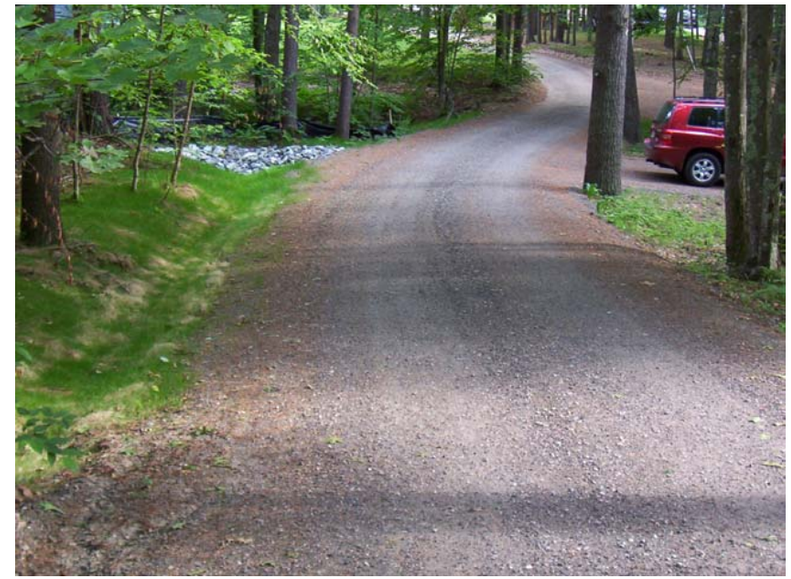
Poorly maintained gravel roads showing signs of severe erosion.

Gravel roads with Best Management Practices (BMPs) installed to prevent erosion...

...will help ensure that your roads are properly maintained.

A Guide to Forming Road Associations



York County Soil and Water Conservation District
Assisted by:
Kennebec County Soil & Water Conservation District
Androscoggin Valley Soil & Water Conservation District
Cumberland County Soil & Water Conservation District

July 2004

ROAD ASSOCIATION FORMATION KIT CD

The attached CD contains the forms needed to establish your road association.

Appendix B: Sample Road Maintenance Agreement (MS Word)
Appendix D: Sample Application to Notary (MS Word)
Appendix E: Sample Notice of Meeting Warrant (MS Word)
Appendix H: Maine Articles of Incorporation Application Form (Adobe PDF*)
Appendix I: Sample Road Association By-laws (MS Word)
Appendix J: IRS Employer Identification Number Application (Adobe PDF*)
Appendix L: Sample Quitclaim Deed with Covenant (MS Word)
Appendix M: Sample Drainage Easement (MS Word)
Appendix N: Sample Gravel Road Maintenance Agreement for Contractors (MS Word)

Adobe Reader* can be downloaded for free from **www.adobe.com/products/acrobat/readstep2.html*

CD with 8.5” x 11” forms

RESOURCE DIRECTORY

Maine Soil & Water Conservation District Offices

Androscoggin Valley	753-9400 x 3
Central Aroostook County	764-4770
Southern Aroostook County	532-2087
St. John Valley	834-3311
Cumberland County	856-2777
Franklin County	778-4767
Kennebec County	622-7847 x 3
Knox/Lincoln County	273-2005
Oxford County	743-5789
Penobscot County	947-6622
Piscataquis County	564-2321
Somerset County	474-8324
Waldo County	338-1964 x 2
Washington County	255-3995
York County	324-7015

Contact the office for your particular region

Maine Department of Environmental Protection (DEP)
State House Station 17
Augusta, ME 04333
(800) 452-1942 (in state only)
287-7688

Bureau of Land and Water Quality (BL&WQ) – licensing, enforcement, water classification, shoreland zoning, and field services 287-3901

Division of Watershed Management – nonpoint source pollution control, watershed surveys, BMP training, technical assistance 287-3901

Regional DEP Offices – BL&WQ

Augusta	287-2111
Bangor	941-4570
Portland	822-6300
Presque Isle	764-0477

OTHER RESOURCES

Maine Volunteer Lake Monitoring Program
24 Maple Hill Road
Auburn, ME 04210
783-7733

Maine Congress of Lake Associations
201 US Route One 1 PMB 172
Scarborough, ME 04074
877-254-2511

Maine Local Roads Center (DOT) Publication: ***Drainage, Drainage, Drainage***
Call 800-498-9133 for more information

Pros: Leaders are in their positions because they have been hired or elected because of their knowledge and/or experience. Leaders should have full authority to make certain decisions. The leader can make quick decisions and it allows the larger group to focus on major issues and allow the leader to guide the
organization on a daily basis.
Cons: This does not allow members of the group to have a voice in the organization. The leader may make decisions that do not reflect the group they lead or they may not have all of the information to make the best decision for the organization.
When to use: When the leader has specific information or authority to make a decision. The leader may not have time to bring the decision to the group or does not need input or support. The key is making sure everyone understands when the leader decides and when the group decides.

CONSENSUS:
Description: Consensus is a process where every member of the decision making group participates in the discussion and decision. Members express their ideas, opinions, experience, feelings and position on a specific issue. Each member's job is to listen to the ideas, opinions, experience, feelings and positions of all other members. The goal of consensus is to reach a carefully examined, thoughtfully considered decision that each member can support. Consensus does not always mean everyone thinks the solution is optimal, but is workable.
Consensus includes: pooling opinions, effective listening, discussing ideas and differences and agreement to the point that everyone can support a decision.
Consensus does not include: voting, majority rule, minority rule, leader rules or bargaining.
Pros: Allows all people to participate in the decision. Creates ownership and support from the group, which means a greater chance for success. Because everyone participates, more information and points of view are shared, decisions tend to be better. Members are more informed and may stay more connected to the organization.
Cons: Consensus is very time consuming and can be difficult to reach. It can be misused, overused, or used inappropriately. Can be a source of conflict if not used correctly.
When to Use: Use for those decisions when you want and need the whole group's support or for major issues that define the future of the organization. Consensus is a time-consuming process and should not be hurried.
Tips: Define deadlines for making the decision up front. Decide on an escape clause, or backup method if the group cannot reach consensus. The group may choose to revert to majority vote with a certain percentage of agreement (usually 85-90%) needed for the decision. The escape clause could include turning over the decision to a subgroup representing all perspectives--either to get additional information or to decide for the group.

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ACKNOWLEDGEMENTS

Support materials for the development of this publication originated from a variety of sources and have been attributed accordingly throughout. However, there were three documents in particular that provided substantial portions of the text and served as useful models in establishing the general outline. They were as follows:

- ***Camp Road Maintenance Manual - A Guide for Landowners*** by the Maine Department of Environmental Protection and Kennebec County Soil and Water Conservation District (2000 Edition).

- ***From Here to There...How to Create A Lake-Friendly Road Association*** by the Damariscotta Lake Watershed Association (August 2002).

- ***Starting and Building an Effective Lake Association*** by the Maine Congress of Lake Associations.

The York County Soil and Water Conservation District (YCSWCD) provided project oversight for the development of this publication in conjunction with the project Steering Committee (see next page). Project funding was provided by the Maine Department of Environmental Protection (DEP) through an Environmental Protection Agency (EPA) Clean Water Act Section 319 Grant. The final version of ***A Guide to Forming Camp Road Associations*** was completed in July 2004.

All services and programs provided by Soil & Water Conservation Districts in the State of Maine are offered on a non-discriminatory basis.

Appendix R: Group Decision Making [1]

Group decision making can be complicated. There are different ways to reach a decision and which method to use varies for each situation. Before calling for a vote, answer the following questions, to choose the most appropriate strategy:

Who needs to be included in this decision? Who are the important players that can help or hinder our success? Do we have all of the information to make this decision? When does the decision need to be made? Should we postpone a decision until we have more research or group members?

MAJORITY VOTE:
Description: Everyone gets one vote, the largest number of votes prevails.
Pros: Majority vote is fast and easy and can give you a general idea on how the group feels about an issue.
Cons: It creates winners and losers, and the losers don't necessarily like or support the majority's decision. Some rely on majority vote too frequently rather than the group working through issues to achieve a win/win solution.
When to use: Majority vote should be used when limited time is available to make the decision and when the decision does not need the full support of the membership to be successful. It may also be used to take a poll of the group before spending a lot of time on an issue that most of the group is against.
Tip: Ask everyone to state their experiences, opinions and feelings about the subject. By allowing everyone's input, people feel less rushed and have more information before voting.

DESIGNATED GROUP DECISION:
Description: A subgroup such as the board, a committee or task force is given the authority to make the decision for the whole group.
Pros: A smaller group may have the expertise or can research an issue before deciding the best course of action. Small groups may work quicker than the larger membership.
Cons: Minority vote may result in a disagreement between the decision-makers and the membership. The smaller group may think they have all the answers without considering all sides, and may leave out important facts or opinions.
When to Use: When the whole group does not have the time or expertise to consider all of the information around an issue. When the decision does not require the full support of the whole organization to be successful. It also can be used as an escape clause when a group is unable to reach consensus. (More about escape clauses later.)

LEADER DECIDES:
Description: The leader decides without a vote, or consensus of the group. They may or may not have requested input.

1. Adapted from Neighborhood Resource Center of Colorado's Tip Sheet No. 6 (call NRC at 303-477-0023 for more info).

Appendix Q: Guidelines for Running Effective Meetings [1]

Conducting the Meeting
The facilitator has primary responsibility for moving people through the agenda in the time available, and involving as many people as possible in the process. He/she helps the group make decisions at the appropriate time, and encourages everyone to take a responsible part in the meeting. A facilitator plays no role in substantive, issue-oriented discussions. Here are a few recommendations to help a facilitator.

- start the meeting promptly
- review the agenda and summarize major points
- keep the discussion focused and ask if people are ready to make a decision
- try to involve everyone in the discussion
- avoid making judgments
- keep people from interrupting each other
- help the group make decisions by noting points of agreement
- avoid letting one or two people dominate the meeting

Ending the Meeting
It is important to close a meeting with a sense of accomplishment and direction. Before people leave:

- review all of the decisions that were made;
- determine who is taking responsibility for carrying them out, and by what date
- set a time and place for the next meeting
- encourage everyone to participate in cleaning up the room

[1.] Adapted from University of Massachusetts, Citizen Action Fact Sheet No. 2, prepared by Michael Kane, Cooperative Extension, Amherst, Massachusetts, 1982. http://crs.uvm.edu/gopher/nerl/group/a/k.html

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Peter Newkirk - Maine DOT
Roy Bouchard - Maine DEP
Don Witherell - Maine DEP
Cliff Goodall - Dyer, Goodall & Federle Attorneys at Law (conducted legal review)
Maureen Conlon-Peirce - retired educator

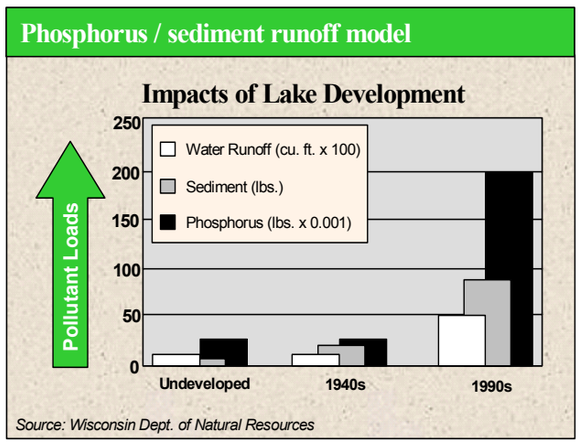
Copies of this document can be obtained from your local Soil and Water Conservation District (please see inside back cover for contact information).

* Steering Committee members

Introduction - The Impact of Camp Roads on Water Quality in Maine

This manual is intended as a resource for private road residents who would like to improve the planning for and implementation of road maintenance. Forming a road association can provide a way for road users to formally manage their roads in an organized and economical manner while also protecting lake and pond water quality. If you have a dirt or gravel road/driveway that leads to your house then you need to know about stormwater runoff and its impact on lake water quality.

> Soil erosion is the single largest pollutant source (by volume) to our surface waters, and the majority of all erosion and sedimentation problems in lake watersheds originate from improper construction and maintenance of camp roads.
>
> ***Camp Road Maintenance Manual***



This chart shows changes over time for water runoff, sediment and phosphorus input into lakes from undeveloped areas and developed areas. Note that as shoreline development intensifies from the 1940s to the 1990s, more phosphorus-laden sediment

An effective camp road maintenance program is critical in avoiding or reversing the negative consequences of soil erosion on lakes and ponds. Many camp roads were either not properly constructed, or not properly maintained, or both. Consequently, stormwater runoff causes erosion of camp road surfaces. Indeed, soil erosion is the single largest pollutant source (by volume) to our surface waters, and the majority of all erosion and sedimentation problems in lake watersheds originate from improper construction and maintenance of camp roads.

The nutrients attached to sediment particles can be bad news for lakes. Phosphorus, a nutrient that is common on land, is a primary food for all plants, including algae. In natural conditions, the scarcity of phosphorus in a lake limits algal growth. However, when a lake receives extra phosphorus attached to sediment

PROPOSED 2004/2005 BUDGET FOR OWNERS OF PROPERTY
ON LAKE DRIVE
July 10, 2004

BUDGET ITEM	
Road maintenance:	
Summer Maintenance:	$3,000.00
Culvert thaw out	$ 75.00
Winter Maintenance (plowing & sanding)	$2,565.00
	$5,640.00
Operations:	
Post Office, supplies (stamps, envelopes, etc.)	$ 80.00
Liability Insurance	$ 850.00 EST.
Attorney Fees	$ 600.00
	$1,530.00
Contingency:	$2,000.00
Total	$9,170.00
Balance brought forward	$1,202.00
Balance to be assessed	$7,968.00

Cost to all owners per dwelling year round or seasonal:	$216.23 x 35 = $7,568.00
Cost to all owners of undeveloped lots:	$100.00 x 4 = $ 400.00
	$7,968.00

Sample road
Culvert: Assume the culvert will need to be replaced every 25 years

- 30' x 30" Plastic Culvert = $600.00 *
- Installation costs: $ 750.00
- Total cost: $1350.00 / 25 years

Annual Total: $55.00

** Culvert diameter may change as the developed area changes. More development may result in increased surface water runoff which in turn will require a larger culvert to accommodate this additional flow.*

Snow removal: This includes snow removal and sanding.

Sample road
Snow removal: **Annual Total: $1500.00**

Sample Road Annual Expenses:

Road Surface:	$1900.00
Ditches:	$600.00
Culverts:	$55.00
Snow Removal:	$1500.00
Grand Total:	**$4055.00 / year**

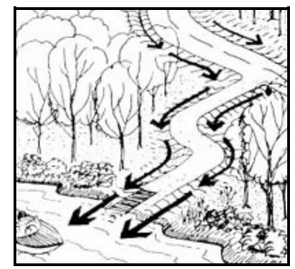
Maintenance for your road may be more or less than this example. Keep in mind this budget only includes maintenance and assumes that your road is in decent shape to begin with. It is possible that a considerable expense is necessary to get your road to the point where the above maintenance budget example would apply.

particles, algal growth increases dramatically. Sometimes this growth causes choking blooms, but more often it results in small, insidious changes in water quality that, over time, damage the health, aesthetics and economy of lakes.

Camp roads frequently change natural stormwater drainage patterns. These changes can increase the potential for soil erosion by:

- reducing the ability of water to soak into the ground by stripping away the protective vegetative cover;
- creating highly erodable pathways of exposed soils; and
- collecting drainage in ditches that increases the overall peak flow, speed and volume of surface water runoff.

Sedimentation is an effect of erosion that results from suspended soil particles entering surface waters. One clear indication is the brown color imparted to the water. Less obvious is the fact that these suspended solids irritate the gills of fish, making them prone to disease. Soil particles can also smother fish spawning and feeding grounds. Other effects include:

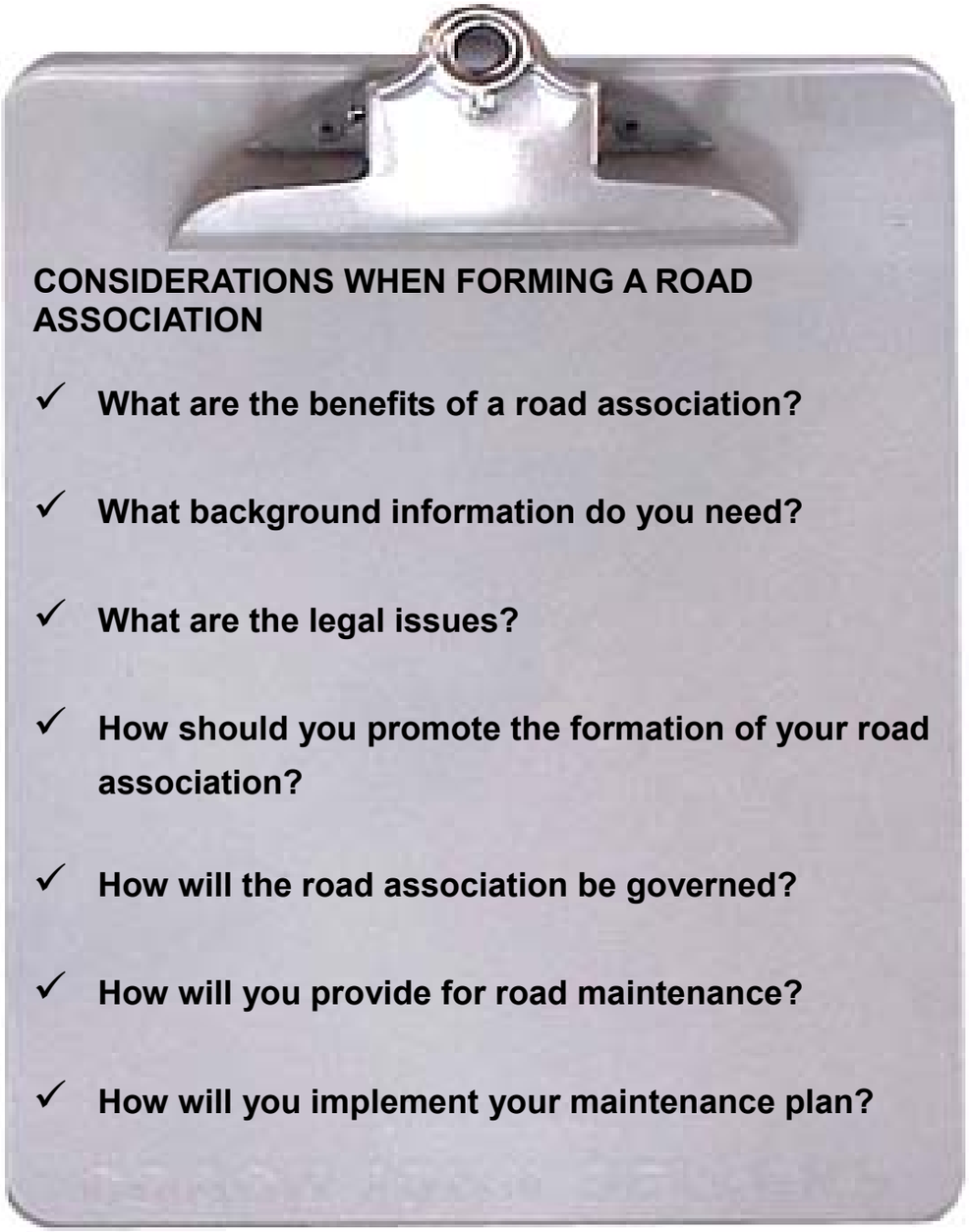


Improperly constructed and/or maintained shore-side roads can result in sedimentation to lakes and ponds.

- gradual filling near shore resulting in the loss of desirable shoreline (due to encroaching weeds, for instance);
- obnoxious algal blooms that result from excess phosphorus in the suspended soil particles being flushed into the lake;
- depleted levels of dissolved oxygen, resulting in fewer cold-water fish (i.e., salmon and trout);
- diminished recreational and aesthetic values of the lake because of a decline in water quality; and
- decreased property values from poor water quality.

- ***Sediment*** is solid fragments of inorganic or organic material that comes from the weathering of rock and soil and is carried and deposited by wind, water, or ice.
- ***Erosion*** is the detachment and movement of soil particles by the action of water, ice, gravity, and/or wind.
- ***Sedimentation*** is the deposition of soil particles that are dislodged during the erosion process and transported by water or wind.

Best Management Practices for Erosion Control - Maine Dept. of Transportation



needs to be reshaped periodically in order for it to efficiently shed water into the road ditches; this is accomplished using some sort of road grading equipment to recover some of the material that has been "lost" to the road shoulder. Unfortunately, this can only recover a portion of the road surface material that has been lost. This means that every year you are losing a certain amount of road surface material. Therefore to maintain the road surface you not only need to reshape the road surface periodically to recover as much "lost" material as possible, you need to periodically add road surface material. For a year round road grading should be done at least once a year. Adding road surface material should be done when there is not enough material to form a sufficient crown.

Sample road
Grading: Road grader at $65/hr for 6 hrs: **$390.00**
Surface Material: Let's assume this road needs about 6" of gravel every four years. Rather than wait four years and add gravel to the entire road, add gravel to a different 500' section every year.

- 500' long x 16' wide x 0.5' gravel/27= about 150 cu.yds.
- 150 cu.yds x $10/cu.yd for surface gravel delivered= **$1500.00**

Annual Total: $1900.00

Ditches: Ditches need to be maintained or cleaned out periodically because "lost" road surface material often ends up in the ditch. Periodic road surface grading will help minimize the filling of the ditches but the ditches still need to be "cleaned out" on occasion. There are many factors that influence the frequency that ditches need to be clean out including; the size of the original ditch, the frequency that the road surface is graded, and soil type to name a few.

Sample road
Ditching: Let's assume that the ditches need to be cleaned out every 7 years. The contractor has given a quote of $2000.00 for a day's worth of ditching, and figures that she can do about 1000 feet.
$6000.00 worth of ditching every ten years

Annual Total: $600.00

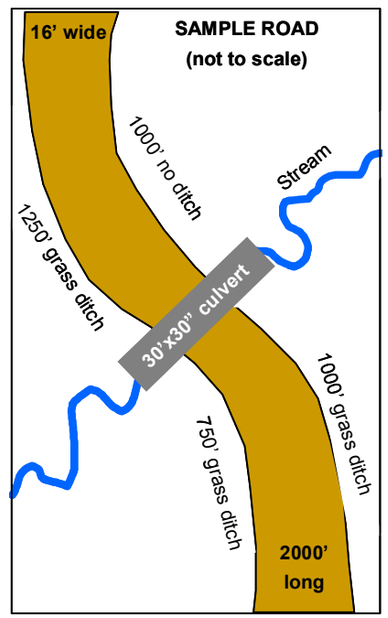
Culvert(s): Culverts need to be replaced when they deteriorate, have been damaged or wash away. Depending on the type of material, they will last anywhere from 15 to 50 years (some times even longer). Corrugated metal pipe deteriorates most quickly while concrete and plastic pipes tend to last much longer.

Appendix P: Forming a Budget [1]

How much do you need to spend on your road? For many roads the answer to this question is- "more." If a gravel road is not maintained at a level that allows it to hold up to the forces of vehicle traffic and weather the road will degrade to the point where fixing it properly will be very expensive. Akin to the maintenance of an automobile there are two options; 1) spend a little money periodically to repair your "old beater" and run it into the ground, or 2) spend a moderate amount of money periodically on a car payment for a car that will be cheaper to maintain. Option one may be cheaper but you don't have as nice a car as in option two. Now in this car scenario both options have their benefits, but in the case of your road the "old beater" approach results in a dangerous, rough, road that is polluting our environment. Maintenance to your road needs to be done <u>every</u> year. This means that a moderate amount of money needs to be spent every year. How do you figure out what the "moderate" amount of money is for you road? Here's an example:

<u>Sample road:</u>

- Is 2000' long and 16' wide
- Has a total of 3000' of ditches
- One 30'x30" culvert
- Is a year-round gravel road



To determine yearly maintenance cost we need to look at the different components of gravel road maintenance: road surface, ditches, culverts, and snow removal.

Road Surface Maintenance: You may have noticed that your gravel road surface is not static. Its shape is constantly changing due to a variety of forces: vehicle traffic, erosion, snowplows, dusting, etc. Gravel road surfaces change shape due to the "loss of material." Essentially road surface material is lost in one of four ways: through dusting, by sinking into ground, by raveling (material is kicked off of the road by vehicles), or through erosion. As a result the road surface

1. From Kennebec County Soil and Water Conservation District. Contact Nate Sylvester at 622-7847 x 3 for more info.

1. The Benefits of Forming a Road Association

Road associations provide a framework for centralized decision making.

The main purpose of this document is to promote organization among private road residents for the implementation of successful road maintenance programs. Forming a road association provides an organizational structure to establish a maintenance program that makes these roads easier to travel and reduces road maintenance costs over time. It will also help to protect property values and marketability since many banks and the secondary mortgage market are denying construction and mortgage loans for properties on private roads that do not have road associations. Moreover, many towns are no longer grading and plowing private roads because of concerns over liability and because using public tax money for private purposes violates Maine laws. A successful road association can help preserve the environmental, economic and aesthetic value of Maine's lakes and ponds for generations to come.

Establishing a road association can:

- help to open the lines of communication among community members;
- provide a framework for centralized decision-making;
- improve planning for and implementation of road maintenance;
- legitimize the collection of road dues;
- set up an impartial and efficient means for managing money; and
- establish legal authority and potentially avoid personal liability.

Road associations can be loosely formed or highly organized. Generally, the more organized the association, the easier it is to maintain the road and share the cost. Please refer to Appendix A for an explanation of the three basic types of road associations.

2. Gathering Background Information

Collecting information to support the need for your road association should primarily be guided by the concerns of your road users. Potential concerns might include the following:

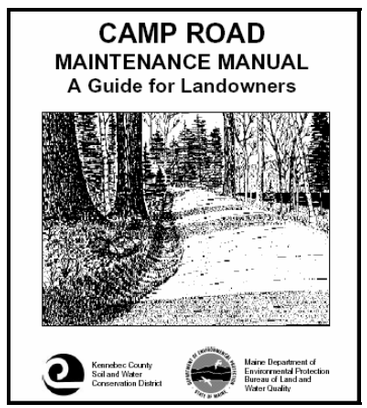
- maintaining or establishing a smooth driving surface;
- maintaining or enhancing property values;
- preserving lake water quality; and
- ensuring a safe roadway.

Whatever the case, the success of your road association will depend upon adequately addressing the concerns of your prospective members. Be sure to consult with them before gathering background information to establish your road association.

ROAD CONDITIONS

The ***Camp Road Maintenance Manual*** has established a scoring system for evaluating road conditions and estimating maintenance and repair costs. The following five key criteria are used to prioritize the road segments most in need of maintenance or repair:

- **Surface:** assess road crown, consistency, base and edge conditions.
- **Diversions:** assess number, condition and discharge location of outlets / turnouts.
- **Ditches:** assess condition and extent of vegetation and sediment accumulation.
- **Culverts:** assess condition, size, slope and cover.
- **Access:** assess angle of approach to main road; water from main road onto camp road; length of landing access to main road; view of traffic; and visibility of fire road name.



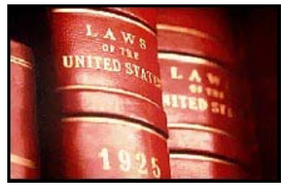
The results from each of these criteria are summarized into a final score to determine the relative maintenance and repair needs for a particular road segment;

The Mandatory Shoreland Zoning Act (and associated municipal ordinances) regulates development along the immediate shoreline of lakes, rivers, tidal areas, wetlands, and some streams. The law requires towns to zone all areas within 250 feet of these resources with the exception of streams, where the zoned area need only be 75 feet. Each town's ordinance may be different, but the ordinance must be at least as stringent as the state's minimum guidelines. As a camp road owner, you must check with the Town's Code Enforcement Officer to determine if the work you plan for your camp road requires a permit from the town. Generally, maintenance activity on existing roads does not require a permit. However, if you plan to fill, disturb soil material, or widen the road, a permit may be required.

In addition to the above laws, construction of **new** camp roads may require permits under either the **Stormwater Management Law** or the **Site Location of Development Law**. Contact the DEP if your project involves 20,000 square feet or more of road construction or will disturb more than 1 acre of land. There may also be local ordinances or land use codes and road standards for both new and expanded private roads. The local Code Enforcement Officer will be able to provide this information.

Appendix O: Regulatory Considerations

REGULATORY ASPECTS AND PERMITTING



There are three laws that may apply to camp road maintenance: the Erosion and Sedimentation Control Law, the Natural Resource Protection Act, and the Mandatory Shoreland Zoning Act (with associated local ordinances). All of these laws require a permit to do some kinds of road work so that state and local officials can ensure that our lakes, streams, coastal areas, and wetlands are protected. Read this section, then contact the municipality in which the project is located and the Maine DEP to find out if a permit is necessary, and if so, how to obtain one.

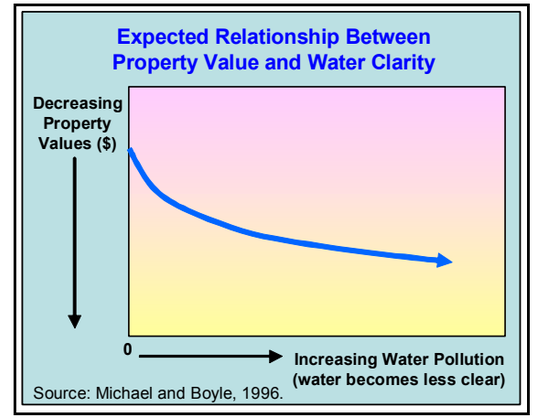
The Erosion and Sedimentation Control Law requires that erosion control devices be installed before any activity begins that will disturb the soil to prevent offsite transport into a water body, and that the devices be maintained until the site is permanently stabilized. The law also requires that **existing** areas eroding into a lake, stream, river or wetland be stabilized by July 1, 2010. **If the eroding area is in a watershed of a water body "most at risk"** (contact the Maine DEP or your local Soil & Water Conservation District for an updated list), **it must be stabilized by July 1, 2005**. This means you must follow erosion control procedures when your camp road maintenance or construction disturbs the soil, and you must ensure that the disturbed area is permanently stabilized.

The Natural Resources Protection Act (NRPA) regulates activities in, on, over, or within 75 feet of lakes, ponds, rivers, streams, brooks, and wetlands. Regulated activities include filling, disturbing the soil, building permanent structures, removing, or displacing vegetation, dredging, or draining. A permit is required from the DEP before starting any of these activities. Two types of permits are available: a Permit-by-Rule (PBR), and a full permit. A Permit-by-Rule only requires that you file notice and follow a set of prescribed standards; a full permit involves a formal project review by the DEP. Most camp road-related activities can be done under the Permit-by-Rule program. Replacing existing culverts does not require a permit, provided the culvert is no longer than 75 feet or no more than 25% longer than the original culvert. Replacing existing bridges is also exempt from the permitting process, provided the new bridge has the same dimensions, does not block fish passage, and does not intrude any further into the water body or wetland than the old bridge.

higher scores represent greater needs. The ***Camp Road Maintenance Manual*** goes into greater detail on how to use this system and is thus a valuable tool for initially establishing the need for a road association. Copies of the ***Camp Road Maintenance Manual*** can be obtained from your county Soil and Water Conservation District or the Maine DEP.

WATER QUALITY DATA

There is no single feature of lakes that affects people's enjoyment more than water clarity, which bears a strong correlation with property values. This was demonstrated by a University of Maine study (see graph at right). Therefore, water quality information can be used to help make a case for protecting property values. There are information resources available that make lake water quality data available to the general public. The Maine Volunteer Lake Monitoring Program (VLMP) and the Maine Department of Environmental Protection (DEP) have been conducting water quality analyses on lakes throughout the State for over 30 years. The VLMP's and DEP's data on over 1,000 of Maine's 5,785 lakes are available through the Public Education Access to Resources on Lakes in Maine (PEARL) website at http://pearl.maine.edu.



Property values show a strong relationship with water clarity. As lake water becomes more polluted with phosphorus (and less clear due to algal growth) property values decrease.

The Public Education Access to Resources on Lakes (PEARL) database provides a variety of water quality monitoring information for lakes in Maine (http://pearl.maine.edu/)

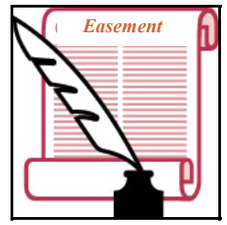
3. Understanding the Legal Aspects

LEGAL ASPECTS

Before forming a camp road association there are several critical pieces of information that should be obtained to assist in establishing the legal status of the private roads. These include the following:

DETERMINE:

- Length and width of the road right of way and travel way (road surface);
- Precise location of road;
- Whether road in question encroaches on other roads or properties;
- Whether road is described by metes and bounds[1];
- Whether road exists by deeded or prescriptive easement[2];
- Whether road exists by fee title[3], and;
- Who has the right to use the road.



There are several additional questions about road association formation that should also be presented to an attorney for consideration:

- Does a road association have any authority regarding parking of vehicles on the road?
- What authority does a road association have to set and enforce speed limits?
- Is it better for a road to be owned by an association or by a few individuals with easements from abutting property owners? What are the pros and cons of these two road ownership scenarios?
- Does a road association have any authority regarding the use of four-wheel drive (ATV) vehicles on their roads?
- When the road is owned by a few individuals within a road association and there is a right-of-way for abutting property owners, who is liable if someone gets hurt?
- Is there any way to hold developers / contractors responsible for the costs to repair road damages due to large trucks and construction equipment?

1. Metes and bounds surveys describe a parcel of land by citing the owners of abutting lands and describing the length of each course of a boundary as 'along' some apparent line, such as a stream or road.
2. An easement upon another's real property acquired by continued use without permission of the owner for a period of at least 20 years establishes the easement. The problems with prescriptive easements are that they do not always show up on title reports, and the exact location and/or use of the easement is not always clear and occasionally moves by practice or erosion.
3. A fee title estate is the most complete type of land ownership.

not exceeding $ _____.

(7) The project funds will be disbursed by the Association to _____ in accordance with the attached schedule of payments.

(8) A project participant shall maintain a separate accounting of funds received under the program.

(9) Records must be kept for three years.

(10) The Association will have access to all relevant program documents during that time.

(11) The Association shall not be held responsible for any loss of life, personal injury, or property damages of any kind incurred in performing or completing the work or duties under this contract.

(12) The project participant agrees to provide the Association with a completed copy of the Project Performance Report when the project is completed.

(13) The project participant shall complete the project no later than _____, unless an extension of time is approved by the Association.

(14) This document and the attachments hereto constitute the entire agreement between parties.

WHEREFORE, the parties have set their hands on the date indicated, intending to be bound hereby.

FOR THE ASSOCIATION: FOR:_____

_____ _____
(Signed) (Date) (Signed) (Date)

_____ _____
(Print Name) (Print Name)

_____ _____
(Title) (Title)

List of Attachments:
Attachment A - Grant Application
Attachment B - Work Plan
Attachment C - General Contract Provisions
Attachment D - Dirt and Gravel Road Maintenance Program Statement of Policy
Attachment E - Quality Assurance Board Standards
Attachment F - Schedule of Payments
Attachment G - Project Performance Report

Appendix N: Sample Gravel Road Maintenance Agreement for Contractors

DIRT AND GRAVEL ROAD MAINTENANCE PROJECT
AGREEMENT BETWEEN
_____ ROAD ASSOCIATION
AND
_____

Now, this ___ day of _____, _____, the _____ Road Association ("Association")
and_____
_____, known wherein as the "project participant", agree as follows:

(1) _____ will conduct, or cause to be conducted, a road maintenance project on specified portions of _____, in accordance the Application and Work Plan attached hereto.

(2) This project will be conducted in accordance with standards that prohibit the use of materials or practices that are environmentally harmful and in accordance with the application and work plan attached hereto and incorporated herein. Any changes or modifications to the work plan will be performed to the satisfaction of the Association.

(3) This project will be conducted in accordance with the "General Contract Conditions" required by the Commission, the "Dirt and Gravel Road Maintenance Program Statement of Policy" as adopted by the Commission and as may be amended from time to time, and the environmental standards approved by the Quality Assurance Board, which are attached hereto and incorporated herein.

(4) The project participant agrees to provide timely documentation to the Association that all required federal, state, or local permits have been obtained, and further agrees to comply with all such permits as a condition of performing this agreement.

(5) The project participant shall ensure that this contract and all other arrangements entered into pursuant to the implementation of this contract are in conformance with all applicable local, state, and federal laws, rules, and regulations.

(6) The Association agrees to fund the eligible costs for this project in an amount up to, but

Penn State Materials Research Institute (www.mri.psu.edu/centers/cdgrs/Downloads/contract.pdf)

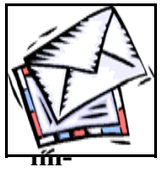
- Is it advisable for a road association to get liability insurance?
- Can a road association be reimbursed for past damages created by developers?
- In the event the association is dissolved, what are the legal requirements regarding any remaining assets?
- What are the enforcement options for collecting maintenance fees?

It is important to adequately address these issues since they are often the most common sources of costly litigation, trespasses and adverse relationships. Consequently, it is highly recommended that an attorney and land surveyor be consulted in the process of forming your road association. While services from either of these professionals can be expensive, the ultimate savings may be considerable. Also see Appendices A through O for more information on legal and regulatory considerations.

4. Promoting the Formation of Your Road Association

The promotion of a road association needs to be a process that is suited to the number and nature of the people on your road. Keep in mind that people respond best to personal contact. However, it may take one or more of the following options to provide road residents with the needed background information about forming a road association. Options include:

- door-to-door visits;
- phone calls;
- mailings (names and addresses can be collected from property tax information at the town office); and
- articles in the lake association newsletter or local newspapers.



With all of these options, having the written background information is the easiest format to use for the people you are trying to reach.

One method that has worked well for larger road networks is to have a kickoff meeting that provides a forum for road residents to talk through the issues on their road. The meeting can also serve as an opportunity to gain support for the formation of a road association. Appendix Q provides guidelines to help you plan and run an effective and productive meeting.

5. Developing Road Association Leadership

Nearly every effort to improve a community starts with a few dedicated people who work together to give direction to the project. They are people who envision the project and draw in others to both assist and take on additional tasks as the effort evolves. You and some of your neighbors have decided to form an association to properly maintain your road. As leaders of your road association, you will make decisions, set priorities and implement actions with respect to managing the overall process of road maintenance. This will involve:

Considerations in Selecting Road Association Board Members:

- *Seek fair and balanced representation from all sections and interest groups on the road.*
- *Tap into the skills of road residents such as experience with road maintenance, running meetings and leading groups, and bookkeeping.*
- *Select one person to serve as the "**road commissioner**." This person will serve a one (1) year term as the primary contact for contractors to establish road repair and upkeep work. Road commissioners also offer recommendations to road owners (and the Executive Committee) and perform maintenance duties as the owners (or Executive Committee) direct.*

- seeking guidance on the specific maintenance needs of your gravel road;
- developing a budget;
- collecting maintenance assessments;
- getting estimates from and setting deadlines for contractors; and
- serving as a contact for addressing road related issues.

Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.
Margaret Mead

Please see References on page 16 for resource links and documents to assist in successfully developing your road association board. Also see Appendix R for information on Group Decision Making.

6. Developing a Maintenance Plan and Budget

When road surface problems are extensive, it is often necessary to select priorities and phase the project over a number of years. The criteria used for selecting priorities should be established in advance of road assessment and clearly stated in

Appendix M: Sample Drainage Easement

Know all those by these presents, that (I / We) _____, (Grantors) of the Town of _____ County of _____ and the State of _____, for considerations paid, grant unto said Grantee(s) located at the address of _____, and (its / their) successors and assignments, the following described drainage easement being located on _____(Road), in the Town of _____, County of _____. Said Drainage Easement to be recorded in the _____ Registry of Deeds.

"DRAINAGE EASEMENT"

Granting to the said Grantee(s) the perpetual right to enter upon land outside of and adjoining the right of way limits of said road in said Town of _____, County of _____, State of Maine, for all purposes necessary to construct and maintain ditches and sheet flow; to convey water to or from a road culvert / road ditch over and across adjoining land in the direction specified, as follows:

_____
_____
_____
_____

The herein described easement being over land of the said Grantor(s) that (he / she / they) acquired from _____By (warranty / Quit / Claim / Release) or (Foreclosure) deed, dated (signed) _____and recorded at the _____County Registry of Deeds in Book _____ on Page _____.

Witness their hand this _____ day of _____ 20____

_____ (WITNESS) _____ (GRANTOR)

_____ (WITNESS) _____ (GRANTOR)

State of Maine
County of _____ ss _____ 20____

Personally appeared the above named _____and acknowledged the forgoing instrument to be their free act and deed.

Before me, _____ Notary Public - My term expires, _____

Appendix L: Sample Quitclaim Deed with Covenant

QUITCLAIM DEED WITH COVENANT

_____ of Nowhere, County of Kennebec and State of Maine, for consideration paid, grant, convey and forever quitclaim to the **LAKE DRIVE IN NOWHERE OWNERS ASSOCIATION**, a Maine not-for-profit mutual benefit corporation of Nowhere, County of Kennebec and State of Maine, whose mailing address is 4 Lake Drive, Nowhere, Maine 04000, with quitclaim covenant, a certain lot or parcel of land situated in the Town of Nowhere, County of Kennebec and State of Maine, more particularly bounded and described as follows, to wit:

> The Lake Drive being a residential private road in Nowhere, Kennebec County, State of Maine, as shown and fully described on the Boundary Survey of Lake Drive recorded in the Kennebec County Registry of Deeds in Plan File # _____, Sheet _____.
>
> Being a portion of the land of the Grantor described in a deed recorded in Book _____, Page _____ in said Registry.

IN WITNESS WHEREOF, the said _____ has caused this instrument to be sealed as her free act and deed this ____ day of May, 2004.

_____ By:_____
WITNESS

STATE OF MAINE
COUNTY OF KENNEBEC May ____, 2004

Personally appeared before me the above-named _____ of _____, Maine and acknowledged the above-instrument to be her free act and deed.

_____
Notary Public/Attorney-at-Law

the improvement plan along with the committee's recommendations for phasing. Assessment criteria could include the potential of the problem site to impact water quality, safety concerns, property value concerns, and nuisance factors, etc.

STEPS IN DEVELOPING A MAINTENANCE PLAN

1. **Inventory the roads.** Determine the size and geographic extent of the road network.
2. **Assess the condition of the roads.** Each year, use the ***Camp Road Maintenance Manual's*** system to assess road conditions. Maintain a continuing record of the assessed condition of each road or road segment so that changes in condition can be noted easily and quickly.
3. **Select a road management plan.** Consult with your local Soil and Water Conservation District and/or contractor to select the most appropriate treatment to repair each road.
4. **Determine overall needs.** Estimate the cost of each repair job using generalized average costs and tally up the total. Establish long-range goals and objectives that in turn will help determine budget needs for your road maintenance program.
5. **Establish priorities.** Keep good roads in good shape (preventive maintenance) and establish a separate budget (or request a temporary increase) to reconstruct roads in poor condition.

Vigilant monitoring and maintenance are the keys to environmentally sound and economically efficient roads. The ***Camp Road Maintenance Manual*** estimates that $1 spent in routine maintenance will save $15 in capital repairs. Your maintenance plan should establish a schedule for surveying the road(s), grading and ditching, cleaning out structures such as culverts and detention basins and for replacing culverts.

For gravel roads, proper routine grading to restore the crown before it has broken down is the number-one way to prevent erosion problems. The amount and type of use a road receives will determine how often grading should be done. The maintenance plan (and budget) should also include some provision for addressing unforeseen problems in a timely manner.

It is estimated that $1 spent in routine maintenance will save $15 in capital repairs.

Proactively improving and maintaining roads can be achieved through a number of cost-effective techniques known as Best Management Practices (BMPs). The ***Camp***

Road Maintenance Manual contains many useful BMPs and is an excellent resource for developing your improvement and maintenance plans. If you need additional guidance, consult with your local lake association, and state and local agencies, such as the Soil and Water Conservation Districts.

DEVELOPING A BUDGET

A budget is simply a plan that identifies the financial resources required to properly maintain your road system. Once constructed, this plan assists in managing your road association's activities throughout the year. Establishing a schedule of key action and decision points in this process allows adequate time for information gathering and decision making. Typically, the budgeting process should begin at least four months before the end of the fiscal year to ensure the budget is approved by the Board and general membership before the start of the new year.

The proposed budget needs to be communicated to the members along with the work plan goals and timelines for the next year. The members will also need to review actual income and expenses compared to the budget on a yearly basis and update and revise the budget to reflect changes during the year.

Appendix P includes sample budget calculations for road maintenance and repair.

KEYS TO A SUCCESSFUL BUDGETING PROCESS

- Clearly identify maintenance and repair objectives.
- Establish a schedule of key action and decision points
- Determine the financial resources needed and available to achieve objectives.
- Involve road residents in the process to improve accuracy of information and commitment to the plan.
- Document! Don't rely on memory. Write down assumptions. This will be very important in managing the budget throughout the year.

7. Implementing Your Maintenance Plan

Now that you have a maintenance plan and, more importantly, the necessary funding - it's time to get to work. In the process of soliciting proposals, your Road Commissioner can establish working relationships with the local contractors.

process for collecting Town taxes can be followed.

Any association legally created can always record in the Registry of Deeds an Affidavit giving notice that the owners of a particular piece of land with Book and Page reference didn't pay their maintenance fee in a particular year and that interest is running at a set percentage. Such a notice in the Registry may sit there for a number of years, but if and when the property is sold or remortgaged, the fee will be paid with interest.

By-laws for non-profit corporation road associations usually have their own provision for how the assessments will be collected.

All collection provisions for road associations should provide that the lot owner, if ordered to pay by a court the assessment, then the court must also order the lot owner to pay the association's legal fees and costs of collection.

A number of road associations have successfully collected fees using Small Claims Court in Maine. The recent Maine Supreme Judicial Court case in Tisdale v. Rawson, 2003 ME 68, 822 A.2d 1136 reinforces the rights of a road association to collect assessments.

A road association legally created can also collect interest on unpaid maintenance fees if so voted at their Annual Meeting or if provided for in the Bylaws.

have to be fair because if someone doesn't want to pay it, they don't have to.

If an annual maintenance assessment goes to court for enforcement, the Court will look to see if the road association has the proper authority, was properly created, has an assessment formula that treats everyone similarly situated similarly and finally, whether the fees were actually being assessed for road maintenance which includes plowing, sanding, ice removal, grading, graveling, ditching, drainage control, brush cutting, etc. all within the road right of way.

If the organization is strictly a road association, it can only make assessments for road maintenance. However, if it is a non-profit corporation with broader purposes such as maintaining a beach or a water supply system, etc., it can require the payment of dues and the assessments can be for more than just road maintenance as long as the purposes, uses and formula are clearly spelled out in the corporate By-laws.

Maintenance Fee Collection Alternatives

A contentious issue in the creation of a road association is how the association will go about collecting maintenance fees.

Collections are ultimately a discretionary act. No association legally has to collect all of its assessments. Like any other creditor it can simply forgive a debt. That may be the neighborly thing to do from time to time when an owner, because of sickness, employment, age, etc., simply can't pay that year.

Association members can also limit the association by restricting how maintenance fees are collected. The sample minutes of the statutory road association at Appendix D has a provision "that there would be no court cases to collect unpaid assessments and/ or there would be no recording of delinquent assessment payments in the Registry of Deeds without a two-thirds vote of the members present and voting at an Annual Meeting".

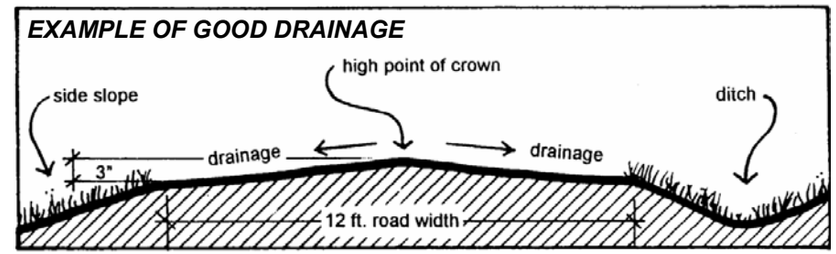
Without such a restriction, at an Annual Meeting of a statutory road association or in the By-laws of a non-profit road association corporation, one has to refer to the By-laws and/or property law and general collection laws.

An association created pursuant to the private way statute under §3103 can collect the assessments the same way as a Town collects taxes. This includes recording a lien in the Registry of Deeds if the assessments are not paid. This statutory provision is relatively new and an association should be very cautious about attempting foreclosure on such an assessment lien. The law is vague and unclear as to how closely the

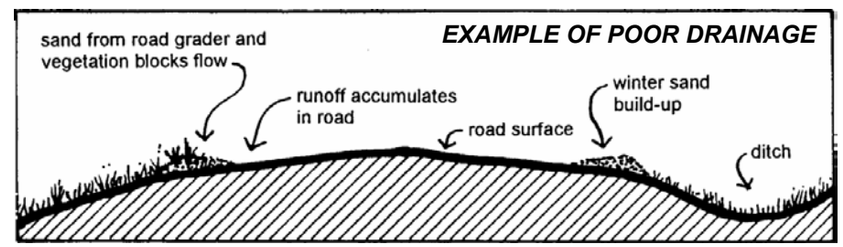
Some suggestions for hiring a contractor:

1. Ask to see other gravel roads upon which the contractor has worked. This will give you a good idea of what you can expect for your project. Some key things to look for include:

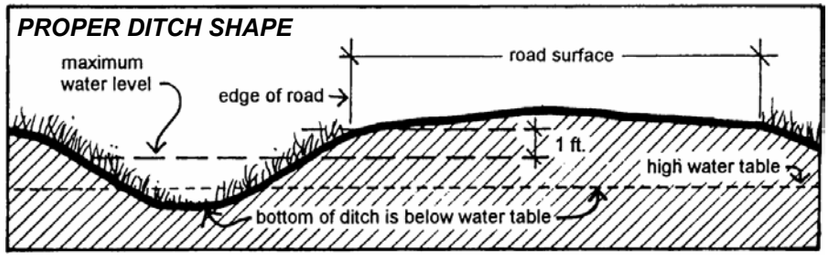
- Presence of a crown: road should have a noticeable pitch towards the ditch/shoulder. The pitch of the crown on a gravel road should be about 4%.



- Presence of grader berm: the transition (laterally) from road surface to shoulder to ditch should be free of obstruction. Below is an example of a road profile where material is trapping water on the roadway. This will result in the erosion of road surface material and possibly increase the incidence of potholes.



- Ditch shape: the shape of the ditch should be a rounded-V. The side slopes of the ditch should not be steeper than a 1.5:1 slope.



- Soil stabilization: after construction all areas of exposed soil (except for the travel way) should be stabilized using vegetation, rock, or erosion control mulch.

2. Consider hiring a "certified contractor." The Maine Department of Environmental Protection has developed an incentive program to recognize contractors who make an ongoing effort to learn about erosion control practices. This program, called the Voluntary Contractor Certification Program, provides contractors with training in environmental laws and erosion control practices that relate to working near sensitive natural resources. A certified contractor is not necessarily more qualified to work on private roads, but does have more training in erosion control measures. See DEP's Nonpoint Source Training and Resource Center website at www.state.me.us/dep/blwq/training or call Bill Laflamme at 287-7726 for a list of certified contractors.

Appendix K: Maintenance Fee Considerations

Maintenance Fee Formula Alternatives and Requirements

There is only one legal requirement for creating a maintenance fee assessment and that is that all property owners similarly situated must be similarly assessed.

For example, a road association could simply decide to assess all lot owners with lots abutting the road $300.00 a year. It would make no difference if the lot had a dwelling unit on it or not. It would make no difference as to whether it was on the lakeside or on the upland side of the road. It would make no difference if there were a residence or three rental units or no rental units. Year round or seasonal use would not make any difference. If you own a lot on the road, you pay $300.00 a year. Everyone is similarly situated is similarly assessed. This formula is seldom used.

The assessments can distinguish between developed and undeveloped lots. For example, $300.00 a year for developed lots, $100.00 a year for undeveloped lots.

The assessments can also be based on the number of dwelling units owned. A dwelling unit consisting of eating, sleeping, cooking and bathroom facilities in separate living quarters may be single-family detached houses, apartments, cabins, or whatever. If the fee were $200.00 for a dwelling unit and a person had a family camp and two rental cabins on their land, they would pay $600.00. Lots with no dwelling units would pay nothing.

The formula could also be determined with one fee for developed lots, and one fee for undeveloped lots, or one fee for lakeside developed lots, one fee for upland developed lots, one fee for undeveloped lakeside lots, and one fee for undeveloped upland lots.

The fees can also be assessed differently for seasonal and year-round residents.

The formula can also be a combination of all of these.

Creating the formula obviously can be a contentious issue. For the statutory road association described in Appendix A, the formula can be changed from year to year. In a non-profit corporation road association, the formula is in the By-laws and would require a By-law amendment if it is to be changed. The voluntary by agreement road association using a contract for services would have to amend the contract to change the formula. For the voluntary road association, since the fees are not enforceable anyways, the formula can be changed from time to time, and it doesn't necessarily

Appendix J: IRS Employer Identification Number Form

Form **SS-4**
(Rev. December 2001)
Department of the Treasury
Internal Revenue Service

Application for Employer Identification Number
(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)
► See separate instructions for each line. ► Keep a copy for your records.

EIN
OMB No. 1545-0003

Type or print clearly.

1 Legal name of entity (or individual) for whom the EIN is being requested

2 Trade name of business (if different from name on line 1) | 3 Executor, trustee, "care of" name

4a Mailing address (room, apt., suite no. and street, or P.O. box) | 5a Street address (if different) (Do not enter a P.O. box.)

4b City, state, and ZIP code | 5b City, state, and ZIP code

6 County and state where principal business is located

7a Name of principal officer, general partner, grantor, owner, or trustor | 7b SSN, ITIN, or EIN

8a **Type of entity** (check only one box)
- ☐ Sole proprietor (SSN)
- ☐ Partnership
- ☐ Corporation (enter form number to be filed) ►
- ☐ Personal service corp.
- ☐ Church or church-controlled organization
- ☐ Other nonprofit organization (specify) ►
- ☐ Other (specify) ►
- ☐ Estate (SSN of decedent)
- ☐ Plan administrator (SSN)
- ☐ Trust (SSN of grantor)
- ☐ National Guard ☐ State/local government
- ☐ Farmers' cooperative ☐ Federal government/military
- ☐ REMIC ☐ Indian tribal governments/enterprises

Group Exemption Number (GEN) ►

8b If a corporation, name the state or foreign country (if applicable) where incorporated | State | Foreign country

9 **Reason for applying** (check only one box)
- ☐ Started new business (specify type) ►
- ☐ Hired employees (Check the box and see line 12.)
- ☐ Compliance with IRS withholding regulations
- ☐ Other (specify) ►
- ☐ Banking purpose (specify purpose) ►
- ☐ Changed type of organization (specify new type) ►
- ☐ Purchased going business
- ☐ Created a trust (specify type) ►
- ☐ Created a pension plan (specify type) ►

10 Date business started or acquired (month, day, year) | 11 Closing month of accounting year

12 First date wages or annuities were paid or will be paid (month, day, year). **Note:** *If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (month, day, year)* . . . . . ►

13 Highest number of employees expected in the next 12 months. **Note:** *If the applicant does not expect to have any employees during the period, enter "-0-."* . . . . . ► | Agricultural | Household | Other

14 Check **one** box that best describes the principal activity of your business.
- ☐ Construction ☐ Rental & leasing ☐ Transportation & warehousing ☐ Health care & social assistance ☐ Accommodation & food service ☐ Wholesale–agent/broker ☐ Wholesale–other ☐ Retail
- ☐ Real estate ☐ Manufacturing ☐ Finance & insurance ☐ Other (specify)

15 Indicate principal line of merchandise sold; specific construction work done; products produced; or services provided.

16a Has the applicant ever applied for an employer identification number for this or any other business? . . . . ☐ Yes ☐ No
Note: *If "Yes," please complete lines 16b and 16c.*

16b If you checked "Yes" on line 16a, give applicant's legal name and trade name shown on prior application if different from line 1 or 2 above.
Legal name ► Trade name ►

16c Approximate date when, and city and state where, the application was filed. Enter previous employer identification number if known.
Approximate date when filed (mo., day, year) | City and state where filed | Previous EIN

Third Party Designee
Complete this section **only** if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.
Designee's name | Designee's telephone number (include area code) ( )
Address and ZIP code | Designee's fax number (include area code) ( )

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.
Name and title (type or print clearly) ► | Applicant's telephone number (include area code) ( )
Signature ► Date ► | Applicant's fax number (include area code) ( )

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 16055N Form **SS-4** (Rev. 12-2001)

Some suggestions for requesting an estimate:

1. Request estimates from more than one contractor.
2. Provide contractors with a detailed description of the work you want done and request itemized estimates in return. (See Appendix N).
3. Ask for a "not to exceed quote" to ensure that the job stays within your budget.
4. Ditch by the day. If your road needs to be ditched, plan on at least a day's worth of ditching at a time because of equipment transportation costs. It is easy for a contractor to quote you for a day's worth of ditching. You will still want to prioritize which sections of road you will want to ditch first.
5. Plan ahead! Available contractors can be very hard to find as the construction season approaches.

Now that you have a detailed description of your road work, a "not to exceed quote," and a contractor, work can begin on your road. If possible, the Road Commissioner (or another representative from the road association) should be present during construction to answer any questions that the contractor may have and to make sure the contractor is meeting your road association's expectations. The Road Commissioner should inspect the work before the contractor takes their equipment to another job. This will save both the contractor and the road association money if more needs to be done (for whatever reason).

Camp road undergoing reconstruction. Road has been regraded to direct runoff to rip rap drainage ditch / detention structure along road side and new grass strip has been installed for soil stabilization.

Same section of camp road several months after reconstruction.

CONCLUSIONS

The formation of road associations offers significant benefits for the users of Maine's private roads. The primary benefit originates from the numerous organizational advantages of a concerted group effort to properly maintain a significant investment, or as Yankee thrift advises: an ounce of prevention is worth a pound of cure. In the long run, developing and implementing a preventative road maintenance program really is less expensive than paying to fix a road once it has developed significant problems - and this process can be undertaken with much less effort when fellow road users join together.

The other key financial consideration for users of private roads is the potential adverse impact to property values resulting from declining lake water quality. There is a strong connection between poorly maintained camp roads and declining lake water quality, and as noted earlier there is also a relationship between water clarity and property values. The majority of all erosion and sedimentation problems in lake watersheds originates from improperly constructed and maintained camp roads. Therefore, a strong financial incentive exists for road users to join together in the protection of their individual and collective investments. Simply put, it literally pays to maintain or improve private roads.

Finally, while the process of forming a road association may seem somewhat daunting, there are many resources available to groups considering this worthwhile endeavor. The Maine DEP has staff that can provide assistance on a variety of topics related to road association formation. Likewise, every county in Maine has a Soil and Water Conservation District with professionals who may provide the following technical and organizational assistance to fledgling road associations:

- Education and training on a variety of lake related issues (including camp roads).
- Grant project planning and development.
- Site evaluations to assess erosion and / or drainage concerns.
- Best Management Practice design.

There are also many well established road associations within the State that could serve as useful models for groups in the process of forming road associations. Contact your county soil and water conservation district or lake associations in your region for more information. Ultimately, however, the real support and reward will come from working together with fellow road users.

Dated: May _____, 2004 _____

Dated: May _____, 2004 _____

State of Maine
County of _____ _____, 20____

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be his free act and deed.

Before me,

_____
Notary Public/Attorney-at-Law
Printed Name: _____
My Commission Expires: _____

State of Maine
County of _____ _____, 20____

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be her free act and deed.

Before me,

_____
Notary Public/Attorney-at-Law
Printed Name: _____
My Commission Expires: _____

statutes of the State of Maine concerning indemnification by nonprofit corporations currently contained in 13-B M.R.S.A. § 714, sub-§ 3 (or the corresponding provision of future Maine law), upon the receipt of an undertaking by or on behalf of the officer, member or employee to repay such amount, unless it shall be ultimately determined that such person is entitled to be indemnified as provided herein.

In the event that such action or proceeding be by or in the right of The Corporation, The Corporation shall have the same power to indemnify and insure any such director, officer or employee, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of such duty, unless the court wherein the action or proceeding is tried shall specifically find that despite the adjudication of liability, but in view of all the circumstances of the case, such a person is fairly and reasonably entitled to indemnity.

The indemnification provided by these bylaws shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute or regulation of the State of Maine.

As used in this provision, the terms "officer", "member", 'employee" include the respective heirs, executors and administrators of persons holding such offices in The Corporation.

Consent and Agreement

We, for ourselves and our heirs, successors and assigns, consent and agree to be bound and our land described herein to be subject to the terms and conditions of these Bylaws, and as amended hereafter, which shall run with the land.

Dated: May _____, 2004 _____

Dated: May _____, 2004 _____

Dated: May _____, 2004 _____

Dated: May _____, 2004 _____

Dated: May _____, 2004 _____

Dated: May _____, 2004 _____

Dated: May _____, 2004 _____

Dated: May _____, 2004 _____

References

Introduction
Adapted from the University of Maine Cooperative Extension Water Quality Program's Lake*A*Syst publication:
www.umaine.edu/waterquality/lake_a_syst/camp_road_maintenance.htm

Section 1
Adapted from the Camp Road Maintenance Manual - A Guide for Landowners
www.state.me.us/dep/blwq/docwatershed/camproad.pdf

Section 5
Adapted from the University of Missouri-Columbia's Community Development Extension Program at:
www.ssu.missouri.edu/commdev/cld/advexcel/formplangrp.htm

Section 6

- Adapted from the Damariscotta Lake Watershed Association's How to Create a Lake-Friendly Road Association.
- Adapted from Kentucky Transportation Center document found at: www.epa.gov/owow/nps/gravelroads/appd.pdf

****

The Maine Department of Transportation has a very informative publication entitled ***Drainage, Drainage, Drainage*** intended for people from small towns or other small government agencies involved in maintaining their local roads. It is presented in a straightforward manner and the material is basic, easy-to-understand and very "user-friendly". For more information contact the Maine DOT at 624-3220.

Note: all forms needed to start your road association are also available on the CD included with this Guide.

APPENDIX A: THREE TYPES OF ROAD ASSOCIATIONS

In Maine, there are three basic types of organizations that are available for formation of a road association for an existing private road. They are:

1. Informal by consent or agreement;
2. A statutory road association; and
3. A non-profit corporation road association with property interests in the road.

An Informal Organization by Consent or Agreement

Many private roads are maintained by a few individuals who take the initiative to oversee the maintenance and who attempt to collect the costs from all the people that use the road. This most frequently is a simple consensual arrangement when there are a few individuals available to take the initiative and most, if not all, of the users voluntarily reimburse the maintenance expenses. It may work in many circumstances, but it has a number of legal and liability problems. To begin with, the individuals who make the maintenance decisions can be liable for anyone who gets injured while using the road. Because of the informality of the arrangement, it may be very difficult to get insurance coverage and a property homeowner's insurance probably does not provide liability coverage for the entire length of the road. There is also no legal mechanism for collecting maintenance costs from all of the other users if it is not voluntarily paid. In addition, banks and secondary mortgage markets are reluctant to provide construction loans and mortgages for property on a private road with such an informal arrangement. This could mean that anyone wishing to sell their lakeside property may find that their buyers are denied financing until a formal road association has been created.

Another type of voluntary road association which is a little bit less informal is created by a written agreement similar to what is in Appendix C. Entering into such an agreement, however, is purely voluntary and can be cancelled anytime in the future. It does not have durability, and there is no way to require that all users of the road sign such an agreement. In addition, every time a property has new owners, a new

ARTICLE XIV

The Association shall have the power and authority to enforce and collect said maintenance fees by any action including actions at law and equity, and including attachment of Members' property. Members who are in default of their fees shall also be liable to the Association of reasonable interest and late charges set in advance by the Association and for the Association's reasonable costs of collection, including but not limited to, attorney's fees and costs. The maintenance fees shall constitute a lien upon the land of the Members and shall run with the land.

ARTICLE XV
Insurance

The Association shall maintain in full force and effect a general liability insurance policy for the benefit and protection of the Association, its officers and Members. It shall cover all land, common areas, facilities, equipment, and activities owned, operated and/or maintained by the Association as well as personal property and all acts performed for the Association. It shall have a face amount which shall be determined from time to time by the Membership. Costs of insurance shall be a part of the maintenance fee.

ARTICLE XVI
Indemnification of Officers and Members

Each officer, member and employee of The Corporation shall be indemnified by The Corporation to the extent of insurance coverage against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by such person in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of The Corporation), by the reason of the fact that such person is or was an officer, member or employee of The Corporation, if such person acted in good faith and in a manner reasonably believed to be in the best interests of The Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not of itself, create a presumption that the person did not act in good faith and in a manner which is reasonably believed to be in the best interests of The Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Expenses incurred in defending a civil or criminal action, suit or proceeding, may be paid by The Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Members in the manner provided by the applicable

Readfield, Maine of each year. Notice for such meeting shall be given three (3) weeks in advance.

Section 2. Special Meetings. Special meetings of the Members shall be held whenever called by the President or by at least four (4)Members. Three (3) weeks notices shall be given to all Members.

Section 3. Proxy. Votes by Members may be cast in person or by written proxy by any Member, with only one vote for each lot owned as provided for in Article VIII.

Section 4. Quorum. A quorum shall consist of at least four (4) Members either in person or by proxy, and it shall take two-thirds (2/3) vote of the Members to decide any question that may come before the meeting.

ARTICLE XII

Section 1. Qualifications. Only persons qualified to be Members under Article III shall be Members.

Section 2. Members. A Member shall have no vested right, interest, or privilege of, in, or to the assets, functions, affairs, or facilities of the Association, or any right, interest, or privilege which may be transferable or inheritable, or which shall continue after Membership ceases.

ARTICLE XIII

Section 1. The Association shall have the right and power to subject the property of its Members to an annual subdivision maintenance fee and charge.

Commencing November 15, 2004, and on the same day of each year thereafter, each owner of a lot with a substantially complete residence, shall pay in advance, the maintenance fee and charges and such payments shall be used by the Association to create and continue a Maintenance Fund to be used by the Association as hereinafter stated. The Association may vote to access the maintenance fee and charges in installments and to set the due date for such installments. The charges will be delinquent when not paid within thirty (30) days after they becomes due.

The annual maintenance charge may be adjusted from year-to-year by the Members as the common area, storm water management facilities and road maintenance needs in its judgment may require and shall be asserted equally and for the same amount for each residential dwelling unit.

Section 2. The maintenance charge shall be used for improving and maintaining the said common areas, road, drainage and storm water management facilities and the sight distances on the curves and intersections of the roads. It shall also be used for providing liability insurance coverage for the Association, its Members and Officers and the costs of consultants.

agreement would be necessary. It may be possible to have liability insurance coverage for the officers and members. Collection of assessments can only be against those people who have an agreement in effect, and its enforcement would be based upon legal contract theory. Basically, this agreement is a contract for services. A bank might accept this type of association for mortgage purposes if they do not read the document carefully.

Statutory Road Association

Maine, for many years, has had what is commonly referred to as the “Camp Road” law. It is now under the heading of “Private Ways” in Maine statutes at Title 23, Maine Revised Statutes Annotated, §3101 to §3104. This statute was revised in 1997 and amended in 1999. It was the subject of a recent Maine Supreme Judicial Court Decision which clarified some application issues. See Tisdale v. Rawson, 2003 ME 68, 822 A.2d 1136. The full statute is set out in Appendix C.

This law provides that when a private road is used by four or more lots of land that three of the owners can call a meeting of all of the owners on the road by having a Warrant for the meeting issued by a Notary. Appendix D has a sample application to the Notary and Appendix E has a Warrant calling an owners’ meeting which was recently conducted on a private road on a lake in Central Maine with approximately 35 dwelling units on three and one half miles of road.

The meeting of owners is conducted just like a Town Meeting with the election of a Moderator, voting on a budget, election of officers and any other decisions concerning the road. See Appendices E and F for the Warrant and Minutes, respectively.

The law provides for the election of a commissioner who will administer the road association for 12 months. The old law used to require the election of a “Clerk and Surveyor”. The new law only requires one person who is now called the Road Commissioner. However, some larger road associations formed under this law choose to expand the leadership so they have an executive committee of at least three. The attached Warrant (Appendix E) provides for a Road Commissioner, a Secretary/Treasurer and a Director who as a group serve as the executive committee for one year.

At the Annual Meeting, the owners also adopt the formula which will be used for making the assessment on all of the property owners using the road. There is no required formula and there are a number of alternative formulas that are discussed

in Appendix K.

The statutory road association has the authority to collect maintenance fee assessments. These payments are not voluntary. They have to be paid, and if they are not, the Association can force payment through the courts and/or by recording a lien in the Registry in the same way that a Town imposes a tax lien for land that has not paid property taxes. See Appendix K for alternative collection mechanisms.

This statutory road association has a life of only 12 months. The meetings must be called as required by the law each year and any errors in calling or conducting the meeting can result in the assessment being un-collectible. The greatest drawback to this type of road association is its limited duration of only one year. However, the advantages are that it is a legal entity created by statute, the courts recognize its legitimacy, and it has the power to collect and enforce its assessments. It can buy liability insurance for its officers and members and it has been successfully used for many years on various lakes throughout Maine. Creating such an association also can be accomplished in about two months and is relatively inexpensive to set up. It does not need any agreement signed by any of the owners. It does not need to be incorporated, it doesn't pay taxes, and it doesn't have to have any property interest conveyed to it in the form of road ownership or easement.

Non-profit Corporation Road Association

This is the most formal legal organization for private road maintenance and requires creating the corporation through the Maine Secretary of State's office, the adoption of by-laws, the voluntary burdening of all of the lots using the road and usually the deeding to the new corporation road ownership or an easement for the road from all of the abutting owners and users of the road.

This non-profit corporation is legally also known as a "mutual benefit" non-profit corporation. It is not a charitable corporation. It is not eligible for tax exemption and cannot get charitable postage status. It should not be confused with non-profit charitable corporations or "public benefit" non-profit corporations that may qualify for Internal Revenue Service 501(C)(3) status and which also can apply for various grants. Most lake associations and public charities are different from the mutual benefit non-profit corporation which benefits only the owners of property using the road.

For short private roads or when there are a limited number of owners on the road, this is a viable alternative. In Appendix H, there are sample Articles of

ARTICLE VII

The Association shall hold an annual meeting in October of each year to elect officers and conduct business and shall hold other meetings as necessary.

ARTICLE VIII

At all meetings and elections, all the Members may cast only one vote for each residential dwelling owned and all such units owned by tenants in common or joint tenants may cast only one vote as a group for each lots owned. For any vote to be effective on any issue, there must be a vote in favor of the decision of at least two-thirds (2/3) of the Members.

ARTICLE IX

The bylaws of the corporation may be amended, altered or rescinded only by two-thirds (2/3) of the Members at an annual meeting.

All amendments shall not become effective until recorded in the Kennebec County Registry of Deeds.

Amendments may be proposed by any Member.

ARTICLE X

Officers

Section 1. Officers. The officers of the Association shall be a President and a Secretary/Treasurer. They shall take office immediately after election.

Section 2. The President. The President shall be the chief executive officer of the Association, and shall perform such other duties as from time-to-time may be assigned to him by the Members. The President shall be ex officio a Member of all committees.

Section 3. The Secretary and Treasurer. The Secretary shall keep the minutes of all the Members' and Officers' meetings and the Treasurer shall have the custody of all the receipts, disbursements, funds, and securities of the Association. They shall perform all duties incident to the office of Secretary or Treasurer and shall perform such other duties as may from time-to-time be assigned by the Members or the President.

Section 4. Registered Agent. The Members shall appoint a Registered Agent for the Association who shall serve until replaced and who need not be a Member, but who must be a Maine resident, and whose duties shall be limited to those provided by Maine law.

ARTICLE XI

Meetings of Members

Section 1. Annual Meetings. There shall be an annual meeting of the Members of the Association each October at such place as may be designated in

_____, Lot 5, whose deed is recorded
in Book _____, Page _____ in said Registry;
and

_____ and _____, Lot 6,
whose deeds are recorded in Book _____,
Page____ and Book _____, Page _____.

The land of _____ shown on said Plan as Lot 7 shall not have membership and rights and obligations in this Association until such time as that land and/or a portion of that land has located thereon a dwelling and/or a new lot which uses _____ Drive as its primary access. If and when such a dwelling and/or lot is created, its record owner will become a member of the Association and the number of Members will be increased to seven (7).

The holder or owner of a security interest only, such as a mortgagee, shall not be qualified to be a Member.

ARTICLE IV

The corporation shall have perpetual existence.

ARTICLE V

The affairs of the Association shall be managed by the Members at membership meetings. Members shall elect a President, Secretary and a Treasurer annually who shall serve as Directors between membership meetings on such matters as delegated by the Members. The duties of the officers shall be as prescribed by these bylaws.

ARTICLE VI

The names of the officers who are to serve until the first election under these Bylaws shall be:

_____ President
_____ Secretary
_____ Treasurer

Said officers shall serve until August 1, 2004, before which the officers shall call with not less than fifteen (15) days notice a meeting of the Members to conduct the first election of officers who shall serve until the annual meeting in October, 2004.

Incorporation; Appendix I has By-laws with a consent provision; Appendix J has a Tax ID application for a recently created road association with only six owners, all of whom are year-round residents. The By-laws, when signed, are recorded in the Registry of Deeds.

For longer roads with multiple owners, the process for setting up such a corporation becomes more complicated. Instead of having it managed by all of the members such as the 6-member non-profit corporation in Appendix J, there may need to be a Board of Directors created as well as the corporate officers when there are multiple owners

There are two distinctive characteristics for the non-profit corporation road association. The first is that it has indefinite duration as a corporation which is a separate and distinct legal entity from all of its members. The second distinctive characteristic is that it generally has some type of ownership interest in the road by the abutting landowners deeding the road ownership to the corporation while retaining a right to pass over it or by conveying an easement across the owner's land for the road. A sample of Quit Claim Deed is in Appendix L and a Drainage Easement Deed is in Appendix M.

Because there is a conveying of property interest to a corporation with unlimited duration, the authority to assess maintenance fees runs with the land and goes on forever regardless of who owns the land and whether or not it has been conveyed to new owners.

A shortcoming of setting up this type of organization in addition to its complexity is the fact that it is voluntary. There is no way to legally force all of the owners on an existing private road to burden their land to a non-profit corporation which takes over the ownership and control of their road. If an owner does not sign the proper document, then the assessment of maintenance fees against that owner may be unenforceable. In Rome, Maine, such a corporation was recently (2004) created for over 30 different lots on a road almost five miles long. It took two years and a lot of work to achieve total participation and it had the leverage of a relocated road which owners could not use if they didn't join the corporation. In the long run such an effort may be worthwhile.

This type of corporation is eligible to buy insurance for its officers, members and directors and has the additional liability protection of a corporation.

Appendix B: Sample Road Maintenance Agreement

This Agreement is made as of _____, 20____ by the property owners (see attached list) hereto and their successors and assigns with respect to real estate located in the Town of _____, _____ County, Maine.

1. Property. This Agreement shall apply to the real property (the "Lots") held by the Owners identified in Appendix A adjoining Fire Road No. ____ (the "Road") in the Town of _____, _____ County, Maine.

2. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot who has signed this Agreement, and the heirs, successors, assigns and personal representatives of said Owners, but, notwithstanding any applicable theory of mortgage law, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title by foreclosure or any proceeding in lieu of foreclosure.

3. Road. The purpose of this Agreement is to provide for the maintenance and upkeep of the Road which services the Lots for the use and benefit of all Owners, and shall be binding upon all Owners.

4. Association. _____ has caused to be incorporated under Maine law a nonprofit corporation, the _____ Fire Road No. ____ Association (the "Association"), for purposes of complying with the requirements of this Agreement.

5. Member. Every Owner shall be a Member of the Association. When more than one person or entity holds an interest in any Lot, all such persons or entities shall be Members. A person or entity who holds a fee or undivided fee interest merely as security for the performance of an obligation, however, shall not be a Member.

6. Voting. All Members of the Association shall be voting Members and the Association shall have one (1) class of voting membership. For purposes of any meeting, a quorum shall consist of Owners of at least one-half (1/2) the Lots being present and voting. Each Lot shall represent one (1) indivisible vote. When more than one Member holds an ownership interest in a Lot, the vote for that Lot shall be exercised as such Members among themselves may determine by majority vote. In no event, however, shall the voting rights for a Lot be divided, nor shall more than one (1) vote be cast with respect to any one Lot. If Members who are Owners of a Lot are unable to agree in any instance as to how their vote shall be cast, in any instance, then the vote shall not be counted.

7. Expenses. Each Owner shall be assessed a sum equal to the Road maintenance and upkeep expenses for the ensuing year multiplied by a fraction of which the numerator shall be the number of Lots owned by the Owner and the denominator shall be the total number of the Lots. Road maintenance and upkeep shall be limited to that required [to remove snow], to repair and prevent erosion and to repair ordinary wear to the surface of the Road unless otherwise agreed by a unanimous vote of all Owners, but shall include the cost of maintaining the Association as a nonprofit corporation in good standing under the laws of Maine, the cost of enforcing any provision of this Agreement and other costs and expenses necessary and proper for the effective and efficient functioning of the Association. All maintenance and upkeep [including snow removal], will be by competitive bid unless a non-competitive price is accepted by vote of a majority of the Owners present at a meeting duly called for the purpose of voting on the budget of the Association.

8. Lien. Each Owner, by signing this Agreement, does covenant and agree to pay to the Association, within sixty (60) days after the date of notice of an assessment, all assessments made by the Association. Each assessment, together with interest in amounts or at rates specified by the Association and together with costs of collection, shall be a lien and charge upon the Lot against which each such assessment is made which lien shall continue until the assessment is paid and shall be the personal obligation of the Owner.

Appendix I: Sample Road Association By-Laws

BYLAWS OF
LAKE DRIVE IN NOWHERE OWNERS ASSOCIATION

ARTICLE I

The name of the corporation shall be Lake Drive in Nowhere Owners Association.

ARTICLE II

The purpose for which the corporation is organized is the owning, improving and maintaining the deeded common areas and/or facilities, storm water control facilities, Lake Drive in Nowhere, Maine and engaging in such other activities as may be to the mutual benefit of the Members. It shall be a limited non-profit private mutual benefit corporation pursuant to the laws of the State of Maine in Title 13-B. The common areas and/or facilities, storm water facilities, and Lake Drive are described in the Boundary Survey of Lake Drive, Nowhere, Maine recorded in the Kennebec County Registry of Deeds in Plan File # _____, Sheet _____.

ARTICLE III

The Members of the corporation shall be limited initially to the owners, their heirs and assigns, of six (6) Lots abutting said Lake Drive as shown on said Plan consisting of:

_____ and _____, Lot 1, whose deed is recorded in Book _____, Page _____ in said Registry;

_____, Lot 2 whose deed is recorded in Book _____, Page _____ in said Registry;

_____ and _____, Lot 3, whose deed is recorded in Book _____, Page _____ in said Registry;

_____ and _____, Lot 4, whose deed is recorded in Book _____, Page _____ in said Registry;

SIXTH: **(Optional)** ☐ (Check if this article is to apply.)

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

SEVENTH: **(Optional)** ☐ (Check if this article is to apply.)

Other provisions of these articles including provisions for the regulation of the internal affairs of the corporation, distribution of assets on dissolution or final liquidation and the requirements of the Internal Revenue Code section 501(c) are set out in Exhibit ____ attached hereto and made a part hereof.

INCORPORATORS **DATED** _____

_____ (signature) Street _____ (residence address)

_____ (type or print name) _____ (city, state and zip code)

_____ (signature) Street _____ (residence address)

_____ (type or print name) _____ (city, state and zip code)

_____ (signature) Street _____ (residence address)

_____ (type or print name) _____ (city, state and zip code)

For Corporate Incorporators*

Name of Corporate Incorporator _____

By _____ (signature of officer) Street _____ (principal business location)

_____ (type or print name and capacity) _____ (city, state and zip code)

Acceptance of Appointment of Registered Agent

The undersigned hereby accepts the appointment as registered agent for the above-named domestic nonprofit corporation.

DATED _____

_____ (signature of registered agent) _____ (type or print name)

Note: If the **registered agent does not sign**, Form MNPCA-18 (§304.3) must accompany this document.

***Articles are to be executed as follows:**
If a corporation is an incorporator (§401), the name of the corporation should be typed or printed and signed on its behalf by an officer of the corporation. The articles of incorporation must be accompanied by a certificate of an appropriate officer of the corporation, not the person signing the articles, certifying that the person executing the articles on behalf of the corporation was duly authorized to do so.

Please remit your payment made payable to the Maine Secretary of State.

SUBMIT COMPLETED FORMS TO: CORPORATE EXAMINING SECTION, SECRETARY OF STATE,
101 STATE HOUSE STATION, AUGUSTA, ME 04333-0101
FORM NO. MNPCA-6 (2 of 2) Rev. 6/16/2003 **TEL. (207) 624-7740**

The personal obligation of the Owner to pay such assessments, however, shall remain the personal obligation of the person who was the Owner when the assessment was first due and shall not pass to successors in title unless expressly assumed by such successors.

9. Enforcement. The Association may bring a civil action against the Owner personally obligated to pay an assessment in order to enforce payment of the delinquent assessment or to foreclose the lien against the Lot, and there shall be added to the amount of such assessment due all costs of collection. In the event a judgment is obtained, such judgment shall include interest on the assessment, together with all the Association's attorney's fees and expenses and costs of the action.

10. Subordination. The lien of the assessments provided for shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots. Such subordination, however, shall apply only to the assessments which have become due and payable prior to a sale or transfer of a Lot pursuant to any allowable method of foreclosure, or any other proceeding in lieu of foreclosure. Upon request by an Owner of a mortgagee of a Lot, the Association shall issue such certificates as are necessary to indicate the status of the assessments. Such sale or transfer shall not discharge the lien of the Association of any assessment thereafter becoming due after the date of any such sale or transfer. The lien of the assessments also shall be subordinate to all utility easements which may be placed upon any Lot.

11. Severability. Invalidation of any one provision of this Agreement by competent authority shall in no way affect any other provision, which shall remain in full force and effect.

12. Amendment. This Agreement may be amended by a written instrument executed in recordable form and signed by Members entitled to cast at least 75% of the votes allocated to the Lots.

IN WITNESS WHEREOF, the undersigned have executed the Agreement as of the date first above written:

WITNESS

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

STATE OF MAINE
COUNTY OF _____, SS.

The foregoing Road Maintenance Agreement was acknowledged before me on _____, 20___ by _____

Signature: _____

Print Name: _____

Notary Public of Maine
My Commission Expires: _____

(NOTARY SEAL)

Appendix C: Maine's Private Way Law

These statutes can be found in electronic form on the State of Maine's web site for the Constitution, Statutes and Session Laws of Maine at http://janus.state.me.us/legis/statutes/23/title23sec3101.html.

Title 23: HIGHWAYS Part 3: LOCAL HIGHWAY LAW **Chapter 305: CONSTRUCTION, MAINTENANCE AND REPAIR** Subchapter 2: PRIVATE WAYS

§3101. Call of meetings; repairs
Except as provided in this section, when 4 or more parcels of land are benefited by a private way or bridge as an appurtenant easement or by fee ownership of the way or bridge, the owners of any 3 or more of the parcels, as long as at least 3 of the parcels are owned by different persons, may make written application to a notary public to call a meeting, who may issue a warrant setting forth the time, place and purpose of the meeting, copies of which must be posted at some public place in the town and mailed to the owners of all the parcels benefited by the way at the addresses set forth in the municipal tax records, at least 30 days before such time. When so assembled, they may choose a commissioner, to be sworn, and they may determine what repairs are necessary and the materials to be furnished or amount of money to be paid by each owner for the repairs and the manner of calling future meetings. This section does not apply to ways constructed or primarily used for commercial or forest management purposes. As used in this section, "repairs" does not include paving, except to repair existing pavement or in locations where limited paving is demonstrated to be a cost-effective approach for fixing an erosion problem. [1999, c. 552, §1 (amd).]

§3102. Commissioner's duties; neglect of owners to pay
The commissioner chosen under section 3101, with respect to the way or bridge, has the powers of a road commissioner. If any owner, on requirement of the commissioner, neglects to furnish that owner's proportion of labor, materials or money, the same may be furnished by the other owners and recovered of the owner neglecting to pay in a civil action, together with costs of suit and reasonable attorney's fees. The commissioner's apportioning of the cost of repairs to the road undertaken pursuant to the provisions of section 3101 may not exceed 1% of an individual owner's property valuation in any calendar year. [1999, c. 552, §2 (amd).]

§3103. Contracts for repair; assessments
The owners, at a meeting held under section 3101, may authorize a contract to be

Appendix H: Maine Articles of Incorporation Application

DOMESTIC
NONPROFIT CORPORATION

STATE OF MAINE

ARTICLES OF INCORPORATION

Filing Fee $20.00

_____
Deputy Secretary of State

A True Copy When Attested By Signature

_____
Deputy Secretary of State

Pursuant to 13-B MRSA §403, the undersigned incorporator(s) execute(s) and deliver(s) the following Articles of Incorporation:

FIRST: The name of the corporation is _____.

SECOND: ("X" one box only. Attach additional page(s) if necessary.)

☐ The corporation is organized as a public benefit corporation for the following purpose or purposes:

☐ The corporation is organized as a mutual benefit corporation for all purposes permitted under 13-B MRSA, or, if not for all such purposes, then for the following purpose or purposes:

THIRD: The name and registered office of the Registered Agent who must be a Maine resident, whose office is identical with the registered office; or a corporation, domestic or foreign, profit or nonprofit, having an office identical with such registered office:

_____
(name)

_____
(physical location - street (not P.O. Box), city, state and zip code)

_____
(mailing address if different from above)

FOURTH: The number of directors (not less than 3) constituting the initial board of directors of the corporation, if the number has been designated or if the initial directors have been chosen, is _____.

The minimum number of directors (not less than 3) shall be _____ and the maximum number of directors shall be _____.

FIFTH: Members: ("X" one box only.)

☐ There shall be no members.

☐ There shall be one or more classes of members and the information required by §402 is attached.

FORM NO. MNPCA-6 (1 of 2)

Authorize the establishment of a ledger and appropriate corporate records.
Adopt a fiscal year for the corporation.
Designate Chairpersons and members of committees.

Annual Report – All non-profit corporations must file an Annual Report by June 1 of each year (although the Secretary of State requests filings by April 1). There is a $20 filing fee, as well as a $10 late fee for filings received after June 1. You may now file the Annual Report online at www.informe.org/aro/index_on.html.
Workers Compensation – A corporation with one or more employees generally must obtain workers compensation insurance.

Federal Requirements and Forms
Obtain an EIN – Every nonprofit corporation must obtain a federal Employer Identification Number (EIN). This is simply a means of identifying the organization for tax and other purposes. You can request an EIN by calling 978-474-9717. The call may take anywhere from 15 minutes during off-peak times to over an hour during peak times. If you do not wish to wait on hold, you may fax a Form SS-4 (form and faxing instructions downloadable from www.irs.gov).

IRS Form 990 – Annual information return for exempt organizations. If your organization has more than $25,000 in income during your tax year, it must file Form 990. You might also qualify to file Form 990-EZ, which is a simplified version generally used by organizations with gross receipts normally less than $100,000 and assets under $250,000. If your organization is a private foundation, you should file Form 990-PF. All of these forms can be downloaded from www.irs.gov.

IRS Form 1099-MISC – An organization must file an IRS 1099-MISC whenever it pays a person $600 or more in a fiscal year for: (1) rents; (2) royalties; (3) commissions, fees and other compensation (nonemployees only); (4) prizes and awards (nonemployees); and (5) other income.

Federal Payroll Tax Documents – A corporation with one or more employees must pay certain federal payroll taxes and make federal and state withholdings on employees' wages. Among the necessary forms are the W-2/W-3 and the quarterly IRS Form 941.

made for making and keeping the way or bridge in repair by the year or for a less time; may raise money for that purpose and choose assessors to assess it on the owners in proportion to their interests, who shall deliver their assessment with a warrant for its collection to the commissioner. The warrant must be in substance such as is prescribed for collection of town taxes. The commissioner shall collect the same as town taxes are collected, and be liable for neglect of duty as town collectors are for similar neglects. [1997, c. 682, §2 (amd).]

§3104. Penalties and process
Money recovered under sections 3102 and 3103 is for the use of such owners. In any process for its recovery, a description of the owners in general terms as owners of parcels of land benefited by the way or bridge, clearly describing the way or bridge, is sufficient. Such process is not abated by the death of any owner or by the transfer of any owner's interest. [1997, c. 682, §2 (amd).]

Appendix D: Sample Application to Notary Public

APPLICATION
TO
NOTARY PUBLIC
TO CALL A MEETING OF THE
OWNERS OF LAKE DRIVE, NOWHERE, MAINE
A PRIVATE WAY

The following three (3) owners request that you call a meeting to be held July 10, 2004 at the home of John and Mary Doe on Lake Drive at 10:30 a.m. for the purpose of calling a meeting of the owners of parcels of land benefited by Lake Drive and to use the attached Notice of Meeting and Warrant to call the meeting pursuant to 23 M.R.S.A. §3101 to 3104.

Dated: June 1, 2004 By _____
Print Name:
Owner of _____ Lake Drive

Dated: June 1, 2004 By _____
Print Name:
Owner of _____ Lake Drive

Dated: June 1, 2004 By _____
Print Name:
Owner of _____ Lake Drive

Appendix G: Maine's Requirements for Incorporating a Non-Profit Corporation

Disclaimer: This information is provided for educational purposes only and is not to be relied upon as legal advice. Readers are strongly encouraged to retain the services of a qualified attorney to help them with their specific situation.

State Requirements and Forms

Articles of Incorporation – Your non-profit corporation must establish Articles of Incorporation and file them with the Secretary of State. Among other items, the Articles of Incorporation must include the following information (see 13-B MRSA § 403 for a complete list of requirements):

o Name of Organization – You must choose a name that is not identical or deceptively similar to an already existing nonprofit or for-profit corporation in Maine. The names of already existing nonprofit corporations can be found online at www.informe.org/icrs/ICRS.
o Purposes of the Organization – The purposes may be identical to the mission statement, or may be as broad as the law allows. A road association will always be a mutual benefit corporation and not a charitable corporation. It cannot be tax exempt.
o Registered Agent (aka Clerk) – All non-profit corporations must appoint a registered agent. Any change of the registered agent must be filed with the Secretary of State within 30 days of the change.
o Whether the Organization Will Have Members – An organization may or may not have members. That is a decision the incorporators need to make from the outset.
o Board of Directors – if the organization has a board, it must be comprised of at least three individuals.

Bylaws – A non-profit corporation must establish a set of Bylaws.

Organizational Meeting – After the incorporators have filed the Articles of Corporation, it is time to hold the Organizational Meeting. At this meeting, the following key measures should be taken:

Adopt bylaws.
Decide if the organization will be run by members or a Board of Directors.
Elect Officers.
Authorize a corporate bank account.
Authorize the payment of organizing expenses and filing fees.

Mr. Goodall read **Article 7** and a Motion was made and seconded that all future meetings of the Mountain Drive Association would be called with a 30-day written notice by regular mail to include an Agenda and proposed budget. After discussion, the **Motion passed by a vote by a show of hands.**

A Motion was then made that Annual Meetings of the Association would be held on the third Saturday in July. After discussion, that **Motion passed by a vote by a show of hands.**

After discussion concerning the collection of late payments, a Motion was made and seconded that there would be no court cases to collect unpaid assessments and/or there would be no recording of delinquent assessment payments in the Registry of Deeds without a two-thirds vote of the members present and voting at an Annual Meeting. After discussion of the motion, the **Motion passed by a vote by a show of hands.**

Attorney Goodall read **Article 8** for the election of a road commissioner, a secretary/treasurer, and a director to serve until August 1, 2004 and to constitute the Executive Committee. After nominations, **John Doe was elected road commissioner**; **Mary Doe was elected secretary/ treasurer**, and after nominations **Bob Smith was elected director**.

There being no further business to conduct on the Warrant, the meeting was adjourned.

Respectfully submitted,

CLIFFORD H. GOODALL
Attorney at Law
DYER GOODALL AND FEDERLE, LLC
61 Winthrop Street
Augusta, Maine 04330
Tel: (207) 622-3693

71004 Minutes

Appendix E: Sample Notice of Meeting Warrant

LAKE DRIVE ASSOCIATION
NOTICE OF MEETING
WARRANT

TO: Property owners and occupants Lake Drive, Nowhere, Kennebec County, Maine

Greetings,

You are hereby notified by the undersigned notary pursuant to 23 M.R.S.A. §3101 to 3104 that there will be a meeting in John and Mary Doe's home on Lake Drive on Saturday, July 10, 2004 at 10:30 a.m. to act on the following articles for the maintenance of Lake Drive for the twelve month period from August 1, 2004 to July 31, 2005.

Article 1:

To elect a moderator for the meeting and see what rules of procedure the owners will choose to conduct the meeting**.**

Article 2:

To see if the owners will elect a road commissioner for a one (1) year term whose duties shall be: to determine what repairs and maintenance are needed for the upkeep of said roads, to make recommendations to the owners and Executive Committee, and to perform such maintenance and duties as the owners' or executive committee directs and/or as authorized by 23 M.R.S.A. §3101 to 3104.

Article 3:

To see if the owners will elect a Secretary/Treasurer for a one (1) year term whose duties shall be: to record and maintain the administrative and financial records of said organization, and to perform such duties as are determined by the owners or executive committee.

Article 4:

To see if the owners will elect a director for a one (1) year term whose duties will be to serve on the Executive Committee with the Road Commissioner and Secretary/ Treasurer which shall manage the affairs of the Association in accordance with the policies approved by the owners and to respond to emergencies as they occur.

Article 5:

To see if the owners will approve and accept the proposed budget which is attached hereto, including the assessment structure, for the fiscal year of August 1, 2004 to July 31, 2005.

Article 6:

To see if the owners will approve September 30, 2004 as the deadline for the collection of the assessments for the 2004-2005 fiscal year and approve a late payment interest penalty of eight percent (8%) per annum on all assessments not paid by November 30, 2004.

Article 7:

To see if the owners will determine the manner of calling future meetings.

Article 8:

To nominate candidates from the floor and to elect, by written ballot, a Road Commissioner, a Secretary/Treasurer and a Director to serve for the next fiscal year beginning August 1, 2004 and to be the Executive Committee.

Dated: June 3, 2004 By: _____

CLIFFORD H. GOODALL, ESQUIRE
Notary
As Attorney-at-Law

DYER GOODALL AND FEDERLE, LLC
61 Winthrop Street
Augusta, Maine 04330

Appendix F: Sample Meeting Minutes

LAKE DRIVE ASSOCIATION
MINUTES OF ANNUAL MEETING
JULY 10, 2004

The meeting of the Lake Drive Association was called pursuant to Title 23, Maine Revised Statutes Annotated, §3101 to §3104 by a Notice including a Warrant with the Articles to be voted upon, a copy of which is attached.

The meeting was Called to Order at approximately 10:40 a.m. on July 10, 2003 by Clifford H. Goodall, Esquire who is the Notary who called the meeting, as provided in the law for unincorporated road associations.

After an explanation by Attorney Goodall of how a road association works and what the law for road associations in Maine is, a Motion was made to elect Attorney Goodall Moderator and to accept the rules of procedure which was a hand-out distributed by Mr. Goodall. A copy is attached. The Motion was seconded and was **passed by a vote by a show of hands.**

Mr. Goodall then read **Article 2**, and a Motion was made and seconded to accept Article 2 as it is written. After discussion and questions, Mr. Goodall called for a vote by a show of hands and **declared that Article 2 passed.**

Mr. Goodall then read **Article 3**, and a Motion was made and seconded to accept Article 3 as it is written. After discussion and questions, Mr. Goodall called for a vote by a show of hands and **declared that Article 3 passed.**

Mr. Goodall then read **Article 4**, and a Motion was made and seconded to accept Article 4 as it is written. After discussion and questions, Mr. Goodall called for a vote by a show of hands and **declared that Article 4 passed.**

Mr. Goodall read **Article 5** and a Motion was made and seconded to adopt an annual budget for $9,120.00. After discussion, Mr. Goodall called for a vote and declared that the **Motion passed by a vote by a show of hands.** A copy of the budget is attached. A motion was also made and seconded that the assessment for 2004/2005 would be $216.23 for each dwelling unit, $100.00 for each lot that does not have any dwelling units on it. After discussion, the **Motion passed unanimously by a vote by a show of hands.**

Mr. Goodall read **Article 6** and a Motion was made and seconded to accept Article 6 as it is written, but to change the dates to March 1, 2005 for the collection of assessments and April 1, 2005 for the beginning of interest for late payments. After discussion, Mr. Goodall called for a vote by a show of hands and declared that the **Article passed with the changed dates.**