

BLAINE COUNTY HEARING EXAMINER

Public Hearing on September 29, and **November 17, 2022, January 5, 2023 at 6:30 P.M.**

REGARDING THE APPLICATION OF: Indian Creek Ranch Owners Association (ICROA) for a Wetlands Conditional Use Permit.	Staff Report By: Rachel Martin Date: September 29, November 17, 2022, and January 5, 2023. New comments in red.
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REQUESTED ACTION: A public hearing and consideration of an application by Indian Creek Ranch Owners Association for a Wetland Conditional Use Permit. Proposed activities include disturbing 880 square feet of wetland for improvement of Lemhi Drive, a platted private road. The property is zoned Rural Residential (R-10), Wetland Overlay District (WE), Mountain Overlay District (MOD) and is located within Indian Creek Ranches No 1.

PROPERTY OWNERS/APPLICANTS: Indian Creek Ranch Owners Assoc.

REPRESENTATIVES: Opal Engineering PLLC, Samantha Stahlnecker PE, Trent Stumph, Sawtooth Environmental Consulting

PROPERTY LOCATION: Lemhi Drive, Indian Creek Ranches 1, Blaine County

APPLICABLE REGULATIONS: Title 9 (Zoning Regulations): Chapters 6, 19, 21, 25 and 33
Title 8 (Comprehensive Plan): Chapter 5, C-9

I. APPLICATION, NOTICE, EXHIBITS & GENERAL FACTS

- 1. Notice:** Public notice for this application was as follows:
 - A. Legal notice was published in the Idaho Mountain Express on September 14, 2022;
 - B. Notice was mailed on September 12, 2022 to all Blaine County political subdivisions;
 - C. Notice was mailed on September 12, 2022 to surrounding landowners within 300’ of the exterior boundaries;
 - D. An on-site notice was posted on/by September 22, 2022, at least seven days prior to the public hearing as evidenced by affidavit on file.

The September 29 hearing was continued. Public notice for the November 17, 2022, hearing was as follows:

- 2. Notice:** Public notice for this application was as follows:
 - A. Legal notice was published in the Idaho Mountain Express on November 2, 2022;
 - B. Notice was mailed on October 31, 2022 to all Blaine County political subdivisions;
 - C. Notice was mailed on October 31, 2022 to surrounding landowners within 300’ of the exterior boundaries;
 - D. An on-site notice was posted on/by November 7, 2022, at least seven days prior to the public hearing as evidenced by affidavit on file.

Pursuant to Idaho Code §67-6512 and Blaine County Zoning Ordinance regulations, the Hearing Examiner shall review the above notice procedures and make a finding as to compliance.

► **Hearing Examiner’s Finding as to Notice:** _____

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

4. Exhibits: Attached to this report are the following exhibits:

All application materials were received on March 3rd, 2022 unless indicated otherwise.

A-1: Conditional Use Permit Application

A-2: Road Plan, Received December 16, 2022

A-3: Response to CUP Standards

A-4: Preliminary Jurisdictional Wetland Delineation, Sawtooth Environmental, August 18, 2021

A-5: Vicinity Map

A-6: Lemhi Drive Revised Road Plans, Received November 2, 2022

A-7: Riparian Wetland Management Plan, Received November 2, 2022

A-8: Geotechnical Report, Received November 2, 2022

A-9: Letter from Opal Engineering, September 29, 2022

A-10: Opal Engineering response to County Engineer Comments, December 29, 2022

Exhibit B—Agency Comments

B-1: Department of the Army (USACE)- ACOE Permit NWW-2022-00083, May 31, 2022

B-2: Blaine County Engineer Review 4-11-2022, and Applicant Comments Response, July 28, 2022

B-3: Idaho Department of Environmental Quality, 401 Water Quality Certification, May 12, 2022

B-4: Jeff Loomis Email September 29, 2022

B-5: Mike Elle Email August 5, 2022

B-6: Jeff Loomis Review of New Material November 17, 2022

Exhibit C—Supplemental Exhibits

C-1: GIS Aerial

C-2: Indian Creek Ranches No. 1 Plat

Exhibit D—Public Comments

D-1: David Schames, September 22, 2022

5. Project Summary

The applicant is proposing to improve Lemhi Drive to Fire Code standards, to access undeveloped platted lots. The platted road area bisects the wetlands. An unimproved road currently exists in the location of the proposed improvements however in its current state, fire access is not possible.

The private road is platted on the Indian Creek no. 1 plat recorded August 22nd 1972, Instrument number 145098. This platted portion of Lemhi Drive is a 60-foot private roadway (originally named Blackfoot Drive). It runs parallel to Indian Creek Road and is the only access to lots 12, 13, 14 and 17. The proposed roadway would cross the existing jurisdictional wetland and extend to the driveway of Lot 17.

The road is also entirely within the Mountain Overlay District. A Categorical Exclusion is currently in process with the Land Use Department.

The applicant is proposing to impact 880 square feet of delineated wetland. 15 cubic yards of fill will be used accommodate the road improvements (Exhibit B-1: Department of the Army (USACE)- ACOE Permit NWW-2022-00083). The new road will have a 20-foot-wide road surface with one passing lane and a fire apparatus turn around; see [Exhibit A-6: Lemhi Drive Revised Road Plans, Received November 2, 2022](#). The applicant proposes to remove vegetation, organics and top soil within the identified roadway alignment, import and place roadway fill materials. Engineered drainage profiles will be constructed in appropriate locations to maintain drainage. All disturbed areas will be reclaimed and revegetated with native grass, forb and native species, stabilized bare soils and associated fill slopes with broadcast hydro-seed applications. Reclamation applications will occur as soon as the proposed construction activities are complete [Exhibit A-7: Riparian Wetland Management Plan, Received November 2, 2022](#).

II. WETLAND CONDITIONAL USE PERMIT APPLICATION Blaine County Code §9-19
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9-19-1: PURPOSE:

The purpose of this district is to identify and protect those lands in the county characterized by marshes, sloughs, poorly drained soils, a high water table or which are covered by natural nonfloodwaters during a significant portion of the year. These lands should be protected from harmful land uses because of their value for fish and waterfowl habitat, for grazing and for stabilizing fluctuations in water levels.

► **Staff Comment:** The applicant is proposing to improve an existing platted roadway. The application does not change the use of the private residential road. This wetland area has been described as an important habitat in The Sawtooth Environmental report, Exhibit (A3). The proposed improvement would keep traffic on the roadway and not in the wetland area.

9-19-2: DEFINITIONS:

The following definition applies to the wetlands overlay district:

WETLANDS: Those areas of Blaine County that are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and which may support both aquatic and terrestrial species. Wetlands generally include swamps, marshes, bogs and similar areas (Army Corps of Engineers regulation, 33 CFR, 328.3, 1988) and tend to be found in transitional areas between dry land and water where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands, for the purpose of this classification, means an area where three (3) of the following attributes, as defined in the current and future amended editions of "The Federal Manual for Identifying and Delineating Jurisdictional Wetlands" exist: a) hydrophytic vegetation, b) hydric soils, and c) wetland hydrology.

9-19-4: PERMITTED USES:

The purpose of this section is to permit the type of activities that can enhance wetlands function and not allow uses that may impede wetlands function. The following uses shall be permitted:

A. *The planting of native riparian vegetation with hand equipment (see definition of "hand equipment" in section [9-17-5](#) of this title).*

B. *Agricultural purposes on lands used primarily for agriculture.*

C. *Maintenance of yardscape existing at the time of passage hereof.*

D. *Activities operating in accordance with a County approved permit. (Ord. 2006-18, 11-2-2006)*

► **Staff Comment:** This road improvement qualifies for D. due to previous platting and this Conditional Use Permit.

9-19-5: CONDITIONAL USES:

A. *Disturbance to wetlands and Geographically Isolated Wetlands or within the wetlands or Geographically Isolated Wetlands setback, including driveway crossing or installation of utilities leading to a building site, which are not reasonably feasible elsewhere on the property, shall comply with the requirements of this chapter and all other County, State and Federal requirements. The amount of land disturbance shall be minimized to the smallest area possible.*

► **Staff Comment:** Road construction, improvements and upgrades, are not listed as a permitted use and therefore a Conditional Use Permit is appropriate. The applicants are minimizing the area of disturbance for this previously platted roadway, which is "not reasonably feasible elsewhere."

9-19-6: DEVELOPMENT STANDARDS:

The following standards shall apply within the wetlands overlay district:

A. *No Disturbance In Wetlands and Geographically Isolated Wetlands Or Wetlands and Geographically Isolated Wetlands Setbacks: Except as provided in sections [9-19-4](#) and [9-19-5](#) of this chapter, no disturbance of land shall be allowed within the wetlands or wetlands setbacks described in subsection B of this section, including, but not limited to, dumping, filling, dredging, new construction, excavating, substantial improvements or modifications, installation of septic systems, scraping by motorized equipment, removal of vegetation or root systems, or transferring materials that will reduce the natural storage capacity of the land or interfere with the natural flow pattern of any watercourse or degrade the quality of surface or ground water.*

► **County Engineer Comment:** Details for the proposed stormwater runoff collection and discharge devices (catch basins?), including runoff collected behind the proposed retaining wall in a 4" perforated pipe, are not indicated with this application. The applicant may want to consider revisions to, or more details of, the proposed road section to include stormwater runoff collection and discharge for the "uphill side" of the road and for the discharge of runoff onto the "downhill" slopes. Erosion control measures should be considered for anticipated stormwater runoff flows in road side ditches, stormwater discharge locations, and disturbed slopes. Also, I suggest some conveyance of water and debris under the road in the location of the existing drainage gulch (around STA 7+50 +/-) be considered. This may increase the impacts to existing wetlands indicated in the application. Exhibit B-2: Blaine County Engineer Review 4- and Applicant Comments Response

► **Staff Comment:** This standard allows for disturbance in wetlands and wetland setbacks “as provided in sections 9-19-4 and 9-19-5...” As noted under 9-19-5.A above, the application attempts to minimize the area of disturbance to the extent possible. However, in order to improve the road to fire district standards, the proposed road construction will cause substantial disturbance within the wetland and will require heavy machinery. The 880 square foot area of disturbance is indicated on the site plan **Exhibit A-6: Lemhi Drive Revised Road Plans, Received November 2, 2022**, Received September 13, 2022. The applicant has proposed to remove vegetation, organics, and topsoil within the identified roadway and import and place roadway fill materials. The 20 feet wide roadway is entirely contained within the 60 foot platted roadway of Indian Creek Ranches No. 1. Some fill will be required to widen the roadway to 20’ in the wetland.

The new Road Plan Exhibit A-6: Lemhi Drive Revised Road Plans, Received November 2, 2022 indicates the same amount of wetland disturbance, 880 sq ft. New is a confirmation from Steve Butler in the Geotech Report that bedrock can be used as retainage. Because of this, the retaining wall has been removed from the plan. Butler confirms that the site is suitable for the road improvements in the plan. See test pit locations on page 9 of Exhibit A-8: Geotechnical Report, Received November 2, 2022.

Suggested Condition: Silt fencing shall be placed prior to construction. Drainage and storm water calculations to be approved by the County Engineer.

Possible Conditions: 10. Retain Butler Associates Inc. to observe preparations and construction of Lemhi Road.

11. Implement best management practices 1 through 8 of the Wetland Mitigation Plan, dated October, 2022.

B. Wetlands and Geographically Isolated Wetlands Setback: Any development excepting, development within a designated building envelope, within this district shall be subject to a minimum setback of twenty five feet (25'), as measured from the edge of any delineated wetland, outside of a riparian setback, and consisting of an area larger than twenty five (25) square feet. Platted or recognized lots of record under two (2) acres shall be subject to a ten foot (10') minimum setback, as measured from the edge of any delineated wetland, outside of a riparian setback.

► **Staff Comment:** The improvement area is within a platted roadway on the Indian Creek Ranches No. 1 plat. The improvements run through the jurisdictional wetland and will require replanting of disturbed areas. A culvert will run beneath the road to maintain the wetland on the downhill slope.

C. In A-20 And A-40 Districts: ...

► **Staff Comment:** Not applicable. The subject property is within the R-10 zoning district.

D. More Restrictive Setbacks: More restrictive setbacks may be imposed through the subdivision review and conditional use process if site conditions or protection of natural resources so warrant.

► **Staff Comment:** N/A. Stricter setbacks do not apply to roadway.

E. Variance: When application of this chapter would deny reasonable use of property, an applicant may seek an exception from the standards and requirements of this chapter by means of a variance as provided in chapter 30 of this title.

▶ **Staff Comment:** N/A - a variance is not requested.

III. 9-25-3: STANDARDS FOR EVALUATION:

A. Review: The commission or the board (or hearing examiner) shall review the particular facts and circumstances of each proposed conditional use in the terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

1. Will, in fact, constitute a conditional use as established for the zoning district involved;

▶ **Staff Comment:** The application requires a Conditional Use Permit pursuant to §9-19-5A.

2. Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or this title;

▶ **Staff Comment:** Chapter 5: Natural Environment; Desired Outcomes; C. Local Regulations; Policy Statements:

C-9: Wetlands Overlay District

a. Continue the emphasis on wetlands protection, including no net loss of wetlands. Keep abreast of potential regulatory changes. Review and clarify existing provisions and consider feasibility of new requirements.

b. Understand and clarify when site-specific wetland delineation studies are needed for land use proposals.

Suggested Condition: The applicant will restore wetlands damaged by improvements to Lemhi Drive.

3. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;

▶ **Staff Comment:** The underlying zoning is Rural Residential (R-10; Title 9, Chapter 6) with a minimum lot area of 10 acres or 1 unit per 10 acres. Improvement to Lemhi Drive is required for fire access necessary for residential use of lots 12,13,14 and 17. The applicant will revegetate any disturbed wetland and surrounding area to maintain natural features. See suggested condition of approval numbers 4-7.

▶ **Applicant's Comment:** Existing uses in the general vicinity are residential. Proposed road improvement is to serve existing platted residential lots.

4. Will not be hazardous or disturbing to existing or future neighboring uses;

▶ **Staff Comment:** No hazards anticipated.

Suggested Condition: Compliance with all conditions listed within the Army Core of Engineers Permit # NWW-2022-00083.

5. *Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;*

► **Staff Comment:** The purpose of the road improvements are to bring Lemhi Drive to fire district standards, thereby improving public services including police & fire protection. Existing platted lots accessed by the improved Lemhi Drive will be served adequately by public facilities and services. Lemhi Drive is a private road and will be maintained by the Indian Creek Ranches Owners Association.

6. *Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;*

► **Staff Comment:** No anticipated excessive public cost for a private road use at this location.

7. *Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, dust, odors, vibration, water pollution or safety hazards. Water pollution includes impact to surface and ground water and potable water sources. 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 commission shall consider the impact of the project on potable water sources and determine whether there is sufficient information in the record to demonstrate that the project has been designed to mitigate adverse impact to potable water source(s);*

► **Staff Comment:** Dust will be an issue during construction of the road. The applicant should address dust abatement plans at the public hearing. If approved, excavated material that remains on-site as shown in the plans should be revegetated as soon as possible to prevent the growth of noxious weeds and maintain slope stability. See suggested conditions 4, 6 and 8.

Suggested Condition: No excavated material may be deposited with the Mountain Overlay District of Blaine County without prior permitting.

8. *Will have vehicular approaches to the property which shall be designed as not to create an interference with traffic on surrounding public thoroughfares;*

► **Staff Comment:** N/A. Not a driveway. Both Bannock Dr and Lemhi Dr are private.

9. *Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance; and*

► **Staff Comment:** See the conditions of approval beginning on page 4 of Exhibit B-1: ACOE Permit approval. These conditions also include details that are described within the mitigation plan (Exhibit A-5) for BMP's, specific project details, construction standards, monitoring, deed restriction, and recommends a security agreement be completed by the landowner and Blaine County to ensure success of project design.

Suggested Condition: The landowner shall post a financial security to ensure the implementation and establishment of the approved wetland mitigation plan. A financial security in the amount of 150% of the estimated cost of the approved revegetation plan as approved by Blaine County shall be held for a period of up to four years

10. If the applicant or landowner with respect to an application for a conditional use 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.

► **Staff Comment:** N/A; the applicant is Indian Creek Ranches Owners Association not the state of Idaho, or any agency, board, department, institution, or district thereof.

B. *Additional Standards: Additional standards for applications for a conditional use permit in the Floodplain Overlay District are set forth in section [9-17-9](#) of this title.*

► **Staff Comment:** All work proposed is within the Mountain Overlay District and must comply with Chapter 21 standards. The Applicant has applied for a MOD Categorical Exclusion.

IV. Decision and Conditions

► **Motion:** *Having considered the evidence in the record the Hearing Examiner hereby (approves with conditions/or denies) this application by Indian Creek Ranch Homeowners Association for a Wetland Conditional Use Permit located at Lemhi Drive, as discussed at this public hearing subject to the following conditions.*

Pursuant to Zoning Ordinance §9-33-8, the Hearing Examiner shall enter an order approving, conditionally approving, or disapproving an application within fourteen (14) days after conclusion of the public hearing together with the reasons therefore. The public hearing on this application is set for Thursday June 4, 2020.

Any approval or denial of this application will be based upon the information provided as part of this application and upon any additional information which may be provided before or during the scheduled public hearing.

The Hearing Examiner shall also, pursuant to Zoning Ordinance §9-33-8, attach conditions to the approval as deemed necessary to protect the rights and the general welfare of all affected property owners.

Approval or denial of this application may be conditioned upon the following conditions, among others:

Possible Conditions of Approval

1. *Applicant shall comply with all applicable zoning, building, fire and health district regulations.*

2. *Any modifications to the plans or approved uses shall require further zoning review, and may be subject to additional regulations pursuant to the Blaine County Zoning Ordinance and/or federal permitting.*
3. *All work and disturbance proposed within the Mountain Overlay District shall obtain necessary permitting from Blaine County.*
4. *The landowner shall post a financial security to ensure the implementation and establishment of the approved wetland mitigation plan. A financial security shall be collected, in the amount of 150% of the estimated cost of the proposed re-vegetation plan approved by Blaine County. The plan shall include specific wetland plant or seed species proposed, a site plan depicting revegetation area and what to be planted in each location, a timeline for revegetation work, weed mitigation plan, & a 3-5 year timeframe for establishment.*
5. *Silt fencing shall be placed prior to construction on the edge of wetland of disturbance and as indicated on the site plan.*
6. *The applicant will restore wetlands damaged by improvements to Lemhi Drive.*
7. *Compliance with all conditions listed within the ACOE Permit NWW-2022-00083.*
8. *No excavated material may be deposited within the Mountain Overlay District of Blaine County without prior permitting.*
9. *Dust abatement plan shall be approved by staff prior to construction*
10. *Retain Butler Associates Inc. to observe preparations and construction of Lemhi Road, dated October 31, 2022.*
11. *Implement best management practices 1 through 8 of the Wetland Mitigation Plan, dated October, 2022.*

The final Findings of Fact, Decision, and Conditions of the Hearing Examiner may be appealed to the Board of County Commissioners in the manner prescribed by Chapter 32 of the Blaine County Zoning Ordinance, specifically within twenty (20) days of the issuance of the Findings of Fact, Decision, and Conditions.

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