TO: ACHD Board of Commissioners & Bruce S. Wong, Director

FROM: David Serdar
Right of Way Supervisor

DATE: June 20, 2016

SUBJECT: Vacation of Public Right of Way - Public Hearing and adoption of Resolution Number 2150 for an application to vacate a portion of Right-of-Way known as Whitewater Park Boulevard located in the Northwest Quarter of Section 4 of Township 3 North, Range 2 East, Boise Meridian, Ada County, Idaho.

Regular Agenda / Public Hearing for Board of Commissioners meeting July 6, 2016

EXECUTIVE SUMMARY

This action is to vacate .039 acres (1,708 SF), more or less, of Right-of-Way known as N. Whitewater Park Blvd. located in the Northwest Quarter of Section 4 of Township 3 North, Range 2 East, Boise Meridian, Ada County, Idaho.

FACTS & FINDINGS

1. ACHD is proceeding with the vacation of the above-referenced right of way from Idaho River Sports, Inc.

2. The area being proposed for the vacation encompasses approximately 0.039 acres, more or less. (Attachment 1).

3. The applicant is requesting this vacation to acquire ground for parking to accommodate current business operations.

4. Idaho Code, section 50-1306A(6) requires that, before vacation can be authorized, a public hearing must be held, with notice published in accordance with Idaho Code, section 40-206, where any person may appear and show cause that the vacation should not occur.

5. Notice of the public hearing was published in the Idaho Statesman on June 21st, 22nd and 29th, 2016, with the last date of publication at least five (5) days before the hearing.

6. In accordance with Idaho Law and ACHD policy, comments were requested from the following public and private agencies and public utilities, regarding their plans for the area of the proposed vacation. In addition, ACHD staff has been notified and comments were requested concerning the requested vacation.
A. ACHD Staff comments:
   Provide easements for any existing utilities

B. The following agencies had no response:
   Intermountain Gas Company
   Idaho Power
   Boise City Development Services
   Boise City Clerk
   Boise City Fire Dept.
   Boise City Public Works
   Boise City Parks Department
   Boise Project Board of Control
   Boise City Canal Company
   Integra Telecom
   Cable One Television
   Level 3 Communications
   AT&T Communications
   Boise Warm Springs Water District
   Ada County Development Services
   Zayo Fiber Systems
   Syringa Networks
   Westel Fiber

C. The following agencies responded and had no objection:
   Century Link
   Nampa Meridian Irrigation District
   Tesoro Logistics
   West Boise Sewer District
   Suez (United Water)

7. There is no access to Federal or State lands or waters that will be denied if the requested vacation is approved.
8. On May 3, 2016 a letter was sent out notifying all the property owners within 300 feet of the requested vacation of the public hearing date.

   A. Property Owner Comments:
      None

9. The public hearing for the vacation and abandonment of the above referenced public Right of Way will be conducted on July 6th, 2016.

10. Attachment 2 for Commission review and consideration is Resolution Number 2150.

11. Approval of the vacation and abandonment is subject to retention of the public and private utility easements, drainage easements, irrigation easements, and/or other easements of record or not of record or in use upon or under said described public right of way and/or the provisions for the relocation or replacement of existing facilities.

12. Costs associated with relocation or replacement of existing easements and facilities shall be borne by the applicant with approval of the applicable utility or agency.

FISCAL IMPACT
The Applicant is exempt from the $1,000.00 application fee, as this owner had donated property at this location to ACHD for a project prior to the construction of Whitewater Park Blvd. According to Idaho State Code 40-203, Subsection (i), there is no charge for the Vacation of Right-of-Way when the landowner who originally dedicated such parcel is the applicant of the vacation.

POLICY IMPLICATIONS
The public hearing and the vacation procedures were accomplished according to current ACHD policies.

RECOMMENDATIONS
Staff recommends that the Board of Commissioners adopt and sign Resolution Number 2150 and the president of the board sign the quitclaim deed (Attachment 3) to vacate the public Right-of-Way known as Whitewater Park Blvd. located in the Northwest Quarter of Section 4 of Township 3 North, Range 2 East, Boise Meridian, Ada County, Idaho.

ATTACHMENTS:

1. Depiction of proposed vacation area
2. Resolution Number 2150
3. Quitclaim Deed to Idaho River Sports, Inc.

cc: Right of Way File
    Idaho River Sports, Inc.
This map is intended as a visual reference only. 2013 Aerials 1 inch = 50 feet
RESOLUTION NUMBER 2150

AUTHORIZING AN ABANDONMENT/VACATION OF PUBLIC RIGHT OF WAY BY AND BETWEEN THE ADA COUNTY HIGHWAY DISTRICT AND IDAHO RIVER SPORTS, INC., WITH OTHER CONSIDERATIONS BETWEEN THE PARTIES.

WHEREAS, by its Resolution Number 2150 adopted and approved at its regular meeting held on July 6, 2016, the Ada County Highway District Commission, in accordance with the requirements of Idaho Code, section 40-1309 and 40-203, found that the public Right-of-Way known as Whitewater Park Blvd. located in the NW ¼ of Section 4, Township 3 North, Range 2 East, Boise Meridian, City of Boise, Ada County, Idaho, and more particularly described in Exhibit “A” hereinafter “subject public right of way”) was no longer useful to ACHD, and set a public hearing before the Commission for 12:00 pm, on July 6th, 2016, at which time any person could appear to show cause why the subject public right of way should not be vacated, and

WHEREAS, in accordance with Idaho Code, sections 40-203 and 40-1309, the Commission does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. Date of Application: May 3, 2016. The applicant is exempt from the application fee requirement as this owner had donated property at this location to ACHD for a project prior to the construction of Whitewater Park Blvd. According to Idaho State Code 40-203, Subsection (i), there is no charge for the Vacation of Right-of-Way when the landowner who originally dedicated such parcel is the applicant of the vacation.

2. Upon the filing of a petition by the Petitioner for the abandonment of the subject public right of way, the following organizations and agencies were notified on May 3, 2016:
   A. Ada County Highway District Staff members;
   B. All appropriate local agencies and utilities were contacted and comments requested.

3. On June 1, 2016 a public hearing date was set by the Board of Commissioners for July 6, 2016.

4. Following the filing of the petition for the abandonment/vacation, property owners within 300 feet of the subject right of way were notified by certified mail on June 2, 2016, of the time, date and place of the public hearing.

5. In accordance with Idaho law, a Notice of Public Hearing was published in the Idaho Statesman a daily newspaper published in Ada County, Idaho, on the 21st, 22nd and 29th of June, 2016, and a confirmation email of publication was received by the Ada County Highway District and is on file in the office of the Right of Way Department.
6. Any and all comments received from the May 3rd, 2016 notification of Ada County Highway District Staff members and all applicable local agencies are on file in the office of the Right of Way Department and are included within the Public Hearing staff memo dated June 20, 2016.

7. Any and all comments, received from those property owners of real property within 300 feet of the subject right of way are on file in the office of the Right of Way Department and are included within the Public Hearing staff memo dated June 20, 2016.

8. An appraisal/determination of value of the subject public right-of-way was not prepared as the applicant is the original owner who deeded such property to ACHD.

9. At the public hearing on Wednesday, July 6, 2016, oral and or written testimony was presented and at the conclusion of which, President Kent Goldthorpe, closed the public hearing for testimony. After discussion, the Commission found the abandonment/vacation and exchange was in the public’s best interest and voted to approve the abandonment/vacation and exchange of the two permanent easements as an even exchange in value.

CONCLUSIONS OF LAW:

It is the opinion of the Board of Commissioners of the Ada County Highway District, per President Kent Goldthorpe, and Commissioners, Sara M. Baker, Rebecca W. Arnold, Jim D. Hansen, and Paul Woods that the subject right of way is no longer needed by the Ada County Highway District and that it is the best interest of the traveling public, the adjacent property owners, and the Ada County Highway District that the abandonment/vacation of the public Right-of-Way known NW ¼ of Section 4, Township 3 North, Range 2 East, Boise Meridian, City of Boise, Ada County, Idaho, and more particularly described in Exhibit “A” be approved and the subject public right of way abandoned/vacated. Subject to the following:

Retention of public and private utility easements, drainage easements, irrigation easements and/or other easements of record or not of record or in use upon or under said described public right of way and/or the provisions for the relocation or replacement of existing facilities.

Consideration being paid to the Ada County Highway District for the vacated public right-of-way of the fair market value for the land in the amount of ZERO DOLLARS (compensation waived per Idaho Code).

NOW, THEREFORE, BE IT RESOLVED, pursuant to Idaho Code section 40-203, and based upon the preceding findings of fact and conclusions of law, that the proposed abandonment/vacation of the public right of way is hereby authorized, and that the President of the Commission and the Director be, and are hereby, authorized and directed to execute such contract of sale on behalf of the Ada County Highway District and an appropriate Quitclaim Deed for the abandoned/vacated subject public right of way and such closing instructions and other instruments and documents as are required by such contract of sale, including the following, and deliver the same, together with the deed to the closing agent:
1. Subject to retention of public and private utility easements, drainage easements, irrigation easements and/or other easements of record or not of record or in use upon or under said described public right of way and/or the provisions for the relocation or replacement of existing facilities.

*Costs associated with relocation or replacement of existing easements and facilities shall be borne by the Petitioner with approval of the applicable utility or agency.*

ADOPTED AND APPROVED by the Board of Commissioners of the Ada County Highway District at its regular meeting held on this ____, day of _________________, 2016.

ADA COUNTY HIGHWAY DISTRICT
BOARD OF COMMISSIONERS

By: ________________________________
    Kent Goldthorpe, President

By: ________________________________
    Paul Woods, Vice President

By: ________________________________
    Rebecca W. Arnold, Commissioner

By: ________________________________
    Jim D. Hansen, Commissioner

By: ________________________________
    Sara M. Baker, Commissioner
The Ada County Highway District (ACHD) is committed to compliance with Title VI of the Civil Rights Act of 1964 and related regulations and directives. ACHD assures that no person shall on the grounds of race, color, national origin, gender, disability or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any ACHD service, program or activity.
QUITCLAIM DEED CONVEYING PUBLIC RIGHT-OF-WAY

THIS INDENTURE, made this ______ day of __________________, 2016, ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho, the "GRANTOR", and IDAHO RIVER SPORTS, INC., an Idaho Corporation, the "GRANTEE";

W I T N E S S E T H:

FOR VALUE RECEIVED, GRANTOR does by these presents convey, remise, release and forever quitclaim unto GRANTEE all right, title and interest of GRANTOR in the real property situated in the COUNTY OF ADA, STATE OF IDAHO, as more particularly described on Exhibit “A” attached hereto and by this reference made a part hereof (hereinafter the “Right-of-Way”).

SUBJECT TO easements of record, statutory rights of utilities and districts to be in the public right-of-way which rights are being exercised in the Right-of-Way as of the date of this Indenture (for sewer, gas, water or similar pipelines and their appurtenances, for electrical and telephone lines and for irrigation and drainage ditches), and subject to licenses for telecommunications lines which are in place in the Right-of-Way as of the date of this Indenture. GRANTEE is responsible for costs of any relocation or replacement of such pipelines, lines and ditches.

TO HAVE AND TO HOLD the same unto the GRANTEE and to Its successors and assigns forever.

The current address of GRANTEE is:

Idaho River Sports, Inc.
601 N. Whitewater Park Blvd.
Boise, ID 83702
IN WITNESS WHEREOF, this Quitclaim Deed has been duly executed by and on behalf of GRANTOR this _______ day of ___________________, 2016.

ADA COUNTY HIGHWAY DISTRICT

By___________________________
President

Attest:

_________________________
Bruce S. Wong, Director

State of Idaho )
) ss.
County of Ada )

On this _____ day of ____________, in the year 2016, before me, ____________________________, a Notary Public in and for the State of Idaho, personally appeared Kent Goldthorpe, known or identified to me to be the President of the Board of Commissioners of the Ada County Highway District, and Bruce S. Wong, know or identified to me to be the Director of the Ada County Highway District, the persons who executed this instrument on behalf of said Highway District 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 the State of Idaho
Residing at ____________________, Idaho
My Commission expires________________