

RESOLUTION 8 - 2018

COUNTY RIGHTS-OF-WAYS ESTABLISHED OVER PUBLIC LANDS UNDER R.S. 2477 AS PUBLIC RIGHTS-OF-WAYS AND PUBLIC HIGHWAYS.

WHEREAS, Montezuma County was established in 1889 and developed as a ranching, farming, logging and mining area, with extensive prospecting and exploration for, and production of, valuable minerals, forest products and agricultural products; and

WHEREAS, much of the mountainous area of Montezuma County became laced with wagon roads and horse trails and footpaths to facilitate such activities. Many of these roads, trails and paths were in general use by the public before and at the time of the establishment of Montezuma County, and many have been further developed into mining roads, logging roads and access roads, for the removal of minerals, forest products, and other uses; and

WHEREAS, these roads, trails and paths have continued in use by the general public for hunting, fishing, hiking, horseback riding, four wheeling, recreation, and other uses; and

WHEREAS, the terms "highways," "ways," "roads," or "rights-of-way" in this resolution have the same meaning, and include, but are not limited to, pedestrian trails, hiking trails, foot paths, horse paths, livestock trails, wagon roads, jeep trails, recreational roads, logging roads, homestead roads, mine-to-market roads, alleys, tunnels, bridges, dirt or gravel roads, paved roads, trails, streets, highways and all other ways and their attendant appurtenances and access for maintenance, reconstruction, and construction; and

WHEREAS, the United States Congress, for the purpose of promoting the settlement of the western United States by establishment of highways, granted a right-of-way for the construction of highways over public lands, not reserved for public uses, in Section 8 of the Mining Act of 1866, reenacted and recodified as Revised Statutes 2477 (R.S. 2477), 43 U.S.C. §932 (repealed Oct. 21, 1976); and

WHEREAS, the adoption of the statute constituted dedication of public highways by the United States government and, prior and subsequent to such statute, countless public ways were constructed by public use, and acceptance was accomplished by such public use, including a network of roads, trails and paths now located within and without of the National Forest and Bureau of Land Management lands in Montezuma County, Colorado; and

WHEREAS, the rights-of-way identified in this resolution were established before the repeal of R.S. 2477 by the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§1701-1784, on October 21, 1976, and are thus preserved in the same Act; and

WHEREAS, the above-mentioned right to enter upon and construct rights-of-way across federal lands unreserved for public uses, which was accepted by grants whenever and wherever rights-of-way were established and were available for public use, remain available to this day as public highways for public use; and

WHEREAS, there now exists in Montezuma County an extensive network of roads, mining roads, logging roads, recreational roads, trails, horse trails, hiking trails, foot paths, and other public ways, all of which provide public access to, and throughout, the National Forest and Bureau of Land Management lands representing a substantial portion of land within Montezuma County; and

WHEREAS, the Board of County Commissioners of Montezuma County, Colorado, considers the existing system of roads, trails and paths as vital to the public welfare and the flow of commerce within this County, similar in some respect as the federal and state highway systems are vital to the welfare and commerce of the State of Colorado; and

WHEREAS, public access to routes of travel is essential to Montezuma County's transportation and public access systems and to the economic and social well-being, and the custom and culture, of the communities and citizens of Montezuma County; and

WHEREAS, identifying, asserting, and protecting these rights-of-way is necessary to protect Montezuma County's resources and to promote public health and safety, including but not limited to, search and rescue, fire protection, health and law enforcement, and other emergency services; and

WHEREAS, it is the policy of Montezuma County to assert that rights-of-ways established pursuant to the grant under R.S. 2477 be retained in perpetuity for the use and benefit of the public unless abandoned and vacated in accordance with applicable law; and

WHEREAS, this resolution recognizes rights-of-ways established over public lands under R.S. 2477, which were identified when the Board of County Commissioners directed Montezuma County staff to undertake an inventory of certain R.S. 2477 highway rights-of-way; and

WHEREAS, The Board of County Commissioners of Montezuma County has considered and evaluated the comments received and has made changes, when determined to be appropriate; and

WHEREAS, the Montezuma County Board of County Commissioners hereby finds, determines and declares that adoption of this resolution is necessary for the preservation and protection of the public health, safety and welfare of Montezuma County, Colorado.

NOW THEREFORE, BE IT RESOLVED by the Montezuma County Board of Commissioners that:

1. All public roads and public rights-of-way located within Montezuma County, Colorado that have not been lawfully vacated by the Board of County Commissioners, and which are listed in this resolution, are hereby asserted as public highways. "Public roads" and "public highways" as used herein include, but are not limited to: The highways, ways, roads and rights-of-way established under R.S. 2477 that are listed in this resolution.
2. The assertion of these R.S. 2477 rights-of-way and highways are currently the highest priority; however, Montezuma County reserves the right to assert highway rights-of-way in addition to this existing assertion, should the Board of County Commissioners deem it to be appropriate.
3. Montezuma County intends to work cooperatively with private landowners to provide acceptable public access while respecting private property interests.
4. Nothing in this resolution shall limit the authority of the Montezuma County Board of County Commissioners to hereafter modify, vacate, abandon, or expand the R.S. 2477 assertions contained herein.
5. Nothing in this resolution shall be interpreted or argued to imply that this listing is an exhaustive list of all R.S. 2477 rights-of-way and highways in Montezuma County or any portion thereof, nor that the listed rights-of-way and highways are not public rights-of-way or public highways under one or more other statutes or bases.
6. This resolution is in addition to, and is not intended to duplicate, any and all prior resolutions adopted by the Montezuma County Board of County Commissioners on this subject matter.

BE IT FURTHER RESOLVED that the Montezuma County Board of Commissioners hereby asserts, the following rights-of-way and highways to be public highways and public rights-of-way under and pursuant to R.S. 2477 (43 U.S.C. 932) and 43 U.S.C. 1701, further described in attached Exhibits 1, 2 and 3:


1. Morrison Trail/ Bear Creek Hill, FS 610
2. Bear Creek Trail, FS 607
3. Sharks Tooth Trail / Bear Creek, FS 620
4. Indian Trail Ridge/ Highline Loop/ Colorado Trail, 520
5. Pasture Gulch
6. Ryman Creek, FS 735
7. Priest Gulch Trail, FS 645
8. Calico South, FS 211
9. Burnett Creek Trail, FS 641
 - A. Burnett Creek Road, FSR 422
 - B. Burnett Creek Road A, FSR 422.A

- C. Burnett Creek Road A-1, FSR 422.A1
10. Eagle Peak Trail, FS 629
 11. Horse Creek Trail, FS 626
 12. Horse Gulch Road, FSR 423
 13. Calico Basin Trail, FS 187
 14. Calico North Trail, FS 208
 15. Papoose Creek Trail
 16. Johnny Bull Trail, FS 438
 17. Dolores Norwood Road, Montezuma County Road 31 / USFS Road 526/ Dolores County Road 31/ San Miguel County Road S31 S/ FDR 610/ San Miguel County Road 44Z S

BE IT RESOLVED that this resolution is hereby adopted effective immediately.

Adopted this 18th day of June, 2018

BOARD OF COUNTY COMMISSIONERS,
MONTEZUMA COUNTY, COLORADO



County Clerk and Recorder
Montezuma County, Colorado



