

REGARDING AN APPLICATION OF: Philip Lovett for a Stream Alteration Permit (SAP) on the Big Wood River.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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REQUESTED ACTION: A public hearing on and consideration of an application by Philip Lovett to excavate 510 cubic yards of material from an eastern channel of the Big Wood River upstream of the East Fork bridge that accumulated during the spring flooding of 2017. This project is located at 158 Wilderness Drive, 406, 410 and 414 Wall Street (Lots 28-31 of Gimlet Sub #11) and 124 W Channel Lane (Lot 2 of Gimlet West Sub). The property is zoned Low-Density Residential (R-1) and Planned Residential (R-2) with areas of Floodplain Overlay (FP) and Riparian Setback (R) Districts.

PROPERTY OWNERS/APPLICANTS: Owners: Steve Holzman, Philip Lovett, & Donald Nickelson
Applicant: Philip Lovett

REPRESENTATIVE: Consultant: Steve Fisher
Engineer: Sean Flynn, P.E., Galena Engineering

NAME/REACH OF STREAM: Big Wood River

PROPERTY LOCATION: 158 Wilderness Drive, 406, 410 and 414 Wall Street (Lots 28-31 of Gimlet Sub #11) and 124 W Channel Lane (Lot 2 of Gimlet West Sub)

APPLICABLE REGULATIONS: Title 9 (Zoning Regulations): Chapters 9, 10 & 17
Title 8 (Comprehensive Plan)

I. APPLICATION, NOTICE, EXHIBITS & GENERAL FACTS

1. Application: Blaine County Stream Alteration Permit Application received March 12, 2018 and certified as generally complete on November 27, 2018.

2. Notice: Public notice for this application was as follows:

- A. Legal notice was published in the Idaho Mountain Express on November 14, 2018;
- B. Notice was mailed on November 13, 2018 to all Blaine County political subdivisions;
- C. Notice was mailed on November 13, 2018 to surrounding landowners within 300' of the exterior boundaries and 1,000' downstream of the project site;
- D. An on-site notice was posted by November 28, 2018, as supported by affidavit on file.

► **Finding:** Upon motion by Commissioner Greenberg, second by Commissioner Schoen, and by a vote of 3 to 0, the Board finds notice to be adequate.

3. Any disclosures (i.e. conflicts of interest, site visits or *ex parte* communications)?

None for this specific site. Commissioners have visited adjacent properties during 2017 flooding.

4. Exhibits: Attached to the staff report and referenced throughout are the following exhibits:

Exhibit A—Application Materials

All application materials were received on March 12, 2018, unless indicated otherwise.

- A-1: Blaine County SAP Application
- A-2: Vicinity Map and Adjacent Land Owners Map
- A-3: Access Routes Site Plan, received September 10, 2018
- A-4: Project Narrative
- A-5: Best Management Practices
- A-6: Biota Memo and Project Review
- A-7: Idaho Power of Attorney and Adjacent Land Owner Consent Letters
- A-8: Joint Application
- A-9: Applicant responses to County Engineer comments (B-4)- received Nov. 13, 2018
- A-10: No Adverse Impact Statement- Galena Engineering- rec'd Nov. 26, 2018

Exhibit B—Agency Comments

- B-1: Department of the Army (USACE) – October 3, 2018
- B-2: Idaho Dept. of Water Resources (IDWR) – September 13, 2018
- B-3: Idaho Fish and Game Comments – received Sept. 19, 2018
- B-4: County Engineer Comments - received October 9, 2018

Exhibit C—Blaine County Supplemental Documents

None

Exhibit D—Public Comments

- D-1: Judy and Dave Threshie 11.18.18
- D-2: Denise Tavares 11.27.18
- D-3: Robert Crosby 11.29.18
- D-4: Ed Lawson for Mr. and Mrs. Threshie 12.3.18
- D-5: Ben Worst for Mr. and Mrs. Carden 12.1.18
- D-6: Ryan Santo (Wood River Land Trust) 12.3.2018
- D-7: Robert Crosby 12.4.18
- D-8: Kurt Patterson 12.5.2018
- D-9: Keri York (Trout Unlimited) 11.30.18

II. STREAM ALTERATION PERMIT APPLICATION (SAP): STANDARDS OF EVALUATION
Blaine County Code §9-17-9D

1. The applicant has applied for permits from the Army Corps of Engineers and the Idaho Department of Water Resources. If the watercourse runs through a neighboring city, they shall be sent a copy of the application, at the direction of the Administrator, to notify them of possible stream alterations. Copy shall be sent if the project is within one thousand feet (1,000') downstream or one mile upstream.

➤ **FINDING:** Compliant. The Joint Application is dated March 23, 2018 and approvals are as follows.

- Army Corps of Engineers (NW 33- Temporary Constructions, Access and Dewatering)– received October 3, 2018
- Idaho Dept. of Water Resources- September 13, 2018

No cities lie within the limits for notification.

2. *Other Property Not Adversely Affected: The proposed stream alteration shall have no adverse impact on the property of another person or entity, including the areas upstream, downstream and across the stream. "No adverse impact" means that the proposed use or activity will not have any deleterious impacts in terms of increased flood peaks, flood stage, flood velocity, erosion and sedimentation, or water quality or that such impacts have been identified and mitigated to the maximum extent feasible.*

- **FINDING:** Not Compliant. The Board found this applicant to lack critical information to make a positive finding with respect to potential adverse impacts resulting from the proposed work in this application. Water behavior, once reconnected with the east channel during high flows, would be unpredictable based on the various comments in the application and review from the county engineer. Refer to Exhibit B-4 for County Engineer comments.

3. *The stream alteration desired will not involve placing an encroachment, structure, fill, deposit, obstruction, storage of materials or equipment in the floodway, all of which are prohibited by subsection 9-17-5B3 of this Chapter, unless certification by a registered engineer is provided and accepted by the County Engineer, demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the 100-year flood discharge and other standards of this Section are met.*

- **FINDING:** Compliant. The proposal included excavation of streambed sands, gravels and cobbles from the regulated floodway therefore the requirement for a no-rise certification is inherently met.

4. *The stream alteration desired shall not have any adverse impacts or go against the stated purposes of the Floodplain Management District (Section 9-17-2) and the Stream Alteration Permit program (subsection 9-17-9A of this Chapter).*

- **FINDING:** Not Compliant. The Board found this application to go against some of the stated purposes of the Floodplain Overlay District and the Stream Alteration Permitting program. The Board found no inherent danger to the applicants and the risk of adverse impacts outweighed potential project benefits which primarily included aesthetic purposes.

5. *Local Public Interests: The proposed application (use) does not conflict with the local public interest, i.e., the affairs of the people in the area directly affected by the proposed use. This includes, but is not limited to, property values, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality or an impact upon a locally important factor. The burden of proof always rests with the applicant.*

- **FINDING:** Not Compliant. The Board found this application to adversely impact the affairs of the other people in the area directly affected by the proposed activities. Further, allowing the removal of sediment for aesthetic purposes would be policy setting for other, similar and future projects along the rivers within Blaine County.

6. The following extraordinary circumstances may favor the granting of a stream alteration permit:
- a. If the river tries to change to a channel outside of the floodway.
 - b. If the viability of an irrigation structure or water delivery system is threatened.
 - c. If a road or bridge which provides access to homes or businesses is threatened.
 - d. If an existing home or building envelope in a platted subdivision is threatened.
 - e. If severe erosion or severe sedimentation of land is threatened.
 - f. If a public facility (sewer plant, school, etc.) and/or any other use which would affect the chemical quality of the river is threatened.

➤ **FINDING: Not Compliant.** The river remains within the federally mapped floodway. None of the above extraordinary circumstances apply to this project.

7. If the applicant or landowner with respect to an application for a stream alteration permit under this chapter is the State of Idaho, or any agency, board, department, institution, or district thereof . . .

➤ **FINDING: Not applicable to this applicant.**

III. DECISION AND CONDITIONS

▶ **Decision:** Upon motion by Commissioner Schoen, second by Commissioner Greenberg, and a vote of 3-0, the Blaine County Board of Commissioners hereby denies the application by Philip Lovett for a Stream Alteration Permit (SAP) on the Big Wood River, finding the proposal does not comply with the applicable criteria set forth under Title 9, Chapter 17, Floodplain Overlay District and Riparian Setback District.

Notice pursuant to I.C. 67-6535(c): The owner of the property subject to this application and decision may request regulatory taking analysis pursuant to I.C. 67-8003.

IT IS SO ORDERED.

DATED this 13 day of December, 2018

BLAINE COUNTY BOARD OF COMMISSIONERS

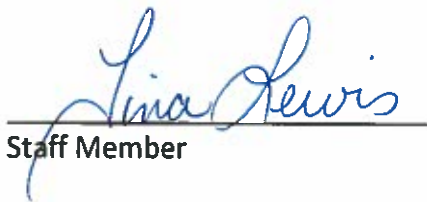

Angenie McCleary, Chair

CERTIFICATE OF MAILING

The undersigned person hereby certifies that on the 13th day of Dec, 2018, she served a true and correct copy of the foregoing document by depositing the same in the U.S. Mail addressed as follows or by service otherwise as noted:

Philip H. Lovett
360 East 88th St.
Apartment 42b
New York, NY 10128
Email: plovett@millenniumptrs.com

Steve Fisher
Email: steve.fishguy@gmail.com



Staff Member