

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