

RESOLUTION NO. 82-12

RESOLUTION OF THE BOARD OF SUPERVISORS OF COCHISE COUNTY SETTING FORTH CONDITIONS AND PROCEDURES FOR COUNTY ACQUISITION OF RIGHTS-OF-WAY FOR ROAD PURPOSES OVER ARIZONA STATE TRUST LANDS

WHEREAS, the County of Cochise desires to assist property owners in obtaining road access to land where such access routes would pass through Arizona State Trust Lands; and

WHEREAS, the County desires that such access routes be acquired at the expense of those property owners who shall directly derive the benefits therefrom; and

WHEREAS, the County desires that certain rights-of-way acquired over Arizona State Trust Land become and remain public county rights-of-way, subject to the authority of the County; and

WHEREAS, the County desires that all roads constructed upon rights-of-way acquired over Arizona State Trust Lands conform to all standards imposed by the County and the State of Arizona;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Upon written request to the Board of Supervisors, the County may submit applications to acquire rights-of-way over Arizona State Trust Land. Such applications may be approved subject to the following conditions:

A. All expenses incurred including those for administration, filing fees, surveys, appraisal and acquisition shall be paid by the requesting party.

B. The requesting party shall acquire no right, title, interest or authority regarding the subject right-of-way.

C. No construction or improvements on the subject right-of-way may be undertaken or authorized until said right-of-way is granted by the Arizona State Land Department and accepted by the Cochise County Board of Supervisors.

D. Upon acceptance by the Cochise County Board of Supervisors, the subject right-of-way shall become public right-of-way. The requesting party shall, at no time, interfere with access of the public to said right-of-way.

E. The requesting party shall be solely responsible for constructing a road upon the subject right-of-way in accordance with minimum standards as established by Cochise County and the State of Arizona, and shall bear all costs associated therewith.

F. Unless all required improvements are completed and accepted within one hundred twenty (120) days following approval of the grant of right-of-way by the State Land Department, the subject right-of-way shall be returned to the Arizona State Land Department unless it can be shown to the satisfaction of the Cochise County Board of Supervisors that such delays are due to factors beyond the control of the applicant.

2. The County reserves the right to withdraw, without penalty, any application for right-of-way over Arizona Trust Land prior to grant of such right-of-way by the Arizona State Land Department.

ON MOTION DULY MADE, SECONDED AND CARRIED, this Resolution is passed and adoped at official meeting this 26<sup>th</sup> day of April, 1982.

COCHISE COUNTY BOARD OF SUPERVISORS

By: V. L. Thompson  
V. L. Thompson, Chairman

ATTEST:

JAMES D. ALTENSTADTER  
Jim Altenstadter  
County Administrator

STATE OF ARIZONA }  
COUNTY OF COCHISE } SS.

WITNESS MY HAND AND OFFICIAL SEAL  
CHRISTINE RHODES, COUNTY RECORDER

[Signature] DEPUTY  
INDEXED | PHOTOSTAT-COMPLETED | SLOTTED  
[Signature]

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED AND RECORDED, AT REQUEST OF: Ord of Supervisors

FEE no fee Bisbee, Arizona

DRAFT \_\_\_\_\_ DATE APR 29 '82 - 10 30 AM

DOCKET 1587 PAGE 356 NO 8142  
358



DKT 1587 PAGE 358

RESOLUTION NO. 82-12

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ON MOTION DULY MADE, SECONDED AND CARRIED, this Resolution is passed and adopted at official meeting this 26<sup>th</sup> day of

April, 1982.

COCHISE COUNTY BOARD OF SUPERVISORS

By: V. L. Thompson  
V. L. Thompson, Chairman

ATTEST:

JAMES D. ALTENSTADTER  
Jim Altenstadter  
County Administrator

MEMORANDUM FROM THE OFFICE OF THE BOARD OF SUPERVISORS

DATE: April 28, 1982  
TO: Fred M. Hewitt, Director, Public Works  
FROM: Diane J. Rutherford  
SUBJECT: Resolution 82-12 - Rights of Way over State Trust Lands



The Cochise County Board of Supervisors, at their meeting held on Monday, April 26, 1982, approved and adopted resolution 82-12 setting forth conditions and procedures for County Acquisition of rights-of-way for road purposes over Arizona State Trust Lands.

Attached is a copy of the resolution for your files.

The original has been placed in the records of the Cochise County Recorder.

djr

C: Bd  
Jim  
D: Diane

**DATE** April 21, 1982  
**TO** Board of Supervisors - Agenda Item  
**FROM** Fred M. Hewitt, Director



**DEPARTMENT OF PUBLIC WORKS**

**SUBJECT** Resolution Regarding R.O.W. Over State Trust Lands.

Enclosed is the proposed resolution regarding the above captioned matter as requested by the Board at the work session on department policy March 22, 1982.

Also enclosed is a copy of the agreement which will be used based upon this resolution.

The State Land Department has reviewed this agreement and a letter from Beverly J. Urke, Administrator of Rights-of-Way, is also enclosed.

We feel this resolution will provide a very beneficial tool in dealing with right-of-way acquisitions on behalf of County residents and respectfully request Board approval.

RH/cb/enc.

**FILED**  
1982 APR 21 AM 8:51  
CLERK  
BOARD OF SUPERVISORS



OFFICE OF THE

## Cochise County Attorney

P.O. DRAWER CA

BISBEE, ARIZONA 85603

(602) 432-5703 EXT. 470

BEVERLY H. JENNEY  
COCHISE COUNTY ATTORNEY

PATRICK M. ELLISTON  
CHIEF CRIMINAL DEPUTY

### M E M O R A N D U M

TO: Bob Hoppe, Deputy Director of Administration  
FROM: David S. Hunt, Deputy County Attorney  
SUBJECT: Resolution Regarding R/W over State Trust Lands  
DATE: April 13, 1982

Enclosed is the proposed resolution regarding the above-captioned matter.

Please call if you have any questions.

DSH:pf



OFFICE OF THE

Cochise County Attorney

P. O. DRAWER CA  
BISBEE, ARIZONA 85603  
(602) 432-5703 EXT. 470

BEVERLY H. JENNEY  
COCHISE COUNTY ATTORNEY

PATRICK M. ELLISTON  
CHIEF CRIMINAL DEPUTY

M E M O R A N D U M

TO: Bob Hoppe, Deputy Director, Administration

FROM: David S. Hunt, Deputy County Attorney *DSH*

SUBJECT: Right-of-Way Application Agreement

DATE: April 8, 1982

I have reviewed the proposed right-of-way application agreement and conclude that it will accomplish its intended purposes. I have made one notation regarding allowable delays in construction which you might want to incorporate.

Let me know if I can provide further information.

DSH:pf

Enclosure

*Mr. Hunt's proposed change was incorporated.*



Bruce Babbitt  
Governor

Arizona  
State Land Department

1624 WEST ADAMS  
PHOENIX, ARIZONA 85007



Joe T. Fallini  
Commissioner

April 19, 1982

R. W. Hoppe  
Cochise County Department of  
Public Works  
P. O. Drawer AJ  
Bisbee, AZ 85603

Dear Mr. Hoppe:

Thank you for forwarding the application agreement for the Department's review.

This agreement would seem to alleviate the problem of time in which an applicant would be allowed for construction of the roadway. It appears that with this agreement between the County and the applicant, no other special conditions as to the time limit of 120 days would be required in the actual lease, however, should you wish to make this a special condition to any of the right of way leases, a written notification to this department at time of application would be necessary.

Cordially,

Beverly J. Urke  
Administrator of Rights-of-Way

BJU/lj

RIGHT-OF-WAY

APPLICATION AGREEMENT

Upon request to County of Cochise by \_\_\_\_\_  
to submit an application to purchase Right-of-Way over  
Arizona State Trust Land through the Arizona State Land  
Department, I/we \_\_\_\_\_ do hereby  
agree to the following conditions:

It is understood that all cost incurred including administrative, filing fees, survey, appraisal and purchase cost will be the responsibility of the requesting party. It is further understood that the requesting party acquires no right, or authority pertaining to the subject right-of-way by this agreement. No work of any kind may be accomplished, or authorized on subject right-of-way until right-of-way is issued by the Arizona State Land Department and accepted by the Cochise County Board of Supervisors.

I/we understand this right-of-way will be issued to Cochise County, and upon acceptance by the Cochise County Board of Supervisors, becomes Public right-of-way.

Public right-of-way is issued by the Arizona State Land Department, contingent upon construction and opening of a road built to minimum standards and compliance to all conditions set forth in the documents of right-of-way sale. An example of conditions which may be set forth, but which may not be inclusive, are attached. The conditions set forth in the sale documents by the Arizona State Land Department for this specific transaction must be accepted by the requesting party as part of this agreement as well as the cost of the road construction. Road construction must be completed and accepted within one hundred twenty days (120) after issuance

of right-of-way by the State Land Department, except when shown to the satisfaction of the Board of Supervisors that such delay is due to factors beyond the control of the applicant. If construction and acceptance by the Board of Supervisors of Cochise County does not occur within this time period, right-of-way shall be returned to the Arizona State Land Department.

Cochise County also reserves the right to withdraw this application any time prior to issuance by the Arizona State Land Department and acceptance of the right-of-way by the Board of Supervisors, without penalty.

This agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Parties requesting submittal  
of Application

\_\_\_\_\_  
\_\_\_\_\_

Cochise County Board of  
Supervisors

\_\_\_\_\_  
\_\_\_\_\_

ATTEST

\_\_\_\_\_

*Multiple recordings to Judge's Memo* ORIG.

RESOLUTION NO. 82-13  
Policy - Public Rights of Way

WHEREAS Cochise County has many miles of roadways that it has been maintaining for several years, the true legal status of which remain undetermined or questionable;

WHEREAS many of these roadways are part of the Cochise County Functional and Maintained Roadway System;

WHEREAS A.R.S. §28-1861(B) states:

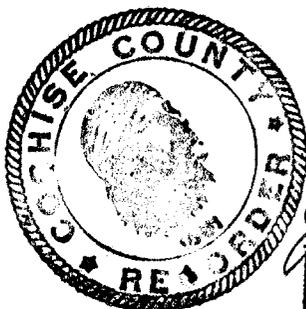
"All highways, roads or streets which have been constructed, laid out, opened, established or maintained for ten years or more by the state or any agency or legal subdivision of the state prior to January 1, 1960, and which have been used continuously by the public as thoroughfares for free travel and passage for ten years or more, regardless of any error, defect or omission in the proceeding or failure to act to establish such highways, roads or streets, or in recording of the proceedings, and all such highways, roads or streets are declared public highways."

WHEREAS A.R.S. §28-1862(A) states:

"All highways constructed, laid out, opened or established prior to August 12, 1927 as public highways by the territory or state, or by a board of supervisors or legal subdivision of the state, and which have been used continuously by the public as thoroughfares for free travel passage for two years or more, regardless of any error, defect or omission in the proceeding to establish the highways, or in recording of the proceedings, and all highways established pursuant to law, are declared public highways sixty-six feet wide, unless the width thereof is otherwise specified."

WHEREAS applicable case law indicates that neither of the above curative statutes vests title in the County to a street, but instead places a cloud on the title;

WHEREAS public roads may not be established by prescription in Arizona;



STATE OF ARIZONA  
COUNTY OF COCHISE ] SS.

WITNESS MY HAND AND OFFICIAL SEAL  
CHRISTINE RHODES, COUNTY RECORDER

*[Signature]* DEPUTY  
INDEXED 1 PHOTOSTAT MARKED [initials] DOTTED BB

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED AND RECORDED AT REQUEST OF: *Dir. of Supervisors Bishop, Ariz.*

FEE *no fee* DRAFT DATE JUN 1 '82 - 4 05 PM  
DOCKET 1594 PAGE 323- NO 10229  
326

WHEREAS the County desires to set reasonable policies which will limit its exposure to liability yet at the same time provide an ample network of roadways for use by the public;

WHEREAS the County desires to develop street policies which can be applied consistently and fairly.

NOW, BE IT THEREFORE RESOLVED that the Department of Public Works shall be subject to the following policies with respect to the rights of way in the County:

1. The County shall continue to maintain the streets and roadways it is presently maintaining as designated on the County Functional and Maintained Road System until such time as a definitive determination is made that a street is not a public roadway pursuant to the procedures outlined in this resolution.

2. The County shall continue to provide emergency repairs as needed on streets and roadways within its area of jurisdiction where it has been determined that such repairs are necessary in order to limit potential County exposure to liability.

3. Whenever an obstacle physical or otherwise to free public use of a roadway is placed in the roadway, the Department of Public Works shall contact the party creating the obstacle and ask that person to remove it, the presumption being that the roadway is public or that the public has an easement to use said roadway. If resistance is encountered, the Department of Public Works shall undertake an investigation to determine the chain of title and legal status of the roadway.

a. If the roadway meets the requirements for establishment, and a board of viewers was involved in determining the value of the property (prior to 1957 when this procedure was declared unconstitutional), the roadway shall be considered a County public highway.

b. If the roadway meets the requirement of §28-1862 (A), and no title acquisition procedures occurred, it will still be considered public highway if the property was originally owned by the federal government and was not transferred from the federal government by patent to private ownership prior to 1927.

c. If establishment procedures were followed or A.R.S. §28-1861 or 1862 is met, and public title was acquired by purchase, gift, condemnation, or otherwise, the roadway will of course be considered a County public highway.

d. In the event that the roadway is determined to be a County highway, a demand shall be made by the Department of Public Works for the trespasser to remove the obstacle from the roadway. Legal action will be taken if necessary to restore free access to the roadway. If the party insists that he or she will not remove the obstacle, and the County cannot determine that all conditions have been satisfied to perfect the status of the roadway as a public highway or road, the following steps shall be followed:

(i) The party shall be notified that the County's only alternative will be to discontinue all maintenance on the roadway and treat it as a private roadway, that person should also be advised that he or she may be subject to private legal action by his or her neighbors to open the roadway, particularly if this is the only accessway to their properties.

(ii) If there are other private portions of the roadway, the Department of Public Works should approach each abutting owner, explain the problem, and advise that person that unless the County can perfect its right to that roadway by a dedication of a fee interest or an easement, that the status of that roadway will thereafter be private, with no further maintenance possible.

(iii) If the County is unable to perfect its legal status to the roadway, it should delete the street from the County Functional and Maintained Roadway System, should sign the road as a private roadway, and refrain from any further work on said roadway until such time as its legal status has been perfected.

4. Whenever an interested party makes inquiry into the status of a roadway, an investigation shall be undertaken as provided in paragraph 3 herein. In the event the County cannot determine that all conditions have been satisfied to perfect its status as a public highway or road, the County shall follow the procedures set forth in paragraph 3 herein.

PASSED AND ADOPTED this 10<sup>th</sup> day of May  
1982.

V.L. Thompson  
V.L. Thompson, Chairman  
Cochise County Board of Supervisors

ATTEST:

JAMES D. ALTENSTADTER  
Acting Clerk

Approved as to form:

David S. Hunt  
David S. Hunt  
Deputy County Attorney

C. Bd  
Jern  
O: Diane



DEPARTMENT OF PUBLIC WORKS

DATE May 17, 1982  
TO Board of Supervisors - Agenda Item  
FROM Fred M. Hewitt, Director

*[Handwritten signature]*

SUBJECT Resolution No. 82-~~13~~ Policy regarding Public Rights-of-Way.

The changes requested by the Board at the work session on May 17, 1982 have been incorporated. A corrected copy is enclosed for your review.

Should the Board feel this resolution is now satisfactory, we would like to request it be placed on the active agenda for Approval with authorization for the Chairman to sign on behalf of the Board.

FMH/RH/cb

enc.

FILED  
1982 MAY 18 AM 11:17  
CLERK  
BOARD OF SUPERVISORS

*Modified according to Judge's Memo*      **ORIG.**

RESOLUTION NO. 82  
Policy - Public Rights of Way

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PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_  
1982.

\_\_\_\_\_  
V.L. Thompson, Chairman  
Cochise County Board of Supervisors

ATTEST:

\_\_\_\_\_  
Acting Clerk

Approved as to form:

\_\_\_\_\_  
David S. Hunt  
Deputy County Attorney

C. Bd  
Jim  
O'Diane.



DATE May 3, 1982  
TO Board of Supervisors - Agenda Item  
FROM Fred M. Hewitt, Director

*Red  
Jim H.C.*

DEPARTMENT OF PUBLIC WORKS

SUBJECT Resolution Establishing County Policy Regarding Right-of-Way Status.

Enclosed is the proposed resolution regarding the above captioned matter as requested by the Board at the work session on department policy March 22, 1982.

The resolution was developed by Mr. Klein in coordination with Mr. Hunt.

This resolution, if adopted by the Board, will provide a consistent and equitable method to deal with problems arising from right-of-way controversies.

We respectfully recommend adoption of this resolution.

FMH/RH/cb

FILED  
May 3  
1982 AM 11:53  
CLERK  
BOARD OF SUPERVISORS