



Department of Public Works

EL PASO COUNTY PUBLIC HIGHWAY FACT SHEET

KEY MESSAGE

El Paso County is committed to serving the community by providing information regarding public highways, section line roads, prescriptive easements, and public domain.

Historical Information

In 1866, the federal government adopted R.S. 2477, a statute providing that "the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." In reliance on this federal statute, the Colorado General Assembly adopted its own statute in 1885 that allowed a board of county commissioners to establish by resolution a public road 60 feet in width (being 30 feet on each side) along any section or township line in the public domain.

In 1887, the El Paso County BoCC adopted a resolution declaring public highways along all Section lines, Township lines, and Range lines on the public domain East of the Range line dividing Ranges 65 W. and 66 W. The resolution was filed in the County's Road Record in Book A at Page 78 but was not recorded in the County's real property records.

In 1917, the BoCC adopted a resolution declaring public highways along all section lines, township lines, and range lines on the public domain. This resolution was recorded in the real property records in Book 571 at Page 55, Reception No. 245329.

Note that all of these actions by the federal, state, and county governments only apply to property still within the public domain at the time of enactment. They do not apply to property that was privately owned or homesteaded.

In 1991, the Colorado Supreme Court decided *City of Lakewood v. Mavromatis*, 817 P.2d 90 (Colo. 1991). Though Mavromatis involved a different method for establishing a public road (a road petition), the principles upon which the Court made its decision apply to an analysis of whether a public road has been established along a section line. The Court held that merely filing the road petition in the County's road book was insufficient constructive notice to subsequent property owners that a public road had been established across their property. Had the road petition been recorded in the real property records, sufficient constructive notice would have been provided. Because the road had never been opened and was thus not discoverable through a visual inspection of the property, the property owner in the case

February 4, 2026

also had no actual or “inquiry” notice of the road. He therefore took title to the property free and clear of any road claims.

Summary:

- If property left the public domain prior to 1887, then the County’s section line resolution does not apply.
- If property left the public domain after 1887 but prior to 1917, then the County’s 1887 resolution likely only applies against a subsequent property owner if such owner has actual or inquiry notice that a public road has been established; for example, if the 1887 resolution appears in a title search of the property, or if a road has actually been constructed on the property and is used by the public or maintained by the County. Note: pursuant to the 1887 resolution, it only applies to section lines east of the Range line dividing Ranges 65 W. and 66 W.
- If the property left the public domain after 1917, then the County’s 1917 resolution, which was recorded, provides constructive notice and likely applies against a subsequent property owner. An owner may be able to defeat this presumption in court with evidence that the resolution does not show up in the chain of title, there is no physical evidence of public use of a right-of-way, and they had no actual knowledge of the 1917 resolution.

Frequently Asked Questions

1. **What are lands in the “public domain?”** In the context of section line roads, property in the public domain is property owned by the United States but not yet committed to a public purpose. Two common methods for leaving the public domain were the granting of a land patent by the United States, or entry to the property under the Homestead Act.
2. **Where is the Range line dividing Ranges 65 W. and 66 W?** The exact location of the Range line would need to be determined by a surveyor, but State Highway 21 (Powers Boulevard) generally follows the Range line from East Platte Avenue to Woodmen Road. The Range line extends generally north from Woodmen Road and south from East Platte Avenue.
3. **What is a prescriptive easement and how wide is it?** A prescriptive easement for a public road can be acquired by a public agency through continuous, open, and uninterrupted public use and maintenance over a statutory period, without a recorded deed or formal dedication. This is also known as adverse possession.
4. **Where can I find out when my property was removed from the public domain?** This information can be found in the Bureau of Land Management records. They can be accessed at the following link. <https://glorecords.blm.gov/search/default.aspx>
5. **Can I use the BoCC “Public Highway” resolution (Book A at Page 78) to access my landlocked property?** No. For further information, we recommend contacting a private attorney.
6. **During the city annexation process, is the real property of these Public Highways conveyed as well as the jurisdictional rights?** No. The jurisdictional rights are conveyed but the real property is not conveyed by annexation. The right-of-way needs to be conveyed by a deed, typically by a quit claim deed approved by the BoCC.
7. **What is inquiry notice?** Inquiry notice is a legal concept meaning a person is considered to have knowledge of a fact because they had enough information to prompt a reasonable person to investigate further, even if they did not actually know the fact.

February 4, 2026