

Memorandum

REPORT TO: Sustainability Board

FROM: Nicholas Ross, Director of Transportation and Engineering

SUBJECT: Wetland Code Project Update

MEETING DATE: February 12, 2025

AGENDA ITEM TYPE: Citizen Advisory Board/Commission

RECOMMENDATION: Receive presentation and discuss ideas.

STRATEGIC PLAN: 6.6 Habitat: Work with partner organizations to identify at-risk, environmentally sensitive parcels contribute to water quality, wildlife corridors, and wildlife habitat.

BACKGROUND:

In 2022, Bozeman City Commission set a Commission Priority to enhance local mitigation of wetland impacts through support for creation of a local Wetland Bank. Sacajawea Audubon Society (SAS) was in the process of creating a wetland bank on the east side of town, therefore staff's approach to meeting this priority was to assist the creation of the bank through review and permitting and follow that with an update to our Wetland Code that would achieve the goal of directing more local mitigation of impacts to said bank.

In 2023, a pair of consequential events outside of city control greatly affected the project.

First, SAS began running into permitting roadblocks with BNSF RR who they're required to receive approval for land necessary to maximize the useful area of the planned bank. They've yet to resolve these conflicts as of today.

Second, the United States Supreme Court handed down a broad ruling over the definition of federal authority of wetland regulation known as the Sackett Decision. This ruling greatly affected the city's own code project. The city pushed forward with drafting a code update while meeting frequently with the Army Corps of Engineers.

Staff brought a final draft of the proposed code update through public engagement, advisory board review, and ultimately Commission hearing in late 2023. While Commission expressed appreciation of the work completed, they ultimately chose to pause adoption of the proposed code revision after facing public pushback to expand the scope of the project. Commission did not explicitly set direction for that expanded scope, therefore staff has presumed our responsibility for these proposed revisions should draw on broadly adopted Commission policy.

The city has since hired Bill Kleindl as consultant support for this effort. Bill is tasked with two general deliverables:

- Measure and report the estimated percentage of Federal-jurisdictional and local-jurisdictional wetlands within the city's planned growth area given the initial Sackett Decision.
 - Bill has completed this task and estimates an approximately 80-20 federal-local split of existing wetlands. This means this city's initial code revision would have, at most, been applicable on just 20% of wetlands within the growth area. Federal supremacy means local laws cannot be applied to federal jurisdiction.
- Review the greater portion of city wetland and natural resource code and propose opportunities for improvement under the general policy direction that the city must support creation of safe, efficient infrastructure systems and housing while protecting sensitive natural resources. The city's Sensitive Lands Plan was directed to be explicitly used in this exercise.
 - Bill has completed this initial review and is working with staff on drafting code revisions.

Next Steps and Timeline

Staff proposes the following next steps and associated timeline.

This wetland code revision project will work within the format of the existing municipal code. Floodplain, Wetland, and Watercourse codes will be combined under Natural Resources in the overall UDC update next year. Staff maintains a technical and legal disagreement with inclusion of manmade features such as stormwater and irrigation facilities as natural resources. Kleindl has produced a substantial list of reasonable recommendations that staff feels would have tangible positive outcomes .

Proposed project timeline as follows:

- **January 2025:** City staff reviews and comments on proposed Kleindl code revisions
- **February 2025:** City staff with support from Kleindl finalizes draft code revisions
- **March 2025:** City staff conducts public meeting/workshop on proposed code revisions
- **April 2025:** City staff completes advertising/noticing of proposed code revisions
- **May 2025:** City staff presents proposed code revisions to Sustainability Board and Community Development Board
- **June 2025:** City staff presents proposed code revisions to Commission for first and second read
- **July 2025:** Effective date of code revision, if adopted.
- **Implementation guidance through Commission Resolution to follow**

UNRESOLVED ISSUES: None

ALTERNATIVES: As Suggested by the Board.

FISCAL EFFECTS: None

Report compiled on: November 13, 2023