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## **CALL TO ORDER & ATTENDANCE**

Secretary/Treasurer Donna Pridmore called the November 14, 2022, 310-permit meeting to order at 7:00 P.M. in the conference room.

**Board members present:** Donna Pridmore, Secretary/Treasurer; Roger Marsonette, Supervisor; Scott Rumsey, Supervisor; Angela Jacobs, Supervisor; Verdell Jackson, Supervisor; being a quorum of the Board.

**Board members absent:** Pete Woll, Chair; John Ellis, Vice-Chair. Absences are excused.

Also, in attendance were Samantha Tappenbeck, Jessie Walthers, Ginger Kauffman, FCD Staff; Kenny Breidinger, FWP; Steve & Nettie Wagoner, Wagoner's Sand & Gravel; Gordon Ash, Associate Supervisor; Bill Yankee, Associate Supervisor; Katie Ridinger, 406 Docks; Leo Rosenthal, FWP; Paul Kusler; Donna Valade, Sands Surveying; Eric Garberg, Jackola Engineering; Clayton Patterson; Dan Wallen.

## **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: Tabled 310's**

- **Buck**, FL-2021-041C, Stoner Creek, complaint: Complaint remains on agenda until remediation work is complete under permit #FL-2021-106 which expires 12/13/2022.
- **Hodge**, FL-2022-015C, Stillwater River tributary, complaint: Complaint received 4/4/2022. Several attempts were made to contact the complainant and alleged violator with no success. Donna Pridmore contacted attorney Camisha Sawtelle 9/27/2022 for advice on how to handle the complaint. No response to date.
- **Inspiration Drive**, FL-2022-007, Whitefish River, path/retaining wall/stairs: Application tabled since July waiting for further information from Casey Malmquist. No additional information received as of 11/9/2022.
- **Lucke**, FL-2022-043C, Flathead River, complaint: 9/12/22 activity initiated without permit. The landowner was required to submit a 310-permit application. No application submitted as of 11/9/2022.

- **Turner**, FL-2021-081C, Swan River, complaint: Tabled until work is completed under permit #FL-2022-008. Permit expires 5/9/2023.

### Consent Agenda Item 3: Minutes

- 9/26/2022 Business Meeting
- 10/11/2022 310-Permit Meeting

### Consent Agenda Item 4: Financial -the following bills/payments were reviewed

Check Detail dated 10/25/2022

1. VISA (Donna Pridmore) \$307.98
2. VISA (Samantha Tappenbeck) \$1,452.35

Check Detail dated 10/26/2022

1. Charter Communications \$162.95
2. Fisher's Technology \$774.56
3. MontanaSky Networks \$10.00
4. Mountain States Leasing – Kalispell \$1,884.86
5. Snowghost Design Inc. \$714.00

### Consent Agenda Item 5: Correspondence

1. 10/17/2022 MACDEO letter to NRCS

Scott Rumsey motioned "to approve the consent agenda." Verdell Jackson seconded. Motion carried unanimously.

### **PUBLIC COMMENT**

Steve Wagoner, Wagoner Sand & Gravel, explained that they have lost 100+ feet of bank along their property upstream from the bridge on Hwy 35 on the east side of Flathead River. They have contacted all agencies listed in the application, and engineering companies, but they are too busy to take on the project. Steve stated the riprap work needs to be done sometime this winter, and voiced concern that if there is another highwater event, and the river breaches the pond area then there is nothing they can do. He stated that they have found a source for materials and asked if those materials could be stored on site. Kenny Breidinger read Adopted Rule E.2.b. *that states temporary stockpiling of excavated materials anywhere in the flood plain is prohibited.* Samantha Tappenbeck and Supervisors noted that they cannot give any recommendations without an application and site visit and encouraged Mr. Wagoner to submit a 310-permit application as soon as possible.

### **310 Onsite Inspections**

**Beatty**, FL-2022-064, Flathead River, walkway/dock/rip rap: Scott Rumsey motioned "this is a project." Roger Marsonette seconded. Motion carried unanimously. An onsite inspection was scheduled for Monday, November 28, 9:00 A.M. at the site.

**Hickok**, FL-2022-065, Whitefish River, fill: Roger Marsonette motioned "this is a project." Scott Rumsey seconded. Motion carried unanimously. An onsite inspection was scheduled for Thursday, December 1, 9:15 A.M. at the site.

**Lowerre**, FL-2022-068, Flathead River, gangway with dock: Donna Pridmore motioned “this is a project.” Verdell Jackson seconded. Motion carried unanimously. An onsite inspection was scheduled for Thursday, December 8, 9:00 A.M. at the site.

**MT MOKKO**, FL-2022-067C, Stillwater River, complaint: Roger Marsonette provided information on the complaint and noted that tailings on the rock pile go down into the river on the south side of the river. Samantha Tappenbeck noted that MT MOKKO’s attorney called the office and is preparing a response to the complaint.

Donna Pridmore motioned “to table complaint FL-2022-067C until a response is received.” Scott Rumsey seconded. Motion carried unanimously.

**Patterson**, FL-2022-066, Garnier Creek, bank stabilization/re-vegetation/water bars: Angela Jacobs motioned “this is a project.” Verdell Jackson seconded. Motion carried unanimously. An onsite inspection was scheduled for Thursday, December 8, 11:00 A.M. at the site.

### **310’s**

**Big Sky Investments**, FL-2022-052, Garnier Creek, boring, stormwater, sub: Eric Garberg, Jackola Engineering, submitted additional information today providing locations and alternate locations for the ponds. Kenny Breidinger noted that John Ellis wants the location of the ponds staked out. Eric replied that they don’t have a complete plan yet. Kenny added that he is ok with waiting for more information on where the ponds will be.

Roger Marsonette motioned “to table application FL-2022-052 until further information is provided.” Verdell Jackson seconded. Motion carried unanimously.

**Burden**, FL-2022-050C, Krause Creek, complaint: The complaint had been determined a violation. Contractor Ray Veilleux submitted a 310-permit application as was required to satisfy the complaint.

Angela Jacobs motioned “the complaint is satisfied by submittal of application FL-2022-063.” Roger Marsonette seconded. Motion carried unanimously.

**Burden**, FL-2022-063, Krause Creek, remove blow down trees: Donna Pridmore motioned “to approve application FL-2022-063 with the additional modification that native shrubs will be planted.” Scott Rumsey seconded. Motion carried unanimously.

**Graham**, FL-2022-061, Unnamed, culvert: Roger Marsonette explained the onsite inspection was completed 11/7/2022. The application was to replace a 16-inch culvert with a 24-inch culvert. During the onsite it was noted that it is an intermittent stream and not under the jurisdiction of the district. Kenny Breidinger agreed there was no sign of scour or swale, and no sign of it being perennial.

Roger Marsonette motioned “this is not a project and not within our jurisdiction.” Verdell Jackson seconded Motion carried unanimously

**Kusler**, FL-2022-044, Flathead River, dock: Donna Pridmore explained that a boundary line adjustment survey was received 11/3/2022, however, ownership of the lots could not be determined by the survey. She noted that only one dock is allowed per ownership. Donna stated she had contacted attorney Camisha Sawtelle regarding the survey but has not heard back from Camisha yet. Mr. Kusler stated that he will go back to Sands Surveying for additional information.

Donna Pridmore motioned “to table application FL-2022-044 until further information is submitted.” Verdell Jackson seconded. Motion carried unanimously.

**Sneed**, FL-2022-057C, Meadow Creek, complaint: On 10/11/2022 the complaint was tabled for further evaluation by Flathead CD. Samantha Tappenbeck explained Meadow Creek is a very manipulated stream with a long history of channel manipulation and diversions particularly in the headwaters which originate in Lake County then flow into Flathead County. Flathead CD contacted Lake County Conservation District and they provided a copy of a recent technical review done within their jurisdiction on Meadow Creek. Pete Woll and Gordon Ash reviewed that information. Samantha spoke to Pete, who is unable to be here this evening, and per Pete’s review of the Technical Review, he determined that the complaint is a violation. Even though there is a lot of channel manipulation, and history of water diversion, it diverts a lot of water so that it no longer perennially flows through this section of the creek where the alleged violation is, it should still be considered a perennial flowing stream. A lot of that water has been diverted so that it flows perennially through the Lake County section, and so it is Pete’s recommendation that it should be considered a violation for this complaint, and the recommended course of action is that the violator submits a 310-permit application to document the work that was done after the fact, and include any potential remediation as determined by the Board.

Donna Pridmore motioned “this is a violation. The landowner is required to submit a 310-permit application.” Verdell Jackson seconded. Motion passed unanimously.

**Sneed**, FL-2022-058C, Patterson Creek, complaint: Samantha Tappenbeck explained on 10/11/2022, the complaint was determined to be a violation, and the landowner was to submit a permit application for work done after the fact. 406 Engineering is currently working on the 310-permit application for Sneed.

Scott Rumsey motioned “to table complaint FL-2022-058C until further information is received.” Verdell Jackson seconded. Motion carried unanimously.

Dan Wallen (complainant) asked when the best time would be to present additional information. Donna Pridmore stated we are waiting for the 310-permit application to be submitted, and asked Mr. Wallen if he wanted to present more information about the application or the complaint. Mr. Wallen stated it is relevant to water rights. Mr. Wallen added that he wanted to make sure a retroactive permit is not given, because even though the work was done the way you would want it to be done, he cannot legally change the amount of water he is pulling from the system. Donna stated Mr. Wallen could submit the information as an addendum to the complaint for the Board’s review. Samantha provided information to clarify the difference between water rights jurisdiction and legal determinations, and the Board’s jurisdiction and authority to make determinations per the 310 Law. Donna added that as part of the application process the Board could require that the violator remediate the stream, and part of that

remediation could be a restoration of the flow. Additional discussion was held regarding the difference in jurisdiction between water rights and 310-related issues. Donna asked Mr. Wallen if he had contacted the Water Rights office. Mr. Wallen stated he had contacted them, and they are waiting for the determination from the District. Ultimately, it's going to be a civil case, but this process is going to be a big part of that. Donna reiterated that any additional information that the complainant would like to submit would be accepted and included in the record. Mr. Wallen alleged that the violator had stated that he removed a smaller pipe, which the water records through the court system indicate was a 2-inch pipe, and that he upgraded it to an 8-inch pipe, so, it's substantially different in the volume and diverted off stream which there's no rights for. Leo Rosenthal speculated that at some point there would probably need to be a flow measuring device put on to his diversion so that the determination can be made on whether or not Mr. Sneed is taking the appropriate amount of water and not more than his allotted amount per the water right. Samantha Tappenbeck stated that if Mr. Wallen would like to provide any additional information, he could submit it to the Flathead CD office; she also offered to discuss the 310/water right differences further with him if needed.

**Sneed**, FL-2022-060C, Meadow Creek, complaint: On 10/11/2022 the complaint was tabled for further evaluation by Flathead CD.

Scott Rumsey motioned "complaint FL-2022-060C is a violation." Verdell Jackson seconded. Motion carried unanimously.

Complainant Dan Wallen stated that he is also dealing with Flathead County Planning & Zoning (FCPZ) and that they are waiting for the 310-determination. Mr. Wallen reiterated that Meadow Creek has a history of manipulation and as a result flows during some years and not in others. He asked how to prove that it is a perennial stream because FCPZ inspected it and determined that there was not a violation even though the building is within inches of the streambed. Discussion was held regarding the technical review completed for Meadow Creek by Lake County Conservation District, which is a public document and can be shared. Additionally the USGS topo map identified Meadow Creek as a perennial stream. Mr. Wallen was informed that as the complainant, he will receive a copy of the letter regarding this complaint, which he could take to FCPZ. Samantha added that 310-jurisdiction determination is up to the Supervisors specific to the 310-Llaw. They are not necessarily going out to determine whether or not a stream is perennial flowing, because the law reads that 310-jurisdiction extends to projects that impact the beds or banks of perennial flowing streams, or with the potential to impact a perennial flowing stream. For example, if work is proposed on an intermittent tributary to a perennial flowing stream, that could have impacts downstream, it could still fall within 310-jurisdiction. Streams are complicated and dynamic, and sometimes it takes a lot to make those determinations of jurisdiction. Scott Rumsey noted, like Krause Creek, it can have a section that is perennial and another one that goes dry, but it's still under 310-jurisdiction. Kenny Breidinger read the definition of natural perennial flowing stream from the Adopted Rules: *RULE 4. DEFINITIONS 31. "Natural perennial-flowing stream" means a stream, which in the absence of diversion, impoundment, appropriation, or extreme drought, flows continuously at all seasons of the year and during dry as well as wet years.*

Donna Pridmore asked Mr. Wallen if he had shown the Lake County CD technical review to FCPZ. He replied no that their determination was mainly based on no water in the channel at time of inspection. Mr. Wallen provided FCPZ with the USGS topo map and a document from

DEQ. FCPZ did ask about the conservation district decision, and thought it would help resolve the issue. Angela Jacobs asked if it was before the zoning board because of a setback violation. Mr. Wallen replied that essentially, the alleged violator covered up the streambed with a culvert, put a parking lot on top of it, and constructed a building approximately 16-inches away from the streambed. He noted that one section is still there but the rest he was covered up with about 40-feet of culvert. Samantha stated I would think that the violation letter, the technical review that was completed on Meadow Creek for Lake County Conservation District and the definition of a perennial flowing stream from our Adopted Rules would be a pretty strong case to present to FCPZ, and copies can be provided to Mr. Wallen.

## **NEW BUSINESS**

**Staff Medical Insurance Renewal:** Samantha Tappenbeck explained Staff and Supervisor Ellis met with PayneWest Insurance on 10/27/22 to discuss staff medical insurance options as the current insurance ends 12/31/2022. Summary information for staff plan selections and budget were included in the meeting packet. Donna Pridmore motioned “to accept plan selections as presented.” Angela Jacobs seconded. Motion carried unanimously.

**Flathead County Planning Board (FCPB) Representative:** Samantha Tappenbeck explained Supervisor Jackson is the current representative for the district on the FCPB; his term expires on 12/31/2022. Flathead CD must provide a recommendation to fill the vacancy no later than November 18. Samantha explained she had talked with Gordon Ash about the vacancy. Gordon expressed concern that he already has a commitment to the Flathead Basin Commission (FBC). Meeting schedule, responsibilities, and process of the FCPB were discussed. Scott Rumsey stated he would be interested in being on the FBC if Gordon wants to be on the FCPB. Discussion held. Gordon stated he was willing to try it.

Roger Marsonette motioned “to appoint Scott Rumsey as the Flathead Basin Commission representative for the Flathead CD.” Angela Jacobs seconded. Motion carried motion unanimously.

Angela Jacobs motioned “to appoint Gordon Ash as the Flathead CD representative to the Flathead County Planning Board.” Scott Rumsey seconded. Motion carried unanimously.

**MACD Convention Resolutions & Voting Member:** Samantha Tappenbeck explained the district needs to appoint a supervisor to vote on business items at the MACD Annual Convention. Part of the responsibility is to provide the FCD vote on Resolutions 22-01 through 22-06, and MACD bylaws revisions. The Board reviewed, discussed, and recommended the following for

Resolution 22-01, Streamline Floodplain Permitting for Stream/Bank Restoration Projects - Yes  
Resolution 22-02, Adoption of Gilly - Yes  
Resolution 22-03, Modify MCA 2-2-302 - Yes  
Resolution 22-04, Fort Peck Test Flow Mitigation - Yes  
Resolution 22-05, Incentive for Cover Crops - Yes  
Resolution 22-06, Opposition to foreign ownership of critical land - No

Donna Pridmore motioned “to appoint Roger Marsonette as the voting member for the Flathead CD, with Donna Pridmore as the backup.” Angela Jacobs seconded. Motion carried unanimously.

Donna Pridmore motioned “the appointed voting representative is given the authority to vote per the discussion had by the board on each resolution.” Verdell Jackson seconded. Motion carried unanimously.

Samantha Tappenbeck explained that the letter from MACD Board President, Dean Rogge, summarized the amendment to the bylaws for MACD. This will be discussed at the MACD Convention.

**District Vehicle Hail Damage Estimate:** Samantha Tappenbeck explained that the district vehicle received minor cosmetic damage during spring hailstorms. The appraisal came back at \$5,103.00. As repair shops are scheduling months out, Samantha stated that she had tentatively scheduled an appointment for 1/10/2023. She noted that the deductible is \$1,000, and \$2,000 has been budgeted for the district vehicle to cover fuel, maintenance, tires, etc. Discussion was held, and Supervisors agreed that repairs are not necessary.

**District Accounts - Supervisor Signatures Authorization:** Ginger Kauffman explained there are 4 Supervisors currently authorized as signers on district accounts. During this past payroll, 3 of the 4 supervisors were gone. Additional signers are needed. Donna Pridmore motioned “to add Roger Marsonette and Scott Rumsey as authorized signers on district accounts.” Verdell Jackson seconded. Motion carried unanimously.

### **MATTERS OF THE BOARD/STAFF**

**Education Letter:** Donna Pridmore and Samantha Tappenbeck made edits to the education letter, which was included in the meeting packet. Angela Jacobs motioned “to accept the new education letter.” Scott Rumsey seconded. Motion carried unanimously.

The next business meeting is scheduled for November 28, 2022, 7:00 P.M. in person and via ZOOM.

Adjournment: Roger Marsonette motioned “to adjourn.” Verdell Jackson seconded. Motion carried unanimously. As there was no further business, the meeting was adjourned at 9:42 P.M.

Submitted By:  
Ginger Kauffman  
Administrator

Reviewed By:  
Samantha Tappenbeck  
Resource Conservationist

Minutes approved by FCD Board motion made on:

<u>12/12/2022</u>	<u>Pete Woll</u>	<u>Chair</u>
(Date)	(Signature)	(Title – Chair etc.)