

**PUBLIC MEETING – JULY 27, 2005**

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

**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 list in the amount of \$1,292,112.82. Chair Curtiss seconded. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Wolfe Family Transfer**

Mike Sehestedt 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 4281, located in the north one-half of Section 22, Township 13 North, Range 16 West.

Tim and Linda Wolfe 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 13.12 acres in size located near Potomac, Montana. Tim and Linda propose to create one approximately 6.5 acre parcel for transfer to their daughter, Jamie Beierle, for residential purposes and keep the remaining approximately 6.62 acre parcel for residential purposes as well.

The history of the parcel is as follows: COS 2843 was filed in January, 1983, to create a parcel as an occasional sale. A Warranty Deed was filed in July, 1991, deeding the property to Timothy A. and Linda G. Wolfe. COS 4281 was filed in October, 1999, to relocate common boundaries.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed below:

COS 2843	05/04/1998	Occasional Sale and Remainder	NW	22-13-16
COS 4281	10/19/1999	Boundary Relocation	NE NW	22-13-16
COS 5175	07/12/2000	Retracement	NW	21-13-19

Chair Curtiss: Thank you, Mike. Is Tim or Linda Wolfe here? If you could come to the microphone please and identify yourself?

Tim Wolfe: My name is Tim Wolfe.

Chair Curtiss: Tim, we have a list of questions that we will ask Mike Sehestedt to ask you on the record in regard to transferring property.

Tim Wolfe: Okay.

Mike Sehestedt: Okay, Tim. How long have you owned the property? Is 1991 a correct --

Tim Wolfe: Actually it's been longer than that. I think I bought it in 1977, the parent parcel.

Mike Sehestedt: Did you buy the property with the intent of dividing it?

Tim Wolfe: No.

Mike Sehestedt: Do you or your daughter plan to transfer either of the parcels created within a year?

Tim Wolfe: No.

Mike Sehestedt: And your daughter is not a minor?

Tim Wolfe: No.

Mike Sehestedt: This is a good question, have you talked to anyone at the County about going through Subdivision Review and I will limit it specifically to this parcel?

Tim Wolfe: No I have not.

Mike Sehestedt: Okay. For those of you in the audience, Tim's profession is surveyor, so he has talked about numerous parcels. Are you in the business of building or developing property?

Tim Wolfe: No.

Mike Sehestedt: Are you attempting to evade Subdivision Review?

Tim Wolfe: No.

Mike Sehestedt: Do you understand that evasion is a misdemeanor?

Tim Wolfe: Yes, I do.

Mike Sehestedt: Do you understand that this request is not being reviewed for adequate access in all weather for all vehicles or for that matter, for access in any weather by any vehicle?

Tim Wolfe: I know that all too well.

Mike Sehestedt: Do you understand there is no review for emergency services?

Tim Wolfe: Yes.

Mike Sehestedt: And that the only approval that the Commissioners can give you is approval to divide the property without going through Subdivision Review, that you will still be required to have the property reviewed for sanitation and zoning if applicable.

Tim Wolfe: Yes.

Mike Sehestedt: And do you understand that you are not approved for anything other than dividing the property?

Tim Wolfe: Yes, I do.

Mike Sehestedt: I have no further questions Commissioners.

Chair Curtiss: Thank you Mike. This is a – do you have any questions for Mr. Wolfe? Thank you. Thanks Tim. This is a Public Hearing. I will open the hearing. Is there anyone who would like to make any comment about this transfer of property to their daughter? Seeing no one come to the microphone, I will close the Public Hearing.

Commissioner Carey moved that the Board of County Commissioners approve the request by Tim and Linda Wolfe 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. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Lloyd/Foster Family Transfer**

Mike Sehestedt presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract A of COS 3194, located in the east one-half of the southeast one-quarter of Section 35, Township 13 North, Range 18 West.

Richard Lloyd and Christine Foster 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 4.62 acres in size located near Missoula, Montana. Richard and Christine propose to create one approximately 2+ acre parcel for transfer to their daughter, Robin Lloyd, for residential purposes and keep the remaining approximately 2+ acre parcel for residential purposes as well.

The history of the parcel is as follows: COS 767 was filed in January, 1976, creating a division of land for the purpose of a sale to a member of the landowner's immediate family. Julia C. Fleming filed a Warranty Deed in March, 1976, deeding the property to John and Kathleen Holden. COS 3194 was filed in May, 1985, for the purpose of showing Tract A as an occasional sale. In March, 1989, a Warranty Deed was filed, deeding Tract A to Jane and Wayne Maahs. The Maahs filed a Warranty Deed, also in March of 1989, deeding the property to Richard H. Lloyd and Christine Foster.

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

Chair Curtiss: Is Mr. Lloyd or Ms. Foster here? Is there a representative of the Lloyds and Fosters? Seeing none I think that we will delay and give your office time to – oh I guess we will open the Public Hearing and we can take comment from anyone who is here to comment on it. Seeing no one, we will recess the hearing and give the family an opportunity to come and answer these questions on the record. We will move this to next week's meeting.

Mike Sehestedt: Why don't we continue without date and we will contact them and then request another date to be set to hear this matter.

Chair Curtiss: Okay. So we will continue it at a later date and it will be listed on our agenda.

**Consideration: Garrard Lots (2 lots on 2.06 acres) – South of Mullan Road in Frenchtown**

Mary McCrea, Office of Planning and Grants, presented the staff report.

For the record, I am Mary McCrea, a Planner with the Office of Planning and Grants. This proposal is by Robert Che Garrard, who is represented by Ron Ewart. The proposal is to split a 2.06 acre parcel into two 1.03 acre lots. The property is located on Mullan Road, one-half mile west of the I-90/Frenchtown interchange. The property is the site of an old gravel pit. The existing grades range from level to over 25%, reflective of the old gravel pit operation. The lots will be served by individual wells and a shared septic system. Mill Creek is close to the southern boundary and it's shown in purple at the bottom of the plat. The southern part of the property is in the Mill Creek 100 year floodplain and that is shown in blue on the plat. The south half of the site has two "No Build/No Improvement Zones," one for the floodplain and area of riparian resource and the other for the area of riparian resource and buffer, which is shown in green on the plat. In terms of Zoning and Comprehensive Plan, the property is unzoned and located outside of the Urban Growth Area. The 1975 County Comprehensive Plan designates the site as Suburban Residential with a density of two dwelling units per acre. The proposal is in substantial compliance with the Comprehensive Plan. In terms of roads and access, both roads are served by Mullan Road, which is a 22 foot paved County road within a 60 foot right-of-way. A shared driveway provides access to both lots. Mullan Road has drainage swales rather than curb and gutter at this location. It's classified as a collector and the regulations require it to be paved to 32 feet. Regulations require curb and gutter on roads in rural subdivisions where the lots have an average street frontage of 175 feet or less. There are two variance requests; the first from the 32 foot paved road standard for Mullan Road and the second from the curb and gutter standard for Mullan Road. Staff approves of the variance request for paving and curb and gutter. The proposal adds one additional lot and widening of the road or installation of curb and gutter adjacent to the subdivision would disrupt the current drainage system on Mullan Road. The plat includes an RSID/SID waiver for upgrading Mullan Road, which includes road widening, curb and gutter and walkways. Public Works supports the variance requests. Staff recommends thirteen conditions of approval. The first four conditions relate to fire; the first, an

RSID/SID waiver statement for a public water system for fire protection shall be shown on the plat. The second, the developer shall contribute a fire service fee of \$538.00 per new lot to the Frenchtown Rural Fire District for fire protection purposes. The third, an installation of interior residential fire sprinklers are required to be installed in each new home and the covenants shall be amended to include this requirement as recommended by Frenchtown Rural Fire District. The fourth one, the development covenants shall be amended to include the requirement that driveway plans shall be reviewed and approved by Frenchtown Rural Fire District. The fifth condition relates to slopes, areas with slopes greater than 25%, north of the area of riparian resource and buffer area, shall be designated on the plat as a "No Build Zone." And they are shown in the terracotta/reddish color at the top of the plat. In the hillside report, in the packet, it stated that the side slopes, which were areas greater than 25% slope, are not recommended for building construction due to steepness. And the submittal application states that areas with slopes greater than 25% are shown as a "No Build Zone." However, the area with slopes greater than 25% north of the area of riparian resource, which is the green, have not been designated as a "No Build Zone" currently on the plat. The sixth condition relates to drainage, that the drainage plans shall be reviewed and approved by County Public Works. The seventh condition relates to radon, the development covenants shall be amended to include update language provided by the County Health Department about radon mitigation. And the eighth condition relates to weeds, a revegetation plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board and the plan shall be appended to the development covenants. The ninth condition relates to wildlife, the development covenant shall be amended to include updated living with wildlife information as provided by Montana Fish, Wildlife and Parks. Conditions ten through twelve relate to the riparian resource area. The development covenants shall be amended to include information defining low impact use of the area and more detailed information about native species of planting and shall attach the Riparian Resource Management Plan map. The plat legend shall be amended to accurately designate the "No Build/No Improvement Zone/Area of Riparian Resource Buffer" to be consistent with the designation on the plat; and (Condition) twelve, the plat legend shall be amended to accurately designate the 100 year flood elevation "No Build/No Improvement Zone/Area of Riparian Resource" to be consistent with the designation on the plat. And the final condition relates to floodplain, the elevation of the first floor, including basements and all mechanical equipment, shall be no lower than elevation 3024.3 feet NGVD 1929 and the covenants shall be amended to include this requirement as recommended by the Floodplain Administrator. And finally, staff recommends approval of the Garrard Lots Subdivision.

Chair Curtiss: Thank you, Mary. Is the developer or their representative here?

Ron Ewart: Good afternoon, my name is Ron Ewart with Eli & Associates. I do want to thank Mary for her hard work on this proposal. It was a difficult site because of the floodplain issues but where the two houses are going to go is quite a ways up – I didn't measure it in feet, but its several feet higher in elevation, over thirty feet. The only condition that I wanted to talk about is Number 5, and I have a drawing but I don't have it in my file, that shows what it's going to look like. Mary, do you happen to have that one drawing that didn't make it into the – the idea is that the two houses would go right here in this area. Because this is an old gravel pit, it's been scooped out of gravel and then these slopes would be feathered in to the side of the houses. So in the rear of the houses faces south, there would be a daylight basement, like a walk out. But on the upside, it would be just a one level. So as long as Condition 5 wouldn't preclude any type of grading in here because, although these are steep slopes, they are just the side of a gravel pit. So if you wanted to come in here and feather these out and so on, there is plenty of room for the houses but, if No Improvement Zone means you can't touch it, I don't know if we'd want to go for that, because the idea is to bring in a whole bunch of clean fill and put around the houses and sort of smooth out these sides against the houses. But, maybe Mary can enlighten us a little.

Mary McCrea: What is proposed in the condition is a No Build Zone, not a No Build/No Improvement Zone, so it's just the structures being built on those slopes that we are concerned about. The grading around them would be permitted.

Ron Ewart: But it could be that when they are all done with the entire development that those slopes may not be 25%, we can show it on the plat, but we probably won't have 25% slopes anymore after bringing in the infill.

Chair Curtiss: Ron, if this is a gravel pit, an abandoned gravel pit or they are done with using it as a gravel pit, don't they have to have a reclamation plan that usually shows that feathering that happens?

Ron Ewart: Does the drawing that we have, that I provided, show the contours.

Chair Curtiss: This one?

Ron Ewart: Yes, actually this is an older one. We do have a drawing, that we will provide to Public Works as part of our drainage plan, that shows the finished contours so they will get a chance to look at it.

Chair Curtiss: That's part of the reclamation plan?

Ron Ewart: Well it's not part of the – it's not really a reclamation plan, it's more of a drainage plan and overall site design. I think when you are talking about reclaiming the gravel pit site, you are looking more at turning it back into a natural condition and this is for the development of two homes, basically.

Chair Curtiss: Mary, did you have a comment?

Mary McCrea: Basically, the drawing that he showed was presented at second certification, but wasn't included in the packet. And so we were responding to the portion of the submittal under the hillside report that states the side slopes are stable and consolidated, but due to the steepness of the side slopes, the side slopes are not as sound as the rest of the soils over the property. It would not be recommended to construct buildings on the side slopes.

Chair Curtiss: That was in his submittal?

Ron Ewart: Right.

Mary McCrea: Right, in the Hillside Report. Since the plat did not show the specific building sites, we recommended the condition just to be clear that the foot prints of the structure wouldn't be put on the areas of the steep slope.

Chair Curtiss: So if the new information submitted is that – do you feel that is still needed?

Mary McCrea: I think we would need to have – to revise the condition then to say that the building sites will be shown and they will not be on the areas of 25% slope. And I think, in some ways, that might be less flexible for your client in terms of – we have to show a specific area and if they wanted to change that foot print, but still stay outside the areas of 25% slope, you would have to then amend that plat.

Ron Ewart: That would be fine because the builder, the owner of this, is also a builder and he knows exactly what he wants to build on the two lots and how he wants to do it, how he wants to share the driveway and do the garages and so on. So what I envision is something, we would have an overall site plan that has a grading and drainage on it and finish contours and it would show how it was going to look once it's all done. So, the fact that we probably wouldn't have 25% slopes anymore.

Mary McCrea: So it would show, though, that the structures weren't being located on the areas of current 25% slopes?

Ron Ewart: That's true, right.

Chair Curtiss: One thing that I hear in the report that was submitted before, is that those slopes are probably unstable but by bringing in more fill and feathering them out, they won't change but they will be an improvement. I mean, they won't be where you want to build a house.

Mary McCrea: Exactly.

Ron Ewart: Right.

Chair Curtiss: But they will be an improvement. Okay, so Ron, so you're okay with changing Number 5 to reflect that it's not a – that you will put on building envelopes, is that what we just said?

Ron Ewart: That we will submit an overall development plan/grading and drainage plan that shows the finished contours that will be reviewed by Public Works and that will show that the buildings do not encroach in that terracotta colored areas.

Mary McCrea: I think that I would like to add just that the building sites will not be located on the areas of slope, current slope, greater than 25%.

Ron Ewart: Right, that would be fine.

Mike Sehestedt: Essentially, Ron would you feel comfortable if we took Condition 5 and line out the NIZ.

Chair Curtiss: I think he agreed that it would be a No Build Zone, just not a No Improvement Zone.

Mike Sehestedt: Right, we have NIZ, No Improvement Zone, marked on it.

Chair Curtiss: Oh, okay, because the written one says NBZ.

Mary McCrea: It's describing areas north of the NBZ/NIZ, which is in green, and it says it shall be shown as a No Build Zone, but there is no NIZ in that part.

Mike Sehestedt: So essentially, you can't be build on what is being shown as terracotta, you don't want to. With that understand we could go with this condition as written.

Ron Ewart: As written, well you could, but the only thing is then, the final plat would be showing these No Build Zones, but after development they wouldn't be slopes over 25%. You could do it, it just wouldn't –

Mike Sehestedt: As I understand it, we don't want to build on those slopes even if they get reworked. You don't want to build on them and we don't want you to build on them because they are not as stable as, if you will, the building pad down on the plat.

Ron Ewart: We could stay with the condition, also. I guess we just want to go on record as explaining what the final product is.

Mike Sehestedt: Right and as long as it is understood that the only limitation imposed is you are not going to put structures on those in the present, and maybe in the future, former high slope areas. But you can certainly change them, alter them, feather them, seed them to grass.

Ron Ewart: And build the shared driveway through there. A lot of fill is going to be brought in to make this a nice building site. I just wanted to mention, of course, that the rest of it will remain as it is. It's a nice site, we are right in Frenchtown, there are a lot of houses in the area on even smaller lots, so it makes sense. And we went ahead and volunteered to do that shared access for safety reasons. If you want to say with (Condition) 5, we can, but I just wanted to air that out.

Commissioner Carey: That's fine.

Chair Curtiss: Thank you, Ron. Did you have any comments or questions?

Commissioner Carey: No, I'm okay now.

Chair Curtiss: Okay. This is a consideration, but we treat them all like Public Hearings, so if anybody would like to make a comment. Apparently that's not what they are here for Ron, do you feel better? You would have been surprised to have that much opposition or support. Okay.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from the Missoula County Subdivision Regulations Article 3-2(3) requiring a minimum 32 foot pavement width for Mullan Road, based on the findings of fact set forth in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from the Missoula County Subdivision Regulations Article 3-2(7) requiring curb and gutter on Mullan Road for rural subdivision with lots with an average street frontage of 175 feet or less, based on the findings of fact set forth in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the Garrard Lot Summary Subdivision based on the finding of fact set forth in the staff report and subject to the conditions in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

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

#### **Fire**

1. The following statement shall appear on the face of the plat:

“Acceptance of a deed for a lot within this subdivision constitutes waiver of the right to protest a future RSID/SID for a public water system for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land.” *Subdivision Regulations Article 3-7(2).*

2. The developer shall contribute a fire service fee of \$538 per new lot to the Frenchtown Rural Fire District for fire protection purposes. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*
3. Installation of interior residential fire sprinklers are required in each new home for purposes of fire protection and Article I, Section 2 of the Development Covenants shall be amended as shown. This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations 3-7(1)(E) and Frenchtown Rural Fire District recommendation.*

**2. Building Construction and Location** – Buildings shall not be located closer than 25 feet to any property line. Interior residential fire sprinklers meeting NFPA 13D standards shall be installed within each new home for purposes of fire protection, ~~per local fire jurisdiction requirements subject to review and approval by the Frenchtown Rural Fire District.~~

4. Article I, Section 7 of the Development 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 3-2(10)(E) and Frenchtown Rural Fire District recommendation.*

#### **Slopes**

5. All slopes greater than 25 percent north of the area designated on the plat as NBZ/NIZ/Area of Riparian Resource/Buffer shall be shown as No Build Zone (NBZ) subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 5-3(G).*

#### **Drainage**

6. Drainage plans shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations Article 3-4(2)(A)(F) and OPG recommendation.*

#### **Radon**

7. Article I, Section 5 of the Development Covenants shall be amended as shown. This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations 3-1(2) and City-County Health Department recommendation.*

**5. Radon Mitigation** – ~~Property owners are advised that Missoula County has high radon potential and all new construction should incorporate passive radon mitigation systems. The EPA has designated the Missoula area as having a high radon gas potential (Zone1). Therefore, the Missoula City-County Health Department recommends that all new residences incorporate radon resistant construction features.~~

#### **Weeds**

8. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. Article I, Section 8 of the Development Covenants shall be amended as shown. This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Board recommendation.*

8. **Weed Control** – The owner of each lot is responsible for control of noxious weeds and the vegetation thereon, in compliance with the Montana County Noxious Weed Control Act, ~~and~~ the Missoula County Noxious Weed Control Management Plan and the revegetation plan approved by the Missoula County Weed District appended by reference to this Development Covenant. Owners are encouraged to contact the Missoula County Weed Control Board for more information on methods of control. Owners shall revegetate any ground disturbance created by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is complete.

### Wildlife

9. Article I, Section 9 (“Wildlife”) of the Development Covenants shall be replaced with the following, 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 3-1(2), 3-1(10) and Montana Fish, Wildlife and Park recommendation.*

9. **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, black bear, mountain lion, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners “live with wildlife.” Alternatively, see the Education portion of FWP’s web site at [www.fwp.mt.gov](http://www.fwp.mt.gov).

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.

- a. Homeowners must 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.
- b. **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.
- c. **Garbage** should be stored in secure animal-resistant containers 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. **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 purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in “an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.” Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- d. **Bird feeders** attract bears. If used, bird feeders should: 1) be suspended a minimum of 20 feet above ground level; 2) be at least 4 feet from any support poles or points; and 3) 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.
- e. **Pets** must be confined to the house, in a fenced yard or in an outdoor kennel area when not under the direct control of the owner 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).

- f. **Pet food and/or livestock feed** 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 and other wildlife. When **feeding pets and/or livestock**, do not leave food out overnight. Consider feeding pets indoors so that wild animals such as bear, skunk and magpie do not learn to associate food with your home.
- g. **Barbecue grills** should be stored indoors and permanent outdoor barbecue grills are discouraged. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- h. 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. We encourage the use of split rail fences.
- i. **Compost piles** can attract skunks and bears. 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.)
- j. **Apiaries** (bee hives) could attract bears in this area. (If used, consult Montana Fish, Wildlife and Parks or the U.S. Fish and Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- k. Purchasers of lots within this subdivision must recognize the subdivision is located near and/or adjacent to potential hunting areas associated with Mill Creek and side sloughs of the Clark Fork River, where lawful **waterfowl hunting** and the associated discharge of shotguns could occur from early morning until sunset, and the season can run from September into January.

#### Riparian Resource Area

10. The Riparian Resource Management Plan contained in Article I, Section 10 of the Development Covenants shall be amended as follows, subject to review and approval by OPG prior to final plat approval. This section may not be changed or deleted without governing body approval. *Subdivision Regulations 3-13 and Montana Fish Wildlife and Park recommendation.*

- a. The covenants shall include a map indicating the boundaries of the riparian area and riparian buffer.
- b. Under B) add the following:

Low impact use of the Area: Low impact use in the No Build/No Improvement Zone (NBZ/NIZ)/Area of Riparian Resource/Buffer is defined as the prohibition of all motorized vehicle access, parking or storage; structures, fences (except for wildlife friendly fencing on the boundaries of the property), roads; livestock grazing or watering, or any other development. Low impact use in the No Build/No Improvement Zone (NBZ/NIZ)/ Area of Riparian Resource/Buffer shall also prohibit any grading, mining, cutting, burning, or removal of live or dead vegetation (except if needed for fire prevention or noxious weed control), filling with substances such as gravel, soil, slash or other debris, or the planting of non-native vegetation such as lawn grasses.

- c. Under C) amend the language as follows:

Planned restoration of the area with native species: The vegetation should be allowed to naturally flourish without ~~cutting any healthy trees~~ removal of live or dead vegetation (except if needed for fire prevention or noxious weed control). Any planting in the Area shall be native vegetation that enhances the riparian area. Planting of native riparian shrubs and trees, such as serviceberry, chokecherry, snowberry, red twig dogwood and aspen, is allowed and encouraged.

- d. Under E) amend the language as follows:

*Planned buffer to mitigate development adjacent to areas of riparian resources:* The buffer to the Area is shown on the ~~attached drawing plat~~ and the attached Riparian Resource Management Plan Map as No Build/No Improvement Zone (NBZ/NIZ)/Area of Riparian Resource/Buffer. The buffer is above the side slopes and about 20 feet or so back from the trees.

11. The plat legend shall be amended to designate the No Build Zone as “No Build Zone/No Improvement Zone/Area of Riparian Resource/Buffer” in order to be consistent with the designation on the plat, prior to final plat approval. *Subdivision Regulations Article 3-13(4)(B)*.
12. The plat legend shall be amended to designate the 100 Year Flood Elevation as “100 Year Flood Elevation/No Build Zone/No Improvement Zone/Area of Riparian Resource” in order to be consistent with the designation on the plat, prior to final plat approval. *Subdivision Regulations Article 3-13(1)(E)*.

### **Floodplain**

13. The elevation of the first floor (including basements) and all mechanical equipment shall be no lower than elevation 3,024.3 feet NGVD 1929. This provision shall be included in the Development Covenants and this section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation*.

### **Consideration: Sun Mountain Estates (5 lots on 19.90 acres) – South of Sun Valley Road (Near the Ravalli County Line)**

Elaine Hawk, Office of Planning and Grants, presented the staff report.

For the record, Elaine Hawk, I'm an Associate Planner with the Office of Planning and Grants. This is a request from Warren O. Oie, represented by Greg Martinsen of Martinsen Survey, to subdivide a 19.90 acre parcel into 5 residential lots. The property is located approximately 13 miles south of Missoula in the foothills on the west side of the Bitterroot Valley, and on the south side of Sun Valley Road. Staff recommends a motion of approval of the subdivision subject to 10 recommended conditions. The property is unzoned and the 2002 Lolo Regional Plan recommends a land use designation of Rural Residential – one dwelling unit per 5 acres. This proposal is for 5 lots on 19.90 acres, resulting in an overall density of one dwelling unit per 3.98 acres. The property is located east of Sun Valley Pines Subdivision, which also has a density of approximately one dwelling unit per 3.98 acres. The property is located south of Sun Valley Road, a 22 foot wide off-site gravel County road within a 30 foot easement, represented on the plat in green. Missoula County Regulations require local streets to have a minimum paved road width of 24 feet within a 60 foot easement. The applicant has proposed a variance from this regulation to allow the existing 22 foot gravel surface within a 45 foot right-of-way. Missoula County Public Works recommends approval of this variance, noting that Sun Valley Road is an existing narrow road in a narrow right-of-way and requiring improvements a few hundred feet at a time is unreasonable. The applicant is dedicating an additional 15 foot of right-of-way within a 30 foot easement. This will result in a total of 45 foot wide easement with 30 feet encumbering the subdivision. Staff recommends a motion of approval of the surface width and a right-of-way variance request to Sun Valley Road based on Findings of Fact and Conclusions of Law as set forth in the staff report. Sun Valley Road provides access to proposed Rambling Rose Lane, which will provide access to all lots within the subdivision. Rambling Rose Lane is proposed as a 28 foot wide gravel road within a 60 foot public easement and it is represented in blue on the plat. Missoula County Subdivision Regulations require that new subdivisions shall have paved roads. The applicant has proposed a variance from the regulation to meet paving requirements on Rambling Rose Lane. Missoula County Public Works recommends denial of this variance, citing that recent subdivisions in this area have provided paved roads and indicate that this is a standard that should be continued with subsequent subdivisions. Further, Public Works notes that this area is a source of dust complaints and new development makes this problem worse. Although the property is outside the Air Stagnation Zone, Missoula Health Department advocates measures to improve air quality in Missoula County. Staff recommends a motion of denial of the variance request from paving on Rambling Rose Lane based on Findings of Fact and Conclusions of Law set forth in the staff report. Missoula County Public Works recommends providing access to the subdivision from Molly Lane, represented in pink on the plat, an existing private access road serving the Sun Valley Pines Subdivision to the west. It is located 300 feet east of the proposed Rambling Rose Lane and abuts this property on the west for a distance of 232 feet. Maple Lane is an existing road which extends north from Sun Valley Road mid-way between Molly Lane and Rambling Rose Lane approximately 150 feet from each, and that is again indicated in orange. Roads are required to either intersect at one point or be offset a minimum of 125 feet and it does meet this regulation. Missoula County Public Works indicates shared access of Molly Lane would greatly reduce potential safety hazards that may arise from having three approaches

to Sun Valley Road within a 300 foot section. Sun Valley Pines Subdivision divided approximately 20 acres into five acres. Sun Mountain Estates Subdivision could be designed similarly to Sun Valley Pines, with possible access from Molly Lane. This configuration would not result in the loss of any proposed lots within the Sun Mountain Estates Subdivision. The applicant's representative indicated that he has spoken with residents of the adjacent Sun Valley Pines Subdivision and was unable to gain permission to use Molly Lane to gain access to this subdivision. Because Molly Lane is a private easement, consent from all lot owners in Sun Valley Pines would be required for the lot owners of Sun Mountain Estates to use the access. Missoula County Public Works recommends a conditional access easement extending east from the Rambling Rose Lane cul-de-sac bulb, along the common boundary of proposed Lots 3 and 4, to the eastern property boundary. I submitted a memo that changes language to that easement in the staff report. The Lolo Regional Plan states that connections are needed between different neighborhoods and the County Subdivision Regulations states that connections should be made with future planned roadways and that the developments with loop streets should provide access to reasonably expected future streets. Staff is recommending as a condition of approval a 60 foot wide public access and utility easement extending east from Rambling Rose Lane to the eastern property boundary of the subdivision to be dedicated on the final plat. The dedication language shall be reviewed and approved by the County Attorney's Office prior to final plat approval. Public Works recommends a one-foot "No Access" strip to be shown on the final plat along the northern boundary of Lots 1 and 2, to limit the access to the interior lower classification road. This is included as a condition of approval except for the area where Rambling Rose Lane accesses Sun Valley Road. The applicant has proposed three drainage easements to accommodate on-site storm water drainage. County Public Works notes that these drainage easements are not part of the public right-of-way and therefore will not be maintained by Public Works. They recommended covenants be amended with a provision that the homeowners of Lots 1, 2 and 3 are responsible for the maintenance and repair of the storm water drainage easements. Staff is recommending as a condition of approval that the covenants be amended, subject to review and approval by OPG prior to final plat approval. Montana Fish, Wildlife and Parks noted that the US Geological Survey topographical map depicts this area as part of an unnamed drainage feature associated with the topography of this site and originating to the west in Section 27, and that it runs downs eastward through this subdivision and beyond. They recommend that a "No-Build/No-Alteration" buffer of 25 feet on either side of the natural drainage feature, depicted on the plat in Lot 1 and 3 as drainage easements, to protect the function of this natural drainage feature and encourage development of native vegetation, also helping to avoid potential erosion here and downhill from the site. Staff is recommending as conditions of approval that the drainage easements on Lots 1 and 3 be labeled as a "Natural Drainage Course" on the plat and a "No-Build/No-Alteration" buffer of 25 feet on the perimeter of the drainage easements to be shown on the final plat. The Florence Rural Fire Department serves the subdivision. The Florence Rural Fire Station is located approximately 2 miles away. Florence Rural Fire District did not comment on this subdivision. The applicant has included a provision within the covenants requiring residential fire sprinkler systems to meet the requirements for water protection. Staff is recommending the residential sprinkler requirement to be included in the covenants and installation of residential sprinklers be a condition of approval. The applicant has also included a statement on the plat that contains an RSID waiver consistent with Missoula County Subdivision Regulations, waiving the right to protest an RSID/SID when a community or municipal water system becomes available. This concludes my presentation and I will be glad to answer any questions you may have.

Chair Curtiss: Thank you, Elaine. Is the developer or his representative here?

Greg Martinsen: My name is Greg Martinsen, I'm the representative for Mr. Warren Oie. And I believe Warren will be speaking as well as his advisor Jennifer Cody. I will just quickly go through the three conditions of approval that we are opposed to, the first being the paving of Rambling Rose Lane. Sun Valley Road is not paved and therefore it's been, let's say the accepted tradition in the past, not to require the adjoining road to be paved. The two roads that they do mention, down in Cunningham and over on Kings Road, do access off of currently paved roads. We have a condition on the face of the plat and in the covenants that would require anyone to pave if an SID were created or anything like that. They have forfeited their right to protest on an SID for paving. That in the past has been acceptable. The second condition of approval was for easements around the storm water retention ponds, the Fish and Game recommendation leads me to believe that maybe they didn't even go out and look at it because the drainage is not really a drainage and they are calling it a natural drainage. I believe they picked it off the Quad Maps, those Quad sheets were created in the mid to late 1960's, off of aerial photography and they are lucky to be within 40 feet of accurate. And they are drawn by a cartographer in Denver who drew things on there with no field investigation to confirm their existence. I don't think it's a real drainage. However, where we put those retention ponds, may have led them to believe that it was a drainage that we were trying to control. But those retention ponds are for the runoff from the roads and from the additional development. I guess in a sense we don't have a problem with it but it just seems like it may be starting a bad habit. The other

thing is the easement recommended to go out to the east side here. The easement is recommended to go right on the property line between Lots 3 and 4 which would put it into the – a jog off from the adjoining property line which is actually right here. Further, there is a hill that comes around like this and Sun Valley Road goes up and to come down here and cross to get to Old Highway 93, you would have to go down a relatively steep, real steep grade as a matter of fact, it would require a lot of cut and fill, through a creek that is designated on the Comprehensive Plan as an Open and Resource area and then to Old Highway 93. If you came in this way and turned and went up this direction to get back to Sun Valley Road, you would intersect somewhere in the area where Sun Valley Road is at it's steepest and create a very, very difficult intersection. This would further detract from the value of the property and we would really like to see that one taken out. We will also put a one foot wide no-access strip along Molly Lane to protect it from anyone over here trying to access through these people's private roadway. I guess that concludes my comments unless you have something you want to ask me.

Commissioner Carey: Greg, I do. So I take it you are also opposed to amending Condition 4 to add a conditional public access and utility easement.

Greg Martinsen: Yes.

Chair Curtiss: But if you had your choice between the two, would you rather have it say conditional?

Greg Martinsen: It would have to say conditional. If it doesn't, what you end up with is people using those easements for uses that they were intended for. So it has to be a conditional easement, conditioned on the development next door and the condition that they will pay for it and do the improvements themselves and these people won't be responsible for it.

Commissioner Carey: That's my understanding, yeah.

Chair Curtiss: I believe it has an RSID waiver that they would have to help pay for.

Elaine Hawk: It does, the staff report includes it.

Commissioner Carey: On their side of it, but not on the parcel to the east.

Elaine Hawk: It would be lot owners within Sun Mountain Estates that would be responsible for them.

Greg Martinsen: If you look in your packet at the aerial photo that is in there, the copy of the aerial photograph, you can see the fence line of the adjoining property headed off to the east there. And the cul-de-sac would be right down in the vicinity where the fences used to be and so forth. And you can see where the hill drops off just on the edge of the photo, there you can see where it's starting to drop off, and that is a very steep bank and if it turns and comes back up to the north, that whole section of Sun Valley Road right in there is real steep and would create considerable danger in the intersection because of the grade on Sun Valley Road. I just don't think it's very feasible. I think you are creating more problems than you are saving there.

Chair Curtiss: So Greg in the aerial photo, the property to the east, the houses that are in the left hand corner toward Florence, are these below a hill? Is this a hill? These houses, are they lower than –

Greg Martinsen: Definitely, yes, the edge of the hill goes right along like that – the top edge of it – and it drops down into here.

Chair Curtiss: But this property directly to the east, this piece up here, is the same height as this?

Greg Martinsen: It slopes off some, but not real bad. If you come in here and come out this way, then there is another steep grade right in here on Sun Valley Road. So coming in here, any place in this area, would intersect on an intersection where Sun Valley Road is, let's say, in the neighborhood of 10%. It creates a hazard.

Chair Curtiss: Okay, thank you Greg. Is there anyone else who would like to make comment on this subdivision?

Commissioner Carey: While you are there Greg, could I ask one more question? On Condition 6, is it your position that there is no natural drainage course there?

Greg Martinsen: There is a little swale there, but if you look on the contour map, it almost disappears towards the west edge of the property and if you look on the photo, there is a house built right on the bottom of it, to the east.

Commissioner Carey: I guess what I'm getting to is, would there be any practical effect in leaving these in, since they wouldn't want to build in the swale anyway.

Greg Martinsen: I can't see any. I can't imagine it would affect anything.

Commissioner Carey: So, I mean if we left it in, it wouldn't affect anything, and if we took it out, it probably wouldn't affect anything?

Greg Martinsen: That's what I say, it's kind of six of one, half a dozen of the other. I just didn't want the staff to get into bad habits but –

Commissioner Carey: Thanks.

Chair Curtiss: Thank you, Greg.

Jennifer Cody: Good afternoon my name is Jennifer Cody –

Chair Curtiss: Jennifer you might want to pull that microphone down a bit. Greg made it too tall.

Jennifer Cody: Well I am sorry for being so short, especially compared to Greg. My name is Jennifer Cody and my real estate office has been working with Warren Oie on this project. Warren has been looking for a piece of land to build a house on and move outside of Missoula for some time and did not really intend to be a developer, but we were not able to find a one acre or two acre lot for Warren, but we did find this twenty acre parcel after about three years of looking, and foresaw that there would be a possibility to divide it and get him the kind of parcel that he wanted. And in working on it, we also ran across about three other people who desire fairly small parcels. And we saw that the twenty acres to the west of that had already been subdivided into five parcels, so we began working on this project and Greg has put together the mechanical parts of it and the things that are required. I would like to reiterate to the Commissioners that all of the people that are interested in this are working people that are simply looking for a parcel that they can afford and Mr. Oie is working on this simply to get himself a parcel that he can build on. One thing that I would like to comment on, well the things that Greg commented on, we would support what Greg said about paving the road and the easement. The big part about paving the road is that Sun Valley Road is not itself paved and if Rambling Rose Lane were paved now, I think that pavement would be subject to a lot of wear and tear because of the gravel coming off Sun Valley Road and we would very much like the balance of the homeowners to be participate in the paving of the road, which is one of the reason that we are very supportive of having on the plat that we would waive, and all the homeowners would waive, any future SID's to pave the road and improve Sun Valley Road. We would very much like to see that road kept as a gravel road until Sun Valley Road gets paved.

Chair Curtiss: Thank you Jennifer. Is there anyone else that would like to make comment?

Tad Lubinski: My name is Tad Lubinski and I'm one of the owners of the adjacent properties.

Chair Curtiss: Could we have you spell your last name please?

Tad Lubinski: It's a good Irish name. L-U-B-I-N-S-K-I.

Chair Curtiss: Thank you.

Tad Lubinski: I live in Sun Valley Pines on Molly Lane. Molly Lane is a wholly private road that is enclosed by private land, so I'm really confused to how that is going to help access in any way since no one contacted me, and at least two other owners there, for any kind of permission.

Chair Curtiss: Just to clarify. It was looked at as an access but it isn't part of the condition.

Tad Lubinski: I'm confused, I haven't looked at this access issue, just listening just now to Mr. Martinsen, one of the options was to use Molly Lane because of a safety concern. Okay, that is really not an option.

Chair Curtiss: But it has been dropped, because it was private.

Tad Lubinski: Okay. So as an owner right next door I have the usual concerns, water being one of them, just density in general, and I'm wondering what the reason for wanting a variance is on this property. If it's simply monetary, then I would be strongly against it. If they want an extra lot to use it as open space or for some other reason that I am not aware of, I would support that – otherwise if it's strictly monetary, no I would be strongly against that.

Chair Curtiss: Okay, the only variances they've asked for are in regards to the road width and curb and gutters.

Tad Lubinski: And the number of lots – is my understanding.

Commissioner Carey: No.

Chair Curtiss: Because it's not zoned, they don't have to ask for a variance.

Tad Lubinski: They don't have to do that. One other thing about the drainage that Mr. Martinsen may not be aware of, in 1996 when we were there, in the middle of spring, we had a pretty significant rain and the ground was still frozen and there is certainly drainage there. It came through our houses but, in part of our land is an actual ditch, a drainage ditch with a culvert. And that water is definitely channeled onto the land that we are talking about.

Chair Curtiss: Okay thank you. Is there anyone else that would like to make comment?

Terry McDonald: I'm Terry McDonald and I am also a landowner on Molly Lane and one of the things that they talked about is the variance on paving, and just in the last year, the County has heavily, I don't know if it's oil or mag chloride, Molly Lane – it's the best condition it's ever been and it's like a paved road and it's not – I also work for the Department of Transportation and I think carrying from a gravel road into that paved road isn't really going to hurt and I'm sure Greg can respond to the number of calls they get out there about dust. It's a constant dust problem and actually Sun Valley is better than it's ever been right now and it is just like a paved road. And that's all.

Chair Curtiss: Thank you. So Greg you got your compliment for the day.

Greg Robertson: One a month is pretty good.

Chair Curtiss: Anybody else that wants to make comment on this subdivision?

Dave Asch: My name is Dave Asch, A-S-C-H. I also live on Molly Lane just west of the property. I have four objections. The first one, even though it seems very small, is minimum size. We have had planning for years, we've had meetings in Lolo, we've had meetings in Florence with people planning, and it always comes out a minimum of five acres per piece. Now I know 19.90 divided by 5 is pretty close, but it's not five acres for each. Second of all, we do have a water problem in that area. Some of you may know, King Road, which is west of the subject property, some of those residence get their water from Maple Lane. Do you understand what we are talking about? I've never measured it, but it's quite a distance. Second of all, Sun Valley Road is a mess, it probably will always remain a mess, because every time we've talked to people about widening it, a lot of the landowners will not go along with it and the County always says no. As an interesting coincidence, I noticed that Sun Valley Road right now is the best that it's ever been in the previous ten summers. I don't know if someone anticipates people visiting it or what, but it's the best that it's ever been. Last of all, as Mr. Lubinski said, the drainage is a drainage. He mentioned that it was in 1996, which happened to be my first year on the property, and in the ditch underneath Molly Lane, I measured 10 inches of water and it has to go someplace and the ditch does continue onto the next property. That's all I have, thank you very much.

Chair Curtiss: Thank you Mr. Asch and the reason that Sun Valley is in such good shape is that the Commissioners decided last year to add \$100,000 to the Public Works budget so they could do dust abatement and they picked busy roads and did such. Thank you for doing that Greg. Okay, anyone else that would like to make comment? Mr. Martinsen, do you want to say something else?

Greg Martinsen: I know that it's the Department of Health and Environmental Sciences that does the approvals and so forth and addresses water availability. In Appendix A of your packet, you will find several well logs and they vary. The well on-site, the existing well, yields 30 gallons per minute at a total depth of 108 feet with a static water level of 40 feet and a pumping water level of 43 feet. Adjoining wells in the neighborhood that show the well logs are all well above the required minimums, so I just wanted to point that out so you can take a look at it and throw that for your aside.

Commissioner Carey: And as you point out, that's not really within our purview.

Chair Curtiss: Thank you Greg. Anyone else who wants to make comment? Seeing no one, I guess we are ready to make motions.

Commissioner Carey moved that the Board of County Commissioners amend Condition 4 to add "conditional," so it reads: "A 60 foot wide conditional public access and utilities easement ...." Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey: Well I'm going to support the paving because in fact we do get a lot of complaints about dusty roads and Greg Robertson and Public Works is doing all they can within very limited resources to do something about those complaints. We will never have enough resources to pave all of our County roads, but I think when there is an opportunity to get something paved, its better to do that than not to do it.

Commissioner Carey moved that the Board of County Commissioners deny the variance request from Article 3-2(1)(G) of the Missoula County Subdivision Regulations requiring the paving of Rambling Rose Lane, based on the findings of fact set forth in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations requiring a 24 foot surface width within a 60 foot right-way width, to allow the existing 22 foot gravel surface within a 45 foot right-of-way on Sun Valley Road, based on the findings of fact set forth in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey: I'm going to go ahead and support Conditions 6, 7 and 8 dealing with drainage because I think it's just better to be cautious about these things and keep that on the plat. So with that, is there anything you would like?

Chair Curtiss: No.

Commissioner Carey moved that the Board of County Commissioners approve the 5 lot subdivision, Sun Mountain Estates, based on the findings and facts set forth in the staff report and conditions as amended. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

### **Sun Mountain Estates Conditions of Approval:**

#### **Roads**

1. Final plans for paving of Rambling Rose Lane to a minimum 24 foot surface shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(3) and OPG recommendation.*
2. A one-foot "No Access" strip shall be shown on the final plat along the northern boundary of Lots 1 and 2, except where the Rambling Rose Lane intersects with Sun Valley Road, subject to review and approval of County Public Works. *Subdivision Regulations Article 3-6, County Public Works and OPG recommendation.*

#### **Fire**

3. Residential sprinklers shall be installed in the residences of this subdivision. The residential sprinkler requirement shall be included in the covenants. *Subdivision Regulations Article 3-1(1) and OPG recommendation.*

#### **Easements**

4. A 60 foot wide conditional public access and utility easement, extending east from Rambling Rose Lane to the eastern property boundary of the subdivision, shall be dedicated on the final plat. The dedication language shall be reviewed and approved by the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-2(1)(E), County Public Works and OPG recommendation.*
5. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements including, but not limited to, the installation of paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways to Sun Valley Road, Rambling Rose Lane and all roads within the subdivision, including those for which easements are shown for future roadways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land."

Final language of the statement shall be reviewed and approved by the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-2(3)(E) and OPG recommendation.*

### **Drainage**

6. The drainage easements on Lots 1 and 3 shall be labeled as a "natural drainage course" on the plat. *Subdivision Regulations Article 3-1(9), Montana Fish Wildlife and Parks and OPG recommendation.*
7. A "No Build/No Alteration" buffer of 25 feet on the perimeter of the drainage easements on Lots 1 and 3 shall be shown on the final plat. *Subdivision Regulations Article 3-1(9), Montana Fish Wildlife and Parks and OPG recommendation.*
8. The covenants shall be amended, subject to review and approval by OPG prior to final plat approval, to include a provision that the homeowners of Lot 1, 2 and 3 are responsible for the maintenance and repair of the stormwater drainage easements. This section of the covenants shall not be amended or deleted without governing body approval. *Subdivision Regulations Article 3-2(A), County Public Works and OPG recommendation.*

### **Weeds**

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

### **Covenants**

#### **Wildlife**

10. 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, black bear, mountain lions, foxes, skunk and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternately, see the Education portion of FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov).

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.

- a. 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.

- b. 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.
- c. Garbage should be stored in animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons and other wildlife. It is best not to set garbage cans out until the morning of garbage pickup.
- d. 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 purposely or knowingly attract bears with supplemental feed attractants in a manner that results in “an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitute a threat to public safety.” Also, homeowners must/should be aware that deer might occasionally attract mountain lions to the area.
- e. Bird feeders attract bears. Consider not using them in this area from April 1st through the end of November. If used, bird feeders should: 1) be suspended a minimum of 20 feet above ground level; 2) be at least 4 feet from any support poles or points; and 3) 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.
- f. Pets must be confined to the house, in a fenced yard or in an outdoor kennel area when not under the direct control of the owner 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 hoofed game animals and the owner may also be held guilty (MCA 87-3-124).
- g. Pet food and/or livestock feed 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 and other wildlife. When feeding pets or livestock do not leave food out overnight. Consider feeding pets indoors so that wild animals such as bear, skunk or magpie do not learn to associate food with your home.
- h. Barbecue grills should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- i. 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. We encourage the use of split rail fences.
- j. Compost piles can attract skunks and bears. 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 warm box with minimum odor and the finished compost can later be added to garden soil.)
- k. Apiaries (bee hives) could attract bears in this area. (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 Article 3-1(2), 3-1(10) and FWP recommendation.*

**Hearing: Brennan’s Wave – 310 Permit**

Chair Curtiss opened the public hearing.

Marnie McClain, Deputy County Attorney, presented the staff report.

This is a request for a 310 permit. A 310 permit is required by State law which is known as the “Natural Streambed and Land Preservation Act.”

Chair Curtiss: Marnie, can I have you state your name for the record?

Marnie McClain: Oh, I'm sorry. My name is Marnie McClain, I'm a Deputy County Attorney with the Missoula County Attorneys Office.

Chair Curtiss: Thanks, Marnie.

Marnie McClain: Any persons who are doing work on the bed or bank of a perennial stream are required to obtain a permit, known as the 310 permit, prior to beginning construction. This permit is being heard by the Board of County Commissioners because of the location of the proposed project. The proposed project is within the 1946 City limits of Missoula. The Missoula Conservation District has jurisdiction over 310 permit applications that are outside of the 1946 City limits. Missoula County has adopted 310 Administrative Rules based on State law. Our County rules are substantially similar to the Missoula County Conservation District rules. I'm going to briefly describe what the 310 process is. It contemplates a collaborative process with Fish, Wildlife and Parks. A completed application has to be submitted and once that completed application has been submitted, Fish, Wildlife and Parks can request an inspection of the project and that occurred here on July 7, 2005. Under the 310 process, a team is assembled and the team consists of one member of the decision-making board, that's the County Commissioners here, and our team member representative was Greg Robertson, who is Public Works Director and a professional engineer. A member of Fish, Wildlife and Parks, who is Pat Saffel, and the applicant or his representative. At the site inspection then, there is a review of the project and discussion about it. The team members fill out team member reports and then submit them back to the Board. The Board then reviews the team member reports and the project application at a Public Hearing such as this, and then they can vote on the project. The Board decision, the options that the Board has, is they can vote to approve the project, they can deny it, they can vote to modify it, which is essentially to add conditions. The Board can also table the application if a team member makes that request. In making its decision, the Board is required to consider the purpose of the project and whether the proposed project is a reasonable means of accomplishing the purpose of the project. The Administrative Rules spell out what elements have to be considered and, in a nut shell, those elements are: what are the impacts on the stream of the proposed project. So, they are things like sedimentation, flooding, erosion, what are the impacts upstream and down stream. And then the other significant element is are there modifications or reasonably practical alternative solution that would reduce the disturbance to the stream? I should also add that another significant element that Fish, Wildlife and Parks consults or participate on, is impacts to fish. If we could talk then for a second about the project that is being proposed today and I want to identify for you the players. The applicant is the Orchard Homes Ditch Company, they are, in my description here, they might want to describe themselves a little differently, a private ditch company and to the best of my knowledge, they are about 500 users, they are primarily homeowners and they irrigate residential uses. In the application documentation, an interested party is Brennan's Wave. As I told you earlier, the County's team member representative here is going to be Greg Robertson and then Fish, Wildlife and Parks is going to be represented by Pat Saffel. The actual proposal is to construct a recreational play wave feature, that would be a permanent structure in the river, to replace what is now a failed irrigation diversion structure, sometimes it is called a weir, it's given different names by different people. The purpose of the project in the application is stated as being, *"To remove a drowning hazard or to improve safety, to improve aesthetics and to maintain irrigation."* Team members can address their recommendations to you and you can ask them any questions that you have. In the request for Commission Action, both Pat and Greg have pointed out to me that we had some mistakes. Greg has pointed out that I misspelled his name and Pat pointed out that I got a little – when summarizing his recommendations, I should have said that: *"Recommends considering a minimal structure that meets the needs of the Orchard Homes Ditch Company for water supply, is consistent with existing or more natural condition of the river and its banks, and is safe."* And I would like to thank both of them for making those comments to me and making them so nicely. Both team members have recommended approval with modifications, and I would just like to clarify that in the language of 310, what that recognizes is that there are significant questions that need to be addressed before the project can be approved. Both of them have proposed, as you can see, that ownership issues need to be addressed here and Fish, Wildlife and Parks has recognized that the irrigation needs and safety, as well, aspects of the project, could be accomplished by smaller alternatives that should be explored. So I think at this point each team member could address to you what their recommendations are and then take public comments and then we can proceed with what you want to do with your action on them.

Chair Curtiss: Okay. So which team member would like to go first?

Greg Robertson: Good afternoon Commissioners. For the record, Greg Robertson Director of Public Works. I have reviewed this project mostly from an engineering prospective to determine that first of all, appropriate

engineering methodology of design were employed and that the overall structure as proposed will be stable. It's based on my review that the engineers of record, who designed the structure, have designed a structure that will stay in place as designed and that the structure itself will be stable over the service life of the improvement. I have two recommendations that were contained in my team member report. The first was, as condition of approval, that the applicant be required to assume long term maintenance of the structure or to find a public entity who will assume ownership and maintenance. The second is a condition that the applicant be required to submit a long term maintenance plan and budget to address maintenance activities such as debris removal, structure failure, crack repair, etc. Since writing this report, and finding out additional information in talking to Marnie, I would like to add a third condition, that an easement be obtained from a public right-of-way to the structure so that it can be maintained over the life of the improvement. My reasoning for that is that this location is somewhat isolated. While there is public right-of-way in the form of Caras Park to the east, getting physical access down is problematic, so I would recommend that that condition be added. And that concludes my report.

Chair Curtiss: Thank you, Greg. Pat.

Pat Saffel: Thanks, my name is Pat Saffel, I'm with Montana Fish, Wildlife and Parks here in Missoula. In my review, a few different aspects, we help with reviewing the local technical aspects of the proposal as Marnie alluded to. We also have Statewide jurisdiction – well not jurisdiction, but advise to other conservation districts throughout the State, so how a decision here would apply to how we make a decision elsewhere is important to us, and that does have some relevance in this issue that I can expand on later. Also, typically our job is to provide reasonable alternatives for consideration by the Board, or the supervisors for the conservation district, here the Commissioners, and then finally, to make recommendations. I have a list of about thirteen, and I'm going to make them brief because I think other people want to speak as well. I guess I just have to give a little preliminary comment here, when I wrote this, I said who am I writing this too? Well, it's the applicant Orchard Homes, the County Commissioners and it is obviously Brennan's Wave also. Well I thought, what about an owner, that might be one of us, it might be none of us, it might be someone else. So I do have some comments in here to whoever an owner might be and whoever might be listening. My first comment is simple, it is to see the attached memo from our technical consultant, Dale Miller. I won't go into detail on that, but that provides a lot of valuable information and my recommendations are gleaned from his comments. First off, I support the stated purpose but offer alternatives. Next, my comments and recommendations are consistent with how Fish, Wildlife and Parks deals with other applications under the Natural Streambed and Land Preservation Act and that is to minimize alteration of the natural or existing streambed and/or banks. I do accept having a structure in the river though it may not be necessary to maintain the river grade and reduce the risk of irrigators losing their water. I did have some confusions in the application between the proposed structure, there was one drawing in Appendix A and another in Appendix G. I do recognize that there are text involved in both of those but I did focus on the picture and the pictures were significantly different. They do have different dates, so Appendix G is what I recognize as the proposal and I think that is going to be talked about more later as the pictures are put up on the board here. I do recommend considering a minimal structure to be consistent with reducing alterations to the streambed and banks. Another alternative, and I'm skipping over 7 to 8, is to just simply modify and remove loose debris or any dangerous parts to their current structure. The ditch company is getting their water now and I think they may very well get it if it was all removed. I think you could meet – the cleaning up of the river, making it safe and the ditch company getting their water by doing a relatively small project. I recommend that any structure not span the river and that's a fishery concern. I would like to have some natural river remaining, some of those side channels closer to the ditch, to provide, I believe, some critical fish passage for smaller fishes. I don't have a clear picture of what a minimal structure would look like yet. I kind of felt around if people were interested in looking into that, I haven't heard any yet. I think there are some other issues that need to be dealt with so that would have to be looked at more and I guess from our standpoint, we don't know if a minimal structure would be significantly different than the proposed structure, at least in Appendix A. So I think that is an important decision point for us. Number 10 was one of my comments to the unknown owner, that a minimal structure that's not attracting users may reduce liability, but I'm not a lawyer, I'll let other people deal with that. I commented that if this project is approved, I recommend the structure follow the design that is show in Appendix A, I already mentioned that. Then I had a few questions about the MRA funding and I never talked to MRA directly and I guess I was just throwing it out, that if some of the earlier objectives were to clean up the river and make it safe, that maybe there is a portion of the funding that could satisfy those objectives, but I don't know the details on that. Finally, it's just recommending ownership or maintenance, construction and financing. Someone needs to be responsible, because this won't be, as proposed, simply an irrigation structure, it's going to be quite a bit more. That's all I have.

Chair Curtiss: Thanks Pat. Okay, so that concludes the team member reports, so the applicant is Orchard Homes Ditch Company. Is someone from them or else their representative ready?

Trent Baker: I don't know if I can really purport to be a representative. My name is Trent Baker and I am the Director of Brennan's Wave, Inc., which is a non-profit corporation that was set up as one of the partners with a role primarily of helping to fund this project. Now, when I say partners, I think that there are a lot of potential partners that I could identify in this project but, primarily it's Orchard Homes Ditch Company and Marvin Ross, one of the board members from Orchard Homes is sitting back here today, and Brennan's Wave, which has kind of been the fundraising entity or the financial muscle behind the project. Also deeply involved is Paul Callahan, who is here today, and he was more engaged with the technical aspects of the project and so I will defer questions on that to him, and I'm sure he can help clarify those issues. I wanted to take the opportunity though just to briefly introduce the project from our prospective and talk a little bit about how it came about. I also wanted to address the request for Commission Action and discuss that slightly, and Pat's comments as well. I will start with my take on why we are here and that's that there is an existing problem in the river in downtown Missoula and I think that's recognized by everyone here. It is a safety issue, it's an aesthetics issue and it's also an irrigation issue. What we recognized here was an opportunity to bring a bunch of people together and fix those issues and do something really positive for a lot of different aspects or members of the Missoula community, and that's what we have tried to do here and I think we have done a great job of putting something together that really has a lot to offer everyone. The first person, or group of people, that we had to satisfy was the Orchard Homes Ditch Company. This existing structure is what is left of an irrigation diversion weir and although it may not be checking the water up and performing a diversion function at this point, there is a lot of evidence and maybe a concession on Fish, Wildlife and Parks part, that it is performing at least at grade control function and that it prevents the river from down cutting or moving over to the Caras Park side and then potentially leaving that Orchard Homes Ditch high and dry. And that's the irrigation company's concern and that's why they won't allow what's there now to simply be removed and not replaced with something else. What's there now has got to go, it's unsafe, it's unsightly and I think everyone is on board with that. The big question has become, what do we replace it with? You heard Pat's Saffel talk a little bit about a minimal structure and that maybe ours is as minimal as it can be and maybe it's not. We think it is and I will let Paul address that a little bit. I think it's important to recognize that this is a problem that this partnership is formed to address and at this point in time, the plan that we've come up with we feel like addresses that, we feel like it does it in a reasonable way, to use the language of the 310 law. Our proposed structure is not unreasonably large or obtrusive to perform this grade control irrigation function. With that as kind of an introduction to the project, I would like to talk a little bit about the request for action and I would also like to compliment Greg, for the second time today, and also Marnie, for the work that they did and recognize that boiling all of this project down into a five or six page synopsis was, I'm sure, a monumental task, not one that I envied and one that I think Marnie did a great job at. But I think there are some clarifications that could be made here and I am going to quickly run through those. First of all, it discusses the existing structure as non-functioning. As I just said, I think it is functioning as a grade control and I think that's important to recognize because that's the reason that the Orchard Homes Ditch Company believes that it can't simply be removed and not replaced. The second thing I would like to address is in that same paragraph on Page 1 and it says "the proposed project is a whitewater recreational structure." Well this may be a matter of semantics. I recognize that that is one of the aspects of the proposed projects but I think on balance, this is an irrigation structure with whitewater benefits. This is something, and the reason that this is critical is for the reason that Pat mentioned, this could be a kind of example for other places and other people in the State looking to do things in our rivers. And that is an important consideration that we not set an inappropriate precedent here and because there is an existing structure here that needs to be replaced, I don't feel we are setting a kind of precedent that Pat is worried about, which is allowing people to come into a natural stretch of river and say, we would like a nice play wave here and how about we build one. That's not what we are about, that's not what the project proponents are proposing here and frankly I think a lot of us would be opposed to something like that. Where we are is standing here looking at a problem that already exists in the river and something needs to go in its place and so we are saying, if we need to replace this structure, let's put in the best possible structure we can, something that performs the irrigation purposes, allows for fish passage, doesn't unduly disturb the riverbed or banks and also provides additional benefits like recreation. And that's what we are trying to do here and that's what the proposal is all about. Looking at the language of the 310 law, it says whether the project is a reasonable means of accomplishing the purpose of the proposed project, is the critical consideration here, and to determine if the project is reasonable, the following considerations enter into the calculations. The first is the effects of soil erosion, sedimentation, and I am looking at Dale Miller's report, I think he addresses that and recognizes that there is not going to be any effect there. I am going to skip over the second one and come back to it and move to the third, which says whether the proposed project will create harmful flooding or erosion problems upstream or downstream. Again I think that is a concern that has been addressed and there won't be any problems relating to

that element. Dale Miller again recognized that. Effects on stream channel alterations – again the project is designed to leave the existing channels in place and directs the flow through the existing channels. Effects on stream flow, turbidity, water quality. Dale Miller recognized that that was something, while there may be short term effects there, we have proposed construction mitigation measures that should address those and that there will not be a long term impact there either. Effect of fish and aquatic habitat. Same story there, Dale Miller's report says this isn't going to be a fish passage barrier. The one that I skipped over says whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project. And I can unequivocally tell you today that I don't think there is an alternative that would do that. Now there is a statement in Dale Miller's report that says there might be a way to put in a smaller structure that would accomplish this grade control function. Now I think it's important to recognize here that grade control is not the only consideration. It's the primary purpose and maybe you could put something in there smaller that would do that, maybe what is there right now does that. But there are problems with what is there right now and there are problems with an under built structure to replace it and that problem is that it could end up looking like what we have now, it wouldn't be stable over the long term and we would wind up with something else that is unsafe, unsightly; not working properly. And that's what we are trying to avoid here. The engineers and technical people that have been involved in this project have been very accommodating in terms of pushing continually for a smaller and smaller structure to a point where they now feel like, in terms of accomplishing the grade control, safety, stability functions, we are as small as we can go here. And one of the comments and considerations that Pat Saffel mentioned was not spanning the entire river, but I think that there is some inconsistency there from Dale Miller's report, which does say he recognizes that this has to go all the way across the river, you can't build a structure halfway across the river and expect it to perform the function that it needs too. Also in this report there is a discussion, or a couple of discussions, of liability issues. The first one says that the issue of Missoula County liability in connection with the alleged ownership of the existing structure is not relevant to the 310 permitting process. And I'm not going to focus on the liability, it's not an aspect of the 310, if you guys have questions about it, I would be more than happy to answer them. I think we've answered them in other places – one memo is contained in the 310 application there and I would be happy to go over that and through that again and I am sure some of the commenters here today are also going to touch on that. I think I will just address a couple more things in the Request for Action. On Page 5, there is a statement that OHDC (Orchard Homes Ditch Company) and their agent acknowledge the proposed structure does not alter the ability of OHDC to divert water. And that may be accurate in the short term. As I said, we have never contended that it is currently pushing water into the ditch, but in the long term it does serve as that grade control function and that's critical here, because the reason the Orchard Homes Ditch Company is going to fight letting anyone just take this thing out and do nothing, is because they are concerned that over time, the river will shift to the right and there ditch will be left high and dry and I think that we have to recognize that concern and recognize that as a result, simply removing the structure is not a viable alternative. And that's the next statement in here that I wanted to address. It says "the 2001 Feasibility Study did not address the alternative of removing the existing structure." I don't think it's an alternative and the Orchard Homes Ditch Company will back me up on that. They are not going to let someone yank that thing and do nothing in its place. The question is what do we put in its place? And the question is, with regards to our proposal, is it a reasonable means of accomplishing that objective? Again I think it is. The irrigation function of the proposed project has not been established. We talked a little bit about that and the fact that the grade control thing, according to Dale Miller's report, is not something that he is sure could ever be established with certainty. That's going to remain an open question. And so that uncertainty is again what prompts the Orchard Homes Ditch Company to say, whoa, you're not just going to take it out without replacing it. And so I think that's a reality that we have to deal with here. Then, on Page 5, second paragraph from the bottom, it says, "however, the applicant has not provided sufficient information to the Board to enable it to determine that approval of a whitewater recreational structure would be a measurable public safety improvement, especially when the structure has no responsible owner." Well we kind of got apples and oranges compared in that statement and I think whether or not the structure is going to be a measurable public safety improvement does not necessarily relate to whether or not the structure has an identified responsible owner. There is no doubt that what is there now is a public safety problem, there is a letter from a fellow from Missoula Search and Rescue in the 310 application that clearly says, in his mind, it is. I think you will hear from boaters today who will tell you that the way the type of feature that that forms at certain water levels is a real drowning hazard. It's a reverse hydraulic, it's something that someone could get stuck in and not be able to get out of. And in fact, it appears that that happened when the structure was first built back in the 1960's and not to long after it was built, a University of Montana student drowned in it while trying to canoe through it. And so that's a safety problem. And then the last thing I wanted to address here is that the idea of having a responsible owner, maintainer for this proposed structure, and the reality is that there is a partnership that has been formed to address that situation. Brennan's Wave has committed to the Missoula Redevelopment Agency as an aspect of receiving some funding from that entity that we would set up a perpetual maintenance

fund in the amount of at least \$20,000 and we intend to honor that commitment. That fund will be set up, that money will be set aside to deal with maintenance issues. Greg Robertson asked that we delineate or create kind of a plan for how that will be administered and we are happy to do that. I would also say though, that our designer, Gary Lacey, who has built a lot of these things over a long period time, has told us time and time again that that's more than enough money to maintain these structures, that these structures do not require that level of maintenance, and he has not had problems with the structures that have required those kinds of expenditures. Regardless of that, we are setting that money aside and we are prepared to deal with whatever does arise. So there is an entity that is willing to step up, take responsibility for the maintenance of this structure and Brennan's Wave intends to do that. Just to touch a little bit on the modifications or comments that Pat went through, I recognize that Pat has been involved in this for a long time and he has been great about maintaining an open dialogue with us and kept telling us his concerns and at the same time, we have spent a lot of time and energy and effort and money addressing those. And we have hired the best in the business to design this thing and they have continually responded to those concerns and minimized it to the greatest extent they consider practical. And further minimization of the structure is not possible while maintaining the engineer stamp on these design drawings. And that engineer stamp is also critical from a liability perspective, that's what says this structure, this design, is state of the art, it's safe and it's going to be stable in the long term, and forcing these guys to reduce the size or the footprint of that structure further, pushes them to a point where they can no longer stamp that thing and certify, yeah, this will be there for the long term, it will remain safe and it will remain stable. I'm going to skip over the Appendix A versus Appendix G drawings issues and let Paul Callahan address that because he is much better at that than I am. But I would like to again point out the not spanning the river recommendation is contrary to what I think Dale Miller says in his report and if the fish passage issue was one that he looked at and said that the proposed structure is not going to be an impediment to fish passage, so I think there is a little bit of a conflict there. And before I turn this over to Paul to talk a little bit about the design and point out the differences between A and G there, and maybe explain that a little bit, I would like to talk a little bit about the MRA funding. That funding was approved by the MRA Board based on the design in Appendix G. That is the project design. Appendix A, the title of that map in your 310 application is, I will have to look at that because it's kind of a long title, Site Map and Construction Limits, it's not the project design, that's the site map and construction limits. But, and I think Paul will point this out, there is not a whole lot of significant difference between the two – well, I will let Paul deal with that. So the MRA approved our funding based on Appendix G, based on that design. That's what they gave us the money to build. That's what the various private donors who have stepped up to support this project gave us the money to do, was to create a project that was safe, stable in the long term, provided a recreational opportunity for whitewater boaters. And that's what we are committed to doing with these funds and to the extent that people feel like, well, you might be able to make a smaller structure that doesn't create whitewater but still does the grade control, our funding is based on a partnership and based on a group of stake holders all getting something out of this project. When we start taking away benefits, we start losing stake holders and we start losing funding. And another thing that I would like to say about the MRA funds in particular, is that those have a time limit on them, we have to spend those funds by next summer and going back and asking for new funds or funds based on a changed design is not possible because the district that funding this has now sunset, they are gone and we can't go back to that well. We've gotten the money committed for what we are proposing here today. What we are proposing here today is a reasonable design to accomplish the purpose and there is no other game in town and I would encourage the Commissioners to consider that and approve it. And that's all I have. I would like Paul to just point out the difference between A and G there and maybe talk a little bit about the minimal-ness of the structure issue.

Paul Callahan: Paul Callahan is my name. Pat is correct in pointing out the inconsistency of these two drawings and we've gone back and forth with this whole left wing of the structure. Essentially Appendix G is the design. The thing about the left wing is that that is simply meant as a depiction about rock augmentation that we proposed in that section of the project. That left hand, willowed or vegetated section is the earliest portion of the diversion, so it's got rocks and logs and all sorts of things. Gary Lacey, the design engineer, felt it would be prudent to, as we started looking at that more closely during construction, to augment where necessary, to maintain the stability on the left hand side of that structure. And I believe that Dale Miller alludes to that in his report to Pat and that is if you just – the river can move from left bank to right bank anywhere in there and if you just plug a portion of the river, it may divert around that, catastrophically at one point. So we wanted to at least augment the rock on the left hand wing. One of the big problems I think that might be occurring here is a picture – different pictures in people's heads about what this structure looks like. The left wing of that structure will be rock that is placed below the existing grade and we can very easily sprig willows cuttings into that rock. So when you go out there in five years or three years, our plan is that you wouldn't see it. The day we walk away, the rock that we placed will be below the current river cobble elevations. And we can even sprinkle river cobbles back on top of that, it's just meant as a – one descriptive term is a rock mattress. Whether that is as wide and as long as shown on this wing,

is completely up to the discretion of the design engineer or the oversight engineer on the site. I've made it clear through this whole process that we want this minimized. Trent, me, everybody that is associated with this, will get a serious black eye if this structure ends up looking bad – if it hurts the river or if it looks bad. I put Gary Lacey, the design engineer, on notice a long time ago that this needs to be minimized, it needs to be low elevation, it has to be aesthetic. I think we are there. It may be, we probably erred on the side of overstating the amount of rock that is in here. The point is that some augmentation is probably going to be necessary, but ultimately the message is, G is the design. It does have language in there that's the same as the Appendix A drawing and that is, "anchor to existing submerged irrigation diversion structure. To be verified in field prior to construction. Add any additional anchoring as directed by engineer." So that gives us a little wiggle room, I can guarantee you that I want this structure minimized too. So that's the G verses A distinction. Associated with that is the – Pat your discussion of the side channels, there are side channels all along through there from the site of the weir on down to the head gate. The only one that would be affected is this upper side channel and again the rock would be placed really low here. There is already a piece of the diversion there. So we wouldn't be any higher than that existing diversion – right through this piece here. I think Trent hit on a good word that we haven't really used previously and that is "under building." I don't think there is much point in approaching this project with an under sized or under built design. The point is, it was under built the first time, or under constructed. And we want something that is really going to remain the way that we designed it, the way that Gary Lacey designed it – so that foot traps don't form in one year, two years, five years, ten years. I've designed structures on the Clark Fork River, on the Bitterroot River, in places out of the way, where you don't need it to be perfectly stable. Foot traps are just the nature of the beast out there. In a location like this, I think foot traps are a particular concern and I would rather see the rocks stay where they are placed, where the engineer designed them. So that is why it may appear to be over built, compared to other minimalist alternatives. It's just that those alternatives don't meet that safety and stability objective here in this location, so it's kind of a special location. I would echo Trent's statement about this not setting a precedent, I would add my voice to that. If this were to set a precedent that some project proponent in say, the Swan Valley, came in and said, hey, this is a nice spot for a lodge and I want to build a whitewater wave and there is no existing structure there, I would be the first one in line to oppose that. So, that's not what we are trying to get at here. I think that about covers the things that came up there. Trent, anything else that I was supposed to hit on? Okay, thanks.

Chair Curtiss: Thank you, Paul.

Pat Saffel: Can I address the questions about my recommendations verses –

Chair Curtiss: Sure Pat, if you could say your name again for the record.

Pat Saffel: Alright. Pat Saffel, Fish, Wildlife and Parks. Okay so a couple of issues brought up by Trent was spanning the river and fish passage and maybe some disagreement with Dale's report. I guess I'm referring to Page 3 in his report that refers to a minimum structure, that it would likely need to extend the majority of the way across river as would the proposed structure. I called Dale and I said, well, which proposed structure are you talking about? He felt like it didn't need to span the river, just the majority, he focused on that part. And Appendix G is spanning the river, so he felt like a minimum structure doesn't have to span the river to be stable, but that analysis isn't complete, so he didn't want to hang his hat on anything there. As far as fish passage, the current situation is pretty good for fish passage and the analysis for these things are mathematical models, they aren't fish moving through there and you just work with what data you have and often it's adult trout and I guess we had some adult dace and some other species, but we are talking about a lot of different fish species, a lot of different age classes and I would like to maintain the fish passage as much as possible in a natural existing channel somewhere along that width. As far as there being other channels, when I look at that picture, it doesn't look like they're as complete as the ones between the proposed structure in A and the ditch.

Chair Curtiss: Thank you, Pat. So, who would like to make comment next? Do you have an organized group that's going to come forward, Trent?

Trent Baker: I don't, there have been several people who have contacted me and who I invited to make comments and I believe that many of them are here today and intend to make comments. I do have one written comment that was submitted that I was asked to read and so I will do that and then I will just turn the microphone over to whoever would like to step up here next. This is from Bill Wagner. Bill is an attorney with Garlington firm and has done some work for and with the County and Bill has been a great ally in this process and a real proponent of the project. He writes: *"Dear Commissioners, I am pleased to have been asked to submit a statement to your Board today. Because of a much needed family vacation, I'm submitting this through others*

*who have worked diligently on this tremendously worthwhile project. Brennan's Wave is the result of the concerted effort by highly qualified professional to remediate an existing hazardous liability situation along the north bank of the Clark Fork River, immediately downstream from the Higgins Avenue Bridge, while preserving and enhancing the irrigation diversion along the south bank. Many of those professionals will address their work in their respective fields of expertise. I will briefly address liability issues, though others will likely testify on this subject. This has been a long and time consuming project. A conscientious effort has been made to address each concern raised by governmental officials primarily because of liability concerns. In addition to design and course of construction safeguards, the project benefits from the broad liability protections afforded both the ditch companies and local governments, Brennan's Wave, and the Missoula Whitewater Association, under Section 70-16-302. Unless the act or omission of any of those entities is found to meet the higher than normal standard of gross negligence or willful or wanton misconduct, the legislature has afforded each security against liability. The merits of the project are self explanatory and its many benefits will be enjoyed by the greater Missoula community if you approve it. I respectfully urge you to do so. Very truly yours, William T. Wagner."*

Chair Curtiss: Thank you Trent. Is there anyone that needs to come to the line first because you have some other commitment? Okay, if you could do that. And Greg, if you think of something that you want to comment on, I know you have a date with your son.

Greg Robertson: Yeah, I have a Miniature Golf Skins Tournament with him in about fifteen to twenty minutes that I will have to leave for. He has called me three times today to remind me.

Chair Curtiss: So if you would like to state your name for the record please.

Carl Westenfelder: My name is Carl Westenfelder, with all E's. I'm going to read a statement that Pat Robbins was going to read. He did have to leave for a previous engagement. I am a member of the Clark Fork Coalition's Board of Directors and Pat is the president of our Board of Directors. Pat was going to read this: *"My name is Pat Robbins, I serve as president of the Board of Directors of the Clark Fork Coalition. We represent roughly 1,200 citizens who care about protecting and restoring the waters of the Clark Fork watershed. We come before you today to support the Brennan's Wave proposal. We understand the concern that this could set a precedent for other permanent structures in the waters of the Clark Fork basin, but we think Brennan's Wave merits an exception because it is downtown Missoula in an already highly compromised section of the river. We think the positive benefits of Brennan's Wave, engaging more people with the river, outweigh the potential negative effects. It is because Missoula turned its civic face to the river, that the entire Clark Fork now enjoys such support. Had people not cared about the river, for example, the Coalition and the County would likely not have been so successful in our Milltown Dam effort. The more river stewards that we can nourish, the better. We greatly appreciate your thoughtful concern over any project that impacts the river and we thank you for your time today."*

Chair Curtiss: Thank you, Carl. So if you just want to come to the microphone as you would like, identify yourself, and if you are repeating something someone else said, you can just say ditto.

Scott Doherty: Thank you. My name is Scott Doherty, spelled D-O-H-E-R-T-Y. I am coming to speak on behalf of not only the whitewater recreationists, but in particular, the youth of the Missoula community. I am the director of a kayak academy that is recognized on an international level, as well as a local club for our young kayakers here, called Zoo Town Surfers. And I would like to speak for just a moment if I may about the benefits of this project just in terms of the youth of Missoula, in that whitewater recreation is a very positive activity for young people in Missoula. Working with them helps build, as mentioned previously, stewardship in the young folks of the Missoula Valley who will then, as they grow and mature, and maybe move onto other places or maybe remain in Montana, continue to care about the rivers, their health, as well as the future of the community. And I think that this project will help provide that in the Missoula youth, as well as easy access within the near Missoula region. Thank you for your time.

Chair Curtiss: Thank you, Scott. Next.

Julie Kahl: I'm Julie Kahl, that's K-A-H-L. I am an officer of the Rocky Mountaineers. And I am here to continue our support of Brennan's Wave, partially because of outdoors people just kind of stick together, but I see two kind of social, civic aspects to this too, and one is, as the previous speaker just said, anything you give kids to do, lowers you crime rate. And the other aspect is, that suppose we built a rock climbing wall on the river side of the Wilma building, people would sit there for hours and watch people rock climb and this will be the same thing.

Even people who aren't into whitewater things themselves will just enjoy sitting there watching people play and so we also encourage the Council to consider Brennan's Wave. Thank you.

Chair Curtiss: Thank you, Julie.

Dan Cedarberg: My name is Dan Cedarberg and I am here today as a long time downtown supporters and also as the Director of the Downtown Association. We just wanted to point out that back in 2003, the Downtown Association was given a presentation on the Brennan's Wave project and we sent a letter to Paul Callahan then and I will just read a part of that: *"Paul, the Missoula Downtown Association Board of Directors unanimously voted at its May 6th Board Meeting, to support the development of a whitewater wave in the Clark Fork River near Caras Park. We are excited about the potential economic impact that Brennan's Wave will have on Downtown Missoula as a whole. We see downtown as the heart of the community and our mission is to promote, support and enhance the vitality of downtown. The Brennan's Wave project fits this mission very well."* I think just to amplify on that a little bit, I've been on the Board for almost 20 years and we really have worked to try to make us a vital part of the community. We, 20 years ago, the downtown was not nearly as vital as it is today. But as a result of a lot of farsighted and energetic business people, some of whom are here today, really great government support, all the way from creating the MRA back in the 1970's, to the new BID that you all just supported about a year ago and has recently gone into operation, the fact that Macy's has stayed in existence downtown, the Bon, the Merc, Macy's, through it's different iterations, all these things have been very, very important in maintaining a vital downtown. But I think if we want to look at everything that is here, as we have to compete with Brooks first and then Reserve Street, to keep us really working down here, the river might be the most important thing that we have. We don't have the wide open spaces down here and sometimes we have old buildings that need to be remodeled instead of just doing the wiring from the beginning, but we do have the river. And anything that we can do to promote, support and enhance the river is essential to the vitality of downtown. Brennan's Wave unquestionably does all this. It creates a feature that will draw people to the river, right in the heart of downtown. What can be better than that? Brennan's Wave also will support the downtown by the fact that right now what we have down there right now is ugly and dangerous, no question, no one will dispute that. What the people of Brennan's Wave have done is taken that problem and they are going to create something that is an amenity. It's classic downtown kind of mentality. Lots of time we have to take lemons and make lemonade and that's exactly what they've done. So I would like to thank the Brennan's Wave folks for doing this and strongly urge you to support this 310 permit. Thanks.

Chair Curtiss: Thank you, Mr. Cedarberg.

Mike Munsey: I would like to point out, before Dan leaves, that he used to work for me 30 years ago. My name is Mike Munsey and I own the Depot restaurant, down the block here and I've been in Missoula for 32 years this year. And Dr. Guth originally asked me to help with some fundraising on this some time ago and when I got involved with it. at one point he pointed out to me that there were 18 of these different kinds of parks, mostly in Colorado. And I happen to move here from Vail. As it turns out, my old ski school buddy is now the Mayor of Vail, and I'm sure he would just as soon go back to being at ski school, sometimes. And he sent me some information that I think might be kind of interesting to everybody here. And I was in Vail last summer to visit old friends and sat on Gore Creek and watched 15 or 20 kayakers go back up and down the river for an hour or so, my wife and I had lunch, and there were crowds of people sitting on the bridge and people milling all around on the big rocks and it was terrific. The idea that we could have something similar to that here, really has moved me to support this project in every way that I can. I have something for each of you to look at, the Commissioners, if you would like to. It's some information that Rod Slifer, the Mayor of Vail, sent to me just the other day relative to this. The interesting connection between what happened in Colorado and what we have in Missoula is that in Vail, some developers back in the 1960's, built one of the first condominium projects downtown and tumbled a bunch of huge boulders into Gore Creek, so when they decided to try to fix that, they decided that they would get the big boulders out of there and get this creek kind of back to what it was. To me, the interesting thing for me was, when I was sitting having lunch last summer, I didn't know that they had done this, and I made a comment to one of my friends that I didn't remember that Gore Creek was a kayaker's paradise, at all. But as Rod points out in his cover letter, which I will read just some parts of it: *"I'm glad to hear you are considering building a water park in Missoula. We are very pleased with ours here in Vail. It is not only more visually attractive but has proved to be an economic asset. I've enclosed some information on the park with some photographs that show it in action. The summer season began on Memorial Day with the Teva games. It originally started with whitewater events, but has expanded to include lots of other venues and activities for the whole week."* What's happened in Vail is, Downtown Vail now has some vendors that rent and sale kayaks, a lot of lunch areas that basically cater to that trade, and downtown Missoula is absolutely perfectly poised to take advantage of that. If you look at the

photographs, which I will pass around to the crowd here, you can see, these are obviously the Teva games and the thing that stuck out in mind when I saw this was our beautiful waterfront and the crowds of people that would be standing on the bridge and enjoying any of the aspects that would come from this. But what struck me more than anything on my recent visit there, was that we were there at a time of the year when the river was low and there was no organized activity whatsoever going on, and there were still dozens of people partaking in this beautiful, what they have created, re-created there, river. I know that one of the concerns that a lot of people have is what one of these is going to look like when it gets done; if it's going to look artificial or whether it's going to look like, and I would direct you to look at this picture – the up and down picture – and this has all been re-created and I don't know if you could find anything that looks more natural or more beautiful, that you would want to have, and I believe that Brennan's Wave accomplishes that here in Missoula. We have so many fabulous assets in this community and a lot of them are downtown and obviously, as a downtown businessman, I have a vested interest in downtown, but I happen to love this community, I have been involved in it for a long time. We have Play Ball Missoula, we've got the Carousel, we've got Caras Park and have something that would enhance our downtown such as this, I think would be a tremendous asset to our community and something that I would encourage you to vote in favor of. Thank you very much for your time.

Chair Curtiss: Thank you, Mike.

Mike Munsey: I should also point out that by the time this gets over, the Depot deck we will be open.

Stan Zimet: Hi my name is Stan Zimet, I am an architect here in Missoula, and was one of the first guys that actually talked to the MRA, I don't know how many years ago – fifteen years ago or something at a scoping meeting and brought this project up. I agree with what most everybody else has said and I don't think I need to repeat it but, one thing that Missoula has been doing over the past forty years, fifty years, is cleaning up its river. We at first we turned our back on the river and I think when my wife was here going to grade school, the entire river was rip-rapped with cars and only because of the citizens of Missoula, did we get that part cleaned up, and I see this as the next step. I don't see it as a last step, I think we have some more impediments in the river that we could clean up and make it a safer place to be, add more recreation, including fishing, and I think that this would be a successful project and I urge you to vote for it.

Chair Curtiss: Thank you.

Dave Glazer: My name is Dave Glazer and I'm going to speak of which I know. I use to live in Colorado, I lived in three towns that had permanent river structures designed by Gary Lacey – Boulder, Colorado, Durango, Colorado and Denver, Colorado. And I lived there not as just a young adult, but as a boy, so I spent time tubing those structures and then as I grew older, I kayaked those same structures. And I spent a lot of time kayaking through Boulder, through Denver and through Durango and it was a wonderful thing. I moved to Missoula for graduate school and I was just sitting here thinking to myself, I have never once kayaked through Missoula, not once, in the seven or eight years I've lived here, and it's because it's unsightly when you are going through town, it's not safe. If you were to swim and try to stand up you might catch your leg or whatever. So on that basis alone I think it's a great idea to encourage that sort of river traffic through the city, to share our city with a bunch of people from a different view. Thank you.

Chair Curtiss: Thank you, Dave. Next.

Ben Schmidt: Thank you for your time. I am Ben Schmidt, I am a managing member of (inaudible), we own the Canoe Rack. We are obviously very interested in seeing this for the economic aspect of it but, like folks who have never floated through this river – through town. We do it every week – every Wednesday night you can come out, float with us, go down this river. And every week, we foster more and more people to come out and see all the problems. And every week, we turn someone on to being a new river steward. And every week, somebody comes down with a boat full of beer cans, somebody comes down the river with a shopping cart in their boat, someone comes down the river with a couple of bikes that were thrown off the bridge. The problem is, as they are coming down, they are ruining their boats, they are ruining themselves. Every week we have somebody get hurt – something happens, and it's because somebody, many years ago, didn't have the foresight to build something to last, to make it safe and so people are going to get hurt, they are going to die, that's the way it is. Sure, we can stop using the river and start putting pollutants back in it, but why not we put some natural rock back in there, why don't we care and why does anybody's personal issue or fears are interfering with the benefit of all of us. There is not a single legitimate argument against this project, not one that we have heard. We fish, we hunt, we boat, we tube, this doesn't affect any of those aspects in a negative fashion. It only provides good for

us. Not passing this would be a large mistake. We would really like to see this happen. It has been too long, we depend on it, other shops in town, we all have a viable economic interest in this. It's safe, it's proven. Please do it. Thank you.

Chair Curtiss: Thank you, Ben.

David Guth: My name is David Guth and I have been a resident of Missoula for 31 years. When a tragedy happens, a person needs to look for something positive just to make some sort of sense of life. This is the situation with the Missoula Downtown project – Brennan's Wave. Excuse me this is going to be hard. My son died, Brennan, in a kayak accident in Chile in 2001. It had been a dream of Brennan's that Missoula's downtown have a whitewater feature for river recreation. Brannan loved the Clark Fork River, he loved downtown Missoula. A sense of community was a passion for him and everything that he did. Brannan felt that this river park would help to foster the identity that was so uniquely Missoula. I, and our family, are extremely honored and humbled by the fact that this will be named in honor of my son. In my four years of working on this project, the support from every aspect of the community has been overwhelmingly positive. The most common comment that I hear is, how could anyone oppose this? It removes something that is, at worst, dangerous and is simply an eye sore. I and all the volunteers respect the process, the regulations that have to be addressed to accomplish this public project such as this. It would be my request that as hurdles arise in this very necessary regulatory process, that governmental agencies involved try to help us find solutions and by doing so, we together can give this gift to the community. Thank you.

Chair Curtiss: Thank you, Dr. Guth.

Jeff Badenoch: My name is Jeff Badenoch. I used to be the Director of the Missoula Redevelopment Agency when this project was first brought to us and our Board approved our participation in it. One of the things about getting old is that you become a historical repository of information and memory. When I started at the Redevelopment Agency, there was not riverfront trail. We had just seen the Milwaukee Railroad go out of business. Caras Park was a lawn, there was no activity there, there was a parking lot that was in terrible condition. Bess Reed Park did not exist, John Tool Park did not exist, the Clark Fork Natural Park did not exist. It was through the efforts of partnerships like the one that is being proposed for this project, that we were able to turn the river into an asset. The guiding principal of the MRA's attitude toward the river was, our mission was, to improve the public's physical and visual access to the river. That is why this project was so warmly received by the MRA Board. Paul will tell you when he first proposed this to me, that I was the first one to crank out the litany of liability, you can't mess with the river, you can't harm the river, this can't hurt the river, we can't do anything that makes the river in a worse condition. I'm satisfied that the review and that the design engineering that people have done on this project, have made it as good as we can make it. Although I am no longer with the Redevelopment Agency, I am happy to be here today to encourage you to help this project move forward. And in addition to what Dr. Guth said, ditto!

Chair Curtiss: Thank you, Jeff.

Tom Roy: My name is Tom Roy. I'm not representing any group except myself and I should point out, I'm not a kayaker, whitewater recreationist, or even a fly fisherman. I'm kind of wondering why I am here. I suppose, in part I'm here because Dave Glazer was one of my students and I always assumed that the reason he wasn't able to kayak was because he was studying, I'm surprised to find otherwise. I come, and first of all want to thank all the members of the greater Missoula community and those of you who have been working on developing this project for what you are doing. I certainly support this project and I would like to offer very briefly a couple of reasons of why I think it's so important. A couple of weeks ago, there was an article on the last page of the Christian Science Monitor and they listed, in rank order, those communities in the United States that were friendliest towards small business. Missoula ranked eighth. One of the reasons Missoula ranked eighth nationwide, was because of the kind of community amenities that Brennan's Wave represents. The kinds of things that Mike Munsey, Jeff Badenoch and others have talked about. This is a marvelous community. Brennan's Wave would make it just that much more special. As with Dave Guth, I've lived in the Missoula community for 31 years. During that 31 year period, I have spent a fair amount of my time working with young people through the Missoula YMCA, Missoula Youth Homes, Friends to Youth, the Youth Court. One of the things that I've learned through those 31 years is that the youth of this community, be they high school valedictorians or the most troubled youth, all have a common lament, and that lament is that – we want things to do. Bill Carey has sat on City and County Blue Ribbon Commissions, United Way Commissions. Those studies and commissions have asked Missoula youth, what is it that you desire, what do you think would make this a

richer community for you? And again, the most common answer was – we want things to do. Brennan's Wave represents exactly the kinds of thing young people want to do – it's clean, it's safe, it's instructive. But it's more than that. Brennan was a world class kayaker. Perhaps in the decades ahead Missoula will generate another world class kayaker or two. But that's not what's really important. All young people can learn the skills of kayaking and whitewater recreation as Brennan did, and in the process, they can gain the confidence, pride, self-esteem, that this activity brought to him. What greater gift could we, as a community, give to our young people than the chance to earn self-esteem. I urge the support of this 310 permit and appreciate your support of Brennan's Wave.

Chair Curtiss: Thank you, Mr. Roy. Anyone else?

Spencer Bradford: Hello, my name is Spencer Bradford. I'm the Board president for the Missoula Whitewater Association, and we are an organization that promotes river access and safety in our region and as I'm sure you guys know and struggle with a lot in Missoula – everybody knows that Missoula is growing. Whitewater recreation is actually one of the largest growing recreational segments as well, as I'm sure you noticed - boats on cars, what not. And as you know as well, the Milltown Dam will be coming out soon. I've sat on the Blackfoot Recreation Steering Committee with Fish, Wildlife and Parks and we were looking at, as I'm sure a lot of people know, the Blackfoot has seen areas that are having issues with a lot of use and what we were saying in some of our last meetings was, when the dam comes out, nobody really is quite sure where the use patterns are going to move to. But there was a pretty good consensus that without the dam, there could potentially be a large influx of people not driving all the way to Whitaker Bridge to go tubing, but why wouldn't you just tube through downtown Missoula. And there is a couple good reasons and one of them is this structure – it's a hazard and I think that, I'm not here to speak for the tubers because they are not really part of my organization, but I don't know who speaks for the tubers. But it speaks to a larger issue of safety on the river. We feel, and this is why we've been involved in this project, is that this is primarily a safety issue. Whenever anybody is hurt on a river, whether or not it's with commercial activity or private users, it damages our sport. It's heart breaking because a lot of time we know them, the Missoula paddling community is relatively tight knit. Brennan was a friend of mine, that's another big reason that I am personally am involved. He was a good friend to me and that's why I'm involved with the project. What I remember speaking to Brennan about with this project is really his feeling that this would reclaim the river for Missoula. I think that probably the largest user group for this, the Orchard Homes diversion weir, is probably homeless transients underneath the viewing structure. If we create this, it's going to be someplace that people are going to want to spend their lunch break – professionals, families are going to want to be down there and when you do that, you create a new dynamic and it becomes something that is owned by the totality of Missoula. I think that – I also have some letters that some people gave to me to read as well, if I may, for some people who had to leave. *"Dear Commissioners,"* this is from Bjorn Nabozney, one of the co-founders of Big Sky Brewing Company – B-J-O-R-N N-A-B-O-Z-N-E-Y. *"I'm writing this letter on behalf of Big Sky Brewing Company to express our support of Brennan's Wave project. This project benefits Missoula aesthetically and economically. Kayakers and spectators will be drawn to the heart of Missoula rather than the outskirts of town and adjacent counties. Reno, Nevada and Gunnison, Colorado are prime examples of successful whitewater parks that have revitalized downtown riverfronts. The downtown stretch of the Clark Fork River would be immensely improved by this project. Rebar and concrete blocks that currently reside in a stretch of this river are hazardous to users and unsightly. Completion of this project not only remedies these hazards, but would also enhance Missoula's downtown character. The support of this project would be much appreciated by Big Sky Brewing Company and its employees."* And, this is from Karl Pare – K-A-R-L P-A-R-E. *"I think that no matter what it takes, a community project of such merit must be completed. Brennan's Wave can bring nothing but a benefit to Missoula, Montana."* Just to finish out, sorry to speak so long, Missoula Whitewater understands that this is a process and that we don't want to go, all of our members care deeply about the river, it's part of the reason that we live here. We feel like this is a very site-specific and benefit-specific project that we really believe should go through. Thank you for your time.

Chair Curtiss: Thank you, Mr. Bradford.

Dave Ryan: My name is Dave Ryan. I want to say ditto to pretty much everybody that came up here in support of this project. I want to address just a couple of things again, one about how whitewater activity can be a positive thing for youth. I have two boys that have both become involved in kayaking and it's incredible to see the passion, self-esteem, that they've gained from that. They work hard to get the money to buy the equipment, they plan the trips and activities, they work constantly with their friends to improve their skills. It's a great activity. Having a local place to do this would reduce travel costs and risk involved in driving out to Alberton Gorge or up the Blackfoot to do these kinds of things. It would be a great asset to the community. The area already has

parking and restroom facilities. It seems like a perfect spot for that and like the previous speaker mentioned, being old gives you some historical perspective. I floated this river in grade school in the 1960's, through this same section, and back then, there were car bodies lining the river from Milltown to Missoula, particularly along the old Hughes Garden's area and people said, you can't take those out because it will cause erosion and the river bank will disappear. Well, those objections were overcome and the river is healing and it's in better shape than it was 50 years ago. I would encourage you to approve the project. Thank you.

Chair Curtiss: Thank you.

Eroll Johnson: My name is Eroll Johnson. I don't represent anyone, I'm just speaking for myself. I spend a lot of time on the river, enjoy it a lot. I've lived in Missoula for a number of years, 30 years plus. I've watched the improvements to the river and trail system and what not. It's very good. I would like to lend my support to see continuing improvements on the river.

Chair Curtiss: Thank you.

John Kors: My name is John Kors, K-O-R-S. I would like to make a comparison between Brennan's Wave and another recent success that Missoula has had and that's the ballpark. From taking a very unpleasant area, with your development with both private organizations and the City developing something that is really a benefit to the community – their record notwithstanding, of course. I live in the 1200 block, right up the street from the ballpark and when I saw it go in, I was very concerned. Didn't want to see a lot more traffic come through my neighborhood – the noise – I wasn't sure what was going to happen. Being a new landowner, a new homeowner, I was just afraid of what it would do with my neighborhood. And it really, the best impact that I have seen is I've seen more people walking in my neighborhood than anything else, people walking down to the park, taking their kids out. Really an asset to the community to enjoy the outside, enjoy what we have to offer and took something that was genuinely an eye sore for the community and turning it into something that is positive and continuing to be positive for our community. I encourage you to pass this 310 permit in that I believe Brennan's Wave will have a very similar effect for the neighborhoods surrounding the Brennan's Wave access site in that it will provide access to the river and provide community access to the river and an ability of the families of Missoula to enjoy the river more and we can all hope that the record just gets better for the Osprey. Thank you.

Chair Curtiss: Thank you.

Peter Neilsen: Good afternoon. My name is Peter Neilsen, I'm speaking on behalf of myself. I reside at 1724 Hilda, here in Missoula. My first involvement in this particular site was back in 1986 and it was a meeting that I was at with Jeff Badenoch at the MRA offices and we were talking about what to do about this problem. My second involvement was when there was some rip rap and rubble and even parking meters hauled down to the site back in, I believe it was the fall of 1987, but my memory isn't precise on the dates. One of my favorite headlines in the newspaper at the time, Jeff Badenoch and I both were very upset about what happened there, we opposed this haphazard placement of rip rap to try to maintain this diversion structure. The headline was 'Rip Rap Rhubarb Rankles River Renovators.' They just don't write them like that anymore. And so, but anyway, it has been a long time. I think that the public safety aspect of this issue should not be underestimated. I speak to you as a person with 35 years of recreational experience on rivers. I'm a former whitewater river guide, outfitter, kayak instructor, been through multiple river safety trainings, am certified by the ACA (the American Canoe Association) and Swiftwater Rescue Technician. This particular structure is a hazard it has been emphasized. I have personally been involved in one rescue at the site, nobody was injured. This was at a time when my company had its offices downtown on Front Street, on the backside of Front Street, and a raft came along and became pinned on the structure. The possibility of being recirculated in a hole below has been mentioned previously, but another hazard associated with a structure like this is directly becoming impinged and pinned upon the structure. So I personally witnessed that occurring at this particular structure back in about 1988. I also heard multiple other reports, one individual who both of you know, Gary Matson, and his family from Bonner, launched their raft just a few yards upstream of this particular structure back in the 1980's and were floating downstream and got stuck and their raft trip was pretty short. They got stuck on this thing and were able to extricate themselves with a raft no longer intact and usable, but nobody hurt. But there have been injuries here. I want to speak to one of the criteria for permitting. One of the criteria here is to permit a reasonable, and I'm paraphrasing, a reasonable approach to accomplishing the objectives. In my opinion, it is reasonable to modify irrigation diversion structures to make them more safe for recreational use. That's a reasonable objective. It's a reasonable means of achieving the method of irrigation diversion. Personally, I believe that all irrigation diversion structures should be evaluated to insure that they are more safe for recreational use. Other folks have mentioned

that when we have the dam removed upstream, we will see a tremendous increase in recreational traffic. It has already increased a tremendous amount, though, from when I first moved here about 25 years ago. A lot more people are floating the river and it is important that we provide safety for them where we can. So in your permitting decisions, this one and in your future permitting decisions, on irrigation diversions, I would ask that you recognize the importance of public safety in evaluating those proposals. Another example of a structure that is inappropriate, in my mind, for public safety, is the Jacob's Island structure, just about a mile upstream. Every year for the last several years, the Clark Fork Coalition has organized a Milltown to Downtown float and there have been thousands of people going over that structure. There have been some minor bumps and bruises, there has been some damage to boats. That particular diversion is one that really does need some improvement also. So it's inconsistent, in my opinion, that those kinds of structures have been permitted in the past without evaluating public safety. Those are not reasonable means of diverting water from rivers, if you create a safety hazards. That structure also created a concrete dam down at the base of the diversion, down by the Jacob's Island footbridge, and there was an instance just two summers ago, I believe, where a kid was trapped in that particular recirculating wave down below and had to be rescued. So that is an important factor and I ask you to consider it and thanks for the opportunity to comment.

Chair Curtiss: Thank you, Peter.

Greg Lind: Hello my name is Greg Lind and I appreciate the opportunity to speak in strong support of this project. I will be brief. I have nothing technical or otherwise to add, except I think you are faced with what, in all definitions of the word, a unique opportunity to solve a problem and provide the community a tremendous benefit. Again I echo the support here and encourage your positive consideration. Thank you.

Chair Curtiss: Thank you, Greg. Anyone else? Anyone from the technical team or the review team that would like to add any information at this time?

Marnie McClain: The alternatives that you have under your –

Chair Curtiss: For the record Marnie, again.

Marnie McClain: Well I, yeah. My name is Marnie McClain, still, and it's after 4:00 p.m. Your alternatives are to deny the application, to table the application, you can upon the request on any team member, extend the application for a time period of, well it would be from 60 days from the date of accepting the application, which would actually be August 1st, and then you have the opportunity to extend it for up to a year from August 1st, or you could approve it with modification. If I could just address some of the things that I think you need to consider at this point. I'm going to do what lawyers do and be a bit of a wet blanket. I would like to acknowledge that there has been many comments today that identify many of the positive aspects of this project and I would like to note, first and most obviously, the memorial aspect of this project. However, this project has to be evaluated based on the 310 rules and beginning with how the application has been framed by the applicant. The stated purpose of the project is to improve safety, aesthetics and irrigation. The purpose of the project is to install a large permanent structure in the river and I note that no one from the Orchard Homes Board has been here today to discuss ownership of the project. I think in the absence of hearing directly from the applicant and statements from them about their intentions with respect to own and maintain this structure, that we cannot proceed today. My recommendation is that this application be tabled pending further, consistent with the team member reports, recommendations that have been made regarding ownership and maintenance of this application. It simply not possible to approve and would be error for this Board to approve a project of a permanent structure that does not identify who the owner of the project is going to be.

Commissioner Carey: Marnie, what's the difference between tabling it and providing a year's extension?

Marnie McClain: Well, it's the way in which the rule is phrased. It's the same thing.

Commissioner Carey: It would have the same effect.

Marnie McClain: Correct.

Trent Baker: Can I comment on that?

Chair Curtiss: Sure. State your name again please.

Trent Baker: Trent Baker, speaking on behalf of Brennan's Wave. A couple of things that I wanted to say in response to that was that I think the tabling or extending equates, in this instance, to a denial and I talked earlier about the MRA money being on a time frame. I would also let you guys know that while the County's review of this has been very vigorous and I appreciate that and understand that, that's not the end of the road for us. We also need to get an easement from the State, which owns the beds and banks of the river. We have a DEQ permit process that we also need to complete and those processes are both on hold pending approval of the 310 permit. And those State agencies are not going to move forward with those applications or permit processes unless we get our 310 permit. And if they don't move forward with the process, this project doesn't move forward and not only do we lose our funding, but we also lose our opportunity for in-kind donations from a company called Envirocon, which has graciously offered to step up and help us build this project. And Envirocon is incredibly important to us for a couple reasons. One, the MRA's money is also contingent on obtaining matching funds or in-kind donations of services and so Envirocon's help with this project is critical because they help us effect that match. Envirocon is the contractor on the Milltown project and that project is ramping up as we speak and they are only going to get busier with that and have told us in no uncertain terms, that while this is an important project that they would very much like to participate in, because they are located in Missoula and they like the project and want to do it, Milltown in their priority and if they get busy with Milltown, we are off the table with them and we lose that opportunity, and Envirocon is not only critical for the matching and just the ability to have a local entity do this project, they are the most qualified contractor to build the thing, they've worked with Gary Lacey and they've built similar projects in other locations and they know how to do this. So that's absolutely critical and that's why I don't believe tabling or voting on an extension is going to do anything but kill the project. I would also point out that, as far as the language of the 310 act, I don't see the word ownership in there. I don't see that as a critical element of that law. I was also handed this morning when I came here, a document that I wasn't aware of until earlier this morning when Marnie let me know about it, which is an agreement between the Orchard Homes Ditch Company and the City and the County that was drafted when the current dilapidated structure was built in the 1960's, in which Orchard Homes Ditch Company agreed to take responsibility for that structure and its maintenance and its repair. And what we are talking about here today is easily characterized as the maintenance and repair of an existing structure. I mean we are going in there and we are fixing, we are replacing what's a problem that is there. And the ownership issue on this thing has been something that has been foggy from the start and one of the reasons is because what's there now is recognized universally as a hazard and no one is really willing to step up and say, hey that's mine, I'll take that. I think there are real possibilities for resolving that ownership issue, moving forward and Orchard Homes Ditch Company was not aware of this document that really seems to drop the thing in their lap pretty concisely, to the extent that it needs to be more nailed down than what that document says. That's something that the Orchard Homes Ditch Company is going to consider. I think that there are lots of other opportunities for resolving that issue, but if you table or delay this thing, that's the end of it and there is really no impetus to resolve those issues. And you know, say it was approved and that issue was not something that we were able to resolve, that's the situation we are in now, it doesn't change things in terms of someone stepping up and saying the magic words, I own it. I would point out, from a lawyers perspective, when you got an entity that is applying for the permit and receiving the permit, if you want to look at an ownership and responsibility as a spectrum, they are clearly moving towards the more responsible end of that spectrum and they are doing so knowingly and willingly, I mean this is a project that they want to see happen, they are aware of it and have been partner's in it all along. So I'm not sure that that is a critical issue and I think in a lot of ways, it's an issue that is at a situation where you guys can act and approve the permit and to the extent that it's not, I don't see where, in the 310 law, it's critical that that be done.

Commissioner Carey: Trent while you are there, I would just like to share my perspective on this. I very much support this for all the reasons everybody's brought forward. It is, as Dr. Guth said, a dangerous eye sore. There are other safety issues, as Peter Nielsen pointed out. It would be a boon for the downtown, it would be wonderful for kids, but we've heard our attorney say that there are unresolved legal questions. We've heard Fish and Wildlife say that there are unresolved concerns here. The consultant, Dale Miller, raises a number of concerns in his report, plus our own Public Works Director has made recommendations that aren't in place yet. So from my perspective, it's premature to say, okay, go forward. There are a lot of unresolved issues to a very worthy project, so I guess I would like to – I don't understand why this would kill the project. It seems to me that it's such a good idea, it brings so many benefits, that there has got to be a way to do it.

Trent Baker: Right, and I agree and I wish I could tell you that I was confident that if we delay this and resolve those issues, that it won't die and that we will find a way to do it. But, the way that we've identified to do it, to make it work with the funding that we have, with the contractors that we have, that disappears and as to Greg's comments, I think those, my understanding of them is that those are conditions to an approval. And we are

certainly willing to impose or accept those conditions in terms of putting together a maintenance plan that will satisfy everybody that what is that the proposed project will be maintained in the long term. We've committed to that with the MRA. I worry that this project could suffer and die of the fallacy of the perfect solution, which is just not possible. I mean, we have come up with what I've said over and over again is a reasonable means of accomplishing the proposed purpose of this project. I don't – there may be problems, there are problems with it, there are problems with any project and the perfect project is, I think in most cases, just not a viable option. I think that we've gotten this project to the point we have resolved, to the best of our abilities and to a reasonable degree, the uncertainties and the potential problems that have arisen and that exist and I'm not sure that we can go further. I think that we can go further and will commit to going further on issues like maintenance, ownership, but in a lot of ways, this is what we've come up with and we have worked a long time and we've worked very hard and we've worked with the County staff and I appreciate everyone's participation in the process, but I think we really have reached a critical juncture where if we don't get the State agencies moving forward on the permit process, we get pushed out of our window of opportunity here and that's the end of it. And maybe someone will revive it in the future and try again, this isn't the first time someone has tried to do this as I think Stan Zimet said earlier, there have been attempts in the past and they failed and that was kind of the end of it, until this opportunity came along. This opportunity could suffer the same fate and I really hope that you guys recognize that while this may not be perfect, we may not have crossed every single 'I' and every single 'T,' that may not be possible ever and what we have done is put together the best proposal that we could and put together a terrific partnership and a proposed project that has a ton of benefits and I think it's certainly approvable at this point. And I know Paul wants to say something on the issue.

Chair Curtiss: Paul, could you say your name for the record please?

Paul Callahan: Sure, Paul Callahan. One of the things, Bill, I want to maybe try to elucidate a little more, you mentioned Dale Miller having concerns that were yet to be resolved, Pat having concerns that were yet to be resolved. I read Dale's report and I know he brought up some – this may happen or that may happen or this might need to be considered and so forth. But in my opinion all of those issues are really just – he was just raising issues, I don't think that there are any real, unresolved issues. I think Pat, on the other hand, has brought up a couple today that are unresolved, but can be handled with conditions in the report and I will give you an example. The left wing, the closing off of the side channels, I think it would be a reasonable approach or a reasonable compromise to have a condition in the approval, a modification in terms of the 310 law, that says any rock on that left wing – I'm shooting from the hip here but this is an example – any rock on that left wing would be placed at an elevation no less than six inches below the current river cobble elevation and would then be covered back with river cobble. The effect of this would be both providing the grade control that the engineer wants, but not raising the elevation nor changing the roughness that a fish would see. So you got a little fish that wants to swim up there, he sees the same hydraulics as he did before, but it provides the engineer with some assurances of grade control. So I think – and I have felt this all along through Pat's comments, from the beginning, was that there was middle ground there. Where we differ is our understanding of the objectives. My understanding the objectives is stability for the long run. Pat is pushing for – he's doing his job and pushing for less, less, less, less. That's where this irresolvable issue comes up and that's your tough decision. Do we really want to go with less structure and more safety risk? I think that's fair to say, Pat. Or do you want to go with more structure and less safety risk? Do you think I'm wrong about that --?

Pat Saffel: We don't know.

Chair Curtiss: And that was Pat, for the record.

Pat Saffel: Oh sorry.

Paul Callahan: So I guess what I'm saying is, in your head, it seems like there were more uncertainties than there were in mine. All of this is easy I think in a way. The difficult issue is ownership and I think Trent has made a persuasive case that we are not making it any better maybe, but we're not making it any worse and we can allow the project to move forward. I guess that would be the argument in a nut shell.

Chair Curtiss: I agree with Commissioner Carey that this is an exceptional concept and a really neat project and a great way to honor Brennan, but I think there are some problems that have come up and this is being sold to us as an application from the Orchard Homes Ditch Company and yet no one from the Ditch Company even spoke. Only three people even talked about irrigation, everyone else talked about all the side benefits which are the fun things and the things that we want to see. But only Paul and Trent and Peter even said anything about the need

for this structure for irrigation. I almost wish that you would have sent a different application that said we want to put a kayaking thing in the middle of the river, because then I think it's easier to meet. I think there are some – the ownership issue in our mind does need to be addressed. We have other structures in Missoula County that we have been held to repair that weren't really our idea and our project in the beginning, but they ended up being ours and they are costing the tax payers millions of dollars to fix. So I think that that does need to be – and this document that Trent referred to, we were able to just finally find yesterday, saying that the ditch company had said they would accept the project in the 1960's. I guess my question to Marnie is, I think we need to make sure that we are listing all of the issues that we still have on the table, but can we grant a 310 permit that is conditioned, saying that we grant it as long as these are met and approved by an engineer, Fish Wildlife, County Attorney's office, somebody – or Mike, either one of you.

Marnie McClain: Are you saying can you issue a 310 permit that has modifications or conditions.

Chair Curtiss: Right.

Marnie McClain: Yes.

Chair Curtiss: So if we decided that we could list them all today, we could say we approve this 310 permit as long as the following conditions are met or modifications are made. I think our problem is that we've taken a lot of notes today and we may need a little bit of time to make sure that that list is complete.

Mike Sehestedt: Mike Sehestedt, for the record, Deputy County Attorney. I recognize the time sensitivity of this, both because of the MRA funds and the other participation. Given the documentation that we have uncovered regarding the Orchard Homes Ditch Company and the fact that I heard repeatedly referenced today that the ditch company would not permit removal of that diversion, which seems to me to be an assertion of their control and authority over it, I think we need to have an acknowledgement of ownership and responsibility for maintenance from the Orchard Homes Ditch Company, and while I recognize that these are not high maintenance items, there are issues and if I can quote from the application: *"Mr. Fagan indicated that in the five years the golden park has operated, there has been virtually no maintenance required. They have, however, modified four of the seven drop structures to improve the quality of the rapids for play. Mr. Feffer indicated that one of the boulders in their drop came lose and had to be replaced and re-grouted. Log jams have not been an issue for either of these parks, probably because of the damns upstream."* The implications of that statement to me are there are in fact potential maintenance, though it may not be large and ongoing, as with any manmade structure, there will be failures as has been alluded to. This structure will not be protected from logs by dams upstream any longer. So there is a maintenance responsibility issue here. While the City has generously contributed MRA money, I notice the Mayor also backed the City away from any other interest beyond enthusiastic support for the project, so there is no City commitment. I think we need to have the Orchard Homes Ditch Company, which is the applicant and which has asserted and by contract is the owner of the existing structure, step up and say they are going to be responsible for maintenance and repair. If they do so, then that ownership issue goes away. But if they are not willing to do that, then we have an issue with a manmade structure which will have issues over time, just as all manmade structures do, and no truly responsible entity with a perpetual or a long term existence responsible for it's maintenance. Do I think that this requires a long term tabling, probably not. We've heard some suggestions for modification or clarification on the left bank stabilization – it sounds like we are in Paris – but that may or may not address some of the fish passage, natural channel concerns of Fish and Game. I think we could explore those. But I would think that we would be able to return to this issue fairly quickly, if it's tabled or the hearing continued for a fairly short period. Either we will resolve it quickly or we will be – in the project, in the words of the sponsors and proponents – will be dead. It doesn't seem to me to be insurmountable and it's simply a matter of the ditch company basically standing up and saying, yeah, that's our diversion, we agree to maintain it, it's in terrible shape and we agree to this as a replacement, because we think it will be less exposure to us and less maintenance responsibility in the future. It shouldn't be too difficult to get them to do that given the representations we've heard here today. But until we do actually hear from the ditch company, I'm concerned about ownership.

Chair Curtiss: And Marnie were we – did we forward this document that we finally found yesterday onto the ditch company too, or only to Trent so far?

Marnie McClain: I just gave it to Trent. We had found it last night, I hadn't had a chance, I've missed the mail today so I'll have to send it out tomorrow.

Mike Sehestedt: I believe there are no representatives, members of the ditch company board still in attendance.

Marnie McClain: Marvin was here earlier.

Commissioner Carey: I want to be able to vote for this application and I want to vote for it as soon as possible, but I believe that there are some conditions that we are going to draft to be able to do that. I don't know quite how that would work, but it doesn't seem to me like it's going to take a real long time. Should we just recess this hearing until a couple weeks from now?

Mike Sehestedt: I think the technical term under the rules is to table it to a time certain. I should probably have consulted with a Fish and Game team member before I suggested that we may have helped address some of his issues, but I think –

Commissioner Carey: Would a couple weeks work for you? It just seems like we have to be able to get there.

Pat Saffel: Pat Saffel, Fish, Wildlife and Parks. I was just thinking about leaning over to Paul and telling him to write me up something and we will take a look at it as soon as possible.

Mike Sehestedt: Again, I think two weeks should be adequate time. I mean, either the ditch company is going to stand up and honor their legal obligations or they are not.

Chair Curtiss: Which then would include a maintenance plan and that kind of thing? The easement for right-of-way for maintenance might be an issue that may take a little longer.

Mike Sehestedt: Well there will be some issues with the – as I indicated – issues with the State.

Commissioner Carey: Those would just be part of the conditions that we –

Mike Sehestedt: Obviously, if we approve the project, they can't build it if they don't have a right to the real estate, if the project's permitted.

Chair Curtiss: Next week is our final budget hearing and so I don't think we want to put it then and I know on the 17th we have a bond discussion.

Mike Sehestedt: I guess I would urge, given what we've heard and the other permits, that we schedule it promptly. I mean, the issue of ownership should not be terribly complicated if the applicant is willing to say, yeah we'll own and be responsible for the maintenance of the structure we are applying to have built. If the applicant isn't willing to own and maintain the structure they are applying to have built, then we have an issue.

Trent Baker: Trent Baker from Brennan's Wave. Just to address that, I'm looking at the agreement and release, which is this newly found document that we are discussing, and I don't see the magical words ownership in there. I do see approval and agreement and responsibility and I think –

Chair Curtiss: There is one that says acceptance, I think.

Trent Baker: Acceptance. We have a similar agreement between the entity Brennan's Wave and the Orchard Homes Ditch Company. Unfortunately, I don't see it in the appendices to this 310 permit submission but it is, I will describe it for you. It's the project design, with some language regarding maintenance and our commitment to provide a certain amount of funds, \$20,000 at least, in a perpetual maintenance account for that and then it is signed by the Orchard Homes Board Members approving that design and I could certainly get that document to you folks, and Mike and Marnie can take a look at it and see if that's the kind of thing that we are talking about here. Maybe they could opine today for me if that's going to cut it or if there is something more that I need to be asking for from them.

Chair Curtiss: Mike.

Mike Sehestedt: What you've got is basically, they agreed with you that they would be the sponsors if you did certain things. If that makes them happy, then all they have to do is agree to us that they will be primarily liable and they can look to you for indemnity or contribution if there are maintenance issues that are required. But we want, with all due respect to any non-profit corporation, group, they quite frequently come and go and involuntary

dissolution due to lack of interest is not an uncommon thing for these non-profit corporations. The ditch company has been around a long time, they have a vested interest. They are the applicant, we want them to sign up as primarily responsible. However they want to spread the risk that they assume is up to them. But they need to – they are the applicant, they are the ones that are saying we want this and we need this for our irrigation works and they need to stand up and say, ‘and if it’s permitted, we will be responsible for it.’ If they are applying for something they don’t want to be responsible for, it causes a lot of questions partly about how real their interest in this application is and where they will be if something, in fact, goes wrong with it. They have, despite their commitment to be responsible for the existing structure, in its current dilapidated state, it apparently serves there purpose adequately and they have shown no interest in repair or maintenance of it over the past 45 years. We want something that puts somebody on the hook if it fails and we want that to be a responsible long term public entity. It seems like the applicant would be a logical entity to be responsible.

Trent Baker: And I agree with you on that Mike and what I am looking at in the way that my mind works and trying to get wrapped around this thing, is what we have here in this agreement and release is the ditch company saying we accept and will be responsible for what the City and County are going to build for us here. And we have a very similar document, strangely similar in language considering I had never seen this, that says the same thing to Brennan’s Wave – ‘we accept this project that you are proposing to do.’ It just continues that responsibility right from what is there now to the new proposed project.

Chair Curtiss: And yet when we met on-site, the gentleman that joined us that day from the ditch company, I can’t remember his name – George – said, ‘you can’t take it out, but it ain’t ours,’ kind of thing.

Trent Baker: Yeah and that’s been there position all along and I can’t blame them because what they are talking about is the existing structure and there is no way that they are going to step up and say, ‘that problem in the river is ours.’ And with the possibility on the table that this project falls apart, they are not going to step up and say, ‘okay, the new one is ours,’ because as Mike and Marnie will recognize I’m sure, just by virtue of saying that – well if you build the new one we will take ownership of that – if that one fails, it creates a problem for them in terms of their ownership of what’s there now.

Chair Curtiss: But you just stated that the language in both agreements is pretty much the same. So if they would come forward and say, ‘once the new one is done, we think it is safe, we will accept it.’

Trent Baker: They have already said that. They have said, ‘we accept this,’ of the proposed project, the design right there, there is a document that says, ‘we will take it, we like it.’

Chair Curtiss: I think we need something a little stronger than that.

Trent Baker: Well I’m just trying to search to figure out what we need because I will go out there and try and get it, I’m committed to that.

Chair Curtiss: It looks to me like Wednesday, the 10th, although we do have a hearing for the adoption of the Building Codes Enforcement Program for Missoula County that day. If this is going to be as simple as saying we can meet the – I guess we need to articulate what our issues are to you, so I don’t know if that’s too short. That’s two weeks.

Trent Baker: I think that’s fine, as long as I know what my goal is.

Chair Curtiss: Mike.

Mike Sehestedt: I think the goal is to come to some agreement with Fish and Game on the mitigation issues that were raised and I think Pat can fill you in on those. Like I said, I heard some things I think that may provide the modifications or clarifications that may address some of Pat’s principal concerns. The second thing is that we want the applicant to stand up and say, ‘it’s ours.’

Chair Curtiss: And that they will maintain it.

Mike Sehestedt: Right, and if it’s not going to be theirs, then the City or what entity is going to own it and be responsible for it. If it’s not the irrigation district or the City, what guarantee we have that their promises are good.

It's kind of like when you buy the Ginzus knives on TV, with a lifetime guarantee. Yours, the knives, or the company's? What's the measure of that guarantee?

Trent Baker: Trent Baker again. What I am wondering, by way of getting some more specifics, is if an agreement just like this, but relating to the proposed structure, will suffice, I mean the same language. If they signed it once for a structure that they thought was going to take care of them in the long term, I don't see why they wouldn't do it again.

Chair Curtiss: Marnie is suggesting, in the interim that, you, the ditch company, and the County Attorney's Office could work on that language to make sure that there is some security there.

Mike Sehestedt: To be honest, I think the ditch company is much more likely to realize they have to step up to the plate given the old agreement, which provides a certain element of leverage that has not been present in the past.

Chair Curtiss: And for the rest of you that came today and testified, you wouldn't need to come back, as this is still on the record. I think we understand all of your interests and agree with you that this could be a really neat thing for Missoula. But there are a few legal things that we need to get worked out.

Commissioner Carey: I think the parties need to find the conditions which will allow us to be able to vote for the application. That's all we are looking for.

Mike Sehestedt: And at this point, Bill, it would be fair to say that the big one is long term ownership and responsibility and the other, I don't know if it's like unto it, is addressing some of the concerns of Fish, Wildlife and Parks – I keep wanting to call them Fish and Game.

Chair Curtiss: Now we are dating ourselves.

Pat Saffel: Pat Saffel, Fish, Wildlife and Parks. I just need to discuss with you all what conditions you want me to work on to resolve, as part of the permit.

Chair Curtiss: Right, so I think it would be good if we could, in the next few days, get those in writing so that Trent knows what he is replying to.

Mike Sehestedt: I think the biggest issue that I heard in your report really was that, from a Fish and Wildlife perspective, was the fish passage issues.

Chair Curtiss: On the left bank.

Mike Sehestedt: On the left bank.

Pat Saffel: Yeah, right, we recommended consideration of a minimal structure. You may have considered that already.

Commissioner Carey: Well Pat, I just need to hear from you, what are the conditions which you would sign off on – to say, okay, if they meet these conditions I'm alright. And we've got a couple of weeks to work on that.

Pat Saffel: Okay.

Chair Curtiss: Okay is there anyone else who wants to make any comments before we do a motion to table for two weeks? Yes.

Ellen Buchanan: Ellen Buchanan, Director of the Missoula Redevelopment Agency. I would just like to re-emphasize the time sensitivity, I know it's been stated but, one of the things that we are facing is that there is a certain window of opportunity to do this work, based on water levels. There is a permitting process that's got to go on after this and if it gets pushed out of that window of opportunity, our funding will not last to next fall. So we need to somehow get this construct red and the MRA funding spent during a construction season this year.

Chair Curtiss: Thank you, Ellen. Any other comments.

Commissioner Carey moved that the Board of County Commissioners table the Brennan's Wave 310 Permit until the August 10, 2005 Public Meeting. Chair Curtiss seconded the motion.

Chair Curtiss: And I think that the discussion on the record should be that the County Attorney's Office and Fish, Wildlife and Parks will work with the applicant and Brennan's Wave to identify and search for solutions.

Mike Sehestedt: And I want to make sure, since we are going forth with that direction, that I have correctly identified the issues the Commissioners feel strongly about.

Commissioner Carey: Yes.

Chair Curtiss: Those are the ones I wrote down, the long term maintenance and ownership and the Fish, Wildlife and Parks issues.

Mike Sehestedt: Okay, thank you very much.

Chair Curtiss: Okay. Any other discussion? All in favor of the motion to table?

Commissioner Carey: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 2-0.

Chair Curtiss: Okay is there any other business to come before the Commission?

There being no further business to come before the Board, the Commissioners were in recess at 4:45 p.m.