

**BLAINE COUNTY PLANNING AND ZONING COMMISSION**

**Public Hearing Date: June 8 & March 30, 2023**

**REGARDING THE APPLICATION OF:**

Beau Burks, landowner, for a Mountain Overlay District (MOD) Site Alteration Permit at 109 Lemhi Dr., Lot 14 Indian Ck. Ranches #1.	Staff Report by Tom Bergin June 1 & March 25, 2023
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**Requested Action:** Public hearing and consideration of an application by Beau Burks, for a Mountain Overlay Site Alteration Permit to place fill removed from the improvement of Lemhi Drive onto 109 Lemhi Drive, for an access, for a residential building site and for a single-family home. The property is zoned Rural Residential (R-10), Wetland Overlay District (WE), and Mountain Overlay District (MOD).

**Applicable Regulations:** Title 8 - Blaine County Comprehensive Plan  
Title 9- Chapter 6- Rural Residential (R-10); Chapter 21- MOD

**Summary of the Issues:**

This application involves five components. In association with the Lemhi Dr. Road application, the first component is what volume of excess road cut material can be utilized on this lot rather than exported. The volume of material will translate into the area or acreage altered. If it can't, the additional components of this application will need to be modified significantly and further review done at a later date. [relevant sections?]

If the Planning & Zoning Commission is, at least initially, open to the possibility of permitting some excess fill material to be utilized on the upper portion of this lot, the next question is whether this property is unique; or any driveway and building site should be at a lower elevation on the property and maybe accessed from Bannock Dr. rather than Lemhi Dr.

If the Planning & Zoning Commission is open to the possibility of permitting some fill to be utilized on the upper portion of the lot and this property is determined to be unique to the typical MOD property and thus a driveway and building site are also acceptable within that disturbed and filled area, the next question is whether the proposed location for the driveway and building site are more or less acceptable or one or the other should be shifted to the north or south.

Finally, if the Planning & Zoning Commission gets through those three components favorably to a large degree, the acceptability of the proposed house and associated revegetation plan are the last two components to be evaluated.

Note: In the criteria below, these components will be referred to as Components 1 thru 5 where the evaluation for one is somewhat distinct from any other.

**Background:** Blaine County adopted hillside subdivision regulations in 1977 and supplemented those with the Mountain Overlay District in 1994. The Mountain Overlay District was mapped in 2007. The Indian Creek Ranches No. 1 plat was recorded in 1972 partially as a hillside subdivision. Since Indian Ck. is the one subdivision in the county that has a significant number of hillside lots, the HOA convinced the county in 1995 to delegate its zoning authority to the HOA on MOD site alterations with certain exceptions like visibility from Highway 75. This is why the county sees very few Indian Ck. MOD applications.

In this case though, the HOA is the applicant on the adjacent Lemhi Dr. road improvements, it wants to avoid or minimize the costs of transporting all the excess material out of the subdivision by essentially pushing it over the edge and onto this lot and has been in mediation with this and other Lemhi Dr. landowners about costs and responsibilities. Given this level of involvement, including economic involvement, now and into the future, the HOA is not an appropriate reviewer of this project regardless of whether it is visible from Hwy. 75.

## Section I. General Background

### Disclosures:

- **Site Visits? Ex. Parte Communications? Economic Conflicts? Other Conflicts?**

*Ex parte* contacts involve a decision-maker's receipt of any information pertaining to an open application on a quasi-judicial matter. (ie: emails, phone calls, conversations) The undisclosed receipt and consideration of *ex parte* information denies interested persons their right to review and respond to this off the record information, resulting in a due process violation and more generally, an unfair process.

- As the staff member handling these applications, I do not have a conflict. I do not have any economic interest in this matter and am not a decision-maker. However, my sister and the applicant's wife have been friends for over 40 years. Since their relationship has crossed my mind many times during this review, it seems appropriate to disclose it.

1. The Planning Office received the MOD Site Alteration Permit application in early February, 2023.
2. Public notice for the March 30, 2023, public hearing for this application was provided as follows:
  - a) Legal notice was sent to the Idaho Mountain Express for publication on March 15, 2023;
  - b) Notification was sent to surrounding property owners within three hundred (300) feet of the subject property on March 14, 2023, and to all county political subdivisions on March ??, 2023.
  - c) An on-site notice was posted on March 15, 2023 at least 7 days prior to hearing as evidenced by the affidavit in file;
  - d) Though not a notice requirement, the application materials were posted on the Blaine County website on March 23, 2023.

**Motion:** Upon motion by Commissioner \_\_\_\_\_, second by Commissioner \_\_\_\_\_, and by a vote of \_\_\_\_ to \_\_\_\_\_, the Commission finds notice to be adequate for the September 8, 2022 public hearing and in compliance with I.C. § 67-6512 and § 9-25-4 of the Zoning Ordinance.

3. The following information and exhibits are included in the record and are part of the public record for this application:

A Exhibits- Application

- A-1: MOD Site Alteration Application dated Feb. 7, 2023
- A-2: Applicant Responses to the Standards of Evaluation
- A-3: Plan Set received 11-2-2022:
  - CS: Cover Sheet, Vicinity Maps
  - S1: Survey
  - SA1: Slope Analysis
  - L1.0: Grading & Drainage Plan
  - L1.0: Grading & Drainage Plan, Rev. 4-24-23
  - L1.1: Site Cross Sections
  - L2.0: Utilities & Snow Storage Plan
  - L3.0: Landscape & Revegetation Plan
  - L4.0: Erosion Control Plan
  - A-100: Main Floor Plan
  - A-101: Lower Floor Plan
  - A-102: Roof Plan
  - A-200: West & South Elevations
  - A-201: North & East Elevations
  - A-202: West & South Elevations Perspective
  - A-203: North & East Elevations Perspectives
  - A-300: Exterior Finishes
- A-4: Permission from owner of adjacent Lot #15 to deposit fill.
- A-5: Photos of the site including photos with the story poles erected. [to be posted]
- A-6: Alex Nelson e-mail relating to avalanche received May 8, 2023 with a site map and photos of recent Indian Ck. avalanches;
- A-7: Avalanche Report Revised dated April 25, 2025;
- A-8: Steve Butler, Geo-Tech Engineer response to Co. Eng.;
- A-9: Revegetation Plan supplement received April 27, 2023;
- A-10: Temporary Irrigation Strategy received April 27, 2023;
- A-11: Community Drainfield Assessment received April 27, 2023;
- A-12: Architectural lighting information received April 27, 2023

B Exhibits- Agency Comments:

- B-1: W.R. Rural Fire Dist. comments dated March 29, 2023
- B-2: County Engineer comments dated April 11, 2023
- B-3: County Engineer received April 27, 2023
- B-4: County Engineer received May 3, 2023
- B-5: W.R. Rural Fire Dist. received April 24, 2023

C Exhibits- Blaine County Supplements:

- C-1: GIS Map showing elevation of development in the vicinity dated 3-21-23

D Exhibits- Pubic Comment: [15 public comments received from March 22 thru April 19. See the detailed list in the materials on the county website.]

- D-1: Steve Kearns received March 22, 2023;
- D-2: Michael Horwitz received March 23, 2023;

**Section II. Evaluation of Site Alteration Permit  
Design Review Standards of Evaluation  
Pursuant to §9-21-5 of the Zoning Ordinance**

See Exhibit A-2 for responses to the Standards of Evaluation. *Italicized font is code citation.*

*Pursuant to §9-21-5 (D) of the Zoning Regulations, the applicant has the burden of demonstrating compliance with this Chapter, including each of the following design review standards of evaluation. Before approving or conditionally approving a site alteration permit, the Commission shall review and find adequate evidence that the proposed development or site alteration meets the following standards:*

1. *No sufficient available area for the site alteration exists on the lot outside of the Mountain Overlay District. "Available area" may be found to exclude land located within the 100-year floodplain, floodway, wetlands, and avalanche hazard created by off-site conditions where such environmental concerns outweigh the hillside concerns for the particular project. Existing structures that are nonconforming to this Chapter may be improved, moved, or replaced within the Mountain Overlay District, provided the Commission finds that the proposal is less nonconforming than what is existing and is in substantial compliance with subsections D2 through D13 of this Section.*

► **Staff Comments:** All of Lot 14 is in the MOD. All of it is above the 100' MOD buffer.

2. Visibility of the site alteration as viewed from reference roads shall be minimized through design, landscaping and siting. Except where extraordinary circumstances (or natural circumstances as defined in subsection D3 of this section) exist that are peculiar to the physical characteristics of the site, site alterations, particularly buildings, other structures, and hillside roads, are less visible the lower in elevation they are as determined by topographic contour lines. New development shall be compatible with the general scale (height, dimensions, overall mass) of development in the vicinity. The maximum bulk of structures shall be hidden or minimized by design, landscaping and siting. Landscaping shall blend harmoniously with the surrounding area, and shall not create excessive contrast with the surrounding area.

► **Comments:** §9-2: DEFINITIONS: REFERENCE ROAD: Any Federal, state or city public road, or County road designated as a graded and drained or higher improvement designation on the official county highway map.

Indian Creek Rd. is a reference road.

**Component 1: Deposit of excess material:** This excess material proposed to be spread over 1.5 to 2 acres of land will be visible from Indian Ck. Rd. If the volume of material is decreased, that presumably would result in less material spread over less land or in some areas would only reduce the depth of the fill. As it extends to the north, a portion of it might also become visible from Buttercup Rd. or even Hwy. 75. If the alteration at 113 Lemhi Dr. (the P&Z reviewed that application last September) is visible from those two public roads, the proposed northern portion the fill may also be. If so, can this "siting" be considered minimized?

**Component 2, Vertical Building Site Location:** Generally and it is presumed within the MOD that the lower in elevation the alteration, the less visible it is. This is not only mentioned here but also in purpose section of Ch. 21. "Extra-ordinary circumstances" is not defined. The Commission may have to add meaning in the interpretation of that phrase. In addition to the lower-is-less visible principle, there are a few things to note in this situation. Indian Ck. is unique, unordinary at least, as one of the handful of subdivisions in the county that located so many lots on the hillside and maybe the only subdivision where the building sites are not tucked behind ridges or forested areas to minimize their visibility. Because of that design and the sheer volume, the county, as mentioned, delegated its

zoning authority to the ICRHOA to process MOD site alterations in most circumstances. This idea, as incorporated into a 1995 agreement, was that ICRHOA would process such applications consistent with these MOD criteria and the county's process. This approach has likely been more efficient for lot owners. It has not been a flawless approach however. Some structures have been approved while skylined. The bulk of a number of other structures has likely been greater than would have been permitted under the broader, more experienced perspective of the Planning & Zoning Commission. In Indian Ck., it is necessary to note that many of the developed lots were smaller than this one and thus have fewer options for siting a house or they are on flatter slopes and thus the elevation is less of a factor. Somewhat similar to the situation on this lot, many are more elevated because the elevated spot is closer to or only accessible by an elevated access road. The houses accessed on, but below, Sitting Bull or Cochise Dr. are examples of this. Finally, the Lemhi/Bannock Dr. neighborhood includes multiple elevated lots, some of which are only accessible from upper sections of this road. To illustrate this situation, staff asked the county's GIS to generate Exhibit B-1. The point of this map is to show the circumstance on the other lots on either of these roads.

**Component 3: Horizontal Building Site Location:** The proposed, southerly location is not visible from a road outside of Indian Ck. If it was in a more northerly location, it would possibly become visible from those remote locations like the house at 113 Lemhi was. The southerly location, though, has a long driveway that starts close to the northern edge of the lot. While not a visible aboveground structure, road cuts further north, as mentioned, are more likely to be visible. Alternatives to the horizontal location and length of both the house and driveway merit further information and discussion. In the end, the application needs to support with facts that the Commission can use to support any decision consist with these criteria, i.e. the “[v]isibility of the site alteration as viewed from reference roads shall be minimized through design, landscaping and siting.

**Component 4: House Design:** The design of the proposed house, where the bulk of both proposed stories faces the reference road, is at the top of the lot, elevated on fill at the western cross-section (See Sh. L1.1), hitting the maximum permissible height limit of 35' at that end as well and totaling over 7800 sq. ft. with the garage and deck included (4738 sq. ft. of living area) would not appear to be minimized by its design or siting. While many comparisons with other houses on the hillsides in Indian Ck., can be considered, one of the last houses reviewed by the county before delegating its zoning authority the HOA is located nearby at 205 Bannock Dr. That two-story house with a garage and around which the trees have now grow is about 3700 sq. ft. or less than half the size of this proposal. In the October findings on the home at 113 Lemhi which is admittedly on a flatter but less exposed location, the Commission noted that the “home is designed with angles facing the reference roads to show the least amount of vertical wall to minimize visual impacts. [Also] the structure is proposed to step down with the existing topography to minimize massing and site disturbance. Angles facing the reference road was also a significant factor in the recent decision at 100 Water Gulch. More information, maybe especially from the HOA regarding what it has permitted, may be necessary to fully evaluate how this is “compatible with the general scale (height, dimensions, overall mass) of development in the vicinity.”

**Component 5: Revegetation Plan:** *The follow-up landscaping shall blend harmoniously with the surrounding area, and shall not create excessive contrast with the surrounding area. All disturbed areas will need to be revegetated which is proposed. The question here is whether the proposed vegetation is native or native compatible with the vegetative in the immediate vicinity.*

3. Site alterations for property protection and hillside stabilization and rehabilitation due to natural circumstances may be permitted . . .

► **Comment:** N/A, no “natural circumstances” such as a recent landslide exist on this lot.

4. The site alteration, and any grading and excavation relating thereto, shall include measures or designs to mitigate the risk of soil erosion, silting of lower slopes, slide damage, flooding, and any other geologic instability. All excavation, grading and fill shall be revegetated as provided herein (except for roadway surfaces) and otherwise stabilized to control erosion.

► **Comment:** The Erosion Control Plan is detailed on Sheet L4.0. Straw wattles are the primary control technique with a silt fence along the lower edge. The Landscaping and Revegetation Plan is detailed on Sheet L3.0. Getting the vegetation re-established quickly is key to this or any erosion control plan. This plan will be financially guaranteed over a period of years to ensure, and insure, its eventual success. The applicant has provided further details on the revegetation plans. See Exhibit A-9. They have also provided further information on the plan to seek a temporary (i.e. one year) irrigation permit. The City of Hailey, apparently, does make water available to out of city users for a fee.

5. The site alteration shall comply, where reasonable, with the requirements of the avalanche overlay district.

► **Comment:** A relatively small area of Blue or medium risk avalanche exists on this lot. The proposed house is within the identified blue zone. See Exhibit A-3 Sheet S1. This is an unusual situation in that structure is proposed at the top of the risk area rather than the bottom. Given the extent of the proposed fill and modifications for the proposed building site, these do modify the area of avalanche risk. Alpine Enterprises has further evaluated the impact of these modifications. See new Exhibits A-7, a one page report and A-6 with the attached map and photos. The report states and the map shows no post-construction risk in the house or driveway locations.

6. Any proposed building or other structure shall remain below the skyline and shall be sited in such a manner so as not to create a silhouette against the sky as viewed from any reference road.

*Definition: SKYLINED: An outline of a structure against the background of the sky as viewed from Federal roads, State roads and/or roads as shown on the grade and drain map for Blaine County*

► **Comment:** Based on the story poles erected on the lot this past winter, the proposed house will not silhouette against the sky from the reference road. .]

7. Manmade slopes, road alignments, driveways, improvements, grading, excavation, berming, and fill activities shall conform as closely as possible to the natural terrain. Alteration and severe scarring of the natural drainage of the site shall be minimized and mitigated, except where natural circumstances exist as defined in subsection D3 of this section, in which cases protective factors of the site alteration shall be considered. Hillside roads shall also meet all other applicable road or driveway standards under county ordinances and adopted codes, including, but not limited to, those for grades and emergency vehicles. Existing roads/driveways to existing nonconforming structures located within the mountain overlay district may be moved or improved to reduce the degree of noncompliance with requirements for grades and emergency vehicles.

► **Comment:** A Blaine County Road and Bridge permit is not required for the driveway since Lemhi Drive is a private road. Wood River Fire District has stated that the driveway appears acceptable for fire access. The applicant has proposed a fire turn around and a driveway within the lot. The county engineer has not yet seen the geotechnical engineer's proposed fill design. This is critically important in this situation. Use of an on-site septic system, rather than the community system, is not thought to alter the natural surface or sub-surface drainage in a way that will impact wetlands or adjacent lots. See Exhibit A-11.

The re-contouring of almost two acres of this lot will be a significant alteration of the natural terrain. To the extent that any road, drive or other improvements can be minimized, those alterations will result in less man-made slope and more area remaining natural terrain and thus reducing the area needing to conform as closely as possible to the natural terrain. Where the rationale for the various alterations is compelling and aside from where relatively flat is necessary for a house or drive, it would seem that the re-contoured slopes would be as close to the angle of repose as possible to minimize the extent of disturbance.

The main drainage channel through this lot is both an intermittent stream and wetland. Given the required setback from both of those, no alteration is proposed there. The fill that is proposed to be placed on the adjacent lot does not intrude into the drainage or drywash running through that lot.

The chances for future erosion and soil instability will need to be mitigated with protective measures and quick re-establishment of stabilizing vegetation is addressed in other criteria.

*8. Native or native compatible vegetation shall be preserved to the greatest extent possible, and revegetation adjacent to residences shall be with low combustible plant species. Revegetation and rehabilitation of disturbed areas shall utilize plant materials harmonious and/or native to the area. The method for control and prevention of noxious weeds shall be demonstrated. Disturbed areas shall be regraded, landscaped or revegetated in a timely manner after completion of the site alteration activities. Components of the revegetation plan shall include the techniques that will be used to ensure the establishment of the proposed vegetation for a period of not less than five (5) years.*

**► Comment:** Component 5 or the revegetation would appear to be the primary component associated with this criteria. However, Component 1 the volume of fill permitted on this lot and Component 3, the extent and size of the driveway and building site are also factors in how much existing vegetation is preserved. The revegetation plan for this project (See Exhibit A-3, Page L3.0 Landscape Plan.) shows the proposed plantings including both evergreen and deciduous trees including aspen. Aside from the aspen, these do not appear to be native to this area in Indian Ck. The Commission and applicant need to consider whether the trees described are native to the Indian Creek Area. The length of the driveway and motor court and maybe the paver patio do not necessarily preserve native vegetation to the greatest extent possible. A reduced driveway entering from the south could be significantly shorter and require less fill and disturbance on the north side of a house.

*9. Exterior building materials shall be of nonreflective materials. The visibility of hillside development shall be lessened by limited glazing and exterior lighting, and by use of materials and colors compatible with the natural surrounding setting. Roofs shall be designed to minimize the visibility of the structure. Reflective metal roofs are prohibited; nonreflective metal roofs may be approved.*

**► Comments:** *The proposed colors are provided on Exhibit A-2, page A-300. Materials appear to be non-reflective. The west side includes a significant amount of window or glazing. The primary color has been lightened from the original, dark gray design and thus is closer to the color of the natural surrounding setting. A new exterior lighting design has been provided. It appears to be dark sky compliant. See Exhibit A-12. Is it nevertheless sufficiently harmonious?*

*10. All outdoor lighting shall comply with the outdoor lighting requirements of chapter 29A of this title.*

**► Comments:** An Outdoor lighting is shown on Exhibit A-3, Sheet A-300. While the lighting design is shielded as required bear in mind that the proposed house is elevated significantly above the reference road. As a result, what might otherwise be shielded from adjacent properties may not be here. Though this criteria addresses outdoor lighting, the Commission has in prior MOD reviews considered the impact of lighting where second story or gable end windows are proposed like here.

*11. Construction proposed as part of a site alteration permit application shall comply with other applicable codes and ordinances, including, but not limited to, the fire code; title 7, chapter 3 of this code; and the building code, as amended, in effect at the time.*

► **Comment:** This standard is recommended Condition 4 and will be evaluated for compliance at building permit review. The Fire District has provided comments on the access . The house is proposed to include an interior fire sprinkler system.

12. *Any proposed new road or driveway is necessary to access a building site or building that was lawfully approved under this title.*

► **Comment:** The construction of Lemhi Drive is under review separately MOD site alteration permit. A Wetlands Conditional Use Permit has been issued. Wood River Fire District has stated that fire access appears to comply with the fire code. No building permit shall be issued for any residence until Lemhi Drive improvements are complete according to Wood River Fire and Rescue. This is part of Condition 4.

13. *If the applicant or landowner with respect to an application for a site alteration permit under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof, the commission or the board, in addition to all other applicable standards and criteria hereunder, shall take into account the plans and needs of the state, or any agency, board, department, institution or district thereof, as required by Idaho Code section 67-6528.*

► **Comments:** N/A. The applicant is not the State of Idaho though as the owner of a nearby parcel, the state was notified of this hearing.

14. *When the proposed use involves a potential contaminant source or potential contaminant as set forth in appendix A of this title, on file in the county, and is located within a wellhead protection area the applicant has adequately demonstrated that the project has been designed to mitigate any adverse impact to a potable water source.*

► **Comments:** N/A. 109 Lemhi Dr. is not in a Wellhead Protection Area. By limiting disturbance especially in wetland areas, controlling erosion and revegetating quickly, potential impacts to nearby, individual water sources is mitigated.

**Section III. Decision and Recommended Conditions**  
**Pursuant § 9-21-5 (E), § 9-30-5, and § 9-25-5 (A) of the Zoning Ordinance:**

► **Motion:** I move to (approve with conditions -or- deny) all or one or more of the components of the proposed Mountain Overlay District Site Alteration permit application as presented and discussed at this Public Hearing. The Commission (finds that there is adequate evidence in the record that the proposed development meets the design review standards of evaluation -- **or** -- finds that the following standard(s) have not been met: \_\_\_\_\_.

If the Commission finds that, there is adequate evidence in the record that the proposed development or components of it meet the design review standards of evaluation as set forth in Section II, the Commission may attach reasonable conditions including, but not limited to:

**Recommended conditions of approval:**

1. The approval granted herein is based on the application as submitted by the applicant and the conditions stated herein. Any material changes and deviations in design from the approved plan shall be subject to



further zoning review and may result in further review at the applicant's expense by either the County Engineer or the Planning and Zoning Commission.

2. Prior to Certificate of Occupancy, Financial Security shall be retained by Blaine County in the amount of 150% of the estimated landscaping cost for a period of five years or until it has been demonstrated to the Land Use director that the approved landscaping is has been adequately established.
3. Silt fence and straw wattle check dams shall be placed as shown on the Erosion Control Plan, below disturbed ground until the soil is stabilized. Photos shall be provided to the planning office demonstrating silt fencing has been placed as required prior to commencing grading, excavation, and construction.
4. The applicants shall apply for and obtain a building permit prior to commencement of any site preparation work, excavation, or construction, and shall comply with all applicable zoning, building, fire and health district regulations. As with any building permit application, review and approval of the building permit application and plans by South Central District Health and the responding fire district, in this case Wood River Rural Fire and Rescue, are required prior to submittal to the Blaine County Building Department. Additionally, it shall be specifically addressed by Wood River Fire and Rescue at building permit submittal that the Lemhi Drive improvements are complete.
5. An outdoor lighting plan showing location, type, height, color temperature, number of all proposed fixtures and boundary of lighting shall be submitted with the building permit application.
6. Material, if any, removed from the subject site shall not be placed elsewhere in Blaine County's Mountain Overlay Distinct without permitting from Blaine Co. Land Use.
7. A geotechnical engineer shall be retained to provide observations of the construction of the driveway, motor court, structural fill used for the foundation building pad, foundation drainage system, structural backfill to support exterior hardscapes and other development needing adequate support or stability any other recommendations presented in Butlers report (Exhibit A-4) that are incorporated into the project design. The geotechnical engineer shall, at appropriate stages in the project, submit a certificate of compliance with geotechnical standards.
8. Nothing presented in this application is approved outside the property boundary of 113 Lemhi Dr., including grading, without written authorization from any property owner or easement holder.
9. Expiration of Permit: This site alteration permit shall expire one year following the date of its approval if the site alteration has not been substantially commenced. If good cause for delay in commencement of construction is shown, the Administrator may ~~one~~ ~~only~~ extend the period for commencement of construction for a period not exceeding one year, provided application is made for an extension before expiration of the permit.
10. Others related to location, house or landscape design, grading, lighting, materials or other factors?