

Creating a County Road 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

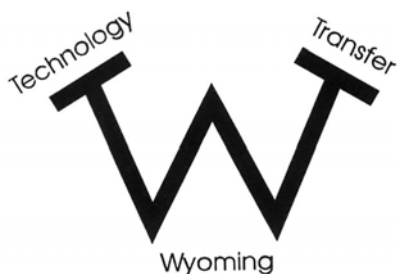
- A. The board of county commissioners decides whether to create the road. § 24-3-109
- (1) The board must have the road surveyed and then record the survey and a certificate in the office of the county clerk. §§ 24-1-101, 24-3-109, 24-3-118(e)
 - (2) The road created must be between 60 and 100 feet 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

**For more information and/or the full text version of the statutes referred to in this outline, please refer to the final report “LEGAL ESTABLISHMENT OF COUNTY ROADS IN WYOMING,” Volumes I and II, by Stacey L. Obrecht, Graduate Assistant with the Wyoming Technology Transfer Center, printed in 2006.



Wyoming Technology Transfer Center
1000 E. University Avenue, Dept. 3295
Laramie, Wyoming 82071

Phone: 800-231-2815 / Fax: 307-766-6784
Web Site: www.eng.uwyo.edu/wyt2