



**ROAD ABANDONMENT & VACATION,  
VALIDATION or ADDITION APPLICATION**

Teton County, Idaho

*\* Validation \**

The County Engineer is available to discuss this application and answer questions. Once a complete application is received, it will be reviewed by staff and then scheduled for the appropriate public hearing(s). It is recommended that the applicant review Idaho Code 40-203 and Teton County Code Section 9-7-1.

*To expedite the review of your application, please be sure to address each of the following items.*

**SECTION I: PERSONAL AND PROPERTY RELATED DATA**

Owner: Kenneth T WARNEK  
Applicant: \_\_\_\_\_ E-mail: KWARNEK@Ponceequipment.com  
Phone: (208) 313-2188 Mailing Address: 7475 RAMS HORN Circle  
City: Idaho Falls State: ID Zip Code: 83406

Location:  
Address: 10399 South 2000 west Section: 22 Township: 3N Range: 45E  
Parcel Number: 1 map 168131 Teton County

I, the undersigned, understand that the items listed below are required for my application to be considered complete and for it to be scheduled on an agenda for public meeting/hearing.

• Applicant Signature: Kenneth Warnke Date: 11-22-11

I, the undersigned, am the owner of the referenced property and do hereby give my permission to \_\_\_\_\_ to be my agent and represent me in the matters of this application. I have read the attached information regarding the application and property and find it to be correct.

• Owner Signature: Kenneth Warnke Date: 11-22-11

*Fees are non-refundable.*

## **SECTION II. CRITERIA FOR RECOMMENDATIONS AND DECISIONS:**

1. A site plan drawn to scale by a professional surveyor may be required showing:
  - Perimeter, dimensions and topography of the road/property.
  - The names and locations of all streets bordering the property.
  - The location of all easements or right(s)-of-way.
  - The location and dimensions of present and proposed structures.
2. Attach a narrative statement that addresses Title 40 of Idaho Code.
  - That granting the proposed vacation is in the public interest.
  - That the vacation will not leave real property adjoining the highway or public right(s)-of-way without access to the public highway or right(s)-of-way.
  - Reservation of easements or right(s)-of-way for public utilities or ditches and canals.
  - Name of landowner who originally dedicated the parcel to the public. (Fair market value may be imposed.)
3. Fees paid in accordance with current fee schedule.

## **SECTION III. SPECIFIC REQUIREMENTS FOR PUBLIC HEARING AND NOTICE:**

- Notification of adjoining property owners: Property owners, utility companies, underground facilities, and irrigation companies adjoining the road shall be notified of this application 30 days prior to the public hearing date. This notice must include time, date, and place of the public hearing and will be mailed by staff.

If a subdivision is adjacent to the application then all lot owners in the subdivision must be notified. If the property is within a subdivision the entire subdivision and any property within 300 feet of the exterior of the subdivision must be notified.

- Notice shall be posted on the property showing the time, date and place of the public hearings and a description of the action requested.
- These procedures are required to be completed prior to each public hearing in accordance with Idaho Code Section 40-203 as amended.

## **SECTION IV: STAFF SUMMARY ANALYSIS, REASONING AND FACT FINDING**

## **SECTION V: PLANNING AND ZONING COMMISSION ACTION IF NECESSARY**

## **SECTION VI: BOARD OF COUNTY COMMISSIONERS ACTION**

Return Completed Form, Documentation and Applicable Fee to:

Teton County Engineer  
Department of Public works  
150 Courthouse Drive  
Driggs, ID 83422

FAX: 1-208-354-8778

If you have questions about this application, you may call 1-208-354-0245

36 (b) Cause the official map of the county or highway district system to be  
 37 amended as affected by the acceptance of the highway or public right-of-  
 38 way.

39 Provided, however, a county with highway jurisdiction or highway district may  
 40 hold title to an interest in real property for public right-of-way purposes  
 41 without incurring an obligation to construct or maintain a highway within the  
 42 right-of-way until the county or highway district determines that the necessi-  
 43 ties of public travel justify opening a highway within the right-of-way. The

2

1 lack of an opening shall not constitute an abandonment, and mere use by the  
 2 public shall not constitute an opening of the public right-of-way.

3 (3) Highways laid out, recorded and opened as described in subsection (2)  
 4 of this section, by order of a board of commissioners, and all highways used  
 5 for a period of five (5) years, provided they shall have been worked and kept  
 6 up at the expense of the public, or located and recorded by order of a board  
 7 of commissioners, are highways. If a highway created in accordance with the  
 8 provisions of this subsection is not designated on the official map of the  
 9 respective highway system or is not opened as described in subsection (2) of  
 10 this section, there shall be no duty to maintain that highway, nor shall there  
 11 be any liability for any injury or damage for failure to maintain it or any  
 12 highway signs, until the highway is designated as a part of the county or  
 13 highway district system by inclusion on the official map as a highway and  
 14 opened to public travel as a highway.

15 (4) When a public right-of-way is created in accordance with the provi-  
 16 sions of subsection (2) of this section, or section 40-203 or 40-203A, Idaho  
 17 Code, there shall be no duty to maintain that public right-of-way, nor shall  
 18 there be any liability for any injury or damage for failure to maintain it or  
 19 any highway signs.

20 (5) Nothing in this section shall limit the power of any board of commis-  
 21 sioners to subsequently include or exclude any highway or public right-of-way  
 22 from the county or highway district system.

23 (6) By July 1, 2000, and every five (5) years thereafter, the board  
 24 of county or highway district commissioners shall have published in map form  
 25 and made readily available the location of all public rights-of-way under its  
 26 jurisdiction. Any board of county or highway district commissioners may be  
 27 granted an extension of time with approval of the legislature by adoption of a  
 28 concurrent resolution.

29 SECTION 2. That Section 40-604, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31 40-604. DUTIES AND POWERS OF COMMISSIONERS. Commissioners shall:

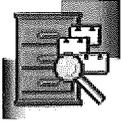
32 (1) Exercise general supervision over all highways in the county highway  
 33 system, including their location, design, construction, reconstruction, repair  
 34 and maintenance, and develop general policies regarding highway matters.

35 (2) Cause to be surveyed, viewed, laid out, recorded, opened and worked,  
 36 any highways or public rights - of - way as are neces-  
 37 sary for public convenience under the provisions of sections 40-202 and  
 38 40-203A, Idaho Code.

39 (3) Cause to be recorded all highways and public rights -  
 40 of - way within their highway system.

41 (4) Have authority to abandon and vacate any highway or public right  
 42 - of - way within their highway system under the provisions  
 43 of section 40-203, Idaho Code.

44 (5) Designate county highways, or parts of them, as controlled-access  
 45 highways and regulate, restrict or prohibit access to those highways so as  
 46 best to serve the traffic for which the facility is intended.



# Idaho Statutes

## TITLE 40 HIGHWAYS AND BRIDGES

### CHAPTER 2 GENERAL PROVISIONS

40-203A. VALIDATION OF COUNTY OR HIGHWAY DISTRICT SYSTEM HIGHWAY OR PUBLIC RIGHT-OF-WAY. (1) Any resident or property holder within a county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may petition the board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, to initiate public proceedings to validate a highway or public right-of-way, including those which furnish public access to state and federal public lands and waters, provided that the petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings, or the commissioners may initiate validation proceedings on their own resolution, if any of the following conditions exist:

(a) If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a highway or public right-of-way;

(b) If the location of the highway or public right-of-way cannot be accurately determined due to numerous alterations of the highway or public right-of-way, a defective survey of the highway, public right-of-way or adjacent property, or loss or destruction of the original survey of the highways or public rights-of-way; or

(c) If the highway or public right-of-way as traveled and used does not generally conform to the location of a highway or public right-of-way described on the official highway system map or in the public records.

(2) If proceedings for validation of a highway or public right-of-way are initiated, the commissioners shall follow the procedure set forth in section 40-203, Idaho Code, and shall:

(a) If the commissioners determine it is necessary, cause the highway or public right-of-way to be surveyed;

(b) Cause a report to be prepared, including consideration of any survey and any other information required by the commissioners;

(c) Establish a hearing date on the proceedings for validation;

(d) Cause notice of the proceedings to be provided in the same manner as for abandonment and vacation proceedings; and

(e) At the hearing, the commissioners shall consider all information relating to the proceedings and shall accept testimony from persons having an interest in the proposed validation.

(3) Upon completion of the proceedings, the commissioners shall determine whether validation of the highway or public right-of-way is in the public interest and shall enter an order validating the highway or public right-of-way as public or declaring it not to be public.

(4) From any such decision, any resident or property holder within a 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.

(5) When a board of commissioners validates a highway or public right-of-way, it shall cause the order validating the highway or public right-of-way, and if surveyed, cause the survey to be recorded in the county records and shall amend the official highway system map of the respective county or highway district.

(6) The commissioners shall proceed to determine and provide just compensation for the removal of any structure that, prior to creation of the highway or public right-of-way, encroached upon a highway or public right-of-way that is the subject of a validation proceeding, or if such is not practical, the commissioners may acquire property to alter the highway or public right-of-way being validated.

(7) This section does not apply to the validation of any highway, public street or public right-of-way which is to be accepted as part of a platted subdivision pursuant to chapter 13, title 50, Idaho Code.

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## Jay Mazalewski

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**From:** jwarn@q.com  
**Sent:** Tuesday, December 13, 2011 4:12 PM  
**To:** Jay Mazalewski; Park, Brandi; Warnke, Kenny; JONNA WARNKE  
**Subject:** Letter & Road access maps  
**Attachments:** 20111213112345505.pdf; 20111213111220995.pdf

----- Forwarded Message -----

From: Kenny Warnke  
To: Jonna Warnke  
Sent: Tue, 13 Dec 2011 17:03:57 -0500 (EST)  
Subject: FW: Road access map

Jay,

I hope this will be what you are looking for. I have never seen a map that was surveyed or recorded that has any other description other than the county road that was 200w and is now 2000w.

The address that was on the application(10399 south 2000 west) is the only legal reference that I have for the address. If the road has a different name such as the Smith Canyon Road, then where does it start?

Teton county records 168131 map shows that the county road 2000w should go straight south to my property line. That would make Ruby Parsons garage part of the county road.

There has been a farm building about 200' off the county road, to the south east for 80 plus years and a newer house was built in 1977, off the county road about 186' where the road went right into the garage drive way.

There is a gate about 50' further up the road, where there is a steel gate, that was installed by the PBA, that has a padlock, for the PBA and for Warnke on it.

This in accordance with the Easement agreement between Moulton's and Bonneville Power Administration, Serial No 144117 DTM-D, Road No PGT-AR-17-1. This was filed in 1967-68.

There is a domestic well that is about 100' from the gate and about 15' off the roadway. Up the road about 126' is a barn that is about 5' off the roadway. This easement was an access road for Bonneville Power Administration to access the power line. If there would have been an Easement By Prescription, then BPA would not have had to purchase one in 1967.

Now that the county has claimed the so called Smith Canyon Rd, was done by Easement By Prescription, there is nothing that shows that any of the 5 requirements for a claim, have been shown, proved or provided.

There is the issue that the easement was sold as a 14' road and that there has never been any additional right-of-way purchased or acquired, recorded, or surveyed. Therefore, I believe the county has no claim to a road that is off 2000w across from Ruby Parson's garage, where Bonneville Power Administration has purchased and easement Crystle Cattle Company property. The so called County road was vacated from through the Crystle County property to the forest service boundary in 2006.

Sincerely,  
Kenny Warnke

N 00°02'31"W

S 00°02'31"E  
416.14'



W 1/4 CORNER SECTION 22  
FOUND BRASS CAP

N 89°40'44"W 416.14'

MOULTON PROPERTY

MOULTON PROPERTY

N 00°02'31"W 416.14'

S 00°02'31"E 416.40'

MOULTON PROPERTY

N 89°40'44"W 417.40'

ALLEN PROPERTY

N 00°02'31"W 416.40'

S 89°40'44"E 417.40'

N 89°40'44"W 366.15'

S 00°05'00"E 1302.6

MILLER PROPERTY

**LEGEND**



SECTION CORNER FOUND AS NOTED



FOUND PROPERTY CORNER - 1/2" IRON PIN WITH CAP INSCRIBED: AW ENG 2860



SET PROPERTY CORNER - 5/8" IRON PIN WITH CAP INSCRIBED: AW ENG 2860

L1

**PLANNING AND ZONING APPROVAL**

ROAD EASEMENT AMENDED TO WEST SIDE OF SECTION CHANGED FROM EASEMENT WHERE OLD FOREST ACCESS EXISTED.

PRESENTED TO THE TETON COUNTY PLANNING AND ZONING COMMISSION ON THE FOLLOWING DATE AT WHICH TIME THIS LAND SPLIT WAS APPROVED AND ACCEPTED.

*Wendy Walker*  
CHAIRMAN, PLANNING AND ZONING

DATE 5-17-02

N 00°02'31"W 888.58'

S 00°02'31"E  
416.14'



W 1/4 CORNER SECTION 22  
FOUND BRASS CAP

MOULTON PROPERTY

N 89°40'44"W 416.14'

SPRING

← ROAD ACCESS EASEMENT FOR B.P.A.  
#144117 DTM-D

offset 0.10'

House

Well  
offset 12'

MOULTON PROPERTY

N 89°40'44"W  
416.14'

N 00°02'31"W 416.14'

S 00°02'31"E  
887.94'

offset 2'  
BARN

OLD FOREST ACCESS ROAD

L1

S 00°02'31"E 416.40'

MOULTON PROPERTY

N 89°40'44"W 417.40'

S 89°40'44"E  
417.40'

ALLEN PROPERTY

N 00°02'31"W 416.40'

N 89°40'44"W 366.15'

S 00°05'00"E 1302.67'

MILLER PROPERTY

STANLEY PROP

PARCEL 2  
23.74 ACRES

LEGEND

SECTIONAL MAP/RECORD ENLARGED AS NOTED

PLANNING AND ZONING APPROVAL

ROAD EASEMENT AMENDED TO WEST SIDE OF SECTION CHANGED FROM EASEMENT WHERE OLD FOREST ACCESS EXISTED.