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BLAINE COUNTY  
LAND USE & BUILDING SERVICES

**BLAINE COUNTY HEARING EXAMINER**  
**Public Hearing Date: February 21, 2019**

REGARDING THE APPLICATION OF: )  
)  
Kathy Braegger, for a ) FINDINGS OF FACT, CONCLUSIONS  
Floodplain Conditional Use Permit, (FPCUP) ) OF LAW & DECISION  
)  
Tax Lot 3, Sec. 15, T4N, R17E. )  
Commonly known as 106 Cross Cut Lane. )

**SUMMARY OF APPLICATION AND DECISION:** A Floodplain Conditional Use Permit is requested to permit the construction of a new primary residence and attached garage to replace an existing non-conforming residence within the floodplain of Warm Springs Creek. The application meets all applicable criteria and the FP-CUP is, by this Decision, issued, with conditions.

**APPLICABLE REGULATIONS:** Blaine County Zoning Ordinance Title 9, Chapters 10, 17, and 25. Blaine County Comprehensive Plan: Title 8.

**REPRESENTATIVES:** The home owner was represented by Benchmark Associates & Williams Partners Architects.

**DISCLOSURES:** None known. The Hearing Examiner has no conflict of interest preventing a fair and impartial hearing and decision herein.

**REGULATORY TAKINGS NOTICE:** Pursuant to I.C. Section 67-6535(c) the owner of the property subject to this Decision may request a regulatory taking analysis Pursuant to I.C. Section 67-8003.

**Section I. General Background, Application, Publication, Pre-Hearing Exhibits & Notice of Hearing**

1. **Description of the Property & Application:** The property is a .5-acre lot, located at 106 Cross Cut Lane, in the recently platted The Island Subdivision, Lot 3, Sec.15, T4N, R17E. The property is zoned Low-Density Residential (R-1) District; and is within the Floodplain (FP) and Riparian (R) Overlay District. The applicant desires to raze an existing home, situated within the riparian set-back, and replace with a new home, outside of the required set-back. The new home is proposed to be constructed on pilings, to raise the home from future flood peril, and allow passage of waters and debris under the structure. An attached garage is proposed to be slab on grade construction, with flood vents as required. The design of the new residence is intended to mitigate damage to the home and floodplain function by allowing for a less encumbered path during both seasonal sheet flooding events and high-flood events. The Decision approving The Island Subdivision was conditioned upon a Riparian Management Plan that required planting of native riparian shrubbery in the river adjacent portion of the lot in question. The applicant has proposed restoration and similar replanting in the area of the lot affected by demolition of the existing home.

2. **Exhibits:** The following exhibits were attached to the Staff Report and reviewed together with

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said report prior to hearing, unless otherwise noted:

**“A” Exhibits - Application Materials;** All application materials were received on December 20, 2018, unless indicated otherwise.

- A-1: Application and responses to standards of evaluation
- A-2: Vicinity Map and 300’ adjoining landowners
- A-3: Grant Deed
- A-4: Base Flood Elevation Letter; Brockway Engineering, June 14, 2018
- A-5: No Adverse Impact Statement; Butler Associates
- A-6: Warm Springs Creek Cross Section and Site Map
- A-7: Pressurized Septic Plan
- A-8: Architectural Drawings: New Residence and Garage
- A-9: Building Material Descriptions

**“B” Exhibits - Agency Comments**

- B-1: County Engineer, received February 4, 2019
- B-2: South Central Public Health Sewage Disposal Permit
- B-2A: South Central Public Health Permit (7/28/98)

**“C” Exhibits - Blaine County Supplemental Information**

- C-1: Sawtooth Environmental – Riparian Management Plan, 7/11/2018
- C-2: Photograph of 2017 flood, 5/13/2017
- C-3: The Island Findings of Fact, 3/13/2018

**“D” Exhibits - Public Comments**

- D-1: Letter dated February 12, 2019 from neighbor, Georgia Coulam, rcvd February 21, 2019.

3. **Notice:** Public notice for the February 21, 2019 Public Hearing was as follows:

- A. Legal notice was published in the Idaho Mountain Express on February 6, 2019.
- B. Notice was mailed on February 6, 2019, to surrounding landowners within 300’ of the exterior boundary of the property and to all Blaine County political subdivisions.
- C. An on-site notice was posted on the applicant’s property or about February 14, 2019, at least 7 days before the scheduled public hearing.

**Section II. Public Hearing & Summary of Testimony Received**

4. Public hearing on this application was called to order at approximately 6:30 p.m., on Thursday February

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21, 2019. The applicant was present in person, and represented by Benchmark Associates & Williams Partners Architects. A brief introduction of the process followed by a statement raising issues of concern was identified by the Hearing Examiner, whereupon the floor was offered to the applicant. Benchmark Associates was present by Garth McCluer, A.I.C.P.A., and Williams Partners Architects by Caleb Williams, who initially provided a narrative description of the project before turning his attention to responding to the issues of concern. The application as proposed would have the lowest structural floor member two (2') feet above BFE, but only six (6") inches above existing grade. The application was silent as to any specific type of reclamation/restoration plan for the area of the demolished home. Furthermore, the application and associated materials called into question the amount of flood water that may be displaced due to fill, both for the septic system and new construction. Mr. Williams responded to the first above issues, by agreeing that the home would be raised on pilings to achieve a minimum of two feet (2') above existing grade. Furthermore, Mr. Williams relayed that the applicant intended to provide a restoration plan for the area of the razed home, of like kind to the restoration plan for the subdivision as a whole. Mr. McCluer responded to the final concern, by giving testimony and assurances that the volume of fill would be neutral and offset by excavation. Mr. McCluer pointed to the "Letter of No Adverse Impact" submitted by Butler and Associates, which reached the same conclusion. No members of the public were present to make comment. The only public comment made, in writing, addressed concerns dealing with steam alterations, of which, none were proposed or in any way part of this project.

The public hearing was closed. A preliminary finding of conditional compliance was made.

### **Section III. Findings of Fact & Conclusion of Law**

5. Legal notice of Public Hearing provided was adequate under I.C. 67-6509 and Blaine County Code Section 9-30-3. Both statute and ordinance require publication in a newspaper of general circulation and notice to land owners within 300 feet of the borders of the subject property fifteen (15) days prior to hearing. The Blaine County Ordinance also requires onsite posting seven (7) days prior to hearing. Notice provided was adequate as a matter of law.

6. Blaine County Code § 9-17-3 establishes the Floodplain Management District. The District includes all lands "...within the 100-year floodplain boundaries as established by a registered professional engineer in the state or determined by the flood insurance study (FIS), as revised and adopted by FEMA from time to time, and the most current flood insurance rate maps (FIRMS) and flood boundary and floodway maps as described hereinabove." § 9-17-3 A.1. The site in question is within the Floodplain Management District, and subject to the regulations thereof.

7. The proposed use is not within an approved platted building envelope shown on a recorded subdivision plat and is therefore not a permitted use pursuant to 9-17-5(C)(1)(b), but a conditional use to be evaluated pursuant to the criteria of 9-17-7 and other factors specified in Title 9 Chapter 17 of the Blaine County Code. Section 9-17-5(C) directs that residential uses located outside platted building envelope are regulated as conditional uses and as such must demonstrate the use or activity will have no adverse impact on or that such impacts can be mitigated to the maximum extent feasible.

8. Conditional Use Permit Applications are non-policy, non-precedent setting matters authorized to be heard by the Blaine County Hearing Examiner pursuant to Title 67 Chapter 65 of the Idaho Code, Title 9 Chapter 33 Blaine County Code and Resolution of the Blaine County Board of Commissioners.

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9. The specific criteria for review and evaluation of Floodplain Conditional Use Permit Applications are found in the Blaine County Zoning Ordinance at §9-17-7E. It is incumbent on the applicant to show that the criteria of this regulation have been satisfied. Factors specified in other sections of Title 9 shall also be considered. §9-17-7E. However, it does not appear the standards for evaluation provided in Section 9-25-3 will provide unique or additional analysis than provided by the Floodplain specific standards, and therefore will not be enumerated here. The following is an analysis of and finding as to each specific criterion as provided by the ordinance. (Ordinance language quoted in bold with analysis in standard font following each criterion)

**1. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.**

Finding: Compliance. Floodplain issues are addressed in the Comprehensive Plan in Chapter 3, Recreation; Chapter 5, Natural Environment; Section 9, Land Use; as well as Chapter 17 of the Zoning Ordinance. The overall policy established by the Comprehensive Plan and Code is to protect the floodplain by avoiding development that adversely impacts the natural functioning of the floodplain while accommodating residential uses whose negative impacts can be mitigated. This proposal is intended to mitigate for adverse impacts within the floodplain by elevating the new residence 2' above BFE and by removing existing development from the 50' riparian setback. In addition, the septic system is intended to reduce the potential negative impacts to water quality during high water events.

**2. The preservation of the inherent natural characteristics of the watercourses and floodplain areas.**

Finding: Conditional Compliance. Moving development further away from Warm Springs Creek and elevating the residence 2' above BFE is intended to improve upon the natural function of the watercourse and floodplain. The applicant has offered to raise the home such that its lowest structural floor member, is not just two (2') above BFE, but also above existing grade. As conditioned, this project will in no way impact the inherent natural characteristics of watercourses or the floodplain.

**3. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.**

Finding: Compliance. The existing development in the vicinity is other residential structures in a semi-rural, riparian, mountain resort neighborhood. No further residential development is anticipated on this lot. The proposed project is compatible with The Island's residential character.

**4. The danger to life and property due to increased flood heights or velocities caused by encroachments.**

Finding: Compliance. None. Moving development further away from Warm Springs Creek and

elevating the residence 2' above BFE and existing grade is intended to improve upon the natural function of the watercourse and floodplain. According to Butler Associates there will be no adverse impacts to downstream properties, "since the proposed structures that will displace floodwaters are equal to the structures being removed there will be no observable rise of the floodwaters elevated above the depth of the 1% annual chance flood water surface elevation."

**5. The effect upon fish and wildlife habitat, including existing vegetation.**

Finding: Conditional Compliance. This project is not anticipated to impact fish and wildlife habitat more than the existing residence has. All disturbed areas should be revegetated with native riparian vegetation with focus as indicated in standard 2, above, within the footprint of the existing residence and weeds removed by hand and with aquatic-safe herbicides. The applicant has agreed to provide a restoration plan for the disturbed area of the razed home.

**6. The availability of alternative locations not subject to flooding for the proposed use.**

Finding: Compliance. The entire property is within the floodplain.

**7. The probability of mass erosion to adjacent property as opposed to normal stream bank erosion and accretion.**

Finding: Compliance. None. The new residence would be elevated and setback further back from the stream bank, therefore less susceptible to erosion. According to Steve Butler, this project will have no adverse impact to downstream properties.

**8. The safety of access to the property in times of flood for ordinary and emergency vehicles.**

Finding: Compliance. Safe access will not be altered by this project. The safety of access would remain the same as currently in place. During times of flooding the subdivision is difficult to access. Evacuation warnings should be heeded.

**9. The danger that materials may be swept on to other lands or downstream to the injury of others.**

Finding: Conditional Compliance. There would be less danger of material being swept downstream as the residence is moved back further from stream bank and elevated 2' above the BFE and existing grade. These mitigating improvements will decrease, not increase the risk of flood or building debris being swept downstream. In addition, as part of The Island Subdivision Plat, the applicant is required to plant new riparian shrubs along the stream bank to help stabilize the bank. Furthermore, the applicant will be provided riparian restoration on the demolition site.

**10. The proposed water supply and sanitation systems and the ability of these systems to**

**prevent disease, contamination, and unsanitary conditions.**

Finding: Compliance. South Central Public Health District (SCPHD) has permitted the septic system.

**11. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.**

Finding: Compliance. No facility is proposed.

**12. The importance of the service provided by the proposed facility to the community.**

Finding: Compliance. No facility is here proposed.

**13. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.**

Finding: Conditional Compliance. According to Butler Associates there will be no adverse impacts, "since the proposed structures that will displace floodwaters are equal to the structures being removed there will be no observable rise of the floodwaters elevated above the depth of the 1% annual chance flood water surface elevation."

**14. Effect of and susceptibility to obstruction by landslides, avalanches, ice jams, or timber.**

Finding: Compliance. The bridge is upstream of the applicant's property. The applicant's property is not susceptible to cause landslides, avalanches, ice jams, or timber.

**15. 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**

Finding: Compliance. The applicant is a private property owner, not the State or political subdivision thereof.

**16. The project will not have an adverse impact on potable water sources when the project is located within a wellhead protection area.**

Finding: Compliance. No evidence has been presented that this project presents any risk of adverse impact on potable water sources.

### **III. Decision and Conditions**

Pursuant to Zoning Ordinance §9-33-8, the Hearing Examiner shall enter an order approving,

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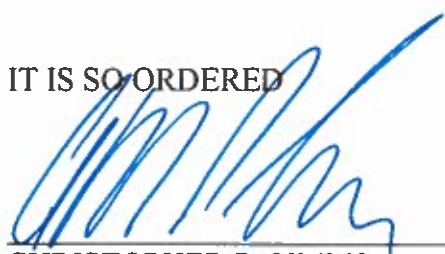
conditionally approving, or disapproving an application within fourteen (14) days after conclusion of the public hearing together with the reasons therefore. Adequate and sufficient evidence has been presented that the requirements of fact and law have been met. The application for Floodplain Conditional Use Permit is granted, with the following conditions:

1. Applicant shall comply with all applicable zoning, building, fire and health district regulations.
2. No disturbance shall occur within the 50' riparian setback.
3. Floor Elevation: Uninhabitable slab on grade structures may be built so that the underside of the slab is at the base flood elevation (BFE) or higher.
4. All new construction and substantial improvements shall be anchored (bolted to the foundation) to prevent flotation, collapse or lateral movement of the structure.
5. Construction Materials and Methods:
  - a. All new construction shall be constructed with materials and utility equipment resistant to flood damage.
  - b. All new construction shall be constructed using methods and practices that minimize flood damage.
  - c. Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed or elevated or both, so as to prevent water from entering or accumulating within the components during conditions of flooding.
6. Utilities:
  - a. New water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
  - b. New sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
  - c. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
7. The residence shall have the lowest portion of the floor system elevated on pilings or piers to a minimum of two feet (2') above BFE and existing grade.
8. A FEMA Elevation Certificate, completed by an Idaho licensed surveyor or engineer, shall be provided to the Land Use & Building Services office to verify the as-built elevation of the lowest floor of the structures prior to issuance of a Certificate of Occupancy.
9. Best management practices shall be implemented during construction to reduce disturbance to soils and vegetation.
10. The 50' riparian setback shall be flagged from the ordinary high-water mark to ensure no disturbances take place during construction.

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11. Any modifications to the plans shall require further zoning review, and may be subject to additional regulations pursuant to the Blaine County Zoning Ordinance.
12. A restoration and revegetation and weed removal/abatement plan for the entire site, of like kind and quality to that required at the time of subdivision approval, shall be submitted and approved, at the sole discretion of the Blaine Flood Manager, and implemented within the first season after building completion. to mitigate floodplain disturbances with focus in the area where the existing home has been removed shall be submitted to the County for administrative approval. This plan shall incorporate native riparian plantings in all disturbed areas due to construction activities.

IT IS SO ORDERED



CHRISTOPHER P. SIMMS  
HEARINGS EXAMINER

2/25/19  
DATED

**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, Conclusions of Law and Decision.**

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