

AGENDA ITEM SUMMARY

DATE: 4/13/09 DEPARTMENT: Legislative DEPT. HEAD SIGNATURE: NW

SUBJECT:

Marijuana Initiatives

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

In the attached decision, the district court recently issued a declaratory judgment that some of the language in the Medical Marijuana Act, Lowest Police Priority Act and Industrial Hemp Act is illegal. I would like to discuss the decision with Council Members Burke and Haemmerle in an executive session and then if appropriate, discuss the city's intention after the executive session.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

Caselle # _____	YTD Line Item Balance \$ _____
Budget Line Item # _____	Estimated Completion Date: _____
Estimated Hours Spent to Date: _____	Phone # _____
Staff Contact: _____	
Comments:	

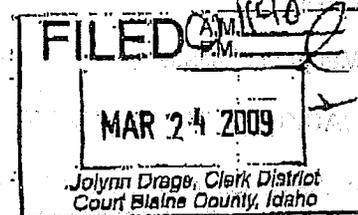
ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

<input type="checkbox"/> City Attorney	<input type="checkbox"/> Clerk / Finance Director	<input type="checkbox"/> Engineer	<input type="checkbox"/> Building
<input type="checkbox"/> Library	<input type="checkbox"/> Planning	<input type="checkbox"/> Fire Dept.	_____
<input type="checkbox"/> Safety Committee	<input type="checkbox"/> P & Z Commission	<input type="checkbox"/> Police	_____
<input type="checkbox"/> Streets	<input type="checkbox"/> Public Works, Parks	<input type="checkbox"/> Mayor	_____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss the decision in executive session pursuant to Idaho Code § 67-2345(f) and, if appropriate, discuss the city's response to the decision in the public meeting.

FOLLOW-UP REMARKS:



**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR BLAINE COUNTY**

RICK DAVIS, DONALD KEIRN and
JEFFREY GUNTER,

Plaintiff,

vs.

CITY OF HAILEY, IDAHO, a municipal
corporation and political subdivision of the
State of Idaho,

Defendant

Case No.: CV-2008-0366

ORDER ON THE PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

This order comes on the plaintiff's motion for summary judgment and involves a number of challenges to three ballot initiatives passed by Hailey voters in 2007 and 2008. The plaintiffs in this case are Hailey Mayor Rick Davis, Hailey City Councilman Donald Keirn, and Hailey Police Chief Jeffrey Gunter. Together, they contend that various provisions of the Hailey Medical Marijuana Act (MMA), the Hailey Lowest Police Priority Act (LLPA), and the Hailey Industrial Hemp Act (IHA) conflict with state law, act in an area preoccupied by state law, unlawfully establish local administrative procedures, and violate the First Amendment of the U.S. Constitution. The plaintiffs also assert that the degree to which the MMA and LPPA initiatives violate the law renders any portion unsalvageable, and that as a result, the two should be declared void in their entirety. At oral argument, plaintiffs made clear that their only attack on the IHA is a

claim that four words requiring city officers in their individual capacities to lobby or advocate or support certain political or social positions violates the free speech rights of those individuals.

Both sides have submitted briefs and the court heard oral arguments on February 13, 2009. Keith Roark appeared for the plaintiff. Ned Williamson appeared for the City of Hailey. The plaintiff's challenges are individually addressed below.

SUMMARY JUDGMENT STANDARD

If the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, summary judgment is proper. *Watkins v. Peacock*, 145 Idaho 704, 708, 184 P.3d 210, 214 (2008); I.R.C.P. 56(c). The burden is on the moving party to prove an absence of genuine issues of material fact. *Peacock*, 145 Idaho at 702, 184 P.3d at 214. Here, both parties have stipulated that there are no disputed issues of material fact. Thus, the plaintiffs are entitled to judgment as a matter of law on any successful claims.

CONSTITUTIONALITY STANDARD

The Idaho Constitution grants municipalities the "authority to make police regulations not in conflict with the general laws, co-equal with the authority of the legislature to pass general police laws." Idaho Const., Art. XII, § 2; *State v. Clark*, 88 Idaho 365, 373, 399 P.2d 955, 959 (1965). Additionally, Article III, Section 1 of the Idaho Constitution reserves power to propose and enact legislation to the people, independent of the legislature, through ballot initiatives. Idaho Const., Art III, § I; *Boise v. Keep the Commandments Coalition*, 143 Idaho 254, 256, 141 P.3d 1123, 1125 (2006).

A party may challenge a statute as unconstitutional "on its face" or "as applied" to the party's conduct. *American Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862, 871, 154 P.3d 433, 442 (2007). A facial challenge to a statute or rule is "purely a question of law." *Id.* For a facial constitutional challenge to succeed, the party must demonstrate that the law is unconstitutional in *all* of its applications. *Id.*

When part of a statute or ordinance is unconstitutional and yet is not an integral or indispensable part of the measure, the invalid portion may be stricken without affecting the remainder of the statute or ordinance. *State v. Nielsen*, 131 Idaho 494, 497, 960 P.2d 177, 180 (1998). The Court will, when possible, recognize and give effect to a severability clause. *Boundary Backpackers v. Boundary County*, 128 Idaho 371, 378, 913 P.2d 1141, 1148 (1996). However, if an unconstitutional portion of a statute is integral or indispensable to the operation of the statute as the legislature intended, the provision is not severable, and the entire measure must fail. *Nielsen*, 131 Idaho at 497, 960 P.2d at 180. The court begins by addressing the plaintiffs' complaints regarding the Hailey MMA.

1. Section 5 of the MMA Conflicts with State Law.

The plaintiffs first contend that Section 5 of the MMA, which seeks to allow seriously ill citizens to possess up to 35 grams of marijuana for medical use, and allows physicians to recommend that use, both conflicts with state law and also legislates in an area solely occupied by the state. The court agrees.

The first portion of Section 5 of the MMA, "Use of Medical Marijuana," states:

Seriously ill citizens have the right to obtain, possess, and use up to 35 grams of marijuana for medicinal purposes where that medical use is deemed appropriate and is recommended by a physician who has

determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, HIV, AIDS, chronic pain, glaucoma, arthritis, migraines, or any other serious condition for which marijuana provides relief.

Municipal corporations, which enjoy a direct grant of power from the Idaho Constitution are, however, limited in certain respects. *Caesar v. State*, 101 Idaho 158, 161, 610 P.2d 517, 520 (1980). A city cannot act in an area that is so completely covered by general law as to indicate that it is a matter of state concern. *Id.* Nor may it act in an area where, to do so, would conflict with the state's general laws. *Id.* Where it can be inferred from a state statute that the state has intended to fully occupy or preempt a particular area, to the exclusion of municipalities, a municipal ordinance in that area will be held to be in conflict with the state law, even if the state law does not so specifically state. *Id.*

Idaho Code § 37-2732(c) states that:

It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.

Idaho Code § 37-2732(c) (3) states that "Any person who violates this subsection and has in his possession a controlled substance which is a nonnarcotic drug classified in schedule I ... is guilty of a misdemeanor." A Schedule I drug is defined as having "a high potential for abuse" and "no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision." I.C. § 37-2704. Marijuana is classified as a Schedule I drug. I.C. § 37-2705.

Under the proceeding sections of the Idaho Code then, the use of marijuana is not permitted under any circumstance, not even when recommended by a physician to treat a

serious medical condition. Thus, to the degree the MMA attempts to permit the use of marijuana, and allows for physicians to recommend the use of marijuana, the act most certainly conflicts with state law.

Additionally, Idaho Code § 54-1702 provides that, "The practice of pharmacy... is declared a professional practice affecting the health, safety and welfare of the public and is subject to regulation and control in the public interest." Section 37-2702 grants the board of pharmacy authority to administer and control all substances listed in the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code.

These sections of the Idaho Code evince the legislature's firm intent that *the state* control all aspects of the possession, use, and dispensing of all controlled substances, marijuana included. As such, the City of Hailey is entirely without authority to permit physicians to recommend the use of marijuana, or allow its citizens to possess, use, or obtain it, under any circumstances.

2. The Plaintiffs Have Standing to Challenge the MMA.

The relevant portions of Section 5 of the MMA state:

Patients who obtain and use marijuana for medicinal purposes upon the recommendation of a physician shall not be subject to any arrest, prosecution, punishment, or sanction; once a doctor's recommendation has been provided by the patient, any marijuana and/or marijuana paraphernalia charges against the patient shall be dismissed by the prosecuting attorney. Also, physicians who recommend marijuana for their patients shall not be subject to any arrest, prosecution, punishment or sanction. Local law enforcement of state law shall be by summons only. All such matters shall only be referred to the Municipal Prosecuting Attorney, and no other prosecuting attorney, and the Municipal Prosecuting Attorney shall not refer the matter to any other prosecutor, agency, or office, unless the individual is also charged with a non-related felony offense arising from the same set of facts and circumstances.

(emphasis added).

The City of Hailey argues that the plaintiffs lack standing to make any challenge to the MMA. The City contends that only the city prosecutor, who has not been made a party to this action, has standing to raise this challenge. At oral argument, the City conceded they raise no objection to plaintiff's standing with regard to the LPPA or the IHA.

The doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated. *Boundary Backpackers v. Boundary County*, 128 Idaho 371, 375, 913 P.2d 1141, 1145 (1996). To satisfy the case or controversy requirement of standing, litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury. *Id.* This requires a showing of a "distinct palpable injury" and "fairly traceable causal connection between the claimed injury and the challenged conduct." *Id.*

The above portion of Section 5 of the MMA is a series of directives as to whether certain types of crime require punishment, who can be arrested for those crimes, and how those certain crimes must be dealt with by the City of Hailey.

The court finds that much or most of Section 5 is a directive to Hailey law enforcement. It recites that patients and physicians, under certain conditions, *shall not be subject to arrest*. Plaintiff Gunther, as Hailey Police Chief, has demonstrated a distinct palpable injury imposed by the requirements of the MMA.

Additionally, Idaho Code § 50-602 grants the mayor of any municipality "superintending control of all the officers and affairs of the city." I.C. § 50-208A(2) appoints the mayor as the "chief administrative official of the city." The court finds that plaintiff Davis, with superintendent control of all the officers and affairs of the city, has

standing to challenge the MMA. Although the city attorney for the city of Hailey may also have standing to challenge these provisions, his participation in this suit is not required, as the mayor and the chief of police have demonstrated standing without him.

3. Section 5 of the MMA Conflicts with State Law.

Idaho Code section 50-208A(2) states that:

The city attorney, his deputies, or contract counsel shall prosecute those violations of county or city ordinances, state traffic infractions, and state misdemeanors committed within the municipal limits. In so doing, the city attorney, his deputies, or contract counsel shall exercise the same powers as the county prosecutor including, but not limited to, granting immunity to witnesses.

Upon reading I.C. § 50-208A(2), the court finds that to the degree Section 5 of the MMA attempts to control prosecutorial discretion regarding marijuana offenses, it directly conflicts with I.C. § 50-208A(2), and is therefore void on its face.

4. Portions of the MMA, LLPA, and IHA are Inviolate of Free Speech.

The plaintiffs have also taken issue with portions of all three initiatives on free speech grounds. To begin, Section 6 of the MMA states that:

The City of Hailey is hereby instructed to advocate by official public declaration and through its lobbyist *and other city officers*, for changes to state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated include, but are not limited to, the following:

- a.) Amendment of state code to allow for the use of medical marijuana by seriously ill patients;
- b.) End any sanctions against physicians who prescribe or recommend medical marijuana to their patients;
- c.) Grant local control to cities and counties to license and regulate the use of medical marijuana; and
- d.) End the prosecution, arrest, investigation, and imprisonment of seriously ill adults who use marijuana for medicinal purposes.

Section 6 of the LLPA states that:

The City of Hailey is hereby instructed to advocate by official public declaration and through its lobbyist *and other city officers*, for changes to

state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated should include, but are not limited to, the following:

- a.) Allow for municipalities to set their own criminal penalties for marijuana use;
- b.) Decriminalize generally the use of marijuana by adults;
- c.) Enforcement of existing laws by summons only.

Additionally, the enactment of this initiative by the voters of the city shall constitute said voters' express and official desire for legislative change to the state's marijuana laws.

And lastly, Section 6 of the IHA states:

The City of Hailey is hereby instructed to advocate by official public declaration and through its lobbyist *and other city officers*, for changes to state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated should include, but are not limited to, the following:

- a.) Allow for the legalization of industrial hemp by the State of Idaho;
- b.) Allow each county or city to decide their own policies with regards to the farming of industrial hemp;

Additionally, the enactment of this initiative by the voters of the city shall constitute said voters' express and official desire for legislative change to the state's industrial hemp laws.

The First Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, requires that the government make no law abridging the freedom of speech. U.S. Const. amends. I, XIV. Here, the plaintiffs argue—and the city concedes—that the degree to which all three of the above provisions require any city official, as an individual, to advocate for a predetermined point of view violates that individual's right to free speech. The court agrees.

The City of Hailey also attempts to concede that all but the last paragraphs of Sections 6 of the LLPA and the IHA run afoul of the free speech clause of the First Amendment. However, the plaintiffs have not challenged these provisions beyond their

application to individual city officers, nor could they, and the city's concession exceeds the parameters of this lawsuit. The court concludes that any declaration of public policy by the voters of Hailey that does not apply to individual speech is constitutional under the First Amendment.

5. Portions of the LPPA and MMA are Administrative.

The plaintiffs assert here that the MMA and the LPPA are, in whole or in part, administrative rather than legislative in nature, and therefore are not appropriate subject matter for a ballot initiative. If a subject is legislative in nature, it is appropriate for action by initiative. *Boise v. Keep the Commandments Coalition*, 143 Idaho 254, 256, 141 P.3d 1123, 1125 (2006). On the other hand, if the proposed initiative is administrative in nature, it falls outside the scope of action allowable by initiative. *Id.* The Idaho Supreme Court has stated that there is no bright line rule that clearly distinguishes what is legislative in nature, as opposed to administrative in nature. *Id.* While the Court has never provided any guidance for distinguishing between when language is legislative in nature and when it is administrative in nature, Justice Trout addressed the issue, citing precedent from other jurisdictions, in her dissenting opinion in the *Keep the Commandments Coalition* case. *See id.* at 259, 141 P.3d at 1128 (Trout, J., dissenting).

There, Justice Trout stated that one rule for distinguishing between legislative and administrative matters is that "[a]n initiative is legislative if it adopts a new policy or plan, whereas it is administrative if it merely pursues a policy or plan already adopted." *Id.* (Trout, J., dissenting) (citing *Worthington v. City of Rohnert Park*, 31 Cal.Rptr.3d 59, 65 (Cal. App. 2005). Additionally, "a relevant consideration is whether the act declared a general public purpose and provides ways to accomplish that purpose generally, in which

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case it is usually legislative; or whether it is an act that deals with a small segment of an overall policy question, in which case it is likely administrative." *Id.* (Trout, J., dissenting) (citing *Wichita v. Kansas Taxpayers Network*, 874 P.2d 667, 672 (Kan. 1994)).

Section 5 of the LPPA declares that Hailey law enforcement officers must make enforcement of adult marijuana offenses their lowest priority. Section 5 also attempts to prevent the city from accepting any federal funding that would be used in the enforcement of adult marijuana offenses. The court concludes that Section 5 of the LPPA is administrative in nature. Section 5 does not attempt to make new law; rather, the court views the act's attempt to control local law enforcement priorities and dictate the city's funding regimen as declarations of *priority*. In the court's view, the setting of law enforcement priority is an act that deals with a small segment of an overall policy question.

Additionally, Idaho Code Section 50-602 prescribes that the mayor shall be the chief administrative official of the city, have the superintending control of all the officers and affairs of the city, and take care that the ordinances of the city are complied with. It appears by law that the mayor has the duty, administratively, to set priority for the city. The court concludes that the setting of law enforcement *priorities*—the allocation of scarce police resources within the city of Hailey, is an administrative function. As such, the LPPA is not an appropriate subject for a ballot initiative, and is hereby declared void on its face.

6. *The MMA Requirement of a Summons Only Intrudes Upon State Law.*

The court previously declared Section 5 of the MMA void, at least down to the sentence that starts out "Local enforcement..." That sentence of Section 5 of the MMA

provides in full that "Local enforcement of state law shall be by summons only." In their briefs and at hearing, the parties raised the issue of whether this clause was limited to marijuana offenses or applied to all offenses. The City of Hailey suggests this sentence should be reinterpreted by the court to mean only those situations dealing with marijuana. Even if the court was able to reconstruct the unambiguous meaning of that sentence, the court would then have to reconstruct the meaning of the following sentences to apply only to *misdemeanor* marijuana offenses, or *medical* marijuana offenses. Felony marijuana charges, by their nature, cannot be prosecuted by a city attorney. As the court has determined that section 5 of the MMA violates state law down to the sentence requiring the "summons only," there are no longer any medical exceptions for marijuana to which this sentence may be applied. Likewise, the sentence stating that, "*All such matters shall only be referred to the Municipal Prosecuting Attorney,*" standing alone, requires *all* marijuana matters, misdemeanor or felony, to be referred to a city attorney. This would violate clearly mandated state law. First, it exceeds the state's grant of authority to city attorneys found in I.C. § 50-208(A). Second, it violates the requirements of Idaho Code § 31-2604 which requires felonies be prosecuted by the *County* prosecuting attorney. Thus, even if the Court were to construe these particular sentences as applicable only to marijuana offenses, the court has no authority or ability to limit its construction solely to *medical* or *misdemeanor* marijuana offenses. The statutes of the state of Idaho set forth the circumstances under which an arrest may be made, what offenses must be commenced only by summons or citation, and defines the bounds of an officer's discretion in deciding to issue a summons or affect an arrest for an offense. The MMA restricts an officer's and/or the court's discretion or ability to conduct an arrest.

Therefore, it intrudes into an area preempted by state law. *See, e.g.* I.C. §§ 19-603 and 19-506.

7. The Severability Clause.

As previously stated, the MMA, IHA, and LPPA each contain a severability clause that attempts to save the remainder of the act should any portion be declared void. The plaintiffs have argued that with respect to the MMA and the LPPA, the unconstitutional or invalid portions of the acts are so "integral or indispensable" to the legislation that both measures must fail in their entirety. The plaintiffs also submit that there is a marked difference between an ordinance and a resolution. While that may be so, the court has not been directed to any authority that suggests if certain operative provisions of an ordinance are declared invalid, the remainder may not stand as a resolution. Both acts, even without the voided portions, are fraught with declarations of public policy approved by the voters. For example, Section 4 of the MMA states that the purpose of the initiative is "[t]o issue an official declaration advocating changes in Idaho State law, county ordinance, or any other applicable laws to authorize the use of marijuana for medical purposes." Section 6 of the LPPA, while void as it applies to the city's individual officers, contains the voter's public declaration of their desire to see legislative changes to the state's marijuana laws. The court cannot say that the relationship among the parts of the ordinance is such that the voters would not have enacted the valid parts without the invalid parts. *See, 6 McQuillen Municipal Corporations* § 2064. The voters have spoken, and the sections of the MMA and LPPA not declared void must stand.

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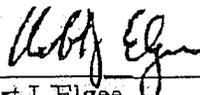
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CONCLUSIONS

- For the reasons set forth above, Section 5 of the MMA is void in its entirety.
- Section 6 of the MMA is void as far as it requires the city's individual officers to advocate for a certain position. That is, the words "and other city officers" are stricken from the ordinance. The remainder of the section, as far as it is a public declaration approved by the voters, is preserved.
- The remainder of the MMA not declared void is preserved under the act's severability clause.
- For the reasons set forth above, Section 5 of the LPPA is declared void.
- To the degree that Section 6 of the LPPA requires the city's individual officers to advocate for a certain position, Section 6 is declared void. That is, the words "and other city officers" are stricken from the ordinance. However, to the extent that Section 6 is a public declaration approved by the voters, the section is preserved.
- The remainder of the LPPA not declared void is preserved under the act's severability clause.
- To the extent that Section 6 of the IHA requires the city's individual officers to advocate for a specific position, that section is declared void. The only provision of the entire IHA declared void are the words "and other city officers." The remainder of Section 6 is preserved as public declaration of policy.
- The IHA's severability clause works to save any portions of that act not declared void.

IT IS SO ORDERED.

DATED this 24 day of March, 2009.



Robert J. Elgee
District Judge

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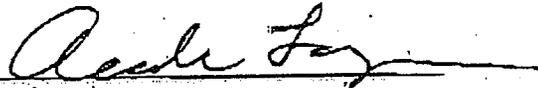
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CERTIFICATE OF MAILING

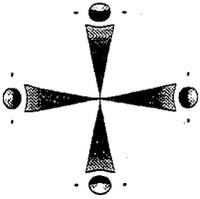
I HEREBY CERTIFY that on the 24th day of March 2009, I caused to be served a true and correct copy of the within and foregoing document by mailing it through the U.S. mail postage prepaid, and addressed to each of the following:

Keith Roark
Roark Law Firm
409 N Main Street
Hailey ID 83333

Ned C. Williamson
Attorney at Law
115 2nd Ave South
Hailey ID 83333



Andrea Logan
Deputy Clerk



MPE, INC

RECEIVED

APR 06 2009

FILE RD CC HD

March 31, 2009

Mayor and City Council
City of Hailey
115 S. Main Street, Ste. H
Hailey, ID 83333

RE: Bureau of Land Management, Shoshone Field Office
Scoping/Information Package for the
Proposed Disposal of 17-acres of Public Land in Blaine County, Idaho

Greetings:

The Bureau of Land Management (BLM) has received a proposal from the Animal Shelter of the Wood River Valley (Animal Shelter) to purchase in fee simple a 17-acre parcel of public land in Blaine County, Idaho, in accordance with sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA). Pursuant to the BLM regulations and the National Environmental Policy Act of 1969, as amended (NEPA), the BLM through MPE, Inc., is soliciting your comments regarding the proposed disposal. The primary contact for questions and comments related to this analysis is Clare Josaitis, BLM Rangeland Management Specialist, at (208) 732-7257.

Enclosed please find a Scoping/Information Package. Your comments are specifically requested on the proposed action, preliminary issues, and alternatives. Comments made on this proposal would be most helpful if they are received on or before May 4, 2009, and are directly relevant to the proposal and project area. Feedback will be accepted beyond this date, however, such comments may be considered secondary to comments received in a timely manner.

On behalf of the BLM, a third-party NEPA contractor, MPE, Inc., Hailey, Idaho, has been retained to conduct the environmental analyses and prepare the Environmental Assessment (EA). A third-party contract is an option utilized when the BLM cannot prepare a required NEPA analysis due to time, budget, or other limitations or when either the BLM or the applicant requests that a contractor be retained to conduct the environmental analysis and prepare the associated required NEPA document. A third-party contract is one that the applicant awards, no direct BLM funding is involved in awarding the contract. Third-party contractors are required to submit to the BLM a disclosure statement that specifies that they do not have any financial or other interest in the outcome of the project prior to performing the analysis [40 CFR 1506.5(c)].

P.O. Box 3040
Hailey, Idaho 83333
208-788-3940
Fax: 208-788-6009

BLM Request for Comments
March 31, 2009
Page Two

The BLM holds final decision authority regarding data used, alternatives studied in detail, analyses conducted and document content and quality. The applicant and the third-party contractor agree to produce an analysis and NEPA document that meets BLM standards.

It would also be appreciated if you could advise us of any special or conditional uses and/or permit requirements that may be applicable.

Comments may be written, oral, or emailed. Should you have questions, please contact me at (208) 788-3940, fax (208) 788-6009, email: mix@mpeinc.net; or the mailing address listed below. Thank you for your kind attention and prompt cooperation.

Sincerely,
MPE, Inc.
Environmental Consulting



Mary Ann Mix

SCOPING/INFORMATION PACKAGE

DISPOSAL OF 17-ACRES OF PUBLIC LAND IN BLAINE COUNTY, IDAHO

Project # ID-230-2009-EA-3631
March 2009

The information in this package summarizes a Bureau of Land Management (BLM) action in response to a proposal from the Animal Shelter of the Wood River Valley (Animal Shelter) to authorize a disposal of 17-acres of public land via a direct sale in accordance with the Sun Valley Management Framework Plan (MFP 1982), as amended by the Amendments to Shoshone Field Office Land Use Plans for Land Tenure Adjustment and Areas of Critical Environmental Concern (Amendment 2003). Federal actions must be analyzed in accordance with the National Environmental Policy Act of 1969 (NEPA) and other relevant Federal and State laws and regulations to determine potential environmental consequences.

The purpose of this document is to inform you and other interested and affected parties of this proposal, and to solicit your comments to assist us with the NEPA review of the proposal. The analysis of this proposal is currently ongoing, and will eventually be documented in an Environmental Assessment (EA). Comments received in response to this solicitation will be used to identify potential environmental issues related to the proposed action and to identify alternatives to the proposed action that meet the purpose of and need for the project.

Introduction

The Animal Shelter has applied to the BLM to acquire a 17-acre parcel of public land through a direct sale pursuant to the Federal Land Policy and Management Act of 1976, as amended (FLPMA). The Animal Shelter is an Idaho non-profit corporation that provides public benefits to Blaine County residents in the form of an adoption center, an impound facility for the County and local cities, administration of the county dog licensing program, and an informational and educational center. The Animal Shelter owns approximately 5-acres of private land that adjoins the subject parcel on the east side. The subject parcel of public land is located approximately one-half mile west of the City limits of Hailey, Idaho, on the north side of Croy Canyon Road in T2N, R18E, S17, Lots 5-7, B.M.. The subject parcel is an isolated parcel of public land left over as a remnant from mining claim activity within the area. The Animal Shelter currently has an authorized right-of-way (ROW) for a road and a fence that crosses the subject parcel that was issued in August 1986 for a period of 30-years. Within the last 20-years or so, the Animal Shelter has inadvertently encroached upon the portion of the subject parcel within the authorized fenced area with infrastructure and uses associated with an animal shelter. This unauthorized use was formally resolved in February 2009; however, most of the improvements remain on the subject parcel pending a decision on the proposed disposal action.

The Animal Shelter submitted a proposal to the BLM to acquire a portion of the subject parcel in October 1995; however, due to workload priorities, staff and budget constraints the proposal was not processed. In December 2008, the Animal Shelter submitted an updated proposal to acquire the entire 17-acre subject parcel with an agreement to fund a third-party contractor to complete the required environmental studies and analysis. The subject parcel was segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA on January 16, 2009.

Purpose of and Need for Proposed Action

The Animal Shelter has filed a proposal with the BLM to acquire a 17-acre parcel of public land located approximately one-half-mile west of the City limits of Hailey, Idaho, on the north side of Croy Creek Road. The acquisition of the 17-acre subject parcel in fee simple would allow the Animal Shelter to expand their existing facilities, which are currently limited on space and use by the topography and zoning of the area; to acquire the land with the unauthorized improvements; for the BLM to support the local non-profit corporation's and government's interest in acquiring public lands, which would support infrastructure and extend community services; and to dispose of an isolated parcel of public land, which is currently encumbered by improvements associated with the inadvertent unauthorized development. A contiguous parcel of approximately 21.84 acres of private land would be created.

The subject parcel proposed for disposal is somewhat difficult and uneconomical to manage since it is surrounded on three sides by private land, with a large portion of the lands situated on the surrounding hillsides. The Proposed Action for disposal would serve the public objective allowing for the Animal Shelter to expand their facilities and in resolving an inadvertent unauthorized development.

Proposed Action

In accordance with sections 203 and 209 of the FLPMA, and in response to a proposal submitted by the Animal Shelter, the BLM is proposing to dispose of a parcel of public land through a direct sale. This disposal would include both the surface and mineral estates for a 17-acre parcel of public land described as follows:

T. 2N, R. 18E, Boise Meridian
Sec. 17: Lots 5-7

Preliminary Issues

Issues are generated through the public scoping process, a review of the MFP, and/or generated from a need for compliance with laws or regulations. Preliminary issues associated with the proposed project are:

Preliminary Alternative Development

Preliminary alternatives include:

1. **No Action:** Under the No Action alternative the subject parcel would remain under Federal ownership and be subject to all applicable laws and regulations.
2. **Disposal under Recreation & Public Purposes Act (R&PPA):** This alternative would allow disposal of the subject parcel under the R&PPA to a qualifying applicant for recreational and/or public purposes.
3. **Non-Disposal/Land Use Authorization:** This alternative would allow the subject parcel to remain in Federal ownership with the issuance of a renewable land use authorization for those improvements and/or uses occurring on the subject parcel that are allowable uses of public land and the removal of those that are not authorized.

Decision to be Made

Under the scope of the upcoming analysis certain decisions are to be made. These decisions are:

1. whether to dispose of the 17-acre subject parcel in fee simple via a direct sale as proposed by the Animal Shelter, or
2. whether to retain the 17-acre subject parcel in Federal ownership and issue a land use authorization for a portion of the existing unauthorized development.

Public Input Needed

Your comments are specifically requested on the proposed action, preliminary issues, and alternatives. Comments made on this proposal would be most helpful if they are received by May 4, 2009, and are directly relevant to the proposal and project area. The BLM will accept public feedback outside of established public involvement timeframes. However, such comments may be considered secondary to comments received in a timely manner and may only be assessed to determine if they identify concerns that would substantially alter the assumptions, proposal design, or analysis presented in the EA. Comments sent electronically should be sent to mix@mpeinc.net with the title of this project in the subject line. Please identify whether you are submitting comments as an individual or as the designated spokesperson on behalf of an organization. Issues that are outside the scope of the proposal will not be addressed at this planning level.

The primary contact for questions and comments for this analysis is Mary Ann Mix, MPE, Inc., P.O. Box 3040, Hailey, ID 83333, Phone: (208) 788-3940, Fax: (208) 788-6009.

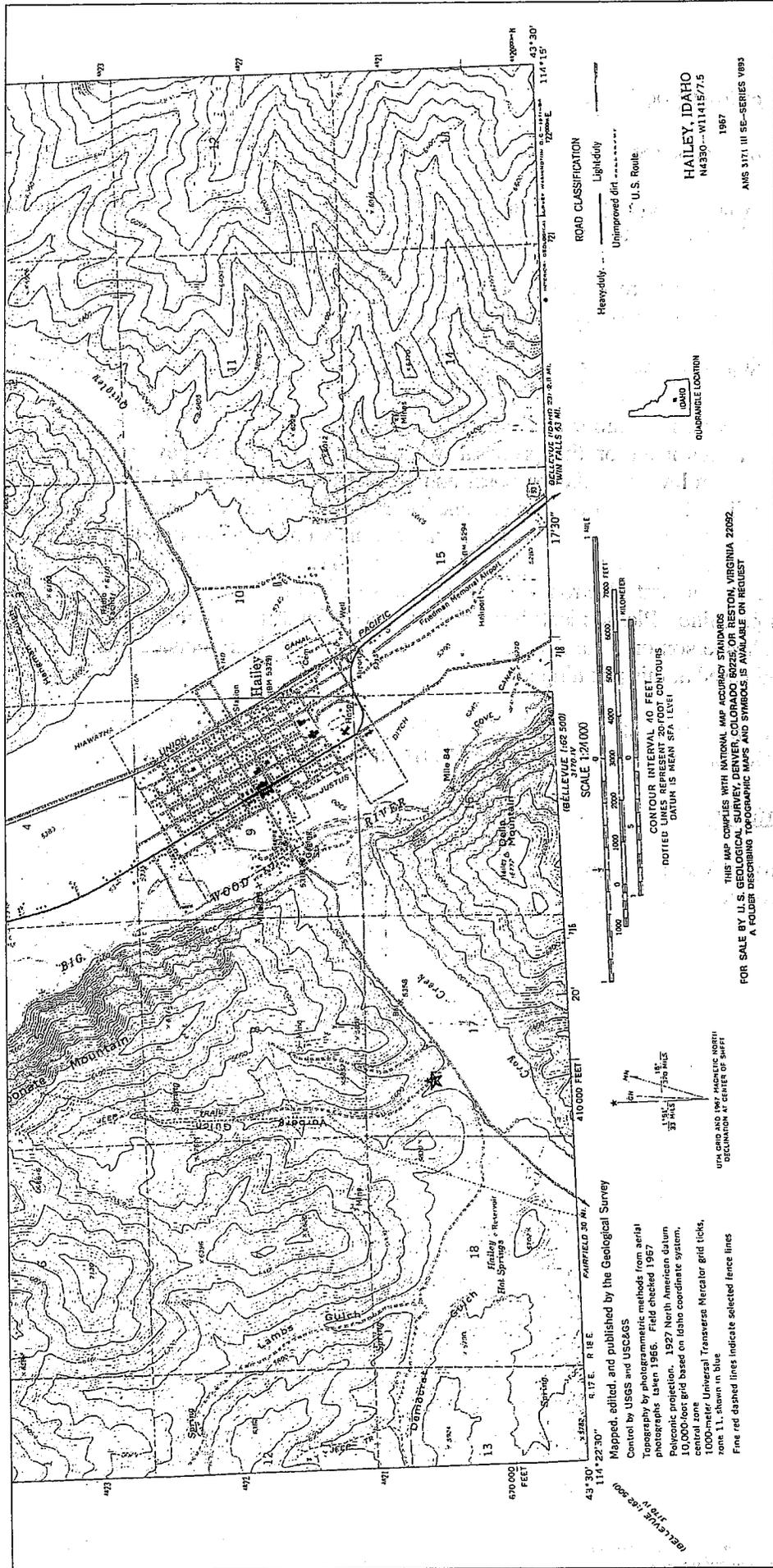
Attachments

Project Vicinity Map
Project Location Map

**Project Vicinity Map
March 2009**

United States
Department of The Interior
Geological Survey

Hailey Quadrangle
7.5 Minutes Series (Topographic)



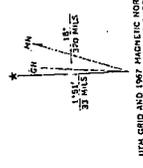
ROAD CLASSIFICATION
 Lightly
 Unimproved dirt
 U.S. Route
 Heavily



HAILEY, IDAHO
 N4350--W11415/7.5
 1967
 ANS 317, III SE--SERIES 1983

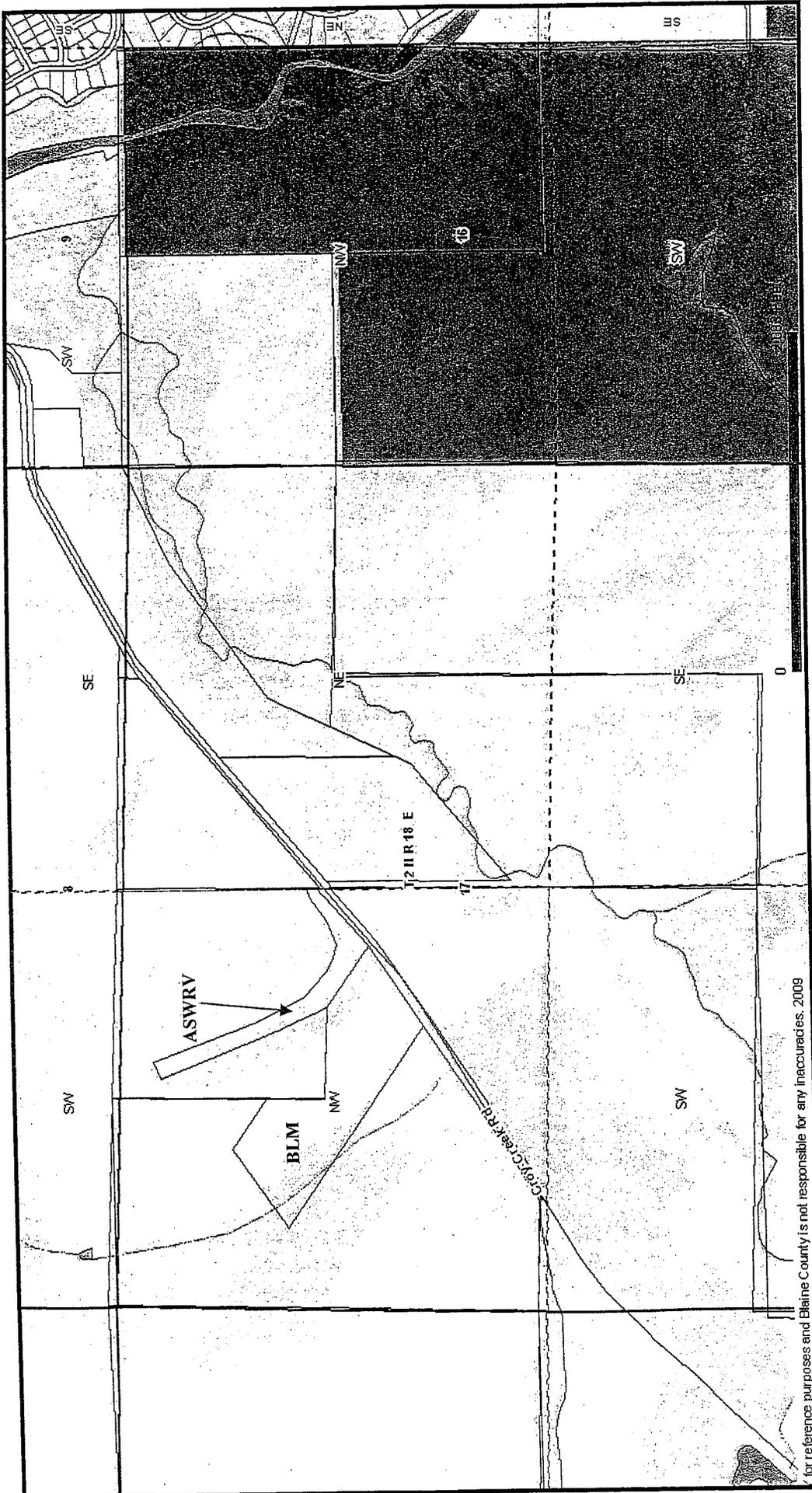
SCALE 1:24,000
 410,000 FEET
 3750 M
 1:24,000
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 3750 M

CONTOUR INTERVAL 40 FEET
 DOTTED LINES 20-FOOT CONTOURS
 DATUM IS MEAN SEA LEVEL



THIS MAP COMPLES WITH NATIONAL MAP ACCURACY STANDARDS
 FOR SALE BY U.S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225; OR RESTON, VIRGINIA 22092.
 A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

**Animal Shelter of the Wood River Valley
Project Location Map**
(Northwest Quarter of Township 2 N, Range 18 E, Section 17)



for reference purposes and Blaine County is not responsible for any inaccuracies. 2009

ENVIRONMENTAL ASSESSMENT

DISPOSAL OF 17-ACRES OF PUBLIC LAND IN BLAINE COUNTY, IDAHO

PROJECT DESCRIPTION MARCH 2009

Introduction

The Animal Shelter of the Wood River Valley (Animal Shelter) has applied to the Bureau of Land Management (BLM), Shoshone Field Office, to acquire a 17-acre parcel of public land through a direct sale pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended. The Animal Shelter is a non-profit corporation that provides public benefits to Blaine County residents in the form of an adoption center, an impound facility for the County and local cities, administration of the county dog licensing program, and an informational and educational center. The Animal Shelter owns approximately 5-acres of private land that adjoins the subject parcel on the east side. The subject parcel of public land is located west of the City of Hailey, Idaho, and is an isolated parcel of public land left over as a remnant from mining claim activity within the area.

The Animal Shelter currently has an authorized right-of-way (ROW) for a road and a fence that crosses the subject parcel that was issued in August 1986, for a period of 30-years. Within the last 20-years or so, the Animal Shelter has inadvertently encroached upon the portion of the subject parcel within the authorized fenced area with infrastructure and uses associated with an animal shelter. This unauthorized use was formally resolved in February 2009; however, the improvements remain on the subject parcel pending a decision on the proposed disposal action.

The Animal Shelter submitted a proposal to the BLM to acquire a portion of the subject parcel in October 1995; however, due to workload priorities, staff and budget constraints the proposal was not processed. In December 2008, the Animal Shelter submitted an updated proposal to acquire the entire 17-acre subject parcel with an agreement to fund a third-party contractor to complete the required environmental studies and analysis. The subject parcel was segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA on January 16, 2009.

Purpose of and Need for Proposed Action

The Animal Shelter has filed a proposal with the BLM to acquire a 17-acre parcel of public land located approximately one-half-mile west of the City limits of Hailey, Idaho, on the north side of Croy Creek Road and described as follows:

T. 2N, R. 18E, Boise Meridian
Sec. 17: Lots 5-7

The acquisition of the 17-acre subject parcel in fee simple would allow the Animal Shelter to expand their existing facilities, which are currently limited on space and use by the topography and zoning of the area; to acquire the land with the unauthorized improvements; for the BLM to support the local non-profit corporation's and government's interest in acquiring public lands, which would support infrastructure and extend community services; and to dispose of an isolated parcel of public land, which is currently

encumbered by improvements associated with the inadvertent unauthorized development. A contiguous parcel of approximately 21.84 acres of private land would be created.

The subject parcel proposed for disposal is somewhat difficult and uneconomical to manage since it is surrounded on three sides by private land, with a large portion of the lands situated on the surrounding hillsides. The Proposed Action for disposal would serve the public objective allowing for the Animal Shelter to expand their facilities and in resolving an inadvertent unauthorized development.

Proposed Action

In accordance with sections 203 and 209 of the FLPMA, and in response to a proposal submitted by the Animal Shelter, the BLM is proposing to dispose of a parcel of public land through a direct sale. This disposal would include both the surface and mineral estates for a 17-acre parcel of public land described as follows:

T. 2N, R. 18E, Boise Meridian
Sec. 17, Lots 5-7

Conformance with Applicable Land Use Plan

In 2003, the *Amendments to Shoshone Field Office Land Use Plans for Land Tenure Adjustment and Areas of Critical Environmental Concern* (Amendment) was completed to amend existing land tenure adjustment decisions and guidance previously contained in the *Sun Valley Management Framework Plan* (MFP1982). The Amendment identifies five land management zones each with different emphasis on land retention and disposal and different criteria for land ownership adjustment. The subject parcel is located in Zone 5 which is generally defined as the area within and influenced by Wood River Valley and within the viewshed of Bellevue, Hailey, Ketchum and Sun Valley. The emphasis within Zone 5 is "to consolidate ownership to provide public access, and improve efficiencies in public lands management." (p. 10).

The Proposed Action is specifically provided for in the Amendment as its general management philosophy is to allow disposal of public lands through sale or exchange. Sales to private land owners will only be allowed if the tracts are small, isolated parcels generally left from mining patents or a resurvey by the USDI cadastral survey. Lands considered for disposal through sale must meet the intent of FLPMA and the sale must comply with the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended.

Relationship to Statutes, Regulations, or Other Plans

Disposal of public lands through sale actions is allowable on BLM administered lands per Title II of FLPMA and the BLM regulations at 43 CFR 2700, at the discretion of the Secretary of the Interior or their delegated officer. Section 2711.3-3 allows for the use of a direct sale action when the public benefit would best be served by this type of disposal action. Examples include: when the adjoining land ownership pattern and access indicate a direct sale is appropriate; and when a need to resolve inadvertent unauthorized use or occupancy of the lands exists.

Alternatives to the Proposed Action

Alternative 1 - No Action: Under the No Action alternative the subject parcel would remain under Federal ownership and be subject to all applicable land laws and regulations.

Alternative 2 – Disposal under Recreation & Public Purposes Act (R&PPA): This alternative would allow disposal of the subject parcel under the R&PPA to a qualifying applicant for recreational and/or public purposes.

Alternative 3: Non-Disposal/Land Use Authorization: This alternative would allow the subject parcel to remain in Federal ownership with the issuance of a renewable land use authorization for those improvements and/or uses occurring on the subject parcel that are allowable uses of public land and the removal of those that are not.

Environmental Analysis

The environmental assessment will describe the affected environment, consider and analyze the environmental consequences of the proposed action, and recommend any mitigation measures that may be applicable.

August 21, 2008

Bureau of Land Management
Attn: Tara Hagen
Realty Specialist
Shoshone Field Office
400 West F Street
Shoshone, ID 83352

Dear Ms. Hagen:

I have been asked by the Hailey City Council to take action necessary to obtain use of the BLM property west of Hailey, outlined in the attachment, for public purposes for the City of Hailey. The seventeen (17) acre parcel is in close proximity to the Hailey city boundary, and, in fact the location, although a mile outside of the current city limits, is actually closer to down town Hailey than some of the subdivisions within Hailey's boundary.

We understand that the City has the ability to request use of the property either through a right-of way agreement, a Recreation and Public Purpose lease (RPP) or through an out right purchase. We are interested in any of the above means to capture in perpetuity a public purpose of that land for the benefit of Hailey's citizens. Public uses which we envision would be of high value on this property in close proximity to Hailey include:

- Snow storage.
- A city shop for road crews
- Road snow equipment maintenance and storage area
- A water storage tank or reservoir
- A fire station in the event Hailey develops westward in the future
- Potential expansion of the Animal Shelter facility adjacent to the site

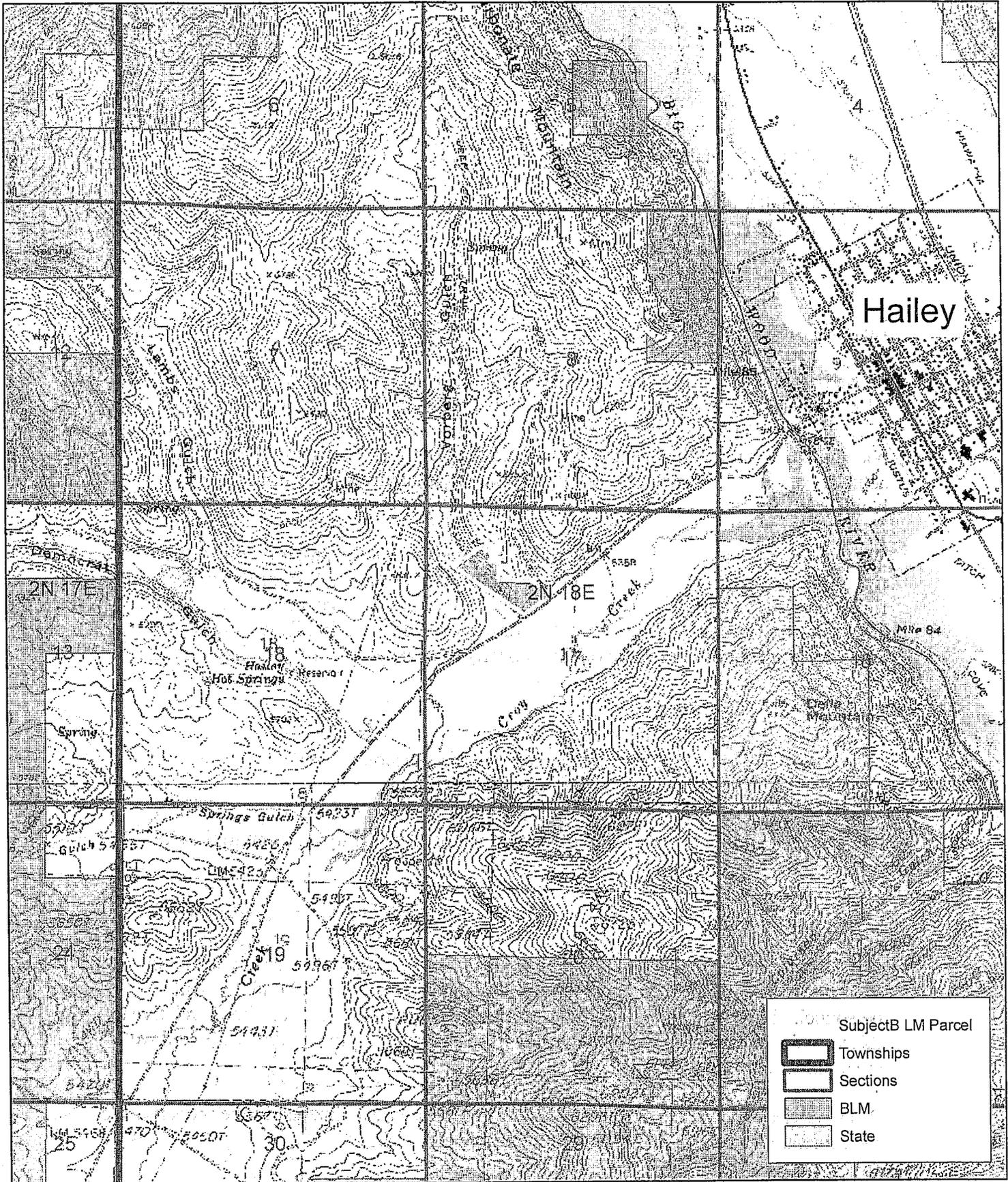
The City of Hailey is responsible to meet the increasing infrastructure demands of its citizenry as well as regulatory demands required by our ordinances and state law. The Animal Shelter of the Wood River Valley, although not a city entity, receives funding from the City of Hailey to shelter animals brought by animal control enforcement personnel. Hailey would be willing to work together with the Animal Shelter relative to its expansion needs, or to help resolve any trespass issues relative to the BLM land we are seeking to acquire.

Please advise as to what steps Hailey should take to secure an interest in the property. We look forward to working to a mutually agreeable conclusion.

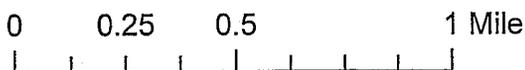
Sincerely,

Rick Davis,
Mayor, City of Hailey

BLM Parcel in Croy Canyon, West of Hailey



	Subject BLM Parcel
	Townships
	Sections
	BLM
	State



Sources: Hailey & Bellevue 1:24K DRG = USGS (INSIDE Idaho);
 land managements tatus = BLM (INSIDE Idaho); PLSS =
 GeoCommunicator - National Integrated Land System.
 Prepared by WRLT on 24 July 2008.

-----Original Message-----

From: Scott Boettger [mailto:sboettger@woodriverlandtrust.org]
Sent: Friday, August 22, 2008 9:26 AM
To: Tara_Hagen@blm.gov; Heather Dawson; Rick Davis
Cc: Valori_Armstrong@blm.gov; Holly_Hampton@blm.gov
Subject: RE: City of Hailey's interest in BLM parcel acquisition

Tara,

I look forward to your letter. I hope it explains how the city can make the case that this land should (as outlined in the Mayor's letter) be 1st and foremost used for public use (along with rectifying the current Animal shelter trespass, which would not affect the potential city's uses).

The continuing inflation of private land values in this valley make it extremely difficult for public entities, like the City of Hailey, to provide ongoing and additional services to its residents. It would be a shame that this land also would end up in private hands and unavailable for the public good.

Scott Boettger | Executive Director WRLT

-----Original Message-----

From: Tara_Hagen@blm.gov [mailto:Tara_Hagen@blm.gov]
Sent: Thursday, August 21, 2008 12:15 PM
To: Heather Dawson
Cc: Valori_Armstrong@blm.gov; Holly_Hampton@blm.gov; Scott Boettger
Subject: Re: City of Hailey's interest in BLM parcel acquisition

Heather,

I'm the correct person to send the attached correspondence to. However, I will let you know that BLM currently has other proposals submitted for this property and we will need to make a determination on those prior to taking your request into consideration. A formal response letter will be drafted and sent hard copy explaining the issues and process.

Thanks!!!

Tara Hagen
Realty Specialist
Shoshone Field Office
400 West F Street
Shoshone, ID 83352

Ms. Hagen,

Attached is a letter from Mayor Rick Davis of the City of Hailey. A signed copy will follow by mail. Please advise as to whether we have directed it to the proper party and addressed it correctly.

Thank you.
Heather Dawson
Hailey City Administrator

AGENDA ITEM SUMMARY

DATE: 4/13/09 DEPARTMENT: Public Works DEPT. HEAD SIGNATURE: 

SUBJECT: Discussion on draft of Capital Improvement Plan

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

A review of the Draft Capital Improvement Plan and eventual approval is required for both budgeting and for review by the Development Impact Fee Advisory Committee. The attached information provides you with an overview, prioritizing methods, discussion points and spreadsheets outlining costs and proposed schedules.

Council member discussion of the following four points is necessary to provide a finalized CIP for approval.

- What changes to the proposed project schedule are needed?
- Adopt the plan or revise the plan for review with the Development Impact Fee Advisory Committee.
- Long-term public education plan for possible future bond election.
- If either the Police Headquarters or the South Fire Station are removed there will be an effect on collected and future DIF funds.

The spreadsheets provide a look at the Near-Term projects (within 4-5 years), the complete Capital Project list and the ranking of Capital Projects in the Citizen Survey. Additional information on these projects is available including a cash flow projection.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: Tom Hellen Phone # 788-9830 Ext 14
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	_____
___ Safety Committee	___ P & Z Commission	___ Police	_____
___ Streets	___ Public Works, Parks	___ Mayor	_____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

ADMINISTRATIVE COMMENTS/APPROVAL:

City Administrator _____ Dept. Head Attend Meeting (circle one) Yes No

ACTION OF THE CITY COUNCIL:

Date _____

City Clerk _____

FOLLOW-UP:

*Ord./Res./Agmt./Order Originals: Record

*Additional/Exceptional Originals to: _____

Copies (all info.):

Copies (AIS only)

Draft 12-30-03

Instrument # _____

CAPITAL IMPROVEMENT PLAN
APRIL, 2009 UPDATE
DISCUSSION OF PROJECTS AND SCHEDULE

Introduction:

A capital improvement or capital project is defined as the purchase, improvement or new construction of a City asset, including construction or rehabilitation which provides an asset for the City's use or, in the case of an existing asset, increases the value of the asset or extends its useful life. Capital improvements are made to improve the value of the City asset, and are relatively large expenditures compared to operating budgets. A capital improvement is expected to have a useful life of at least five years, compared to operating items which are consumed in the delivery of City services.

Because of these criteria capital improvements by nature need to have a long-range plan developed and a variety of funding mechanisms investigated and used. Depending on the City fund; General, Water & Wastewater; the available options for financing vary. Until passage of the Federal Stimulus Act (ARRA) the amount of grants in recent years had been decreasing or eliminated.

As a part of the implementation of Development Impact Fees an initial capital improvement plan (CIP) was developed and adopted. This CIP has now been revised for your review and is attached as Exhibit A. Portions of this plan include the use of Development Impact Fees while other projects will require new funding sources. Available options for funding include annexation fees; both existing and anticipated funds; parks in-lieu funds, Local Improvement Districts, grants, revenue or general obligation bonds requiring voter approval.

The basis for the CIP recommended improvements is a combination of the following master plans:

- Transportation,
- Wastewater
- Water
- Parks and Trails:

In addition, goals from the other City Departments such as Police, Fire and Library as well as the recently completed Citizen Survey results were reviewed. This CIP was reassessed with the preparation of a new Wastewater Master Plan, scheduled for public hearings shortly. We have also hired SPF Water Engineering to review our water supply and operations where preliminary results have been incorporated in this revised plan.

Given both the current economic conditions and the Quigley Annexation request it was felt that a review of assumptions and schedules for capital projects was in order. For example, development impact fees, originally estimated to bring in over \$500,000 per year, had revenues in FY2008 of \$238, 575 and are now estimated conservatively at \$240,000 per year. The annexation fees from Cutters have been revised to reflect the revised annexation agreement. Other assumptions need to be examined in light of our current needs and projected revenues.

Establishing Priorities:

With the listing of the projects over a 5 year timeframe the next step is setting the priorities and establishing a cash flow plan. Coincident with the cash flow are the financing options available for the projects. These need to be identified specifically for each project.

Setting the priorities must involve a public forum to gain public support. Important in these presentations to the public is the criteria used to determine the project priorities. Examples of criteria include the following:

- Mandated Project/Regulatory Compliance – EPA, DEQ, Court Decision
- Grant Funding Available – This can redirect \$ to less important projects
- Health, Safety, Welfare
- Maintenance or Replacement
- Part of Sequenced Project
- High Priority of Elected Officials

Combined with criteria would be the ranking of projects by establishing a priority level – high, medium, low for example. Public input would be expected in putting some guidelines around these rankings.

High Priority Factor

- Mandated Project
- High Priority by Council
- Revenue Enhancement or Reduction of Costs

Medium Priority Factor

- Maintains Service Levels
- Reduces Operating Costs
- Improves Workforce Morale or Efficiencies

Low Priority Factor

- Not Mandated
- Improves Service Levels
- Improves Quality of Life

A possible method of then combining priorities and criteria to rank projects would be to utilize a matrix such as shown here:

CRITERIA		PRIORITY		
		HIGH	MEDIUM	LOW
Health/Safety/Welfare	1	LEVEL 1		
Maintenance/ Replacement	2		LEVEL 2	
Expansion of Existing Program	3			
New Program	4		LEVEL 3	

Public Process:

As we have seen it is extremely important to have a public process when deciding work of this magnitude. Public involvement could take place in a number of forums. For a localized project where LID funding could be considered a neighborhood meeting would be most appropriate. A city-wide project could be an Open House(s), town meeting, a public hearing during a council meeting. Information could be gathered ahead of any meetings with surveys with the utility bill or on the city website.

Project Costs and Funding Options:

The total 2009 – 2013 proposed Capital Improvement Plan forecasts \$22 million in General Fund projects. This includes some rather large projects such as the River Street Redevelopment, Woodside Fire Station and Police headquarters that need to be discussed in detail. The total 2009 – 2013 proposed Capital Improvement Plan forecasts \$4.47 million in available funds for general fund projects leaving a deficit of nearly \$18 million. Of the available funds \$1.44 million is for Development Impact Fee (DIF) eligible projects and \$3.03 million is available for all projects. In some instances, e.g. a new police headquarters, the DIF projects will require funds other than from Development Impact Fees.

Additional capital funds will be required to complete all the projects in the CIP. Sources for these funds include grants, future annexation fees, Local Improvement Districts (LIDs), Business Improvement Districts (BIDs), Property taxes, in-lieu funds and General Obligation Bonds (requiring voter approval).

The Water and Wastewater funds are separate from the General Fund and specified for only those department's projects. Each department has two separate funds to draw upon; user fees and hook-up fees. User fees could be raised with the express purpose of providing for expansion of the system; i.e. a new city well; while hook-up fees are not allowed for system expansion but for replacing major pieces of equipment and maintaining the integrity of the system; making sure it is operating well. The funds are also allowed to raise capital by issuing Revenue Bonds. City residents are already paying this on their monthly utility bill for the Woodside Wastewater Treatment Plant and the water storage tank in Quigley.

Currently the Water Fund shows a balance of \$1.5 million in the user fund and \$1.7 million in the replacement fund. Projected capital projects in the Water Department total \$3.3 million over the next 5 years.

Currently the Wastewater Fund shows a balance of \$460,000 in the user fund and \$1.2 million in the replacement fund. Projected capital projects in the Wastewater Department total \$9.2 million over the next 5 years.

Project Schedules

With some projects there is a synergy that can be achieved, lowering the overall project costs. The primary example of this is the Woodside Sewer Trunk line replacement, reclaimed water line and a reconstruction of Woodside Blvd. Combining these projects will share the cost between the General Fund and Wastewater Replacement Fund. All of these projects are estimated with an asphalt replacement cost included. Other projects strive to take advantage of the Development Impact Fees either collected or anticipated. As noted earlier these funds need to be spent or else returned. These projects include the Police Headquarters, Fire Station and equipment and roundabouts.

Discussion Points

What changes to the proposed project schedule are needed?

Adopt the plan or revise the plan for review with the Development Impact Fee Committee.

Long-term public education plan for possible future bond election.

If either the Police Headquarters or the South Fire Station are removed there will be an effect on collected and future DIF funds.

NEAR TERM PROJECTS

PRIORITY	Project Description	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	Future	Total
General Fund								
Non-Development Impact Fee Projects								
	Snow Storage - Requires Land	0	0	20,000	2,450,000	0	0	2,470,000
	S. Woodside Blvd Replacement	0	0	50,000	1,366,000	0	0	1,416,000
	N. Woodside Blvd Replacement	0	50,000	1,256,000	0	0	0	1,306,000
	Second Ave Reconstruction	0	0	0	30,000	1,090,000	0	1,120,000
	River Street Reconstruction/Upgrade	0	0	0	0	8,537,000	0	8,537,000
	Airport Way Reconstruction	0	0	0	0	0	0	0
	Missing Sidewalk Connections	0	20,000	20,000	20,000	20,000	20,000	100,000
	Pedestrian Crossing Pavement Lights	0	0	55,000	0	55,000	0	110,000
	City Shop Cold Storage Building	0	0	88,000	0	0	0	88,000
	3rd Avenue Wellhouse & Contact Basin	0	0	35,000	400,000	0	0	435,000
	Second Ave Water Main Installation	0	0	0	30,000	325,000	0	355,000
	Sidewalk Replacement Program	0	27,000	27,000	27,000	27,000	27,000	135,000
	1st Ave Shared-use path	0	0	10,000	118,000	0	0	128,000
	Woodside Elementary Trail	0	0	81,000	0	0	0	81,000
	Rodeo Grounds & Hailey Ice Improvement	20,000	100,000	0	0	0	0	120,000
	Keefer Park Plaza/Public Art Project	0	20,000	0	0	0	0	20,000
	Fire Station - South Non-DIF	0	0	75,000	1,085,000	1,235,000	0	2,395,000
	Replace Substandard Drywells	0	35,000	35,000	35,000	35,000	0	140,000
	TOTAL	20,000	252,000	1,752,000	5,561,000	11,324,000	47,000	18,956,000
Development Impact Fee Projects								
	Rolling Stock	0	0	144,000	144,000	0	0	360,000
	Silver Star Dr & Cedar St Roundabout	0	350,000	0	0	0	0	350,000
	Fire Station - South DIF Funds	0	0	165,000	165,000	0	0	330,000
	New Fire Engine - DIF Funds	0	0	0	0	288,000	0	288,000
	Police Station Location Unknown	0	0	50,000	750,000	750,000	0	1,550,000
	McKercher Park Restroom	52,000	0	0	0	0	0	52,000
	Lions Park Restroom	0	0	0	0	52,000	0	52,000
	Founders Trail	0	0	0	41,000	0	0	41,000
	Parks Trail B	0	0	0	0	77,500	0	77,500
	TOTAL	52,000	422,000	359,000	1,100,000	1,167,500	0	3,100,500

Water Department Projects

River St Water Main Upgrade	0	25,000	110,000	0	0	0	135,000
Water Grid Transmission Improvements - Deerfield	455,000	225,000	500,000	0	0	0	1,180,000
Middle School Irrigation	0	5,000	10,000	0	0	0	15,000
Next City Well - Requires Land	0	0	50,000	750,000	0	0	800,000
Shop & Office	0	200,000	150,000	0	0	0	350,000
TOTAL	455,000	455,000	820,000	750,000	0	0	2,480,000

Wastewater Department Projects

WWTP Tertiary Filter Addition	0	140,000	440,000	0	0	0	8,030,000
WWTP Treatment Capacity Expansion	0	0	0	0	150,000	9,700,000	9,850,000
Replace Carbonate Dr Sewer Main	0	115,000	0	0	0	0	115,000
Woodside Sewer Main Replacement	0	20,000	2,000,000	3,150,000	275,000	0	5,445,000
WWTP Aerobic Digester Building & Dome	0	0	350,000	350,000	0	0	700,000
Reclaimed Water Pipeline	0	0	1,200,000	1,000,000	0	0	2,200,000
TOTAL	0	275,000	3,990,000	4,500,000	425,000	17,150,000	26,340,000

Capital Improvement Plan Project List - 4/2009 Update

Sorted By Type

PRIORITY	Project Description	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	Future	Total
		Estimate	Request	Projected	Projected	Projected	Projected	Projected		
Street Projects										
	Non-Development Impact Fee Projects									
	Snow Storage - Requires Land			0	0	20,000	2,450,000	0	0	2,470,000
	S. Woodside Blvd Replacement			0	0	50,000	1,366,000	0	0	1,416,000
	N. Woodside Blvd Replacement			0	50,000	1,256,000	0	0	0	1,306,000
	Second Ave Reconstruction			0	0	0	30,000	1,090,000	0	1,120,000
	River Street Reconstruction/Upgrade			0	0	0	0	8,537,000	0	8,537,000
	W. Bullion St Reconstruction			0	0	0	0	432,000	408,000	408,000
	Airport Way Reconstruction			0	0	0	0	0	0	432,000
	4th Ave Reconstruction			0	0	0	0	0	250,000	250,000
	5th Avenue Reconstruction			0	0	0	0	0	431,000	431,000
	South Woodside Industrial Park Street Reconstruction			0	0	0	0	0	440,000	440,000
	E Elm St Reconstruction			0	0	0	0	0	300,000	270,000
	E Myrtle St Reconstruction			0	0	0	0	0	289,000	289,000
	E Bullion St Reconstruction			0	0	0	0	0	325,000	325,000
	Missing Sidewalk Connections			0	20,000	20,000	20,000	20,000	20,000	100,000
	Pedestrian Crossing Pavement Lights			0	0	55,000	0	55,000	0	110,000
	City Shop Cold Storage Building			0	0	88,000	0	0	0	88,000
	Non-Development Impact Fee Project Total			0	70,000	1,489,000	3,866,000	10,134,000	2,463,000	17,992,000
	Development Impact Fee Projects									
	Rolling Stock			0	72,000	144,000	144,000	0	0	360,000
	River St & Cedar St Roundabout			0	0	0	0	350,000	0	350,000
	Silver Star Dr & Cedar St Roundabout			0	350,000	0	0	0	0	350,000
	2nd & Myrtle Roundabout			0	0	0	0	0	350,000	350,000
	2nd & Bullion Roundabout			0	0	0	0	0	350,000	350,000
	4th & Elm Roundabout			0	0	0	0	0	350,000	350,000
	2nd & McKercher Roundabout			0	0	0	0	0	350,000	350,000
	5th Ave & Bullion Roundabout			0	0	0	0	0	350,000	350,000
	5th Ave & Myrtle Roundabout			0	0	0	0	0	350,000	350,000
	River St & McKercher Roundabout			0	0	0	0	0	350,000	350,000
	2nd & Elm Roundabout			0	0	350,000	0	0	350,000	350,000
	Development Impact Fee Intersection Project Total			0	350,000	0	0	350,000	2,800,000	3,500,000
	Street Project Total	0	0	72,000	564,000	1,633,000	3,866,000	10,484,000	5,263,000	21,852,000
	Water Projects									
	3rd Avenue Wellhouse & Contact Basin			0	0	35,000	400,000	0	0	435,000
	Second Ave Water Main Installation			0	0	0	30,000	325,000	0	355,000
	River St Water Main Upgrade			0	25,000	110,000	0	0	0	135,000
	Water Grid Transmission Improvements - Deerfield			0	455,000	500,000	0	0	0	1,180,000
	Silver St Water Main Installation			0	0	0	0	0	330,000	330,000
	Woodside Subdivision Water Grid Improvements			0	0	0	0	0	280,000	280,000
	Middle School Irrigation			0	5,000	10,000	0	0	0	15,000
	Next City Well - Requires Land			0	0	50,000	750,000	0	0	800,000
	Shop & Office			0	200,000	150,000	0	0	0	350,000
	Totals	0	0	455,000	455,000	855,000	1,180,000	325,000	610,000	3,880,000

Capital Improvement Plan Project List - 4/2009 Update

Sorted By Type

PRIORITY	Project Description	FY 06:07 Estimate	FY 07:08 Request	FY 08:09 Projected	FY 09:10 Projected	FY 10:11 Projected	FY 11:12 Projected	FY 12:13 Projected	Future	Total
	Building Projects									
	New City Hall - Requires Land		0	0	0	0	0	0	4,030,000	4,030,000
	Library Expansion - At Fox Building Site		0	0	0	0	0	0	300,000	300,000
	Building Project Total		0	0	0	0	0	0	4,330,000	4,330,000
	Police Department									
	Police Station Location Unknown		0	0	50,000	750,000	750,000	750,000	0	1,550,000
	Development Impact Fee Projects Total		0	0	50,000	750,000	750,000	750,000	0	1,550,000
	Non-Development Impact Fee Projects Total		0	0	0	0	0	0	0	0
	Police Project Total		0	0	50,000	750,000	750,000	750,000	0	1,550,000
	Fire Department									
	Fire Station - South DIF Funds		0	0	165,000	165,000	165,000	0	0	330,000
	New Fire Engine - DIF Funds		0	0	165,000	165,000	165,000	288,000	0	288,000
	Development Impact Fee Project Total		0	0	165,000	165,000	165,000	288,000	0	618,000
	Fire Station - South Non-DIF		0	0	75,000	1,085,000	1,235,000	1,235,000	0	2,395,000
	Fire Station - North - Requires Land		0	0	0	0	0	0	1,525,000	1,525,000
	Non-Development Impact Fee Projects Total		0	0	75,000	1,085,000	1,235,000	1,235,000	1,525,000	3,920,000
	Fire Project Total		0	0	240,000	1,250,000	1,523,000	1,523,000	1,525,000	4,538,000
	Stormwater Projects									
	Replace Substandard Drywells		0	0	35,000	35,000	35,000	35,000	0	140,000
	Totals		0	0	35,000	35,000	35,000	35,000	0	140,000
	Affordable Housing									
	River Street Affordable Housing		0	0	0	0	0	0	0	0
	Totals		0	0	0	0	0	0	0	0
	General Fund Totals		0	0	144,000	2,076,000	6,087,000	12,948,500	11,247,000	33,218,500
	Water Fund Totals		0	0	455,000	855,000	1,180,000	325,000	610,000	3,880,000
	Wastewater Fund Totals		0	0	275,000	3,990,000	4,500,000	425,000	17,150,000	26,340,000

DEPT	PROJECT	CITIZEN SURVEY RANKING (IF APPLICABLE)	DEPT RANKING (BY DEPT PROJECT)	CITY COUNCIL RANKING
Parks	Rodeo Grounds & Hailey Ice Improvement	1	1	
Parks	Woodside Elementary Trail	2	1	
Parks	Parks Trail B	2	4	
Parks	Parks Winter Fox Trail	2	6	
Parks	Founders Trail	2	7	
Parks	McKercher Park Restroom	3	2	
Parks	Lions Park Restroom	3	5	
Street	Missing Sidewalk Connections	4		
Street	Sidewalk Replacement Program	5	4	
Street	River Street Reconstruction/Upgrade	6	6	
Street	S. Woodside Blvd Replacement	7	1	
Street	N. Woodside Blvd Replacement	7	1	
Parks	Additional Active Parks with Play Fields	8		
Parks	Additional Passive/Pocket Parks	9		
	Underground Downtown Business Power Lines	10		
	Underground Old Hailey Residential Power lines	11		
Admin	Library Expansion - At Fox Building Site	12		
Street	W. Bullion St Reconstruction	13	16	
Fire	Fire Station South	14		
Street	E Elm St Reconstruction	15	9	
Police	Police Station Location Unknown	16		
Fire	Fire Station - North - Requires Land	17		
Parks	Expanded Skatepark	18		
Street	E Myrtle St Reconstruction	19	10	
Street	Second Ave Reconstruction	20	7	
Admin	City Owned Community Housing	21		
Street	Airport Way Reconstruction	22	3	
Street	South Woodside Industrial Park Street Reconstruction	23	5	
Street	4th & Elm Roundabout	24	21	
Street	2nd & McKercher Roundabout	25	19	
Street	Silver Star Dr & Cedar St Roundabout	26	13	
Admin	New City Hall - Requires Land	27		
Street	Snow Storage - Requires Land		2	
Street	City Shop Cold Storage Building		8	
Street	Rolling Stock		11	
Street	4th Ave Reconstruction		12	
Street	1st Ave Shared-use path		14	
Street	River St & Cedar St Roundabout		15	
Street	5th Avenue Reconstruction		17	
Street	2nd & Myrtle Roundabout		18	
Street	4th & Elm Roundabout		20	
Street	2nd & Bullion Roundabout		22	
Street	5th Ave & Bullion Roundabout		23	
Street	5th Ave & Myrtle Roundabout		24	
Street	River St & McKercher Roundabout		25	
Water	Water Grid Transmission Improvements - Deerfield		1	
Water	Shop & Office		2	
Water	Next City Well - Requires Land		3	
Water	Middle School Irrigation		4	
Water	3rd Avenue Wellhouse & Contact Basin		5	
Water	River St Water Main Upgrade		6	
Water	Second Ave Water Main Installation		7	
Water	Silver St Water Main Installation		8	
Water	Woodside Subdivision Water Grid Improvements		9	
WW	Woodside Sewer Main Replacement		1	
WW	WWTP Treatment Capacity Expansion		2	
WW	Replace Carbonate Dr Sewer Main		3	
WW	WWTP Tertiary Filter Addition		4	
Parks	Keefer Park Plaza/Public Art Project		3	
Parks	Foxmoor Park Restroom		8	
Fire	New Fire Engine - DIF Funds			

DEPT	PROJECT	CITIZEN SURVEY RANKING (IF APPLICABLE)	RANKING (BY DEPT PROJECT)	CITY COUNCIL RANKING
Street	S. Woodside Blvd Replacement	7		1
Street	N. Woodside Blvd Replacement	7		1
Street	Snow Storage - Requires Land			2
Street	Airport Way Reconstruction	22		3
Street	Sidewalk Replacement Program	5		4
Street	South Woodside Industrial Park Street Reconstruction	23		5
Street	River Street Reconstruction/Upgrade	6		6
Street	Second Ave Reconstruction	20		7
Street	City Shop Cold Storage Building			8
Street	E Elm St Reconstruction	15		9
Street	E Myrtle St Reconstruction	19		10
Street	Rolling Stock			11
Street	4th Ave Reconstruction			12
Street	Silver Star Dr & Cedar St Roundabout	26		13
Street	1st Ave Shared-use path			14
Street	River St & Cedar St Roundabout			15
Street	W. Bullion St Reconstruction	13		16
Street	5th Avenue Reconstruction			17
Street	2nd & Myrtle Roundabout			18
Street	2nd & McKercher Roundabout	25		19
Street	4th & Elm Roundabout	24		20
Street	2nd & Elm Roundabout			21
Street	2nd & Bullion Roundabout			22
Street	5th Ave & Bullion Roundabout			23
Street	5th Ave & Myrtle Roundabout			24
Street	River St & McKercher Roundabout			25
Street	E Bullion St Reconstruction			26
Water	Water Grid Transmission Improvements - Deerfield			1
Water	Shop & Office			2
Water	Next City Well - Requires Land			3
Water	Middle School Irrigation			4
Water	3rd Avenue Wellhouse & Contact Basin			5
Water	River St Water Main Upgrade			6
Water	Second Ave Water Main Installation			7
Water	Silver St Water Main Installation			8
Water	Woodside Subdivision Water Grid Improvements			9
WW	Woodside Sewer Main Replacement			1
WW	WWTP Treatment Capacity Expansion			2
WW	Replace Carbonate Dr Sewer Main			3
WW	WWTP Tertiary Filter Addition			4

DEPT	PROJECT	CITIZEN SURVEY RANKING (IF APPLICABLE)	RANKING (BY DEPT PROJECT)	CITY COUNCIL RANKING
Parks	Rodeo Grounds & Hailey Ice Improvement	1	1	
Parks	Woodside Elementary Trail	2	1	
Parks	McKercher Park Restroom	3	2	
Parks	Keefer Park Plaza/Public Art Project		3	
Parks	Parks Trail B	2	4	
Parks	Lions Park Restroom	3	5	
Parks	Founders Trail	2	6	
Parks	Parks Winter Fox Trail	2	7	
Parks	Foxmoor Park Restroom		8	
Admin	New City Hall - Requires Land	27		
Admin	Library Expansion - At Fox Building Site	12		
Police	Police Station Location Unknown	16		
Fire	Fire Station South	14	1	
Fire	New Fire Engine - DIF Funds		2	
Fire	Fire Station - North - Requires Land	17	3	

April 13, 2009

CITY OF BELLEVUE

Mayor Jon Anderson
Bellevue City Council
Administrator Tom Blanchard
Box 825
Bellevue, ID 83313

WOOD RIVER FIRE PROTECTION DISTRICT

Commissioner James Frehling
Commissioner Allen Luray
Commissioner Jay Bailet
Chief Bart Lassman
117 East Walnut Street
Hailey, ID 83333

BLAINE COUNTY AMBULANCE DISTRICT

Commission Chair Larry Schoen
Commissioner Angenie McCleary
Commissioner Tom Bowman
206 First Ave South, Suite 300
Hailey, ID 83333

CAREY RURAL FIRE DISTRICT

Chief Dennis Patterson
Carey, ID 83320

Dear South-Valley Fire and Emergency Medical Service Response Agency:

The Hailey City Council discussed, during its Strategic Planning meeting of March 30, 2009, the recommendation from Hailey Fire Chief Mike Chapman that an independent analyses of the costs and benefits of our agencies' current emergency response structures be conducted. We have also heard the same recommendation from our constituents in a Hailey Citizen's Satisfaction Survey conducted in January, 2009. We know that many of you have expressed interest in exploring the most efficient approach to emergency service. We value emergency service with the highest degree of 1) life-safety protection, 2) property protection, and 3) environmental protection at the best possible cost to our constituents.

From our discussion emerged the idea of holding a summit meeting of our organizations, during which we mutually consider whether there is common interest among our jurisdictions for such an independent study. If we establish that there is, we would then discuss the elements of the study important to each of us, thereby fashioning a mutually acceptable Request for Proposals. Finally, we would need to discuss each agency's willingness to contribute toward the costs of the study. Together, we may launch a study that begins to answer many of the questions about emergency services costs and the benefits or detriments of all models of organizational structure.

Please discuss this at your earliest convenience, and let us know whether you would be interested in attending the summit meeting, and how the agencies should be represented. We expect that attendance and discussion from a representative of Friedman Memorial Airport Aircraft Rescue and Firefighting representatives would be important. We would like to organize the meeting at a time convenient to all of us sometime in May, 2009.

Sincerely,

Mayor Rick Davis
City of Hailey

cc: Friedman Memorial Airport Manager Rick Baird
Operations Chief Pete Kramer
AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF)
Box 929
Hailey, ID 83333



THE BOARD OF BLAINE COUNTY COMMISSIONERS

206 FIRST AVENUE SOUTH, SUITE 300

HAILEY, IDAHO 83333

PHONE: (208) 788-5500 FAX: (208) 788-5569

www.blainecounty.org bcc@co.blaine.id.us

Lawrence Schoen, Chairman * Angenie McCleary, Vice Chair * Tom Bowman, Commissioner

Mayor Wayne Willich
City of Sun Valley
Via E-mail

Thursday, April 02, 2009

Re: Consolidated dispatch funding reconsideration

Dear Wayne,

You asked that I articulate, for the benefit of the Sun Valley City Council, the representations I made to you and Councilman Ribi at the regular Board of County Commissioners meeting March 17, 2009. The request I made is that you and the Council formally reconsider your decision not to commit to the so-called "dwelling unit" funding model for consolidated dispatch. It is my hope you will consent instead to collaborate with all other Blaine County jurisdictions over the next year in this funding protocol. I said I felt this would, to an extent, meet the objective of your phase-in proposal. In return, we would take this year to accomplish the following:

First, Blaine County will submit a letter to Idaho Attorney General Lawrence Wasden requesting his advice on the statutory meaning of portions of Idaho Code Title 31, Chapter 48. It is clear the legislative intent is to facilitate consolidation statewide, but conflicting interpretations of the language have, in my view, hindered this very process, including in Blaine County. The principal focus here is the proposition that a governing board has the authority to collect fees from the user agencies to co-fund the consolidated dispatch system. I have already initiated drafting of this letter with counsel and we are likely to seek your and others' input before sending it.

It must be said, this approach entails some risk to the County. Nonetheless, I feel the goal of clearing some of the smoke generated by this issue and bringing more confidence to ongoing discussion of funding is worth it. In the event the AG is unable to give clear guidance, we would seek legislative clarification, with his assistance. Such a letter from the AG is just that, guidance, but my hope would be that the result would carry weight, keep any of us out of court and ultimately facilitate the overarching legislative intent in Blaine County--and statewide--as we begin budgeting FY2011.

Secondly, I shall request the 'Users Group' re-evaluate the pros and cons of the principal funding models that have come to light during community-wide discussion; that is, not to make a recommendation on the best model, or who pays what, but to elucidate how exemplary dispatch affects and is affected by these models. (The Users Group, as you know, is comprised primarily of first responder agency representatives.) I would ask this group then to spend time educating Councils and the public further on their findings, including the merits of consolidation itself. The goal is to become equipped with greater understanding and acceptance by all of what we are trying to accomplish, going forward.

Finally, as we prepare for the future, I will repeat my calls for all jurisdictions to continue reviewing their respective policies recognizing dispatch as an essential component of emergency service provision and, as such, funding our consolidated system properly in a fair, equitable and stable manner in concert with others.

As concise as it is, I hope this letter serves as an adequate overview of my representations to you in asking for your special reconsideration of this important matter.

Yours respectfully,

Lawrence Schoen
Chairman, Board of Blaine County Commissioners