SUBDIVISION VACATION APPLICATION

Teton County, Idaho

The Planning Staff will review this application for completion, and then schedule a public hearing by the Board of County Commissioners. The Board shall make a decision to approve or deny the application.

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

TO BE CONSIDERED A COMPLETE APPLICATION EACH ITEM HAS TO BE ADDRESSED
Disclaimer: Receipt of this submission of application materials does not represent acceptance or approval of submitted items or a complete application.

SECTION I: PERSONAL AND PROPERTY RELATED DATA

Owner: Warm Creek Estates LLC

Applicant: Teton County E-mail: arutherford@co.teton.id.us

Phone: (208) 354-2593 Mailing Address: 150 Courthouse Dr. Rm 107

City: Driggs State: ID Zip Code: 83422

Name of Subdivision: Warm Creek Manor

Address: 1750W 10250S Section: 22 Township: 3 Range: 45

Legal Description: part of the N½ N½ of Section 22

Total Acres: 60 Total Lots: 19 Zoning: A-2.5

- ☐ Fee
- ☐ Survey and plat to be recorded
- ☐ List of all property owners affected
- ☐ Latest recorded deed to the property
- ☐ Letter of Authorization
- ☐ Taxes Current

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 the agenda for the Planning and Zoning Commission public meeting.

- Applicant Signature: [signature] Date: 05/09/2011

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:_____ Date: _____

Fees are non-refundable.

SECTION II: CRITERIA FOR RECOMMENDATIONS AND DECISIONS

1. A survey map showing the area requested to be vacated showing:
2. Perimeter, dimensions and topography of the property.
3. The names and locations of all streets bordering the property.
4. The location of all easements or rights-of-way.
5. The location and dimensions of present and proposed structures.
6. Existing wells
7. That the subdivision vacation will not leave real property adjoining the highway or public right of way without access to the public highway or right of way.
8. Relocation plan of utilities

SECTION III: ANALYSIS REASONING AND FACT FINDING IN CONSIDERATION AND ACCORDANCE WITH THE ABOVE LISTED CRITERIA

1. Each exception to otherwise applicable restrictions shall be identified and the reasons provided
2. The subdivision or PUD is consistent with the public health, safety and welfare of the county.
3. The PUD contains the minimum of open space required by this title or amount of open space agreed to in the plans and plat.

SECTION IV: STAFF SUMMARY

Required Notification in accordance with Title 50, Chapter 13, Section 1306A of the Idaho Code

This hearing has been duly noticed in the Teton Valley News and notification shall be notified via mail to surrounding property owners in accordance with Idaho Code 50-1306A. Letters for surrounding property owners must be submitted no later than 30 days prior to the hearing to the Planning & Zoning Office addressed with proper postage for mailing by the Office Staff.

STAFF REPORT

VACATION APPLICATION:
WARM CREEK MANOR SUBDIVISION

Prepared July 25 for the August 11, 2011
Board of County Commissioners Public Hearing

OWNER: Warm Creek Estates LLC **APPLICANT:** Teton County, ID

REQUESTS:

Teton County, ID is applying to vacate the entitlements for the Warm Creek Manor Subdivision recorded in 2009. The development agreement states that the improvements shall be completed within two years of the recording date (February 23, 2009). To date, improvements have not been started, putting the developer in breach of contract. Because of this lack of performance, the County is applying to vacate the entitlements to this subdivision.

CODES:

Teton County Subdivision Ordinance Section 9-3-2 (D-2-n-i) Revocation by Board of County Commissioners. *The Board of County Commissioners may revoke a subdivision or Planned Unit Development upon failure to comply with the conditions of approval of a final plat or subdivision extension, upon the violation of any of the provisions of this Title, or for misrepresentations or material omissions made to the Planning Commission or to the Board of County Commissioners. (amd. 9-17-09)*

Teton County Subdivision Ordinance Section 9-7-1 Application Procedure and 9-7-2 Vacation of Plats Procedure.

LEGAL DESCRIPTION:

A part of the north ½ of the north ½ of Section 22
Township 3 North, Range 45 East

LOCATION: 1750 W 10250 S – South and West of the City of Victor

PROPERTY SIZE: 68 acres, 19 lots

ZONING: Underlying zoning is A-2.5.

OVERLAYS: None

PLANNING STAFF RECOMMENDATION:

Staff recommends that the Planning Commission recommend approval of the Warm Creek Manor vacation application based on the fact that the developer is in breach of contract and the idea that the elimination of 19 lots is a public benefit.

VICINITY MAP

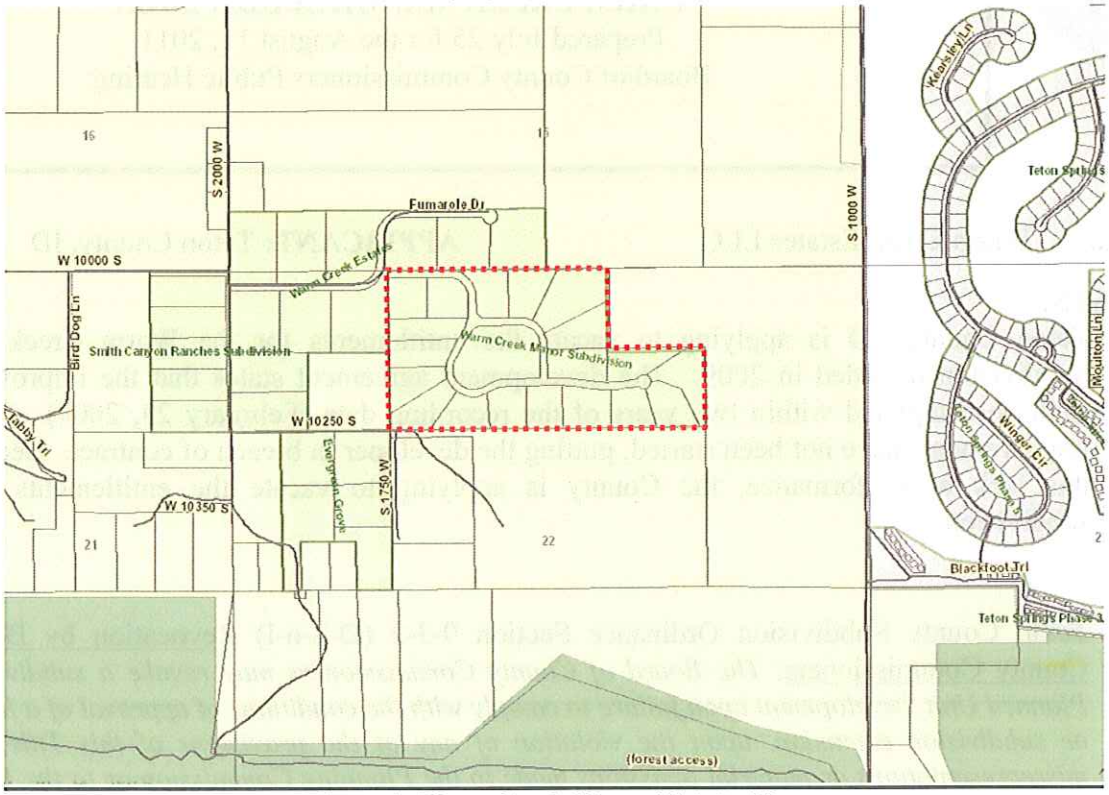

Figure 1: Warm Creek Manor Vicinity Map

BACKGROUND INFORMATION

On May 9, 2011, the Board of County Commissioners sent, via certified mail, a letter to the owner of Warm Creek Manor Subdivision informing them that because of the lack of performance of subdivision improvements, the County would be applying to vacate the subdivision entitlements on this property. The County, therefore, is applying to vacate the subdivision entitlements based on a lack of performance of the development agreement contract on the part of the developer, i.e. they have not started or completed the infrastructure improvements outlined in the development agreement.

STAFF ANALYSIS

It is the planning staff's opinion that vacating the current subdivision entitlements is in the public's best interest because it reduces the number of lots available in Teton County that are decreasing market values County-wide. The owner is free to come back to the County at any time to re-apply for subdivision entitlements under the then-current ordinance. This vacation application stems from the lack of performance on the developer's part in not upholding his end of the development agreement and cannot be considered a taking.

COMPLIANCE WITH 2004 – 2010 TETON COUNTY COMPREHENSIVE PLAN

Chapter 5 Property Rights:

Policy 3: The land use ordinances and actions of Teton County, including the policies, restrictions, conditions and fees, shall not violate private property rights, shall minimize adverse impact on property values and minimize technical limitation on the use of property consistent with state and federal constitution and statutory law. Implementation is implicit in and mandated by state and federal law.

Staff response: The glut of platted, vacant subdivision lots in Teton County is a detriment to property values. Reducing the number of lots County-wide will work towards relieving this glut.

Chapter 7 School Facilities and Transportation:
Policy 1: Planning decisions and efforts must emphasize providing infrastructure and services to the growing population and provide means for growth to pay its way. Growth trends over the past decade and growth projections for the coming decade indicate that providing infrastructure and services will be a bigger challenge than attracting new residents and business.
Staff response: The scattered growth pattern in Teton County will become increasingly more difficult and expensive to provide services as build-out occurs. Even the nineteen lots, valued at $375,235 each, will cost the County $6,414 annually and $51,247 in one-time capital improvement costs as calculated by the fiscal impact calculator (see attachment).

Chapter 8 Economic Development
Policy 3: One of the county's prime economic values is the attraction of a rural, small town lifestyle, magnificent views, clean air and water, and abundances of outdoor recreational opportunities. Development and land use proposals that support and balance these values with desirable growth should be encouraged.
Staff response: As more lots become developed in the rural areas of the County, the small-town feel of the area becomes more compromised.

Chapter 9 Land Use
Policy 1: Protect open space throughout the County. Enhance the mechanisms available to incorporate the same in developments.
Staff response: Warm Creek Manor is a standard subdivision without any dedicated open space, which was not required for approval of this subdivision. Returning the development to acreage would put it back into open space until a future development application is received in the planning department.

Policy 4: Higher density developments should be located within or near the cities or within or near their areas of impact. Developments in the unincorporated county may be based on the density based zoning concept which will provide significant open space.
Staff response: This project consists of 19 lots from 2.50 to 4.98 acres in size. While this subdivision is outside of the area of impact, it is within a mile of the City of Victor. This density is not high enough to be considered high density near a city, nor is it low enough to be appropriate that close to the City. Returning the development to acreage would allow a future application to provide density in that area that is appropriate for its proximity to the City of Victor.

Chapter 10 Natural Resources:
Policy 6: Ensure that noxious weeds are consistently and effectively controlled in compliance with state regulations and guidelines.
Staff response: Approximately 2.5-acre lots are very difficult to maintain and keep weed-free, especially in the absence of lot owners. Returning this development to acreage would allow the property to continue in agricultural production which would diminish weed problems on the land.

Chapter 17 Community Design
Policy 1: *Encourage the preservation of the scenic vistas, open space, mountains, forests, night skies and wetlands.*
Policy 2: *Encourage the preservation of the county's rural character.*
Staff response: Returning this subdivision to acreage will preserve open space and contribute to the rural character of the County.

CONSISTENCY WITH THE APPLICABLE TETON COUNTY SUBDIVISION CODE

Teton County Title 9, the Subdivision Ordinance, does not outline criteria for approval for a plat vacation. It does, however, state that "the Board of County Commissioners may revoke a subdivision or Planned Unit Development upon failure to comply with the conditions of approval..." This provision has been in the Teton County Subdivision Code since 1994. Clearly, the developer has failed to comply with the conditions of the approval, as outlined in the development agreement that was recorded on Feb. 23, 2009.

TECHNICAL COMMENTS

2009 and 2010 taxes are delinquent totaling approximately $377 (see attached email from the assessor's office).

PUBLIC NOTICE:

1. Legal ads were made to the Teton Valley News in accordance with local and state requirements.
2. A development notification was mailed to the landowner, the landowners within 300 feet and to those who own land within subdivisions within 300 feet of the subject property.

COMMENTS FROM NOTIFIED NEIGHBORS AND GENERAL PUBLIC

City of Victor planner, Bill Knight, wrote a letter of support.

FINDINGS OF FACT:

1. The Teton County Title 9 Subdivision Ordinance allows for the "revocation" of entitlements upon failure to comply with the conditions of approval of a subdivision.
2. The developer is in breach of the development agreement by not having complied with the conditions of approval of the subdivision.
3. The elimination of these subdivision entitlements would not cause harm to the residents of Teton County.

PLANNING & ZONING ACTION:

A. APPROVE the vacation as presented.
B. APPROVE WITH CONDITIONS, which are enumerated in this staff report, and others the Board might add.
C. DENY the vacation application and provide the reasons and justifications for the denial.
D. CONTINUE consideration of the application to a future public hearing with reasons given as to the continuation or need for additional information.

RECOMMENDATION:

Action A: A motion that references the required findings in the code that this vacation application is appropriate. Here is a suggested motion that could be used to approve the vacation.

> *I move to APPROVE the Warm Creek Manor vacation application as described and depicted in the application materials contained in the review packet. We have determined that the procedural requirements for the vacation have been satisfactorily met and that the findings of fact support this vacation application.*

Report prepared by Planner Angie Rutherford

Attachments:

Application Materials
Letter from City of Victor Planner, Bill Knight
Emails from treasurer's office and assessor's office

City of Victor
P.O. Box 122
32 Elm Street
Victor, Idaho 83455

(208) 787-2940
FAX (208) 787-2357
craigs@victorcityidaho.com

Teton County Planning & Building Department
150 Courthouse Drive
Driggs, ID 83422

Re: Evergreen Grove and Warm Creek Manor Subdivision Vacations.

Dear Ms.Rutherford;

Thank you for this opportunity to comment on the above two subdivision vacations. The City of Victor supports the County's efforts to modify those existing subdivision plats in recognition of our changed economic conditions and a more sustainable development pattern.

In general, the City supports reduced suburban and exurban development intensity in the County and supports an emphasis on municipal infill development within the cities. The City of Victor sees no negative issues associated with this proposal. We commend you for your time and effort in these endeavors.

Sincerely,

William Knight
Planning Director

Ctyvac.7_19

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FEB 19 2009

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DEVELOPMENT AGREEMENT
FOR
WARM CREEK MANOR SUBDIVISION

THIS AGREEMENT is made and entered into this 23rd day of Feb, 2009 by and between WARM CREEK ESTATES, LLC and Teton County, Idaho.

It is the intent and purpose of the Developer to meet the conditions of approval for the final plat allowing the creation of WARM CREEK MANOR SUBDIVISION, as approved by the Teton County Commission on 23rd, 2009; and

It is the intent and purpose of the Developer to obtain final plat approval for the subdivision. It is the intent and purpose of the Developer and the county to enter into this Agreement, which will guarantee the full and satisfactory completion of the improvements on the property described in this Agreement. It is the intent of this Agreement and the parties to satisfy the improvement guarantee requirements for the final plat recordation of the subdivision.

In consideration of the mutual covenants and conditions contained herein, it is agreed as follows:

Instrument # 203052
TETON COUNTY, IDAHO
2-23-2009 02:43:00 No. of Pages: 4
Recorded for : A W ENGINEERING Fee: 12.00
MARY LOU HANSEN Ex-Officio Recorder Deputy
Index to: DEVELOPEMENT AGREEMENT

Section 1. Subdivision Description. This agreement pertains to and includes that property, which is designated and identified as WARM CREEK MANOR SUBDIVISION,, located in a part of the North half North half of Section 22, Township 3 North, Range 45 East, B.M., Teton County, Idaho.

Section 2. Improvements and Time of Completion. The Developer shall, at its own cost and expense, complete the road construction, the telephone, power, fencing, irrigation, landscaping and fire protection. The estimated costs to complete these improvement is $270,160 as shown on Exhibit A of this Agreement. The bonding requirement by the county is 110 percent of the engineer's estimated amount that equals $300,000. The Developer shall be responsible for all dust control and abatement and weed eradication during the installation of the infrastructure.

Section 3. Schedule for Completion of the Improvements. The Developer shall complete the fencing by October 1, 2009. The Developer shall complete the road improvements, the telephone, the power, irrigation, landscaping and fire protection within two (2) years of the recording of the final plat. The Developer shall be allowed extensions of time beyond the completion date for unavoidable delays caused by strikes, lockouts, acts of God or other factors beyond the control of the Developer.

Section 4. Inspection. Representatives of the County shall have the right to enter upon the property at any reasonable time to inspect and to determine whether the Developer is in compliance with this Agreement. The Developer shall permit the County and its representatives to enter upon and inspect the property at reasonable times. It is estimated that all improvements will be completed and inspected within two (2) years of the recording of the final plat.

Section 5. Final Inspection and Approval of Improvements. The Developer shall notify the County when it believes that the improvements have been fully and properly completed and shall request final inspection, approval and acceptance of the improvements by the County. Developer must provide a stamped letter from an engineer stating the roads have been built in accordance with the submitted road plans and meet county standards. Upon approval the county shall give its written acceptance of the improvements. Upon inspection by the Engineer, Fire Marshal and Planning Administrator, a Certificate of Completion will be issued. A subdivision entrance sign and street sign are also required to be installed by the Owners/Developers prior to final county inspection.

Section 6. One-Year Guarantee of the Improvements. The Developer guarantees the prompt and satisfactory correction of all defects and deficiencies in the improvements that occur or become evident within one year after acceptance of the improvements by the County. If such defect or deficiency occurs or becomes evident during such period, then the Developer shall, within ten days after written demand by the County to do so, correct it or cause it to be corrected. If the defect or deficiency cannot be reasonably corrected within ten days after written demand from the County, the Developer shall commence the correction of the deficiency within the ten-day period and proceed with reasonable diligence to correct the same or cause it to be corrected. The guarantee provided by this Section shall be extended for a full year from the date of repair or replacement of any improvements repaired or replaced pursuant to such demand.

Section 7. Financial Security Guarantee. The Developer shall provide an irrevocable letter of credit in the amount of 110% of the Engineer's Cost Estimate to cover the cost of installation of road, electric and telephone to the lots proposed in the application. Said funds shall be dispersed by attachment of developer and signature of one authorized member of Teton County as an applicable means of money transfer. Said funds shall be deposited within 15 days of final plat approval by the County Commissioners. The security deposit of funds may be drawn in stages of any amount by the developer, up to the costs incurred for the installation of individual improvements, not to exceed a total of 100 % of the attached estimates for each individual improvement referenced herein.

The amount of the escrowed funds shall be reduced upon payment to the sub-contractors for the completed and approved portion of the scheduled improvements on the subject property. Said draw needs to include an invoice and stamped Engineer's approval of work completed. Any amount remaining in the escrow account shall be paid to the developer within four banking days of the release of the payment for the final portion of the scheduled improvements. Teton County may impose penalties on the Developer in the form of monetary fines, not to exceed the outstanding balance of work not performed or carried out at the scheduled completion date.

Section 8. Estimated dates. It is estimated the actual date construction will begin on the date that the final plat is recorded. The owner reserves the right to begin any time after recording of the final plat if weather conditions permit. The subdivision is estimated to be completed two years from the date of the final plat being recorded.

Warm Creek Estates, LLC, developer, will be solely and fully responsible for the supervision of sub-contractors and timely completion of installation of roads, electric and phone. The Developer will be fully responsible for all dust abatement during construction. Control of Warm Creek Manor Subdivision during the installation of the infrastructure until securing a certificate of completion from Teton County will be solely the responsibility of Warm Creek Estates, LLC.

Section 9. Transfer of lots. No lots may be sold (warranty deeds transferred) or offered for sale prior to the recording of final plat. Furthermore no building permit or certificate of occupancy shall be given until all improvements have been completed. The fire protection, including roads, must be operational and approved by the Fire Marshall before any building permits may be issued.

Developer does hereby agree that all unsold lots and common areas will be maintained by the Developer at the Developers sole expense. Once the Warm Creek Manor Homeowners' Association is created and functioning, said Association will assume responsibility for common areas. Developer will continue to maintain any unsold lots at developer's sole expense until said lots are sold.

Agreed:

BOARD OF COUNTY COMMISSIONERS, TETON COUNTY, IDAHO

Chairman

, manager of Warm Creek Estates, LLC
(Owner/Developer name)

State of IDAHO)

SS

)

County of Teton)

On this 28 day of Jan, 2002, before me, a Notary Public for the State of IDAHO, personally appeared Travis Thompson, president of JT Inc Managing Member known to be to be the person(s) whose name(s) is executed above, and acknowledged that he executed the same.

Notary Public

Residing Victor Id

Commission expires 6/8/2010

ARNOLD W. WOOLSTENHULME
NOTARY
PUBLIC
STATE OF IDAHO

AW ENGINEERING
P.O. Bx. 139 255 South Main St.
Victor, ID 83455

FEB 2 3 2009
Shelia

ENGINEER'S FINAL COST ESTIMATE

for **WARM CREEK MANOR SUBDIVISION** **Nov 24, 2008**

#	DESCRIPTION	COST/UNIT	UNITS	COST
1	Road system construction 4450 eq ft long	$ 179,160	1–A below	179,160
2	Electrical power service:	$ 12.00	0	0
3	Telephone service: 3200 l.f. @ $3.50/ft.	$ 7.00	0	0
4	Irrigation system for lots	$43000	1-B -below	43,000
5	Fire Protection System, 1 Hyd & Pond	$24,000	1	24,000
6	Fence rebuild around property Sides	2.00 ft	4000	8,000
7	Dust Abatment Co Road treat	1.00 / ft x 2 applic	5000	10,000
8	Park grass and some landscaping picnic area	1- Sum	6,000	6,000
	TOTAL PROJECT QUOTE			270,160
# A	ROADS DESCRIPTION	COST/UNIT	UNITS	COST
1	Road sub excavation, 9" deep & haul on site	$ 7.00/ C. Y.	3600 Cy	25200
2	Culverts: 18"x length corrugated metal pipes	$45.00/l.f.	160 feet	7200
3	Uncrushed pit run aggregate sub base	$ 10.00c.y.	4600 C.y.	46000
4	Crushed aggregate 3/4" minus gravel -4" deep	$14.00 /c.y.	1540 c.y.	21560
5	Pave road 2" asphalt at 24' wide road	$ 18.00/l.f.	4400 l.f.	79200
	TOTAL Road Project Estimate			179160
B	IRRIGATION SYSTEM	COST/UNIT	UNITS	COST
1	4" buried irrigation pipe line- 160 psi	$6.00/l.f.	5000 ft.	30,000
2	6" Burried irrigation pipe line 160 psi	$ 7.50 / ft	1200 ft	9,000
3	3" riser with cap valve & 3/4" yard hydrant	$200.00 each	20	4000
	TOTAL Irrigation Project Estimate			43,000

County Bonding at 110 % = $270160 x 1.10 = $ 300,000
No Public Water or Sewer system proposed on this project.
No electric or telephone included in bonding.

REGISTERED PROFESSIONAL ENGINEER 12800 State of Idaho Arnold W. Woolstenhulme

Angie Rutherford

From: Maureen Green
Sent: Tuesday, July 26, 2011 8:04 AM
To: Angie Rutherford
Subject: RE: Taxes

Good Morning Angie,
The 2010 taxes for Andrew Snow-Lots 1-5 of Evergreen Grove are paid in full.
Warm Creek Estates LLC – Park, Roads and Lots 1-19 Warm Creek Manor have 2009 and 2010 taxes delinquent totaling approx. $377.00.
Please let me know if you have any other questions.
Thanks,
Maureen

From: Angie Rutherford
Sent: Monday, July 25, 2011 2:18 PM
To: Maureen Green
Subject: Taxes

Hi Maureen,
Could you please tell me if Teton Investors/Andrew Snow is up to date on taxes for Evergreen Grove AND
If Warm Creek Estates LLC is up to date on taxes for Warm Creek *Manor* (not Estates)?

Thanks,
Angie

Angie Rutherford
Planner, Teton County, Idaho
150 Courthouse Drive
Driggs, ID 83422
208 354-2593
arutherford@co.teton.id.us
www.tetoncountyidaho.gov

TETON VALLEY 2020
Our future links together.

_____ Information from ESET NOD32 Antivirus, version of virus signature database 6324 (20110725)
_____

The message was checked by ESET NOD32 Antivirus.

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_____ Information from ESET NOD32 Antivirus, version of virus signature database 6324 (20110725)

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

Information from ESET NOD32 Antivirus, version of virus signature database 6326 (20110726)

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

Information from ESET NOD32 Antivirus, version of virus signature database 6326 (20110726)

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

Teton County, Idaho

Project Profile

Project Name	Warm Creek Manor
Number of Dwelling Units	19
Distance out County Roads	1-3 Miles
Daily Vehicle Miles Traveled	370
Value of One Lot with a Dwelling Unit	$375,235

	Cost Per Dwelling Unit	Property Tax and Other Revenues Per Dwelling Unit
Annual Operations and Maintenance for All County Services	$1,651	$1,313
Capital Facilities County Total for All County Services	$5,185	$2,488

	Cost-Benefit Per Dwelling Unit
Annual Operations and Maintenance Cost-Benefit	-$338
Capital Facilities Cost-Benefit	-$2,697

Cost-Benefit of

Warm Creek Manor

	Operations and Maintenance Annual Cost-Benefit	Capital Improvements One-Time Cost-Benefit
Road Fund	-$1,466	-$39,362
General Fund	-$4,764	-$7,759
Special Revenue Funds	-$184	-$4,126
Total Cost-Benefit	**-$6,414**	**-$51,247**

Generated Using the Fiscal Impact Planning System