
CALL TO ORDER & ATTENDANCE

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

Board members present: Pete Woll, Chair; Donna Pridmore, Secretary/Treasurer; Roger Marsonette Supervisor; Mike Kopitzke, Supervisor; Bill Yankee, Supervisor; being a quorum of the Board.

Board members absent: John Ellis, Vice-Chair; Scott Rumsey, Supervisor. Absences are excused.

Also, in attendance were Samantha Tappenbeck, Ginger Kauffman, Jessie Walthers, FCD Staff; Kenny Breidinger & Leo Rosenthal, FWP; Mary T. McClelland; Blair Bohn; Connor Loughran; Craig Fry; Helen Lundgren; Laura Compton; Andrew Wilson; Eric Urban; Don Murray; Mackenzie Gress; Laurel Fullerton; Chris & Sheila Clobes; Sandy Heil; George Gibson; Connie Valentine; Jay Sandlin; Mikel Siemens; Carl Gustafson; Monica Jungsten; Bob Randolph; Steven Levesque; Rudy Koestner; David Stalowy.

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

- September 11, 2023, 310-Meeting Minutes

Consent Agenda Item 3: Financial

Check Detail dated 9/27/2023

1. Charter Communications \$222.95
2. Montana Sky Networks Inc. \$10.00
3. Snowghost Design Inc. \$169.00
4. Steitzhof Merinos \$2,939.00'
5. Successful Signs & Awards \$33.00

Consent Agenda Item 4. Correspondence

1. Correspondence from Hearing Officer, Laurie Zeller, regarding the McDonald Creek declaratory ruling process.

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

PUBLIC COMMENT

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

310 Onsite Inspections

Bellwoar, FL-2023-100, Whitefish River, bank stabilization: Mike Kopitzke motioned “to accept FL-2023-100 as a complete application.” Donna Pridmore seconded. Motion carried unanimously. An onsite inspection was scheduled for Tuesday, October 24, 9:00 A.M. at the site.

Busche, FL-2023-104, Echo Creek, culvert: Pete Woll motioned “to accept FL-2023-104 as a complete application.” Roger Marsonette seconded. Motion carried unanimously. An onsite inspection was scheduled for Monday, October 30, 9:30 A.M. at the site.

Fry, FL-2023-099, Flathead River, dock: Pete Woll motioned “to accept FL-2023-099 as a complete application.” Donna Pridmore seconded. Motion carried unanimously. An onsite inspection was scheduled for Tuesday, October 24, 1:30 P.M. at the site.

Gustafson, FL-2023-105, Unnamed, building addition: Bill Yankee motioned “to accept FL-2023-105 as a complete application.” Donna Pridmore seconded. Motion carried unanimously. An onsite inspection was scheduled for Friday, October 20, 9:30 A.M. at the site.

InterBel Telephone, FL-2023-103, Stillwater River & Spring Creek, utilities: Donna Pridmore motioned “to accept FL-2023-103 as a complete application.” Mike Kopitzke seconded. Motion carried unanimously. Donna Pridmore motioned “to waive the onsite inspections and approve the application with modifications. The modification is that all borings will be 5-feet below the streambed.” Bill Yankee seconded. Motion carried unanimously.

Koestner, FL-2023-098, Stillwater River, culvert/rip rap: Donna Pridmore motioned “that FL-2023-098 is a complete application.” Bill Yankee seconded. Motion carried unanimously. An onsite inspection was scheduled for Monday, October 23, 9:00 A.M. at the site.

Maltbie, FL-2023-094C, Mount Creek, complaint: Complaint letter sent 9/7/2023. The complaint was tabled waiting for response from the alleged violator. The complaint letter came back on 10/10/2023 as unclaimed/insufficient address. Samantha Tappenbeck will contact legal.

Miles Whitefish Inv, FL-2023-096, Whitefish River, dock, gangway, stairs: The onsite inspection was re-scheduled for Tuesday, 10/24/2023, 10:00 A.M. at the site.

Sneed, FL-2023-106, Meadow Creek, remediation: Pete Woll motioned “to accept FL-2023-106 as a complete application.” Bill Yankee seconded. Motion carried unanimously. An onsite inspection was scheduled for Monday, October 30, 10:30 A.M. at the site.

Stalowy, FL-2023-083C, Bear Creek, complaint: An onsite inspection was scheduled for Monday, October 30, 11:45 A.M. at the site.

Stalowy, FL-2023-101C, Bear Creek, complaint: The complaint letter was mailed 9/26/2023. The return receipt was signed 10/9/2023 and received in the district office on 10/10/2023. A response has not yet been received.

Don Murray stated Stalowy is currently excavating Grassy Marsh on Bear Creek which is partially on his property and on the complainant, Bryg Klyce's property. He asked that Stalowy be called to account and referenced the declaratory ruling and judicial review decisions. Samantha stated she had contacted legal counsel to ask if the district could deviate from normal process and issue a cease-and-desist order given the previous legal determinations. The district cannot deviate and does have to follow normal process. Don Murray noted that the 2016 permit stated that there is to be no excavation in Grassy Marsh where Stalowy is currently excavating.

Thompson (Larry), FL-2023-093C, Unnamed, complaint: A complaint response was received 9/12/2023. An onsite inspection was scheduled for Friday, October 20, 1:00 P.M. at the site.

Thompson (Tula), FL-2023-097, Patterson Creek, utilities: Pete Woll motioned "to accept FL-2023-097 as a complete application." Bill Yankee seconded. Motion carried unanimously. Pete Woll motioned "to approve FL-2023-097 as proposed. The onsite inspection is waived." Donna Pridmore seconded. Motion carried unanimously. Leo Rosenthal noted that no 318 is needed.

Valentine, FL-2023-102, Stillwater River, bank stabilization: Roger Marsonette explained that the applicant could not complete work under permit #FL-2022-049 and it expired 9/12/2023; so, the applicant submitted a new application. Roger Marsonette motioned "to accept FL-2023-102 as a complete application. The onsite inspection is waived. The application is approved with the following modifications: 1. Bank to be sloped back and existing gravels within the bank to be used as bedding for the rock rip rap. 2. Rip rap to be placed 1-foot above the mean high-water mark of the river. 3. Rip rap to be keyed into the bank at the downstream end of the project. 4. Woody vegetation materials to be planted within the rock rip rap. 5. Disturbed areas to be reseeded to native grass after construction." Mike Kopitzke seconded. Motion carried unanimously.

310's

Ambler, FL-2023-071, McDonald Creek, house: This remains tabled until the Declaratory Ruling is completed.

Birk, FL-2021-011, Flathead River, remediation: An onsite inspection was completed 10/3/2023 with Eric Urban, the representative for Birk. Samantha Tappenbeck explained that the order on that violation was that Mr. Birk was to hire a representative to do a revegetation plan, so an application and plan will be coming, but may not be in time for the November 310-permit meeting. This remains tabled.

Brazan, FL-2023-008, Stillwater River, pier: Donna Pridmore stated additional information was received 9/11/2023. Donna Pridmore motioned “to approve FL-2023-008 with modifications submitted 4/28/2023 and 10/4/2023.” Mike Kopitzke seconded. Motion carried unanimously.

Christensen, FL-2023-087, Tobie Creek, utilities: Donna Pridmore explained an onsite inspection was completed 9/29/2023. Donna Pridmore motioned ‘to approve FL-2023-087 with the modification that the boring is 5-feet under the streambed.’ Bill Yankee seconded. Motion carried unanimously.

Clobes, FL-2023-084C, O’Neil Creek, complaint: Donna Pridmore explained an onsite inspection was completed 9/29/2023. The landowner tried to make a pond in the middle of a dry streambed, placed a rubber liner in the stream, covered the liner with rock, placed rock up the bank and in the channel. There is also a rocked area in the streambed that is being used as a ford. Onsite photos were viewed. Bill Yankee noted that the landowner wanted to create habitat for nesting ducks; they just did not know they needed a permit.

Donna Pridmore motioned “that this is a violation, but it has already been remediated.” Donna noted that the only problem she had was there was about 50-feet of liner in bottom of the stream, and by this time making them tear it out would be more destructive than leaving it in. Bill Yankee seconded the motion.

Pete Woll re-stated that work has been initiated on an intermittent flowing stream without a permit. Samantha Tappenbeck noted that a motion to remediate by a specific deadline was needed, but if the remediation is already complete then the motion could be to that effect. Kenny Breidinger noted that remediation conditions included revegetation and maintaining the liner by cutting away any exposed liner. Donna reviewed the following recommended course of action in the Complaint Inspection Report: No further action on the structural channel banks, but we recommend planting shrubs and native grasses on the river right side away from the house, and to stabilize all the loose soils that are surrounding the streambed/streambanks.

Staff asked if the landowners needed to submit an application for remediation, and Samantha Tappenbeck agreed that is part of the standard process for orders to remediate a violation. Kenny Breidinger added that there is a straight section that is not very high gradient, but a little bit of gradient. We should have them put a few larger rocks in there to dissipate the energy in the stream a little bit, so it is not just a straight smooth shot. The rocks would not impound water, just dissipate some of that energy if there is a big-flow event. Roger Marsonette asked if there is rock further down. Kenny explained that the landowner just put rock over the areas he disturbed. Donna added that it is rocky all the way down to the bridge. Samantha stated she wanted to clarify that what Kenny mentioned about the fabric was an order on that violation. Kenny added that there are going to be some channel changes after a couple high water events, and we want that (liner) cut away or repaired.

Staff re-stated what had been discussed; that this is a violation. Work has been initiated on a stream without a valid permit. As remediation, no further action is required on the structural channel banks, but we recommend planting shrubs and native grasses on both sides where the soil is exposed to stabilize. Additionally, anywhere that liner is exposed should be covered so it is stabilized and does not degrade or if it is exposed to be cut away. Finally, we recommend

adding a few larger rocks to the straight section of channel to dissipate the energy in the stream during high-flow events.

Bill Yankee stated he felt these people had good intentions and were trying to create some wildlife habitat, they just went about it in the wrong way. He wondered if in the violation letter we could add that we encourage them to contact the NRCS or look for other funding to continue to create wildlife habitat.

Motion carried unanimously.

Fullerton, FL-2023-090, Flathead River, bank stabilization: Pete Woll explained an onsite inspection was completed 10/3/2023. There has been a lot of erosion from the wake boats; the site is on the outside bend, and the current is creating erosion and undercutting. Pete and Kenny Breidinger agreed that the drawings included in the three applications (Fullerton/Gress/Wilson) do not indicate what they want to do onsite, and more in-depth drawings are needed. Pete Woll motioned “to table FL-2023-090 until a more detailed drawing is submitted including the rock size, slope, a revegetation plan, and details on keying in the ends of the riprap.” Roger Marsonette seconded. Motion carried unanimously.

Gress, FL-2023-091, Flathead River, bank stabilization: Pete Woll explained an onsite inspection was completed 10/3/2023. There has been a lot of erosion from the wake boats; the site is on the outside bend, and the current is creating erosion and undercutting. Pete and Kenny Breidinger agreed that the drawings included in the three applications (Fullerton/Gress/Wilson) do not indicate what they want to do onsite, and more in-depth drawings are needed. Pete Woll motioned “to table FL-2023-090 until a more detailed drawing is submitted including the rock size, slope, a revegetation plan, and details on keying in the ends of the riprap.” Roger Marsonette seconded. Motion carried unanimously.

Heil, FL-2023-088, Blaine Creek, bridge: Pete Woll explained an onsite inspection was completed 10/3/2023. This project was originally a complaint, remediation was to remove the culverts and install a bridge, however, the application expired without work being done. Pete Woll motioned “to approve FL–2023-088 as proposed.” Roger Marsonette seconded. Motion carried unanimously.

Krezowski, FL-2023-077, Haskill Creek, excavation/fill/bank stabilization: This remains tabled until additional information is received from the applicant.

Levesque, FL-2023-029, Flathead River, bank stabilization: Mikel Siemens reviewed information submitted on 9/11/2023 and explained that the slope will be 1:25 for the ACOE nationwide permit, and willows will be placed on top. Mikel noted that Floodplain will not issue a permit until FCD issues a 310. Additional time is needed for Scott Rumsey and Kenny Breidinger to review the information. Roger Marsonette motioned “to table FL-2023-029 until the October 23rd business meeting.” Mike Kopitzke seconded. Motion carried unanimously.

Osborn Landing HOA, FL-2023-095, Swan River, thin & trim brush: Pete Woll explained that an onsite inspection was completed 9/28/2023. Trees will be limbed and some of the brush will be trimmed, nothing will be removed from the stream channel. Leo Rosenthal noted that they will just trim leaving all the roots intact. Pete Woll motioned “to approve FL-2023-095 with

modifications. Modifications are that no annual maintenance permit will be issued." Bill Yankee seconded. Motion carried unanimously.

Paddock, FL-2023-080C, Ashley Creek, complaint: The complaint letter came back as unclaimed, a site inspection was completed from the road on 9/27/2023. Mike Kopitzke explained this is not a violation. Mike Kopitzke motioned "that activity is not a violation as defined by district rules." Donna Pridmore seconded. Motion carried unanimously.

Rediger, FL-2023-081, Flathead River/Goodrich Bayou, footpath: Roger Marsonette explained an onsite inspection was completed 9/28/2023. The contractor had created a path before he knew he had to submit an application, which he has done. Some of the dirt needed to be re-seeded, and there was some sloughing. Additional information to correct the issues that were discussed on the ground was submitted 10/10/2023. Roger Marsonette motioned "to approve FL-2023-081 with modifications. 1. Monitor fabric under gravel and repair exposed fabric as necessary. 2. Stabilize the lower portions of the trail to prevent sloughing. 3. Seed all soil including old pathway steps." Donna Pridmore seconded. Motion carried unanimously.

Reilly, FL-2023-089, Unnamed, culvert: Roger Marsonette explained that an onsite inspection was completed 9/28/2023. Roger Marsonette motioned "that FL-2023-089 is not a project under 310-jurisdiction because it is not on a perennial flowing stream." Donna Pridmore seconded. Motion carried unanimously.

Siderius, FL-2023-086, Flathead River, replace irrigation intake & pump site: Pete Woll explained an onsite inspection was completed 10/3/2023. They are upgrading an old irrigation system, removing an old culvert, replacing it, and installing a more efficient irrigation pump. Kenny Breidinger stated some excavation will be done to the bank for the inlet pipes, and one or two old birch trees will be removed. Pete Woll motioned "to approve FL-2023-086 as proposed." Donna Pridmore seconded. Motion carried unanimously.

Skyline Metal Roofing, FL-2023-085, East Spring Creek, shop/parking area: An onsite inspection was completed 9/27/2023. Mike Kopitzke stated that the landowner is adding to the shop and the parking area, which is approximately 150-feet from the stream. Mike Kopitzke motioned "that FL-2023-085 is not a project under 310-jurisdiction because it is outside of our jurisdiction." Donna Pridmore seconded. Motion carried unanimously.

Sneed, FL-2022-057C, Meadow Creek, complaint: On 7/10/2023 the Board determined this remained a violation, and landowner was to submit application to remediate. Application # FL-2023-106 was submitted.

Wilson, FL-2023-092, Flathead River, bank stabilization: Pete Woll explained an onsite inspection was completed 10/3/2023. There has been a lot of erosion from the wake boats; the site is on the outside bend, and the current is creating erosion and undercutting. Pete and Kenny Breidinger agreed that the drawings included in the three applications (Fullerton/Gress/Wilson) do not indicate what they want to do onsite, and more in-depth drawings are needed. Pete Woll motioned "to table FL-2023-090 until a more detailed drawing is submitted including the rock size, slope, a revegetation plan, and details on keying in the ends of the riprap." Roger Marsonette seconded. Motion carried unanimously.

Winthrop, FL-2023-045, Stillwater River, clean diversion intake: Tabled until additional information is received from Mikel Siemens

NEW BUSINESS

Ambler Work Authorization Request: Roger Marsonette explained a letter was received from the Ambler's attorney, Trent Baker, requesting authorization from the Board to install the six remaining windows and the metal roof on the structure to prevent any damage that may occur throughout the winter.

Roger Marsonette motioned "to approve the request to let the Ambler's install the remaining windows and the metal roof on the existing structure before the weather turns bad. This is with one stipulation; that we [Flathead Conservation District] receive within one week of the approval, by October 17th, a baseline report as to the existing condition of the structure and to include photos." Bill Yankee seconded.

Donna Pridmore stated that a 310-permit application was to be submitted describing how they are going to remove the structure by the 1st of November. Roger noted that was part of the original motion back in March. Donna asked if the district had received it. Roger stated the only 310-application we received is the one that has been tabled (FL-2023-071). Donna stated it is an after-the-fact application that described how they excavated the bank, put the rip rap in, and placed fill behind it. So basically, confirming what we determined was a violation.

Samantha Tappenbeck stated that Donna's question is relevant because we are approaching the November 1st deadline, and the Board could consider taking some action considering we have not received an application nor have they indicated they intend to remove the structure. It might just be a matter of tabling the order on the violation until the matter is settled in litigation.

Pete stated the main reason this came before us is if we do not go ahead and approve or let them winterize it, if they win the litigation, then they can come back on the conservation district for the liabilities and construction costs of us not allowing them to winterize it. Donna stated she does not see how we can allow them to winterize it and pour all that money into it when we want them to remove it.

Bill Yankee asked if there are alternatives to winterize the structure without the additional construction, perhaps heavy-duty plastic sheeting materials that could secure and protect the structure. Roger stated there could be, but he does not have this expertise. Samantha stated that we received a request for this specific work to be done and that is what we are entertaining at this point. Legal counsel advised the Board to approve that work authorization request to avoid future liability for damages. But if the board is not comfortable approving what they proposed, then we do not have the expertise or the authority to direct them on how to winterize.

Jessie Walthers asked if the Board could request an alternative like we do for 310 applications. Samantha stated that is possible. Bill stated he thought we should follow our legal advice to act on this specific request. Samantha stated there might be more cost-effective alternatives that would be less construction and more just protection of the structure, but the cost to them at this point is not our concern. The potential cost to us later is. Hence, Roger's requirement that they submit a baseline condition. Roger stated the intent is to document the current condition of

the structure. He further stated that he does not trust them, and the documentation of current condition would ensure that no additional work is done beyond what would be necessary to winterize.

Samantha stated that there is no change in the order on the violation to remediate. The remediation is to remove the structure and remediate the streambank that was disturbed. Donna stated that is not going to happen by November 1st and asked what the next steps would be. Samantha stated either the Board looks at that date approaching and takes some action to extend the timeline on the order on the violation and keep the order standing, or wait until November 1st comes and goes and at that time take action.

Leo Rosenthal stated that while we don't know the ultimate fate of this structure, protecting it so that it doesn't incur any further damage makes sense. It sounds like they already have the materials there on site. Leo said he is fine with it if that is the minimum amount that they need to winterize it, because clearly this is not going to get settled before the snow flies. Donna stated she would approve them jacking it up and preparing to move it.

Samantha stated the order on the violation still stands and it is clear that they do not intend to follow that order until they are forced to do so. The only way to force them to do that is to go through the process that we are going through now. So, adjusting the timeline accommodates that process, it does not accommodate their ability to keep the house and not remediate the violation.

Motion carried with one no. Mike Kopitzke abstained from voting.

Certificate of Deposit Renewal: Donna Pridmore explained the Certificate of Deposit will automatically renew 10/27/2023 with a new maturity date of 1/27/2024. The bank has asked that the district notify them within 10 days after the maturity date of any changes. She asked if the Board wanted to continue for another 3 months.

Donna Pridmore motioned "that we leave the CD as-is and let the bank roll it over." Bill Yankee seconded. Motion carried unanimously.

MATTERS OF THE BOARD/STAFF

Planning Board Appointment: Samantha Tappenbeck explained that a letter was received September 29, 2023, from Flathead County Planning Board notifying the district that the term for Flathead CD representative on the Flathead County Planning Board will expire December 31, 2023, and request's the district submit a letter of recommendation to fill the vacancy by November 17, 2023. Discussion held.

MACD Convention: Samantha Tappenbeck explained that the convention agenda was included in the meeting packets. She asked Supervisors and Staff to please contact her if they plan to attend as registration and lodging needs to be booked soon.

The next business meeting is scheduled for Monday, October 23, 2023, 7:00 P.M. in person and via ZOOM.

Adjournment: Roger Marsonette motioned “to adjourn.” Mike Kopitzke seconded. Motion carried unanimously. As there was no further business, the meeting was adjourned at 10:30 P.M.

Submitted By:

Ginger Kauffman
Administrator

Reviewed By:

Samantha Tappenbeck
Resource Conservationist

Minutes approved by FCD Board motion made on:

<u>11/13/2023</u>	<u>Pete Woll</u>	<u>Chair</u>
(Date)	(Signature)	(Title – Chair etc.)