

## 6) Develop Recommendations for the Road Commissioner or Board

The steering committee should develop a list of recommended name(s) and roles for the road commissioner and/or road association board. Nonprofit corporation road associations are required by law to have a board of directors. Statutory road associations may have a road commissioner or board. While having only a road commissioner is legally sufficient for statutory road associations, most have chosen to have a board of at least three directors to help spread the work and the decision making.

The road commissioner or association board will manage the overall process of road maintenance. This will involve:

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

When 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/president." This person will serve as the primary contact for contractors to establish road repair and upkeep work.

## 7) Hold an Informational Meeting

While an Informational Meeting is not required, having this sort of kickoff meeting has worked well for larger road networks. The Informational Meeting 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.



### Prepare for the Informational Meeting

Along with considering some of the topics mentioned above, there are a few other items that need to be done in preparation for the Informational Meeting. Choose a convenient place and time for the meeting, so most road owners can attend. Appoint someone from the steering committee to create and send out written invitations. Be sure to invite all property owners served by the private way to attend. Names and addresses of property owners can be obtained from property tax maps and information at the town office and for some towns may be available on the town's website.

## Nonprofit Corporations

**Draft Articles of Incorporation.** If you are planning to form a nonprofit corporation road association, you should complete an Articles of Incorporation application so it can be voted on at the informational meeting. The application must include the name of the organization, purposes of the organization (can be the same as the mission statement), registered agent, whether the organization will have members, and board of directors. For more information and a link to the application, see Online Appendix F.

**Get Sample Legal Forms.** Assemble samples of legal forms you will likely want road association members to sign so they can get a better idea of what "signing on" will entail. A sample road maintenance agreement is in Online Appendix G, a sample of a Quit Claim Deed is in Online Appendix I and a Drainage Easement Deed is in Online Appendix J.

## Promote the Formation of Your Road Association

The promotion of forming 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 promotion options to provide road residents with the needed background

information and to encourage them to attend the Informational Meeting. Having some basic written information is good to have on hand during this promotion.

### ***Promotion Options Include:***

- door-to-door visits
- phone calls
- mailings or email
- articles in the lake association newsletter or local newspapers



## At the Informational Meeting

At the meeting, set a pleasant tone by providing a friendly setting and refreshments. Encourage participation by asking for folks to identify concerns in a group discussion and list concerns for all to see. You will also want to remember to do the following:

- Circulate a sign-in sheet to collect all names & contact information including email addresses and any second home information
- Have someone take minutes
- In handout form, present suggestions on governance, fees, and maintenance and discuss various concerns and options
- When the time is ripe, take an unofficial vote on forming a road association. If yes,
  - Hammer out any remaining issues regarding governance, fees, maintenance, and implementation.
  - If you have decided to form a statutory road association:
    - Decide the time and place of the Organizational Meeting (be sure to allow for enough time to comply with the law concerning notice of meeting)

- If you have decided to form a nonprofit corporation:
  - Complete and approve the Articles of Incorporation Application
  - Decide the time and place of the Organizational Meeting
- Thank everyone for participating

After the meeting, send the meeting minutes out promptly to everyone with property accessing the road, whether they were present or not.

- For some guidelines for running effective meetings, see Online Appendix P. For descriptions of the various ways for groups to make decisions, including pros and cons of each and when to use each method, check out "Group Decision Making" in Online Appendix Q.

### **III. The Organizational Meeting**

The Organizational Meeting is the official meeting where the road association is formed. Because of this, you must make sure you follow the specific requirements of the type of road association you are forming. If you are forming an informal road association, there are no requirements for an organizational meeting, but you could use the statutory requirements as a guide.



### **Statutory Road Association Organizational Meeting**

The following describes the overall process for a statutory road association as it must occur per the Private Way Law at the time of this publication. However, be sure to check the current statute since revisions have been common and you want to ensure you are meeting the requirements of the Private Way Law on the date of your meeting.

#### **Proper Call of Meeting for Statutory Road Associations**

The formation meeting must be called as required by the law and any errors in calling or conducting the meeting can result in the assessment being uncollectible. Three or more owners must call the meeting of all owners by having a notice of meeting warrant issued by a notary. At least 30 days prior to the meeting, the notice of meeting warrant must be distributed to all owners of parcels benefited by the private road. The notice must be sent, as a minimum, by U.S. mail to the addresses used by the town's tax collector. The warrant must include the time, place, purpose of the meeting, agenda, and items to be voted on. If you want to allow, or the by-laws permit, proxy voting by one owner for another and/or absentee voting, this must be stated in the notice of the meeting and forms for that purpose should be sent with the notice. A sample warrant and application for issuance of the warrant are in Online Appendix B and A, respectively.

## Meeting Procedure for Statutory Road Associations

Designate a meeting Moderator who will lead the meeting and be sure to have a designated note-taker. Go through each section of the warrant and vote on each, using majority vote (required by the private way law) which can be done by a show of hands. If you have by-laws, use majority vote to vote on those as well. Be sure to discuss any sections that do not have consensus and try to reach consensus since buy-in is very important and will provide a stronger foundation for your road association. After all meeting business is completed and has been voted on, officially adjourn the meeting and thank all for attending. Sample meeting minutes are available in Online Appendix C.

## **Nonprofit Corporation Road Association Organizational Meeting**

This information is provided as general information and should not be relied upon as legal advice. If you are forming a nonprofit corporation road association, you are encouraged to retain the services of a qualified attorney to help with your specific situation. While the following describes the overall process for a nonprofit corporation road association as it must occur per the Maine Nonprofit Corporation Act at the time of this publication, be sure to check the current statute.



### Prior to the Meeting – for Nonprofit Corporation Road Associations

Prior to or after the Organizational Meeting, you should file the Articles of Incorporation application with the Secretary of State. You will also need to gather information about getting a corporate bank account.

### Proper Call of Meeting for Nonprofit Corporation Road Associations

The Maine Nonprofit Corporation Act requires that the organizational meeting must be held by a call of a majority of the incorporators or board of directors. Those calling the meeting must give the other incorporators or board members at least three days' written notice and the notice must state the time, place and purposes of the meeting. Of course, assuming the goal is to have all road users sign on to the road association, it is highly recommended to notify all road users about the meeting and give more notice than just three days.

### Meeting Requirements for Nonprofit Corporation Road Associations

Designate a meeting Moderator who will lead the meeting and be sure to have a designated note-taker. Go through the by-laws and vote on each one, using majority vote (or a greater percentage vote if this is in your by-laws) which can be done by a show of hands. At this organizational meeting you must:

- Adopt by-laws.
- Decide if the organization will be run by members or a Board of Directors.
- Elect Officers.

# **-HOW TO FORM A FORMAL ROAD ASSOCIATION-**

## **I. How to Start: Convene a Steering Committee**

Once you have determined a formal road association might be a good option for your road, you will want to convene a steering committee of fair-minded and diverse folks to get the association off the ground. This group will help with tasks that need to get done, plan to get the road association up and running, and generally provide support for the formation process.

### **Basic Steps to Forming a Road Association:**

1. Convene a Steering Committee
2. Plan to Get Up and Running
3. Hold an Informational Meeting
4. Hold an Organizational Meeting

When you meet with the steering committee, appoint a leader that will help guide the formation process. You will also want to appoint a database manager who will create and maintain the list of road association member names and contact information. Have just one person be responsible for keeping the membership list up-to-date.

*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*

## **II. Planning to Get a Road Association Up and Running: What the Steering Committee Needs to Do**

While the following topics are those that will be discussed at the informational and organizational meetings, the steering committee should review the options and develop some recommendations in preparation so meeting attendees can be informed when they decide whether they want to form a road association or not, and what that means. Also, being prepared to answer questions and concerns makes a meeting go much smoother and is more likely to result in a positive vote.

### **Basic Planning Steps:**

#### Develop:

1. Mission Statement
2. Road Maintenance Plan
3. Association Budget
4. Maintenance Fee Formula
5. By-laws
6. Board
7. Informational Meeting

### **1) Develop a Mission Statement**

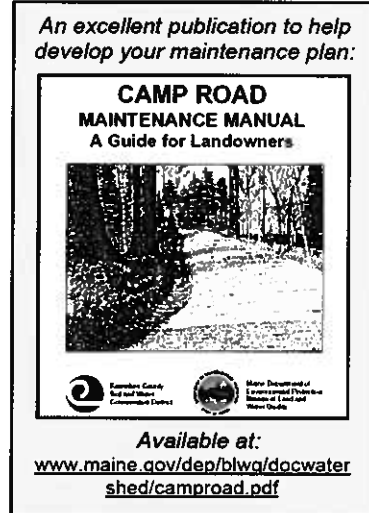
A very important first step of forming a road association is developing a mission statement. Having a mission statement reminds association members what the purpose of the association is and helps guide your maintenance plan, and therefore budget. A good way to develop a mission statement is to start by listing everyone's road concerns and then write the mission statement to address them. This draft mission statement can be presented at the informational meeting and then modified to address additional concerns of the group. As an example, the mission of 13<sup>th</sup> Street Road Association is "to facilitate the maintenance of our road to the benefit of all its members."

## 2) Develop a Maintenance Plan and Budget

Vigilant monitoring and maintenance are the keys to having a quality road for the least expense. Your maintenance plan should establish a schedule for surveying the road, grading and ditching, cleaning out structures such as culverts and detention basins, and for replacing culverts. The maintenance plan (and budget) should also include some provision for addressing unforeseen problems in a timely manner. If you are not familiar with proper road maintenance techniques, contact your local Soil and Water Conservation District or local contractor for assistance.

### Steps to Develop a Maintenance Plan:

1. **Inventory the roads.** Determine the size and geographic extent of the road network as best you can.
2. **Assess the condition of the roads.** Each year, assess the condition of your road using the Camp Road Maintenance Manual (available at the camp roads maintenance website). 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. **Determine specific road repairs.** Consult with your local Soil and Water Conservation District and/or contractor to select the most appropriate treatment to repair the road and get bids or estimates for the needed work. For a list of contractors certified by the DEP in erosion and sedimentation control, see the camp roads maintenance website ([www.maine.gov/dep/blwq/docwatershed/camp/roads/maintenance.htm](http://www.maine.gov/dep/blwq/docwatershed/camp/roads/maintenance.htm)).
4. **Determine overall costs.** Add up the costs of each repair job to get a total estimate. When road surface problems are extensive, it is often necessary to select priorities and phase the project over a number of years.
5. **Establish priorities.** Determine criteria to use for selecting priorities and clearly state them in the maintenance plan. Assessment criteria could include the potential of the problem site to impact water quality, safety concerns, property value concerns, and nuisance factors, etc. You should plan to keep good roads in good shape (preventive maintenance) and establish a separate budget (or request a temporary increase) to reconstruct roads in poor condition. The amount and type of use a road receives will determine how often grading should be done. The maintenance plan should consist of the established priorities and a timeline, including any recommendations for phasing.



*For gravel roads, the #1 solution to erosion is **proper routine grading** to restore the crown before it has broken down.*

## 3) Develop an Association 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 maintenance plan priorities 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.

**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.

<b>SAMPLE ROAD ASSOCIATION BUDGET</b>	
PROPOSED 2009/2010 BUDGET FOR OWNERS OF PROPERTY ON LAKE DRIVE July 10, 2009	
BUDGET ITEM	
<i>Road maintenance:</i>	
Summer Maintenance (2 x grading and gravel)	\$3,000.00
Culvert thaw out	\$ 75.00
Winter Maintenance (plowing & sanding)	<u>\$2,565.00</u>
	\$5,640.00
<i>Operations:</i>	
Post Office, supplies (stamps, envelopes, etc.)	\$ 80.00
Liability Insurance	\$ 500.00 EST.
Attorney Fees	<u>\$ 600.00</u>
	\$1,180.00
<i>Contingency:</i>	\$2,000.00
<b>Total to be assessed</b>	<b><u>\$8,820.00</u></b>

See Online Appendix M for sample budget calculations for road maintenance and repair.

**4) Determine Maintenance Fees**

**Maintenance Fee Creation**

There is only one legal requirement for statutory and nonprofit road associations when creating fee assessments and that is: all property owners similarly situated must be similarly assessed. For the voluntary road association, since the fees are not enforceable anyway, the fee doesn't necessarily have to be fair because if someone doesn't want to pay it, they don't have to.

<p><b><i>Some factors that are often used when creating a fee formula:</i></b></p> <ul style="list-style-type: none"> <li>• Tax assessment value</li> <li>• Year round usage or not</li> <li>• Lot development or not</li> <li>• Number of dwelling units</li> <li>• Lot location</li> <li>• Length of road used</li> <li>• No differences – all lots the same</li> </ul>
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Creating the maintenance fee formula obviously can be a contentious issue. No two roads are the same and road associations have considered various factors in determining the formula. See the box above for some factors that are often used by road associations.

“To determine the most fair and acceptable maintenance fee, you must **put yourself in the position of each road user** and see the formula from all sides.”  
 – Bill Gannon, 13<sup>th</sup> Street Road Association

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 fairly, and whether the fees were actually being assessed for road maintenance. Maintenance is understood to include: plowing, sanding, ice removal, grading, graveling, ditching, drainage control, brush cutting, etc. within the road right of way. Courts have allowed insurance and operating costs to be included in the maintenance fee.

If the organization is strictly a road association, it can only make assessments for road maintenance. However, if it is a nonprofit 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.

<b>Road Association Type</b>	<b>Fee Formula Change Requirements</b>
Statutory	Majority vote at annual meeting
Incorporated	By-laws amendment
Voluntary – with contract	Amend contract
Voluntary – without contract	No conditions

**Maintenance Fee Collection**

Another area to consider is how the association will go about collecting maintenance fees.

**Associations do not have to collect.** 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.

**Associations have collections options.**

- **Recording a lien** - Statutory road associations can collect the assessments in the same way a Town collects taxes. This includes recording a lien in the Registry of Deeds if the assessments are not paid. A nonprofit corporation association can also record in the registry a notice of non-payment of assessments. A notice of non-payment in the Registry of Deeds may sit unnoticed for a number of years, but if and when the property is sold or remortgaged, the fee must be paid with



interest. A Registry notice of non-payment can also affect the non-payer's credit score, and the fee and interest is often paid because of this. A sample Registry Notice of Nonpayment is available in Online Appendix E. For statutory road associations, 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 process for collecting Town taxes can be followed by statutory road associations.

- *Small Claims Court* - A number of statutory road associations and nonprofit corporation associations have successfully collected fees using Small Claims Court in Maine. The 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. The private ways statute authorizes the court to order the owner to pay the statutory road association's collection costs and attorney fees.

**Associations can determine collection methods.** Association members can limit the association by restricting how maintenance fees are collected.

- *Statutory Road Associations*
  - Fee collection restrictions should be put in the by-laws, or if there are none, should be voted on at the annual meeting. The sample minutes of the statutory road association in Online Appendix C 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".
  - Statutory road associations can also collect interest on unpaid maintenance fees if so voted at their Annual Meeting or in their by-laws.
- *Incorporated Associations*
  - By-laws for nonprofit corporation road associations should make provision for how the assessments will be collected. By-laws can also provide for the collection of interest on unpaid maintenance fees and require the lot owner to pay the association's cost of collection, including its attorney fees.

## 5) Develop By-laws

While by-laws are not required for statutory road associations, they are highly recommended as a way to record what the road association can or cannot do. By-laws are required for nonprofit corporations. By-laws should include such items as:

- A purpose statement, including the location of your road and that you have formed for the purpose of maintaining the road
- Who is eligible to be a member and vote
- What the dues are to be used for and how they will be collected
- Election of officers and duties
- When meetings will generally be held and how they will be called
- How absentee voting will be dealt with

Sample by-laws for a statutory road association are in Online Appendix D and for an incorporated road association in Online Appendix H.



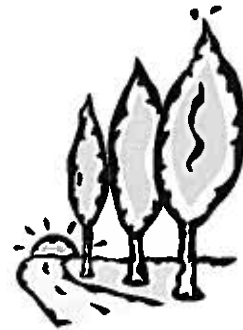
- Authorize a corporate bank account.
- Authorize the payment of organizing expenses and filing fees.
- Authorize the establishment of a ledger and appropriate corporate records.
- Adopt a fiscal year for the corporation.
- Designate Chairpersons or members of committees.

You will also want to have any legal documents, such as any maintenance agreements, quitclaim deed, or drainage easements, signed by members at this meeting. Be sure to discuss any topics that do not have consensus and try to reach consensus since buy-in is very important and will provide a stronger foundation for your road association. After all meeting business is completed and has been voted on, officially adjourn the meeting and thank all for attending.

#### **IV. After the Organizational Meeting: What To Do Next**

##### **Notify All Owners**

After the Organizational Meeting, be sure to notify all owners of parcels benefiting from the road about the meeting outcome and send them the meeting minutes.



##### **If You are a Statutory Road Association – Register with MARA**

The Maine Alliance for Road Associations (MARA) is an unaffiliated online community and information resource for road associations forming under the Maine Private Ways statute. There are no requirements to register with MARA, but by registering for free on the website, you can share problems and solutions with the MARA online community, access publications, receive email notification of private way statute changes and updates on road association events and concerns.

##### **If You are a Nonprofit Corporation – File Forms and Annual Report**

This information is provided for educational purposes only and is not to be relied upon as legal advice. Check with your attorney, online resources, and the current Maine Nonprofit Corporation Act (Title 13-B).

##### **Record By-laws – for Nonprofit Corporation Road Associations**

For nonprofit corporation road associations, the signed by-laws or a memorandum of the by-laws need to be recorded in the Registry of Deeds. This document needs to list each owner and the Book and Page for each owner's deed.