

BLAINE COUNTY PLANNING & ZONING COMMISSION

Public Hearing Date: April 27, 2023

REGARDING THE APPLICATION OF: Wood River Land Trust Company for a Wetlands Conditional Use Permit.	Staff Report By: Crystal Rigby Date: April 13, 2023
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REQUESTED ACTION: Wood River Land Trust has applied for a Wetland Conditional Use Permit (CUP) to temporarily impact 0.09 acres and permanently impact 0.03 acres with the development of a trail and boardwalk system through the Simons Bauer Preserve west of Lions Park, also known as Lot 4, Croy Canyon Ranch Sub #1. Property is zoned Residential/Agricultural (R-5) with areas of Floodplain (FP), Riparian (R), Wetland (WE), and Wellhead Protection Overlay Districts.

PROPERTY OWNERS/APPLICANTS: Wood River Land Trust Company (Owner)
Opal Engineering PLLC (Applicant)

REPRESENTATIVES: Ben Majsterek and Samantha Stahlnecker, P.E.

PROPERTY LOCATION: 45 Croy Creek Rd, Hailey, Idaho

APPLICABLE REGULATIONS: Title 9 (Zoning Regulations): Chapters 7, 17, 19, & 25
Title 8 (Comprehensive Plan)

I. APPLICATION, NOTICE, EXHIBITS & GENERAL FACTS

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

- A. Legal notice was sent to the City of Hailey per the Area of City Impact agreement on March 27, 2023.
- B. Legal notice was published in the Idaho Mountain Express on April 12, 2023;
- C. Notice was mailed on April 11, 2023 to all Blaine County political subdivisions;
- D. Notice was mailed on April 11, 2023 to surrounding landowners within 300' of the exterior boundaries;
- E. An on-site notice was posted by April 14, 2023 as supported by affidavit on file.

► **Motion:** Upon motion by Commissioner _____, second by Commissioner _____, and by a vote of __ to __, the Commission finds notice to be in compliance with applicable regulations §9-25-4 of the Zoning Ordinance.

2. Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

Ex parte contacts involve a decision-maker's receipt of any information pertaining to an open application on a quasi-judicial matter. (ie: emails, phone calls, conversations) The undisclosed receipt and consideration of ex parte information denies interested persons their right to review and respond to this off the record information, resulting in a due process violation and more generally, an unfair process.

3. Exhibits: Attached to this report are the following exhibits:

Exhibit A—Application Materials

All application materials were received on February 16, 2023, unless indicated otherwise.

- A-1:** Wetland Conditional Use Permit Application
- A-2:** Vicinity Map
- A-3:** Response to Standards of Evaluation
- A-4:** Design Drawing
 - C0.1 Cover Sheet
 - C1.0 Trail Map
 - C1.1 Trailhead Enlargement (**for informational purposes only, not part of the wetland CUP evaluation*)
 - C1.2 Boardwalk Plan & Profile
- A-5:** Wetland Location Map
- A-6:** Wetland Disturbance Map
- A-7:** Boardwalk Details
- A-8:** Joint Application for U.S. Army Corp Permit
- A-9:** Wetland Delineation - Sawtooth Environmental:

Exhibit B—Agency Comments

None received to date of this report.

Exhibit C—Supplemental Exhibits

- C-1:** Croy Canyon Ranch Sub. I Plat Map

Exhibit D—Public Comments

None received to date of this report.

4. Project Summary:

The Wood River Land Trust is proposing to construct a recreational trail that connects the Lions Park to the Animal Shelter. A small portion of this trail must cross through jurisdictional wetlands, Refer to Exhibit A-5 Site Map. In an effort to minimize impacts to wetlands, a boardwalk is proposed to span the wetlands. The application states that the boardwalk will be supported by piers which will be placed with hand tools, including a post driver. All disturbed areas will be revegetated with native materials. The application further states that alternatives were considered but that the proposal is the least impactful approach to the wetlands and a necessary one to connect the trail system.

- The property is approximately 90-95% encompassed by wetland, riparian, and floodplain overlay.
- Impact to Wetland
 - Temporary- approximately 4, 250s.f. or 0.09 acres
 - Permanent- approximately 1,380s.f. or 0.03 acres.
- Proposed Boardwalk
 - 230 linear feet long and 6 feet wide
- Boardwalk Construction Materials
 - Trek decking and Diamond Pier foundation system (Exh. A-4)
- Gravel Path and Overview area (For information purposes only)
 - 4,700 linear feet of trails
 - See Exh. A-4 for General Construction Notes

II. WETLAND CONDITIONAL USE PERMIT APPLICATION
Blaine County Code §9-19

9-19-1: PURPOSE:

The purpose of this district is to identify and protect those lands in the county characterized by marshes, sloughs, poorly drained soils, a high water table or which are covered by natural nonfloodwaters during a significant portion of the year. These lands should be protected from harmful land uses because of their value for fish and waterfowl habitat, for grazing and for stabilizing fluctuations in water levels.

► **Staff Comment:** The application proposes to build a boardwalk crossing for the Croy Trail expansion to minimize an unavoidable impact to the wetlands due to the existing topography. The applicant did not specifically discuss the other alternative locations for the path that were considered. The planning and zoning commission may want to inquire about those alternatives.

This particular lot was called out in Plat Note 5 of the existing Croy Canyon Ranch Sub, Exhibit C-1. Plat note #5 states, "*Flood plain, Riparian, Wetland and Drainage Areas (f.)*" *"The conservation and park easement area on Lot 4 shall be left in its natural state and no development other than fences, nature trails, and trail signing are permitted. Permitted public uses within the conservation and park easement include non-motorized trails, fishing, birding, educational programs, and passive recreational and cultural activities."* This application appears to comply with the intent of this note.

9-19-2: DEFINITIONS:

The following definition applies to the wetlands overlay district:

WETLANDS: *Those areas of Blaine County that are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas (army corps of engineer's regulation, 33 CFR, 328.3, 1988) and tend to be found in transitional areas between dry land and water where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands, for the purpose of this classification, means an area where three (3) of the following attributes, as defined in the current and future amended editions of "The Federal Manual For Identifying And Delineating Jurisdictional Wetlands" exist: a) hydrophytic vegetation, b) hydric soils, and c) wetland hydrology.*

9-19-4: PERMITTED USES:

The purpose of this section is to permit the type of activities that can enhance wetlands function and not allow uses that may impede wetlands function. The following uses shall be permitted:

- A. The planting of native riparian vegetation with hand equipment (see definition of "hand equipment" in section [9-17-5](#) of this title).*
- B. Agricultural purposes on lands used primarily for agriculture.*
- C. Maintenance of yardscape existing at the time of passage hereof.*
- D. Activities operating in accordance with a County approved permit. (Ord. 2006-18, 11-2-2006)*

► **Staff Comment:** The applicant does not meet the listed permitted uses and therefore has applied for a CUP.

9-19-5: CONDITIONAL USES:

A. *Disturbance to wetlands or within the wetlands setback, including driveway crossing or installation of utilities leading to a building site, which are not reasonably feasible elsewhere on the property, shall comply with the requirements of this chapter and all other county, state and federal requirements. The amount of land disturbance shall be minimized to the smallest area possible.*

► **Staff Comment:** The construction of a boardwalk for the trail system is not listed as permitted and therefore a Wetland Conditional Use Permit is appropriate. The Planning and Zoning Commission will need to decide if temporarily disturbing +/-4,250 square feet of the wetland area and adding +/-4 cubic yards of fill for the permanently disturbed +/- 1,380 square feet of the wetlands to construct a boardwalk area meets the standard of land disturbance shall be minimized to the smallest area possible and if the project is not reasonably feasible elsewhere on property.

9-19-6: DEVELOPMENT STANDARDS:

The following standards shall apply within the wetlands overlay district:

A. *No Disturbance In Wetlands Or Wetlands Setbacks: Except as provided in sections 9-19-4 and 9-19-5 of this chapter, no disturbance of land shall be allowed within the wetlands or wetlands setbacks described in subsection B of this section, including, but not limited to, dumping, filling, dredging, new construction, excavating, substantial improvements or modifications, installation of septic systems, scraping by motorized equipment, removal of vegetation or root systems, or transferring materials that will reduce the natural storage capacity of the land or interfere with the natural flow pattern of any watercourse or degrade the quality of surface or ground water.*

► **Staff Comment:** The wetland modification project does not meet the development standard of *no disturbance in wetland or wetland setback* & therefore the applicant has applied for a conditional use permit.

B. *Wetlands Setback: Any development excepting, development within a designated building envelope or within a platted or recognized lot of record under two (2) acres, as of November 8, 2006, within this district shall be subject to a minimum setback of twenty five feet (25'), as measured from the edge of any delineated wetland, outside of a riparian setback, and consisting of an area larger than twenty five (25) square feet.*

► **Staff Comment:** The proposed boardwalk can not meet the required wetland setbacks, therefore the applicant has applied for a conditional use permit.

C. *In A-20 And A-40 Districts: ...*

► **Staff Comment:** Not applicable the subject property is within the R-5 zoning district.

D. *More Restrictive Setbacks: More restrictive setbacks may be imposed through the subdivision review and conditional use process if site conditions or protection of natural resources so warrant.*

► **Staff Comment:** No proposal to subdivide. Staff does not suggest applying more restrictive setbacks.

E. Variance: When application of this chapter would deny reasonable use of property, an applicant may seek an exception from the standards and requirements of this chapter by means of a variance as provided in chapter 30 of this title.

► **Staff Comment:** Not applicable no request for variance.

III. 9-25-3: STANDARDS FOR EVALUATION:

A. Review: The commission or the board (or hearing examiner) shall review the particular facts and circumstances of each proposed conditional use in the terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

1. Will, in fact, constitute a conditional use as established for the zoning district involved;

Applicant's Responses: "Proposed trail improvements have been designed to minimize wetland disturbance with the inclusion of a boardwalk with minimal permanent disturbance footprint. All temporary disturbance for construction access will be re-vegetated per the recommendations of Sawtooth Environmental. The boardwalk will be constructed using the Diamond Pier foundation system and Trek decking. The construction crew will use hand tools, and a generator-powered post driver to place each Diamond Pier." (Exh. A-3)

► **Staff Comment:** The application appears to meet the standards for a Conditional Use Permit according to §9-19-5A.

2. Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or this title;

Applicant's Responses: "The Wood River Land Trust has many public access preserves, which are community spaces where you can connect with the beauty of nature, whether you're fishing, hiking, biking, or just sitting and letting the landscape wash over you. Allowing the community to access and enjoy their preserves aligns with their mission statement and Chapter 3 of the Comprehensive Plan. The mission of the Wood River Land Trust is to protect and sustain the treasured landscapes and life-giving waters of the Wood River Valley and inspire love for this special place for generations to come. Allowing access and creating a user-friendly trail system allow community members to engage with the preserves, nature, and open spaces in ways they cannot otherwise in this area. This can help further the future protection of natural areas for public access and use. This project will create over 4,700 linear feet of accessible trails for people to enjoy, spanning from the existing Lions Park/Draper Preserve area and extending all the way (to the west) to the Mountain Humane animal shelter. There will be approximately 230 linear feet of boardwalk that will cross along the northern edge of a wetland. This small boardwalk is the only feasible way to complete the trail without encroaching on a larger length of wetlands. This small boardwalk (6' wide) will give the Wood River Land Trust an opportunity to further the education of the importance of wetlands to the general public. This educational aspect will help the public better understand the importance of wetlands for water quality and quantity as well as the importance of wetlands for wildlife species. The trail and boardwalk construction will be completed out of the mapped floodway of the Big Wood River." (Exh. A-3)

► **Staff Comment:** Chapter 3 and 5 of the Comprehensive Plan speaks to the importance of educating the people that recreate within Blaine County. It can be difficult for people to comprehend the importance of our natural environment without having safe controlled access to view the wetlands with their own eyes. The Comprehensive Plan emphasizes the importance of “no net loss of wetlands” and this proposal to build a boardwalk would reduce the wetlands by approximately +/-1,380s.f. The educational factor for the public may outweigh the loss because it could encourage better protections to preserve more wetlands throughout the county.

3. *Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;*

Applicant’s Responses: “The boardwalk is minimal in footprint, height, and visibility. It will be harmonious with the intended character of Croy Canyon which is largely native and undisturbed.” (Exh. A-3)

► **Staff Comment:** The project should not result in a change of the existing or intended character of the general vicinity.

4. *Will not be hazardous or disturbing to existing or future neighboring uses;*

Applicant’s Responses: “The proposed boardwalk will not be hazardous or disturbing to existing or future neighboring uses.” (Exh. A-3)

► **Staff Comment:** No hazards anticipated. The applicant has represented that the use of the Diamond Pier support system for the boardwalk will minimize fill material and is nonhazardous. It is also represented by the applicant that these specifications match the existing Draper Preserve Boardwalk. See Exh. A-7 for the building specifications for the boardwalk design. Proposed condition of approval #10 requires best management practices (i.e. silt fencing) and revegetation of all disturbed areas with native vegetation.

5. *Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;*

Applicant’s Responses: “No increase in demand on essential public facilities is anticipated as part of the proposed boardwalk.” (Exh. A-3)

► **Staff Comment:** It doesn’t appear that the addition of this boardwalk will demand more from public facilities and services.

6. *Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;*

Applicant’s Responses: “The proposed trail system will be privately owned and maintained by the Wood River Land Trust.” (Exh. A-3)

► **Staff Comment:** No anticipated excessive public cost for this project. Refer to proposed condition of approval #6, which requires maintenance of the boardwalk by the owner.

7. *Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, dust, odors, vibration, water pollution or safety hazards. Water pollution includes impact to surface and ground water and potable water sources. When the proposed use involves a potential contaminant source or potential contaminant as set forth in appendix A of this title, on file in the county, and is located within a wellhead protection area, the commission shall consider the impact of the project on potable water sources and determine whether there is sufficient information in the record to demonstrate that the project has been designed to mitigate adverse impact to potable water source(s);*

Applicant's Responses: "N/A No hazardous processes or materials are proposed to be used in the construction of the boardwalk." (Exh. A-3)

► **Staff Comment:** The proposed boardwalk appears to not cause any detrimental effect on any persons, property, or the general welfare.

8. *Will have vehicular approaches to the property which shall be designed as not to create an interference with traffic on surrounding public thoroughfares;*

Applicant's Responses: "N/A" (Exh. A-3)

► **Staff Comment:** N/A The proposed boardwalk is for pedestrians using the trail system going to and from Lions Park, but there appear to be future plans for gravel parking along Croy Creek Road to access the trail system. This would be located on an adjacent lot (Lot 3) to the west of the subject lot. (Exh. A-4, Sheet C1.1)

9. *Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance; and*

Applicant's Responses: "Proposed boardwalk is minimal in footprint and will enhance natural and scenic features by allowing the public trail access to recreate without damaging wetland resources." (Exh. A-3)

► **Staff Comment:** The applicant appears to be making every effort to minimize the loss to the wetland area, but +/-1,380 s.f. (0.03 acres) will be permanently changed with the implementation of the boardwalk. It appears that the design of the boardwalk will allow the free flow of water underneath the boardwalk. Staff did not receive any type of indication of the likelihood of success of vegetative plantings directly under the constructed boardwalk. It may be worth inquiring of the applicant.

10. *If the applicant or landowner with respect to an application for a conditional use 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 section 67-6528.*

Applicant's Responses: "N/A" (Exh. A-3)

► **Staff Comment:** N/A; the applicant is not the state of Idaho, or any agency, board, department, institution, or district thereof.

B. *Additional Standards: Additional standards for applications for a conditional use permit in the Floodplain Overlay District are set forth in section 9-17-9 of this title.*

▶ **Staff Comment:** N/A; the applicant has applied for a Floodplain Categorical Exclusion Permit which is currently being reviewed by staff.

IV. Decision and Conditions

▶ **Motion:** Having considered the evidence in the record, I move to (approve with conditions/or deny) this conditional use permit by Wood River Land Trust Company for a Wetland Conditional Use Permit located at 45 Croy Creek Rd. and as discussed at this public hearing subject to the following conditions.

Pursuant to Zoning Ordinance §9-25-5, the commission shall enter an order approving, conditionally approving, or disapproving an application within fourteen (31) days after conclusion of the public hearing together with the reasons therefore. The public hearing on this application is set for Thursday April 27, 2023.

Any approval or denial of this application will be based upon the information provided as part of this application and upon any additional information which may be provided before or during the scheduled public hearing.

The commission shall also, pursuant to Zoning Ordinance §9-25-5, attach conditions to the approval as deemed necessary to protect the rights and the general welfare of all affected property owners.

Approval or denial of this application may be conditioned upon the following conditions, among others:

Possible Conditions of Approval

1. *Applicant shall comply with all applicable zoning, building, fire and health district regulations.*
2. *Any modifications to the plans or approved uses shall require further zoning review, and may be subject to additional regulations pursuant to the Blaine County Zoning Ordinance and/or federal permitting.*
3. *All work proposed within the riparian setback or floodplain shall obtain necessary permitting from Blaine County.*
4. *Building and other materials shall be secured or stored outside of the floodplain.*
5. *The boardwalk shall be anchored to prevent flotation, collapse or lateral movement of the structure. The boardwalk shall be installed using methods and practices that minimize flood damage.*
6. *Maintenance: the Wood River Land Trust or any future property owner shall be responsible for maintaining the boardwalk to insure that no lateral movement occurs that could potentially impact other properties.*
7. *Construction Materials and Methods: Materials resistant to flood/water damage shall be used.*
8. *The boardwalk shall at a minimum be elevated to the level of the base flood elevation.*

9. *The applicant shall comply with all applicable Federal, State and Local Permits.*
10. *All disturbed areas shall be revegetated with native vegetation per the approved Blaine County Wetland and Riparian plant list. Best management practices (i.e. silt fencing) shall be in place during construction and until vegetation is reestablished.*

The final Findings of Fact, Decision, and Conditions of the commission may be appealed to the Board of County Commissioners in the manner prescribed by Chapter 32 of the Blaine County Zoning Ordinance, specifically within twenty (20) days of the issuance of the Findings of Fact, Decision, and Conditions.

Notice pursuant to I.C. 67-6535(3): The owner of the property subject to this application and decision may request regulatory taking analysis pursuant to I.C. 67-8003.