



STAFF REPORT

Packsaddle Road Vacation/Abandonment Application Additional Information

Prepared for the October 31, 2016
Board of County Commissioners Public Hearing

PROJECT INTRODUCTION

Application submitted by Ag Rim LLC with additional landowners Grandview Ranch, Bainbridge, Assante and Felger. This application is for the partial vacation of Packsaddle Road. There is also a Road Name Request form that can be administratively approved and will be discussed with the commissioners at a later date.

The application is part of an offering in which the existing corridor would be vacated in exchange for a new road constructed to County Specifications and right of way dedication.

All new and revised information that has been received since the previous public hearing date is attached with this report.

APPLICATION UPDATE

At the September 13, 2016 continued Public Hearing for this application, it was brought to the Board's attention that there was concern over access to properties affected by the re-alignment. Owners Assante and Felger have since had conversations with the County Attorney and myself about access configuration. Teton County has communicated to the applicant that, at a minimum, no property can be left land locked per Idaho State Statute but also that the commissioners have the option to require additional considerations be met as a condition of application approval. Attached is the most recent agreement with 1. the original access exhibit and 2. recently received access update.

Conditions required by the County Attorney are as follows:

Before the Packsaddle Agreement goes in front of the Board it needs to provide, as a contingency of moving forward with vacation and acceptance:

1) A legal access for the Assantes and the Felgers (the smaller parcel that the Assante piece was once a part of). Attached is an exhibit that was provided to the County at one point showing the access, but it is not mentioned in the agreement you sent. IC 40-203(2) does not allow the County to vacate a road if it leaves any parcel adjoining the highway or right of way without access to a highway or public right of way. Thus, the Board cannot sign an agreement that does not provide for access to the Assante and the Felger parcels. The access depicted in the attached Exhibit needs to be a part of the Agreement, but with the modification that Assantes and Felgers do not need to purchase an easement. The County cannot vacate the road that provides them access and then require them to purchase their own.

2) It also needs to explain how the County will be granted the road - fee simple or easement. We need a draft easement for each of the configurations and, at a minimum, the width for each segment:

- Road
- Road & Trail
- Road, Trail and future Scenic Pullouts
- Road access from parking area to packsaddle lake road

3) The Agreement also needs to provide that fee simple ownership will be conveyed for the parking area.

General terms have been agreed upon for items 2 & 3 between Staffa and applicant.

MOFFATT THOMAS

Attorneys at Law

Lee Radford

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October 24, 2016
via E-Mail and Certified Mail

Teton County Board of County Commissioners
Cindy Riegel, District 1
Bill Leake, District 2
Kelly Park, District 3
Teton County Courthouse
150 Courthouse Drive
Driggs, Idaho 83422

Darryl Johnson
Teton County Director of Public Works
Teton County Courthouse
150 Courthouse Drive, Room 107
Driggs, Idaho 83422

Kathy Spitzer
Teton County Prosecutor
230 N. Main Street
Driggs, Idaho 83422

Re: Packsaddle Road Vacation
MTBR&F File No. 26727.0000

Dear Ladies and Gentlemen:

I represent Joe and Carol Felger (the "Felgers") in regard to the proposed vacation of Packsaddle Road, which is currently scheduled to be on the agenda of the Teton County Commission on October 31, 2016.

The Felgers own real property that borders on the current Packsaddle Road. This includes the parcels of real property numbered RP05N44E082700, RP05N44E083600, and RP05N44E070010 in the records of the Teton County Assessor. The Felgers rely on Packsaddle Road to access these parcels. To access these parcels, the Felgers several years ago constructed a private road of more than 2,500 feet, which connects to Packsaddle Road, with a gated entrance onto their property.

Ag Rim, LLC, has been pursuing an effort to construct an improved Packsaddle Road roughly parallel to and north of the existing Packsaddle Road near these parcels. The new road appears to be designed to be less steep than the existing Packsaddle Road. The Felgers have been supportive of this project by Ag Rim LLC, on the understanding that the vacation of the existing Packsaddle Road would not leave any real property adjoining the existing road without access to the Teton County right-of-way.

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It now appears that Ag Rim, LLC, is proposing that Teton County vacate the existing Packsaddle Road, even though it would leave the property of the Felgers and the land of Michael and Christina Assante without access to the Teton County right-of-way. The Felgers object to the vacation of the existing Teton County road, if the Felgers are not provided access on the new road that is equivalent to the existing access on the current Packsaddle Road. Currently, the Felgers have no way to access the new Packsaddle Road if the existing Packsaddle Road is vacated.

Idaho law does not allow Teton County to vacate the existing Packsaddle Road if the vacation deprives the adjacent landowners of access to their property. Section 40-203(2) of the Idaho Code states,

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.

Idaho Code § 40-203 (emphasis added). Furthermore, Article 1, § 14, of the Idaho Constitution demands that “just compensation” be provided to landowners who are deprived of a access to a public right of way under the doctrine of inverse condemnation. *E.g. Brown v. City of Twin Falls*, 124 Idaho 39, 41 (1993). Also, if a county does decide to vacate a public right-of-way in violation of Section 40-203(2), the property holder aggrieved by that decision has the right to pursue judicial review of the decision in the district court. Idaho Code § 40-208.

The Felgers appreciate Teton County’s understanding of this issue. However, while it is the County’s responsibility to ensure the Felgers retain access to a public right of way, the County should require that the developer proposing the revised road design the new road so as to preserve the existing accesses, according to the requirement of Idaho Code § 40-203. It is best to resolve this issue now to move the process along as quickly as possible.

While the Felgers seek to cooperate with the parties in the resolution of this matter, the Felgers also must preserve and assert their statutory and constitutional rights to access to the County right-of-way. For these reasons, based on the current positions and record, the Felgers strongly oppose the proposed vacation of Packsaddle Road until the developer provides an access to the Felgers that is reasonably equivalent to the current access.

The Felgers have appointed me to represent them in this matter. At this point, you can communicate with either Joe or Carol Felger or with me in relation to these issues. No other persons are authorized to speak for Joe or Carol Felger in relation to the Packsaddle Road access issue.

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If you have any questions, please contact me directly at klr@moffatt.com or (208) 522-6700, with any questions or comments. I look forward to hearing from you.

Sincerely,



Lee Radford

KLR/car

From: [Christina Assante](#)
To: [Darryl Johnson](#); [Kathy Spitzer](#); [Bill Leake](#); [Kelly Park](#); [Cindy Riegel](#)
Cc: [Home Home](#)
Subject: Packsaddle Road Property Owner Request - Assante
Date: Tuesday, October 25, 2016 9:27:28 PM

Dear Commissioners, Kathy, and Darryl,

We are sending this email to you before the October 31, 2016 vote to remind you of the situation we currently find ourselves in as Packsaddle property owners. We have informed you in writing and maintain our support for a new road for the community.

Our private property consists of 4.17 acres and our future access continues to be an unresolved issue.. At the June hearing, AGRIM and the affected property owners gave a verbal and illustrated description of how future access would be configured to allow Assantes, Felgers, and Bainbridges access to our different properties. This involved the Assantes personally purchasing a half acre parcel of land from Terry Kay, and jointly paying to construct a private drive to the existing Packsaddle road at our Eastern property junctions. At the September..... meeting we made you aware that Terry Kay charged us an exorbitant and unacceptable amount to purchase his half acre, followed two days later by notifying us that he was no longer willing to sell us that parcel at all. Due to this fact, the originally proposed access became impossible. We (the Assante family) have reached out to and have talked with AGRIM to examine the challenge of property access.

At the September 13, 2016 hearing the Commissioners discussed at length (with the aid of the Teton County GIS map) our property access options. While a GIS Map is helpful in defining property boundaries, we feel it does not give enough information to make this decision. We feel that two things need to happen in order to make your decision:

1. The county needs to define what real property "access" is. Is it a driveway, an easement, a path, a measured allowable parking space?
2. All affected property owners and decision makers should meet at the properties in question to walk through the proposed access options. This should include the County Commissioners, the County Engineer, the County Prosecutor, property owners affected (Assante, Felger, Bainbridge), and an AGRIM representative. Looking at the Teton County GIS map is helpful when defining property lines, but having our feet on the ground allows us to see and consider slopes, rock ledges, trees, fence lines, and any other features that affect property access.

Before you make your decision on which way you will vote, you need to understand this: under the current conditions, if the existing road is vacated, our property will be land locked. We understand that land locking a real property by vacating an existing road goes against Idaho Statute 40-203 subsection 2. Also, when AGRIM submitted our signed Request of Road Vacation/Abandonment/Addition, it states on page 4 that "The vacation will not leave real property adjoining the public right(s)-of-way without access to the County right(s)-of-way."

If you are willing to meet on the properties as suggested, please let us know as soon as possible so that we may set up a time that works for as many people as possible. We would suggest that we meet before the October 31 meeting if at all possible.

Thank you for your time,

Christina and Mike Assante
208.270.0347

AGREEMENT TO VACATE AND RELOCATE ROAD

THIS AGREEMENT is made and entered into as of the ___ day of _____, 2016, by and between AG RIM, LLC, whose mailing address is P.O. Box 50130, Idaho Falls, Idaho 83405, its successors and/or assigns (hereafter “Ag Rim”), GRANDVIEW RANCH II, LLP, GRANDVIEW RANCH III, LLP GRANDVIEW RANCH IV, LLP GRANDVIEW RANCH V, LLP, and GRANDVIEW RANCH VI, LLP each whose mailing addresses is 3565 Las Vegas Boulevard South, Suite 705, Las Vegas, Nevada 89109, its successors and/or assigns (collectively Grandview Ranch I, Grandview Ranch II, Grandview Ranch, III, Grandview Ranch IV, Grandview Ranch V, and Grandview Ranch VI are hereafter known as “Grandview Ranch”), and Teton County Idaho, a political subdivision of the State of Idaho (hereafter “County”).

WHEREAS, the County is the local highway authority for purposes of Title 40 of the Idaho Code.

WHEREAS, Ag Rim, and Grandview desire to construct a road and other improvements, shown for the purpose of identification in red on Exhibit “A” (the “Road”);

WHEREAS, Landowners own land that the existing County road traverses, which ownership is shown within Exhibit “B” (the “Ownership Map”) free of lien or interest that would need approval from third parties or partial release.

WHEREAS, Ag Rim, and Grandview desire to construct a road and other improvements, shown for the purpose of identification in red on Exhibit “B” (the “Road”);

WHEREAS, Ag Rim, Grandview and County have agreed that the Road and the area near or surrounding the road must be enhanced with certain improvements (the “Plan”) as further described and agreed upon in this Agreement;

WHEREAS, Landowners have requested that when the Plan has been executed and maintained in accordance with the provisions of this Agreement and the specification the Board of County Commissioners, the County shall abandon and vacate portions of West 4000 North, (sometimes more commonly known as Packsaddle Road and/or Milk Creek Road), identified in magenta on Exhibit “A” and Exhibit “B”, pursuant to Idaho Code § 40-203;

WHEREAS, Landowners have requested that when the Plan has been executed in accordance with the provisions of this Agreement and conform to the County Road Standards for Teton County, Idaho, as amended. (ORD.9 as Amd. Through 9-25-2000; Amd.06-05), the County shall, pursuant to Idaho Code § 40-202, designate the Road as a public right-of-way identified in _____ on Exhibit “A”;

WHEREAS, it is the intent and purpose of the Ag Rim, Grand View, and the County to enter into this Agreement that will guarantee the full and satisfactory completion of the required Improvements on the Property described in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Conditions of Acceptance

A. **The Road Construction:** Except as otherwise specified hereafter, and at their sole expense, Ag Rim and Grandview shall construct the Road depicted in Exhibit “A” in conformance with the County Road Standards for Teton County, Idaho, as amended. (ORD.9 as Amd. Through 9-25-2000; Amd.06-05).

B. **The Plan Condition:** Except as otherwise specified hereafter, and at their sole expense, Ag Rim and Grandview shall carry out and complete the additional improvements which are described below and further identified in Exhibits “A” to this Agreement (the “Plan”). All improvements shall be constructed in a good and workmanlike manner in accordance with the provisions of this Agreement, the County Road Standards for Teton County, Idaho, as amended. (ORD.9 as Amd. Through 9-25-2000; Amd.06-05), and in accordance with the plans and specifications found in Exhibit “C” on or before November 13, 2018.

- Scenic Pullouts – Ag Rim and Grandview will designate and include in the Road scenic pullout rights-of-way for potential future construction and development by the County as located and illustrated on Exhibit “C” and designed suitably to the approximate site as generally shown on Exhibit “C”.
- Multi-Use Trail – In addition to constructing the Road, a multi-use trail will be constructed in accordance with Exhibit “B” that will be a shaped, flat, revegetated surface approximately 14 feet wide within a 20 foot easement. This multi-use trail will be placed approximately parallel to the Road, and open to offroad, motorized, traffic between December 1st to March 31st. All other months of the year, the multi-use trail will be closed to motorized use.
- Utilities – The County agrees that any utilities placed in the Road or the Multi-Use Trail will be buried underground and agrees that any right-of-way or easement does not include rights for overhead utilities.
- Traffic Impact Study – Ag Rim and Grandview have submitted a traffic impact study to the Idaho Transportation Department (“ITD”), which has been approved by ITD and is outlined on Exhibit “D”.
- BLM Property – The County will take the lead and work with the United States Bureau of Land Management (“BLM”) to route the Road right-of-way through BLM property. Ag Rim and Grandview will be responsible for the reclamation and revegetation of the old roadways through the BLM property. In the event that approval for routing the Road through the BLM property is not obtained on or before June 1, 2017, Landowners and County agree, without further review, that the Road will be routed around the BLM property in accordance with Exhibit “A-Alt”, which will instead become the new County road. That portion of the existing public right-of-way through the BLM property will be abandoned by the County and all roads through the BLM property will be reclaimed and revegetated in native grasses by Ag Rim and Grandview.
- Reclamation of Abandoned Road – Ag Rim and Grandview shall be responsible for the cost of the revegetation of any portion of the existing County road that is vacated, identified in magenta on Exhibit

“A”, to natural vegetation or appropriate ground cover for farming. Further, Landowners will warranty the revegetation and provide weed control along the existing County road and Road for one year after the abandonment of the existing County road and adoption of the Road.

- Public Parking Area – Ag Rim agrees to construct and convey, via standard grant deed, fee-simple ownership to the public parking area as described in Exhibit “E”. The County Engineer and the engineer for Ag Rim will work together to create a mutually agreeable, final public parking area design that details the parking area layout..
 - Signage – Ag Rim and Grandview will provide and install signage in accordance with Exhibit “F”.
 - Cattle Guards – Ag Rim agrees to install and/or remove any cattle guards on the Road to control adjacent National Forest Service grazing, if needed.
 - Snowplowing – This Agreement does not create a new obligation on the part of the County to maintain the Road. However, nothing in this Agreement prevents the Landowners, or future landowners, from requesting County services to the Road in accordance with the County road maintenance policies. Norton Conservation Easement Property – Ag Rim will place signs every 300 feet along the boundary alerting the public to the Norton conservation easement property adjacent to the Road and the Parking Lot except by the National Forest Service boundary.
 - Road Extension Evaluation – Landowners will provide an engineering evaluation to the County that details the construction issues (including, but not limited to, existing underground utilities, proposed road relocation, potential easement ownership conflicts, and cost of construction) surrounding extending the Road along that portion of the road commonly known as the Milk Creek Road to Highway 33.
- (ii) Before the Road(s) are accepted the County Engineer must issue a “Final Certificate” indicating that the Road(s) and Plan are complete and meet the specifications of the County Road Standards for Teton County, Idaho, as amended. (ORD.9 as Amd. Through 9-25-2000; Amd.06-05).
- (iii) Ag Rim and Grandview shall maintain the Road until the issuance of the Final Certificate. Within forty-five (45) days of receipt of written application from Ag Rim and Grandview, the County shall inspect the Road and where necessary provide Ag Rim and Grandview with a definitive list in writing of any remedial works required to be carried out before the issue of the Final Certificate. Ag Rim and Grandview will warranty the Road improved by this Agreement for one year from the date the Final Certificate is issued. Further, Landowners shall provide a cash bond of Fifty Thousand Dollars (\$50,000.00) to be held by a mutual agreed upon escrow holder. The parties agree that the aforementioned bond will only be used, if necessary, for reparative work for the Road, road reclamation, and/or weed control along the Road or associated with the existing County road reclamation during the warranty period.

Road Designation

Upon the satisfactory completion of the Road in accordance with the specifications of the County Road Standards for Teton County, Idaho, as amended. (ORD.9 as Amd. Through

9-25-2000; Amd.06-05), (or satisfactory completion of the partial sections thereof identified by the station markers below), and issuance of the Final Certificate for the Road, the Board of County Commissioners agree that the completed Road (identified in red on Exhibit "B"), or partial section thereof, will become the new County right-of-way. The Road shall be commonly known and identified as follows:

- 1) Packsaddle Road – from station marker 1+00.00 to station marker 86+64.79;
- 2) Packsaddle Bench Road – from station marker 86+67.7 to station marker 242+61.36; and
- 3) Grandview Road – from station marker 242+61.36 to station marker 401+50.00.
- 4) Packsaddle Lake Road – existing.

Vacation of old Road

Upon the issuance of the Final Certificate for the Road, or partial section thereof, the Board of County Commissioners agree that those portions of West 4000 North identified in magenta on Exhibit "A" and Exhibit "B" are abandoned as a County right-of-way. Final Certificate and vacation of the Road may be obtained for the Road as a whole, or for Packsaddle Road, Packsaddle Bench Road, and Grandview Road as a separate section of the Road. However, the issuance of Final Certificate and vacating of a separate section of the Road does not eliminate the obligation of the Ag Rim and Grandview to complete the remaining sections of the Road in accordance with this Agreement.

Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including County's corporate authorities and their successors in office. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.

Notices. All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee when delivered in person on a business day at the address set forth below or on the third day after being deposited in the United States mail, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, to the address set forth below.

Notices to the County shall be addressed to, or delivered at, the following address:

Teton County Board of County Commissioners
ATTN: Public Works Director
150 Courthouse Drive, Rm. 107
Driggs, Idaho 83422

Notices to the Landowners shall be addressed to, or delivered at, the following addresses:

Ag Rim

c/o Tammie Smith
P.O. Box 50130
Idaho Falls, Idaho 83405

Grand View
c/o Ron Judy
3565 Las Vegas Boulevard South, Suite 705
Las Vegas, NV 89109

with copies to:
Sean R. Moulton
P.O. Box 631
Driggs, ID 83422

By notice complying with the requirements of this Section, each party shall have the right to change the address for all future notices, but no notice of a change of address shall be effective until received as provided above.

Amendments or Alterations. All changes, amendments, omissions, or additions to this Agreement shall be in writing and shall be signed by both parties.

Governing Law. This Agreement shall be construed and governed according to the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Teton County, or in the United States District Court for the District of Idaho.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first above written.

Agreed:

BOARD OF COUNTY COMMISSIONERS, TETON COUNTY, IDAHO

William Leake, Chairman

Ag Rim, LLC

Tammie Smith, Manager

Grand View Ranch II, LLC

By Ronald J. Judy, Manager
For RJJ International, LLC, General Partner
Grand View Ranch III, LLC

By Ronald J. Judy, Manager
For RJJ International, LLC, General Partner

Grand View Ranch IV, LLC

By Ronald J. Judy, Manager
For RJJ International, LLC, General Partner

Grand View Ranch V, LLC

By Ronald J. Judy, Manager
For RJJ International, LLC, General Partner

Grand View Ranch VI, LLC

By Ronald J. Judy, Manager
For RJJ International, LLC, General Partner