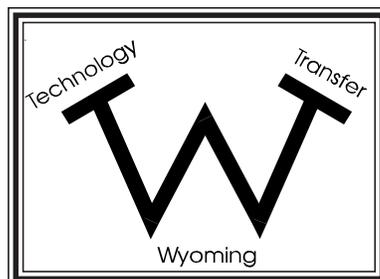




# **LEGAL ESTABLISHMENT OF COUNTY ROADS IN WYOMING**

**Final Report  
Volume 1 of 2  
Wyoming Technology Transfer Center**



Local Technical Assistance Program

**Revised June 2006**

## **ACKNOWLEDGEMENT**

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## **DISCLAIMER**

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## **Abstract**

This report details the results of a project aimed at determining how to legally establish a county road in Wyoming. This report covers the laws on this issue from territory days until the present. It consists of a survey, case law, statutory law, federal law, direction and a final desk reference. The survey was conducted in Wyoming and given to all county road officials, county commissioners, county attorneys and other important entities. This survey showed that there is an issue of roads in Wyoming not being legally established and that not all counties have been establishing these roads correctly. The survey also showed that this issue is complex and different issues face each county.

Based on the survey results, the case law and statutes in Wyoming were analyzed and compiled into a desk reference form to enable someone to access this information in one source and quickly. This desk reference covers the laws from territory days until the present. This report and desk reference address how to currently legally establish a road; how to determine if an old road was legally established; and how to “fix” a road that was not legally established.

This report was also put together to provide a more thorough investigation into these laws and to be used as a more detailed form of the desk reference. Addressed in this report is the background of the problem, the survey results, the Wyoming statutes involved, the case law involved, the federal law involved, a definitions section, a citation section and a comprehensive appendix including full text versions of all statutes and case law referred to in this report and in the desk reference. There are two volumes of this report. Volume II contains the appendices.

## **1.1 Background and Problem**

When asked if a rural road is legally established, it has been estimated that a Wyoming county road and bridge supervisor can answer the question about 30% of the time. Answering this question requires that two issues be addressed: First, when and how was this road established? Second, what were the legal requirements for establishing a county road at the time and were these procedures followed? These questions are legal questions that take quite a lot of time to investigate and answer. This is why the funding for this project was sought.

For as long as rural roads have been maintained in Wyoming, roads have been added to county road networks. For a state with twenty-three counties, over 97,000 square miles and less than 500,000 inhabitants, rural roads take on a problem very unique to this state. Over the years, as rural roads have been established, it may have been done following the exact letter of the law, or it may have been done by a simple handshake between a landowner and a county road and bridge supervisor. There are a number of steps that may take place when road construction and maintenance begins. A road may be part of a platted subdivision; it may be a road that the county maintained for any number of reasons; it may be a two-track road used by the public; or it may be surveyed and dedicated as a county road by the county commissioners. There are many other procedures that may have been followed; some of them constitute a legally binding road establishment and some of them don't.

There are many bodies of law that affect the procedures for legally establishing a rural road in Wyoming – state statutes, state case law, federal law, and common legal definitions. A county road and bridge supervisor or engineer does not often have the legal training or time to wade through all of the legal rules and laws to end at a proper explanation or procedure.

This report and desk reference address how to currently legally establish a road; how to determine if an old road was legally established; and how to “fix” a road that was not legally established.

This project started with conversations with county officials to hone in on the specific problems and issues from one county to another. The most striking similarity among counties is that there is no similarity at all. Every county is struggling with its own issue, its own problems and very different fact scenarios. The first task of this project was to conduct a statewide survey. This survey was used to pinpoint what issues needed to be addressed and what the problem really was.

## **1.2 Survey**

**Purpose of Survey:** To obtain information from county officials on: (1) current procedures for establishing a county road, (2) past procedures for establishing a county road (1900-2005), (3) concerns with current and/or past procedures, (4) questions about current procedures, (5) current issues with specific roadways, (6) legislative actions that would help address problems with current procedures, (7) what assistance the Wyoming Technology Transfer Center can provide, (8) any special issues in particular counties (i.e. Native American land, Federal Park Service land, etc.) and (9) any other important issues regarding the legal establishment of rural roads in Wyoming.

**Survey Procedures:** The survey was distributed to all county officials, including county attorneys, in Wyoming. There are twenty-three counties: Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, and Weston. County engineers were asked to fill-out the survey and return it to the Wyoming Local Technical Assistance Program. The survey was also distributed to various federal agencies and the tribal communities.

**Survey:**

2005 SURVEY  
Legal Establishment of Rural Roads in Wyoming  
Wyoming Technology Transfer Center

**Purpose:** To assess the problems, issues and needs in Wyoming counties regarding the legal establishment of rural roads.

**Instructions:** Please answer as many of the questions as you can. The more information we have, the better we can help. Either fill in the bubble or answer the short questions.

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1. Name \_\_\_\_\_
2. Professional Title \_\_\_\_\_
3. County \_\_\_\_\_
4. Does your county have issues relating to the legal establishment of rural roads?
  - Yes
  - No (*If answer to this question is no please go to question 13; skip questions 5-12*)
5. What year did it become evident that this was an issue in your county? \_\_\_\_\_
6. From what party(s) did you receive complaints or concerns about the legal establishment of rural roads in your county? (*please mark ALL that apply*)
  - Private Landowners
  - County Commissioners
  - Title Insurance Companies
  - Developers
  - Private Citizens
  - Other(s) (*please list*) \_\_\_\_\_
7. When you first found out about this issue, about how many roads in your county were not correctly recorded as county roads? \_\_\_\_\_ About what percentage of the roads in your county were not correctly recorded as county roads? \_\_\_\_\_
8. What people or entities have been involved in remedying this issue in your county? (*please mark ALL that apply*)
  - County Engineer
  - County Board of Commissioners
  - County Surveyor
  - County Attorney
  - Private Citizens
  - Other(s) (*please list*) \_\_\_\_\_
9. Since you first started working on this problem, about how many roads have been corrected and are now listed as legal county roads? \_\_\_\_\_
10. About how long (from first contact to finalizing a recorded county road) does the process of legally establishing a county road take? \_\_\_\_\_
11. About how many more roads in your county are still at dispute and are not legally recorded as county roads? \_\_\_\_\_ About what percentage of roads in your county are still at dispute and are not legally recorded as county roads? \_\_\_\_\_
12. *If there are still roads at dispute in your county, who is working on legally establishing them as county roads? (please mark ALL that apply)*
  - County Engineer
  - County Board of Commissioners



No

19. *If you do consult someone else about this issue, whom do you consult? (please mark ALL that apply)*

- County Attorney
- County Engineer
- Court Clerk
- County Board of Commissioners
- County Assessor
- County Road and Bridge Supervisor
- Other(s) *(please list)* \_\_\_\_\_

20. What information about this issue do you need? \_\_\_\_\_

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21. Would a summary of the law (including statutes and case law) regarding this issue help you or your office?

- Yes
- No

22. What other services or assistance would help you or your office with this issue? \_\_\_\_\_

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23. Would you like to see the law in this area changed?

- Yes
- No
- I don't know

24. If so, how would you like to see it changed? \_\_\_\_\_

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25. If you have any instructional manuals, pamphlets, information sheets, etc., regarding this issue, please attach a copy to this survey.

26. Do you think this project will help you or your office better deal with this problem?

- Yes
- No

27. Comments \_\_\_\_\_

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\_\_\_\_\_

Thank-you so much for taking the time to share this information with us. If you have any questions or concerns regarding this survey or this issue, please contact Dr. Khaled Ksaibati or Stacey Moss at the Wyoming Technology Transfer Center, University of Wyoming, 1-800-231-2815.

Please return this survey in the enclosed self-addressed, self-stamped envelope.

### 1.3 Survey Results

**Number of Surveys Distributed and Returned:** sent out 110, received 29 back

1. Name – Cannot Quantify

2. Professional Title (2 did not respond)

Road and Bridge Supervisors	7,	24%
County Attorneys	4,	14%
County Commissioners	3,	10%
County Planners	2,	7%
County Foremen	3,	10%
Public Works	2,	7%
County Engineers	5,	17%
County Surveyors	1,	3%

3. County (3 did not respond)

Albany	1,	3%
Big Horn	1,	3%
Campbell	2,	7%
Carbon	0	
Converse	1,	3%
Crook	1,	3%
Fremont	1,	3%
Goshen	0	
Hot Springs	2,	7%
Johnson	2,	7%
Laramie	2,	7%
Lincoln	1,	3%
Natrona	2,	7%
Niobrara	1,	3%
Park	1,	3%
Platte	0	
Sheridan	2,	7%
Sublette	0	
Sweetwater	1,	3%
Teton	3,	10%
Uinta	1,	3%
Washakie	1,	3%
Weston	0	

4. Does your county have issues relating to the legal establishment of rural roads? (2 did not respond)

Yes	17,	59%
No	10,	34%

5. What year did it become evident that this was an issue in your county? (13 did not respond)

Before 1900	1,	3%
1900-1950	1,	3%
1951-1970	0	
1971-1980	1,	3%
1981-1990	3,	10%
1991-2000	6,	21%
2001-present	3,	10%

6. From what party(s) did you receive complaints or concerns about the legal establishment of rural roads in your county? (12 did not respond)

Private Landowners	16,	55%
County Commissioners	13,	45%
Title Insurance Companies	9,	31%
Developers	10,	34%
Private Citizens	17,	59%
Others	9,	31%

7. When you first found out about this issue, about how many roads in your county were not correctly recorded as county roads? (21 did not respond, most answered unknown)

1-5	3,	10%
6-10	2,	7%
11-15	1,	3%
16+	2,	7%

8. What people or entities have been involved in remedying this issue in your county? (13 did not respond)

County Engineer	7,	24%
County Commissioner	15,	52%
Surveyor	11,	38%
County Attorney	12,	41%
Private Citizens	9,	31%
Others	7,	24%

9. Since you first started working on this problem, about how many roads have been corrected and are now listed as legal county roads? (15 did not respond)

0	3,	10%
1-5	5,	17%
6-10	2,	7%
11-15	3,	10%
16+	1,	3%

10. About how long (from first contact to finalizing a recorded county road) does the process of legally establishing a county road take? (16 did not respond)

Up to one month	0	
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One month to three months	2,	7%
Three months to six months	5,	17%
Six months to one year	3,	10%
More than one year	9,	31%

11. About how many roads in your county are still at dispute and are not legally recorded as county roads? (21 did not respond)

0	1,	3%
1-5	4,	14%
6-10	1,	3%
11-15	0	
16+	3,	10%

12. If there are still roads at dispute in your county, who is working on legally establishing them as county roads? (13 did not respond)

County Engineer	6,	21%
County Commissioner	10,	34%
County Surveyor	6,	21%
County Attorney	10,	34%
Road and Bridge Supervisor	8,	28%
Assessor	1,	3%
Private Citizens	3,	10%
Others	5,	17%

13. What procedures, if any, do you now use to legally establish a road as a county road? – Cannot quantify

14. Do you, personally, (or your office) have a copy or have access to the relevant Wyoming Statutes regarding this issue? (2 did not respond)

Yes	25,	86%
No	2,	7%

15. Do you, personally, (or your office) have a copy or have access to the relevant court cases that discuss this issue? (2 did not respond)

Yes	16,	55%
No	11,	38%

16. If you do have access to the relevant court cases that discuss this issue, do you understand the decisions that the judges have come to in those cases? (10 did not respond)

Yes	14,	48%
No	5,	17%

17. When someone asks you whether a road is a county road or how to determine whether it is a county road, what do you tell him or her? – Cannot quantify

18. When someone asks you whether a road is a county road or how to determine whether it is a county road, do you consult anyone else about the issue? (4 did not respond)

Yes	14,	48%
No	11,	38%

19. If you do consult someone else about these issues, who do you consult? (7 did not respond)

County Attorney	12,	41%
County Engineer	4,	14%
County Clerk	7,	24%
County Commissioner	8,	28%
Assessor	4,	14%
Road and Bridge Supervisor	10,	34%
Others	6,	21%

20. What information about this issue do you need? – Cannot quantify

21. Would a summary of the law (including statutes and case law) regarding this issue help you or your office? (5 did not respond)

Yes	22,	76%
No	2,	7%

22. What other services or assistance would help you or your office with this issue? – Cannot quantify

23. Would you like to see the law in this area changed? (3 did not respond)

Yes	8,	28%
No	9,	31%
I don't know	9,	31%

24. If so, how would you like to see it changed? – Cannot quantify

25. Attachments

# of respondents that attached information from their offices on this issue - 7

26. Do you think this project will help you or your office better deal with this problem? (12 did not respond)

Yes	13,	45%
No	4,	14%

27. Comments – Cannot quantify

## **2.1 Introduction to Findings and Guidance**

The following sections will outline the laws and rules relating to rural/county roads in Wyoming. Section 2.2, the current statutes in Wyoming are outlined. This outline touches on all the statutes in Wyoming that relate to county roads. (This compilation is only the list of these statutes. For a full text version of these statutes, in either print or CD, please contact the Wyoming Technology Transfer Center.)

Section 2.3 is the compilation of the state statutes by year. This is organized from the first year there were statutes on highways until the present, with each year's changes. There were only changes when the legislature reviewed these statutes and made adjustments, so this was not every year. There were changes made in 1886, 1887, 1895, 1910, 1913, 1937, 1953, 1959, 1965, 1969, 1983, 1985, 1987, 1991, 1994 and 2004.

Section 2.4 is the case law in Wyoming as it relates to county roads and highways. This section outlines the rules of law from the major decisions by the Wyoming Supreme Court. It is by no means exhaustive and only highlights the major decisions that will almost necessarily affect every county in Wyoming.

Section 2.5 is the summary of the federal law. The federal law is a large and vast area of law, even pertaining to roads. This section is also not meant as an exhaustive representation of every federal law that may affect every road in Wyoming. Unfortunately, the federal law complicates this issue and goes beyond this project. Each federal agency (e.g. US Forest Service, US Bureau of Land Management, US Fish and Wildlife Service, etc.) may also have its own procedures and that agency will have to be contacted when dealing with roads that are also on federal lands.

Section 2.6 is a section with definitions. All major words and phrases that might need explanation are included here. In section 2.7, a short explanation of legal citation and how to get the full versions of statutes and cases that are cited in this report is included.

In section 2.8, the outline done separately as a desk reference is also reproduced in this report. This is the final product in a short and usable form for offices. Section 2.9, is a section on frequently asked questions. These questions were taken from presentations on the draft version of this report and desk reference. This section is extremely helpful to answer your questions in a very short and direct way.

The last section, number 2.10, is the appendix, which includes all the statutes and case law that is cited in this report and in the desk reference outline.

## **2.2 Wyoming Statutes Relating to County Highways:<sup>1</sup>**

(These statutes were compiled into a separate booklet. For a copy or extra copies of this booklet in paper format or on a CD, please contact the Wyoming Technology Transfer Center.)

### Title 1 – Code of Civil Procedure

#### Chapter 26 – Eminent Domain

1-26-801: Authority of state, counties and municipal corporations to acquire by condemnation proceedings; uranium mill tailings

1-26-811: Crossing public highways; privileges and duties

1-26-813: Right-of-way along public ways granted; permission necessary for new lines

### Title 11- Agriculture, Livestock and Other Animals

#### Chapter 28 – Fences and Cattleguards

11-28-105: Board of County Commissioners to authorize lawful fences upon right-of-way

### Title 18 – Counties

#### Chapter 2 – Corporate Powers and Duties

18-2-101: General Powers

#### Chapter 3 – County Officers

18-3-102: County officers required to execute bonds; amount; sureties; penalty

18-3-103: Offices and records to be kept within county; exceptions; records open to public inspection; removal for purposes of copying; penalty

18-3-504: Powers and duties generally (County Commissioners)

18-3-701: Qualifications; appointment; duty as supervisor of roads (County Surveyors)

18-3-702: Duty to make county surveys and keep plats

18-3-705: Compensation of surveyor; appointment and compensation of road supervisor in case surveyor does not act

#### Chapter 4 – Finance

18-4-401: Power of county commissioners

### Title 24 – Highways

#### Chapter 1 – General Provisions

24-1-101: Public highways defined and established; creation by adverse possession

24-1-102: Location, survey and construction

24-1-103: State transportation commission of Wyoming to acquire right-of-way; when right-of-way becomes state property

24-1-104: Management and control of county roads

24-1-205: Width restrictions

24-1-106: Closing or restricting use; when necessary

24-1-107: Same; who may close; notice to controlling agency required

24-1-108: Same; public notice

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<sup>1</sup> Compilation of Wyoming State Statutes Relating to County Highways, prepared by Wyoming Association of County Engineers & Road Superintendents, i-viii, (1992) (updated by Stacey Obrecht to 2004 statutes). Title 24, Chapter 3, Article 1, updated through 2005 can be found in the Appendices.

- 24-1-109: Same; failure to observe signs and markers
- 24-1-110: Speed or acceleration contest or exhibition on highways
- 24-1-111: County road districts
- 24-1-113: Owner of unnatural canal to construct and maintain bridge at road crossing; subsequent assumption and maintenance by county
- 24-1-114: Bridges between counties
- 24-1-116: Restrictions upon damming streams, generally
- 24-1-117: Same; effect of failure to comply with section 24-1-116
- 24-1-119: State highway fund created; income and expenditure
- 24-1-121: Highways subject to injury from cattle; designation; entry of order; notice to be posted
- 24-1-122: Same; designation of substitute highway
- 24-1-123: Same; drover's liability
- 24-1-124: Livestock crossings; generally
- 24-1-125: Same; construction; length and width
- 24-1-126: Same; signs required
- 24-1-132: Contracts for county bridge work; bids; exception

#### Chapter 2 – State Department of Transportation

- 24-2-110: Cooperation with counties in construction of county roads; allocation of costs; state-county road construction account established
- 24-2-112: Contracts and agreements with the United States government

#### Chapter 3 – Establishment, Vacation or Alteration of County Highways

- 24-3-101: Resolution by County Commissioners; petition of county electors; alteration authority specified
- 24-3-102: Requiring deposit by petitioners
- 24-3-103: Viewer; appointment, qualifications and duties generally
- 24-3-104: Same; Oath; Scope of Investigation
- 24-3-105: Same; Factors to be considered
- 24-3-106: Same; Report
- 24-3-107: Same; Compensation
- 24-3-108: Roads established by consent of Landowners
- 24-3-109: Survey of proposed location for new road; recordation required
- 24-3-110: Notice of location of road to be published or posted; notice by mail to property owners
- 24-3-111: Objections and claims for damages; when filed
- 24-3-112: Same; when barred
- 24-3-113: Same; continuance of hearing upon filing
- 24-3-114: Appraisers; number; appointment; qualifications; duties generally; report
- 24-2-115: Same; notification of appointment required; contents
- 24-3-116: Same; specific duties enumerated; compensation
- 24-3-117: Neglect of duty by appraiser or viewer
- 24-3-118: Hearing before county commissioners; determination and payment of damages; entry on land; abandonment prohibited; records; surveys
- 24-3-119: Appeals from decisions of County Commissioners; notice; bond required
- 24-3-120: Same; duties of county clerk
- 24-3-121: Same; recovery of damages; court costs

- 24-3-122: Condemned land tax free during use by state
- 24-3-123: Effect of location of new road on route of previous road
- 24-3-124: Removal of fences on right-of-way
- 24-3-125: Streets in unincorporated towns or villages declared public roads; working
- 24-3-126: Abandonment of portion of highway upon reconstruction or relocation of existing highway; relinquishment to county or city in lieu of abandonment
- 24-3-127: Cooperative agreements with Federal agencies to construct, maintain and use roads within county
- 24-3-201: Purpose of procedure
- 24-3-202: Definitions
- 24-3-203: Board may identify county roads through specified procedure; resolution; terms; limited to not more than 1 per area
- 24-3-204: Notice of identification to be published
- 24-3-205: Objections and claims for damages; when filed; when barred; procedure for considering
- 24-3-206: Effect of identification

#### Chapter 5 – Industrial Road Program

- 24-5-101: Program in addition to any existing road program
- 24-5-102: Board of County Commissioners to incite procedure for industrial road
- 24-5-103: Three viewers to examine industrial road proposal; appointment of viewers
- 24-5-104: Viewers to be sworn; scope of inquiry
- 24-5-105: Viewers to consider certain standards
- 24-5-106: Viewers to report to County Commissioners
- 24-5-107: Compensation of viewers
- 24-5-108: Department of Transportation to survey, plat and record proposed road
- 24-5-109: Notice of proposed location of road; form of notice; publication; posting; registered mail
- 24-5-110: Fixing date for filing objections or claims for damages
- 24-5-111: Failure to file objections or claims for damages deemed waiver
- 24-5-112: Hearing continued until matter disposed of when objections filed
- 24-5-113: Board to appoint appraisers to fix amount of damages; report
- 24-5-114: Notification to appraisers of appointment; contents
- 24-5-115: Duties of appraisers; report to county commissioners; compensation
- 24-5-116: Road established; awards paid; certificate of legal description of property to be filed
- 24-5-117: Construction under supervision of director of department of transportation; division of construction costs
- 24-5-118: Industrial road programs account
- 24-5-119: Counties to match state funds; maximum amount of county expenditures; exception; acquisition of right-of-way
- 24-5-120: Industrial road to be designated as county road
- 24-5-121: Priority of road projects
- 24-5-122: Counties may associate on road project

#### Chapter 6 – Access Facilities

- 24-6-101: Purpose
- 24-6-102: Access facility defined

- 24-6-103: Highway authorities to plan access facilities; scope and limitations of authorities
- 24-6-104: Powers of highway authorities generally
- 24-6-105: Design and regulation of access to highway
- 24-6-106: Acquisition of public or private property
- 24-6-107: Agreements respecting financing and planning
- 24-6-108: Property rights of abutting residents
- 24-6-109: Local service roads or streets
- 24-6-110: Prohibited acts
- 24-6-111: Service stations not to be constructed or located within right-of-way

## Title 31 – Motor Vehicles

### Chapter 5 – Regulation of Traffic on Highways

- 31-5-109: General powers of local authorities
- 31-5-110: Limitations upon powers of local authorities; exceptions as to municipal authorities
- 31-5-303: Alterations of maximum speed limits by local authorities
- 31-5-305: Special speed limit at bridges and other elevated structures
- 31-5-401: Duty of local authorities to place and maintain (traffic control devices)
- 31-5-501: Authority to place signs prohibiting, regulating or restricting parking; handicapped parking; obedience to signs required; free parking areas
- 31-5-502: Penalty for violation of section 31-5-501
- 31-5-503: Erection and maintenance of traffic-control devices to designate through highways
- 31-5-504: Specific places where prohibited
- 31-5-505: Roadways outside of business or residence districts
- 31-5-508: Removal of illegally stopped vehicles
- 31-5-512: Parking alongside curbs or on edge of roadways; angle parking; power of highway department to place devices restricting parking
- 31-5-801: Operation on highways (snowmobiles)

### Chapter 13 – Abandoned Vehicles

- 31-13-104: Abandonment on highway or property; removal; presumption of abandonment; title to vehicle; notice of intent to impound

### Chapter 18 – Size and Weight Limits

- 31-18-801: Definitions
- 31-18-802: General Requirements

### **2.3 Statute Summary by Year**

Even the first recorded and printed laws in Wyoming contained provisions regarding the legal establishment of county roads.<sup>2</sup> The Territory of Wyoming was formed in 1868 and the State of Wyoming was admitted into the union in 1890.<sup>3</sup> The first session laws for the Territory of Wyoming, 1869, contains a lengthy chapter on county roads.<sup>4</sup> This chapter is entitled “Roads and Highways,” and covers most issues that arise when legally establishing a road. Since 1869, these laws have undergone many changes and revisions. They have also been re-numbered, but the years where there were substantive changes to the laws are: 1886, 1887, 1895, 1910, 1913, 1937, 1953, 1959, 1965, 1969, 1983, 1985, 1987, 1991, 1994 and 2005.

#### *Territory of Wyoming, 1869*

The 1869 county road laws are contained in chapter twenty-six, and this chapter consists of twenty-four sections.<sup>5</sup> Section one contains the core of legally establishing a county road in 1869.<sup>6</sup> This section lays out three situations that can result in the establishment of a county road.<sup>7</sup> First, “by an act of legislative assembly.”<sup>8</sup> Second, “by the board of county commissioners,” and finally, if the road is or has been “used and traveled by the public.”<sup>9</sup> All three of these situations are ones that create a county road if they are presently satisfied or if they

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<sup>2</sup> Roads and Highways, ch. 26, 1869 Wyo. Sess. Laws 330.

<sup>3</sup> Wyoming Firsts and Chronology, *available at* <http://www.rootsweb.com/~wygenweb/first.htm>.

<sup>4</sup> Roads and Highways, ch. 26, 1869 Wyo. Sess. Laws 330.

<sup>5</sup> *Id.*

<sup>6</sup> Roads and Highways, ch. 26, §1, 1869 Wyo. Sess. Laws 330, 330.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

are satisfied in the future.<sup>10</sup> The acts of the board of county commissioners is mostly what is addressed in the next sections, but it is worthwhile to note that from the statutes, public use in 1869 was alone sufficient to create a county road.<sup>11</sup>

Section two governs the procedure for petitions to the board of county commissioners to change or create a county road.<sup>12</sup> Section three imposes the duty on the board of county commissioners to “post notices in three conspicuous places along the line of said road” or proposed road.<sup>13</sup> Section four imposes another duty on the board of county commissioners – that they must view the road or the location of the proposed road.<sup>14</sup> Section four also directs that a road would not be changed unless the change is “necessary to straighten or locate the same upon better ground, or by a shorter or nearer route;” and, the road cannot be changed if the change will cause the road to “not connect directly with the continuation of such road in any adjoining county or counties.”<sup>15</sup> Section five contains the duties of the petitioner and more duties of the board of county commissioners.<sup>16</sup> Section six, seven, eight and nine talk about viewers, their duties and job.<sup>17</sup> Section ten states that it is the board of county commissioner’s job to take the information, including the information from the viewers, and make a decision about the road.<sup>18</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Roads and Highways, ch. 26, §2, 1869 Wyo. Sess. Laws 330, 330.

<sup>13</sup> Roads and Highways, ch. 26, §3, 1869 Wyo. Sess. Laws 330, 330-31.

<sup>14</sup> Roads and Highways, ch. 26, §4, 1869 Wyo. Sess. Laws 330, 331.

<sup>15</sup> *Id.*

<sup>16</sup> Roads and Highways, ch. 26, §5, 1869 Wyo. Sess. Laws 330, 331-32.

<sup>17</sup> Roads and Highways, ch. 26, §6-9, 1869 Wyo. Sess. Laws 330, 332-33.

<sup>18</sup> Roads and Highways, ch. 26, §10, 1869 Wyo. Sess. Laws 330, 333.

Section eleven orders the county to pay damages to any landowner that will incur damages in excess of the benefits of changing or creating a county road; and, section twelve states that after these damages are paid to the landowner, the road will become a county road.<sup>19</sup>

The remainder of the sections deal with the width of county roads, fords near county roads, obstructions, bridges, penalties, ditches and fines.<sup>20</sup> The one section that might be useful to determining where the county road ends is section fifteen, dealing with fords.<sup>21</sup> This section lays out what parts of a ford and stream are considered part of the county road.<sup>22</sup> It states, if a county road crosses water and that water is fordable, “the said ford and the banks of the stream adjacent thereto, and the roadway or track usually traveled leading to and from such highway to and from such ford, shall be deemed and taken to be a part, portion and continuation of such public road and highway.”<sup>23</sup>

*Territory of Wyoming, 1886*

In 1886, the road and highway laws were contained in Chapter 99, and consisted of forty-one sections.<sup>24</sup> Section one emphasizes that all county roads are “under the supervision of the board of county commissioners.”<sup>25</sup> And, no road may be established, altered or vacated without authority from the county commissioners.<sup>26</sup> If someone wanted to petition for a county road to

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<sup>19</sup> Roads and Highways, ch. 26, §11-12, 1869 Wyo. Sess. Laws 330, 333-34.

<sup>20</sup> Roads and Highways, ch. 26, §13-24, 1869 Wyo. Sess. Laws 330, 334-37.

<sup>21</sup> Roads and Highways, ch. 26, §15, 1869 Wyo. Sess. Laws 330, 334.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Roads and Highways, ch. 99, 1886 Wyo. Sess. Laws 375, 375.

<sup>25</sup> Roads and Highways, ch. 99, § 1, 1886 Wyo. Sess. Laws 375, 375.

<sup>26</sup> *Id.*

be laid, altered or relocated, the procedures for this are contained in section two, including they must petition the county commissioners, the petition must be signed by twelve or more “householders” that live where the road is or is to be located, and petition must explicitly state certain location indicators.<sup>27</sup> Section three states that notice of the petition must be given to all concerned persons, and sections four, five and six set out the job of viewers, their duties, and the duties of the county commissioners.<sup>28</sup>

Complaints are addressed in section seven, payment of damages in section eight and appeals to district court in section nine.<sup>29</sup> Generally, the width of county roads had to be between sixty feet and one hundred feet, although there are some exceptions set out in section ten.<sup>30</sup> Section eleven sets out the procedures for landowners to petition to have a county road changed, section twelve discusses viewers neglecting their duties, and section thirteen, fourteen and fifteen address petitions for private roads.<sup>31</sup> Section sixteen commands the commissioners to divide the counties in to road districts, and section seventeen and eighteen discuss the appointment of a road supervisor.<sup>32</sup>

Road taxes are set out in section nineteen and section twenty and twenty-one discuss the duties of every county citizen to perform at least one day of road labor on the public roads.<sup>33</sup> Section twenty-two directs the road supervisor to maintain the roads and be sure they are in good

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<sup>27</sup> Roads and Highways, ch. 99, § 2, 1886 Wyo. Sess. Laws 375, 376.

<sup>28</sup> Roads and Highways, ch. 99, § 3-6, 1886 Wyo. Sess. Laws 375, 375-78.

<sup>29</sup> Roads and Highways, ch. 99, § 7-9, 1886 Wyo. Sess. Laws 375, 378.

<sup>30</sup> Roads and Highways, ch. 99, § 10, 1886 Wyo. Sess. Laws 375, 379.

<sup>31</sup> Roads and Highways, ch. 99, § 11-15, 1886 Wyo. Sess. Laws 375, 379-81.

<sup>32</sup> Roads and Highways, ch. 99, § 16-18, 1886 Wyo. Sess. Laws 375, 381.

<sup>33</sup> Roads and Highways, ch. 99, § 19-20, 1886 Wyo. Sess. Laws 375, 381-82.

condition; and, if they aren't to spend money from the general road fund to maintain the roads.<sup>34</sup> The rest of the sections are pertaining to obstructions, bridges and other laws that are not directly related to the establishment and maintenance of these roads.<sup>35</sup>

*Territory of Wyoming, 1887*

Roads and Highways is Title 44, Chapter 1 in 1887, and consists of forty-one sections, 3859 through 3899.<sup>36</sup> Sections 3859 through 3897 are exact replicas of sections one through thirty-nine of Chapter 99 of the Sessions Laws from 1886, as discussed above.<sup>37</sup> Section 3898 provides an exception for Albany County to build roads that are outside of their county lines.<sup>38</sup> The last section of Title 44 explains that any money needed for the road and bridge title are to be taken from the county's road and bridge fund.<sup>39</sup>

*State of Wyoming, 1895*

In 1895, the county road laws were addressed in Chapter 69, Highways and Bridges.<sup>40</sup> This Chapter contains sixty-seven sections.<sup>41</sup> Section one states that all roads shall be called public highways, and section two states that the county commissioners shall supervise all county roads.<sup>42</sup> Section three states all county roads be between sixty and one hundred feet in width.<sup>43</sup>

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<sup>34</sup> Roads and Highways, ch. 99, § 22, 1886 Wyo. Sess. Laws 375, 382-83.

<sup>35</sup> Roads and Highways, ch. 99, § 22-44, 1886 Wyo. Sess. Laws 375, 383-87.

<sup>36</sup> Rev. Stat. of Wyo., tit. 44, § 3859-3899 (1887).

<sup>37</sup> Rev. Stat. of Wyo., tit. 44, § 3859-3897 (1887).

<sup>38</sup> Rev. Stat. of Wyo., tit. 44, § 3898 (1887).

<sup>39</sup> Rev. Stat. of Wyo., tit. 44, § 3899 (1887).

<sup>40</sup> Highways and Bridges, ch. 69, § 1-67, 1895 Wyo. Sess. Laws 126, 126-44.

<sup>41</sup> *Id.*

<sup>42</sup> Highways and Bridges, ch. 69, § 1-2, 1895 Wyo. Sess. Laws 126, 126.

<sup>43</sup> Highways and Bridges, ch. 69, § 3, 1895 Wyo. Sess. Laws 126, 126.

The procedures for petitioning the county commissioners are contained in section four and require at least ten signatures and set forth the form in which the petition is to be filed.<sup>44</sup>

Sections five through eighteen address the other concerns associated with the petition, including viewers, deposits, considerations, surveys, damages, notice, hearings and appraisers.<sup>45</sup>

If a new road is established on an old route that is already an established road, the old road is not vacated unless specifically ordered to be vacated by the commissioners, pursuant to section twenty.<sup>46</sup> Section twenty-one deals with the removal of fences and section twenty-two deals with streets in villages.<sup>47</sup> Roads could also be established by consent, without the viewers or other proceedings, if: all landowners provided written consent and the commissioners approve the locations, etc.<sup>48</sup>

Sections twenty-four through twenty-six talks about appeals to the district court from decisions of the county commissioners.<sup>49</sup> Section twenty-eight through thirty discusses the establishment of private roads.<sup>50</sup> Section thirty-two changes the requirement of road districts from mandatory to discretionary.<sup>51</sup> County and District Road Supervisors are addressed in sections thirty-three through thirty-seven, and section thirty-eight through forty talks about

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<sup>44</sup> Highways and Bridges, ch. 69, § 4, 1895 Wyo. Sess. Laws 126, 126-27.

<sup>45</sup> Highways and Bridges, ch. 69, § 5-18, 1895 Wyo. Sess. Laws 126, 127-30.

<sup>46</sup> Highways and Bridges, ch. 69, § 20, 1895 Wyo. Sess. Laws 126, 131.

<sup>47</sup> Highways and Bridges, ch. 69, § 21-22, 1895 Wyo. Sess. Laws 126, 131.

<sup>48</sup> Highways and Bridges, ch. 69, § 23, 1895 Wyo. Sess. Laws 126, 131.

<sup>49</sup> Highways and Bridges, ch. 69, § 24-26, 1895 Wyo. Sess. Laws 126, 132.

<sup>50</sup> Highways and Bridges, ch. 69, § 28-30, 1895 Wyo. Sess. Laws 126, 133-34.

<sup>51</sup> Highways and Bridges, ch. 69, § 32, 1895 Wyo. Sess. Laws 126, 134.

applicable road taxes.<sup>52</sup> The previous laws relating to roads and highways were repealed by the laws of 1895, through section sixty-four and section sixty-six.<sup>53</sup>

*State of Wyoming, 1913*

Chapter 73, Sections one and two of the Session Laws of Wyoming 1913 made two changes to the county road laws.<sup>54</sup> First, the section addressing the petition for opening, closing or altering a road was kept the same, but added the following: “With said petition shall be filed a list containing the names and also the known postoffice address of each person owning or having an interest in any land over which the proposed establishment, vacation or alteration of a public road is to be made.”<sup>55</sup>

Second, there were two changes made to the section entitled “Notice of Location of Road to be Published.”<sup>56</sup> One is that the notice can be in any official newspaper in that county, not just weekly newspapers, and second, it requires the county commissioners to send by mail a copy of the notice to “all persons owning lands or claiming any interest in any lands over or across which said road is proposed to be located or altered.”<sup>57</sup>

*State of Wyoming, 1937*

In 1937, the legislature overhauled the specific provisions addressing the establishment, alteration or vacation of county roads.<sup>58</sup> This Chapter, number 139, was entitled “Highways –

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<sup>52</sup> Highways and Bridges, ch. 69, § 33-40, 1895 Wyo. Sess. Laws 126, 134-36.

<sup>53</sup> Highways and Bridges, ch. 69, § 64 & 66, 1895 Wyo. Sess. Laws 126, 143.

<sup>54</sup> Relating to Public Roads, ch. 73, §1-2, 1913 Wyo. Sess. Laws 68, 68.

<sup>55</sup> Relating to Public Roads, ch. 73, §1, 1913 Wyo. Sess. Laws 68, 68.

<sup>56</sup> Relating to Public Roads, ch. 73, §2, 1913 Wyo. Sess. Laws 68, 68.

<sup>57</sup> *Id.*

<sup>58</sup> Highways – Establishment, Alteration or Vacation, ch. 139, § 1-5, 1937 Wyo. Sess. Laws 288. 288-90.

Establishment, Alteration or Vacation,” and consisted of five sections.<sup>59</sup> Section one states that all roads which are established as county or state roads before January 1<sup>st</sup>, 1924, are considered highways, and directs the county to make plans for any additional roads needed.<sup>60</sup> Section two states that the county surveyor along with the county commissioners shall take the county highways and county plans and survey, construct and maintain the roads.<sup>61</sup> Section three sets out the duties of the county commissioners and section four sets out the petition for opening, closing or altering roads.<sup>62</sup>

*State of Wyoming, 1953*

Chapter 181, titled “Highways,” contains five sections of changes.<sup>63</sup> Section one authorizes and requires the county commissioners to obtain right-of-ways for their county roads/highways.<sup>64</sup> It also requires the counties to obtain right-of-ways for State highways previously built that run through their counties.<sup>65</sup> Section two addresses the width of the roads and states that it is still between sixty and one hundred feet, but there are exceptions, and this revision offers a procedure for petitioning for land to expand the width of a road.<sup>66</sup>

*State of Wyoming, 1959*

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<sup>59</sup> *Id.*

<sup>60</sup> Highways – Establishment, Alteration or Vacation, ch. 139, § 1, 1937 Wyo. Sess. Laws 288. 288.

<sup>61</sup> Highways – Establishment, Alteration or Vacation, ch. 139, § 2, 1937 Wyo. Sess. Laws 288. 289.

<sup>62</sup> Highways – Establishment, Alteration or Vacation, ch. 139, § 3-4, 1937 Wyo. Sess. Laws 288. 289-90.

<sup>63</sup> Highways, ch. 181, § 1-5, 1953 Wyo. Sess. Laws 232, 232-34.

<sup>64</sup> Highways, ch. 181, § 1, 1953 Wyo. Sess. Laws 232, 232.

<sup>65</sup> *Id.*

<sup>66</sup> Highways, ch. 181, § 2, 1953 Wyo. Sess. Laws 232, 232-33.

The changes in 1959 deal with state highways, no county highways, but nonetheless is important for county roads, because the provision reads that if the state abandons or relinquishes part of a state highway to relocate the highway, that abandoned highway, after “entry of the resolution of the abandonment or relinquishment of any portion or portions of an existing state highway in the minute recorded of the commission, all title and interest, except as herein provided, to the highway right-of-way shall pass to and vest in the present adjacent landowner, or landowners according to the portion contributed by each adjacent landowner or his predecessors in interest.”<sup>67</sup>

*State of Wyoming, 1965*

The 1965 revisions change the above law regarding the right-of-way passing to the landowner(s), to that portion of the state highway passing to the county, if: the county requests it, it is needed or wanted by the county, and the county assumes all repair and maintenance of said road.<sup>68</sup> If the county does receive the abandoned state highway, it is given by quit-claim deed from the state.<sup>69</sup>

*State of Wyoming, 1969*

In 1969, we see an addition to the laws to allow counties to enter into agreements with federal agencies, including the National Forest Service, to coordinate the maintenance and use of county roads that are used by these federal agencies.<sup>70</sup>

*State of Wyoming, 1983*

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<sup>67</sup> Highways, ch. 160, § 1, 1959 Wyo. Sess. Laws 221, 221-22.

<sup>68</sup> Highway Abandonment, Ch. 7, § 1, 1965 Wyo. Sess. Laws 4, 4-5.

<sup>69</sup> *Id.*

<sup>70</sup> Forest Roads – Repair and Maintenance, ch. 10, § 1, 1969 Wyo. Sess. Laws 10, 10.

Chapter 139 of the 1983 Session Laws relates mostly to the state highways and state highway commission.<sup>71</sup> Yet, under section one, 24-2-102(c)(ii) again contains the provision regarding the state abandoning a highway and relinquishing that abandoned portion to the counties.<sup>72</sup>

*State of Wyoming, 1985*

The legislature in 1985 changes two provisions regarding county roads.<sup>73</sup> First, when petitioning for the establishment, vacation or alteration of a county highway, a person only needs five or more signatures of “electors of the county residing within twenty-five (25) miles of the road proposed to be established, altered, or vacated.”<sup>74</sup> Second, the legislature amended the law setting out provisions regarding viewers, their appointment, qualifications and duties.<sup>75</sup>

*State of Wyoming, 1987*

In 1987, the legislature enacted W.S. 24-3-201 through 24-3-206, which provided a process to identify county roads.<sup>76</sup> The legislature believed that there were many county roads that weren’t being used or that weren’t described correctly, so it wanted to have a procedure for altering or vacating those roads without survey.<sup>77</sup> This procedure was not and could not be used

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<sup>71</sup> Highway Lands, ch. 139, § 1-3, 1983 Wyo. Sess. Laws 406, 406-409.

<sup>72</sup> Highway Lands, ch. 139, § 1, 1983 Wyo. Sess. Laws 406, 406-408.

<sup>73</sup> County Road Procedure Amendments, ch. 83, § 1, 1985 Wyo. Sess. Laws 93, 93.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Identification of County Roads, ch. 69, §1-2, 1987 Wyo. Sess. Laws 98, 98-101.

<sup>77</sup> Identification of County Roads, ch. 69, §1, 1987 Wyo. Sess. Laws 98, 98-101.

to create new roads or identify roads as county roads that the county did not have a valid title to or a valid right –of-way to.<sup>78</sup>

W.S. 24-3-201 set out the purpose of this procedure, and 24-3-203 set out the process.<sup>79</sup> It states, that the board must adopt a resolution to initiate the procedure.<sup>80</sup> The resolution had to include all roads affected by identification and must no leave any out.<sup>81</sup> The commissioners could not adopt more than one identification, and the county could not alter or vacate a road that was currently established and maintained as a county road.<sup>82</sup> W.S. 24-3-204 stated the county had to publish notice in the newspaper, and that the notice should include a map.<sup>83</sup> W.S. 24-3-205 set out the process for objections and damages and 24-3-206 stated the effect of the identification, the “the roads designated as county roads in the identification action shall be the only county roads within the area identified and all other county roads within the area identified are accordingly altered or vacated.”<sup>84</sup> This procedure was effective as of May 22, 1987.<sup>85</sup>

*State of Wyoming, 1991*

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Identification of County Roads, ch. 69, § 2, 1987 Wyo. Sess. Laws 98, 101.

In 1991, the Wyoming legislature created the Wyoming Department of Transportation, and with this creation came numerous laws.<sup>86</sup> These laws are found in Chapter 241 of the 1991 session laws and consists of five sections.<sup>87</sup> There are a few provisions affecting county roads.<sup>88</sup>

First, right-of-ways for public utilities were granted for all existing lines and existing state highways and county roads.<sup>89</sup> For new public utility lines, a person must “first obtain permission from the state transportation commission or the board of county commissioners in the county where the construction is contemplated before entering upon any state highway or county road for purpose of commencing the construction.”

Second, is the reiteration that abandoned state highways can be relinquished to counties (or cities) upon request.<sup>90</sup> Third, are the provisions for application for industrial roads, contained in W.S. 24-5-102 through 24-5-119.<sup>91</sup> Lastly, is the provision allowing counties “to design any access facility and to regulate, restrict or prohibit access as in their opinion may best serve the traffic for which the facility is intended.”<sup>92</sup>

#### *State of Wyoming, 1994*

Chapter 62 of the 1994 Session Laws specifies actions relating to altering a county road by designating that road a private road.<sup>93</sup> Specifically, the commissioners are allowed to

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<sup>86</sup> Department of Transportation, ch. 241, § 1-5, 1991 Wyo. Sess. Laws 680, 680-734.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Department of Transportation, ch. 241, § 1, 1991 Wyo. Sess. Laws 680, 684.

<sup>90</sup> *Id.* at 698-99.

<sup>91</sup> *Id.* at 700-01.

<sup>92</sup> *Id.* at 701-02.

<sup>93</sup> County Highways – Alteration, ch. 62, § 1-2, 1994 Wyo. Sess. Laws 187, 187.

designate a county road a private road, and in doing so, can do the following: “reserve the access rights of the area landowners and permit governmental agencies to retain access to that road for performing essential public services...[and] may also designate a nongovernmental entity to be responsible for the maintenance of any road altered pursuant to this section.”<sup>94</sup>

*State of Wyoming, 2005*

The 2005 legislature made one change to 24-3-101.<sup>95</sup> They added the requirement that if the county commissioners are vacating a road, alley or highway that is within one and one half (1½) miles of a city or town boundary, then the commissioners also need to give notice to the governing body of that city or town.<sup>96</sup>

***Current Statutes, with all changes through the 2005 General Session of the legislature***

**TITLE 24, CHAPTER 3, ARTICLE 1<sup>97</sup>**

24-3-101. Resolution by county commissioners; petition of county electors; alteration authority specified.

(a) The board of county commissioners of any county, may, on its own motion by resolution duly adopted, where it deems the public interest so requires, initiate the procedure for the establishment, vacation or alteration of a county highway, as the case may be, by setting forth in such resolution the point of commencement, the course and the point of termination of said road to be established, altered or vacated, as the case may be, and thereafter following out the provisions of article 2, chapter 52, Wyoming Revised Statutes, 1931, not inconsistent therewith. If the motion specifies vacation of a county road, alley or highway located within one and one half (1 ½) miles of the boundary of a city or town, the board shall notify the governing body of the city or town.

(b) (i) Any person desiring the establishment, vacation or alteration of a county highway shall file in the office of the county clerk of the proper county, a petition signed by five (5) or

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<sup>94</sup> County Highways – Alteration, ch. 62, § 1, 1994 Wyo. Sess. Laws 187, 187.

<sup>95</sup> Roads and Highways – Notice of Vacation, ch. 164, § 1, 2005 Wyo. Sess. Laws 383, 383.

<sup>96</sup> *Id.*

<sup>97</sup> Wyo. Stat. Ann. §§ 24-3-101 to 24-3-127 (2006).

more electors of the county residing within twenty-five (25) miles of the road proposed to be established, altered, or vacated, in substance as follows: To the Board of County Commissioners of .... County. The undersigned ask that a county highway, commencing at .... and running thence .... and terminating at .... be established (altered or vacated as the case may be).

(ii) With said petition shall be filed a list containing the names and also the known post office address of each person owning or having an interest in any land over which the proposed establishment, vacation or alteration of a county highway is to be made.

(c) In altering any county highway under this article or any other road dedicated by recorded plat as a public road, a board of county commissioners may change the designation of any road to a private road. If a board alters any road, it shall reserve the access rights of the area landowners and permit governmental agencies to retain access to that road for performing essential public services. It may also designate a nongovernmental entity to be responsible for the maintenance of any road altered pursuant to this section.

#### 24-3-102. Requiring deposit by petitioners.

The board of the county commissioners may require, in their discretion, that the petitioners for the establishment, alteration or vacation of a public road, shall deposit with the county clerk, a sufficient sum of money to defray the expenses of laying out, vacating or altering such road, and such expense, when so incurred, shall be paid out of such deposit. If the road is finally established, altered or vacated, the money so deposited shall be returned to the person who deposited the same.

#### 24-3-103. Viewer; appointment, qualifications and duties generally.

Upon filing of the petition the board of the county commissioners at a regular or special meeting, or the chairman of the board, if in his judgment an emergency exists, shall appoint a suitable and disinterested person, who may be a member of the board of county commissioners, to examine into the expediency of the proposed road, alteration or vacation thereof, and to report immediately.

#### 24-3-104. Viewer; oath; scope of investigation.

The person so appointed shall be termed a viewer, and he shall be sworn by some person or officer authorized by law to administer oaths, before entering upon his duties, to faithfully and impartially discharge his duties, and he shall file his oath in the office of the county clerk. He shall not be confined to the precise matter of the petition, but may inquire or determine whether that, or any road, in the vicinity of the proposed or altered road, answering the same purpose is required.

#### 24-3-105. Viewer; factors to be considered.

In forming his judgment the viewer shall take into consideration both the public and private convenience, and also the expense of the proposed road.

24-3-106. Viewer; report.

The said viewer shall report in writing to the board of the county commissioners, whether or not in his judgment, said proposed road is practicable, and ought or ought not be established, altered or vacated, as the case may be, stating the probable expense of the same, including damages to the property owners along the line thereof, the benefits thereto, and such other matters therein as shall enable the said board to act understandingly in the premises.

24-3-107. Viewer; compensation.

The board of the county commissioners shall allow the said viewer such reasonable compensation for his services as they shall determine and fix upon.

24-3-108. Roads established by consent of landowners.

Public roads shall be established without the appointment of a viewer, or without any other proceeding, than the order of the board of county commissioners; provided, that the written consent of all the owners of the land to be used for that purpose, be first filed in the office of the county clerk, and when it is shown to the satisfaction of the said board that the said road is of sufficient importance to be opened and traveled, they shall make an order establishing the same. The board of the county commissioners, when in their judgment such action shall be in the interests of economy or the public good, may purchase or receive donations or rights-of-way for a public road, or any alteration thereof, or any part thereof, from any and all persons along the route thereof, and declare the same opened, whenever the consent of the owners of the land through which said proposed road or alteration shall run, has been obtained, either by the donations of land or when an amicable adjustment of the amount to be paid therefor has been made between such landowners and said board; and all roads or parts of roads or alteration of roads heretofore opened or made, by consent or adjustment of damages, without recourse to other proceedings, are hereby declared to be public roads, the same as if such roads had been legally opened, or said alterations legally made.

24-3-109. Survey of proposed location for new road; recordation required.

If, upon considering and acting upon the report of the viewer, or otherwise, the board of the county commissioners shall decide to lay out such road, they shall cause the county surveyor to make an accurate survey thereof, if such survey is deemed necessary, and to plat and record the same in the book provided by the county for such purpose; and a copy of said plat and notes of survey shall, without unnecessary delay, be filed in the office of the county clerk.

24-3-110. Notice of location of road to be published or posted; notice by mail to property owners.

(a) Notice shall be published of the proposed location or alteration of any road for three (3) successive weeks in three (3) successive issues of some official newspaper published in the county, if any such there be, and if no newspaper be published therein, such notice shall be

posted in at least three (3) public places along the line of said proposed or altered road, which notice may be in the following form:

To all to whom it may concern: The Board of County Commissioners have decided to locate (or alter, as the case may be) a road commencing at .... in .... County, Wyoming, running thence (here describe in general terms the points and courses thereof), and terminating at .... .

All objections thereto or claims for damages by reason thereof must be filed in writing with the county clerk of said county, before noon on the .... day of .... A.D. .... or such road will be established (or altered) without reference to such objections or claims for damages.

.....County Clerk

Dated .... A.D.

(b) The county commissioners shall cause a copy of the above notice to be mailed by registered mail to all persons owning lands or claiming any interest in any lands over or across which said road is proposed to be located or altered. The publication and posting of such notice shall be a legal and sufficient notice to all persons owning lands or claiming any interest in lands over which the proposed road is to be located or altered.

24-3-111. Objections and claims for damages; when filed.

If the board of the county commissioners shall determine to establish, lay out or alter any road, they shall appoint a day, not less than thirty (30) days after such determination, on or before which day all objections to the establishment, alteration or vacation of the proposed road, and claims for damages by reason thereof, shall be filed with the county clerk.

24-3-112. Objections and claims for damages; when barred.

No objections or claims for damages shall be filed or made after the noon [12:00 p.m.] of the day fixed for filing the same, and if no objections or claims for damages are filed, on or before noon [12:00 p.m.] of the day fixed for filing the same, they shall be disregarded, and not considered, and shall be deemed to have been waived and barred.

24-3-113. Objections and claims for damages; continuance of hearing upon filing.

If objections to the establishment, altering or vacating of the road, or if any claims for damages shall be filed, the further hearing of the application may be continued by the board until the matter can be properly disposed of.

24-3-114. Appraisers; number; appointment; qualifications; duties generally; report.

When claims for damages are filed, at the next regular meeting or special meeting of the board of the county commissioners, or as soon thereafter as may be practicable and convenient, the said board shall appoint three (3) suitable and disinterested electors of the county as appraisers, to view the ground, on a day fixed by said board, and they shall report their doings in the matter

and file their report in writing with the county clerk within thirty (30) days after the date of their appointment, fixing the amount of the damages sustained by the claimants.

24-3-115. Appraisers; notification of appointment required; contents.

The county clerk shall cause each of the said appraisers to be notified in writing, of his appointment, stating in said notice, first, the names of all appraisers, second, the names of all claimants for damages, on account of the location or alteration of the said road, with the amount of damages asked by each claimant, third, stating when their report must be filed, and fourth, the law relating to their duty as found in W.S. 24-3-116. The county clerk shall prepare suitable blanks, for such notice, for the oath of the appraisers and for the report, a proper number of which shall be forwarded by him to them.

24-3-116. Appraisers; specific duties enumerated; compensation.

The said appraisers shall, within ten (10) days after receiving notice of their appointment, meet at some convenient place, on the line of said proposed or altered road, and take and administer to each other, an oath or affirmation to faithfully and impartially discharge their duties. They shall then view the ground, so far as they shall deem it necessary, and fix the amount of damages sustained by each claimant, after allowing for all benefits that may accrue to each claimant, by reason of the location or alteration of the said proposed road. They, or a majority of them, shall as soon as practicable, after performing their said duties, make a report in writing to the county clerk of their doings, stating that they were so sworn or affirmed as aforesaid, before performing their duties and fixing the amount of damages, if any, sustained by each claimant, after allowing and deducting for benefits, and where they have disallowed claims for damages, they shall so state in their report, and they shall immediately transmit their report, when made, to the county clerk. They shall, whenever they can conveniently do so, notify the claimants or their agents, of the place of their meeting and may hear such evidence as they may deem necessary in determining the amount of damages fixed by them. They are hereby authorized to administer oaths to each other and to such witnesses as they may hear. If any one (1) of them shall fail or refuse to perform his duty, the other two (2) appraisers shall serve and shall appoint a suitable and disinterested elector in his place, who shall be within easy access, and he shall be sworn or affirmed in like manner as the other two (2) appraisers, and the facts of such appointment and qualification shall be stated in said report to the county clerk. The said appraisers shall each receive for his compensation such reasonable sum as the board of county commissioners shall allow.

24-3-117. Neglect of duty by appraiser or viewer.

If any viewer or appraiser shall refuse or neglect to perform any of the duties required by law or shall fail to act after his appointment, without a satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding fifty dollars (\$50.00), upon his conviction thereof in any court of competent jurisdiction, and such fine when collected shall be paid into the county treasury for the benefit of the road fund.

24-3-118. Hearing before county commissioners; determination and payment of damages; entry on land; abandonment prohibited; records; surveys.

(a) At the next meeting of the county commissioners after the report of the appraisers has been filed, or as soon thereafter as may be practicable, the said board may hear testimony and consider petitions for and remonstrances against the establishment or alteration, as the case may be of any road, or may establish or alter any road or may refuse so to do, as in the judgment of the said board, the public good may require, but in case there shall be no claim for damages filed, they shall act as speedily as possible in the matter. Said board may increase or diminish the damages allowed by the appraisers, and may make such establishment or alteration of any road, dependent or conditioned upon the payment, in whole or in part, of the damages awarded or expenses incurred in relation thereto by the petitioners for such road or such alteration of any road.

(b) The amount of damages awarded, if any, shall immediately be paid to the person or persons entitled thereto or deposited with the county clerk for delivery to such person or persons, which payment shall be without prejudice to the right of such person or persons to appeal to the district court as provided by law.

(c) When the road has been established and the award has been paid by the board of county commissioners or by the department of transportation, to the person or persons entitled, or deposited with the county clerk, the highway authorities and their contractors and employees may take possession and exercise full control of the land within the right-of-way of the road so established.

(d) After the county or the department of transportation has taken possession of the right-of-way, there shall be no abandonment of the establishing of the highway, and in the event of an appeal by an owner of real estate affected to the district court from the award finally made by the board of county commissioners, the board shall pay the amount finally determined to be due.

(e) A certificate, authorized by the board of county commissioners and signed by its chairman, setting forth the legal description of the property taken shall be recorded in the office of the county clerk, and indexed in like manner and with like effect as if it were a conveyance of the easement or right-of-way from said owners to the county.

(f) If, upon considering and acting upon the report of the viewers or otherwise, the board of county commissioners shall decide to lay out or alter any road, they shall cause the county surveyor to make an accurate survey thereof, if such survey is necessary, and to plat the same in books to be provided by the county for such purpose, and the county clerk shall record in the same books opposite or near to such plat so that the same may be easily ascertained to be concerning the platted road, the proceeding of the said board in relation to the location, establishment or alteration of said road, in order to keep in a separate book a record of all the county roads of that county.

24-3-119. Appeals from decisions of county commissioners; notice; bond required.

Any applicant for damages claimed, or caused by the establishment or alteration of any road, may appeal from the final decision of the board of the county commissioners to the district court of the county, in which the land lies, for the taking of which for a public road, damages are asked; but notice of such appeal must be made to the county clerk, within thirty (30) days after such decision has been made by the said board, or such claim shall be deemed to have been abandoned. No appeal shall be allowed, unless a good and sufficient bond be given by the party appealing, in a sum not less than fifty dollars (\$50.00) to cover costs, said bond to be approved by the clerk of the district court.

24-3-120. Appeals from decisions of county commissioners; duties of county clerk.

The county clerk shall, within ten (10) days after the notice of an appeal as provided for in W.S. 24-3-119 is filed in his office, make out and file in the office of the clerk of the district court, in his county, a transcript of the papers on file in his office, and the proceedings of the board in relation to such damages.

24-3-121. Appeals from decisions of county commissioners; recovery of damages; court costs.

The amount of damages to which the claimant shall be entitled on such appeal shall be ascertained in the same manner as in a civil action, and the amount so ascertained, if any, shall be entered of record, but no judgment shall be entered therefor. The amount thus ascertained shall be certified by the clerk of the court to the county clerk who shall thereafter proceed as if such amount had been allowed by the board of the county commissioners to the claimant as damages. If the appellant shall fail to recover an amount exceeding fifty dollars (\$50.00) above the amount allowed to him by the board of the county commissioners, he shall pay all costs of the appeal.

24-3-122. Condemned land tax free during use by state.

No taxes covering the real estate taken by the county or the department of transportation for rights-of-way shall be assessed, or charged against the land owner or owners during the time that rights-of-way are being used for the purposes for which they were established.

24-3-123. Effect of location of new road on route of previous road.

The establishment of a new road on the route of a road already established according to law, shall not vacate any road previously established, unless such vacation shall be ordered by the board of the county commissioners.

24-3-124. Removal of fences on right-of-way.

Whenever a public road is ordered to be established or altered, according to the provisions of this act, which shall pass through, or on enclosed lands, the road overseer, or other proper officer, shall give the owner, agent or occupant of such lands, notice in writing to remove the fences

thereon, and if such owner, agent or occupant shall not move his fence, within thirty (30) days thereafter, the same may be removed by the proper officer, and the road opened and worked; and such owner shall forfeit and pay twenty dollars (\$20.00) for each day he shall permit his fence to remain after said thirty (30) days, and shall pay all necessary cost of removal, to be collected by the proper officer, in any court of competent jurisdiction, for the use and benefit of the general county road fund.

24-3-125. Streets in unincorporated towns or villages declared public roads; working.

All public streets of towns or villages, not incorporated, are a part of the public roads, and all road overseers, or persons having charge of the same, in their respective districts or counties, shall work the same as provided by law or ordered by the board of the county commissioners of the proper county.

24-3-126. Abandonment of portion of highway upon reconstruction or relocation of existing highway; relinquishment to county or city in lieu of abandonment.

(a) The transportation commission may abandon or relinquish any portion of state highways upon the reconstruction or relocation of any portion of an existing state highway.

(b) Prior to abandonment of any portion of a state highway, the transportation commission shall offer the highway to the governing body of any county or city in which the highway is located. Upon being notified of the transportation commission's intent to abandon any portion of a state highway, the governing body of the county or city shall comply with the procedures provided for in paragraph (c)(ii) of this section in order to initiate transfer of the state highway.

(c) The abandonment or relinquishment of any portion of state highways shall be conclusively evidenced by the resolution entered in the minute record of the commission. A certified copy of the resolution shall be recorded by the secretary of the transportation commission in the office of the county clerk of any county in which abandoned or relinquished highway right-of-way is located. Abandonment or relinquishment shall not affect the rights of corporations or their successors in interest acquired under the provisions of W.S. 1-26-813 to continue the operation and maintenance of transmission and distribution lines constructed upon the right-of-way and shall not affect the rights of any corporation or successors in interest to continue to maintain any facility lawfully in the highway right-of-way at the time of any abandonment or relinquishment. Corporations shall have the right to go upon these lands for the purposes associated with maintenance or use of their facility. Specific rules regarding relinquishment and abandonment are:

(i) Upon the entry of the resolution of abandonment in the minute record of the commission, all title and interest, except as herein provided, to the highway right-of-way shall pass to and vest in the present adjacent landowner according to the portion contributed by adjacent landowner or his predecessor in interest;

(ii) Instead of abandonment, the transportation commission may, upon written request, relinquish to any county or city any portion of a state highway within the county or city proposed

to be removed from the state highway system. The request shall be in the form of a resolution adopted by the governing body of the county or city, indicating that the portion of the state highway sought by the governing body will be used for a local public purpose enumerated in the resolution and expressing the agreement of the county or city to assume all responsibility with regard thereto. Relinquishment by the transportation commission shall be by entry of the resolution of relinquishment in the minute record of the commission and by quitclaim deed effective upon recordation in the office of the county clerk and recorder of any county in which the real property is located.

24-3-127. Cooperative agreements with federal agencies to construct, maintain and use roads within county.

The board of county commissioners of any county of this state may, in its discretion, enter into cooperative agreements with the forest service of the U.S. department of agriculture or other federal agency to provide for the joint construction, maintenance and use of roads located within the boundaries of the county, where such roads are used by the forest service or other federal agency in the protection, administration and utilization of the national forests and national recreation areas or other federal lands and are also used by communities or persons within or adjacent to such national forests or other federal lands in the use and development of the resources thereof or where such roads otherwise serve the needs of the public.

## 2.4 Case Law

(In chronological order, most recent first.)

Powder River Ranch, Inc. v. Michelena, 103 P.3d 876 (Wyo. 2005)

- A party claiming an easement by prescription bears the burden of proving four elements:
  - o proof of adverse use
  - o claim of right under title or claim of right
  - o use which puts the owner of the subservient estate on notice of his claim
  - o continuous and uninterrupted adverse use for at least ten years

Boykin v. Carbon County Board of Comm'rs, 2005 WL 3389666 (Wyo. 2005)

- Adverse or hostile use of property, for purposes of a claim of adverse possession or prescription, is use inconsistent with the rights of the owner, without permission asked or given, use such as would entitle the owner to a cause of action against the intruder.

Broek v. County of Washakie, 82 P.3d 269 (Wyo. 2003)

- Counties must comply with the statutory requirements of § 24-1-101 to establish a road by prescription before bringing the claim into court.

Yeager v. Forbes, 78 P.3d 241 (Wyo. 2003)

- If not created by the process outlined in the statute and not recorded correctly, road is not a county road.
- Public use alone is not enough to establish a prescriptive easement.

Lincoln County Bd. of Comm'rs v. Cook, 39 P.3d 1076 (Wyo. 2002)

- When trying to establish a road under prescription:
  - o the public's use of the road must be adverse, not permissive
  - o the county's maintenance of the road can establish assumption of control

Steplock v. Board of County Comm'rs for Johnson County, 894 P.2d 599 (Wyo. 1995)

- Use by the public, coupled with maintenance by the county, gives rise to the right to establish a county road by prescription pursuant to Wyo.Stat. § 24-1-101. The road is not established, however, until the county commissioners formalize their actions in accordance with the statute.

L.U. Sheep Co. v. Board of County Comm'rs, 790 P.2d 663 (Wyo. 1990)

- County did not exceed its delegated powers in seeking to partially take through condemnation privately owned road for public at behest of United States Forest Service (USFS) to provide access to national forest; Wyoming statute authorizes counties to cooperate with United States entities or authorities in exercising any authority legally vested by Wyoming law.
- When the parties stipulated to the use of the Eminent Domain statute, as opposed to the Establishment of a County Road statute, they could do so, but it would not bind the court.

Koontz v. Town of Superior, 746 P.2d 1264 (Wyo. 1987)

- When trying to establish a road under prescription:
  - o evidence of town's maintenance of road for at least 30 years effectively rebutted any possible presumption of "permissive use"
  - o evidence establishing claim of right in the public combined with undisputed evidence of continuous use by public established sufficient notice to owners that adverse right was being claimed.

Sheridan County v. Spiro, 697 P.2d 290, 303 (Wyo. 1985)

- There is no citation of authority which supports a contention that the road, once acquired by the county, was or can be vacated or abandoned by failure to adequately maintain or by operation of law.
- Where a way has been established by the appropriate officials under permissive statutes, has been opened for public use, and has, for a substantial period of time, in fact been used by the public on a course which is generally in accord with the line described in the location procedures, but not exactly the same, the user will in most instances determine the limits and boundaries of the road.

Big Horn County Comm'rs v. Hinckley, 593 P.2d 573 (Wyo. 1979)

- When a county attempts to establish a county road by prescription:
  - o the county need only publish a declaration or purpose to acquire the land and file a survey plate of the proposed roads
  - o landowner may not challenge establishment of a county road by prescription on the basis that there is no necessity for the taking of the land
  - o the statute precludes consideration of damage claims.

Board of County Comm'rs, Carbon County v. White, 547 P.2d 1195 (Wyo. 1976)

- Agreements between landowners and Commissioners are null and void if they are attempting to vacate an established county road by methods other than those provided by state statute.

Rocky Mountain Sheep Co. v. Board of County Comm'rs of Carbon County, 269 P.2d 314 (Wyo. 1954)

- If the county records fail to meet statutory requirements relating to records necessary to be made to establish a county road, then the road was never established as a county road.

Nixon v. Edwards, 264 P.2d 287 (Wyo. 1953)

- No public road can be established in this state by public user alone.
- One of the prime requisites of a public highway is that the public authorities must maintain it.

Board of Comm'rs of Sheridan County v. Patrick, 107 P. 748 (Wyo. 1910)

- The only roads that are not officially established as public roads that are considered public roads are those designated as state highways on government maps or plats of record in any land office of the US within the state.

## **2.5 Federal Law**

Federal law now governs acquisition and creation of county roads on federal lands. However, from its passage in 1866 until its repeal in 1976, a federal law, R.S. 2477, said that “[t]he right-of-way for the construction of highways across public lands not reserved for public purposes is hereby granted.” Counties could thus establish roads on federal lands as long as they complied with state legal requirements for creating roads. *Yeager v. Forbes*, 78 P.3d 241, 247-50 (Wyo. 2003). Roads claimed under R.S. 2477 therefore must have been established in the same way that any other county road must have been established. Although R.S. 2477 has been repealed, the statute’s repeal did not change the status of any county road already created on federal land.

## 2.6 Definitions

- **Public Road** – a road that is open to common use by the general population<sup>98</sup>
- **County Highway** - (also county road, county route) a road that is usually maintained by the county highway department<sup>99</sup>
- **Private Road** - a road owned and maintained by a private individual, organization, or company rather than by a government<sup>100</sup>
- **Easement** – an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road)<sup>101</sup>
- **Right-of-way** – a person’s legal right, established by usage or by contract, to pass through roughs or property owned by another; the right to build and operate a railway line or a highway on land belonging to another, or the land so used<sup>102</sup>
- **Eminent Domain** – the inherent power of a government entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking<sup>103</sup>
- **Adverse Possession** – a method of acquiring title to real property by possession for a statutory period under certain conditions<sup>104</sup>
- **Prescription** – the effect of the lapse of time in creating and destroying rights; the acquisition of title to a thing (esp. an intangible thing such as the use of real property) by open and continuous possession over a statutory period<sup>105</sup>
- **Adverse Use** – a use without license or permission<sup>106</sup>
- **Notorious Possession** – possession or control that is evident to others; possession of property that, because it is generally known by people in the area where the property is located, gives rise to a presumption that the actual owner has notice of it (also termed open possession; open and notorious possession)<sup>107</sup>

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<sup>98</sup> Answers.com, available at <http://www.answers.com/public%20road>.

<sup>99</sup> *Id.*, available at <http://www.answers.com/county%20road>.

<sup>100</sup> *Id.*, available at <http://www.answers.com/private%20road>.

<sup>101</sup> BLACK’S LAW DICTIONARY 527 (7th ed. 1999).

<sup>102</sup> *Id.* at 1326.

<sup>103</sup> *Id.* at 541.

<sup>104</sup> *Id.* at 54.

<sup>105</sup> *Id.* at 1201.

<sup>106</sup> *Id.* at 1540.

<sup>107</sup> *Id.* at 1185.

- **Hostile Possession** – possession asserted against the claims of all others, including the record owner<sup>108</sup>
- **State’s Police Power** – the inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order health, morality, and justice<sup>109</sup>
- **Interested Parties** – parties with fee simple rights in affected land, possibly any parties known that claim an interest in the land
- **Fee Simple** – an interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs<sup>110</sup>
- **Disinterested** – free from bias, prejudice, or partiality; not having a pecuniary interest<sup>111</sup>
- **Survey** – the measuring of a tract of land and its boundaries and contents; a map indicating the results of such measurements<sup>112</sup>
- **Resolving Conflicting Boundary Evidence** – (listed in rank of importance)
  - Survey
  - Monuments
    - Natural, artificial, record boundaries (if gap)
  - Directions & distances
  - Directions
  - Distances
  - Coordinates
  - Area
- **Types of Surveys** –
  - *ALTA/ACSM survey*: A surveying standard jointly proposed by the American Land Title Association and the American Congress on Surveying and Mapping that incorporates elements of the boundary survey, mortgage survey, and topographic survey. ALTA/ACSM surveys, frequently shortened to *ALTA surveys*, are often required for commercial real estate transactions.
  - *Boundary survey*: The actual positions of existing marks on land (typically iron rods or concrete monuments in the ground, but also tacks in trees, pipes, and manholes) are measured, and a map is drawn from the data.
  - *Deformation survey*: a survey to determine if a structure or object is changing shape or moving. The three-dimensional positions of specific points on an object are determined, a period of time is allowed to pass, these positions are then re-measured and calculated, and a comparison between the two sets of positions is made.

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<sup>108</sup> *Id.* at 1184.

<sup>109</sup> *Id.* at 1178.

<sup>110</sup> *Id.* at 630.

<sup>111</sup> *Id.* at 481.

<sup>112</sup> *Id.* at 1459.

- *Draw lot*: One lot from a plat is drawn, with any easements and setbacks that may be on it.
- *Foundation survey*: The position of the house is measured before it is finished being built.
- *Mortgage survey*: A simple survey that generally determines land boundaries and building locations. Mortgage surveys are required by title companies and lending institutions when they provide financing to show that there are no structures encroaching on the property and that the position of structures is generally within zoning and building code requirements. Mortgage surveys are not sufficiently accurate for use in building new structures.
- *Physical survey*: The finished house and driveway are measured, and all markers on the boundary are indicated. This is recorded when the lot is sold.
- *Plot plan*: A proposal for a house or other building and driveway or parking lot are added to a draw lot.
- *Subdivision plat*: A plot or map based on a survey of a parcel of land, lines are drawn inside it, indicating where roads and lots are. Plats are usually discussed back and forth between the developer and the surveyor until they are agreed on, at which point pins are driven into the ground to mark the lot corners and curve ends and the plat is recorded in the cadaster (USA, elsewhere) or land registry (UK).
- *Topographic survey*: A survey that measures the elevation of points on a particular piece on land, and presents them as contours on a plot<sup>113</sup>

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<sup>113</sup> Answers.com, available at <http://www.answers.com/topic/surveying?gwp=19>.

## 2.7 Citations

### Cases

- The more recent Wyoming Supreme Court opinions can be found on the Wyoming State Law Libraries' Website at <http://wyom.state.wy.us/applications/oscn/index.asp>. To use this function, put the citation for the case in the QuickCase box and press GO. The citation for a case is the number part, e.g. 78 P.3d 241.
- For older case opinions, contact the Wyoming State Law Library and give them the case citation.
- All cases cited to in this report or the outline are included in the Appendices.

### Current Statutes

- Current Wyoming Statutes, updated after every legislative session can be found on the internet at <http://legisweb.state.wy.us/titles/statutes.htm>.
- A statute is identified by title, chapter and article (for example: 1-26-801 refers to Title 1, Civil Procedure; Chapter 26, Eminent Domain; and Article 8, Power of Eminent Domain Granted).

### Historical Statutes

- The historical statutes are available at the Wyoming State Law Library at the Wyoming Supreme Court Building. They are only in print and are not currently available on-line.
- Included in the Appendices is all the historical statutes cited to in this report.
- If you need more assistance, you can contact the Wyoming State Law Library at:

**Wyoming State Law Library**  
Supreme Court Building  
2301 Capitol Avenue  
Cheyenne, WY 82002  
Phone: 307-777-7509  
Fax: 307-777-7240  
Email: [lawlibref@state.wy.us](mailto:lawlibref@state.wy.us)

### Blacks Law Dictionary

- Blacks Law Dictionary is the foremost and most widely used law dictionary
- If you do not have access to it, it is not available on-line for free; but, there are other law dictionaries available on-line at <http://dictionary.law.com/>, <http://lawyerintl.com/modules/dictionary/>, <http://www.nolo.com/glossary.cfm>, and [http://www.formfolks.com/legal\\_glossary.asp](http://www.formfolks.com/legal_glossary.asp)

Generally, [www.findlaw.com](http://www.findlaw.com), is a free, on-line law search engine.

## 2.8 Conclusions

### Creating a County Road/Highway in Wyoming:

#### 1. Acquisition of right-of-way

- A. To create a county road, the county must own the land or an easement (right-of-way) over the land. The county may acquire a right-of-way in three ways:
- *Before 1953, the statutes did not say that a county had to obtain a right-of-way for a county road. Highways, ch. 181, § 1, 1953 Wyo. Sess. Laws 232, 232. Nevertheless, a county would still have to own the land or a right-of-way to create a road even if the statute didn't say so.*
- (1) Agreement: donation or purchase. § 24-3-108; § 1-26-503.
- *Not included in statute until 1895. Highways and Bridges, ch. 69, § 23, 1895 Wyo. Sess. Laws 126, 131.*
- (2) Taking
- (a) Pay damages to landowners filing claims pursuant to road establishment statute. §§ 24-3-111 to -118.
- (b) Take pursuant to Eminent Domain Act. §§ 1-26-501 to -516.
- *County may acquire right-of-way under either statute. L.U. Sheep Co. v. Board of County Comm'rs, 790 P.2d 663, 674-75 (Wyo. 1990).*
- (3) Prescription
- (a) A county may acquire a right-of-way (a “prescriptive easement”) simply by a long period of public use and maintenance. The county must prove:
- (i) Adverse use under a “claim of right”
- *County must rebut presumption of permissive use with evidence of public use and maintenance / control of the road for at least ten years. E.g., Boykin v. Carbon County Board of Comm'rs, 124 P.3d 677 (Wyo. 2005); Lincoln County Board of Comm'rs v. Cook, 39 P.3d 1076 (Wyo. 2002).*
  - *Highways, up to 66 feet in width, “actually constructed or substantially maintained” and used by the public for ten years, are “presumed to be public highways lawfully established.” § 24-1-101(d)*
- (ii) The adverse use was sufficiently open to give the owner notice of public claim.
- (iii) The adverse use was continuous and uninterrupted for at least ten years.

## 2. Initiation of establishment process

- A. Regardless of how acquired or how long owned and used, a right-of-way is not a county road until established according to the statutory process in effect at the time. *Yeager v. Forbes*, 78 P.3d 241 (Wyo. 2003); *Rocky Mountain Sheep Co. v. Board of County Comm'rs*, 269 P.2d 314 (Wyo. 1954).
- (1) If a road has not previously been properly established under the statute then applicable, it is not a county road until established according to the statutory process presently required by Title 24, Chapter 3.
  - (2) If the right-of-way is claimed by prescription, county must comply with the statutory requirements of § 24-1-101 to establish the road. *Broek v. County of Washakie*, 82 P.3d 269 (Wyo. 2003).
- B. The statutory process of establishing a county road may be initiated in two ways:
- (1) Resolution by the board of county commissioners. § 24-3-101(a)
    - (a) If the county commissioners are vacating a road that is within 1½ miles of a city or town boundary, the commissioners also must notify the local governing body.
      - *This was not required prior to July 1, 2005. Roads and Highways – Notice of Vacation, ch. 164, § 1, 2005 Wyo. Sess. Laws 383, 383.*
  - (2) Petition by residents. § 24-3-101(b)
    - (a) Must be signed by 5 or more electors residing within 25 miles of the proposed road. § 24-3-101(b)(i)
      - *Between 1895 and 1985, the petition had to have at least 10 signatures. Highways and Bridges, ch. 69, § 4, 1895 Wyo. Sess. Laws 126, 126-27.*
      - *Between 1886 and 1895, the petition had to be signed by 12 householders residing within the vicinity of the road. Roads and Highways, ch. 99, § 2, 1886 Wyo. Sess. Laws 375, 376.*
      - *Between 1869 and 1886, the petition had to be signed by at least two-thirds of the householders residing within one mile of the road. Roads and Highways, ch. 26, § 2, 1869 Wyo. Sess. Laws 330, 330.*
    - (b) Petitioners must also file a list of people with “an interest” in any land over which the road passes. § 24-3-101(b)(ii)
      - *This was not required prior to 1913. Relating to Public Roads, ch. 73, § 2, 1913 Wyo. Sess. Laws 68, 68.*

- (c) Board of county commissioners may require petitioners to pay a deposit (which must be returned to the applicant after the road is finally established). § 24-3-102

### 3. Consideration of petition

- A. If residents petition for the creation of a county road, the board shall appoint a “suitable and disinterested person,” who may be a member of the board, to “examine into the expediency of the proposed road” and to report to the board. § 24-3-103
- B. The board must give notice of the road. §§ 24-1-101, 24-3-110
  - (1) Must be published 3 successive weeks in official county newspaper.
    - *Before 1913, notice had to be in a weekly newspaper. Relating to Public Roads, ch. 73, § 2, 1913 Wyo. Sess. Laws 68, 68.*
    - *Between 1886 and 1895, the only notice requirement was that the person petitioning had to provide all interested people notice, but the statute did not specify how. Roads and Highways, ch. 99, § 3, 1886 Wyo. Sess. Laws 375, 375.*
  - (2) If there is no newspaper, notice must be posted in at least 3 public places along the line of the proposed road.
    - *Between 1869 and 1886, the board had to post a notice in at least 3 public places along the line of the proposed road. Roads and Highways, ch. 26, § 3, 1869 Wyo. Sess. Laws 330, 330-31.*
  - (3) The board must give notice by registered mail to every person owning an interest in land over which the road passes.
    - *This was not required prior to 1913. Relating to Public Roads, ch. 73, § 2, 1913 Wyo. Sess. Laws 68, 68.*
- C. A condemnor and its agents may enter private land to survey and otherwise examine the property if the owner agrees in writing. Wyo. Stat. Ann. § 1-26-506. Otherwise, the condemnor may obtain a court order to enter. Wyo. R. Civ. P. 71.1(e).
- D. The board may hold a hearing to “hear testimony and consider petitions.” § 24-3-118(a)

### 4. Establishment of county road

- A. The board of county commissioners decides whether to create the road. § 24-3-109

- (1) The board must have the road surveyed and then record the survey and a certificate in the office of the county clerk. §§ 24-1-101, 24-3-109, 24-3-118(e)
  - (2) The road created must be between 60 and 100 feet in width, with a few narrow livestock exceptions. § 24-1-105(a)
- B. A road acquired by prescription is only as wide as the width actually used and maintained for the prescriptive period. *Steplock v. Board of County Comm'rs*, 894 P.2d 599 (Wyo. 1995).
- C. A county road may be established by consent without any other required process. § 24-3-108
- (1) "All the owners of the land" must consent in writing to establishment of the road.
  - (2) Their written consent must be filed in the office of the county clerk.
  - (3) The board orders the road established.

## 5. Altering or vacating roads

- A. The process for altering or vacating is the same as establishing. County can't vacate a road by private agreement or any other means. *Board of County Comm'rs v. White*, 547 P.2d 1195 (Wyo. 1976).
- (1) Failure to adequately maintain a county road does not vacate the road. *Sheridan County v. Spiro*, 697 P.2d 290, 303 (Wyo. 1985).
- B. If the board alters a county road to a private road, the county must reserve access rights for the government and public utilities and may order a "nongovernmental entity" to maintain the road. § 24-3-101(c)
- *Before 1895, this provision was not in the statutes.*
- C. If a new road is created on an established road, the established road is not vacated unless the board orders it vacated.
- *Between 1869 and 1886, roads could be altered only if "necessary to straighten or locate the same upon better ground, or by a shorter or nearer route," and the road could not be altered if the change would cause the road to "not connect directly with the continuation of such road in any adjoining county or counties." Roads and Highways, ch. 26, § 4, 1869 Wyo. Sess. Laws 330, 331.*
- D. County may adopt a resolution identifying all roads in an area, and thereby vacate or alter roads not identified. But this one-time procedure cannot create roads not previously established. § 24-3-203

## **2.9 Frequently Asked Questions**

### **Acquisition of right-of-way**

1. If the county has a right-of-way, do they have a county road?
  - a. No, they still need to go through the procedures to establish a county road.

### **Creation by prescription or adverse possession**

1. What proof can be used to show adverse possession?
  - a. Mere use is not enough; continued use combined with maintenance and control would work.
  - b. Factually based and contextual.
  - c. Mere failure to interfere with public use is not permission.
2. What is a claim of right?
  - a. Anything inconsistent with private ownership of road. Improvements without permission, etc.
  - b. Maintenance may indicate a claim of right if sufficiently substantial and inconsistent with private ownership.

### **Initiation of establishment process**

1. Who has an “interest” in the land?
  - a. Anyone with a recorded interest in the land. This includes mortgagees, easements, mineral rights, etc.
2. What obligation does the county have to determine interest holders?
  - a. The court has not decided a case on this issue, but the likely decision would be all interest holders that are recorded and those which can be ascertained by looking at the property.
3. Are utility companies with easements interested parties?
  - a. Yes.
4. Are licensees interest owners in the land?
  - a. Yes, if the license is not revocable – in which case it is essentially an easement.
5. If the petitioner files a list of interested people, does the county still need to do title searches and compile their own list of interested people?
  - a. This issue has not been decided, but the county still has a separate obligation to give notice, so they would most likely need to still do a title search for recorded interests.

### **Consideration of petition**

1. Who is a “suitable and disinterested” viewer?
  - a. The statute specifically states that a county commissioner can be appointed as a viewer, so it seems that the only people that wouldn’t be disinterested are people that have an interest in the land over which the road passes.
2. Can the county commissioners refuse to create a county road?
  - a. Yes.

### **Establishment of county road**

1. Is a survey required?

- a. Section 24-3-109 says that a survey is required “if such survey is deemed necessary” by the board. But the commissioners could abuse that discretion if they did not have a good reason for deciding not to have a survey done.

### **Altering or vacating roads**

1. Is changing the name of a county road an alteration?
  - a. No
2. How far can a road move before the county has to go through the procedure to alter the road?
  - a. If road moves within the feet of a right of way, that’s fine. If not, if it exceeds the property right; then it is an alteration requiring compliance with the statutory process.
  - b. If the county never went through that procedure, and it has been over 10 years, they could try prescription.

### **Miscellaneous**

1. Can the county initiate weight and use restrictions or close a road?
  - a. They can if the commissioners have adopted the Title 31 state provisions for these issues.
2. Do the counties have a duty to maintain county roads?
  - a. Yes. Their failure to maintain the road will not vacate the road, but they can be sued for failing to maintain the county roads. It opens the counties up to liability.
3. What do counties do if they have a road that has been used and assumed to be a county road for many years, but it was never legally established?
  - a. They can try to establish the road by prescription. If they don’t meet the elements of prescription, then they have to establish the road under the procedures outlined to establish a road now.

**2.10 Appendices (The following appendices are contained in Volume II of this report.)**

1. Powder River Ranch, Inc. v. Michelena, 103 P.3d 876 (Wyo. 2005)
2. Boykin v. Carbon County Board of Comm'rs, 2005 WL 3389666 (Wyo. 2005)
3. Broek v. County of Washakie, 82 P.3d 269 (Wyo. 2003)
4. Yeager v. Forbes, 78 P.3d 241 (Wyo. 2003)
5. Lincoln County Bd. of Comm'rs v. Cook, 39 P.3d 1076 (Wyo. 2002)
6. Steplock v. Board of County Comm'rs for Johnson County, 894 P.2d 599 (Wyo. 1995)
7. L.U. Sheep Co. v. Board of County Comm'rs, 790 P.2d 663 (Wyo. 1990)
8. Koontz v. Town of Superior, 746 P.2d 1264 (Wyo. 1987)
9. Sheridan County v. Spiro, 697 P.2d 290, 303 (Wyo. 1985)
10. Big Horn County Comm'rs v. Hinckley, 593 P.2d 573 (Wyo. 1979)
11. Board of County Comm'rs, Carbon County v. White, 547 P.2d 1195 (Wyo. 1976)
12. Rocky Mountain Sheep Co. v. Board of County Comm'rs of Carbon County, 269 P.2d 314 (Wyo. 1954)
13. Nixon v. Edwards, 264 P.2d 287 (Wyo. 1953)
14. Board of Comm'rs of Sheridan County v. Patrick, 107 P. 748 (Wyo. 1910)
15. Roads and Highways, ch. 26, 1869 Wyo. Sess. Laws 330.
16. Roads and Highways, ch. 99, 1886 Wyo. Sess. Laws 375, 375.
17. Rev. Stat. of Wyo., tit. 44, § 3859-3899 (1887).
18. Highways and Bridges, ch. 69, § 1-67, 1895 Wyo. Sess. Laws 126, 126-44.
19. Relating to Public Roads, ch. 73, §1-2, 1913 Wyo. Sess. Laws 68, 68.
20. Highways – Establishment, Alteration or Vacation, ch. 139, §1-5, 1937 Wyo. Sess. Laws 288, 288-90.
21. Highways, ch. 181, § 1-5, 1953 Wyo. Sess. Laws 232, 232-34.
22. Highways, ch. 160, § 1, 1959 Wyo. Sess. Laws 221, 221-22.
23. Highway Abandonment, ch. 7, § 1, 1965 Wyo. Sess. Laws 4, 4-5.
24. Forest Roads – Repair and Maintenance, Ch. 10, § 1, 1969 Wyo. Sess. Laws 10, 10.
25. Highway Lands, ch. 139, § 1-3, 1983 Wyo. Sess. Laws 406, 406-409.
26. County Road Procedure Amendments, ch. 83, § 1, 1985 Wyo. Sess. Laws 93, 93.
27. Identification of County Roads, ch. 69, § 1-2, 1987 Wyo. Sess. Laws 98, 98-101.
28. Department of Transportation, ch. 241, § 1-5, 1991 Wyo. Sess. Laws 680, 680-734.

29. County Highways – Alteration, ch. 62, § 1-2, 1994 Wyo. Sess. Laws 187, 187.
30. Roads and Highways – Notice of Vacation, ch. 164, § 1, 2005 Wyo. Sess. Laws 383, 383.
31. Current statutes through 2005 General Session on establishing, altering and vacating county roads - Title 24, Chapter 3, Article 1.