
CALL TO ORDER & ATTENDANCE

Vice-Chair, John Ellis, called the August 14, 2023, 310-meeting to order at 7:00 P.M. in the conference room.

Board members present: John Ellis; Vice Chair; Donna Pridmore, Secretary/Treasurer; Scott Rumsey, Supervisor; Roger Marsonette, Supervisor; being a quorum of the Board.

Board members absent: Pete Woll, Chair. Absence is excused.

Also, in attendance were Samantha Tappenbeck, Jessie Walthers, Ginger Kauffman, FCD Staff; Kenny Breidinger and Leo Rosenthal, FWP; Michael, Kopitzke; Tory Baughan; Adnan Merchant, Big Mountain River; Stephanie Trehwitt; Danielle Vukonich; Alex White; Meghan Allsopp; Larry and Becki Booker; Wally Wilkinson; Brad Bennett, WET; Kay Guesdon; Chris Nelson; 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: Meeting Minutes

- ~~7/10/2023 310-Permit Meeting Minutes~~
- Samantha Tappenbeck noted that the 7/10/2023 310-meeting minutes were not finalized, so they are not included on the consent agenda.

Consent Agenda Item 3: Financial

Check Detail dated 8/2/2023

1. Land to Hand \$550.00
2. MACD \$35.00
3. Montana Sky Networks \$10.00
4. Safeguard Business Systems Inc. \$293.32
5. Fisher's Technology \$287.00

Consent Agenda Item 4: Phone Polls

- 7/14/2023 Letter to City of Whitefish
- 7/26/2023 Approve 7/24/2023 Business Meeting Minutes

Consent Agenda Item 5: Correspondence

- CD Funding Forum follow-up
- Haskill Creek diversion update
- Whitefish Growth Policy stakeholder invitation

Donna Pridmore motioned “to accept the consent agenda as presented.” Roger Marsonette seconded. Motion carried unanimously.

PUBLIC COMMENT

No one was present to comment on items not listed on the meeting agenda.

310 Onsite Inspections

Big Mtn River LLC, FL-2023-076, Whitefish River, dock, trail, outfall, etc.: John Ellis explained this application is a re-submittal of application #FL-2022-040 which was approved last year. Permit FL-2022-040 expired and no work was done. John Ellis motioned “to waive the onsite inspection and approve FL-2023-076 as proposed.” Roger Marsonette seconded. Motion carried unanimously.

Booker, FL-2023-075C, Swan River, complaint: An onsite inspection was scheduled for Thursday, September 7, 9:30 A.M. at the site.

Guesdon, FL-2023-079, Echo Creek, remove silt & weeds: John Ellis motioned “to accept the application.” Donna Pridmore seconded. Motion carried unanimously. An onsite inspection was scheduled for Thursday, September 7, 11:00 A.M. at the site.

Krezowski, FL-2023-077, Haskill Creek, excavation/fill/bank stabilization: John Ellis motioned “to accept FL-2023-077.” Donna Pridmore seconded. Motion carried unanimously. An onsite inspection was scheduled for Thursday, August 17, 9:00 A.M. at the site.

Paddock, FL-2023-080C, Ashley Creek, complaint: A complaint response has not yet been received. Scott Rumsey motioned “to table the complaint until we receive a response.” Donna Pridmore seconded. Motion carried unanimously.

310’s

Ambler, FL-2023-071, McDonald Creek, residential building: This remains tabled until the jurisdictional issue is resolved.

Andrews, FL-2022-069, Flathead River, permit modification request: Additional information was received from the applicant on 6/21/2023, and an onsite inspection was held 7/21/2023. Kenny Breidinger explained the project is for removal and reshaping of the existing slope and is a substantial amount of excavation. Tory Baughn provided specifics of work to be done. Samantha Tappenbeck stated that Pete Woll asked to table the application and schedule another onsite inspection. Other Supervisors asked to also see the site. Donna Pridmore motioned “to table FL-2022-069 until the next 310-meeting.” Scott Rumsey seconded. Motion carried unanimously. An onsite inspection was scheduled for Thursday, August 31, 9:30 A.M. at the site.

BNSF/FCEDA, FL-2023-078, Stillwater River, remove debris/revegetate/weed control: Roger Marsonette explained that an application was received 8/7/2023 as remediation for complaint FL-2023-052C. Roger Marsonette motioned “to accept the application.” John Ellis seconded. Motion carried unanimously.

Roger stated that the application proposed to continue to revegetate and do weed control but includes no specific information (e.g., species and spacing, timing of grass seeding, survival evaluation, irrigation, etc.) was included in the application.

Roger Marsonette motioned “to approve FL-2023-078 with modifications 1. Re-establish woody vegetation in disturbed areas below the mean high-water elevation, on the upper terrace for bank stabilization, and on top of the bank; 2. Weed control and irrigate as necessary for establishment of woody vegetation; 3. Seed grasses along with woody plantings; 4. Provide a management plan for establishment of vegetation.” John Ellis seconded.

Discussion held regarding whether the application should be tabled until a revegetation plan is received or if the submission of a revegetation plan should be included as a condition of the permit approval. If the application is approved with modifications, it will need to be processed. If additional information is requested of the applicant, it should be tabled until that information is received. John Ellis withdrew his second, and Roger Marsonette withdrew the motion.

Roger Marsonette motioned “to table the application until a revegetation plan is submitted.” Donna Pridmore seconded. Motion carried unanimously.

Brazan, FL-2023-008, Stillwater River, pier: This remains tabled waiting for additional information.

Columbia Mountain Ranch, FL-2023-068C, Unnamed Stream, complaint: Donna Pridmore explained an onsite inspection held 7/21/2023. There was no evidence of a violation, and no evidence of work was done within 310 jurisdiction. Donna Pridmore motioned “FL-2023-068C is not a violation.” Scott Rumsey seconded. Motion carried unanimously.

Glacier Stone Supply, FL-2023-052C, Stillwater River, complaint: Roger Marsonette explained an application was to be submitted for remediation of the violation. FL-2023-078 (BNSF/FCEDA) was received 8/7/2023. This file is now closed.

Hartley, FL-2023-058, Little Lost Creek, replace pole barn: Donna Pridmore explained an onsite inspection was held 7/14/2023. Donna stated they will replace a pole barn and it will not impact the stream. Kenny Breidinger stated it is an existing structure and the tree will be left. Donna Pridmore motioned “to approve FL-2023-058 as proposed.” Scott Rumsey seconded. Motion carried unanimously.

Note: Upon review of the permit file following the meeting, the Area Supervisor realized that the wording of the motion should have been “to approve FL-2023-058 with modifications. The modifications are: 1. To install silt fencing during construction, and then remove it when the soil is stabilized, and 2. To leave the mature spruce tree.” The decision form was modified to reflect the change and the permit was processed accordingly.

Jense, FL-2023-074, Cow Creek, road/culvert: John Ellis explained this is a culvert for a driveway. An onsite inspection was held 7/18/2023. Kenny Breidinger noted that this is in a spot where Cow Creek was straightened out, however the site is stable, and the size of the culvert is adequate and spans bankfull width. John Ellis motioned "to approve FL-2023-074 as submitted." Donna Pridmore seconded. Motion carried unanimously.

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

Maldonado, FL-2023-070, Flathead River, bridge: Roger Marsonette explained an onsite inspection was held 7/18/2023. Roger Marsonette motioned "to approve FL-2023-070 as proposed for the culvert crossing and bridge crossing." Scott Rumsey seconded. Motion carried unanimously.

Miles Whitefish Inv, FL-2023-065 Whitefish River, gravel river landing/thinning/retaining wall/stairs/path/dock: John Ellis explained this application was tabled 7/10/2023 to allow other supervisors time to view the property.

Kenny Breidinger stated the application proposes a 12-foot x 150-foot recreation landing, and approximately 250 linear feet of vertical retaining wall that will be cut into the streambank and filled. He noted that the trail is only mentioned as an alternative under section #5 of the application. He stated that a 12-foot x 150-foot gravel pad would have a lot more impacts than a small recreation platform set on piers just above the surface of the existing streambank. A small recreation platform would allow vegetation to grow underneath, but still allow people to go down to the stream. It could be done without 250-feet of vertical retaining wall and without losing riparian vegetation and streambank habitat. He noted that this was designed with the hope that this could be turned into a trail, but a trail was not applied for and there are reasonable alternatives to minimize the impacts to the stream and bank.

Samantha Tappenbeck stated at the last 310-permit meeting there were differing opinions during the discussion regarding jurisdiction and what is considered the immediate bank. Supervisors were able to view the site and get their own perspective on where that jurisdictional boundary is. Supervisors Donna Pridmore, Scott Rumsey and Roger Marsonette agreed that the entire proposed project area is on the immediate bank and within the jurisdiction of the Flathead Conservation District. John Ellis disagreed stating that jurisdiction does not extend beyond the bench.

Samantha stated there are a couple different components of this project that extend over the area in question. There is the cut and fill slope which would create the gravel pad, the upper retaining wall, and the lower retaining wall which were flagged out on the ground during the onsite inspections which would be on the portion of the bank on the landward slope of the bench. Then there is a walking path and stairways that would extend onto and below the bench. Brad Bennett added the stairways go down to that bench, then there is a pathway to the dock on the north end. Current drawings and addenda were viewed and further discussed.

Kenny stated he still has the same concerns: excavation, fill, retaining walls on the streambank, and the substantial impact from a large recreation landing by removal of riparian vegetation and

loss of riparian habitat. Roger Marsonette voiced concern of loss of the riparian vegetation, and loss of a major portion of vegetation with the construction of the retaining walls. Scott Rumsey stated the whole project is part of the immediate bank and is clearly defined by the Adopted Rules. He had the same concerns that Roger expressed, that it's a major alteration of the bank when other alternatives could be pursued that would be less invasive and not destroy the native/natural vegetation and meet the intent of the 310-law is, which is to preserve the stream in its present state as much as possible.

Casey Malmquist asked for a formal definition of riparian vegetation, as he did not think the retaining walls would be in the riparian area and also questioned the immediate bank and proceeded to draw the bank area and topography. Samantha Tappenbeck stated we do not have a formal definition in the rules, like a species list, but generally it is considered hydrophilic vegetation, plants that love water and like to have their feet wet. She stated when she went onsite, she saw the site was dominated by serviceberry and snowberry which are certainly riparian species but are also common in terrestrial/forest environments not near the water. There were also obligate hydrophilic plants like red osier dogwood growing in very dense thickets on the upper slope, from the base of the slope almost all the way to the top of that upper sloped bank. There were also cottonwood, and some quaking aspen present which are classic riparian hydrophilic species. Casey disagreed and stated there is a definition for riparian vegetation and it is not species specific; he stated that there are five conditions that need to be met for that but those conditions were not specified by Casey.

Casey added that he is confused because they have almost the identical situation on their other project (95 Karrow LLC, FL-2019-017, FL-2021-027, FL-2023-060) which was approved in terms of the distance and the relative structure of the bank. Kenny Breidinger stated he was opposed to 95 Karrow because it was an asphalt road cut and fill on the slope of the streambank. Kenny also noted that we struggled with that application for a really long time, and ultimately it was approved because the supervisors felt uncomfortable putting 95 Karrow LLC between two different government agencies with different goals. The board followed up after that with a public meeting with City Council, and numerous discussions with City staff and the mayor. Kenny noted that when the City required Casey to do the trail at the Miles Avenue property per the conditions of approval, the City of Whitefish was aware that this violated Flathead CD Adopted Rules. Casey stated that building the trail is a condition of approval by the City of Whitefish on Miles Avenue and added that he continues to hope that we seek resolution to that because he is the same spot here and has been transparent about all of this. John added that the City of Whitefish did not consult Flathead CD. Samantha added that the City is not required to consult Flathead CD, which is unfortunate because they are approving development permits on conditions that the developer violate the state law that conservation districts are required to uphold. John Ellis noted that the City of Whitefish is being unreasonable because they have not resolved the issue with the trail easement through the Riverbend Condominiums property [immediately downstream], but Flathead CD is now perceived to be the problem. Casey noted that he has not indicated that Flathead CD is the problem but emphasized that he is only applying for the project at the Miles Ave site, not the Riverbend Condos site.

Donna Pridmore motioned "to deny the permit." Scott Rumsey seconded. Motion carried with a three-to-one vote.

Oursland, FL-2023-072, Flathead River, bank stabilization: Donna Pridmore explained an onsite inspection was held 7/21/2023 and provided project specifics. Kenny Breidinger noted that the project would be good as a demonstration project (310-success story). He noted that the riparian vegetation is established, and the riprap is barely above full pool. Donna Pridmore motioned "to approve the application as proposed." Scott Rumsey seconded. Motion carried unanimously.

Trewhitt, FL-2022-025, Logan Creek, permit extension request: Donna Pridmore explained the permit expires 10/11/2023. A request for a permit extension was received 8/1/2023. Donna Pridmore motioned "to approve the permit extension." John Ellis seconded. Motion carried unanimously.

VanDenburgh, FL-2023-073, Whitefish River, debris removal: Roger Marsonette explained an onsite inspection was held 7/18/2023. A fallen tree is collecting debris, which is now a hazard. Roger Marsonette motioned "to approve FL-2023-073 with modifications. The rootball of the tree presently across the river is to be left in place." Donna Pridmore seconded. Motion carried unanimously.

Vukonich, FL-2022-011, Flathead River, permit modification request/dock: A permit modification request was received 7/26/2023. The request is to change from an F-shaped dock to a U-shaped floating dock. Danielle Vukonich stated the dimensions of the F-shape was approved, but 406 Docks suggested a U-shaped dock and explained the dimensions of the modification request. Roger Marsonette motioned "to approve the modification request as proposed." Donna Pridmore seconded. Motion carried unanimously.

White, FL-2023-067, Walker Creek, application modification/culvert: John Ellis explained an application amendment was received 8/7/2023 to change from two culverts to one. John Ellis motioned "to approve the application with modifications submitted 8/4/2023 and to waive the 15-day waiting period." Donna Pridmore seconded. Motion carried unanimously.

Whitefish Comm. Foundation, FL-2022-033, Whitefish River, Follow-Up: John Ellis explained that a follow-up inspection was held 7/24/2023, and that a letter needs to be sent stating that they should add a silt fence and revegetate the disturbed slope.

John Ellis motioned "to send a letter stating a follow-up inspection was done, and that they need to revegetate the slope, install silt fence and other erosion control measures until the revegetated slope takes hold." Donna Pridmore seconded. Motion carried unanimously.

Winthrop, FL-2023-045, Stillwater River, clean diversion intake: Donna Pridmore explained the application was submitted 5/1/2023 and has been tabled waiting for additional information. Donna Pridmore motioned "to send a letter to the representative clarifying that the application is tabled awaiting information on the final plans for the intake cleanout. A response is to be submitted by September 5th or the application will be closed." Roger Marsonette seconded. Motion carried unanimously.

NEW BUSINESS

Urban Supervisor Appointment: Samantha Tappenbeck explained that the Whitefish City Council appointed Mike Kopitzke to serve as Urban Supervisor on 8/7/2023.

John Ellis motioned “to approve the appointment of Mike Kopitzke as an urban supervisor to the Flathead Conservation District Board of Supervisors.” Donna Pridmore seconded. Motion carried unanimously.

MATTERS OF THE BOARD/STAFF

McDonald Creek/Ambler Declaratory Ruling Hearing. Samantha Tappenbeck explained that the Declaratory Ruling will be held August 25, 2023, 9:00 A.M. at the Hilton Garden Hotel. The exhibit record is posted online, and Supervisors were reminded to review the record before the hearing. Samantha noted that Laurie Zeller is the Hearings Officer and will preside over the hearing.

Agenda with Notes: Pending Action Section. Samantha noted that staff has added a section to the agenda with notes as a way of documenting and tracking the status of 310 files that are technically closed but require some future action and/or we are waiting on information or action by a specific date. The items on the pending action list will not be included on the formal agenda until such time that it is appropriate for the board to take action.

The next business meeting is scheduled for Monday, August 28, 2023, 7:00 P.M. in person and via ZOOM.

Adjournment: Donna Pridmore motioned “to adjourn.” Scott Rumsey seconded. Motion carried unanimously. As there was no further business, the meeting was adjourned at 9:32 P.M.

Submitted By:

Ginger Kauffman
Administrator

Reviewed By:

Samantha Tappenbeck
Resource Conservationist

Minutes approved by FCD Board motion made on:

<u>9/11/2023</u>	<u>Pete Woll</u>	<u>Chair</u>
(Date)	(Signature)	(Title – Chair etc.)