

## Chapter 5 Rights-Of-Way Act

### Part 1 Public Highways

#### **72-5-101 Title.**

This chapter is known as the "Rights-of-way Act."

Enacted by Chapter 270, 1998 General Session

#### **72-5-102 Definitions.**

As used in this part, "state transportation purposes" includes:

- (1) highway and public transportation rights-of-way, including those necessary within cities and towns;
- (2) the construction, reconstruction, relocation, improvement, maintenance, and mitigation from the effects of these activities on state highways and other transportation facilities under the control of the department;
- (3) limited access facilities, including rights of access, air, light, and view and frontage and service roads to highways;
- (4) adequate drainage in connection with any highway, cut, fill, or channel change and the maintenance of any highway, cut, fill, or channel change;
- (5) weighing stations, shops, offices, storage buildings and yards, and road maintenance or construction sites;
- (6) road material sites, sites for the manufacture of road materials, and access roads to the sites;
- (7) the maintenance of an unobstructed view of any portion of a highway to promote the safety of the traveling public;
- (8) the placement of traffic signals, directional signs, and other signs, fences, curbs, barriers, and obstructions for the convenience of the traveling public;
- (9) the construction and maintenance of storm sewers, sidewalks, and highway illumination;
- (10) the construction and maintenance of livestock highways;
- (11) the construction and maintenance of roadside rest areas adjacent to or near any highway; and
- (12) the mitigation of impacts from public transportation projects.

Amended by Chapter 79, 2001 General Session

#### **72-5-103 Acquisition of rights-of-way and other real property -- Title to property acquired.**

- (1) The department may acquire any real property or interests in real property necessary for temporary, present, or reasonable future state transportation purposes by gift, agreement, exchange, purchase, condemnation, or otherwise.
- (2)
  - (a)
    - (i) Title to real property acquired by the department or the counties, cities, and towns by gift, agreement, exchange, purchase, condemnation, or otherwise for highway rights-of-way or other transportation purposes may be in fee simple or any lesser estate or interest.
    - (ii) Title to real property acquired by the department for a public transit project shall be transferred to the public transit district responsible for the project.

- (iii) A public transit district shall cover all costs associated with any condemnation on its behalf.
- (b) If the highway is a county road, city street under joint title as provided in Subsection 72-3-104(3), or right-of-way described in Title 72, Chapter 5, Part 3, Rights-Of-Way Across Federal Lands Act, title to all interests in real property less than fee simple held under this section is held jointly by the state and the county, city, or town holding the interest.
- (3) A transfer of land bounded by a highway on a right-of-way for which the public has only an easement passes the title of the person whose estate is transferred to the middle of the highway.

Amended by Chapter 79, 2001 General Session

**72-5-104 Public use constituting dedication -- Scope.**

- (1) As used in this section, "highway," "street," or "road" does not include an area principally used as a parking lot.
- (2)
  - (a) A highway is dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of 10 years.
  - (b) Dedication to the use of the public under Subsection (2) does not require an act of dedication or implied dedication by the property owner.
- (3) The requirement of continuous use under Subsection (2) is satisfied if the use is as frequent as the public finds convenient or necessary and may be seasonal or follow some other pattern.
- (4) Continuous use as a public thoroughfare under Subsection (2) is interrupted only when:
  - (a) the regularly established pattern and frequency of public use for the given road has actually been interrupted for a period of no less than 24 hours to a degree that reasonably puts the traveling public on notice; or
  - (b) for interruptions by use of a barricade on or after May 10, 2011:
    - (i) if the person or entity interrupting the continuous use gives not less than 72 hours advance written notice of the interruption to the highway authority having jurisdiction of the highway, street, or road; and
    - (ii) the barricade is in place for at least 24 consecutive hours, then an interruption will be deemed to have occurred.
- (5) Installation of gates and posting of no trespassing signs are relevant forms of evidence but are not solely determinative of whether an interruption has occurred.
- (6) If the highway authority having jurisdiction of the highway, street, or road demands that an interruption cease or that a barrier or barricade blocking public access be removed and the property owner accedes to the demand, the attempted interruption does not constitute an interruption under Subsection (4).
- (7)
  - (a) The burden of proving dedication under Subsection (2) is on the party asserting the dedication.
  - (b) The burden of proving interruption under Subsection (4) is on the party asserting the interruption.
- (8) The dedication and abandonment creates a right-of-way held by the state in accordance with Sections 72-3-102, 72-3-104, 72-3-105, and 72-5-103.
- (9) The scope of the right-of-way is that which is reasonable and necessary to ensure safe travel according to the facts and circumstances.
- (10)

- (a) The provisions of this section apply to any claim under this section for which a court of competent jurisdiction has not issued a final unappealable judgment or order.
- (b) The Legislature finds that the application of this section:
  - (i) does not enlarge, eliminate, or destroy vested rights; and
  - (ii) clarifies legislative intent in light of Utah Supreme Court rulings in *Wasatch County v. Okelberry*, 179 P.3d 768 (Utah 2008), *Town of Leeds v. Prsbrey*, 179 P.3d 757 (Utah 2008), and *Utah County v. Butler*, 179 P.3d 775 (Utah 2008).

Amended by Chapter 107, 2014 General Session

**72-5-105 Highways, streets, or roads once established continue until abandoned --  
Temporary closure.**

- (1) Except as provided in Subsections (3) and (7), all public highways, streets, or roads once established shall continue to be highways, streets, or roads until formally abandoned or vacated by written order, resolution, or ordinance resolution of a highway authority having jurisdiction or by court decree, and the written order, resolution, ordinance, or court decree has been duly recorded in the office of the recorder of the county or counties where the highway, street, or road is located.
- (2)
  - (a) For purposes of assessment, upon the recordation of an order executed by the proper authority with the county recorder's office, title to the vacated or abandoned highway, street, or road shall vest to the adjoining record owners, with one-half of the width of the highway, street, or road assessed to each of the adjoining owners.
  - (b) Provided, however, that should a description of an owner of record extend into the vacated or abandoned highway, street, or road that portion of the vacated or abandoned highway, street, or road shall vest in the record owner, with the remainder of the highway, street, or road vested as otherwise provided in this Subsection (2).
  - (c) Title to a highway, street, or road that a local highway authority closes to vehicular traffic under Subsection (3) or (7) remains vested in the city.
- (3)
  - (a) In accordance with this section, a state or local highway authority may temporarily close a class B, C, or D road, an R.S. 2477 right-of-way, or a portion of a class B, C, or D road or R.S. 2477 right-of-way.
  - (b)
    - (i) A temporary closure authorized under this section is not an abandonment.
    - (ii) The erection of a barrier or sign on a highway, street, or road once established is not an abandonment.
    - (iii) An interruption of the public's continuous use of a highway, street, or road once established is not an abandonment even if the interruption is allowed to continue unabated.
  - (c) A temporary closure under Subsection (3)(a) may be authorized only under the following circumstances:
    - (i) when a federal authority, or other person, provides an alternate route to an R.S. 2477 right-of-way or portion of an R.S. 2477 right-of-way if the alternate route is:
      - (A) accepted by the highway authority; and
      - (B) formalized by a federal permit or a written agreement between the federal authority or other person and the highway authority;

- (ii) when a state or local highway authority determines that correction or mitigation of injury to private or public land resources is necessary on or near a class B or D road or portion of a class B or D road; or
  - (iii) when a local highway authority makes a finding that temporary closure of all or part of a class C road is necessary to mitigate unsafe conditions.
- (d)
- (i) If a local highway authority temporarily closes all or part of a class C road under Subsection (3)(c)(iii), the local highway authority may convert the closed portion of the road to another public use or purpose related to the mitigation of the unsafe condition.
  - (ii) If a local highway authority temporarily closes all or part of a class C road under Subsection (3)(c)(iii), and the closed portion of road is the subject of a lease agreement between the local highway authority and another entity, the local highway authority may not reopen the closed portion of the road until the lease agreement terminates.
- (e) A highway authority shall reopen an R.S. 2477 right-of-way or portion of an R.S. 2477 right-of-way temporarily closed under this section if the alternate route is closed for any reason.
- (f) A temporary closure authorized under Subsection (3)(c)(ii) shall:
- (i) be authorized annually; and
  - (ii) not exceed two years or the time it takes to complete the correction or mitigation, whichever is less.
- (4) To authorize a closure of a road under Subsection (3) or (7), a local highway authority shall pass an ordinance to temporarily or indefinitely close the road.
- (5) Before authorizing a temporary or indefinite closure as described in Subsection (4), a highway authority shall:
- (a) hold a hearing on the proposed temporary or indefinite closure;
  - (b) provide notice of the hearing by mailing a notice to the Department of Transportation and all owners of property abutting the highway; and
  - (c) except for a closure under Subsection (3)(c)(iii):
    - (i) publishing the notice:
      - (A) in a newspaper of general circulation in the county at least once a week for four consecutive weeks before the hearing; and
      - (B) on the Utah Public Notice Website created in Section 63F-1-701, for four weeks before the hearing; or
    - (ii) posting the notice in three public places for at least four consecutive weeks before the hearing.
- (6) The right-of-way and easements, if any, of a property owner and the franchise rights of any public utility may not be impaired by a temporary or indefinite closure authorized under this section.
- (7)
- (a) A local highway authority may close to vehicular travel and convert to another public use or purpose a highway, road, or street over which the local highway authority has jurisdiction, for an indefinite period of time, if the local highway authority makes a finding that:
    - (i) the closed highway, road, or street is not necessary for vehicular travel;
    - (ii) the closure of the highway, road, or street is necessary to correct or mitigate injury to private or public land resources on or near the highway, road, or street; or
    - (iii) the closure of the highway, road, or street is necessary to mitigate unsafe conditions.
  - (b) If a local highway authority indefinitely closes all or part of a highway, road, or street under Subsection (7)(a)(iii), and the closed portion of road is the subject of a lease agreement

between the local highway authority and another entity, the local highway authority may not reopen the closed portion of the road until the lease agreement terminates.

(c) An indefinite closure authorized under this Subsection (7) is not an abandonment.

Amended by Chapter 2, 2017 Special Session 1

**72-5-106 Expiration of franchise of toll bridge or road.**

If the franchise of any toll bridge or road expires by limitation, forfeiture, or nonuser it is a free public highway, and no claim shall be valid against the public for right-of-way or for land or material comprising the bridge or road.

Renumbered and Amended by Chapter 270, 1998 General Session

**72-5-107 United States patents -- Patentee and county to assert claims to roads crossing land.**

- (1)
  - (a) If any person acquires title from the United States to any land in this state over which any public highway extends that has not been duly platted, and that has not been continuously used as a public highway for a period of 10 years, the person shall within three months after receipt of the person's patent assert the person's claim for damages in writing to the county executive of the county in which the land is situated.
  - (b) The county legislative body shall have an additional period of three months in which to begin proceedings to condemn the land according to law.
- (2)
  - (a) The highway shall continue open as a public highway during the periods described under Subsection (1).
  - (b) If no action is begun by the county executive within the period described under Subsection (1) (b), the highway shall be considered to be abandoned by the public.
- (3) In case of a failure by the person so acquiring title to public lands to assert his claim for damage during the three months from the time the person received a patent to the lands, the person shall thereafter be barred from asserting or recovering any damages by reason of the public highway, and the public highway shall remain open.

Renumbered and Amended by Chapter 270, 1998 General Session

**72-5-108 Width of rights-of-way for public highways.**

The width of rights-of-way for public highways shall be set as the highway authorities of the state, counties, or municipalities may determine for the highways under their respective jurisdiction.

Renumbered and Amended by Chapter 270, 1998 General Session

**72-5-109 Contributions of property by counties and municipalities.**

Counties and municipalities may contribute real or personal property to the department for state transportation purposes.

Amended by Chapter 79, 2001 General Session

**72-5-110 Acquisition of personal property -- Disposal of certain personal property.**

- (1) The department may:
  - (a) acquire by gift, agreement, exchange, purchase, or otherwise machinery, tools, equipment, materials, supplies, or other personal property necessary for the administration, construction, maintenance, and operation of the state highways; and
  - (b) sell, exchange, or otherwise dispose of the machinery, tools, equipment, materials, supplies, and other personal property described in Subsection (1)(a) when no longer suitable or required for state transportation purposes.
- (2) In accordance with Section 63A-2-409, the department is exempt from using the state surplus property program when disposing of surplus personal property that was acquired as part of a transaction or legal action by the department acquiring real property for a state transportation purpose.
- (3) Proceeds from the sale, exchange, or other disposition of property described in Subsection (2) shall be deposited with the state treasurer and credited to the Transportation Fund.

Amended by Chapter 15, 2013 General Session

**72-5-111 Disposal of real property.**

- (1)
  - (a) If the department determines that any real property or interest in real property, acquired for a highway purpose, is no longer necessary for the purpose, the department may lease, sell, exchange, or otherwise dispose of the real property or interest in the real property.
  - (b)
    - (i) Real property may be sold at private or public sale.
    - (ii) Except as provided in Subsection (1)(c) related to exchanges and Subsection (1)(d) related to the proceeds of any sale of real property from a maintenance facility, proceeds of any sale shall be deposited with the state treasurer and credited to the Transportation Fund.
  - (c) If approved by the commission, real property or an interest in real property may be exchanged by the department for other real property or interest in real property, including improvements, for highway purposes.
  - (d) Proceeds from the sale of real property or an interest in real property from a maintenance facility may be used by the department for the purchase or improvement of another maintenance facility, including real property.
- (2)
  - (a) In the disposition of real property at any private sale, first consideration shall be given to the original grantor.
  - (b) Notwithstanding the provisions of Section 78B-6-521, if no portion of a parcel of real property acquired by the department is used for transportation purposes, then the original grantor shall be given the opportunity to repurchase the parcel of real property at the department's original purchase price from the grantor.
  - (c) In accordance with Section 72-5-404, this Subsection (2) does not apply to property rights acquired in proposed transportation corridors using funds from the Marda Dillree Corridor Preservation Fund created in Section 72-2-117.
  - (d)
    - (i) The right of first consideration described in Subsection (2)(a) is subject to the same terms and may be assigned by the original grantor in the manner described in Subsection 78B-6-521(2).
    - (ii) The original grantor or the assignee shall notify the department of an assignment by certified mail to the current office address of the executive director of the department.

- (iii) An exchange of real property as provided in Subsection (1)(c) or Section 72-5-113 does not entitle the original grantor to exercise the right of first consideration described in Subsection (2)(a).
  - (iv) The right of first consideration described in Subsection (2)(a) terminates upon an exchange of the acquired real property as provided in Subsection (1)(c) or Section 72-5-113.
- (3)
- (a) Any sale, exchange, or disposal of real property or interest in real property made by the department under this section, is exempt from the mineral reservation provisions of Title 65A, Chapter 6, Mineral Leases.
  - (b) Any deed made and delivered by the department under this section without specific reservations in the deed is a conveyance of all the state's right, title, and interest in the real property or interest in the real property.

Amended by Chapter 273, 2017 General Session

**72-5-112 Acquisition of real property from county, city, or other political subdivision -- Exchange.**

The department may purchase or otherwise acquire from any county, city, or other political subdivision of the state real property or interests in real property which may be exchanged for or used in the purchase of other real property or interests in real property to be used in connection with the construction, maintenance, or operation of state highways.

Renumbered and Amended by Chapter 270, 1998 General Session

**72-5-113 Acquisition of entire lot, block, or tract -- Sale or exchange of remainder.**

If a part of an entire lot, block, tract of land, or interest or improvement in real property is to be acquired by the department and the remainder is to be left in a shape or condition of little value to its owner or to give rise to claims or litigation concerning damages, the department may acquire the whole of the property and may sell the remainder or may exchange it for other property needed for highway purposes.

Renumbered and Amended by Chapter 270, 1998 General Session

**72-5-114 Property acquired in advance of construction -- Lease or rental.**

- (1)
- (a) The department may acquire real property or interests or improvements in real property in advance of the actual construction, reconstruction, or improvement of highways in order to save on acquisition costs or avoid the payment of excessive damages.
  - (b) The real property or interests or improvements in real property may be leased or rented by the department in a manner, for a period of time, and for a sum determined by the department to be in the best interest of the state.
- (2)
- (a) The department may employ private agencies to manage rental properties when it is more economical and in the best interests of the state.
  - (b) All money received for leases and rentals, after deducting any portion to which the federal government may be entitled, shall be deposited with the state treasurer and credited to the Transportation Fund.

Renumbered and Amended by Chapter 270, 1998 General Session

**72-5-115 Acquisition of property devoted to or held for other public use.**

- (1) If property devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state transportation purposes, the department may, with the consent of the person or agency in charge of the other public use, condemn real property to be exchanged with the person or agency for the real property to be taken for state transportation purposes.
- (2) This section does not limit the department's authorization to acquire, other than by condemnation, property for exchange purposes.

Amended by Chapter 79, 2001 General Session

**72-5-116 Exemption from state licensure.**

In accordance with Section 61-2f-202, an employee or authorized agent working under the oversight of the department when engaging in an act on behalf of the department related to one or more of the following is exempt from licensure under Title 61, Chapter 2f, Real Estate Licensing and Practices Act:

- (1) acquiring real estate pursuant to Section 72-5-103;
- (2) disposing of real estate pursuant to Section 72-5-111;
- (3) providing services that constitute property management, as defined in Section 61-2f-102; or
- (4) leasing of real estate.

Amended by Chapter 379, 2010 General Session

**72-5-117 Rulemaking for sale of real property -- Licensed or certified appraisers --  
Exceptions.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the department buys, sells, or exchanges real property, the department shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.
- (2) The rules:
  - (a) shall establish procedures for determining the value of the real property;
  - (b) may provide that an appraisal, as defined under Section 61-2g-102, demonstrates the real property's value; and
  - (c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section 61-2g-102.
- (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:
  - (a) that is under a contract or other written agreement before May 5, 2008; or
  - (b) with a value of less than \$100,000, as estimated by the state agency.

Amended by Chapter 289, 2011 General Session

**Part 2  
Rights-Of-Way Across State Lands**



**72-5-201 Purpose statement.**

- (1)
  - (a) The Legislature recognizes that highways provide tangible benefits to private and public lands of the state by providing access, allowing development, and facilitating production of income.
  - (b) Many of those highways traverse state lands, including lands held by the state in trust for the school children and public institutions of the state.
  - (c) Many of the existing highways have been previously established without an official grant of an easement or right of entry from this state, yet these highways often are the only access to private and public lands of the state.
- (2) The Legislature intends to establish a means for ensuring continued access to the private and public lands of the state for the good of the people, while fulfilling its fiduciary responsibilities toward the schoolchildren by protecting their trust holdings against loss.

Renumbered and Amended by Chapter 270, 1998 General Session

**72-5-202 Definitions.**

As used in this part:

- (1) "Responsible authority" means a private party, the state of Utah, or a political subdivision of the state claiming rights to a highway right-of-way, easement, or right of entry across state lands.
- (2) "Sovereign lands" has the same meaning as provided in Section 65A-1-1.
- (3) "State lands" means sovereign and trust lands, as well as all other lands held by or on behalf of the departments, divisions, or institutions of the state.
- (4) "Trust lands" has the same meaning as "school and institutional trust lands" as defined in Section 53C-1-103.

Renumbered and Amended by Chapter 270, 1998 General Session

**72-5-203 Public easement or right of entry -- Grant -- Application -- Conditions.**

- (1)
  - (a)
    - (i) Subject to Section 53C-1-302 and Subsection 53C-1-204(1), a temporary public easement or right of entry is granted for each highway existing prior to January 1, 1992, that terminates at or within or traverses any state lands and that has been constructed and maintained or used by a responsible authority.
    - (ii) The temporary public easement or right of entry granted under Subsection (1)(a)(i) is 100 feet wide for each class A and B highway.
  - (b) Each easement shall remain in effect through June 30, 2004, or until a permanent easement or right of entry has been established under Subsection (2), whichever is greater.
- (2)
  - (a) The School and Institutional Trust Lands Administration and the Division of Forestry, Fire, and State Lands shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing an application process for a responsible authority to obtain a permanent easement or right of entry over any temporary public easement granted under Subsection (1), subject to the provisions of Subsections (2)(b), (c), and (d).
  - (b) A grant of a permanent easement or right of entry across sovereign lands shall be made upon a showing to the Division of Forestry, Fire, and State Lands that continued use of

the easement will provide a public benefit commensurate with the value of the permanent easement or right of entry.

- (c) A grant of a permanent easement or right of entry across trust lands shall be made upon a showing to the School and Institutional Trust Lands Administration that the grant is consistent with the state's fiduciary responsibilities under Section 53C-1-302 and Subsection 53C-1-204(1).
- (d) A grant of a permanent easement or right of entry across state lands other than sovereign and trust lands shall be made upon a showing to the managing unit of state government that the continued use will provide a public benefit commensurate with the value of the easement and will not unreasonably interfere with the purposes for which the land was obtained or is now held.
- (3) The grant of the temporary public easement or right of entry under Subsection (1) is consistent with the trust responsibilities of the state and in the best interest of the state.
- (4) A responsible authority that has been granted a permanent easement or right of entry over state lands may maintain the permanent easement or right of entry for the uses to which the permanent easement or right of entry was put prior to and including January 1, 1992, subject to the right of the managing unit of state government or private party to relocate the permanent easement or right of entry.
- (5) The grant of a permanent easement or right of entry under this section is effective on the date the highway was originally constructed or established for public use.

Amended by Chapter 344, 2009 General Session

### **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 acknowledgement 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

## **Part 4 Transportation Corridor Preservation**

### **72-5-401 Definitions.**

As used in this part:

- (1) "Corridor" means the path or proposed path of a transportation facility that exists or that may exist in the future. A corridor may include the land occupied or to be occupied by a transportation facility, and any other land that may be needed for expanding a transportation facility or for controlling access to it.
- (2) "Corridor preservation" means planning or acquisition processes intended to:
  - (a) protect or enhance the capacity of existing corridors; and
  - (b) protect the availability of proposed corridors in advance of the need for and the actual commencement of the transportation facility construction.
- (3) "Development" means:
  - (a) the subdividing of land;
  - (b) the construction of improvements, expansions, or additions; or
  - (c) any other action that will appreciably increase the value of and the future acquisition cost of land.
- (4) "Official map" means a map, drawn by government authorities and recorded in county recording offices that:
  - (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;
  - (b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
  - (c) for counties and municipalities may be adopted as an element of the general plan, pursuant to Title 17, Chapter 27a, Part 4, General Plan, or Title 10, Chapter 9a, Part 4, General Plan.
- (5) "Taking" means an act or regulation, either by exercise of eminent domain or other police power, whereby government puts private property to public use or restrains use of private

property for public purposes, and that requires compensation to be paid to private property owners.

Amended by Chapter 254, 2005 General Session

**72-5-402 Public purpose.**

- (1) The Legislature finds and declares that the planning and preservation of transportation corridors is a public purpose, that the acquisition of public rights in private property for possible use as a transportation corridor years in advance is a public purpose, and that acquisition of public rights in private property for possible use as alternative transportation corridors is a public purpose, even if one or more of the transportation corridors is eventually not used for a public purpose, so long as reasonable evidence exists at the time of acquisition that the transportation facility will be developed within the time period established under this part.
- (2) The Legislature finds and declares that the acquisition of private property rights for the preservation of transportation corridors should be done on a voluntary basis and not by the use of eminent domain powers.

Amended by Chapter 300, 2003 General Session

**72-5-403 Transportation corridor preservation powers.**

- (1) The department, counties, and municipalities may:
  - (a) act in cooperation with one another and other government entities to promote planning for and enhance the preservation of transportation corridors and to more effectively use the money available in the Marda Dillree Corridor Preservation Fund created in Section 72-2-117;
  - (b) undertake transportation corridor planning, review, and preservation processes; and
  - (c) acquire fee simple rights and other rights of less than fee simple, including easement and development rights, or the rights to limit development, including rights in alternative transportation corridors, and to make these acquisitions up to a projected 30 years in advance of using those rights in actual transportation facility construction.
- (2) In addition to the powers described under Subsection (1), counties and municipalities may:
  - (a) limit development for transportation corridor preservation by land use regulation and by official maps; and
  - (b) by ordinance prescribe procedures for approving limited development in transportation corridors until the time transportation facility construction begins.
- (3)
  - (a) The department shall identify and the commission shall approve transportation corridors as high priority transportation corridors for transportation corridor preservation.
  - (b) The department shall notify a county or municipality if the county or municipality has land within its boundaries that is located within the boundaries of a high priority transportation corridor.
  - (c) The department may, on a voluntary basis, acquire private property rights within the boundaries of a high priority transportation corridor for which a notification has been received in accordance with Section 10-9a-509 or 17-27a-508.

Amended by Chapter 121, 2012 General Session

**72-5-404 Disposition of excess property rights.**

If the department has acquired property rights in land in proposed transportation corridors, and some or all of that land is eventually not used for the proposed transportation corridors, the department shall dispose of the property rights in accordance with the provisions of Section 78B-6-521.

Amended by Chapter 3, 2008 General Session

**72-5-405 Private owner rights.**

- (1) The department, counties, and municipalities shall observe all protections conferred on private property rights, including Title 63L, Chapter 3, Private Property Protection Act, Title 63L, Chapter 4, Constitutional Takings Issues Act, and compensation for takings.
- (2) Private property owners from whom less than fee simple rights are obtained for transportation corridors or transportation corridor preservation have the right to petition the department, a county, or a municipality to acquire the entire fee simple interest in the affected property.
- (3)
  - (a) A private property owner whose property's development is limited or restricted by a power granted under this part may petition the county or municipality that adopted the official map to acquire less than or the entire fee simple interest in the affected property, at the option of the property owner.
  - (b) If the county or municipality petitioned under Subsection (3)(a) does not acquire the interest in the property requested by the property owner, then the county or municipality may not exercise any of the powers granted under this part to limit or restrict the affected property's development.

Amended by Chapter 382, 2008 General Session

**72-5-406 Rulemaking.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for private property owner petition procedures described in Section 72-5-405.

Amended by Chapter 382, 2008 General Session