

**PUBLIC MEETING – February 2, 2005**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt and Public Works Director Greg Robertson.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$489,654.19. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Decision: Petition to Alter a County Road (Remount Road)**

This is a petition to alter a portion of that certain County road specifically described as:

Remount Road, located in Section 28, Township 15 North, Range 22 West, from the northerly boundary of Resolution 2004-085 (Micro Book 735, Page 169 – north one-half, northeast one-quarter, northwest one-quarter, Section 28) to the section line common to Sections 21 and 28.

The reasons for the request are as follows:

1. Remount Road, Deed Exhibit No. 59 (Deed Book 117, Page 44) does not coincide with the as built and existing roadway.
2. Adjoiners, Deed Exhibits 402 (Deed Book 172, Page 611), 2247 (Micro Book 14, Page 206) and 2096 (Micro Book 10, Page 1) do not coincide with the as built and existing roadway.

The following landowners have been notified: Mark S. Millhouse; Kenneth K. and Cora A. Krout; Patrick K. and Donna M. Paige; Donald R. and Helen M. Harrington; and Harvey and Lorraine Millhouse.

The public hearing on this petition was opened on Wednesday, January 26, 2005. A site visit was conducted by Commissioner Jean Curtiss and Public Works Assistant Director Chuck Wright on Wednesday, January 26, 2005.

Chair Curtiss stated that she and Chuck Wright visited the site and feel it is in the public interest to alter this right-of-way. The public hearing is still open and she asked for comments. There being none, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the petition to alter a portion of that certain County road specifically described as Remount Road, located in Section 28, Township 15 North, Range 22 West, from the northerly boundary of Resolution 2004-085 (Micro Book 735, Page 169 – north one-half, northeast one-quarter, northwest one-quarter, Section 28) to the section line common to Sections 21 and 28. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Consideration: Snowhaven Lots (4 lot Summary Subdivision) – off Snowdrift Lane, north of Mullan Road**

Kathy Ciarimboli, Office of Planning and Grants, presented the staff report.

This is a request by Arlene Kamura, represented by Ron Ewart of Eli & Associates, to create Snowhaven Lots, a 4 lot residential subdivision of a 20.31 acre parcel. The property is located northeast of Mullan Road on the east side of Snowdrift Lane within the Grass Valley Farms area. There is an existing home on proposed Lot 1, with a detached garage and 2 pole barns. Two variances are being requested. One is to vary from the required 24 foot paved road surface width to allow for a 20 foot width for Snowhaven Lane, a proposed private road. The other is to not provide the required internal pedestrian connections on Snowhaven Lane. Staff is recommending denial of the variance request for a reduced road width; approval of the variance request to not provide pedestrian connections and approval of the subdivision, subject to 10 conditions.

The subdivision would create 4 lots on 20.31 acres. The gross area of each lot is approximately 5 acres. The density is one dwelling unit per 5.07 acres. The property is zoned C-A3 which permits a density of one dwelling unit per 5 acres. The 1998 Missoula Urban Comprehensive Plan Update designated the property as Rural Residential with a recommended density of one dwelling unit per 5 to 10 acres, as does the proposed Wye/Mullan Plan. Adjacent properties have lots sizes ranges from 5 to 20 acres and the Phantom Hills Golf Course Subdivision is directly adjacent to the east. The property is located outside of, but directly adjacent to, the Urban Growth Area and Sewer Service boundary.

The property has been used as grazing land for cattle and horses and the soils on the property are classified as soils of local importance. The Grass Valley Irrigation Ditch runs along the east side of proposed Lot 4, contained within an existing 60 foot wide irrigation ditch easement. Easements are shown to provide irrigation water to all lots within the subdivision. The eastern 100 feet of Lot 4 has been designated a No Build Zone as it contains the 60 foot irrigation ditch easement along side a 20 foot public utility easement and some steep areas of slope.

The property is accessed by taking Snowdrift Lane north off of Mullan Road. There is an existing 20 foot irrigation ditch and public utility easement centered along the entire common boundary of the subject property and the adjacent property to the south. The applicant proposes to create a 40 foot private access/public utility/irrigation easement centered along the common boundary of proposed Lots 1, 2 and 3 and the adjacent property located to the south. The 40 foot easement will terminate at the southeast corner of Lot 3. Staff is recommending a condition that an agreement for the proposed private access easement that will benefit Snowhaven Lots and the adjacent property located to the south be filed with the Clerk and Recorder's Office and referenced on the plat.

Currently, there is a driveway shared by the existing house on the subject property and the property located to the south. To serve lots within the subdivision the applicant is proposing to replace the existing driveway with a private road called Snowhaven Lane, centered on the southern property boundary of the subject property. Snowhaven Lane will terminate at the southeast corner of Lot 2. From the terminus of Snowhaven Lane, a shared driveway would then provide access to Lots 3 and 4. The portion of the driveway running through Lot 3 and providing access to Lot 4 will run along the southern property boundary of Lot 3 within the proposed 40 foot easement. There is a private road maintenance agreement for Snowhaven Lane and a private road statement on the face of the plat. There is a one foot no access strip along the property frontage of Lot 1 to Snowdrift Lane in order to ensure that lot owners access Snowdrift Lane via Snowhaven Lane.

Snowhaven Lane is proposed as a 20 foot wide paved private road with 2 foot shoulders and 8 foot drainage swales on each side. It is proposed to have its centerline on the southern property boundary. Currently there is a fence and pole barn located 20 feet from the proposed centerline of Snowhaven Lane. Therefore, half of a 24 foot pavement width (12 feet) plus 2 feet of shoulder and 8 feet of swale would add up to 22 feet, resulting in the pole barn and fence infringing upon the swale by 2 feet. To prevent possible relocation of the fence and avoid requesting additional easement from the adjacent property owner, the applicant is seeking a variance. Public Works does not support the variance request due to the potential for development of the approximately 20 acre parcel adjacent to the south. Should this property subdivide in the future, Snowhaven Lane would provide access to an increased number of lots.

Staff is therefore recommending denial of the variance request as well as a condition that Snowhaven Lane be paved to a 24 foot width. Furthermore, staff recommends a condition that an additional 7 feet of easement width within the subject property be shown on the final plat to accommodate for a 24 foot road width and possible future pedestrian facilities. As designed, Snowhaven Lane is a dead end street. Staff recommends that a turnaround easement be shown on the face of the plat at the terminus of proposed Snowhaven Lane, in the southeast corner of Lot 2, and that a turnaround be constructed within the easement. To plan for the potential extension of Snowhaven Lane to the terminus of the proposed private access easement, staff is recommending a condition that half of a 50 foot radius private cul-de-sac easement be dedicated at the terminus of the private access easement, which is located at the southeast corner of Lot 3.

Regulations require that subdivisions outside of the Urban Growth Area located on private roads provide pedestrian facilities. Staff recommends approval of the variance request to not provide pedestrian facilities on Snowhaven Lane as there are no pedestrian facilities on Snowdrift Lane to connect to. The plat also contains a waiver of the right to protest future improvements to Snowdrift Lane.

Each lot will be served by individual wells and private septic systems. Each of the drainfields for proposed Lots 2, 3 and 4 and will be located entirely within an easement in the north portion of Lot 2, so as to place the drainfields at a distance from the Grass Valley Ditch. A 20 foot sewer line easement across the north boundary of Lot 3 is shown on

the plat for the benefit of Lot 4. The plat contains an RSID waiver statement for community sewer and water systems.

The plat contains a note that new homes in the subdivision shall not have basements. Staff recommends that this information also be included in a development covenant. The City-County Health Department is requiring this proposed subdivision to be tested for high ground water in the Spring, to ensure that ditch leakage would not cause a ground water problem. The applicant is seeking preliminary plat approval for the 4 lots prior to the testing season. In the event this proposed subdivision does not pass high groundwater testing, this plat could not be approved for filing by the Health Department.

The Missoula Rural Fire District will serve the proposed subdivision. The applicant indicated their intent to provide residential sprinkler systems in each home to meet fire protection standards. The Fire District will review plans for driveways and turnarounds.

There are several other conditions staff recommends. Public Works recommends that the developer contribute to the Mullan Road Transportation Fund in the amount of \$230 per lot for signaling the Flynn Lane/Mullan Road intersection and \$815 per lot for improving the Reserve Street/Mullan Road intersection. A revegetation plan shall be reviewed and approved by the Missoula County Weed District. House numbering plans, as well as residential fire sprinkler system plans, shall be approved by Missoula Rural Fire and included in the development covenants. Covenants shall be provided to include the following: Lot owners maintain their property in compliance with applicable weed control measures; lot owners revegetate after disturbance with beneficial species; driveway designs and turnarounds approved by Fire District and paved at least 20 feet back from the edge of Snowhaven Lane right-of-way; stoves and fireplaces comply with local and State laws and regulations; all new construction incorporate passive radon mitigation systems; and lot owners comply with all aspects of "Living with Wildlife."

Ron Ewart, Eli & Associates, Inc., developer's representative, thanked Kathy for her presentation. They are in agreement with most of the conditions, but he would like to talk about two of them. The first is Condition 1 regarding Snowhaven Lane being paved to a 24 foot width. Erik Dickson said that most roads in the area are 24 feet. When he checked, there is only one road out there that is 24 feet wide. They feel the 20 foot width is sufficient for the area. These lots will probably stay 5 acres in size. There is a fence that is setback 20 feet from the common boundary between this property and the property to the west. If the road has to be 24 feet wide, it will require tearing down that fence. A 20 foot wide road with 2 foot shoulders has the potential for 24 feet if needed. Even if the adjacent property is subdivided, the 20 foot width would be adequate and keeps the road in character with the rural area and the already well constructed fence does not have to be removed. They are requesting approval of a 20 foot wide road within a 40 foot easement. The other issue deals with the Mullan Road Transportation Fund money. He has been in contact with Denise Alexander and Hellgate Elementary over the past few months on this issue. For this subdivision, they would like the money denoted for the Mullan Road Transportation Fund to go instead to Hellgate Elementary to help with their traffic calming in the school zone. Pleasant View Homes gave \$20,000 to the school zone. A lot of work has been done which has helped. In recent e-mail correspondence between himself, Denise and Hellgate, they recognize that people in the entire district drive their kids to and from school each morning and afternoon. If some of the new subdivisions give money to the school zone, it would alleviate the safety problem. The money that was spent on the traffic zone fell short of what was needed. There is a desperate need for street lights and they would like to install a pedestrian-activated crossing signal. The street lights have been purchased but there wasn't enough money to pay for their installation. Hellgate did not ask that this be mentioned. He did not mean to set a precedent with this subdivision or take away money from the Mullan Road Transportation Fund, but felt it would be warranted in this case and would give the school enough money to put up the street lights.

Greg Robertson stated that in this particular case, he would agree with Ron to allow a 20 foot road width. If it becomes necessary at some time in the future, the road will be designed to allow for widening to accommodate future growth. It is more than adequate at 20 feet and does fit in with the character of the area.

Mike Sehestedt stated the dollar figure identified in the Mullan Road Transportation Fund was established based on impact and estimated costs of improvements to the respective intersections. It would be difficult to justify diverting the funds as a surcharge for random projects. The City Council declined to require the most recent phase of Pleasant View Homes to make a contribution to the Flynn Lane intersection. The school probably struck some kind of deal with the development to use the money that would have been directed to the Flynn Lane intersection for traffic calming. It was disappointing to have the City depart from a well thought out plan to fund improvements as development occurred. He suggested the Board stand by the plan as developed for both intersections, which have been clearly identified as problem areas. If the charge is not uniformly assessed, it undermines its validity.

Chair Curtiss asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations to vary from the required 24 foot paved road surface width to allow for a 20 foot paved road surface width for Snowhaven Lane, based on the testimony of the Public Works Director. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections on Snowhaven Lane, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion.

Chair Curtiss stated that this is a private road and there is no way to provide for pedestrian connections in the future. She wanted to know if there was a way to trigger a requirement for pedestrian facilities based on a specific number of homes.

Mike Sehestedt stated the neighbors could agree to install the improvements and fund it among themselves through a Homeowners Association. Another option would be to dedicate the road to the public at which point the RSID mechanism would be available to fund the improvements.

The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Snowhaven Lots Summary Subdivision, based on the findings of fact in the staff report and the testimony of the Public Works Director and subject to the conditions in the staff report, with an amendment to Condition 1 requiring Snowhaven Lane be improved to a 20 foot paved width. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans stated that she agreed with counsel regarding the contribution to the Mullan Road Transportation Fund. This contribution had already been explained to the developer and to apply it somewhere else, regardless of the good intentions, would be unwarranted.

### **Snowhaven Lots Summary Subdivision Conditions of Approval:**

#### **Roads**

1. Snowhaven Lane shall be improved to a 20 foot paved width, plans for which shall be reviewed and approved by County Public Works prior to final plat approval. *Public Works and OPG recommendation.*
2. A turnaround easement shall be shown on the face of the plat at the terminus of proposed Snowhaven Lane and a turnaround shall be constructed within the easement, subject to review and approval by County Public Works and Missoula Rural Fire District. *Subdivision Regulations 3-2(11)(A) and Public Works recommendation.*
3. An agreement for the proposed private access easement that will benefit Snowhaven Lots and the adjacent property (Tract 3, COS 1159A and Tract 3-A, COS 2220) shall be filed at the Clerk and Recorder's Office and referenced on the plat. The agreement shall be subject to review and approval by the County Attorney's Office prior to final plat approval. *Subdivision Regulations 3-2(2)(D) and Public Works recommendation.*
4. In addition to the proposed 40 foot private access/public utility/irrigation easement width, another 7 feet of easement width within the subject property shall be shown on the final plat, subject to review and approval by County Public Works and OPG. *Public Works and OPG recommendation.*
5. Half of a 50 foot radius private road cul-de-sac easement shall be shown on the final plat in the vicinity of the common boundary between Lots 3 and 4, subject to review and approval by County Public Works prior to final plat approval. *Subdivision Regulations 3-2(11)(A) and Public Works recommendation.*
6. The developer shall contribute to the Mullan Road Transportation System Fund \$230 per lot for signaling the Flynn Lane/Mullan Road intersection, and \$815 per lot for improving the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 4-1(12) and Public Works recommendation.*

#### **Weeds**

7. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*

## Fire

8. House numbering plans, including size and location, shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval and shall be included in a development covenant. *Subdivision Regulations Article 3-2(2)(G) and OPG recommendation.*
9. Prior to construction of any new residence, plans for installation of a residential fire sprinkler system shall be approved by the Missoula Rural Fire District. The requirement for installation of Missoula Rural Fire District approved sprinkler systems in all new residences shall be included as a provision within the covenants. *Subdivision Regulations Article 3-7(1)(E) and Missoula Rural Fire District recommendation.*

## Development Agreement or Covenants

10. The applicant shall provide development covenants for the Snowhaven Lots Subdivision, subject to review and approval by OPG and the County Attorney's Office prior to final plat approval. The development covenants shall include the following and shall not be amended without the consent of the governing body:
  - a. Lot owners shall maintain the property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan.
  - b. Lot owners shall revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs.
  - c. Dead-end driveways in excess of 150 feet in length shall have an approved turnaround for fire apparatus. A turnaround shall be located within 150 feet of the building. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches shall be provided for any driveway over 150 feet. The opening through a gate should be two feet wider than the road. Final design shall be approved by the Missoula Rural Fire District.
  - d. This subdivision is located in the Air Stagnation Zone. All new wood burning equipment, including stoves and fireplaces, shall comply with all local and State laws and regulations. The Missoula City-County Air Pollution Control regulations prohibit the installation of wood burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Missoula City-County Health Department.
  - e. All new driveways must be paved a minimum of 20 feet back from the edge of the Snowhaven Lane right-of-way.
  - f. New homes in this subdivision shall not have basements.
  - g. EPA has designated Missoula County as having a high radon potential (Zone 1), so the Health Department recommends that all new construction incorporate passive radon mitigation systems.
  - h. Living with Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, skunks and raccoons. Numerous small mammal and bird species could be found nearby, as well as nesting birds. Contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- i. There is the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage and should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

- ii. Gardens and fruit trees can attract wildlife. Keep the produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- iii. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
- iv. Birdseed can attract bears. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- v. Garbage should be stored in secure bear-resistant containers, in closed sheds or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. It is best not to set garbage cans out until the morning of garbage pickup.
- vi. Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- vii. Pet food and livestock feed should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, skunks, raccoons, etc. When feeding pets or livestock do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- viii. Barbecue grills should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
- ix. Consider boundary fencing that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
- x. Compost piles could attract skunks and bears. If used they should be kept indoors or built to be wildlife-resistant. *Subdivision Regulations Article 3-1, 3-2(10)(E), 3-7, 3-2(10)(A), 3-2(10)(D), Missoula County Weed District, Rural Fire District, City-County Health Department and Montana Fish, Wildlife and Parks recommendation.*

**Hearing: Houle Meadows (23 lots on 27.5 acres) NW corner of Houle Creek Road and Mullan Road**

Jennie Dixon, Office of Planning and Grants, presented the staff report.

Steven and Betty Bidlake and Warren Sheppard, represented by Greg Martinsen of Martinsen Surveys, are requesting approval to create Houle Meadows, a 23 lot residential subdivision on 27.62 acres. The property is located approximately 3.5 miles west of Frenchtown, at the northwest corner of Mullan Road and Houle Creek Road. Montana Rail Link and Interstate 90 border the property to the north.

There are two variance requests. The first is to not widen Houle Creek Road or Mullan Road from the existing 22 feet to the required 32 foot paved width. The second variance is to allow Lots 13 through 16 to be through-lots (with roads on parallel sides of the lot).

The Planning Board voted unanimously to recommend denial of the subdivision. However, before voting to deny the subdivision, the Board did recommend approval of the road width variance and denial of the through-lot variance. Staff recommended approval of the subdivision subject to 11 conditions, as well as approval of both variance requests.

The average gross lot size in the subdivision is 1.2 acres and the density of the proposed subdivision is one dwelling unit per approximately one acre. The property is unzoned and located outside of the Urban Growth Area. The Comprehensive Plan designate the property as Open and Resource with a maximum residential density of one dwelling unit per 40 acres. A small part of the western portion of the property is within the Huson Activity Circle. Other subdivisions in the area include Henry's Estates and the River Ranch, which are to the south across Mullan Road. Henry's Estates was approved at a density of approximately 1 dwelling unit per 9 acres. The River Ranch subdivision resulted in an overall density of one dwelling unit per 13 acres and that proposal was determined to be in compliance with the Comprehensive Plan goals by preserving the best agricultural lands on the property and enhancing riparian areas along Roman Creek.

In order to mitigate density and impact from this subdivision, the applicants have proposed placing an agricultural covenant on a 62 acre parcel south of the proposed Bidlake Subdivision. That 62 acre parcel, when combined with the 27 acres of Houle Meadows, produces an overall density of approximately one dwelling unit per 4 acres. It is not clear what amount of potential transferable density could be associated with the 62 acre parcel south of the Bidlake Addition. It is designated Open and Resource and although it is within the Frenchtown Activity Circle, it is almost entirely within the 100 year floodplain. Density transfers are intended to move density from areas less suitable to those areas more suitable for development. There is approximately 5 acre located outside of the mapped floodplain on the 62 acre parcel, however, access and sanitary services on that 5 acres may be problematic, but those issues are not clear at this point. Permits for residential construction, though not encouraged, could potentially be obtained on that 62 acre parcel within the 100 year flood fringe.

For the reasons noted above and based on adopted policy, staff has concluded that neither the 62 acre parcel nor the 28 acre subdivision property is suitable for suburban levels of development and the proposal to transfer density from the floodplain area within the Frenchtown Activity Circle does not bring this proposal into compliance. The 28 acre parcel proposed for subdivision could be considered more suitable for development than the 62 acre parcel. However, a development with fewer lots that retains the maximum area of land for agricultural use would more substantially comply with the Plan. Due to fairly recent changes in State law, however, no land use proposal shall be conditioned or denied based solely on lack of compliance with the Growth Policy. For that reason, no conditions are recommended based upon failure to comply with the Growth Policy or its amendments.

To clarify the subdivider's proposal, staff has recommended a condition that a note be placed on the Houle Meadows plat and that a development covenant be filed against the 62 acre parcel indicating that all density has been transferred from that parcel to the Houle Meadows Subdivision. The property proposed for Houle Meadows Subdivision is currently in agricultural use and is classified as prime farmland if irrigated. **The Frenchtown Ditch runs along the south and east sides of the property and there is a 50 foot wide ditch easement. Ditch easement are also provided to all lots within the subdivision and the ditch is proposed to be buried.**

The property is accessed off both Mullan Road and Houle Creek Road and a new public road, Shepard Drive, is proposed. Lot 17 is proposed to access directly from Mullan Road. Staff recommended a one foot no access strip along Mullan Road adjacent to Lots 13 through 16. A one foot no access strip is also recommended along Houle Creek Road to ensure that all the lot owners within the subdivision, except for Lot 17, access from Shepard Drive. Planning Board recommended a one foot no access strip along the entire Mullan Road frontage and Houle Creek Road frontage which would result in all lots needing to access from the interior road.

Both Planning Board and staff recommended that the road width variance request for Mullan Road and Houle Creek Road be approved to allow for a 22 foot paved surface width where the requirement is currently 32 feet. The Planning Board vote on this variance was 4-3. A Level of Service for a two lane road such as Mullan Road or Houle Creek Road is between 1,400 and 1,700 vehicles per hour. Public Works supported this variance because these roads are below capacity and widening of these roads at this time was not a reasonable approach; widening should occur comprehensively.

Shepard Drive is proposed to be constructed to County standards, 24 foot wide paved public road within a 60 foot right-of-way with 2 foot shoulders and drainage ditches on both sides. Individual driveways accessing off of Shepard Drive are proposed to serve all lots, except Lot 17. A 5 foot wide paved pedestrian walkway is proposed for the north and west side of Shepard Drive with an 11 foot separation from the road pavement.

Drainage is proposed to be handled in roadside drainage ditches and drainage easements on several lots. Staff has recommended a condition of approval that drainage plans be reviewed and approved by Public Works prior to final plat approval.

These lots are proposed to be served by individual septic systems and private wells and the plat includes an RSID waiver statement for community sewer and water systems. Frenchtown Rural Fire District will serve the proposed

subdivision and the subdivider indicated their intent to provide residential sprinkler systems in each home to meet fire protection standards. The Fire District will review plans for driveways and turnaround. In addition, development, growth and review fees will apply to the subdivision. The developer will be required to provide proof of payment to the Frenchtown Rural Fire District in accordance with the District Development Mitigation Program, subject to review and approval by the Board of County Commissioners.

The parkland dedication required for the subdivision is approximately 1.2 acres. The applicant did not propose parkland, cash-in-lieu or common area and instead requested that the proposed 62 acre agricultural exemption parcel meet the requirement for parkland dedication. The County Park Board recommended instead that common area be provided within the subdivision in a location which would not be adjacent to either Mullan Road or Houle Creek Road. Planning Board voted 6-1 to recommend that a minimum one acre common area be provided within the subdivision in a location recommended by the Park Board and the balance of the park requirement be met through a cash-in-lieu payment. The Planning Board also voted to recommend creation of a Homeowners Association to maintain the common area.

Staff, in recommending approval of the through-lot variance, also recommended a condition that there be a No Build Zone placed on the plat in the area that also includes the irrigation ditch. That would result in Lots 13 through 16 being required to build on the north portion of those lots, matching the same depth of the other lots along Shepard Drive. This mitigates the impact of back yards being in close proximity to Mullan Road and requiring homes to front more along Shepard Drive.

There are public comment letters attached to the staff report and some photos have been presented from a neighbor. As stated before, the Planning Board voted 7-0 to recommend denial of this subdivision, approval of the road width variance and denial of the through-lot variance. The denial of the through-lot variance would require a redesign of the subdivision so those lots had perpendicular road frontage or frontage on only one road. Before voting to deny the subdivision, Planning Board did make modifications to staff's recommended Conditions 7 and 8. Condition 7 was amended to require a one acre common area. Condition 8 was amended to require a one foot no access strip along the entire length of Mullan Road and Houle Creek Road. They also specifically voted to request the Board of County Commissioners pursue a reduction of the speed limit on Mullan Road in this vicinity. The primary reasons for denial of the subdivision generally included loss of agricultural resources, the suburban level of development is not compatible with surrounding land uses and services are not in place to support such development. They also felt the transfer of density from the agricultural parcel, as well as the mechanism to assure the transfer, was unacceptable.

Greg Martinsen, Martinsen Surveys, developer's representative, stated there were no problems with any of staff's recommended conditions. There is no problem with filing a development covenant against the 62 acres near Frenchtown for the density transfer. The No Build Zone suggested by staff on Lots 13 through 16 is acceptable. Residential sprinkler systems will be required and a mitigation fee will be made to the Frenchtown Rural Fire District. The drainage plans must be reviewed by Public Works and a revised drainage plan has been submitted to Erik Dickson. Cash-in-lieu of parkland as recommended by staff is acceptable. The one foot no access strip as recommended by staff on the south side of Lots 13 through 16 is shown on the plat; additional no access strips have also been placed in other locations, thereby exceeding staff's recommendation. There are no problems with the driveway paving requirement, radon mitigation language or a Revegetation Plan. The Comprehensive Plan for this area is 30 years old and a lot has happened since it was drafted. Based on what happened with the new Lolo Land Use Plan, in his opinion this area would be approved for one acre lots if a new Comprehensive Plan for the area were drafted. Most of the development from Frenchtown west to this location is predominately one acre tracts, especially between Mullan Road and the railroad right-of-way, whether divided by exemption or by subdivision. Other recent subdivisions have traded density. The 62 acre parcel proposed for the density transfer is inside the Frenchtown Activity Circle and would have a development potential of 2 dwelling units per acre, or 124 tracts. Access to this subdivision is more than adequate by MDT standards and can be from several different approaches – west on Mullan Road to the Huson interchange, under the Interstate on Houle Creek Road, Houle Creek Road to the Frontage Road, or straight on Mullan Road through Frenchtown. A 5 foot wide paved walkway will be provided on the north and west sides of Shepard Drive for foot traffic within the subdivision. The developer has no problem with paying cash-in-lieu of parkland equivalent to the value of 1.2 acres. In regard to Planning Board's recommendation, a one acre park is just too small. Some of these small common areas in other subdivisions only foster knapweed. They are not developed or used for a lot of reasons. A parking area for up to 12 cars plus an access road would use up more than a tenth of the acre. The County will not take responsibility for the park and the homeowners don't want the responsibility either, it is a huge liability problem. There is a high cost to develop the land properly with covered picnic areas and restrooms. In this case, there is a wonderful State park just east of the subdivision. It seems more logical to contribute cash-in-lieu of parkland and use the money to improve an existing, viable, usable park. There is a bike/walk path along the State park that is slowly making its way out to this area. It is anticipated that this trail will

eventually connect all the way from Frenchtown to Huson. The No Build Zone on Lots 13 through 16 provides a buffer against the neighbors to the south.

Jennie Dixon stated the cash-in-lieu amount is 11% of the unsubdivided value of the land.

Chair Curtiss opened the public hearing.

Scott Waldron, Frenchtown Rural Fire, stated that he concurred with Mr. Martinsen's comments about the common area. The Fire District gets calls every year from subdivision with small common areas who want to burn their weeds. Several of the District's fire stations sit on common areas that the homeowners did not want to maintain. He would suggest that the cash-in-lieu funds be designed for continued development on the ball parks in Frenchtown, which the Park Board has funded in the past. As a safety factor, the Fire District would like to see the irrigation ditch be fenced.

Jennie Dixon stated she believed the ditch was proposed to be buried.

Greg Martinsen stated that depending on where drainfields have to be located, the ditch may or may not be buried. It is intended to be buried if necessary due to the location of drainfields.

Commissioner Evans asked if Houle Creek Road was paved.

Greg Martinsen stated it is paved in this location. It comes from the Frontage Road, south under the Interstate, across the railroad tracks to Mullan Road. The portion that is unpaved is to the north of this location.

Steve Bidlake stated he was one of the owners of this property. He described several photos which are being presented in response to comments from the Planning Board hearing.

Picture	Description
1	Home on one acre parcel adjoining the proposed subdivision on southwest corner.
2	Two homes on a two acre parcel directly across Mullan Road near the southeast corner of the proposed subdivision. These net to one home per acre.
3	Picture taken at the corner of Mullan Road and LeMazion Place near the northeast corner of Henry's Estates Second Addition Subdivision, showing multiple homes, each on a one acre lot, with well groomed yards and paved driveways. Located approximately one block east of the proposed subdivision on the opposite side of Mullan Road.
4	Picture taken at the corner of Houle Creek Road and Mullan Road showing home on a one acre parcel located at the northwest corner of Henry's Estates Second Addition Subdivision. The right side of the picture shows a 4.8 acre parcel located in the northeast corner of the River Ranch Subdivision, bordered on the west side by Lefler Lane. Both locations are located directly across Mullan Road at the southeast corner of the proposed subdivision.
5	Picture taken at the corner of Boyers Place and Mullan Road showing homes on one acre parcels in Henry's Estates Subdivision located approximately two blocks east of the proposed subdivision on the opposite side of Mullan Road.
6	Existing homes and foundation for a new home under construction in Henry's Estates Subdivision. Both are on one acre lots.
7 – 9	Prefabricated or modular homes each located on one acre parcels approximately six blocks east of the proposed subdivision on the opposite side of Mullan Road. NOTE: Picture 9 shows the modular/prefabricated home on one acre parcel with the entire back half growing in knapweed.
10 – 14	Pictures 10 through 14 were taken from the corner of Mullan Road and Lefler Lane and further into the River Ranch Subdivision from Lefler Lane. All five pictures are of Lot 1 in the River Ranch subdivision, located directly across Mullan Road from the proposed subdivision. This property borders Lot 2 in the River Ranch Subdivision, which is covered with knapweed, as shown in Picture 4. Not only do pictures 10 through 14 show an array of wrecked, junked or old cars surrounded by woods, there is also a damaged van body off a wrecked Ryder truck that is used for storage. There are also piles of used wood panels (as shown in Picture 14) and various car parts. The owner operates a body and paint shop in the building next to the Ryder van body.
15	This is also in the River Ranch Subdivision and taken from Lefler Lane. It shows a nice, newer home with a well groomed yard that uses less than one acre of ground. The rest of the acreage is totally covered with weeds. There are several other lots in this 4 – 5 acre subdivision that look the same way.
16	Area located next to Henry's Estates Subdivision. It is a larger parcel of land that has a small yard

	and knapweed covering the rest of the parcel.
17 – 19	These pictures were taken on Brittany Lane off House Creek Road on the north side of I-90, approximately one mile from the proposed subdivision. These pictures show a relatively nice home on a larger parcel of property covered by brush piles and knapweed.
20 – 22	These pictures show a modular home in Picture 20, a garage with temporary living quarters attached in Picture 21 and a foundation for construction of a new home in Picture 23, located next door to Picture 21 on the same property. These pictures show both properties within 50 to 60 feet of the railroad tracks that border many residences throughout Frenchtown and Huson communities all along Mullan Road. NOTE: Pictures 20, 21 and 22 appear to be one acre parcels.
23	Picture 23 is in Huson on a small parcel located beside the railroad tracks and across the road from Larry's 6-Mile Bar and the Huson Mercantile.
24	Picture 24 shows numerous modular homes on small tracts of land in Huson. This picture was taken from Mullan Road.
25 – 26	Pictures 25 and 26 show the designated common area in a subdivision on Boyce Putnam Drive, approximately two miles east of the proposed subdivision off Mullan Road. This subdivision has nice homes and a common area that no one maintains. The lawns are groomed to the edge of the common area, but the common area itself is overgrown with weeds.

Several of the pictures show common area dedication in other subdivisions which are nothing more than a weed patch. He would prefer to give cash-in-lieu to be used for improvements to existing recreational facilities.

Jennie Dixon stated the Park Board recommended common area and asked that a Homeowners Association be created to maintain it. The Planning Board concurred with that recommendation. The Park Board also had specific recommendations for the location of the common area, that it not be adjacent to Mullan Road, Houle Creek Road or the railroad right-of-way. Staff felt that cash-in-lieu would probably be more beneficial and appropriate here, recognizing Park Board's recommendation as important and valid. The developer's proposal was to not do either common area or cash-in-lieu, but use the 62 acre density transfer parcel to satisfy the requirement.

Commissioner Evans stated that in her subdivision, the homeowners maintain their own property, but would not be able or willing to maintain common area, which would most likely end up in knapweed. She agreed that cash-in-lieu used for existing facilities would be more appropriate.

Jeri Delys stated she lived in the River Ranch 2 Subdivision. She took some pictures from the Houle Creek Road overpass which shows the condition of the road, which is bad, and the rural nature of the area. She purchased her acreage 4 years ago and she takes care of her place. She can't transfer density or subdivide. This is a proposal for 23 homes and there is another one coming for 17 homes. When she purchased, it was with the intention that it would remain rural, with tracts larger than one acre. The rural integrity of the area is important. The Planning Board felt this many homes in this small an area was premature, the infrastructure is not there to support the density. She agreed with the Planning Board assessment.

Gary Kees stated he lives in the same area. He had a concern about the road under the overpass, Houle Creek Road is very narrow and it is difficult for two vehicles to pass. There is evidence of vehicles driving on the bank to get by each other. He was impressed with the quality of the debate at the Planning Board hearing. Two of the Planning Board members said the subdivision is 15 to 30 years before its time. He agreed with the Planning Board's unanimous decision to deny the subdivision, it is the right thing to do. It does not fit in with the residential density of the area. He has viewed the pictures that Steve presented and questioned how big a "block" is in this area. The urban definition of a block certainly doesn't fit. There are some one acre parcels, but they are fairly well distributed and spread out, they are not blocked in like this subdivision will be. The other thing the Planning Board talked about, that he also agreed with, is the infrastructure or lack of it. The subdivision is requesting variances for Houle Creek Road and Mullan Road. Those roads don't support the extra traffic that will be generated by this subdivision. Planning Board felt the infrastructure should be developed first, before such large developments are built and he thought that assessment was right on. The roads are used by a lot of people, pedestrian and bicycles. His two daughters ride their bikes to town on that road and he does too. It doesn't fit to be adding that much traffic to the roads. Most of the owners in the River Ranch Subdivision take care of their properties. Much of that land is still in hay production and efforts are being made to bring in irrigation to increase production. He lived in a subdivision in southeast Idaho with one acre lots and many of those lots had noxious weeds. One acre is a big lot for most homeowners, so there might still be problems with noxious weeds. The quality of life next to the railroad and Interstate 90 is better suited for plants and agriculture than it is for people in subdivisions.

Chair Curtiss stated that often subdivisions are not required to widen a road because of its impact, but a waiver of the right to protest a future RSID is required so that when the road needs improvement in the future, they will contribute to the costs of the improvements.

Greg Robertson stated the worst part of Houle Creek Road is the gravel portion further up the hill, which has been a battle for the Road Department because the road is below grade. This segment of the road is typical for the area, a standard rural, County road, 20 feet to 24 feet wide, and it is more than adequate to carry the traffic generated in rural areas. He felt there were very few RSID waivers, if any, in the area.

Jennie Dixon stated that Commissioner Evans asked who owned the property to the west and if it was likely to be developed. The Johnson Brothers own the property and the 18 acre parcel has been through pre-application for potential development of one acre tracts. Letters regarding the Houle Meadows Subdivision have been received from Pat Gould and Jeri Delys. Ms. Delys also submitted some photos.

There being no further comments, the public hearing was closed.

Commissioner Carey stated it troubled him that a way can't be found to create a common area that works. Transferring development rights from a parcel that is mostly floodplain to make this density happen is somewhat slippery. This is putting suburban density on rural infrastructure. He would like to see if the developer and his representative could go back to the table and work something out along those concerns. He appreciates that some people cannot take care of 5 to 10 acres, but there needs to be a better approach to development in this area than the piece meal that is happening.

Commissioner Evans stated her major concern is that she would prefer the developer contribute cash-in-lieu rather than dedicate common area that will probably end up in knapweed. She did not know if there were any other legal reasons to deny the subdivision.

Mike Sehestedt stated that one of the concerns raised through testimony and by Commissioner Carey was the question of suburban development on rural infrastructure and mixed and conflicting uses on the roads. That sort of conflict lead to a tragedy in the Frenchtown area, which has led to the ongoing development of the walkway. Mitigation could be RSID waivers for improvements to Mullan Road. That would be a legitimate issue for the Board to look at. The Board must specifically identify their concerns and give the developer the opportunity to mitigate those concerns. There has been recent legislation that prohibits the use of the Comprehensive Plan to control density, but it could be addressed by zoning.

Commissioner Evans stated the Planning Board voted to deny this subdivision and their reasons were because of the lack of infrastructure and because it is good farm soil. However, people cannot be required to continue farming if they no longer can or want to do so. The development is close to the Interstate and other roads and is within driving distance of all services, so the infrastructure does exist.

Commissioner Carey stated that he agreed people should have other options if farming is no longer economically viable. He felt there was a public safety issue in terms of introducing more traffic conflicting with pedestrian and other uses on very rural roads. He would like to give the developers a chance to address some of the issues and come back before the Board with alternatives.

Mike Sehestedt asked what the timeline was for action on the subdivision.

Jennie Dixon stated the deadline for Commission action is February 17, 2005. However, the February 16, 2005 Public Meeting has been cancelled and the February 9, 2005 meeting would likely be too soon. The developer would have to grant an extension of time, possibly to a date unknown depending on when the applicant submits new material.

Mike Sehestedt stated that sufficient time should be granted but he would prefer that a date certain be identified, so the people in the audience will know when the matter will be discussed again.

Jennie Dixon stated that staff would be able to re-notify people by mail of a new hearing date. Her concern is that in the past when a date certain has been set, the developer has delayed presenting new material which puts a lot of pressure on staff to produce recommendations in the absence of additional agency review depending on the degree of change to the plat. She would agree to set a date certain, but she would like it on the record that the developer should submit new material to OPG for review no less than three weeks prior to the date certain. This would allow for potential agency re-review depending on the degree of modifications to the plat.

Chair Curtiss stated that the use of density transfer is a concept that few people are familiar with. This allows a developer to transfer density to property better suited for housing. However, she did question the potential density of 62 acres of mostly floodplain property. She proposed a redesign with lots closer to two acres in size with the possibility of dividing them in the future by use of No Build Zones. That would result in about 14 lots, about half of what is being proposed.

Mike Sehestedt asked if the developer would like to continue the hearing so they may explore some other issues.

Chair Curtiss stated the Board would take a 5 minute break to allow the developer to speak with his client.

Chair Curtiss called the meeting back to order.

Greg Martinsen stated that one of the partners in this project could not be reached right now; therefore, they would like to table the discussion for three weeks. If they will be submitting a redesign or other changes, then other arrangements will be made.

Mike Sehestedt stated that the developer would come back on February 23, 2005 and announce their decision to either stand on the submittal as proposed or submit a redesign. If a redesign is proposed, then a further extension could be requested at that time.

Commissioner Evans asked if the Board could vote on the subdivision today and add conditions that are in addition to what staff and the Planning Board have recommended.

Mike Sehestedt stated they Board could do that as long as they have findings of fact to support the new conditions.

Chair Curtiss stated that where Butler Creek Road goes under the Interstate had a similar situation to Houle Creek Road, not enough room to install pedestrian facilities. The A.J. Memorial Trail will be extended this summer almost to the Huson interchange from the Frenchtown Pond area, which will help eliminate the conflicts between pedestrians and traffic. Greg Robertson suggested that it would be possible to install a pedestrian walkway behind the overpass supports. That would help mitigate the concerns of the increased traffic and conflicts with pedestrians. It has been noted that there are others in the area that are looking at subdividing their land as well. Perhaps the landowners should get together to coordinate and mitigate the concerns and issues identified. Testimony heard today is that folks in the area don't want to add a bunch more one acre lots. A larger lot that could be split at some time in the future might be more valuable. She would agree to delay action for three weeks to allow further discussion between Mr. Martinsen and all the applicants, rather than the Board deciding today.

Commissioner Carey moved that Board of County Commissioners recess the hearing on Houle Meadows to Wednesday, February 23, 2005 at the Commissioners regular Public Meeting at 1:30 p.m. Commissioner Evans seconded the motion.

Chair Curtiss stated that at the February 23rd meeting, the developer will announce their decision to either submit a redesign of the subdivision or stay with the design as presented today with mitigations proposed. If they choose to redesign the subdivision, they will give adequate time for the changes to be reviewed.

Commissioner Carey stated that he seconded Chair Curtiss' observation that other private landowners coordinate their efforts on potential developments. There is an way to develop this area well if there is some coordination and cooperation among landowners.

Chair Curtiss stated that another issue raised by Frenchtown Fire was the irrigation ditch. The developer might want to investigate further either fencing or putting that ditch underground.

The motion carried on a vote of 3-0.

### **Hearing: Bidlake Addition (7 lots on 9 acres) – 3/4 mile SE of Frenchtown on Mullan Road**

Jennie Dixon, Office of Planning and Grants, presented the staff report.

This is a request from Steven and Betty Bidlake, represented by Greg Martinsen of Martinsen Surveys, to create the Bidlake Addition, a 7 lot residential subdivision on 9.13 acres. Planning Board and staff recommend approval of the subdivision subject to 13 Conditions of Approval and there are no variance requests.

The property is located on Mullan Road, approximately three-quarters of a mile southeast of the Frenchtown Interchange. This subdivision would create 7 lots on 9.13 acres, with a gross lot size of 1.3 acres. The entire parcel is 71 acres, however, the area proposed for subdivision is the northern 9.13 acres. The subdivider proposes to apply an agricultural exemption covenant to the remaining 62 acre parcel south of the proposed subdivision. A slough of the Clark Fork River separates the proposed subdivision from the area proposed for agricultural exemption.

The property is unzoned and designated in the Comprehensive Plan as Residential, with a density of one dwelling unit per 5 acres. It is located outside the Urban Growth Area but within the Frenchtown Activity Circle. The current use of the property is agriculture. The soil types on the property are prime farmland, if irrigated.

The applicant stated that there is an irrigation ditch adjacent to, but not on, this property. However, the property owner to the west, Frank Bucknum, stated that the ditch does, in fact, extend onto the Bidlake property in the northwest corner, extending approximately 50 to 60 feet. This ditch provides the only source of water to the Bucknum property and staff has recommended a condition that the location of the ditch be verified and that an easement be provided if it is determined to be located on the Bidlake Addition.

The property is accessed directly off of Mullan Road with a new cul-de-sac road, Bidlake Court. Lots 6 and 7 on the east are proposed to access from Mullan Road from individual driveways. Both staff and Public Works recommend a shared driveway to serve Lots 6 and 7. There is a one foot no access strip along Mullan Road on Lot 5 and staff also recommends that a no access strip be placed along Mullan Road on Lot 1, so that Lots 1 through 5 would access directly off Bidlake Court. This segment of Mullan Road is designated as a Primary Travel Corridor and the plat and covenants contain provisions for Primary Travel Corridor setbacks and landscape requirements.

Bidlake Court will meet County standards with a 24 foot wide paved public road within a 60 foot right-of-way, with 2 foot shoulders and drainage ditches on both side. A 5 foot wide paved pedestrian walkway is proposed for the northeast side of Bidlake Court, separated from the paved roadway by 10 feet.

The subdivider proposes a 30 foot wide private access easement along the western boundary of the subdivision for the use and benefit of the proposed agricultural exemption tract for continued agricultural use and access through Lot 2. There is an existing 14 foot wide gravel driveway within this easement and no improvements are planned. The driveway crosses a riparian area, the slough and a 100 year floodplain located along the southern boundary of the subdivision. The Bidlakes intend to continue to use this driveway. Although it crosses Lot 2, the driveway is not intended for use by any lots in the subdivision.

Drainage is proposed to be handled in roadside drainage ditches and there is a drainage easement on the northwest corner of Lot 1 to contain runoff from the subdivision. The lots are proposed to be served by private wells and individual septic systems and the plat includes an RSID waiver statement for community water and sewer systems.

Frenchtown Rural Fire will serve the subdivision. The nearest station is approximately 1 mile west of the property. The subdivider indicated their intent to provide residential sprinkler systems within each home. Parkland dedication for this subdivision is approximately .85 acres. The applicant proposed that the agricultural exemption parcel south of the property meet the parkland requirement. The Park Board recommended that cash-in-lieu be donated to meet the open space requirement and staff concurred and made that a recommended condition of approval.

The northern portion of the property is flat and the slough on the south supports riparian vegetation. There is a steep bank that drops approximately 20 vertical feet from the subdivided developed lot area to the slough. That area has been designated a No Development Zone and Riparian Resource Area. The Subdivision Regulations contain standards to ensure that no subdivision be approved which adversely affects riparian resource areas. The covenants contain provisions for management of this Riparian Resource Area. Staff has recommended some modifications to that management plan.

There are photos and public comment letters from Frank and Dawn Bucknum and Cathy Childs attached to the staff report. Mr. Bucknum initially had some concerns with the subdivision but those concerns have been address to his satisfaction. Planning Board conducted a public hearing on January 18, 2005 and voted 7-0 to recommend approval of the subdivision subject to staff's recommended conditions of approval. The Planning Board also voted unanimously to request that the Board of County Commissioners pursue a reduction of the speed limit on Mullan Road in this vicinity.

Chair Curtiss stated that Mr. Bucknum called the office earlier and said he was unable to attend the meeting today as he had fractured his foot. He did say that his concerns regarding the subdivision had been addressed.

Greg Martinsen stated that he, Jennie and Mr. Bidlake worked long and hard to put these two subdivisions together and he commended Jennie for her efforts. The 62 acre parcel ties into the Houle Meadows Subdivision, not the Bidlake Addition. He wanted it clear that the 62 acres is not a part of this subdivision. The conditions of approval are acceptable as long as the 62 acre parcel is not considered to be tied in with these parcels.

Chair Curtiss stated for the record that the 62 acre parcel is not considered as a part of this subdivision, even though it is referred to in the staff report.

Chair Curtiss opened the public hearing.

Steve Bidlake stated that he agreed with all of staff's recommended conditions and appreciated Jennie's hard work. The speed limit issue is important for the whole community, whether this subdivision is approved or not. It has been tried before, with no satisfactory results, in fact, the speed actually increased. There is a grade school a few blocks up the street, there is a day care near the subdivision and several pets have been killed on the road. Small children use the road every day and there are houses on one acre tracts all the way to Frenchtown. They would appreciate any help the Board can give to get the speed limit reduced.

Commissioner Evans stated the Board can request a speed study from MDT, but it can be a two-edged sword. MDT uses the 85th percentile rule, if 85% of the folks are driving at a particular speed, that is the speed limit that is set. There is no guarantee that the speed will be reduced. It is also something that they schedule as time permits, so it may not get done very quickly. However, the Commissioners would be willing to request that a speed study be conducted.

Chair Curtiss stated that the last time she spoke to the Highway Department about this, she was told a speed study could be requested specifying that the speed limit not be increased.

Greg Robertson asked what specific segment of Mullan Road was being considered.

Chair Curtiss stated this was on the other side of Frenchtown on Mullan Road.

Greg Robertson stated that is within County jurisdiction, so the Board could request that he conduct a speed study.

Steve Bidlake stated that the study should cover Mullan Road from the Frenchtown side of the grade school to Marcure Lane. The current speed limit is 55 miles per hour.

Greg Robertson stated that is generally the statutory limit. There are two things that govern the speed limit. One is the State statutes that define speed zones. The Commissioners have the ability to modify a speed limit based on appropriate engineering studies conducted, based on the 85 percentile speed, but other considerations can be factored in, such as land use, access, geometry, accident history, etc. His Department has approximately 12 speed studies they are currently investigating and this request will be added to the list.

Steve Bidlake stated that since the truck scales have been removed, a lot more trucks are being seen on Mullan Road, most of them exceeding the speed limit.

Greg Robertson stated that weight limit signs or No Truck Route signs could be installed, but enforcement by the Highway Patrol could be a problem.

Cathy Childs stated she owns land adjacent to this subdivision on the north. This subdivision ignores the land history. The reason behind the one dwelling per five acres is because of high groundwater. The slough that flows behind the property runs everywhere and if it gets polluted, it affects everyone. Frenchtown feels that they are being pushed to have municipal water and sewer systems, but how to pay for such systems is not being addressed. Development cannot continue unchecked because it is putting way too much pollutant into the groundwater. This subdivision is not in compliance with the Comprehensive Plan but the lawyer said that has been thrown out. Her biggest concern is that this land is under water every spring. It has a high water table and drainage problems. The Montana Codes have a section that says when there is evidence of flooding, swelling soils, improper drainage, etc., an engineer needs to be brought in to look at the situation. She did not think that had been done. This land is in the heart of Frenchtown and if it was developable, it would have been developed already. Everybody calls it "that land that is under water every spring." The land in this area is quirky, that is why a lot of the subdivisions have "Springs" in their name. She would like to see a perc test done on the land in the spring. A perc test was done in October as a Planning Board member mentioned. Having seven more houses near a day care with septic systems that could fail bothers her. If the field is under water, the septic systems are not working. How will this affect the current residents. The City has proposed bringing the sewer out to the Wye, so will everybody in Frenchtown have to be on sewer and

pay for it. That would be objectionable. Most of the residents of Frenchtown are concerned about the continued development, the infrastructure is not in place to be developing one acre lots. The one acre tracts that currently exist were created 35 to 40 years ago, before it was known what would happen to the ground water as more and more housing was built. She also found in the Montana Codes a cite that says a subdivision cannot be approved if it impacts streets and highways, it should lessen congestion, not increase it. This is a dangerous stretch of road; even children that live less than a mile from the school are bussed in. Young children are not allowed on the road. The neighborhood petitioned a few years ago to reduce the speed limit, which was not successful, but traffic mitigation funds were received to widen the road by five feet on each side; however that did not do anything for the speed. There are a lot of teenagers drivers in the area and their speeding on the road could affect the speed study. Most people don't have pets anymore, because they have been killed. She has witnessed four or five times a child almost being killed on the road. She did not want the subdivision to go in unless something can be done about the traffic and the speed on that road. It amazed her that nobody has addressed the impact to the school. She has taught at Frenchtown for 27 years and all these subdivisions are being built. Frenchtown tried a bond issue about two years ago but it failed, mostly due to property reassessments and a mistake the County made with the previous years taxes.

Commissioner Evans stated the law does not allow the Commissioners to consider impacts to schools.

Chair Curtiss stated it specifically states that impacts to schools cannot be taken into consideration.

Cathy Childs asked how schools could not be considered.

Chair Curtiss stated that Ms. Childs should speak with her legislators.

Commissioner Evans stated the legislators are the ones that wrote the law, but it is one the Board has to follow, they cannot consider impacts to schools when a subdivision is being reviewed.

Chair Curtiss stated that schools are asked for their comments regarding a subdivision, but the Board is specifically not allowed to deny a subdivision based on its impact to schools.

Mike Sehestedt stated that law has been in effect for many years, when schools began suggesting they were entitled to impact money as a result of increased enrollment from subdivision activity. The legislature responded by saying schools could not require a subdivision to pay capital costs or impact fees for a school.

Cathy Childs stated that since she cannot mention the impact to schools, her biggest concern is ground water in the area.

Chair Curtiss stated the Board does not make decisions based on the availability of water or the ability to have a septic system. That is done by the Health Department and the Department of Environmental Quality. If those agencies find it is not appropriate to have that many houses, even if the Board has approved the subdivision, the plat cannot be filed.

Mike Sehestedt stated a subdivision goes through two review process. This process addresses most of the issues, then it goes through review by the DEQ on health related issues, specifically water supply and sanitation issues. A plat cannot be filed until it is approved and sanitary restrictions are lifted by the Department of Environmental Quality. After the Board approves a subdivision, it gets submitted to DEQ which reviews soil data, ground water data and decides whether or not it meets State standards, specifically including non-degradation standards. This is not an issue that the Commissioners are allowed to review.

Cathy Childs stated that all of these new subdivisions in Frenchtown are an extremely hot topic and people are upset.

Mike Sehestedt stated that if people want to come up with enforceable rules, they need to go through the zoning process, which includes the right of citizens in the area to defeat it by protest. Zoning is the only tool the legislature says can be used to regulate land use, occupation, density, lot size, etc. The same comments that Ms. Childs made are heard from citizens in Lolo all the time, yet they have no particular enthusiasm for pursuing zoning.

Steve Bidlake stated that he spoke with several of his neighbors. When some of the test holes were being dug, a neighbor asked what their intentions were. After explaining what was being proposed, the neighbor found it to be acceptable, just wanting to make sure that it would not be another trailer court. Two neighbors, one across the street and one next door, have already inquired about purchasing lots in this subdivision.

Mike Sehestedt read into the record the provision of State law on impacts on education, MCA 76-3-608: Criteria for Local Government Review: "The governing body may not deny approval of the subdivision based solely on the subdivision's impact on educational services."

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approved the Bidlake Addition Subdivision, based on the findings of fact and subject to the recommended conditions of approval. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

### **Bidlake Addition Subdivision Conditions of Approval:**

#### **Fire**

1. The subdivider shall provide a means for fire suppression for this subdivision either by providing a minimum 350 GPM water supply or residential sprinkler systems. Final plans for fire suppression shall be reviewed and approved by the Frenchtown Rural Fire District prior to final plat approval. The covenants shall be amended to include the plan for fire suppression and may not be changed or deleted without governing body approval, subject to review and approval by Frenchtown Rural Fire District and OPG prior to final plat approval. *Subdivision Regulations 3-1(1)(F), 3-7(1) and Frenchtown Fire District recommendation.*
2. Section 23 of the covenants shall be amended to include the requirement that driveway plans shall be reviewed and approved by Frenchtown Rural Fire District prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-2(10)(E) and Frenchtown Rural Fire District recommendation.*

#### **Drainage**

3. Drainage plans shall be reviewed and approved by County Public Works and OPG prior to final plat approval. *Subdivision Regulations 3-2(A) and OPG recommendation.*

#### **Open Space Requirement**

4. The subdivider shall donate cash-in-lieu of parkland, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3- 8(6) and County Park Board recommendation.*

#### **Driveways**

5. The final plat shall include a shared driveway easement for Lots 6 and 7 to be reviewed and approved by OPG, Montana Department of Transportation (MDT) and County Public Works prior to final plat approval. A shared driveway maintenance plan shall be incorporated into the covenants and may not be changed or deleted without governing body approval, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3-2(10)(B), OPG, MDT and County Public Works recommendation.*
6. Plans for paving of driveways a minimum of 20 feet back from the edge of the Mullan Road right of-way and 20 feet back from the pavement on Bidlake Court shall be incorporated into the covenants and may not be changed or deleted without governing body approval, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3-2(10)(A), 3-2(10)(D), OPG, MDT and Health Department recommendation.*

#### **Access**

7. The one foot no access strip along the Mullan Road frontage of Lot 5 shall be extended to include the Mullan Road frontage of Lot 1, subject to review and approval by OPG and County Public Works prior to final plat approval. The covenants shall also be amended to state that Lots 1 and 5 shall access from Bidlake Court, subject to review and approval by OPG prior to final plat approval, and may not be changed or deleted without governing body approval. *Subdivision Regulations 3-2(1) and OPG recommendation.*

#### **Radon**

8. The covenants shall be amended advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG and the Health Department prior to final plat approval and may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

#### **Irrigation Ditch**

9. The subdivider shall verify the location of the irrigation ditch at the northwest corner of the property. If the ditch is determined to extend onto Lot 2 of the proposed Bidlake Addition, the subdivider shall grant a use and

maintenance easement, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

### **Weeds**

10. The subdivider shall prepare a Revegetation Plan for disturbed areas in the subdivision requiring revegetation with beneficial species of any areas of ground disturbance created by construction on or maintenance of these lots, subject to review and approval by the Missoula County Weed District prior to final plat approval. The Revegetation Plan shall be incorporated into the covenants and, along with Section 6, may not be changed or deleted without governing body approval. *Subdivision Regulations 3-1(1)(B) and Weed District recommendation.*

### **Wildlife**

11. The following shall be incorporated into the covenants, subject to review and approval by OPG prior to final plat approval and may not be changed or deleted without governing body approval:

“Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, [elk], [black and/or grizzly] bears, mountain lions, [wolves, coyotes, foxes,] skunks and raccoons. Contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners “live with wildlife.”

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

1. Homeowners must/should be aware of the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
2. Gardens and fruit trees can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
3. Garbage should/must be stored in secure [animal/bear]-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. It is best not to [or Do not] set garbage cans out until the morning of garbage pickup.
4. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a “concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.” Also, homeowners must/should be aware that deer might occasionally attract mountain lions to the area.
5. Bird feeders attract bears. [Consider not using them in this area between the months of April through October.] If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds. [or, Birdseed is an attractant to bears; bird feeders may not be used in this subdivision.]
6. Pets must/should be confined to the house, in a fenced yard, or in an outdoor kennel area, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
7. Pet food [and/or livestock feed] must/should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding pets [and/or livestock] do not leave food out overnight. Consider feeding pets indoors so that wild

animals do not learn to associate food with your home. [or, Pets must be fed indoors or inside kennels, so wild animals do not learn to associate food with your home.]

8. Barbecue grills should/must be stored indoors. [Permanent, outdoor barbecues grills are not allowed in this subdivision.] Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
9. Consider boundary fencing that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer [and/or elk] becoming entangled in the fence or injuring themselves when trying to jump the fence.
10. Compost piles can attract skunks and bears and should be avoided [or, may not be used] in this subdivision. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
11. Apiaries (bee hives) could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears). *Subdivision Regulations Articles 3-1(2), 3-1(10) and FWP recommendation.*

#### **Primary Travel Corridor**

12. Section 24 "Mullan Road Primary Travel Corridor" of the covenants may not be changed or deleted without governing body approval. The setbacks in Section 5 of the covenants shall be revised to be consistent with the 50 foot setback from Mullan Road as required by the Primary Travel Corridor Standards, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3-14.*

#### **Riparian Resource Area**

13. The Riparian Resource Area Management Plan contained in Section 26 of the covenants shall be amended as follows, subject to review and approval by OPG prior to final plat approval:
  - a. The covenants shall include a map indicating the boundaries of the riparian area.
  - b. The plan shall include more specific information about the types and extent of riparian vegetation and habitat present on the site. Based on this information, the Riparian Area/No Development Zone may be required to be amended to include all riparian vegetation and an adequate buffer area, subject to review and approval by OPG prior to final plat approval.
  - c. Section 26 (c) shall be amended to state: "Wildlife friendly fencing should also be considered where fencing is permitted."
  - d. The plan shall be amended to prohibit the daylighting of homes on Lots 2, 3, 4, 6 and 7 on the bank where the "No Development Zone/Riparian Resource Area" is located, and that no fill may be placed in the "No Development Zone/Riparian Resource Area" and further that a silt fence or other erosion control fence shall be erected along the top of the bank during home and road construction.
  - e. The plan shall specify examples of the types of maintenance activities that might be required.
  - f. The plan shall clarify the types of recreation proposed that might require additional clearing of vegetation. Clearing of vegetation shall be minimized.
  - g. The plan shall clarify that no additional stream crossings are permitted.
  - h. The plan shall be amended to address stock watering.

Section 26 "Riparian Resource and No Development Zone" may not be changed or deleted without governing body approval. *Subdivision Regulations 3-13.*

There being no further business to come before the Board, the Commissioners were in recess at 4:00 p.m.