

State of New Mexico  
County of McKinley

RESOLUTION No. SEP-19-089

Road Maintenance & Improvement Policy  
Administrative Procedures Manual P-34

PURPOSE:

To help the citizens of McKinley County and the various community and group organizations, participate in and be an integral force for the improvement of roads and needed transportation infrastructure. With this involvement of citizens, communities and groups, we can achieve a better and enduring partnership which will help the needed projects move forward to completion.

RECITALS:

**Whereas**, McKinley County receives requests to perform work on roads from many sources, including citizens, landowners, land beneficiaries, chapter organizations, subdivisions, and community groups; and,

**Whereas**, McKinley County maintains a certain portion of the roads within the County, and maintains a road inventory of all roads accepted for maintenance; and,

**Whereas**, the Roads on the McKinley County maintenance inventory are held in various forms of ownership, such as, express right-of-way; easements; prescriptive easements; presumption of grant; and RS2477 statutory rights-of-way; and,

**Whereas**, the land within McKinley County is held in varied forms of ownership or control including but not limited to private fee land, BLM, US Forest Service, State Trust, Tribal Trust, Indian Allotment; and,

**Whereas**, the Board of County Commissioners has the power and authority to declare and change from time to time, the maintained roads and which roads will and/or will not receive maintenance; can accept or reject maintenance responsibilities; can abandon or abandon for maintenance any road; and,

**Whereas**, the budgetary constraints of McKinley County make it impossible for the County to accept all roads for maintenance nor for improvement or addition to the maintenance list; and,

**Whereas**, the Constitution of the State of New Mexico prohibits the County from performing any type of road improvement or any type of work on private land; and,

**Whereas**, other agencies such as the State Land Office and the Bureau of Indian Affairs has the potential to prosecute trespass actions against the County for improving roads without proper documentation; and,

**Whereas**, McKinley County will only upgrade and/or build a new road for and on rights-of-way that have been perfected in McKinley County, or in the name of a local entity, including but not limited to the recording of appropriate grant documents, obtaining appropriate consents, obtaining the necessary clearances from any other government or government agency; and,

**Whereas**, it is only through partnerships, interest, and involvement at the local community level that the needed documentation can be secured; and,

**Whereas**, the Board of Commissioners of McKinley County desire to have a policy and procedure set forth for any entity to partner with the County in obtaining the needed documents.

**Now therefore**, the Board of County Commissioners of McKinley County hereby adopts this Policy and the following procedures for Non-Subdivision<sup>1</sup> Roads within McKinley County.

<sup>1</sup> All subdivision roads shall follow the procedures as outlined in the McKinley County Subdivision Regulations of 1997.

DEFINITIONS:

County - means McKinley County, a political subdivision of the State of New Mexico, acting through its duly elected Board of County Commissioners.

County Roads - means the Road Department of McKinley County supervised by a County Road Superintendent under the direction of the County Manager and County Commission.

Requesting Entity - means, any person, individual, private landowner, City, Town, Village, or any similar political subdivision including, but not limited to Chapters of the Navajo Nation, Tribes, Pueblos, Quasi-Municipalities or similar divisions such as water and sanitation districts, mutual domestics, etc.

Roads / Right-of-Way - any strip of land obtained by a requesting entity, and subsequently transferred and/or dedicated and accepted by McKinley County for the purpose of conveying vehicular traffic. Any such right-of-way should contain the ability of McKinley County to enter into Use Agreements and/or franchise agreements if the authority for the same is within the power of Counties.

(THIS SPACE INTENTIONALLY LEFT BLANK)

DOCH 390264

10/01/2019 11:16 AM Page 2 of 9  
RES R \$0.00 H. K. Becenti, McKinley County



## SECTION 1: NON-ELIGIBLE PROJECTS AND REQUESTS

PART A: Non-eligible Requests: will be denied include any request for grading baseball fields, private driveways, parking lots and non-County (anything not on the County inventory) property.

## SECTION 2: INVENTORIED ROAD REQUESTS, PROCESS, AND PRIORITIZATION

PART A: Maintenance Requests: Requests for maintenance on a road listed on County's inventory.

**Policy Statement:** McKinley County in keeping its commitment to provide its citizens with roads, must also balance the demands for maintenance on existing roads with the restraints of limited resources. Therefore, it is the stated policy of McKinley County to maintain the historically maintained roads (i.e. roads as listed on the annual Certified County Maintained Mileage Report). The level of maintenance is always within the discretion of the County Commission and is subject to budgetary constraints as determined by the County Commission.

### **Procedure:**

- A Requesting Entity shall contact the County Road Department by phone and identify the location of road needing maintenance.
- The County Road Department shall determine if the area is on the inventory of McKinley County.
- If the area of road in the request is on the inventory, the County Road Superintendent (or his designee) will inspect to determine the extent of maintenance needed and determine the priority to set for the maintenance.
- McKinley County Road Department currently has a maintenance schedule for all County inventory roads. At the Road Superintendent's discretion (granted by this policy) the County Road department will perform the needed maintenance taking into consideration public safety, financial condition in the established budget, the location of equipment and mobilization costs, etc.
- If, and only, if the portion of road is on the inventory; and, the Road Superintendent (or his designee) has determined that the request will be denied; then, the Requesting Entity may appeal the denial to the County Commission. On appeal, there will be a presumption in favor of the Road Superintendent, and the County Commission must consider the factors as stated in this policy.

PART B: Improvement Requests: Prioritization of funding projects for improvement with Right-of-Way.

**Policy Statement:** McKinley County in keeping its commitment to provide its citizens with road improvements to better their daily access and connectivity will elevate priorities based on the following criteria due to the financial constraints of the County.

**Procedure:** Projects are selected annually by the County Commission based on the County Road Department's recommendations based on assessment of the following factors:

- Existence and size of Right-of-Way;
- Road condition, need, and scope-of-work; and
- Cost, and availability of grant funds.

PART C: Historic Requests: Road projects listed on the maintenance inventory without Right-of-Way.

**Policy Statement:** McKinley County believes it is important to continue to maintain historic routes created by users in the County and maintain their access and connectivity, while balancing the need to bring these roads into compliance with applicable local, State, and Federal standards.

**Procedure:** The Requesting Entity as lead will work to obtain Right-of-Way with County support including the following options:

- Requesting Entity obtains Right-of-Way on its own;
- Requesting Entity obtains Right-of-Way with County as the applicant; and
- Option to consider a community request where County acts as contractor for the project; this requires the Requesting Entity to upfront project cost.

### SECTION 3: NON-INVENTORIED ROAD REQUESTS, PROCESS, AND PRIORITIZATION

**PART A:** Acceptance and Maintenance Requests: Requests for acceptance and maintenance of a Non Inventory Road (or portion of road); OR, improving or altering an existing County Inventory Road (or portion of road).

**Policy Statement:** Experience has shown that the most successful, and timely road improvement projects are those where the Requesting Entities commits to and plays a major part in the project development. McKinley County, as a matter of policy, requires any Requesting Entity, to follow the procedures outlined herein. As a matter of policy, McKinley County staff will aid Requesting Entities with technical guidance with any of the procedures herein; however, it is still the responsibility and duty for the Requesting Entity to follow the procedures.

Before any new road (non inventory road) is accepted for maintenance; and, before any existing road (an inventory road without approved right-of-way documentation) is improved, McKinley County MUST have all proper rights-of-way. McKinley County requires the Requesting Entity to obtain the appropriate rights-of-way in their name; and if the entity is such that they cannot hold rights-of-way, the entity shall enter into an MOU committing to take the steps outlined herein prior to the County considering accepting a road for maintenance or improvement.

**Procedure:**

- Determination of Right-Of-Way Status. Requesting Entity shall submit a written request to the County: Attn., Road Department, P.O. Box 70, Gallup New Mexico 87305.
  - Requesting Entity should initially describe any NEW road (or portion of road); and,
  - Any proposed improvement or alteration to an existing road (or portion of road); and,
  - The beginning and terminating point of the road (or portion of road);
  - The land status if known, i.e. Fee (private), Allotment, Tribal Trust, etc.; and,
  - The existence of any surveys (this includes but is not limited to environmental surveys, archeological surveys etc.
- The County Road Department shall research the records to determine the right-of-way status for the road (or portion of road) that is the subject of the request.
  - The Road Department may make a preliminary inspection to determine the location of the request;
  - Shall verify the land status of the area of the request;
  - Determine whether or not express/written rights-of-way exist or are needed (in consultation with the County Legal Department);
  - Determine if any survey of the road exists;
  - prepare a written report on their findings to be given to the County Manager;
  - Forward the request documents along with the report mentioned above to the County manager with a copy to The County Legal Department, and a copy to the requesting entity.

- Based upon the determination of Right-Of-Way status and other items in the report mentioned above, the County Manager will transmit to the Requesting Entity, the process they must follow before McKinley County can act (other than technical advice/assistance as stated in this Policy).
  - If Right-Of-Way is needed from another Governmental entity, the Requesting Entity shall proceed under that Governmental entity's requirements.
  - If Right-Of-Way is needed from fee (private) landowners, the Requesting Entity shall request a donation of the needed land; or, proceed to purchase the Right-Of-Way; or, extra Right-Of-Way needed if there are existing rights as a matter of law.
  - If Right-Of-Way is in existence, then (depending on right-of-way ownership), the Requesting Entity may proceed to:
    - Request letter of support from County Roads for project, including termini, scope-of-work, and map.
    - Request that the project be placed on the ICIP for McKinley County.
    - Seek improvement/construction money from other sources.
    - Enter into an MOU with the County for funding
    - Seek to hire the County to act as contractor for the project.
    - As the last and final step after the project is complete, ask the County to accept the project as part of their maintenance system; which acceptance is always at the discretion of and with an express Resolution of the County Commission.

#### SECTION 4: OBTAINING RIGHT-OF-WAY AND COUNTY SUPPORT

Actions the Requesting Entity must take to obtain proper Right-Of-Way; and, procedures which the County may render technical advice/assistance to the Requesting Entity.

**Policy Statement:** Experience has shown that the most successful and timely road improvement projects are those where the Requesting Entities commit to and play the major part in the project development. McKinley County does not have the staff or resources to obtain the needed rights-of-way. As a matter of policy, McKinley County must depend on the commitment and investment of the Requesting Entities to, on their own initiative and at their own expense, obtain the needed documentation and rights-of-way prior to construction of any road improvement project. McKinley County, may however, render advice on processes and technical assistance to Requesting Entities on various processes in which the Requesting Entity must undertake.

**Procedure:** Processes for which County technical assistance may be given are outlined in the following Parts.

PART A: Title Searches, Permissions to Survey/Enter, Consent Forms, and Land Withdrawals. The Requesting Entity at its own expense shall:

- Be responsible for seeking and obtaining the appropriate Title information from which proper forms may be produced. When the Requesting Entity has received the title information, the County may help in preparing the forms.
- Obtain valid signatures from all persons (Allottees, Permittees, Landowners, Government agencies, etc) whose land would be affected by the roadway project, on the following forms:
  - Permission to enter the land for surveying. (Note that Consent To Survey forms must be obtained granting permission to the Requesting Entity's chosen surveyor until completion of the survey work but in no event for less than six (6) months).

- Waiver of compensation, unless requesting entity is compensating for Right-of-Way.
- Waiver of the Bond requirement for construction and maintenance.
- Actual Right-Of-Way. (NOTE: that Right-of-way grants must be obtained for the perpetual period of road use, with a reverter clause if the road is not being used as a road for 5 years).
- Land Withdrawal. (NOTE: that for Navajo Chapters and any land held in trust (allotment or tribal trust or BIA), consent forms must be obtained from the Bureau of Indian Affairs; and, Right-of-Way forms must be obtained from Navajo Department of Transportation).
- For Navajo Chapters any approvals for land withdrawal shall be obtained by the requesting entity. Land withdrawals must come from the Navajo Nation (any appropriate committee) and the Bureau of Indian Affairs. The requesting entity will need to obtain any forms and work to complete any land withdrawal process.
- If time expires on the title information, survey work permission, right-of-way grants, or land withdrawals, the Requesting Entity shall at their own expense obtain a new title search, permission forms, right-of-way or withdrawals, etc.

PART B: Preliminary Archaeological and Environmental Survey. The Requesting Entity at its own expense shall:

- Preliminary field evaluations of the environmental and archaeological impact of the proposed road alignment. These surveys shall be an evaluation of sufficient width to address any future issue that could arise during construction and maintenance:
  - The minimum width needed is  $\geq 200$ -feet wider than the actual Right-of-Way..
  - A copy of the survey along with the findings must be in an acceptable form to the agency from which Right-Of-Way is sought, as well as the County.
  - The Requesting Entity shall keep and update as needed the documents to be submitted with any applications.

PART C: Actual Location Survey. When the Requesting Entity has obtained permission to survey; they must hire a surveyor and obtain a "Centerline" field survey showing the actual alignment in the most preferred corridor for constructing and long-term maintenance of a Right-of-Way. This survey will then be used in the right-of-way application.

- McKinley County has worked with various surveyors and prefers surveys prepared by surveyors experienced with McKinley County. If a centerline survey is for a road currently on the County maintenance and inventory list, the County could work with the local community based on negotiated costs share considering the estimated cost and capacity of the contractor – for the County to be lead on completing centerlines to ensure quality and consistency.
- Centerline Survey plats and applications based on the surveys should be drawn so as to eventually submit for Right-of-Way; and applications must include the following:
  - A  $\geq 150$ -foot preferred corridor;
  - At wash crossings or major drainage structures, a  $\geq 300$ -foot corridor, within reasonable limits considering terrain and feasibility of construction and maintenance;

DOC# 390264

10/01/2019 11:16 AM Page: 6 of 9  
RES R \$0.00 H K Becenti McKinley County



- The Anticipation of and inclusion of using the Right-of-Way for all public use purposes including but not limited to Utilities, telecommunications infrastructure, poles, wires pipes etc.; and, the ability to negotiate these uses with services providers and the possibility of issuing franchise or other similar agreements.
- If the Requesting Entity cannot obtain a “Centerline” survey, the Requesting Entity may submit the documents giving the permission to survey to the County.
  - The County (through the Managers office or Road Department) may review documents submitted to render aid to the Requesting Entity.
  - When the County (through the Managers office or Road Department) deems the documents complete and the project creditable, staff will present the project to the Board of County Commissioners for direction and/or permission to aid the requesting entity with more technical assistance i.e. order a “Centerline” field survey showing the actual alignment.
  - The County Manager should notify the requesting entity of the date and time of the commission meeting.
  - The County Commission will need to direct the Requesting Entity to provide a “Centerline” survey at the Requesting Entities expense, or will need to budget, authorize and direct the County Road Department to hire a surveyor and pay the actual cost of survey for and on behalf of the Requesting Entity.

PART D: Archaeological Survey and Environmental Assessment. After the “Centerline” survey is complete, the Requesting Entity shall complete all studies to meet all Federal, State, and other agency Regulations.

- Navajo Nation Chapters as the Requesting Entity may obtain all clearances utilizing NDOT Staff; Navajo EPA; or any other Navajo Nation entity capable of performing such clearances; or if unable to obtain the reports as mentioned in this paragraph, the Chapter shall hire at their own expense a private entity.
- All other Requesting Entities shall obtain all clearances at their expense.
- All Requesting Entities shall use best efforts to obtain final clearances from: Navajo Nation, BIA, BLM, private fee landowners, State lands, etc. The County shall not consider any construction aid without final clearances from all appropriate agencies.

PART E: Funding Actual Construction Costs. When the Requesting Entity has obtained express Right-Of-Way, then, the Requesting Entity may ask The Board of County Commissioners to assist in obtaining funding which may include:

- Permission to be placed on the County Infrastructure Capital Improvement Plan (ICIP) and other planning and master planning documents.
- Assistance from the County may include, prioritizing the projects to receive School Bus Route Funds, Cooperative Funds, County Arterial Funds, and Local Government Transportation Project Funds;
- Navajo Chapters as the Requesting Entity shall consider requesting road improvement funds from NDOT utilizing the Navajo Fuel Excise Tax and other tribal funds.
- Any Requesting entity in seeking funding from the State Legislature for any particular project including certified road projects shall complete and submit the proper forms under McKinley County’s “Legislative Request Policy” Resolution No. NOV-03-069 or any subsequent Policy. A copy of the forms and policy may be obtained from McKinley County or the Northwest New Mexico Council of Governments.

- McKinley County requires that the local community or Chapter deposit up front the amount of any match required from funding sources.
- If the requesting entity obtains a “reimbursement-only” funding source, the local community or Chapter shall be responsible for providing up front 25% of the total cost of the project costs from an allowable source. (Certain grant funds are usually not an allowable source of up-front money).

Questions on funding options may be directed to the County Road Department at (505) 722-2303, or the County Manager at (505) 722-3868.

## SECTION 5: PROCEDURES FOR CURRENT AND FUTURE PROJECTS

PART A: Projects in Progress. At the adoption of this Policy, there are several projects that are in various stages of approval. Each project will be affected by this Policy and therefore, McKinley County must evaluate each project on a case by case basis to determine how the project will proceed. Possible determinations may include:

- Requiring the local community group (Chapter, Subdivision, Quasi-Municipality, Developer, etc.), to become the Requesting Entity and complete all the requirements of this Policy as if at the beginning of the project. In this case, McKinley County would turn over copies of all documentation to date.
- Require the local community group (Chapter, Subdivision, Quasi-Municipality, Developer, etc.), to assist the County with the necessary requirements so the project can progress. This could be obtaining signatures on consent forms or obtaining Environmental and Archaeological documents, etc.
- Assistance from the local community group (Chapter, Subdivision, Quasi-Municipality, Developer, etc.), in the final stages of a project.

PART B: Future Projects. For any Project in Progress, the County Commission has and reserves all discretion to make a determination on status. Once status has been determined by the County Commission, the County may offer an MOU to the local community group (Chapter, Subdivision, Quasi-Municipality, Developer, etc.), consistent with the determination of the County Commission and this Policy.

## SECTION 6: POLICY HISTORY

PART A: History, Repeal, and Exhibits. This Road Improvement Policy (P-034) repeals and replaces the “McKinley county Non-Subdivision Road Work Request Procedures” dated June 29, 2004 and July 13, 2010, and any policy or procedure with similar intent and content. Any Exhibit(s), Chart(s), and/or map(s) attached to this policy, is for guidance only and is not part of the Policy. The Exhibit(s), Chart(s), and/or Map(s) may be changed at any time by County Staff.

(THIS SPACE INTENTIONALLY LEFT BLANK)  
(Signatures Follow on Next Page)

DOC# 390264

10/01/2019 11:16 AM Page 8 of 9  
RES P: \$0.00 H. K. Becenti, McKinley County





This McKinley County Road Maintenance & Improvement Policy is, APPROVED AND ADOPTED this 1<sup>st</sup>, day of October, 2019, at Gallup, McKinley County, New Mexico.


**McKinley County Board of Commissioners:**

  
\_\_\_\_\_

Bill Lee, Chairperson

  
\_\_\_\_\_

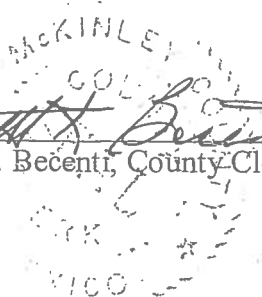
Tommy Nelson, Commissioner

  
\_\_\_\_\_

Billy W. Moore, Commissioner

ATTEST:

  
Harriett K. Becenti, County Clerk



DOCH 390264



10/01/2019 11:16 AM Page 9 of 9  
RES R.\$0.00 H. K. Becenti, McKinley County

