

## RESOLUTION NO. 2009-15

**WHEREAS**, the Board of County Commissioners of Lincoln County, New Mexico, recognizes the importance of providing a policy and procedures for the abandonment and vacation, or closure of roads and county maintained rights-of-way.

**NOW, THEREFORE, BE IT RESOLVED** that the County of Lincoln, acting by and through its duly elected Board of Commissioners, does hereby create the Lincoln County policy and procedures for abandonment and vacation or closure of roads and rights-of-way with the following provisions:

### 1.0 PURPOSE

It is the purpose of this policy to establish procedures for reviewing abandonment and vacation, or closure of county roads, streets, highways, and rights-of-way.

### 2.0 AUTHORITY

NMSA § 67-2-6 (1978) provides that the Board of County Commissioners of Lincoln County has the right to abandon and vacate public roads, streets or highways. NMSA § 67-5-4 provides that the Board of County Commissioners may discontinue or close public roads.

### 3.0 FORMAL DECLARATION

NMSA § 67-2-6 (1978) directs that property or property rights in roads, streets or highways will not revert until such property or property rights are vacated and abandoned by formal written declaration of vacation and abandonment which has been duly declared by the Board of County Commissioners of the County in whom the property or property right has vested.

### 4.0 DEFINITIONS

**4.1 “Abandonment of a County Road”** means the removal of the public interest in a road (see “Vacation of a County Road”) and which is documented by a duly executed declaration of Abandonment and Vacation.

**4.2 “Adjacent Landowners”** are property owners who own property with frontage on the road proposed for vacation or who own land at each end of the road segment in question.

**4.3 “Affected Property Owners”** are property owners who own property which is not immediately adjacent to the road proposed for Abandonment and Vacation or Closure, but whose property or rights will be significantly impacted by the Abandonment and Vacation or Closure of the road proposed for such.

**4.4 “Applicant”** means the person who requests Vacation and Abandonment or Closure by completing an Application in the form required by this Policy and who pays all requisite fees.

**4.5 “Certified Appraisal”** means a written appraisal of value conducted by a state certified appraiser.

**4.6 “Closure of a County Road”** means an action taken by the Lincoln County Board of County Commissioners whereby an established road is closed for the purposes of terminating public access to or use of the road but the County’s interest in the road for other purposes such as utility easements, drainage maintenance or other uses is retained.

**4.7 “County Road”** is defined as a County-owned dedicated right-of-way or easement for public right-of-way.

**4.8 “Partial Vacation”** means public access may be closed while utility access through creation of a defined utility easement is retained.

**4.9 “Public Right-of-way”** means land used to provide access for the movement of people, goods, drainage, utilities (surface or subsurface), vehicles, and services

**4.10 “Review Summary and Comments”** means the summary decision of any department charged with review of the Application consisting of a recommendation for or against the abandonment and vacation or closure proposed in an Application for the same. The Comments section shall include reasons, circumstances or evaluations not apparent in the Application and discussion of any possible adverse impact on Adjacent and and Affected Property Owners.

**4.11 “Road Review Committee”** means the Committee selected by the Board of County Commissioners of Lincoln County.

**4.12 “Vacation of a County Road”** means a formal action taken by the Lincoln County Board of County Commissioners whereby the public interest in a road right-of-way or public service easement is removed (abandoned) and which is documented by a duly executed declaration of Abandonment and Vacation.

## **5.0 ABANDONMENT AND VACATION OR ROAD CLOSURE REQUESTED BY THE PUBLIC**

An applicant may request abandonment and vacation or closure of a county road or county regulated public right-of-way after submitting a formal Application to the Lincoln County Planning Department along with the appropriate application fee as set forth hereinbelow.

## **6.0 PROCEDURE FOR ABANDONMENT AND VACATION OR ROAD CLOSURE**

### **6.1 Application**

#### **6.1.1 Form.**

The form of Application shall be the prescribed form attached to this policy as Exhibit A.

#### **6.1.2 Attachments.**

All attachments hereinbelow described shall be submitted with the Application at the time application is made. No Application will be considered for review until and unless it is complete, including all attachments, and will be returned to the applicant.

##### **6.1.2.1 Letter of Intent.**

A Letter of Intent must accompany any Application for Abandonment and Vacation or Closure of any road or right-of-way and shall include the following elements:

##### **6.1.2.1.1 Acreage of road.**

Provide an estimate of the acreage of the road proposed to be abandoned and vacated or closed, citing the measurements or criteria and sources used for the estimate and the method of calculation of the estimate.

**6.1.2.1.2 Description in detail of location of road.**

Provide a legal description obtained from a New Mexico Registered Professional Land Surveyor or provide a detailed description of the approximate location of the road or right-of-way, e.g. "Approximately [X] feet South of [road name], approximately [X] feet North of [road name], approximately [X] feet East of [road name], and approximately [X] feet West of [road name]."

**6.1.2.1.3 Name of Subdivision.**

Provide the name of the subdivision, if any, of record within which the road or right-of-way lies.

**6.1.2.1.4 Reason for the proposed abandonment.**

Specify clearly any and all reasons for the proposed abandonment and vacation or closure.

**6.1.2.1.5 Special considerations.**

Outline any special considerations the Applicant believes to have bearing on the review of the Application for Abandonment and Vacation or Closure, e.g. any special circumstances applicable to the Applicant and/or Adjacent and/or Affected Property Owners which have particular impact on the reasons for the proposed abandonment and vacation or closure given above.

**6.1.2.2 Utility Company Approvals.**

The Application must contain a statement of approval of all affected Utilities Companies or Providers on company letterhead showing the title of the person signing the letter or provide a prepared plat with the signature or signatures of a utility company or companies on the plat.

**6.1.2.3 Letters of Consent/Non-Consent.**

Letters of Consent/Non-consent of all adjacent landowners shall be attached to the Application. Letters of Consent/Non-consent must be obtained from every adjacent property owner. If it is not possible to obtain a Letter of Consent/Non-consent from any adjacent property owner, a statement of the reasons the letter cannot be obtained should accompany the Application.

**6.1.2.4 Copies of Deeds to Adjacent Properties.**

The Applicant shall provide copies of the recorded deeds to all adjacent properties, including his own, with the Application in order to verify that the legal owner(s) of adjacent properties have provided Letters of Consent/Non-Consent.

**7.0 ADDITIONAL PROCEDURES FOR ABANDONMENT AND VACATION**

The procedure for abandonment and vacation of a road or county regulated public right-of-way shall be the same as the Procedure described hereinabove at Section 6.0 and will also include the following attachments to the application:

**7.1 Drawing.**

An accurate drawing of the road or right-of-way to be abandoned and vacated, showing all adjacent landowners' property lines and names shall be attached to the application.

**7.2 Legal Description.**

A proper legal description of the parcel to be abandoned and vacated shall be included with the Application.

**7.3 Determination of Square Footage**

The Applicant shall calculate the approximate square footage of the parcel of the road proposed to be vacated and state the total estimated square footage showing the measurements and the method of calculation used on an attachment to the Application.

**7.4 Assessor's Determination of Value**

All Applications for Abandonment and Vacation shall be sent to the Lincoln County Assessor's Office which shall make a determination of the value of the road or right-of-way requested to be abandoned and vacated. If the Lincoln County Assessor's determination of the value of the road is Twenty-four Hundred Ninety-nine Dollars (\$2,499) or less, no Appraisal as described in Section 7.5 below is necessary.

**7.5 Appraisal**

If an Application for Abandonment and Vacation is approved by the Lincoln County Board of County Commissioners and if in accordance with the Assessor's Determination of Value described herein at Section 7.4 the calculation of value of the parcel proposed to be abandoned and vacated amounts to Twenty-five Hundred Dollars (\$2,500) or more, then the Applicant must obtain at his/her own expense a Certified Appraisal setting forth the appraised value of the land to be abandoned and vacated.

**7.6 Plat.**

If an Application for Abandonment and Vacation is approved by the Lincoln County Board of County Commissioners, a Plat of Survey certified by a Registered Professional Land Surveyor (R.P.L.S.) of the road or right-of-way to be abandoned and vacated showing all adjacent landowners shall be prepared at the Applicant's expense and provided to the Board of County Commissioners.

**8.0 Application Fees**

**8.1** The initial application fee for an Application for Abandonment and Vacation or Closure is Two Hundred Fifty Dollars (\$250.00) for each Application. The Application Fee shall be tendered at the time the Application is submitted and any Application submitted without the requisite Application Fee will be returned to the Applicant. The Application fee shall not be returned once the Application has gone through Road Department and Road Review Committee review.

**8.2** For Applications for Abandonment and Vacation only, there shall be an additional fee of One Hundred Fifty Dollars (\$150.00) made payable to the Lincoln County Assessor for the Assessor's determination of the value of the road. This fee shall not be applicable to requests to close a County road.

**9.0 Acquisition Fee**

An Acquisition Fee applies to Applications for Abandonment and Vacation only. If a determination of value by the County Assessor as described in Section 7.4 above places the estimation of value of the property at Two Thousand Five Hundred Dollars (\$2,500) or more, the acquisition fee in the amount of the appraised land value shall be collected by the Lincoln County Planning Department after the Application has been approved for abandonment and vacation by the Lincoln County Board of County Commissioners and prior to the filing of the Statement of Abandonment and Vacation.

## **10.0 Submission of Application**

### **10.1 Planning Department.**

All Applications for Abandonment and Vacation or Closure shall be initially submitted to the Planning Department of Lincoln County at its office located at: 115 Kansas City Rd., Ruidoso, New Mexico 88345. The Planning Department shall review all Applications for completion in accordance with this Policy. Upon completion of its review and after a determination the Application is complete, the Planning Department will send the original Application along with all attachments to the Lincoln County Road Department. For Applications for Abandonment and Vacation only, an additional copy of the Application will be sent to the County Assessor for a determination of value.

### **10.2 Road Department and Road Review Committee**

The Lincoln County Road Department and the Road Review Committee shall review all Applications for Abandonment and Vacation or Closure. The County Road Review Committee will review the requests and send its Review Summary and Comments in accordance with NMSA 67-5-4 (1978) to the Board of County Commissioners.

### **10.3 Board of County Commissioners**

The Board of County Commissioners will consider the Application and the Review Summary and Comments of the Road Review Committee to determine whether to approve the application to abandon and vacate or close the subject road. Following proper notification and publication requirements the Board of County Commissioners will consider all comments from all present at the meeting and will act in the best interests of the county to either abandon and vacate or close the road or maintain the road as a county right-of-way.

## **11.0 APPROVAL AND PAYMENT**

### **11.1 Documentation**

The Planning Department shall coordinate the preparation, signing and recording of all documents of the action taken upon the payment of the appropriate fee or fees as determined under Sections 8.0 and 9.0 above and Sections 11.3 and 11.4 below.

### **11.2 Approval of Abandonment and Vacation**

Upon approval of the abandonment and vacation of a road or right-of-way by the Lincoln County Board of County Commissioners, the Applicant must provide all additional documentation required in Section 7 above and make payment of the appropriate fees as determined under Sections 8.0 and 9.0 above and Sections 11.3 and 11.4 below.

### **11.3 Abandonment and Vacation of Road with a Value of Twenty-five Thousand Dollars (\$25,000) or More**

If the value of a road or right-of-way approved for Abandonment and Vacation has been determined to have a fair market value of Twenty-five Thousand Dollars (\$25,000) or more, compliance with all provisions of NMSA § 13-6-2.1 (1978) and applicable regulations of the state board of finance shall be required.

### **11.4 Signage Change and Cost.**

If an Application for Abandonment and Vacation or for Road Closure is approved by the Board of County Commissioners, Applicant will also be responsible for the cost to change existing signage from the color indicating a County maintained road (green) to the color for a private road (blue).

**11.5 Quit Claim Deed**


If an Application for Abandonment and Vacation is approved by the Board of County Commissioners, the Board shall issue a Quit Claim Deed for the property so abandoned and vacated, once the appropriate fees have been paid.

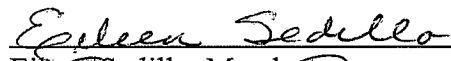
**12.0 ROAD REVIEW**

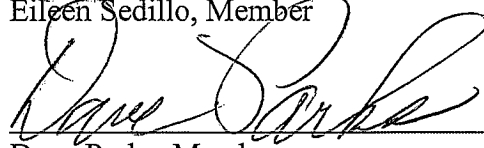
The Applicant must attend the road review as scheduled by the Road Review Committee to provide any necessary information to the committee.

**PASSED, APPROVED AND ADOPTED** this 20 day of October, 2009.

**BOARD OF COUNTY COMMISSIONERS  
OF LINCOLN COUNTY, NEW MEXICO**

  
\_\_\_\_\_  
Tom Battin, Chairman

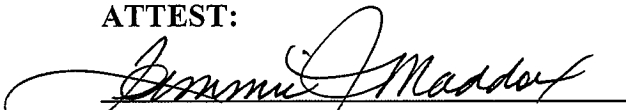
  
\_\_\_\_\_  
Eileen Sedillo, Member

  
\_\_\_\_\_  
Dave Parks, Member

  
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Don Williams, Member

  
\_\_\_\_\_  
Jackie Powell, Member

**ATTEST:**

  
\_\_\_\_\_  
Tammie J. Maddox  
Lincoln County Clerk



**APPLICATION TO THE COUNTY OF LINCOLN FOR  
ABANDONMENT AND VACATION or CLOSURE  
OF ROAD AND/OR RIGHT-OF-WAY**

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**APPLICATION FOR:**     \_\_\_ Abandonment and Vacation     \_\_\_ Closure

**DATE SUBMITTED:** \_\_\_\_\_

**LOCATION OF PROPOSED ABANDONMENT and VACATION OR CLOSURE:**

Lot: \_\_\_ Block: \_\_\_ Addition: \_\_\_\_\_ Subdivision: \_\_\_\_\_  
Section: \_\_\_\_\_ Township: \_\_\_\_\_ Range: \_\_\_\_\_

**DESCRIPTION OF PROPERTY TO BE ABANDONED AND VACATED OR CLOSED:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPLICANT NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE(S):** \_\_\_\_\_

**REQUIRED ATTACHMENTS FOR ABANDONMENT AND VACATION OF ROADWAY  
OR COUNTY MAINTAINED PUBLIC RIGHT-OF-WAY:**

- \_\_\_\_\_ 1. Letter of Intent
  - \_\_\_\_\_ a. Acreage of road including measurements and method of calculation
  - \_\_\_\_\_ b. Detailed description of location of road
  - \_\_\_\_\_ c. Name of Subdivision (if any)
  - \_\_\_\_\_ d. Reason for proposed abandonment, vacation or closure
  - \_\_\_\_\_ e. Special considerations (if any)
- \_\_\_\_\_ 2. Utility Company Approvals
- \_\_\_\_\_ 3. Letters of Consent/Non-consent from all adjoining landowners
- \_\_\_\_\_ 4. Copies of Deeds to adjacent properties
- \_\_\_\_\_ 5. Drawing
- \_\_\_\_\_ 6. Legal description
- \_\_\_\_\_ 7. Determination of value as provided by County Assessor
- \_\_\_\_\_ 8. Appraisal (if required)
- \_\_\_\_\_ 9. Plat of Survey (if required)

**REQUIRED ATTACHMENTS FOR ROAD CLOSURE:**

- \_\_\_\_\_ 1. Letter of Intent
  - \_\_\_\_\_ a. Acreage of road including measurements and method of calculation;
  - \_\_\_\_\_ b. Detailed description of location of road;
  - \_\_\_\_\_ c. Name of Subdivision (if any);
  - \_\_\_\_\_ d. Reason for proposed abandonment, vacation or closure;
  - \_\_\_\_\_ e. Special considerations (if any).
- \_\_\_\_\_ 2. Utility Company Approvals
- \_\_\_\_\_ 3. Letters of Consent/Non-consent from all adjoining landowners
- \_\_\_\_\_ 4. Copies of Deeds to adjacent properties

**APPLICATION TO THE COUNTY OF LINCOLN FOR  
ABANDONMENT AND VACATION or CLOSURE  
OF ROAD AND/OR RIGHT-OF-WAY**

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**IS ROAD A COUNTY MAINTAINED ROAD:    \_\_\_ YES    \_\_\_ NO**

**REQUIRED FEE:**

\_\_\_\_\_ **Two Hundred Fifty Dollar (\$250.00) fee per Application**

**ADDITIONAL FEES:**

\_\_\_\_\_ **One Hundred Fifty Dollar (\$150.00) fee for Assessor's Determination of Value**

\_\_\_\_\_ **Acquisition Fee in the amount of \$**

\_\_\_\_\_ **Fees for Signage changes in the amount of \$**

**PLANNING DEPARTMENT REVIEW OF APPLICATION:**

Planning Department staff shall notify applicant whether or not application is deemed complete within fifteen (15) days of submittal. Only applications which are found to be complete will be processed and forwarded to the Lincoln County Road Department. Incomplete applications will be returned to applicant.

**AFFIDAVIT/SIGNATURE:**

The undersigned person hereby makes this application in accordance with the Resolution and policies of the Board of County Commissioners of Lincoln County, and hereby certifies that the information given herein is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date