

NOTICE

From the Board of County Road Commissioners of the County of Ogemaw

POLICY STATEMENT ON HIGHWAY ABANDONMENTS

I. BASIC REQUIREMENTS FOR A PETITION TO ABANDON A ROAD

A. The Petition must be signed by 7 or more freeholders (someone holding either a fee interest or lifetime estate) of the township where the road to be abandoned is located. MCL 224.18(4).

B. Where abandonment of an entire road is requested, the Petition must describe the road in general terms, which can be simply the name by which it is commonly known. However, where abandonment of only a portion of a road is requested, the Petition must specifically describe that portion of a road. MCL 224.18(4).

C. The Petition must also be accompanied by a true and correct list of the names and mailing addresses of the occupants or each parcel of land abutting the road or the portion of the road to be abandoned. This list must be certified by one of the persons making or presenting the Petition. MCL 224.18(4).

II. PROCESSING THE PETITION AND ISSUANCE OF NOTICE

A. Within twenty days after receiving the Petition, (1) if all the owners and occupants of the land abutting the portion of the road to be abandoned have signed the Petition (as determined from the records in the office of the register of deeds and the certified list accompanying the Petition), and (2) if the road to be abandoned does not border on, cross, run adjacent to, or end in a lake or stream, then the Board of County Road Commissioners (“Board”) must either grant or deny the Petition without further proceedings. MCL 224.18(5).

B. In all other cases, (1) where the road or portion of a road to be abandoned borders on, crosses, is adjacent to, or ends at a body of water or (2) where the Petition does not contain the signatures of all owners and occupants of land abutting the road or portion of the road, the Board must issue a written Notice within 20 days after receiving the Petition that states the (1) object of the Petition and (2) the time and location for a hearing on the Petition. MCL 224.18(5).

C. Appropriate Service

1. At least 30 days before the scheduled hearing, the Board must serve a copy of the Notice by first-class mail addressed to (1) the township board of the township in which the road to be abandoned is located and to (2) the residence of each owner of record or occupant of the abutting land at their last known residence. Further, if (1) the owner does not reside upon the land or (2) the owner of record or occupant cannot be found within the county where the land is situated, the Board must serve the Notice (1) by posting the Notice in 3 public places in the township *and* (2) by publishing the Notice in a newspaper circulated in the county at least 30 days before the hearing on the Notice. MCL 224.18(5).

2. If the road to be abandoned borders, crosses, is adjacent to, or ends at a lake or a stream and the proposed road abandonment would result in the loss of public access, the Board must also notify the township or municipality within which the road is situated, the state transportation department, and the Department of Natural Resources at least 30 days before the hearing on the Petition. MCL 224.18(5)

3. The Board must serve the Notice on railroad companies by leaving a copy of the Notice with the agent in charge of any ticket or freight office operating the railroad on the railroad line adjacent to the road to be abandoned.

III. AFFIDAVIT OF SERVICE

Before the hearing on the Petition is conducted, the person who served the Notice must make and annex to the Notice an Affidavit stating the time and specifying the manner of service of the Notice (e.g., first-class mail, posting, or advertising). In addition, if service was made on a railroad, the Affidavit shall specifically identify the agent on home service was made. Further, if service was published, a copy of the affidavit of publication shall be attached to the Petition. Each of these documents must be present at the hearing on the Petition. MCL 224.18(6).

IV. PUBLIC HEARING ON THE PETITION

For petitions described in Section II(B) above, the Board must conduct a public hearing on the Petition, or, in the Board's discretion, an employee of the Road Commission designated as a "hearing examiner" may conduct a public hearing on the Petition and report all findings of fact to the Board. MCL 224.18(6). The Board must ascertain the necessity or advisability of absolutely abandoning and discontinuing the road identified in the Petition. MCL 224.18(7).

V. VIEW OF THE PREMISES

The Board of County Road Commissioners or the Superintendent or the Engineer employed by the Board must view the premises described in the Petition and Notice. MCL 224.18(7).

VI. WHERE THE BOARD DETERMINES TO GRANT THE PETITION TO ABANDON A ROAD

A. In all cases where a Petition is granted, the Board issues a Resolution of Abandonment stating that the abandonment is the best interests of the public. The Resolution must contain an accurate description of the land comprising the road or portion of the road being abandoned. The Board must record a true copy of the Resolution with the county register of deeds for the county where the property is situated. MCL 224.18(3).

B. Where the Board of County Road Commissioners grants a Petition under circumstances where all adjacent owners and occupants have signed the Petition and no public hearing is required (i.e., the road does not border, cross, run adjacent to, or end in a lake or stream)

1. The property reverts by operation of law to the adjacent property owners and the road ceases to exist as a public highway.

C. Where the Board of County Road Commissioners grants a Petition for a road that does not border on, cross, run adjacent to, or end at a lake or stream, and in cases where a public hearing is required

1. The township has first priority to retain all or a portion of the abandoned property.

(1) If the township exercises its priority right, the Board quit claim deeds the property to the township. The township can retain the property or allow it to revert to the adjoining landowners. MCL 224.18(9).

2. If the township does not exercise its first priority to retain all or a portion of the abandoned property, the property reverts by operation of law to the adjacent property owners and the road ceases to exist as a public highway.

D. Where the Board of County Road Commissioners grants a Petition for a road that borders on, crosses, runs adjacent to, or ends at a lake or stream, but the abandonment does not result in the loss of public access to the water

1. The township has first priority to retain all or a portion of the abandoned property.

2. If the township exercises its priority right, the Board quit claim deeds the property to the township. The township can retain the property or allow it to revert to the adjoining landowners. MCL 224.18(9).

E. Where the Board of County Road Commissioners grants a Petition for a road that borders on, crosses, runs adjacent to, or ends at a lake or stream, and where the abandonment results in the loss of public access to the water

1. Both the Township and the Department of Natural Resources must determine whether the property should be retained as an access point and notify the Road Commission within 30 days of receiving the Notice, and before the Public Hearing on the Petition. The Township has first priority to the road and the Department of Natural Resources has second priority. MCL 224.18(5). The Board must convey its interest in the road by Quit Claim Deed or relinquish jurisdiction over the property (if the interest is not transferrable) to the Township first and then to the Department of Natural Resources second. MCL 224.18(8).

VII. RESERVATION OF UTILITY EASEMENTS.

The Board may reserve utility easements within the right-of-way of the absolutely abandoned and discontinued road and may also subsequently extinguish any easements it previously reserved when the property is no longer used for public utility purposes. MCL 224.18 (11).

VIII. FILING PROCEEDINGS WITH THE MICHIGAN DEPARTMENT OF TRANSPORTATION

Within 30 days of its determination on a Petition to abandon, the Board must file a full record and return of its road abandonment proceedings with the Michigan Department of Transportation.

IX. THE TOWNSHIP'S OR STATE'S CONTINUING OBLIGATIONS

If a Township or the State of Michigan retains abandoned road property for water access, it assumes a continuing obligation to maintain that property to prevent litter, noise, and congestion. Further, individuals have a private right of action to compel a Township or the State of Michigan to fulfill this obligation. MCL 224.18(12)-(19).

X. CONSIDERATIONS OF THE BOARD AND POTENTIAL CONSEQUENCES

Abandonment requests that arise from the circumstances below are heavily disfavored by the Board as those things are generally law enforcement issues.

- Game poaching and violating on private property or road right-of-way.
- Homes or cabins break-ins and vandalism.
- Dumping of garbage and debris on private property or road right-of-way.
- Excessive noise or camping, etc. on road right-of-way.

Applicants are encouraged to consider the following potential consequences before submitting an abandonment petition.

- Re-sale of adjacent property can be adversely affected if there is no public access to the property, more so if a gate is erected and the nuisance of using a key to get in and out is necessary.
- Future subdivision into smaller parcels will compound the above problem.
- If the adjacent property owners decide to change back to a public road in the future they must stand the cost of bringing the road up to current county road standards before the Board will take the road back. Releases of right-of-way would also be required from all adjacent property owners.
- Connection to public utilities such as a telephone, electricity, natural gas, etc. will require approval of individual easements crossing another people's property.

Please contact the CRC with any questions regarding road abandonment or partial road abandonment.