

CHAPTER 14

Public Property

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ARTICLE 1

Seismic and Heavy Equipment

Resolution No. 82-34

July 14, 1982

WHEREAS, all roads in Otero County are under the ownership of Otero County and the undersigned Commissioners have the responsibility for the maintenance thereof; and

WHEREAS, the maintenance of all roadways within Otero County is administered by funds available through budgeted road and bridge resolutions; and

WHEREAS, the Board of County Commissioners are concerned about damage to roads and bridges belonging to Otero County resulting from the use of heavy equipment by operators of seismic equipment and other heavy equipment; and

WHEREAS, by virtue of the authority vested in them by Section 42-4-409, C.R.S. 1973, the Board of County Commissioners have been vested with the right to issue or withhold permits and to impose conditions and regulations regarding the use of roads under County Subdivisions;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That, as of June 14, 1982, a use fee of three hundred dollars (\$300.00) per mile on any County road right-of-way will be charged for a permit of any type of seismic operations performed within the right-of-way of any County-maintained road.

2. That, prior to any activity being conducted on Otero County-maintained roads or road rights-of-way, the owner of such equipment shall apply for a permit to the Land Use Administrator/County Engineer of Otero County and shall designate the road, length of travel, expected date of commencement of operations and such other information as may be reasonably required.

3. That if, in the opinion of the Land Use Administrator/County Engineer, after inspection of the equipment and the proposed place of operation, he shall find that there is the likelihood of extreme damage to the County roads and bridges, he is authorized to refuse to issue the requested permit. Upon such refusal, the Land Use Administrator/County Engineer shall immediately notify the Board of County Commissioners of his action, and the Board of County Commissioners shall grant a hearing with regard to such permit request as soon as possible to the applicant for the permit, and if the Board of County Commissioners finds that the Land Use Administrator/County Engineer has abused his discretion in refusing such permit, the Board of County Commissioners shall then order the permit issued upon the payment of the proper fee. If the Board of County Commissioners shall sustain the action of the Land Use Administrator/County Engineer after a hearing, the decision of the Board of County Commissioners shall be final.

4. That, in the event any person or company undertakes such seismic activity within the County upon the County roads and bridges without having first obtained a permit as herein required, the Sheriff of Otero County, upon direction by the Land Use Administrator/County Engineer or the Board of County Commissioners, shall immediately stop such activity until the owner of the seismic equipment complies with this Article.

BE IT FURTHER RESOLVED that all monies collected in this manner shall be deposited to the appropriate road and bridge fund for the repair and maintenance of said roads and bridges.

ARTICLE 2

Underground Utilities

Resolution No. 85-30

May 13, 1985

WHEREAS, the County of Otero has adopted a system of underground utility permitting in regards to the installation of underground utilities; i.e., telephone, electrical, gas, etc., across or through County road right-of-way; and

WHEREAS, it has become evident that a written policy detailing a procedure for installation and inspection of the projects being developed by the permittees must be formally adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF OTERO COUNTY COMMISSIONERS THAT:

1. All utility lines shall be buried a minimum of thirty (30) inches below ground.
2. Notification of commencement of the project must be given at least seven (7) days prior to the project start-up. Said notification shall be made to the County Engineer's office.
3. Prior to the closure of the bore/cut, a final inspection must be obtained from the County Engineer's office.

ARTICLE 3

Official Advertising Devices

Resolution 4/26/93

April 26, 1993

WHEREAS, the Colorado Outdoor Advertising Act, Section 31-1-401, et seq., C.R.S. 1973, and the regulations duly enacted thereunder, provide for the erection of official advertising devices by a governmental agency for a public purpose authorized by law.

WHEREAS, it is the intention of the Board of County Commissioners to authorize the erection by Otero County of certain official advertising devices which will comply with Colorado's "Outdoor Advertising Act" and applicable regulations are more fully set forth in Exhibit A attached hereto.

WHEREAS, the erection of the above-mentioned official advertising devices will achieve a public purpose by enhancing the economic well-being of Otero County by attracting tourists and assisting local tourist-related businesses.

WHEREAS, the erection of the above-mentioned official advertising devices will further achieve a public purpose by assisting the traveling public in locating attractions, activities and services which are available in the Otero County area.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Otero County is hereby authorized to erect certain "official advertising devices" as more fully described in Exhibit "A" attached hereto for the public purposes declared above in compliance with the provisions of Colorado's "Outdoor Advertising Act," Section 43-1-401, et seq., C.R.S. 1973, and the regulations duly enacted thereunder.

ARTICLE 4

Road Access and Excavations

Resolution No. 2008-006

September 2, 2008

A RESOLUTION CONCERNING OTERO COUNTY'S POLICIES REGARDING ROAD ACCESS; EXCAVATION ON COUNTY-OWNED PROPERTY OR PROPERTY MAINTAINED BY OTERO COUNTY; CULVERTS AND IRRIGATION STRUCTURES; ROAD RIGHT-OF-WAY DRAINAGE DITCHES; OBSTRUCTION OF COUNTY ROADS, DITCHES OR OTHER COUNTY-USED FACILITIES; CATTLE GUARDS; ACCEPTANCE OF NEW ROADS AND MAINTENANCE OF ROADS; RIGHT-OF-WAY USE BY ELECTRIC LIGHT POWER, GAS OR PIPELINE COMPANIES; NON-COUNTY-OWNED PROPERTY AND PROJECTS; AND VIOLATION THEREOF

WHEREAS, Section 43-2-135, C.R.S., provides that a County shall exercise full responsibility for and control over any such streets within its jurisdiction and Section 43-2-147, C.R.S., provides that the Department of Transportation and local governments are authorized to regulate vehicular access to or from any public highway under their respective jurisdiction from or to property adjoining a public highway in order to protect the public health, safety and welfare, to maintain smooth traffic flow, to maintain highway right-of-way drainage, and to protect the functional level of public highways; and

WHEREAS, Section 43-2-135(1)(d), C.R.S., provides that the County has the right to grant the privilege to open the surface of any street, but all damages occasioned thereby shall promptly be repaired either by the County itself or at its direction; and

WHEREAS, Section 43-5-305, C.R.S., provides for the construction and maintenance of culverts or other irrigation structures constructed across, in or upon any County road; and

WHEREAS, Section 43-2-211, C.R.S., provides that the Board of County Commissioners has authority to establish cattle guards on County roads; and

WHEREAS, Section 43-2-111, C.R.S., provides that the County systems, both primary and secondary roads, shall be assigned to the County for construction and maintenance; and

WHEREAS, Section 38-5-101, et seq., C.R.S., provides authorization to an electric light power, gas or pipeline company to construct, maintain and operate lines of electric light, wire or power or pipeline along, across, upon and under any public highway; and

WHEREAS, the Board of Commissioners of Otero County, Colorado, desires to establish policies for road access; excavation on County-owned property or property maintained by Otero County; culverts and irrigation structures; use of highway right-of-way drainage ditches; obstruction of County roads, ditches or other County-used facilities; cattle guards; acceptance of new roads and maintenance of roads; right-of-way use by electric light power, gas or pipeline companies in any right-of-way, roadway, street, alley or other places or property owned or maintained by Otero County or dedicated to public use; non-County-owned property or projects, and violation thereof;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Otero County, Colorado, as follows:

Section 1: Road Access

(a) Policy Established. Direct access from a public road may be limited if it is determined by the County that the additional access will create a safety problem or creates a problem for the County or the public. Additional accesses may be approved by the Director of Public Works or the Board of County Commissioners. This policy shall apply to all new and existing accesses within the unincorporated areas of the County of Otero. Properties within municipalities or other counties which access County roads are subject to this policy.

(b) Purpose.

(1) Land use and development in recent years have impacted County roads. This policy recognizes that the efficiency and safety of County roads depends, to a large extent, upon minimizing roadside interference and its detrimental effect upon the movement of traffic. This policy provides minimum requirements for the design, construction and maintenance of accesses.

(2) This policy is established for the safe and efficient movement of traffic while allowing reasonable access to properties.

(c) Road access application, design and construction standards.

(1) An Otero County Road Access Information Sheet, furnished by Otero County, shall be completed and signed by the owner of the property to be accessed from a County road, or his or her duly authorized agent as evidenced by written documentation. This includes all new roads, driveways or other means of providing ingress or egress to lands adjoining County rights-of-way.

(2) All road access design must be approved by the Public Works Director and shall be constructed in accordance with the approved design.

Section 2: Excavation in County Rights-of-Way.

(a) Permit required. It is unlawful and impermissible for any person to dig, excavate or cut in any right-of-way, roadway, street, alley or other place on property owned or maintained by Otero County or dedicated to public use without having first secured a permit from the designated official of Otero County. Provided, however, that this shall not apply to the United States Forest Service roads which are maintained by Otero County when such excavation is at the request of or upon the demand of the United States Forest Service.

(b) Application for permit. Application for a permit to dig, excavate or cut shall be made upon a form furnished by Otero County. The application form may be amended from time to time by Otero County at its sole discretion. Such application shall recite, specifically, and illustrate by sketch or plan, the exact location and the approximate depth, length, width, extent, nature and purpose of the excavation that is proposed, the purpose for which the privilege is requested, the duration of the time required for the work and other pertinent data requested by Otero County and the issuing official. Any work allowed by the permit must be completed within thirty (30) days of issuance, and the applicant must give the County twenty-four (24) hours' notice before beginning work.

(c) Maintenance of restored cuts (warranty period). The responsibility for maintenance of the restored cuts shall rest with the applicant for one (1) year after the cut has been filled (warranty period). Any cut which indicates settling at any time during or at the end of the one-year period shall be restored to the level of the surrounding area.

(d) Notification of repairs to roadway cuts and cost of repairs.

(1) The applicant will notify the County Road and Bridge Department before making any repairs to the roadways.

(2) If the County determines that repairs are needed during the warranty period, the owner of the improvements will be notified by Otero County of the repairs that need to be made and, if repairs are not made within fifteen (15) days of said notification, Otero County shall make the repairs and bill the owner for all incurred expenses, including but not limited to labor, equipment and materials used. If the billing is not paid within thirty (30) days of issuance, interest shall accrue on said bill at the rate of eight percent (8%) per annum.

(e) Open trench.

(1) Open trenching is not allowed across paved county roads for pipes two (2) inches or less in diameter.

(2) No open trench will be permitted in a traveled roadway after dark, unless otherwise specified under special provisions.

(f) Fee. The applicant shall pay a fee in the amount of thirty-five dollars (\$35.00) unless the applicant is a private individual or a small nonprofit utility company, who are exempt from paying the fee but will still need a permit. A permit shall not cover more than one (1) excavation project.

(g) Hold harmless and indemnification. The applicant agrees by requesting a permit to indemnify and hold harmless Otero County from any and all liability or claims as concerns the permitted activity.

Section 3: Road Access Culverts and Other Culverts Along County Rights-of-Way

(a) Installation. The County will install new culverts and the property owner shall pay for all the cost of the materials whenever the installation of a culvert is made necessary:

- (1) By the creation of a new access from private property to a County road;
- (2) By any alteration of natural flow of water across private property by the owner or occupier; or
- (3) For any other reason created or allowed by any owner of private property.

The culvert shall be installed according to Otero County specifications.

(b) Road access and/or culvert maintenance.

(1) After installation, such owner or occupier shall be responsible for the cost of materials needed for maintenance, repair or replacement of the culvert.

(2) Otero County will perform the work needed to complete the maintenance, repair or replacement and shall bill the owner for all incurred expenses. The owner or occupier shall be required to keep the culvert free of weeds, trash and debris at his/her expense. Otero County shall have the right of ingress and egress for the purpose of maintenance, repair or replacement of the culvert. If billing is not paid within thirty (30) days of issuance, interest shall accrue on said bill at the rate of eight percent (8%) per annum.

(c) Retrofitting a road access and/or culvert. The property owner may be required to modify his road access culvert if the Otero County Commissioners determine that it is necessary in order to protect the safety

of the traveling public, improve drainage conditions or provide for public roadway improvements. The County will make the improvements in its right-of-way, and the property owner will pay the cost of materials used.

(d) Removing or relocating culverts.

(1) A property owner may request a culvert to be removed and the County may do so at its sole discretion. If the County agrees to remove the culvert, the County will do so at no cost.

(2) A property owner may request a road access culvert to be relocated, and the County will relocate said culvert and the property owner will be charged for the labor and materials incurred by the County in relocating the same. If billing is not paid within thirty (30) days of issuance, interest shall accrue on said bill at the rate of eight percent (8%) per annum.

Section 4: Culverts and Irrigation Structures That Cross County Roadways

(a) Installation.

(1) The County will install the culverts and the property owner shall pay for all the cost of the materials. Section 43-5-305(1), C.R.S., provides that any person or corporation owning or constructing any ditch, race, drain or flume in, upon or across any highway shall keep the highway open for safe and convenient travel by constructing culverts, bridges or similar structures over such ditch, race, drain or flume. When any ditch is constructed across, in or upon any highway, the person owning or constructing such ditch shall construct a culvert, bridge or similar structure long enough to conduct the water from shoulder to shoulder from such road or highway or of such greater length as the Board of County Commissioners having jurisdiction thereover may require, plans for said culvert, bridge or similar structure having been approved in advance by the Board of County Commissioners.

(2) The installation of or replacement of pipes or culverts shall be built to the following minimum standards or better:

(a.) Galvanized corrugated steel pipe.

(b.) Spiral galvanized pipe.

(c.) HDPE – N-12.

(d.) PVC – SDR-26 – 100 PSI.

(e.) Pipes of lesser strength shall be encased in one (1) of the above-listed pipes.

(3) The County Public Works Director shall approve the type of pipe for each request based on the specific circumstances. HDPE and PVC pipe can only be used if the County determines that the exposure of the pipe to fire is a low risk.

(4) The culvert shall extend three (3) feet beyond the driving surface of the road when possible.

(5) The culverts should be installed on slope of one-eighth ($\frac{1}{8}$) inch fall per foot.

(6) On a gravel road:

(a.) The culvert shall have a minimum of twelve (12) inches of compacted Class Six road base materials, as specified in the State Department of Highways Standard Specifications for Road and Bridge Construction, 1999 Edition. Culverts and pipes shall be water packed to avoid damage to the pipe.

(b.) The road base shall be compacted with water and a plate compactor. The first lift must be a six-inch lift to prevent damaging the pipe. All additional lifts must be six (6) inches or less. Culverts and pipes shall be water packed to avoid damage to the pipe.

(7) On a paved road:

(a.) The top two and one-half (2½) inches must be compacted hot mix.

(b.) The trench shall be a minimum of twelve (12) inches of compacted Class Six or Class Seven of road base material, as specified in the State Department of Highways Standard Specifications for Road and Bridge Construction, 1999 Edition.

(c.) The trench shall be compacted with water and a plate compactor. The first lift must be a six-inch lift to prevent damaging the pipe. All additional lifts must be six (6) inches or less.

(b) Maintenance. Section 43-5-305(1), C.R.S., further provides that the Board of County Commissioners shall maintain the culvert, bridge or similar structure after construction, in accordance with the provisions of Section 37-84-106, C.R.S. Section 37-84-106, C.R.S., provides: "All bridges constructed over any ditch, race, drain or flume, crossing any public highway, street or alley after construction, shall be maintained by and at the expense of the county or municipality, in which the ditch, race, drain or flume may be situated." Otero County reserves the right to pursue reimbursement of maintenance expenses caused by the negligent or intentional act of any person or entity.

Section 5: Use of County Roads and Right-of-Way Drainage Ditches for Irrigation Runoff and Other Uses

(a) Duty of users. Persons in Otero County who are currently using ditches along Otero County rights-of-way for irrigation runoff and other uses, whether the consent to such use was originally given expressly or impliedly, may continue such uses if the following conditions are met:

(1) Owner and user are responsible for preventing irrigation water or other uses from causing silt, other sediment, trash or weeds to accumulate in the ditches so that proper drainage is not inhibited.

(2) Owner and user are responsible for preventing the blockage of the ditches and must not alter the direction or rate of flow in any manner in the ditches.

(3) Owner and user are responsible for preventing the irrigation water and other uses from causing damage to Otero County rights-of-way or other properties.

(4) The water shall be controlled to prevent erosion and sedimentation of the ditches and/or damage to County roads or other properties.

Section 5: Obstruction of County Roads, Ditches or Other County-Used Facilities.

Persons in Otero County who obstruct the use of any County road, ditch or other County-used facility are in violation of this Article and are responsible for any damages that may be caused from said obstruction, and may be subject to penalties as described in Section 11 of this Resolution.

Section 6: Cattle Guards

(a) Definition. *Person* includes any individual, business, corporation or entity of any nature. A person who is not a landowner must demonstrate authority to act on behalf of the landowner prior to entering into any

agreement or receiving any services from Otero County. A person is sometimes hereinafter referred to as the *beneficiary*.

(b) New installations. Any person can request that a cattle guard be installed in a County road, and the County Commissioners may approve the installation of the cattle guard, provided that the following conditions are met:

(1) A written request is received.

(2) The cost of materials for a cattle guard is paid by the person making the request.

(3) Any cattle guard which is installed upon a County road must comply with any and all standards required by the Department of Public Works.

(4) The applicant shows good reason for the cattle guard.

(c) Cleaning.

(1) The County will be responsible to periodically clean the space below the grate of the cattle guard located across any County road. The word *clean* includes the removal of all sand, dirt, silt and other solid debris which renders the cattle guard ineffective.

(2) Cleaning of the cattle guard must be completed within one (1) working day. If such cleaning is likely to extend into the next working day, the County shall replace the grate of the cattle guard one-half (½) hour before sunset.

(3) The road on which the cattle guard is located shall be closed during the cleaning, and signs are to be placed where necessary in order to warn oncoming motorists of the road closure.

(d) Maintenance and repair.

(1) It is the responsibility of the beneficiary of a cattle guard located in the County road to notify the County of the need for repair to the cattle guard.

(2) It is the responsibility of the County to maintain and repair the cattle guards located in the County roads.

(e) Replacement.

(1) In the event a cattle guard located upon a County road is deemed by Otero County to be beyond repair, the County shall notify the beneficiary to determine if said beneficiary desires to have a cattle guard continue at this location, and, if not, the County may decide to remove it rather than replace it.

(2) Any person may request the replacement of the cattle guard, but if Otero County determines that replacement is not necessary, the entire cost of said replacement shall be paid for by the person making the request. Said replacement shall be done in accordance with Otero County's specifications for cattle guard installations.

(f) Vested right. No portion of these policies shall be considered to have vested any person with the right to a particular size of cattle guard. Otero County may require replacement of an existing cattle guard upon a determination that road improvement or widening is necessary or that public safety dictates the change be made.

Section 8: Acceptance of New Roads Policy.

It is the policy of Otero County not to allow or accept any new roads; however, Otero County Commissioners may accept roads for maintenance under the following conditions:

- (1) All roads shall comply with the construction standards as specified by the County Commissioners;
- (2) Acceptance of roads by Otero County requires approval by resolution of the Board of County Commissioners before acceptance is effective.

Section 9: Right-of-Way Use by Electric Light Power, Gas or Pipeline Companies.

(a) Authorization. The use of road right-of-way by electric light power, gas or pipeline companies is governed by Section 38-5-101, C.R.S., which states:

"Any domestic or foreign electric light power, gas or pipeline company authorized to do business under the laws of this state or any city or town owning electric power producing or distribution facilities shall have the right to construct, maintain and operate lines of electric light, wire or pipeline along, across, upon and under any public highway in this state, subject to the provisions of this article. Such lines of electric light, wire or power or pipeline shall be so constructed and maintained as not to obstruct or hinder the usual travel on such highway."

(b) Construction. Any company desiring to exercise its right to construct, maintain or operate lines of electric light, wire, power or pipeline along, across, upon and under any County road shall apply to the County for a permit and shall provide appropriate evidence that such construction, maintenance and operation will not obstruct or hinder the usual travel on the County road. Said company will also comply with all other applicable provisions of law as concerns the project.

(c) Other uses. Any other use of County roadways or rights-of-way by users other than electric light power, gas or pipeline companies as provided in Section 38-5-101, C.R.S., shall be only as approved and authorized by the Otero County Commissioners.

Section 10. Non-County-Owned Property/Non-County Projects.

(a) Board Approval. All requests to have culverts cleaned or materials hauled, or to perform any other work on property that is not in a County right-of-way or on County property, or concerning projects that are not the County's responsibility, must be presented to the Board of County Commissioners for its review and approval. The Board shall:

- (1) Determine if there is a reason why a contractor cannot do the work.
- (2) Determine if the request will place the County equipment or the County employee in a dangerous situation.
- (3) Determine if the request will keep the County employees from performing their regularly scheduled work on a timely basis.

(b) If the Board approves the work, the Board shall determine the fees to be charged based on its findings.

Section 11: Violations.

Enforcement. Without limiting the availability and use of any other legal remedies, the provisions of this Resolution may be enforced by means of a legal or equitable action brought at the direction of the Board of County Commissioners for damages, injunctive relief, nuisance, or seeking such other relief as may be appropriate. This may include all costs, expenses, attorneys' fees or other fees incurred by Otero County in enforcing this Resolution.

Section 12: General Provisions.

(a) Water rights. No portion of this policy is intended to authorize any person to alter the flow of water in a manner contrary to the laws of the State of Colorado regarding water rights or drainage. If the Board of County Commissioners of Otero County, Colorado, determines the users are violating the laws of the State of Colorado, the Board may consider the revocation of its prior consent, whether express or implied.

(b) Severability. If any individual provision of this Resolution shall be found to be unenforceable or void by a Court of competent jurisdiction, the remainder of this Resolution shall continue to be enforceable according to its terms.