



Appendix N

MONTANA CODE ANNOTATED LAWS

MONTANA RIGHT-OF-WAY
DESIGN MANUAL

Placeholder page for double-sided printing.

Revised: 9/30/10

**Appendix N
MONTANA CODE ANNOTATED LAWS**

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Montana Code Annotated 2009

Provided by Montana Legislative Services

7-14-2601. Petition to establish, alter, or abandon a county road. (1) Any 10, or a majority, of the freeholders of a road district taxable therein for road purposes may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district.

(2) When the road petitioned for is on the dividing line between two counties, the same procedure must be followed except that a copy of the petition must be presented to each board. The two boards shall act jointly.

(3) As used in this part, unless the context requires otherwise:

(a) "board" means the board of county commissioners;

(b) "abandonment" means cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again and is sometimes called "vacation".

History: (1), (2)En. Sec. 8-202, Ch. 197, L. 1965; Sec. 32-4002, R.C.M. 1947; (3)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-4002(part).



7-14-2616. Procedure to discontinue street. (1) The county commissioners may discontinue a street or alley or any part of a street or alley in an unincorporated town or townsite upon the petition in writing of all owners of lots on the street or alley if it can be done without detriment to the public interest.

(2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed is required.

(3) Before acting upon the petition, a notice must be published as provided in [7-1-2121](#), stating when the petition will be acted on and what street or alley or part of a street or alley is asked to be vacated.

History: (1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802; amd. Sec. 48, Ch. 354, L. 2001.

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7-14-4114. Procedure to discontinue streets. (1) The council may discontinue a street or alley or any part of a street or alley in a city or town, if it can be done without detriment to the public interest, upon:

- (a) a petition in writing of all owners of lots on the street or alley; or
- (b) (i) a petition in writing of more than 50% of the owners of lots on the street or alley; and
- (ii) approval by a majority vote of the council.

(2) Where the street or alley is to be closed for school purposes, the council may discontinue the street or alley upon a petition signed by 75% of the lot owners on the whole street or alley to be closed.

(3) Before acting upon the petition, a notice must be published, stating when the petition will be acted on and what street or alley or part of a street or alley is asked to be vacated. The notice must be published as provided in [7-1-4127](#).

History: (1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802; amd. Sec. 1, Ch. 78, L. 1989; amd. Sec. 51, Ch. 354, L. 2001.

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60-2-209. Description and plan of new highway or reconstructed or controlled-access facility. (1) Whenever the department establishes the location, width, and lines of any new, reconstructed, or proposed highway or the commission designates a road, street, or highway as a controlled-access facility, the department shall make a description and plan showing the centerline and the established width, the immediate boundary lines of all private property over, across, or through which the highway passes, the name of the owner of the property, the boundaries of that part of the private ownership included within the right-of-way of the highway, the parcel number assigned to that part of each ownership included within the highway right-of-way, together with the project number under which the highway is or is proposed to be constructed or reconstructed.

(2) Reference to the project number, parcel number, and section or quarter section, tract, block, or lot from which the same has been subdivided is a valid description of the parcel in all deeds given to or received from the state in which a parcel is transferred.

History: En. Sec. 4-113, Ch. 197, L. 1965; amd. Sec. 1, Ch. 131, L. 1969; amd. Sec. 81, Ch. 316, L. 1974; R.C.M. 1947, 32-2413.

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70-1-202. Property of the state – what included. The state is owner of: (1) all land below the water of a navigable lake or stream; (2) all property lawfully appropriated by it to its own use; (3) all property dedicated or granted to the state; and (4) all property of which there is no other owner.

History: En. Sec. 1091, Civ. C. 1895; re-en. Sec. 4432, Rev. C. 1907; re-en. Sec. 6674, R.C.M. 1921; Cal. Civ. C. Sec. 670; Based on Field Civ. C. Sec. 169; re-en. Sec. 6674, R.C.M. 1935; R.C.M. 1947, 67-302.

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70-16-201. Owner of land bounded by water. Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

History: En. Sec. 1291, Civ. C. 1895; re-en. Sec. 4529, Rev. C. 1907; re-en. Sec. 6771, R.C.M. 1921; Cal. Civ. C. Sec. 830; Based on Field Civ. C. Sec. 267; re-en. Sec. 6771, R.C.M. 1935; R.C.M. 1947, 67-712.

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70-16-202. Owner of land bounded by road. An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.

History: En. Sec. 1292, Civ. C. 1895; re-en. Sec. 4530, Rev. C. 1907; re-en. Sec. 6772, R.C.M. 1921; Cal. Civ. C. Sec. 831; Field Civ. C. Sec. 268; re-en. Sec. 6772, R.C.M. 1935; R.C.M. 1947, 67-713.

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70-18-203. Island formed in navigable stream. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state if there is no title or prescription to the contrary.

History: En. Sec. 1403, Civ. C. 1895; re-en. Sec. 4575, Rev. C. 1907; re-en. Sec. 6822, R.C.M. 1921; Cal. Civ. C. Sec. 1016; Field Civ. C. Sec. 445; re-en. Sec. 6822, R.C.M. 1935; R.C.M. 1947, 67-1304.

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70-20-201. Rules for construing description. The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

(1) Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount.

(3) Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces and that of lines paramount to both.

(4) When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or thread of the stream is held under another title.

(5) When a navigable lake, where there is no tide, is the boundary, the rights of the grantor to low watermark are included in the conveyance.

(6) When the description refers to a map and that reference is inconsistent with other particulars, it controls them if it appears that the parties acted with reference to the map; otherwise, the map is subordinate to other definite and ascertained particulars.

History: En. Sec. 3413, C. Civ. Proc. 1895; re-en. Sec. 8039, Rev. C. 1907; re-en. Sec. 10683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2077; re-en. Sec. 10683, R.C.M. 1935; R.C.M. 1947, 93-2201-4.



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70-30-203. Contents of complaint. (1) The complaint for condemnation must contain:

(a) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought to be taken, who is the plaintiff;

(b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of record of the property sought to be taken, if known, or a statement that they are unknown, who are the defendants;

(c) a statement of the right of the plaintiff to take the property for public use;

(d) statements of each of the facts necessary to be found in [70-30-111](#);

(e) a description of each interest in real property sought to be taken, a statement of whether the property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed to be taken as well as to any remaining parcel of property.

(2) If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show the location, general route, and termini and must be accompanied with a map of the route, so far as the route is involved in the action or proceeding.

(3) (a) If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be taken, in addition to the items listed in subsection (1), the complaint must include a description of the reservoir and of the land in which the reservoir is alleged to be contained and a description of all other property and rights sought to be taken for use in connection with the right to store natural gas in and withdraw natural gas from the reservoir.

(b) In addition, the complaint must state facts showing that:

(i) the reservoir is subject to being taken by the plaintiff;

(ii) the underground storage of natural gas in the land sought to be taken is in the public interest;

(iii) the reservoir is suitable and practicable for natural gas storage;

(iv) the plaintiff in good faith has been unable to acquire the rights sought to be taken; and

(v) a statement that the rights and property sought to be taken are not prohibited by law from being taken.

(c) The complaint must be accompanied by a certificate from the board of oil and gas conservation as provided in [82-10-304](#).

History: En. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1244; re-en. Sec. 9940, R.C.M. 1935; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955; amd. Sec. 1, Ch. 197, L. 1973; amd. Sec. 206, Ch. 253, L. 1974; R.C.M. 1947, 93-9908; amd. Sec. 20, Ch. 526, L. 1983; amd. Sec. 5, Ch. 622, L. 1983; amd. Sec. 2, Ch. 666, L. 1985; amd. Sec. 2, Ch. 20, L. 2001; amd. Sec. 63, Ch. 125, L. 2001.

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76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with [60-2-209](#) and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).

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76-3-305. Vacation of plats -- utility easements. (1) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by [7-5-2501](#), [7-5-2502](#), [7-14-2616](#)(1) and (2), [7-14-2617](#), [7-14-4114](#)(1) and (2), and [7-14-4115](#). Upon vacation, the governing body or the district court, as provided in [7-5-2502](#), shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in [7-5-2502](#), shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1); amd. Sec. 1, Ch. 100, L. 1995; amd. Sec. 277, Ch. 42, L. 1997.

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76-3-307. Donations or grants to public considered a grant to donee. Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.