

BLAINE COUNTY BOARD OF COMMISSIONERS
PUBLIC HEARING DATES: November 30, 2017, continued to December 18, 2017
and re-noticed for November 26, 2018.

<p>REGARDING AN APPLICATION OF: Eccles Window Rock Ranch, LLC for a Stream Alteration Permit (SAP) on the Big Wood River. This is a follow up SAP to an emergency SAP issued during the spring flooding of 2017.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION</p>
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REQUESTED ACTION: Public hearing on and consideration of an application by Eccles Window Rock Ranch, LLC to revise emergency stream alterations on the Big Wood River that occurred during the spring flooding of 2017, and perform additional stream alterations that include the discharge of additional rock riprap and cottonwood trees with root wads into the bank, excavation and relocation/utilization of accumulated woody material. This project is located at 125-126 Lower Broadford Road and 11020 State Highway 75, all within Sec 1, T1N, R18E, B.M. Blaine County and is zoned Residential/Agricultural (R-5) with areas of Floodplain (FP) and Wetland (WE) Overlay Districts.

PROPERTY OWNERS/APPLICANTS: James Conger and Eccles Window Rock Ranch, LLC (Applicant)

REPRESENTATIVE: Erick Powell, Brockway Engineering, PLLC

NAME/REACH OF STREAM: Big Wood River

PROPERTY LOCATION: 125/126 Lower Broadford Road and 11020 State Hwy 75 within Sec 1, T1N, R18E, B.M. Blaine County

APPLICABLE REGULATIONS: Title 9 (Zoning Regulations): Chapters 7, 17 & 19
 Title 8 (Comprehensive Plan)

I. APPLICATION, NOTICE, EXHIBITS & GENERAL FACTS

1. Application: Blaine County Stream Alteration Permit revised application received May 7, 2018 and certified as generally complete on May 7, 2018.

2. Notice: Public notice for the November 26, 2018 hearing 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 by November 13, 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)?

On May 16, 2017, Commissioners Schoen and Greenberg conducted a site visit in response to an emergency stream alteration permit request.

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

Exhibit A—Application Materials

All application materials were received on May 7, 2018, unless indicated otherwise.

- A-1: Blaine County SAP Application
- A-2: Vicinity Map
- A-3: Site Plan Overview and Adjacent Owner Information
- A-4: Aerial Photograph with pre/post flood bank delineations
- A-5: Responses to Standards of Evaluation
- A-6: Site Plans (North, Center and South)
- A-7: Plan Design Details
- A-8: Comparison of ESAP Application, ESAP Work, and Joint Application
- A-9: No Adverse Impact Statement- Brockway Engineering
- A-10: No-Rise Certification- Brockway Engineering
- A-11: Joint Application
- A-12: Applicant responses to IDFG comments (Exhibit B-5)

Exhibit B—Agency Comments

- B-1: Department of the Army (USACE) NWP 13- *Emergency* Permit rcv'd July 5, 2017
- B-2: USACE- September 6, 2018
- B-3: Idaho Dept. of Water Resources (IDWR)- *Emergency* Permit rcv'd May 17, 2017
- B-4: IDWR- October 22, 2018
- B-5: Idaho Dept. of Fish and Game- October 13, 2018
- B-6: County Engineer Comments- September 6, 2018

Exhibit C—Blaine County Supplemental Documents

- C-1: Emergency Stream Channel Photos and Proposal- dated May 15, 2017
- C-2: Blaine County Commissioner ESAP Meeting Minutes- site visit May 16, 2017
- C-3: Blaine County ESAP Approval Letter, Kristine Hilt- dated July 7, 2017
- C-4: Site photos during flood (pre-emergency work)- dated May 16, 2017
- C-5: Site photo post-emergency work- dated September 21, 2017
- C-6: Aerial photo pre and post flooding (2016 v. 2017)
- C-7: Photo Exhibit (3 work sites)- post ESAP work 2017

Exhibit D—Public Comments

No written comments received.

II. STREAM ALTERATION PERMIT APPLICATION (SAP): STANDARDS OF EVALUATION
Blaine County Code §9-17-9D

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 for Emergency Permits is dated May 16, 2017 and the normal Joint Application is dated May 4, 2018.
- **Army Corps of Engineers**
 - NWP 13; received July 5, 2017
 - Follow up permit; received September 6, 2018
 - **Idaho Dept. of Water Resources**
 - Emergency Permit; received May 17, 2017
 - Follow up permit; received October 22, 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.** The Board found the application compliant with the standard based on the details provided regarding mitigation, the incorporation of woody debris into bank work, and the details regarding adverse impacts below. The applicant states the following with respect to potential adverse impacts:
- a. *"Peak flood flow. The project will have no effect on magnitude of flood flow in the Big Wood River based on its current condition.*
 - b. *Flood stage. The project will decrease or maintain flood stage in the Big Wood River compared to current conditions.*
 - c. *Flood Velocity. Removal of river bed material will cause increase river conveyance and reduced average flood velocities. It cannot be guaranteed that some local spot-velocities may not increase or decrease.*
 - d. *Erosion and sedimentation. The proposed project will reduce the risk of erosion and progressive sedimentation which has occurred along the river banks of the river.*
 - e. *Water quality. The proposed project will have no effect on water quality in the Big Wood River."*

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 9175B3 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 100year flood discharge and other standards of this Section are met.*

- **FINDING: Compliant.** The engineer-in-responsible states “Based on the hydraulic evaluation of the proposed project, the project will not cause a rise in the 100-year floodplain elevation at the published cross sections.” Refer to Exhibit A-10, No-Rise Certificate and Exhibit B-6, County Engineer comments, for specifics regarding this no-rise certificate.

4. *The stream alteration desired shall not have any adverse impacts or go against the stated purposes of the Floodplain Management District (Section 9172) and the Stream Alteration Permit program (subsection 9179A of this Chapter).*

- **FINDING: Conditionally Compliant.** The Board found the application to be compliant with this criteria based on the following details regarding beneficial and adverse impacts provided by the applicant:

“The project will have the beneficial effect of stabilizing the banks that were substantially eroded during the 2017 flood event. In addition, removing one major woody debris obstruction and relocating woody debris to river bank will preserve wood in the river while protecting the river bank and removing hydraulic impediment. The project will not jeopardize the county’s participation in the federal flood insurance program. The [project] appears to be in harmony with the purposed of the Floodplain Management District and the Stream Alteration Permit program. In terms of quantifiable, scientific criteria, the project will not have an adverse impact.”

Exhibit A-3, IDWR Permit, requires willows to be planted at 5 foot intervals rather than the proposed 6 foot intervals. Refer to conditions of approval #3-4.

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: Conditionally Compliant.** The Board found that additional riparian species within the revegetation of the project sites will contribute to protecting the local public interest and diversity to the bank, plant community and fish and wildlife habitat. The applicant agreed to incorporate a variety of onsite native plantings within the reconstructed banks to ensure compliance with this standard. Refer to conditions of approval #3 and #4. Discussion also included the opportunity to utilize woody debris in a manner that would not result in burying footer logs under rocks in the bank. The applicant stated that if footer logs were not used then additional rock would need to be imported. The County Engineer also noted that “carbon in the river is carbon in the river.”

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:** The Board found item A applicable to this project.

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 application by Eccles Window Rock Ranch, LLC for a Stream Alteration Permit (SAP) on the Big Wood River, 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. The applicant shall submit a detailed revegetation plan that includes details regarding quantity, spacing and species of plantings at all three project sites and in upland areas disturbed during construction, for administrative approval. Species shall include more than one type of native vegetation for plant community diversity. Dormant willow cuttings, willow bundles, willow clumps, or other native woody vegetation shall be planted within armored streambank and barbs (cuttings spaced no greater than 2-foot intervals, bundles or clumps spaced no greater than 5-foot intervals).

4. Financial Security in the amount of 30% of the estimated cost of the approved revegetation plan approved by the Administrator, or a minimum of \$1,500, shall be collected and held for up to four (4) growing seasons to ensure at least 80% establishment of the plants as determined by the administrator.
5. Written consent for work extending on to other properties shall be submitted to the Land Use and Building Services Department prior to start of construction.
6. 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.
7. Overflow channels shall remain open and unobstructed.
8. Instream woody debris shall be utilized and conserved to the maximum extent possible to preserve the shoreline complexity/cover available to aquatic species.
9. Excavated channels to the Big Wood River shall be reconnected with gradually increasing flows to reduce sediment mobilization related to construction-disturbed substrates.
10. Instream work shall not be conducted between March 15 and July 15.

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


Angelle 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:

Eccles Window Rock Ranch
125 Lower Broadford Road
Bellevue, ID 83313
Email: bbrockette@msn.com

Brockway Engineering
Erick Powell
Email: erick.powell@brockwayeng.com

Robertson & Slette, PLLC
Evan Robertson
Email: erobertson@rsidaholaw.com


Staff Member