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## **CALL TO ORDER & ATTENDANCE**

Chair Pete Woll called the July 10, 2023, 310-meeting to order at 7:00 P.M. in the conference room.

**Board members present:** Pete Woll, Chair; John Ellis, Vice Chair; Scott Rumsey, Supervisor; Roger Marsonette Supervisor; being a quorum of the Board.

**Board members absent:** Donna Pridmore, Secretary/Treasurer. Absence is excused.

Also, in attendance were Samantha Tappenbeck, Jessie Walthers, Ginger Kauffman, FCD Staff; Kenny Breidinger, Leo Rosenthal, FWP; Brad Bennett, Water & Environmental Technologies; Nate Ingelfinger; Helen Lundgren; Donna Valade, Sands Surveying; Daniel Corbeille, Connor Loughran, 406 Engineering; Mary T. McClelland; Brian Sugden; Terese Kashi; Chris Nelson; Carole Murphy; Dan Wallen; Monica Jungster; Mike Kopitzke; Andrew Ferris; James Oursland; Braelynn Anderson; Ethan Bay; Evan Heupel; Ted & Linda Nichols; Casey Malmquist.

## **CONSENT AGENDA**

### **Consent Agenda Item 1: Signature Authority**

- Authorization for Samantha Tappenbeck to sign on behalf of Supervisors attending the meeting virtually.

### **Consent Agenda Item 2: Minutes**

- June 12, 2023, 310-Stream Permit Meeting Minutes

### **Consent Agenda Item 3: Financial**

The following bills were reviewed (Check Detail 7/5/2023)

1. MontanaSky Networks \$10.00
2. Mountain States Leasing – Kalispell (June rent) \$1,884.86
3. Mountain States Leasing – Kalispell (July rent) \$1,884.86

### **Consent Agenda Item 4: Correspondence**

None

John Ellis motioned “to approve the consent agenda.” Roger Marsonette seconded. Motion carried unanimously.

## **PUBLIC COMMENT**

This year's college scholarship recipients thanked the board for the scholarships and explained where they will be attending and their studies. Braeylynn Anders will be attending the University of Montana to study natural resources. Ethan Bay will be attending MSU Bozeman to study financial engineering to use in Montana agriculture. Evan Hypal will be attending MSU Bozeman to study ag education to become an ag teacher. Nate Ingelfinger will be attending MSU Bozeman to study environmental science.

## **310 ONSITE INSPECTIONS**

**Ambler**, FL-2023-071, McDonald Creek, residential building: Roger Marsonette motioned "to accept the application." John Ellis seconded. Motion carried unanimously. Roger Marsonette motioned "to table until the jurisdictional issue is resolved. At that time this application will be addressed." John Ellis seconded. Motion carried unanimously.

**Columbia Mtn Ranch**, FL-2023-068C, Unnamed Stream, complaint: An onsite inspection was scheduled for Friday, July 21, 10:00 A.M. at the site.

**Hartley**, FL-2023-058, Little Lost Creek, replace pole barn: An onsite inspection was scheduled for Friday, July 14, 9:30 A.M. at the site.

**Jense**, FL-2023-074, Cow Creek, road/culvert: John Ellis motioned "to accept the application." Scott Rumsey seconded. Motion carried unanimously. An onsite inspection was scheduled for Tuesday, July 18, 11:30 A.M. at the site.

**Maldonado**, FL-2023-070, Flathead River, bridge: Roger Marsonette motioned "to accept the application." John Ellis seconded. Motion carried unanimously. An onsite inspection was scheduled for Tuesday, July 18, 9:15 A.M.

**Oursland**, FL-2023-072, Flathead River, bank stabilization: Scott Rumsey motioned "to accept the application." John Ellis seconded. Motion carried unanimously. An onsite inspection was scheduled for Friday, July 21, 11:30 A.M. at the site.

**VanDenburgh**, FL-2023-073, Whitefish River, debris removal: Roger Marsonette motioned "to accept the application." John Ellis seconded. Motion carried unanimously. An onsite inspection was scheduled for Tuesday, July 18, 12:30 P.M. at the site.

**White**, FL-2023-067, Walker Creek, culvert: John Ellis motioned "to accept the application." Roger Marsonette seconded. Motion carried unanimously. An onsite inspection was scheduled for Tuesday, July 18, 10:30 A.M. at the site.

## **310's**

**95 Karrow**, FL-2023-060, Whitefish River, bridge/dock/path: John Ellis explained this project has been going on for 3-4 years. The last permit #FL-2021-027 expired 6/14/2023, so a new application was submitted. The onsite inspection was held 6/19/2023. He noted they could see where some parts of the trail has been graded. The Team recommends approval of the

application per the same conditions as the last application that we approved on this project. Kenny Breidinger agreed.

John Ellis motioned “to approve FL-2023-060 with the modifications as were on the prior application/Team Member Report for this project.” Scott Rumsey seconded. Motion carried unanimously.

**Andesite**, FL-2023-066, Flathead River, fill/added rock to bk stabilization: Roger Marsonette explained an onsite inspection was held 6/26/23. This is an after the fact application. The landowner had placed one load of rock and dribble it along the top of the bank, and also placed about 20 yards of fill in a low spot. Roger recommended approving the application for work done, with the modification that the applicant re-seed the disturbed areas with sod forming grass mixture as soon as technically reasonable. Kenny Breidinger stated he definitely has a problem there, and this is right upstream of a large rip rap wall and there is a big eddy swirling right above it and digging a lot of land out. What he did is not going to solve the problem but is not hurting anything either.

Roger Marsonette motioned “to approve the application with modifications per the Team Member Report.” Scott Rumsey seconded. Motion carried unanimously.

**Andrews**, FL-2022-069, Flathead River, permit modification request: Pete Woll stated he would like to schedule an onsite for the modification. An onsite inspection was scheduled for Friday, July 21, 12:30 P.M. at the site.

**Bain**, FL-2023-059, Hell Roaring Creek, bridge removal & replacement: John Ellis explained an onsite was held 6/19/2023. A wooden bridge collapsed, and the applicant wants to remove and replace it with a railroad car. John reviewed the considerations and recommendations in the Team Member Report. Modifications are 1) that the silt fence be installed and removed. 2) that they minimize vegetation removal. 3) that they leave vegetation root wads in place when they do this work. Kenny Breidinger noted the biggest impact associated with this project would be that they have to walk a machine across the creek.

John Ellis motioned “to approve the application with modifications per the Team Member Report.” Roger Marsonette seconded. Motion carried unanimously.

**Birk**, FL-2021-011, Flathead River, permit noncompliance/violation: Kenny Breidinger, Donna Pridmore, Pete Woll, Scott Rumsey and Samantha Tappenbeck looked at the site from a boat on the river. Scott Rumsey stated this is a violation, and there needs to be some remediation on the site. He will need a revegetation plan in place that would have to be reevaluated for survival and success. In the meantime, put up some temporary erosion control just above ordinary high water to try to retain some of the fines that are potentially going to be washed on the site. Kenny Breidinger stated when we were out there, there was a very definite line where waves are breaking and the coarser material that he put down and the finer materials stopped right at that point. It was a very sharp edge. I think putting a coir log extending the entire length of the project would be good to hold some of that back until it gets vegetated. Right now, it is a very shallow going up and it is getting splashed. Erosion control is real important, especially if there is another big weather event, and then planting trees as he will need a reforestation plan with an assurance that the plants will survive. That might be difficult because we don't know what is

underneath. Planting wood shrubs in a layer of dirt that is on the top might be really challenging, but we need to get a good riparian area established. Pete recommended sending a letter to Mr. Birk stating he needs to hire a professional consultant to review the plan and come up with a revegetation and stabilization plan. John noted that it should include but not be limited to the other items that were discussed. Kenny added that we talked about having a certain number of feet of riparian woody vegetation established.

Scott Rumsey motioned “to send a letter to Mr. Birk requesting that he hire a professional consultant to review the project and come up with a revegetation and stabilization plan and submit it to the district for approval. The 310-permit application must be submitted by September 1, 2023.” John Ellis seconded. Motion carried unanimously.

**Brazan**, FL-2023-008, Stillwater River, pier: This application remains tabled until information is submitted by the applicant.

**Bybee**, FL-2023-063C, Ashley Creek, complaint: Scott Rumsey explained an onsite was held 6/30/2023. It did not appear to be a recent violation regarding rocks pushed on to the banks or bed of Ashley Creek based on the information submitted.

Scott Rumsey motioned “this is not a violation.” John Ellis seconded. Motion carried unanimously.

**Glacier Stone Supply**, FL-2023-052C, Stillwater River, complaint: Roger Marsonette reported that an onsite inspection was completed 6/29/2023, and work was initiated on a perennial flowing stream without a valid permit. Roger reviewed the recommendations in the Complaint Inspection Report. He noted that work was done on BNSF and Flathead County property, and that some natural regeneration of woody vegetation is occurring. Scott Rumsey noted that he would like to see some level of vegetation survival be included in all the revegetation plans that the district is satisfied with.

Roger Marsonette motioned “that Glacier Stone, to satisfy the complaint, must do the following: 1. Re-establish additional woody vegetation in disturbed areas below the mean high-water elevation, on upper terrace bank for stabilization, and on top of the bank. 2. Weed control as necessary, and irrigate as necessary for establishment of the woody vegetation. 3. Seed grass along with woody plantings. 4. Apply for 310-permit prior to doing work. An application must be submitted by September 5, 2023.” John Ellis seconded. Motion carried unanimously.

**Green Diamond Res.**, FL-2023-056, Pleasant Valley Fisher River, culvert: Pete Woll explained the onsite was held 6/20/2023 for a culvert replacement. Modifications noted in the Team Member Report state the applicant has changed the CMP material to plastic with the same diameter and length. Kenny Breidinger added that this is a low gradient stream that crosses one of the roads. The project meets the Adopted Rules, and the pipe is appropriately sized. The applicant stated originally, they had envisioned using a metal culvert on this project. Green Diamond had easy access to a plastic culvert of the same diameter. It is corrugated just like a metal one would be, and is a seamless substitution, even though it is a different material.

Pete Woll motioned “to approve the application with modifications per the Team Member Report.” John Ellis seconded. Motion carried unanimously.

**Jag Capital Invest.**, FL-2022-035, Autumn Creek, permit ext. request: Pete Woll motioned “to approve a one-year permit extension.” John Ellis seconded. Motion carried unanimously.

**Klempel**, FL-2023-025, Boorman Creek, culverts: An onsite inspection was held 5/18/2023. Kenny Breidinger stated he was ok with the modifications submitted 7/3/2023.

Pete Woll motioned “to approve the application with modifications per letter received 7/3/2023.” John Ellis seconded. Motion carried unanimously.

**Levesque**, FL-2023-029, Flathead River, bank stabilization: This remains tabled until additional information is received from the applicant.

**Miles Whitefish Investments**, FL-2023-065, Whitefish River, gravel river landing/thinning: John Ellis explained this is a condominium project between Miles Avenue and Whitefish River just north of Hwy 93 where the bridge goes over the river. Litigation with the City of Whitefish is continuing just south of this property regarding the location of the trail in front of another condominium complex.

John provided the history of this project and applications that were previously submitted. He stated that the trail is not part of this application. Samantha Tappenbeck noted that Brad Bennett, WET, submitted an application addendum today after discussion during the onsite inspection. Brad Bennett provided additional hard copies of the site and grading plans for the Board and explained that the site map has the pathway to the river and the addition of a dock, and the grading map provides heights of the retaining walls. John added that a stormwater outfall was permitted under #FL-2022-007.

Kenny Breidinger submitted his own Team Member Report, and John noted that they have differing opinions regarding top of the bank and the path.

Casey Malmquist explained that as a condition of approval of the development project, the City of Whitefish requires that this section of trail be built, and it is his responsibility to get the permits to do so. He noted that they ran into the issue of the connecting piece, which is on a different property that he does not own or have control over, and there is some contention about. The condos (he is working on) will be complete this fall, and owners want access to the riverfront. So, as a means to meet the City requirements and a way to provide access for the owners to reach the river, they are presenting a plan that creates an access, keeping in mind that if/when the trail is built, they are providing an access that complies with the engineered design of that trail. It is not complete, but offers access to the river, and is in compliance with the standards. He asked that the application be considered specifically for this property, and that at some point in the future we can talk about the balance of the trail system.

Kenny Breidinger stated he recommended denial for a number of reasons. There is approximately 200 lineal feet of vertical concrete retaining wall. He cited Standard A, subsection b in the Adopted Rules: “The use of retaining walls solely for landscaping is prohibited.” The Adopted Rules speak to retaining walls for bank stabilization, and the banks at this site are currently stable. The application does not say anything about the Whitefish trail. It talks about a recreation landing, which is something that we have permitted elsewhere. The proposed recreational landing is 12’x150’ long, that’s 1800 square feet. It would be gravel laid down with

fabric underneath and will completely wipe out the vegetation. Other recreation landing applications have small decks that were built on piers with some kind of decking on top of it that allowed sunlight and water to move through it and allows vegetation growth underneath and around the sides. It takes a little maintenance, but it saves the streambank, and is a lot less impactful to the streambank than putting down fabric and laying gravel over the top of it. That would be an appropriate way to minimize the effects of a recreation landing or deck. Kenny noted that he had submitted his Team Member Report before he had the addendum.

The application shows two stairways, and I think one of the biggest things we can do is concentrate use in one area. I don't think that two stairways are necessary. Above the retaining wall/trail/recreation landing there is going to be a lawn and there will be plenty of area to go down one stairway to the riverbank. The last recommended modifications is selective trimming and keeping vegetation removal to a minimum. Kenny noted that those changes would really reduce the amount of impacts to the riverbank, they a pretty substantial and we don't have a design. He again stated that he is recommending denial, but not saying they cannot have a recreation landing. The applicant could come back and submit some improved designs that don't have such a big impact on the riverbank.

Further discussion was held regarding jurisdiction; topography and characteristics of the site; whether or not the Whitefish River Trail should be considered one project and the permitting requirements imposed by the City of Whitefish versus Flathead CD; and specific references to definitions and standards in the Adopted Rules.

John Ellis motioned "to approve FL-2023-065." Motion failed for lack of a second.

John Ellis motioned "to deny FL-2023-065." Motion failed for lack of a second.

Roger Marsonette stated we need more questions answered. Casey asked if others could visit the site, and if we can work together.

John Ellis motioned "to table until the next 310 meeting to allow supervisors to view the property." Roger Marsonette seconded. Motion carried unanimously.

The engineer will stake the ground. Samantha Tappenbeck noted that the City of Whitefish reached out to her today to say that if the board had any questions, or if the city could provide additional information, they would be happy to do so. Samantha will contact the city and Brad Bennett, then she will contact others to coordinate the onsite date and time.

**Neuharth**, FL-2023-064, Flathead River, ret. walls/dock/boat shelter/lift: Pete Woll explained an onsite inspection was held 6/22/2023. The applicant/homeowner wants to build an inlet and boathouse on the lagoon in Mayport Harbor. They propose excavating for a boat slip and building a structure over it. There would be minimal impacts to the man-made lagoon. Work will be done during low water. Pete reviewed the considerations in the Team Member Report. Kenny Breidinger noted Adopted Rule I. DREDGE, FILLING, AND SWIM BEACH CREATION 2. h. "Dredging for the purpose of creating, enlarging, or improving an artificial harbor, lagoon, or in-stream pond is prohibited." However, he agreed that impacts would be minimal to the existing lagoon as work would be done during low water in the winter. Brad Bennett stated Mayport Harbor is an artificial harbor. He explained that the plan is to excavate where the boat slip will be, build the retaining walls, and cut and remove the existing wall outside of the existing channel

with no contact with water. He added that in reference to the Adopted Rule, the goal is not to enlarge the harbor or lagoon, it is about a single boat slip and shelter. The harbor is common area properties that have been re-surveyed have adjusted the property boundaries to be the edge of the retaining walls. Pete noted that the district has already permitted one of these in the past. Samantha Tappenbeck asked if an alternative would be to build the boat slip out. Brad replied that it would reach out into the common area creating a hazard for the neighbor who has to come in at an angle to get to his boat slip. He added that the harbor is typically empty of water by November.

Pete Woll motioned "to approve the application as proposed." John Ellis seconded. Motion carried unanimously.

**Niche Holdings**, FL-2023-057, Swan River, tree removal: Pete Woll explained the onsite inspection was held 6/30/2023. The landowner wants to cut a tree leaving the stump, clear brush, and clean up another tree and vegetation. Stumps will be left in place. In the future they plan to build a home and a retaining wall. Leo Rosenthal stated the site is the river, but it is more of a lake-like environment because of the bay and not subject to the same kinds of river processes that we typically think of when we advocate for leaving the stumps in place. Yellow willow tends to spring back up, and the landowners may come back to the district with a proposal to remove the tree. He added that it is a good choice, for the time being, to leave the stumps in place. The project is in Bigfork Bay. John Ellis asked if the applicant had plans to replant trees. Dan Corbeille, Niche Holdings, stated it is commercial land. There is currently just trash down there and they are trying to clean it up to get a better plan and have Sands Surveying survey the property.

Pete Woll motioned "to approve the application as proposed." John Ellis seconded. Motion carried unanimously.

**Nichols**, FL-2023-042C, Flathead River, complaint: Roger Marsonette explained an onsite inspection was conducted 6/29/2023. The complaint stated 30 trees were cut. They found that a few trees had been cut down and a substantial amount of regrowth is occurring. Some terracing was done but that is outside of the jurisdiction of the district. They determined that activity has been initiated on a perennial flowing stream without a valid permit and recommended that the landowner contact each tenant, in writing, that cutting of any more trees is prohibited.

John Ellis motioned "that activity has been initiated without a valid permit on a perennial flowing stream. The landowner is to notify every tenant in writing that it is a violation to cut any trees along the Flathead River." Roger Marsonette seconded. Motion carried unanimously.

**Robinson**, FL-2023-050C, Little Deer Creek, complaint: Pete Woll stated an onsite was held 6/22/2023. This is an intermittent spring runoff only "ditch" like stream with no possible connection to Ashely Creek. Pete Woll motioned "this is not a violation as defined by the district rules." Scott Rumsey seconded. Motion carried unanimously.

**Sneed**, FL-2022-057C, Meadow Creek, complaint: Pete Woll motioned "that FL-2022-057C remains a violation with remediation to be completed by October 1, 2023. The required remediation is: 1) to remove the pumphouse discharge pipe and fill both ditches to adjacent

ground elevations and revegetate, 2) to remove culverts at the three locations proposed for replacement, 3) to fence off Meadow Creek from livestock access except at no more than three livestock watering access points that have been hardened for livestock and vehicle use, 4) to revegetate the banks of Meadow Creek with native woody vegetation, including live willow stakes, 5) to obtain an approved 310-permit prior to any remediation work.” Scott Rumsey seconded. Motion carried unanimously.

**Sneed**, FL-2022-058C, Patterson Creek, complaint: Pete Woll motioned “to close FL-2022-058C because it has been satisfied by the submission of FL-2023-009.” John Ellis seconded. Motion carried unanimously.

**Sneed**, FL-2023-009, Patterson Creek, remediation for FL-2022-058C: Samantha Tappenbeck stated River Design Group provided the findings of the technical review at the last meeting. This application was tabled to allow the Board time to review the report and findings in the technical review.

Pete Woll motioned “to approve FL-2023-009 as submitted with a recommendation that the applicant only divert the legal water right during the months of June, July, August, and September and minimize diversion volume to prevent dewatering of Patterson Creek during periods of low flow.” John Ellis seconded.

Pete Woll asked for discussion from the Board and attendees. Discussion was held regarding the violator’s legal water rights and information provided in the application.

Motion carried unanimously.

**Sneed**, FL-2023-062, Meadow Creek, remediation for FL-2022-057C: Samantha Tappenbeck stated River Design Group (RDG) provided the findings of the technical review at the last meeting. This application was tabled at the last meeting as it was received only a few days before the technical review and the Board had not had opportunity to review that application and compare it to the technical review. Pete Woll asked if the Board or FWP had any comments on the information provided by RDG.

Leo Rosenthal stated this was the more challenging portion of the work that was done. The RDG report showed the historic and current channel alignments. The way the channel was constructed is not very natural; there is some fabric cloth, and it is basically just a gravel-lined ditch to convey water. The challenging part of this section of Meadow Creek is that it does not flow perennially. What should a natural channel look like flowing through there? Is a gravel lined ditch appropriate for it? Currently there’s not really any type of riparian vegetation, it’s mostly just a horse pasture. I don’t know, as a Board, what we would like to do about that portion of the ditch.

Samantha Tappenbeck stated this application was not reviewed by RDG, but they did do a thorough documentation of the work that was done. It would be worthwhile to compare the findings from the technical review with the information that was included in the application when considering whether or not to approve the application after-the-fact for previous work and for proposed future work. Samantha noted that the application lacked a substantial amount of detail and almost no specifications for the work that was done previous to the complaint being



filed. And there were some discrepancies between the findings on the ground and details that were included in the application. For example, RDG documented eight, 8 to 12-inch culvert crossings within the project area. The application numbered five culvert crossings in the project area. There were not any specifications provided for the geo textile fabric that was used as part of the previous work and is proposed for the future work. There were no design specifications submitted for the proposed culvert crossing replacements. There was also no specific information about the kind of revegetation that was used to revegetate in the areas where work was previously done.

Connor Loughran stated the application was submitted based on a site visit and talking with the landowner, where the technical review was done with a lot higher budget performed with a lot more data that they could use to prove all this stuff.

Pete Woll motioned “to deny FL-2023-062 because it is an incomplete application and because the details included in the application were inconsistent with the findings of the technical review.” John Ellis seconded. Motion carried unanimously.

**Winthrop**, FL-2023-045, Stillwater River, clean diversion intake: This remains tabled pending submission of additional information from the applicant.

**NEW BUSINESS**

None

**MATTERS OF THE BOARD/STAFF**

**Board Members:** John Ellis asked if there have been any leads on anyone that might interested in being on the Board. Jessie Walthers stated this has been advertised in the district newsletter.

The next business meeting is scheduled for Monday, July 24, 2023, 7:00 P.M. in person and via ZOOM.

Adjournment: Roger Marsonette motioned. “to adjourn.” John Ellis seconded. Motion carried unanimously. As there was no further business, the meeting was adjourned at 10:05 P.M.

Submitted By:

Ginger Kauffman  
Administrator

Reviewed By:

Samantha Tappenbeck  
Resource Conservationist

Minutes approved by FCD Board motion made on:

8/28/2023     John Ellis     Vice-Chair  
(Date)            (Signature)     (Title – Chair etc.)