

PUBLIC MEETING – April 13, 2005

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

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 \$289,268.93. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Decision: Petition to Abandon a Portion of GLO Road, Book 1 Road (Lolo Trail Ranch / Woodman School area)

The public hearing on this matter was opened on March 30, 2005. A site visit was conducted by Commissioner Bill Carey and County Public Works Assistant Director Chuck Wright on Monday, April 4, 2005.

A petition has been filed with the County Commissioners requesting to abandon a County road, street or alley.

The petition is to abandon those certain County roads located within the East ½ of the NW ¼ of Section 31, the East ½ of the Southwest ¼ and the Southeast ¼ of Section 30, the South ½ of Section 29, the NE ¼ of Section 32 and the North ½ of Section 33 of T12N, R21W, P.M.M., County of Missoula, State of Montana, bounded on the west by the West 1/16th lines of Sections 30 and 31, T12N, R21W, P.M.M., and bounded on the east by the most easterly line of Tract 2 of Certificate of Survey 4304, all within the ownership of Lolo Trail Ranch (AKA OZ Ranch), a subsidiary of the Potomac Corporation, more particularly described as follows:

- 1) General Land Office (GLO) road as shown on GLO plat, surveyed by Charles Albee in September to October, 1899 and approved August 4, 1900, by the Surveyor General's Office. This GLO road is described on said plat and the original surveyor's notes as "Road to Missoula" and located in the E ½ of the SW ¼ and the E ½ of Section 30, Sections 29 and 32, the W ½ of Section 33, and the W ½ of the E ½ of Section 33, T12N, R21W, P.M.M., County of Missoula, State of Montana.
- 2) Road Plat Book 1 road located in Sections 28, 29, 30 and the W ½ of Section 33 and the W ½ of the E ½ of Section 33, T12N, R21W, P.M.M., County of Missoula, State of Montana. This right-of-way is further described in the Road Plat Book 1 on page 057, Sheet 127, and page 067, Sheet 138 as Road File A 141, petitioned by C.E. Muzzie, and accepted June 4, 1895 in Commissioner's Journal Volume G, page 250. Alignment changed by road file A 145, petitioned by T.E. Magee, declared September 11, 1896 in Commissioner's Journal Volume G, page 421.
- 3) Right-of-way easements quitclaimed to Missoula County from the former Clearwater Short Line Railroad, as recorded in Book 111 of Deeds on pages 375 to 378, that are located outside an eighty (80) foot offset, on both sides, as measured perpendicular to the Right-of-way centerline of U.S. Highway 12 as shown on the State of Montana Right-of-way plan S-391 (2) dated October 19, 1961 through March 27, 1962, and located in Sections 29, 30, 31, 32, the W ½ and the W ½ of the E ½ of Section 33, T12N, R21W, P.M.M., County of Missoula, State of Montana.

The reasons for the request are as follows:

1. The right-of-way (ROWs) are not needed since every property (public or private) crossed or abutted by the ROWs is more readily accessible via U.S. Highway 12, which is paved and maintained, or by private roads with permanent easements.
2. Abandonment will avoid conflicts between the use of ROWs and current uses of the land for ranch operations.
3. Abandonment will avoid other trespass-related problems.

4. Abandonment will clear title to the underlying properties and will clarify that the public is not permitted access on the underlying privately owned lands.
5. Similar abandonment has been granted in the same townships for both GLO roads, Book 1 Roads, and Clearwater Short Line Railroad ROW outside the 160 foot Highway 12 ROW, as evidenced by Missoula County Board of County Commissioners Resolutions No. 96-084, 99-083, and 2000-075.

The following landowners have been notified:

Potomac Corporation P.O. Box 67 Wheeling, IL 60090	Potomac Corporation 2063 Foster Avenue Wheeling, IL 60090	Plum Creek Timberlands LP Attn: Jaime Schaefer Columbia Falls, MT 59912
State of Montana Capital Building Helena, MT 59601	Bruce and Betty Lou Duffalo 16950 Lolo Creek Road Lolo, MT 59847	Steve T. and Lorna D. Robertson 17350 Lolo Creek Road Lolo, MT 59847
Kory S. and Melinda J. Mytty P.O. Box 891 Lolo, MT 59847	Donald G. and Melva I. Campbell 17400 Lolo Creek Road Lolo, MT 59847	Woodman School District #18 U.S. Highway 12 Lolo, MT 59847

Commissioner Carey: Surveyor Wright and I did drive down there and took a look at the road and discussed the matter. We both came to the conclusion that we would like to not abandon this portion of the GLO road at this point and explore our options with the possibility perhaps someday of having, moving the easement to perhaps have a connection to a trail someday that might parallel Highway 12. Is that fair to say, Charlie?

Chuck Wright: That's fair to say, but there's two roads out there that they're talking about and when we discussed that, I said that the one road that you probably wanted to keep if you were going to keep anything, would be the GLO road, not the other road.

Commissioner Evans: That's which one, the purple one or the green one.

Chuck Wright: I believe the purple is the GLO road.

Mike Sehestedt: Actually, I think we have three different right-of-ways at issue here, and correct me if I'm wrong. We have the right-of-way associated with the Book 1 Road, the right-of-way associated with the GLO Road and right-of-way associated with the Clearwater Short Line Railroad, which has been determined to be County road right-of-way because of the manner in which it was dedicated to us and accepted in the, I believe, 30's, although I wouldn't swear to the date.

Chair Curtiss: So the yellow crosshatching represents the railroad right-of-way and it looks like it would be the one that would be most likely used as a trail in the future, because it's adjacent to the highway right-of-way.

Mike Sehestedt: It is, but I noticed from the representation, that it is not the full length of the property. It represents the fact that the railroad acquired variable widths depending on its needs and the highway did not necessarily locate dead center on the railroad right-of-way, so you see variable widths of railroad right-of-way lying to the north of Highway 12 on the large map.

Commissioner Carey: Could we at this time then just not take action on this, or basically deny the petition for the moment and explore our options with this.

Mike Sehestedt: What I would do, since they've gone to the trouble of petitioning, my recommendation to you, legally you can deny the petition which maintains the status quo, you can grant the petition which vacates all of the roads, you could vacate as to some and deny as to some, or you could, an infinite number of combinations, there are too many roads here, you could simply say that you're going to, if you need to get more information, that you're simply going to continue the hearing for another week to explore the possibility of retaining part or all of the right-of-way or relocating part or all of the right-of-way for purposes of potential future pathway pertinent to the highway.

Commissioner Evans: Is there anyone here representing this.

Mike Sehestedt: If you simply just deny the petition, then we're really without a vehicle to address this, even if the property owner, and I do not presuming the property owner is in agreement with this, but even if the property owner

said, well, 30 feet adjacent to the highway is great. If you just deny the petition, then we have to go back through this whole process to vacate those roads to get the landowner what they want. I think if you're looking at taking some action other than a straight vacation of the roads or straight denial of the petition, that you'd continue it and keep this open so we've got a vehicle to act on if we can reach agreement or come to a conclusion we want to do something different.

Chair Curtiss: Mr. Shulman is here and has provided a map that does show the existing right-of-ways and also the Department of Transportation's maps that show where those numbers came from, so I think that we need to decide what our goal is. If our goal is to have enough right-of-way so that in the future there could be a trail, then we can just say we want to end up altering where those roads are so that we have that.

Mike Sehestedt: I would say that the alteration would probably require the consent of the property owner. Your lever is the fact that if you don't get that, you just deny the petition in its entirety, or in part, again, these are matters vested in your discretion to determine what's in the best interest of the County and County roads, generally.

Commissioner Evans: Could we ask Mr. Shulman for his opinion.

John Shulman: We talked to Mr. Wright earlier in the week, who told us that the Commission was considering denying this and so we have talked to the owners about it and of course they're very disappointed. If the Commission would like to come up with a proposal for them, they would certainly consider it. I would say that there's a couple of reasons why we would discourage you from considering a trail that goes through the property along either of these rights-of-way. One would be feasibility related to cows, what the County's obligations are as far as keeping cows off the Federal and State highways, this is in MCA 7-14-2130, but also gates that would allow the cows movement. MCA 7-14-2607 requires the payment of damages resulting from establishment or alteration of a County road, so that would include loss of pasture and interference with ranch operations. There's also requirements of weed control and I don't know if you noticed on there, but those rights-of-way cross the Lewis and Clark Trail which goes through the ranch, which is sort of a black dashed line, so trying to put a trail across that would get you into some cultural permitting questions through the Nez Perce and also through the Federal statute on cultural, there would have to be some archeological, or whatever that's called.

Chair Curtiss: Just to clarify, I don't think that we want these trails to wander out through the ranch, we just want to make sure that adjacent, or as part of the highway right-of-way, there would be room for a trail that might be on the very edge of your property, which may never be developed.

John Shulman: The owners told us that we should bring to them any proposals that the Commission has and they'll consider it and that was as far as they would go. I've worked for the ranch for half a dozen years in various capacities and the people I work for have worked for them for a dozen years and they're committed to their privacy, they've purchased land which has no grazing value just strictly for the purpose of preventing development that would interfere with their privacy, so they're very protective of their privacy.

Mike Sehestedt: Certainly. Understood. I won't concede the point, if we were to open an existing County road we're subject to damages, my belief is the right-of-way exists now, that's not to say that there aren't serious practical problems with using the roads as located. So, I think that the best action, given what Mr. Shulman said, is to simply continue the hearing and take a look at what outcome we want and take that, give that to Mr. Shulman and let him take it to the owners and see if it's consistent with their wishes and desires and see what we can work out. I mean, there's always time to either say yea or nay to the petition as a whole and it sounds like there's some reluctance to do that, so, let's keep the matter open, take a look, given existing Highway Department right-of-way, what we think might be necessary for a path appurtenant to the highway and come back to the property owner with a response.

Chair Curtiss: If we decided to alter one of these and put it next to the highway and the existing right-of-way on the, say, green road is 60 feet, we could say we are only going to keep 20.

Mike Sehestedt: We can alter to whatever, at the point, I think, based on this petition, we could say, we've got two presumptive 60 foot right-of-ways across there, plus whatever we have from the Clearwater Short Line. What we really want is here, here and here along the road to bring it out to this total width and so to that end, we propose relocating. You need to look on the ground, you need to think about what you might want and what the Highway Department might do and then make a proposal based on that. I think the people, certainly if the road is pulled back next to the highway, it should go some distance toward mitigating their privacy concerns, but these are matters that they'll have to make a judgment on and you guys need to make an initial judgment as to what you want as an outcome.

Chair Curtiss: Would you like to state what you'd like as an outcome.

Commissioner Carey: I'd like to find something mutually beneficial to the owner and to the public interest. I don't think they're going to own it forever. We, I think, have a responsibility to explore what may be of benefit 10, 20, 30 years from now in terms of public access in some way. So, I would hope that we could find some reasonable accommodation here and I'd like some time to explore that.

Mike Sehestedt: I think there's every possibility that we can and if we can't, well, one of those things you don't know until you try.

Commissioner Carey: So I would move to continue the ...

Mike Sehestedt: What I would do is just continue the hearing without date and we'll advise Mr. Shulman and Jim of what we're proposing and then, if we put it up for dispositional hearing, we'll make sure they get notice of it as well.

Commissioner Carey: I would make that motion in the hope that we will be able to perhaps work together with the representatives of the landowner and not just come at it from the County's thing, but maybe we can work up something together and find a way to do this.

Commissioner Evans: Second.

Mike Sehestedt: I think they're in a position where they really need to have something from us to take back. I think it would be useful for us to talk with them as we formulate it and get some real practical response.

Chair Curtiss: I know it would seem to me that we'd want our Public Works Director and the Highway Department, probably Charlie, to tell us how much space we do need, maybe there's enough there.

Mike Sehestedt: If that's the case, then you come back and simply grant the petition. If there isn't, we need to talk some more.

Chair Curtiss: So, it's been moved and seconded, any discussion. Barbara did second the motion. All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye.

Commissioner Evans: Aye and I'd like to make it clear that I agree with Bill that we should work together with the landowners, it is their land even though we have a right-of-way and I wouldn't care to proceed without them saying, no, that's not good, or yeah, that's wonderful.

The motion carried on a vote of 3-0.

Mike Sehestedt: The reality is, in all honesty, we don't want to open a path or road through the middle of that meadow, even if the landowner thought it was a swell idea.

Chair Curtiss: So, we'll make sure that you're notified and we do have your numbers here from last time.

Hearing (Certificate of Survey): McCool Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 1 of COS 5347, located in Section 18, Township 12 North, Range 19 West and Section 13, Township 12 North, Range 20 West.

Richard W. and Linda L. McCool have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located near Missoula, Montana. Richard and Linda propose to create one approximately six and one-half (6.5) acre parcel for transfer to their daughter, ~~Amanda M. Beauchamp~~ Kelly McCool, for residential purposes and keep the remaining approximately three and one-half (3.5) acre parcel for residential purposes as well.

The history of the parcel is as follows: The parcel was created as a Remainder Tract 1 of COS 4889. A Warranty Deed was filed in 2003, deeding the property to Richard W. and Linda L. McCool from Hazel Harlan.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Richard McCool corrected the report to reflect that this transfer was to his other daughter, Kelly McCool.

Chair Curtiss stated that in the past, counsel has said that Remainders do not have a legal description.

Colleen Dowdall stated that Remainders with subdivision do not have a legal description. Remainders with Certificates of Survey do have a legal description. She was not sure why this was labeled a remainder, the survey done only showed its boundary; there was nothing on the COS to give any hints as to why it was done that way.

Richard McCool, 8200 Miller Creek, was present and came forward to answer questions.

Chair Curtiss stated the Board is responsible to make sure these exemptions to the Subdivision and Platting Act are legitimate family transfers as the law allows and not an attempt to evade subdivision review. The Deputy County Attorney would ask a series of questions to determine his intention.

Colleen Dowdall asked how long he had owned the property.

Richard McCool stated it was a little over 2 years.

Colleen Dowdall asked if purchased the property with the intent of dividing it.

Richard McCool stated he did not.

Colleen Dowdall asked if he lived on the property currently.

Richard McCool stated that he did.

Colleen Dowdall stated that he is transferring the property to his daughter.

Richard McCool stated that was correct, to Kelly.

Colleen Dowdall asked where she lived currently.

Richard McCool stated she had an apartment in town right now and in about three months, she is going to be moving to Los Angeles.

Colleen Dowdall asked what she intends to do with the property.

Richard McCool stated that he hoped she would eventually build a house on it. He is trying to give her a little nest egg like he did for his oldest daughter.

Colleen Dowdall asked if she intends to transfer the property in the near future.

Richard McCool stated she did not.

Colleen Dowdall asked if the property is going to be developed with a house in the near future.

Richard McCool stated if she decides to build a house on it, he will build it for her.

Colleen Dowdall asked if he was in the business of building houses.

Richard McCool stated that he was in the business of building houses.

Colleen Dowdall stated that she will not be currently residing on the property, she is moving to Los Angeles.

Richard McCool stated that was correct, to pursue an acting career. She received a degree at the University.

Colleen Dowdall asked if he had talked to anyone at the County about going through subdivision review.

Richard McCool stated he had not.

Colleen Dowdall asked if he was attempting to evade subdivision review.

Richard McCool stated he was not, he just wants to give Kelly a piece of property.

Colleen Dowdall stated he would not be building a house except for her use.

Richard McCool stated it would be several years before a house would be built. If she gets married and wants to come back and build a house, that is what they will do.

Colleen Dowdall asked what the reason was for doing the division now.

Richard McCool stated he helped the oldest daughter get started on her house and wanted to give Kelly the same start. He only has the two daughters.

Colleen Dowdall asked if he understood this request is not being reviewed to determine whether the access is good, or all those other things that subdivision review provide.

Richard McCool stated that he understood that.

Colleen Dowdall stated that this approval does not necessarily mean the parcel is developable, other permits for zoning compliance, floodplain, septic, etc., need to be obtained.

Richard McCool stated that he understood that too.

Chair Curtiss asked if the property was zoned.

Richard McCool stated he did not think it was zoned.

Chair Curtiss stated that if this division is approved but zoning prohibits building on a lot that size, then it cannot be developed.

Richard McCool stated he understood that.

Chair Curtiss stated that it looks like he uses the whole property right now and will continue to do so even though part of it is his daughter's.

Richard McCool stated that was correct.

Chair Curtiss stated that he must have animals, since there are barns and sheds.

Richard McCool stated he has three Labrador Retrievers and a whole bunch of deer.

Commissioner Evans stated that she drives that road every day and asked where this land was located.

Richard McCool stated it is at the intersection of Lower Miller Creek and Miller Creek Road, on the south Wye, not the north Wye.

Commissioner Evans stated she felt it probably was zoned because there is a tremendous amount of growth going on in the area.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Richard and Linda McCool to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey) Holmes Family Transfer

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 7 of COS 1853, located in the southeast one-quarter of Section 33, Township 15 North, Range 14 West.

Jamie Holmes has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately twenty (20) acres in size located near Greenough, Montana. Jamie proposes to create one approximately ten (10) acre parcel for transfer to his wife, Michelle Holmes, for residential purposes and keep the remaining approximately ten (10) acre parcel for residential purposes as well.

The history of the parcel is as follows: Certificate of Survey 1853 was filed in 1979, creating parcels of land twenty acres in size or greater. A Warranty Deed was filed January, 2005, deeding Tract 7 to James Holmes.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Colleen Dowdall: Mr. Weatherly is here on behalf of the applicant. They are not here, they're in Florida. I know in the recent past you have wanted to have the actual applicant here to answer the questions. Will they be returning at some time soon?

Jim Weatherly: Their hopes are to return to Montana, but I can give you the whole history of why we got where we are and why they aren't here today and I think that will help explain it. Jim Weatherly with WGM Group and I'm here today representing Jamie and Michelle Holmes. Jamie and Michelle moved to Montana last year because Jamie had a job offer here. They purchased this piece of property last year with the hopes of building their house starting this spring. As it turns out, over the winter the job that Jamie accepted did not pan out and there are no other jobs in his exact line of work, I guess, so what he has had to do is accept another job in Florida, as it turns out. They left about three weeks ago with their family and moved to Florida. Their goal is to come back to Montana. They bought this 20 acres and they hope to keep the 20 acres, however, having moved here, bought this piece of property, now having moved to Florida, probably faced with buying another house down there and so on, this is probably a financial planning move as much as anything. By gifting one half, 10 acres of this, to his wife, the two parcels will appraise higher, that gives them a greater source for financial borrowing, I guess, to purchase a new house and so on. In a worst case scenario, if they had to, they may have to sell one of the these parcels, that would still allow them to keep the other 10 acres if they can get back to Montana and build on it. So, having just moved to Florida a few weeks ago, I talked to them the day they left for Florida, I have not talked to them since, so I don't know if their status has changed, but he did have a job he was assuming when he left here.

Chair Curtiss: The information that we have says a Warranty Deed was actually filed in January of this year.

Jim Weatherly: Yes, he just purchased it, I mean, he was negotiating it last fall when he got here and so on and they closed on it, I thought it was in December, it might have been January.

Colleen Dowdall: It was January 25, 2005, when both the mortgage on the property and the Warranty Deed were recorded.

Commissioner Carey: I just wonder if it's unreasonable to view this as a family transfer for the purposes of subdividing the land and is that relevant to our consideration?

Colleen Dowdall: I consider it relevant to your consideration. What you need to determine is whether there's an attempt to evade subdivision review, because there are two ways to divided property, one is by exemption and one is by subdivision review. The Family Transfer exemption allows for the transfer of property from one spouse to another, but you are allowed to collect evidence that helps you determine whether that is truly a transfer to a family member for their use or whether it is a family financial planning tool that it sounds as if this is, these are funds that would benefit both parties by dividing the property. This is not a gift, this is a division of land.

Commissioner Evans: It has always stuck in my mind that when you are going through subdivision review, it isn't just for the purpose of splitting a piece of property, it's in order to develop the piece of property and you've got a plan for houses and sales and such. So for me, I've not been able to separate subdivision and the subdivision process from actually development of the land. However, a land split, from my perspective, this might look like an attempt to evade the Subdivision Act, but if he ... one of the papers we had, Jim, indicated that he was single. Have they just been married?

Jim Weatherly: Colleen showed that to me and I have in my file a letter signed by Jamie Holmes, and again, this is when he was exploring when he realized his job was not working out here and he would probably have to leave the state if he couldn't continue in that job, he was trying to explore how he could keep this land in case they came back

and so on, and we talked about different options, including the subdivision option, and that's when I explained to him the gift to family member and all those other options available under the State law. And he sent me a letter that said, should you recommend separation of one half, I would like the second half of the property assigned to my wife, who is not on the title. Her name is Michelle Holmes and her Social Security Number is I'm not going to tell you her Social Security Number. That is a letter signed by Jamie Holmes and I have met Michelle Holmes. I didn't ask for their marriage license but I'm pretty sure they're married.

Chair Curtiss: I just see this as something that I would rather have them here that I could ask them the questions directly, but especially if they're trying to do this so, financially, they could sell one piece and hopefully buy a house in Florida, seems to me to be more of a division of land because they need the money for other things rather than something like estate planning and that kind of thing, so.

Jim Weatherly: But you can look at that both ways, they may want to do this in case the house or whatever they buy in Florida costs them enough money that they can't keep this piece of property, their secondary goal is if they had to sell a piece of this in order to keep 10 acres here so they can come back to the State of Montana and have a place to build a residence, is still a reason, plus the fact that two 10 acre parcels will appraise for more than a 20 acre parcel that may allow them to borrow additional funds if they have to either buy a house or buy a house and be able to maintain the payments on this property.

Colleen Dowdall: It appears that Jamie also bought property in Double Arrow with his brothers and that a house is being built there as well.

Jim Weatherly: I'm not privy to that.

Colleen Dowdall: And his job was with Paws Up, correct?

Jim Weatherly: That's correct.

Colleen Dowdall: And Paws Up owns some land here, this corner as well. Are they involved with this purchase at all.

Jim Weatherly: No. As a matter of fact there's probably not a very good relationship between Jamie Holmes and Paws Up Ranch.

Commissioner Evans: Well, it's very clear to everybody, including myself, that I'm very flexible on Certificates of Survey, so I'm willing to give it to them. It's up to you guys, you're probably not.

Commissioner Carey: Well to me, as our attorney said, it looks more like a subdivision of land than a gift, I mean, I don't know how we get around that one or whether we want to.

Commissioner Evans: But a subdivision of land doesn't prove that someone's trying to evade the Subdivision Act.

Jim Weatherly: We've been involved in a number of gifts to family members, including between husbands and wives and I've never seen the instance in a gift to family member where the husband and wife did this so that they could both build their individual houses on the parcels. I mean, it's either a tool of some kind for financial purposes, in some cases it is to sell half and keep half, and quite frankly, if we go down to the Planning Office and talk to them about this, they often will say it's one of the tools available for you.

Chair Curtiss: But the money, if he gifts it to his wife, the money from that needs to go to benefit her, not him.

Colleen Dowdall: I think the other thing that we have seen a lot lately, which is causing us to have more scrutiny is property that is purchased and then within a few months, or a few weeks, there's a request to divide the property for a gift to a spouse and that raises red flags that this property was purchased with the intent to divide it, it was purchased by speculation and this doesn't, the reason it is important to me that one not be able to go through this is not only that we need to review divisions of land because that's what our job is and we need to review those that are not family transfers that are not attempting to evade subdivision review, but also that there are people who pay the price of going through this review and that we need to not provide this benefit to people who are not doing legitimate transfers, because it is considerably cheaper to have your property divided in this way. So we ask a lot more questions, we follow the transfers afterward. If we find that the property is listed, I have called a number of people and said I think you evaded, I want you to withdraw this and not file the COS and that has been the case. I don't recall that we've done any of those with your firm lately, but there have been other firms where that has been the case and if we want to have this exemption available to anyone, it has to be used legitimately.

Jim Weatherly: I guess I can tell you this, all I know is my dealings with the Holmes, and that when they first contacted us, it was to help them to obtain lifting of sanitary restrictions so they could build their house. The fact that the man lost his job or quit, I don't know the exact circumstances there, that necessitates him to move out of state is something that came along later and when he approached us and said, we would like to keep all or a portion of this property so that if we move back here, we can build another, a residence as we planned originally, however, if they can't and facing the unknown of moving to Florida and having sold one house and moved here and so on and so forth, trying to put himself in a position that he has the financial wherewithal to buy another house for his family elsewhere plus hopefully, hang on to this piece of ground. That's the history as I know it.

Commissioner Evans: So, let me ask you a question, Colleen, let's assume that this is a perfectly legitimate request and instead of leaving the question whether the wife would get the benefit out of it, supposing he puts the land in trust for the wife and the wife chooses to sell it and chooses to build a house with it, does she have to keep him in the garage? I'm being silly here, and I'm being silly on purpose, because I think the same thing can be accomplished doing a trust document where he gives it to her, he puts it in trust and she does what she wants with it and legally, I see nothing wrong with that.

Colleen Dowdall: Except the property still has to be divided and I think the difference in this case is that, at the time that this request was made, the parties knew that they were not staying here and that they were likely going to market at least part of the property as if it was a subdivided lot. I can't substitute my judgment for yours, it's got to be how the Board of County Commissioners' views this.

Commissioner Evans: Jim, do you know when they came to a separation between the Holmes and Paws Up. Was it before the purchase or after?

Colleen Dowdall: I was just looking, the affidavit was March 17th, so I'm assuming by that time they knew they were leaving town, when they asked to divide it.

Jim Weatherly: I don't have the dates because I met with them a couple of times and talked to them on the phone numerous times and at some point, he told me his job had not worked out and that they were probably going to have to leave the state and that's when he started to explore what options he had to be able to keep all or a portion of this property. When did we actually fill out this application and submit it, that could have very well been two or three weeks, a month after he actually asked us to depending on what our time was that we had in the office to do the research and submit the actual application.

Chair Curtiss: Okay, thank you Mr. Weatherly. This is a public hearing. Is there anyone else who would like to speak on this particular property transfer? Seeing none, I'll close the hearing.

Commissioner Carey: I'll move that the Board of County Commissioners deny the request by Jamie Holmes to create one parcel by use of the family transfer exemption based on the fact that there does appear to be an attempt to evade subdivision review.

Commissioner Evans: I won't second it.

Chair Curtiss: I'll second the motion. Any discussion? All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: Opposed.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Consideration: Hollis Addition (4 lots on 20 acres) – 4 miles SE of Arlee

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a request from Steven Hollis, represented by Tim Wolfe of Territorial Engineering and Surveying, to divide a 20.02 acre parcel into four residential lots. The property is located four miles southeast of Arlee; 14 miles north of the Wye and approximately 500 feet east of Highway 93 on Mountain Home Lane. The property is on the Flathead Indian Reservation. Staff recommends approval of the subdivision.

The property is unzoned and the Comprehensive Plan recommends a residential density of one dwelling unit per 40 acres. The density with this proposal is about one dwelling unit per 5 acres.

There are three existing irrigation ditches on the property. One runs east/west across the middle of the property within a 10 foot easement and staff is recommending the ditch be placed within a 20 foot easement in accordance with the Subdivision Regulations. There is a ditch that runs along the southern edge of the property that is not shown within an easement. Staff is recommended that this be shown within a 20 foot easement. Staff also recommended that cul-de-sac and driveway building activity around the ditch in the middle of the property be reviewed by the local ditch company.

Mountain Home Lane is a 24 foot wide gravel surface County road that serves this parcel. The cul-de-sac road proposed to serve the four lots is called Sliding Horse Lane. The developer is proposing a 24 foot gravel surface. Public Works in their review of this project recommended a one foot no access strip be placed on the plat to restrict access to the four lots by way of Sliding Horse Lane. The developer is requesting a variance from the paving standard. Public Works did not object to this request based on the fact that the connecting road is also gravel, as are most of the roads east of Highway 93 in this area. A road maintenance agreement was submitted as part of the proposal. Staff recommends that the agreement be amended to include grading, dust abatement and snow removal as provisions. In addition, staff is recommending a mechanism for homeowners to contribute to the cost of maintenance of Sliding Horse Lane. There is an additional variance request from the private walkways requirement. Public Works had no objection to this request based on the substantial distance to existing pedestrian facilities.

The project was reviewed by the Arlee Fire District. They made a recommendation for a \$100 per lot contribution to address impacts of additional development in the area.

The original submittal lacked a Riparian Resource Management Plan. There is substantial riparian vegetation on the parcel, particularly southwest of one of the irrigation ditches. Staff is recommending a Riparian Resource Management Plan be submitted. Staff is also recommending that the riparian areas plus a buffer be labeled as No Improvement Zones on the plat.

The County Weed District recommends a revegetation plan to address disturbance that will come with building the cul-de-sac road. This is an area of flood irrigation with fairly shallow groundwater. As a result, staff is recommending a note on the final plat and within the covenants, citing the risk of shallow groundwater or other inundation. This note requires a 2 foot elevation of the finished floor and mechanicals above existing grade and that no basements be constructed below the finished floor elevation.

Chair Curtiss asked if this was a forested area.

Tim Worley stated that it was actually fairly open grassland.

Tim Wolfe, Territorial Engineering and Surveying, stated there were no problems with the staff recommendations or conditions of approval. He apologized for the necessity of Conditions 3, 4 and 6, they should have already taken care of those matters. He was not directly involved in this project until late in the process.

Chair Curtiss asked for public comments. There were none.

Commissioner Carey moved that Board of County Commissioners approve the variance request from Section 3-2(1)(G) of the Missoula County Subdivision Regulations requiring paved roads in all new subdivision, based on the findings of fact in the staff report. 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 and pedestrian connections to school bus stops and adjoining neighborhoods, based on the findings of fact in the staff report. 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 Hollis Addition, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hollis Addition Subdivision Conditions of Approval:

1. A no access strip shall be placed along the northern boundary of the subdivision fronting on Mountain Home Drive, excepting the intersection with Sliding Horse Lane, subject to review and approval by County Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(1)(E) and County Public Works recommendation.*
2. The applicant shall show evidence of contribution of \$100.00 per new dwelling unit to the Arlee Fire District prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Arlee Fire District recommendation.*
3. An easement shall be shown on the plat for the irrigation ditch that parallels the southern boundary of Lots 3 and 4, to be reviewed and approved by the Flathead Agency Irrigation District prior to final plat approval. *Subdivision Regulations Article 3-6 and OPG recommendation.*
4. The 10 foot width for the irrigation ditch easement on the northern end of Lots 3 and 4 shall be widened to 20 feet on the plat, prior to final plat approval. *Subdivision Regulations Article 3-6 and OPG recommendation.*
5. Planned driveway crossings of, and roadside swale excavation near, the ditch that crosses the northern end of Lots 3 and 4 shall be submitted to and approved by the Flathead Agency Irrigation District, prior to final plat approval. *Subdivision Regulations Article 3-6, MCA 85-7-1922 and OPG recommendation.*
6. The developer shall incorporate a Riparian Resource Management Plan into the covenants for review and approval by OPG prior to final plat approval. A site map of the Areas of Riparian Resource, plus an adequate buffer, shall be attached to the Riparian Resource Management Plan. The final plat shall show the Areas of Riparian Resource and an adjacent buffer subject to review and approval of OPG. The riparian areas plus the buffer shall be labeled on the final plat as "Area of Riparian Resource - No Improvement Zone - see covenants for more information." *Subdivision Regulations Article 3-13 and OPG recommendation.*
7. Prior to final plat approval, the following provisions shall be added as a note on the final plat and to the proposed covenants: "In order to mitigate the risk from shallow groundwater or other inundation, dwellings on lots within Hollis Addition shall be constructed with their finished floor and all mechanical duct work a minimum of two feet above existing grade. Additionally, no basements will be allowed below the finished floor elevations." *Subdivision Regulations Articles 3-1(1)(B), 4-1(12), Floodplain Administrator and OPG recommendation.*
8. The covenants shall be revised to state that sections regarding driveways, address signs, radon, the Riparian Resource Management Plan, Living with Wildlife, elevation of structures and weed control shall not be amended or deleted without governing body approval. *Subdivision Regulations Article 5-1(5)(K)(x) and OPG recommendation.*
9. The road maintenance agreement shall be amended to specify maintenance needs, including, but not limited, to grading, dust abatement and snow removal, and shall contain a mechanism for each lot owner to contribute to the cost of maintenance. These amendments shall be reviewed and approved by the County Attorney's Office and OPG prior to final plat approval. *Subdivision Regulations Article 3-2(1)(I)(iii) and County Attorney's Office recommendation.*
10. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:20 p.m.