

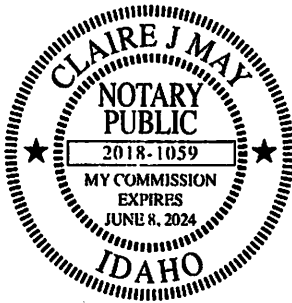
RESOLUTION NO. 2020-38

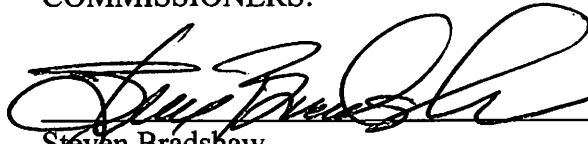
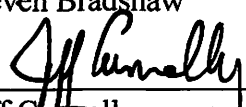

A RESOLUTION OF THE  
BONNER COUNTY COMMISSIONERS

RESOLVED, that the Findings of Fact, Conclusions of Law, Decision and Order copied and attached hereto collectively as Exhibit 1, arising from the public hearing on the Petition of Iris DeMauro, *et al*, for the Vacation and Abandonment of a Public Right-of-Way filed with Bonner County, which public hearing was held April 23, 2020 and continued to May 21, 2020, are hereby adopted.

DATED this 2nd day of June, 2020.

COMMISSIONERS:

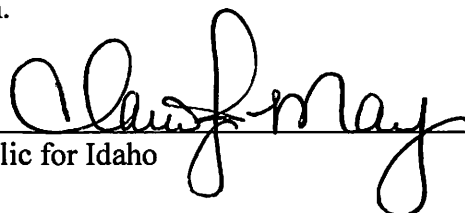


  
Steven Bradshaw  
  
Jeff Connolly  
  
Dan McDonald

STATE OF IDAHO     )  
                              ) ss.  
County of Bonner    )

On this 2nd day of June, 2020, before me, a notary public of the State of Idaho, personally appeared Steven Bradshaw, Jeff Connolly, and Dan McDonald, known to me to be the Bonner County Commissioners, and acknowledged to me that they executed this instrument on behalf of Bonner county for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

  
Notary Public for Idaho

RESOLUTION NO. 2020-38



## Bonner County Commissioners

1500 Hwy 2, Ste. 308 • Sandpoint, ID 83864 • Phone: (208) 265-1438

June 2, 2020

### Memorandum

To: Commissioners

Re: Resolution Brush Road Vacation - DeMauro

On April 23 and again on May 21 of 2020, the BOCC held hearings to determine the validity of the Vacation of a portion of Brush Rd as petitioned by Iris DeMauro. The BOCC has found it in the public interest to grant the road vacation according to the attached documents.

Legal Review: 

Distribution: Original to BOCC, Copies to Applicant, Road & Bridge, David Wynkoop and Scott Bauer

A suggested motion would be: **Mr. Chairman based on the information before us I move to approve Resolution #20- 38 including the Findings of Fact, Conclusions of Law, Decision and Order copied and attached hereto collectively as Exhibit 1, arising from the public hearing on the Petition of Iris DeMauro, et al, for the Vacation and Abandonment of a Public Right-of-Way filed with Bonner County, which public hearing was held April 23, 2020 and continued to May 21, 2020, are hereby adopted.**

Recommendation Acceptance: ☐ yes ☐ no

  
Commissioner Dan McDonald, Chairman

Date: 6/2/20

## **BONNER COUNTY**

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

#### **FINDINGS OF FACT**

1. An Amended Petition to Abandon and Vacate County Road ("Petition") was filed with Bonner County, Idaho ("County") by Stephen F. Smith, Counsel for Iris DeMauro, and William B. Nietmann and the James P. Nietmann and Ann M. Dougherty Trust (collectively, "Nietmann"), (collectively, "Petitioners"), on or about November 1, 2019.

2. Petitioners requested in the Petition that an unmaintained public right-of-way, sometimes referred to as the portion of Brush Road located on Petitioners' real property, as more specifically depicted in Addendum 1 attached hereto (the "Affected ROW"), be vacated and abandoned.

3. The location of the Affected ROW is within Bonner County, north of the community of Clark Fork, Idaho.

4. The Affected ROW is a not publicly maintained segment of public right-of-way created by a 1903 Viewers Report and opened as a public highway by the Kootenai County Commission, the predecessor of Bonner County, prior to the time Bonner County was split off from Kootenai County.

5. The Affected ROW was at one time a connecting segment between the roads now known as East Spring Creek Road and Shadow Valley Lane, connected to West Spring Creek Road.

6. Usage of the Affected ROW was reduced in the 1930's when Highway 10A (now Highway 200) was created to replace the Affected ROW because of frequent local floods. Most public use of the Affected ROW stopped in 1964 when the bridge over Spring Creek washed out and only trucks and motorcycles could ford the Creek after that at the former location of the bridge. The last regular public use of the Affected ROW ended in 1978 when John Dibble purchased the current DeMauro property and built his home. The Affected ROW is not currently being used or maintained as a public right of way.

7. Some of the original Viewers Report locations of the Affected ROW is under water and now serves as a portion of the bed of Spring Creek.

8. The exact location of Brush Road on Petitioners' properties may have moved somewhat over the years due to flooding of Spring Creek.

9. The portion of the Affected ROW which the Petitioners seek to abandon and vacate is north of Shadow Valley Lane at the Cherry Lane junction and includes all current and past locations of Brush Road on Petitioners' real property.

10. A map depicting the Affected ROW is attached as Amended Addendum 2 and adopted by reference.

11. The Petitioners' real property adjacent to the Affected ROW is shown on the attached Amended Addendum 3. Iris DeMauro is the sole owner of all frontage on her property, while William B. Nietmann (a 50% owner) and The James P. Nietmann and Ann M. Dougherty Trust (a 50% owner) own all frontage on the Nietmann property.

12. Notification of the hearing to consider the Petition was provided to owners of real property abutting the Affected ROW, to the United States Forest Service, and to known operators of underground facilities advising that the County would consider the Petition at a public hearing, schedule for April 23, 2020, at 10:00 a.m., and that the public could view the Petition and related materials at County offices.

13. Newspaper notice of the hearing to consider the Petition was published in the Bonner County Daily Bee of Bonner County, Idaho on April 2, 2020, April 9, 2020, and April 16, 2020.

14. No operators of underground facilities responded and made comment. No underground facilities are known to be in the Affected ROW.

15. Written comment and oral testimony by Steve Klatt, Bonner County Road and Bridge Director, was received and is of record.

16. Testimony was provided by Petitioner Iris DeMauro, and by her attorney Steve Smith.

17. Testimony was provided by Toby McLaughlin as attorney for the Walker family and as attorney for the Shadow Valley Camp.

18. Other testimony was provided in favor of and in opposition to the Petition.

19. Testimony was provided that there are numerous private properties in the vicinity of the Affected ROW and that it would be in the public interest for there to be a secondary emergency vehicular access available for use in the event of a public emergency such as a fire, flood, or landslide.

20. After all persons desiring to provide testimony had an opportunity to do so, the April 23, 2020 public hearing was continued until May 21, 2020.

21. Petitioner Iris DeMauro has created a private drive across her property, in a location different than the Affected ROW, sometimes referred to as Quarry Road, which Ms. DeMauro testified could be made available for vehicular use in the event of an emergency.

22. The Affected ROW is within the jurisdiction of the County.

23. The real property abutting the Affected ROW is adequately served by an existing system of public and private roads, upon the grant of a secondary emergency access utilizing Quarry Road.

24. Vacation of the Affected ROW will not leave any real property adjoining the Affected ROW without access to an established public highway or public right-of-way.

25. No access to federal or state land will be denied if the Petition is approved.

26. The Affected ROW is not located on land owned by the United States or the State of Idaho, nor on land entirely surrounded by land owned by the United States or the State of Idaho, nor does it provide the only means of access to such public lands.

27. The United States Forest Service ("USFS") has designated the land abutting the north portion of the Affected ROW as grizzly bear and caribou habitat. For this reason, the USFS has decided against opening up a road through Petitioners' properties and currently has Trail 120 ending in a turnabout at or near the northern end of Petitioner Iris DeMauro's property.

28. It would cost at least \$500,000 for the County to replace bridges and reopen the Affected ROW for public vehicular use. The County Road Department does not plan to open and maintain the Affected ROW for the foreseeable future due to the considerable expense required to do so.

29. Based on the testimony at the public hearing, the fair market value of the Affected ROW is less than two thousand, five hundred dollars (\$2,500.00).

30. There is no current or expected future need for a public right-of-way to be located on the Affected ROW. A portion of the Affected ROW lies within the seasonally-varying creek bed of Spring Creek, and therefore is not an environmentally appropriate location for a road.

31. It is in the public interest that emergency services and fire equipment and personnel be allowed to use Quarry Road as a secondary emergency access and that public vehicular access be allowed on Quarry Road in the event of an emergency which blocks other vehicular access.

32. At the conclusion of the May 21, 2020 continuation of the public hearing, the County Board of Commissioners voted in favor of vacating the Affected ROW as requested in the Petition, finding that it is in the public interest to do so, so long as secondary emergency access is allowed on a permanent basis via the Quarry Lane private road. This secondary emergency access point shall remain entirely closed to the public except only in the case where

the Bonner County BOCC duly declares an emergency in which access to said route is expressly opened to mitigate the emergency.

### **CONCLUSIONS OF LAW**

1. Vacation and abandonment of the Affected ROW is in the public interest, so long as a secondary emergency access is allowed in the location of Quarry Road. This secondary emergency access point shall remain entirely closed to the public except only in the case where the Bonner County BOCC duly declares an emergency in which access to said route is expressly opened to mitigate the emergency.

2. Retaining the Affected ROW located on Petitioners' real property is not in the public interest, so long as a secondary emergency access is allowed in the location of Quarry Road.

3. It is not in the public interest to vacate in this proceeding any portion of Shadow Valley Lane, or any public right-of-way in the vicinity of Petitioners' properties, located outside the boundaries of Petitioners' properties.

4. It is in the public interest for the vacation and abandonment of the Affected ROW to be subject to the reservation of a right for secondary emergency access which shall run with the land. Prior to the recording of these Findings of Fact and Conclusions of Law, a memorandum of understanding for the grant of secondary access shall be prepared in form and substance agreeable to Petitioner Iris DeMauro and the Director of the County Road and Bridge Department. The fully executed secondary emergency access easement and agreement for the Quarry Road location shall be recorded simultaneously with these Findings of Fact and Conclusions of Law. The vacation shall not be considered final until such easement is recorded. This secondary emergency access point shall remain entirely closed to the public except only in the case where the Bonner County BOCC duly declares an emergency in which access to said route is expressly opened to mitigate the emergency.

5. It is in the public interest that the Affected ROW located on Petitioners' real property be vacated and abandoned to the abutting and adjoining properties.


### **DECISION AND ORDER**


IT IS THEREFORE ORDERED by the Commissioners of Bonner County pursuant to Idaho Code §40-203 and Idaho Code Title 50, Chapter 13, that The Affected ROW within the boundaries of Petitioners' real property, is hereby abandoned and vacated to the abutting and adjoining properties, subject to the reservation of an easement for the continued use of existing sewer, gas, water, drainage or similar pipelines, and appurtenances, or other underground facilities, if any, as defined in Idaho Code 55-2202, for ditches or canals and appurtenances for


drainage, and for electric, telephone and similar lines and appurtenances, of record or now in use, and further subject to the grant of a secondary emergency access by Petitioner Iris DeMauro in the location of Quarry Road.

DATED this 2nd day of June, 2020.

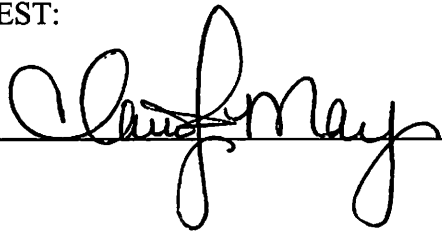
BONNER COUNTY COMMISSIONERS:

  
\_\_\_\_\_  
Steven Bradshaw

  
\_\_\_\_\_  
Jeff Connolly

  
\_\_\_\_\_  
Dan McDonald

ATTEST:

  
\_\_\_\_\_

Brush Road Vacation of Original Viewer's Report Right-of-Way-DeMauro and Nietmann

LEGAL DESCRIPTION

A strip of land, fifty (50.0) feet wide, 25.0 feet on each side of the following described centerline, which Viewer's Report was approved and declared a Public Highway by the Kootenai County Commissioners on Monday August 24, 1903 and recorded in Book E of the Commissioners Journals, page 168, over and across a portion the East Half of the Northeast Quarter ( $E\frac{1}{2}NE\frac{1}{4}$ ) of Section 22, and a portion of the West Half of the Northwest Quarter ( $W\frac{1}{2}NW\frac{1}{4}$ ) of Section 23, all lying in Township 56 North, Range 2 East, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

Beginning at the Southeast corner of said  $E\frac{1}{2}NE\frac{1}{4}$  (the  $1/4$  corner between said Sections 22/23) thence along the centerline the following ten (10) courses: 1.) North  $00^{\circ} 08'$  East (North by original report) along the section line between said Sections 22/23, a distance of 710.0 feet; 2.) North  $01^{\circ} 37'$  West (N.  $01^{\circ} 45'$  W. by original report) a distance of 279.00 feet; 3.) North  $08^{\circ} 38'$  East (N.  $08^{\circ} 30'$  E. by original report) a distance of 177.00 feet; 4.) North  $19^{\circ} 52'$  West (N.  $20^{\circ} 00'$  W. by original report) a distance of 420.00 feet; 5.) North  $08^{\circ} 37'$  West (N.  $08^{\circ} 45'$  W. by original report) a distance of 282.00 feet; 6.) North  $41^{\circ} 22'$  West (N.  $41^{\circ} 30'$  W. by original report) a distance of 337.00 feet; 7.) North  $21^{\circ} 52'$  West (N.  $22^{\circ} 00'$  W. by original report) a distance of 312.00 feet; 8.) North  $63^{\circ} 52'$  West (N.  $64^{\circ} 00'$  W. by original report) a distance of 251.00 feet; 9.) South  $82^{\circ} 23'$  West (S.  $82^{\circ} 15'$  W. by original report) a distance of 130.00 feet; 10.) North  $66^{\circ} 52'$  West (N.  $67^{\circ} 00'$  W. by original report) a distance of 307.81 feet to the North line of said  $E\frac{1}{2}NE\frac{1}{4}$ , which point is South  $88^{\circ} 25' 49''$  West a distance of 1147.14 feet from the Northeast corner of said  $E\frac{1}{2}NE\frac{1}{4}$  (Section corner common to Sections 14/15/22/23) and which point is the end of said strip of land.

The side lines on the North end of said description are to terminate on the North Section line of said  $E\frac{1}{2}NE\frac{1}{4}$ , and the side lines on the South end are to terminate on the South lines of said  $E\frac{1}{2}NE\frac{1}{4}$  of said Section 22, and on the South line of said  $W\frac{1}{2}NW\frac{1}{4}$  of said Section 23.





Iris DeMauro -- Legal Descriptions for Brush Road Vacation

1.) The Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 22, Township 56 North, Range 2 East, Boise Meridian, Bonner County, Idaho.

2.) The East Half of the East Half of the Southeast Quarter of the Northeast Quarter (E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 22, Township 56 North, Range 2 East, Boise Meridian, Bonner County, Idaho.

LESS that portion thereof lying South and West of the centerline of the existing access road (Known as Cherry Lane and Sled Run Trail) as described in Instrument Number 622264 as recorded in the records of Bonner County on April 10, 2003.

3.) The West 200 feet of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 23, Township 56 North, Range 2 East, Boise Meridian, Bonner County, Idaho.  
LESS the North Half of the North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said Section 23.

William Nietmann, and James P. Nietmann and Ann M. Dougherty, trustee or successor trustees of the James P. Nietmann and Ann M. Dougherty Trust, dated August 16, 2005  
Legal Descriptions for Brush Road Vacation

1.) The West 200 feet of the North Half of the North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 23, Township 56 North, Range 2 East, Boise Meridian, Bonner County, Idaho

2.) The South 200 feet of the West 200 feet of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 23, Township 56 North, Range 2 East, Boise Meridian, Bonner County, Idaho.