

**BLAINE COUNTY BOARD OF COUNTY COMMISSIONERS**

Public Hearing: December 6, 2022

REGARDING AN APPLICATION  
By Blaine County and the Wood River  
Land Trust to vacate a portion of Colorado  
Gulch Rd. a public road right of way

STAFF REPORT  
By: T. Bergin  
Date: November 14, 2022

REQUESTED ACTION: Public hearing and consideration of a county-initiated proposal to vacate an approximately 650’ section of the existing, public, Colorado Gulch Rd. Right-Of-Way set out on Lot 2A, Block 1 of the Stevens Family Ranch Subdivision and to re-establish a new, public right-of-way that corresponds with the new pathway further south within Lot 2A, Block 1 of the Stevens Family Ranch Subdivision and as shown in Exhibit C of the easement agreement between the Wood River Land Trust and Blaine County. It is located south and west of the City of Hailey in the SE1/4, SE1/4 of Section 16, T2N, R18E, BM, Blaine County.

APPLICABLE REGULATIONS: Title 10: Ch. 4, §7(A), Idaho Code §40-203

**I. GENERAL BACKGROUND**

1. Pursuant to Idaho Code §40-203 and Blaine County Code, the notice for this December 6 hearing was provided as follows:
  - a. legal notice published in the Idaho Mountain Express on November 2, 2022 and November ??, 2022;
  - b. sent by first class mail on November ?? , 2022 to all property owners abutting the external boundaries of this property;
  - c. posted onsite on November ??, 2022
  - d. sent to all political subdivisions and area media on November ??, 2022; and,
  - e. posted on the Blaine County website by Nov. 1, 2022.

► Motion: Upon motion by Commissioner \_\_\_\_\_, a second by Commissioner \_\_\_\_\_, and by a vote of \_\_\_ to \_\_\_, the Board finds/does not find notice to be adequate and in compliance with I.C. §40-203 and Blaine County Code §10-4-7.

**3. Exhibit A—Application Materials**

All application materials were received on June 4, 2019 unless indicated otherwise.

**A-1:** Approved easement agreement with exhibits relating to new public access location with the following exhibit:

**A-1(a):** Stevens Family Ranch Subdivision, pg. 1 of 4 only; and

**A-1(a):** Description and map of new, public right of way location.

- A-2:** Preliminary site plan of existing and new public access locations; and
- A-3:** GIS generated map with aerial of existing and new public access locations.

**Exhibit B—Agency Comments**

**B-1:** None

**Exhibit C—Additional Information**

**C-1:** None

**Exhibit D—Public Comments**

**D-1:**

**II. PROCEDURES AND CRITERIA TO VACATE**

The application is processed under §10-4-7(A), Vacation, which states that: *“(w)hen a person desires to vacate any lot, tract, street, alley, road, highway, common plot or any part thereof, such person shall follow the procedures found in Idaho Code, § 50-1301 et seq. or 40-203.”*

- **Staff Comment:** Title 40, Chapter 2, §40-203 governs “[a]bandonment and vacation of county and highway district system highways or public rights-of-way.” In addition, §50-1317 states that a public right of way “under the jurisdiction of a county . . . [the] board of county commissioners shall assume the authority to vacate said public street or public right-of-way pursuant to section [40-203](#), Idaho Code.

*TITLE 40  
HIGHWAYS AND BRIDGES  
CHAPTER 2  
GENERAL PROVISIONS*

*40-203. ABANDONMENT AND VACATION OF COUNTY AND HIGHWAY DISTRICT SYSTEM HIGHWAYS OR PUBLIC RIGHTS-OF-WAY.*

*(1) A board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, shall use the following procedure to abandon and vacate any highway or public right-of-way in the county or highway district system including those which furnish public access to state and federal public lands and waters:*

- (a) The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest. [emphasis added]*

- **Staff Comment:** The new, more southerly, public access pathway and easement for an approx. 650’ portion of Colorado Gulch Rd. between the Silver Bell Ranch Subdivision and the west side of the Big Wood River are in a location that the Board of County

Commissioners evaluated and approved. In other words, this new access location is thought to be “in the public interest.” Therefore, the original roadway and easement location, which is no longer a readily accessible pathway, is seemingly superfluous and can be vacated as a public right of way.

*(b) Any resident, or property holder, within a county or highway district system including the state of Idaho, any of its subdivisions, or any agency of the federal government may petition the respective commissioners for abandonment and vacation of any highway or public right-of-way within their highway system. The petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings.*

- **Staff Comment:** The county, of its own initiative and as the right of way beneficiary, and the Wood River Land Trust as the land owner and the servient estate seek this action.

*(c) through (h) cover notice and hearing provisions.*

*(i) If the commissioners determine that a highway or public right-of-way parcel to be abandoned and vacated in accordance with the provisions of this section has a fair market value of two thousand five hundred dollars (\$2,500) or more, a charge may be imposed upon the acquiring entity, not in excess of the fair market value of the parcel, as a condition of the abandonment and vacation; provided, however, no such charge shall be imposed on the landowner who originally dedicated such parcel to the public for use as a highway or public right-of-way; and provided further, that if the highway or public right-of-way was originally a federal land right-of-way, said highway or public right-of-way shall revert to a federal land right-of-way.*

- **Staff Comment:** The county may charge for the land associated with the vacated right of way. A charge is discretionary. With this being a relocation rather than simply a right of way vacation, it would seem that a charge for the land or market value of the vacated right of way is not appropriate.

*(j) The commissioners shall cause any order or resolution to be recorded in the county records and the official map of the highway system to be amended as affected by the abandonment and vacation.*

*(k) From any such decision, a resident or property holder within the county or highway district system, including the state of Idaho or any of its subdivisions or any agency of the federal government, may appeal to the district court of the county in which the highway or public right-of-way is located pursuant to section 40-208, Idaho Code.*

(2) *No highway or public right-of-way or parts thereof shall be abandoned and vacated so as to leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way. The burden of proof shall be on the impacted property owner to establish this fact.*

➤ **Staff Comment:** Since the public right of way is moving within the same property/lot and will enter and exit the relocated right of way in the same locations as currently and has not been accessible for a vehicle for at least four and one-half years, the access for any adjoining property owner to a public right of way will be unchanged. The burden of showing otherwise is on that adjoining property owner.

(3) *In the event of abandonment and vacation, rights-of-way or easements shall be reserved for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.*

➤ **Staff Comment:** N/A- No utilities exist along either the existing or relocated right of way.

(4) (a) *When a county or highway district is to consider the abandonment or vacation of any highway, public street or public right-of-way that was accepted as part of a recorded platted subdivision, such abandonment shall be accomplished pursuant to the provisions of this section. (b) When a county is to consider the abandonment or vacation of any private right-of-way that was accepted as part of a recorded platted subdivision said abandonment or vacation shall be accomplished pursuant to the provisions of chapter 13, title 50, Idaho Code.*

➤ **Staff Comment:** The existing Colorado Gulch Public Right of Way was “accepted” as part of the Stevens Family Ranch Subdivision Plat. (See the plat, Application Materials, Item A-3.) Therefore, this vacation application shall be evaluated pursuant to the provisions set out in this report.

(5) *In any proceeding under this section or section 40-203A, Idaho Code, or in any judicial proceeding determining the public status or width of a highway or public right-of-way, a highway or public right-of-way shall be deemed abandoned if the evidence shows...*

➤ **Staff Comment:** N/A – This review is not about deeming a ROW “abandoned.”

(6) *All other highways or public rights-of-way may be abandoned and vacated only upon a formal determination by the commissioners pursuant to this section that retaining the highway or public right-of-way for use by the public is not in the public interest, and such other highways or public rights-of-way may be validated or judicially determined at any time notwithstanding any other provision of law. Provided that any*

*abandonment under this subsection shall be subject to and limited by the provisions of subsections (2) and (3) of this section.*

- **Staff Comment:** See the evaluation of “public Interest” set out above in Subsection 1(a).

### III. VACATION PETITION DECISION OPTIONS

The Board may approve the application, modify the application, or deny the application after considering the record, facts presented, testimony and the provisions of I.C. §40-203.

**Suggested Motion:** I move to *approve, deny, or modify* the application by Blaine County to vacate an approximately 650’ section of the Colorado Gulch Public Right of Way within Lot 2A of the Steven Family Ranch Subdivision and relocate it as setout in the easement agreement between the Wood River Land Trust and Blaine County, attached as Exhibit A-2.

**Possible Conditions:**

1. An order will be prepared memorializing any approved right of way vacation; and
2. Any vacation order and the recently approved easement agreement will be finalized and recorded contemporaneously.
3. Other?