



What Makes a County Road?

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Based on a presentation and materials provided
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Topics

- What is a public road in Colorado?
- R.S. 2477 and Prescriptive Use
- Deed of Dedication
- Express and Implied Dedication
- Section Line Road Resolutions
- Road-Viewers' Reports
- Abandonment
- Maintenance
- Common Legal Issues



Colorado Statutes

Creating Public Roads

- **§ 43-1-202. Public highways or roads**

All roads and highways which are, on May 4, 1921, by law open to public traffic shall be public highways within the meaning of this part 2.

- **§ 43-2-201. Public highways**

(1) The following are declared to be public highways:

(a) All roads over private lands dedicated to the public use by deed to that effect, filed with the county clerk and recorder of the county in which such roads are situate, when such dedication has been accepted by the board of county commissioners. A certificate of the county clerk and recorder with whom such deed is filed, showing the date of the dedication and the lands so dedicated, shall be filed with the county assessor of the county in which such roads are situate.

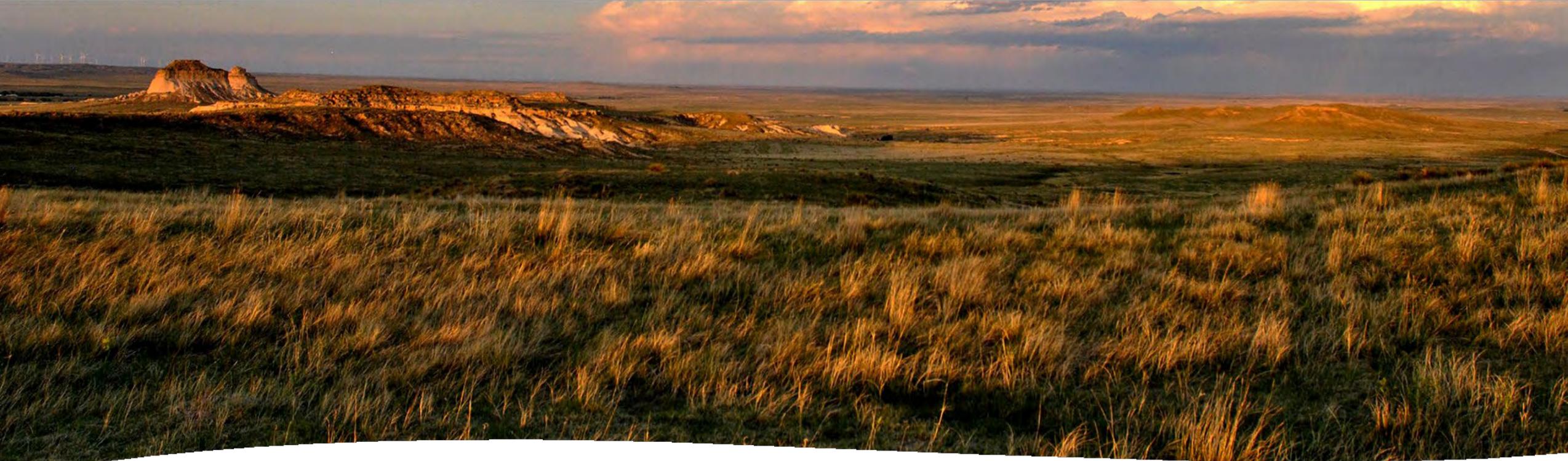
(b) All roads over private or other lands dedicated to public uses by due process of law and not heretofore vacated by an order of the board of county commissioners duly entered of record in the proceedings of said board;

(c) All roads over private lands that have been used adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years;

(d) All toll roads or portions thereof which may be purchased by the board of county commissioners of any county from the incorporators or charter holders thereof and thrown open to the public;

(e) All roads over the public domain, whether agricultural or mineral.





R.S. 2477

- “That the right-of-way for construction of highways over public lands, not reserved for public uses, is hereby granted.”
- Prior to its repeal in 1976, this was an “open-ended offer” by the United States to the public for the creation of right-of-way across public lands. Any R.S. 2477 right-of-way in existence prior to the statute’s repeal on October 21, 1976, was preserved by the Federal Land Policy Management Act of 1976. *High Lonesome Ranch, LLC v. United States*, 508 F.Supp.3d 801 (2020), *affm’d in part and rev’d in part*, 61 F.4th 1225 (2023).
- The intent of R.S. 2477 was to promote access, development, and settlement of remote areas of the U.S. *Heath v. Parker*, 30 P.3d 746, 750-751, 2000 CJ C.A.R. 6360 (2000), *as modified on denial of reh’g* (Jan. 4, 2001).

R.S. 2477 (Cont.)

- Two requirements for a R.S. 2477 Road:
 - A right-of way over land in the public domain; and
 - Acceptance or use of it by the public.
- Land in the public domain is land which is open to sale or other disposition.
- The claimant has the burden of establishing public use of the road before the government land is withdrawn from the public domain.
- Rights-of-way in existence prior to the repeal of Federal R.S. 2477 are preserved.

Mining Act of July 26, 1866, § 8, 14 Stat. 253, codified at 43 U.S.C. § 932, repealed by Federal Land Policy Management Act of 1976, Pub. L. No. 94-579 § 706(a), 90 Stat. 2793; *High Lonesome Ranch, LLC v. United States*, 508 F.Supp.3d 801 (2020), *affm'd in part and rev'd in part*, 61 F.4th 1225 (2023); *Brown v. Jolley*, 153 Colo. 530, 387 P.2d 278 (1963); *Board of County Commissioners of Cheyenne County v. Richey*, 888 P.2d 298 (1994); *Gold Hill Development Company, L.P. v. TSG Ski & Golf, LLC*, 378 P.3d 816, 2015 COA 177 (2015).



R.S. 2477

Key Points

- Whether and when the R.S. 2477 grant is accepted by the public are questions of state law. *Barker v. Board of County Commissioners of the County of La Plata*, 24 F.Supp.2d 1120 (1998).
- For acceptance, “user” is the requisite element. It is acceptable if the user is only one person and if the public highway extends to only one location. *Brown v. Jolley*, 153 Colo. 530, 387 P.2d 278 (1963) (*but see below*).
- There is no time limit for the public use or a set number of trips that must happen for the R.S. 2477 acceptance to occur. However, cases finding these roads reference repeated use. *High Lonesome Ranch, LLC v. United States*, 508 F.Supp.3d 801 (2020), *affm’d in part and rev’d in part*, 61 F.4th 1225(2023).
- Acceptance of the R.S. 2477 grant is by “user,” and no government action is necessary. *Id.*

Public Roads Created Through Adverse Use: “Prescriptive Public Highways”

- A party seeking to establish a road across private property as a public highway must demonstrate the following:
 - Members of the public must have used the road under a claim of right and in a manner adverse to the landowner’s property interest;
 - the public must have used the road without interruption for the statutory period of twenty years; and
 - the landowner must have had actual or implied knowledge of the public’s use of the road and made no objection to such use.
- *Board of County Commissioners of Saguache County v. Flickinger*, 687 P.2d 975 (1984).



Prescriptive Use: Claim of Right

- The “claim of right” must be by an “overt act.” *Bockstiegel v. Board of County Commissioners of Lake County*, 97 P.3d 324 , 329 (2004).
- The “overt act” for the “claim of right” need not be by the county with maintenance responsibilities. *Gold Hill Development Company, L.P. v. TSG Ski & Golf, LLC*, 378 P.3d 816, 2015 COA 177 (2015).
- The “overt act” does not commence the prescription period, but rather, is a “prerequisite” for the prescription period to be effective. *Id.*



Prescriptive Use: Adversity

- Adverse use of the road by the public should be general in nature and not sporadic. However, intermittent use on a long-term basis is adverse. *Bockstiegel v. Board of County Commissioners of Lake County*, 97 P.3d 324 (2004).
- There is a presumption that public use is adverse if it goes uninterrupted for 20 years. *Board of County Commissioners of Saguache County v. Flickinger*, 687 P.2d 975 (1984). However, the presumption is rebuttable. *Boulder Medical Arts, Inc. v. Waldron*, 31 Colo. App. 215, 500 P.2d 170, 172 (1972).
- The route being established through adverse use must be along a “reasonably definite and certain line.” *Starr v. People*, 30 P. 64 (1892); *Lieber v. People*, 81 P. 270 (1905).
- It is unnecessary for the public to have exclusive possession of the route. *Alexander v. McClellan*, 56 P.3d 102, 105 (2002).

Prescriptive Use: Notice to Landowner

- There are two types of notice: actual and implied.
- Actual: The landowner sees the public using the road or is informed of such use.
- Implied:
 - Constructive notice such as recorded documents.
 - Inquiry notice, “exists when the [landowner] has notice of some fact that, in accordance with human experience, is sufficiently curious or suspicious that [he or she] should be obligated to make further inquiry into it. If a reasonable inquiry would reveal that there is another outstanding interest, then the [landowner] is on inquiry notice of that interest.” *Littlefield v. Bamberger*, 32 P.3d 615, 618 (Colo. App. 2001).



Prescriptive Roads: What Does “No Objection from Landowner” Mean?

- The requirement of “no objection” means no permission was given.
- Gates across the road do not necessarily mean the use is permissive, but they can in certain circumstances.
 - *McIntyre* at 412 (“While evidence of a fence or gate on the road gives rise to a strong indication that any public use of the road is permissive, their existence does not provide the landowner with a conclusive presumption that the use is permissive.”).
 - *Board of County Commissioners of Delta County v. Ogburn*, 554 P.2d 700, 214 (Colo. App. 1976) (the presence of unlocked gates across the road was not conclusive that the public’s use was permissive or lacked necessary contiguity).
 - *Board of County Commissioners of Saguache County v. Flickinger*, 687 P.2d 975, 981 (1984) (unlocked gate erected across road to protect livestock not considered to make road usage permissive).
 - *Lang v. Jones*, 191 Colo. 313, 552 P.2d 497, 499 (1976) (unlocked gates across road for “substantial periods of time” over 50 years meant public use permissive).
 - *Walter v. Hall*, 940 P.2d 991, 995 (1996) (landowner’s placement of locked gates made public use permissive).



Prescriptive Use: Special Considerations

- The court must define the width and location of the public road acquired through prescriptive use. *Lovvorn v. Salisbury*, 701 P.2d 142, 144 (1985).
- Although footpaths are typically not “roads” as contemplated pursuant to C.R.S. § 43-2-201(1)(c), the court needs to follow a flexible approach to fit reality, meaning that if the footpaths show up on the road map, then it is a road. *Simon v. Pettit*, 687 P.2d 1299, 1302 (Colo. 1984).
- The issuance of a tax sale certificate for the property over which the prescriptive public road extends does not stay the prescriptive period. Additionally, a tax deed for the underlying property issued prior to the end of the prescriptive period does not wipe out the public’s claim for adverse use of the road. *Town of Silver Plume v. Hudson*, 151 Colo. 394, 380 P.2d 59, 60 (1963).



Roads Open to Public Use Over the Public Domain on May 4, 1921

- This method of public road creation is pursuant to C.R.S. § 43-1-202. While although this statute was probably originally intended to be a “catch-all” to confirm existing public highways lawfully created, it has been primarily used to prove up public roads across State school lands. To that end, it may be used with C.R.S. § 43-1-218, which says, “The provisions of this part 2 shall apply to state lands and school lands as well as other lands.”
- State school lands were in “public domain” for the purposes of public road creation, at least until May 4, 1921. *Martino v. Board of County Commissioners of Pueblo County*, 360 P.2d 804, 806 (Colo. 1961). So, pursuant to C.R.S. § 43-1-202 and C.R.S. § 43-1-218, a road being used by the public prior to May 4, 1921, is a public road. See *Gold Hill Development Company, L.P. v. TSG Ski & Golf, LLC*, 378 P.3d 816, 827-828, (Colo. App. 2015).



Public Roads Created by Deed of Dedication

- C.R.S. § 43-2-201(1)(a) has three requirements to create a public road:
 - The road extends over private lands;
 - the road is dedicated to public use; and
 - the dedication is accepted by the board of county commissioners.
- While there is no apparent reason why a landowner would be prohibited from using a standard form quit claim deed, special warranty deed, or warranty deed, none of those forms include a portion to show *acceptance by a board of county commissioners*.

Example of a
standard
form Deed of
Dedication

DEED OF DEDICATION FOR PUBLIC ROAD RIGHT-OF-WAY

THIS DEED, made this [Date] day of [Month], [Year], between [Grantor Name] (referred to herein as "Grantor", whether one or more), and the County of Weld, a body corporate and politic of the State of Colorado, by and through its Board of County Commissioners (referred to herein as "Grantee"), whose legal address is 1150 "O" Street, Greeley, Colorado 80631:

WITNESSETH: That Grantor, for and in consideration of payment made by Grantee, the receipt and sufficiency of which is hereby acknowledged, does, pursuant to Colorado Revised Statute §43-2- 201(1)(a), hereby dedicate and convey forever unto Grantee for use as a Public Road Right-of Way, that real property lying and being in the County of Weld, State of Colorado, to wit:

The real property described and depicted on the attached Exhibit.

EXCEPTING oil, gas, hydrocarbons, and mineral leases, liens, encumbrances, rights-of-way, easements and utilities thereto existing or of record, and

RESERVING unto Grantor the mineral estate under said property, including oil, gas, hydrocarbons and any and all water rights including non-tributary and not non-tributary water currently attached to, upon, under, or associated with said property, except as required to sustain the integrity of the Public Highway.

GRANTOR:

[Grantor Name]

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____.

Witness my hand and official seal.

Notary Public

| | |
|---|---|
| <u>ACCEPTANCE</u> | |
| The County of Weld, by and through its Board of County Commissioners, hereby accepts the above dedication of property as a Public Highway (Public Right-of-Way) pursuant to C.R.S. §43-2-201(1)(a). | |
| Dated this ____ day of _____, 2021. | |
| ATTEST: | BOARD OF COUNTY COMMISSIONERS |
| Weld County Clerk to the Board | WELD COUNTY, COLORADO |
| By: _____ Deputy Clerk to the Board | _____ Chair, Board of County Commissioners |

**No Deed of Dedication is valid until accepted by the Board of County Commissioners pursuant to C.R.S. 43-2-201(1)(a).*

Public Roads Created by Express Dedication

- An express method of dedication of public roadways was created by the Colorado General Assembly in 1883. § 2972, G.S. (1883). This required a dedication petition to the board of county commissioners signed by all owners of land through which the proposed road was to extend, accompanied by a plat.
- All of the landowners along the route needed to sign the dedication petition for the public highway to extend the entire route. *White v. Town of Arvada*, 153 P. 696 (1915); *Korf v. Itten*, 169 P. 148 (1917).
- “The signing of the petition by a landowner, agreeing to give the right-of-way over his land..., is not an absolute grant, but is conditional, one of the conditions being that the other owners of all the lands to be taken do likewise.” *White, supra, at 349*.
- The dedication petition needed to be recorded in the grantor-grantee index in the clerk and recorders office to constitute constructive notice to subsequent purchasers. *City of Lakewood v. Mavromatis*, 817 P.2d 90, 95 (Colo. 1991).

ROAD PETITION.

To the Honorable Board of County Commissioners of Weld County, Colorado:

GENTLEMEN:

We, the undersigned, Citizens of your County, respectfully represent that the necessities of the public require a county wagon road to be laid out as follows, to-wit: Commencing at The South end of the line of the Colorado Canal No 2 at the Southern terminus of 11th Avenue in the City of Greeley thence due South through the SW 1/4 NW 1/4 and W 1/4 SW 1/4 Sec 8 Twp 5 N. R. 65 W. to the South line of said Section 8 thence West on said section line to the present county road at the SW corner of said Section 8 and to vacate and abandon so much of the County road commencing at the SW corner of Sec 8 Twp 5 N. R. 65 W. and running North between Sections 7 & 8 Twp 5 N. R. 65 W. Also commencing at the western terminus of District Street in the City of Greeley thence due West on the half section line of Sec 8 Twp 5 N. R. 65 W. to connect with the proposed road above described.

Said road to be not less than ~~40~~ ⁶⁰ feet in width.

We therefore petition your honorable body to cause to be laid out and opened a County road, as above described, and we, the owners of the land through which said road is sought to be laid out, in consideration of the sum of one dollar to us each and severally in hand paid by the said County of Weld, the receipt of which is hereby acknowledged, and of the laying out and opening of said road, hereby agree to give the right of way through our lands, as shown by the plat accompanying this petition, and relinquish all claims for damage by reason thereof. The said proposed line of road is more fully shown by the following map or plat, to which reference is herein made, the same being in

Township 5 N. North Range 65 West 11th D.M.

| | | | | | | | |
|----|----|----|----|----|----|----|----|
| 36 | 31 | 32 | 33 | 34 | 35 | 36 | 31 |
| 1 | 6 | 5 | 4 | 3 | 2 | 1 | 6 |
| 12 | 7 | 8 | 9 | 10 | 11 | 12 | 7 |
| 13 | 18 | 17 | 16 | 15 | 14 | 13 | 18 |
| 24 | 19 | 20 | 21 | 22 | 23 | 24 | 19 |
| 25 | 30 | 29 | 28 | 27 | 26 | 25 | 30 |
| 36 | 31 | 32 | 33 | 34 | 35 | 36 | 31 |
| 1 | 6 | 5 | 4 | 3 | 2 | 1 | 6 |

As witness our signatures hereunto annexed, and followed by a description of our land, this 1st day of March, 1897

| SIGNATURES | PROPERTY OWNED | | |
|-------------------|----------------|--------|-------|
| | SECTION | TWP. | RANGE |
| James S. Crawford | SW 1/4 | SW 1/4 | |
| John S. Crawford | | | |
| J. S. Paulson | | | |
| J. S. McElvahan | | | |
| M. E. Rice | | | |
| George S. Statter | | | |
| M. C. Baker | | | |
| A. F. Currier | | | |
| J. S. Arthur | | | |
| Emma E. Rosen | | | |
| By Oscar S. Rosen | | | |
| P. H. Allen | | | |

Filed in the office of the County Clerk _____, 1897

By _____, County Clerk.
By _____, Deputy.

Presented to the Board of County Commissioners, April 12, 1897, when the following action was

taken and entered of record in the minutes of their proceedings, to-wit:

It appearing to the Board that the right of way for said road through certain lands is donated by the owners thereof, and the Board believing that the public good requires the laying out of said road, it was ordered that the prayer of the petitioners be granted and that the right of way through unimproved government lands be taken in accordance with Section 111 of the Revised Statutes of the State and the line of road prayed for be and is hereby declared a public highway. The Clerk is directed to record the petition, plat the road as granted, and notify the Road Overseer of the proper District to open said road to travel at once.

J. B. Newell CHAIRMAN.

Filed for record the 1st day of April, A. D. 1897, at 4 o'clock P. M.

L. M. Reed Recorder.
By C. C. Huffman Deputy.

Example of dedication petition

34/3
37/40

Public Roads Created by Implied Dedication

- An implied dedication is a mix of dedication by the landowner and use by the public. There are two elements to implied dedication:
 - The landowner must manifest some intent to dedicate a road for public use extending across his or her property; and
 - Use by the public.
- *McIntyre v. Board of County Commissioners of Gunnison County*, 86 P.3d 402, 411 (Colo. 2004)



Section Line Roads Created by Resolution

- In April 1885, the Colorado General Assembly enacted the following:

“The commissioners of the county may, at any regular meeting, by an order of the board, declare any section or township line on the public domain a public highway...”

Colo. Sess. Laws 1885 ch.95, § 4 at 327, codified as C.S.A. 1935, Ch. 143, § 44, repealed by Laws of 1953, Ch. 202, § 46 at 531, effective December 31, 1953.

- Many counties passed resolutions in the late 1880’s and early 1890’s to accept the grant and declare the existence of section line roads on public domain within those counties.
- Section line roads cannot in time be abandoned on account of nonuse. *Uhl v. McEndaffer*, 123 Colo. 69, 225 P.2d 839, 842-843 (1950).



Weld County's Section Line Road Resolution

Corporate Seal
Land Company has herewith set his hand, and affixed the seal of the Company this tenth day of July A.D. 1889.

Countersigned
R. O. Phillips, Secretary. H. P. Scott, President
Witness Signature of President:
E. R. Haubold

State of Iowa }
Des Moines County } ss.

Be it his over, That on this 20th day of July A.D. 1889, before me a Notary Public in and for said County, personally appeared H. P. Scott, President of the Lincoln Land Company, who is personally known to me to be the identical person whose name is subscribed to the foregoing instrument as said President, and then and there acknowledged the execution of said instrument to be the voluntary act and deed of said Company.



Witness my hand and Notarial seal on the day last above written.
W. D. Eaton, Notary Public.

34283.
Transcript of Proceedings
of
Board of County Commissioners
of Weld County, Colorado.
Declaring all Section and Township
lines on the Public Domain of the
United States within Weld County,
Colo. to be County Roads, etc.
Filed for record at 4⁵⁵ o'clock,
P. M. October 14th 1889.
R. P. Frost,
Recorder.

State of Colorado
County of Weld ss:-
Be it remembered that on the 12th day
of October A.D. 1889, the same being one of
the regular days of the October meeting of the
Board of County Commissioners of the County
of Weld, in the State of Colorado, which regular
meeting was duly convened upon Monday,
the 7th day of October, A.D. 1889, and duly
adjourned from day to day until said 12th day
of October, 1889, the following proceedings in
ter alia were duly had and entered of record,
upon the minutes of the proceedings of said
board, that is to say:

" On Motion of Commissioner S. H. Southard seconded by Commissioner J. S. Barber the following order was unanimously adopted:-
Whereas, Section 2477 of the Revised Statutes of the United States provides:
"The right of way for the construction of highways over public lands not reserved for public uses, is hereby granted."
And Whereas, by virtue of an Act of the General Assembly of the State of Colorado, entitled:
"An Act to Amend Section 4 of Chapter 95 of the General Statutes of the State of Colorado, entitled "Roads and Highways", "as passed April 7, 1885, it is provided:
The Commissioners of the County may, at any regular meeting

Public Roads Created by Road- Viewers' Reports

- The Colorado Territorial Legislature enacted a condemnation-style public road creation procedure in 1862, amended in 1864, which has been commonly referred to as the “Road Viewers’ Report process.”
- The Road-Viewers’ Report needed to be recorded in the grantor-grantee index in the clerk and recorder's office to constitute constructive notice to subsequent purchasers. *City of Lakewood v. Mavromatis*, 817 P.2d 90, 95 (Colo. 1991).



ROAD-VIEWERS' REPORT.

To the Honorable Board of County Commissioners of Weld County, Colorado,
 GENTLEMEN:—Your viewers appointed on the 14th day of January 1884 to view a county road prayed for in a certain petition presented to your Honorable body on the above named day and date, a copy of which has been received by us, viz.: Commencing at*

The South East corner of the South East quarter of Sec 29 Twp 3 N R 47 West and running on said line East to the South West corner of Sec 26—3—67

Respectfully submit the following report, to wit: After receiving our authority to act, we met at the starting point of said proposed road, on the 24 day of January 1884 at the hour of 10 o'clock A.M., being the time and place specified in our appointment, and proceeded to view the road prayed for in said petition, as follows: We commenced at the starting point named in said petition and, run

thence East two sides as described in instructions to wit: commencing at the S E corner of the quarter of Sec 29 Town 3 North Range 47 West and running on said East to the South West corner of Sec 26—Town 3 R 47

ended point being the terminus thereof, and the road as above laid out and viewed being over the most practicable route which we in our find. We found it necessary to make the following changes in the proposed route as prayed for, viz:

passed to be surveyed and platted, and have herein embodied a plat of said road as viewed by us, and which forms a part of this the following map:

| | | | | | | |
|----|----|----|----|----|----|----|
| 31 | 32 | 33 | 34 | 35 | 36 | 31 |
| 6 | 5 | 4 | 3 | 2 | 1 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 7 |
| 13 | 18 | 17 | 16 | 15 | 14 | 18 |
| 24 | 19 | 20 | 21 | 22 | 23 | 19 |
| 25 | 30 | 29 | 28 | 27 | 26 | 30 |
| 36 | 31 | 32 | 33 | 34 | 35 | 31 |
| 1 | 6 | 5 | 4 | 3 | 2 | 6 |

* Description of Road as prayed for. † Description of the Viewing. ‡ State the change, if any; if no change has been made, cross this witness.

We have taken into account all the damages and benefits to land owners arising from the laying out of said road, and report, in tabular form, as follows:

| NAME OF LAND OWNER. | DESCRIPTION OF LAND. | | | | | | | Value of the Benefits. | Amount of Damages to be borne by Beneficiaries. |
|---------------------|-------------------------------|--------------------|------|-----|----|---------------|---|------------------------|---|
| | Part or width of strip taken. | Subdivision. | Sec. | Tp. | R. | No. of Acres. | Damage to parties of land and other property. | | |
| McCarty | 30 ft off South line | S 20 th | 28 | 3 | 67 | 1 1/2 | Benefit thereon 10 00 | None | |
| Edwin Lyman | " " " " | S 20 th | " | " | " | 1 1/2 | Benefit thereon 10 00 | None | |
| Rail Road | " " " " | S 20 th | 27 | 3 | 67 | 1 1/2 | Benefit thereon 10 00 | None | |
| See Shortly | " " " " | S 20 th | " | " | " | 1 1/2 | Benefit thereon 10 00 | None | |
| Rail Road | " " " North | N 20 th | 33 | 3 | 67 | 1 1/2 | Benefit thereon 10 00 | None | |
| " | " " " " | N 20 th | " | " | " | 1 1/2 | Benefit thereon 10 00 | None | |
| Government | " " " " | N 20 th | 34 | " | " | 1 1/2 | Benefit thereon 10 00 | None | |
| C. & Parsons | " " " " | N 20 th | 34 | " | " | 1 1/2 | Benefit thereon 10 00 | None | |

We have taken the following Government lands, viz.:
 30 ft wide by 140 rods long from N. W. 1/4 Sec 34 Town 3 Range 47

We have taken the following Railroad Grant lands, viz.:
 30 ft by 140 rods from the following 1/2 sections viz: N. W. and N. E. of 33 and S. W. and S. E. of 27 all in Town 3 R 47.

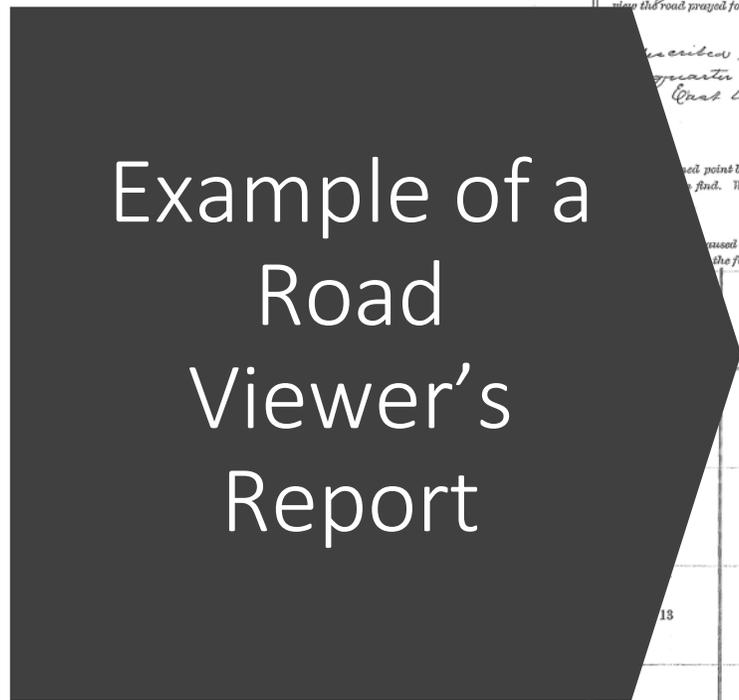
We have marked out the line of said road as located by us by turning a furrow on each side of said proposed road. We estimate the probable cost of opening said road to travel to be \$ 3500. In estimating cost of opening same we have estimated cost of one bridge at \$2000 which is not absolutely necessary at present. In regard to counter petitions submitted to us, we would answer specifications by number 1st The road is a way but practicable, no necessary, 2nd We have not being found, 3rd We find the land said to have been purchased to be S E 1/4 Sec 27 We find no reservoir and have that no survey has been made but that parties contemplate creating reservoir, which if filled would necessitate changing road about 2 rods South near NW corner N E 1/4 27. If reservoir is filled as proposed we estimate that there might be three or four feet of water main of road. In view of all the facts we recommend the laying of the road as prayed for.

Which viewing we have completed this 24 day of January 1884.
 J. M. Bacon
 F. W. Hammersmith
 Milton Eaton } VIEWERS.

Filed in the office of the County Clerk 24 day of January 1884.
 W. H. Rice } County Clerk,
 Deputy.

Presented to the Board of County Commissioners, July 12 1884, when the following action was taken, and entered of record on the minutes of their proceedings, to wit: The within report having been returned to the Board of County Commissioners record of April 15 1884 and having been returned duly corrected then 12th day of July and viewing said road to be a necessity for the accommodation of the traveling public, it is ordered that their report be accepted in the office of the County Clerk and recorded in the book kept for that purpose and that the money thereon in the amount of \$3500 be paid to the parties named therein who are authorized to make and lay out the road as shown by the plat herewith attached and to have and hold the same to and for the use of the public.

Filed for record the 14 day of July A. D. 1884 at 4 30 o'clock P. M.
 and is duly recorded in book 48 page 251
 W. H. Rice } Recorder,
 Deputy.
 #13802



Example of a
 Road
 Viewer's
 Report

Abandonment of Public Roadways

- All the creation methods may involve claims by landowners that the public roads claimed to have been created have actually been abandoned. This is known as “common law abandonment.” This requires proof of intent to abandon and nonuse.
- The burden lies with the party asserting abandonment.
- C.R.S. § 43-2-113 provides for a statutory method for abandonment of primary county roads. The statute requires:
 - Relocation of a primary road;
 - the “opinion” by the board of county commissioners that the road is no longer necessary as part of the “county road system,” and
 - no resolution by the board that the road is necessary for use as a secondary road.



Primary vs. Secondary County Roads

- “[T]here is a difference between county roads and public roads.” *See High Lonesome Ranch*, 508 F. Supp. 3d at 828–29; *see also Sarver v. Allen Cnty., By & Through Its Fiscal Ct.*, 582 S.W.2d 40, 41 (Ky. 1979) (“[T]hough a road may be ‘public,’ it is not necessarily a ‘county road.’”).
- The current statutes addressing county highway systems were approved in 1953.
- The systems consist of a county primary system (C.R.S. § 43-2-109) and a county secondary system (C.R.S. § 43-2-110).
- Primary roads are chosen by a BOCC by including them on a County Roads Map after a public hearing and “designating each primary road by appropriate number.” *See* C.R.S. § 43-2-110 (1)(a).
- County primary roads “must be constructed to general standards acceptable for county primary roads, where found practicable by the board of county commissioners.” *See* C.R.S. § 43-2-114.



Maintenance

- In 1877, counties had a statutory duty to maintain public highways within their jurisdictions:
- “All public highways, except such as are owned and operated by private corporations, and highways within the corporate limits of any incorporated city or town, shall be maintained and kept in repair by the respective counties in which they are located.” Colo. Sess. Laws 1883 § 2 at 251.

This requirement was repealed in 1953. Laws of 1953, Ch. 202, § 46 at 531, effective December 31, 1953.

- **“There is no law requiring [a Colorado] county to maintain roads because there are many more miles of road than the county has funds to maintain.”** See *High Lonesome Ranch, LLC v. Bd. of Cnty. Commissioners for Cnty. of Garfield*, 508 F. Supp. 3d 801, 827 (D. Colo. 2020) (emphasis added); see also *Wark v. Bd. of Cnty. Comm’rs of Cnty. of Dolores*, 47 P.3d 711, 716 (Colo. App. 2002), as modified on denial of reh’g (May 4, 2006) (“We find no authority to support plaintiffs’ assertion that the county had a constitutional duty to make road improvements.”).
- The sole authority to determine what roads are included on the official county road system map and thereby eligible for the expenditure on maintenance rests with the board of county commissioners. *Wibby v. Boulder County Board of County Commissioners*, 409 P.2d 516, 522 (Colo. App. 2016).





Common Legal Issues Surrounding County Roads



Obstructions

- C.R.S. § 43-5-301 – civil infraction to obstruct public road
- C.R.S. § 18-9-107(1)(a) – criminal penalties for obstructing public road



Trees



- C.R.S. § 42-4-114 – County may notify landowner to remove tree limb or other vegetation overhanging County road to remove
- If landowner does not remove, County may remove and bill landowner for cost of removal.

Private use of Public Roads

- *Lewis v. Lorenz*, 354 P.2d 1008 (Colo. 1960) (private use of public road does not create a private right for landowner).



Cattle Guards

- C.R.S. §§ 43-2-211, -212, -213 – BOCC may install cattle guards at expense of county OR permit landowners adjoining county road to install at landowner expense.
- Either way cattle guards must conform to fixed design specs.
- If meets specs not deemed obstruction.
- Who responsible for maintenance?
“Pottery Barn rule”?



Overflowing Irrigation Water

- C.R.S. § 43-5-303 – civil infraction to repeatedly, willfully or negligently allow water to damage road or cause traffic hazard
- Defenses for acts of God or if exercising due diligence and using crop sprinkler systems with devices to prevent flooding



Road Closures and Restrictions

- C.R.S. § 42-4-106(1), (2): allows counties to prohibit vehicles or impose weight restrictions due to weather for up to 90 days and to establish signage for such closures





Road Closures and Restrictions

- C.R.S. § 42-4-106(3)(b),(c) allows counties to:
- Prohibit commercial vehicles on designated roads
- Impose weight limitations
- Prohibit OHVs (*more on this in a moment*)



Road Closures and Restrictions

- C.R.S. § 42-4-106(3)(d) allows counties to:
- Designate road for only over the snow use when seasonal snow packed conditions exist
- Impose weight limitations
- Further limit over the snow use to human or animal-powered means

Private Plowing of County Roads

- C.R.S. § 42-4-106(3)(d)(IV) – allows counties to enter into private winter plowing agreements for private citizens to plow seasonally closed county roads and permit wheeled winter access



Snowmobiles

- C.R.S. § 42-4-106(3)(d) – seasonal closure can allow winter motorized use
- C.R.S. § 33-14-110,-111, -112 – With some exceptions, snowmobiles not allowed on county roads except where County designates snowmobile routes



OHVs (e.g., UTVs)

- C.R.S. § 33-14.5-108(1) – with some exceptions, OHVs are prohibited on county roads unless expressly authorized by a county Board.



Questions?

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