

T&E COMMITTEE #2
September 22, 2016

MEMORANDUM

September 20, 2016

TO: Transportation, Infrastructure, Energy and Environment (T&E) Committee

FROM: Glenn Orlin, ^{GO} Deputy Council Administrator

SUBJECT: Resolution to amend the Dedicated but Unmaintained County Roads Policy

In 2009 the Council approved Resolution 16-1235 establishing a policy governing improvements to dedicated but unmaintained (DBU) roads. DBU roads, sometimes referred to colloquially as “orphan” roads, are those that were constructed by developers many years ago, but not to County standards. As a result, while they are public rights-of-way, they were never accepted by the County for maintenance, including snow removal. The policy describes means by which affected property owners (APOs) can pursue a path leading to these roads to be improved and being accepted for County maintenance. The most likely means is for the Department of Transportation (DOT) to design the improvement, but for the APOs to pay for its reconstruction. To avoid a large up-front assessment, the County funds the improvement with General Obligation bond proceeds, and the APOs refund the County through a property tax surcharge over subsequent years.

One DBU road has been improved since the policy was initiated: Fawsett Road in Potomac, which was opened in 2015. The total cost of that project came to about \$530,000, of which 10% (about \$53,000) was paid by the County, as per the policy. The eighteen APOs are each being assessed \$1,669 annually for the next twenty years (i.e., from FY2016 through FY2035) to reimburse the County’s principal and 2.3% annual interest on the debt.

A second potential DBU road under consideration is Kirk Lane/Brooks Road, west of Olney. An issue that has arisen is that some of the property adjacent to the road is owned by a County agency. Under the policy, at least 50% of the APOs must be in agreement to prepare a preliminary analysis, cost estimate, and report regarding improvements to the road. For the project to proceed to construction, 60% must be agreement to cost-share in those improvements. If a County agency were an APO, it would have a vote in both ballots; and a non-vote would count as a “no” vote.

The County Executive is recommending amendments to the policy so that if a County agency owns property along such a road, it would not be included in the balloting, and that these votes be taken among only the non-government APOs. If at least 60% of the non-government APOs vote for improving the road, then the County would cover 10% of the cost of the improvements in the segment adjacent to non-government properties (as per the existing policy) but also 100% of the cost of the segment adjacent to the government property. An example of how the math would work is on page 5 of the proposed revised policy.

The Executive also recommends acknowledging in the policy that the Rustic Roads law and regulations may restrict DBU improvements to Rustic or Exceptional Rustic roads (see page 3 of the policy). The Executive's transmittal, a draft resolution that would amend the policy, and the policy itself—with the recommended amendments—are attached.

Council staff recommendation: Concur with the Executive.

Bruce Johnston, Chief of DOT's Division of Transportation Engineering, will be on hand to provide more background and answer questions.

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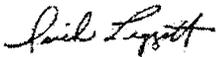
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

September 16, 2016

TO: Nancy Floreen, 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, draft revisions to the Dedicated but Unmaintained (DBU) County Roads Policy.

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 roads.

Therefore, the DBU County Roads Policy was developed by the DBU County Road Policy Working Group and adopted by County Council on December 8, 2009 by Resolution no. 16-1235. Since then, there has been one roadway (Fawsett Road) improved under this policy and accepted for County maintenance. Several other roads have been studied at the request of the Affected Property Owners (APO's) as defined in the policy, but they subsequently decided not to pursue improvements to their road.

On November 17, 2015, the Council adopted a revised Dedicated but Unmaintained County Roads Policy by Resolution 18-321. These revisions basically revised:

- the threshold from 60 percent to 50 percent of APO's, via petition, seeking to have a preliminary analysis, cost estimate and report prepared, and
- the definition of Affected Property Owner to exempt properties that front on multiple roads and that previously participated in a special assessment for improvements to a road providing access to their property.

Nancy Floreen, President
September 16, 2016
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Recently, MCDOT has determined that several modifications to the policy are in order, including:

- Noting that the maintenance of and modifications to Dedicated but Unmaintained (DBU) County Roads that are also designated as Rustic Roads, are addressed in Section 49-79 of the County Code,
- Excludes government owned properties from balloting or participating in a petition seeking DBU road improvements, and
- Provides that the funding for the pro-rata share of the design and construction costs of any government owned properties abutting the DBU road will be included in the Capital Improvement budget.

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

IL:gl

Attachment

Resolution No.: _____

Introduced: _____

Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council at Request of County Executive

SUBJECT: Approval of a Revised Policy on Dedicated but Unmaintained County Roads

Background

1. Montgomery County has numerous 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 the responsibilities of the private property owners.
2. Accordingly, in December, 2009, Council adopted the Dedicated but Unmaintained County Roads Policy by Resolution 16-1235. On November 17, 2015, the Council adopted a revised Dedicated but Unmaintained County Roads Policy by Resolution 18-321.
3. On September 16, 2016, the Executive transmitted a draft revised policy to the Council which:
 - a. Notes that the maintenance of and modifications to Dedicated but Unmaintained (DBU) County Roads that are also designated as Rustic Roads, are addressed in Section 49-79 of the County Code,
 - b. Excludes government owned properties from balloting or participating in a petition seeking DBU road improvements, and
 - c. Provides that the funding for the pro-rata share of the design and construction costs of any government owned properties abutting the DBU road will be included in the Capital Improvement budget.

4. On _____, the Transportation, Infrastructure, Energy and Environment (T&E) Committee reviewed the draft revised policy.

Action

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

The attached Policy on Dedicated but Unmaintained County Roads, Revised _____, 2015, is approved.

This is a correct copy of the Council action

Linda M. Lauer, Clerk of the Council

Dedicated but Unmaintained (DBU) County Roads Policy

Montgomery County, Maryland

REVISED – September, 2016

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.

Regarding DBU Roads that are also designated as Rustic Roads, Section 49-79 of the County Code provides for a basic level of County maintenance on Rustic Roads and limitations on modifications to Rustic Roads.

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. EXEMPTION: Properties that front on multiple roads and that have previously participated in a special assessment for improvements to a road providing access to their property are exempt from consideration as an APO.

Government owned properties abutting a DBU road are excluded from balloting or participating in a petition seeking DBU road improvements.

This policy is not intended to establish a requirement for improving an existing DBU Road. However, for those APO’s who are interested in making physical improvements to their DBU Road, three approaches exist to undertake the improvements necessary to bring a DBU Road into compliance with County standards. 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.

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 50% of the total non-government owned 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.

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

Funding example for scenario (3), County Build/County Maintain:

Assume a DBU Road with 20 Affected Property Owners, 3 of which are government owned, and a total project cost of \$360,000.

The County would pay for the government owned portion of the total project cost, as follows:

$$\underline{\$360,000/20 \text{ APO's}} \times 3 \text{ government owned properties} = \$54,000$$

Also, the County would pay for the first 10% of the remainder, as follows:

$$\underline{10\% \times (\$360,000 - \$54,000)} = \$30,600$$

$$\underline{\text{Total County costs}} = \$54,000 + \$30,600 = \$84,600$$

The 17 privately owned properties each pay an equal portion of the remainder:

$$\underline{\$360,000 - \$84,600} = \$275,400$$

$$\underline{\$275,400/17} = \$16,200 \text{ per APO}$$

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.

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 non-government owned 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 non-government owned 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.

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. The funding request will include funding for the pro-rata share of the design and construction costs of any government owned properties abutting the DBU.

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 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 non-government owned Affected Property Owners must agree to participate in the program for the project to proceed.

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 be 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 previously 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 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.

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.

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 50% of the non-government owned 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 – Non-government owned Affected Property Owners vote (using a confidential 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, a[n] non-government owned 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 confidential 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. This second ballot should be within a year of the submission of the biennial budget cycle. Again, for the purposes of this policy, a[n] non-government owned 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.

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 |

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)