

PUBLIC MEETING – DECEMBER 19, 2007

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Larry Anderson, Commissioner Bill Carey, Deputy County Attorney James McCubbin, Assistant Director of Public Works Tim Elsea, Assistant Chief Deputy Clerk & Recorder Kathy Wahl, Office of Planning and Grants Principal Planner Denise Alexander, Office of Planning and Grants Planner Vlad Kryukov, Office of Planning and Grants Planner Tim Worley, Rural Initiatives Senior Planner Pat O'Herren, Rural Initiatives Matt Boulanger, and City/County Health Department Air Quality Staff Ben Schmidt

Pledge of Allegiance

Public Comment

Carol Ulrigg: I'm Carol Ulrigg.

Chair Curtiss: Would you spell your last name, please?

Carol Ulrigg: U-L-R-I-G-G. I'm here to find out what the status of my request for the emails are that I made in October that no one from the county is responding to. Then I also wanted to address the filtering of those emails

Chair Curtiss: Ma'am, I know that staff are working on pulling those emails together. I think we now know all of the parties who had your emails. We don't have a program that we can just type in and say if that name appears in anything, so we need to go through by the number of people who were privy to emails from your family. James, do you know anything further than that? I believe we've identified who all was on that email list and I'll make a note that we ask the County Attorney to address that.

Carol Ulrigg: All right and what about the filtering?

Chair Curtiss: We don't do filtering.

James McCubbin: I know there's been progress on that. I don't know the current status, but as far as I'm aware, there's not even been any discussion of filtering...[inaudible, interrupted by Carol Ulrigg.]

Carol Ulrigg: Well, my definition of filtering is that, according to Mike Shest--I'm not...

Chair Curtiss: Sehestedt.

Carol Ulrigg: Okay, sorry, that he was going to have Kristen review them and see which ones I was going to be able to get and which ones I wasn't. I'm not sure that that's even within the merits of the law.

James McCubbin: If there's confidential criminal justice information, we'd be restricted by law as to what we can disclose.

Carol Ulrigg: Under which law?

James McCubbin: The Council of Criminal Justice Information Act, I think is what they call it. That's why Kirstein is our Chief Deputy on the criminal side... [inaudible, interrupted by Carol Ulrigg.]

Carol Ulrigg: So that would take a court order to get?

James McCubbin: I believe so, I haven't looked at that law for some time.

Carol Ulrigg: It's my understanding that the county has GroupWise for an email system? I googled GroupWise, just googled it and there is a program out there that shows you how to do it and if you have GroupWise, you have the ability to do it. Microsoft also has a free service search, all you have to do is google that and it's out there.

James McCubbin: I wouldn't know and I wouldn't know how that would relate to our security systems.

Carol Ulrigg: Do you know when I'll be getting an answer then?

Chair Curtiss: I'll have the County Attorney's office contact you by next week.

Carol Ulrigg: All right, thank you.

Chair Curtiss: Anyone else who's here for public comment on items not on today's agenda? Mr. Martinson.

Greg Martinson: My name's Greg Martinson and I'm here today as, so to speak, an ongoing member of the Missoula Conservation District Board of Supervisors. I've been elected for--or an appointed member through the urban supervisorship for the last 11 or 12 years or something like that. Due to several reasons, I have to be inside the city limits to have them appoint me as a member and I'm somewhat pleased to say, I'm moving out of the city limits and moving into the county, and see if they can catch me again, and a few other things. I want to spend a little more time in Alaska, a little more time in Fish Creek, and a little more time in Arizona, and a little more time in Costa Rica. So I'm, therefore, resigning from my position. What you have there is this last year's annual report. There's not a heck of a lot different from what the other reports are that I've give you over the years. You can go ahead and take a look at it. If you have any questions, you can call me or the district. I'm pleased to tell you also that one of our associate members, a fellow by the name of Rob Roberts, is going to take over for me. He's been an associate member with the board for a little over a year, isn't it Bob? Yeah, about a year and a half or so. He's very well equipped and understands what he has to do and everything, so I feel that my shoes are being filled probably better than I fill them. I thank you folks for your support over the last few years and hope that you get what you need to hear from the conservation district. They appointed me an associate supervisor, so I may be back with the annual reports anyway. Hard telling. Thank you.

Chair Curtiss: Mr. Martinson, we sure thank you for your time in this and you always give us a nice report. We'll expect a postcard from Costa Rica or somewhere maybe. Thank you. Further comment on items not on today's agenda. For any of you that came in late, if you plan to speak on the item, last on our agenda, about the emergency conditions in regard to the Lolo pit, make sure you sign in on one of our clip sheets, so we--especially if you want to speak, so we make sure we don't miss you.

Routine Administrative Actions

Commissioner Anderson moved that the Board of County Commissioners approve the weekly claims list in the amount of \$838,214.36. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Arnold Family Transfer

Chair Curtiss opened the hearing.

James McCubbin presented the staff report.

There's actually two pending exemption requests related to this property that have been submitted simultaneously and are reliant upon each other. I think you each have a copy of the proposed certificate of survey. This is a combined boundary line relocation and family transfer exemption. Currently, taking into account a parcel that was formed upon abandonment of the Milwaukee Rail, there are two parcels here. You'll see on sort of the western end of the property, a previous boundary line. That's the boundary proposed for boundary relocation. So in addition to--so one of the tracts is from that prior boundary is proposed for the existing boundary rather. Then five tracts are proposed to be created by family transfer, four to children and I believe one to a parent. This would turn this--the total property into a total of seven tracts, so it will total seven lots. I would recommend that we go through the usual questions on family transfers, but needs to be considered, I think, together with the boundary line relocation. Normally, the County Attorney's office would just process the boundary line relocation unless we had a question about whether we think there's a doubt as to an evasion. Here, I think, the circumstances are somewhat unique and particularly because there's the two exemptions, we ask that you address both the boundary line relocation and the family transfer. With that--yes?

Cathie Cichosz: Does it matter that it [inaudible, spoke without mic.]

James McCubbin: No, because normally we would just process this and I think all the parties [inaudible] this is an exemption and it's one proposal.

Chair Curtiss: So could either one or both of the Arnold family come to the microphone please? We ask our Deputy County Attorney to ask you some questions on the record to help us establish whether this meets the intent of the law as evasion of subdivision review is a misdemeanor and we don't want people to inadvertently cause a misdemeanor to be charged against you. Mr. McCubbin?

James McCubbin: Could I ask you to each state your names for the record please?

Gail Arnold: Gail Arnold.

Chair Curtiss: You can tip that down toward you. There you go.

Gail Arnold: Is it on?

Chair Curtiss: Yep.

Gail Arnold: Gail Arnold.

Darrell Arnold: Darrell Arnold.

Chair Curtiss: Thank you.

James McCubbin: How long have you owned the property?

Darrell Arnold: 30 years, approximately.

James McCubbin: Did you buy the property with the intent of dividing it?

Darrell Arnold: No.

James McCubbin: Is there any intent for you or the transferees to transfer the property within the next year or so?

Darrell Arnold: No.

James McCubbin: Are the children all of majority age, I take it?

Darrell Arnold: Yes.

James McCubbin: None of them are minors? Is the property intended to be developed, in other words, constructed?

Darrell Arnold: No.

Chair Curtiss: Go ahead and state what your plan is then.

Darrell Arnold: Well, the kids might build a house on there.

James McCubbin: Do your kids and your mother intend to live on the property?

Darrell Arnold: Mother do--now, the mother-in-law does now. She's 83 years old and she lives by herself in a place and she's selling it.

Chair Curtiss: You need to turn the mic over towards you. There you go.

Darrell Arnold: So we're going to move her over to my place. That way we're close to her and we can take care of her. We're the only one's up there.

James McCubbin: Where do the children live now?

Darrell Arnold: One lives up Potomac and one's...

James McCubbin: Let's put it this way, are they all relatively local?

Darrell Arnold: Yeah.

James McCubbin: Have you discussed your proposal with anyone at OPG or otherwise in the county, Office of Planning and Grants, about doing a subdivision review to accomplish this?

Darrell Arnold: No.

James McCubbin: Are you attempting to evade subdivision review?

Darrell Arnold: No.

James McCubbin: Do you understand that your requests, boundary line relocation and the family transfer, the creation of these parcels, are not being reviewed for adequate access in all weather for all vehicles, including for emergency services or otherwise?

Darrell Arnold: Yeah.

James McCubbin: Do you understand that, we're not reviewing access? Do you understand that if approved, that would not mean that the property in the new lots are approved for zoning compliance, floodplain, or septic systems, or any other permits that might be required?

Darrell Arnold: Yes.

James McCubbin: That's all the questions that I have.

Chair Curtiss: I have one more. Some of the land out in this area is zoned. Is your property zoned? One per five acres, one per one?

Janelle Arnold: No.

Chair Curtiss: Because we aren't allowed to do family transfer that goes against the zoning. Are there other questions for Mr. McCubbin or for the Arnold family?

Commissioner Carey: I have a question for James. Would you talk about the boundary readjustment and the Milwaukee easement and so on?

James McCubbin: One thing that probably should be taken into account when you evaluate evasion, particularly with regard to a boundary line relocation, is guidance we have from Judge Haynes who ruled on a case in the City of Missoula here. These were the boundary line relocation realigning lots. I think we're all familiar with that ongoing litigation [inaudible] occurred. The indication there was that if, at least in his opinion, if there's creation on a practical level of a new buildable lot that that is maybe not dispositive, but an indication of evasion. Here, I haven't discussed this with public health or anyone, but I doubt that the tract that currently exists that's the prior railroad could be constructed on because you generally can't get a septic system on compacted earth such as under a road or here the railroad is even more density compacted than most roads are, so that's probably a factor that you should take into account that the rail parcel is essentially being created into a buildable lot, where there was not a buildable before.

Chair Curtiss: Mr. Martinson?

Greg Martinson: Greg Martinson. That's already built on.

James McCubbin: It is?

Greg Martinson: There is an existing residence with an approved drainfield and an approved well. The other point I would like to make that the Arnolds didn't bring up is the fact that they have five children; they're only gifting to four of them because one of the children will be getting this parcel that's being done through a relocation

of boundary. If their intent was to create parcels to sell, then they probably would have gone ahead and gifted another parcel to this other child. That's not their intent at all. We've had long discussions over how to do this and I know that that's not what they're trying to do. But, there is currently...

James McCubbin: It's not shown on the certificate of survey.

Greg Martinson: Well, we generally don't

Chair Curtiss: So there's an existing house on Tract 1, is that what you're saying?

Greg Martinson: There's two existing residences. There's a-yeah, whatever you want to do. This zone right here is an easement for the drainfield for the mobile with the well right here on the Old Milwaukee right-of-way. The Arnolds present house where they live is right back here and their drainfield comes out here onto this easement and they're well is over here. If they had been trying to create another parcel, you can see easily that we could have created another parcel in here someplace, but that's not their intent. They've got five kids; they're trying to create a parcel for each child and one for mom.

Commissioner Carey: Greg, are you saying then that there is a house and a mobile home on the Old Milwaukee right-of-way?

Greg Martinson: There's a mobile on the Old Milwaukee right-of-way and the Arnold's home is right back here.

Commissioner Carey: Is that mobile going to go away, do you know?

Greg Martinson: No, one of the kids is going to live in it.

James McCubbin: Where's the building site for Tract 1 then...

Greg Martinson: Right here, right underneath Tract 1

Chair Curtiss: So how will Tract 1 get a drainfield, when it already has two drainfield easements on it?

Greg Martinson: Right between them. It's judged on the total area and this has an acre, this has an acre; that's the minimum that's required. This one has 2.97 acres.

Commissioner Carey: So I'm wondering what we do here may negatively influence the possibility of eventually having a trail along the Old Milwaukee easement. The city's working on that, as you know.

Greg Martinson: This is clear out by the pulp mill.

Commissioner Carey: Yeah, it would be part of the trail though, hopefully, some day.

James McCubbin: Well, this one is already constructed and the other building site would be [inaudible]. I don't know that there's really an impact from this.

Greg Martinson: That's a long ways out. You've got old railroad trestles and everything else to contend with before you get there.

Commissioner Carey: Could we James condition this perhaps on some future vacation?

James McCubbin: [Inaudible, spoke over each other] being reviewed--I mean if it were a subdivision review, you could. If the intent were to avoid having a condition like that that you'd put on subdivision, then you could find that that's a basis for evasion. Frankly, from Mr. Martinson's comments, I think that addresses my concerns because it is true that with Tract 3 being 2.97 acres, there is sufficient space to put another lot there if they were maximizing this. I didn't know that the Milwaukee part was already constructed.

Commissioner Anderson: Is there any concern about the number of lots involved in this proposal that would exceed what would be considered right for an exemption from the subdivision regulations?

James McCubbin: There's no strict restriction in the law. The more lots you're creating at once through exemption, I think, the most closely it warrants scrutinizing the proposal. The statements that you've been given is that there's another child that would be eligible, at least arguably, for family transfer parcel. I think mitigates some of that concern. I have seen family transfer subdivisions of 20, 30 lots where it's multi-generational and they maximize every single-family member and then they all sold. That's what you want to watch out for; that would be an evasion situation. Typically, if people were pursuing that, they would use every member of the family.

Chair Curtiss: So you're telling us there's not a for sale sign in front of this property like we see sometimes? Okay. Yeah, Mr. Arnold?

Darrell Arnold: The reason we broke that one acre up--or changed the borders on was because the railroad was so small, the power lines and everything else, we have a trailer that's already there. This way they could move it back off of the Milwaukee right-of-way later. Instead of [inaudible] real long and skinny, we made the lot so they could move the trailer back away from the road.

Commissioner Carey: Away from the right-of-way?

Darrell Arnold: Yeah.

Chair Curtiss: So this isn't a portion of Old Milwaukee that's elevated a lot above the surrounding area?

Darrell Arnold: No.

Chair Curtiss: Not very much? Okay.

Commissioner Carey: I would like to find some way to see that that would happen because who knows, like Greg said, it's a long way off, but I'm hoping that eventually we will have a trail system through that area. Is there anyway we could ensure that the--if and when we get to the point where somebody is getting a trail to this particular area, that the agreement would be to move the mobile home or to not build a stick-built home on that [inaudible] part of Tract 2?

Greg Martinson: I think it's like Mr. McCubbin says, you're not in the subdivision review process.

Commissioner Carey: But that's the other choice is to deny this and then put it into subdivision review.

Greg Martinson: What do you think, Darrell?

Darrell Arnold: Well, we're definitely not going to build a stick house on there because it's way too close to the road and there's a trailer house on...

Commissioner Carey: I'm trying to get to some legally binding arrangement that would work in 15 years or so.

Darrell Arnold: I mean it's already there.

James McCubbin: At this state, you cannot impose a condition...

Chair Curtiss: But, they could volunteer.

James McCubbin: They could voluntarily add to the certificate of survey a non-motorized trail easement on the western border if they wanted to, but you can't force them to do that.

Commissioner Carey: Well, that's what I'm trying to get at. Can we work that language...?

James McCubbin: If you found this as an evasion, the only way that these lots could be created would be through subdivision review and that would be subject to those conditions.

Commissioner Carey: And I, for one, don't want to find an evasion here. I want to find some way to have an easement down the line.

Darrell Arnold: We can guarantee we're not going to build on the easement no more. That's no problem there. I mean, there's a trailer house, but if we ever...

Greg Martinson: [Inaudible, spoke from audience] 15 foot?

Commissioner Carey: I don't know, what does the city do, do you know? It will be city by then.

James McCubbin: I don't think we had the Parks people come because our next issue, we resolved the park issues. I think on those kinds of trails, I know like you get up to where the Hiawatha Trail is, that kind of thing. They like to have them a little wider than a typical city trail, but if it were 15 foot and it happened to be wider further down, you could narrow it down at that point too. It's a lot more than what exists now.

Greg Martinson: ...keep in mind is that this parallels Mullan Road, out there is a military road and the right-of-way in a lot of spots out there is in excess of 60 feet and some of its 80 feet. I don't know exactly what it is there, but we're just parallel on Mullan Road.

Commissioner Carey: We have a representative from Public Works, Tim Elsea. Tim, would you like to comment on this?

Tim Elsea: A multi-use trail generally is either eight or 10 feet wide, 15 feet would be plenty, might need a construction easement, depending on the side slopes.

Greg Martinson: How about this. We'll put some kind of conditional easement on it that's 8-foot wide and it will be parallel to Mullan Road against the Mullan Road right-of-way that way you have Mullan Road to use also, which is what those right-of-ways are intended for. We'll give you an 8-foot strip down through there that--I'll work out the working with Mr. McCubbin on what the--and Tim...

Chair Curtiss: So it will be conditional access if the trail got built?

James McCubbin: [Inaudible] constructed on either--or on one side or the other [inaudible]...

Greg Martinson: On one--?

James McCubbin: On the north or south that, there's actually a trail connecting to something [inaudible].

Commissioner Carey: You sure 8-foot's okay, is that wide enough?

Chair Curtiss: If it's against the right-of-way.

Tim Elsea: Without knowing where the road sits within the right-of-way, I can't sit here and say for sure. I'm assuming the road is somewhere within the center of the right-of-way, but I'm not positive.

Greg Martinson: It's pretty close.

Commissioner Carey: Can we just say sufficient easement with--you guys work out the...?

James McCubbin: We need to designate an easement [inaudible] dedicate...

Chair Curtiss: They're going to volunteer it.

Greg Martinson: If it helps you any, it's just before the road turns to the right. It crosses the Old Milwaukee right-of-way at the substation and then turns back left, where it makes that, what used to be, a real tight corner and is now kind of a gradual S out towards the mill.

Tim Elsea: [Inaudible] Greg, I just don't know where the road sits in the right-of-way there.

Greg Martinson: Do you know where Fairbanks Lane is?

Tim Elsea: Uh, huh.

Greg Martinson: It's right across the road.

Tim Elsea: Still wouldn't know where the road sits in the right-of-way.

Commissioner Anderson: Could we put language in there that would say up to a 10-foot right-of-way depending upon the location of the centerline of Mullan Road? Just say, "Up to," that doesn't mean we have to use it.

James McCubbin: Up to is a 10-foot easement [inaudible] mean there's a legal right to use [inaudible].

Commissioner Carey: Can we say that?

Greg Martinson: You got 10.

James McCubbin: I think you can consider that the dedication of an easement is evidence of a lack of the lack of an intent to evade, so it's not a condition, but if they're offering that and that's part of the evidence that you've got, then you can certainly take that into account.

Chair Curtiss: So this is really a different one that we've done. Thank you. This is a public hearing; did the Arnold family want to add anything else before we ask for other public comment? Okay, thank you. This is a public hearing, would anyone else like to comment on this family transfer and boundary relocation. Seeing no one come to the mic, I'll close the hearing. We'll let the record reflect that what we're considering then will include a 10-foot non-motorized easement on the western boundary, adjacent to the Mullan Road. Is there a motion?

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Darrell and Janelle Arnold to create five additional parcels by use of the family transfer exemption based on the fact that they are willing to donate a 10-foot non-motorized easement on the western portion of the parcel of Tracts 1 and 2 and there does not appear to be an attempt to evade subdivision review. Commissioner Anderson seconded the motion.

Chair Curtiss: Do we need to add the language about the boundary relocation since you asked us to consider them together?

James McCubbin: I guess I wasn't listening quite carefully enough, but my understanding is the motion was to approve both the family transfer and boundary line.

Commissioner Carey: Yeah, that wasn't what I said, but I'll add that.

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Darrell and Janelle Arnold to create five additional parcels by use of the family transfer exemption based on the fact that they are willing to donate a 10-foot non-motorized easement on the western portion of the parcel of Tracts 1 and 2 and there does not appear to be an attempt to evade subdivision review and approve the request for a boundary line relocation. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: Thank you, Mr. and Mrs. Arnold. You'll get a letter from our office saying this has been approved and it might go to Greg instead, since he probably...

James McCubbin: If your staff could coordinate with me on that letter? We'll have to talk about that language.

Chair Curtiss: So we'll probably need a new amended plat to put with it, right?

James McCubbin: Yeah, I'll work that out with them.

Consideration and Decision (Continued from December 5, 2007): Potential Sale of County Property located in the City (20-foot strip east of Reserve, south of 3rd Street West, between Davis and Harriet Streets)

Chair Curtiss opened the consideration and decision. The Commission did do a site visit with the City Parks, County Parks, the attorney's office, and the folks who were interested in buying the property.

James McCubbin presented the staff report.

At the site visit last Friday, Mr. Ault and his partner, whose name escaping me, I apologize, proposed that as part of a purchase price that they dedicate a public non-motorized trail easement adjacent to this strip of land immediately to the west. We've subsequently received a dollar offer via email, which I think should be in your packets. They're offering that 5-foot trail easement, plus \$1875. So that's the offer you have before you. Basically what you need to do at this point is, first of all, decide whether this tract of land is something that's useful for County purposes or has any prospect for being useful in the future; if not, whether it's something that you want to dispose of. If you are interested in selling it, then you need to determine whether or not the value is reasonably estimated at more or less than \$2500. If the value is estimated by you as Board to be less than \$2500, then you can sell it by whatever means. There's no further public process really required at that point, so you can engage in negotiations for private sale. The one thing that any sale of this property does need to be conditioned on or subject to is all easements of record and apparent on the ground, and particularly here, this land is highly encumbered by access easements, both, I think there's some, dedicated access easements and there's some pretty clear prescriptive easements across there as well. There's at least one driveway that I recall--well, there's three driveways total that access onto this, but I believe two of them are probably prescriptive use. I believe there's also utilities and some drainage-type easements on the property, so we would want to note that on the deed, and the purchasers need to be aware of that, which I think Mr. Ault is. With that, I'd leave it to you to discuss those issues.

Commissioner Anderson: Each of items you described there need a separate motion or is that just general discussion?

James McCubbin: I think you need to address them separately. You can do it all in one motion, but I think you need to address them in that order. First of all, do we want it; do we want to keep it? What's its value? Then, to work on a sale. So you could do it by separate motions or by one motion, depending on your preference.

Chair Curtiss: This is a consideration, not a hearing. Is there anyone from the public that would like to make comment?

James McCubbin: Oh, I do have one thing to add, both Lisa Moisey of our Parks Program and David Shaw from the City Parks have submitted written comment that they both concur with the offer made by interested parties based on that trail easement.

Chair Curtiss: Okay, seeing no one come to the mic, is there discussion or questions from the Commission?

Commissioner Carey: We've got an offer from the property owners. Is that kind of ipso facto, a declaration that the property's worth less than \$2500?

James McCubbin: No, I don't think it is. Maybe it bears on it, but I think just the fact that somebody is interested in it, is willing to make a lowball offer doesn't necessarily mean that it's not worth more than that. I think you need to...

Commissioner Carey: How do we determine that actual or at least approximately value?

James McCubbin: That's really your discretion to consider whether you think you have enough facts and evidence here. I think some of the relevant factors are this is a 20-foot wide piece of land that's probably not, I've been wrong before, but it's probably not a buildable lot. It is highly encumbered by numerous different kinds of easements, so I don't think there's much that can ever be done with this property, other than to use it as a driveway.

Chair Curtiss: Do the Commissioners, after our visit, believe that it's in the interest of the County to dispose of the property?

Commissioner Carey: I do.

Commissioner Anderson: Yes, I think it's an isolated tract out there, surrounded by City property, so I don't think it has great value to the County.

Chair Curtiss: Do we agree that it's reasonably of value less than \$2500?

Commissioner Carey: Yes.

Commissioner Anderson: I would concur.

Chair Curtiss: Are we willing to accept the offer for a five-foot trail easement that would not be part of this property, it would be adjacent to that would actually serve the public better, non-motorized trail, and price of \$1875?

Commissioner Carey: I believe that accepting the offer is in the public interest.

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Emmett Ault and Josh Rohde of Ault & Rohde Real Estate Development to purchase County property legally described as Section 20 Township 13 North, Range 19 West; 20-foot strip in East portion of North ½ of Lot 2 of Freisheimer's Addition, Geocode 220020317210000 for \$1875 and a five-foot trail easement, with review and preparation of appropriate legal documents to be handled by the County Attorney's Office. Commissioner Anderson seconded the motion.

Chair Curtiss: Any discussion?

James McCubbin: Before you vote, I'd request that that acceptance of that offer we [inaudible] preparation of acceptable legal documents on both sides. We need to review the dedication of the trail easement and they're going to want to review probably our form of a deed. I don't foresee any issues there. The documents haven't been drawn up yet.

Chair Curtiss: Denise, come to the microphone. We also need to, of course, continue with the--it would be subject to easements of record and apparent on the ground for access and utilities.

Denise Alexander: Denise Alexander, Office of Planning and Grants. I apologize I wasn't able to follow up on this and you did mention that both City and County Parks had agreed to the trail easement and they had only agreed to a 5-foot trail easement. I was surprised about that.

James McCubbin: That's correct and taking to David Shaw. I think it's going to be kind of consistent with sidewalks namely.

Denise Alexander: So it will just run concurrent with the 5-foot sidewalks? All right, thank you very much.

Chair Curtiss: So those legal documents would show that all those existing...

James McCubbin: Absolutely.

Chair Curtiss: ...encumbrances are still there?

James McCubbin: Yes, the deed would be subject to that.

Tim Elsea: May I make a comment? Tim Elsea, for the record. You cannot build a 5-foot path in a 5-foot easement unless you have a construction easement outside of that.

Chair Curtiss: They're actually going to build it. I don't know if that makes any difference.

James McCubbin: That's not expressly part of the offer, but [inaudible] proposed on site and this is in the nature of a driveway essentially, so if there had to be a taking for a construction easement, the value of that would be basically zero. I don't know if the offerers want to comment on that, on how the trail's going to be constructed?

Chair Curtiss: Mr. Gangle, would either one of you like to comment?

Josh Rohde: Josh Rohde, R-O-H-D-E. What is the question? Sorry.

James McCubbin: The issue is you can't build a 5-foot trail in a 5-foot easement without having some land on one side or the other at least to work on it. So you have any comments on how the trail's actually going to get constructed? Or if you guys didn't construct it, whether the City could come in and use the driveway to access easement to...?

Josh Rohde: Yeah, I believe the City would be able to use the other 20-foot easement to access that for any of their needs.

James McCubbin: What we could do is just put in the grant of easement a construction easement as needed to use the driveway if you guys don't have any problem with that. I don't think that's going to impact this driveway other than when you have a truck there.

Josh Rohde: The construction easement on the current...?

James McCubbin: 20-foot strip.

Josh Rohde: ...20-foot strip.

James McCubbin: Just to access the 5-foot.

Josh Rohde: I believe that would be fine.

Chair Curtiss: Could you state your name please because Cathie has to take minutes from...

Emmett Ault: Emmett Ault, A-U-L-T.

Chair Curtiss: Emmett, do you plan to build this as you construct your subdivision there?

Emmett Ault: Yeah, we're going to talk to Mr. Shaw and we had talked about [inaudible] be pavement or concrete, whatever they desire [inaudible] preference.

Chair Curtiss: So we'll address the, in the documents to be prepared, we'll address the construction easement so that we know that can happen. Also, at that time you could propose--it sounds like you plan to build it as part of your subdivision?

Emmett Ault: Yes.

James McCubbin: So Tim, that would be sufficient to have access from one side; one side of the 5-foot easement?

Tim Elsea: What's on the other side of the 5-foot easement?

Chair Curtiss: Nothing, right now, but they're going to build homes.

Tim Elsea: If it's part of the subdivision, then, yes, one side is fine. The other side is [inaudible].

James McCubbin: So that's acceptable [inaudible] add a construction easement for trail construction and maintenance across the 20-foot easement?

Emmett Ault: Yes.

Josh Rohde: Yes.

Chair Curtiss: So Mr. Ault and Mr. Rohde agreed. Further discussion?

The motion carried on a vote of 3-0.

Chair Curtiss: Thank you, you're free to go.

Hearing: Petition to Annex Property into Missoula Rural Fire District (Mackintosh Manor - Lots 6, 16A, 19, and 44)

Chair Curtiss opened the hearing.

[This is a hearing on annexation into the Missoula Rural Fire District. A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District. The petition has been checked and verified. The area to be annexed is described as follows: That particular parcel of land situate in Section 15, Township 11 North, Range 20 West, Principal Meridian, County of Missoula, State of Montana, being more particularly described as Lot 6 of Mackintosh Manor Lots 16A, 19 & 44, records of Missoula County.]

This petition has been received by the Clerk & Recorder's Office to annex parcels of land. Kathy is here from the Clerk & Recorder's Office, could you come to the mic, Kathy, and tell us if you certified the petition.

Kathy Wahl: Kathy Wahl from the Clerk & Recorder's Office. In this petition, the owner Thomas Maclay owns Mackintosh Manor, Lots 6, 16A, 19, and 44 and is requesting to have his property annexed into the Missoula Rural Fire District, so he's the only owner of this property. There isn't any body else involved with it.

Chair Curtiss: We do have in our packet a letter from Missoula Rural Fire District, from Larry Hanson, Chairman of the Board, saying that the board has met and approved the petition for annexation of these four lots. I thought I saw someone here from Missoula Rural Fire, but I don't remember.

Brent Christopherson: Good afternoon, Commissioners, I'm Brent Christopherson. I'm the Deputy Chief with Missoula Rural Fire District. Excuse the head cold, please. If you have any questions, I'd be happy to answer them, but it's just the standard petition process request from Mr. Maclay to be annexed into our district. Access and those types of things were checked out beforehand and we're recommending, as Chairman Hanson has, that they be allowed to come into the district.

Chair Curtiss: Thank you. This is a hearing; I'll open the hearing for other public comment. Is there anyone here that would like to comment on the addition of these lots into Missoula Rural Fire District? Seeing no one, I'll close the hearing. Any discussion?

Commissioner Anderson made a motion that the Board of County Commissioners approve the annexation of that particular parcel of land situate in Section 15, Township 11 North, Range 20 West, Principal Meridian, County of Missoula, State of Montana, being more particularly described as Lot 6 of Mackintosh Manor Lots 16A, 19, and 44, records of Missoula County into the Missoula Rural Fire District as presented in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Consideration: Lexi Hills (5 lots on 160 acres) - Lund Drive, northeast of Florence

Chair Curtiss opened the consideration.

Tim Worley: The developer for Lexi Hills requests a 60-day postponement of this subdivision consideration, which is for five lots on 160 acres, northeast of Florence. Staff concurs with the suggested 60-day timeline and recommends that this minor subdivision be considered prior to or on February 20, 2008. That would be just about 60 days. Staff would like to note though that any subdivision redesign may result in the project being required to go back through element review, which potentially could require new fees. We just wanted to put that on the record. We don't know if anything's in the works yet or not.

Chair Curtiss: I believe there is at least one person here today that came to testify in regard to Lexi Hills. Is Mr. Schroeder [phonetic] still here? Maybe I'll jump out of order. Is there anyone else that was here specifically for Lexi Hills? We'd be happy to take your testimony today and we'll enter it as part of the record when it comes before us again. If that's all right with the Commission, I'll jump out of order, so you don't have to sit through the next item if you don't want to. If you could state your name for the record and, since we know you spell it different than we pronounce it, we'll let you do that.

Bob Schroeder: Thank you, Commissioners, my name's Bob Schroeder, S-C-H-R-O-E-D-E-R. The Lexi Hills Subdivision is 160 acres that crosses some critical wildlife corridors, north fork of Woodchuck Creek, and a small drainage that intercepts it. The plan is to cross both of those drainages with a road system that I think is ill conceived for a number of reasons, one of which is that it directly intercepts that major game corridor between the river and the forested areas in Woodchuck. The second being that it's so steep; Woodchuck Creek is a very steep draw, prone to slumping. I would agree that because the fact that it may be possible to do doesn't make it the right thing to do. Other than that, I really don't have a lot of comment. I think that they should go back and redesign their idea of five bigger lots and think about putting more of their lots on the southern portion of that ground, which by the way, other applications have come before this Commission that butt up against Woodchuck Creek that you have requested to do the same. I would request that the Commissioners do the same on this parcel. I guess that's all I have to say.

Chair Curtiss: So your concern is mostly the game corridor and crossing of both the small creek and Woodchuck Creek?

Bob Schroeder: Yes, yes, and the terrain just doesn't lend itself to road construction. It's got to be 60% slope and the fill on the slope would roll clear to the creek, I guarantee you. It's just a very steep site. I know it can be done. You can do anything if you want to spend the time and money, but I just think it's ill conceived.

Chair Curtiss: I think those concerns were also brought up by staff.

Bob Schroeder: I think the Fish and Game supports that position also. Thank you very much.

Chair Curtiss: Thank you. Any other comments on Lexi Hills? So that will come back before us approximately the 20th of February.

Consideration: 66 Quarter Circle Ranch (2 lots on 11.88 acres) - 11591 Dry Hill Lane

Chair Curtiss opened the consideration.

Vlad Kryukov presented the staff report.

This is 66 Quarter Circle Ranch, Lot 5 Subdivision. Kong Vang and Cha Moua, represented by Eli & Associates, are proposing a two-lot residential subdivision on 11.88 acres north of I-90 and the Frenchtown Road, about two miles northwest of the Wye. The property is open grassland and there is no evidence it has been used for grazing or agricultural purposes in recent years. Lot 5A is 6.12 acres and contains an existing residence; Lot 5B is 5.76 acres and is vacant. The property is outside the air stagnation zone. There is a 222-237 foot wide swath of no-build zone in the southern portion of the property to keep buildings from skylighting along the ridgeline. Both lots will be served by individual wells and septic systems. There are no areas of riparian resource, irrigation ditches, wetland, or steep slopes on the property.

The subject property is within the 2002 Regional Land Use Guide based on the 1998 Missoula Comprehensive Plan Update and designates the property as open and resource with a recommended density of one dwelling unit per 40 acres. The property is unzoned and outside of urban growth boundary. The applicant is proposing two lots on 11.88 acres for a residential density of one dwelling unit per 5.44 acres, which does not comply with the 1998 Missoula Comprehensive Plan Update. Roads and access section; the property is accessed from Fred Lane and Sixty-Six Lane via Dry Hill Lane. Fred Lane is graveled to an approximately 24-foot width within a 60-foot public right-of-way and is county maintained. Sixty-Six Lane is paved to a 24-foot width within a 60-foot private access easement. Dry Hill Lane was approved as a driveway easement across Lot 3 and 6 to serve only Lot 5 with the Sixty-Six Quarter Circle Subdivision back in 2000. Currently, Dry Hill Lane provides access to homes on Lot 3, Lot 6B, and the existing home on Lot 5A. The off-site portion of Dry Hill Lane is paved to approximately 10-11 feet in width within a 54-foot private access easement to the western boundary of Lot 5A.

Missoula County Subdivision Regulations require an 18-foot wide surface width for onsite roads serving three to five lots. The subdivider proposes to pave the onsite portion of Dry Hill Lane to a 14-foot width within a 40-foot wide private access easement to the point where only Lot 5B is served. Therefore, the subdivider requests a variance to the road surface width standards. County Public Works does not support the variance request. County Public Works commented that widening the last 180 feet (the onsite portion of Dry Hill Lane) of a 520-foot wide road by two feet is not practical. Frenchtown Rural Fire District does not support the variance request and commented that both the offsite and onsite portions of Dry Hill Lane do not meet the access road standards. County Public Works and Frenchtown Rural Fire District recommend that the onsite and offsite portions of Dry Hill Lane be widened and paved to a 16-foot width with 2-foot gravel shoulders each side from Sixty-Six Lane cul-de-sac bulb to the point on Lot 5 where only proposed Lot 5B is accessed. This is required by a Condition of Approval #1. Missoula County Subdivision Regulations require cul-de-sacs be installed for onsite roads when through streets are not feasible with a minimum 60-foot radius right-of-way and 45-foot minimum radius paved width. The subdivider does not propose a cul-de-sac bulb at the end of Dry Hill Lane, therefore a variance is required. Staff recommends conditional approval of the variance request to permit the installation of an emergency vehicle turnaround at the end of Dry Hill Lane subject to review and approval of County Public Works and Frenchtown Rural Fire District per Condition of Approval #1.

Subdivision Regulations require access roads to be maintained in order to provide emergency access in all weather conditions. The plat contains a statement that maintenance of private roads is the responsibility of lot owners. Condition of Approval #4 requires a private road maintenance agreement for Dry Hill Lane. A 40-foot private access easement is shown along the northern boundary of Lot 5A and provides legal access to Lot 5B. This is required by a Condition of Approval #2. Subdivision Regulations and Frenchtown Rural Fire District recommendations require driveways greater than 150 feet in length to meet minimum unobstructed width and height standards and driveway plans to be reviewed and approved by Frenchtown Rural Fire District. This is required by a Condition of Approval #3. Staff also has additional conditions of approval with regard to fire. Condition of Approval #5 requires the subdivider to contribute a fire service fee of \$530 per new lot to Frenchtown Rural Fire District for fire protection. Also, Condition of Approval #6 requires water supply for fire protection to be provided via a hydrant system and water storage or interior residential fire sprinklers in each new home.

In addition to road access and fire conditions, staff also has additional condition of approvals and motions. They include addressing standard requirements, weeds, and the development covenants. Lastly, staff's recommended motions: denial of the road surface width variance request requested by the applicant, conditional approval of the cul-de-sac variance request, and finally approval of the subdivision subject to conditions and findings of fact in the staff report. That concludes my report.

Chair Curtiss: Thank you, Vlad. Is the developer's representative here?

Ron Ewart: Good afternoon, my name is Ron Ewart with Eli & Associates. This is Emily West. She is also a planner with Eli & Associates. I'd like to thank Vlad for all his work on this subdivision proposal. The property owners are here today. They are in the back of the room; they are Cha and Kong Moua and Chu [phonetic] and Choa [phonetic] Vang [phonetic]. They all own the property together. Cha and Kong own the home and live in the home that's on the property. Their goal is to divide the property so that Chu and Choa can build themselves a home on the property.

We'll pass out some photographs here of Dry Hill Lane. It's about some 300 feet long and there are three houses that access to it. With this subdivision, there would be a total of four houses accessing to this 300-foot long road or whatever. When 66 Quarter Circle Ranch was developed, it was contemplated that only Lot 5 would be using that 54-foot access and that 3 and 6 would come off 66 Lane. However, there was no prohibition against them using the access, so they did connect to this access. The road was paved to basically a driveway standard, which of course is less than the county road standards, although the subdivision regulations do not specifically require improvements to the offsite road, we do want to create a safe situation. We had some meetings last week and I met yesterday with our clients again. They are okay with improving the road portion to a 20-foot width. Vlad had emailed me a proposal for a change to Condition #1. I just printed that verbatim. It's on this sheet here, "As proposed by applicant" on top and "As proposed by OPG" on the bottom. I just worked with the language just a little bit.

First of all, I do want to say that Cha feels that he would be more comfortable with a 30-foot easement on his property. The regulations would allow a 30-foot easement for local roads serving three to five lots. The right-of-way width has to be 30 to 60 feet wide. The reason we were short of 40 foot is that sort of how it encompasses

the existing driveway. If we're going to go ahead and rebuild that driveway into a road, then perhaps you can move that road closer to the property line. In fact, he may wind up getting some easement from the person who lives on Lot 3. If we could just change that to a minimum 30-foot. If he has to go to 40 foot, that's fine, but it would also include whatever the property owner to the north gives, if he gives some easement as well. We would like to see that Condition #1--well I won't read it verbatim, you have it right here in front of you, but we are agreeing to widening the paved portion to a 16-foot width plus 2-foot shoulders, as recommended by Frenchtown Rural Fire, Public Works, and OPG. On the property, the road would be constructed to a 20-foot width. If they could afford to pave it at that time, then they go ahead and pave it, if they can. These two families are going to be under a lot of financial strain to go ahead and rebuild this road as it is, so if they could have just some relief on the immediate paving of the onsite portion, that would be fine. Then of course, the plans would be reviewed and approved by Public Works. Of course, [inaudible] Public Works would look at the situation and realize that we're not planning to completely tear out the road, rebuild it all over again, which is what you'd probably have to do to technically meet county road standards. You'd have to start all over, but what we're going to try to do here is to work with what we have and do the best we can and come up with a wider road that meets standards without starting fresh. Sometimes it's easier to build a road from scratch, but it's not less expensive to do it that way. Then of course, the turnaround plans would be approved by Frenchtown Rural Fire District.

Just to quickly talk about the next two conditions, Condition #2 does require a 40-foot wide private access easement. We'd like to change that to a minimum 30 feet. I'm sorry, Vlad, that we didn't talk about this earlier, but this just came up yesterday, but if we could change that to a minimum 30 foot easement. Then on #3, we talked about this a little bit at Planning Status and I feel that it's very important. Vlad and I spoke at length on the phone about it and I don't think there was a resolution. It states driveways in excess of 150 feet in length must be approved by the Frenchtown Rural Fire District prior to building permit approval. That's fine, that's the way it's always been. It goes on to state the driveway must provide 20 feet of drivable unobstructed horizontal clearance and so on. As I stated on Monday, this is the first time I've ever seen the word drivable put into the conditions, so drivable unobstructed horizontal clearance. What this means when I read it or it could be interpreted that the driveway has to be constructed to a 20-foot width. The regulations do not require the driveways to be 20-foot wide. It does require that a two-lot user road be constructed to 14 feet without shoulders, so shoulders are not required in addition to the 14-foot width for a two-lot user road. Why would a one-lot user road be 20 feet wide? The regulations do not say how wide a driveway has to be. The old regulations said 12 feet and we've just always gone with the 12 feet, but it's not specifically required or stated here, although it does state again that a roadway serving two lots has to be 14 feet wide. When we say 20 feet of drivable unobstructed horizontal clearance, that could very well mean that we're looking at a 20-foot driveway. If that's the direction we want to go, that's fine, but it really needs to be in the regulations because when people come to us to do a subdivision or develop their property or when they go to OPG, we all have to be able to know what to explain to these folks. In fact, when the Mouas and Vangs first came to us, we really didn't know what to say about the offsite road because the regulations do not require. It just requires that the offsite road have a 20-foot horizontal clearance, which it does. That's also up to interpretation, so we're just trying to get some consistency here on this and not have confusion. If we're going to change the regulations again, hopefully we can do it so it helps create a safe situation, but a consistent type of thing so that we all know what the rules are and we can apply them fairly and equitably.

With just those three changes, just change Condition #1 complete and #2 at a minimum 30-foot easement. Of course, again that meets the regulations. Number 3, just take out the word "drivable," because at this point we don't know exactly how that would be interpreted. Thank you.

Chair Curtiss: Thank you, Mr. Ewart. Vlad, could you clarify for me, Condition #3 talks about driveways. Are we talking about the driveway from Lot 5A to Lot 5B or are we talking about the whole length from the 66 Quarter Circle of Dry Hill Lane?

Vlad Kryukov: When we talked about driveways, we mean from the point where the applicant proposes, will provide an adequate turnaround for fire apparatus and other emergency vehicles, from that point on to the proposed structure on Lot 5B.

Chair Curtiss: Tim, maybe you could point. When we say driveway, we really are saying 20 feet of unobstructed from Lot 5A to Lot 5B?

Vlad Kryukov: I believe it's from the onsite portion of 5A to the point where it only provides access to Lot 5B, it could be considered or it is considered a roadway from that point on, it's considered a driveway because it's only serving one.

Chair Curtiss: Condition #3 is talking about a driveway?

Vlad Kryukov: I believe so. Now if I may clear things up a little bit. From my conversation with Mary McCrea and Scott Waldron with Frenchtown Rural Fire District, we came up with the Condition of Approval #3, stating that 20-foot unobstructed drivable surface and, if I may, I would like to have Scott Waldron come up and explain further the significance of having unobstructed drivable surface.

Scott Waldron: Good afternoon, Scott Waldron, Frenchtown Fire District. We find ourselves in a bit of an unfortunate situation where the subdivider of this current lot is having to accept the results of poor planning and poor implementation of the previous developer and the current and previous engineering firm, which was one and the same. As Vlad mentioned, Dry Hill Lane was built in the 54-foot wide easement. That was never intended to be a driveway. It's foolish for any of us to believe that that was the case and instead of paving it as appropriate at the time and not even paving it to the minimum standards listed in their covenants, they paved it to above 10 feet wide. The proposal to pave that to 16 feet is acceptable to us, but certainly a minimum. The current subdivision regulation covenants require every driveway in that subdivision to be paved to 12 feet width within two years of construction. If in fact they'd even managed to comply with their current subdivision regulations, the previous owners would have had part of this paved. When we've seen, and we've heard here today, Mr. Ewart makes comments and we find ourselves in a situation because of these types of comments of if we can and if it's possible, and that type of stuff. I would urge the Commissioners not to reward past bad behavior because they didn't follow through what they should have done in the first place. Again, it's unfortunate and we certainly don't want to put an inappropriate burden on the current owner of that property, but, Commissioners, be real careful about accepting stuff like if we can and maybe we'll get 10 feet of additional easement from the property next door. Those things never happen and we've got lots of evidence to that case.

To speak to these conditions, we'll concur with 16 paved to the lot line of 5A. We believe the current covenants require pavement within two years of the driveways. If in fact they were to pave them 12 feet wide, those would usually have a 2-foot shoulder on them anyway, which would end up being 18 feet. If in fact the Commissioners desire to approve and we will agree with a 20-foot unobstructed drivable roadway, we can live with that if this is going to be strictly as a driveway. The soils in this area are very clay soils and during conditions that we have now, 50,000-pound fire trucks can't get off of a good roadway, which meets an all-weather surface all year round. To reduce the width of that challenges us a lot in cases of emergency or fire to get multiple apparatus in those driveways. If they want to go along and meet the requirements that are currently listed in their covenants of a 12-foot paved right-of-way with 2-foot shoulders, that would give us 18 feet. If we could get them to agree to that in a certain specific timeframe, I would be willing to reduce that overall width by the two feet. If they're unwilling to meet the current subdivision covenants, we would have to require the 20-foot drivable surface, all weather drivable surface.

Chair Curtiss: Chief, could you talk to us a little bit about if you have a paved section and then you have a shoulder that's built to a certain grade and it gets used very much for heavy trucks such as you drive, what happens?

Scott Waldron: One of the problems that we have currently in some of the language that is being interpreted is that after you get off the drivable width, the paved width, they other can drop off into a ditch or whatever. The problem is that creates a situation where we can't, gain, pass vehicles. Even on a 16-foot wide paved road, if we're passing two large fire trucks, we're on the shoulder. Those need to be bermed up, as Commissioner Curtiss has mentioned, it needs to be drivable surface. If you don't do that--that's the key change that we're looking at in language here is unobstructed means you can drive over a small bush, drivable surface means that it's capable of carrying the capacity and the weight of the fire apparatus or emergency equipment that need to use that roadway.

Chair Curtiss: Thank you. Any other questions for the fire chief?

James McCubbin: Commissioners, could I just jump in for a moment, based on his comments. I just want to--I think you're already aware of this, but your timeline for any conditions of approval basically ends at final plat, not two years later. That can be extended by the developer with an improvements guarantee, but if you're going to make a condition, it can't be past that point.

Tim Elsea: Commissioners, if I may make one point. Tim Elsea, for the record. They're speaking of two different sets of regulations. When they say the regulations say one thing and then we're asking for something different. One is the fire code regulations and that's the 20-foot unobstructed width. That is generally defined by the fire chief. The other is our subdivision regulations. In this case, where my understanding is where the driveway gets beyond 150 feet, that the fire code regulations take effect.

Chair Curtiss: Thank you, Tim. Are there any other comments from planning staff?

Vlad Kryukov: If I may, the handout that Tim handed out with the alternative condition of approval, the way it has underlined language and strikeout language is identical to the second paragraph handed out by Ron Ewart with Eli & Associates. The only difference I see with Ron's proposal, which the first paragraph is he's asking for a 30-foot easement, rather than a 40-foot, otherwise we don't see much different in his proposal.

Chair Curtiss: So Vlad, Ron had mentioned that our regulations do allow for a 30-foot instead of a 40. Is that correct? Tim?

Tim Worley: Yeah, I think 30 should work.

Chair Curtiss: So as long as they build a--the easement is just the extra space?

Tim Worley: Right.

Commissioner Carey: Just so I'm clear, the handout with the stricken language is coming from OPG?

Vlad Kryukov: Yeah, it's identical. What I did is I emailed a copy of our alternative condition of approval to Ron earlier today per his request. It's the second paragraph on his handout. Now the first one is his proposal from his applicant and the only difference that I saw was the 30-foot easement rather than the 40-foot easement.

Commissioner Carey: And you're okay with the 30 feet?

Vlad Kryukov: I believe so. I think Ron's main concern was--I can't remember what he said, but less encumbrance on the applicant to provide a 40-foot easement.

Chair Curtiss: We're talking about for Cathie's notes, the one that says, "Roads and Access" and has red letters with strikeout and underline.

Vlad Kryukov: Right, and that's our copy of it. If I can...

Cathie Cichosz: Excuse me, just let me clarify, so I wrote on top of here from Ron Ewart, and that's not true, it's from you?

Vlad Kryukov: That's our copy.

Chair Curtiss: It's from OPG, the one with the red letters.

Vlad Kryukov: Now if I may clear this up. The 40-foot easement that we're describing, it's colored in orange and it's from the western boundary of the proposed Lot 5 [inaudible] eastern boundary or the western boundary of Lot 5 be--all Ron is requesting is instead of 40 -feet wide, making it 30, which we essentially don't see any problem with.

Chair Curtiss: Thank you, Vlad. Any further comments on this subdivision? Ron.

Ron Ewart: Sorry to come back up again, but just to clarify a couple things that were brought up. When I said that the neighbor may give easement, he may, but at a minimum, we are at least going to dedicate 30 feet of the

easement and meet the regulations. All we're saying in this entire thing here is we're wanting to meet the regulations, building the road to the 20-foot width all the way coming in. I will say that Eli & Associates had nothing to do with the construction of Dry Hill Lane. We didn't name it, like I said, it was contemplated that Lot 5 would use that as an access. We didn't restrict the other lots, you know, the county didn't restrict the other lots from using it and they used it. It's something that maybe they shouldn't have been able to use it, but they did. We had nothing to do with the construction of the road.

Lastly, the driveway serving Lot 5B, which would come off of Lot 5A, where it is now, we're just asking that they be allowed to build it to the same standards that all other driveways are allowed to be built in the county, which is a 12-foot width. If they want to pave it and meet the covenants, that's fine, but it's not something that we can require. To say that we'll accept 18 feet, but where have we ever had a requirement for an 18-foot driveway or a 20-foot driveway. It's always been 12 feet and we probably shouldn't be arbitrary for this particular situation here just because all of a sudden a new word was added into a condition. Again, we're just looking for fairness and consistency so that we know what the rules are.

Chair Curtiss: Thank you, Mr. Ewart. Tim, could you read to us out of the regulations, since I see you have them, what it says about driveways for width.

Tim Worley: Is the question about the 20-foot unobstructed or about shoulders?

Chair Curtiss: Well, in this red-lettered, it says that we're proposing--I guess that one is pointing to Dry Hill Lane, though, that we want written. So where was the part that was about the driveway length--width?

Vlad Kryukov: That's Condition #3. This is Condition #1.

Chair Curtiss: Condition #1's okay, then so Condition #3 talks about driveway width. It sounds like its 20-foot driveway. There they could make it 12 feet wide, they'd just need to have wider shoulders, is that what it...?

Tim Worley: Yeah, you just need to have a 20-foot unobstructed and maybe Scott can explain that a little better, but you'd just have to have enough width essentially for two fire trucks to pass each other. Some of that width, I guess it would be four-feet on each side typically could be drivable shoulder.

I did notice a couple other missing clauses in the applicant's proposed language that I might want to discuss just real quickly here if I could. If you take a look at the very first sentence of the condition as proposed by the applicant, "The offsite portion of Dry Hill Lane shall be widened and paved to a 16-foot width with 2-foot gravel shoulders on each side from the Sixty-Six Lane cul-de-sac bulb to the property boundary of Lot 5A." Probably should have a phrase saying something like, "prior to final plat approval" on that. There's really no timeline on that improvement. Similarly, if you'd go to the second to the last sentence, "An emergency vehicle turnaround shall be provided at the end of" and Vlad thought there should be an insertion of "the onsite portion of Dry Hill Lane, subject to approval subject to approval by the Frenchtown Rural Fire District." Similarly, there's no timeline on here, so we would add, "prior to final plat approval," which was in the original condition, or any timeline that you think is appropriate to meet the regulations.

Chair Curtiss: So if we went with the red-lettered handout today, is there any language that needs to be added there in that second to last sentence about the onsite portion? Right now it says, "An emergency vehicle turnaround shall be provided at the end of Dry Hill Lane."

Tim Worley: I think that could be added, do you think, Vlad, that's appropriate?

Vlad Kryukov: You could; however, Dry Hill Lane actually ends--to be more precise, it does end on the onsite portion where it terminates at the point where it will only provide access to Lot 5B. We could add it, just to clarify the location of the turnaround.

Commissioner Carey: Would it be simplest to just amend the original Condition #1 to go from 30-foot wide private access to 30-foot wide access and call that good?

Tim Worley: I'm wondering if we could do that with the language that Vlad has presented in underlined ~~strikeout~~. Would that be workable, Vlad?

Vlad Kryukov: I believe so.

Tim Worley: Just change that 40 to a 30.

Vlad Kryukov: [Inaudible, spoke without mic.]

Tim Worley: The condition would just change to read like this.

Chair Curtiss: If we would do it, this would be a substitute. We could change the 30-foot here if we wanted to?

Tim Worley: Correct, yeah, you could change it from 40 to 30.

Commissioner Carey: And then go with the amended OPG Condition #1.

Chair Curtiss: What we would do is we'd take the one that is in red-letter, if we wanted to change it to 30, we could. Then just substitute if for the one that's in the staff report, is that what you're saying.

Tim Worley: Right.

James McCubbin: Because you have an obligation to confer with the developer on mitigation, we might just clarify that their on the same page with that too. It sounds like that's what they're proposing, but I'd be inclined to see if Ron has a comment on that.

Chair Curtiss: Mr. Ewart, could you come to the mic please. Our question to you is if we take the handout--do you have a copy of this red-lettered handout? It basically says the same thing only it's put in the format that matches our conditions of approval. What we're talking about is taking this red-lettered one, but where it has a 40-foot wide, we could substitute the 30. Does that meet the intent that you had/

Ron Ewart: That'd be fine, sure. Thank you.

Chair Curtiss: This is a consideration, not a hearing, but is there anyone else who would like to make public comment? Are there further questions of the fire chief or anyone else from the Commission? I guess we're ready for motions then, seeing no one come to comment.

Commissioner Carey made a motion that the Board of County Commissioners deny the variance request from Article 3.2.2.6 of the Missoula County Subdivision Regulations to permit a 14-foot road width for the onsite portion of Dry Hill Lane based on the findings of fact in the staff report.

Commissioner Anderson: I want to make sure that I understand that if we deny that, that the other substitute motion here, does that address that situation then?

Chair Curtiss: Yes.

Commissioner Anderson: And the developer has concurred with that, right?

Chair Curtiss: Yes.

Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey made a motion that the Board of County Commissioners conditionally approve the variance request from Article 3.2.2.6(1) of the Missoula County Subdivision Regulations requiring installation of a cul-de-sac at the end of Dry Hill Lane to permit a hammerhead turnaround for fire apparatus per amended Condition of Approval #1 based on the findings of fact in the staff report. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey made a motion that the Board of County Commissioners amend Condition of Approval #1 to read, "Dry Hill Lane shall be widened and paved to a 16-foot width with 2-foot gravel shoulders each side from the Sixty-Six Lane cul-de-sac bulb to the western boundary of Lot 5 prior to final plat approval. The onsite portion of Dry Hill Lane shall be widened and graveled to a 16-foot width with 2-foot shoulders each side within a 30-foot

wide private access easement from the western boundary of Lot 5A to the point on Lot 5 where only one lot, proposed to Lot 5B, is accessed prior to final plat approval. An emergency vehicle turnaround shall be provided at the end of Dry Hill Lane and engineering plans shall be reviewed and approved by County Public Works and Frenchtown Rural Fire District prior to final plat approval.” Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey made a motion that the Board of County Commissioners approve the Sixty-Six Quarter Circle Ranch, Lot 5 Subdivision based upon the findings of fact in the staff report and subject to the recommended amended conditions of approval. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Sixty-Six Quarter Circle Ranch, Lot 5 Subdivision Conditions of Approval

Roads and Access:

1. Dry Hill Lane shall be widened and paved to a 16-foot width with 2-foot gravel shoulders each side from the Sixty-Six Lane cul-de-sac bulb to the western boundary of Lot 5 prior to final plat approval. The onsite portion of Dry Hill Lane shall be widened and graveled to a 16-foot width with 2-foot shoulders each side within a 30-foot wide private access easement from the western boundary of Lot 5A to the point on Lot 5 where only one lot, proposed to Lot 5B, is accessed prior to final plat approval. An emergency vehicle turnaround shall be provided at the end of Dry Hill Lane and engineering plans shall be reviewed and approved by County Public Works and Frenchtown Rural Fire District prior to final plat approval. (*Subdivision Regulations Article 3.2.2.2, 3.2.2.6(1), Public Works, and Frenchtown Rural Fire District recommendations*)
2. A 40-foot wide private access easement for the benefit of Lot 5B shall be shown across Lot 5A adjacent to the northern boundary to the western boundary of Lot 5B prior to final plat approval. (*Subdivision Regulations Article 3.2.2.1*)
3. Driveways in excess of 150 feet in length must be approved by the Frenchtown Rural Fire District prior to building permit approval. The driveway must provide 20 feet of drivable unobstructed horizontal clearance and 13 feet 6 inch unobstructed vertical clearance the length of the drive and a fire district approved turnaround for fire apparatus at the end of the drive. This language shall also be included in a development covenant prior to final plat approval and shall not be deleted or amended without governing body approval. (*Subdivision Regulations Article 3.1(1)(f) and Frenchtown Rural Fire District recommendation*)
4. A shared private road maintenance agreement for the maintenance of Dry Hill Lane shall be filed with the Missoula County Clerk and Recorder’s Office subject to review and approval by OPG, County Public Works and the County Attorney’s Office and shall be included in the development covenants prior to final plat approval. (*Subdivision Regulations Article 3.1(1)(f)*)

Fire:

5. The subdivider shall contribute a fire service fee of \$530 per new lot to the Frenchtown Rural Fire District for fire protection purposes. Payment of this contribution shall be verified prior to final plat approval. (*Subdivision Regulations Article 3.7.1 and Frenchtown Rural Fire District recommendation*)
6. The subdivider shall provide a water supply for fire protection via a hydrant system that produces 1000GPM fire flow with a minimum 30,000 gallons of storage, approved by the Frenchtown Rural Fire District. In lieu of a water supply with hydrant, the subdivider shall request approval from the Frenchtown Rural Fire District to 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 the Frenchtown Rural Fire District prior to final plat approval. Plans for the installation of interior residential fire sprinklers shall be approved by the Frenchtown Rural Fire District prior to building permit approval and the development covenants shall include the following language prior to final plat approval:

“Residential Fire Sprinklers:

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 Frenchtown Rural Fire District prior to Building Permit approval. Fire sprinkler installations shall be inspected and approved by the Frenchtown Rural

Fire District. 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 Article 3.7.1 and Frenchtown Rural Fire District recommendation*)

7. An address signage plan, including size and location, shall be reviewed and approved by the Frenchtown Rural Fire District and the approved design shall be incorporated into the covenants prior to final plat approval. (*Subdivision Regulations Article 3.1(1)(f) and Frenchtown Rural Fire District recommendation*)

Weeds:

8. The developer shall provide a Revegetation Plan subject to review and approval of the Missoula County Weed District prior to final plat approval. (*Subdivision Regulations Article 3.1(1)(f) and Missoula County Weed District recommendation*)

Development Covenants:

9. The subdivider shall provide Development Covenants supplemental to the Sixty-Six Quarter Circle Ranch covenants that include an applicability section and the following sections:
 - a. Living with Wildlife: Please refer to the “Wildlife” section of the covenants for the original Sixty-Six Quarter Circle Ranch (first filed in 2001). Those covenants are designed to help minimize problems that homeowners could have with wildlife (such as deer, elk, bear, mountain lion, coyote, fox, raccoon, skunk and magpie), as well as helping homeowners protect themselves, their property and the wildlife that Montanans value. For further information on “living with wildlife,” you can contact the Montana Fish, Wildlife & Parks, office in Missoula for brochures that can help homeowners “live with wildlife.” Alternatively, see FWP’s web site at www.fwp.mt.gov.
 - b. Weed Control: In addition to the weed control covenants contained in the development covenants for the Sixty-Six Quarter Circle Ranch, owners shall revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs.
 - c. Radon: The EPA has designated the Missoula area as having high radon gas potential (Zone 1): Therefore, the Missoula City–County Health Department recommends that all new residences incorporate radon resistant construction features.
 - d. Amendments: The following sections may not be amended or deleted without governing body approval: driveways, radon, living with wildlife, weed control, interior residential fire sprinklers, address signage plan, and private road maintenance agreement.

Chair Curtiss: At this time we’re going to take a 5-minute break, so that we have time to look at how many people have signed up to speak on JTL. Also, it gives people time to move so those that have been waiting can move into this room if needed.

Consideration: Whether Emergency Condition Exists and Whether to Direct Staff to Pursue Possible Interim Zoning in Lolo Area

Chair Curtiss opened the consideration.

I’m going to talk a little bit about the process that we’re going to use today to try and make this a fair hearing and get all the information the Commission needs. Then I do have one person that’s asked to go first because of another commitment in Kalispell. As listed on our agenda this week, our consideration is whether an emergency condition exists and whether to direct staff to pursue possible interim zoning in the Lolo area. We’ll be taking testimony on that today. This interim zoning would need to mitigate whatever emergency is identified by the discussion today. The things that we have entered into the record are the permit from JTL that includes a draft environmental review by DEQ, a letter from the Department of Transportation dated December 7, 2007 that talks about their process in permitting a new access onto the highway, all letters, emails, faxes, and phone calls that we have received to date, and of course all the testimony that we’ve heard the last three weeks during our public comment period is part of the record.

We've asked for folks to sign in, if you haven't had the opportunity to sign in and you would like to testify, there's some clipboards up front, you could do that. We ask today that people focus on new information, so if we've heard it at previous meetings, it doesn't need to be repeated. Please try to limit your repeating or duplicating testimony that the folks before you present. You can simply indicate that you support the same concept, same testimony. In order to be sure that everyone's had a chance today to be heard by the Commissioners, we'll ask that you limit your testimony to about three minutes. We have about 55 people who have said they want to speak, so that will keep us from being here all night. In the event you believe you need more time than, simply ask permission to extend your time. Right now, we know that Myra Shults has asked for about 10 minutes, Mr. Ferguson has asked for about 10 minutes, and Mr. Gannon has asked for five. If we need a little bit more time, just let us know. We're just trying to move the meeting along.

Today the Commissioners are sitting as a legislative body, so sometimes we're executive, today its legislature, therefore, we've added some procedures. We'll take all testimony from the public and from the experts that might be in the room, then go into executive session for questions and discussions. At that time, the Commissioners may ask someone who has spoken earlier to respond to some questions that we may have. We ask that folks, as you speak today, to direct your comments to the Commissioners, not to JTL or Mr. Allen or anyone. Questions today come to us. Please state your issues and concerns, refrain from any comments that could be considered disrespectful or directed at any one person or agency. If you have a question, please state them in your testimony and we'll consider them while we're in executive session.

At this time, I would like to ask Carey Hegreberg to come and speak to us as he has a previous commitment and asked to go first.

Commissioner Anderson: Chairperson, could I just note for the record, four more items that have been entered into the public record, those are the DEQ applications for the Pyron [phonetic] and Blaine Ford [phonetic] gravel pits that are across the road from this location. Also, a hard copy of the community highway safety forum presentation that was presented December 6, 2007, here in Missoula, specifically pages 31 and 32. Also, a letter to Duane Kailey dated December 7 regarding crash information between Hamilton and Missoula from the period of 1999 to 2006.

Chair Curtiss: Thank you Commissioner Anderson. If you could state your name and spell it for the record.

Carey Hegreberg: Madam Chair and members of the Commission, my name is Carey Hegreberg, H-E-G-R-E-B-E-R-G. I'm the executive director of the Montana Contractor's Association. I do appreciate you allowing me this opportunity. I am headed to Kalispell for a public forum almost exactly like this one on their zoning regulations for gravel operation. Last night I was in Helena addressing a similar hearing concerning a pit proposed for the East Helena area. These are very critical issues statewide. We understand that our member companies throughout the state are under fire from local residents as they attempt to try and find new sources of aggregates to fulfill construction needs around the state. However, if these issues were simply popularity contests, I would allege that construction would shut down across the state. There would be almost no gravel available for asphalt, concrete, base gravel that construct our roads, our streets, our infrastructure. The last time I addressed this Commission was in a similar circumstance and I warned that if you attempt to appease every group that pops up to oppose a new activity such as a gravel pit, that you will basically invite a bigger uprising the next time. Montana's environmental laws and analysis procedures are not intended to be used as a populace vote on every new proposal. We're seeing this around the state, an attitude that if you can generate a huge crowd, that somehow out of sheer opposition that a public body is going to deny a private landowner and a company an opportunity to get a permit to operate in a lawful way. I would also like to encourage you to always keep in mind that it's the Montana Department of Environmental Quality that analyzes and discloses environmental impact. You're going to hear probably a lot of things and a lot of allegations, but it is the DEQ of the state of Montana that is charged with both responsibilities.

Today's hearing is to determine if there's an emergency. We would allege that there is no emergency that would precipitate interim zoning. The Gallatin County Commissioners recently entertained a very similar proposal to declare an emergency and enter into interim zoning, which ostensibly would allow you to declare an area to be residential. That's an issue that we've worked real hard at legislature quite frankly and we realize that we haven't quite gotten to where we need to be for the industry to find balance with local government. The Gallatin County Commissioners decided that in almost identical circumstances to this that no emergency existed and they had no legal right to declare interim zoning. We would encourage the same decision here today. I handed forward a copy of Senate Bill 398 that was introduced in the 2007 legislature at our request. It was drafted by the Montana

Contractors' Association. It did not pass the legislature, however, we would encourage you to take a strong look at this proposal. It would encourage the County to identify where your gravel reserves are and zone accordingly, and put future property owners in those areas on notice that there is gravel in those areas and it has been zoned for the possibility of extraction and processing. We understand that these issues are going to continue to be contentious, but as you're very well aware, in talking with your own county road department and in talking with some of the folks who testified earlier. We're trying to widen roads, we're trying to develop the economy, we're trying to meet the growth trends that are affecting Western Montana. It's not a matter of whether we're going to mine gravel; it's a matter of where we're going to get it. We can import shoes from Korea, but we can't import gravel from Japan or China. It simply has to come from close proximity to where the construction occurs. We urge you to deny this request for interim zoning. If you did have any questions, I'd appreciate getting them now, so I can get off to Kalispell.

Chair Curtiss: Any questions at this time? Thank you, Carey. I'm just going to start down the list if that's okay. I was going to start with you, Myra, but John will go first? Okay.

John Ferguson: My name is John Ferguson, I'm a water attorney, as well as I have my masters in environmental studies from the University of Montana Graduate School. I appreciate this opportunity today to provide testimony to you. I have requested 10 minutes and I should be able to keep it in 10 minutes, is that okay?

Chair Curtiss: That's fine.

John Ferguson: If the DEQ issues an open-cut mining permit to JTL, a property right will vest in that permit and they will have the legal right to drastically alter and change the character of that property of the use and the character of that property. Because of that, an emergency measure under Montana Code Annotated 76-2-206 is necessary to protect and promote the public health, safety, and general welfare. More specifically, the emergency measure here that we're requesting is interim zoning. In order to determine whether an emergency measure such as interim zoning is necessary, you need to determine whether there's an exigent circumstance. In this case, the exigent circumstance is that in 45 days or less, DEQ may very well issue the open-cut mining permit to JTL, therefore effectuating [inaudible] vesting of that property right. In order for you to determine that an emergency measure is needed, you have asked us to provide you with objective and verifiable facts that you could determine whether or not there's a threat to the public health, safety, welfare as a result of this proposal.

Today, I'm going to address two different things. I'm going to address the impact to welfare and to health, and I'm going to start with welfare. Welfare includes the use and enjoyment of property rights of which is water rights. If the DEQ issues an open-cut permit to JTL and gravel operations begin, which would occur relatively soon, the water supply source in that area will be drastically affected and adverse affects will occur to groundwater and surface water right holders in that area. The following facts that I'm going to talk about show the complete disregard for other water right holders in this area. Instead of meeting their burden under the state law to come forward with facts and evidence showing that they are not going to adversely impact other water right holders, they have provided absolutely no evidence and, as such, it is really likely that these water right holders adjacent to there are going to be adversely impacted.

So the plan of operations calls for a wash plant and the draft EA states that [inaudible] 1800 gallons a minute will be used for that wash plant. It also states that Ken Allen and JTL together have 810 gallons per minute and that's used for domestic and irrigation and that they will be seeking an additional 2,000 gallon per minute industrial water right because they claim they only have 810 right now, there are short by 1,190 that they would have to seek additional water. There was no evidence provided in open-cut mining permit or otherwise to determine whether or not they even have valid water rights in the amount of 810 gallons per minute. The Bitterroot, which includes its areas closed to new appropriations due to the fact that more water rights have been issued than there is water. There is a new groundwater surface water bill that has been passed to address this very issue. This statute requires that they come forward with sufficient report with a hydrogeologic report that meets strict standards to determine whether or not there is available water and, if so, how is it going to affect the area landowners with the zone of influence. Nothing like that has been presented.

There are residential wells down gradient from the proposed area of the mine. The groundwater flows towards those areas and it's very likely that any pumping would intercept water that otherwise would have made it to those wells or to the Bitterroot River where other folks have surface water rights. The Bitterroot River is a mere one-half mile away. In the open-cut mining permit as required on the very specific question, which you have as part of the record, they failed to identify the specific DNRC water right numbers that they have currently that they intend to

use for the wash plant that they are requesting. They also fail to identify any other water rights that could be potentially affected, but in that area there's a list here, and I'll provide this for the record, there are several, many water rights, both groundwater and surface water, in this area. None of these were identified or discussed as being potentially impacted. The bid that JTL submitted as part of the open-cut permit shows that excavation of the 30-foot pit would begin in December. Because the static groundwater table has been confirmed between seven and 16 feet, this 30-foot excavation pit would intercept groundwater. As a result, they would be intercepting water that they have no right for and that would have otherwise have been used by other water right holders. As required on the open-cut mining permit, there was supposed to be DNRC consultation. No evidence was provided that that in fact occurred. No change application for the current water rights, whatever amount they are, has been submitted to the DNRC. They currently are not--there's no beneficial use, at least not that I'm aware of, for industrial use, no hydrogeologic study has been prepared. Even if all that was prepared and submitted today, it's not likely that DNRC would rule in the next nine months and possibly two years, because there is an enormous amount of consideration that needs to occur to prevent adverse impact to other water right holders. You as the County Commissioners have the authority to promote and protect the general welfare, which includes water right holders and those who enjoy the use of the water [inaudible] this time. The DNRC does not have exclusive jurisdiction in this area and their measures are not absolutely protective. You can protect the general welfare right now. They cannot, meaning that they can only step in once the pit was excavated, once the water was intercepted that otherwise would have made it to someone else's well or to the Bitterroot River for surface water, but at that point the damage will have been done.

Now I want to talk about the potential impact to health. With regards to health, if an open-cut mining permit was issued, operations begin, the public will be exposed to an increased health risk due to a deficit groundwater study and containment, detection, and contingency plan. JTL is planning to operate an asphalt plant, which they mentioned in their plan of operations. The DEQ confirmed this with the public notice they sent out. The bid that JTL provided, which is part of that, said to setup the asphalt plant in April of 2008. I'm sure that timeline depends upon when the permit has actually issued. Petroleum products will be onsite for operation, as well as other hazardous materials for the asphalt plant. The groundwater may be contaminated as a result of operations and that's why the DEQ does require a containment, detection plan [inaudible] contingency. An online settling pond is also planned to discharge water into. This proposed area has been identified by the Lolo Regional Plan as being prone to high groundwater areas, pictures have been submitted, previous meetings, which show area flooding. Because of this, with petroleum products and hazardous materials onsite for operations, they could be intercepted during high water and there could be exposure to the groundwater--the groundwater could be contaminated through the open unlined pond, as well as the excavation pit. Then, as we know, the groundwater flows towards the--downgrading towards residential wells. There's a real threat. The hydrogeologic study that was submitted in support of their proposal was one that was prepared years before for a subdivision. It did not take into account the use of water for an excavation pit of that size or for a 2,000 gallon per minute water right. In fact, the two irrigation wells used to determine the pumping test to draw down and determine the aquifer properties was 90 feet in depth. In fact, what's mainly going to be affected with contamination into the aquifer will be the shallow aquifer. Because of that, they were most likely grossly miscalculated the hydraulic connectivity, meaning the rate with which groundwater travels. Without having a clear picture of that, if there is a spill, how can you have a containment detection and other response if you really don't know how fast the containments are going to travel in the first place. For all these facts, I urge you to use interim zoning as an emergency measure because of the exigent circumstance at hand and there is a real threat to public health and welfare. Thank you.

Chair Curtiss: Boy, you've got that 10 minutes down to a science. Thank you, Mr. Ferguson. Ms. Shults, would you like to go next? The next name that I have as a speaker, Dianna Mitchell has a question mark. Dianna, did you want to speak at this time? Pamela Gehrig.

Pam Gehrig: My name is Pam Gehrig, I live at 8000 Mull Road, and you spell my last name G-E-H-R-I-G, as in Lou. I wanted to present to the County Commissioners a couple of CDs that we had made of the Lolo Community Council meeting that was held on the 4th of December. I guess I want to present it because I know that Jean and Bill, you weren't there. I think it's important that you review it. Also, if you want to pay particular attention to the comment from Debra Odell [phonetic], who lived in the Westview Park area where a JTL facility was in operation. We would like you to pay particular attention to that. I would like to present these to you.

Chair Curtiss: Thank you, Ms. Gehrig.

Pam Gehrig: Lastly, I have done some research. I am in the health care business; have been for 20 years and work a lot with the CDC World Health Organization everything cetera with the current job that I have. I have for

you to review an article from the World Health Organization, I went ahead and ordered the publication from the World Health Organization about asphalt, really pretty much everything about the aspects of asphalt, and I guess that is really my issue. It's not so much the gravel, but it's the asphalt part of it. Also, there's some other articles in here about hazardous substance fact sheets from the New Jersey Department of Health and Senior Services, a couple of other articles that you might find of interest. I didn't have time to get this article from the CDC, but I did leave the website for that to discuss the hazards of asphalt plants and living near them. I had one more. It is something that any company that really is in business to do anything, they're material safety data sheets. This one is from Cenex and it discusses the aspects of asphalt. I would like to make these a part of the record. Thank you.

Chair Curtiss: Thank you, Ms. Gehrig. The next person would be, I think its, Stan Duadale?

Stan Dugdale: My name's Stan Dugdale, D-U-G-D-A-L-E. Thank you for hearing my comments. I work for LS Jensen Construction and Ready Mix. I just have a few comments. Our community needs aggregates; we build roads, we all drive on roads, we all have houses that have aggregates involved with them. Our businesses and citizens and our county need affordable aggregates. I think our community needs to embrace responsible aggregate operations and I believe JTL is proposing a very responsible aggregate operation that meets all the requirements that the governing bodies have asked of their operation. I just encourage the Commissioners to look at those facts and support this. Thank you.

Chair Curtiss: Thank you, Mr. Dugdale. Todd Bauer?

Todd Bauer: My name's Todd Bauer, B-A-U-E-R. I'm the General Manager of LS Jensen and [inaudible] Construction. I just wanted to let everybody here know that I agree with the position that Carey stated earlier. As most people in the room here know, Dave's my main competitor. We battle head-to-head through a lot of things, but I really feel they're a responsible contractor in this community. I just want to say that I support their intention to put a pit there in Lolo. As much as I would enjoy to have one there, I support what they're doing and to get that started in the community. I feel the Lolo community could use that material and they're a suburb of Missoula and as Missoula keeps growing, we're running out of room here and growth is going to expand in that direction. I would ask you guys not to allow the emergency zoning. Thank you.

Chair Curtiss: Thank you, Mr. Bauer. Denise Wills.

Denise Wills: My name is Denise Wills, I'm a Lolo resident. I would like to say good afternoon to the Board, ladies and gentleman, and residents of Lolo. Thank you very much for allowing me to address my concerns regarding the JTL Group Incorporated and the proposed gravel, asphalt, and concrete pit. First, I would like to say that I don't--that I feel that this community is not standing in the way of growth and progress. What we're standing in the way of are the dust and diesel exhaust pollution, as well as excessive noise impacting physical and mental health, dangers of heavy trucking entering, moving along, and returning from a highway, especially with cars traveling at high speeds, traffic congestion along Highway 93, the possible industrialization of a residential area, which would impact on the peacefulness of the community and property values, the impact on the soil and groundwater, and the impact to the wildlife habitat, which is very important to me. Secondly, Lolo has Chinook winds and while wind gusts and speeds were not readily available, that information was not readily available to me on the internet, and could not be included in my statement. Wind conditions need to be examined. There is no doubt that the gusts will move the debris and the dust, both large and small particles. While many construction companies would challenge and downplay the impact of wind conditions at the site and local area, they cannot say with all certainty that the winds are not a factor for a health issue. Thirdly, winning a lot bid contract is great for JTL and can benefit the community if this is a done deal and all decisions have been made to move forward. However, low bids oftentimes have cost overruns and what is JTL's track record and performance with respect to low bidding? This information should be researched and provided to the community. Fourthly, there's nothing precluding changes and contract modifications after 20 years to either extend the timeframe for the pit or one of its components. Mr. David Zinke, Vice President/General Manager of JTL Group Incorporated stated in his article in the Missoulian, "It is not JTL's intent to use this resource as a stationary everyday operation," but this is something that he cannot guarantee. The operative word here is intent. We also know that conditions and people in decision-making positions change due to death, relocation, advancement, therefore, what was initially intended is subject to change. Fifthly, as taxpaying residents, the fact is that we're concerned about our environment and our community and care to maintain it as it is. We cannot help being passionate about an issue that impacts our lives. It is because of these issues presented that we would like to

have this land in Lolo zoned by emergency measure as residential until such time as it can be enacted permanently. Thank you.

Chair Curtiss: Thank you, Ms. Wills. Candy Goth? Thank you, I appreciate that.

Candy Goff: My name is Candy Goth, G-O-F-F. I live at 7600 Mull Road. I would like to present petitions that were signed that state, "We the undersigned request the Missoula County Commissioners used interim zoning to zone the field proposed for the JTL gravel operation to protect the public health, safety, and general welfare from the traffic effects of that operation and from the fumes and particulate generated by that operation. We ask that the zoning designation be residential in accordance with the Lolo Plan and that the zoning prohibit the complete use, development, or recovery of sand and gravel and an operation that mixes concrete or batches asphalt."

The reason we think that interim zoning should occur is to preserve public health and safety relating to Highway 93 traffic. As you know, Ken Allen's original subdivision proposal was denied based on findings of fact that showed no mitigation for the effect of the subdivision's impact on travel relating to Highway 93. I would like to submit for the record statistical data concerning accidents and fatalities for the entire corridor and, specifically, for the stretch between mile marker 87 and mile marker 84. I have three copies of the community highway safety forum.

Chair Curtiss: And this is the one that you entered as part of the record, right Larry?

Commissioner Anderson: I believe so.

Chair Curtiss: We have one in the record file.

Candy Goff: Okay. The Community Highway Safety Forum documents the following facts. Highway 93 from Missoula to Lolo is considered a high crash corridor. Annual average daily traffic has increased from 19,600 trips in 1999 to in 24,800 in 2006, which is an over 25% increase. Most crashes occur during peak hours of seven to eight a.m. and five to seven p.m. Most crashes occur on dry pavement during daylight hours. You can conclude from these statistics that the high volume of traffic contributes to the frequency of accidents, as do whether and other related causes. Here is a summary of traffic accidents for the last 10 years, specifically from mile marker 87 to mile marker 84, the area between the 55 mile an hour curve on the hill north of Lolo and the curve just south of Valley Grove Drive.

I have submitted the data from which the summary was prepared for the record and have also submitted specific statistics by the individual years from 1996 to 2006 for the record. On just this three-mile stretch of highway, there were 525 accidents in the last 10 years, including seven fatalities. Contributing factors for crashes include speed, inattentive or careless drivers, alcohol and drugs, and weather-related effects. The map attached to the accident summary shows the stretch of highway the statistics relate to and the location where each of the seven fatalities occurred indicated by the white crosses. It is with this documentation we establish the threat to public safety due to frequent and severe traffic accidents. The Department of Transportation has realized the need to improve conditions on the highway due to ever-increasing growth in the Bitterroot Valley and along Highway 12. It commissioned a traffic study in 2004, which analyzed access points to the highway between Lolo and Missoula. I have a copy of the study overview. In it you will find the analysis of the corridor, including average daily traffic, peak hour traffic, and an accident summary. This study concluded that by eliminating or consolidating accesses, the highway would be safer. Some accesses have already been modified. For example, Peak Automotive, the motorcycle shop, and Lolo Glass all share the same drive at Farmer's State Bank in Lolo.

Other recommendations made by the study were to be implemented as new construction occurred or if there were changes to existing properties that would allow for modification of the access points. No budget existed to actually implement improvements to the highway in this initial study. Subsequently, a further study was commissioned to evaluate the long-range plan for improvements to Highway 93. The Department of Transportation has realized the highway between Lolo and Missoula will need dramatic improvements in order to be functional for future growth. Recommendations for the area from mile marker 87 to 84 suggest connecting Bird Lane and Valley Grove with a frontage road and a common access at the location of the current Farm Road. It also implies an alternative for a grade-separated access and interchange, access at Bird Lane and Valley Grove would be eliminated entirely. The proposed pond is in precisely this location. It would eliminate any possibility for an improved highway access. This is why this point is so important. Any improved access requires acceleration and deceleration lanes in order for vehicles to merge with highway traffic. A center refuge at Bird Lane was

proposed for the original Liberty Cove subdivision. The idea was that you could cross two lanes of traffic and wait in the center refuge until it was safe to pull into the passing lane of traffic heading north. This is very difficult to do at highway speeds, so we ask why was there no acceleration lane? The engineers from WGM Group stated there's not enough room at Bird Lane for an acceleration lane before you hit the curve, the 55 mile an hour curve. The same thing is true at Valley Grove, not enough room to merge going south before you hit the curve going into Lolo. The only practical location for a controlled access is halfway between Bird Lane and Valley Grove and this is the location that will eventually become Lolo Pond.

Long-range planning is needed to address future traffic concerns. Ken Allen plans to develop the remainder of his property with numerous residences. He feels it is not his responsibility to mitigate highway safety concerns because the development's only access county roads. He and his representatives suggest that complaints be directed to the Department of Transportation. DOT has a conflict of interest because they want gravel for the 2008 resurfacing project, but doing so will severely compromise the safety for homeowners restricted to using county roads, Bird Lane and Valley Grove, to access the highway. It is likely that significant improvements to Highway 93 won't occur for 20 years, considering the financial investment required. It's imperative that options for improvement remain on the table. It's irresponsible to do otherwise, knowing the adverse affect on public safety. It not only will affect homeowners in the immediate area, but also the 25,000 plus drivers that pass this site daily. In the short-term, slow-moving heavy trucks and equipment will further exacerbate traffic problems, obviously causing potential for many more accidents at the site. All of us concerned particularly with traffic safety respectfully request that this property be zoned for residential use only and that mining of gravel be prohibited. Thank you.

Chair Curtiss: Thank you, Ms. Goff. Paul Rossignol? If you could wait just a second Mr. Rossignol.

Candy Goff: I am submitting from the Montana Department of Transportation the access management plan, the result of the latest study, which indicates the frontage road and controlled access between Valley Grove and Bird Lane.

Paul Rossignol: Paul Rossignol, R-O-S-S-I-G-N-O-L, Lolo resident. I'd like to kind of bring in property rights into this concern here. I've always considered land as a good investment. It always outperforms most investments. It can be used as a tool to have cows, hay, timber, minerals, or sold for housing. When I look at land as an investment, I look at what legally can be done on this property. If it fits investment strategies and is legal, I'd proceed as you would with any other investment. This generally does not include other outside factors such as neighbor's numerous opinions, since everyone has one. I would also not give my opinion of anyone else's investments be it stock investments, 40k's or whatever that would restrict one's income.

According to the DEQ and other government agency, this is a legal use of this property. I have a question for the County Attorney or his representative. If a decision is made by the governing body to restrict the use of this land with interim zoning for reasons outside what is the owner's legal right, would this be considered a taking?

Chair Curtiss: Mr. Rossignol, we're not going to answer your question as you ask it, but we'll make a note of it.

Paul Rossignol: Okay, thank you.

Chair Curtiss: There's a couple people that have put a question mark by their name, Mr. Harrison, did he leave? Alex Beal.

Alex Beal: Hi, my name is Alex Beal, I'm a Lolo resident. First off, I'd like to thank you guys for putting this on the calendar and taking the time to hear from everybody out there. I sent in some comments in letter form, I wasn't sure if I would be able to make it down, I'll try and keep this pretty short assuming you'll have a chance to read those. I guess in large part I can comment on some of the legal or legal-like aspects of this. Certainly, defer to Mr. McCubbin on all this obviously, but give you my thoughts at least. In terms of the legal aspects of this in terms of whether you have the power, you certainly do. Montana law is clear that until any permits are issued by the DEQ, there's no vesting, there are not property right issues involved in this.

The main legal tape thing I'd like to talk to you about, which I think is more philosophical or along those lines is about zoning and the reason you zone land. A few years ago, [inaudible] reenacting your old policy after the legislature made some changes, you guys prohibited gravel pit operations on residential land. You did that for a reason and I can only thing that that reason is an understanding that the gravel pits and houses just aren't

compatible with one another. That those two uses of land don't work. That's a rather important thing. This is not the difference between some light commercial gas station abutting a residential area; this is a massive industrial operation in the middle of a residential area. The uses in this case are just remarkably incompatible with one another and that use doesn't change just because you put some label on the land, just because you zone it a certain type. Those people, all of us that live on Valley Grove, on Bird, on Mull Lane, we don't suddenly spring into life as residences because you zone it residential. We're there; we're on land that is used and taxed as a residence. The land in between there, as it is right now, if you decided, okay, we want a gravel pit there, but we want to zone it for a gravel pit. You can't. Your own growth policy says it's going to be--I think it calls for a residential density of one per one and certainly, those are not regulatory documents, but you'd have to go in and amend your own growth policy first. I'm not even sure that you can do that, because that's when the spot zoning concerns come in. Not when you're applying the label to things that they really have right now, but when you're trying to kind of monkey with them, when you're trying to cram something into an area that it doesn't fit.

So there are all kinds of concerns with this project or reasons why gravel pits and residences are incompatible. The air issues, both the, at least for me, shocking chemicals that are involved in the asphalt production process, as well as the small particulate emissions from the gravel process, which has certainly given [inaudible] EPA issues we've been having with non-compliance, a real problem. The water quality concerns with all the wellheads in the neighbor and certainly the community well system, a Valley Grove water users system, which is near feet away from the edge of this project and the well depths not much below where this pond is going to be. The traffic concerns, again both the access to Highway 93 whether it's direct or whether it involves massive gravel trucks trying to pull onto Valley Grove to get out, as well as the noise concerns. Just people trying to live their life and be outside when all that is taking place.

It depends on for an emergency how you look at things. If you say, is this an emergency for people in Seeley Lake? But it's certainly an emergency for people in Lolo and it definitely an emergency for the people who surround it. That meeting on the fourth at the council was pretty shocking to me. There must have been 250 people there. You can't get 50 people out in Lolo to anything, even when we're talking about fire danger and things like that that are pretty repetitive and don't involve any kind of government issues and [inaudible]. I just--this is so incompatible with both the actual use and with the use you've proposed in all of your planning for that area, that I would urge you to pass the emergency zoning because once they have the permit from the DEQ, this is irrevocable. It's done; they're vested. It's there and you can't fix it. I think that the gentleman from the Contractor's Association really had it right, identifying the resources is what you guys need to do and certainly it's something that--I know MACO and others have recommended to most counties, but, you know this isn't the spot, given all the residences. Do that, but do that in addition to the zoning here so that you don't ruin it for--so that it isn't ruined for all these people.

Chair Curtiss: Thank you, Mr. Beal. Sue Hadnot? Is Sue here?

Sue Hadnot: My name is Sue Hadnot; I'm the Chairperson of the Lolo Community Council. I was going to present some traffic study information, but Candy Goff has done that, so I will defer that. I will backup that our November Community Council addressed this for the first time and I think it is important for the Commissioners to keep in front of them the actual map and proposed project. So I'm just going to enter what we had as our initial introduction for our November Community Council meeting.

On other thing, I do have the calendar for the US 93 Corridor Study Plan, the calendar is here with the contact information, and Duane is here. So I'll just pass that along. Also, a copy of an article from the newspaper that was prior to the fall meeting and I have highlighted on the second page--it is actually a quote from Duane Kailey talking about traffic on the Missoula to Florence stretch averages about 25,900 vehicles a day now. The state projects 34,000 cars by 2014 and 46,000 by 2024. I will just add these things and thank you very much and Happy Holidays to everyone.

Chair Curtiss: Ms. Hadnot, just to clarify, you said November meeting, did you mean the December 4?

Sue Hadnot: No, November.

Chair Curtiss: So, November, you had this information about the gravel pit?

Sue Hadnot: It was initially the very first information that we had and the public input was, at that time, to be done by November 16. Dale Nooney was in attendance at our meeting and as our council and the other people sent

requests to DEQ to extend the public input time. That was when we first started for the extension of the public input so the community could get educated.

Chair Curtiss: Mr. Harrison, you put a question mark by your name, did you want to speak today? Okay, please come up to the microphone.

Jim Harrison: My name is Jim Harrison; I live at 7705 Mull Road. Mr. Harrison, Cathie has to listen to this, so if you could get the microphone close, she can pick it up better.

Jim Harrison: How about now, can you hear me better? I had to leave the room momentarily, excuse me, but I had to cancel an appointment. I didn't expect this take so long. I won't reiterate the things I said last week and, obviously, some people here have done actually a better [inaudible] facts. I just want to bring two things out that happen to me, particularly personally. My house is about 50 feet above Mr. Allen's field. I have a 68-foot well that says that the water level that I get my water from is only 18 feet below that. That field has often been flooded to where it looks like a lake. When Dick Rossignol was irrigating his hay there and he had a little pond there that he put his pump in, you could see the water sometimes level with the top of the field. The lowest I ever saw it was only six feet, so it's obviously going to impact the water level there. I don't know about my own property; they say the water flows the other way, but from being a kayaker, I notice that the water often runs down very steeply, but [inaudible] eddy back right to the [inaudible]--or the entrance from where it comes down.

The most important thing that bothers me though is the traffic. It's very very difficult to make a left-hand turn off of Bird Lane, almost any time of day, but specifically during the rush hour. In fact, when my children drive to go to high school, I have them turn right onto Highway 93, go into Lolo, turn left at the first light, circle behind the shopping center there, so they could make a right turn and come out. There's been many times that I have tried to make a left-hand turn myself. The people will come up right behind you, blow their horns, whip around, and pull right in front of you and flip you off because they're driving and there's nobody in the right-hand lane. That's during the non-traffic hours. That's a very dangerous intersection. One other thing I'd like to [inaudible] is that I have never counted them, but there seems to be numerous gravel pits up Highway 12 and down the Bitterroot. I think 400 tons of gravel that they need to resurface the highway between Lolo and Missoula, I think there's actually probably infinitely more gravel there than is really needed. I thank you very much.

Chair Curtiss: Thank you, Mr. Harrison. So there are quite a few names on the list here that did not say that they wanted to speak. Has anyone changed their mind? Anybody that wants to speak? Come to the mic and state your name please.

Richard Heida: My name is Richard Heida, H-E-I-D-A. I live at 9950 Valley Grove in Lolo, Montana. I'm the very first house as you go up the hill. I think there is--you know, I do respect Mr. Allen's right to make some money on his property, but I don't think anybody has a right to make money at my expense. I think this, you know, it's a realistic point. My bedroom, my front porch, my living room, and my office overlook this field. I have several concerns about this. One basically is our water quality or if we're even going to have water. Our wells are, again, we sit 40 to 50 feet above the highway out there and our wells are only 60 feet deep. We have one at 60, one at 80. Now if they start removing one million cubic yards, I think that plan says about, you know, from this pit. What's that going to do to the water table? What's that going to do our well?

The other thing is property values. I think we have a right to maintain our property value. Like Mr. Allen, we have made investments in this property for our future, for growth, and, in my case, for retirement, which is about two years off. I too am in the process of trying to sell my home. I'm probably not going to be able to sell for what it was worth last month before the word came out about the gravel pit. I know there will be a diminution of value in my home, especially since I overlook the pit.

Another thing is health issues. I just recently took on my father-in-law, who's in the early stages of Alzheimer's. He also has respiratory and heart conditions. We live upwind from the pit in the mornings. There's not going to be--the wind comes up the hill every morning and there's going to be nothing but those fumes from the asphalt plant, the dust from the gravel pit area coming up that way. Yeah, they might measure their particulates, but they're not going to do it in the morning when the wind is there and it affects my father-in-law's respiration conditions. We might be looking at extra costs there in having to place him in a home because he can't stay with us because of those conditions. I just think that consideration of this zoning needs quality of life. I have a right to quality of life. That's what my investment was and I think that does need to be taken into consideration. Thank you.

Chair Curtiss: Thank you, sir. Myra?

Myra Shults: Good afternoon. My name is Myra Shults, S-H-U-L-T-S. I live at 7650 Mull road in Lolo and I'm a land use attorney. I litigated subdivision and zoning cases until the end of 2003 and am now the land use consultant to the Joint Powers Insurance Authority of the Montana Association of Counties. I've now visited all three industrial gravel operations in Missoula, JTL off South Avenue near the Target Range School, LS Jensen on Mullan Road, and the JTL operation next to Westview Park. These locations are not the least bit analogous to the proposed JTL operation north of Lolo. They are in open spaces where fumes and particulate can dissipate. None of them access a highway where over 25,000 cars pass by every day at 70 miles an hour.

Today, I'm going to focus on the legal interpretation of interim zoning statute, the economic impacts the JTL proposal has had on the neighbor's welfare, and JTL's lack of standing to sue the county as threatened in the newspaper article on Friday, December 14. In 2003, I defended Big Horn County in a challenge to the county's interim zoning of setbacks on perennial streams. As part of that defense, I had an experienced paralegal research the legislature history of 76-2-206, the code section with which we're concerned today as you make the decision whether to interim zoning Valley Grove, Bird Lane, Mull Road, and the field in between for residential use in accordance with the Lolo Plan.

Exhibit 1 to my testimony, which I'll leave with your secretary, is a copy of the report from the legislative council in 1970 about the necessity for this code section. Note on page 14 the following language, "The intent of this proposal is to allow county government with potentially major land use problems, which because of the urgency of the situation, cannot be effectively controlled through the normal process of completing the required comprehensive plan and adopting land use regulations". Section 76-2-206 gives you the power to adopt an interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare. If the purpose of the interim zoning map or regulation is to classify and regulate those uses and related matters that constitute the emergency, and the county intends to conduct studies within a reasonable time about a revision to a growth policy or to zoning regulations. Last week we were advised the county is going to consider a revision of the Lolo Plan portion of the growth policy for the Bitterroot Resort and will consider zoning at that time. So the last part of 76-2-206 is satisfied. Others have addressed public health and safety. I'm here to day to add to what John said about the general welfare prong of the statute.

Exhibit 2 to my presentation are documents about four listings of real estate adjacent to the property [inaudible] be mined. Rafael Chacon on Valley Grove and I on Mull Road lost the sales of our houses, which were listed for \$380,000 and \$379,000 respectively when knowledge of this proposed operation became known. The property at 8989 Bird Lane is listed for \$299,000 and has not sold. The veterinary clinic off Valley Grove that fronts the highway is listed for \$470,000 and has not sold. To date the economic impact of the inability to sell four properties in the vicinity of the proposed gravel pit, asphalt plant, concrete plant, pug mill, crusher, and wash plant is \$1,528,000. The newspaper article on December 14 states, "If the project is delayed, JTL could lose upward of one million dollars." The neighbors have already lost half again as much. Exhibit 2 contains documented facts about the effect of this proposed gravel operation. It has affected our welfare and an emergency exists because we are unable to sell our properties. For those of us who have short-term loans, when those loads come due, there's a question about whether they can be reviewed. In the December 14 article, Ken Allen stated, "If the project is delayed, JTL will sue." They will bring in their top-notch corporate attorneys and Missoula County won't win. The county knows that. I discussed this statement with an attorney friend of mine who's litigated at least two zoning cases in the Montana Supreme Court and it was her opinion that JTL has no standing to sue Missoula County over its interim zoning. JTL does not own the property to be zoned. It has no right to a DEQ permit. A legal analysis by the Gallatin County Attorney's Office addressing all the legal questions raised by zoning property on which a zoning compliance permit has been issued before a DEQ permit issues has been provided to Deputy County Attorney McCubbin. I take issue with Mr. Hegreberg that when the Gallatin County Commissioners decided not to interim zone, it was the same situation. Those gravel pits were gravel pits only; they weren't asphalt plants, concrete plants, et cetera and they were on gravel county roads with maybe a maximum of 60 trips per day. If Missoula County dots all it's i's and crosses all it's t's and follows the procedure set forth in the North 93 Neighbors Case, a court is unlikely to reverse a legislative act by the Missoula County Commissioners. I would hate to think the Commissioners will make a decision that affects the health, safety, and welfare of so many people because it's threatened with a lawsuit. The primary purpose of government is to protect public health, safety, and welfare. Please do so by asking OPG to develop and map and regulations for zoning in the interim and hold a hearing as soon as possible. Thank you.

Chair Curtiss: Thank you, Ms. Shults. Mr. Allen, you also had a question mark by your name. Did you want to testify?

Ken Allen: My name is Ken Allen, A-L-L-E-N. I feel that we have proposed a project that is within the limits of the law. It is legal. I do know that some of the concerns that people have, I have had in my past. I have talked to the Highway Department about access, about how to handle this. The proposal from one of their consultants about joining Bird Lane and Valley Grove was a suggestion that I made to them that they could put that out in the middle there and whatnot. They thought that would be a good idea and when they turned their study in, that was on their study. They did not have it until that time, so I did propose that and I would like to see something like that. As far as not being able to put that in if this gravel pit goes through, that isn't true, because the pond will be 270 feet back from our property line, plus any roadway right-of-way that there already is with the highway. So there's more than enough room to supply any of the stack requirement for cars parking at a stop light or whatever that the Highway Department would require. That part isn't there.

If you were to look at the Gallatin County's ruling that they did not do an emergency zoning, Commissioner Steve White over there did a lot of research. There was a water specialist did research and stated in their research that gravel pits do not in any way affect water rising or lowering in the water table. The water is there and is not going to move according to what a water specialist told Gallatin County, so I don't feel that what the people are throwing out, there's an old saying in the legal professional, if you've got the facts, you pound the facts, if you don't have the facts, you pound the table. That's exactly what I'm hearing here is they're pounding the table because they do not have the facts. With that, I'll finish and if you have any questions, you can ask me later. Thank you.

Chair Curtiss: Thank you. Mr. Allen. So that leads very well into Mr. Jim Gannon who will give us some information on water. Mr. Gannon asked for five minutes.

Jim Gannon: My name is Jim Gannon, G-A-N-N-O-N. I'm a scientist and for the last 20 years, I've been funded by the federal government and other agencies to actually study how nutrients move through alluvial aquifers and their associated surface water. Our focus has always been on studying the baseline nutrient movement and cycling through the system, and then looking at how landscape changes affect that process because that process is a critical one to all life forms. I've been asked here--I've been asked to come here today by a friend on mine who's on one side of the issue, but I assure the Commissioners that I have other friends here today, important friends, on the other side of the issue. In order to protect myself and to keep my wife happy, I'm going to keep to the science.

As weird as it may sound, I actual study the impact of gravel pits and other mining aspects, mainly on trophic levels and nutrient movement. I realize that's a little bit [inaudible]. The impact of a gravel mine depends upon many factors. You've heard here today the hydrogeological water issues and that's mainly my focus, not the air quality issues or the traffic issues. I reviewed the literature on the impacts of gravel mining and I really don't find any reports, and I don't think you would either, that really indicate major impacts of gravel mining. Every process has minor impacts; everything we do in the environment has an impact. The degree depends on many things; the degree of the impact of gravel mining depends on the hydrogeological properties of the site, how close it is to the river, the type of mining process that's going to be used. There are a variety of them. Those are the major things. You could obviously, depending on how those things vary, find a lot of different impacts, but if you look at the literature people [inaudible] study them and they don't find many major impacts. They only find minor ones with every gravel mine that's been studied or every pit that's been studied. I think that leaves the issue to reasonable people to decide or to weigh impact versus benefit. I guess that's what you guys are doing here today. In my opinion as a scientist and someone who studies gravel pits, and when I'm asked the question is there a gravel pit crisis with respect to the hydrobiological properties of the site, the conclusion is no, there is no crisis with respect to hydrology or biology that at least I see or my studies have shown on this particular site.

Chair Curtiss: We're asking the questions, I'm sorry, Mr. Harrison. Mr. Kailey, would you like to talk to us a bit about the Department of Transportation's role, or whatever you want to talk to us about.

Duane Kailey: Can I run now? For the record, Duane Kailey, MTD, Montana Department of Transportation District Administrator. Just to be very clear, MDT does not support and/or oppose development. We simply do not. Our jurisdiction, our authority solely lies between the right-of-way and in that, we look at access, that is our issue, that is our jurisdiction. Relative to this proposal, MDT has two processes that we will review. The first process will be the access relative to our project. We have a project scheduled; JTL is the prime contractor going between Missoula and Lolo. Relative to that project, we will work with them as far as accessing our highway and

bringing the gravel trucks onto our highway or paving trucks onto our highway in a safe and effective manner. Once that project is complete, it will initiate a second process; it will be the process of approving a permanent access. Through that process, we will treat them as though they are any other developer. We will require an engineering study, which will review and disclose the magnitude of vehicles, the type of vehicles, and the direction of those vehicles, whether they're making right-hand turns or left-hand turns on or off the highway. Through that engineering study, we will look at the necessary mitigation, mitigation or improvement that needs to take place to preserve the safety of not only the traveling public, but the vehicles accessing and leaving the roadway. That mitigation, once identified, will be the sole responsibility of the developer. In this case, either Mr. Allen or JTL Group. That's their responsibility not the responsibility of the taxpayers. That is our process, very brief, very short, but it is a long tried and true process that we do for any and all development. I'll stick around if you have any questions, but thank you very much.

Chair Curtiss: Thank you, Mr. Kailey. Mr. Zinke?

Dave Zinke: Good afternoon, or maybe evening as its getting dark. My name is Dave Zinke, Z-I-N-K-E. I'm Vice President/General Manager of JTL Group, the Missoula Division. I'd like to make a couple comments on the Lolo Ponds. JTL has a contract right now with the owner to excavate a pond for the owner and to utilize those excavated materials for specific projects south of Missoula. The first project we have is the asphalt overlay project that will be constructed this spring and that is under contract right now. So we do have that work. Again, Duane addressed the traffic control, the access will be to the highway, and it is in the construction zone, so therefore there will be an approved traffic control plan. JTL's intent is not to make this pond excavation area a stationary operation. I've stated in the paper, in Missoula here, we have a Target Range operation, Mullan Road operation, and Expressway, so the reserves here in this pit so forth don't really allow for long-term permanent-type operation. Our intent is to take a portable-type equipment into this area, that's portable crushers, portable wash plants, portable hot plants, portable ready-mix plants. Again, project specific. We don't have anything right now other than the highway project that we need to go in there and do any operations. For this highway project, we will be taking in a portable crusher to crush the material and a portable hot plant. Just to explain, neither one of those take a majority of water. Dust suppression and so forth, minimal water, plus we'll be mining out of the water, so the aggregates will be wet already, so really the crushing operation should be fairly dust-free.

I've heard some concerns about hot plants here today. Just a little bit of mechanics about a hot plant. A lot of time people see this flume coming from a hot plant, that is moisture. Hot plants dry out aggregates. It makes your asphalt, it's very hot. Our plants have what's called bag houses on them that collect any dust or any particles through a suction or a vacuum-type operation. These admissions are monitored and we do comply with state regulatory agencies on air quality issues. As far as health and safety, JTL Group has one of the best safety records in the state. We're always inspected by MSHA, which is Mine, Safety, and Health. I brought a couple awards that we've received here recently for our mining activities, noise, mechanical failures, all safety aspects, including dust. Like I stated earlier, JTL has complied with all regulatory agency compliances as far as air quality. Our plants are monitored. We have to do, I think, yearly monitoring of these plants and we've had no violations here in the Missoula that I am aware of in any of these situations.

I talked a little bit about hot plants. The other thing I've heard here is wash plants. Wash plants are for, usually, cleaning the fine aggregates or fine materials out of the aggregates that are usually used for ready-mix. The water used in a wash plant operation is recycled. We don't consume that water. It is pumped out of, in this case, pond, goes through the wash plant, wash the fine aggregates, fine materials out of the aggregates, goes into a settling pond, they are not contaminated, it's natural material, then the water goes back into the pond. Wash plant operation might take a lot of water, but it's all recycled, goes back in the pond. Just to clarify that.

JTL's truck drivers are all MDT certified professionals. All of our people are trained [inaudible] and to deal with this traffic in Missoula. It is scary, believe me, it is scary. This source in the Lolo area allows for fewer trucks to be on the highway. If we had to haul from Missoula down to that area, we'd have to put many more trucks on the road, which in this case, by using this source in Lolo, we're using less diesel fuel, less emissions, and dust and everything else. So actually, fewer trucks on the road is better. If we were to haul materials or gravels from the Missoula urban area here down to Lolo, we would have to actually access these trucks, many more trucks, would have to access Airway Boulevard, Expressway, Highway 10, Mullan Road, and all the way down Reserve Street before we hit Highway 93. So again, there are traffic concerns, not only on Highway 93 by Lolo, but actually in town and many more vehicles. I think everybody's driven around Missoula to see the situation.

I think Duane mentioned traffic control. For our current project, it will be approved traffic control plan. Going forward, it's a traffic study and we'll have to see what the recommendations are and address those at that time. It depends on traffic flows and everything else. Again, we don't plan on having a stationary plant with day-to-day truck traffic, operations, or anything else; come in, do our job, get out. This source is designated for south of Missoula, so we don't have to haul through town, so we use it to build down south. Some of the figures flying around here, you know, the source isn't just for this highway job and it's not just for this corridor down on Highway 93. It's for specific projects that we don't know that are out there yet. So that's why the time period. This thing is market driven and it might take 20 years to create this pond for the owner. We just don't know that.

In closing, I'd just like to say 1.5 million cubic yards sounds like a lot of material. With the growth that we are experiencing in this valley right now, if that was the only source available in Missoula, it would be depleted in probably a year or less. Again, it seems like a lot of material, but really, in our work, it is not. We have much more; I guess reserves per se, in our local pits up here in the rural area. By utilizing sources like this, it lessens the impact on the Missoula market, as far as our reserves, and costs and everything else. If we deplete these reserves here in the Missoula area, that means we're going to haul from who knows where, permit and everything else, which again is a cost to the consumer. Projects like this, again, water features. We have one in Target Range, we have a lot of wildlife, we're going to reclaim it, make it a park. Water features are good. I mean people aren't going to have to look at a big eyesore. We're not going to have a big industrial plant there or anything else. We've got our permit application spells out monitoring wells, operation hours, a lot of things that mitigate the concerns that I've heard today. It's all in there and it will be addressed; no fuel onsite, so forth like that. We want to be friendly to the community and to the environment and I think our track record speaks for itself. I will be available to answer any questions that the Commissioners might have.

Chair Curtiss: Thank you, Mr. Zinke. The only one that I missed that has a question mark is Diana; did you want to speak Diana Mitchell? This is it.

Diana Mitchell: Hi, this--

Chair Curtiss: State your name.

Diana Mitchell: I'm sorry, Diana Mitchell, Lolo, Montana. This whole situation is very troubling and I hear terms like the Lolo Pond and the gravel pit, but it's really more than that, it is an asphalt plant that has the potential to be with us for 20 years, which is the rest of some of our lives. I just would like to, I guess, let you Commissioners know how much we value your consulting with us and we trust that you will find that you can actually stop this and have legally validated for you, so you don't have to feel like, gee, Lolo is not behind us. Lolo would like to be hind you in stopping this. Thank you.

Chair Curtiss: Thank you, Diana. That's the last name that I have on that list that checked that they wanted to speak. Did I miss someone that wanted to speak? Then I'm going to close the public hearing and we will move into executive session. We have some staff that will help us go through the rest of this. First is James McCubbin, who will be giving the Commissioners a guide to tell us what we're really doing here today and what we have to consider in determining an emergency exists. James, do you want to give us some background?

James McCubbin: First of all, the research that I've done is based on kind of where we are in this process. In order to actually enact interim zoning, you would need to have a formal public hearing. We discussed that last week. This is not that hearing. This is more just to determine do you want to pursue it. Do we have a legal basis to even start down that road?

There's really very little guidance in Montana law regarding interim zoning. There's basically the statute that we have, which is 76-2-206, that's been cited. There's some passing references in cases by the Montana Supreme Courts, and really the one interpretive document we have is an AG opinion, Attorney General Opinion, from 2002. I've done my own research on [inaudible], I've also reviewed research materials I've received from other attorneys including Myra Shults, John Ferguson, Alex Beal that have all spoken here today. That's also included a review of a memorandum that was prepared by the Gallatin County Attorney Marty Lambert for the Commissioners there recently when the considered possible interim zoning for gravel pits in that county. I guess with respect to the latter, I think Marty Lambert's take on the status of the law is similar to mine. He was largely relying on the Attorney General's opinion.

The statute as well as the Attorney General's opinion both outline essentially three steps that are legal and necessary or three factors that are legal and necessary to enact interim zoning. I think Myra Shults summarized those fairly well, but basically just to reiterate. Three factors that need to be met for interim zoning. First, there has to be an emergency for interim zoning. The whole purpose of interim zoning is to address an emergency. The first factor is an existence of an emergency to justify pursuing interim zoning. That's the main purpose of this meeting. The second is that the purpose of the interim zoning and how the interim zoning is drafted must address whatever that emergency is or exigent circumstances as the Attorney General phrased it. Third, there have to be planning efforts underway. Amendment to the growth policy or pursuit of permanent zoning would satisfy that.

The Attorney General's Opinion that was issued in 2002, was actually a result of or a response to a request from the City of Kalispell and from the Missoula County Attorney Fred VanValkenburg. When an Attorney General request is made, the requesting party, probably mostly frequently city and county attorneys, have to present the Attorney General with basically by policy [inaudible] office policy, with a legal memorandum going through what the requesting party believes is the law and believes [inaudible] the question and also proposing outcome to the Attorney General in terms of how the requesting party thinks it all works out. I think part of what Fred had written to the Attorney General is relevant to these proceedings. In particular, Fred took a look at other areas of Montana law in the Montana code to look at how emergency has been defined by the legislature in other areas. There is no definition of what an emergency for planning purposes is. Like I said, there's just the one statute that just says emergency. It uses the word emergency a couple of times, but it doesn't say what an emergency is or might be, what circumstances could lead to it. Fred had taken a look at laws relating to disaster and emergency services. There's a definition of emergency there and emergencies under the budget act, and also emergencies in the context of public utilities. Fred wrote after listing those definitions, "These definitions all have in common a finding that action is required to respond to events that are unforeseen and that pose an imminent threat. In the context of zoning and applying concepts found in the other definitions of emergency found in the Montana code, a definition of emergency is, 'The unforeseen imminent development or use of property or unforeseen imminent circumstances which will permit the development or use of property in a way which constitutes a threat to the public health, safety, welfare, and morals.'" Fred went on to write, "An imminent threat suggests something is looming or about to happen." Fred also noted, "Failure to adopt a growth policy," which was the context of this memo, "cannot be said to be a looming threat when there were two years advance notice of the need to adopt such policy." The Attorney General's response, I think, is consistent with those statements.

The three areas, at least as I would summarize them, and this is up to your interpretation, but I think the three areas that we've heard that were of concern that are alleged to constitute an emergency here are air quality issues, water quality issues, and traffic issues. I guess they could be more broadly defined as environmental issues and traffic issues. Something that I think you need to take into account in your consideration is that all of those issues are the subject of specific regulatory schemes and permitting requirements. I think that's unlike other circumstances we've seen. I think Matt's prepared to give some history on what we've done with other gravel pits, but this is a little bit different because, in other situations, we either had a failure of regulations or change in law that rendered regulations either questionable or ineffective. Whereas, here we're in a situation where this is highly regulated activity.

In order to find that there is an emergency based on any of these issues, I think you have to find that the regulatory schemes and the personnel that administer those regulations and permit requirements are inadequate, that there's basically a failure in that regulatory scheme. With respect to air and water as to open mining, DEQ does regulate that. I believe they've addressed both of those issues in their draft EA, at least to a certain degree, and whether adequate or not, that's a factor you can take into account. I think that EA document is something that you should consider. In addition to DEQ's review of air quality factors relating to an open mining permit application, Missoula County has--we have our own air quality program and permits that you're certainly more aware of than I am. We, in other words, you, the Board of Commissioners has adopted a set of air quality regulations and you employ an air quality specialist that administers those regulations. In addition to having those regulations in place, DEQ oversees that program and could decertify that program if it were found to be deficient. I think you have management present to comment on that if necessary, but as far as I'm aware, that is not [inaudible]. In order to find an air quality emergency, I think that you'd have to find that our own program is defunct, your own personnel are either not doing their job or doing it inadequately, which, as a side note, could raise personnel issues; that DEQ's oversight of the program is deficient and that DEQ doesn't adequately address air quality on the mining permit application as well.

With respect to traffic, the only access proposed for this project for the pit is directly onto Highway 93. That's subject to access permits that have been discussed by Mr. Kailey. Although that hasn't actually been triggered at

this point, MDT has taken some affirmative steps on it. They've submitted a letter to DEQ regarding the steps that they will in the future take and requesting that that be incorporated into the EA or the permit process. I think you have that in your record.

My concern from a legal point of view is that there's no point in enacting interim zoning if it's not going to stick frankly. If you do something that's not legally supportable or defensible, then it might delay things, and it might cost the county and others time and money, but it won't necessarily have an ultimate change in the outcome of the situation. It's important that if we do it, we do it right. My concern on finding an emergency, which is the first step in interim zoning, is that I think you need to find a factual basis to support a finding that the regulatory processes in place are inadequate to address the issues that have been raised. If the regulatory process has adequately addressed those issues, there's no emergency even regardless of zoning or lack of zoning because the issues are being addressed through those regulations and the permitting processes related to them. If you're considering finding an emergency based on one or more of these issues, I think it would be best that you support that finding with specific reference to expert testimony that you've heard and describe exactly how and why you think those processes are inadequate to address the issues.

If we get to that point and you've made a finding that there is an emergency, the next thing that you'll need to consider is the development of interim zoning regulations that address that emergency. Here, again, I have somewhat of a legal concern, because if the emergency is that there's a failure of an agency, particularly if it's a failure of a state agency, we need to consider carefully if and how interim zoning can address that and try to fix a defunct state agency. I'm not sure how we would [inaudible], but that's something to consider. In addition to that, I think essentially the request here is to zone this area residential, so that the gravel pit will be disallowed. We have a bit of a problem with that, at least, as pertains to traffic, because you've relatively recently voted down a subdivision in the same land essentially based at least in part of traffic concerns. I wasn't in the office at the time, so I don't have the details, but now, zoning it residential to try and address traffic issues, where previously you ruled that increasing residential density in the area would cause traffic problems, could certainly be seen as an inconsistent decision and it's something to be considered. I have not at this point addressed the issues of spot zoning and whether JTL's vested in their project or not vested in their project, but that's something I would take up and research further if we move to pursuing interim zoning and scheduling a hearing.

Chair Curtiss: Thank you, James. Any questions for James at this point? I think it would be good to have Matt give us a little bit of history about some of the steps the county has taken in the past in regard to gravel mining in the county.

Matt Boulanger: Yeah, gravel mining...

Chair Curtiss: Matt, could you state your name for Cathie?

Matt Boulanger: I'm sorry, Matt Boulanger, Missoula County Rural Initiatives. Gravel mining, and particularly gravel mining and it's a pertinent activities in proximity to residential uses is something Missoula County has found itself concerned with for a very long time. In fact, in 1985 the county lost a lawsuit at the Supreme Court level where it was attempting to not allow a gravel mining operation in a residential zone. In addition, that Supreme Court opinion found that in order to allow for the complete use, development, and recovery of gravel resources, the county's ability to restrict mining operations from including things such as wash plants, cement plants, and crushers was really limited to the point that those uses need to come along with gravel mining.

Following that 1985 case, by 1989 state law relating to this statement about complete use and recovery had changed to require that gravel mining comply with any local zoning resolution. Therefore, from 1989 forward to the year 2005, persons owning land or living in residential zones in the county had the assurance that there would not be gravel mining in those areas. In 2005, the legislature changed that law again a little bit. The language changed the law to say instead of gravel mining must comply with local zoning, to say that gravel mining may only be prohibited in residential zones, but could also be permitted or conditioned. Missoula County staff at the Planning Office became concerned that that might open a small crack in what we had been providing as a guarantee to persons in those residential zones in that it added a little bit of permissive language. Missoula County, in 2005, adopted interim zoning to further state and solidify that gravel mining was not allowed in those named county residential zones. That was to continue to guarantee that people in those zones had had since 1989 about gravel mining. That interim zoning was followed up by a planning process and permanent zoning making that prohibition final in the spring of 2007.

This was a way that interim zoning was used to address a potential threat to the guarantee that the residential zoning in Missoula County was providing to residents at that time. This is a little different from the situation we're dealing with now in that we're talking all about residentially zoned land as opposed to unzoned land.

Chair Curtiss: And further then, Missoula County did deny a gravel permit in one of those zoned areas.

Matt Boulanger: That's correct. You saw a proposal to rezone a residential area where gravel mining was prohibited to a zone where gravel mining would be permitted and you did deny that.

Chair Curtiss: Thank you. Any questions for Matt? Any questions for JTL or other speakers?

Commissioner Carey: Maybe for James, we did have the question of is this or could this be a taking were we to put interim zoning into effect and zone it residential.

James McCubbin: The one that I heard this evening that kind of triggered in my mind a takings issue sounds like it turned out to be non-issue and Mr. Zinke addressed it. That was the concept of if the only place on this stretch of road where a controlled intersection could be installed is roughly in the vicinity of the pit property. We blocked the pit in order to preserve the land for that public use. That triggered some eminent domain concerns in my mind, I mean, if we're preventing somebody from using their property the way they want, specifically to reserve it for a public purpose, that's starting to sound like takings. Beyond that, I don't really think so, but the concern would be more if we enacted interim zoning without a legal basis to do so, we would be setting ourselves up for a legal battle with [inaudible] more a damages claim is what I'd be concerned about if we were to lose as opposed to takings. I don't know if there's a difference at that point. I guess it's kind of a temporary takings or damages from delay, however you want to phrase it, but it's not a permanent taking of property.

Chair Curtiss: Pat, I believe that you have a piece of information that we got today in regard to DEQ's timeline in looking at this permit and what they're taking into consideration?

Pat O'Herren: Pat O'Herren with Rural Initiatives. I was in contact with DEQ in Helena and asked for a clarification on their review process for this permit application and was assured that given the comments that they have received and the issues raised to date during the public comment period, that they would not be acting on the permit application before the end of January. They will be taking some time to review all of the issues that have been raised through the public comment period.

Chair Curtiss: Thank you. One other item that I made a note about that came up in testimony today was one Mr. Ferguson talked about, which is water rights. It seems to me there is also an agency in place that deals with water rights, which is DNRC. Would you agree with that James?

James McCubbin: Yeah, that's their job. They have jurisdiction over that. I think Mr. Ferguson had raised some questions about whether there could be any enforcements that could prevent a problem like this. I think there can be. If DNRC is aware of issues that will lead to violations, and I mean they're a state agency same as DEQ, and those are all public documents. DNRC has access to those, the documentation on this gravel pit. If they perceived that as leading to a violation, they could certainly seek an injunction for a court of jurisdiction. That would be a legal enforcement option for them. I don't know if it's a matter of policy whether they would choose to get involved or not, so far we haven't heard anything. I don't know if that's because they don't choose to get involved or they don't perceive a violation, but that is their jurisdiction.

Chair Curtiss: My take on what you've given us information on is that we would have to determine that issues like water quality, air quality, and traffic issues are a public safety, health, safety, welfare, and morals, which is an interesting one, issued to the public and that interim zoning--that the agency's overseeing those are not doing an adequate job and that interim zoning would somehow address them. I have trouble making that connecting the dots to see how zoning would address those. I don't know if the Commission has comments.

Commissioner Carey: I would. If we could ask Ben Schmidt for his comments or his perspective on this?

Chair Curtiss: Sure, Ben, did you have anything that you'd like to add to the conversation. If you could state your name for Cathie.

Ben Schmidt: This is Ben Schmidt. I work for the County Health Department. I believe your question is can JTL do what is required to get a permit and then perform in a way that meets the requirements for the permit based on historical practices? I would have to say yes. What the rules are [inaudible] have to be submitted are very clearly set in county law, which is adopted from state law. It is pretty much identical. There is a set process and it addresses emissions from the asphalt plant, from gravel crushers, from concrete plants. I believe those would be adequately addressed in any permitting process if it did go forward.

Commissioner Carey: Are you as a County Health Department employee, will you be involved in any of this process or does it go straight to the state DEQ?

Ben Schmidt: There's two separate issues at this particular location. There's the open cut mining permit, which they need to get from DEQ. DEQ has jurisdiction over that. State government agencies prepare things called environmental assessments, documents like that. County and local governments do not. Now, where I would step in in the process is in the air quality permitting section. They would come to the Missoula County and say we would like an air quality permit to operate an asphalt plant, operate a gravel crusher, everything cetera. When they submit that application to me, I have to review it for completeness, make sure everything is addressed. One of those things that I look for is a zoning compliance permit. I do not check for an open-cut mining permit. There are many times gravel crushers and things like that set up in locations that do not require an open-cut mining permit because they're temporary and very small-scale operation that is going on there, but again, those are very temporary things. In this particular case, I will look for that zoning compliance permit, this land is unzoned. They would get the okay off that little checklist immediately. The next thing I would check for is they have submitted documentation showing that they have air pollution control equipment and that that equipment is adequate, that they can meet the regulatory regulations that they are required to meet. If all that is done, I am required to issue them a permit.

Chair Curtiss: How do you monitor that?

Ben Schmidt: At a minimum, one site inspection per year. I try to do that site inspection when they're in operation. Coming and visiting a site when they're not in operation is obviously not as good, but at a minimum, yes, they do need one site visit per year at a location.

Chair Curtiss: Other than that, it would be complaint driven?

Ben Schmidt: Yes. Whenever there's a complaint under any activity, we do try to respond within 10 days. For some things like outdoor burning for instance or complaints about dust, we try to respond immediately. That is not always possible, but yes, every complaint is looked at and addressed. If nothing else, I will call and talk to a source if I can't respond immediately and ask what is going on? Do you notice anything on the site? [Inaudible] fashion.

Commissioner Anderson: Then would they be required to comply with any air inversion alerts or anything like that as well?

Ben Schmidt: They're in what we call the Missoula Air Stagnation Zone, this location. What that means is, at the time when we have troubles with air pollution right now for violating--potentially violating standards, keep in mind we have three pollutants that we have had historical problems with meeting the standards for. PM 10, that's particulate matter [inaudible] that's 10 microns across and smaller, carbon monoxide, gas basically. Also for PM 2.5, that's similar to PM 10, except this is the really small stuff. We have not violated the standard for PM 10 nor carbon monoxide since the early 90s and late 80s. That being said, we do have an issue with PM 2.5. It is a problem; we will probably be a non-attainment area for that. It is something that is very important to keep in mind. Because of our violations of that standard, the PM 2.5 standard, which occur mostly in winter time, your Decembers, you know, you Januarys, is typically when we violate these. These operations are severely restricted from November through March 15. They basically are almost shut down entirely. The only times they are allowed to operate is when they, first of all, have called in and asked to operate during the winter time and we have an air quality hotline. They can operate only when air quality is good and forecast to remain good. They basically are non-contributors or insignificant contributors to our violations to our violations in the air quality standards. The other thing to keep in mind, construction season also is typically closed down during the wintertime.

Chair Curtiss: That would be part of the permit that you would issue would have those kinds of restrictions upon it on any operation like this?

Ben Schmidt: Yes, all permits inside the air stagnation zone have as a condition of getting that permit or to have that as one of the conditions in the permit.

Commissioner Anderson: Then references made today to the other sites around town that they're in more of an open setting and maybe not as affected by some of the microclimate activities, such as upslope winds or down slope winds and those things? Would you get into a situation where that would be a factor that you would look at or take into consideration either in the permitting process or in the enforcement activities?

Ben Schmidt: Generally speaking, [inaudible] look at a specific site in that way. Every site has high winds at times. Every site has calm conditions [inaudible] valley floor, we're all familiar with inversions. They can even set up in the summer time and that's one of the reasons why we try to restrict some activities in late evening. That's a common thing. Sometimes for instance, with these industrial sites, you cannot do that for safety reasons. They have to operate at nighttime. That takes priority for those instances. So winds are taken into account in the general practices that are required at the pits, know where they water roads, they try to develop a crust on their pile so they don't have a lot of emissions during wind events. That being said, wind events do raise dust. All of us have probably been outside in town even when a wind comes along and you suddenly have a hard time keeping your eyes open because of the dust hitting you. You do get more of those from [inaudible] it is an industrial operation. So to answer your question in the short manner, no, that is not specifically looked at.

Chair Curtiss: Thank you, Ben. Other questions of other staff?

Commissioner Anderson: I had a question for Duane Kailey. I think if I heard you right in your testimony, you mentioned that there would be two separate permitting processes for JTL to comply one or to submit a plan for. One would be during this first phase when the DOT contract would be carried out. Then after that, is that correct?

Duane Kailey: Commissioner, correct, we will do basically, depending upon their proposal, two processes. One will be for temporary access relative to the construction project, Missoula to Lolo. The other process will be a permanent approach permit, which will be for their permanent operation of that pit.

Commissioner Anderson: Would then the use of Mr. Allen's property for residential development, would that require another permitting process or review process once the pit operation is carried out?

Duane Kailey: Yes, it would fall under the guidelines of what we call a change in use. When that change in use comes about, it will be based on whatever mitigation has been brought forward or built by JTL at that time. If that mitigation meets the requirements for the residential development, then no additional mitigation would be required, if that makes sense.

Commissioner Anderson: So if, following the construction phase, if they are required to say put in a frontage road along the Highway 93 access to that pit that would link up the two roads that currently access onto 93, would that be then considered at the time of a long-term plan or possibly act as mitigation for Mr. Allen in future permit applications?

Duane Kailey: To make sure that I'm fully and clearly understand to answer your question, whatever mitigation is built out there prior to Mr. Allen's application for change in use, that will be taken into consideration in his application. Yes, in your scenario, if JTL, part of their mitigation was to build a frontage road and that met the needs. I'm not saying it is or does not, but if that did meet the needs of their permit, then yes, that would be taken into consideration for the review on Mr. Allen's change in use as well.

Chair Curtiss: Other questions?

Commissioner Anderson: I guess just--there are two other pits right across the road from this. They're both smaller, but have there been any concerns that any of the staff have addressed from the operation of those pits regarding air quality or water quality? Have those been a concern that folks have brought to your attention?

Ben Schmidt: I've had no recent complaints over the last several years and none that I know of in past years either from those specific locations. We have had many complaints from operations up Highway 12, which is in the Lolo area, but topographically separated.

Commissioner Anderson: Anybody else?

Chair Curtiss: Staff said no, their heads are all going sideways. Any other questions? It seems to me like then our first step, according to the outline given to us by James McCubbin, is to decide if we believe there's an emergency based on testimony today and findings of fact that show that regulations and agencies responsible for air, water, and traffic, which are the identified issues folks have brought to our attention, are deficient.

Commissioner Carey: Well we haven't heard any testimony today that the respective agencies are dysfunctional and incapable of protecting the public health and safety. It just hasn't been here. So for us to say that they cannot do their jobs, we would need to find reasons for doing that because otherwise there's no threat that we can handle. The question for me is important because we're not here to ask whether or not it's a pleasant thing to live next to a gravel pit. Obviously, hardly anyone would choose to do that. The question here is to find, do we have a basis, in fact, for saying that they agencies that are supposed to look after the public's health and safety can in fact do that. I've heard nothing to say that they can't. I can't support interim zoning.

Commissioner Anderson: This is a very emotional issue for a lot of folks out there. I guess my concern is this has been--folks have been aware of this that have been immediately affected by this since--for almost 18 or 19 months. Now--no?

Chair Curtiss: We need to keep the meeting in order.

Commissioner Anderson: I believe Ms. Shults was notified about this when the zoning compliance application was made. So to suddenly come forward now with all these concerns is legitimate for the folks that are out there, but I think that a lot of these application processes are still under way; they're still adequate opportunity for additional public comment. I guess I have to agree with Commissioner Carey that based on what we've been advised by legal counsel, that there is not an adequate remedy for a violation of other agencies that are responsible for reviewing these things to justify interim zoning. Nor would interim zoning necessarily address issues that might be brought up for those concerns, so I guess I'm in support of that.

Chair Curtiss: I guess we would need a motion to find an emergency. We don't technically need a motion to find that we don't have the finding of fact to show there's not an emergency, but we do have some wording if we'd like to make a motion.

Commissioner Carey made a motion that the Board of County Commissioners are not able to determine findings of fact to warrant a declaration of emergency. This Board will continue to work with the Department of Environmental Quality, Missoula's City/County Health Department, and the Montana Department of Transportation to address the issues and concerns as best we can raised through the course of meetings and hearings on the JTL application, based on the testimony presented to the Board of County Commissioners. Commissioner Anderson seconded the motion.

Commissioner Anderson: I would just like to add that the issue zoning is very important to folks in Lolo and the County Commissioners. Going on the record to say that I will do everything I can to support the zoning process as it carries forward in regards to the Bitterroot Resort and opening up these planning areas for future zoning. I would hope that the community would stay involved in that as well and work to get the permanent enacted in these areas so you folks can define what your community wants to look like in the future.

The motion carried on a vote of 3-0.

Other Business

There being no further business to come before the Board, the Commissioners were in recess at 5:09 p.m.