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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
OKANOGAN COUNTY

<hr/>		:	
GAMBLE LAND & TIMBER LTD.,	:	Case No. 17-2-00086-0	
Washington limited partnership; and	:		
CASCADE HOLDINGS GROUP, LP, a	:		
Nevada limited partnership,	:		
	:	DECLARATION OF NATALIE	
	:	N. KUEHLER	
Plaintiffs	:		
vs.	:		
	:		
OKANOGAN COUNTY, WASHINGTON	:		
a Washington Municipal Corporation; and	:		
all other persons or parties unknown claiming	:		
any right, title, estate, lien or interest in the real	:		
estate described in the Complaint herein	:		
	:		
Defendants,	:		
and	:		
	:		
OKANOGAN OPEN ROADS COALITION,	:		
and individual taxpayer members thereof	:		
LORAH SUPER, CRAIG OLSON, and	:		
KEVIN CREAGER,	:		
	:		
Defendants and Cross-Plaintiffs.	:		
<hr/>		:	

39 I, Natalie N. Kuehler, hereby declare under penalty of perjury according to the laws of  
40 the State of Washington that I am of legal age and competent to testify, and further declare and  
41 state the following from my personal knowledge and observation:



Natalie N. Kuehler  
Principal  
RYAN & KUEHLER PLLC  
P.O. Box 3059 Winthrop, WA 98862  
(509) 557-5769 www.ryankuehler.com

1           1.       I am counsel of record for defendants and cross-plaintiffs Okanogan Open Roads  
2 Coalition, and individual taxpayer members thereof (together “OORC”) in this action.

3           2.       Lorah Super, a member of OORC, submitted public records requests for  
4 documents relating to the French Creek Road (the “Road”) on January 27, 2009, February 15,  
5 2012, May 11, 2015, and April 28, 2017. Okanogan County produced neither the historic records  
6 from 1889 and 1890 nor the records relating to the 1965 petition to vacate the Road in response  
7 to these requests. On October 27, 2017, Okanogan County responded to document requests  
8 propounded by Plaintiffs in this action. Okanogan County produced neither the historic records  
9 from 1889 and 1890 nor the records relating to the 1965 petition to vacate the Road in response  
10 to these requests.

11           3.       On September 12, 2018, OORC propounded its First Request for Production of  
12 Documents and Interrogatories on Okanogan County. Although some records were initially  
13 produced on October 27, 2018, and despite multiple follow-up conversations among counsel,  
14 Okanogan County did not provide substantive responses to OORC’s discovery requests until  
15 February 1, 2019, nearly five months later.

16           4.       Also on February 1, 2019, Okanogan County for the first time produced records  
17 relating to a 1965 petition to vacate the French Creek Road (the “Road”), which was denied as  
18 contrary to the public interest.

19           5.       Okanogan County for the first time produced records relating to the 1889 petition  
20 by which the Road was first established on March 25, 2019, when it produced the 1889 Road  
21 survey notes.



1           6.       On April 1, 2019, Okanogan County for the first time produced the Commissioner  
2 meeting notes relating to the establishment of the Road by petition in 1889.

3           7.       On April 5, 2019, Okanogan County for the first time produced the 1889 petition  
4 to establish the Road as a County road and supporting documents.

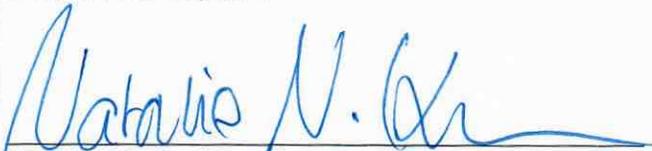
5           8.       Finally, on May 1, 2019, Okanogan County produced additional survey notes and  
6 records relating to the establishment and surveying of the Loop Loop Road in 1890, in which  
7 reference is made to the existence of the Methow Valley Road.

8           9.       Attached to this declaration as Exhibit A is a true and correct copy of the Montana  
9 Supreme Court's decision in Bugli v. Ravalli County, 392 Mont. 131, 136 (MT. 2018) as  
10 published on Westlaw.

11           10.      Attached to this declaration as Exhibit B is a true and correct copy of the Laws of  
12 Washington Territory 1879, *An Act in Relation to Roads*, Chapter 1, also available at  
13 <http://leg.wa.gov/CodeReviser/documents/sessionlaw/1881pam1.pdf>.

14  
15 DECLARED UNDER PENALTY OF PERJURY.

16 Dated: June 29, 2019

17 

18  
19 Natalie N. Kuehler, Esq.



# Kuehler Declaration

## **EXHIBIT A**

392 Mont. 131

Supreme Court of Montana.

Zackary Jay BUGLI, Tracy Bugli, Wade Cox and Charlene Cox; and Violet Cox, as Trustee of the Cox Family Trust, Plaintiffs and Appellants,

v.

RAVALLI COUNTY, a political subdivision of the State of Montana, Defendant and Appellee

DA 17-0426

Submitted on Briefs: March 28, 2018

Decided: July 17, 2018

### Synopsis

**Background:** Landowners brought declaratory judgment action against county, alleging claim preclusion regarding removal of gate, and seeking a declaration as to the end point of county road. The District Court of the 21st Judicial District, Ravalli County, [Jeffrey H. Langton](#), P.J., granted county's motions to dismiss, and landowners appealed.

**Holdings:** The Supreme Court, en banc, [Mike McGrath](#), C.J., held that:

claim preclusion did not operate to bar board of county commissioners from asserting a gate placed by landowners across a county road should be removed, and

District Court lacked jurisdiction to make a declaration as to the end point of county road.

Affirmed.

**Procedural Posture(s):** On Appeal; Motion to Dismiss for Failure to State a Claim; Motion to Dismiss for Lack of Subject Matter Jurisdiction.

**\*\*132 APPEAL FROM:** District Court of the Twenty-First Judicial District, In and For the County of Ravalli, Cause No. DV-17-137, Honorable [Jeffrey H. Langton](#), Presiding Judge

### Attorneys and Law Firms

For Appellants: [Martin S. King](#), [Jesse C. Kodadek](#), Worden Thane P.C., Missoula, Montana

For Appellee: Bill Fulbright, Ravalli County Attorney, [Daniel Browder](#), Deputy County Attorney, Hamilton, Montana

### Opinion

Chief Justice [Mike McGrath](#) delivered the Opinion of the Court.

**\*132 ¶1** Zackary Bugli, Tracy Bugli, Wade Cox, Charlene Cox, and Violet Cox (Landowners) **\*\*133** appeal from a Twenty-First Judicial District Court opinion and order granting Ravalli County's (County) Rule 12 Motions to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim. We affirm.

¶2 We restate the issues as follows:

1. *Whether the District Court erred when it dismissed this case concluding that it lacked subject matter jurisdiction regarding Landowners' claim preclusion argument.*
2. *Whether the District Court was correct when it declined to address Landowners' request for declaratory judgment regarding the legal description of Hughes Creek Road.*

### PROCEDURAL AND FACTUAL BACKGROUND

¶3 This is a dispute about where Hughes Creek Road (Road), a Ravalli County road created in 1900, ends and private property begins. In the 1970s, a gate was placed about nine miles up the Road from West Fork Road, preventing public access beyond the gate. In 1982, previous landowners abutting the Road filed a petition with the Ravalli County Board of County Commissioners (BOCC) to abandon the Road beyond the gate. The BOCC denied the previous landowners' petition, ordered that the gate be removed, and made a finding of fact that the Road was 11.8 miles long.

¶4 When the previous landowners failed to remove the gate, the County commenced an action against them

seeking an order directing removal of the gate and a temporary restraining order. In 1984, Judge James B. Wheelis orally denied the county road supervisor's motion for \*133 a temporary restraining order. After being inactive for approximately nine years, the case was dismissed by stipulation of the parties. *Jay Unrue, Road Supervisor for Ravalli Cnty. v. Royal Teton Ltd., et al.*, No. DV-84-248, Or. (21st Judicial Dist. Dec. 10, 1993).

¶5 In 2016, Landowners filed a new petition with the BOCC to abandon the Road at the same spot that was proposed by previous landowners in the 1982 proceeding. Landowners are alleged successors in interest to the previous landowners and others that own property accessed by the Road. Following a hearing on January 25, 2017, the BOCC denied the petition and directed the landowners to remove the gate no later than June 1, 2017. The BOCC found that, pursuant to § 7-14-2615(3), MCA, the Road provided public access to public lands or waters, and that no other public road or right-of-way provides substantially the same access to public lands or waters.

¶6 Two and a half months later, on April 10, 2017, Landowners filed a complaint for declaratory and injunctive relief in the District Court. In their complaint, they presented four claims: (I) claim preclusion regarding removal of the gate; (II) declaratory judgment regarding the end of the Road; (III) declaratory judgment regarding the construction and application of § 7-14-2615(3), MCA; and (IV) unconstitutional taking of private property. On June 29, 2017, the District Court dismissed Landowners' complaint for lack of subject matter jurisdiction and for failure to state a claim. They appeal the decision regarding claims I and II.<sup>1</sup>

## STANDARD OF REVIEW

¶7 A district court's decision to grant or deny a motion to dismiss for lack of subject matter jurisdiction is a question of law that we review for correctness. *Rimrock Chrysler, Inc. v. DOJ*, 2016 MT 165, ¶ 10, 384 Mont. 76, 375 P.3d 392. We review a district court's conclusions of law de novo. *Giambra v. Kelsey*, 2007 MT 158, ¶ 28, 338 Mont. 19, 162 P.3d 134.

## DISCUSSION

¶8 1. *Whether the District Court erred when it dismissed this case concluding that it lacked subject matter jurisdiction regarding Landowners' claim preclusion argument.*

¶9 Claim preclusion embodies “a judicial policy that favors a definite \*134 end to \*\*134 litigation, whereby we seek to prevent parties from incessantly waging piecemeal, collateral attacks against judgments.” *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 18, 366 Mont. 78, 285 P.3d 494 (quoting  *Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267). Claim preclusion bars relitigation of a claim that a party has already had an opportunity to litigate if:

- (1) the parties or their privies are the same in the first and second actions;
- (2) the subject matter of the actions is the same;
- (3) the issues are the same in both actions, or are ones that could have been raised in the first action, and they relate to the same subject matter;
- (4) the capacities of the parties are the same in reference to the subject matter and the issues between them; and
- (5) a valid final judgment has been entered on the merits in the first action by a court of competent jurisdiction.

*Brilz*, ¶¶ 21-22 (citations omitted).

¶10 Here, the District Court did not address Landowners' claim preclusion argument because it concluded that it did not have subject matter jurisdiction to do so. We agree with the result of the District Court's decision, but for a different reason. See *City of Billings v. Staebler*, 2011 MT 254, ¶ 9, 362 Mont. 231, 262 P.3d 1101 (holding this Court will “affirm the district court when it reaches the right result, even if it reaches the right result for the wrong reason”).

¶11 Landowners have not satisfied all elements of claim preclusion. First, the issues in the 1984 action and this proceeding are not the same. This Court has held that the identity of issues is the most crucial element of collateral

estoppel. *Stewart v. Liberty Northwest Ins. Corp.*, 2013 MT 107, ¶ 21, 370 Mont. 19, 299 P.3d 820 (citations omitted). Landowners argue the issues are the same because both actions question whether landowners have a right to exclude the public beyond the gate. However, the “mere fact that each action arises from the same transaction does not necessarily mean that they each involve the same issues.” *Stewart*, ¶ 21 (citations omitted). The proceedings involved in the 1984 action are entirely different from the one at issue here. Whereas this case was essentially brought by Landowners in an attempt to challenge the County’s decision to deny their 2016 petition for abandonment, the 1984 action was brought by the County to remove a gate from the Road. See *Stewart*, ¶ 22 (citations omitted) (holding that this Court compares pleadings, evidence, and circumstances surrounding the two actions when determining whether the issues are the same).

¶12 Further, a valid final judgment on the merits was never entered regarding the 1984 action. Landowners assert that the parties’ \*135 stipulation to dismiss the 1984 case was a final judgment and argue that the County is barred by claim preclusion from asserting a determination that the gate across the Road is an interference with the public use of the roadway. Although a stipulation to dismiss with prejudice can be considered “the same as a judgment on the merits” for claim preclusion purposes, *Tisher v. Norwest Capital Mgmt. & Trust Co.*, 260 Mont. 143, 152, 859 P.2d 984, 989-90 (1993), the Stipulation and Order issued on December 10, 1993, contains conflicting language regarding whether the case was dismissed with or without prejudice. As the District Court points out, the first sentence of the Stipulation and Order states “with prejudice,” but clearly the actual court order states “without prejudice.” And more to the point, in the 1984 oral pronouncement, Judge Wheelis denied the County’s request for a *temporary restraining order*, stating “I will deny your restraining order at this time. That doesn’t prejudice you in your case in chief on the issue....” However, the case languished and a final order and judgment was never made.

¶13 Nine years later, the District Court ordered the parties to “show cause, if any there be, why an order should not be entered dismissing this action without prejudice” based on inactivity. Clearly, there is not a final judgment or order that precludes the County from asserting the gate should be removed from the Road. The County is not

barred from asserting that the gate should be removed. We affirm the District Court’s dismissal of Landowners’ claim preclusion argument.

**\*\*135 ¶14 2.** *Whether the District Court was correct when it declined to address Landowners’ request for declaratory judgment regarding the legal description of Hughes Creek Road.*

¶15 County commissioners have specific authority to “lay out, maintain, control, and manage county roads ... within the county.” Sections 7-5-2101, 7-14-2101(1)(a)(i), MCA. Moreover, county commissioners have the authority to grant or deny a petition to establish, alter, or abandon a county road. Sections 7-14-2601-2604, MCA. Following notice and a public hearing, county roads are only abandoned by (1) operation of law; (2) judgment of a court of competent jurisdiction; or (3) the order of the board. Section 7-14-2615(1), (2), MCA.

¶16 It is well settled in Montana’s jurisprudence that a district court does not have jurisdiction to independently order the abandonment of a county road. *Bd. of Cnty. Comm’rs v. District Court*, 203 Mont. 44, 48-49, 659 P.2d 266, 268-69 (1983); *Lee v. Musselshell*, 2004 MT 64, ¶ 27, 320 Mont. 294, 87 P.3d 423. The proper procedure for abandoning a county road requires landowners to file a petition with the Board of \*136 County Commissioners. Section 7-14-2601, MCA. If a petitioner disagrees with the Board of County Commissioners’ decision regarding abandonment, the petitioner must seek a writ of review in the district court. *Bd. of Cnty. Comm’rs*, 203 Mont. at 48-49, 659 P.2d at 268-69. A writ of review may be granted by “the supreme court or the district court ... when a lower tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction of the tribunal, board, or officer and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy.” Section 27-25-102, MCA.

¶17 Here, the District Court declined to address Landowners’ claim for declaratory judgment regarding the length of the Road, ruling it did not have jurisdiction without a petition for a writ of review of the 2016 BOCC decision. In its opinion and order, the District Court stated that re-establishing the length of the Road as urged by Landowners would abandon the Road by implication, which cannot be done by a court without a writ of review. Conversely, Landowners allege that their request

for declaratory judgment has nothing to do with the 2016 petition and abandonment of the road. We disagree.

¶18 Landowners seek a declaratory judgment that the Road ends at the east edge of Mineral Survey 5898. This same argument was made by Landowners when they petitioned the BOCC for abandonment of the Road in 2016. The alternative declaratory relief and injunction sought would contradict the BOCC's findings of fact that the Road not be abandoned beyond the gate. Either way, Landowners seek an injunction from interfering with their constitutional right to exclude the public from their private property beyond that point.

¶19 Instead of filing a complaint in the District Court, Landowners should have challenged the BOCC's denial pursuant to the statutory requirements for county road abandonment cases. *See* § 7-14-2601, MCA; *Bd. of Cnty. Comm'rs*, 203 Mont. at 48-49, 659 P.2d at 268-69. Landowners argue, though, that their claims are not appropriate for a writ of review because they are not contending that the BOCC exceeded its jurisdiction. However, they essentially are, because they claim that whether a petitioned-for county road ever existed beyond the gate is a mixed question of law and fact that the BOCC had no authority to decide.

¶20 It has long been the practice in Montana to litigate the existence, location, and conditions of a county road through declaratory or quiet title actions. *See Sayers v. Chouteau Cnty.*, 2013 MT 45, 369 Mont. 98, 297 P.3d 312 (Landowner sought a declaratory judgment regarding whether the entire length of a road constituted a public roadway); *Garrison v. Lincoln Cnty.*, 2003 MT 227, 317 Mont. 190, 77 P.3d 163 \*137 (Landowner brought an action alleging the county had no interest in a county road that crossed his property); *Roe Family, L.L.C. v. Lincoln Cnty. Bd. of Comm'rs*, 2008 MT 70, 342 Mont. 108, 179 P.3d 514 (Landowners requested a declaratory judgment that a county road existed between a piece of their property and an existing county road); *Galassi v. Lincoln Cnty. Bd. of Comm'rs*, 2003 MT 319, 318 Mont. 288, 80 P.3d 84 (Landowners sued a county and others to quiet \*\*136 title to part of a county road that crossed their property and for injunctive relief barring public access to that part of the road);  *Reid v. Park Cnty.*, 192 Mont. 231, 627 P.2d 1210 (1981) (Landowner sought quiet title in a county road crossing his property). However, this case must be distinguished from those cases.

¶21 Here, Landowners attempt to run around the denial of their petition in 2016. By submitting their petition to abandon the road, Landowners voluntarily chose, accepted, and submitted to the BOCC's jurisdiction and committed their road dispute to the statutory process that arises from the statutory abandonment process, including necessary fact-finding. Landowners are now bound to that process, and cannot relitigate these issues in a separate forum.

¶22 A declaratory judgment by the District Court regarding the length of the Road could conflict with the BOCC's denial of the 2016 petition and undermine its statutory authority over the Road. Under these facts, the proper process to invoke the jurisdiction of the courts is through a properly filed petition for writ of review of the BOCC decision. *See Bd. of Cnty. Comm'rs*, 203 Mont. at 48-49, 659 P.2d at 268-69; *Lee*, ¶ 26.

¶23 Landowners argue this case is distinguishable from previous county road abandonment cases in which this Court declined to address arguments that would effectually abandon a county road. However, the *Board of County Commissioners* case is very similar to this case. In 1979, landowners filed a petition to vacate a dedicated road right-of-way, also in Ravalli County. In addition, a second group of landowners filed a petition for removal of "road obstructions," and requested that the dedicated right-of-way be opened. In September 1979, following public hearings on both, the BOCC declined to take action on either petition.

¶24 One of the parties filed a civil action in November of 1979. In August 1981, the district court ordered the BOCC to retain the subject land in trust for the public or return it to the land grantors. In response, following a properly noticed public hearing, the BOCC entered findings of fact and denied the petition for vacation of the right-of-way. In June 1982, the district court issued an order holding \*138 the BOCC in contempt for failing to abide by the prior order. The BOCC then filed a petition for a writ of review with this Court.

¶25 The Montana Supreme Court overturned the orders of the district court, reasoning that the "effect of the [d]istrict [c]ourt order was to abandon the road," that the district court did not have original jurisdiction, and the dissatisfied landowners should have petitioned the district

court for a writ of review. *Bd. of Cnty. Comm'rs*, 203 Mont. at 48-49, 659 P.2d at 268-69. This exact point was restated in *Lee v. Musselshell*. In *Lee*, this Court held that “the [d]istrict [c]ourt did not have jurisdiction to issue an order that would have effectuated a forced abandonment” of a county road without a writ of review. *Lee*, ¶ 27. Here, Landowners seek an order that would have the same impact on the Road as that identified in *Board of County Commissioners* and *Lee*; Landowners seek abandonment by implication outside of the abandonment process.

¶26 Landowners petitioned the BOCC to abandon the Road in 2016. However, they did not petition the District Court for a writ of review upon denial of their petition. Thus, Landowners' civil action, filed two and a half months later regarding the length of the Road, was properly dismissed because they failed to follow the proper procedure for county road abandonment cases.

### CONCLUSION

¶27 The District Court was correct when it granted the County's motion to dismiss. Landowners did not satisfy

all factors for claim preclusion and Landowners failed to follow the proper procedure for seeking review of a BOCC's denial of a petition to abandon a county road.

¶28 Affirmed.

We Concur:

LAURIE MCKINNON, J.

JAMES JEREMIAH SHEA, J.

INGRID GUSTAFSON, J.

BETH BAKER, J.

DIRK M. SANDEFUR, J.

JIM RICE, J.

All Citations

392 Mont. 131, 422 P.3d 131, 2018 MT 177

### Footnotes

- 1 Landowners do not appeal the District Court's decision regarding the scope and application of § 7-14-2615(3), MCA, or Landowners' takings claim.

# Kuehler Declaration

## **EXHIBIT B**

LAWS  
OF  
WASHINGTON TERRITORY,

ENACTED BY THE

LEGISLATIVE ASSEMBLY

IN THE YEAR 1879.

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Published by Authority.

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OLYMPIA:  
C. B. BAGLEY, PUBLIC PRINTER.  
1879.

tax levy in the county for all purposes. His certificate shall be substantially in the following form:

OFFICE COUNTY AUDITOR, }  
 For \_\_\_\_\_ COUNTY, W. T. }  
 ..... 18

I hereby certify that the total amount of taxable property, both real and personal, for the county of \_\_\_\_\_ and Territory of Washington, for the year 18—, as returned by the county assessor, and examined and approved by the county commissioners, is as follows, to wit: Real property, \$.....; personal property, \$.....; Total, \$.....

I further certify that the total amount of tax levy in said county, for the year 18—, is as follows:

For territorial purposes	—	mills.....	\$—
For county	“	“ .....	—
For school	“	“ .....	—
For road	“	“ .....	—
For poll, etc.	“	“ .....	—

Witness my hand and official seal.

For .....,  
 \_\_\_\_\_,  
 Territorial Auditor, Olympia, W. T.

SEC. 195. The intention of this act is to the effect that the treasurer shall be the collector for taxes until the first day of January of each year, and the sheriff shall be the collector of all delinquent taxes.

Approved, Nov. 14, 1879.

AN ACT

IN RELATION TO ROADS, FERRIES, BRIDGES, AND TRAVEL ON PUBLIC HIGHWAYS.

CHAPTER I.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington.* That all county roads shall be under the supervision of the board of county commissioners of the county wherein the said roads are located, and no county road shall be hereafter established, nor shall any such road be

altered, or vacated in any county in this territory, except by the authority of the board of county commissioners of the proper county: *Provided*, That this act shall not be construed to interfere with the jurisdiction over roads within the corporate limits of any city, or town which by the charter of said city or town is vested in the corporate authorities of said cities or towns, and when such charter confers upon the corporate authorities of said cities or towns the sole power to expend the road labor and taxes collected within such corporate limits.

SEC. 2. All applications for laying out, altering or locating county roads, shall be by petition to the board of county commissioners of the proper county, signed by at least twelve householders of the county, residing in the vicinity where said road is to be laid out, altered, or located, which petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road.

SEC. 3. When any petition shall be presented for the action of the board of county commissioners for laying out, alteration, or vacation of any county road, it shall be accompanied by satisfactory proof that notice has been given by advertisement, posted at the place of meeting of said board and also in three public places in the vicinity of said road or proposed road, thirty days previous to the presentation of said petition to said board, notifying all persons concerned that application will be made to said board at their next term, for laying out, altering, or vacating such road, as the case may be.

SEC. 4. Upon the presentation of such petition, and proof that notice has been given, as provided in the last section, the board of county commissioners may appoint three disinterested householders of the county as viewers of said road, and a surveyor, to survey the same, and shall issue an order directing said viewers and surveyor, on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view, survey and lay out, or alter said road.

SEC. 5. It shall be the duty of the viewers and surveyor appointed as aforesaid, after receiving at least five days' previous notice by one of the petitioners, to meet at the time and place specified in the order of the board of county commissioners aforesaid, or within five days thereafter, and after taking an oath or affirmation faithfully and impartially to discharge the duties of their appointments, respectively, they shall take to their assistance two suitable persons as chain bearers, and one marker, and proceed to view, survey and lay out or alter said road as prayed for in the petition, as near as in their opinion a good road can be made at a reasonable expense, taking into consideration the utility, convenience, or inconvenience, and ex-

pense which will result to individuals, as well as to the public, if such road shall be established and opened or altered, and the surveyor shall survey such road under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the angles and distance. A sufficient number of trees shall be blazed to mark the line of the road plainly. The beginning and termination of such road, and the termination of each mile thereon shall be designated by a tree, if one is found at the point, if not, then by a stone containing at least 1,728 solid inches, if such stone can be found in the vicinity, if not, then by a post of durable wood, at least four inches square and three and a half feet long, and firmly planted not less than eighteen inches in the ground. When posts are used two bearing trees shall be chosen, then the course and distance of each of which from the post, the direction of the tree, and the kind of wood shall be noted by the surveyor. If no stone can be obtained and no tree suitable for bearing trees can be found, the surveyor shall cause a mound to be erected of compact earth around the post, eighteen inches high and four feet square. The beginning and terminating points of the road, whether trees, posts, or stones shall be marked by the letter "R." The termination of each mile shall be marked by a figure indicating the number of the mile from the beginning of the road, followed by the letter "M." The marks required by this section, if occurring on stones, shall be cut legibly, at least one-eighth of an inch deep; if occurring on trees or posts they shall be plainly cut, at least one-fourth of an inch deep, in the solid wood, the bark having been first removed. All bearing trees shall be marked on the side facing the post to which they correspond, with a figure and letter the same as that on the post, cut into the solid wood in the same manner as other trees are required to be marked. The surveyor shall also make out and deliver to one of the viewers, without delay, a certified return of the survey of the said road, and a plat of the same, and the viewers or a majority of them shall make out and sign a report in writing, stating their opinion in favor of or against the establishment or alteration of such road, and set forth the reasons of the same, which report, together with the plat and survey of said road, or alteration, shall be delivered to the county auditor by one of the viewers, on or before the first day of the term of said board then next ensuing, and it shall be the duty of the said board of county commissioners, on receiving the report of the viewers aforesaid, to cause the same to be publicly read twice at the same meeting, and if no remonstrance with a greater number of remonstrators than there are names on the petition, (the names on the remonstrance or petition to be confined to the road district or districts established, or to be established where the proposed change is to be made,) or petition.

for damages be filed, and the commissioners being satisfied that such road will be of public utility, the report of the viewers being favorable thereto, the commissioners shall cause said report, survey, and plat to be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue an order directing said road to be opened.

SEC. 6. In all cases where any oath or affirmation is required to be taken by any person under the provisions of this act, the same may be administered by the surveyor, or by one of the viewers, who has been previously sworn or affirmed.

SEC. 7. If any person, through whose land county roads may be viewed and marked out, shall feel that he or she would be injured by the opening of the same, such person may make complaints thereof in writing, to the board of county commissioners at the time the report of the viewers, appointed to view said road, is received, and if such complaint be made the county commissioners shall appoint three disinterested householders of the county, who shall meet at such time as may be designated by the county commissioners, or at such time as may be agreed upon by such householders, and after having been duly sworn or affirmed to discharge their duty faithfully and impartially, shall proceed and view said proposed road, the whole distance through the premises of the complainant and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the county commissioners at the next regular term.

SEC. 8. If the board of county commissioners are satisfied that the amount of damage so assessed is just and equitable, and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, the commissioners shall order the same to be paid the complainant out of the county treasury; but if in the opinion of the county commissioners such proposed road is not of sufficient importance to the public to cause damages to be paid by the county, the commissioners may refuse to establish the same as a public highway, unless the expense or damages, or such part thereof as the commissioners may think proper, shall be paid by the petitioners.

SEC. 9. Any complainant who may conceive himself aggrieved by the assessment of damages, as prescribed by the two preceding sections, may, within twenty days after such report is adopted by the county commissioners, appeal therefrom to the district court of the proper county. Such appeal shall be taken to the district court in the same manner as appeals from justices of the peace, and if the appellant shall fail to recover a judg-

ment more favorable than the report appealed from, he shall pay all costs of the appeal.

SEC. 10. All county roads shall be sixty feet in width, unless the county commissioners shall, upon the prayer of the petitioners for the same, determine on a less number of feet in width.

SEC. 11. When the place of beginning, or true course of any public road shall become uncertain, by reason of the removal of any marked tree, or monument by which such road is designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested householders of the county to review, and if they deem it necessary to straighten such road, and the reviewers shall cause the said road to be correctly surveyed and marked throughout, as in case of a new road, and shall make a return of the survey and plat of such road to the county commissioners of the proper county, the commissioners shall cause the same, if approved, to be recorded as in other cases; and from thenceforth such road surveyed as aforesaid shall be considered as a public highway.

SEC. 12. If any person or persons, through whose lands any public highway is or may be established, shall be desirous of turning such road through any other part of his or their lands, such person or persons may, by petition, apply to the county commissioners of the proper county to permit him or them to turn such road through any other part of his or their land, on as good ground, and without materially increasing the distance to the injury of the public, and on receipt of such petition, accompanied by a sufficient bond, to pay the costs and expenses to be incurred thereby, the commissioners may appoint three disinterested householders as reviewers and a surveyor, who, or a majority of such reviewers, shall proceed to review the ground over which the road is proposed to be turned, and ascertain the distance such road will be increased by the proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility of making such alterations, and if the reviewers, or a majority of them, shall report to the commissioners that the prayer of the petitioner or petitioners is reasonable, and upon receiving satisfactory evidence that the proposed new road has been opened a legal width and in all respects made equal to the old road for the convenience of travelers, the commissioners may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced in the new, and the person or persons, petitioning for the alteration, shall pay all costs and expenses of the view, survey and return of the alteration.

SEC. 13. If any viewer or viewers shall refuse or neglect to perform the duties required by this chapter, without making satisfactory excuse for such refusal or neglect, he shall be fined by the board of county commissioners in any sum not exceeding ten dollars, to be recovered by an action before a justice of the peace of the proper county, which fine, when collected, shall be paid over, without delay, into the county treasury.

SEC. 14. Upon application being made under the provisions of this chapter for a view or review of any public road proposed to be laid out, altered or vacated, the county commissioners shall, before issuing an order to the viewers, require a bond to be executed by one or more of the petitioners for such view or review, with surety sufficient, to be approved by the commissioners, and made payable to the county in such sums as the commissioners shall direct, not exceeding two hundred dollars, conditioned that, if the prayer of the petitioners be not granted and allowed, the person executing such bond will pay all costs and expenses that may be incurred by reason of such view or review.

SEC. 15. Any person or persons whose land shall be so situated that it has no connection with any public road, may make application in writing to the county commissioners of his county, at a regular term, for a public road leading from his premises to some convenient public road, by first posting three notices fifteen days before said meeting in the district where said road is to be located, and thereupon the commissioners shall appoint three disinterested householders of the county as viewers, and cause an order to be issued directing them to meet on a day named in such order to view and locate a public road according to the application and notices, and to assess the damage to be sustained thereby, and after being duly sworn or affirmed faithfully and impartially to perform the duties of their appointment, and after at least three days' notice given to all persons, through whose land such public road is to be located, such viewers shall proceed to locate and mark out a public road thirty feet wide, from some certain point on the premises of the applicant to some certain point on the public road, so as to do the least damage to the lands through which such public road is located, and they shall also at the same time assess damages sustained by the person or persons owning such land: *Provided*, That no part of the county road tax or fund shall be applied to said road so established.

SEC. 16. The viewers appointed in accordance with provisions of the preceding sections of this act, shall have power to determine in all cases whether or not gates shall be placed at proper points on said road, and assess damages in accordance with that determination.

SEC. 17. The viewers so appointed, or a majority of them, shall make a report to the county commissioners, at the next regular term, of the public road so located by them, and also the amount of damages, if any, assessed by them, and the person or persons entitled to such damages; and, if the county commissioners are satisfied that such report is just, and after payment by the applicant of all costs of locating such road and the damages assessed by the viewers, the commissioners shall order such report to be confirmed, and declare such road to be a public road, and the same shall be recorded as such, and any person aggrieved by the assessment of damages, may appeal within twenty days after such confirmation of the report, to the district court.

SEC. 18. The board of county commissioners shall, as often as they may deem necessary, but not oftener than once a year, divide their respective counties, or any part thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records.

SEC. 19. The supervisor of each road district in this territory shall, at least ten days before the first Monday in January of each year, cause three notices to be posted up in three conspicuous places in his road district, giving notice that there will be an election held in such district on the first Monday in January, at two o'clock in the afternoon, at some convenient place in said district to be specified in said notice, for the purpose of electing a road supervisor for the next succeeding year, at which election the old supervisor shall act as chairman if present; if not present, a chairman shall be elected by the voters present. The meeting shall also elect a secretary who shall record the proceedings of the meeting, and all persons in the district, who are required to labor on the roads or who have road taxes to pay, may vote at such election, and the person receiving the highest number of votes shall be considered elected supervisor for that year, who shall within ten days, and before entering upon the duties of said office, take an oath before any officer authorized to administer oaths, or his predecessor in office, to faithfully discharge the duties of his office, and, if required by the county commissioners, shall enter into a bond to the county, with one or more sureties, in any sum not exceeding one thousand dollars, to be approved by the county commissioners, to the effect that he will faithfully account for all money coming into his hands by virtue of his office; but in case any road district shall fail to notify the county auditor in writing that they have elected a supervisor, it shall be the duty of the county auditor to report what districts have failed to elect, to the county commissioners, at their regular February meet-

ing, and they shall appoint supervisors to fill all vacancies in such road districts.

SEC. 20. It shall be the duty of the county auditor to furnish the supervisor of each road district a list of petitioners for county roads, residing in their respective districts, and it shall be the duty of the supervisors to cause said petitioners to perform two days' labor each in opening said road: *Provided*, That any person may in lieu of each day's work to be performed according to this section, pay into the hands of the supervisor the sum of two dollars per day, to be expended in labor on said road in said district.

SEC. 21. The county auditor shall furnish the several supervisors of roads in his county, with their respective road lists, on or before the third Monday in February of each year. Said list shall be properly ruled with the spaces for names and amount and containing directions to supervisors when to return the same.

SEC. 22. It shall be the duty of the board of county commissioners of the several counties, at their February session, to levy and assess a road tax of four dollars on every male person liable to perform labor on the public roads, between the ages of twenty-one and fifty years, except persons that are a public charge, or too infirm to perform labor; also to assess not less than one or more than five mills on every dollar's worth of property as returned by the county assessors, which tax shall be assessed and collected in labor at the rate of two dollars per day, unless he shall elect to pay the same in money: *Provided, however*, That the road property tax of non-residents shall be collected by the county collector of taxes the same as other taxes are collected.

SEC. 23. That the road, poll, and road property tax, of resident tax payers, may be paid in labor on the public roads, as now provided by law, between the first day of March, and the thirtieth day of June of each year: *Provided*, That the county auditor shall be guided by the assessment roll returned by the county assessor in making list for supervisors. *And, provided further*, That said auditor shall not return to the county collector of taxes any road poll, or road property tax for collection, that he is hereby required to send to the supervisor for collection.

SEC. 24. The supervisor must notify every person within his road district, subject to road labor as aforesaid, to perform the work assessed on the public road within his district; and if any person subject to road labor as aforesaid, shall, after three days' notice, either personally or by writing left at his usual

place of abode, or sent by mail to his post office address, by the supervisor, or by any other person by his direction, neglect or refuse to attend by himself or substitute, at the time and place designated by the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall pass his time in idleness or inattention to the labor or duties assigned, every such delinquent shall thereby become liable to an additional assessment of twenty-five per cent. of his original tax, and the supervisor shall add the same to the amount on the tax roll, and demand the same as original tax, and upon further refusal to comply with the directions or orders of said supervisor, he shall return the same as delinquent, to be collected as by law provided for delinquent taxes. It shall be the duty of every person, firm, corporation or company, or their agents, who have or may have in his or their employ, persons working for wages, who are liable to perform road labor under the law, whose names are not placed on the list of the road supervisors; to furnish to such supervisors on demand the names of such persons employed by whatever name, number or appellation they are known by such person, firm, corporation or company, or by his or their agent; and it shall also be the duty of such firm, person, corporation or company to retain or cause to be retained from the wages of such person or persons a sufficient amount to pay the tax due from them respectively, and if a sufficient amount is not due to the person or persons so employed, then such person, firm, corporation or company, shall pay to the supervisor on demand whatever sum may be due to such person or persons so employed, and if a sufficient amount shall thereafter become due to such person or persons, it shall be retained and paid to the road supervisor on demand: *Provided*, That such person or persons so employed neglect or refuse to perform their road labor as required by law and the provisions of this act.

SEC. 25. It shall be the duty of each supervisor of roads, on or before the first day of August of each year, to return to the sheriff of his county the road list, with the amount paid thereon, properly endorsed in work or money, as the case may be, each several endorsements placed directly opposite the name of the person so paying it. Said endorsement shall be received by the sheriff in lieu of a road receipt, in the payment of taxes: *Provided*, That all amounts on said lists not endorsed by the supervisor, as paid at the time when said list is returned to sheriff, shall be paid in money at the time provided by law for the payment of other taxes.

SEC. 26. Every person notified to labor on the public roads, under the provisions of this chapter, shall be required to appear at the place appointed by the supervisor, at the hour of

eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and work industriously and diligently, doing at least eight hours' faithful labor in each day at such work and in such manner as shall be directed by the supervisor; and such supervisor may, if he deem it necessary, order any person (owning the same) to furnish a team of horses, mules, or oxen and wagon, scraper, or plow, to be employed or used on the roads under the direction of the supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper or plow, in discharge of any labor due from such person.

SEC. 27. The supervisor of roads shall open, or cause to be opened, all public roads which may have been, or may hereafter be, laid out and established according to law, in any part of his road district and shall keep the same in good repair; and if the labor in his district, assessed as provided in section twenty-two of this act, is not sufficient for that purpose, then he shall have authority to assess and call out such an amount of labor as will be sufficient to put the public roads in his district in good repair: *Provided*, That said assessment shall be made as near as possible upon the basis of assessments in section twenty-two; and he shall have authority to purchase for the use of the road district, any plows, scrapers or other implements, which he may think proper, and to enter upon any lands adjoining or near the public road, and gather, dig and carry away, any stone, gravel or sand, and cut down and carry off any trees or wood necessary for the making and repairing of any public road, and to purchase any timber, plank or other material necessary for making or repairing any public road in his district, and to enter upon any land adjoining or lying near any public road in his road district and cut, open, or construct such drains and ditches, as he shall deem necessary for the making or preservation of such roads, doing as little injury as may be to such lands; and any person, stopping or obstructing the drains or ditches so made, shall forfeit the sum of twenty dollars for each offense, to be recovered and appropriated as provided in section twenty-four of this act: *Provided*, That in all suits decided adversely to the supervisor, hereby authorized to be instituted by him, he shall be allowed a credit, in his yearly settlement, of costs he may have been compelled to pay on account of such adverse decision or decisions.

SEC. 28. If any person shall feel aggrieved by the act of any supervisor cutting or carrying away timber or stone as aforesaid, he may make complaint thereof in writing to the county commissioners, at any regular meeting within six months after the cause of such complaint shall exist, and such commissioners shall proceed to assess and determine the dam-

ages, if any, sustained by the complainant, and cause the same to be paid out of the county treasury.

SEC. 29. Every supervisor shall erect and keep up at the forks of every highway and every crossing of public roads within his road district, a guide or finger board, containing an inscription in legible letters, directing the way, and specifying the distance to the next town or public place situated on each road respectively.

SEC. 30. If at any time subsequent to the thirtieth day of June of any year and before the list of the next year shall come into the hands of the supervisor, any public road shall become obstructed by fallen timber, or from any other cause, or any bridge shall be impaired or become dangerous for the passage of teams or travelers, the supervisor of the road district, upon being notified thereof, shall forthwith cause such obstruction to be removed or bridges repaired, for which purpose he shall immediately order out such number of inhabitants of his district as he may deem necessary to remove such obstruction, or to repair such bridge; and all persons so ordered out, shall, after having received one day's notice, be subject to the same restrictions and liable to the same penalties, as if ordered out under section twenty-four of this chapter.

SEC. 31. In all cases where any person shall, under the direction of the supervisor of roads, perform more labor upon the public roads, than may have been assessed upon him under the provisions of this act, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate may be transferred and received in discharge of the labor of any other person within the same district, to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads in such road district in any subsequent year; for the amount of labor specified therein.

SEC. 32. Every supervisor shall keep an account of the days' work performed on the roads, in payment of road tax, and by whom performed, and also an account of all moneys collected or received by him for road tax, and such supervisor shall each year return his account to the board of county commissioners for examination and settlement, at the February term thereof, and must pay over any moneys in his possession to his successor in office.

SEC. 33. Any supervisor of roads, who shall neglect or refuse to perform the several duties enjoined upon him by this chapter, or who shall, under any pretence whatever, give or sign any receipt or certificate purporting to be a receipt or certificate

for money paid or labor performed, unless the money shall have been paid, or the labor performed prior to the giving or signing of such receipts or certificate, shall forfeit for every such offense not less than five, nor more than fifty dollars, for the use of his county, to be recovered before any justice of the peace having jurisdiction of the same, in the name of the county commissioners; and it is hereby made the duty of the commissioners to sue for the same: *Provided*, That if any supervisor conceive himself aggrieved by the decision of the justice of the peace, he may appeal to the district court as in other cases.

SEC. 34. Every supervisor of roads shall receive for each day necessarily employed in the performance of any of the duties required by this act, over and above the number of days' work required by law to be performed by such supervisor, the sum of two dollars and fifty cents, to be paid out of the road fund in the county treasury, after the report of the supervisor shall have been received and approved by the commissioners. Every person, employed as surveyor under this act, shall receive as compensation, the sum of five dollars per day; each viewer or reviewer the sum of two dollars per day; and each chain carrier and marker the sum of two dollars per day: *Provided*, That no surveyor, viewer, reviewer, chain carrier or marker shall receive any compensation, until he shall certify to the county commissioner that he has been necessarily employed the number of days for which he claims pay, and that he has complied with the requirements of this act: *And, provided further*, That the surveyor may in his report certify to the names and amounts due the persons engaged as chain bearers and markers.

SEC. 35. That when the board of county commissioners of any county have, upon petition, appointed viewers who have viewed and located any public highway or county road, and the same has been surveyed and the minutes of such survey have been recorded in the office of the auditor of the county in which such survey was made, the said public highways or county roads so surveyed, as aforesaid, be, and the same are hereby, declared to be lawful public highways and county roads, to all intents and purposes, regardless of any defect or omission in posting notices or defect in the appointment of such viewers, or in their returns or reports of such view, survey and location: *Provided*, That the minutes of any such survey and location have been recorded as herein specified.

SEC. 36. That in any cause wherein the legality of any county road or public highway shall be contested, the introduction of the record, or a certified copy thereof, showing that the minutes of survey of any such road have been recorded as specified in section thirty-five of this act, the same shall be suffi-

cient proof of location, survey and legality of such road or roads.

SEC. 37. The foregoing provisions of this act shall be understood and construed to include all aliens between the age of twenty-one and fifty years, except those who are too infirm to perform labor, or who are a public charge, or Indians not taxed.

## CHAPTER II.

### THE ESTABLISHMENT AND REGULATION OF FERRIES.

SEC. 38. The board of county commissioners of any county in this territory may grant a license to any person, entitled and applying therefor, to keep a ferry across any lake or stream within its respective county, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioners, not exceeding five years.

SEC. 39. The board of county commissioners shall tax such sum as may appear reasonable—not less than one, nor more than one hundred dollars per annum for such license, and the person to whom such license shall be granted, shall pay, to the county treasurer, the tax for one year in advance, taking his receipt therefor, and upon the production of such receipt the county auditor shall issue such license under the seal of his office.

SEC. 40. Unless otherwise provided by law, no such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where the ferry is proposed to be kept, unless such owner shall neglect to apply for such license; and whenever application shall be made for a license by any person other than such owner, the board of county commissioners shall not grant the same, unless proof shall be made that the applicant caused notice, in writing, of his intention to make such application, to be given to such owner, if residing in the county, at least ten days before the session of the board of county commissioners, at which application is made.

SEC. 41. Every person intending to apply for a license to keep a ferry at any place, shall give notice of such intention by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, twenty days