

## **PUBLIC MEETING – October 5, 2005**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Commissioner Bill Carey and Deputy County Attorney Colleen Dowdall.

### **Pledge of Allegiance**

### **Public Comment**

None

### **Routine Administrative Actions**

Commissioner Evans 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 \$953,451.97. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

### **Hearing (Certificate of Survey): Dundas Family Transfer (Postponed to October 12, 2005)**

Chair Curtiss announced that the Public Hearing on the Dundas Family Transfer was postponed to next week, Wednesday, October 12, 2005.

### **Hearing (Certificate of Survey): Ghenie Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract B of COS 4749, located in the southeast one-quarter of Section 13, Township 13 North, Range 19 West.

John and Kathy Ghenie 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 2.08 acres in size located near Missoula, Montana. John and Kathy propose to create one approximately 1.08 acre parcel for transfer to their daughter, Kerrie Ghenie, for residential purposes and keep the remaining approximately 1 acre parcel for residential purposes as well.

Certificate of Survey 4749 was filed in December, 1997, as a retracement survey of stipulation and judgment to partition real property, by the Honorable Douglas G. Harkin, District Judge, creating Tract A, Tract B and Tract C. A Warranty Deed was filed in February, 1998, deeding Tract B to Contemporary Builders, Inc. Contemporary Builders, Inc. filed a Warranty Deed in April, 2000, deeding the property to David Adler. Mr. Adler deeded the property to AABL Partners, LLP, in March, 2003. AABL filed a Warranty Deed in March, 2005, deeding the property to John and Kathy Ghenie.

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: Mrs. Ghenie, if you could come to the microphone please and state your name for the record. We have a list of questions that we ask our Deputy County Attorney to ask you on the record.

Kathy Ghenie: Okay. My name is Kathy Ghenie

Colleen Dowdall: So you have owned the property since March of this year?

Kathy Ghenie: Right.

Colleen Dowdall: Did you buy the property with the intent of dividing it?

Kathy Ghenie: Not at the time. At the time we bought it, we wanted to build a house and move over here, but we don't need that much property, so what we decided we wanted to do was gift the rest of it to our daughter that lives here.

Colleen Dowdall: Okay, and so, do you live in Missoula at this?

Kathy Ghenie: We live on the property right now, we put a house up.

Colleen Dowdall: So there is a home on the property?

Kathy Ghenie: There is.

Colleen Dowdall: And will she live on the property as well?

Kathy Ghenie: Not right away. They have a home in Missoula, but eventually, it'll probably be a few years down the road or whenever they're able to do it, they'll put a house up on the other part.

Colleen Dowdall: Okay. Do you think she intends to transfer it within the next year?

Kathy Ghenie: To somebody besides –

Colleen Dowdall: To sell it.

Kathy Ghenie: No.

Colleen Dowdall: So, you have built on it since March, or was there a house on it when you purchased it?

Kathy Ghenie: No. We put up a Stratford Home, I don't know if you're familiar with those.

Colleen Dowdall: Have you, prior to this, did you talk to anyone at Missoula County about going through subdivision review?

Kathy Ghenie: No, we had intended to do that and then the house got ordered a lot sooner than we thought and we had to have it ordered within a certain time because they were going to be building a bunch of houses in Seattle. If we didn't get our order in, we were going to be put clear back, we probably wouldn't have been able to come over 'til next year. So I talked to Jim Weatherly and we had everything surveyed and at that time, that's when we pretty much decided that we would gift the rest of it to Kerrie.

Colleen Dowdall: Okay. Are you attempting to evade subdivision review?

Kathy Ghenie: No.

Colleen Dowdall: Do you understand that evasion is a misdemeanor?

Kathy Ghenie: Yes.

Colleen Dowdall: You understand that we are not reviewing this like we would a subdivision to determine whether there's adequate access, legal access, whether emergency vehicles can get there all year round.

Kathy Ghenie: Right.

Colleen Dowdall: And that we are not also – you may have to comply with other regulations, zoning, sewer, septic, floodplain. This approval doesn't give approval for anything but dividing the land.

Kathy Ghenie: Okay.

Chair Curtiss: Are there any other questions for Ms. Ghenie? Okay. Thank you. This is a hearing. Is there anyone else who would like to speak for or against this transfer of land? Seeing none, we'll close the hearing.

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

**Consideration: Lower Ninemile Acres Summary Subdivision (3 lots on 7.60 acres) – West of Remount Road, north of Old Highway 10**

Commissioner Evans left the meeting briefly to get her information on the proposed subdivision. A Public Affairs Reporting class from the University of Montana was in attendance.

Chair Curtiss: So, while we're waiting for Barbara then, we'll give you a little bit of a civics lesson. This is small subdivision, it has less than 4 lots so it only has to come in front of the Commission, it doesn't go to the Planning Board. If they have 5 lots or more, or it's being subdivided for a second time, it needs to go before the Planning Board. So, this is the only hearing this one has. That's your lesson.

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

Lower Ninemile Acres is a proposal by Doug and Barbara Gaut, represented by Ron Ewart and Jeff Pearson of Eli and Associates. The property is 7.60 acres in size and the proposal is to divide it into three lots. Lot 1 is 3.80 acres, Lot 2 is 2.75 acres and Lot 3 is 1.05 acres. The property is located on Remount Road, just north of the Ninemile House and Ninemile Trailer Court.

Ninemile Creek is close to the western property boundary. The existing grades range from gently sloping to over 25% slope at the bench running north/south near the center of the property. The western half of the property drops ten feet along a bench toward Ninemile Creek. The top of the bench forms the eastern boundary of the Area of Riparian Resource/No Build Zone/No Improvement Zone. A Riparian Resource Buffer/No Build Zone starts at the top of the bench and extends easterly for 30 to 70 feet. Lots will be served by individual wells and individual septic systems.

The property is unzoned and located outside the Urban Growth Area. The applicable plan is the Missoula County Growth Policy (2002) with the applicable amendment, the 2002 Regional Land Use Guide based on the 1975 Missoula County Comprehensive Plan, which designates this parcel as "General Commercial" (adjacent to the Ninemile House) and "Open and Resource" with a recommended density of 1 dwelling unit per 40 acres. The General Commercial designation is probably due to the adjacent Ninemile House restaurant and Ninemile Trailer Court to the south. The proposal is not in compliance with the land use designation of the Comprehensive Plan for the area. Provision of a No Build/No Improvement Zone and Riparian Management Plan mitigate the impacts to the resources.

Access to the subdivision is from Remount Court, a proposed private road, which connects to Remount Road, a paved County road. Remount Road is a County maintained road paved to approximately 22 feet, without curb or gutter, within a 60 foot right-of-way easement at this location. The Subdivision Regulations require Remount Road to be paved to 24 feet. The applicant is asking to vary from this standard. The right-of-way shown on the plat depicts the traveled way, but does not follow the road right-of-way granted to Missoula County. Staff recommends the applicant petition the County to relocate the right-of-way to match the traveled way as shown on the plat or the developer dedicate the additional right-of-way for Remount Road to provide access to Remount Court.

Proposed access to all three lots is via Remount Court, a private road, without curb or gutter, within a 40 foot right-of-way easement. The Subdivision Regulations require Remount Court, a private road, to have a 24 foot surface width within a 28 foot to 60 foot easement to the point that the driveway for Lot 3 intersects Remount Court. After the intersection of the driveway for Lot 3, Remount Court is required to be a shared driveway with a 12 foot surface width within a 20 foot to 54 foot easement providing access to Lot 1 and Lot 2. The applicant is asking to vary from this standard. The applicant proposes paving Remount Court a consistent 16 foot width with 2 foot gravel shoulders either side for the entire 200 foot length of the road, the end of which forms a hammerhead turnaround.

Public Works stated that they will require all approaches to lots to come from Remount Court and recommended a condition requiring a One Foot No Access Strip along the Remount Road frontage of Lot 1 and Lot 3 on either side of the shared private roadway access easement be added to the plat.

The applicant is requesting 4 variances: 1) from the 24 foot paved standard for Remount Road; 2) from the 24 foot paved standard for Remount Court; 3) from the requirement to provide internal pedestrian connections; and 4) from the requirement which prohibits an average lot depth from being greater than three times its average width.

Staff approves of, and County Public Works supports, all four variance requests. The proposal adds one additional lot and widening of Remount Road adjacent to the subdivision would disrupt the current drainage

system. The plat includes an RSID/SID waiver for upgrading Remount Road, which includes road widening, curb and gutter and walkways. County Public Works and Frenchtown Rural Fire District expressed no concerns with the proposed road section for Remount Court. The proposed road is short, paved a consistent width and will serve only three homes, providing adequate pedestrian access between each lot. Though Lots 1 and 2 are long and narrow, the western half of each lot has been designated a No Build/No Improvement Zone, effectively clustering the development on each lot toward Remount Road.

Staff recommends approval of the Lower Ninemile Acres Subdivision, subject to 17 conditions. The conditions address Roads and Driveways, Fire, Radon, Weeds, Wildlife, Covenants, Riparian Resource Area and Floodplain.

Chair Curtiss: Thank you Mary. Is the developer or the developer's representative here?

Jeff Pearson: Jeff Pearson, Eli and Associates. I think Mary did a pretty thorough job there for us. I did have a meeting with Doug Gaut, the owner, on Monday afternoon and we went through all this and he's happy with it, we all agreed to it. So, I think it's all fine.

Chair Curtiss: Okay. Thank you. Is there anyone from the public who wanted to make comment on this subdivision. Okay. Seeing no one, I guess were ready for motions.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from the Missoula County Subdivision Regulations Article 3-2(3)(B) requiring a minimum 24 foot pavement width for Remount Road, to permit a 22 foot pavement width, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from the Missoula County Subdivision Regulations Article 3-2(1)(I) requiring a minimum 24 foot pavement width for Remount Court, to permit a 16 foot pavement width, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from the Missoula County Subdivision Regulations Article 3-2(8)(A)(iv) requiring internal pedestrian connections for subdivisions located outside the Urban Growth Area and on private roads, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from the Missoula County Subdivision Regulations Article 3-3(1)(E) which states that no lot shall have an average depth greater than three times its average width, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Lower Ninemile Acres Summary Subdivision, based on the findings of fact and subject to the conditions in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

### **Lower Ninemile Acres Summary Subdivision Conditions of Approval:**

#### **Roads and Driveways**

1. The applicant shall petition Missoula County to relocate the right-of-way to match that shown on the plat or, if appropriate, that the developer dedicate the additional right-of-way on the plat to provide access to Remount Court, prior to final plat approval. *Subdivision Regulations Article 3-2(3)(B) and County Public Works recommendation.*
2. The proposed road name of Remount Court shall be approved by Missoula County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2(12) and County Public Works recommendation.*
3. A One Foot No Access Strip shall be shown on the plat along the eastern boundary of Lot 1 and Lot 3 along Remount Road, prior to final plat approval. *Subdivision Regulations Article 3-2(13)(A) and County Public Works recommendation.*

4. The existing access from Remount Road to Lot 3 and the existing 20 foot private access easement adjacent to the eastern boundary of Lot 1 shall be removed from the plat prior to final plat approval. *Subdivision Regulations Article 3-2(13)(A) and County Public Works recommendation.*

#### **Fire**

5. 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 or 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).*

6. The developer shall contribute a fire service fee of \$530 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.*
7. Article I, Section 2 of the Development Covenants shall be amended as follows: *Subdivision Regulations 3-7(1)(E) and Frenchtown Rural Fire District recommendations.*

**2. Building Construction, Location and Type-** “Interior residential fire sprinklers for fire protection purposes meeting NFPA 13D standards are required in each home, ~~subject to review and approval by the Frenchtown Rural Fire District.~~”

8. A signage plan that conforms to the Manual on Uniform Traffic Control Devices (MUTCD), current edition, shall be approved by Missoula County Public Works prior to final plat approval and Article 1, Section 11 of the Development Covenants shall be amended to include the requirement that all homes post a County approved home address sign and road or street sign for emergency response. *Subdivision Regulations 3-2(2)(F), County Public Works and Frenchtown Rural Fire District recommendation.*

#### **Radon**

9. Article I, Section 7 of the Development Covenants shall be amended as follows: *Subdivision Regulations 3-1(2) and 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**

10. 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 10 of the Development Covenants shall be amended as follows: *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Board recommendation.*

**10. 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 ~~renegotiate~~ revegetate any ground disturbance created by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is complete.

#### **Wildlife**

11. Article I, Section 8 of the Development Covenants, third and fourth sentences under “Nuisances,” shall be deleted and replaced as follows, subject to review and approval of OPG prior to final plat approval. *Subdivision Regulations 3-1(2), 3-1(10) and Montana Fish, Wildlife and Park recommendation.*

**8. Nuisances-** ~~All garbage shall be stored in secure and sturdy containers of metal, plastic or other suitable material that has sufficiently tight fitting covers to prevent the escape of noxious odors and to prevent entrance or destruction by wild animals. It is best to store garbage indoors, and to not set garbage cans out until the morning or garbage pickup.~~ Garbage must be stored in secure bear-resistant containers or

indoors to avoid attracting animals such as bears, raccoons, and dogs. If stored indoors, do not set garbage cans out until the morning of garbage pickup.

12. Article I, Section 13 of the Development Covenants (“Wildlife”) shall be replaced with the following, subject to review and approval by OPG, prior to final plat 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 & 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 & Parks or the U.S. Fish & 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.

### Covenants

- 13. Article II, Section 2 of the Development Covenants, third sentence of "Amendment," shall be revised as follows, subject to review and approval of OPG prior to final plat approval and may not be changed or deleted without governing body approval. *Subdivision Regulations Article 5-1.*
- 2. **Amendment-** ~~No sections relating to wildlife, No-build/No-Improvement Zones, weed control, radon, fire standards or driveways~~ Interior Residential Fire Sprinklers; Pets; Radon Mitigation; Garbage Storage; Weed Control; Driveways and Address Signs; Maintenance of Shared Access Road (Remount Court); Wildlife, Fire Fuel Management; Enforcement; and Riparian Resource Management Plan may be changed without prior written consent of the governing body.
- 14. Article II, Section 3 of the Development Covenants shall be amended to include Fish, Wildlife and Parks as an interested party for purposes of enforcing covenants included to protect wildlife, areas of riparian resource and control of noxious weeds. The amended language is subject to the review and approval of the County Attorney's Office and OPG, prior to filing the final plat.

### Riparian Resource Area

- 15. The Area of Riparian Resource/No Build Zone/No Improvement Zone and the Riparian Resource Buffer/No Build Zone shall be shown on the final plat. Article I, Section 15 of the Development Covenants, "Area of Riparian Resource Management Plan," shall be replaced with the following, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3-13 and Montana Fish, Wildlife and Park recommendation.*
- 15. Riparian Resource Management Plan-** The Area of Riparian Resource is designated on the subdivision plat and the attached Appendix 'A' Riparian Resource Management Plan Map as "Area of Riparian Resource/No Build Zone/No Improvement Zone." The Area of Riparian Resource (hereinafter referred to as "Area") is bounded on the east by the top of the bench and extends to the west to the edge of the property. The Area contains rich and diverse riparian vegetation including Cottonwood Trees, Ponderosa Pines, Willows, riparian shrubbery, and grasses. The Area shall be protected and preserved for its riparian and wildlife values. Within the area there shall be no construction, no wells, no drainfields, no roads, no changes in topography, no vehicular access and no livestock.

The portion of the property designated as the "Area" meets the criteria for designation as an area of riparian resource, according to Section 3-13 of the Missoula County Subdivision Regulations. The intent of these as listed in 3-13(1)(A-G) shall be upheld. To meet these purposes, the following, per Article 3-13(3)(A-E), are addressed.

- A. *Access To or Through the Area:* Access to or through the Area is allowed by pedestrians only. There shall be no vehicular access within the Area.

- B. *Low-Impact Use of the Area*: Low impact use in the Area of Riparian Resource/No Build Zone/No Improvement Zone 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; or any other development. Low impact use in the Area of Riparian Resource/No Build Zone/No Improvement Zone 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. If livestock are kept on the property, off-stream watering facilities (e.g. water troughs) shall be developed and livestock shall be kept out of the Area of Riparian Resource/No Build Zone/No Improvement Zone, using fences if necessary to keep livestock from trampling and grazing riparian vegetation.
- C. *Planned Restoration of the Area with Native Species*: Do not cut or remove live or dead vegetation, particularly shrubs and trees from the Area. Dead trees function as important wildlife nesting habitat. Do not plant lawns in the Area or the Buffer. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems. Exception: proper use of chemicals or other methods of control for noxious weeds is allowed. Planting appropriate native riparian vegetation (trees, shrubs) that enhances the Area and Buffer is allowed.
- D. *Planned Mitigation of Impacts from All Proposed Uses*: There shall be no land use activities within the Area except as provided for within these covenants. The intent is to leave the Area in a natural condition.
- E. *Planned Buffer to Mitigate Development Adjacent to Areas of Riparian Resources*: The Riparian Resource Buffer is designated on the subdivision plat and the attached Appendix 'A' Riparian Resource Management Plan Map as "Riparian Resource Buffer/No Build Zone". The Riparian Resource Buffer (hereinafter referred to as "Buffer") is bounded on the west by the top of the bench and extends thirty (30) feet to seventy (70) feet to the east. The vegetation in the Buffer is primarily riparian shrubs and grasses. Low-impact use in the Buffer is the same as defined in "B" above for the Area, except as follows: a well for Lot 2 may be located within the Buffer; and vehicular access, though generally prohibited, is permitted for maintenance.

16. Appendix 'A' of the Development Covenants shall be amended to include the title "Riparian Resource Management Plan Map," subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-13.*

**Floodplain**

17. The floodplain notation on the plat shall be amended to state: "NINEMILE CREEK/EDGE OF 100-YEAR FLOODPLAIN PER FEMA PANEL 850 EFFECTIVE AUGUST 16, 1988" subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 1:50 p.m.