



February 12, 2020

Daiva Katieb and Tambi Katieb
Attn: Biscayne Trust
P.O. Box 3722
[Via Email]

Re: Parcel Number 186313300001, FONZ-009071-2019, Determination Letter

Dear Ms. and Mr. Katieb,

DETERMINATION OF A FINDING OF NO SIGNIFICANT IMPACT

Pursuant to Eagle County’s Land Use Regulations (“ECLUR”) Section 3-340.C.6.b, *Exceptions to the Streamside Setbacks and Water Resource Protection*, an applicant may request a reduction of the stream setback to a minimum of 50 feet or the outer edge of the 100 year floodplain, whichever provides the greater separation from the stream, through a Finding of No Significant Impact (“FONSI”) process. Based upon review of the application material and the information obtained at the pre-application meeting, the Director of Community Development (“Director”) may determine that a FONSI is warranted. The Director may determine that a FONSI should be issued if the project is consistent with the spirit and intent of related standards and is unlikely to have any significant adverse impact to natural resources or scenic or recreational resources pursuant to ECLUR Section 3-340.C.6.b.(1).(a-f), *Finding of No Significant Impact (FONSI)*. In the instance that a FONSI is made, and upon expiration of the reconsideration period, pursuant to ECLUR Section 3-340.C.6.b.(2).(a), *Reconsideration of Director's Determination of a FONSI*, the applicant may pursue a Building Permit for construction.

File Number and Name: FONZ-009071-2019; 1500 West Sheep Creek
Applicant: Biscayne Trust
Consultant: Daiva Katieb; MS, PWS, Principal; Watershed Environmental Consultants
Pre-Application Meeting: July 25, 2019
Date of this Determination: February 12, 2020
Location: W Sheep Creek, Dotsero Area, Parcel Number 1863-133-00-001

I. PROJECT DESCRIPTION:

The applicant owns a property off of West Sheep Creek Road near the Dotsero area. There is an existing 676 square foot cabin on-site that was built in 1987 by a previous owner. This cabin exists within the live stream setback. It is an illegal structure because it was constructed within the 50 foot stream setback that was in effect when the cabin was built in 1987. Neither the applicant nor Eagle County staff have been able to locate building permits or other County approval for the construction in 1987. The owner would like to expand this cabin to add a mechanical room and full

bathroom to the structure between 50 feet and 75 feet of the ordinary high water mark. A FONSI is necessary to reduce the stream setback from 75 feet to 50 feet so this addition may be permitted. Additionally, the applicant has extended the extent of the FONSI request to include additional property along the stream to account for potential future development.

The property owner is currently pursuing a Zoning Variance as the existing cabin is an illegal structure. Eagle County can only issue building permits to legal structures, meaning the cabin is not currently eligible for the proposed addition. The FONSI application will allow the owner to build an addition to the cabin if the Zoning Variance is also approved. The owner has chosen to extend the limits of the FONSI request to allow for potential future development up or down-stream of the illegal cabin. This will allow for development that is not attached to the cabin to be permitted within 50' and 75' of the ordinary high water mark should the associated Zoning Variance application be denied. The FONSI and Zoning Variance applications are independent applications and must each be evaluated on independent merit.

II. PROPOSAL PROCESS:

Eagle County received a building permit application on March 28, 2019 to remodel and expand an existing 2 bedroom cabin on the subject property. The proposed remodel includes a kitchen remodel, new roof with improved insulation, new interior finishes, and an addition containing a new, larger bathroom and mechanical room. During review, staff discovered the proposed addition was partially within the 75 foot stream setback and could not be approved as proposed. Staff requested a meeting with the property owner to discuss the owner's long-term goals for the property and current project proposal.

On July 25, 2019, Daiva Katieb, PS, PWM; Tambi Katieb, AICP; and Kyle Webb, AIA, NCARB met with Eagle County staff to discuss land use applications to permit development at parcel number 186313300001. The Katiebs are consultants of Land Planning Collaborative, Inc, and are representing the property owner, Biscayne Trust, in the land use application process.

During this meeting the County learned that in addition to the scope proposed in the building permit application, the owner is also considering future development within the 75 foot stream setback. Portions of the existing cabin were constructed within 50 feet of West Sheep Creek; the remainder was constructed between 50 feet and 75 feet of West Sheep Creek. The owner was able to find original construction plans for the cabin which indicate it was constructed in 1987. Eagle County had a 50 foot stream setback in 1987. Neither the applicant nor the County were able to find proof of a building permit or other land use approval for the cabin and therefore the cabin is classified as an illegal structure and Article 6, *Nonconformities*, is not applicable. Based on this information, staff informed the owner's representatives that a Zoning Variance must be approved to legalize the cabin and a FONSI must be approved to allow for the requested addition and future development at a reduced stream setback of 50 feet. Reducing the stream setback to 50 feet will allow the addition of the new mechanical room and full bathroom to meet setback requirements and provide the owner with flexibility for future projects; however, the proposed addition may only be permitted if both the FONSI and Zoning Variance are approved. In this meeting, staff recommended both applications be accompanied by an Environmental Impact Report ("EIR"). An EIR is not required for a FONSI application but provides additional analysis and detail of potential environmental impacts and can strengthen an application.

The applicants submitted a FONSI application on October 8, 2019. Application materials included all reports required by ECLURs for a FONSI and an EIR prepared by Watershed Environmental Consultants. This EIR considers the impact of both the existing structure and proposed development on the property and the live stream. The EIR considered the requirements contained in ECLUR Section 4-460 and met such report requirements. Staff conducted a site visit on October 22, 2019 to better understand current site conditions.

A Zoning Variance application was also submitted; the Zoning Variance application is currently in the land use file review process. The FONSI application is independent to the Zoning Variance application and each must be evaluated on independent merits; approval or denial of either application is not dependent on the other. The FONSI application has been evaluated against the standards outlined in ECLUR Section 3-340.C.6.b.(1).(a-f) and approval is warranted.

III. STANDARDS AND CONFORMANCE:

The following FONSI criteria listed in ECLUR Section 3-340.C.6.b.(1), *Report Required*, must be met:

Standard 3-340.C.6.b.(1).(a): Water Quality	Conformance
<p><i>That the setback reduction will not degrade water quality of the stream or ground water.</i></p> <p><u>Analysis:</u></p> <p>Groundwater: A reduction in the stream setback was not found to degrade groundwater quality. Based on the EIR prepared by the Watershed Environmental Consultants, the stream does not have a continuous flow throughout the year. Further, there are two active well permits on the property. An additional well has been approved for the site to serve the cabin and a car barn that is being constructed in compliance with ECLUR and building codes. The EIR also proposes the applicant mitigate negative impacts on the stream by reconstructing access to the property to further reduce potential water pollution and runoff from vehicles coming and going from the property.</p> <p>Water Quality: All proposed land disturbance within 100 feet of a stream is subject to ECLUR Section 4-665, <i>Erosion Control Standards</i>. These standards regulate water quality and water quantity throughout construction. Any development proposed within the FONSI area will be less than 100 feet from West Sheep Creek and must comply with these Erosion Control Standards for development permit approval. An Erosion and Sediment Control plan must be submitted to the County for review as part of a development permit application. Staff finds that conformance with Erosion Control Standards is sufficient to protect surface water quality during construction and the standard is met.</p> <p>ECLUR Section 4-650, <i>Drainage Standards</i>, applies to any proposed development within 100 feet of a water body. These standards regulate post-construction water quality and water quantity to preserve natural resources. Any development proposed within the</p>	<p style="text-align: center;">YES</p>

<p>FONSI area will be less than 100 feet from West Sheep Creek and must comply with these Drainage Standards for development permit approval. Staff finds that conformance with Drainage Standards is sufficient to protect surface water quality post-construction and the standard is met.</p>	
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<p align="center">Standard 3-340.C.6.b.(1).(b): Erosion</p>	<p align="center">Conformance</p>
<p><i>That the setback reduction will not impact shoreline and stream banks, or cause erosion.</i></p> <p><u>Analysis:</u></p> <p>All proposed land disturbance within 100 feet of a stream is subject to ECLUR Section 4-665, <i>Erosion Control Standards</i>. The purpose of these standards is to prevent siltation of bodies of water and minimize water quality impacts resulting from land development and other land disturbing activities. Proposed development within the FONSI area must include an erosion and sediment control plan designed by a qualified professional for development permit approval. Per the EIR, proposed work within the FONSI area will avoid cutting woody vegetation including mature trees or shrubs, to the extent practicable, so the roots may continue to provide soil stabilization. Per ECLURs, any disturbed area must be stabilized via revegetation post-construction which will ensure long-term soil stabilization and prevent erosive conditions. Slopes within the FONSI area are less than 20% and there is minimal risk of erosion due to steep slopes. Furthermore, a significant portion of the proposed development area was previously excavated and existing retaining walls provide a terrace which is nearly level and has minimal erosive risk. Disturbance within 50' to 75' of the creek will not affect slope stability of the existing streambed or streambank or increase the impact of erosion on the stream and the standard is met.</p>	<p align="center">YES</p>

<p align="center">Standard 3-340.C.6.b.(1).(c): Habitat</p>	<p align="center">Conformance</p>
<p><i>That the setback reduction will not degrade fish and wildlife habitat.</i></p> <p><u>Analysis:</u></p> <p>The EIR prepared by Watershed Environmental Consultants discussed impacts on several wildlife species in the area including mule deer, American elk, black bears, bighorn sheep, mountain lions, and wild turkeys. The report did not find that a setback reduction from 75 to 50 feet would affect any of these species, especially because there is not any proposed fencing on the site. Therefore, migratory paths will not be affected. Report findings also state that critical habitats are not located in the area. Thus, further analysis on critical habitat was not required.</p> <p>The report identified plant species on the property. None of the vegetation on the</p>	<p align="center">YES</p>

<p>property is listed as an endangered or threatened species. Critical habitats for vegetation are not present on the property. The report included a vegetative survey from 2019, which identified that “no penstemon plants or populations were observed within 100 feet of West Sheep Creek, between the well and new on-site wastewater treatment system, the proposed cabin expansion area” (EIR page 22). Staff did find there was significant site disturbance to the property prior to the site visit on October 22, 2019. It is difficult to determine when this disturbance occurred, and whether it was before the vegetation survey conducted in July of 2019. However, staff has concluded that since the cabin has existed in its current state since 1987, approving a reduced stream setback on some areas of the property will not further affect vegetation on the property. Therefore, this standard has been met.</p>	
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<p align="center">Standard 3-340.C.6.b.(1).(d): Scenic and Recreation Values</p>	<p align="center">Conformance</p>
<p><i>That the setback reduction will not negatively impact scenic and recreational value associated with the stream.</i></p> <p><u>Analysis:</u></p> <p>The FONSI area is located within a small valley on the property and does not negatively affect viewsheds for neighboring properties. Similarly, the proposed development area is not in a mapped ridgeline area. There is no negative impact to scenic values associated with the stream.</p> <p>The proposed development area is on private property and there is no public access to this stretch of West Sheep Creek. The creek is not navigable and there is no recreational boating. The application states, “West Sheep Creek within this reach does not support fish because it does not have a stable flow regime to sustain a wild fishery,” and therefore there is no recreational fishing activity. There are no existing recreational values associated with the stream.</p> <p>The proposed development will not negatively impact scenic and recreational values associated with the stream and the standard is met.</p>	<p align="center">YES</p>

<p align="center">Standard 3-340.C.6.b.(1).(e): Alternative Design</p>	<p align="center">Conformance</p>
<p><i>That the proposal for improvements on the site results in a design that more adequately preserves unique characteristics of the site, protects public view sheds, enhances public recreational enjoyment of the stream, or creates a design that results in greater public benefit than would be created by adhering to the 75 foot setback.</i></p> <p><u>Analysis:</u></p>	<p align="center">Not Applicable</p>

<p>The application includes analysis of alternative design options for the cabin by considering locations on the property that would comply with the 75 foot setback regulations. This analysis indicates the property already has a large area of buildable land that is outside of the 75 foot stream setback. However, the applicant is seeking approval of the FONSI application to 1) reduce the stream setback to 50 feet for the hatched areas as indicated on Sheet SP01 provided by SGM and dated December 18, 2019, and 2) to remove the rear of the cabin from the 75' setback. However, the FONSI will apply to the cabin if and only if the Zoning Variance application is approved by the Zoning Board of Adjustment. Thus, analysis of the FONSI application is focused on the reduction of the stream setback for the length of the 100-year floodplain as proposed by the applicant. The FONSI report finds, and staff concurs that reduction of the stream setback would not negatively impact or enhance:</p> <ul style="list-style-type: none"> ● Public recreation or public benefit as there is no public access to the property. ● Public viewsheds as there are no public viewsheds within the 50 or 75 foot stream setback. ● Unique characteristics as there are no unique characteristics within the 50 or 75 foot stream setback. <p>Because these characteristics do not exist with respect to this property, no findings can be made with respect to the impact of the proposal for improvements, as compared to alternative designs. Staff therefore finds that this standard is not applicable.</p>	
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Standard 3-340.C.6.b.(1).(f): Other Circumstances	Conformance
<p><i>That other circumstances prevent adherence to the 75 foot setback, including but not limited, to: lot depth, lot dimensions, existing development; lot topography.</i></p> <p><u>Analysis:</u></p> <p>The applicants evaluated alternative design options by assessing slope, habitat for protected species, soil classification, etc. across the property. This evaluation indicates there is substantial building area on the property which conforms to all zoning standards and would accommodate both the existing cabin and desired improvements. There is no physically limiting circumstance which prevents adherence to the 75 foot setback. However, per ECLUR Section 3-340.C.6.b.(1).(f), existing site development may be considered for conformance with this standard. Existing site development between 50 feet and 75 feet of the creek includes significant excavation and retaining walls which provide a flat, level building site. Use of this infrastructure limits further disturbance and excavation on the property to achieve the same scope. The existing infrastructure warrants consideration as it will limit disturbance elsewhere on the property to achieve the same scope. The standard is met.</p>	YES

IV. STAFF RECOMMENDATION:

Based on a review of the information obtained with the application, the required report, and during the pre-application meeting, staff finds that the streamside setback reduction from 75 feet to 50 feet for parcel number 186313300001 is UNLIKELY to have significant adverse impact to natural resources associated with the stream environment, or to the people of Eagle County. As such, staff believes a Finding of No Significant Impact with conditions is APPROPRIATE.

V. DETERMINATION BY THE DIRECTOR OF COMMUNITY DEVELOPMENT

Pursuant to ECLUR Section 3-340.C.6.b.(2).(b), *Notice of Director's Determination of a FONSI*, based on the review of the application and required report, and the recommendation of staff, it is determined that a FONSI should be issued for File Number FONZ-009071-2019 reducing the required live stream setback from 75 feet to 50 feet with conditions:

Conditions:

- 1) All material representations provided by the applicant in the Finding of No Significant Impact application materials shall be adhered to as conditions of approval.
- 2) The Zoning Variance application must be approved for the FONSI to permit further development on the cabin.
- 3) The extent of FONSI approval is the hatched area indicated on Sheet SP01 provided by SGM and dated December 18, 2019.



Morgan Beryl, Director
Eagle County Community Development

February 12, 2020

Date

VI. RECONSIDERATION OF DIRECTOR'S DETERMINATION:

Pursuant to ECLUR Section 3-340.C.6.b.(2).(c), *Reconsideration of Directors Determination of a FONSI*, within 14 days after the publication of the Director's Determination of a FONSI, the Board may decide to reconsider, or "call-up", the Determination. Within the same 14 days of the date of publication, any affected party may also seek reconsideration through a written request to the Board. If a "call-up" occurs, at a public hearing, the Board of County Commissioners shall consider the application, the relevant support materials, and any public testimony. After the close of the public hearing, the Board may approve, approve with conditions or disapprove of the proposed exception to the stream setback regulation.

The period during which reconsideration can be requested shall be 14 calendar days from February 13, 2020, which will be the first day of publication. The last date for which a reconsideration request can be submitted is February 27, 2020.