

## **PUBLIC MEETING – FEBRUARY 6, 2008**

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, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney James McCubbin, County Parks Coordinator Lisa Moisey, Office of Planning and Grants Planner Office of Planning and Grants Senior Planner Mary McCrea, and Office of Planning and Grants Planner Janet Rhoades.

### **Pledge of Allegiance**

### **Public Comment**

Carol Ulrigg: Hello, I'm Carol Ulrigg. You need my address or anything?

Chair Curtiss: No, Carol, if you could spell your last name for our secretary...

Carol Ulrigg: U-L-R-I-G-G.

Chair Curtiss: Thank you.

Carol Ulrigg: I'm trying to get to the bottom of emails still. I have yet to get a response from the Commissioners at all. I'm very frustrated that I have to come down here when I've mailed things, emailed things, and receive no response. Can someone please tell me what the status of the program to retrieve emails is from the county?

Chair Curtiss: Mike, if you'd like to--because your issue is with the County Attorney's Office, we've referred everything to him.

Mike Sehestedt: Well, and the issue on the status of program to retrieve emails is that it has a) lots of expense and b) lots of implications. We've got IS, who's researching a number of different programs and we'll make a decision, probably as part of the next budget year as to what we're going to acquire. Typically, stuff isn't organized by citizen name. Your request specified we locate all emails by specified departments showing your name. The problem with our current program is we have to have everyone in the department run a report. We wind up with lots of duplicates and lots of internal communications. For example, the name you requested is also name on a citation of a criminal case, so every email that mentions that criminal case, Supreme Court decision, comes up when we run a search. We try to avoid duplicates where we had an email strand or multiple individual copies of the same email; we didn't copy them and charge you for them. It is a time-consuming process. We're attempting or I don't know if I should say attempting, we're looking at various programs that will let us search the email database differently and perhaps more efficiently. They all come with other costs including potential lawsuit, privacy in the sense that if we have an individual with HIPPA information, protected health information, that becomes accessible readily to other people without necessarily leaving tracks and we're trying to address all of those issues.

Chair Curtiss: So, Ms. Ulrigg, the bottom line is that there was not money allocated in the county's budget for this year to purchase such equipment. It is being researched, we are looking at the implications of those, and we'll probably discuss it during the next budget cycle, which our budget begins in July. As for your request, it is being addressed by the County Attorney's Office as timely as possible.

Carol Ulrigg: Okay, so my request for emails between the Commissioners and the one's from Missoula Probation have to go through the County Attorney's Office also?

Chair Curtiss: The Commissioners have--all of ours have been--any correspondence has been forwarded to the attorney's office, so they're putting those together. Missoula Correctional Services is not a county office, so if there's an email between us and them, that's one thing, but within their own company, those are not under our jurisdiction.

Carol Ulrigg: But you fund it, correct?

Chair Curtiss: Pardon?

Carol Ulrigg: You fund misdemeanor...

Chair Curtiss: We fund portions of some of their programs, but we have a contract with them. They are not a county department.

Mike Sehestedt: We purchase certain services from them.

Chair Curtiss: Right.

Carol Ulrigg: But taxpayer dollars go to pay for those services?

Chair Curtiss: Yes, they do, but it's still a contract with that company. It is not a county department. We don't have oversight, only over the programs we contract for.

Carol Ulrigg: But wouldn't part of that oversight be to see that people's civil rights are protected?

Chair Curtiss: You know, these are all County Attorney questions that I can't answer for you.

Mike Sehestedt: I mean fundamentally, some county money goes to GM, but we buy General Motors products, but we don't assert any control over General Motors. Similarly, we purchase services from a variety of sources, but we don't exercise any control over them.

Carol Ulrigg: So when I asked for this in October, is there a reason that somebody could have not told me I had to go directly to Missoula Probation?

Mike Sehestedt: Part of what we're trying to figure out how to respond to the part we did have and frankly, we'd asked them if they'd voluntarily provide the information to us. They indicated no, they wouldn't.

Carol Ulrigg: Surprising.

Chair Curtiss: Thank you, Ms. Ulrigg. Is there anyone else who would like to make public comment on items not already on the agenda?

### **Routine Administrative Actions**

Commissioner Anderson moved that the Board of County Commissioners approve the weekly claims list in the amount of \$439,375.51. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

### **Hearing (Continued from January 9, 2008): Rodeo Ranchettes Lot 13 Management Strategy for River Access**

Chair Curtiss opened the hearing.

Lisa Moisey presented the staff report.

When the public hearing from the 9<sup>th</sup> was recessed, the Commissioners had asked staff to provide additional information on what other tools the county has available to manage Lot 13 that may help to address some of the more specific concerns that folks had expressed at the public hearing, particularly relating to parking, traffic issues, and also to some of the social and behavioral issues on the site. In addition, the Commissioners asked staff to further address alternative river access sites or research further alternative river access sites in the area.

In my report, I'm going to start with the latter and update you on progress on the general river access issues. County staff and staff from Fish, Wildlife, & Parks have investigated potential alternative sites along the Bitterroot River in the area that may, if developed, help reduce the pressure of demand at the Rodeo Ranchettes Lot. What we know is that Fish, Wildlife, and Parks owns a 37-acre parcel of land along the east bank of the Bitterroot River in the Lower Miller Creek area. That particular area could provide a potential river access site to the river. A couple questions had to be answered with respect to that. One is what is the access to that area and the County Surveyor's Office conducted quite a research project to conclude that there is public access to the Fish, Wildlife, and Parks site via a GLO road that has been described as the Bitterroot Trail. Some work yet needs to be done in looking at that access. The Surveyor's Office will go out in the spring after the snow clears and survey that

GLO road area and the easement to determine whether an existing roadway is located in that easement. That work can't be done until the spring. Additionally, Fish, Wildlife, and Parks will be looking at that particular site for suitability as a fishing access site. Development of the site would then depend on available funding and through the FWP budgeting process and then also the funding for that site is probably a couple two, three years away from this timeframe here. That's the update on that information.

Now with respect to Rodeo Ranchettes Lot 13 and the question of what other tools are available at that site to help address management at that site. I've broken that up into what tools can we identify to help address some of the social and behavioral issues and concerns. What I go back to on that is if we have appropriate signage that can be enforced by the Sheriff's Department that will help provide clear expectations for guests who are using this site and others in the area that these are the park rules there, this is what's expected, and if you break the rules, the Sheriff's Office can enforce those. It's important to have established park hours. I know in the County Park's Board recommendation to you, their interest was in looking at a dawn to dusk. I think we need to pin that down beyond just dawn to dusk and look at actual hours of operation. The other side of the river at the Lolo Beach, the hours there are eight a.m. until 10 p.m. The park rules should include notification that it's a pack-it-in, pack-it-out area. We don't have litter facility and pickup there. Also, presently county resolutions prohibit fireworks on county parklands, prohibit camping, no open fires should be permitted or shooting of firearms. That should be noted on the sign. Also, I think to help curb some of the concerns with at-large dogs, keep dogs on lead at all times should be included on that sign. In addition, as part of an education for folks using the site, it should be noted on the sign or another sign that this is a residential area, be considerate of area neighbors when using the site. Regardless of whatever management option is implemented here, signage from staff's point of view is imperative, that's implied with any of the other options that have been laid out.

Traffic and parking concerns, what are the other tools that we have available to help address those? There was significant concerns expressed by folks here about parking and expressed public health and safety concerns regarding the parking load on the street. Some of the tools available would be for the Commissioners to create a no parking zone along Oral Zumwalt Way or within that Rodeo Ranchettes neighborhood area. To do that, we would need to have a separate meeting, a noticed public meeting because the notice that went out for this particular issue did not specifically address parking zone, no parking zone. That parking zone could be created with or without provisions for public parking. If it's determined that there are places where could safely park and not interfere with the passage of emergency vehicles that may need to access the area, that could be designated on certain zones or on one side of the street. Another option would be to look at continued parking on the lot itself. Presently vehicles have parked on the north side of the two-track on Lot 13. There's a little bit of room there that would allow a limited number of parking spaces, if the vehicles were parked outside of the two-track there. One of the concerns with that is that you're putting all of the parking associated with this site, somebody's side yard adjacent to their property. Another option with respect to locating safe parking in the area would be to develop a parking lot at the Oral Zumwalt Park, which is the park at the end of Oral Zumwalt Way. That's considered a county conservation park; it's presently not opened for vehicle use. There's a gate; it's a walk-in area only. It's a county parkland that does not have river access. It's surrounded by private property. In 1997, the Commissioners granted a right-of-way easement through that park to allow access to the adjacent property owner to access that individual's property there. Any type of expansion of the--or development of a new parking facility would require that we meet the Missoula County Air Pollution Control Program with respect to paving, so paving would be required there. The cost to do that would be pretty significant. The quote I got was \$50 a square yard for asphalt paving, which includes labor, but no design or drainage. That would essentially be a more permanent facility located on that park area.

Those are additional options that are in your toolbox that you can consider. There's obviously pros and cons to all of those and I'm sure that others in the audience and residents have some comments as well. I'm here for questions.

Chair Curtiss: Thank you, Lisa. Is there anyone here that would like to speak on the Rodeo Ranchettes, the management of that lot?

Gary Carvajal: Good afternoon, County Commissioners, my name is Gary Carvajal. I live at 10 [inaudible] Oral Zumwalt.

Chair Curtiss: Could you spell your name please, Gary?

Gary Carvajal: C-A-R-V-A-J-A-L. I'm going to speak on behalf of the residents today. I'm sure that some of them may have additional comments. We have a letter, which was entered into today, and I'll just read this real briefly. "Dear County Commissioners, County Attorney, and Sheriff: We the undersigned, being residents as noted below in Rodeo Ranchettes, appreciate the opportunity to offer some suggestions in managing the issues on Lot 13 in our subdivision as presented in the County Commissioners' meeting on January 9, 2008. During last summer of 2007, interested and concerned residents met on two occasions to discuss what could be done to address the issues on Lot 13. After the second meeting, a number of area residents agreed a no-parking zone established on Oral Zumwalt Way and adjacent streets would likely address the issues of parking, nuisance activities, and other actions noted in the PowerPoint presentation in the County Commissioners' meeting. That meeting was on February--or on January 9. A copy of that letter signed by thirty of the residents of this subdivision was attached hereto. We understand you already have that. This was presented to the Parks Board as a solution last year. The Parks Board staff report and recommendation for posting signage as for change for Option 2A only addresses part of the problem and the other staff recommendation for Option 2B does not allow for any boat access to the river for residents of the subdivision or others. Neither of the aforementioned options presented will address most of the nuisance and behavior issues brought to light without addressing the parking problem as commented on by Mr. Sehestadt. It is the recommendation of all of the signers of this letter that the following solutions will provide the most workable resolution to this complicated issue. Establish a parking restriction zone on Oral Zumwalt Way is #1, Inclination Way, Rodeo News Way, and Trails End Road. This precedent is already in place in several places in the county with admirable success noted by its implementation. A majority of the undersigned, under A, want the entire restricted parking zone to be a no parking zone. A smaller but significant number of the undersigned prefer that the restricted zone allow some limited parking. The sites of this parking to be determined through coordination with a Rodeo Ranchettes neighborhood representative and Missoula County Public Works and with important consideration given to issues of safety, fire, and emergency vehicle property access. Number 2, appropriate signage on Lot 13 to include, which mirrors a number of what Public Works and Lisa's already talked about, hours 8 a.m. to 9 p.m.; no parking on or blocking the road from the street to the river; no littering, pack-it-in, pack-it-out; no facilities; no loitering; no fireworks or open fires; no discharge of firearms; all dogs on leash or voice command; pick up after your dog; no obnoxious, lewd, or loud activities; please respect the neighbors who live here by respecting these rules. Placing other signs on the roads into the area will also help: dead end and no outlet signs on Trails End where it begins at Miller Creek and along the road somewhere as the road descends into the valley will inform those coming in, there is no way out. Annual County Commissioner review under #4 of the management plan for Rodeo Ranchettes Lot 13, with evaluation of the process, of the success, and ongoing issues related to the neighborhood by impact of the public use of Lot 13. In summation, many of the residents of this neighborhood do not want to see the access to the river closed. We also recognize the public's right to river access and are willing to share and to endure some further respectful use by those wishing to access the river to float and to fish. The implementation of a parking restriction zone still allows for access. It does not make it convenient, but it is still open. Parking restrictions and adequate appropriate signage will begin to address the behavior issues and the social problems and will provide enforceable standards for the property." We have 23 residents of the subdivision all neighbors literally within eyesight [inaudible] stroll of this thing who signed this letter.

My own personal comments are, I mean, noted before, I'd like to see no parking. I didn't move out there eight years ago this week to have people parking in front of my house or next to my house. We're three miles from the nearest stop sign, six and a half miles from the nearest stop light, and you know, if I wanted people parking in front or next to my house, I'd have stayed in town. Thank you.

Chair Curtiss: Thank you sir. Anyone else who would like to speak on the Rodeo Ranchettes? I think we need to clarify a couple things in regard to parking. One is we have different legal abilities than the city does when it comes to parking. If we posted no parking, that means also that your friends and neighbors can't park there if you have a big party. So we just need to clarify that where we mark no parking would have to be no parking for everybody. So if you want to talk about just that we need to focus on where we don't want people to park rather than where we do want them to park.

James McCubbin: If we're talking about parking restrictions on a county road or on a public road in the county's jurisdiction. The main distinction that we need to keep in mind is the distinction between county powers and the powers that the City of Missoula has. I think it's probably pretty common knowledge that there's like resident's only parking districts in the city, particularly the University area [inaudible]. The county does not have the power to do that. What you do have the power to do is to control and regulate usage of public rights-of-way to protect public health and safety and to ensure kind of logical traffic flow. So you're ability to restrict parking is unlimited so long as it's related to public health and safety and those kinds of issues. You can't really restrict parking for

social purposes, such as overuse of an area, for example, but if you determine that there is traffic hazard that exists, if the roadway is clogged on both sides with parked cars, then you can implement a no parking area to address that area.

Chair Curtiss: After a public hearing.

James McCubbin: Well, it doesn't have to be a formal public hearing, but you have to have a properly noticed public meeting. I think if you're interested in pursuing that further, the thing that you can do today is decide whether you think that's a viable option, but then, for example, we haven't had Public Works weigh in on exactly where a no parking area would be or to the extent that it's needed. You'd need to have a subsequent meeting to I guess work out the details of what that would be is how I'd phrase it. I think you can determine whether you think it's a viable option or something that you need to pursue with Public Works, but you can't actually decide exactly where a no parking zone would be or how extensive it would be because we don't really have notice [inaudible].

Chair Curtiss: Right, thank you. So Lisa I noticed two things on the list that the homeowners provided that we may want to consider, one would be a sign saying there are no facilities. I don't know how to word it exactly and there's no public water and no sanitation. The other is pick up after your dog, which is kind of common sense, but do we ever put that up on any of our other signs in the park? Is that part of...?

Lisa Moisey: That's certainly something that could be included on a sign. We, in most parks, we don't regularly provide mutt mitts. It seems that that's nice if you can offer those, but you have to be able to stock them with new mitts, so that you have something right there for folks to use.

Chair Curtiss: Okay. Any questions from the Commission?

Commissioner Carey: I wonder if I could ask an outfitter to volunteer to answer a question. Somebody step forward?

Chair Curtiss: They're drawing straws.

Commissioner Anderson: John got the short straw.

Chair Curtiss: Could you state your name please?

John Herzer: It's John Herzer, H-E-R-Z-E-R.

Commissioner Carey: John, I read your letter, appreciate your getting in touch with us. I wonder whether a restricted parking zone would work for you folks. Would it be possible for an outfitter to come up, unload a boat and take off, and come up [inaudible] boat and take off? Can we work something like that out?

John Herzer: As we mentioned before, the real shortcoming of that is that it's all about logistics and how a person picks up your car at one end of the area where you're putting in, in this case up by Florence, moving it down to the river--or down the river in front of you, while you're floating the river. Then that car is parked there. So that's the real limiting factor here. Really to me no parking there at all just precludes any legitimate river access for a boat, realistically.

Commissioner Carey: Is there no way then to kind of call ahead and let somebody know when you're going to be arriving within 20-30 minutes?

John Herzer: The problem is that, you know, most of these guys, it's a business, right? People do shuttles, not just for us. I can list 50 different private floaters in Missoula that know realize that this makes much more sense than driving two cars because even then--so, even I was just a private citizen going to take my family there, my wife and I would drive a car to the takeout. We would leave a car there, we'd get back in a car, we'd drive around to Florence, put our boat in, we'd drive back around. Then it's actually double the use because then we're there twice, moving cars around. You leave a car there, then you have to go back, pick that car up. In that case, because you're doing it on the way up, at least it's a little shorter, but it doesn't work out because what happens for someone who's actually doing this as a business, there's going to say, for instance, they're going to start in Hamilton, start moving cars down river. So they go up to Hamilton with four or five people in their car. They pick

up all the cars there, they move then down to the next spot, they get in all the cars there, they move them down to the next spot. They get in all the cars there, then move them down to the next spot, they get all the cars there, they move them down to the next spot. Hopefully, they're done by one. Another issue with that, you talk about the safety and things. There's safety involved with us too. If I have an issue on a river, for instance, you years ago, I had a guide with a young woman in his boat and actually stuck and #8 fly right in her eyeball in bad wind. Luckily, the barb was pinched and she's fine, but in that instance, he was on the Blackfoot, probably in a mile from a nine-mile float. He turned the boat around, it rode for eight miles and, by chance, his shuttle had already been run, and he was able to get her to the hospital. Same thing would happen if somebody gets injured on the river, we want those shuttles there as early as we can because you just never know. You have somebody older on your boat or whatever. A lot of reason people pay me to take them fishing, they can't do that on their own. They're old or they're frail or whatever it is, that's sort of a safety issue for us too. You get those things down there as early as you can. We hope that they can get them there at an early time.

Commissioner Carey: This might be a question for County Attorney, but I'll ask you first. Had you ever had any experience dealing with by-permit only kind of arrangement parking?

John Herzer: We talked about that and we're willing to work with--I haven't done that, I don't know how that would work. Obviously, those would be pretty coveted. I don't know if there's some way you have that in a pool. Then you have to figure out how to make that fair to the public, users as well as the outfitter users, and all those people. I'd be willing to sit down and try to hammer something like that out, but I think it'd take some work. There's a potential for that. I haven't been in that situation. The only thing that would be similar to this that I've seen in the past and work, and amazingly so, is that there was limited parking, three, four trucks, you know, three-stall like I mentioned, I think it was last meeting, a three-stall parking lot that's up on the Blackfoot River and there's a [inaudible] stall. It's kind of a problem sometimes, but you deal with it. In an outfitting situation where we know the shuttle drivers and stuff, I mean we just call ahead and he'd say, oh, I've already got three guys going in there. Then the problem with that becomes, with anything that you decide, is that when somebody comes that's not in the know, they just say, oh, let's float from Florence to Lolo. I hear there's someplace to take out down here. Well then, they show up and there's nowhere to park. Where are they going to do? They're going to park right in these guy's yard. There's going to be some issues with that. You know, it's not an easy decision for you. I'm glad I'm here and not there.

Chair Curtiss: You refer in your letter to allow time-restricted boat access only. Could you talk a little more about that?

John Herzer: Really, you know, I don't want to--as I said, I was willing to work with these people and try to figure out some kind of a compromise, but it seems like there's a few of the landowners there that aren't willing to compromise and I think there's a few that are willing to compromise. Their real concerns were, as I listed, you know, safety issues and lewd and bad behavior and people partying there. The guy throws the Playboy magazines down or something like that. We don't do any of that stuff. We're there, literally our time there is typically, I would be surprised if it's over 30 minutes a day. We come in--you don't want to be, you don't want to be on the river all day. You want to get the boat out, get those people back; you want to go see your family. So you're out there. Now most of the problem is when people pull out--if there's really a safety issue, it's when we pull up, and I've done it myself, right in front of their houses. I pull up on the main road, just pull in there, strapping my boat down, guys are loading the fly rods in the truck, just because it's easier than being down on the--when you back it right down into the water. However, it wouldn't take anything for me to just pull it up 10 feet and do that. We do it on those kind of roads daily. I don't know why we pull up there, it's just easy, but it doesn't have to be that way. Like I said, I want to be fair about it, but at the same time if I'm going to lose an access to over 20 miles of river, I'm willing to fight for it, so I'm going to say, really, the only safety issue is when we pull our boats up on there. You pull down at the edge of the road, there's plenty of room to get those things by. The people can drive by, no problem. We're not there; we're not the people that's creating the problem. There's some people that just don't want to see us there and that's okay. So you have to decide, as Commissioners, if that's more important than letting people utilize the access. Really, in my opinion, that's what this comes down to. It's not we're a safety hazard or we're creating real issues. It's really the issues with the residents and the issues with the river users and your decision is what's most important and how you're going to deal with that. I don't have the answers. I wish I did. I wish I could say, yeah, we don't have to do that, we can go somewhere else, but we can't right now.

Commissioner Carey: Part of the problem is that they're equally important.

John Herzer: I understand. I told you before, I live in a similar situation. I understand both sides, but the difference is, you know, I'm not telling people they can't park in front of my house. I don't care. I moved to Montana thinking that people can access rivers and there happens to be an access right adjacent to my house. That's part of the program and instead of having them park there, I tell them to park in front of my [inaudible], but I just have a different view that some people do.

Commissioner Carey: Thank you.

John Herzer: Thank you.

Commissioner Carey: Question for James?

John Herzer: Anything else?

Commissioner Carey: Not that I can think of right now, thank you. James, would you care to comment on some sort of restricted zone by parking by permit only arrangement.

James McCubbin: I don't think we can do it. I don't think you can do two-hour parking or permit parking. The only possible exception would really be on the parcel itself, but if you're charging someone for permits, that's the point where we do start looking at that, the covenant for commercial use. So I'm not really seeing it as an option. I think if you're going to end up with some kind of restricted parking, what you're probably most likely looking at, and this is [inaudible] put on my engineering hat, you know how much that's worth. You're probably looking at parking only allowed on one side of the road. I just don't imagine that there's not enough room in the road right-of-way that you can't have cars at least on one side of the road. I mean, it may be a partial solution; it may help avoid safety hazards in not having emergency vehicle access and that kind of thing, but it's not going to solve all these issues because ultimately you're just going to have people park further up the road. Rather than turn around and drive home and not do their float that day, they're going to be willing to walk a half mile at the end of the day, so you'll get cars all the way up the hill on one side of the road, I think is what you might end up seeing. The light at the end of the tunnel really is the other access, the Fish, Wildlife, and Parks property. I mean to the extent there's positive news here, it does look like there's access there. Once that's built, I think a lot of these issues will self-resolve, but that's a couple years down the road.

Chair Curtiss: Lisa, could you talk a little bit about one of the suggestions in the homeowners, and we talked about this with you, but I want it on the record, is putting signs to say dead end and no outlet just about the requirement that Greg talked about.

Lisa Moisey: Sure. This is really respect to a sign noting that if there is a parking district--or a no parking zone created, would it be appropriate to place a sign somewhere along the way that folks take to get there. If you're going to do that, you need to make sure that you have an appropriate and safe place for people to turn around. So the sign wouldn't be appropriate at a place where you're on the top of a hillside or there's nowhere, there's no turnaround opportunity. There may be a place somewhere on Lower Miller Creek where that sign would work, where there is a safe turnaround, but at this point, I don't know where that is. I haven't look at it with that eye or asked the Public Works Department to look at that. Dead end sign, that could probably be accommodated without...

Commissioner Anderson: The requirement for a turnaround?

Lisa Moisey: Yeah.

Chair Curtiss: Thanks. Anyone else who wants to speak? You guys are awful quiet today. Yes, sir, if you could state your name for the record please?

Chris Stroup: My name's Chris Stroup, S-T-R-O-U-P. I'm a fishing guide. I would really support the idea of putting a sign up there, encouraging appropriate behavior and, where you had mentioned calling the Missoula County Sheriff into play. I can't speak for every fishing guide, but for the fishing guides that I work with, we're pretty responsible when it comes to river access to what we do when we're there to appropriate behavior because really, we try to get in and out as fast as possible. We don't litter, we actually try to pick up--if there's litter there, try to pick up litter that's already there. We're aware--this isn't the first time our image has been called into question. We're losing accesses in this state or having more limited access in this state because of public

perception often of what happens with us, we're all pretty aware and we talk about it. I think if people would use the resources at hand. If they would call the Sheriff when there's inappropriate behavior going on, they would probably find out that it's not a fishing guide. There's been times, at that access, where I've said something to somebody that was there, they weren't a fishing guide, but they were doing something illegal. This time they were breaking a Fish, Wildlife, & Parks law and I said something to them about it and just informed them that they were breaking the law. We all try to be good stewards of our resource because I mean, not only is it how I make my living, but that's the reason why I live here is the rivers, and the fishing, and the lifestyle [inaudible] have here. So don't just do this just to make money, but I do it because I love it. We're all willing to work with landowners as best we can and we would--I respect their point of view and everything. I just hope that we could do this where there could be compromise, there could be agreement, and not hostility.

Chair Curtiss: Thank you. Lisa, do we currently allow parking along the two-track road? Does that happen?

Lisa Moisey: It happens.

Chair Curtiss: Would it be possible to maybe limit that area? Do we need to limit that area, I guess? I was thinking more about some of the photos they showed in the PowerPoint last time showed, you know, somebody had taken their pickup right down to the river and pretty much camped there all day. I can see that we could make--I don't think it's legal to park in the riverbed anyway, but we could maybe post that area differently.

Lisa Moisey: I'm not sure of the question, but you could post a part of the signage, you could post no parking within the lots. You could post no parking within the two-track area. I think there's ways to explain that through signage. You may need a picture, sometimes signs that have a picture showing--if you plan to allow parking there, a sign that shows a picture of how that's done would probably be helpful.

Chair Curtiss: So we could also say that the road is to be used to load and unload only or something?

Lisa Moisey: I believe you could do that.

Commissioner Carey: Question for Mr. Carvajal. Mr. Carvajal, would you be willing to answer a question? In reading the letter dated February 6, it strikes me, and maybe I'm wrong about this, that there was an inability to reach some sort of compromise, which would allow outfitters to access the river at that site. Is that true?

Gary Carvajal: No, not really. What there is is there's a range of different ideas of what should be allowed in our neighborhood. Once again, as I said in the meeting in January, the outfitters are probably the most well behaved bunch of folks that come down there. We don't appear to and want to appear to be picking on them specifically, but part of it is parking, I mean the biggest issue is parking. Not necessarily their behavior, its other folk's behavior outside of the outfitters. Without the 23 people that signed today's letter, there was the range and spectrum from no parking should be allowed to perhaps some limited parking. Now some of our neighbors have offered that yes, they would perhaps allow a couple of vehicles to park in front of their house. Where they're located on there would be a couple here, a couple there, a couple here, a couple there, where there wouldn't be an opportunity perhaps for vehicles to be directly across the road from each other, which could perhaps make for some reasonable parking opportunities. There's not probably going to be enough to meet the demand, but as John Herzer talked about, I meant here are places where there is some limited parking. It becomes somewhat self-regulating. The poor guy that wants to float the river, yet doesn't know about this, or doesn't have to do the shuttle, he's just out of luck, but that's life. Life is not always fair, but, you know, we're trying to be understanding and accommodating and reasonable, but as I said, I don't want them parking in front of my house. I have that position myself, but our neighbors have said they wouldn't mind them parking there in front of their house, so there might be opportunities for four, five, six, something like that to be parking along the street and spread out, then perhaps. It might be workable, but the poor guy that comes down or the shuttle driver that comes down, if all those spots are taken, where are they going to park? There's always going to be that issue. How are you going to resolve it? No parking is equally distasteful to everybody, as equally problematic to everybody. Whole cottage little industries spring up from places and things like this. There are places along the Locksaw [phonetic], along the Big Hole, along the Beaverhead where there's only river access. There's places on the Clark Fork where there's only river access and there's no parking anywhere close to it. People put in, they take out; they manage and work out with their shuttle arrangements and stuff need to be. If they can get to the river, they can work out how to handle their vehicles. That's the most equally enforceable of all, but it may not be convenient for guys that use the river a lot. This is your decision, not ours. We're just--there's some folks that would say okay, some folks won't. Did I answer your question?

Commissioner Carey: Yes, you did.

Cathie Cichosz: Excuse me sir, could you state your name please?

Gary Carvajal: Gary Carvajal.

Cathie Cichosz: Thank you.

Chair Curtiss: I think Cathie's probably just about ready to need to change the tape; I'm just looking at the regular time. Did you want to do that before we move to the next person? State your name please.

Jamison Starbuck: Jamison Starbuck and I live at 10742 Oral Zumwalt Way. I'd like to address two quick points. One, John's position about his situation being the same is actually not accurate. He moved voluntarily next door to a place that was a designated fish/wildlife and parks access and he had knowledge of that. Almost all of us moved to our neighborhood with the assumption that, because the surveyor map says this, that it is a landowner's park and it is still not designated as an access site. I think that the burden is quite different and that's not really a fair comparison. Secondly, with regard to your question about failing to reach a compromise, it is our position that a commercial use, which the outfitters are doing and admit they're doing, is a violation of our covenants. For us to agree to leave it open to their use is a huge compromise and huge way of trying to find common ground with them. So to suggest that we haven't reached a compromise, I think that the very act of being willing and courteous and welcoming of their continued use in the face of their clear violation of our residential covenants is in and of itself, a big compromise and to, in addition, suggest that we should become a parking lot is, I think, beyond a compromise position.

Commissioner Carey: How is it that you see they have a continued use? I'm not clear on that.

Jamison Starbuck: Because by being open for them to come and go and put their boats in whenever they want to and merely have to figure out--I mean, I know it's different than what they do now, but there are places all over the west and the east where there are people who's job is to be a shuttle service. Two high school kids and a cell phone and you can call up and get somebody to haul your rig from Wal-Mart down to Oral Zumwalt when you're ready to roll out.

Commissioner Carey: So you're saying that under the restricted parking zone scenario, there would be an opportunity for them to continue to access the river?

Jamison Starbuck: Yeah, absolutely, I mean under our proposal of having it be a no parking zone, the outfitters are free, as any member of the public, free to come, go, put a boat in, take it out. They are just not free to create our street becoming a parking lot for their vehicles. Yes, six and a half miles is a little bit of a distance to get somebody, but most people have friends or family members or pay somebody \$10 to go and bring your car down. I guess what I would say is if as an outfitter you can't figure out a six and a half mile shuttle with a cell phone 2008, then I'm just wondering if you're in the right business.

Chair Curtiss: Let's not slam people. It seems like we have a couple things. Yes, Mr. Herzer. If you'd state your name again.

John Herzer: It's John Herzer. With all due respect, first I want to make one point. I don't live at a fishing access point. It's exactly like this. The fishing access site is actually about a quarter or a half-mile upstream of my house. There is an easement between my house and my neighbor's house, exactly like this. Okay? Secondly, two high-schoolers with a cell phone is pretty dangerous. All of my shuttle drivers have insurance, they're paid professional. It's not that easy.

Chair Curtiss: Thank you. Any other comments? I guess to me it looks like we have a couple things that we could do today. For one thing, if we want to do anything to do with parking, which I think that it would probably be good to have a hearing on--or a meeting, a noticed meeting on, we can't do that today. We could talk about the signage and what we might want to do in regard to signage as part of the [inaudible].

Commissioner Anderson: I would just suggest that in the interim period that we have Public Works and Parks and representatives from the neighborhood work on identifying areas where parking might be acceptable there and going over the details of these, the lettering that would be on signage so that we can identify that.

Chair Curtiss: To do it all together?

Commissioner Anderson: Do it all together with the understanding that this is a, hopefully, an interim solution to what could result in a more permanent solution, but that's going to be, if everything works out, at least two or three years away. Trying to do the best with what we have to work with right now and try to accommodate the access to the public, but recognize the concerns of the neighbors in the area as well. I guess what I would propose is that a week from now we reconvene and identify in areas identified for appropriate parking that at that time, we notice that meeting up and in that intervening time, we work on the language for whatever signage would be appropriate there.

Chair Curtiss: I don't know if a week's enough time. Lisa, did you have any suggestions about the process or the--I'm watching you write big notes. I thought maybe you had an idea.

Lisa Moisey: I was trying to capture where Larry was heading with this. If you're contemplating no parking zone, you should probably note that today in the record and direct staff to do a public notice for a meeting regarding establishing a no parking zone. Given the way the public notice rules work, I don't know if we could do it by next week. We probably need--do you know?

James McCubbin: You're fine to notice this for the meeting next week. I think the issue is more practical one, making sure that we have involvement of Public Works. I guess they have been out there, but I don't know how much of an evaluation they've done. Probably have Tim Elsea go out and really take a more formal look from an engineer's point of view and be prepared to comment to you on that. I guess just given those practical considerations, I'd recommend against setting a firm date or you can set it for next week or the week after, but if turns out they need more time, maybe be open to postponing that.

Chair Curtiss: I think we'd be better off to set it a little further out, like March.

Mike Sehestedt: We've got a lot of people here, so if we tell them for sure when we're going to address other parts of this or further address this, now is a good idea.

Commissioner Anderson: My concern was that we gather information in the intervening week between now and our next public meeting and at that time, set a date for a public meeting regarding the parking zone when we have the information back from consultation with Public Works and representatives of the neighborhood and that sort of thing.

Chair Curtiss: I was thinking that, unless we have some huge issue with signage, that signage and, to me, the two can be separate. Signage we know we can do. We're going to may hear some other discussion in regard to the parking, whether we want to restrict it all, whether we want to just designate some of it no parking, or whatever. Is there any agreement or is there more discussion needed on what would go on a sign? Lisa, did you have anything that you'd like to add.

Lisa Moisey: Well, I was just looking over what the residents had recommended there and I think most of it mirrors what staff put together. The hours are different. The residents recommended eight to nine p.m. The residents recommended no parking on or blocking road from street to river. I'm not sure that I know what that means. No littering, pack-it-in, pack-it-out, we have that, no facilities, I think we can--that makes sense to include. No loitering, I'd want to check with the Sheriff's Office to make sure that that's something that's enforceable. How do they determine that? The fireworks or open fires, I think that's fine there. No discharge of firearms, that's fine there. Dogs on a lead, I think that's something that can be included on the sign and asked to pick up after the dog. I'd want to check with the Sheriff's Office on no obnoxious, lewd, or loud activities. Again, just how is that defined in terms of enforcement? I think please respect the neighbors who live here by respecting the rules is a good addition that folks know that they're in a residential neighborhood. I guess there's two pieces there I'd like to do a little more research on and get the Sheriff's input on those. Then--

Commissioner Anderson: And also an appropriate location for the other signage there in item #3, I guess.

Chair Curtiss: Dead end and no outlet. Those you said could be done without worrying about a turnaround, however if we decided to do a parking restriction area, then we'd need to--if we were going to put a sign saying you can't park beyond this point, we'd have to consider some other things. So that could be discussed in that regard, right?

Lisa Moisey: Yeah, I think that makes sense.

Chair Curtiss: So it sounds like you'd like a little more time to work on the sign language.

Lisa Moisey: There's two issues I want to check with the Sheriff's Department on with respect to the sign. The rest of it, I think, is consistent with the kind of signage that we've used in other places.

Chair Curtiss: What's been our experience with having eight to 10 p.m. on the other side of the road? In the summer, it's still light at 10:00.

Lisa Moisey: It is still light and as far as I know, that seems to be working, although sometimes, I'm sure folks are coming off the river there on the other side and maybe nobody knows and nobody calls in and reports it.

James McCubbin: I think we can problem address those two issues on the signage. The loitering language is really not something we can legally support. I think its public land; it's open to public use. If somebody wants to sit there on the riverbank and sunbath that certainly can be interpreted as loitering, but it's not necessarily unauthorized or illegal use of the property. I think that--I recommend that that language not be included in the sign. I think the obnoxious, lewd, and loud activities, I think Lisa has a really good point that that could be kind of vague and it's not clear what it is. What I'd suggest there is that [inaudible] might be appropriate to include is not necessarily as a strict and fast rule, but under the please respect the neighbors language, to add it in there. Please respect the neighbors and avoid inappropriate behavior or you can use obnoxious, rude, whatever you want there, but under a kind of request language for civil behavior as opposed to a hard and fast rule.

Chair Curtiss: So then the only other one that we hadn't already addressed would be the no parking or blocking and I think that would need to be part of the discussion in regard to a parking area.

Mike Sehestedt: Let me point out that if the behavior, loud, lewd, obnoxious behavior, may well constitute disorderly conduct, which is a separate criminal offense whether we have a sign up or not. The sign kind of encourages them not to commit it, but it falls I think into that category.

Chair Curtiss: So are you saying that it would be okay to put the language on there and that would be the charge if there was one?

Mike Sehestedt: I think putting James's suggestion, putting it under, you know, be considerate to the landowners, none of this kind of behavior. It would show up at the Sheriff's office as [inaudible] cite for violation of that, probably they'll cite disorderly conduct. We're going to enforce the rest of these pretty much by--citing them for criminal trespass. You're entering with permission; you're violating the permission, that makes you a trespasser sort of theory.

Chair Curtiss: I think that some of these items that we already say no fireworks, camping, so I think we'd want our signs to be fairly consistent in the way they're posted in other parks. While we'd be saying the same thing, but maybe in a different way than what was presented by the homeowners. With that then, would you like to go forward with this today, would you like to take it back to the Park Board, would you like to do it all in [inaudible] with the other discussion?

Lisa Moisey: I don't think this needs to go back to the Park Board at this point. I think if you want to act on the sign, you can do that today. We can move forward on securing additional information regarding a no parking zone. Is that what I'm hearing?

Mike Sehestedt: Making a decision on nature and extent of the no parking district at a meeting properly noticed for that purpose, giving time to get Public Works to weigh in on some issues on signage [inaudible].

Commissioner Carey: I don't think we want to limit it right off the bat to considerations of no parking, we want to say possible restrictions of parking, right?

Mike Sehestedt: Well, what I said was--I thought I said parking restrictions. You're entirely correct, because there may be something there that would work that I hadn't thought of.

Chair Curtiss: I think if we want to deal with the signage today, the other piece would--three other things I wrote down, then we'd also want to establish a time to have a noticed meeting on parking. Then we would have staff continue to work on other river access sites as we'd talked about. I think the annual review of this is a good idea, at least until we had a little bit of time under our belt. Do we want to deal with signs now?

Commissioner Carey: I really think we'd get a better product if we give Lisa a couple weeks at least to work it out, but it's no big deal.

Commissioner Anderson: I think she could bring all of those items back for meeting notice and the results of the parking review.

Chair Curtiss: Do we even have--just to do signs, if we said that we were willing to sign it, could that be done in an Administrative Meeting? I think we heard what the homeowners said and what staff's recommended and I don't think there's any disagreement that we wouldn't have to public meeting on what the sign says necessarily.

Mike Sehestedt: Yeah, I think on the signage, you could do that, particularly with staff direction to prepare you a blended sign, between her staff recommendation and what the neighbors would put forward and get that going now; put that in place. The downstream signage of no outlet, dead-end, probably...

Chair Curtiss: We'd have to work with Public Works.

Mike Sehestedt: We need to talk to Public Works. It seems to me that that's--at least one of those signs is appropriate somewhere, maybe multiple places along that road.

James McCubbin: How about when you notice a meeting on road issues, we don't [inaudible, spoke without mic] restrict it to parking or restricting parking, but road management issues for this area [inaudible] name the relevant roads including signage and parking. Then that will leave it open when Public Works is here to comment with the discussed signage and parking and all those kind of--or Public Works road management issues.

Mike Sehestedt: It's like they have no outlet, dead end means the same thing to me, but there are accepted traffic conventions as to when you use one and when you use the other. Yeah, I think that's a good suggestion.

Chair Curtiss: So before I close the hearing, is there any comment from the public about the direction that we're headed? Yes, sir.

Douglas Turner: Douglas Turner and I live at 4395 Trails End Road. I'm the last person to have signed the document submitted by the neighborhood landowners this morning. This is just a brief point of clarity for myself. A few minutes ago, there was a reference to all of the signers of that document believe that there are currently violations of neighborhood covenants going on. I would say that that is an inaccurate statement. There are certainly signers of that letter that do not believe that the current utilizations of Lot 13 constitute violations of the neighborhood covenants. Thank you.

Chair Curtiss: If you could clarify, Mike, covenants are between the people who belong to--or on the covenants.

Mike Sehestedt: Well, generally speaking, where [inaudible] property owners, so if they were to successfully argue that this use or any use being made of this was a violation of the covenants, I mean we would be, as a property owner, subject to that.

Chair Curtiss: Okay, thank you. Any other comments before I close the hearing? Okay, I'll close the public hearing on this issue and I guess it would be best to put in a motion the direction that we'd like staff to go and pick a date for a hearing, possibly. I was thinking maybe clear out to like March 5. Do you think that would give time for you to work with Public Works, Lisa?

Lisa Moisey: Yeah.

Commissioner Carey: Well, I wish I would have copied down James formulation because that what I have in mind.

Mike Sehestedt: The wonder of electronics, let Cathie read it back.

Commissioner Carey made a motion that the Board of County Commissioners hold meeting on March 5 in order to consider road management issues, including signage and parking on the various streets and roads off Oral Zumwalt Way

Chair Curtiss: Is it the Trails End subdivision; is that what it's called? Or no, Rodeo Ranchettes area.

Mike Sehestedt: Rodeo Ranchettes and on the access roads there too.

Commissioner Carey: We're also consideration signage at the Trails End intersection.

Commissioner Anderson seconded the motion.

Chair Curtiss: Just to clarify then, staff would work up the actual correct notice for what area we're talking about. Is there further discussion?

The motion carried on a vote of 3-0.

Chair Curtiss: Okay, so we've taken care of the signage and parking. Would you see the signage of this [inaudible] as part of that discussion then James? Or we could have Lisa develop the signage for that lot and do that administratively?

Mike Sehestedt: That's covered. You guys I think have acted to sign it...

James McCubbin: You've given staff directions.

Mike Sehestedt: Lisa's been directed to bring it back and make sure she heard your directions correctly.

Chair Curtiss: Okay, thank you.

Commissioner Carey: Should we give them a couple minutes to leave?

Chair Curtiss: We do not feel insulted if folks decide they would like to go home now.

**Consideration (Continued from January 30, 2008): Robertson Remount Estates (2 lots on 10.25 acres) - Remount Road, north of Ninemile House**

Chair Curtiss opened the continued consideration.

Janet Rhoades presented the staff report.

I do have a memo that reflects some of the conversation we've been having on this. You can pass that around.

Chair Curtiss: Can we make sure we give a copy to--or have you already given a copy to Mr. Ewart?

Janet Rhoades: Yes. So I just want to real quick go through the memo. Did everyone get a copy of this?

Chair Curtiss: Yes, the one dated February the 6<sup>th</sup>.

Janet Rhoades: Okay, just to go over the revisions that have been made to the original staff report. The first one is there was some discussion about the riparian area and the riparian buffer area and where the boundary for the riparian buffer area would be. Staff have worked with the developer's rep and have come up with what is in Attachment A to the memo, which is this lower one here. You can probably see it better on your attachments though. So that is the buffer and instead of describing the whole buffer in language, we ended up just putting it on the plat because words can get so confusing after a while. The riparian resource area itself is going to be defined

by the eastern edge of the vegetation per our regulations. The buffer can be of variable width, so that's why we have the drawing for that.

Chair Curtiss: This Attachment A is also dated February 6, so just for the notes that Cathie keeps.

Janet Rhoades: Yeah, thanks. She does have copies of both of these. Then the third issue that we had talked about with the livestock, what we came to is instead of defining a specific number, just saying, "Livestock animals (horses, cattle, llamas, and the like) shall be permitted to be kept on any one lot in numbers that do not result in overgrazing. Decided to get straight to the issue instead of a specific number, which there's so many ifs, ands, or buts with that. That summarizes up the memo.

Chair Curtiss: Okay, are there comments from the developer's representative?

Ron Ewart: Good afternoon, my name is Ron Ewart; I'm with Eli & Associates. We are in agreement with the recommended conditions of approval to include the memo that's dated today. We took the recommendations from OPG, something that we had discussed and we actually drew it on CAD with the 30-foot buffer along the top and then on the bottom basically, it's where we had shown it in the beginning with the area of riparian resource generally shown as the edge of the riparian vegetation. This top drawing is something that we drew today on CAD and then I just colored the area of riparian resource and the buffer, which I believe reflects the memo. Of course, I just gave it to Janet a little while ago, so I don't know if they've had time to review it, but I believe it should be quite accurate.

Chair Curtiss: So Ron, did you use aerial photos or something to shown where the vegetation was? How did you come up with that point to draw for the CAD?

Ron Ewart: Those trees were located...

Chair Curtiss: Located and put on your map?

Ron Ewart: Right.

Chair Curtiss: So like GPS or something?

Ron Ewart: Right, so they should be pretty accurate.

Chair Curtiss: So I guess the thing that we're trying to agree on is that where the riparian vegetation is is the edge and we want to be 30 feet from that with a minimum of 80 from the creek.

Ron Ewart: That's correct.

Chair Curtiss: I think we all agree with that.

Ron Ewart: Correct.

Janet Rhoades: But if I can clarify for you, the riparian area, the riparian resource area is still going to be defined by the eastern edge of the vegetation, not by the boundary on that plat. Does that make sense? That's why we only drew on Attachment A, we only drew the buffer boundary, not the riparian area boundary because that's defined by the vegetation, which is kind of hard to tell when it's all covered in snow.

Chair Curtiss: It looks like they're pretty similar. It looks like there's kind of a little...

Janet Rhoades: Right, I think that's good as an approximate just illustration, I just wanted to clarify that that boundary won't be what goes into the covenants. It'll be defined by the vegetation, which is what our regulations say.

Chair Curtiss: Okay.

Unidentified Speaker: Excuse me, [inaudible, spoke from audience].

Chair Curtiss: Sir, we need you to say your name for the record.

Unidentified Speaker: [Inaudible, spoke from audience.]

Chair Curtiss: Mr. Legato, could you spell your last name?

Unidentified Speaker: [Inaudible, spoke from audience.]

Chair Curtiss: Okay, so Mr. Legato would like us, Ron, to show where the creek is.

Ron Ewart: The western boundary of the property is shown as the low water mark of Ninemile Creek. Just to add one more thing to what we were saying, the edge of the buffer area coincides with the Attachment A. If the riparian line moves a little bit, that's one thing, but what is important is that the fence line would not encroach beyond the edge of this buffer.

Chair Curtiss: Thank you, Ron. So as defined in the low water mark, because it is a navigable stream is what defines that property boundary. Did you have anything else you wanted to add, Ron?

Ron Ewart: No, unless you have any questions. Thank you.

Chair Curtiss: Thank you. Mr. Spoon.

Chuck Spoon: Chuck Spoon. I own a property north of this development as we talked about last week. I have other comments, but the one relative to the riparian, I'd like to ask for the favor of the County Commissioners. My request is to be very careful with buffer zones along these riparian areas. Where I own up here, the stream has washed out. Where I have no riparian vegetation, I'm trying to recover or recoup the vegetation. To take an artificial, what, 80-foot distance from the edge of the stream out into the pasture and preclude it from grazing, it--when you look at the land and walk it, it just does not make sense. I understand the logic of wanting to come up with something like [inaudible]. The same way with the setbacks, these arbitrary figures that don't take into the site specific nature of the stream is flawed. It concerns suggest me from an individual landowner. It would suggest that I had to move my fence 80 feet from the creek because it comes off the grazing grasslands and then drops straight vertical down to where Ninemile edge is. So that is the low water as well as the high water, short of a major flood. It puts me in a real awkward position of having to go out there and move my fence, theoretically, 80 feet from that line and leave all this 80-foot of pasture without being grazed. Now, I've done a reasonable job because I pulled it back 30 feet to protect that area from stock use, but I don't want to gee, come back to 80 feet. Now that's my land, but this kind of stuff here keeps setting these precedences, expectations that the public has that to a landowner with a site specific nature of Ninemile Creek and the riparian vegetation, doesn't demand that. Nature is not suggesting and this arbitrary thing that deals with streams is going to get us into major problems. I just ask--I know there's--I mean this is not a big issue, but it's an issue that could come out in the future relative to navigation, low water, and the fact that these streams migrate a lot and the boundary's keep changing on us. If you go ahead and you take a legal boundary like here at the low water mark, next year it's going to change. From a landowner's standpoint, it just--well, it just has no meaning because it's a floating line that it just can't anchor to anything. I just ask for some patience and some--in fact, let's not implement or require a landowners to abide by that because I think last time we were talking about putting a fence up there and saying that that fence could not be within that 80-foot distance from the low water of that particular stream. I just ask for some consideration there as to how that gets administered. Thanks.

Chair Curtiss: So you understand that this would be, for now, if the stream changes, we aren't going to make them go change the fence every time?

Mike Sehestedt: I think to address his concerns about...

Chuck Spoon: Jean, I...

Chair Curtiss: Just a minute, let's let Mike answer.

Mike Sehestedt: ...to address his concerns about his property. This is a subdivision regulation. It will only come into play if you choose to subdivide your property. The issue then would be if you have site-specific reasons that there is no riparian vegetation, then you might have to ask for a variance based on, from the general regulations,

based on the site-specific nature. That's only going to happen if you choose--first of all, these only come into play if you choose to subdivide your property. Then if, for whatever reason, the literal application of the regulations is unreasonable because there's specific circumstances concerning your property, you'd ask for a variance and quite frequently, they're granted. Trying to think, is there a variance or two involved in this project with--no? None? None, okay. Typically, actually, it's a two-lot subdivision, you're right. If we had three or four lots, there would probably be a requirement for offsite or not offsite, but pedestrian facilities along the edge of the road. If you felt that was unreasonable, you could ask for a variance, so on and so forth.

Chair Curtiss: Mr. Spoon, did you have something else you wanted to add?

Chuck Spoon: Later, one relative to the road issue.

Chair Curtiss: Janet?

Janet Rhoades: If I could just speak to the 80-foot width, that was what was recommended by Mel Waggy, who's the biologist with Rural Initiatives. The purpose of that, as well as protecting the riparian vegetation, is protecting the creek itself. The water quality from the nitrates, especially since there's livestock or livestock allowed on this site, stabilizing the bank from any overgrazing of the vegetation, and providing an opportunity for riparian vegetation to come back, whereas, if they were grazing, that it might stay pasture forever.

Unidentified Speaker: [Inaudible, spoke from audience.]

Chair Curtiss: Sure, Mr. Spoon

Chuck Spoon: I'm sorry, but you know, some of these things start to lock in. I've been trying to revegetate that section for 12 years with the help of Terra Comfort [phonetic] and we have been unsuccessful to get tree growth in there. If nature can't do it--I can't do it, nature probably won't do it either because there's a definite soil-type change there relative to clay versus some of the gravels. Again, I don't want to belabor, I just want to make the point.

Chair Curtiss: Thank you. As Janet said, she's just going with the recommendations made by Rural Initiatives staff. Yes sir?

Norm Legato: Norm Legato from West Ninemile. Several years ago, probably about 30 years ago when I bought the property that's partly in question here, I told the developers that I'd like to acquire the property that's between Ninemile Road and Ninemile Creek and that was agreed on. They set up the plat to the different sections the way--they tried to set it up with 20-acre plots. Well, the piece that I had had 34.8, if I recollect right, but I'm sure that's what it was. Down the road a ways, well, all of sudden, I found out they took a few more acres off the north end of my property, so they could adhere to their 20-acre request per plot. I've lost about four or five, I'd say probably close to five acres right now. That's land that I had been developing every year [inaudible] farm. It wasn't a great big project that I undertook at the time, [inaudible] over the years, I've been trying to enhance the growing of grass, which I use for my own use [inaudible]. It gets real touchy when people just come along and take a piece of property from you for no good reason. Now this was--like I said to be able to come up with their projected 20-acre plot. If this subdivision here is approved, now just what does the landowner [inaudible] asked for this change going to gain by the piece of property that's on my land now. I mean, [inaudible] change going to put the land--or the line over on my land. It looks to me like they're wanting to come across the creek and get on my property.

Chair Curtiss: No, this property is defined by the low water mark on his side of the creek, not your side. We have some other maps maybe we could show you that would help you see better.

Norm Legato: Well, I couldn't read that map, even with the help of magnifying glasses. It's just too fine to pick out what's what. I'm not sure where the stake is going to be if they do go through with this project.

Chair Curtiss: It will be on the, what is that, the east side of the creek. All there property is at the low water mark on the east side of the creek and you live on the west side, right?

Norm Legato: Then in other words, all this change is going to be done on the east side of Ninemile Creek? Nothing comes across the creek?

Chair Curtiss: Yes, nothing comes across the creek in this property.

Norm Legato: That's a little different than what I understood. Well then, I have no complaint I guess, except I feel I've lost enough land already and I'd hate to see anymore go for no good reason.

Chair Curtiss: Okay, thank you.

Cathie Cichosz: Excuse me, sir, could you state your name?

Chair Curtiss: It was Mr. Legato.

Cathie Cichosz: Mr. what Legato?

Commissioner Carey: Norm Legato.

Unidentified Speaker: [Inaudible, spoke from audience.]

Chair Curtiss: Did you get that Cathie? Okay. Yes sir.

Ty Brennan: Hello, Ty Brennan, Remount Road.

Chair Curtiss: Ty Brennan? Okay.

Ty Brennan: I just want to go over something real quickly with regard to that new survey and what Norm's concern is. What's going on here is like Norm suggested, when he purchased the property, he paid for, what was it, 34.8 acres. There was a subdivision downstream that the subdividers, the land developers had used this method of creek meandering to gain some more property so they can reach this 20-acre minimum at that time. Norm lost property there. Now we have another subdivision where the same principle is coming into effect, the meandering creek. If you look at this--the old original when Norm purchased his property--and there's other landowners there that are concerned as well, the original mark, you can see it very clearly, that defined the properties on each side. When landowners purchase, they know how much acreage they're getting. I don't know the rules about slow movement or fast movement or one year to declare, but I do know that depending on what time of year, which year it is, how much runoff you have, you can kind of miss the mark on this thing. If you look at the map right now, where the creek is, this Lot #1, although the low water mark has, yes, has moved that way, the survey's going to show that Lot #1 for this development has extended size from the original and that extended size has encroached on Norm's property, thus the surveys going to reflect less acreage for his property.

I understand Norm's position. He's retired, he doesn't want to have to be fooling around--I mean he wants to enjoy his grandkids now. He doesn't want to have to be on guard every year of who's subdividing on the other side of the creek and having his own surveyors out there to protect him. A few acres here, a few acres there, by the time he goes to pass his property down to his children or his grandchildren or if he sells it for his keep when he retires, all of a sudden he's got, what, 28, 29 deeded acres for himself. Well five acres [inaudible] the Ninemile Creek is quite a chunk of change, especially on the creek side there. I don't know how we solve this problem. I really don't. I thank Mike for meeting with me the other day and spending most of the afternoon and trying to help me reconcile this. I just--I'm still not there. I just don't see how this works. There's just too much at stake here. The problem here is Norm's property runs along a long distance and then he's got several parcels of land adjoining him. Each time one of these parcels subdivides, somehow the land gets taken from him. Even though it can be justified, well, it's still on that side of the creek, well, it's still surveyed in as deeded acres. So I don't know how this--do you gain deeded acres? Does it have a joint ownership now? Do both landowners own that section? Because he has a deed that's recorded with the county that says he has 34.8 acres, but in reality, if this stream has moved, he doesn't have that. John Robertson has that now, so it's deeded to him. I just don't know how that works. Still not there, I was hoping to get some more clarification on this today possibly; maybe somebody else could look a little deeper into this. If we can just maybe...

Chair Curtiss: Unfortunately, that's the way it's written in statute...

Ty Brennan: Yeah, I know.

Chair Curtiss: ...navigable stream, so some years you got more and some years the neighbor does...

Mike Sehestedt: Let me [inaudible] try and clarify.

Chair Curtiss: Go ahead, Mike. It is confusing.

Mike Sehestedt: The deed description, if you look at the actual legal description of the parcels created on the certificate of survey, they say and to the centerline of Ninemile Creek, which is approximately shown by the following courses. That approximation is what appears as that surveyed line, but the legal boundary as described, and there was an error in that legal description because it calls to the centerline of Ninemile Creek. Ninemile Creek is a navigable stream, according to the Department of Natural Resources by their criteria, which means the state owns the bed of Ninemile Creek and the adjoining property owners own only to the low water mark. Ida didn't own that property, she couldn't sell it, so to that extent, that's an error. But whether Ninemile is navigable or non-navigable, by Montana statute adopted in 1895, part of the field code, essentially representing the common law or codifying the common law on the subject, where a property owner purchases property described as bounded by water, the property boundary will move. If it's non-navigable, it moves with the centerline of the stream. If it's navigable, moves in accordance with the low water mark. Now, there are two kinds of movement. One is accretion, which is described as a slow, imperceptible depositing of sediment on one side and gradual cutting away on the other. With that, the boundary line moves absolutely. The other kind of change is called avulsive. If the change is avulsive, i.e., a sudden change in the stream, in the case of a creek like Ninemile, log jam at high water, it cuts a new channel around it. That kind of sudden change does not affect the title to the property; it remains with the original property owner. So instead of going to the person on the far shore, they continue to have title to it. The classic example is the cutting off of an oxbow on a large river. That doesn't affect title to the land inside the oxbow; that remains with the original owner. On the other hand, if the river over a long period of time flattens the oxbow out by--I have no idea how, cutting on the inside of a curve and depositing sediment on the outside, a physically impossible situation, but if it should occur, then there's gain and loss as a gradual erosion. I'm not trying to--I chose a bad example, but does that make it any clearer to you?

Ty Brennan: What determines the two methods? You had mentioned that one thing--one law or whatever, one ruling you had read said 12 feet.

Mike Sehestedt: That was just an illustrative case. It's a question of fact I think in every situation as to how did the change occur. The case I referred you to was I think movement of a quarter mile over a period of approximately a hundred years. The court found that to be an avulsive change rather than a change by accretion. I regret I didn't really study that case to see for sure what the underlying facts were, but as I recall from the head note, court found that that was a perceptible, rather than imperceptible change. I don't know what the other associated facts were, but they concluded that the boundary line had remained fixed and only the river had moved. What that property owner lost on one side, he or she picked up on the other. I don't know the history of Ninemile Creek. By the very nature, when the boundary line is a watercourse, survey such as you see describing the--I think it says approximately described in the actual legal description. These courses necessarily has to be an approximation because you do not get several hundred foot straight stretches of a creek like Ninemile. If you were going to actually document this [inaudible] you can't say hence along a tangent curve. You're really doing an approximation, the monument is either the low water mark if it's navigable or the center of the stream, if it's non-navigable waterway. Yeah, it does move, I mean nothing is fixed and that is I think that is an uncomfortable position to be in if you're a riparian owner. In a sense, you never know how much you've got. On the other hand, it's a very comfortable thing because you know, even if the creek does slowly wander, you will always have waterfront property. You get the bitter and the sweet there, as it were.

Chair Curtiss: So Mike do you know when Ninemile Creek was designated and who designated it?

Mike Sehestedt: I don't know when. The designation is done by the State Department of Natural Resources. On their website, they have a list of--they go into considerable detail stating the basis. It goes back to an 1844 Supreme Court decision that said all of the newly admitted states are admitted on an equal footing with the original 13 colonies. That's important in this context because under the common law of England, the bed of navigable stream in the original 13 colonies was owned by the colony and then by the state as a successor. They applied the same rule to all of the newly admitted states. That's the fundamental way it happened. Montana statutes reflect ownership of the bed. The...

Chair Curtiss: So do you know if there's any legislative way that possibly the folks who live along this creek could have that designation changed?

Mike Sehestedt: No, well, no. Once you're into it, the bed of all navigable is school trust land and the only way to get away from it is by purchase. I suspect that that is practically and politically impossible, but that's for others to decide not myself. Ninemile Creek probably was declared navigable from the point where navigation begins. The result of its use to float saw logs or similar products.

Chair Curtiss: So it's not something that we can fix or even give you direction on how to fix it.

Mike Sehestedt: No.

Chair Curtiss: Mr. Legato?

Norm Legato: Can I just make one more remark? Like I've said, I've been up Ninemile now 30 years. In that time, I've watched Chuck put an awful lot of sweat and blood in his property. He is a good steward of the land. He's built up the creek with [inaudible] and everything else and until today, I didn't know Ty at all. I've admired the person that has his property for all the work he's putting in his home; he's building it himself. With us having to be stewards of the land, I'd say it would be a big boost to us if we'd see things like this controlled to the point that were not going to feel that we're going to lose everything and somebody else comes along with a better story than we've got. That isn't the case, we're putting our sweat and blood into our property and our homes and we're trying to make it better, but we've got to have some backing. Thanks.

Chair Curtiss: Thank you, Mr. Legato. So the one other issue--are there further comments on the changes in language for the riparian resource and the buffer zone and the number of livestock being changed to reflect the more not to overgraze than to have numbers.

Mike Sehestedt: I think there was one other issue.

Chair Curtiss: Yeah, that's why I was going to move to the other one, the road.

Mike Sehestedt: Okay, good enough.

Chair Curtiss: If there's any more comment on that, we'll move to--the other issue was whether or not the property goes to the center of the road, which used to be COS, it looks like, 2656.

Mike Sehestedt: 2656.

Chair Curtiss: So, Mike, you were going to do research...

Mike Sehestedt: Yeah, I did some research on it. Actually, Parcel G on the original COS also contained the dedication of that road as a public road. Again, longstanding law of Montana dating back to 1895 and it's in Section 70-16-202, Montana Code Annotated, owner of land bounded by road or street is presumed to own to the center thereof, but the contrary may be shown. Every deed to the parcels created by Certificate of Survey 2656 uses the boundary of the road as one of the boundaries. As a result, there's nothing to the contrary, there's no reservation in any of those deeds of the fee underlying the road. By conveying, using the road shown as one of the boundaries, the presumption is that the owner of the parcel takes fee to the center of the road. Montana Supreme Court case that is probably the leading case on this is Bailey versus Ravalli County, decided back in 1982. It recites this [inaudible] that when they acquire property for a road, all it acquires is the right-of-way and the incidents necessary to enjoying and maintaining the same. That, for the record, is Section 7-14-2107. When you read that in conjunction with 70-16-202, the presumption is that the adjoining property owner bounded by the road takes to the center of it. If you think about the situation in [inaudible] Dinsmore Orchard Homes, where all of the lots are described as corners and there's a dedication of the streets. Our consistent position has been, and I think decision in Bailey validates this, that the owners of those lots own the fee, subject to our right-of-way to the center of the street. We've used that in terms of determining acreage for septic systems and in terms of determining whether or not they met sufficient area for zoning density purposes. This is--it isn't new law for us, it certainly isn't new law for the State of Montana. All of these are statutes that go back close to the end of territorial days and the beginning of statehood.

Chair Curtiss: So we know that--the other thing the record shows is that Ida Sleeman's granted that Plat G to the county for road purpose. At that time, she owned land on both sides of the road...

Mike Sehestedt: I didn't...

Chair Curtiss: ...that looks like on that one...

Mike Sehestedt: I didn't even--I couldn't tract that down...

Chair Curtiss: Because the one other question that came up was whether or not this then means, they own to the center of the road or if they own clear to the other side.

Mike Sehestedt: At this point, they're assumed to own to the center.

Chair Curtiss: So everybody on along this road now just found out that they own to the center of the road?

Mike Sehestedt: That's correct, in fee. They're still subject, in subject to...

Chair Curtiss: Subject to the right-of-way.

Mike Sehestedt: ... subject to the burden by the right-of-way. What it means is that we were going to do a road improvement project and we cut down a tree that was a saw log, whoever owned the fee would be entitled to that saw log.

Chair Curtiss: But because we have the right-of-way easement...

Mike Sehestedt: We...

Chair Curtiss: ...we could take down the tree because [inaudible]...

Mike Sehestedt: We have the right to take the tree down; we don't have the right to appropriate to our own purposes. Does that make sense to you?

Chair Curtiss: James, did you have something you wanted to add?

James McCubbin: Yeah, as to the ownership. When I was contacted by John Taboracci last June about this issue, I had reviewed the historical background of the property with the Surveyor's Office. I don't specifically recall, but I do note, and I think this is part of the record from June 13, noted that I had reviewed this with the Surveyor's Office and they didn't have anything that indicated other than that ownership was to the center of the road. I can tell you that usually what I look for with the Surveyor on these kinds of issues is whether the original ownership at the time of dedication to the road was all in the same person's name when the road was dedication. I believe that was the case here. That's my best memory.

Chair Curtiss: Okay. Mr. Spoon.

Chuck Spoon: Chuck Spoon again. Couple points to be made if I could, the lot that us landowners have, the Sleemans put together with the help of a friend of mine, Marilyn Foss, originally went to the center of the creek. Now, we've identified now that the state of Montana has asserted their rights to the navigability of that, therefore that is what set the precedent to upstage the COS, I believe. I think were all in agreement [inaudible] on the same page. That's where we lost land. I hate it, we lost it. Now we go to the road and you look at the plats that Ida Sleemans subdivision documented through a COS that was well documented and on file within the county of Missoula, shows those pins along the side of a said road. Then we identify Parcel G as including that road and that road is very definite as a parcel of land made up of the road, which was set aside for the enjoyment of the folks that purchased the lots, as well as for a public road in perpetuity. Marilyn Foss, do you folks know Marilyn Foss? I see two hands, I think Jane does too. I talked to her this morning for two hours in her office to try and recollect--because she was the one that did the marketing for Ida Sleemans. Ida Sleemans was incapacitated when she put together this, so she worked with the heirs and the development, she worked with a surveyor that broke the lots up. She said it's very clear in my recollection that it was the county that required or requested that the Ninemile Remount Road be included in a separate parcel for the protection and enjoyment of all the people

who purchased land within that development. Therefore, everybody within that development shares in the ownership of that and she said much like a common area. She said the only way an adjacent landowner can take a portion of that Parcel G for their own personal lot would be if they went through a formal subdivision of that particular parcel and broke it up at the approval of all of the people who are part of the covenants who now own land within that development and we're agreeable to have that busted up where all the properties--or portion of the Remount Road to the centerline would revert to the lots that were owned. Again, she says it would have to through a subdivision, which seems kind of interesting, but I can see where she's coming from. It's a lot in and of itself. It's part owned by all the people that have land from the original Sleemans subdivision, so I guess it does make sense. It makes a lot more sense than to think that the--[inaudible] now that with those lots go to the center of the road. We [inaudible] paid taxes on that parcel of land from my pins or from our pins to the center of the county road. Eli & Associates have been doing, I think, a number of subdivisions along that road; they never asserted this right before. It's kind of interesting to see that--kind of interesting for the landowners to accept the reality of this. I mentioned last week, to accept the reality of what's going on in the stream, where now we're going ahead and relying on the state's assertion of their rights because it's navigable water and now we're saying that we might be snookered because--now we're saying that the pins have been established for these lots were erroneous and they actually should have gone to the center of Ninemile. Mike, when I came in here, gave me some information and one was the code, which he related, which addresses the owner of land bounded by road and there's the last little caveat there says but the contrary may be shown. Is it not valid to suggest that the contrary would be that Parcel G was isolated in and of itself, much different than most other subdivisions? And might it also be legitimate to suggest that Marilyn Foss, who still has the memory of this and is willing to come here before the County Commissioners and tell the County Commissioners that it was the county that suggested that that particular county road be put into a separate parcel? I just ask for some consideration for that because again, all of a sudden these things come up and again, I say that Eli & Associates, they're not first comers on development along this road. They've got a history of this and why is it all of a sudden they identify that as an issue now. I think I know and I guess I would like to take issue with it, but I'm just asking the County Commissioners and County Attorney to give some consideration and if necessary, give Marilyn Foss a call and talk to her about what she remembers when she put this together. Thank you.

Chair Curtiss: Thank you, Mr. Spoon. Would you like to respond James or Mike because I thought we had something that shows that she later dedicated it?

Mike Sehestedt: Actually, it was dedicated at the time the COS was filed. This was after the law changed to require minimum of 20 acres. Tract G would have been permitted only because it was a road parcel and the certificate of survey itself on its face dedicates Tract G as a county road. Now, there's no indication that it was ever conveyed to the property owners collectively or individually. The only record on it is that it was dedicated to the use of the public forever as a county road. The question then becomes as a matter of law, where does title to the fee under Parcel G, the road, the tract in right-of-way, dedicated? Where is title to that vested? There are two possibilities; one is in the heirs and devisees of Ida Sleeman. The other is that in accordance with the law that was in place at the time and continues to be the law is that fee title is actually vested in the adjoining property owners to the center of the road in accordance with the statutory presumption. Now, that makes a great deal more sense than any other outcome. None of it affects the existence of the county's easement for the full width of the road as shown, but talking about the fee, I believe, because property was then subsequently conveyed bounded by this road that the fee ownership extends, subject to the easement, to the center of the road.

Chair Curtiss: So in the same way that there was an error in the description in regard to the creek, it sounds like there...

Mike Sehestedt: I...

Chair Curtiss: ...people were not led to understand that they owned to the middle of the road...

Mike Sehestedt: I wouldn't even describe it as an error. This is a convention that, to be honest, we've broken the local surveyor's of, but it still occurs at other places in the state. It doesn't matter much where it's public road because DOR doesn't tax it, but where this particular convention of showing a road as a separate parcel is used to create private road, the Department of Revenue taxes it and we're confronted with the conundrum of whether or not we want to own fee title under a strip of ground that is subject to an access easement in favor of all the adjoining property owners. Be happy that DOR isn't taxing, they actually don't typically tax the square footage that's beneath the public no matter how it's [inaudible].

Chair Curtiss: While it's confusing to folks who don't deal with this on a regular basis, we make that assumption based on the law when we do subdivisions, that a public road that the folks next to it--so the land you lost in the creek, you gained on the road. That's all I can say.

Unidentified Speaker: I wasn't going to say that.

Chair Curtiss: Mr. Legato?

Norm Legato: [Inaudible, spoke from audience] starting pin on property, where the surveyor starts the legal description of the property in question, from that pin, it tells how many feet and what direction and certain line is taken. Then it keeps going with the creek. Now for instance, as the creek would change, we've lost channels out there, literally the fingers of the creek are gone in some places. Now as long as my description reads--my plat actually reads that from this point is say 10,000 feet at 32 degrees, then comes back another--number of degrees for so many feet, how legal is that as far as maintaining my property [inaudible]?

Mike Sehestedt: The answer to that is your actual property description, if you look at the tract descriptions on the COS, are, for example, if the start point was down at the southwestern corner of your property, says the distance of 365 feet. I suspect in the actual legal description, it says more or less to the center of Ninemile Creek, hence along Ninemile Creek as shown approximately by, and then it calls out the various calls that are depicted on COS 2656 up to a point. Then you go over and back down Ninemile Road, or whatever the westerly boundary is, to the point of beginning. So your legal description is--you've got a clear top, a clear bottom, and a clear westerly boundary at Ninemile Road. Your actual legal description says the centerline of Ninemile Creek, then it gives an approximate location in terms of those courses. Looking at your actual--and I did look at the actual legal descriptions of the parcels to see what was intended here, because this is an issue. In some cases, looking at what's depicted here and what shows on some of the other drawings we've got, I suspect you have both gained and lost property based on the movement of Ninemile Creek. I think there's some significant gain for you from Mr. Spoon and it looks--looking at this like there's some loss. Well, I'm not sure whether it's Mr. Spoon, but north there's some areas where it appears the creek has now moved to the east giving you more ground. Down here, it looks like it's moved to the west. To determine how much property you have at the end of any high water season, given the fact you're bounded by a watercourse, you just about need to see what the watercourse has done, if it's done any changing at all. That's an uncomfortable position to be in if you're a property owner, but that is, as I said, it's the dark side of buying property with water as a boundary. The bright side is your property never becomes non-waterfront property as a result of the water moving.

Chair Curtiss: Thank you, Mike. Is there further discussion before we move to motions? I think that the--we don't have to do anything in regard to motions in regard to the Remount Road, right? That's all described properly?

Janet Rhoades: Yeah, I just realized that I didn't actually put recommended motions on this memo. There are recommended motions on a couple memos ago that would work as long as you switched out [inaudible]--does that make sense? Yeah, just say the regular one in the staff report and then as amended. Right.

Commissioner Carey: Just so you know, there are times when we're not happy to hear our attorney's advice, but we have learned to follow it. It's in the best interest of the citizens of Missoula County, but there are sometimes when we're unhappy to hear what they tell us, but they're good at what they do. I must say we've given this matter a very thorough consideration in my view.

Commissioner Anderson: That's true.

Commissioner Carey made a motion that the Board of County Commissioners approve the Robertson Remount Estates Subdivision based on the findings of fact and subject to the recommended condition of approvals including the amended Conditions #7, 8, 9, and 10 found in the February 6 memo from staff. Commissioner Anderson seconded the motion.

Chair Curtiss: And including the Attachment A as given us today?

Commissioner Carey: Yes.

The motion carried on a vote of 3-0.

Chair Curtiss: Thank you. Thank you for all of your input.

## **Robertson Remount Estates Conditions of Approval**

### **Roads and Access:**

1. The subdivider shall install a new driveway to the existing house on Lot 2 prior to final plat approval. Plans for the driveway and approach to Lot 2 should be reviewed and approved by Missoula County Public Works and Frenchtown Rural Fire District prior to final plat approval. Plans for the driveway and approach to Lot 1 shall be reviewed and approved by Missoula County Public Works and Frenchtown Rural Fire District prior to building permit approval.
2. Driveways in excess of 150 feet in length must be approved by Frenchtown Rural Fire District prior to building permit approval. A turn around for fire apparatus must be incorporated at the terminus of the driveway. The driveway must provide 20 feet of unobstructed horizontal clearance and 13 feet 6 inches unobstructed vertical clearance the length of the drive. Driveways shall be constructed to support emergency vehicles in all weather conditions. This language shall be included in the development covenants and shall not be deleted or amended without governing body approval.

### **Fire:**

3. The developer shall provide a water supply for fire protection that produces 1000 GPM with two hours storage and a hydrant or, in lieu of a water supply with hydrant, the developer shall install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for a water supply and hydrant location shall be approved by Frenchtown Rural Fire District prior to final plat approval. If water supply for fire protection is to be provided by interior residential fire sprinklers then the subdivider shall provide verification from Frenchtown Rural Fire District of approval to install interior residential fire sprinklers that meet NFPA 13D standards in each new home for the purposes of fire protection 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 (Section 15 – Interior Residential Fire Sprinklers) shall be amended to state the following prior to final plat approval:

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

This section of the covenants may not be changed or deleted without governing body approval.

4. The developer shall contribute a fire service fee of \$530.00 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.
5. Fuel mitigation work meeting Montana State Department of Natural Resources Fire Protection Guidelines for Wildland Residential Interface Development is required prior to combustible construction. Plans for wildland fire suppression shall be reviewed and approved by Frenchtown Rural Fire District prior to building permit approval.
6. All residences within this subdivision shall post address signs visible from Remount Road in all light conditions. Plans for visible addressing shall be reviewed and approved by the Frenchtown Rural Fire District and the approved language shall be included in the Development Covenants prior to final plat approval.

### **Riparian Area:**

7. The subdivider shall amend the plat, the Riparian Management Plan and Map, and the Development Covenants to refer to the Riparian Resource Area as a “Riparian Resource Area/No Build/No Alteration Zone” subject to review and approval of OPG prior to final plat approval. The boundary of the Riparian Resource Area shall be shown on the plat and the Riparian Management Plan Map as the area from Ninemile Creek to the eastern edge of the riparian vegetation, subject to review and approval by Missoula County Rural Initiatives and OPG prior to final plat approval. The boundary of the Riparian Buffer Area shall be shown on the plat and the Riparian Management Plan Map as shown on Attachment A subject to review and approval by Missoula County Rural Initiatives and OPG prior to final plat approval. The Riparian Management Plan Map shall be attached to the Development Covenants prior to final plat approval.
8. Section 19 of the Development Covenants shall be amended to replace section B) with the following language, subject to review and approval of OPG prior to final plat approval:

“Riparian Resource Area/No Build/No Alteration Zone - The Riparian Resource Area/No Build/No Alteration Zone is the area from Ninemile Creek to the eastern edge of the riparian vegetation, as indicated on the plat and the Riparian Management Plan Map. The Riparian Resource Area/No Build/No Alteration Zone shall include the prohibition of all buildings, structures, fences, utilities, parking, roads, motorized vehicle access (except for routine maintenance activities), storage, containment of domestic animals, or any other development. It shall also prohibit any mining, cutting, burning, or removal of live or dead vegetation (except as needed for wildfire prevention, noxious weed control or conservation management), modification of the stream bank or streambed, filling with substances such as gravel, soil, slash or other debris, the use of pesticides, herbicides, or fertilizers, or the planting of non native vegetation such as lawn grasses.”

This section of the Development Covenants may not be changed or deleted without governing body approval.

9. The subdivider shall amend the plat and the Riparian Management Plan and Map to designate the following Riparian Buffer Area, and Section 19 of the Development Covenants shall be amended to replace section E) with the following language, subject to review and approval of OPG prior to final plat approval:

“Riparian Buffer Area/No Build/No Alteration Zone - The Riparian Buffer Area/No Build/No Alteration Zone is a strip of land with varying width extending east from the edge of the Riparian Resource Area as shown on the plat and the Riparian Resource Management Plan Map attached to these Covenants. The Riparian Buffer Area/No Build/No Alteration Zone shall include the prohibition of all buildings, structures, fences, utilities, parking, roads, motorized vehicle access (except for routine maintenance activities), storage, containment of domestic animals, or any other development. It shall also prohibit any mining, cutting, burning, or removal of live vegetation (except as needed for wildfire prevention, noxious weed control or conservation management), filling with substances such as gravel, soil, slash or other debris, the use of pesticides, herbicides, or fertilizers, or the planting of non native vegetation such as lawn grasses. Wildlife-friendly fencing is permitted at the eastern boundary of the Riparian Buffer Area to keep livestock out of the Riparian Resource Area and Buffer.”

This section of the Development Covenants may not be changed or deleted without governing body approval.

### **No Build Zone:**

10. The subdivider shall amend Section 3 of the Development Covenants as follows, subject to review and approval of OPG prior to final plat approval:

“Livestock and Fencing - Livestock animals (horses, cattle, llamas, and the like) shall be permitted to be kept on any one lot in numbers that do not result in overgrazing. All such animals shall not be kept within the “Riparian Resource Area and Riparian Buffer Area as shown on the subdivision plat. If owners keep livestock, wildlife-friendly fencing shall be located on the eastern boundary line of the Riparian Buffer Area or within portions of the “No

Build Zone for Residential Structures/ Steep Slope/ Low Area.” Lot owners shall maintain their fences to prevent livestock from entering the Riparian Resource Area or Riparian Buffer Area. Lot owners shall monitor and manage the vegetative cover to ensure that no overgrazing occurs. Any signs of possible overgrazing shall be corrected immediately.”

11. The subdivider shall amend Section 18 of the Development Covenants as follows, subject to review and approval of OPG prior to final plat approval:

“No Build Zone for Residential Structures/Steep Slope/Low Area-A ”No Build Zone for Residential Structures/Steep Slope/Low Area” is shown from the eastern edge of the Riparian Buffer Area to the top and edge of the steep bench and as indicated on the plat. Construction and land use activities within this zone is restricted as provided within these covenants.

#### **Floodplain:**

12. The subdivider shall designate a 15-foot building setback for new structures on Lot 1 and Lot 2 and additions/remodeling to the existing residence on Lot 2, measured from the edge of the “No Build Zone for Residential Structures/Steep Slope/Low Area.”
13. The subdivider shall amend the notation of the 100-year FEMA floodplain boundary on the plat to the following, subject to review and approval by OPG prior to final plat approval.

“100-YEAR FLOODPLAIN PER FEMA PANEL 30063CO850D, EFFECTIVE AUGUST 16, 1988”

#### **Development Covenants:**

14. The subdivider shall amend the development covenants as follows, subject to review and approval by OPG prior to final plat approval:
  - A. The subdivider shall replace Section 17 Wildlife of the Development Covenants with the following updated version of the Living With Wildlife guidelines as provided by Montana Fish Wildlife and Parks, and the subdivider shall delete the Living with Wildlife Brochure attached to the Development Covenants, subject to review and approval by OPG prior to final plat approval:

##### Section 17. Living With Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon, and magpie. Please 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](http://www.fwp.mt.gov).

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property, and the wildlife that Montanans value.

- a. There is high potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. Gardens, fruit trees or orchards can attract wildlife such as bear and deer. Fruit bearing trees and shrubs are strongly discouraged in this subdivision because they are a major wildlife attractant and can regularly attract bears in the fall. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or organic material can attract bears, skunks, and other wildlife. To help keep

wildlife such as deer out of gardens, fences should be 8 feet or taller. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries. To keep wildlife such as bears out of gardens and/or away from fruit trees, use properly constructed electric fences and maintain these constantly. (Contact FWP for information on “all-species electric fencing” designed to exclude wildlife from gardens, fruit trees/shrubs, and/or home areas.)

- c. If stored outdoors, garbage must be in secure bear-resistant containers; otherwise, it must be stored indoors prior to curbside pick-up or transport to a centralized garbage collection site, in order to avoid attracting wildlife such as bears and raccoon. If curbside garbage pick-up is available, garbage cans may not be set out until the morning of garbage pickup and must be brought in no later than that same evening. (Consult Montana Fish, Wildlife & Parks for information on purchasing or constructing bear-resistant trash containers or storage areas.)
- d. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in “an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.” Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. Birdseed is an attractant to bears, and outdoor birdfeeders should not be used from April 1<sup>st</sup> through the end of November. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds. Keep any birdseed that does fall to the ground, cleaned up at all times.
- f. Bears can be attracted to food smells associated with outdoor food storage; therefore, freezers and refrigerators should not be placed outdoors on porches or in open garages or buildings. If a freezer/ refrigerator must be located outdoors, attempt to secure it against potential bear entry by using a stout chain and padlock around the girth of the freezer.
- g. Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law, it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Outdoor domestic pets could be at risk of injury or death from wolves and other predators) in the area. Thus, keeping pets confined or indoors also helps protect them from predatory wildlife.
- h. Pet food and livestock feed must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such bears, mountain lions, skunks, raccoons, and other wildlife. When feeding pets and/or livestock do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- i. Barbecue grills should be stored indoors, permanent outdoor barbecue grills are discouraged, and permanent barbecue pits are not permitted. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- j. Consider boundary fencing that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
- k. Compost piles can attract skunks and bears and should be avoided. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and

garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)

- I. Apiaries (beehives) could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
  - m. These “living with wildlife” covenants cannot be altered or eliminated without consent of the governing body (Missoula County Commissioners).
- B. The subdivider shall replace Article II Section 2 of the Development Covenants with the following language, subject to review and approval by OPG prior to final plat approval:

“No covenants or sections thereof relating to weed control, radon, address signage, living with wildlife, riparian resource management, driveways, wildland residential interface, interior residential fire sprinklers, woodstoves, steep slopes, or energy efficiency, may be changed or deleted without prior written consent of the OPG or other relevant governing body.”

### **Hearing: Annex Property into Missoula Rural Fire District (Lamar Trail & McClain Creek Road in Florence)**

Chair Curtiss opened the hearing.

Kathy Wahl: My name's Kathy Wahl, I'm from the Clerk & Recorder Office. The 40% of the freeholders, they're supposed to own this property, both these pieces are single homeowners, so that wasn't really a real issue with the petition for McClain Creek and Lamar Trail in Florence.

Chair Curtiss: So they've met the petition requirements? Thank you, Kathy. So this property--the parcel of land [inaudible]. So this property I'm guessing has gone through Missoula Rural Fire and I thank you for not falling asleep in the back. If you'd like to come and tell us that your board has reviewed these and is ready to accept?

Brent Christopherson: Hi, Commissioners, I'm Brent Christopherson, Deputy Chief with the Missoula Rural Fire District. You are correct; this is a standard annexation before you that 's gone before our board and we as the fire district do recommend your approval of these two annexations. We appreciate your time.

Chair Curtiss: So it looks like they're listed as 8337 Lamar Trail and 8888 McClain Creek Road. Yes?

Commissioner Carey: I have a question; I'm just curious whether or not--are there any fiscal impacts to this at all? Are there now or in the future to the district?

Brent Christopherson: Fiscally, yes, probably so because there isn't--the way I understand it, there isn't anything on that land right now, but potentially in the future, depending on the development and that, yes, there would be.

Commissioner Carey: Are they positive or negative, do you know?

Brent Christopherson: I don't know that, I would say probably both in that providing the service whatever [inaudible] on the property, but also the revenues that are generated from being annexed would be a gain [inaudible] to the district.

Commissioner Carey: Does the district ever attempt to do an analysis of fiscal impact?

Brent Christopherson: I can't answer that, sir. In my short term during the year, I don't think there's been a formal one done. You could surmise what possibly the developer has in mind, but we really don't have any idea other than they're requesting our services [inaudible].

Commissioner Carey: What would happen if we didn't adopt the request, who provides fire protection in that case? Who's doing it now?

Chair Curtiss: There's nothing there.

Unidentified Speaker: I thought there were two homes?

Chair Curtiss: No, its...

James McCubbin: I think what technically happens is you, the County Commissioners, are responsible for fire protection...

Chair Curtiss: Firemen, I mean the Sheriff.

James McCubbin: ...and generally--yeah, and generally what will happen, I don't have specific examples, is the closest rural fire district will respond, but then I'm not sure what happens in terms of payment after that. Whether the county ever actually pays the district or not, but I think the technicality is that the county that's responsible probably not a bad idea to have some kind of agreement with the fire districts that they'll do it and you'll pay them back. I don't know if we have agreements, but the best bet is [inaudible] always [inaudible] that takes care of the problem.

Commissioner Carey: All right.

Mike Sehestedt: The question I have is what's the total acreage?

Brent Christopherson: I don't have that in front of me; it's been several weeks ago...

Mike Sehestedt: Looks like...

Brent Christopherson: It's quite an area.

Mike Sehestedt: ...the better part of the section. It's rare to see a petition for annexation what is essentially timberland when there are no structures to be protected, raises some question as to why. Well, actually given the area this is in, I think I know why.

Chair Curtiss: Is this the ski area, proposed ski area?

Mike Sehestedt: I believe it's in approximately the area where the lodge is proposed, but we haven't seen anything yet that's actually a presentation, so who knows what the actual plans are.

Chair Curtiss: If there were--if this is-land is accepted and further divided in any way, then each one of those new structures is assessed a fee, right?

Mike Sehestedt: Right, because this is fire district its [inaudible] taxation, so the fire district will receive revenue based on the taxable value. Obviously if you put structures on it, a, you lose the Ag class or timberland classification, which makes ground more valuable. You also have value of the structure, subject to taxation. I need to say that in the case of fire district annexations, these are hearings for the purpose of hearing protest. There are two protests that would stop the fire district annexation. One is protest by majority of the property proposed to be annexed. The other is a protest by a majority of the property [inaudible] original district. If we determine we don't have that protest, we really don't have any discretion, which makes these really useless in terms of a petitioned annexation and a district as large as Missoula Rural. What we're hearing are the protests and determining that all of the legal prerequisites have been done.

James McCubbin: Just also just the fact that they're in a fire district doesn't eliminate, if there is a subsequent subdivision, doesn't eliminate that as a factor that you still would [inaudible] subdivision.

Chair Curtiss: So was there any discussion at the fire board meeting about whether or not this was an appropriate property to add into your district.

Brent Christopherson: They looked at that and with what's there now, which is essentially not much, as such they approved what we had. It's probably been in front of you too, but they didn't have any problem with it, nor do the fire chiefs and the administrative of the fire district at this time. We certainly would review, as we do through OPG

and all of the other things, if there's proposals that come at a later date of subdivisions, those type things, fire access, water supply, all those things that we usually review, we would certainly look at that at that time.

Mike Sehestedt: Something that maybe I need to be real clear about so we can say it's on the record early and often. The mere fact that it's already in a fire district doesn't commit us to approving any particular form or level of development.

Chair Curtiss: Is this adjacent to property that's already in the district, do you know? Close, but who knows...

Brent Christopherson: I believe its close, but I'm not sure if it borders.

Commissioner Carey: I think that's what this shows, Jean, current fire districts [inaudible]. I think.

Chair Curtiss: Current fire district proposed annexation, so I guess it is. All right, thank you. Is there further discussion about this? Did I open the hearing?

Commissioner Carey: You did.

Chair Curtiss: I'll close the hearing.

Commissioner Anderson made a motion that the Board of County Commissioners approve the petition to annex a parcel of land into the Missoula Rural Fire District described as that particular parcel of land situate in the West ½, Northwest ¼ Northeast ¼ of Section 21, Township 11 North, Range 20 West of Parcel #1333200 located at 8337 Lamar Trail, Florence. Also, the North ½ Southeast ¼ and Northeast ¼ Less Northwest ¼ Northeast ¼ IN of Parcel #5903223 located at 8888 McClain Creek Road, Florence, Principal Meridian, County of Missoula, State of Montana, records of Missoula County as presented in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Mike Sehestedt presented the staff report.

### **Other Business**

There being no further business to come before the Board, the Commissioners were in recess at 3:38 p.m.