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LAFCO
San Bernardino County

Kathleen Rollings-McDonald
Executive Officer
Local Agency Formation Commission
for San Bernardino County
215 North D Street, Suite 204
San Bernardino, CA 92415-0490

Re: Potential Liability and Duty to Maintain Unaccepted County Roads

Dear Kathy:

You have requested guidance regarding potential liability if a county discontinues its maintenance of roads not officially part of the county road system.

Generally, California Streets & Highways Code section 941(b) immunizes a county from any claimed failure to maintain a road which has not been accepted into the county road system by official action of the county board of supervisors or its designee. Section 941 indicates that a county can only be held liable for failure to maintain a road if the county has officially accepted a road as part of the county road system. If the road has not been officially accepted, the county cannot be held liable for failure to maintain it. A 1978 California Court of Appeals case found that the Legislature, in passing section 941, clearly intended to immunize public agencies from liability for damages caused by defects in a street which had not been officially accepted into the public entity's street system by resolution. (*Benitez v. City and County of San Francisco* (1978) 77 Cal. App. 3d 918, 920-922.)

Additionally, California Government Code section 831.3 speaks generally to when a public entity has maintained roads which it never accepted into its official road system. If a public entity performs an act of maintenance, grading, repair, or reconstruction of an unaccepted road, it may be held liable for injuries occurring on account of that work only if the work is not done with reasonable care and if the work leaves the road in a more dangerous or unsafe condition that it was before the work began. Thus, as long as a county has done work with reasonable care and the work left the road "in a no more dangerous or unsafe condition that it was before the work commenced," a county would likely not be held liable for any injuries occurring on account of the work.

The case of *Matthews v. County of San Bernardino* discusses and applies these two code sections in a summary judgment context. (*Matthews v. County of San Bernardino* (1991) 223 Cal.App.3d 1623.) The court there simply indicated that:

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“section 941 states that a county is not liable for *failure to maintain* unaccepted roads, while section 831.3 merely states that *if* public entities perform an act of maintaining, grading or repairing unaccepted roads, they may be liable *if* the work is not done with reasonable care and *if* the work leaves the road in a more dangerous or unsafe condition that it was in before the work began. Simply stated, section 941 immunizes a county from any claimed nonfeasance regarding its lack of maintaining unaccepted roads. Section 831.3 addresses in part a public entity’s misfeasance in its action of maintaining or grading or repairing an unaccepted road.” (*Matthews v. County of San Bernardino* (1991) 223 Cal.App.3d 1623, 1633.)

Moreover, the California Attorney General has also opined that a county has no statutory duty to maintain public roads that have not been accepted into the county highway system by resolution of its board of supervisors. (89 Cal.Ops.Atty.Gen. 148, 150 (2006); 61 Ops.Cal.Atty.Gen. 466, 468 (1978) (citing *County of Kern v. Edgemont Dev. Corp.* (1963) 222 Cal.App.2d 874, 878-879).)

Therefore, pursuant to California Streets & Highways Code section 941, a county generally cannot be held liable for failure to maintain a road that has not been officially accepted into the county road system. If a county has performed maintenance work on these unaccepted roads, California Government Code section 831.3 indicates that so long as a county has completed any maintenance work with reasonable care and the work left the road “in a no more dangerous or unsafe condition that it was before the work commenced,” a county generally cannot be not be held liable for any injuries occurring on account of the work.

Please do not hesitate to contact me with any further questions or concerns.

Sincerely,



Clark H. Alsop
of BEST BEST & KRIEGER LLP

jml: CHA