

**BONNER COUNTY PLANNING DEPARTMENT
BOARD OF COUNTY COMMISSIONERS
STAFF REPORT FOR AUGUST 21, 2019**



Project Name: Vacation of a portion of North Thama Road,
a public easement

File Number: VS0002-19

Type: Title 40 – Vacate a Public Easement

Request: The petitioner is seeking to vacate a portion of North Thama Road easement.

Legal Description: The subject portion of easement is located in Section 4, Township 55 North, Range 4 West, B.M.

Location: The subject area is located southwest of Highway 2, encompassing portions of North Thama Road.

Parcel number: RP55N04W043050A

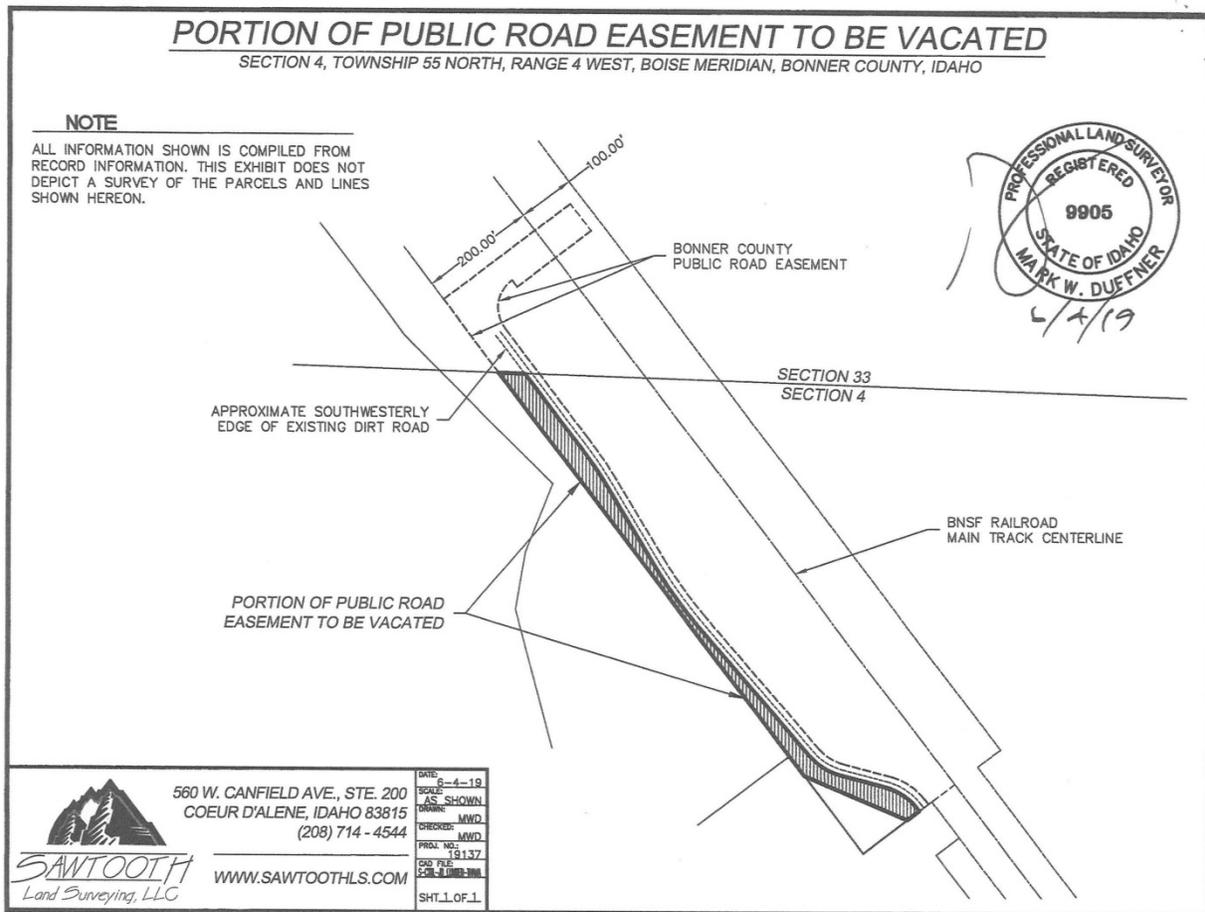
Petitioner: JD Lumber
PO BOX 55
Priest River, Idaho
83856

Petitioner's Representative: Jeff Weimer
JD Lumber
2737 Eastside Road
Priest River, Idaho
83856

Property owner: Same as petitioner

Petition filed: June 20, 2019

Notice provided: Mailed: July 19, 2019
Published in newspaper: July 19, 31, August 14, 2019
Site Posting: July 17, 2019



PORTION OF EASEMENT TO BE VACATED

Project summary:

Burlington Northern Railroad (BNSF) sold the property in question to JD Lumber. BN presumed they gave an easement to [Bonner County] for the road and only the road. They actually gave the county an easement for the road and south of the road and south of the road to the Southern BNSF property line. Then JD Lumber bought the property south of the county road to the Southern BNSF property line, and no one realize that area of property was encumbered by the easement given to the county.

The petitioner is seeking to vacate a portion of North Thama Road easement.

Applicable laws:

The following sections of Idaho Code apply to this petition:

- §40-203 – Abandonment and Vacation of County and Highway District System Highways or Public Rights-Of-Way

Overview:

A. Site data:

- Parcel acreage: 1.12 (assessed)
- Structures: vacant
- Hydrologic Features: None
- Flood Hazard Zone: X/AE
- Wetlands: Portions of the area feature "Freshwater Emergent Wetland"
- Slope: <15% per USGS
- Soils:
 - Selle Fine Sandy Loam, 0 To 8 Percent Slopes
 - Mission Silt Loam, 0 To 2 Percent Slopes

B. Access:

- Access to the easement is provided by North Thama Road a local access road.

C. Standards review:

- Required:
 - Compliance with:
 - §40-203, Abandonment and Vacation of County and Highway District System Highways or Public Rights-Of-Way
 - 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.
- Provided:
 - Petitioner's reason for the request:
 - *"Burlington Northern Railroad (BNSF) sold the property in question to JD Lumber. BN presumed they gave an easement to [Bonner County] for the road and only the road. They actually gave the county an easement for the road and south of the road and south of the road to the Southern BNSF property line. Then JD Lumber bought the property south of the county road to the Southern BNSF property line, and no one realize that area of property was encumbered by the easement given to the county."*

D. Agency Review

The petition was routed to the following agencies on July 19, 2019.

Panhandle Health District Bonner County Road Dept. West Pend Oreille Fire District Avista Utility Company Northern Lights INC.	Bonner County Schools – Transportation BNSF Railway Frontier Communications Idaho Transpiration Dept. Dept. of Env. Quality
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Agency Review Ended on August 7, 2019.

- No agency comments were submitted.

E. Public Notice & Comments

- There have been no public comments at the time this staff report was produced.

Staff analysis:

The statutory sections referenced below were found to be applicable during staff's review of the particular facts and circumstances as they relate to the proposed vacation.

- Idaho Code §40-203(1) sets forth the procedures for the hearing and consideration of the petition:

(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.

- Idaho Code §40-203(2) sets forth the standards for the consideration of a petition as it relates to access:

(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: Based on the depicted legal description, aerial photographs, and the petition, no real property adjoining the area to be vacated would be left without access to an established highway or public right-of-way.

- Idaho Code §40-203(3) sets forth the standards for reserving easements for utilities and other appurtenances

(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: Conditions have been added to satisfy this requirement. See Condition 3.

- Idaho Code §40-203(5)(a) sets forth the standards by which a public highway or ROW shall be deemed abandoned.

(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:

(a) That said highway or public right-of-way was created solely by a particular type of common law dedication, to wit, a dedication based upon a plat or other document that was not recorded in the official records of an Idaho county

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: The subject easement was dedicated from Burlington Northern, Inc., to Bonner County, Idaho via easement deed dated April 11, 1972. (Per Instrument No. 766219.)

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- Implementation Component - Bonner County Comprehensive Plan
 - Section 2.9 – Transportation
 - Goal:
 - Bonner County intends to provide a transportation system that is safe, uncongested, and well maintained.
 - OBJECTIVE:
 - Future development shall not adversely impact the existing transportation system by reducing the quality or level of service or creating hazards or congestion.
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- Summary:
 - Based upon the standards set forth in Idaho Code §40-203, a petition to vacate a public easement shall be in the public interest.
 - The Implementation Component of the Bonner County Comprehensive Plan establishes the goals and objects for Transportation in Bonner County.

Staff analysis:

Based upon the information found in the 'Background' portion of this report, staff concludes this validation is consistent with Idaho Code. This conclusion is founded upon conformance to procedures set forth in IC §40-203.

Planner's Initials: SR

Date: 8/8/2019

Note: The final decision rests with the governing body after the completion of the public hearing and consideration of all relevant oral and written testimony and evidence.

Motion by the governing body:

BOARD OF COMMISSIONERS

MOTION TO APPROVE: I move to approve this petition, FILE VS0002-19, a petition to vacate a portion of the North Thama Road public easement, finding that it is in accord with Idaho Code enumerated in the following conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further move to adopt the following findings of fact, conclusions of law and conditions of approval as written (noting any amendments). The action that could be taken to obtain the validation is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property.

Conclusions of Law:

The Background section of the staff report above is the basis for all of the following findings of fact and conclusions of law. Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

This proposal is compliant with the vacation criteria and standards set forth at Idaho Code §40-203.

Finding

The procedures set forth in section 40-203, Idaho Code, have been followed.

No public agency has objected to the proposed petition to vacate.

Local utility providers were routed as part of agency review, and none opposed the validation.

Conclusion 2

That portion of the North Thama Road Public Easement is hereby vacated and declared abandoned.

Finding

The petitioner demonstrated adequate evidence that the vacation of the subject easement would not be in conflict with public interest.

Finding

The petitioner provided adequate evidence that the vacation of the subject easement would not result in any real property, adjoining said easement, without access to an established highway or public right-of-way

MOTION TO DENY: I move to deny this petition, FILE VS0002-19, a petition to vacate a portion of the North Thama Road public easement, based upon the following conclusions: [REFER TO FOREGOING CONCLUSIONS OF LAW AND SPECIFY WHICH CONCLUSIONS THE PROJECT MEETS AND FAILS TO MEET]. The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further move to adopt the following findings of fact and conclusions of law **as amended**. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the validation is to:

- 1) File a new petition with the Planning Department and meet the standards required by Idaho Code; or
- 2) Pursue such remedies as may be applicable at Idaho Code, Title 40, Chapter 2.

Conditions of approval:

1. The vacation of the above-described platted area shall be effective upon the recording of a resolution by the Bonner County Commissioners granting the vacation.
2. The costs for legal advertisements and recording fees shall be borne by the petitioner and shall be paid prior to the recording of this vacation.
3. The petitioner shall allow for 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 – pursuant to Idaho Code §40-203(3).

The complete file is available for review in the Planning Department, 1500 Highway 2, Suite #208, Sandpoint, ID. Staff reports are available online one week before the hearing at www.bonnercountyid.gov Bonner County Revised Code (BCRC) is available at the Planning Department or online.