

0071

**EMERY COUNTY ROAD DEPARTMENT**

**P. O. BOX 889  
CASTLE DALE, UTAH 84513  
(435) 381-5450 OR FAX (435) 381-5239**

INCOMING  
LO150018 sm

CC: WAYNE H

**FAX COVER SHEET**

DATE: 6/30/05

TO: Wayne Hedberg

AGENCY/FIRM: DOGMA

FROM: REX FULLE

PAGES TO FOLLOW: 10

COMMENTS ENCLOSED IS PROCESS DOCUMENTATION REGARDING COMMISSION ACTION TO ABANDON THE OLD ADJUDICATED (1935) PORTION OF RILDA CANYON RD IN EXCHANGE FOR CO OP CONSENT TO CHANGE 1994 RILDA ROAD ALIGNMENT TO ACCOMMODATE A BRIDGE REPLACEMENT AFFECTING CO-OP PROPERTIES FROM HWY 31 ATTACHMENT WESTWARD THROUGH CO-OP PROPERTIES IMPACTED BY NEW BRIDGE AND ALIGN TO ROAD -

UTAH CODE 27-12-89 FOR HIGHWAY DEDICATION ESTABLISHED THROUGH PUBLIC USE

REPLY REQUESTED

INFORMATION ONLY

RECEIVED  
JUN 30 2005  
DIV. OF OIL, GAS & MINING

ORDINANCE NO. 5-18-94**AN ORDINANCE VACATING AND ABANDONING  
A COUNTY ROAD RIGHT-OF-WAY**

**WHEREAS**, the existing Emery County Road #306 in Rilda Canyon does not lie along the description contained in the adjudication of 1935; and,

**WHEREAS**, Emery County is desirous of acquiring the proper description of the existing Emery County Road #306; and,

**WHEREAS**, Emery County and C.O.P. Coal Development Company (C.O.P.) have reached an agreement that C.O.P. will grant a proper easement for the existing road alignment, and Emery County will vacate and abandon the adjudicated right-of-way; and,

**WHEREAS**, the Emery County Commission has received a Consent signed by C.O.P., the owner of property adjacent to portions of a County road sought to be abandoned and vacated; and,

**WHEREAS**, the Emery County Commission considered and approved vacating and abandoning the following-described County road upon approval of including a newly-described road for inclusion into the County road system at its meeting on April 20, 1994; and,

**WHEREAS**, the Emery County Commission found that the vacating and abandoning of the road, as sought, was in the best interest of the County, and notice is not required pursuant to §27-12-102.3, Utah Code Annotated (1953), as amended;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF EMERY COUNTY COMMISSIONERS AS FOLLOWS:**

Upon consent of adjacent owner, C.O.P., the following-described County road be and the same is vacated and declared no longer to be public property for use as a County road:

Beginning at a point North 43°11' West 2854.5 feet from the section corner common to Sections 22, 23, 26 and 27, Township 16 South, Range 7 East, S.L.M.; thence South 69°22' West 190 feet; thence South 19°08' East 200 feet; thence South 42°08' East 655 feet, more or less, to the South line of the Northwest Quarter of the Southeast Quarter of Section 22, Township 16 South, Range 7 East, S.L.M.

Said vacation is made expressly subject to all existing rights-of-way and the easements

of all public utilities of any and every description now located in, on, under or over the confines of the above-described property and also subject to the rights of entry thereon for the purpose of inspecting, maintaining, repairing, replacing, removing, altering or rerouting said utilities and all of them.

This Ordinance shall take effect upon passage and posting.

PASSED AND ORDERED POSTED by unanimous vote of the Board of County Commissioners of Emery County at the regularly scheduled meeting of the Board on the 18<sup>th</sup> day of May, 1994.

**BOARD OF EMERY COUNTY COMMISSIONERS**

By   
Kent R. Petersen, Chairman

ATTEST:

  
Bruce C. Funk, Clerk

008

MAY 18 1994

(9)

ORDINANCE VACATING AND ABANDONING A COUNTY ROAD RIGHT OF WAY  
ORDINANCE 5-18-94

County Attorney, David Blackwell presented to the Commission for their consideration Ordinance 5-18-94. Wherein, said Ordinance vacates the existing Emery County road number 306 in Rilda Canyon which does not lie along the description described in the adjudication of 1935. Previously, the Commission had approved the acquisition of the Rilda Canyon County road. Wherein, said Ordinance, Emery County and the C.O.P. Coal Development Company reached an agreement in which C.O.P. will grant a property easement for the existing road alignment and Emery County will vacate and abandon the adjudicated right of way as described in this Ordinance. Also attached was a consent from the C.O.P. Coal Development Company consenting to the vacating of the described property.

Whereupon, motion was made by Commissioner Mark Justice to approve Ordinance No. 15-18-94 vacating and abandoning a County Road Right of Way as described therein. Also included in his motion was the project agreement supplement number 1-94 with the U. S. Forest Service for improvements to be made on the Rilda Canyon Road. Motion was seconded by Commission Chairman Kent Petersen and approved by all members present.

*Commission minutes  
5/18/94*

April 12 1994

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B) Rilda Canyon Road - Commission Chairman Kent Petersen discussed the Emery County Special Service District #1 together with Energy West are to rebuild the bridge on the Rilda Canyon Road. He inquired if there were any concerns in the County taking over the road to the trail head. Commissioner Mark Justice inquired as to any trade off and that costs need to be identified now and in the future.

*Commission minutes  
4/12/99*

Commission Minutes 1992 - 1995

CONSENT

C.O.P. COAL DEVELOPMENT COMPANY, a Utah corporation, as abutting property owner, hereby consents to the vacation by Emery County of the following described property, located in Emery County, State of Utah, as a public highway:

A strip of land 50.0 feet wide, 25.0 feet on each side of the following described centerline;

Beginning at a point North 43°11' West, 2854.5 feet from the Section corner common to Sections 22, 23, 26 and 27, Township 16 South, Range 7 East, S.L.M.; thence South 69°22' West, 190 feet; thence South 19°08' East, 220 feet; thence South 42°08' East, 655 feet more or less to the South line of the Northwest quarter of the Southeast quarter of Section 22, Township 16 South, Range 7 East, S.L.M.

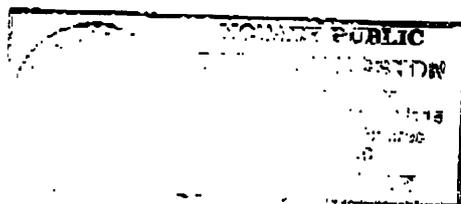
Dated this 26 day of April, 1994.

C.O.P. Coal Development Co.

By J.O. Kingston

STATE OF UTAH )  
 :ss.  
County of Salt Lake )

On the 26 day of April, 1994, personally appeared before me J. O. Kingston, the signer of the foregoing document, who being first duly sworn, did say that he is the President of C. O. P. Coal Development Company, and that the within and foregoing document was signed in behalf of said corporation by authority of a resolution of its board of directors and said J. O. Kingston duly acknowledged to me that said corporation executed the same.



J. O. Kingston  
Notary Public

5  
Commission Minutes  
May 18, 1994

(8)

REGISTRATION AGENTS AND JUDGES OF ELECTION TRAINING AND COMPENSATION

Clerk, Bruce Funk informed the Commission of the need to replace McKette Allred in Orangeville as the Registration Agent who has declined because of upcoming summer activities. Therefore, it was his recommendation that the Commission appoint Glenna Sasser of Orangeville to fill that vacancy. Also, it was his recommendation that the Commission approve the compensation to Judges of Election at the rate of \$50 per day and Registration Agents at \$30 per day as has been paid in previous years. Also, to approve light refreshments and mileage expense to the training meetings.

Whereupon, motion was made by Commissioner Mark Justice to approve Glenna Sasser as the Orangeville Registration Agent and approve compensation and training expenses for the Registration Agents and Judges of Election as presented. Motion was seconded by Commission Chairman Kent Petersen and approved by all members present.

(9)

ORDINANCE VACATING AND ABANDONING A COUNTY ROAD RIGHT OF WAY - ORDINANCE 5-18-94

County Attorney, David Blackwell presented to the Commission for their consideration Ordinance 5-18-94. Wherein, said Ordinance vacates the existing Emery County road number 306 in Rilda Canyon which does not lie along the description described in the adjudication of 1935. Previously, the Commission had approved the acquisition of the Rilda Canyon County road. Wherein, said Ordinance, Emery County and the C.O.P. Coal Development Company reached an agreement in which C.O.P. will grant a property easement for the existing road alignment and Emery County will vacate and abandon the adjudicated right of way as described in this Ordinance. Also attached was a consent from the C.O.P. Coal Development Company consenting to the vacating of the described property.

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**UTAH CODE  
ANNOTATED**

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**1953**

**VOLUME 3B  
1995 REPLACEMENT**

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**Titles 25 to 30**

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**THE MICHIE COMPANY**  
*Law Publishers*  
Charlottesville, Virginia

Routes 161 to 280, were re-  
969, ch. 69, § 32. For present  
27-12-47.1 et seq.

**D TOWNS**

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(i) the permission shall contain the condition that any instal-  
lation will be removed from the right-of-way at the request of the  
city or town; and

(ii) the city or town shall cause any installation to be removed  
at the request of the department when the department finds the  
removal necessary:

(A) to eliminate a hazard to traffic safety;

(B) for the construction and maintenance of the state  
highway; or

(C) to meet the requirements of federal regulations.

(3) If it is necessary that a utility, as defined in Section 27-12-11, be  
relocated on federal-aid highways, reimbursement shall be made for the  
relocation as provided for in Section 27-12-11.

(4) (a) The department shall construct curbs, gutters, and sidewalks on  
the state highways when it is found necessary by the department for  
the proper control of traffic, driveway entrances, or drainage.

(b) If a state highway is widened or altered and existing curbs,  
gutters, and sidewalks are removed, the department shall replace the  
curbs, gutters, and sidewalks.

(5) The department may furnish and install street lighting systems for  
the state highways, but their operation and maintenance is the responsi-  
bility of the city or town.

(6) If new storm sewer facilities are necessary in the construction and  
maintenance of the state highways, the cost of the storm sewer facilities  
shall be borne by the state and the city or town in a proportion mutually  
agreed upon between the department and the highway authorities of the  
city or town.

(7) In accordance with Title 63, Chapter 46a, Utah Administrative  
Rulemaking Act, the department may make rules governing the location  
and construction of approach roads and driveways entering the state  
highway, and the department may delegate the administration of the rules  
to the highway authorities of the city or town.

History: L. 1963, ch. 89, § 88; 1991, ch.  
137, § 21; 1994, ch. 120, § 36.

Amendment Notes. — The 1991 amend-  
ment, effective April 29, 1991, redivided Sub-  
section (1) into present Subsections (1) to (3);  
redesignated former Subsections (2) to (5) as  
present Subsections (3) to (7); substituted "de-  
partment" for "state road commission" through-  
out the section; and made changes in punctua-  
tion and phraseology.

The 1994 amendment, effective May 2, 1994,  
substituted "for highways" for "with respect to  
streets" in the introductory language; subdivi-  
ded Subsection (2); substituted "department"  
for "commission" in Subsections (6) and (7);  
added the code citation in Subsection (7); and  
made stylistic changes.

**ARTICLE 6**

**ACQUISITION OF PROPERTY FOR HIGHWAY  
PURPOSES**

**27-12-89. Public use constituting dedication.**

A highway shall be deemed to have been dedicated and abandoned to the use  
of the public when it has been continuously used as a public thoroughfare for  
a period of ten years.

27-12-89

HIGHWAYS

History: L. 1963, ch. 89, § 89.

## NOTES TO DECISIONS

## ANALYSIS

Acceptance.  
 Burden of proof.  
 Change in highway.  
 Control by landowners.  
 Estoppel.  
 Intent of landowner.  
 —Necessary.  
 —Not necessary.  
 "Public" defined.  
 Rights granted to public.  
 Rights of subsequent grantees.  
 Sufficiency of proof of dedication.  
 "Thoroughfare" and "public thoroughfare" distinguished.

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**Acceptance.**  
 When owner of land deeded it to city for public use but city never accepted it, no dedication took place and claim of purchaser from city was invalid as against subsequent purchaser from original owner of land. *William J. Lemp Brewing Co. v. P.J. Moran, Inc.*, 51 Utah 178, 169 P. 459 (1917).

**Burden of proof.**  
 Where claim is made that a highway has been dedicated to public use, there is a presumption in favor of the property owner and the burden of establishing public use for the required period of time is on those claiming it. *Leo M. Bertagnolo, Inc. v. Pine Meadow Ranches*, 639 P.2d 211 (Utah 1981).

**Change in highway.**  
 A public highway over public lands is established, although there has been no official acceptance, when it has been used for longer than ten years; if travel has remained substantially unchanged, and practical identity of road preserved, that is sufficient, although there may have been slight deviations from the common way. *Lindsay Land & Live Stock Co. v. Chornos*, 75 Utah 384, 285 P. 646 (1929).

Slight change in course of highway or of its location that does not materially change or affect the general course thereof or affect its location, nor break or change the continuity of travel or use, does not constitute abandonment or affect public nature of highway. *Sullivan v. Condas*, 76 Utah 585, 290 P. 954 (1930).

**Control by landowners.**  
 No dedication was shown under identically worded predecessor section where it appeared that an alleyway which had more or less been used by the public at will for a number of years had from time to time been closed by the abutting owners, who had at all times exercised

control over it. *Culmer v. Salt Lake City*, 27 Utah 252, 75 P. 620 (1904).

**Estoppel.**  
 Municipality may be estopped from asserting dedication by acts and conduct that have been relied on by others to their prejudice and, likewise, private individual may be estopped in the same way where he stands by and permits others to improve land claimed to have been dedicated. *Premium Oil Co. v. Cedar City*, 112 Utah 324, 167 P.2d 199 (1947).

**Intent of landowner.**

**—Necessary.**  
 In order for a private road to become a public thoroughfare there must be evidence of intent by the owner to dedicate the road to a public use and an acceptance by the public. Such intent may be inferred from declarations, acts or circumstances and use by the general public. *Gillmor v. Carter*, 15 Utah 2d 280, 391 P.2d 426 (1964) (but see cases noted under "—Not necessary" below).

For cases discussing landowner's intent to dedicate road to public use, see *Wilson v. Hull*, 7 Utah 90, 24 P. 799 (1890); *Whittaker v. Ferguson*, 16 Utah 240, 51 P. 980 (1898); *Schettler v. Lynch*, 23 Utah 305, 64 P. 955 (1901); *Culmer v. Salt Lake City*, 27 Utah 252, 75 P. 620 (1904); *Brown v. Oregon Short Line R.R.*, 36 Utah 257, 102 P. 740 (1909); *Morris v. Blunt*, 49 Utah 243, 161 P. 1127 (1916); *William J. Lemp Brewing Co. v. P.J. Moran, Inc.*, 51 Utah 178, 169 P. 459 (1917); *Barbogio v. Gibson*, 61 Utah 314, 213 P. 385 (1923).

**—Not necessary.**  
 The determination that a roadway has been continuously used by the general public for at least ten years is the sole requirement for it to become a public road; it is not necessary to prove the owner's intent to offer the road to the public. *Thurman v. Byram*, 626 P.2d 447 (Utah 1981).

To establish a dedication of a road to a public use, it is not necessary to prove landowner's intent to dedicate the road to a public use. *Leo M. Bertagnolo, Inc. v. Pine Meadow Ranches*, 639 P.2d 211 (Utah 1981).

**"Public" defined.**  
 Owners of property abutting or straddling rural road and their personal visitors were not members of public generally within this provision; burden of proving real public use of that road continuously for ten years was not met in suit by subdividers who sought to establish that the road had become a public thorough-

## HIGHWAY CODE

27-12-90

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fare. *Petersen v. Combe*, 20 Utah 2d 376, 438  
P.2d 545 (1968).

#### Rights granted to public.

City still owned fee to strip, acquired under  
Townsite Act (43 U.S.C. § 718 et seq., now  
repealed), after alleged dedication thereof as  
public street, so that only right that public  
could have acquired would be right to easement  
across strip for traveling purposes, and only  
additional right contiguous property owners  
might acquire would be right of ingress to and  
egress from their property. *Premium Oil Co. v.*  
*Cedar City*, 112 Utah 324, 187 P.2d 199 (1947).

#### Rights of subsequent grantees.

Where land is dedicated by owner as highway  
and is accepted by public as such, all subse-  
quent grantees of abutting lands are bound by  
dedication. *Schattler v. Lynch*, 23 Utah 305, 64  
P. 955 (1901).

#### Sufficiency of proof of dedication.

Highway over privately owned ground will be  
deemed dedicated or abandoned to the public  
use when the public has continuously used it as  
a thoroughfare for a period of ten years. *Morris*  
*v. Blunt*, 49 Utah 248, 161 P. 1127 (1916).

Mere use by public of private alley in common  
with owners of alley does not show a dedication  
thereof to public use, or vest any right in public  
to the way. *Thompson v. Nelson*, 2 Utah 2d 340,  
273 P.2d 720 (1954).

Though dedication of one's land to public use  
should not be lightly regarded, where a narrow,  
private dead-end street was used by neighbor-  
ing residents and the general public without  
interference for at least 25 years, and where the  
city had platted it as a public street in 1915 and  
had thereafter paved it and maintained a pub-  
lic street sign at its entrance, and where plain-

tiff who owned the fee simple interest in the  
land on which the street was situated had not  
paid any taxes on the street property for 25  
years, this combination of factors was sufficient  
to justify finding that the street had been  
dedicated to public use. *Bonnar v. Sudbury*, 18  
Utah 2d 140, 417 P.2d 646 (1966).

Clear and convincing quantum and quality of  
proof is required for the establishment of a  
public thoroughfare or taking of another's prop-  
erty. *Thomeon v. Condas*, 27 Utah 2d 129, 468  
P.2d 639 (1972).

Where the trial court found that public had  
used north-south road for 12 years and that  
during this time, the road was ten feet wide,  
and the court found that there was insufficient  
use of an east-west road by the public to make  
it a public road, these findings of fact, sup-  
ported by substantial evidence, compelled a  
holding that the north-south road was a public  
highway ten feet wide and that no public high-  
way existed on the east-west road. *Western*  
*Kane County Special Serv. Dist. No. 1 v. Jack-*  
*son Cattle Co.*, 744 P.2d 1376 (Utah 1987).

For cases finding sufficient evidence to sup-  
port finding of dedication to public use, see  
*Sullivan v. Condas*, 76 Utah 585, 290 P. 954  
(1930); *Jeremy v. Bertagnole*, 101 Utah 1, 116  
P.2d 420 (1941); *Boyer v. Clark*, 7 Utah 2d 395,  
326 P.2d 107 (1958); *Clark v. Erekson*, 9 Utah  
2d 212, 341 P.2d 424 (1959).

#### "Thoroughfare" and "public thorough- fare" distinguished.

Under identically worded predecessor sec-  
tion, a "thoroughfare" was a place or way  
through which there is passing or travel. It  
became a "public thoroughfare" when the public  
acquired a general right of passage. *Morris v.*  
*Blunt*, 49 Utah 248, 161 P. 1127 (1916).

#### COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways,  
Streets, and Bridges § 25 et seq.

C.J.S. — 39A C.J.S. Highways § 15.  
Key Numbers. — Highways — 6(1).

#### 27-12-90. Highways once established continue until aban- doned.

All public highways once established shall continue to be highways until  
abandoned or vacated by order of the highway authorities having jurisdiction  
over any such highway, or by other competent authority.

History: L. 1963, ch. 39, § 90.