

## RESOLUTION NO. R-10-44

### A RESOLUTION TO ACCEPT A ROAD WITHIN THE INDIAN HILLS SUBDIVISION FOR MAINTENANCE

**WHEREAS**, The Board of Grant County Commissioners accepted for purposes of public use the dedication of roads constructed within the Indian Hills Subdivision as designated on the subdivision plat approved in 1975; and,

**WHEREAS**, The residents of a portion of Deer Trail road within Indian Hills Subdivision have requested that the county accept maintenance of Deer Trail road beginning at the Grandview intersection, going south to the end of the cul de sac ("the road"); and

**WHEREAS**, The road to be accepted for maintenance covers .1 mile; and

**WHEREAS**, The road has been inspected by the Grant County Road Superintendent, who has determined that the road meets the Grant County road standards; and

**WHEREAS**, All residents on the road have signed the petition requesting maintenance for the road; and

**WHEREAS**, The Board of County Commissioners desires to accept such road for maintenance and orders such road to be added to the 2011 Certified County Maintained Road Inventory.

**THEREFORE BE IT RESOLVED** by the Board of Grant County Commissioners that the portion of Deer Trail road described above be accepted for maintenance.

**Done**, this 15<sup>th</sup> day of November 2010, in Silver City, Grant County, New Mexico.

#### BOARD OF GRANT COUNTY COMMISSIONERS



MARY ANN SEDILLO, CHAIRWOMAN



JOVITA GONZALES, MEMBER



CHRISTY MILLER, MEMBER

ATTEST:



ROBERT ZAMARRIPA, COUNTY CLERK

September 8, 2010

To:

Grant County Commissioners and  
Mr. Earl Moore, Grant County Road Superintendent  
Silver City, NM

Dear Commissioners and Mr. Moore:

We, the residents of Deer Trail (south of the Grandview intersection), hereby submit the attached signed Petition for the purpose of requesting that the road will be dedicated as a Public Road.

It is our understanding that Road Superintendent Moore has conducted an inspection of the road and found it's current condition to be at County Road Construction standards. It is our hope that Grant County Road Department will accept the road for any future maintenance for the interest of public health, safety, and general welfare of its residents.

Thank you for your consideration.

*Mark D. Bighley*  
*Rachel J. Bighley*  
Mark D. & Rachel Bighley  
4655 Deer Trail Rd.

*Laurelle Patricia Chavez*  
Laurelle Patricia Chavez  
4650 Deer Trail Rd.  
575-574-5548 (cell)  
575-538-9602 (Hm)

## APPENDIX F

GRANT COUNTY ROAD ORDINANCE  
AND COUNTY ROAD CONSTRUCTION STANDARDSBOARD OF COUNTY COMMISSIONERS  
GRANT COUNTY, NEW MEXICO

This policy, Procedure and County Road Construction Standard will hereinafter be called "The Grant County Road Ordinance." The Board of Grant county Commissioners is hereinafter called the "County". This Policy will govern the dedication and acceptance of all roads and acceptance by the County of roads for maintenance, except for roads which the County may acquire by means of U.S.D.A. easements. Procedures for roads acquired by means of U.S.D.A. easements will be negotiated on an individual basis. The Procedure sets forth the steps which must be taken before the County will perform the following two separate functions:

- A. Accept dedication of a road as public property.
- B. Accept the road for maintenance by the County.

**GENERAL****Policy**

- 1 Acceptance of roadways within an approved subdivision for maintenance by the County requires an application by the subdivider or property owner for such maintenance to the County Commission, and specific action by the County Commission pursuant to this Appendix. If the subdivider wishes to obtain County's prior agreement to accept a planned public road within the subdivision for County maintenance, the subdivider must first obtain the formal agreement of the County Commissioners, at the sketch plan phase of subdivision approval or thereafter, that the County will accept for public maintenance once the County has accepted the roadway's construction to standards for either Type A or Type B Roadways as specified within Appendix E of these Regulations without variances.
- 2 The dedication to the County of a previously private road requires that all landowners whose land abuts the road participate in the dedication process. The County will not utilize the power of eminent domain to condemn a holdout property except under highly unusual emergency circumstances or if the road is being constructed pursuant to the County Improvement District Act, Sec 4-55A-1 et seq, NMSA 1978 either by provisional order or petition. In the

event that the holdout property is acquired pursuant to the County Improvement Act, then all property benefitted by the road will be assessed for the total amount of the project, which would include acquisition of holdout property.

- 3 The County shall be provided with a legal description of the road and a survey of the road on a plat, at a scale of 1 inch equals 200 feet, signed by a registered land surveyor.
- 4 The road to be dedicated must conform to the criteria as listed in the Grant County Subdivision Regulations, Appendix E, Road Development Plan (E. Right-of-Way Widths).
- 5 The County shall not accept any road into the County system for maintenance by the County unless it meets County road construction standards, as attached hereto and fully incorporated herein.
- 6 Subdivision Roads: Pursuant to Section 47-6-5 NMSA 1978, approval of a plat by the Board of County Commissioners dedicates the land dedicated on the plat for public use. Although dedicated land becomes public property, a change in the statutory provision after 1981 makes it clear that the County need not maintain the roads until the road fully conforms with the County Road Standards, and the roads are accepted for maintenance by the County, in a separate application procedure. The revised County Land Subdivision Regulations (1987), provide that a dedication can be accepted before the road is built, but that the County is not obligated to maintain the roads until they are built according to County standards by the subdivider, whose responsibilities for construction and maintenance of the roads will be clearly set forth in the Subdivision Disclosure Statement, and in a secured Subdivision Improvements Agreement between the County and subdivider, executed pursuant to the Subdivision Regulations.
- 7 Roads in new subdivisions approved after the effective date of this Ordinance shall be considered for dedication and maintenance according to County Subdivision Regulations and County road standards, and according to procedures as set forth in the County Subdivision Regulations and herein. Roads in subdivisions approved before the effective date of this policy and procedure will be approved pursuant to the procedure for nonsubdivision roads unless there is official documentation, such as an approved plat, disclosure statement, or other documentation, which specifically sets forth the responsibility of the parties for dedication and maintenance.

- 8 At such time as the County accepts the road for dedication, it becomes public property, and the fee vests in the County.
- 9 If the road accepted by the County was previously indicated as an easement across private property on the deed to that property, the approved plat dedicating the road must be referenced to every piece of private property involved, in the office of the County Clerk, and the easement shall no longer be shown on future deeds transferring said property.

I PRIVATE ROADS IN INHABITED RESIDENTIAL AREAS AND  
NONRESIDENTIAL AREAS WHICH ARE NOT IN SUBDIVISIONS

A. Policy

1. The County is under no obligation to accept the dedication of any road or assume its maintenance and will only do so if, in its discretion, it feels that public health, safety, and general welfare requires such acceptance of dedication and acceptance for maintenance.
2. The County shall only accept private roads in areas which are not in approved subdivisions after they are certified by the County Road Review Committee as meeting County standards, unless the road will be constructed by the County utilizing a County Improvement District pursuant to Section 4-55A-1 et seq, NMSA 1978.
3. Property owners seeking dedication of the road will assume the cost of bringing the roads to County standards. If the landowners demonstrate that they are unable to assume the costs of constructing the road and if the County, in its discretion, believes that a situation of public necessity exists requiring the road to become public property, then the County Commission may establish a special County Assessment District pursuant to 4-55A-1 et seq, NMSA 1978. The County would then assume responsibility for construction of the road to County standards, accepting the dedication of the road, and, after completion of the road, will accept the road for maintenance. It would assess the abutting landowners for the cost of the construction according to the terms of 4-55A-1 et seq, NMSA 1978.

1. All landowners on whose land the road proposed to be dedicated to the County enters and/or crosses or abuts, must sign a preliminary petition for dedication, must include the legal description of the road, and be accompanied by a survey of the road, and be dedicated on a plat which indicates all property abutting on the road, as well as the road's intersection with other County and private roads. The petition form shall be provided by the County (see sample form).

### B. Procedure

4. The Board of County Commissioners will accept both the dedication of the road and accept the road for maintenance only at such time as the road is in actual use.

## SAMPLE FORM

## PRELIMINARY PETITION

We the undersigned hereby petition the Board of Grant County Commissioners in accordance with Grant County Road Standards and Road Ordinance, to include the following described road(s) on the County Road System and maintain the same:

A. The road by name is: Deer Trail (south of Grandview Intersection)

B. A legal description and surveyed plat of the road is attached and/or provided as required by the County Road Ordinance and/or County Design Standards.

C. All landowners whose property abuts the road(s) and/or all landowners on which the road traverses, dedicates the road for public use; and

We the undersigned are aware of and will abide by the Grant County Road Standards and County Road Ordinance prior to acceptance if accepted, of the road(s) by the Board of Grant County Commissioners.

Laurelle Patricia Diaz Chavez - Owner, 4650 Deer Trail  
Mark D. Brightley owner 4655 Deer Trail  
Mark D. Brightley  
Rachel F. Brightley owner 4655 Deer Trail  
Rachel F. Brightley

2. Petitioners or their representatives shall schedule a meeting with the County Manager and the County Superintendent and/or Engineer before commencement of construction of the road so that appropriate personnel can conduct a preliminary, intermediate, and final inspection of the road. The County Manager and the County Road Superintendent and/or County Engineer will determine if the petition and plat are complete and will also review County Road construction standards with the petitioners and advise them about construction. Advice given at this meeting does not obligate the County to accept the road upon completion, either as public property or for maintenance.
3. If landowners are petitioning for a County Improvement District, pursuant to 4-55A-10, NMSA 1978, then owners of 66 2/3 or more of the front feet of any tracts or parcels of land, exclusive of land owned by the United States or the State, which abuts the street or road, must sign the petition.
4. Except in the case of a petition for a County Improvement District, after completion of the road, all landowners on whose land the road proposed to be dedicated to the County enters and/or crosses or abuts shall sign a final petition and a final plat. The petition shall state that the road meets County standards at the time of the petition (i.e., if it is a petition for County Improvement District), then the petitioners must present, in the petition, the reason that it does not, and request a variance from these requirements, giving justification for the variance.
5. All landowners on whose land said road enters and/or crosses must sign the plat, except as provided in the County Improvements District Act. The plat must also be signed by a licensed surveyor.
6. The plat must contain the following dedicatory language:

The undersigned hereby dedicates for public use; for ingress and egress, utilities, maintenance, and any other public use, the following described property:

(Property Description)

7. The petition and plat will be reviewed by the County Manager or his designee, who will inform the petitioners, within thirty (30) days of receipt, if it is complete. If it is not complete, it will be returned to the petitioners. If the County Manager or his designee finds the petition and plat to be complete, it will be submitted to the County Road Review Committee for investigation, inspection, and recommendations within 30 days of receipt. The Committee consists of the Road Superintendent and/or his foreman, and the County Manager and/or his designee.
8. The County Road Review Committee will conduct its investigation and inspection and make its recommendations within sixty (60) days of receipt from the County Manager, and will inform the County Manager of its recommendations within sixty (60) days of receipt of the petition and plat from the County Manager. If a variance has been requested, the County Road Review Committee will also make a recommendation concerning whether a variance should be granted and under what conditions. The County Manager will inform the petitioners of the County Road Review Committee's recommendations within ten (10) days of its receipt from the County Road Review Committee.
9. If the County Road Review Committee recommends acceptance of the dedication of the road and acceptance for maintenance by the County, then the County Manager will transmit this recommendation to the County Commission, to be placed on the agenda of the next Commission meeting. If the road is to be constructed pursuant to the County Improvements District Act, then the provisions of that statute will govern notice, hearings, and subsequent procedure.
10. The County Road Review Committee will schedule public meetings four time during the calendar year. If the Road Review Committee has recommended against acceptance of the dedication and acceptance of the road for maintenance, and/or against granting a variance, and/or recommends acceptance only on the performance by petitioners of certain conditions, then petitioners, or their designated representative, will be placed on the agenda of the next regularly-scheduled quarterly meeting of the Committee for a public hearing, if petitioners so request. If the Road Review Committee does not revise its opinion within 30

days of its meeting, the petitioners may appeal to the County Commission, within 30 days of the applicable road meeting date. The appeal will be placed on the agenda for the next public meeting of the Commission.

11. Whenever testing of material is required by the County Road Construction Standards, it shall be paid for by the landowner and/or subdivider. Before performing a test, the landowner shall post security with the County Treasurer in the amount of the estimated cost of the test, as signed by a licensed contractor or professional approved by the County Road Superintendent and/or County Engineer.
12. If the Review Committee approves the final petition and plat, it will submit its findings to the County Manager who will place the item on the agenda of the next regularly-scheduled meeting of the Board of County Commissioners.
13. Any person aggrieved by a decision of the County Commission may seek judicial review within 30 days of the decision of the Commission.

## II SUBDIVISION ROADS

### A. Policy

1. At the time of submittal of a subdivision plat, the subdivider may designate the roads on the plat as either public or private.
2. All roads, whether private or public, must be constructed by the subdivider in full conformance with County road construction standards, including right-of-way, surface material, grades, etc.
3. The plat shall clearly state that the subdivider has agreed to build the roads within the subdivision in full conformance with the requirements of the New Mexico Subdivision Act and the County Subdivision Regulations, and whether the roads are private or public.
4. Roads designated as public, become public property upon approval of the plat by the Board of County Commissioners; and the fee of such land vests in the County.

5. Approval of a plat does not indicate acceptance of the road for maintenance by the County. Pursuant to the Subdivision Regulations, and a Subdivision Improvements Agreement executed under the terms of those Regulations, the construction of roads in a subdivision will be scheduled according to a plan for development of the subdivision, and subdivision roads will only be accepted by the County at such time as they are ready for actual use, upon submittal of a separate application for acceptance of the roads by the subdivider, or a succeeding homeowners' association.
6. The subdivider shall remain responsible for continual road maintenance in the subdivision unless, and until, either the County accepts the road maintenance responsibilities, or a homeowners' association is duly constituted, as described in the Subdivision Disclosure Statement and Subdivision Improvements Agreement, to accept road maintenance responsibility. The County Commission shall have sole authority to determine if County maintenance is justified. The streets shall be maintained by the subdivider or homeowners' association until such time as the County Commission formally declares that the roads or streets are eligible for County maintenance.
7. The County will no longer approve easements for access across lots in subdivision applications. If roads in a subdivision are to be private, then they must be owned and maintained by either the subdivider, or a homeowners' association. The responsibilities of the association must be fully disclosed to the property owners in the Subdivision Disclosure Statement, Subdivision Improvements Agreement, and final plat.

#### B. Procedure

1. The provisions of the Grant County Subdivision Ordinance and the County road constraints shall govern the dedication of County roads as well as construction.
2. The provisions of the County Subdivision Regulations, and the subdivision agreement executed pursuant to those regulations, will govern the time during which the subdivider is obligated to construct and maintain subdivision roads.

3. The subdivider, or homeowners' association, if this responsibility has been clearly set forth in the Subdivision Disclosure Statement, Subdivision Improvements Agreement Disclosure, and preliminary plat, shall petition the County for road maintenance of public roads, according to the terms of the Agreement. In the event that subdivision roads are private, or the subdivision was approved before the adoption of this Ordinance, and responsibilities for construction and maintenance of the road are not clearly set forth in either the disclosure Statement or any written agreement with the County, or on the final plat, the subdivider or homeowners' association will follow the same procedure for dedication and acceptance as set forth herein for nonsubdivision roads.
4. Where a plat of the subdivision has been previously filed in the County Clerk's Office, a second plat may or may not be required, depending on whether or not property lines on the physical location of the existing road(s) are the same as in the original plat.

