

Report of the Roads, Easements & Drainage Committee
Muir Beach Community Services District
July 22, 1980

CONTENTS:

Policy Recommendations:

1. Maintenance responsibility and definitions
2. Procedure for setting priorities
3. Signs
4. Acceptance of dedications and donations

Priority Recommendations:

1. Solving of drainage problem
2. Securing dedication of Little Beach Access
3. Seeking County aid
4. Solving parking problems
5. Mapping CSD maintenance responsibilities
6. Calling maintenance work parties

Committee Comments:

1. CSD responsibility for maintenance
2. Level and extent of responsibility
3. Managers duties
4. Public nature of community roads and easements
5. Parking

Policy Recommendations

The committee recommends the CSD Board adopt the following as Board policy;

1. The CSD shall be responsible for the maintenance of all community roads, turnarounds, easements, and associated drainage in Muir Beach except for those within County, State, or Federal jurisdictions. The availability of funds and resources shall limit the level and extent of this responsibility.

In determining the extent of this responsibility the Board shall use the following definitions:

Community road: Those roads that are open to community use and serve more than one property owner. This shall not include driveways serving only one property owner except when they serve as community turnarounds.

Community turnaround: The area at the end of a community

road necessary for the turning around of vehicles and Fire equipment.

Community easement: Those foot and equestrian paths that show significant community use but not including those paths that serve solely one or abutting property owners.

Associated drainage: Those drainage ditches and culverts necessary to preserve the integrity of community roads and easements.

Maintenance: The periodic repair work necessary to keep roads and easements in their present condition and reasonably safe and passable, particularly for emergency vehicles. This work shall be understood to be of a minimal nature consistent with the rural nature of the community.

2. In order that maintenance can be undertaken in a fair and orderly manner with the CSD's limited funds and resources the Board will use the following procedure for establishing priorities for maintenance:

Each year, concurrent with the establishment of the budget, the Board shall set general priorities for the use of CSD funds and managers time. These shall be set in consultation with the manager and take into consideration the availability of funds, managers time, and the community's needs of fire protection, water supply, roads and easements maintenance, and recreation.

At each monthly meeting, after consulting with the manager, considering problems brought to its attention by individuals, and changes in funding or other conditions, shall set priorities for work to be undertaken in the coming month. The Board shall consider innovative ways to meet community needs including calling for volunteer work parties, seeking public and private grants and donations, using CETA workers, seeking County DFW aid, hiring additional part-time help, forming fire or road assessment districts, etc.

One Board member shall serve as an Ombudsman for roads and easements and this position shall rotate quarterly as does the Chairperson. Between meetings, any problems or complaints regarding maintenance shall be brought to the attention of the Ombudsman (not to the manager) who in consultation with the manager shall try to resolve them within the priorities set by the Board.

The Board shall on a continuing basis actively seek additional funding in order to fulfill its maintenance responsibilities.

3. The CSD shall post signs warning of hazardous conditions on roads or easements when limited funds or resources prevent them from eliminating these hazards. It shall also post signs such as No Parking, Fire Lane- Keep Clear, etc. to help keep roads safe and passable. The design of these signs shall be consistent with the character of the community.

4. It shall be the policy of the CSD to accept the dedications of roads or easements to the CSD that serve community needs and to accept donations of money or volunteer labor for the maintenance of community roads and easements.

Priority Recommendations:

The committee recommends that the Board set the following as immediate priorities:

1. The solving of the drainage problem above Casa del Sol that threatens Sunset Way and the adjoining easement. This should be part of a comprehensive solution to the whole problem of drainage below Cahoons, Butresses, Silvers, Littwillers, past Cohens and along Cove Lane to Little Beach. Help should be sought from the County who bears major responsibility for this problem since the source of the water is the County roads and the County approved subdivision of Seascape.

2. To secure dedication to the CSD of access to Little Beach and to restore the incline from Cove lane to the beach for boat, equestrian, and pedestrian access consistent with historic use.

3. To formally seek County aid for a roads, easements and drainage maintenance program with the assistance of Gary Giacomini. His office has offered to facilitate DFW assistance in designing a program in consultation with the CSD and to help us obtain funding for it with State bail-out money, HUD grants or from other sources..

4. To take steps to reduce the problems of parking on community roads by: A. Posting of CSD Ordinance #7 that prohibits parking within 6 feet of the center of any road. B. Marking the roads to clearly show the 12 feet that are to be kept open. C. Contacting residents who ignore Or.#7 to point out the problem and to help try to find alternative parking. D. If taking steps A,B,&C fail

to reduce parking problems enforcement of Or.#7 should begin by ticketing illegally parked cars.

5. To map areas of CSD maintenance responsibility and provide copies to the Fire Department, manager, Board Ombudsman, DPW, and to post at the Community Center.

6. To call periodic work parties of households along community roads and easements to assist the manager in their maintenance.

Committee Comments:

In making recommendations to the CSD the committee considered a number of problems facing the CSD and the community. Foremost among them was the lack of funds presently available to the CSD and the recognition that while the CSD is and should be responsible for maintenance every individual's perception of what is a safe and passable road will always be different, ranging from a narrow dirt track to a two lane paved street with sidewalks and gutters. Similar differences in perception will be found in all areas of community concern and in setting priorities the Board must be able to distinguish between the real needs of the whole community and what are seen as problem by only a few individuals within it.

The recommendations are an attempt to define the responsibilities and establish procedure for setting maintenance levels and we hope the following comments will also be helpful in determining solutions to these community concerns.

CSD Responsibility for Maintenance

The question of whether the CSD is responsible for the maintenance of roads seems to be constant and not fully answered by the County Counsel's cursory opinions. The committee, unlike the Counsel, read through years of Board minutes, the ordinance passed, the special election held as well as reviewing the principals of California law to try to find an answer.

In 1969 a special election was held which gave the CSD the additional powers of road maintenance and recreation. The CSD has exercised that power continuously since that time, though in varying levels, through the actions of the manager and by expenditure of funds, with explicit direction of the Board. In 1978 the Board unanimously endorsed the Muir Beach Master Plan which designates responsibility for road maintenance

to the CSD.

The actions of the Board for the last 11 years clearly show that they recognized their responsibility and fulfilled it by maintaining the roads but that they hoped to avoid liability for it by never explicitly defining it. Though legal liability can only be definitively established by a court of law, a similar precedent setting California Supreme Court case established that the sole act of inspecting a road used by the public for needed repairs constituted an acceptance of responsibility and liability for that road. (Union Transp. Co. vs Sacramento County 42 C2d 235)

It would appear that by virtue of their past actions the CSD is already responsible for road and easement maintenance and is liable for any claims for damages resulting from the failure to perform that maintenance. Unless the Board wishes to initiate the statutory procedures for road abandonment they should fulfill these obligations to the best of their ability.

Level and Extent of Responsibility

The Board in setting priorities will be faced with difficult choices due to its limited resources and individual residents demands for immediate action. In recommending that the CSD explicitly accept responsibility for maintenance we felt that this should be understood as an agreement to act as overseer of maintenance, sharing with residents and users as well as other governmental agencies the responsibility for it, rather than accepting sole or absolute responsibility. We feel this is an appropriate role, given the present level of CSD funding, even considering the proposed increase in water rates. If the community feels that this role needs to be expanded they must be willing to work to secure additional funds either from the County or by the formation of an assessment district.

Lacking any clear indication from the community on an appropriate level of maintenance we recommend that the roads be kept in condition safe and passable for county fire equipment. Trails should be kept passable and free from hazardous conditions or signs warning of those conditions should be posted as provided by Sec. 831. of the Governmental Code that grants public agencies immunity from claims for injury caused by conditions of trails and accessways.

Maintaining drainage ditches and culverts under and along roads and easements is clearly part of maintaining those roads

and easements but responsibility for drainage beyond them is harder to define. We felt that that when drainage is created and caused by the existence of a road or easement rather than by the natural conditions of the landscape then that drainage should be the responsibility of the person or body responsible for that road or easement.

In the case of the drainage from Litwillers and Cahoons to Little Beach we felt: 1. To the extent that the water comes from County roads and County approved subdivision this is a County responsibility; 2. To the extent that it threatens Sunset Way, easements, and Cove Lane it is a CSD responsibility; 3. To the extent that the houses along that drainage were built with an awareness that the drainage existed, a large part of it being a natural watercourse, and that threat to the integrity of the land should have been considered and planned for in the placement, design and construction of their houses, it is the property owners responsibility. Rather than place blame we feel the constructive thing to do is to bring all these interests together to solve the problem before it gets worse. The first step is to ask for the County's help and advice as offered by Gary Giacomini.

Manager's Duties

We feel that the openended nature of the managers job description has contributed much to the confusion about responsibility for maintenance. Priorities for work to be accomplished within the limits of what is a part-time job must be established so that the community does not expect the impossible. Complaints about these priorities must be directed to the Board and not the manager. We also feel it is unfair to require a minimum number of hours per month work without also setting a maximum. When work is required beyond that maximum, overtime must be paid or additional help must be hired or volunteered. The responsibilities that the manager bears on a 24 hour basis are tremendous and we feel Click Pickens deserves commendation for performance beyond the call of duty.

Public Nature of Roads and Easements

While the question of whether community roads and easements are public or private can only definitively be answered by a court of law, an investigation of the principals of California law shows that when any road, easement, lands or beach are used by the public for five years, without effectual efforts to prevent

that use by the fee owner and without express permission, that the public acquires the right of access to them by the laws of implied dedication and prescriptive rights. The fact that a public body has maintained them is an additional significant factor in determining that these rights have accrued. (Gion vs City of Santa Cruz, Dietz vs King 2 Cal 3d 29 (1970) The principals of law are explored at length in the California Attorney Generals handbook Implied Dedication and Prescriptive Rights Manual which is available for Board review.) While County Counsel has advised the Board that property owners may own the fee title to the center of roads and easements adjoining their property (Sec. 831 & 1112 Ca. Civil Code) this does not necessarily give them the right to control access over it. We know of no effectual efforts to prevent the public's use of community roads or easements many of which have been used by the public for over 50 years. The only efforts to restrict their use has been in regard to parking and even that has been ineffectual; no locks have been placed on gates, few if any cars have been towed away or ticketed.

While the committee does not feel that the public should be actively invited or encouraged to exercise their right of access, neither do we feel it is appropriate or practical to try to prevent their enjoyment of it. The CSD's control of access should be limited to restricting parking for fire safety reasons.

Parking

While the problem of parking has always seemed insoluble and we don't know whether our recommendations will end it either, a review of past Board history shows that all our recommendations have been proposed by the Board but little attempt has been made to implement them. It should be pointed out that, particularly in light of the Board's passage of Ord. #7 and its own recognition of the hazard that parking presents to Fire Protection, both the CSD and the Fire Department could be found criminally negligent for failure to enforce its own laws and unless the CSD wishes to repeal Ord. #7 and divest its self of its fire protection responsibility, it should enforce the ordinance to the best of its ability.

Respectfully submitted; *W John Col* Robin Collier; chair

Jean D. Stump
Aug. 4, 1971