

# Title 13

## Rights-of-Way Classification and Use Policies

### Chapter 1

#### Administration of Rights of Way

- 13.1.1 **Public Rights-of-Way Width:** For purposes of validation and or judicial proceedings, all rights-of-way and highways [public rights-of-way] widths under the jurisdiction of this Highway District as they exist at the time the proceedings are commenced are as follows:
- 13.1.1.1 Those Public Rights-of-Ways established by any of the following: plat, dedication, deed, easement, agreement, official road book, determination or other document or by an oral agreement supported by clear and convincing evidence that effectively conveyed, created, recognized or modified the highway or established the width, width is in accordance with the width therein set forth.
  - 13.1.1.2 Those Public Rights-of-Ways which are not located upon or surrounded by any land: owned by the United States or the State of Idaho and which have been maintained, at the expense of the Highway District or other public entity, in less than three (3) years during the previous fifteen (15) years shall have a declared width as is sufficient to accommodate:
    - 13.1.1.2.1 The existing physical road surface;
    - 13.1.1.2.2 Existing uses of the highway;
    - 13.1.1.2.3 Existing features included within the definition of highways in section 40-109(5), Idaho Code;
    - 13.1.1.2.4 Such space for existing utilities as has historically been required for ongoing maintenance, replacement and upgrade of such utilities; and
    - 13.1.1.2.5 Space reasonably required for maintenance, motorist and pedestrian safety necessary to maintain existing uses of the highway.
  - 13.1.1.3 For all other public rights-of-ways where no width is established as provided for above, such public rights-of-way, except bridges and those located within cities shall be not less than fifty (50) feet in width.

### Chapter 2

#### Classification and Use of Public Right of Way

- 13.2.1 **Public Highway Right-of-Way:** Public Right-of-Way is classified as "Public Highway Right-of-Way" when it contains a Highway which is accepted as part of the Highway District's Highway System for perpetual maintenance and "Public Highway Right-of- Way" includes the Highway and all area within the Public Right-of-Way which lies under or adjacent to the Highway.

- 13.2.1.1 Public Highway Right-of-Way is designated and included on the official map of the Highway District as a part of the "Public Highway".
- 13.2.2 Open Public Right-of-Way: Public Right-of-Way is classified as "Open Public Right-of-Way" established by order of the Board of Commissioners and is Public Right-of-Way, which lies within this Highway District and is under its jurisdiction and not a part of its Highway System and which is open to the public for vehicular travel or open with restricted use where this Highway District has no obligation to construct or maintain, but may expend funds. for the maintenance or post traffic signs for vehicular traffic.
  - 13.2.2.1 "Open Public Right-of-Way" and "Open Public Right-of-Way- Restricted Use" shall be signed by the Highway District as follows:
    - 13.2.2.1.1 "Open Public Right-of-Way": A sign 'bearing the following: "[Insert Designated Right-of-Way Name] PUBLIC RIGHT-OF-WAY - NOT MAINTAINED" with black 4" lettering on white background shall be erected at the limits of the Open Public Right-of-Way.
    - 13.2.2.1.2 "Open Public Right-of-Way - Restricted Use": A sign bearing the following: "RESTRICTED USE [e.g. LOCAL TRAFFIC ONLY] PUBLIC RIGHT-OF-WAY - NOT MAINTAINED - CONTACT CANYON HIGHWAY DISTRICT FOR INFORMATION AT 454-8135" with black 4" lettering on white background shall be erected at the limits of the Restricted Use Open Public Right-of-Way.
  - 13.2.2.2 Open Public Right-of-Way shall be designated on the official map of the Highway District as "Open Public Right-of-Way" and Open Public Right-of-Way with restricted use shall be designated as "Open Public Right-of-Way - Restricted Use".
  - 13.2.2.3 **The criteria for Open Public Right-of-Way classification are:**
    - 13.2.2.3.1 The Public Right-of-Way must have existed as of the effective date of this Resolution as a Public Right-of-Way and in such a state that it will accommodate vehicular travel upon it and is presently being used for vehicular travel; or
    - 13.2.2.3.2 The Public Right-of-Way was classified as a Closed Public Right-of-Way and is reclassified by the Board of Commissioners as an Open Public Right-of-Way, as herein this Policy provides for.
  - 13.2.2.4 **The criteria for Open Public Right-of-Way - Restricted Use classification are:**
    - 13.2.2.4.1 The Public Right-of-Way was classified as a Public Highway Right-of-Way, Open Public Right-of-Way, or Closed Public Right-of-Way and is reclassified by the Board of Commissioners as an Open Public Right-of-Way - Restricted Use.

- 13.2.2.4.2 Reclassification of Public Right-of-Way to Open Public Right-of-Way - Restricted Use shall be on the basis that the existing road or right-of-way conditions related to road condition, vertical and/or horizontal alignment, roadway section, intersection geometry, or other roadway design or safety parameters do not meet current standards and lack of right-of-way, topography, and other constraints, present hazards to unrestricted use as found in the discretion of the Board of Commissioners and the elimination of the conditions is not reasonably economical and not in the public's interest.
- 13.2.2.5 **Closed Public Right-of-Way:** Closed Public Right-of-Way includes all Public Right-of-Way which lies within this Highway District and is under its jurisdiction which is not otherwise part of the Highway District's Highway System or classified as an Open Public Right-of-Way or Public Right-of-Way-Subject to Construction.
  - 13.2.2.5.1 Closed Public Right-of-Way classified by the Board of Commissioners in this Policy shall be so designated on the official map of the Highway District as "Closed Public Right-of-Way".
- 13.2.2.6 **Public Right-of-Way Subject to Construction:** Public Right-of-Way Subject to Construction is Public Right-of-Way within which a highway is being constructed which project has been approved by the Board of Commissioners.
  - 13.2.2.6.1 Public Right-of-Way Subject to Construction is not open for public vehicular and pedestrian uses except local traffic uses by neighboring properties as needed; and is under the control of the contractor of the highway improvements.
- 13.2.2.7 **Reclassification of Public Right-of-Way:** The process and criteria for reclassification of public right-of-way are as follows:
  - 13.2.2.7.1 Application [on a form approved by the Highway District Commissioners] for reclassification of a Public Right-of-Way may be filed by an adjacent property owner or property owners and/or a resident within the Highway District whose property is affected by the Public Right-of-Way classification status and/or seeks to construct highway improvements within the Public Right-of-Way. The application for reclassification shall be filed with the Highway District Secretary together with the filing fee and any costs of a survey of the Public Right-of-Way,
  - 13.2.2.7.2 Highway District staff may initiate a process for the reclassification of a Public Right-of-Way.
  - 13.2.2.7.3 The Public Right-of-Way shall then be inspected by the Highway District Engineer and the Highway District may cause a survey of the Public Right-of-way to be conducted, which survey will be reviewed by the Highway District; and

- 13.2.2.7.4 The Applicant and/or Highway District Staff as the case may be must set forth facts to support a need for the reclassification of the Right-of-Way and or for construction of highway improvements within the Right-of-Way; and
- 13.2.2.7.5 The Highway District Engineer must then review the application and determine the circumstances of the application and whether or not the Applicant is required to present a Right-of-Way Improvement Plan as a condition of processing the application; and
- 13.2.2.7.6 In the event the Applicant is required by the District Engineer to prepare and present a Public Right-of-Way Improvement Plan, the Applicant, at the Applicant's expense, shall submit a Public Right-of-Way Improvement Plan, which addresses the needed 'improvements to existing conditions to provide for safe public use and vehicular travel affected by the reclassification, which Public Right-of-Way Improvement Plan must be approved by the Highway District Engineer.
- 13.2.2.7.7 Upon the Applicant satisfying the above requirements the District Engineer and/or Director may then recommend Reclassification to the Board of Commissioners who shall then set a hearing date,
  - 13.2.2.7.7.1 Prior to the hearing the Highway District Secretary shall provide-fourteen (14) days prior written notice to show cause why the reclassification should not be ordered to the adjacent property owners and possessors and to law enforcement agency, School District and its bus transport carrier, U. S. Postal Service, Canyon County Ambulance District and to the fire department and/or district jurisdiction.
  - 13.2.2.7.7.2 Any Reclassification Order under this section may include reasonable conditions related to the Improvement Plan and maintenance of the Public Right-of-Way to assure upon its opening that it' is then suitable for public vehicular travel uses.
- 13.2.2.7.8 Reclassification of Public Right-of-Way as Public Right-of-Way Subject to Construction may be made when an application is made to and granted by the Board of Commissioners for the Acceptance of Roadway Into Highway System for Continuous Maintenance in accordance with the Highway Standards and Development Procedures; March 2002 Edition, §211; or the Board of Commissioners has authorized a Highway Improvement Project for the Acceptance of Roadway Into Highway System for Continuous Maintenance within the Public Right-of-Way.

- 13.2.2.7.9 Reclassification of a Public Highway as Public Right-of-Way is pursued by the Board of Commissioners by resolution by declaration of intention to reclassify a public highway as a public right-of-way, where doing so is in the public interest and the Board of Commissioners shall then follow the procedures provided in Idaho Code Section 40.203 to complete this reclassification process.
- 13.2.2.8 **Public Highway Right-of-Way Uses:** Use of Public Highway Right-of-Way shall be in accordance with the currently adopted "Highway Standards and Development Procedures for the Highway Districts of Canyon County, Idaho" (H-SDP), adopted amendments thereto, and/or permits/licenses entered into by the Board of Commissioners, and the following:
- 13.2.2.8.1 Public Highway Right-of-Way within the roadway [i.e. the travel way and shoulders] is open for public vehicular and pedestrian uses which may not be restricted or impeded by encroachment or installation of any obstruction or by the installation of signs or notices that might tend to restrict or prohibit public use.
- 13.2.2.8.2 Public Highway Right-of-Way outside the roadway [i.e.: the travel way and shoulders] is not open for public vehicular uses, but pedestrian and vehicular uses may not be restricted or impeded by encroachment or installation of any obstruction or by the installation of signs or notices that might tend to restrict or prohibit public use.
- 13.2.2.8.3 The use restrictions herein set forth in sections above do not apply to regulatory, advisory, informational, and/or other highway signage of the Highway District.
- 13.2.2.9 **Open Public Right-of-Way Uses:** Open Public Right-of-Way is open for public vehicular and pedestrian uses which may not be restricted or impeded by encroachment or installation of any obstruction restricting the public use, or by the installation of signs or notices that might tend to restrict or prohibit public use and otherwise the uses provided for except:
- 13.2.2.9.1 Public Right-of-Way - Restricted Use Uses: Open Public Right-of-Way classified with Restricted Use will include those restricted uses as are established by the Board of Commissioners. Examples of allowed restricted use may include any of the following: existing permitted access, agricultural uses, emergency vehicles, law enforcement, utilities, irrigation drainage or canal access and/or such uses as authorized by the Director as is reasonably needed for public health or safety.
- 13.2.2.10 Closed Public Right-of-Way Uses: Any uses other than as provided in this section are provided for above.

13.2.2.10.1 Closed Public Right-of-Way may be occupied by subservient real property owners [in the case Highway District's Public Right-of-Way is not held in fee simple title] in a manner that is not an unreasonable interference of the Public Right-of-Way, as herein this Policy set forth; and

13.2.2.10.2 Closed Public Right-of-Way may be occupied by adjacent real property owners [in the case Highway District's Public Right-of-Way is held in fee simple title] in a manner that is not unreasonable interference of the Public Right-of-Way, as herein this Policy set forth; and

13.2.2.10.3 Closed Public Right-of-Way is not open for public vehicular and pedestrian uses and is held in reserve for future use and development as a highway upon demonstrated need for public vehicular and pedestrian uses and in accordance with Highway, District policy for the Acceptance of Highways for perpetual maintenance.

13.2.2.10.4 **Allowed Uses without a Special Permit:** The following uses are allowed in Closed Public Right-of-Way without a Special Permit, HSDP Section 212:

13.2.2.10.4.1 Landscaping uses.

13.2.2.10.4.2 Landscaping rock, drain rock or 'perma-bark, 8" or smaller in size.

13.2.2.10.4.3 Bark, wood chips, or other organic materials for ground cover.

13.2.2.10.4.4 Landscape irrigation piping not exceeding 2 inch diameter and sprinkler/spray heads for the purpose of irrigation of lawn or landscaping within the Closed Public Right-of-Way.

13.2.2.10.4.5 Landscaping berms or buffers constructed of soil or dirt that do not exceed a height of 36 inches above the natural grade of the surrounding ground.

13.2.2.10.4.6 Fencing uses.

(i) Fencing of a semi-permanent nature constructed of wood, chain link fabric, or wire with concrete post backfill not exceeding 2 cubic feet per post are allowed. Fencing or walls constructed with concrete foundation are not permitted.

(ii) Cattle guards incorporated at access points through the fencing are allowed.

13.2.2.11 **Interference/Encroachment Declared Public Nuisance:** The construction, maintenance, use, or occupancy of any of the following uses within a Public Right-of- Way by any person is interference and/or an encroachment, and the same is herein declared to be a public nuisance:

- 13.2.2.11.1 Construction of a permanent foundation or footings for any structure;
- 13.2.2.11.2 Any well;
- 13.2.2.11.3 Walls or Landscaping walls including, but not limited to, precast concrete block products, rock, cast-in-place concrete, or wood timbers or landscape ties.
- 13.2.2.11.4 Concrete [not including removable blocks or small footings for fences];
- 13.2.2.11.5 The use and/or generation and/or process and/or storage and/or disposal of, and/or release of, and/or discharge of, any Hazardous Substance;
- 13.2.2.11.6 Any use other than residential lawn and/or farming and/or ranching and/or recreational and/or feed lot;
- 13.2.2.11.7 Any residential lawn and/or farming and/or ranching and/or recreational and/or feed lot use; which includes a structure within an intended life of more than 10 years, which cannot be easily removed using considering the use of standard highway construction equipment and/or its removal will then materially affect the suitability of the Public Right-of-Way for public vehicular and right-of-way use.
- 13.2.2.11.8 Any use or occupancy of Public Right-of-Way by any person who is not the owner or possessor of adjacent real property or subservient real property is an interference and an encroachment and a trespass.
- 13.2.2.11.9 Any other use or occupancy of a Public Right-of-Way not herein this policy provided for by any person is an interference and/or an encroachment and the same is herein declared to be a public nuisance unless permitted by Special Permit in accordance with HSDP § 212.

## Chapter 3

### Width Policy for Prescriptive Rights of Way

- 13.3.1 The Policy for the Administration of the Width of Prescriptive Rights-of-Way and Rights-of-Way.
  - 13.3.1.1 **Policy Application:** This policy shall apply to all prescriptive rights-of-way and public rights-of-way located and established by recorded order of the Board of County Commissioners since 1887 and held by this Highway District.
  - 13.3.1.2 **Prescriptive Rights-of-Way Width:** All prescriptive rights-of-way established since 1887 and held by this District, excepting for bridges, are fifty (50) feet in width, unless there is clear and convincing objective evidence that the prescriptive right-of-way is at a greater width.