

## **PUBLIC MEETING – MAY 14, 2008**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney James McCubbin, Director of Public Works Greg Robertson, Office of Planning and Grants Planner Michele Reinhart, Office of Planning and Grants Planner Tim Worley, Office of Planning and Grants Planner Vlad Kryukov. Commissioner Larry Anderson is out of town at a meeting.

### **Pledge of Allegiance**

### **Public Comment**

### **Routine Administrative Actions**

Commissioner Bill Carey moved that the Board of County Commissioners approve the weekly claims list in the amount of \$1,401,976.63. Chairman Jean Curtiss seconded the motion. The motion carried on a vote of 3-0.

### **Hearing: Petition to Abandon a Turnaround Easement in Williams Addition (Snapdragon Drive & Ladyslipper Lane)**

Chairman Jean Curtiss opened the hearing.

Mike Sehestedt presented the staff report.

This is a petition to abandon the turnaround easement bounded on the northwest by the Snapdragon right-of-way as shown on the plat of Williams Addition, by a public access easement on the northeast, and on all other sides by a portion of the remainder of Tract A of Certificate of Survey 2204 and the turnaround easement bounded on the northeast by the Ladyslipper Lane right-of-way as shown on the plat of Williams Addition and on all other sides by a portion of the remainder of Tract A-2 of Certificate of Survey 2593.

The reasons for the request are as follows: the approved preliminary plat for Running W Ranch proposes public rights-of-way over both the turnaround easements described in items 1 and 3 above, making them unnecessary; other public rights-of-way are planned in this area per the preliminary plat of Running W Ranch Subdivision approved by the Board of County Commissioners in August 2005. These future roads will provide through road connections, therefore replacing the need for turnarounds. The turnaround easements that this petition requests to be abandoned do not provide exclusive access to any private land, as there is no present roadway.

We notified the adjoining landowner, which is Waldo Williams Development LLP. I believe someone's here from the Clerk & Recorder's office. I don't see them. The Clerk & Recorder's office has recorded the petition [inaudible] required signatures of freeholders in Missoula County.

Chairman Jean Curtiss: Thank you, Mike. Is there someone here who'd like to speak to this proposed abandonment for the turnaround easement? Is you could state your name for the record please?

Dan Gnotov: My name's Dan Gnotov, land surveyor with WGM Group.

Chairman Jean Curtiss: Could you spell your last name please?

Dan Gnotov: G-N-T-O-V as in Victor. Just to add that the Williams Addition, the plat of Williams Addition shows these two turnaround easements as being temporary and they quote books and pages at the bottom. I don't really have anything to put up on the wall there, but anyway, if you actually pull those documents, they were written in as to be permanent. With the approval of the preliminary plat of Running W and I believe I submitted exhibits showing that we are in fact going to put through roads there and it's all been approved already, it just--we have easements over easements. We're just trying to clean up the [inaudible] plat, so there's no ambiguities in the future.

Chairman Jean Curtiss: Thank you. Is there anyone else who'd like to comment on these abandonment of these two turnarounds proposed to be temporary? The law requires that to do an abandonment, one Commissioner and someone from our Public Works Surveyor office needs to do a site visit even when we think we can

understand it very well from paper. Both Chuck Wright and Steve Smith from our Surveyor's Office are out next week and because they'll both familiar with it, one of them would like to go with us. They have requested that we delay the decision until June 11. Does that mess up anything for your client? Okay. So we'll set up a site inspection. Would you like to join us when we go?

Unidentified Speaker: Sure.

Chairman Jean Curtiss: What's your phone number?

Unidentified Speaker: 721-6411--4611.

Chairman Jean Curtiss: Somewhere in there, one of those numbers. We will notify you Dan when we go. Is there anyone else who'd like to speak? Seeing none, we'll recess the hearing and continue it on June 11 and we'll let you know when we go out to do the site visit.

**Consideration (continued from April 16, 2008): Bear Creek Lots Proposed Amendment to Condition 13 (Regarding Shared Driveway) - Bear Creek Road & Bull Pines Road in Potomac**

Chairman Jean Curtiss opened the hearing.

We recessed the last time to allow Commissioners to go out on site, which all three Commissioners have done. Commissioner Anderson is representing us in Polson today at the MACo district meeting, so he's not here. Michele, did you have anything that you'd like to go over?

Michele Reinhart: Yes, I'll just give you a quick handout.

Chairman Jean Curtiss: So this a copy of the PowerPoint you showed us last time?

Michele Reinhart: Right and so I'll just summarize the last page for you. For the record, I'll give you a brief background. Dwayne Heikes and Pau Hana Time, represented by Ron Ewart of Eli & Associates, request a condition amendment to Bear Creek Lots, a 4-lot subdivision in the Potomac area that was approved in October of last year. The request is to amend Condition of Approval #13, which required a shared driveway for Lots 1 and 3. I can pull up the plat if you want; it's also in that PowerPoint. The OPG recommendation is for denial of the request to remove the shared driveway condition. The condition was imposed as mitigation for public health and safety in response to public comment and concerns regarding traffic on Bear Creek Road. The concerns as seen in the minutes were regarding curves, icy winter driving conditions, road gradient, traffic [inaudible], and behavior and short distances from the intersections of Bear Creek Road and West Fork Bear Creek Road and Bear Creek Road with Bull Pine Road. That briefly summarizes the staff report.

Chairman Jean Curtiss: Thank you, Michele. Is there someone from the developer's representative?

Ron Ewart: Thank you very much. This is Ron Ewart from Eli and Associates. We appreciate everyone's time. I know it's not fun to go back and revisit something although it is fun to take a drive up the Blackfoot to check things out. Just really quickly and this is nothing new, but we didn't feel there was a need for a shared access. It wasn't an original condition; it wasn't a Public Works recommendation. It came about due to people talking about having a shared access over on Bull Pine at the bottom of the hill there. We have over 400 feet of site distance from both of the proposed entrances. The one problem with the shared access, right on that fence is we have some nice Ponderosa Pines, there's about 11 that would have to be removed when you go down the fence line, plus the fence would have to be removed and the driveway would be near the probable home site on Lot 3. Again, Lot 3 would use the historical access.

I was just reading Michele's summary here. At the bottom of the page it says, "At a minimum, if the Commissioners agreed to remove the condition, the location for the Lot 1 access should be directly adjacent to the fence line and boundary between Lots 1 and 3 in order to improve stopping site distance." If this is something that could help this situation, I think we would agree with that for a couple reasons. Number one, it wouldn't be a shared access. Number two, it would not be right on the fence line where those Ponderosas are and where you'd have to take down the fence and everything. Number three, it would be a little bit further from the probable home site on Lot 3. I guess what--sort of thinking off the cuff here, we would agree to keep that access to Lot 1 within say--oh, see, there's a power pole there, so we'd probably come in just to the west of the power pole with the

driveway. In other words, it would be within 30 feet any way, of the shared boundary. I can show you if you want to take a look at a plat.

Chairman Jean Curtiss: Sure. You'll have to share microphones. So Ron, are you saying that what you're proposing is a shared driveway just not exactly on the boundary.

Ron Ewart: No, actually--if I read that the way I thought I read it, the idea would be Lot 3 would have its historical access as proposed and Michele you can correct me on this. Then the access for Lot 1 would come in immediately adjacent to the boundary.

Michele Reinhart: I think it might be easier to see it with a picture. I don't know if you can see this, I can bring it over to you. This is looking from Bear Creek Road toward Lot 1 and maybe I can come over there and point it out. This location is [inaudible], it's right there, so it would be in between the trees you can see. This is the fence line right here, so that would improve site distance from West Fork, but, well--I'll go back.

Chairman Jean Curtiss: So Michele, what you're saying is that the--you could have two accesses?

Michele Reinhart: Yeah, as a compromise that you could improve site distance for Lot 1 for the driveway by distancing it further from the intersection of Bear Creek Road and West Fork Bear Creek Road, which was one of the concerns that the public members brought up at the hearing. One of the opposing arguments to that that was brought up at the last meeting was that you could better see up the road if you had the driveway closer to the intersection, but that's your call based on your site visit and what you think would be best. This is just a compromise.

The intent of having one access was there already is one access and if you weren't adding any additional access driveways then we weren't making the problem any worse by creating four new lots to add approaches to Bear Creek Road. It looks relatively flat now, but the biggest concern by from the public was in the wintertime with icy driving conditions.

Chairman Jean Curtiss: Did you have something you wanted to add, Ron?

Ron Ewart: My assumption was correct then, there would be a single use driveway for Lot 1, but it would be immediately adjacent to the fence line.

Michele Reinhart: Right, and if you look at the photo, it looks like you wouldn't need to remove trees to do that.

Ron Ewart: Okay. [Inaudible] 20 feet, I mean if we have to take down a tree [inaudible].

Michele Reinhart: Substantial clearing has already been done and many trees have already been removed on site.

Ron Ewart: Right, but, the Lot 1 and [inaudible] that's been thinned and it looks obviously nice thanks to Rich's hard work.

Chairman Jean Curtiss: Any comments? Again, this is way out of our normal process to do--to come back and visit a condition after the subdivision's been approved. The reason that we went with that is because of public comment about safety and ice and site distance. The driveway into Lot 3, an old driveway of sorts, is pretty obvious on the ground and there isn't one to Lot 1, at least not in that part. This compromise would be adding just one new spot.

James McCubbin: I think in general in subdivision procedure, trying to come up with something that--it's all compromise. We're all weighing competing interests, but here, a little bit of a unique situation. I think you need to find basically under our plat adjustment procedure, which is the closest we have in our regs to allow you to amend a condition. I think we can apply that by analogy if nothing else, but I think you need to find that if you're going to change the condition that whatever that's changed to, addresses the underlying need for a condition to basically an equal extent as the original condition. That's where we start talking about compromise. I think that you need to find that whatever you order, if it's something different, addresses the same problem to the same extent, but maybe in a different way.

Ron Ewart: May I just--Jean? What James just said, I think that by moving the driveway all the way over next to the fence, we're getting it as far away from that intersection as we're going to get anyway. I mean, within just a few feet, so it's about at that same location, the driveway into Lot 1. Now the historical entrance into Lot 3, that's never been identified as a problem because that's been the historical entrance and you have even better site distance in either direction. In my humble opinion, I think that you could find that they would both be similar as far as having safety characteristics because the entrance into Lot 1 would be at that same approximate location as if you had a shared drive.

Chairman Jean Curtiss: Is there anyone else who'd like to make any comments about this proposed change to a condition?

Commissioner Bill Carey: Madam Chair, I think the conversation about access points is misplaced. In terms of a compromise, I think what we really ought to be talking about is whether we want to compromise the integrity of our public process because what's to stop anybody from going through a public process, us making conditions and findings, and then having somebody come in a couple months later and say you know what, we really don't like that, can we change it? That to me opens a very slippery path. I think we ought to stay with the initial findings and if in the future we do have citizen input or whatever kind of input that would make us think we ought not to act and we ought to take a look at the situation on the ground, then let's not make a decision at that point. Let's go ahead and recess the hearing, take a look at the situation on the ground, then come back. To change a condition based on public safety and not be part of the public process, in fact, kind of [inaudible] the public process, I think that's dangerous and we ought not to go there.

Chairman Jean Curtiss: James, could you look at the condition as we adopted it on 13 and see whether in your mind it says that it has to go right down the centerline of that property line or if it could go to one side or the other?

James McCubbin: The particular concern I have here is this wasn't just a condition that was adopted from staff report without a lot of thought or something like this. This was actually a condition that was crafted by the Commissioners in direct response to issues raised in the public hearing. I mean technically a conditions a condition, but here where you've specifically crafted that to find, based upon evidence that you yourselves had observed, I think you've got a little bit more you need to address to potentially change this than perhaps if we had some other condition that was part of the staff report that didn't get a lot of attention or thought. It...

Chairman Jean Curtiss: Let me clarify my question.

James McCubbin: Okay.

Chairman Jean Curtiss: My question is could that shared driveway be here where the tree opening is rather than right, you know, half on one side, half on the other?

James McCubbin: You're talking about essentially moving it 10 feet if you're putting it...

Chairman Jean Curtiss: Yeah...

James McCubbin: ...[inaudible] driveway?

Chairman Jean Curtiss: ...if I look at the language, it says along the property line. It doesn't say splitting the property line right?

James McCubbin: Well, where it's a shared driveway along the property line, I think that's hard to interpret as other than...

Chairman Jean Curtiss: Than half and half.

James McCubbin: ...probably centered on it. I mean it's--you know you could make a minor change. I'm not going to tell you that I think moving it 10 feet over is huge, but I think really the concern is more as Commissioner Carey stated personally.

Chairman Jean Curtiss: All I'm looking at is there might be a better spot to put it than splitting it down the line so that you could take out less trees.

James McCubbin: But that's--the 20/20 hindsight going back and reviewing your factual decision, I mean there's really no process for that in Montana law. I think we can do minor plat adjustments as provided in our regs. I think that's within the spirit of the law, but substantially changing your findings really isn't there, but if you want to do it and you're saying that it does everything the condition would have done, we're just moving it such a minor amount that it's a minor plat adjustment and is--it's kind of this principle of de minimis in the law where you're changing things, yes, technically, but substantially, nothings changed. I think that's the one circumstance if you find that that's the case, that's [inaudible] it.

Chairman Jean Curtiss: So it would be minor to say along or adjacent to?

James McCubbin: That's your call to make.

Commissioner Bill Carey: But if I may, again, we'd be, down the road, we'd be talking about, well, I'm not asking for a major change in this particular thing, I'm asking for a minor one and on and on it goes. I think we made legitimate findings and we ought to honor the public process.

Commissioner Bill Carey made a motion that the Board of County Commissioners deny the amendment of Condition of Approval #13 to remove the requirement for a shared driveway for Lots 1 and 3 of Bear Creek Lots Subdivision.

Chairman Jean Curtiss: I think that we do minor ones, we've done them before. We do [inaudible]--we let people change boundary lines, we do [inaudible] and I think that if we were allowing this to move 10 or 15 feet in order to actually save some trees, there could be a pipeline there. There could be a lot of reasons why you could move something 10 feet. I wouldn't have a problem with it. It kind of puts us at a standstill if I do that however.

James McCubbin: What you can do is continue until you have a three-member board. There's no deadline for processing this.

Chairman Jean Curtiss: I agree, I don't like--I don't want us to open the door to end runs, but I think that moving it a few feet to allow for better access into a development and taking out fewer trees in an area that's already been nicely thinned is okay with me. Mr. Robertson?

Greg Robertson: I attended the hearing and heard all the testimony and I believe, based on typical stopping site distances for the speed zone that we have, which is 35 on this road, the general rule of thumb is one or 10 feet for every mile per hour. If we can maintain a minimum of 350 feet in both directions, we've satisfied what we consider with relative [inaudible] safety adequate stopping site distance for the conditions.

Chairman Jean Curtiss: What about when you add ice?

Greg Robertson: Drivers are expected to adjust their speed accordingly. For design purposes, when we're making the determination, it's based on dry conditions.

Chairman Jean Curtiss: Mr. Ewart.

Ron Ewart: I just want to say quickly I--actually we appreciate the need for public process, and this has been a public process as far as the neighbors being notified and so on. Of course, nobody's come forward since, but in the spirit of the public process, I would appreciate it and I guess it's whatever you want to do. If we wanted until we had a three-member Commission and just to add more of the public in the process and [inaudible].

Chairman Jean Curtiss: Michele, are you available next week?

Michele Reinhart: I believe so.

Chairman Jean Curtiss: Then I think we'll wait until we have a third Commissioner.

Michele Reinhart: [Inaudible]

Mike Sehestedt: No, go ahead, no, go ahead.

Michele Reinhart: Mike, I need the mic. I just wanted to clarify that notices were sent out to all the adjacent property owners who were contacted for the hearing to let them know of the request. Comments were also requested from the different agencies, who did not express concern.

Chairman Jean Curtiss: Okay.

Mike Sehestedt: Just as a matter of procedure, probably the Chair should declare that Commissioner Carey's motion dies for lack of a second. Then we could [inaudible] where you could do a motion, Commissioner Carey could decline to second it, it would die for lack of a second and we would be forced to continue or we could just jump to immediately continuing it a week.

Chairman Jean Curtiss: Okay, well Mr. Carey's motion just died for lack of a second.

Chairman Jean Curtiss made a motion that the Board of County Commissioners amend Condition 13 to insert the language, "along or adjacent to the property line."

James McCubbin: Just to clarify then, if that's the only change that you made, it would still be a shared driveway access.

Chairman Jean Curtiss: It would

James McCubbin: Okay, but you're still talking about one driveway for the two lots.

Chairman Jean Curtiss: Just letting them relocate it slightly to allow for trees. That motion died for lack of a second, so therefore, we will continue this next week.

Mike Sehestedt: I'm sorry for the parliamentary interlude.

Chairman Jean Curtiss: So I'll recess the consideration.

**Consideration (continued from May 7, 2008): Painted Sky Subdivision (4 lots on 32.18 acres) - Lamar Trail, 1-1/2 miles west of Old Highway 93**

Chairman Jean Curtiss opened the hearing.

Vlad Kryukov presented the staff report.

I will briefly recap Painted Sky Subdivision for those who haven't been here last week just to reiterate some of the more significant points that were stated by both myself and the applicant. Just as a reminder, this is a 4-lot minor subdivision located between Lolo and Florence off of Lamar Trail. The property is unzoned and the applicable growth policy is the 2002 Lolo Regional Plan designating the property as rural residential and open and resource. The applicant is proposing four lots on 32.18 acres for a residential density of one dwelling unit per eight acres. The proposed subdivision is in elk and deer winter and spring range, and according to MFWP and Missoula Rural Initiatives, includes some of the historically most important portion of that range currently used by about 130 elk, plus mule and white-tailed deer. The proposal is for development at a density greater than the recommended land use density designation for the area however, by clustering the development, the proposal will preserve wildlife habitat and open space area. Additionally, FWP stated that the development would cause usurpation of the elk and deer habitat that is causing further displacement and harassment of elk, deer in the critical winter/spring birthing times. Note FWP and Missoula Rural Initiatives formerly commented that the proposed development will further encroach into the most important elk winter range on the west side of the Bitterroot Valley north of Hamilton.

Briefly, I will recap some of the more significant condition of approvals affecting the proposed subdivision. Condition of Approval # 1 requires the subdivider to revise the plat to divide the proposed Lot 2 into two five-acre lots labeled Lots 2 and 3 that share a common boundary line running approximately east/west. Lots 3 and 4 are required to be combined into one 20-acre lot labeled Lot 4 prior to final plat approval. A maximum one-acre building envelope is required to be designated on the new Lot 4 within 150 feet of the existing Lamar Trail cul-de-sac bulb and east of elevation line 3490. All areas outside of the building envelope on Lot 4 are required to be

designated as open and resource for the preservation of elk habitat. Condition of Approval # 3 requires Lots 2, 3 and 4 to be accessed via a new on-site road within the location of the existing 40-foot wide private access and utility easement along the property boundary between Mackintosh Manor Lot 40A-1 and Lot 41A. The developer shall construct the new on-site road to an 18-foot surface width up to the point where it provides access to three lots, 14 feet wide to the point where it provides access to only two lots and any additional easement required individual driveways to provide access to the new homes. There is also an additional condition of approval for pedestrian facilities, that's Condition #10 requiring the subdivider to construct a minimum 2-foot low impact trail along the new onsite road providing access to Lots 2, 3, and 4. There are numerous other conditions of approval that I haven't addressed, but are in the staff report dealing with easements, weed control, and development covenants.

Staff's recommended motion, approval of the Painted Sky Subdivision subject to the recommended conditions of approval and findings of fact in the staff report. I will briefly show a PowerPoint presentation with a visual aid just clarifying existing conditions surrounding the subdivision itself.

[Vlad Kryukov presented PowerPoint slides, which can be found in the file.]

Staff is willing to present a new set of conditions, along with conceptual drawing illustrating how amended conditions of approval will address an alternative subdivision design proposed by the applicant at the Planning Status meeting on Monday, May 12 and Tim Worley will be presenting those conditions.

Chairman Jean Curtiss: So Tim should we let them present that first?

Tim Worley: That's ultimately up to you. What I was going to start with was just reading a letter from Fish, Wildlife, & Parks that I was requested to read on the record.

Chairman Jean Curtiss: That's good, go ahead.

Tim Worley: It says, "Montana Fish, Wildlife & Parks (FWP) apologizes that we are unable to attend the public hearing, but our wildlife personnel already had other scheduled commitments. Due to the importance of the elk herd that utilizes habitat within the proposed subdivision and on adjacent private and public lands, we asked Tim Worley at Missoula OPG to read this letter into the record for us. As per a site visit on the western portion of the proposed Painted Sky subdivision on May 9, 2008, FWP staff found extensive sign of elk utilizing winter habitat within the proposed subdivision. Therefore, we would like to reiterate (from our April 10, 2008 comment letter) our concerns with the proposed subdivision. Our major concern is that the development further encroaches on already limited elk winter range. The winter range in this area is the most important on the west side of the Bitterroot Valley, north of Hamilton. Unfortunately, these elk and their habitat are highly threatened by development, with their future in serious jeopardy. Consequently, the Painted Sky proposal is a further encroachment into this remaining elk winter range. Each new subdivision or other land division that occurs in this area contributes to this cumulative loss. Elk winter-habitat areas are extremely crucial to elk populations because they provide food and shelter that are significant for the animals' survival during mild and especially severe winters. Elk require nutrients throughout the winter season, not only for its continued existence, but for calf recruitment as well. Calf recruitment is the successful addition of an elk calf into the adult age class. Nutritional deficiencies during the winter and spring result in cow elk losing weight, which subsequently decreases the odds of fetal survival, as well as normal, calf birth weight, growth, and survival. We have reviewed the "alternative preliminary plat" (dated May 7, 2008) recently provided to us by WGM. But to help reduce the impacts of the proposed Painted Sky development on this important elk population, FWP supports the OPG Staff Alternative Layout (May 2, 2008) which incorporates FWP earlier recommendations to the extent practical. Consequently, there would be a greater loss of elk habitat if building were allowed any further west than indicated in the OPG staff recommendation. Thank you for the opportunity to provide additional comments. Mack Long, Regional Supervisor for FWP.

Chairman Jean Curtiss: Thank you, Tim.

James McCubbin: Commissioners, you have kind of referenced both in discussion [inaudible] and in this comment from Mack Long to an alternate proposal by the developer and you did get an overview of that as an informational matter on Monday, but we really don't have anything in the record. We don't know exactly...

Chairman Jean Curtiss: That's what I thought they were going to do next.

James McCubbin: Okay, I was just going to recommend that that happen before you hear more from OPG. I didn't want to cut off Tim, but I think that would be the better way...

Chairman Jean Curtiss: That's scary because I'm thinking just like you now.

James McCubbin: Wow.

Vlad Kryukov: We would be willing to present that information and we have prepared handouts with alternative conditions of approval of a drawing illustrating what we have recommended.

Tim Worley: So whatever sequence the Commissioners would prefer.

Chairman Jean Curtiss: I thought maybe Kristin would like to present what they were proposing and then we can have staff [inaudible] to go with that.

Tim Worley: Sure, that's fine.

Chairman Jean Curtiss: Okay, so Kristin.

Kristin Smith: Kristin Smith with WGM Group, for the record. Thank you. With me today is Gene Mosted from Painted Sky LLC, one of the developers for this project. I do--I've got a few points I'd like to discuss. It's been kind of frustrating [inaudible] myopic lens that's been placed on this project and hopefully, we can step back a little bit and look at a couple of things that were actually missing from some of the comments that Fish, Wildlife, & Parks has submitted. We understand that this is at the edge, the edge of winter range, but I think they kind of confuse the issue when I talked about the crucial aspect of that, because the crucial range is actually farther to the west and our map and our submittal is from Fish, Wildlife, & Parks [inaudible] and it shows that farther up towards the timber line.

[Kristin Smith presented PowerPoint slides, which can be found in the file.]

Wrapping up, again this proposal's come forward already with Living With Wildlife covenants and consistent with Fish, Wildlife, & Parks recommendations. The applicant's further willing to restrict perimeter fencing to be of a particular style, wood posts with barbless wire, required dogs only be contained within those building envelopes and limit the number of dogs per home because that's part of the human encroachment is pets harassing wildlife which is a concern out there. The proposed building envelopes for this project range and their modest in size between .33 and 1.43. The applicant would like to keep those in that arrangement. There's no provisions for such building envelopes on any of the previously approved lots that came through your office. So in taking into consideration with all the existing lots and recently approved lots by the county to the north, it's our hope that this alternative layout helps to meet the overall goals of managing elk in this area. The adjacent pasture here, pasture area, rangeland to the west is certainly sufficient and has a better vegetation for the small herd that comes through this area, which [inaudible] about 58 elk. Again, sort of thinking about this in the context of being too different property owners with two different goals, the original staff report from May 7 is not acceptable to the Gianchettas that would affect the property on the eastern half. Again, while the updated staff memo, which you'll hear about, is well intentioned, I think the scars that it would create because of that natural setting is--you know, has its offsets too. Again, trying to find a balance of all of the elements and impacts that might be there. When it really comes down to it, we're kind of--we're quibbling over about 200 feet distance and one--really one building envelope and its location and where it goes. I'm not really sure how--what the significance of that really is when you get down to it. We think just as one final [inaudible], we think the original proposal is optimal because it strategically sites all of the buildings. They were--if you look back to that, they're all kind of down here in this area, would keep a nice wide band up here, they could be restricted to one acre in size. That would be the ultimate, but this is the applicant's preferred alternative.

Commissioner Bill Carey: Kristin, do you know if this proposal's the one that Mack Long refers to in the letter that Tim just read into the record?

Kristin Smith: Yes, that's correct and Tim--OPG was cc'd on that correspondence, so they had the opportunity to review [inaudible] that's why I sent it to them. Thank you.

Chairman Jean Curtiss: Thank you Kristin. So now, we could have staff's reaction to this proposal.

Tim Worley: Vlad, if I could have you just change the slide maybe before you do the handouts. This 20 acres with an east/west division, and by the way, this is not supposed to be prescriptive in any way. It's highlighted in Condition #1 as amended by staff, so as far as where this boundary line is located, there's flexibility that the lots could be five acres and 15 acres respectively or there could be two 10's. There's nothing specific as to how big these lots need to be in staff's amended condition. Also, the building envelopes are to be up to one acre in size and within 250 feet of this curve right here, but again, they could move as far as location. This is again conceptual and doesn't dictate where the building envelopes have to be. It's staff opinion also that if the Commissioners choose to go this direction, really there was a minimal number of conditions that need to be amended to get to this place. Significant condition alteration is going to be required if we go back to WGM's latest proposal. We can go there if the Commissioners choose to go there, but again minimal condition amendment really was needed to get to this place.

I pretty well, I think, described Condition 1, so I think we could move on to Condition #5. The only additional language that we added was that there would be a one-foot no-access strip right down here. You might remember in the new WGM proposal that Lamar Trail actually has to be extended. With this alternative, the original road condition that staff recommended could be retained to access Lots 3 and 4.

If you'll skip down from Condition #5, I think the only other condition that was going to be amended--thank you, Condition #17. We actually have, unfortunately, we made a mistake, we had two Condition #17's. There we go, thank you. In the Planning Status...

Chairman Jean Curtiss: [Inaudible].

Tim Worley: Yeah, but...

Chairman Jean Curtiss: [Inaudible]

Tim Worley: The second 17, correct. It was pointed out in Planning Status by James that you needed to make sure that access to Lot 1 across Lot 2 could occur even though a 25% slope area was being crossed. We added some language to the no-build zone, steep slope area definition that allows for the planned driveway within the 40-foot easement crossing, Lot 2 for the use and benefit of Lot 1 on the plat dated January 2008, that that driveway now can be accommodated and cross that road cut. I believe a lot of that 25% slope is based on the fact that Lamar Trail was put in. That addition of language should allow for that driveway to put in within that 40-foot easement on Lot 2 for the benefit of Lot 1.

Aside from that, really there's not a lot of other alternations. Vlad, did you have anything to comment?

Vlad Kryukov: I was just going to add that the original alternative condition of approval [inaudible] layout of the subdivision did not significantly change because if you look at this proposed subdivision envelope on the lower parcel [inaudible] in identical location or in the same location as previously presented by the staff. All that took place is the envelope on the more northern lot has shifted and that's pretty much the only significant change. As Tim stated, it would minimize the amount of conditions of approval that needed to be--or conditions of approval that needed to be altered.

Tim Worley: In addition to that, and I'll wrap up here in just a second, but Lamar Trail doesn't have to be extended with this rendition of the subdivision and also the extension of this onsite road, this proposed--what WGM's alternative wouldn't be required. You could just use the existing road as recommended by staff. With that, I'll conclude and be available if you have any questions.

Chairman Jean Curtiss: Tim, could you talk a little bit about because the 250 feet closest to that curved property line is more steep, the way I figure it's 30 feet from the edge up to where they propose their lot, what would the cut and fill look like for building a house and a driveway?

Tim Worley: This is sort of a balancing issue, what's the greater disturbance on the landscape and I don't know the answer to that. Ultimately, whether having homes here, which would be more of a disturbance probably than what WGM's alternative, but the one advantage that you would get in this instance is you don't have this onsite

road being constructed. So you have to balance those two issues, but I think there would be a fair amount of cut and fill required for this design.

Kristin Smith: I need to clarify something for the record. There are currently no onsite roads there, so what's shown in the blue and red would have to be constructed as well.

Chairman Jean Curtiss: Right, it's an easement, but not built.

Kristin Smith: Right, so whether it's there or farther to the west, it still has to be constructed. Lamar Trail already does extend to the end of the property and goes to the south, just to remind everybody. It's dirt...

Chairman Jean Curtiss: Why is there a cul-de-sac bulb back further?

Kristin Smith: That would be additional easement to provide for a surface turnaround. It's probably about 14 feet wide, a gravel surface extending beyond that up the hill to the south and west.

Chairman Jean Curtiss: So it's paved to one point and then it becomes gravel?

Kristin Smith: Correct, paved to the first cul-de-sac and then its gravel.

Vlad Kryukov: I just want to clarify that it's a dirt road and it's...actually it's a driveway because it provides access to a property [inaudible] house that's [inaudible] to the south of the proposed subdivision. It's currently serving as a driveway rather than a road.

Chairman Jean Curtiss: Kristin, did you want to respond to the staff's proposal?

Kristin Smith: Sure, I'll just touch on the few items I think I mentioned earlier. Perhaps, Gene might want to chime in on this one. Again, the disturbance here I think is going to be more significant than we can really anticipate. The citing of these--what we had initially proposed in our alternative, which are a little bit farther back, we're on more level ground, nearly the same amount of road construction would have to be accommodated, so again, we're talking about the placement of one lot. It's a one-acre building envelope with mitigating provisions to accommodate the wildlife and I don't know that there's that much of a trade-off.

Gene Mosted: For the record, I'm Gene Mosted. I would just like to go back to a little bit of history why this ground was purchased and some of the conversations that went--that we had with the seller of this property. Really, what the desire of the purchasers was for the ground initially and our thoughts on this kind of--I'm not opposed to building envelopes. I've always felt that building envelopes can enhance the quality of any project if they're done properly. We had known all along that this is an elk habitat. We know that elk habitat in general in this whole area has always communicated very well with all of the housing developments. I'm kind of perplexed initially why we're having to shuffle building envelopes way down when we're already on the edge and we're really looking at the impact of two residents. I have some thoughts on that, but first I'd like to describe the real reason for buying this piece of property was that there--the sellers indicated to us, the buyers of Painted Sky, which we can in a lot of later. The Gianchettas that owned the piece down below owned their piece of ground for quite awhile, probably eight or 10 years. Then we came along and found out that Mr. Maclay wanted to sell this piece of property, which it wasn't for sale before. He indicated to us that all of the property to the south of this piece of parcel is going to be--[inaudible] going to be horse range and equestrian center. He's told us that he's not going to do a bunch of building up next to us, which is a plus for any buyer. Our thoughts in buying this piece of property were to capture the southern views of the landscape from here, knowing that across the ranch that we're not going to have to worry about them other houses and more development there. In our initial design, that's why you see them more side-by-side, so that the houses could be positioned to take advantage of the southern view of the ranch and the mountains and be limited on the views that we have to look back north where all the rest of the housing is because we have--this piece of property has the opportunity to accomplish that. That's the initial desire.

In the staff's recommendation, then it starts--the Lot 3, I mean, Lot 3, you can probably look back through across the ranch, but there are some particular [inaudible] or some elevation areas that are flatter than areas that we've talked about that do fit building sites better. We've looked at those and wanted to talk advantage of them as best we could. Our main theme was that we wanted to be able to look back south across the ranch. Our thoughts in the original design, as Kristin mentioned, leaves all of this area in here already open. Like she indicated, we're

talking really about one site, but we would rather see the sites like the original. The original design could be adjusted a little bit to bring one of the sites down a little closer. In fact, could we go back to our alternative design? Thank you. Just from our point of view, and everyone has their point of view, but the location of this site here is actually [inaudible] as you can see, as everyone understands that the farther apart these lines are means that that area is flatter and has less slope to it. That's always kind of been a desirable area for this particular site to be. Coming up here and putting the site over here, it does help having this site higher than this one because if you bring this site down and line these things up then to us it devalues the reason why we bought this piece of property because now this site here is going to be pretty impossible for it to take advantage of all the wide views to the south.

My thought, and I was telling Kristin this, is that why can't we take this site and just put it right here next to this one and bring this road up. This road can access both of them this way rather than having it there. When we're talking about this elk habitat and these elk and everything, is it that--and I need someone to tell me or at least hear your thoughts, is it that big of deal to be up the hill a little bit or to have this site over here when we already know and the Forest Service knows also that all of these elk are coming down and they're living in this neighborhood anyway? If you look at some of the--there is a graph from the Forest Service that shows the size of the herds over the last 25 years. The size of the herd now is down where they want it, which is about 25 years ago. So the herd with this existing neighborhood to the north grew quite a bit and they managed it back down to where they wanted it. To me that indicates that these houses in this--on the edge of this elk area is not impacting the herd for its growth. Me as a developer and a landowner here, I'm wondering why does it make that big of a deal to take this site and put it down here and then just leave all this open in here. They can still come down through here. Like I was telling Kristin, I mean if you really need to, and I don't know if we need to, but we can leave some of the fence up out here so they can get down into here easier, but whether this site is here or here, I don't think is going to impact the trend of the elk coming down through there when they're already living amongst all the other houses. If you go to the north of this proposed subdivision, there's houses a lot farther west into it and granted it wasn't per--they didn't go through the subdivision process, but it doesn't seem to--there isn't any indications from Fish, Wildlife, & Parks that those houses have impacted the elk and the herd being there. I don't see why it really hurts from my view.

If the sites do have to go down in here, we're going to have a lot more impact with driveways because we're going to have a lot more slope. When you--anytime that you bring a road in from the bottom of a site, you try and get your driveway up around the top because when you're on this type of slope, you're usually going to have a daylight basement. You're going to want your garage on the top because no one wants to put their garage in the bottom of their house and have to walk up the stairs to get to the main level, so we're always trying to bring the road around. It's always more desirable to bring the road from the top so then you have a lot less impact on your driveway and then you can drive right into the garage from the top and you're not having to do much [inaudible] to get around and get on the top side of the site, if that makes sense. I think that's my comments, thank you.

Chairman Jean Curtiss: So Mr. Mosted, it looks to me like if you moved the house down on that green spot next to Lot 3 that that on this topographical map, that looks like it's fairly steep also.

Gene Mosted: Yes, it is steeper, but the nice think about that, this driveway coming up through here is already there, so all you're going to do is just turn and come right back into the house. You're not going to impact any driveway because now you're going to--the front of the house is going to be more in here, about where the top of the road is and you put the house down, so you'll be able to drive right across the topo lines at a lot less of an impact to get to the driveway. Another good thing to do there is you could actually have an end load on your garage and not have to come around to the front, drive right into the end of the house and have your sidewalk go around the front. Your impact would be a lot less too.

Chairman Jean Curtiss: Thank you. Vlad.

Vlad Kryukov: [Inaudible] for the record, I would like to remind the Commissioners that FWP originally recommended prohibition of any development on that western most parcel I believe [inaudible] on the west side of the curve [inaudible]. As a compromise, OPG staff had recommended that both envelopes on the proposed lots [inaudible] would be shown within 250 feet or fully encompassed within 200 feet of the centerline of an existing 40-foot easement.

Chairman Jean Curtiss: Questions or comments?

James McCubbin: The Commissioners might want to consider having public comment at some point. I realize it's not exactly a crowded room, for the record.

Chairman Jean Curtiss: This is a consideration, not a hearing, but is there any other public comment?

Commissioner Bill Carey: Well, I guess I'll just say that I think developers are very creative people and if we can ever send a message that development standards have changed in terms of encouraging the clustering of homes in environments like this, I think that we and future generations would be much better off. I'm talking not only about human generations, but wildlife as well. I think the staff has in fact met the developer halfway and personally, I think maybe that [inaudible] case, but I'm willing to go along with it. Montana Fish, Wildlife, & Parks has looked at the developer's alternate proposal and does not think it's as good as the staff's proposal. I would rely on their training and expertise so I think we ought to go with the staff's recommended revisions.

Chairman Jean Curtiss: Just a question, Fish, Wildlife, & Parks letter that was read today responded to the 5/7/2008--basically, this drawing. Did they also have any response to staff's compromise that you addressed Tim?

Tim Worley: They did not. I think they essentially reaffirmed staff's original recommendation.

Chairman Jean Curtiss: That's what I thought. I guess the one difference also that's on the alternative presented by the developer today is that they changed the shape of Lot 1 to include the road rather than have an easement across Lot 2, which seems to me like that's always a better solution to have your road on your own property rather than across someone else's. So staff didn't do that in their proposal, I don't believe, right?

Vlad Kryukov: No, we didn't because the original proposal did not include [inaudible] different shape and the applicant has recently changed it, so we did not incorporate any of our conditions of approval to reflect on what Kristin with WGM had proposed. [Inaudible] ...

Chairman Jean Curtiss: So if Lot 1 was changed [inaudible]...

Vlad Kryukov: It was just changed recently.

Chairman Jean Curtiss: ...a couple conditions would probably be changed about easement language and such. Tim?

Tim Worley: Yeah, I think we actually eliminate one condition, Condition #2 we'd eliminate and then we could add a condition just talking about a common boundary line relocation, so it would be pretty simple. I could give you that language if you'd want it.

Chairman Jean Curtiss: Common boundary [inaudible]?

Tim Worley: Well...

Chairman Jean Curtiss: If it's in on the preliminary plat, there would [inaudible] boundary location, right?

Tim Worley: Well, what I've come up with so far is that the common boundary between Lots 1 and 2 shall be relocated as depicted on the alternate revised preliminary plat dated May 2008. I think that would get the job done if you choose to go there.

Chairman Jean Curtiss: I have one question for Kristin or Gene. If the Commission decided to look more seriously at your alternative proposal, your building envelopes as depicted on your plat show that Lot 4's building envelope is 1.43. Would there be a way to reduce that some so that you could move that building envelope further east, I guess its east, to maybe Lot--I'm looking at the topo line 3530? I'm guessing that it would then be about the same size as the one proposed on Lot 3.

Kristin Smith: Yes, I think that that would work because it would also, you know, you can see that this topography's a little bit steeper here as well, so you could just come off and they would be roughly an acre in size, in line with the staff's recommendations.

Chairman Jean Curtiss: I guess to me the big issue is whether or not it's more important to move houses or building envelopes 200 feet and have way more cut and fill, which to me is the ugliest thing that happens on hillsides, or whether it's better to have less invasion on the land and still allow movement for the elk. That's my dilemma.

Commissioner Bill Carey: I don't know if we have any real proof that there would be a great deal more. I mean, I must say that again developers can be and generally are very creative. If they're given a problem to solve, I think they can solve it with minimal disturbance. You're right, there may be some short-term loss or unsightliness, but over the long-term, with regard to elk habitat, we ought to keep the building envelopes as far to the east as we can, I think.

Chairman Jean Curtiss: Well if you look at those topo lines, you're going from 3470 to, if we moved them all that far, 3510. You've got 40 feet, that's--because you can't just drive, you have to have switchbacks and all kinds of things if you're going to get in there.

Commissioner Bill Carey: [Inaudible.]

Kristin Smith: Thank you, we did provide a slope map in your books, which might help a little bit. It's in tab three; I believe it's the very first map. I appreciate your comments, Commissioner Carey, I do know developers who are very creative and find good solutions, but I think what they applicant has proposed to you and what our engineering firm is saying is more acceptable relative to site design is the alternate layout. Not to be disparaging of Fish, Wildlife, & Parks, but I think they're just considering one aspect, which is elk and there are multiple aspects to be considered. Thank you.

Commissioner Bill Carey: It looks to me like that green area is flatter than what's to the west.

Chairman Jean Curtiss: It doesn't look like that on...

James McCubbin: This map is not consistent with the topo lines that we're seeing.

Kristin Smith: You're got to take it with a grain of salt. It's generated from USGS and so it's not down to the accuracy level, so when it gets to be this size, it gets a little pixilated.

James McCubbin: What's more accurate, the colored map or the topo...?

Kristin Smith: The topo, yeah. This is just a general guideline for basic slope categories.

Chairman Jean Curtiss: Tim, did you have something you wanted to add?

Tim Worley: The only thing I was going to point out is that I've reviewed one of the Mackintosh Manor subdivisions; I think that Kristin pointed out and just--to say it simply, Mackintosh is steep. Whether its little steeper here or less steep there, it's just steep all around. We're talking about definite cut regardless of where these homes are sited.

Chairman Jean Curtiss: About 3475, go up the hill to 3510, so that's [inaudible]. [Inaudible] this road.

Commissioner Bill Carey: Uh huh.

Chairman Jean Curtiss: [Inaudible].

James McCubbin: If and when the Commissioners, when either one of you are ready to make a motion, the one thing that I note is we've got an original proposal and a staff alternate proposal and then a developer alternate proposal, and then a staff second alternate proposal and I think we've kind of heard the developer second alternative proposal today. I just--if and when you make a motion, let's try and be as clear as possible [inaudible] we're talking about because it's getting to be confusing.

Chairman Jean Curtiss: Yeah, especially when Cathie's not here and she gets to interpret what we [inaudible]. Take a five-minute break and ...

Commissioner Bill Carey: I personally say to the staff's recommended conditions of subdivision approval as revised in their May 14 memo to the Board of County Commissioners with Condition 2 amended as Mr. Worley had suggested.

James McCubbin: So this is their second alternate layout that you're talking about or the original with all three on the lower property?

Commissioner Bill Carey: The way it's worded is recommended conditions of subdivision approval revised and that's the May 14 memo. Is that clear?

Chairman Jean Curtiss: Going with the map...

Commissioner Bill Carey: Yes.

Chairman Jean Curtiss: [Inaudible] show it to the camera. Yes, Tim, plus we might want to [inaudible].

Tim Worley: And if you wanted to move that lot line, the language would be the common lot boundary between Lots 1 and 2 shall be relocated as depicted on that alternate revised preliminary plat dated May 2008 to be reviewed and approved by OPG prior to final plat approval.

Commissioner Bill Carey: That's staff's alternate layout.

Chairman Jean Curtiss: Well it's actually coming off theirs.

Tim Worley: [Inaudible] because the--this plat dates back to January 2008 and the alternative that WGM has just presented this week is dated May 2008, so that's where the May reference comes in.

Commissioner Bill Carey: I see.

Chairman Jean Curtiss: May 7.

James McCubbin: Tim, on the steep slope, no-build, would the road going to two, three, and four, does that cross the steep slope? It's kind of hard to tell on this map. I'm just wondering if we need to amend Condition second 17 to also reflect that.

Vlad Kryukov: [Inaudible] referring to the road, the onsite road at the end of an existing cul-de-sac bulb?

James McCubbin: Right. [Inaudible] to Lot 1 covered. That would need to be amended because it's not crossing Lot 2 any more if we do what we're just talking about, but I'm just wondering if we need to clarify the onsite road, even though it crosses a steep slope area, if it does, that's okay.

Vlad Kryukov: [Inaudible].

James McCubbin: [Inaudible, interrupted] make sure the conditions are all consistent.

Vlad Kryukov: [Inaudible] did not appear that the proposed onsite road is in the location of a 25% slope...

James McCubbin: I'm looking here [inaudible] on this map, the red part to the left of the red, it looks like there's a little area of the steep slope, so I think [inaudible].

Vlad Kryukov: It's all [inaudible].

Unidentified Speakers: [Inaudible, several interruptions.]

Vlad Kryukov: It doesn't, it doesn't [inaudible].

James McCubbin: [Inaudible] steep right? So we need to just amend the second 17 to also clarify--well, first of all, that Lot 1 is not using an easement crossing Lot 2 and, secondly, that another exception from the no-build is to allow for this road that goes to two, three, and four. That make sense? Another question I have, Tim, just to

clarify, the first line of Condition 1 on the recommended conditions of subdivision approval revised dated May 14, it said dated January 2008, is there a missing day in that?

Tim Worley: No, it's just the way they depicted it on their plat was January 2008.

Chairman Jean Curtiss: So then somewhere do we want to refer to this is the plat we decide we're going with, do we want to refer to it?

James McCubbin: Yes.

Chairman Jean Curtiss: Because we're going to [inaudible] it, that Lot 1.

Tim Worley: We may have something for the second 17.

Chairman Jean Curtiss: Yes, Tim.

Tim Worley: Just another line language, if you go to the second sentence, "Low impact use within this zone shall be defined as the prohibition of all buildings, structures, utilities, parking, roads, except for the required road that accesses Lots 2, 3, and 4, motor vehicle access except for routine maintenance activities and the planned driveway for Lot 1." Now this is assuming that the boundary line relocation condition is approved that would move that lot line so there's no need for the easement.

Commissioner Bill Carey: I would incorporate that in my motion.

James McCubbin: Did you make a motion?

Commissioner Bill Carey: Didn't I, I think I did.

James McCubbin: I think you started too...

Chairman Jean Curtiss: ...kind of talked about it.

Commissioner Bill Carey: I think I...

Chairman Jean Curtiss: ...but I didn't hear you say, "I move."

James McCubbin: Was that a so moved?

Commissioner Bill Carey: Well, yes.

Commissioner Bill Carey made a motion that the Board of County Commissioners approve the staff's recommended conditions of approval, their revised conditions dated in a May 14 memo to the Board of County Commissioners and with the suggested revisions of language that we've just heard.

James McCubbin: So that motion is referencing the document that has been presented today by staff titled, "Painted Sky Staff Alternative Layout." Is that correct?

Commissioner Bill Carey: Oh, yes, yes.

Chairman Jean Curtiss: And the...

Commissioner Bill Carey: But we've amended that.

James McCubbin: Amended for the lot line for Lot [inaudible].

Chairman Jean Curtiss: So that means that Condition #2 goes away, right?

Commissioner Bill Carey: Right.

Chairman Jean Curtiss: Delete Condition #2.

Commissioner Bill Carey: Then substitute the language that Tim gave us.

Chairman Jean Curtiss: [Inaudible] we have two number 17s, it's the second #17a, the under no-build zone steep slope, the second sentence would be, "Low impact use within this zone shall be defined as the prohibition of all building structures, utilities, parking, roads, motorized vehicle access except for the road required to access Lots 2, 3, and 4, and routine activities and the planned driveway for Lot 1 on the plat dated January 2008." Did I get it right, Tim?

James McCubbin: The reference to the plat probably shouldn't be January 2008 because now it's going to be...

Chairman Jean Curtiss: May 7? May 7, 2008. Okay, just to be clear, we're talking about kind of a combination of the map that staff presented that says "Staff alternative layout," but the lot, Lot #1, is going to look like the one presented by the developers, the shape to include the road driveway.

James McCubbin: Does that make sense to everyone?

Chairman Jean Curtiss seconded the motion.

Chairman Jean Curtiss: So do we now think that we have things clear? The shape of Lot 1 will be as reflected on the plat dated May 7, 2008 by the developer, but Lots 3 and 4 and the building envelopes and roads would be as reflected on this one.

James McCubbin: When you say this one, just for the tape that's...

Chairman Jean Curtiss: That's the [inaudible, interrupted each other] staff alternative layout. So we'll make sure Cathie's clear on those. Is there discussion on the motion? Is there comments from the public? [Inaudible.]

Kristin Smith: I'm sorry. The applicant has asked if it would be possible to have a full board consider this?

Chairman Jean Curtiss: Okay, we have a motion on the floor, it's been seconded, but we could have a motion to table it that supersedes that motion, right?

Mike Sehestedt: You can have a motion to table it, which would take precedence. Then you'd have to vote on the motion to table. If it received two votes, you'd table it and the matter would be--I think rather than a motion to table, I would do a motion to continue for one week because if you table it, it could stay on the table until we decide we want to fight with this again.

Chairman Jean Curtiss: Okay, the developers ask that we delay a decision until next week when we have a full board. A motion for that.

Commissioner Bill Carey: My vote wouldn't be changing.

Chairman Jean Curtiss: On next week, you mean or on this?

Commissioner Bill Carey: On this motion.

Chairman Jean Curtiss: I guess what they're asking is just that we see if Commissioner Anderson has anything he'd like to add to the conversation. Are you saying you wouldn't vote for that motion? I guess I could put it on the table and we'll see where it goes.

Chairman Jean Curtiss made a motion that the Board of County Commissioners delay a decision on this proposed subdivision until next week.

Unidentified Speaker: [Inaudible] no second.

Chairman Jean Curtiss: So the motion is on the table.

The motion carried on a vote of 2-0.

## **Painted Sky Subdivision Conditions of Approval**

### **Subdivision Layout and Natural Resources**

1. The subdivider shall revise the plat to divide the Mackintosh Manor Lot 40A-1 into two lots labeled Lots 3 and 4 that share a common lot boundary running approximately east-west. The new Lots 3 and 4 shall have maximum one-acre building envelopes located wholly within 250 feet of the centerline of the existing 40-foot private access easement that also forms the boundary between Mackintosh Manor Lot 40A-1 and Lot 41A on the plat dated January 2008. All areas outside of the building envelopes on Lots 3 and 4 shall be designated as “Open Space / No-Build / Alteration Zone (OSNBAZ)—see Covenants for details.” The covenants shall be amended to include an explanation of this area with an appropriate exhibit as an attachment. (*Subdivision Regulations Articles 3.1(9), Fish, Wildlife and Parks, Rural Initiatives, and OPG recommendation*)

### **Roads and Driveways**

2. Lots 2, 3 and 4 shall be accessed via a new on-site road within the location of the existing 40-foot wide private access and utility easement along the property boundary between Mackintosh Manor Lot 40A-1 and Lot 41A. The developer shall construct the new on-site road to an 18-foot surface width from the existing Lamar Trail cul-de-sac bulb to the point where only two lots will be accessed, and 14 feet wide to the point where only one lot will be accessed, with road construction plans to be reviewed and approved by County Public Works and OPG prior to final plat approval. An emergency vehicle turnaround shall be provided at the end of the new on-site road and engineering plans shall be reviewed and approved by County Public Works and Missoula Rural Fire District prior to final plat approval. (*Subdivision Regulations Article 3.2.2.2, 3.2.2.6(1) and Table 1, and OPG recommendations*)
3. The developer shall abandon the 40-foot private access and utility easement north of the existing Lamar Trail cul-de-sac bulb and replace it with an adequate private access easement for required Lot 2, 3 and 4 road improvements, subject to review and approval by County Public Works and OPG prior to final plat approval. (*Subdivision Regulations Article 3.1.1(f) and OPG recommendation*)
4. The subdivider shall place a one-foot no-access strip along the northern property boundary line at the location where Highland Drive abuts the parent parcel, and a separate one-foot no-access strip along the southern property boundary of Mackintosh Manor Lot 40A-1, subject to review and approval by OPG prior to final plat approval. (*Subdivision Regulations Article 3.3.1(5)*)
5. Driveways in excess of 150’ in length shall be approved by Missoula 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’ of unobstructed horizontal clearance and 13’6” unobstructed vertical clearance the length of the drive. Driveways shall not exceed 10% grade and 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. (*Subdivision Regulations Article 3.2.2.2(4)(c) and Missoula Rural Fire District recommendation*)
6. A private road maintenance agreement for Lamar Trail and the new required on-site road shall be filed with the Missoula County Clerk and Recorder’s Office subject to review and approval by OPG, County Public Works, and the County Attorney’s Office prior to final plat approval and shall be included in the development covenants. (*Subdivision Regulations Article 3.1(1)(f)*)
7. The subdivider shall revise the private road name on the plat from Lamar Trail North to Lamar Trail subject to review and approval by County Public Works prior to final plat approval. (*County Surveyor’s recommendation*)
8. The following statement shall be included on the plat: “The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property owner’s association and that Missoula County is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by Missoula County for maintenance.” (*Subdivision Regulations Article 5.6(4)(k) and County Public Works recommendation*)

Pedestrian Facilities:

9. The subdivider shall construct a minimum two-foot low impact trail along the new on-site road providing access to Lots 2, 3, and 4 prior to final plat approval, subject to an improvements guarantee. Engineering plans for the walkway improvements shall be reviewed and approved by Missoula County Public Works prior to final plat approval. (*Subdivision Regulations Article 3.2.3(3) and County Public Works recommendation*)

Fire:

10. Plans for installation of “No Parking” signs for Lamar Trail adjacent to the subdivision and the required on-site road providing access to Lots 2, 3 and 4 shall be reviewed and approved by County Public Works and the Missoula Rural Fire District prior to final plat approval. (*Subdivision Regulations Article 3.2.2.2(4)(c) and Missoula Rural Fire District recommendation*)
11. The following statement shall appear on the face of the plat: “Acceptance of a deed for a lot within this subdivision constitutes waiver of the right to protest a future RSID or SID for a public water system for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land.” (*Subdivision Regulations Article 3.7(2) and Missoula Rural Fire District recommendation*)
12. The subdivider shall provide a water supply for fire protection via a hydrant system that produces 1000 GPM fire flow with minimum 2-hours of storage, approved by the Missoula Rural Fire District. In lieu of a water supply with hydrant, the subdivider shall request approval from the Missoula Rural Fire District to install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for a water supply and hydrant location shall be approved by the Missoula Rural Fire District prior to final plat approval. Plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and the Fire Sprinkler section of the development covenants shall be replaced with the following language prior to final plat approval:

“Residential Fire Sprinklers:

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

This section of the covenants may not be changed or deleted without governing body approval. (*Subdivision Regulations Article 3.7.1 and Missoula Rural Fire District recommendation*)

13. Plans for address signage for each property shall be reviewed and approved by Missoula Rural Fire District and included in the Development Covenants prior to final plat approval. (*Subdivision Regulations Article 3.1(1)(f) and Missoula Rural Fire District recommendation*)
14. The subdivider shall provide verification that the subject property has been approved for annexation into the Missoula Rural Fire District prior to final plat approval. (*Subdivision Regulations Article 3.1(1)(f) and Missoula Rural Fire District recommendation*)

Easements:

15. The subdivider shall ensure that lot owners have access to irrigation water through the provision of 20-foot wide irrigation ditch easements, or have the water rights removed through an appropriate legal or administrative process, which shall be indicated by a statement on the plat and in the covenants subject to review and approval by the County Attorney’s Office prior to final plat approval. (*MCA 76-3-504(1)(j-k), Subdivision Regulations Article 3.6 and 4.1.13(1)(d)*)

Weeds:

16. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed District prior to final plat approval. (*Subdivision Regulations Article 3.1(f) and Missoula County Weed District recommendation*)

Development Covenants:

17. The Development Covenants shall be amended as follows, subject to review and approval by OPG, prior to final plat approval:

- A. Add a No Build Zone/Steep Slope and Open Space/No-Build/Alteration Zone definitions to the Development Covenants as follows prior to final plat approval:

“No Build Zone/Steep Slope-Areas with slopes greater than 25% are designated No-Build Zone/Steep Slope. Low impact use within this zone shall be defined as the prohibition of all buildings, structures, utilities, parking, roads, motorized vehicle access (except for the road and any driveways required to access Lots 2, 3 and 4, routine maintenance activities and the planned driveway for Lot 1 on the plat dated May 2008), storage, 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, or the planting of non native vegetation such as lawn grasses.”

- B. Replace the Living With Wildlife section of the Development Covenants with the following updated version of the Living With Wildlife covenants as provided by Montana Fish Wildlife and Parks, subject to review and approval by OPG, prior to final plat approval:

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as elk, mule deer, white-tailed deer, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon, and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners “live with wildlife.” Alternatively, see 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.

- i. Homeowners must be aware of the potential for vegetation damage by wildlife, particularly from elk and deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- ii. Gardens, fruit trees or orchards can attract wildlife such as bear and deer. 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 and/or home areas.)
- iii. Garbage must be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, and other wildlife. If stored indoors, do not set garbage cans out until the morning of garbage pickup and bring them in no later than that evening.
- iv. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in “an artificial concentration of game animals that may potentially contribute to the transmission of disease or that

constitutes a threat to public safety.” Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.

- v. Birdseed in bird feeders attracts bears. If used, bird feeders must: 1) be suspended a minimum of 20 feet above ground level, 2) be at least 4 feet from any support poles or points, and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
  - vi. Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the direct control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Keeping pets confined also helps protect them from predatory wildlife. 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).
  - vii. Pet food and/or livestock feed should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. When feeding pets or livestock do not leave food out overnight. Consider feeding pets indoors so that wild animals such as bear, skunk, or magpie do not learn to associate food with your home.
  - viii. 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.
  - ix. Barbecue grills should be stored indoors. Permanent outdoor barbecues grills are not allowed in this subdivision. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife. (Due to the potential hazard of fire and explosion, propane cylinders for gas-fueled grills should be disconnected and kept outdoors. Under no circumstances should propane cylinders be stored indoors.)
  - x. 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 and elk becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
  - xi. Compost piles can attract skunks and bears. If used they should be kept in wildlife-resistant containers or structures. 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. (Due to the potential fire hazard associated with decomposition of organic materials, compost piles should be kept at least 10 feet from structures.)
  - xii. Apiaries (beehives) could attract bears in this area. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
18. The developer shall amend the covenants as follows subject to review and approval of OPG and the County Attorney prior to final plat approval:
- A. Re-title the covenants as “Declaration of Covenants, Conditions, and Restrictions for Painted Sky Subdivision.”
  - B. Revise the first paragraph to remove references to the Missoula Board of County Commissioners.
  - C. Replace the second paragraph to state the covenants apply to Lots 1, 2, 3 and 4 of Painted Sky Subdivision, and that the covenants shall run with the land.

D. Add an Amendments section at the end of the covenants that states the following: "No covenants or sections thereof relating to Address Signage, Wildlife, Radon, Fire Sprinklers, Weed Control, Driveways, Road Maintenance, and Amendments may be changed or deleted without prior written consent of the governing body."

E. Remove the signatory lines for the Missoula Board of County Commissioners. (*Subdivision Regulations Article 3.1(1)(f) and Missoula Rural Fire District recommendation*)

19. The common lot boundary between Lots 1 and 2 shall be relocated as depicted on the alternate (revised) preliminary plat dated May 2008, to be reviewed and approved by OPG prior to final plat approval.

**Other Business**

There being no further business to come before the Board, the Commissioners were in recess at 3:08 p.m.