

A RESOLUTION OF THE MONTROSE COUNTY BOARD OF COUNTY COMMISSIONERS CONCERNING R.S. 2477 RIGHTS OF WAY AND THE UNCOMPAHGRE NATIONAL FOREST TRAVEL PLAN, MONTROSE COUNTY, COLORADO

CLERKS NOTE:
NO EXHIBIT "A"
ATTACHED

WHEREAS, the United States Congress granted the right-of-way for the construction of highways over public lands, not reserved for public uses in Section 8 of the Mining Act of 1866, reenacted and recodified as Revised Statutes 2477, 43 U.S.C. 932 (R.S. 2477); and

WHEREAS, the United States Congress intended to promote the settlement of the western United States by granting rights-of-way for the construction of highways; and

WHEREAS, Montrose County, Colorado, is the owner of highway rights-of-way accepted pursuant to the grant offered under R.S. 2477; and

WHEREAS, the County accepted the grant offered under R.S. 2477 through public use, County construction or maintenance of the rights-of-way or other action establishing the County's intent to accept the offer contained in R.S. 2477; and

WHEREAS, the County and the public relied upon the terms of the offer, as established by the common law of statutory construction, federal regulations since at least 1938, federal statements of policy, and numerous rulings of state and federal courts which have addressed the terms of the offer contained in R.S. 2477, in accepting and administering the granted rights-of-way; and

WHEREAS, these rights-of-way are essential to the County's transportation and public access systems the public has relied on and continues to rely on them since prior to October 21, 1976; and

WHEREAS, state, county and local health, search and rescue, resource management, fire protection and law enforcement personnel rely on these access routes to carry out important public functions; and

WHEREAS, public access to routes of travel are essential to the economic, social and political well-being of the communities within the County; and

WHEREAS, these rights-of-way are important to the free flow of commerce in the United States; and

WHEREAS, the existence of a highway establishes a presumption that the highway has continued in use in its present location since the land over which it is built was public land not reserved for public use; and

WHEREAS, the majority of lands within Montrose County currently fall within the jurisdiction of Federal Land Management Agencies; and

WHEREAS, the United States is the owner of the servient estate traversed by rights-of-way accepted by the County pursuant to the grant offered in R.S. 2477; and

WHEREAS, the regulatory powers of the United States are limited by the obligation to honor valid existing rights, including the rights-of-way accepted pursuant to the grant offered under R.S. 2477; and

WHEREAS, other property owners may have succeeded the United States as owner of the servient estate traversed by rights-of-way accepted by the County pursuant to the grant offered in R.S. 2477 and the rights of those property owners in the servient estate is limited by the obligation to honor the rights-of-way accepted by the public pursuant to the grant offered under R.S. 2477; and

WHEREAS, the County is, and has been since its creation, authorized under state law to provide a transportation system for the traveling public and to support the local economy, custom and culture; and

WHEREAS, the County's right, title and interest in these rights-of-way includes the right to perform any and all construction and maintenance which is reasonable and necessary for safe passage for the uses established prior to the repeal of R.S. 2477 or the reservation of the lands for public use, as those uses may increase over time, based upon currently-applicable safety standards, including, at a minimum, the existing disturbed area occupied by the rights-of-way and associated improvements; and

WHEREAS, the rights-of-way accepted pursuant to the grant offered under R.S. 2477 have not been vacated or waived except where formal procedures provided under state law have been followed; and

WHEREAS, the United States Department of Agriculture, Forest Service, Grand Mesa, Uncompahgre and Gunnison National Forests has issued the Uncompahgre National Forest Plan Record of Decision and Final Environmental Impact Statement, and

WHEREAS, the proposed actions contained within these documents will have significant effects upon highway rights-of-way accepted pursuant to the grant offered under R.S. 2477 and located within lands administered by the Forest Service within Montrose County, and

WHEREAS, the County has previously requested that the U.S. Forest Service resolve the issue of R.S. 2477 rights-of-way on lands administered by the Forest Service within Montrose County prior to issuing the above mentioned documents; and

WHEREAS, the U.S. Forest Service failed to address these concerns prior to issuing the above mentioned documents; and

WHEREAS, it is the policy of the County to ensure that all rights-of-way accepted pursuant to the grant offered under R.S. 2477 be retained in perpetuity for the use and benefit of the public;

NOW, THEREFORE, BE IT RESOLVED, as follows:

A. DEFINITIONS

As used in this resolution:

"Acceptance." "acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses," or "accepted," means one or more of the following acts prior to October 21, 1976, by the County or person with the intention of creating a public highway over public lands:

Construction or maintenance of a highway; inclusion of the right-of-way in a state, county, or municipal road system, plat, description, or other map of public roads within the county;

expenditure of any public funds on the highway; execution of a memorandum of understanding or other agreement with any other public or private entity or an agency of the federal government that recognizes the right or obligation of the County to construct or maintain the highway or a portion of the highway; or use by the public for the period required by Section 43-2-201, C.R.S.; or any other act consistent with state or federal law indicating acceptance of a right-of-way.

"Construction" means any physical act of readying a highway for use by the public according to the available or intended mode of transportation, including, foot, horse, vehicle or other mode. "Construction" includes removing vegetation, moving obstructions, including rocks, boulders, and outcroppings, filling low spots, maintenance over several years, creation of an identifiable route by use over time, and other similar activities.

"Highway" means: any road, street, trail, or other access or way that is open to the public to come and go at will, without regard to how or by whom the way was constructed or maintained; and appurtenant land and structures including road drainage ditches, back and front slopes, cut and fill slopes, turnouts, rest areas, and other areas that facilitate use of the highway by the public. "Highway" includes pedestrian trails, horse paths, livestock trails, wagon roads, jeep trails, logging roads, homestead roads, mine-to-market roads, alleys, tunnels, bridges, and all other ways and their attendant access for maintenance.

"Maintenance" means any physical act of upkeep of a highway or repair of wear or damage whether from natural or other causes.

"Public lands not reserved for public uses" means any federal lands open to entry or location.

"R.S. 2477 right-of-way" or "right-of-way" means a right-of-way for a highway constructed in this County on public lands not reserved for public uses and accepted by the County prior to October 21, 1976.

B. ACCEPTANCE

1. The County hereby finds that the rights-of-way illustrated in EXHIBIT A were accepted as public highways across public lands prior to October 21, 1976:
2. The failure to include any right-of-way in EXHIBIT A is not intended as evidence that said right-of-way was not accepted pursuant to R.S. 2477. The identification of R.S. 2477 rights-of-way in EXHIBIT A may be amended from time to time as evidence establishing the perfection of any R.S. 2477 right-of-way becomes available.
3. The County shall not be deemed to consent or have consented to the exchange of any R.S. 2477 right-of-way unless a formal written resolution specifically so stating has been passed at a duly called public meeting of the County Commission. No employee or agent of the County has been given authority to vacate, waive or exchange any R.S. 2477 right-of-way and any prior action by any employee or agent purporting to take any such action was void when taken, unless in the case of exchange, later ratified by formal written resolution as provided herein, or in the case of vacation or waiver, action has been taken in accordance with the procedures defined in State Statute, in which case the right-of-way reverts to the state. Where an R.S. 2477 right-of-way has

been perfected through public use, the failure by the County to conduct mechanical maintenance of said right-of-way shall not affect in any way the status of said right-of-way as a highway accepted by the public pursuant to R.S. 2477. The omission of any right-of-way from any plat, description, or map of county roads or highways, whether required by state law or otherwise, shall not be deemed a failure to accept the grant offered under R.S. 2477.

C. VACATION

Vacation of any R.S. 2477 right-of-way shall take place only in accordance with the procedures specified in Section 43-2-301, et. seq., C.R.S.

D. SCOPE OF RIGHT-OF-WAY

1. The scope of the R.S. 2477 right-of-way is that which is reasonable and necessary to ensure safe travel for all uses that occurred before October 21, 1976.
2. The scope of the R.S. 2477 right-of-way includes the right to widen the highway as necessary to accommodate the increased travel associated with all uses that occurred before October 21, 1976, up to, where applicable, improving a highway to two lanes so travelers can safely pass each other.

E. ROAD CONSTRUCTION AND MAINTENANCE STANDARDS

1. Unless otherwise established by formal action taken by the County Commission, the width of an R.S. 2477 right-of-way used for vehicular travel may not be less than the setback standards for wilderness boundaries along existing roads as described in Bureau of Land Management Manual H-8560-1, Management of Designated Wilderness Areas, dated July 27, 1988, as follows:
 - high standard paved highways shall be 300 feet from the centerline;
 - high standard logging roads shall be 100 feet from the centerline;
 - low standard logging, jeep, maintenance, dirt roads used for right-of-way, or similar roads shall be 30 feet from the centerline.
2. Standards of safety and convenience, as established by the Colorado Department of Transportation (CDOT) Design guide will guide construction and maintenance activities on R.S. 2477 rights-of-way as follows:
 - for two-wheel drive roads that are either paved or graveled, AASHTO standards, as adopted by CDOT and/or Montrose County Road Standards as may be adopted from time to time by the Board of County Commissioners, apply.
 - for all other two-wheel drive roads, safety will be based upon considerations of (a) the current condition of the right-of-way, (b) the type of vehicles which use the route, (c) foreseeable future needs, and (d) the location/condition of the servient estate.
 - for four-wheel drive roads, horse paths, and foot trails, maintenance will proceed in accordance with historical practice as needed and as determined by the Board of County Commissioners..



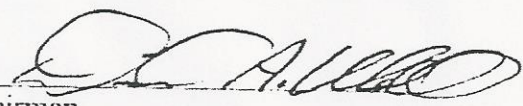


3. The County shall design and conduct construction and maintenance activities so as to minimize impacts on adjacent lands, consistent with applicable safety standards.
4. The County shall perform maintenance pursuant to applicable state law in accordance with its discretion; no notice to the servient estate owner is required prior to performance of such maintenance.
5. Construction within the scope of the right-of-way which will result in significant new disturbance of adjacent land will be preceded by notice to the adjacent landowner, who may comment on any design feature or construction method which the landowner believes exceeds the scope of the County's right-of-way.
6. The County Sheriff is hereby authorized to take any action necessary to prevent unreasonable interference with the County's exercise of its rights by the owner of the servient estate.

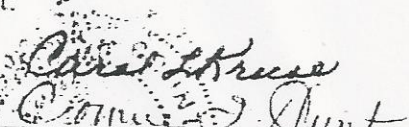
F. PUBLIC COMMENT:

1. It is in the best interests of the County and the public that facts and legal issues relevant to the County's management of its rights-of-way accepted under R.S. 2477 be raised in a timely manner and it is a fundamental principle of due process and fairness that any person having knowledge relevant to such facts or issues bring them to the attention of the County.
2. Inclusion of any proposed action on the agenda for a duly called public meeting of the County Commission shall be deemed notice to the public for all purposes under this resolution.
3. Any factual or legal issue not brought to the attention of the County by presentation at the public meeting where action is proposed or authorized to be taken or by written comments filed within five days of said meeting shall be deemed waived by any party in later proceedings, whether in a court of law or otherwise.

DATED THIS 27 DAY OF June, 2000.

By 
Chairman
Board of County Commissioners

Attest:


County Clerk
By Deputy Clerk 