

PUBLIC MEETING – DECEMBER 20, 2006

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Assistant Public Works Director Tim Elsea for Director of Public Works Greg Robertson, Administrative Aide Anne Hughes, and Human Resources Director Steve Johnson. Commissioner Jean Curtiss was out of town on vacation.

Pledge of Allegiance

Public Comment

None.

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the weekly claims list in the amount of \$576,169.86. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Contract Award (Wellness Committee): Wellness Services

Chairman Carey opened the contract award.

Anne Hughes presented the staff report.

In early November of 2006, the Wellness Committee, which is a subcommittee of the Benefits Advisory Committee, issued an RFP requesting a comprehensive wellness program. We had three vendors respond, Two Medicine, Integrative Health and Wellness, which is a company out of Nevada, and It Starts With Me. Based on the committee's evaluation of each of the proposals, we would like to recommend that the Commissioners award a contract to It Starts with Me in the amount of \$37,064. The FY 07 budget allotted \$40,000 from the Health Benefits Fund, so it is within our range.

Chairman Carey: Any questions for Anne at this point? Does anybody here wish to speak to this? It's not a hearing, but we'd be happy to listen to any comments, questions. The Commissioners have been briefed on this. This isn't the only thing we've heard about the proposal.

Commissioner Evans made a motion that the Board of County Commissioners award the contract for wellness services to It Starts With Me based on the recommendation of staff and the evaluation of each of the three proposals received by the Wellness Committee in the amount of \$37,064. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Chairman Carey: We have changed the agenda just a bit. We're going to move the consideration of JL Acres up ahead of the hearing on River Estates. I hope that's okay with folks.

Consideration: JL Acres Minor Subdivision (5 lots on 5.75 acres) - South Avenue, West of Humble Road

Chairman Carey opened the hearing.

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

I'm here to present JL Acres. This is a minor subdivision proposal by Korry Mytty, represented by Kristin Smith of WGM Group, for five residential lots on 5.75 acres. This property is located on South Avenue, west of Humble Road and it is within the Target Range-West End Rural Zoning District, which permits homes on lots of one acre or greater.

South Avenue provides subdivision access. The subdivision regulations require curb and gutter, as well as concrete boulevard sidewalks in this location along South Avenue. These improvements are not proposed by the developer and so two variances are being requested, which are both supported by County Public Works. Lots 1 and 2 are proposed to be accessed by a paved cul-de-sac road, with Lots 3 and 4 proposed to be accessed by a short court that connects with the cul-de-sac. A private driveway is planned off of South Avenue for Lot 5. A

variance is requested to allow for a curbside sidewalk to be built along the eastern edge of the cul-de-sac road. This is supported by County Public Works.

There are a total of 14 recommended conditions with this subdivision and I'd just like to go over a handful of the most important of these conditions. Condition #2 requires a 30-foot conditional public access easement along the southern edge of the subdivision in order to provide for a potential future mid-block road connection in this portion of Target Range. Conditions 5 and 6 require review of plans for the private short court and the cul-de-sac road before final plat. Condition #7 requires review of private driveways on each of the five lots before building permit approval for each of the lots. Condition #8 requires access to irrigation water from the pipe along South Avenue or severance of the water rights. Condition #9 requires review of the planned road and driveway crossings of the concrete pipe structure. Condition #10 is a requirement for a water supply for firefighting or residential fire sprinklers, plus language in the covenants for the chosen method of fire suppression. Condition #13 is a requirement for a public sewer system RSID statement and that is to be placed on the plat according to the condition. Staff is in support of the JL Acres Subdivision.

Chairman Carey: Thank you, Tim. Again, this is not a hearing, but we'd welcome any comment, questions from anybody who'd like to speak to this. Kristin.

Kristin Smith: Good afternoon, Kristin Smith with WGM Group. I would just like to go on the record with respect to Condition #10, which addresses the fire protection, a note that this project is two miles from a fire station at South Avenue, Reserve Street. The installation of fire sprinklers [inaudible] is between \$10,000 to 15,000. Condition #2, which Tim spoke about, the 30-foot conditional public access easement, I would also just like to note that should a road ever be constructed in that area, that that would result in those homes being fronted on two streets. Thank you very much.

Chairman Carey: Thank you. Any other comments, questions? Commissioner Evans?

Commissioner Evans: This isn't right; we've got to have more comment. I'd like to hear from Curt Belts in regards to fire fighting. That's why Curt comes so that I can pick on him.

Curt Belts: Curt Belts, Fire Chief, Missoula Rural Fire District. As you recall, subdivision regulations require that each subdivision provide a water supply for fire fighting. The proximity of the fire station has nothing to do with the availability of water. I'm not sure where Ms. Smith gets her information on \$10,000 to \$15,000 for residential sprinklers, but that is not an accurate number, as you know, Commissioner, you didn't pay that much for yours.

Commissioner Evans: No, but I paid plenty.

Curt Belts: The choice is theirs, but there will be water provided.

Commissioner Carey: Thank you. Anybody else? Are we ready for a motion then?

Chairman Evans: Which one, Kristin or Tim, is the one that has a conditional road?

Tim Worley: That would be Condition #2.

Commissioner Evans made a motion that the Board of County Commissioners approve the variance requests from Article 3-2(8)(A)(ii) requiring boulevard sidewalks along South Avenue West; from Article 3-2(9)(A) requiring a concrete boulevard sidewalk along one side of Riding Ring Road; and from Article 3-2(7)(B) requiring curbs and gutters on South Avenue, all based on the findings of fact in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans made a motion that the Board of County Commissioners approve the JL Acres Subdivision based on the findings of fact and subject to the recommended conditions in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

JL Acres Subdivision Conditions of Approval:

1. The plat shall be revised to show a one-foot no-access strip along the South Avenue frontage of Lot 1 from Riding Ring Road to the eastern lot boundary prior to final plat approval. The covenants shall be amended to

include the following language prior to final plat approval: "Access to Lot 1 shall be limited to Riding Ring Road subject to approval of County Public Works." *Subdivision Regulations Article 3-2(1)(E) and OPG recommendation.*

2. A 30-foot Conditional Public Access Easement shall be shown along the entire southern boundary of the subdivision, to be reviewed and approved by County Public Works prior to final plat approval. The following statement shall appear on the plat and in the covenants and refer to the Conditional Public Access Easement prior to final plat approval: "This Conditional Public Access Easement is for the purpose of a public roadway as shown on the subdivision plat of JL Acres, conditioned upon said easement being used as public roadway in the event a connection is made or planned to be made east or west of this property. No structures shall be placed within said easement so as to interfere with the eventual use of the right-of-way as a public roadway." *Subdivision Regulations Article 3-2(6), County Public Works, and OPG recommendation.*
3. The name of the private cul-de-sac road shall be reviewed and approved by County Public Works, and the approved name shall appear on the plat prior to final plat approval. *County Public Works recommendation.*
4. A signage plan in conformance with the Manual on Uniform Traffic Control Devices, including provisions for temporary signage during construction, permanent signage, and cost of installation to be included in the security deposit, shall be reviewed and approved by County Public Works and the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations 3-2(2)(F) and County Public Works recommendation.*
5. Plans for installing curb/gutter and paving the private cul-de-sac to a 28 foot width from back-of-curb to back-of-curb, and a 5-foot concrete curbside sidewalk along the eastern side of the private cul-de-sac shall be reviewed and approved by County Public Works to final plat approval. *Subdivision Regulations Articles 3-2(3), 3-2(7), 3-2(1)(i)(vi), 3-2(8)(A)(ii) and OPG recommendation.*
6. Plans for installing curb/gutter and paving the private short court to a 20-foot width from back-of-curb to back-of-curb shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations Articles 3-2(3), 3-2(7), 3-2(1)(i)(vi) and OPG recommendation.*
7. Plans for private driveways on the individual subdivision lots shall be reviewed and approved by the Missoula Rural Fire District prior to building permit approval. *Subdivision Regulations Article 3-2(10)(E) and Missoula Rural Fire District recommendation.*
8. The subdivider shall ensure that lot owners have access to irrigation water, or have the water rights removed through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat and in the covenants subject to review and approval by the County Attorney's Office prior to final plat approval. *MCA 76-3-504(1)(j-k), Subdivision Regulations Article 4-1(13) and Missoula Irrigation District recommendation.*
9. The planned road crossing of the irrigation structure that parallels South Avenue shall be submitted to and approved by the Missoula Irrigation District prior to final plat approval. The planned Lot 5 driveway crossing of the structure shall be reviewed and approved prior to building permit approval for this lot. *Subdivision Regulations Article 3-6, MCA 85-7-1922, and Missoula Irrigation District recommendation.*
10. The developer shall provide a water supply for fire protection that produces 1000 GPM with a hydrant or, in lieu of a water supply with hydrant, the developer shall install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for a water supply and hydrant location shall be approved by Missoula Rural Fire District prior to final plat approval. If water supply for fire protection is to be provided by interior residential fire sprinklers then plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and the development covenants shall be amended to include the following prior to final plat approval:

"Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purpose of fire protection. Plans for installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to Building Permit approval. Failure to install residential fire sprinklers in any new home may subject the entire subdivision to the cost of installation of a shared water source for fire fighting purposes."

This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations 3-7(1) and Missoula Rural Fire District recommendation.*

11. The subdivider shall provide verification of approval from utility providers for location of utility easements subject to review and approval of County Public Works prior to final plat approval. *Subdivision Regulations Article 3-6 and County Public Works recommendation.*
12. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*
13. The following note shall appear on the face of the plat:

“Acceptance of a deed for a lot in this subdivision shall constitute: 1. Assent by the owners of the lots to waive the right to protest an RSID/SID affecting said property for the purpose of financing the design and construction of a public sewer benefiting said property; and 2. An agreement whereby the owner(s) shall connect to public sewer within 180 days after public sewer is installed and available in the public right of way adjacent to the property. This waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted herein. All documents of conveyance shall refer to and incorporate this waiver.” *Subdivision Regulations 3-1(1)(E)(6) and 3-7(3).*

14. The covenants for JL Acres shall be amended to include the following items, prior to final plat approval, and these sections of the covenants shall not be amended, deleted, modified, or added to without consent of the governing body:
 - a. Article II, Section 4 (“Amendment”) shall be amended to include water supply for firefighting, radon, address signage, Living with Wildlife, weed control, driveways and private roadway maintenance as sections that may not be amended without Governing Body approval.
 - b. The following sentence of Article II, Section 16 shall be amended as follows:

“Owners shall revegetate any ground disturbance ~~caused by construction or maintenance~~ with beneficial species at the first appropriate opportunity ~~after construction or maintenance is complete~~ after the disturbance occurs.”

- c. Article II shall be amended to include the following section:

Driveways. Plans for driveways in access of 150 feet must be approved by the Missoula Rural Fire District, and a turn around for fire apparatus must be incorporated at the terminus of the driveway. All driveways shall have a minimum 12 foot surface width, provide 20 feet unobstructed horizontal clearance, and 13 feet 6inches unobstructed vertical clearance the length of the drive. The surface of the driveway must be engineered to support the weight of the emergency equipment in all weather conditions.

- d. Article II, Section 15 of the covenants shall be replaced with the following:

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 white-tailed and mule deer, black bear, fox, raccoon, skunk, squirrels 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 FWP’s web site at 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.

- i. 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.
- ii. Gardens and fruit trees can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because ripe or rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- iii. Garbage should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, and other wildlife. If stored indoors, it is best not to set garbage cans out until the morning of garbage pickup; bring cans back indoors by the end of the day.
- iv. 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.
- v. Birdseed is an attractant to 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.
- vi. 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). Keeping pets confined also helps protect them from predatory wildlife.
- vii. Pet food should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as skunks and raccoons. When feeding pets 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.
- viii. 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.
- ix. Consider boundary fencing that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences or other wildlife-friendly designs.
- x. Compost piles can attract skunks and bears. 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.)
- xi. Residents of this subdivision must recognize that the subdivision is located about one-half mile from the Bitterroot River's associated sloughs and wetlands, where lawful waterfowl hunting and the associated discharge of shotguns could occur from a half-hour before sunrise through sunset, and the season can run from September into January.

- xii. These “living with wildlife” covenants cannot be altered or eliminated without consent of the governing body (County Commissioners).
Subdivision Regulations 3-1(1)(F); Subdivision Regulations Article 3-2(10)(E); Subdivision Regulations Article 3-1(10); and Fish, Wildlife & Parks recommendation.

Hearing: River Estates (7 lots) - off Rustic Road in Turah

Chairman Carey opened the hearing.

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

Thank you, for the record, my name is Jennie Dixon. This is a seven-lot major subdivision and what I'd like to do first, after I orient you to the site, is show some slides of the sight. The property is located about 15 miles east of Missoula out the interstate at the Turah Interchange. You take the interchange and then head back west on Rustic Road about a half a mile.

I have about 10 or 11 slides that will show you the proposed plat and also some photographs of the site to orient you to the layout of the land. I think you're going to be seeing a lot more slide shows, especially for major subdivisions and rezonings because anything that goes to Planning Board, the presentation--you have do everything on a slide show now. So it will probably come to you in this form as well. This is the entire acreage of the property, its 90 acres, as I said, out Interstate 90 and back Rustic Road. Next to the property is Turah Meadows, an old landfill that has been closed is now being used for composting. This is the Clark Fork River. This is a floodway area, proposed common area in the dark green. Lot 6 to be used for recreation and Lot 7 to be used as a study area, five residential lots up here accessing off a road called Duckshack Lane. The orange is an area that's generally being proposed as no-build. The yellow is buildable area and I'll be able to explain that much better once the slide show is over. I've got some plats on the wall that I can explain how the project has evolved in terms of no-build areas and recommended buildable areas.

That shows in a little more detail the subdivider's proposal for the five residential lots, which are approximately one, one and one-half acres. The largest lot, Lot #1 on the north, which has an existing home approximately right here in the middle of the lot, sitting on a bench facing out towards the west. This area down here is about 15 to 20 feet lower than this side of the property, a large meadow area out here, which I'll show you a photo of in just a moment. This line here is simply an easement for, I think it's Yellowstone Pipeline or power line easement--gas main, thank you. This is a proposed trail easement and trail off the end of Duckshack Lane to access the common area, as well as a driveway to access the proposed Lots 6 and 7, which are proposed as no-build lots. The highlighted areas in orange, the dark orange, are no-build for purposes of slopes here along this bench. You'll see the applicant has proposed this area be left open as a buildable area here and here, on Lots 2 and 3. This area encompasses both riparian area up here, as well as some floodplain, which would happen through a letter of map revision there and down here. Currently the floodplain by FEMA's designation currently that runs just in an arc right there, but by elevation would be modified to this area.

So this is a photo looking west, toward the subdivision. You can see the existing home right here. This is Rustic Road, a two-lane road, shoulders, both sides. This is looking from Rustic Road towards the south; the Clark Fork River is way here in the background. This is the beginning of that bench that you can see that the flatter area up on top, the drop-down to the meadow area and looking through that riparian area on the northern part of the property, the existing home that was some cut and fill occurred to place that home with a daylighted lower level. There you can see it a little bit better. This was a gray snowy day. This I think probably gives you the best sense of how far that drops and the grade of that slope, as well as that photo for that bench, has some vegetation, which as a whole system, this is the bench that's running north-south through those lots and at the north end of this bench is the riparian area. At the south end of the bench is an area in the floodplain that my assessment is that it could be considered riparian. Applicant's assessment is no, it's not. I think it's debatable and since its floodplain, we're not going to argue that point. It's no-build regardless of what it is, but I think that as a whole system this whole meadow area makes up a wildlife area and habitat area that not only is inaccessible because of slope, but is an important area to just stay out of. Later we'll get to variance requests to build in this slope, but staff is recommending that the applicant not build on these slopes since there is plenty of flat, buildable area for home construction. Just to jump ahead a bit, Planning Board's recommendation was kind of a compromise position to allow construction to a mid-level in this slope, not clear down to the bottom. I don't believe was ever the applicant's intention to come clear down to the bottom of the slope, even through their plat showed allowing that whole slope to be allowed for construction on Lots 2 and 3. They would like to daylight the homes ... at the top of

these slopes on Lots 2 and 3. That's that area on the south of the bench, the south end of that bench that is in the floodplain that I would think could be classified as riparian. The applicant does not consider as riparian, regardless provides wildlife habitat cover and forage area that is in a no-build area and it functions in the larger system, the eco-system here that is not proposed for construction. And that's looking from the top of the bench across that meadow that I've been discussing. I just started at one end of the property and made a loop. So we're going to get to the more buildable parts of the property as well, though I don't really have photos of the common area, wetland area, they're not proposing any construction there and it's all riparian and floodway and it was also somewhat difficult to access and didn't feel the need to take photos of that area.

Coming back up the bench and looking back on that upper portion of the bench, the existing home is here now on this side, looking towards Rustic Road in the background. This is the start of that landfill area that would be the buildable portion of the property, that Duckshack Lane would come down the side and access the lots here.

This is turning around from the last photo and looking south again down the proposed trail that I mentioned that comes off of Duckshack Lane. That shows you that while it is 10% for a distance greater than 50 feet, seems very navigable in terms of pedestrian access and even driveway access. We did recommend approval of the variance to allow that to remain at that grade at that location. That goes down and then jogs over to the left to then traverse across the top of the common area to then access down to Lots 6 and 7.

That's the composting facility to the east. This is the right-of-way for Rustic Road looking west. I apologize, these photos actually look much better on the computer than on the screen. That shows you there's quite a bit of width. The Rustic Road right-of-way is actually I believe part of the larger Interstate 90 right-of-way. So you have a large right-of-way in which Interstate 90 and Rustic Road are within--plus I believe another-- I can't recall the distance, but you have quite a ways from here to here within which the potential trail that I mentioned to you earlier this week maybe constructed as part of a larger project, looking at the right-of-way east rather than the west, which was the previous picture. It shows you there is a swale as was in the other photo, but there's certainly some flatter area as well in the right-of-way where a trail could be constructed.

This is the staff's recommendation. I showed you at the beginning of the slide show the subdivider's proposal and then this is the staff's recommendation that just keeps all the building to the east of the top of this bench, over in the yellow. I'm going to show you those actually on paper, which I think the conclusion of the slide show. Thank you.

The applicant for this project is River Enterprises and represented by Professional Consultants. The total acreage of the property is 90 acres. The wetland easement must be about I think about 84 acres. The easement's included in your packet and it sets some parameters for how that land can be used. Essentially, no development allowed. The applicant is requesting allowance for maintenance of the area, potential restoration, and enhancement of the area, study purposes, recreational use. Lots 6 and 7 as I've mentioned down on the southeastern end are to remain in the owner's possession not to be used or accessed by Lots 1 through 5. Lots 1 through 5 may access the common area however. This driveway is proposed to access all the way down to Lot 7 via an existing dirt track road.

I've gone over the variances with you earlier in the week and explained that staff is essentially supporting all of the requested variances but for two, which we have recommended conditional approval on, which means we're supporting a portion of two variance requests, but not completely endorsing the two variance requests. Real quickly, let me explain the four that we are recommending approval of. One, that Duckshack Lane not be required to have curb and gutter. Two, that that trail coming off the end of Duckshack Lane is proposed to be paved I believe to--I'm sorry graveled to 12 feet, but then after that as I said, just the dirt road. That's a variance request that we're supporting. Also, I mentioned it's over 10% in this area and that that's the third variance we're supporting. The fourth one is that Rustic Road is required to be 32 feet and it's 23 to 24 feet. So those are the four variance requests that we are supporting. That's shown in your motions and your Request for Commission Action that way.

Now the two variances that we are recommending conditional approval of are four and five. Let me talk about the fifth one first, which is the pedestrian connection. A rural subdivision outside of the urban growth area on private roads, which Duckshack Lane is proposed to be a private road, is required to provide internal pedestrian connections, as well as connections to other neighborhoods. They are providing an internal pedestrian connection to their common area. There really is no connection to be made to the land--the composting facility nor to this parcel, however, two agencies, the Health Department and County Parks, commented that there is a

proposed trail system along Rustic Road as part of a larger trail system that, I think, is partially funded through the EPA. It was recommended that this subdivider install a walkway as part of the subdivision requirement with this subdivision because the subdivision regulations require pedestrian walkways. So we recommended that okay, you don't need to do your ped walkway on Duckshack Lane, but we're going to ask that you do that along Rustic Road.

The second variance that we have recommended conditional approval on has to do with this building on slopes greater than 25%. Let me preface that with the description of an action that you recently took on your subdivision regulations in October, you amended--adopted amended regulations in October that deleted hillside regulations. You did keep in a section that states that lands over 25% are considered hazardous land and if developers want to build on them, they must supply a geotechnical report to demonstrate that construction on over 25% is safe and that it can practically and feasibility be accomplished. This subdivision has not been submitted under the new regulations; it was submitted under the old regulations, so the hillside regulations apply here, thus the request for the variance on Lots 2 and 3 to allow construction on those two areas of that bench. When I met with the applicant, I was open to the idea because I recognized that there are certain situations where construction on lands over 25% can occur with all practical construction techniques and without having much impact. After the site visit and viewing the context in which this property sits, it was my assessment that this is a situation where there was plenty of buildable area outside of--off the slopes and outside of what appeared to be--you know, not a pristine wildlife area, but a wildlife area nonetheless and there are other options. This home was constructed perhaps on a river terrace slope that was an original part of the bench or the slope that it's on may have been part of the cut and fill that resulted from the construction. It's hard to say, but that's there and staff is recommending that that construction, you know, if that house is removed for whatever reason, can be rebuilt. We're suggesting that any future homes stay away from this area because this really functions as the slide showed, as quite a large meadow area that wildlife do use and to intrude into that with homes just doesn't seem, in this case, to be a reasonable proposal. That is in recognition of the deletion of the hillside regs. So our reason for recommending that is not because its hillside, it's more because of the natural environment in which it sits. So whether or not this was reviewed under old regs or new regs, that would still be our recommendation.

The Planning Board wanted to acknowledge that, but took the compromise position and said, well, we'll let you go to the 33.05 elevation on this lot, a 33.04 elevation on this lot, and a 33 elevation on this lot, which gives them a portion of that bench on these two lots to build on. It's not exactly what developer wanted. It gives them towards their goal and they have acknowledged that they don't know if a future lot purchaser will build a home there or not, but they want that lot purchaser to have the option. They have presented a proposal, which I think I'm going to leave for the applicant to explain a little bit better. I haven't had a whole lot of time to digest that, but that's up there for them to present in a little more detail.

So I've outlined the six variances, staff recommended approval of the subdivision subject to, I believe it was 14 conditions because the numbering got a little bit off, yeah 14 conditions. You'll see in the Request for Commission Action how the Planning Board modified the conditions of approval. Let me go over the conditions with you here. The Planning Board supported the staff recommendations to require the subdivider to install No Parking signs on Duckshack Lane because Duckshack Lane is proposed to be 24 feet wide, which is less than the width to allow for parking and emergency access. Also, a very standard condition of the street sign plan and that driveway plans be reviewed and approved by Missoula Rural Fire. The Planning Board did not agree with the staff's recommendation to install that ped walkway on Rustic Road, to provide a paved ped walkway and instead required the subdivider to only grade the pathway there. The fifth condition is to provide residential sprinklers or hydrants or a fire protection system that meets MRFD's standards and that MRFD approves and that addresses are provided that meets MRFD's approval as well.

Condition #7 requires a riparian resource management plan that allows for limited vehicular access to the common area and Lots 6 and 7 to allow for research, maintenance, and restoration activities. That's a revision that the Planning Board suggested that staff certainly supports to allow for those activities that weren't clearly explained in the proposal that we do want to allow for in that area. Condition #8 is to simply include a definition of what it means for no-build and no-alteration or a restricted alteration in that area. Condition #9 is simply the text version of what the Planning Board did with these elevations and no-build zones. They removed Condition #10, which staff actually supports removal of Condition #10. I don't know if you can see it, staff's [inaudible, spoke without mic]. Yes, we had originally recommended no-build around the home, the orange, but after the Planning Board and discussion with the applicant and the Commissioners, we would support also the deletion of Condition #10. Then 11 through 14 are just standard weed and covenants conditions that I won't take any further time to explain unless you have questions. With that, I will conclude my staff report this afternoon.

Chairman Carey: Thank you Jennie, very good. Would the applicant's representative care to speak to this?

Dick Ainsworth: For the record, my name's Dick Ainsworth. I'm with PCI, sort of. I'm on loan. I'm here representing the applicant. I'd like to thank Jennie for all of her work on this thing. It's kind of a unique project and we've sort of been flogging on it for a long time, but I think we've reached a pretty workable solution here for the most part.

I would like to address the Planning Board's recommendations, which we support. I think all of, perhaps with a little bit of clarification of a couple of things. I think the key items here that we need to talk about and the developers on this property are here and may address some of these as well. The building on the slope over 25% is an issue that we spent a lot of time on and I think that probably our original proposal that's over here that shows us building clear to the toe of that steeper slope is not really what we had in mind. What we wanted to be able to do was to do something similar to what this existing house did. That was built years ago and, as the slide showed, was built with a daylight basement. We discussed that at the Planning Board and the Planning Board was unanimously in agreement with us that it made some sense to allow people to build a daylight basement. They arrived at the elevations that are in the proposed Condition #4 here and those make sense to us and I think would work just fine. I have a little sketch that I showed you at the Planning Status meeting that just shows a cross section through Lots 2 and 3 that really shows what we want to be able to do. I think to say that we're building on that 25% slope is a bit of a misnomer. What we want to be able to do is excavate away a portion of the top of that slope that would enable somebody to put a daylight basement, a house with a daylight basement on it. I think that the requirement that you get a geotechnical engineer's report certainly fits if you're trying to build a house on this slope and set it out in the slope. We want to excavate a little bit so that we can build the house basically up on the flat, but cut out a portion of that slope, if you will, in front of it, so that you could have a daylight basement. Planning Board thought that made sense, the developers are certainly agreeable with the elevations that the Planning Board came up with. Those were actually I think developed by Don MacArthur, who, as you know, is an architect and he decided how much depth you'd need for a basement and what made sense. So we really don't want to build on those 25% slopes, we want to be able to disturb a portion of them up at the top that would enable a daylight basement. I think the way that this is worded enables us to do that. There's a little bit of confusion perhaps or maybe disagreement, I'm not sure, between Jennie and I as to--the way we had proposed it here, what we had done was come in the setback distance from the sideyard line and then just draw a straight line. I think if you're going to do that, you're not going to just do this, you'd want to slope it back a little bit. This proposal that we have over here I believe reflects what the Planning Board intended to do and it's probably a little bit heard to see at that distance. But basically across Lots 2 and 3, we've gone to the elevation the Planning Board suggested, but then instead of a vertical line that would go up the bank like is shown over here, we've gone at an angle up to the lot line. It would permit us to do basically what I've shown in that little cross-section sketch that I've shown you. Then basically across Lot 1, we've gone right across the top of where they had excavated previously and just said above that line if somebody wanted to add onto that house or rebuild that house, that they ought to be able to do that and they wouldn't be disturbing anymore of the 25% bank than was already disturbed. I think from the slide that Jennie showed you, you could see that this house was built here. It didn't encroach down into this wildlife area. It didn't encroach down into the riparian area and we think these two lots, the owners those at least, should have an opportunity to do that. As Jennie said, they may not, someone may buy it and say they'd rather build a house up on flat and stay away from that, but we think it's an opportunity that they should be allowed to do. So we're in support of that Condition 4 as recommended by the Planning Board. Again, I think this represents at least what I think the Planning Board intended this proposal over here, which is a little bit different than the staff's proposal.

Chairman Carey: Condition #9 you mean?

Dick Ainsworth: Well actually Variance #4 and Condition #9. Yes, now let me talk a little bit about the no-build, no-alteration zone. We've got--and we're suggesting on our proposal up here that virtually everything below that line that I've just talked about where they could build over to putting a daylight basement, everything down there should be no-build, no-alteration. Some of it's riparian area, some of it's floodplain, some of it slopes over 25%, but we think it all--we don't have any problem with it all being no-build, no-alteration, below that elevation we just talked about. Again, some if it is riparian and some of it isn't, this area over here is not floodplain and is not riparian, but as Jennie said you really can't get--you can walk down the hill to get to it, but you can't drive down to it. We don't want anybody down there anyway, so we're suggesting everything below that contour we just talked about would be no-build, no-alteration.

This whole area that is comprised of a common area in Lot 6 and 7 is all in the floodplain. It's an area that's all subject to a federal wetland easement that controls a lot of what we've done there. We had incorrectly, in our original submittal in our covenants, called that (and in our plat) called that a no-build, no-alteration. We suggested, or I did to Jennie I think after the Planning Board or maybe at the Planning Board, I don't remember, that we call this area down here a no-build, restricted alteration zone. Then we spell out in the covenants in detail what those permitted alterations would be down there. Those are primarily to do with, and I think Greg Kenneth [phonetic], one of the owners will address those and can address a little better than I can. They would be things that would be to maintain this wetland area down here and do some improvements to it and weed control and some of those sorts of things, but not call it no-alteration, call it restricted alteration. So in this plan over here that I've submitted here, I've changed the designation on this legend some and we're calling this no-build, no-alteration. We're proposing to call this restricted alteration. Then we need to word out in the way Jennie's written her staff report it permits us to do that. We need to work out the specifics of the language of the riparian management plan to permit these things and of the no-build, restricted alteration zone to permit those things. I think in #9, maybe not #9, #9 really addresses the no-build, no-alteration zone that's up here in Lots 1 through 5. Somewhere we need to get the term restricted alteration zoning here. Maybe Jennie has a place to put it. I think she's on board with that, but I don't see it in here and I think we need to address that, if everybody's comfortable with that.

One other clarification that I guess I would like to make with this is, when we did our riparian plan that's in the submittal, we did that on this area up here. We didn't do an entire riparian resource management study and plan on this. This is already subject to the federal wetland easement, already subject to a lot of restrictions. Our riparian plan covers this area up here and when Jennie, in Condition #7a, it says to accurately reflect all areas of riparian resource on the property, I think she was, I think, she was really talking about these right in here. She mentioned to you that she thought this was riparian area and we didn't. She mentioned that to me at the Planning Board and I talked to the fellow, Bill Burnett, who does all our riparian plans, and Bill went back through his notes and looked at his photos. Bill doesn't really think this is a riparian area. Again--and Jennie said she didn't care really, and we don't either. We're going to call all of this no-build, no-alteration. I don't want this to be read to say that all this area is part of the riparian management plan, because that was never our intention. I don't think it's Jennie's intention either, but I'm not sure. That's one clarification I wanted to make in there.

The only other thing I might address briefly is the trail out along Rustic Road. When we made our submittal, we were not aware of the proposal that was--and it may have even come after we made the submittal. It came certainly after we started the submittal--for the trail to be built out of Bonner that comes out and loops under--and you're probably well familiar with it. We weren't aware of that, so we had asked for a variance from that because there was no trail out there, it wasn't going to anywhere, from anywhere. During the review of it, the Health Department addressed that. Peter Nielsen's here I think. Peter Nielsen addressed that in his comments on the subdivision. Peter's here I see. So they were proposing that we actually pave a trail along here. We, at the Planning Board meeting, discussed that. That concerns us I guess a little bit. First of all, there's probably, I can't remember, about four miles of trail out there being built by some sort of funding other than the private property owners. To require this private property owner to pay for this stretch of trail here, when everybody else is getting there's paid for by someone else seemed unreasonable. We don't mind contributing to that effort and so we suggested perhaps that we could, when we're out here building this road, if they've decided where they want to put this trail, and I understand they've let a contract to have that studied and determined where it wants to be. But if they know where it is, we would grade that, but we wouldn't pave it. Then it could be paved as part of their overall trail plan when they are out there paving it. That doesn't put the whole burden of that on this developer. This piece of trail, a paved trail, along there, there's about a \$10,000 bill and we've only got five lots to spread this against. So it's a couple thousand dollar hit on them and we think it's sort of an unfair requirement against this one property owner on about a four-mile trail out there. We gave that pitch to the Planning Board, they thought that made sense. Actually, there were a couple of folks at that meeting from the Bonner/Milltown Community Council, personally there. I don't think they represented the group as a whole, but they both supported that position. So that's how we got there and we support what the Planning Board has recommended here. Staff did not--and the Planning Board talked about the variance we've asked for a trail along here and staff supported that. Our reasoning behind that is really two-fold. First of all, we've got only five lots here. We've got a private road, but it's County standard, 24-foot wide paved road. We feel that those folks in here can easily walk on the shoulder of that 24-foot wide paved road to get down here to the common area or to get out to there if there is a trail out here and it doesn't cause a hazard because it's not a high traffic road. It's only serving five lots. Secondly, they're concerned that if there's a trail along Rustic Road and it's a public trail and then here's at trail running right down the side of this road, that people walking by here will assume that this is a public trail and they'll want to get down here and access this area, which is private. This is not public and they don't want the public down there.

So that's another reason that we don't feel that requiring a walkway along that road makes a lot of sense. We do support the staff and the Planning Board's recommendation on that to grant that variance. With that, I'll sit down and be quiet.

Commissioner Evans: Before you do, I have some questions, if you don't mind. I don't think I've ever seen anything that mentioned a federal easement.

Dick Ainsworth: It's in our submittal packet.

Commissioner Evans: I know, but I'd like you to explain to me how that happens, what the restrictions are, why it was done.

Dick Ainsworth: I'll let Greg Kenneth do that. He's much more familiar with it than I am.

Commissioner Evans: And I'd also like to know how does anybody manage to build on a former dump? What did you have to do?

Dick Ainsworth: This wasn't the former dump. The dump kind of started at the edge of this and went east...

Commissioner Evans: So there's no [inaudible]...

Dick Ainsworth: ...no, this is native soil. We've done a lot of soils tests there. There's no old dump or garbage. The dump started kind of here and it took in this area right in here, but we've off of it entirely.

Commissioner Evans: Okay, I just wondered how you [inaudible].

Dick Ainsworth: We probably wouldn't, but we're not.

Gregory Kenneth: Good afternoon, for the record my name is Gregory Kenneth. To first answer Barbara's question. While I'm a minority owner of River Enterprises, formerly Clark Fork Compost, we've had this for about 10 or 11 years. At one point, we looked at the conservation values [inaudible]. We were working with the Natural Resource Conservation Service under the federal wetland reserve program. We made several applications to get a conservation easement in perpetuity. We had a chance of a 10-year, 30-year, or perpetuity easement, which allows us to work with the NRCS in doing any kind of--in keeping it as a conservation property. Then any kind of restoration, so wildlife fencing, if we want to improve the wetland habitat, it was an old over-grazed pasture/hay bottom. So we haven't had any cattle on that in 11 years. Then there's a spring creek on it that we, with some FERC money, we probably pulled out 50 to 75 car bodies and restored a spawning habitat to a spring creek/

Commissioner Evans: What is FERC money?

Gregory Kenneth: Federal Energy Regulatory...

Commissioner Evans: Thank you.

Gregory Kenneth: Sorry about that. So does that answer your question about the easement?

Commissioner Evans: Yes.

Gregory Kenneth: I would like to speak to three different items. One is the motorized access discussed in 7d to allow limited vehicular access to the common area, 6 and 7. We would like to make sure that besides the three mentioned reasons, research, maintenance, and restoration, that we also have some folks that we want to make sure that's its okay to do it for recreation purposes as well.

Commissioner Evans: How would you want that worded?

Gregory Kenneth: Just add restoration in with research, maintenance, and restoration activities.

Unidentified Speaker: Recreation.

Gregory Kenneth: Recreation. The second item I want to talk to you about, the no-build, no-alteration zone and we talked with Jennie in the Planning Board because the bottom, it's the actual functions and values of that riparian area, wetland easement, it can be improved. We want the ability to, with the NRCS, improve some of that, and do some restoration activities down there. So when it says no-alteration, we'd like to clarify that or remove that so that we can conduct restoration activities. We suggest a redefinition of--yeah and restricted, what Dick has proposed, is fine.

The third item I wanted to talk about was the daylight basements. Some folks from the Bonner Redevelopment Agency last time brought up the point about the energy efficiency of building into a hill slope. It's not like we're building on a hill slope; we're building at the top of a bench. Someone mentioned, and we've thought about, a daylight basement. It's the perfect landscape for a daylight basement. I know the Office of Planning and Grants had some questions about impacts to wildlife and we asked Mike Hillis [phonetic], who's a Senior Wildlife Biologist with our company to prepare an analysis of the subdivision on wildlife resources. Did you get a copy of that?

Jennie Dixon: That should be in your packet. I also brought the extras that I gave to Dick that have the color attachments if you'd like to distribute those.

Gregory Kenneth: Okay, and what Mike said was that due to the combination of high value protected floodplain terraces, protections by the conservation easement, the small percentage of lands being developed for residences, the concentrated nature of the development, the degree to which the excavation, including the construction of daylight basements, can be fully re-vegetated and invasive weeds can be controlled. The River Estates will have no significant adverse impacts on wildlife. Our wildlife biologist asked him if he thought there would be a significant--an impact to the species there, and he's got a two-page, probably preface that talks about those. So we don't think that the daylight basements are going to deleteriously impact wildlife habitat or wildlife populations. With that, that's all I wanted to speak to.

Commissioner Evans: I'd like to tell me what you're going to study.

Gregory Kenneth: Oh, we--the four-acre plot down there, we do a lot of vegetation work all over the western US for Forest Service and the BLM. Everybody studies plots differently. Everybody has, you know, plot layouts and whether they're [inaudible] plots, I mean, very precise methods for reading plots. We have crews that work all over the west. So we thought we'd have some permanent vegetation plots that we could train our crews and then working with the Forest Service and things, we could take their crews down to have these permanently established vegetation plots whether it's habitat structure, amount of Kentucky Bluegrass or Orchard Grass. It would be an interesting thing to have close by.

Commissioner Evans: I would like Peter to come to the podium if he would. I'm confused, Peter, on Rustic Road. I believe we've had comments from the Milltown/Bonner folks concerned about the traffic that will be on Rustic Road as a haul road. Is that correct or is my memory wrong?

Peter Nielsen: Your memory is correct. We have had--there's been a great deal of concern about traffic along Rustic Road, including traffic associated with the Superfund Cleanup, even existing levels of traffic and pedestrian safety.

Chairman Carey: Peter, would you identify yourself for the record?

Peter Nielsen: Yes, Peter Nielsen, Missoula City/County Health Department. I actually had prepared comments. Nothing fancy, but there's a few things I'd like to say, if that answers your question?

Commissioner Evans: Yes, thank you.

Peter Nielsen: I'm representing the Missoula City/County Health Department today. We are in opposition to the requested variance to internal walkways for this particular subdivision. We feel that pedestrian walkways should be viewed and are as an important aspect of infrastructure that should be provided whenever possible in all new development. We feel that pedestrian walkways are important for many reasons including public safety, public health, environmental quality. They also increase the livability and value of properties in new development.

With respect to public safety, we touched on that just briefly, in response to your question. This is an area of Rustic Road, 70 mile an hour speed limit out there where people are concerned about pedestrian safety, even

with existing levels of traffic. It's used as a haul road now for materials that go from the mill to the compost facility. The wood waste is being hauled there frequently now. It'll be a haul road used for bringing materials in to the Superfund Site for construction. It won't be hauling sediments out, because that will be done by rail. Public safety is an important consideration in walkways. Whenever you can get pedestrians separated from vehicle traffic, you can eliminate potential accidents. The more separation, the better separation you can provide, the better safety you can provide for people who live there. That is important for people in this subdivision. Whether they're going next door to visit each other or whether they're going down to the street to connect to our proposed pedestrian trail to go to the Turah Meadows Subdivision down the way, which did install internal pedestrian walkways, or whether somebody just wants to send their kid out to visit their neighbor friend in the neighboring subdivision and wants to know that they have a safety way to get their on their bike. So public safety is an important consideration.

Public health is another important reason to provide pedestrian walkways whenever possible in all new development. As you probably all have heard as a nation, as a culture, we're all becoming increasingly large in our midsections. Obesity is an increasing concern in this country with a variety of health effects associated with that including heart disease, hypertension, diabetes, and you name it. So whenever we can provide a convenient means for people to get off the couch and get out and exercise, that's a good thing. It's a good thing for people and whenever we put these in, whenever these pedestrian walkways have been installed, you see people using them. They're very--they do get used and it gives people a way to get out and exercise and get to know your neighbors even. It's not a bad thing.

Pedestrian walkways also benefit environmental quality by getting people out of their cars, at least occasionally and reducing vehicle emissions that affect both air quality and water quality. I think, personally at least, that it increases the livability of communities. I live in a part of town that, for the most part, has pedestrian walkways. I live near Bonner Park here in Missoula. Very popular, very well used and makes it a very livable part of our community. I think providing this sort of thing up front increases the value of homes in these developments and the livability for people who live there. We are learning, I think, Tim Elsea is here with Public Works and Tim and I are going through a real learning experience right now trying to bring pedestrian trails into this area where they were not originally provided. It's not easy to go back in and put them back in after the fact. If you make a decision today to not require pedestrian walkways, chances are by the time we're all dead and gone, they still won't have them. There are places even in the neighborhood I live in near Bonner Park that lack pedestrian sidewalks. When we're out walking, when I've walked the dogs twice a day, you get to that section where there's no sidewalk and you're on the road. You're on the road, you're out there next to parked cars, and it's inherently more hazardous. I have had a few close calls. I haven't had an accident fortunately, but I think we're learning how tough it is to go back in and do it after the fact. It's better to do it up front.

The re-development group, the Milltown Redevelopment Group, which was appointed by the County Commissioners about three and a half, four years ago to look at the future for this area prepared a conceptual redevelopment plan, had public input on that plan, you guys had a public hearing on it, and ultimately adopted that plan back in 2005. It has a lot of stuff in it, but there's one little section I'd like to read from here relating to roads and traffic and land use. It says that, "Restoration and park development will likely increase visitor traffic," which is already heavy due to Highway 200, which bisects Milltown and Bonner, "...with increased traffic comes a potential,"--well, skip that. "The group is concerned about inadequate pedestrian crossings." This was reflected in the public comment as well. Recommendations included, "We recommend evaluating pedestrian crossing improvements for West Riverside and Milltown," which we have done. "In addition, sidewalks and pedestrian crosswalks should be included in all new development and should be further evaluated in existing neighborhoods." As Dick pointed out, trail plans have been proposed. They first were included in that 2005 conceptual redevelopment plan. The County has obtained funding through Senate Baucus through the Federal Transportation Bill and through the United States Environmental Protection Agency to fund a network of trails in this area. This is the first project that's been initiated by the County. It's a 5.9-mile loop trail starting at Bonner School, going out to the Turah interchange and back along Rustic Road, making a loop back to Highway 210. So funding is in place, the design has been initiated; HRD is the consultant that's selected for that, planning to have a public meeting on those designs in January and attempt to construct much or all of this project next year.

The trail most certainly will be on the southside of the road in this location. The Commissioners have already made affirmation of that or determination of that in a letter that you sent to concerned citizens in that area several weeks ago, maybe a couple months ago. That's where it would be is on the southside of the road where this subdivision is. Now we don't know exactly where to tell Dick Ainsworth to put the trail now and I recognize that we are passing up our opportunity to tell Dick Ainsworth where to put it, but--I couldn't resist. Frankly, we

appreciate the offer to grade the trail. Any assistance would be appreciated. You are correct though, none of the other landowners are being assessed a fee to construct this trail. We appreciate your cooperation and your willingness to do that. It's more important from our department's perspective to get the internal connections and we'll take care of the mail trail, and then we have the whole package.

Commissioner Evans: Since--I totally agree that having one developer have to pay to do that when nobody else pays for it, but considering our concern, EPA's concern, everyone's concern, people from Bonner and Milltown that have expressed their concern, I would like to know if it's possible to not make the trail be put in immediately, but have a waiver of right to do it or a need to do it and to work with EPA to see if, since this is part of the Hall Road that's connected with the dam removal, if there would be some funding to help to pay for a paved walkway a little way off the road so that it adds to safety, but it doesn't put the entire burden on this developer. Would you be willing to work with EPA to--or whoever to see if it's possible to get some shared funding here?

Peter Nielsen: We can certainly ask. It's been a pretty good task to try to put the funding together for this so far and hold all of it together with all the matching funds and get it put together. I suspect that EPA would share our concern about connecting trails, but then it opens up a--I mean where do you start and where do you stop on that. There's already a lot of existing development out there, Piltsville [phonetic], Bonner Pines, Turah Meadows, and other subdivisions. I'm not sure if they would do it on this one.

Commissioner Evans: I'm not suggesting that we go back. I'm suggesting that [inaudible, spoke over each other] go forth, that anything else that is involved in providing safety due to the removal of the dam, that they might be willing to participate. I really believe that John Wardell would do whatever he can to help us on that issue.

Peter Nielsen: It's possible.

Chairman Carey: Tim Elsea, would you care to...?

Tim Elsea: Yes, Commissioners, if I'm understanding you right Commissioner Evans, that trail is already in the process to be paid for out of the EPA funds and the Federal Earmark to go past this subdivision. Missoula County Public Works also agrees that that requirement for this developer to participate in that [inaudible] because of the project that is coming down the road. However, we also agree with the Health Department that the interior paths should be required on this subdivision. It is a five-lot subdivision. The previous subdivision that came through today was a five-lot subdivision and they're putting in an interior walkway. There are several other five-lot subdivisions or less that have been required to have interior pathways. With the proposal to build a six-mile loop around here, interior pathways for subdivisions that are going to be connecting into this loop that we'll be constructing I think are going to be very important, not only for this subdivision but for other subdivisions in the future.

Chairman Carey: Well, maybe, since I agree with both of you almost all the time, I'm in disagreement this time, at least for now because it seems to me that the proposed interior trail will run alongside a private road, then a private trail, into private property. I don't understand how we would do that. Why would we do that? We're basically inviting the public into private property on a private trail.

Gregory Kenneth: It's a pedestrian walkway, just like a walkway is around Bonner Park. People walk in my front yard every day on their way to the band concerts in the summer.

Chairman Carey: But, that's my point, they're accessing a public event on a public road or a public sidewalk.

Mike Sehestedt: In a public road right-of-way.

Tim Elsea: This loop will pass several other private roadways. This is not the only one and there will be the opportunity to walk down any of those private roads or driveways. In my mind this is no different than just requiring this developer to comply with the subdivision regulations I don't think is necessarily in itself is inviting trespass. There can certainly be trespass signs, but this is providing for the walking of the interior residents [inaudible] to access the public path in the public right-of-way.

Chairman Carey: Does the public have a right to access a private...?

Mike Sehestedt: Here's what we've got. These will not be--the public walkway is out in the Rustic Road right-of-way. We're imposing requirements as to what the private road is going to look like even though it will be a private road used and legally accessible only by property owners, their guests, and invitees. What I'm hearing Tim and Peter say is that we ought to have a walkway, subject to the same limitations the public trail system. It would be a private walkway, accessible only--under law, accessible only to property owners, their guests, and invitees. The practice issue is the road will surely be signed private road and I would guess if you required a walkway, it would be appropriate to sign it the same way. Who has the right to use it is one set of questions. The second question after you've resolved that is whether or not it should be required at all. We're just talking the interior walkways serving these five lots.

Commissioner Evans: Now, are we talking a paved walkway, a gravel walkway, what are we talking about?

Dick Ainsworth: Dick Ainsworth again. We had, in answer to your question Barbara, we had asked for a variance so we weren't proposing any kind of a walkway and staff had supported that, so they weren't proposing anything. Really--and my clients could speak to this maybe better than I can, but they're concern with that internal walkway is not the cost, which quite often with developer's it is, and there will be a cost, whether it's gravel or paved. But it's that it will invite people into that big lower private common area that they don't want the public into. It's fine to say the road will be signed private, you can sign the walkway private, but if...

Chairman Carey: You have with experience with signs.

Dick Ainsworth: Yeah, I know how signs work. What's going to happen, and I know it and you know it, if people are walking down that trail and they say, gee, there's a nice trail, they're going to complete--if they even see it, they'll ignore that private sign. They'll walk down there and they'll be fighting public--they may anyway, because people may walk down the street, down the road because they'll know the river's down there, the river bottoms down there. But their concern is they're inviting the public into a private area where they don't want the public and that's really their concern.

Commissioner Evans: And is part of that is due to the fact that it's a federal easement and we don't want people down there because of that?

Dick Ainsworth: That's part of it, yeah.

Mike Sehestedt: But it basically, Barbara, it's like every other common area.

Commissioner Evans: Yeah, right.

Mike Sehestedt: It's not a publicly accessible ...

Dick Ainsworth: And the river's down there, it's an attraction. There's no question about it.

Peter Nielsen: Just in response to what Dick had to say and I certainly understand the concern. As he has suggested people would be walking on the road anyway and if they're going to walk down that road down to the common area, you've got the same problem. So really what we're talking about here is back to our fundamental position is that we should provide internal walkways for new developments so that people have a way to get out and walk safely. And it's for those five homes that are there and for people who are in neighboring subdivisions that might want to come visit those five homes. It's not really an issue about whether we provide public access to the river or not, that's a whole other separate issue. People are going to walk down that road to get to the river anyway. You'll probably have the same problem whether or not you put pedestrian walkway in here.

As far as whether it should be gravel or paved, both would probably work. I've seen both done. Paved trails tend to be more attractive unless maintenance, then gravel [inaudible] higher cost.

Commissioner Evans: So maybe a compromise position is that if we require a trail or a walkway that we only require it to be gravel path because I think he's right, it is less enticing than a nice paved path, which I think is a lot more inviting than a gravel walkway.

Chairman Carey: Well, I still think it would be a basic invitation to head on down to the river. Duckshack Lane is supposed to be 24-feet wide?

Jennie Dixon: Yes.

Chairman Carey: And see for me, Peter, somebody in Lot 1 could walk safely to Lot 5 or ride a bike or tricycle on a 24-foot wide lane that that's short. I mean I just see it as a safety issue.

Jennie Dixon: Tim, go ahead.

Tim Elsea: Well Commissioner, in Dale Acres subdivision is a 24-foot wide road, but they proposed to have sideway next to it in Cora Court subdivision, it's a 24-foot wide road, but they provided a walkway. We've got several other subdivisions with 24-foot wide roads where they provide walkways. This is a subdivision regulation and I do believe that it's a good requirement. Like Peter mentioned before, if you don't require it with this subdivision now, we will [inaudible] our guys out there paving a walkway whether it's needed or not.

Commissioner Evans: We will what?

Tim Elsea: [Inaudible] our grades without it being there because getting it in the future is incredibly difficult.

Jennie Dixon: A couple of things, the subdivision regulation requirement is to provide internal pedestrian connections to bus stops and connections to other neighborhoods. So there is no specific requirement for a sidewalk along Duckshack Lane. The reason for the variance in this case was the subdivider's proposal to not install a walkway along Rustic Road. It was our assessment that a variance was not needed because of Duckshack Lane, because they were providing the internal connection off of the end of Duckshack Lane to the common area that--and it's a very subjective standard. It's very hard to assess that and we have to do that every day. So I can see how you can arrive at different conclusions on this.

The reason staff recommended to not install ped walkways along Duckshack Lane, first of all, we did have a letter written by a different staff person at Public Works that felt that they weren't essential in this case. We agreed because of the large lots, one to one and one-half acres and that this road is not going to go anywhere. I mean this is a conservation easement on 85 acres. Twenty-four foot wide road here meets the standard. Other subdivisions with 24-foot wide roads might have smaller lots, that may be a difference perhaps, but we didn't feel it was essential. There are certainly differing opinions in other agencies obviously and so I just want you to have the benefit of the knowledge of why we did not recommend that.

Dick Ainsworth: Dick Ainsworth again, just a couple of comments and Jennie touched on a couple of the points I was going to make. I don't disagree with Peter and Tim and the staff and you folks in general that pedestrian facilities in subdivisions are good and we ought to put them in and we ought to put them in when we're doing a subdivision, no question about it. You can't compare this to the Bonner Park area. We're talking two different worlds. I grew up a half a block from Bonner Park and I've walked on all the sidewalks and I'm sure Peter has and they're great and they ought to be there. This is unique in several ways and Jennie touched on it. This road is--and one of the reasons that they're often required in subdivisions is for connectivity and Jennie mentioned that out of the regulations. It is connectible to Rustic Road, but this road is not going anywhere. That's all the road that's ever going to be there. There's never going to be another subdivision on beyond it that might want a walkway to go to it. The property to the east of it is an old dump that's been reclaimed. It's not going to get subdivided, there's not going to be houses on the other side of that lot. So we've got five lots here that are going to be served by this road and potential walkway. It is a 24-foot wide paved County road. One of the conditions in here is that it be signed for no parking. They're going to have a full 24-foot width there and you indicated Commissioner Carey that that's plenty of room and we felt that all along, for people to be able to walk along the side of that between Lot 1 and 5 or between Lot 5 and Rustic Road. We just think it's a unique situation here. Again, I agree fully that pedestrian facilities in subdivisions are something that we ought to require and typically do. This is an unusual--and again the biggest concern of the clients and the developers is inviting access into that lower private area where they really don't want people to be. Thank you.

Commissioner Evans: What do you want?

Tim Elsea: If I can make a clarification, first of all, from a Public Works standpoint we would recommend removing Condition 4 under any circumstance. Second of all...

Chairman Carey: Excuse me, Tim, even with the rewording that the Planning Board did?

Tim Elsea: Yes.

Chairman Carey: And why's that?

Tim Elsea: Because we don't feel--this path, if it's going to be constructed, is going to be constructed for the benefit of many property owners out there and we don't feel that this developer should have to pay.

Chairman Carey: Oh, right, I'm sorry, I was on a different--I was on Variance 4. Agreed.

Commissioner Evans: Could we put in something that there will be a pedestrian pathway along Rustic Road that is already in the works, and I don't care how this is worded, and that the subdivider does not have to contribute to it because funding is provided elsewhere?

Mike Sehestedt: I don't think so Barbara. Somebody comes in and says we didn't require these guys to do a walkway along their street. The record of this hearing indicates the basis for it.

Commissioner Evans: If somebody reads the hearing.

Mike Sehestedt: Well, if they don't, we can refer them. I mean we have a ready response.

Commissioner Evans: I don't have a problem with that as long as it, the path, gets in because I am concerned about the safety also.

Tim Elsea: As a second point, as a minimum we would like that in the future, prior to this road ever becoming a public easement or being maintained by the public, that there be a pathway to current standards be placed along this road.

Commissioner Evans: You've lost me.

Mike Sehestedt: Basically, what he's saying is if you don't require a pathway now, he would like that condition modified to say that in the event Duckshack is ever dedicated and becomes a public road, a condition of that acceptance shall be construction of a pedestrian...

Commissioner Evans: A waiver of a right to protesting...?

Mike Sehestedt: No, no, construction of because right now it's private. If at some point the people decide for bank financing reasons or whatever, that they want to get that road dedicated to the public and they petition, he wants it in the record that a condition of any acceptance for that as a public road will require construction of a pedestrian walkway.

Jennie Dixon: Does that need to be a condition of subdivision or can that be a condition upon which acceptance of the road as a County road is based?

Mike Sehestedt: It will be. I think Tim wants to put it in the record up front that--so that when it comes up, people think about it.

Jennie Dixon: Because that's not really a condition of subdivision that we can enforce at final plat review. That needs to be I think something that Public Works--I mean certainly getting it on the record is--

Chairman Carey: It's on the record here.

Tim Elsea: Is it a note that could be placed on final plat?

Mike Sehestedt: Well, I was about to suggest Duckshack will be shown as a private road. I supposed we could put something that says in the event right-of-ways ever dedicated as a public road will require construction of a walkway. I don't know where we get because future Commission could either waive it even if we say it or require it even if we don't. It might be just for the record something.

Chairman Carey: What do you think about the offer to grade the trail? It's a nice offer, but I'm wondering if it--is it really going to help or when you come through with the trail...

Tim Elsea: We'll just be coming through; we won't be stopping, so we wouldn't recommend just removing that requirement all together.

Chairman Carey: Okay, that's what I thought.

Peter Nielson: If I may make one more suggestion and then I'll stop that would be that you require a pedestrian walkway along Duckshack Lane for Lots 1 through 5, but allow it to stop so it doesn't connect to the trail that goes to the common area. Then direct Public Works to [inaudible] signage as part of our trail project along Rustic Road at this intersection, notifying everyone that that would be a private trail. That way you've got a way for kids that live there to walk out to the school bus--kids get bussed to school and you have a way for them to get out along that road without walking along with traffic, with people who live there. On icy roads, accidents happen.

Chairman Carey: Thank you Peter. I have a question for, is it Mr. Kenneth? Could you answer a question perhaps? How far is it from this kind of southwesterly part of Lot 5 to the river?

Gregory Kenneth: 350 yards.

Chairman Carey: I really believe we need to find public access to the river, greater numbers than we have now. Someday I wonder if wouldn't work to have a public access to that. Do you think that's just out of the question forever?

Gregory Kenneth: It's something that we've thought about when we had the easement with the Natural Resource Conservation Service and we made sure one of the conditions of our easement was that there was no public access to that. We firmly believe that we need better public access to river in Missoula County. That's not something that we have supported because we end up going down there and cleaning up the river, uninvited guests, and it would be an attractive nuisance. We think that having the trail from the end of the cul-de-sac in a 40 or 50-acre common area is going to promote all the exercise and healthy activities that Peter mentioned. So we see the internal trail as superfluous, even to the point where we said if we have a social responsibility, we would rather contribute that along Rustic Road than internally. I think that's our preference.

Chairman Carey: Thank you. Anything else? I guess I would say that, while I support the staff's concern about not building on that steep slope, I do think the Planning Board found a reasonable compromise if you will because it could be done aesthetically. I would support that. I would also support--I don't think we need the Planning Board's Condition #15 if we go ahead and adopt their other proposal or condition. If we support the Planning Board's revised Condition #9, can we do without #15 since they won't actually be on the hillside?

Jennie Dixon: Condition #15, and I'm sorry, I should have explained that more in my staff report, is something I started to discuss at Planning Board and, after two and a half hours of discussion at the end, we forgot to finish our conversation about that. So when I was preparing the Request for Commission Action, realized that I needed to make you aware that your regulations require any construction that involves slopes over 25% require a geotech study and so that's what this condition is doing. If you do allow for any construction on slopes over 25% or that disturbs slopes over 25%, Condition #15 is a condition that addresses that.

Chairman Carey: Is that under the old regs?

Jennie Dixon: Yes, and I'm not sure, it may even be under the new regs as well.

Chairman Carey: Well, another question, is this a 25% slope at that elevation?

Dick Ainsworth: Yes, it is, but again, my contention is we're not building on that slope, we're not out--and that's what that part of the regulation is intended to address, is like at the foot of [inaudible] Butte when we're building on the thing. We're wanting to excavate away part of it and I don't see where that really provides anything and it's an added expense that each one of those owners would have to do.

Chairman Carey: To a layperson like myself, it doesn't seem like you'd need an engineer to say that would work because...

Dick Ainsworth: I mean you're basically digging a basement and you're digging it out of the edge of that bank and pulling it back away from there, so we're not building the house on that slope again.

Chairman Carey: Any legal thoughts on the matter?

Mike Sehestedt: Well, the issue I've got as I thinking of it here is that we're talking, been talking daylight basements, but the condition of subdivision approval, if you go with the Planning Board recommendation, will be that they can build provided that they don't have the finished floor elevation any higher than the specified elevation. It doesn't really preclude them from building straight up at that point. The illustration here shows what I think everybody's proposing. Dick, I'm using yours...

Dick Ainsworth: That's what we...

Mike Sehestedt: But the actual condition of subdivision approval doesn't prevent you from building straight up here at the [inaudible] slope. Admittedly, you're still not...

Dick Ainsworth: Yeah, I know what you're trying to say and maybe we need to reword that such that you can excavate away a portion of that to permit a daylight basement, as long as the excavation doesn't go below this elevation or something. That's clearly our intent.

Chairman Carey: Yeah, that's a good point, Mike.

Dick Ainsworth: Yeah, I hadn't thought about that.

Mike Sehestedt: Well, I hadn't either until I'm sitting here, thinking what could possibly go wrong.

Dick Ainsworth: A lawyer, leave it to a lawyer.

Chairman Carey: Well, that would work if we can get some language. I wonder if we need a little more time to straighten out, there's a lot of...

Mike Sehestedt: Well, there's some language issues. I'm trying to think how you could word this and it would be to permit disturbance of this slope in accordance with the Planning Board recommendation that actual structural construction shall occur...

Dick Ainsworth: And we don't have any problem requiring that the face of the structure be at least at the break in the bank or further back. I mean we don't want it pushed out further than that.

Mike Sehestedt: Right, I think everybody here--I'm thinking, with all due respect to our good architect on the Planning Board, I've known some very creative ones that would find a lovely design to push the envelope.

Chairman Carey: Is this really time-sensitive? I know we're not meeting next week, but could we take...

Dick Ainsworth: I don't know that it is and it would be nice if we could get something approved, even if we left the language ...

Chairman Carey: We haven't dealt yet with the restricted riparian area and...

Jennie Dixon: The 60-day deadline is January 9, so we could come back on January 3 if you're meeting that day.

Chairman Carey: Would that be okay? I think we are.

Commissioner Evans: If you were ready to make a motion, and I know the Chair doesn't usually, but who cares.

Chairman Carey: Well, I'm not really because of the language that we need to create for Mike's concern.

Mike Sehestedt: And I think smithing out what we need by restricted riparian area and the--I think everybody's got a pretty good sense. Barbara, you're kind of concurring with Bill on...

Commissioner Evans: Yeah, I don't have a problem with that as long as it doesn't--go ahead Greg.

Gregory Kenneth: Maybe a suggestion just to see if we could keep this efficient, if we could use Dick's drawing as a reference, would that satisfy the legal's concern just refer to that in your motion. Secondly, for the restricted area for the riparian area, if you trust the NRCS wetland easement restrictions, just to make sure was consistent with those would seem to address both issues and not require us to get back together. But, you know, if you--I guess we're not opposed to coming back to answer more questions, but I think those two suggestions may cover our concerns.

Commissioner Evans: I think what needs to be done between now and when Bill feels we're ready to make some motions, is some work by the staff with Dick and you to come up with answers to these concerns we have today.

Chairman Carey: I don't think it'll take all that long.

Jennie Dixon: With your indulgence and permission, I might be able to offer what I think, I sense that you want to do today. It may take a little bit of effort, but I might be able to get us there fairly quickly.

Commissioner Evans: Well, why don't we take a 10-minute break while you work on that and I return some phone calls?

Chairman Carey: Okay, we'll resume the hearing and where are we?

Mike Sehestedt: After discussion, I'll let Ms. Dixon go through what I think is agreement on conditions reflecting what we think we heard the Commissioners say, so if there's not agreement from those parties or if we didn't hear the Commissioners correctly, we'll keep working.

Chairman Carey: Are you going to put this in a way that Barbara can say, so moved?

Jennie Dixon: Absolutely.

Mike Sehestedt: We hope so.

Jennie Dixon: So I'm going to just start you at the beginning with variances so this can be most efficient. The first variance.

Commissioner Evans made a motion that the Board of County Commissioners approve the variance request from Section 3-2(7) requiring curb and gutter on Duckshack Lane to allow Duckshack Lane to be constructed without curb and gutter based on the findings of fact. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans made a motion that the Board of County Commissioners approve the variance request from Section 3-2(1) prohibiting driveways from exceeding 8% slope, or 10% slope for more than fifty feet to allow the driveway serving Lots 6 and 7 to be 10% as shown on the road plans and subject to review and approval by Public Works based on the findings of fact. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans made a motion that the Board of County Commissioners approve the variance request from Section 3-2(10) requiring the driveway serving Lots 6 and 7 to have a gravel surface width of 12 feet to allow the driveway serving Lots 6 and 7 to have a 10-foot wide gravel surface on Lot 5 and no improved surface on the Common Area and Lots 6 and 7 subject to review and approval by Public Works based on the findings of fact. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans made a motion that the Board of County Commissioners conditionally approve the variance request from Section 3-3(1)(B) to allow structures on Lots 1, 2, and 3 to be constructed on slopes greater than 25% based on the findings of fact. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans made a motion that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iv) requiring internal pedestrian connections, connections to bus stops, and connections to adjoining neighborhoods on private roads outside the Urban Growth Area based on the findings of fact. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans made a motion that the Board of County Commissioners approve the variance request from Section 3-2(3)(B) requiring Rustic Road be paved to a width of 32 feet to allow Rustic Road to remain 23 to 24 feet wide based on the findings of fact. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Jennie Dixon: Then the main motion that the River Estates Subdivision be approved for a two-year plat approval period subject to the amended conditions based on the findings of fact. Then I guess we need to go to the amended conditions.

Using your Request for Commission Action, keep Condition 1, 2, and 3; delete Condition 4 about the ped walkway on Rustic Road; keep Conditions 5 and 6; amend Condition #7, Section b to state, "to allow limited vehicular access on the Common Area and Lots 6 and 7 to allow for research, maintenance, recreation, and restoration activities in an area to be designated no-build, restricted alteration zone."

Chairman Carey: Very good.

Commissioner Evans: Ready for a motion?

Jennie Dixon: No, Condition #8 to remain as is with an addition at the end to state, "The covenants shall be amended to include a definition of the no-build, restricted alteration zone defined as the no-build, no-alteration zone except with the four exceptions in Conditions 7b.

Condition #9 will read, "The plat shall be amended to show a no-build zone from the top of the bench to the west. No portion of any structure may project beyond the top of the bench, however, excavation for structures on Lots 1 through ...

Mike Sehestedt: [Inaudible] excavation may encroach on bench to the 3305 elevation level.

Jennie Dixon: On Lot 1.

Mike Sehestedt: On Lot 1. Area on Lot 2....

Commissioner Carey: Why don't you let Jennie go ahead Mike?

Jennie Dixon: ...excavation may occur on Lot 1 to the 3305-foot elevation level. Excavation on Lot 2 may occur to the 3304-foot elevation level and excavation on Lot 3 may occur to the 3303-foot elevation level.

Dick Ainsworth: Do you want to say to permit a home with a daylight basement to be constructed or something just to clarify that a little.

Mike Sehestedt: Yes, that would make it even clearer.

Jennie Dixon: To permit construction of homes with daylight basements. Let me make sure that Cathie has this because I don't have this written down.

Delete Condition #10 and then Condition #11 remains; 12 as amended by Planning Board shown; 13, 14 as amended by Planning Board; and then no Condition 15.

Chairman Carey: Minor thing on amended Condition #9, do we not say that the elevations below the ones we mentioned are no-build, no-....

Jennie Dixon: Well the first part of that condition says that the plat shall be amended to show a no-build zone from the top of the bench to the west.

Chairman Carey: Okay, thank you, good work. Anything else?

Commissioner Evans: Do you have any more comments?

Dick Ainsworth: I think that does it. I was telling Jennie we better do this final plat real quick before we forget what we all agreed to. This is one of those in two years you'd say, what did we mean by that?

Commissioner Evans made a motion that the Board of County Commissioners approve the River Estates Subdivision for a two-year plat approval period subject to the amended conditions based on the findings of fact. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

River Estates Subdivision Conditions of Approval

Roads and Driveways

1. The subdivider shall install "No Parking Signs" on both sides of Duckshack Lane to ensure a minimum 20 foot unobstructed width for fire apparatus access, in locations approved by Public Works, as part of the approved signage plan, prior to final plat approval. *Subdivision Regulations 3-1(1)(F) and (J)*.
2. A street signage plan in conformance with the Manual on Uniform Traffic Control Devices, including, but not limited to, provisions for temporary signage during construction, permanent signage, and cost of installation to be responsibility of the subdivider, shall be reviewed and approved by Public Works prior to final plat approval. The developer must install the temporary signs prior to construction and permanent signs prior to final plat approval. *Subdivision Regulations 3-1(1)(F) and 3-2(2)(F)*.
3. Driveway plans shall be reviewed and approved by Missoula Rural Fire District prior to final plat approval. Driveway plans for all driveways within this subdivision, to include length, width, unobstructed width and height clearances, and surfacing requirements, shall be incorporated into the covenants which may not be changed or deleted without governing body approval. *Subdivision Regulations 3-2(10)(A) and (D)*.

Fire

4. The developer shall provide a water supply for fire protection that produces 1000GPM with a hydrant or, in lieu of a water supply with hydrant, the developer shall install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for a water supply and hydrant location, if applicable, shall be approved by Missoula Rural Fire District prior to final plat approval. If water supply for fire protection is to be provided by interior residential fire sprinklers, plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and the covenants shall be amended to include the following statement prior to final plat approval:

"Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purpose of fire protection. Plans for installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to Building Permit approval. Failure to install residential fire sprinklers in any new home may subject the entire subdivision to the cost of installation of a shared water source for fire fighting purposes."

This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations 3-1(1)(F) and 3-7(1)*.

5. Plans for addressing buildings so that address signs are clearly visible from the street in all lighting conditions shall be reviewed and approved by the Missoula Rural Fire District and included in the covenants which may not be changed or deleted without governing body approval. *Subdivision Regulations 3-1(1)*.

Riparian Resources

6. The Riparian Resource Map and Management Plan and covenants shall be amended:
 - a. to accurately reflect all areas of riparian resource on the property and their designation as a "No-Build/No-Alteration Zone" in the plan and on the plat; and,

- b. to allow limited vehicular access on the Common Area and Lots 6 & 7 to allow for research, maintenance, recreation, and restoration activities in an area to be designated as a “No-Build / Restricted Alteration Zone.”

These changes shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3-13.*

7. The Riparian Resource Management Plan shall be amended to include the definition of “No-Build/ No-Alteration Zone” contained within the covenants (Section m. on Page 3), subject to review and approval by OPG prior to final plat approval. The covenants shall be amended to include a definition of the “No-Build / Restricted Alteration Zone” defined as the “No-Build / No-Alteration Zone” except with the four exceptions listed in Conditions 6b. *Subdivision Regulations 3-13.*

No-Build/No-Alteration Zone

8. The plat shall be amended to show a “No-Build / No-Alteration Zone” from the top of the bench to the west. No portion of any structure may project beyond the top of the bench; however, excavation for structures on Lots 1 through 3 may occur as follows To permit construction of homes with daylight basements: excavation may occur on Lot 1 to the 3305-foot elevation level; excavation on Lot 2 may occur to the 3304-foot elevation level; and, excavation on Lot 3 may occur to the 3303-foot elevation level. *Subdivision Regulations 3-1(10), 3-3(1)(B) and 3-15(1).*

Weeds

9. The Revegetation Plan and the covenants related to weeds are subject to review and approval by the Missoula County Weed District prior to final plat approval. *Subdivision Regulations 3-1(1)(B).*

Covenants

10. The covenants shall be amended to include the following provision, subject to review and approval by OPG prior to final plat approval:

“Builders should consider using energy efficient building techniques such as building orientation, appropriately sized eaves, wind breaks, super insulation techniques, daylighting, passive solar design, photovoltaic cells, and ground source heat pumps for heating/cooling. Ground Source heat pumps are usually more efficient and so create less pollution, than other systems for heating and cooling. Increased energy efficiency reduces air pollution, reduces the need for people to use cheaper heating methods that pollute more, and helps protect the consumer from energy price changes.” *Subdivision Regulations 3-1(1).*

11. The covenants shall be amended to apply to all lots (#1 – 7) and the Common Area within the subdivision, or the subdivider shall file a separate development covenant for Lots 6 & 7 which addresses weed control, radon, address signing, living with wildlife, riparian resource management, driveways, private road maintenance, a signage plan, common area maintenance and use, the private pedestrian access trail, easements, utilities, fire suppression, woodstoves, and energy efficiency, the “No-Build/No Alteration Zone” and amendments, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3-1(2) & 3-1(10).*
12. Section 12 (Amendments) of the covenants shall be amended to state the following, subject to review and approval by OPG prior to final plat approval:

“No covenant or sections thereof relating to building setbacks, parking, weed control, radon, address signing, living with wildlife, riparian resource management, driveways, fire suppression, woodstoves, or energy efficiency, may be changed or deleted without prior written consent of OPG or other relevant governing body.” *Subdivision Regulations 3-1(2) & 3-1(10).*

Other Business

There being no further business to come before the Board, the Commissioners were in recess at 3:35 p.m.