

The Fight to Preserve Hammer Flat


By
Anthony Jones
Founder – SaveThePlateau.org
March 2012


For Susan Clark

Copyright 2012, Anthony M. Jones

On the Cover: In the foreground, Mule Deer in the Boise, ID, foothills. In the middle distance, the Hammer Flat plateau to the right of the Boise River and the Black Cliffs. In the background, Boise's urban center with the cities of Boise, Eagle, and Meridian beyond.

Following page: Looking east from Boise, ID, the image shows Hammer Flat, the boundaries of The Cliffs subdivision, the critical portion of State land proposed for the entry road, and other relevant features.

 **The Cliffs' Boundaries**


 **Proposed Entry Road Location**

Highland Valley Rd

Pe Haven Ln

Teresa Dr

Brian Way

 **Warm Springs Ave**

21

Surprise Way

1033 ft

© 2012 Google
Image © 2012 TerraMetrics

© 2010

Google



A Hammer Flat image worth a thousand words. About 90 deer in the group closest to the camera. Hundreds more out of sight to the left and right, and on the steeper slopes beyond. Trapped between winter snows higher up, and the encroachment of urban dwellings lower down.



A.	About the author	6
B.	Acknowledgements	7
C.	Preface	8
Part 1, The Battle Lines are Drawn		11
1.	Introduction - Pre History of the Flat	11
2.	Skyline Development and the Push for the Cliffs	13
3.	The Inception of SaveThePlateau.org	15
Part 2, Fighting Ada County		19
1.	SaveThePlateau.org's Operating Philosophy	19
2.	Planning and Zoning in The West, The Game is Rigged	22
3.	The Treachery of the "Illegal Subdivision"	25
4.	Make Them Touch All The Bases	30
5.	Development Models, Part 1	32
6.	Enviro Groups to the Rescue?	34
7.	Open Meeting Law Violation	37
8.	The Hearings	40
9.	The Entry Road, Some Background	43
10.	The Entry Road, Ulterior Motives?	46
11.	The Second Hearing, Collusion Toward a Conclusion	47
12.	The Third Hearing, A Reduction of Options	49
Part 3, Life After the Ada County Hearing		52
1.	Post Hearing Tactics	52
2.	Property Taxes	54
3.	The Courts	58
4.	ITD's Property, Some Blow Back, Then Capitulation	60
5.	ACHD Shows ITD a Spine	63
6.	The Idaho State Legislature	65
7.	Due Process, At Long Last	67
8.	A Retrospective	70
9.	Development Models, Part 2, A Light at The End of STP's Tunnel	73
10.	Sterling Bank	75
11.	End of the Line	77
Part 4, Postscript		81
1.	No One Needed to Suffer	81
2.	Critical Path	83
3.	SaveThePlateau.org Mission Statement	87

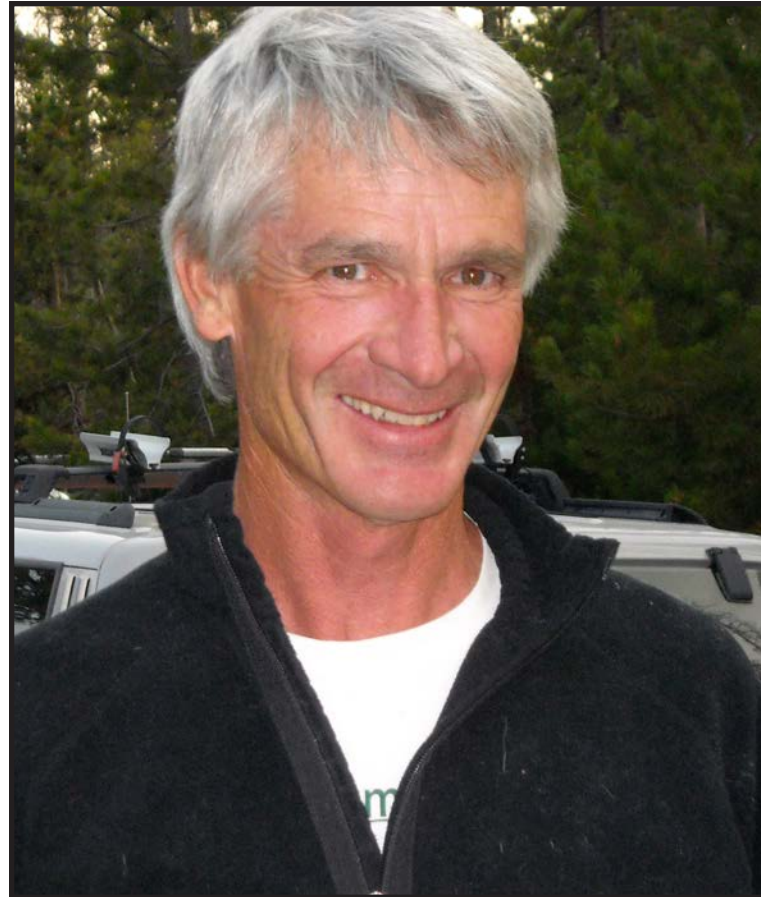
A. About the author

Mr. Jones is an Idaho native, and a product of the Meridian, Idaho school system. After high school, he attended Idaho State University in Pocatello, Idaho where he received his Bachelor's Degree in Economics.

After graduation, his love of the out of doors led him to pursue a career as a mountain guide. Ten years later, with experience in the Himalayas, and fist ascents in such places at the Wind Rivers, the Tetons and the North Cascades, Mr. Jones learned one of life's enduring constants: Physically and mentally rewarding jobs are often financially debilitating. It was time to get a real job. That entailed a stint in graduate school at the University of Washington where he received his M. A. in Economics.

Since then Mr. Jones has worked for a variety of Companies and Public Agencies. The list includes, H.J Heinz, J.R. Simplot, Gannet (The Idaho Statesman), The Idaho Public Utilities Commission, and the Idaho Division of Financial Management.

For much of this time, Mr. Jones also maintained two private consulting companies. One, Rocky Mountain Econometrics, special-



izes in environmental issues with particular emphasis on energy and the impact of hydroelectric dams on the environment. Clients include Idaho Rivers United, the National Wildlife Foundation and Idaho Governors Batt and Kempthorne.

His other consulting company, Design 4000, specializes in Web Site design and services such clients as the Idaho State Bar Association.

Mr. Jones' most public activity involved the founding of an organization called SaveThePlateau.org. This group's activities revolved around efforts to preserve the 700-acre plateau known as Hammer Flat.

The Hammer Flat plateau is in the foothills on the east side of Boise, Idaho, about 10 miles from the Idaho Capitol building. It is sandwiched between the Black Cliffs on the west and the Boise River Wildlife Management Area on the east. It forms a substantial portion of the last remaining viable harsh winter habitat for about one fourth to one third of the 15,000 - 20,000 deer in the Boise Front, the largest mule deer herd in Idaho.



B. Acknowledgements

Leslie Nona, Paul Hilding, Mike Reineck, Doug and Barbara Eno, and Ed Chaney not only understood the issue at hand, they were all far more committed to the outcome and supportive of the process than reason could justify. Without them, I might now be living under a bridge.

Idaho Department of Fish and Game are the logical beneficiaries of saving Hammer Flat, but the State of Idaho is often, at best, conflicted on the degree to which IFG should be involved in habitat and game protection. Four people from IFG, Ed Bottum, Al Van Vooren, and Eric Leitzinger not only understood what was at stake, but also went the extra mile to provide advice and assistance.

Joe Tarace asked the question that exposed the entry road issue. Absent that, STP's entire venture might have been for nothing. Be well Joe.

Ultimately, about 3,300 people, businesses, and agencies aligned themselves with, and supported, STP in one form or another. No one knows better than me that it took all of us to drive the point home. Among the most stalwart were Pete White, Rod Cashin, Dennis King, Joanne Pence, Judi Brawer, Chris & Michelle Cooper, Dave Spencer, Janet Crockett, Tracey Doyle, Jan Duffy and Annie Zior. Thank you all.

Reading land use code is one thing. Understanding how it is interpreted and applied is another. Getting a clear cold interpretation of the latter is critical. It should have come from Ada County Development Services staffers. Instead, it came from Bruce Eggleston at Boise City. Thank you Bruce for tolerating my slowness of uptake.

Deanna Smith, Greg Burak, Norman Nelson, and Al Van Vooren were willing to not only state their conclusions regarding the impact of The Cliffs on Hammer Flat, they were willing to do it on film. The benefit of the resulting video of their interviews that ran on TVTV once a month for about two years is immeasurable.

Hammer Flat could not have been saved without the coverage it got in the press. No one did a better job of capturing what was in play, and what was at stake, than did Amanda Peacher, a contributing writer then for the Boise Weekly. Amanda did not pick sides, but she did get it right. In the process she put Hammer Flat and STP on the map.

C. Preface

The place has many names. Some call it Hammer Flat after the 19th century horse breeder named Hammer who bought it from the federal government after the Feds stole it from the Indians. A 21st century real estate developer called it “The Cliffs” during his attempt to paper it with houses. The Ada County Commissioners and their lackeys in Development Services didn’t call it anything, as if it didn’t exist, at least as far as records of related deliberations and meetings with developers were concerned. The people who tried to save it simply referred to it as The Plateau.

From this plateau, from Hammer Flat, you can see Boise, Idaho’s capital city. If you look close, you can even see the state capitol building itself 10 miles to the northwest. To the southwest, you can see steam rising from the stacks of the Micron Technology microchip manufacturing plant. Thirty miles further south and west the Owyhee Mountains can be seen above the Snake River Plain. Hammer Flat has that in common with much of the Boise River Valley.

The thing that is not common compared to the rest of the valley, indeed compared to the rest of the state and nation, is the wildlife density. One day in the late winter of 2003, looking out over the plateau, the author counted over 900 head of deer, 70 head of elk, 25 antelope, a couple coyote, a few wild turkeys, several coveys

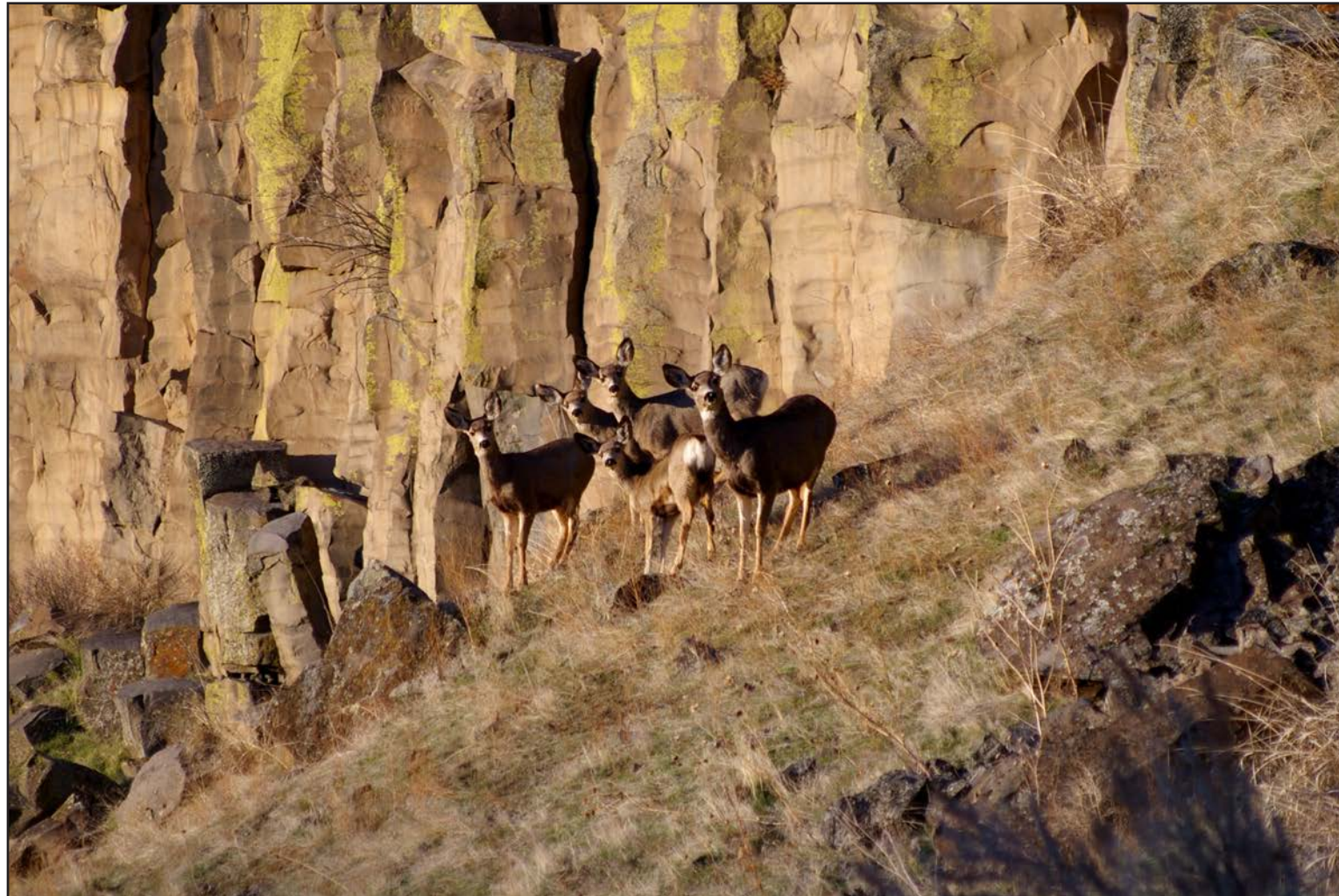
of quail and chukar, and 5 bald eagles. Sightings by others of wolves are rumored; visits by cougar and bear are fact.

When the neighboring state of Wyoming contemplated a piece of land with similar attributes, they turned it into a tourist magnet. Now known as the National Elk Refuge it provides critical winter habitat for thousands of elk, a spectacle that brings millions of dollars of tourist

income into the Jackson area year after year, and supports dozens of jobs.

Idaho residents pride themselves on their down-home common sense. However, where the town of Jackson saw an unending series of golden eggs delivered by eager tourists, an Idaho real estate developer, with the encouragement of the Ada County government, embarked on a plan to slaughter the goose.

There were social, political and economic reasons why the subdivision should not have gone forward. Urban sprawl, perhaps 10,000 more cars per day on the already overburdened historic Warm Springs Avenue, difficulties with fire protection, a major drain on the area’s water supply, minimal provision for basic retail services, and little or no chance that the project would build out in a bad housing economy all made the list.



However, the biggest argument against the subdivision by far was that there was nowhere else in the county, perhaps nowhere else in Idaho, where a single subdivision's negative impact on wildlife and the environment would have been more severe.

The true measure of a society is often measured not by what it builds, but rather by what it preserves. In a state and a city that waste no opportunity to extol their quality of life and the access to the outdoors, and in a County whose seal is a Bald Eagle soaring over a body of water, it seems careless, perhaps even absurd, to contemplate housing developments in areas that eliminate major Bald Eagle hunting areas and severely impact large numbers of big game and other species.

The Hammer Flat plateau was a terrible place to propose a subdivision.

Undaunted, surveyors drove their stakes. Preliminary plats were drawn, and secret discussions between Ada County Officials and the developers were held. The public was excluded when possible, ignored when it wasn't. Even other local governmental agencies, such as the City of Boise, were excluded. The developers and the Ada County Commissioners were blind to reason, and the law.

The combined actions of the Idaho Transportation Department, Ada County and the developer are a black spot on the history of Hammer Flat fully consistent with the manner in which it was stolen from the natives in the 1860s.

An unlikely community action group called SaveThePlateau.org rose up in an effort to preserve Hammer Flat as wildlife habitat. In less than a year they grew from little more than a hastily sketched concept to the largest contingent of people to ever oppose an Idaho real estate development. Ultimately, more than 3,500 people, businesses, and agencies aligned themselves with SaveThePlateau.org against the proposed development.

The developer's application made it all the way through the approval process on rails greased especially for the occasion. The developers bought what they needed in the way of land and consultants. Development Services and the Ada County Commissioners gave away everything they could in the form of development rights.

However, SaveThePlateau.org exposed a flaw. For all their money, their secret dealings, and forsaking of the public trust, the developer and the county failed to produce an essential item, an entry road.

The project, and the future of wildlife on Hammer Flat, ultimately hinged on the disposition of a small rock-strewn hillside the size of a few football fields owned by the State of Idaho. The developer depended on Idaho Transportation Department (ITD) letting them run their entrance road down and across the hillside, no strings attached. For five years, the developer relentlessly pressured ITD to grant them access. For the same five years, SaveThePlateau pressured ITD to adhere to state and federal guidelines that prohibited said access. When ITD finally concluded that giving unmitigated access to this land was impossible, The Cliffs' days were numbered.

It was that close.

Over the course of six years, the developer made false promises of future benefits to win-over gullible opponents. They tried to force less gullible opponents out of their homes and to get them fired from their jobs. Ada County staffers spied on SaveThePlateau.org (STP) meetings and relayed their findings to the developer. During the course of the hearings before the Ada County Commissioners the developer funneled STP correspondence to the commissioners and their staff with suggestions of how to counter our testimony. The three county commissioners were found guilty of violating open meeting laws for which at least one was voted from office. The director of Ada County Development Services and four of his staffers were fired. The bank whose loans funded the bulk of the project, in an effort to save their rapidly sinking financial ship, lost faith in the developers and threw them overboard. They recalled the developer's promissory note and sold it to Boise City, terminating the project.

It was that brutal.

Hammer Flat is now public property and will be managed by Idaho Department of Fish and Game for the benefit of wildlife as an extension of the Boise River Wildlife Management Area. In a superb example of governmental cooperation, the City bought the land and held it long enough for IFG to wrangle habitat mitigation funding from the Bonneville Power Administration. In a rare case of having their cake and getting to eat it too the city not only protected Hammer Flat as one of the best wildlife refuges in the nation but also managed to fully recharge the Foothills Levy to the tune of \$4.2 million. The money is desperately needed to continue funding open space purchases in the central and western Boise foothills.

The funding and commitment provided by the Foothills Levy and Boise City Mayor Dave Bieter, in conjunction with the Boise City council and the Foothills Open Space Committee,

was the foundation without which the final resolution could not have been achieved.

SaveThePlateau.org provided the spotlight of public scrutiny that ultimately forced ITD and others to adhere to their charters and protect public assets. When subsidies to the developer by Ada County and the State of Idaho failed to materialize, improper gifts of public assets the developer had come to expect, The Cliffs' financial house of cards came tumbling down.

The people of Boise, the Treasure Valley, and Idaho should be proud that the area is now protected. SaveThePlateau.org is honored to have been a part of saving this vital asset.

This is the story of what it looked like and how it felt to confront some of Idaho's largest governmental agencies and one of the state's largest real estate developers. This is the story of SaveThePlateau.org's campaign to save Hammer Flat.

Part 4, Postscript

1. No One Needed to Suffer

Back in 2005, before the project had been approved by Ada County, Boise City held a hearing for the purpose of extending its area of impact, and with it the Foothills Policy Plan, over Hammer Flat in an attempt to stop The Cliffs. The Cliff's attorney, Fred Mack, argued that the City's act would amount to reverse zoning and would constitute a taking. It was Fred's contention that the zoning of any property, and therefore the development rights, were what-



ever the owner thought they should be on the day a developer purchases property.

As an attorney, you do what you can for your client but Mr. Mack’s argument was ludicrous on its face. The city didn’t buy it.

Ada County was the one that made that mistake.

The fundamental concept behind zoning regulations is to guide development for the greater benefit of the community. The idea is to help businesses and individuals make sound real estate investments by diminishing some of the uncertainty and thereby reducing risk. Zoning laws tell investors that, if they buy land in certain areas, they can expect to be granted permission to build projects that are consistent with those zones. Conversely, if a person invests in land, they expect to be protected from builders who desire to make conflicting uses of land in the zone.

In the absence of rules governing the location of types of development, and the enforcement of those rules, chaos reigns and risk soars. People and businesses suffer if there is no way of knowing what can and cannot be constructed before property is purchased. Truly, if there is a poster child of unintended consequences The Cliff’s application is it.

The commissioners appeared determined to aid any and all developers in rural Ada County, regardless of how the land was zoned. They did this, apparently, for no better reason than many of these developments were opposed by Boise City, the mayor of which was of the opposing political party.

As for development in the foothills, the extremely popular Foothills Policy Plan had been a fully funded, functional program since March of 2001. It specifically called for open space preservation in the Eastern Foothills. It all but mentioned Hammer Flat by name. By encouraging developments such as The Cliffs, the Ada County Commissioners seemed intent on scrapping the Foothills Policy Plan, not just for themselves but for all the other agencies as well. They seemed intent on thwarting the preservation of wildlife habitat in the eastern foothills.

The logical political move is to do things that most people have already indicated they prefer. Instead, in the face of the majority of Ada County voters who had supported the Foot-

hills Levy, and contrary to the largest opposition group in the history of Idaho real estate development, the three then sitting Ada County commissioners picked up open meeting law violations for which all were politically damaged and at least one got voted out of office. Five Ada County Development Services staffers were fired, seemingly for following the commissioner’s unpopular orders, and the development went bankrupt. The cloud of bankruptcy passed within millimeters of the developer’s prime lender and this author as well.

The foregoing list is not presented in the form of a boast. The damage was neither intended nor pleasant. Injury only causes unneeded anger and perpetuates useless division. It is common sense and understanding that is needed to help societies pull toward common goals.

At the same time, the list presents no cause for embarrassment for activists such as STP. When threatened, it is only natural for people to protect themselves and things they love. The reason for documenting all the carnage is that it helps illustrate a much bigger, much more important point;

It didn’t have to be this way. No one needed to suffer.

If the county had codified the Foothills Policy Plan, or even codified and enforced a real comprehensive plan, there is an excellent chance that the Johnson’s would not have purchased Hammer Flat. They would likely have never submitted the application for The Cliffs. Opposition in the form of SaveThePlateau.org would not have materialized and none of the carnage would have ensued. SaveThePlateau.org would not have formed because it would not have been needed.

My recommendation, my plea, to City and County governments everywhere is this;

- Develop sound Comprehensive Plans.
- Write them into Code.
- Enforce the Code,
 - Firmly,
 - Fairly,
 - Consistently.

The Rule of Law is a good rule.

