

BLAINE COUNTY BOARD OF COMMISSIONERS
PUBLIC HEARING DATE: November 26

<p>REGARDING THE APPLICATION OF: The Nature Conservancy for Stream Alteration Permit on East Fork of Fish Creek, a tributary of Fish Creek.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION</p>
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REQUESTED ACTION: A public hearing on and consideration of an application by The Nature Conservancy to install a series of small biodegradable, permeable structures within East Fork of Fish Creek to demonstrate beaver-mimicry stream restoration techniques to restore wet meadow, riparian, and upland habitats to ecologically functioning conditions. The project site is adjacent to East Fork Fish Creek Road, located within Sections 5-8 of T1N R23E and Sections 32-34 of T2N R23E, B.M. Blaine County. The property is zoned Rural Remote RR-40 with areas of Wetlands (WE) Overlay, Mountain Overlay (MOD) and Riparian Setback (R) Districts.

APPLICANT/PROPERTY OWNERS: The Nature Conservancy

REPRESENTATIVE: David Weskamp; The Nature Conservancy

PROJECT PARTNERS: Office of Species Conservation (Josh Uriate), US Fish & Wildlife Service (Josh White), Idaho Soil Conservation (Derek Mynear), Idaho Dept. of Fish & Game (Terry Gregory), Anabran Solutions (Joe Wheaton)

NAME/REACH OF STREAM: East Fork Fish Creek, a tributary of Fish Creek

PROPERTY LOCATION: Within Sections 5-8 of T1N R23E and Sections 32-34 of T2N R23E, B.M., Blaine County

APPLICABLE REGULATIONS: Title 9 (Zoning Regulations): Chapters 6A, 17, 19, & 21
Title 8 (Comprehensive Plan)

I. APPLICATIONS, NOTICE, EXHIBITS & GENERAL FACTS

1. Applications: Blaine County Stream Alteration Permit application received on October 23, 2018 and certified as complete on October 23, 2018

2. Notice: Public notice for this application was as follows:

- A. Legal notice was published in the Idaho Mountain Express on November 14, 2018;
- B. Notice was mailed on November 8, 2018 to all Blaine County political subdivisions;
- C. Notice was mailed on November 8, 2018 to surrounding landowners within 300' of the exterior boundaries and 1,000' downstream of the project site.
- D. An on-site notice was posted before November 19, 2018, as supported by affidavit on file.

► **Finding:** Upon motion by Commissioner Greenberg, second by Commissioner Schoen, and by a vote of 3 to 0, the Board finds notice to be adequate.

3. Any disclosures (i.e. conflicts of interest, site visits or *ex parte* communications)?
No Disclosures were offered by the Board.

4. Exhibits: Attached to the staff report and referenced throughout are the following exhibits:

Exhibit A—Application Materials

Revised application materials were received on October 23, 2018, unless indicated otherwise.

- A-1: Blaine County SAP Applications
- A-2: Vicinity Maps
- A-3: Drawing Exhibits – BDA Examples
- A-4: Photo Exhibit
- A-5: Joint Application for Permits
- A-6: Email responses to staff- received November 8, 2018
- A-7: Riparian Fencing Map

Exhibit B—Agency Comments

- B-1: Department of the Army (USACE)- Pending
- B-2: Idaho Department of Water Resources- received October 30, 2018
- B-3: Idaho Dept. of Fish & Game – received October 30, 2018

Exhibit C—Blaine County Supplemental Documents

- C-1: Staff Site Visit Photos- dated September 11, 2018

Exhibit D—Public Comments

None received.

II. STREAM ALTERATION PERMIT APPLICATION (SAP): STANDARDS OF EVALUATION

1. *The applicant has applied for permits from the Army Corps of Engineers and the Idaho Department of Water Resources. If the watercourse runs through a neighboring city, they shall be sent a copy of the application, at the direction of the Administrator, to notify them of possible stream alterations. Copy shall be sent if the project is within one thousand feet (1,000') downstream or one mile upstream.*

➤ **FINDING:** Compliant. The Joint Application is dated September 19, 2018.

- Army Corps of Engineers (USACE); Pending
- Idaho Dept. of Water Resources (IDWR); received October 30, 2018

No Cities within the limits for notification.

2. *Other Property Not Adversely Affected: The proposed stream alteration shall have no adverse impact on the property of another person or entity, including the areas upstream, downstream and across the stream. "No adverse impact" means that the proposed use or activity will not have any deleterious impacts in terms of increased flood peaks, flood stage, flood velocity, erosion and sedimentation, or water quality or that such impacts have been identified and mitigated to the maximum extent feasible.*

➤ **FINDING:** Compliant. According to Exhibit A-5, Joint Application for Permits, the project is intended to improve the waters of the US and wetlands. It is further stated that mitigation is not necessary due to the minimal amount of disturbance caused by the structures and installation activities of each. It is stated that measures to reduce the amount of structures necessary to achieve project goals will be implemented. There will be no heavy machinery or vehicles in, or near the project area.

3. *The stream alteration desired will not involve placing an encroachment, structure, fill, deposit, obstruction, storage of materials or equipment in the floodway, all of which are prohibited by subsection 9-17-5B3 of this Chapter, unless certification by a registered engineer is provided and accepted by the County Engineer, demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the 100-year flood discharge and other standards of this Section are met.*

➤ **FINDING:** Not applicable. There is no FEMA mapped floodplain or floodway.

4. *The stream alteration desired shall not have any adverse impacts or go against the stated purposes of the Floodplain Overlay District (Section 9-17-2) and the Stream Alteration Permit program (subsection 9-17-9A of this Chapter).*

➤ **FINDING:** Compliant. Beneficial impacts include improving riparian habitat and floodplain connectivity. The intent of this project is to use beaver-mimicry and stream restoration techniques as part of an effort to restore wet meadow and riparian habitat along degraded sections of the streams. The application states that post-line wicker weaves can accelerate recovery of incised streams and riparian habitats by reducing water velocities, increasing sediment deposition and aggradation, enhancing floodplain connectivity, raising groundwater tables, and increasing habitat complexity.

5. *Local Public Interests: The proposed application (use) does not conflict with the local public interest, i.e., the affairs of the people in the area directly affected by the proposed use. This includes, but is not limited to, property values, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality or an impact upon a locally important factor. The burden of proof always rests with the applicant.*

- **FINDING:** Compliant. According to Exhibit A-5, Joint Application, the beaver-mimicry structures are hand-built bioengineering structures designed to mimic the function of natural beaver dams. Each structure will consist of several untreated 3-4 inch diameter wooden posts up to eight feet (8') long, driven 2-3 feet into the stream bed and spaced 1-2 feet apart. Refer to the photo and diagram exhibits, A-3 and A-4, for more information and examples of each. Fish and wildlife habitat and water quality will improve according to project goals.

It is further stated in Exhibit A-6, Email from Applicant, that The Nature Conservancy is currently constructing a wildlife friendly fence along East Fork Fish Creek to establish a riparian buffer that will allow the restoration to commence whilst keeping grazing cattle out of these areas. Refer to Exhibit A-7, Riparian Fencing Map, for specific locations of the proposed fencing.

6. *The following extraordinary circumstances may favor the granting of a stream alteration permit:*
- a. *If the river tries to change to a channel outside of the floodway.*
 - b. *If the viability of an irrigation structure or water delivery system is threatened.*
 - c. *If a road or bridge which provides access to homes or businesses is threatened.*
 - d. *If an existing home or building envelope in a platted subdivision is threatened.*
 - e. *If severe erosion or severe sedimentation of land is threatened.*
 - f. *If a public facility (sewer plant, school, etc.) and/or any other use which would affect the chemical quality of the river is threatened.*

- **FINDING:** Not applicable.

7. *If the applicant or landowner with respect to an application for a stream alteration permit under this chapter is the State of Idaho, or any agency, board, department, institution, or district thereof, the Commission or the Board, in addition to all other applicable standards and criteria hereunder, shall take into account the plans and needs of the State, or any agency, board, department, institution or district thereof, as required by Idaho Code §67-6528.*

- **FINDING:** Not applicable.

III. DECISION AND CONDITIONS

- **Decision:** Upon motion by Commissioner Schoen, second by Commissioner Greenberg, and a vote of 3-0, the Blaine County Board of Commissioners hereby approves The Nature Conservancy's application for a Stream Alteration Permit (SAP) on East Fork Fish Creek, finding the proposal complies with the applicable criteria set forth under Title 9, Chapter 17, Floodplain Overlay District and Riparian Setback District, subject to the following conditions:

Conditions of approval:

1. The project shall comply with Idaho Department of Water Resources (IDWR), US Army Corps of Engineers (USACE), Department of Environmental Quality (DEQ), Blaine County and applicant's specifications, conditions and standards. The work shall be done by appropriate construction equipment according to conditions placed on the State and Federal permits.
2. The work shall be done as specified in application; no work outside that applied for and approved under this permit shall be done.
3. Minor modification to the proposal as a result of field conditions during construction may be presented to the County for Administrative approval without further public hearing provided other agencies with jurisdiction have granted approval and that the modifications made are described in writing and made part of the file.
4. The applicant shall provide notify the County's Floodplain Manager prior to start of work.
5. The applicant shall provide the county with copies of the monitoring plans, photo and possibly flow monitoring, submitted to IDWR each year by December 31 for a minimum of 3 years. A site plan of the installation locations shall be included with the monitoring report.
6. Work shall occur in the dry or low water to minimize turbidity and adverse impacts. In-water work shall not be conducted March 15 - July 15 to minimize impacts to spawning salmonids.

Notice pursuant to I.C. 67-6535(c): The owner of the property subject to this application and decision may request regulatory taking analysis pursuant to I.C. 67-8003.

IT IS SO ORDERED.

DATED this 4 day of December, 2018

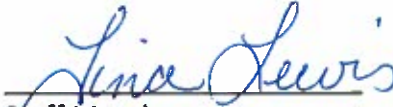
BLAINE COUNTY BOARD OF COMMISSIONERS


Angele McCleary, Chair

CERTIFICATE OF MAILING

The undersigned person hereby certifies that on the 5th day of Dec, 2018, she served a true and correct copy of the foregoing document by depositing the same in the U.S. Mail addressed as follows or by service otherwise as noted:

The Nature Conservancy
David Weskamp
Email: david.weskamp@tnc.org



Staff Member