible for the program. The notification will include:

- Eligibility requirements
- Explanation of the application and deadlines for the biennial CIP process
- Explanation of the scoring and rating criteria
- Explanation of the financial responsibilities of the Affected Property Owners.
- Other relevant information that may be of assistance to property owners in making the decision to apply for the program.

Additionally, the County will offer at least two public meetings to explain the process and to respond to any questions from possible applicants. Then, and only then, the process will be opened to the public for official requests.

In general, the following process will be followed to submit and review an application for improvements under this policy.

- 1) DOT will establish periodic deadlines for applications into the program, based on the biennial budget cycle.
- 2) The Affected Property Owners prepare and submit an application requesting improvements to a DBU Road. The application must include:
 - i) Petition requesting the improvement of the DBU Road and noting any particular problems or issues that need to be addressed in the design and construction of the road
 - ii) Majority of at least 60% of the Affected Property Owners.
- 3) DOT prepares an order of magnitude cost estimate for the improvements and estimated individual responsibility to the Affected Property Owners.
- 4) DOT prepares and distributes a summary report as outlined above.
- 5) DOT meets with Affected Property Owners to review the application, conceptual improvements, order of magnitude cost estimate and funding options according to policy. DOT advises the Affected Property Owners that the "order of magnitude" cost estimates are very preliminary and may change based on final design.
- 6) First Ballot - Affected Property Owners vote (using a secret ballot and one vote per Affected Property Owner) if they want the County to proceed with design and construction of the improvements and their acceptance of the financial responsibilities associated with the project. Note: for the purposes of this policy, an Affected Property Owner not participating in the voting is considered a "NO" vote. This first ballot should be within a year of the submission of the biennial CIP budget.
- 7) DOT evaluates and develops priority rankings of all applications of those DBU roads where more than 60 percent of the Affected Property Owners want the improvements and are willing to pay for the road improvements, in accordance with the procedures outlined above for the "County Build/County Maintain", scenario (3).
- 8) If Affected Property Owners vote not to proceed, or vote to proceed with the privately funded option, DOT's involvement is concluded.
- 9) If Affected Property Owners vote to proceed with the initial County funded option, then DOT prepares a recommendation to the County Executive, who will then consider it for transmittal and approval by the County Council in the next biennial CIP.
- 10) The County Council will then decide which projects to undertake on the basis of the available budget. Projects not funded in any one cycle will be eligible to compete in the next biennial CIP cycle.
- 11) Second Ballot – For those projects which were considered but did not receive funding by County Council in the prior budget cycle, Affected Property Owners vote a second time (using a secret ballot and one vote per Affected Property

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Owner) if they want the County to proceed with design and construction of the improvements and their acceptance of the financial responsibilities associated with the project. This second ballot should be within a year of the submission of the biennial budget cycle. Again, for the purposes of this policy, an Affected Property Owner not participating in the voting is considered a "NO" vote.

12) If Affected Property Owners vote not to proceed in the second ballot, or vote to proceed with the privately funded option, DOT's involvement is concluded.

13) Any DBU road, for which the Affected Property Owners reject, for whatever reason, participation in the program after the preliminary engineering work, will be excluded from applying to the program for six years from the deadline given to the Affected Property Owners to obtain a 60 percent majority (either the First Ballot or the Second Ballot) to proceed with the final engineering and construction of the road.

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Scoring Factor Tables

Table 1. Scoring Factors for Community Support (CS)

CS is determined by the percent of Affected Property Owners signing the petition in support of the project.

<u>% Property Owners in Support</u>	<u>CS</u>
< 60%	0
60% to <67%	5
67% to <74%	10
74% to <81%	15
81% to <88%	20
88% to <95%	25
95% to 100%	30

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Table 2. Scoring Factors for DBU Roads Demonstrating Public Safety Issues (PSI)

PSI is determined by the urgency of a demonstrated Public Safety Issue.

<u>Urgency of Public Safety Issue</u>	<u>PSI</u>
Critical	25
Urgent	18
Important	10
None	0

Examples of Public Safety Issues are as follows:

Critical: - Access by Public Safety Vehicles (Fire Apparatus and/or Ambulance) is constrained by physical features of DBU Road and can be improved by reconstruction

- High accident history with fatality, attributable to road conditions
- Impending failure of stream crossing structure which provides the only access to Affected Property Owners
- Urgent:
 - Degradation of stream crossing structure
 - High pedestrian activity with possible vehicular conflicts
 - Degradation of stream channel
- Important:
 - Riding surface failure throughout a majority of the roadway

Table 3. Number of Affected Property Owners (NAPO)

NAPO is determined from the number of Affected Property Owners along the subject DBU Road.

<u>Number of Affected Property Owners</u>	<u>NAPO</u>
< 2	0
2 - 5	5
6 - 12	10
13 - 20	15
> 20	20

Table 4. Scoring Factors for Cost per Affected Property Owner (C/APO)

C/APO is determined by dividing the total cost of the subject DBU Road by the total number of Affected Property Owners.

<u>Cost per Affected Property Owner</u>	<u>C/APO</u>
< \$20,000	15
\$20,000 to < \$30,000	10
\$30,000 to < \$40,000	5
> \$40,000	0

Table 5. Scoring Factors for Complexity of Implementation (CI)

<u>Complexity</u>	<u>CI</u>
Very complex	0
Somewhat complex	5
Simple	10

Examples of complexity are as follows:

- Very complex: Environmentally sensitive areas such as wetlands, old growth forests or champion trees, all requiring lengthy

permit reviews, complex storm water management solutions, requirements for stabilization of downstream drainage channels and impact to one or more properties that require easements 10' wide or greater

Somewhat complex: Difficult topography, difficult drainage solutions, stream crossings or need to obtain construction easements

Simple: All right-of-way obtained and no environmental difficulties

Definitions

Affected Property Owner: an owner of property abutting or having their only access provided by an DBU Road.

DBU Road: A road that:

- is dedicated for public use, usually by a recorded plat of subdivision,
- was intended to provide public access to multiple privately owned properties,
- was not constructed to County standards,
- was never accepted by the County for maintenance under Executive Order and
- is not maintained by County forces.

Tertiary Road: A road meant to provide direct access to a residential development with 75 or fewer dwelling units.

Abbreviations

- APO – Affected Property Owner
- C/APO – Cost per Affected Property Owner (ranking factor)
- CI – Complexity of Implementation (ranking factor)
- CIP – Capital Improvement Program
- CS – Community Support (ranking factor)
- DOT – Department of Transportation
- DPS – Department of Permitting Services
- MCCF – Montgomery County Civic Federation
- NAPO – Number of Affected Property Owners (ranking factor)
- PSI – Public Safety Issues (ranking factor)
- TS – Total Score (ranking factor)

DBU Road Policy Working Group Members

- Department of Environmental Protection
- Department of Fire & Rescue Services
- Department of Transportation
- Department of Permitting Services
- East-County Regional Services Center
- Montgomery County Civic Federation

- Stan Edwards
- Michelle Harrigan
- Bruce Johnston
- Joe Cheung
- Chuck Crisostomo
- Peggy Dennis

Mid-County Regional Services Center
M-NCPPC
Office of the County Attorney
Office of Management and Budget
Taxpayer's League
Up-County Regional Services Center
Western Montgomery County Citizen's Advisory Board

Helene Rosenheim
David Paine
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Edgar Gonzalez, Deputy Director for
Transportation Policy

Department of Permitting Services
Department of Finance

Sarah Navid
Glenn Wyman

DRAFT



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

MEMORANDUM

December 3, 2009

TO: Nancy Floreen, Chair
Transportation, Infrastructure, Energy and Environment Committee

FROM: Arthur Holmes, Jr., Director 
Department of Transportation

SUBJECT: Dedicated but Unmaintained County Roads Policy

The purpose of this memorandum is to transmit for your review, the revised draft Dedicated but Unmaintained (DBU) County Roads Policy. Attached are copies of the revised policy in a "clean" version and also in a version showing the track changes. The revisions suggested by the T&E Committee have been reviewed by the DBU County Road Policy Working Group, and by the County Executive. The revisions made to the policy are as follows:

Concurrence: The working group felt that the 60 percent threshold was sufficient. However, we noted that due to the biennial CIP cycle and possible deferral of construction funding, there could be several years between the "first ballot" wherein Affected Property Owners determine whether or not to proceed with the project, and actual funding of the design and construction. In this time, there could be turnover in property owners that could impact the vote. So, the policy as revised includes a "second ballot" which should be held within a year of the submission of the biennial CIP budget. Again, at least 60 percent of the Affected Property Owners must agree to participate in the program for the project to proceed.

Requirement to dedicate right-of-way: Since, by definition, the right-of-way has presumably already been dedicated, there should be few cases in which additional right-of-way will be needed. However, there will be easements required, particularly for storm drains and storm water management. The revised policy provides that rights-of-way and easements be acquired consistent with current procedures, laws and regulations and the cost included in the overall cost of the project.

Public subsidy: It was suggested at the T&E Committee Meeting that property values would increase after construction of a paved road; therefore, tax revenues would increase. However, it should be pointed out that the likelihood of the County receiving increased property values due to the paving of the road would *at best* be de minimus and would take a long time to be realized.

Office of the Director

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Increased revenues from taxes result from both a history of established sales and the reassessment cycle. Any contribution of the road improvements to the land values would be difficult to calculate and would again be very small. However, as recommended by the Working Group, the policy provides that the County would fund the Planning, Design and Supervision (PD&S) portion of the project cost, provided however that the County's participation be capped at 10 percent of the total project cost.

Method #4 – Public/Private Partnership – We recognize that the issues this proposal is trying to address are twofold:

- a) to use the County's financial resources to assist in funding the project through private design and construction, presumably to recognize lower costs than the County can obtain through the CIP process, and
- b) use the County's leverage to ensure that all APO's are participating equitably in the repayment to the County.

During the Working Group meeting, there was considerable discussion and recognition of significant legal and procurement challenges associated with this approach. Therefore the policy has not been revised to address these issues.

I recommend that the Council adopt the attached revised policy to formalize a consistent approach to dealing with the County's DBU Roads.

Thank you for your consideration in this matter.

AH:gl

bcc: Holmes/Tyree
B. Johnston, DTE
G. Lescinskiene, DTE



Serving the Public Interest Since 1925

MEMORANDUM

TO: Glenn Orlin

FROM: Peggy Dennis, President, Montgomery County Civic Federation

SUBJECT: Dedicated but Unimproved County Roads Policy

The Dedicated but Unimproved County Roads Policy (DBUCRP) represents a step forward within a system that has not and will not in the future, work.

The step forward is in the section on "Design and Construction". One major impediment to property owners on Dedicated but Unimproved County Roads (DBUCR) seeking to have their roads improved in the past was the standards. In the 1960s, DOT told property owners that their roads would be improved to "primary" or "secondary" standards. The standards for primary and secondary roads were too costly and would have required massive clearing in the right-of-way in addition to the actual road construction. Many mature trees would have been destroyed adversely affecting the environment and essential character of the roads and their neighborhoods.

Allowing the design of improvements for DBU roads to be "largely context sensitive" should result in more modest and environmentally acceptable proposals. Designing to "tertiary" standards with "open sections" (instead of curbs, gutters and storm drains) will help hold down costs and preserve the character of these old roads and their neighborhoods.

The DBUCRP disappoints by spelling out clearly and concisely the three approaches or processes by which the DBUCRs may be improved. This, in effect, rubber stamps the *status quo* as it is now and as it has been since 1950. It does not ask if the *status quo* has worked; and if not, why not. Nor does it suggest the need for a new, fourth approach.

(1) Self Build/Self Maintain. About half the DBUCR property owners have, in fact, used this approach successfully to improve their roads. But, they have proceeded illegally and under the radar, without petitioning the County for abandonment of the right-of-way, and without having the public road formally converted to a private road. They have hired contractors and had their roads paved without surveys, engineered

studies, permits, inspections or written contracts spelling out their “initial and long term responsibilities” or “maintenance...repairs, snow and ice removal, drainage or storm water management facilities.” They have had their roads paved at very reasonable and minimal financial cost to each property owner and with no “red tape” or impediments from the County’s government. They have done it this way because it is the only approach that works.

Would any property owners on DBUCRs be likely to choose Self Build/Self Maintain as described in the policy statement? No. Why not? Because this approach is too complicated, costly and time-consuming. This approach would result in a private road with the property owners bearing all the costs of much larger and more expensive construction, all future maintenance costs (see above list) plus perpetual concerns about legal liability and higher rates for homeowners insurance. It would represent a net loss for property owners.

(2) Self Build/County Maintain. The County government’s willingness to allow this approach is new and laudatory, but inherently flawed. It was agreed in the meetings of the DBU County Road Policy Working Group that a fundamental requirement was that each and every “Affected Property Owner” (APO) benefitting from a road improvement project must pay for his/her “fair share” of the cost. In the real world, it is virtually impossible for any group of property owners to achieve 100% voluntary financial participation.

1. Every road has one or two residents who either don’t want the road improved or don’t care if the road is improved just so long as they don’t have to pay a dime towards the work.
2. Every road has one or several residents who want the road improved and are willing to participate financially but who cannot afford to pay all or even a large part of their “fair share” during the several years it takes to carry out the process.
3. Even if 100% of the APOs on a DBUCR agree to undertake a road improvement project and believe in good faith that they can each afford to pay their fair share, costs are unpredictable and individuals’ financial circumstances change. It is not possible to make even a rough estimate of costs before undertaking such a project. This makes it difficult for property owners to commit to paying their “fair share” because they have no idea what their share will be. The “Fawsett Road Three” is a perfect example. Construction estimates based on the first (and similar 240 foot) section of road construction carried out by a developer several years earlier looked reasonable and affordable. The price for the required survey work and engineered studies was also reasonable, so the preliminaries commenced. One year later, with both permits approved and construction bids finally formalized, the final construction costs – about \$33,000 or \$11,000 for each property owner – were known. But the economy had tanked. One property owner could only afford \$5,000 more. A second had suffered in the stock market and no longer had any funds to pay for his share of the construction. With the best faith in the world and \$14,000 already invested in the preliminaries, this “shovel ready” project could not go forward because of the lack of \$17,000.

(3) County Build/County Maintain. This is the approach that property owners were told for many years was the only way their roads could be improved. As explained above, the method was too destructive of the “streetscape” and old neighborhood character, and too costly. High cost will continue to be a major deterrent. An even greater obstacle will be the simple fact (pointed out on page 2) that “improving these roads would mostly benefit the adjacent [and very small in number] property owners and would not provide general mobility or relieve congestion for the general public.” For this reason, the DBUCRs will always be at the bottom of DOT’s prioritized list of roads awaiting CIP improvement and will never rise to the level of importance to be recommended for improvement as a CIP project.

It is an inconvenient and unacknowledged truth that none of the three approaches outlined in this Policy have worked or ever will work. It is unfortunate that so much time and attention was spent in working out (pages 5-7 and 9-12) the details required for the Self Build/County Maintain approach. What was really needed was the suggestion that a new, fourth approach – a private/public partnership - is needed; an approach that will require legislation.