

Part 3

Rights-Of-Way Across Federal Lands Act

72-5-301 Definitions.

As used in this part:

- (1) "Acceptance," "acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses," or "accepted" so as to vest the R.S. 2477 dominant estate in the right-of-way in the state and any applicable political subdivision of the state, means one or more of the following acts prior to October 21, 1976:
 - (a) by the state or any political subdivision of the state:
 - (i) construction or maintenance of a highway;
 - (ii) inclusion of the highway in a state, county, or municipal road system;
 - (iii) expenditure of any public funds on the highway;
 - (iv) 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 state or a political subdivision of the state to construct or maintain the highway or a portion of the highway; or
 - (v)
 - (A) the acceptance at statehood of the school or institutional trust lands accessed or traversed by the right-of-way; or
 - (B) the selection and receipt by the state of a clear list, indemnity list, or other document conveying title to the state of school, institutional trust lands, or other state lands accessed or traversed by the highway;
 - (b) use by the public for a period in excess of 10 years in accordance with Section 72-5-104; or
 - (c) any other act consistent with state or federal law indicating acceptance of a right-of-way.
- (2)
 - (a) "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, pipeline, or other mode.
 - (b) "Construction" includes:
 - (i) removing vegetation;
 - (ii) moving obstructions, including rocks, boulders, and outcroppings;
 - (iii) filling low spots;
 - (iv) maintenance over several years;
 - (v) creation of an identifiable route by use over time; and
 - (vi) other similar activities.
- (3) "Cut-off date" means the earlier of the date the underlying land was reserved for public use or October 21, 1976.
- (4)
 - (a) "Highway" means:
 - (i) any road, street, trail, or other access or way that is open to the public to come and go or transport water at will, without regard to how or by whom the way was constructed or maintained; and
 - (ii) appurtenant land and structures including road drainage ditches, back and front slopes, turnouts, rest areas, and other areas that facilitate use of the highway by the public.
 - (b) "Highway" includes:

- (i) 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; and
 - (ii) irrigation canals, waterways, viaducts, ditches, pipelines, or other means of water transmission and their attendant access for maintenance.
- (c) To be a "highway" a right-of-way need not have destinations or termini that are some kind of landmarks distinguishable from other points along the right-of-way, as long as the right-of-way accommodates travelers from one point along the right-of-way to another point as often as convenient or necessary.
- (5) "Maintenance" means any physical act of upkeep of a highway or repair of wear or damage whether from natural or other causes, including the following:
- (a) vertical and horizontal alignment alterations to meet applicable safety standards;
 - (b) widening an existing road or flattening of shoulders or side slopes to meet applicable safety standards;
 - (c) grooming and grading of the previously constructed road surface;
 - (d) establishing and maintaining the road crown with materials gathered along the road;
 - (e) filling ruts;
 - (f) spot filling with the same materials of the road, or improved materials;
 - (g) leveling or smoothing washboards;
 - (h) clearing the roadway of obstructing debris;
 - (i) cleaning culverts, including head basins and outlets;
 - (j) resurfacing with the same or improved materials;
 - (k) installing, maintaining, repairing and replacing rip rap;
 - (l) maintaining drainage;
 - (m) maintaining and repairing washes and gullies;
 - (n) installing, maintaining, repairing, and replacing culverts as necessary to protect the existing surface from erosion;
 - (o) repairing washouts;
 - (p) installing, maintaining, repairing and replacing marker posts;
 - (q) installing, maintaining, and repairing water crossings;
 - (r) installing, maintaining, and repairing and replacing cattle guards;
 - (s) installing, maintaining, and repairing and replacing road signs;
 - (t) installing, maintaining, and repairing and replacing road striping;
 - (u) repair, stabilization and improvement of cut and fill slopes;
 - (v) application of seal coats; or
 - (w) snow removal.
- (6) "Public lands not reserved for public uses" means the surface of federal lands open to entry and location and includes the surface of lands that are subject to subsurface coal withdrawals or mining claims.
- (7) "R.S. 2477 right-of-way" means a right-of-way for a highway constructed in this state on public lands not reserved for public uses in accordance with Revised Statute 2477, codified as 43 U.S.C. Section 932, and accepted by the state or a political subdivision of the state prior to October 21, 1976.

Amended by Chapter 293, 2003 General Session

72-5-302 Rights-of-way across federal lands -- Title -- Presumption -- Scope.

- (1) This part applies to all R.S. 2477 rights-of-way.

- (2) The state and its political subdivisions have title to the R.S. 2477 rights-of-ways in accordance with Sections 72-3-102, 72-3-103, 72-3-104, 72-3-105, and 72-5-103.
- (3)
 - (a) Acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses, is presumed if the state or a political subdivision of the state makes a finding that the highway was constructed and the right-of-way was accepted prior to October 21, 1976.
 - (b) The existence of a highway in a condition suitable for public use 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.
- (4)
 - (a) Unless specifically determined prior to the cut-off date provided in Section 72-5-301 by the state or a political subdivision of the state with authority over the R.S. 2477 right-of-way, the scope of the R.S. 2477 right-of-way is that which is reasonable and necessary for all highway uses as of the cut-off date determined according to the facts and circumstances, including:
 - (i) highway drainage facilities;
 - (ii) shoulders adjacent to the right-of-way; and
 - (iii) maintenance activities defined in Section 72-5-301 that are reasonable and necessary.
 - (b) Unless specifically determined by the state or political subdivision of the state with the authority over the R.S. 2477 right-of-way, an R.S. 2477 right-of-way is presumed to be at least 66 feet wide if that is the usual width of highway rights-of-way in the area.
 - (c) 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 those uses, up to, where applicable, improving a highway to two lanes so travelers can safely pass each other.
- (5) The safety standards established by the Department of Transportation in accordance with Section 72-6-102 apply to all determinations of safety on R.S. 2477 rights-of-way used for vehicular travel.

Amended by Chapter 293, 2003 General Session

72-5-303 Maintenance -- Impact on adjacent land owners.

- (1)
 - (a) The state and its political subdivisions are not required to maintain highways within R.S. 2477 rights-of-way for vehicular travel unless the R.S. 2477 right-of-way encompasses a highway included on a highway system for vehicular travel.
 - (b) A decision to improve or not improve an R.S. 2477 right-of-way is a purely discretionary function.
- (2) The holder of an R.S. 2477 right-of-way and the owner of the servient estate shall exercise their rights without unreasonably interfering with one another.
- (3) The holder of the R.S. 2477 right-of-way shall design and conduct construction and maintenance activities so as to minimize impacts on adjacent federal public lands, consistent with applicable safety standards.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-304 Mapping and survey requirements.

- (1) The Department of Transportation, counties, and cities are not required to possess centerline surveys for R.S. 2477 rights-of-ways.

- (2) To be accepted, highways within R.S. 2477 rights-of-way do not need to be included in the plats, descriptions, and maps of county roads required by Sections 72-3-105 and 72-3-107 or on the State Geographic Information Database, created in Section 63F-1-507, required to be maintained by Subsection (3).
- (3)
 - (a) The Automated Geographic Reference Center, created in Section 63F-1-506, shall create and maintain a record of R.S. 2477 rights-of-way on the Geographic Information Database.
 - (b) The record of R.S. 2477 rights-of-way shall be based on information maintained by the Department of Transportation and cartographic, topographic, photographic, historical, and other data available to or maintained by the Automated Geographic Reference Center.
 - (c) Agencies and political subdivisions of the state may provide additional information regarding R.S. 2477 rights-of-way when information is available.

Amended by Chapter 169, 2005 General Session

72-5-305 Term of grant -- Abandonment.

- (1) In accordance with the terms of the R.S. 2477 right-of-way grant, once accepted, an R.S. 2477 right-of-way is established for a perpetual term.
- (2)
 - (a) Abandonment of any R.S. 2477 right-of-way shall only take place in accordance with the procedures in Part 1, Public Highways, of this chapter.
 - (b) If any R.S. 2477 right-of-way is abandoned by a political subdivision of the state, the right-of-way shall revert to the state.
- (3) The passage of time or the frequency of use of an R.S. 2477 right-of-way is not evidence of waiver or abandonment of the R.S. 2477 right-of-way.
- (4) An R.S. 2477 right-of-way continues even if the servient estate is transferred out of the public domain.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-306 Assumption of risk -- Immunity -- Public safety.

- (1) An R.S. 2477 right-of-way not designated under Section 72-3-102, 72-3-103, or 72-3-104 as a Class A, B, or C road is traveled at the risk of the user.
- (2) The state and its political subdivisions do not waive immunity under Title 63G, Chapter 7, Governmental Immunity Act of Utah, for injuries or damages occurring in or associated with any R.S. 2477 right-of-way.
- (3) The state and its political subdivisions assume no liability for injury or damage resulting from a failure to maintain any:
 - (a) R.S. 2477 right-of-way for vehicular travel; or
 - (b) highway sign on an R.S. 2477 right-of-way.
- (4) If the state or any political subdivision of the state chooses to maintain an R.S. 2477 right-of-way, the basic governmental objective involved in providing the improvements is the consistent promotion of public safety.
- (5)
 - (a) The state recognizes that there are limited funds available to upgrade all R.S. 2477 rights-of-way to applicable safety standards.

- (b) A decision by the state or a political subdivision of the state to allocate funds for maintaining an R.S. 2477 right-of-way is the result of evaluation and assigning of priorities for the promotion of public safety.
- (c) The state or a political subdivision of the state must use its judgment and expertise to evaluate which safety feature improvements should be made first. In making this policy determination the state or a political subdivision of the state may:
 - (i) perform on-site inspections and weigh all factors relating to safety, including the physical characteristics and configuration of the R.S. 2477 right-of-way and the volume and type of traffic on the R.S. 2477 right-of-way; and
 - (ii) consult with transportation experts who have expertise to make an evaluation of the relative dangerousness of R.S. 2477 rights-of-way within their jurisdiction.

Amended by Chapter 382, 2008 General Session

72-5-307 Agreement affecting R.S. 2477 right-of-way.

- (1) Before a political subdivision of the state enters into an agreement with the federal government affecting the rights, status, or scope of an R.S. 2477 right-of-way, the political subdivision shall give written notice of its intent to enter the agreement, together with a copy of the proposed final agreement, to the governing body of every county of the state through which the right-of-way extends.
- (2) After receiving notice of the proposed agreement, the governing body of a county shall, within 60 days, give written notice to the political subdivision that:
 - (a) the county does not object to the proposed agreement; or
 - (b) the county objects to the proposed agreement.
- (3) If the governing body of a county through which an R.S. 2477 right-of-way extends objects to a proposed agreement in accordance with Subsection (2), the political subdivision proposing to enter into the agreement may only enter into the agreement if it obtains declaratory relief from the district court. The relief shall be granted if the political subdivision shows by a preponderance of evidence that the proposed agreement does not materially affect the objecting county's interests.
- (4) If the governing body of a county through which an R.S. 2477 right-of-way extends fails to object within 60 days after receiving notice, in accordance with Subsection (2), the county is considered not to have an objection.
- (5) If a political subdivision fails to provide notice of a proposed agreement to a county as required by Subsection (1), the political subdivision is considered without authority to enter into the agreement, and the agreement is void.
- (6) In accordance with the joint title provisions in Subsection 72-5-302(2), an agreement between a political subdivision of the state and the federal government may not affect the interests of the state regarding an R.S. 2477 right-of-way, unless the state is also a party to the agreement.
- (7) This section does not affect an agreement made solely for the purpose of:
 - (a) maintenance, as defined under Section 72-5-301; or
 - (b) preserving safe travel of an R.S. 2477 right-of-way.

Enacted by Chapter 123, 2001 General Session

72-5-308 Provisions govern determinations -- Determinations effective dates.

The provisions of this part pertaining to substantive standards for acceptance of the R.S. 2477 grant shall govern the R.S. 2477 assessments of the governor or the governor's designee and

the decisions of the courts to the extent that the provisions are consistent with state law, including common law, applicable as of the cut-off date.

Enacted by Chapter 293, 2003 General Session

72-5-309 Acceptance of rights-of-way -- Notice of acknowledgment required.

- (1) The governor or the governor's designee may assess whether the grant of the R.S. 2477 has been accepted with regard to any right-of-way so as to vest title of the right-of-way in the state and the applicable political subdivision as provided for in Section 72-5-103.
- (2) If the governor or governor's designee concludes that the grant has been accepted as to any right-of-way, the governor or a designee shall issue a notice of acknowledgment of the acceptance of the R.S. 2477 grant as to that right-of-way.
- (3) A notice of acknowledgment of the R.S. 2477 grant shall include:
 - (a) a statement of reasons for the acknowledgment;
 - (b) a general description of the right-of-way or rights-of-way subject to the notice of acknowledgment, including the county in which it is located, and notice of where a center-line description derived from Global Positioning System data may be viewed or obtained;
 - (c) a statement that the owner of the servient estate in the land over which the right-of-way or rights-of-way subject to the notice runs or any person with a competing dominant estate ownership claim may file a petition with the district court for a decision regarding the correctness or incorrectness of the acknowledgment; and
 - (d) a statement of the time limit provided in Section 72-5-310 for filing a petition.
- (4)
 - (a)
 - (i) The governor or the governor's designee may record a notice of acknowledgment, and any supporting affidavit, map, or other document purporting to establish or affect the state's property interest in the right-of-way or rights-of-way, in the office of the county recorder in the county where the right-of-way or rights-of-way exist.
 - (ii)
 - (A) A notice of acknowledgment recorded in the county recorder's office is not required to be accompanied by a paper copy of the center-line description.
 - (B) A paper copy of each center-line description together with the notice of acknowledgment shall be placed in the state archives created in Section 63A-12-101 and made available to the public upon request in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
 - (C) An electronic copy of the center-line description identified in a notice of acknowledgment shall be available upon request at:
 - (I) the county recorder's office; or
 - (II) the Automated Geographic Reference Center created in Section 63F-1-506.
 - (b) A notice of acknowledgment recorded in the county recorder's office is conclusive evidence of acceptance of the R.S. 2477 grant upon:
 - (i) expiration of the 60-day period for filing a petition under Section 72-5-310 without the filing of a petition; or
 - (ii) a final court decision that the notice of acknowledgment was not incorrect.

Amended by Chapter 97, 2008 General Session

Amended by Chapter 382, 2008 General Session

72-5-310 Notice of acknowledgment -- Court determination -- Presumption of acceptance.

- (1) The governor or the governor's designee shall provide a copy of the notice of acknowledgment by certified mail and return receipt requested to:
 - (a) the last known owner of the servient estate in land over which the right-of-way or rights-of-way subject to the notice runs; and
 - (b) any person known to have a competing dominant estate ownership claim.
- (2)
 - (a) A person with a servient estate or competing dominant estate ownership claim to the right-of-way may petition for a decision of the district court as to the correctness of the acknowledgment of acceptance of the R.S. 2477 grant issued under Section 72-5-309.
 - (b) Venue for the court action shall be the district court for Salt Lake County.
 - (c) The petition shall be filed no later than 60 days after the date on which the petitioner received a copy of the notice of acknowledgment.
 - (d) The state, through the governor or the governor's designee, shall be named as a respondent and served with a copy of the petition in accordance with the Utah Rules of Civil Procedure.
 - (e) No one other than a person with a servient estate ownership claim in land over which the right-of-way or rights-of-way subject to the notice runs or a competing dominant estate claim may challenge the correctness of a notice of acknowledgment.
- (3) The petition for a court decision of the correctness of the notice of acknowledgment shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:
 - (a) the petitioner's name and mailing address;
 - (b) a copy of the notice of acknowledgment the petitioner asserts is incorrect;
 - (c) a request for relief specifying the type and extent of relief requested; and
 - (d) a statement of the reasons why the petitioner is entitled to relief.
- (4) Except as provided under this Part 3, Rights-Of-Way Across Federal Lands Act, all pleadings and proceedings to determine the correctness of a notice of acknowledgment in the district court are governed by the Utah Rules of Civil Procedure.
- (5) The court shall make its decision without deference to the notice of acknowledgment.
- (6)
 - (a) In accordance with Section 72-5-302, a rebuttable presumption that the R.S. 2477 grant has been accepted is created when:
 - (i) a highway existed on public lands not reserved for public uses as of the cut-off date under Section 72-5-301; and
 - (ii) the highway currently exists in a condition suitable for public use.
 - (b) The proponent of the R.S. 2477 status of the highway bears the burden of proving acceptance of the grant by a preponderance of the evidence for all decisions that are not subject to Subsection (6)(a).

Amended by Chapter 9, 2006 General Session