

BLAINE COUNTY PLANNING AND ZONING COMMISSION

Public Hearing Date: March 30, 2023

REGARDING THE APPLICATION OF:

A Mountain Overlay District (MOD) Site Alteration by the Indian Creek Homeowners' Assoc. (ICRHOA) to upgrade Lemhi Dr. to private road standards.	Staff Report Tom Bergin March 24, 2023
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Requested Action: Public hearing and consideration of a Mountain Overlay District (MOD) Site Alteration permit application by the Indian Creek Homeowners' Association (ICRHOA), holder of a Lemhi Drive Right of Way easement, for a Mountain Overlay Site Alteration Permit to improve Lemhi Drive, a platted private road, with disturbance and revegetation proposed outside of the platted easement. 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

Representatives: Sam Stahlnecker, Opal Engineering & Dennis Kavanagh, Indian Ck. Homeowners' Assoc. (HOA)

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. This is why the county sees very few Indian Ck. MOD applications. In this case though, the HOA is the applicant and cannot review its own project.

Lemhi Drive, a minimally graded, two-track road, is the sole platted access to the Indian Ck. Ranch Lots at 110 (Lot 12), 113 (Lot 17) and 114 (Lot 13) Lemhi Dr. Ranch Lots at 105 Bannock (Lot 15) and 109 Lemhi (Lot 14) have frontage on both Bannock and Lemhi Dr. Both roads are private. Bannock is maintained by the HOA. Lemhi will be as well presumably. The Planning and Zoning Commission issued a Mountain Overlay District Site Alteration Permit last October for a new house at 113 Lemhi or the lot at the end of this road. As a result, the entire length of Lemhi Dr. (about 3/10th of a mile) must be improved to private road standards before construction of the house can begin. See Condition of Approval #1. As a platted lot, this access is almost invariably provided by the subdivision developer or a successor. For unknown reasons, it was not constructed by the original developer. This may have been due to the obvious challenges, and thus cost, of such a road project.

Summary of Issues:

- 1) The access to the lot at the end of the road and the three, if not six, lots that front on Lemhi Dr. are entitled to access. The Indian Ck. plat with Lemhi Dr. shown as a 60' access easement ensures that. Accordingly, the question is not whether Lemhi Dr. is constructed but how.
- 2) The initial "how" focus is the road location on the slope.
- 3) The second location issue is the width of the road. Smaller is better because it results in less cut and fill, less disturbance that needs to be rehabilitated. The width, though, is primarily dictated by the county's fire code. That code (Ch. 5, Section 503 & Appendix D) requires a 20-foot width. The design is consistent with that requirement but a 20-foot road will require significant cut and fill and will result in significant excess material.
- 4) One final component of this width issue is the proposed fire access turn-arounds.
- 5) One way to minimize the extent of the cut and fill is to utilize retaining walls above or below the road travel surface.
- 6) The next, "how" question is steepness of the grade. Again, the fire code defines the allowable steepness of the grade here. (Appendix D, Section D103)
- 7) If the various locational aspects of the road are acceptable and the extent of any retaining walls is also considered acceptable, the next question is whether the excess fill should be exported off the site or incorporated, to the extent needed and acceptable, into the development of the adjacent lot.
- 8) Whatever the extent of the disturbance ends up being, all of it shall be revegetated.

Section I. General Facts

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. (i.e.: 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.

1. The Planning Office received a MOD Categorical Exclusion Application last March. That administrative option for processing the type of application was denied in December as responsibility for the road construction costs was being mediated between the HOA and at least two of the adjacent lot owners. Due to the scope and breadth of this road construction project, the administrator determined that a site alteration permit is the appropriate process and permit.
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 ??, 2023, and to all county political subdivisions on March ??, 2023;
 - c) An on-site notice was posted on March ??, 2023 at least 7 days prior to hearing as evidenced by the affidavit in file;
 - d) Though not part of the above requirements, 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 March 30, 2023 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 attached hereto or by reference and are the extend of the public record on this application:

A Exhibits- Application

A-1: MOD Categorical Exclusion Application dated March, 2022

(Note:

A-2: Plan Set received 11-2-2022:

CO1: Cover Sheet & Details

CO.2: Stormwater Calculations

C1.0: Road Plan & Profile: Begin to STA 7.0

C1.1: Road Plan & Profile: STA 7.0 to 13.0

C1.2: Road Plan & Profile: STA 13.0 to End

C2.0: Erosion control Plan

A-3: Butler Associates Geotechnical Report; revised received 10-31-2022 (Pgs. 1 – 6 & 9 included in P&Z packets. The whole report including the balance through pg. 15 available with web page materials and on-file in the record).

B Exhibits- Agency Comments

B-1: Jeff Loomis, County Engineer comments; dated 11-17-2022

(Note: these comments relate to both the road generally and the wetland crossing. The wetland crossing was addressed in a separate CUP.)

B-2: Wood River Fire & Rescue comment letter; dated 3-4-2022

C Exhibits- Blaine County Supplements:

C-1: Photos of the project vicinity (to be posted and distributed)

D Exhibits- Pubic Comment:

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**

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 Comment: Relocating or realigning this road to a location outside the Mountain Overlay District and still accessing all the platted lots fronting it is not possible. Relocating or realigning this road in any meaningful way to a location that minimizes the 3/10th of a mile that it runs through the Mountain Overlay District does not seem to be a viable option in this situation either.

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.*

Staff Comment: Lemhi Dr. is visible from Indian Ck. Rd., a reference road. There are a number of issues related to the siting and design of this road. They are addressed initially. To conclude, landscaping or restoration and revegetation are addressed.

As mentioned, the question is not whether but how this road is constructed. The initial "how" focus is the location on the slope. Those who designed and bladed a road in the early 1970s did a reasonable job locating it on the slope. The initial road and gradualness of its grade appears to confirm that it is essentially where it should be in order to reasonable safely access these elevated lots. An easement was established crossing four lots (Lots 11 – 14) for this purpose. Given the easement, general acceptability of the location on the slope and the fact that the road is mostly centered within that easement, there is very little opportunity to shift that location. Where it is not close to the center or land is needed for cut or fill, the adjacent land is either owned by the applicant HOA or the adjacent landowners will need to provide an easement or some other type of permission for this purpose.

The second location issue is the width of the road. Smaller is better because it results in less cut and fill, less disturbance needing rehabilitation. The width, though, is primarily dictated by the county's fire code. As mentioned, that code (Ch. 5, Section 503 & Appendix D) requires a 20-foot width. The design is consistent with that requirement, but a 20-foot road plus shoulders will require significant cut and fill and will result in significant excess material. Is there any viable alternative? The applicant has stated that they have explored options (and cost saving measures) with the Wood River Rural Fire District, but no alternatives to this extensive Mountain Overlay disturbance has been identified. Guardrails are utilized along one stretch to reduce the shoulder from 5' to 2'. At the Turner/Castle project in Cold Springs Canyon behind the hospital which is about the same length as this project, guardrails were employed along about 30% of that access to address safety concerns. They have the added benefit of reducing the width of the downslope shoulder and thus the amount of cut and fill.

One final component of this width issue is the proposed fire access turn-arounds. They should be located on ground as flat as possible to minimize the extent of the fill needed to create a turn around on steep slopes. That means any turn-around needed for acceptable access to 113 Lemhi should be located close to any proposed house which in the case of Lot 17 would locate it on the flatter ground that exists closer to the house and not on the steeper slopes that are off that lot.

This project will be the largest MOD disturbance since Owl Rock Rd. was constructed over 30 years ago. One way to minimize the extent of the cut and fill is to utilize retaining walls above or below the road travel surface. No retaining walls are shown on the site plan, but the plan (see Note 23 on Sheet CO.1) says that "small sections of bedrock will be exposed during the winter of 2022-2023 to determine long-term stability of bedrock. If geotechnical engineer find bedrock to be unstable in Spring 2023, owner will provide Blaine County with revised drawing as necessary." Has this occurred? Is long term stability thought to be necessary above the hairpin where the most extensive cut is proposed? Retaining walls may remain visible in the long term. That is a consideration when evaluating eventual revegetation and the long-range impacts of this project.

The next, "how" question is the steepness of the road grade. Fire Code requirements apply here as well. The one hairpin corner can be no more than 7% and it is well below that. The more or less straight sections can be no more than 10%. This proposed road meets that standard and generally follows the grade established 50 years ago. To reduce the cut at the upper end, why can't areas of 7% grade be increased to 10% along this whole stretch? No other alternatives have been identified. The extent of the disturbance to the wetlands and seasonal drainage at the corner have been permitted via a wetlands CUP issued by the hearing examiner in January. From the wetlands identified on the site map for the 109 Lemhi Dr. project, it appears that there is further intrusion adjacent to Station 5, this area was not addressed in the previously issued CUP. Rather than return to the Hearing Examiner, The P&Z can address that issue here

If the various locational aspects of the road are acceptable and the extent of any retaining walls or guardrails are also considered acceptable, the next question is whether the excess fill should be exported off the site or incorporated, to the extent needed and acceptable, into the develop of the adjacent Lot #14. Not exporting it will save the HOA money. Moving it to the adjacent lot will considerably expand the extent of the disturbance on this hillside. It appears that about 30% of that adjacent lot will be disturbed.

Whatever the extent of the disturbance ends up being, all of it shall be revegetated with native or native-compatible vegetation and in a manner that blends harmoniously with the surrounding area, and does not create excessive contrast with the surrounding sage-covered hillsides. This revegetation shall be financially guaranteed at 150% of the cost of the installation. Does any water exist to help ensure its survival?

3. *Site alterations for property protection and hillside stabilization and rehabilitation due to natural circumstances may be permitted, if the applicant can demonstrate and a licensed engineer certifies that the site alterations are designed to remedy a substantial threat of significant damage to permanent structures. Natural circumstances are limited to the following natural hazard circumstances: postfire and postfire debris flows or landslides and post-flood.*

Staff Comment: This alteration is not a result of natural circumstances, such as a landslide or debris flow, that threaten property or are necessary to stabilize or rehabilitate this hillside.

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.*

Staff Comment: Sheet C2.0 sets out erosion control measures during construction. It says that perimeter erosion and sediment control are set out on Sheet 3.0, but that sheet is not included with the packet. Two measures are listed at the bottom of that sheet for erosion and sediment control after construction. They address maintenance of the installed storm drainage infrastructure removal upon re-establishment of vegetation. Reseeding and mulch, it says, shall be in accordance with "landowners landscaping plan." We have a landscaping plan for Lot 14 and the area disturbed with fill on a smaller portion of Lot 15. However, outside of the wetlands restoration plans, no other plans are included for disturbance on the other two private lots or the HOA open space parcel. At a minimum and as the criteria requires, "all excavation, grading and fill shall be revegetated and otherwise stabilized to control erosion." A financial guarantee up to 150% of the estimated cost will be necessary.

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

Staff Comment: No areas of avalanche hazard are identified. Given the platted lot locations, the access easement location, the existing road cut, and the required grades, realigning the road to avoid or minimize any avalanche risk does not appear to be much of an option. In other instances where an access traverses avalanche risk areas and significant realignment was not realistic, warning signs were required when risk areas were entered.

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.*

Staff Comment: While the road is technically a "structure" under the county's definitions, it is not likely the type of structure contemplated in this instance. Regardless, this road will not be elevated in such a way to skyline or create a silhouette against the sky from Indian Ck. Rd., 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.*

Staff Comment: Typically and especially in a highly visible location, if “fill activities shall conform as closely as possible to the natural terrain, excess material is exported off the site rather than spread further within the Mountain Overlay District. Such a typical requirement is an option here. Alternatively, the neighboring lot owner wishes to develop their lot (see the companion application for review on March 30th) and wishes to take some or all of this fill material. Whether fill stays or is exported, will depend on the outcome of at least components of that application.

Per this criteria, hillside roads shall meet all applicable road or driveway standards including, but not limited to, those for grades and emergency vehicles. Driveway standards are mentioned because once the access goes past Lot 14, this access is only to one house and thus is technically only a “driveway.” This does impact the extend of the regulations involved. The county’s private road standards do not apply. However, emergency vehicle standards continue to apply and are the source the width and grade requirements that will so significantly scar this hillside. Impacts to the natural drainage are primarily addressed in the wetlands permit that has already been issued. However, during that process, a neighboring landowner alerted the county of a concern with the size of the culvert in Bannock Dr. With the possibility of additional water draining from an expanded roadway, this concern needs further attention.

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.

Staff Comment: A weed control plan is needed to demonstrate long term control along the length and breadth of this project. Revegetation installation shall be completed by the end of the fall of the year in which it is commenced. A financial guarantee shall be provided for up to five years to ensure re-establishment. For other access road projects, stabilizing, low combustible and native or native compatible plant species shall be used. Sage is typical on these hillsides and thus, except for close to the travel surface, shall be incorporated into any seed mix.

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.

Staff Comment: This criteria is only applicable to a hillside residence or other building and thus is largely irrelevant to this application. Any retaining walls would be structures. They should be stacked no higher than necessary and colored to minimize their visibility from any reference road, i.e. Indian CK. Rd.

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

Staff Comment: No lighting is proposed along this access or any of the retaining walls bordering it.

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.*

Staff Comment: This access has been designed to meet fire code width and other fire code requirements. No building code requirements apply unless a retaining wall is installed and exceeds six feet

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

Staff Comment: All the lots along Lemhi Dr. were lawfully approved under whatever form of Title 10 that existed in the early 1970s. At this point, only one building has been approved under this title. That building at 113 Lemhi was permitted under this title and these site alteration permit regulations last October. It has not yet been issued a building permit under Title 7. No other building sites have been approved. A road, at least part of the way, and then a driveway is necessary to access 113 Lemhi.

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.*

Staff Comment: Because the Dept. of Land owns a lot that is at the mouth of this drainage, they will be notified of this hearing and have an opportunity to identify any state plans and needs related to this application.

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.*

Staff Comment: The homes in Indian Ck. have individual wells. To protect the quality of those wells, the minimum setbacks from the small intermittent stream channel (25 feet) and adjacent wetlands (25 feet) shall be observed as well as other practices to avoid any altered soils from washing or eroding downslope or near any well or water source.

9-21-5(E) *Conditions [for reference]: The commission may attach reasonable conditions upon granting a site alteration permit, including, but not limited to:*

1. Providing bonding or other sufficient financial guarantee to complete the site alteration; at a minimum, the revegetation of disturbed areas, including weed control, and new vegetation or landscaping proposed to minimize the visibility of the project on the hillside shall be financially guaranteed at one hundred fifty percent (150%) of the estimated cost for five (5) growing seasons;

2. Modification of the property development or site alteration;

3. Providing road design modifications to avoid undue scarring;

4. Further mitigation of visibility not included on the application; and/or

5. Any other condition . . . to:
 - a) minimizing adverse impact on other development;
 - b) controlling the sequence and timing of development;
 - c) controlling the duration of development;
 - d) assuring that development is maintained properly;
 - e) designating the exact location and nature of development;
 - f) requiring specific on site or off-site public facilities or services;
 - g) requiring more restrictive standards than those generally required in this title; and
 - h) requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

6. When the proposed use involves a potential contaminant source or potential contaminant . . . *[the proposed residential uses do not.]*

**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) 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 meets 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 commencing construction, a 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 in the Erosion Control Plan, Exhibit A-2, Sheet C2.0 for any 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 comply with all applicable building and fire district regulations. It shall be specifically addressed by Wood River Fire and Rescue at the time of any building permit accessing along Lemhi Dr. or upon completion of this road project.
5. Fill removed from the subject site may/may not be placed elsewhere in Blaine County's Mountain Overlay District without permitting from Blaine Co. Land Use.
6. Nothing presented in this application is approved outside the 60' easement without written authorization from the property owner.
7. 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 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.
8. Butler Associates, Inc. shall be retained to provide observations for the construction of the structural fill foundation building pad, foundation drainage system, structural backfill to support exterior hardscapes and any other recommendations presented in Butler's report (Exhibit A-3) that are incorporated into the project design. Exhibit A-4; Butler Associates, Inc. Geotechnical Report dated October 31, 2022, shall be incorporated into the project construction documents. The geotechnical engineer shall, upon completion of the project, submit a certificate of compliance with the geotechnical plans and recommendations.
9. [Other conditions per the above criteria?]