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Park Conservation District

5242 Highway 89 South Livingston, MT 59047  
Telephone (406) 946-3007

July 6, 2023

**REGULAR BOARD MEETING  
MINUTES**

**USDA Conference Room  
5242 US HWY 89 S. Livingston, MT 59047  
11:00 a.m.**

**BOARD MEMBERS PRESENT:** Ned Zimmerman – Chair, Dave Haug, Judy O’Hair, DeWitt Dominick

**NON-BOARD MEMBERS:** Ashley Lowrey, SVWG/UYWG Watershed Coordinator; Kelly Arterburn, PCD Administrator; Buddy Drake, FWP; Scott Opitz, FWP; Judy O’Hair, landowner; Kelton Cole, Contractor; Carter Boehm, landowner;; William Smith, Engineer; Jonah Herman; Lawson Moorman, Park County Floodplain; Zoom: Jade Metzler, USACE; Kara Huyser, DNRC

**11:07am**

**Call the Regular Park CD Board Meeting to Order – Ned Zimmerman, Chairman**

*\*\*Automatic **No** Votes for Board members not present*

**Natural Streambed & Land Preservation Act Applications Inspections/Discussion:**

- A. **PK- 23-23-C** Yellowstone River; 13 Ninth St Island, LV. Carter Boehm – installed 5 barbs with intent to protect the eroded bank in front of his new home and used an excavator in the Yellowstone River to retrieve rock/ boulders that had been washed downstream during the 2022 flood, all without a 310 permit. Ned Zimmerman read the minutes from the June 6, 2023, meeting to state the directive the PCD had given the landowner, contractor, and engineer to remedy the violation work done without a 310 permit. PCD received a Form 270 – 310 Application on June 8, 2023 that was reviewed, but did not have the information requested by the Supervisor’s decision in the June 2023 meeting. The application did not include the requested: removal of barbs, linear footage of rip rap, drawing indicating existing conditions, source of rip rap material, describe plans and methods to stabilize the bank. Jade Metzler reminded applicant that the onus is on them to provide the Form 270 – 310 Application to the US Army Corps of Engineers as well. **\*Judy made a motion to find the applicant(s) in violation, giving them until July 15<sup>th</sup>, 2023 to comply with PCD requests for a complete application without a fine. Dave 2<sup>nd</sup>. Motion passed 4-3.**

Carter Boehm stated the PCD was welcome to come down whenever to view the site and bank.

General Discussion:

Ned stated that the PCD needs to have a violation fee in the Adopted Rules due to the administrative time the violations are taking. Supervisors discussed \$200 - \$250 automatic fine, consistent with every violation.

Lawson, Park County Floodplain, explained their process and workload. They are working on updating FEMA floodplain hazard maps, which is a 3-5 year process. Discussed jurisdictions between city & county floodplain, and PCD region.

- B. **PK-34-23** Elbow Creek, near 150 Elbow Creek Road on State Trust Lands, LV, Art Burns. Work to repair damage from 2022 flood to west bank and protect road and bridge. Pushed gravel bar up on the bank. Due to the fact the work was done on School Trust Lands, Kara Huyser shared she thought they had their Emergency permit, but she is new to stream permitting. Kara requested copy of 310 application and permit for State Trust Lands File.

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**\*Judy moved to approve with modifications – no additional imported rock shall be used to protect the bank. Dave – 2<sup>nd</sup>. Motion passed 4-3.**

- C. **PK-01-23** Soda Butte Creek, 279 Bannock Trail, Cooke City, Michael Rosengren. Violation work included diversion of flood waters, pushed berm up to direct creek away from house & sauna building, reconstruction of the bank, floodplain, and front yard.

Inspection Team Report 6/27/23: A cribbing of large trees had been built on the bank/channel interface, in front of the lawn pad that was constructed the previous summer. Rock from an off-site source was placed on and around the trees. A large hole in front of the newly created bank revealed where gravel and cobble had been excavated from the creek bottom. The spoils from that hole were placed on and around the imported rock, and then compacted. The newly constructed bank was approximately 350' long. At its widest point the reconstructed lawn pad and bank fill is approximately 100' wide. The in-channel berm that was constructed on what was the creek's old south bank, prior to 2022 flooding, is approximately 4' high and 150' long. There is also a berm constructed on the creek's north bank that angles and tapers back into the creek's mid-channel, across from the house. This berm is approximately 4' high, tapering down to 2' high, for about 500'. (It should be noted that all measurements are approximations based on pacing lengths.)

Inspection Team Report 4/26/23: Rosengren's verbally agreed not to undertake any additional work until a re-inspection took place in June due to snow cover and upcoming high water. Rosengren's were informed of the 310 Law and processes and legal requirements to obtain all necessary permits prior to performing work on the streambed and bank. They agreed to meet the team at the June re-inspection.

General discussion included requirements to remedy the violation – need to address loss of channel length, remove berm, protect the resource and neighbors, and request an engineered plan to restore the stream and bank to acceptable conditions. Remove about 100' of newly reclaimed "lawn", to within 25' of the house. Lawson Moorman – unsure if they have a septic permit, they don't have zoning compliance, and can't dig in the creek without a floodplain permit. Forest Service and USACE are pursuing violations in their jurisdictions as well.

**\*Dave made a motion to find Rosengren's in violation. DeWitt 2<sup>nd</sup>. Motion passed 4-3.**

**\*Dave made a motion to fine Michael Rosengren \$500 for violating 310 Law, doing work on the streambank without a permit, and require Mr. Rosengren to attend the next PCD Board Meeting. DeWitt – 2<sup>nd</sup>. Motion passed 4-3.**

The Park CD will send a letter noticing the Rosengren's of the violation by certified mail and email.

- D. **PK-31-23-ER** Tributary to Billman Creek, 776 US Hwy 10 W, LV, Connie Malcolm. Buddy gave the history of the illegal ponds, that were built on-channel without a permit. Emergency work was done when the water started cutting around the left side of the outflow on the lower pond. Emergency work included filling the washed-out portion of the dam on the large (lower) pond with a mixture of rock and clayish soil. Site inspection team recommended to the applicant to remove the dam and concrete barriers on the large (lower) pond. Once the pond is drained, create step pools with native rock located on site. Advised Connie that she should submit a 310 Application Form 270 to the Conservation District to decommission or to do work on the ponds.

**\*Dave made a motion to approve the emergency work with the modifications recommended by the site inspection team. Judy 2<sup>nd</sup>. Motion passed 4-3.**

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- E. **PK-33-23** Palmers Lake/Eagle Creek, Above the Rest Road, Gardiner, Yellowstone Forever, Larry Dears. Detailed plans to repair and replace culvert, improvements to the south end of the embankment road and shoulders.  
Inspection Team Report: Good plan and approach. Recommend waiving 15-day waiting period.  
**\*Ned made a motion to approve and waive 15-day waiting period. Dave 2<sup>nd</sup>. Motion passed 4-3.**
- F. **PK-13-22** Mill Creek -Mogen Bridge; Caleb Minnick requested a one-year extension of 310 permit. Dewitt explained that the PCD approved a permit in 2022, but the Forest Service required more freeboard. Updated engineered plans were re-submitted to the PCD – which increased the height and span of the bridge. Ned asked to assign the application a 2023 number – PK-37-23.  
**\*Ned made a motion to approve. DeWitt 2<sup>nd</sup>. Motion passed 4-3.**
- G. **PK-28-23** Indian Creek, Todd – 310 permit, circulated for Board Signatures.

### New Business

Discussion of PCD Rules and Procedures. Consider adopting mandatory \$250 fine, for both owner and contractor, for all violations. Scott – history of why Board previously had a flat fee for violations – due to extra work for the Board and staff. ARM and LAW in book can't be changed. Dredging history – Board previously decided no more dredging. Boat ramps – can't say "no more boat ramps", but in the rules can require an engineered design. Can amend Rules at any point in a public meeting. PCD should adopt the 2019 Model Rules, then modify as needed.

**\*Ned made a motion to approve the 2019 Model Rules for Conservation Districts, Grazing Districts, and Counties to Implement the Natural Streambed and Land Preservation Act of 1975. Dave 2<sup>nd</sup>, motion passed 4-3.**

Further discussion –

- Buddy informed the group that DNRC is advising CD's to not declare anything jurisdictional or non-jurisdictional. Advise inquiries to submit a 310 application.
- Complaint procedures – how should the CD handle these. Briefed Board on the Rules governing complaints. Agreed we should call the complainant to follow up on Board Decision.
- Board Supervisor bios and photos needed for Park CD website.
- Board meeting agenda to be emailed out to all Board Supervisors, Hailey Graf, Lawson Moorman, Jade Metzler, Scott Opitz, Buddy Drake, Ted Nelson, Nate Brown, and PCD Staff and posted at USDA Building.

**Minutes Approval** – June 2023 Minutes

**\*Judy made a motion to approve the minutes, DeWitt 2<sup>nd</sup>, motion passed 4-3.**

### Treasurer's Report and Financial Items

- A. Approval of Checks and Financial Reports.
- B. Rocky Mountain Insurance – Ashley submitted expense on our DNRC Administrative grant for reimbursement. Insurance expense increased from \$950 to \$4,500.
- C. Balance sheets, profit and loss – \$25k (2<sup>nd</sup> half) of Mill levy is pulled in July.
- D. CDA Administrative Grant – to help fill the financial deficit. Ashley submitted for \$30k. Should see the check by the end of August/September.
- E. MACD – annual dues are 6.5% of mill levy (of the \$52,00). Last year we paid half, because of emergency. Minimum payment \$750, Maximum is \$17,00.

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Ashley recommended we wait until she hears back on CDA Administrative grant.

- F. PCD Supervisor required at all Site Inspections. Should we submit a grant to pay a consultant to go to site inspections? Put on agenda for August to discuss again. Fall is a difficult/busy time for our Paradise Valley Supervisors to attend inspections. DNRC funding possible? Site inspections conducted last Wednesday of each month.

**\*Dave made a motion to approve financials, July 2<sup>nd</sup>, motion passed 4-3.**

### **Watershed Business**

Upcoming Weed Education Field Day and Water Field Day. Ashley will send out fliers.

UYRAC – DES debris removal on the Yellowstone River. Originally to remove demolition & construction material (DNC), somehow scope got expanded. Out of state contractor pulled trees out and set up a burn pile at Tom Miner – Park County dump station. Scott - explained that landowners are not liable for woody debris that cuts loose off personal property during flood events. Point of Rocks is on the floodplain, not FWP jurisdiction. DES funding runs out end of August.

Upper Yellowstone Watershed Group

- Last meeting: June 15th, Emigrant
- Next meeting: October TBD, Emigrant

Shields Valley Watershed Group

- Last meeting: February 13, Wilsall
- Next meeting: TBD, Wilsall

**Public Comment**    None

**Adjourn 2:50**

### **Next Proposed Park CD meeting:**

**August 1, 2023**

**USDA Conference Room**

**Following Park CD meeting:**

**September 7, 2023**

**USDA Conference Room**