

PUBLIC MEETING – MAY 30, 2008

The Public Meeting was called to order at 2:00 p.m. by Chair Jean Curtiss. Also present were Commissioner Larry Anderson, Commissioner Bill Carey, Chief Administrative Officer Ann Mary Dussault, Chief Civil Deputy County Attorney Mike Sehestedt, Office of Planning and Grants Director Roger Millar, Rural Initiatives Senior Planner Pat O’Herren, Rural Initiatives Planner Matt Boulanger, Rural Initiatives Planner Nancy Heil, and Environmental Health Specialist Ben Schmidt.

Resolution Establishing Interim zoning in the North Lolo Area

Chairman Jean Curtiss opened the meeting.

Welcome to the special meeting of the Board of County Commissioners. We’re here today to consider a resolution establishing interim zoning in the North Lolo area. We have sign-in sheets that we would like everyone to sign in, just to identify that you were here, but also it gives you the opportunity to note if you want to make comment today. When we get to the comment period, then we’ll just call you in order that we have your names on a list.

The purpose of today’s meeting is to take comment and consider adoption of a resolution establishing interim zoning in that North Lolo area. Without objection from the Commission, I will ask that staff enter all the following materials into the record:

- a. All documents received prior to December, 19, 2007 public meeting regarding this issue, including the original permit from JTL and the draft Environmental Review by DEQ; the MDOT letter dated December 7, 2007; all letters, emails, faxes, and phone calls received relative to the matter for the 12-19-2007 meeting; all comments made and documents submitted at that 12-19-2007 public meeting; action taken by the Commissioners at the 12-19-2007 meeting, and also all correspondence and communication that we’ve received in the last few days prior to this meeting. That would be whether by letter, email, or phone.

Is there any objection to entering that material into the record?

Commissioner Bill Carey: No.

Commissioner Larry Anderson: No.

Chairman Jean Curtiss: We’ll consider it done then. The procedures for this meeting are we’ll ask you to sign in as we already stated. Today, please provide new information only. All the comments that folks have made in the past, as we said, are part of this record. It is not necessary to repeat comments or information already entered into the record. Please try not to repeat or duplicate comments that someone before you states today. Simply indicate you support that comment. In order to make sure that everyone has a chance to be heard, we’re asking folks to limit your comments to five minutes. If you believe you have something that needs more time than that, please ask permission from the Chair before you begin. We do have a limited time that this building is available to us; that’s one reason we’re limiting comment. Please direct all of your comments to the Commissioners, not to folks in the audience. Please state your issues and concerns, but refrain from any comments that would be considered disrespectful and directed at any person or agency. The Commissioners will take all comments and then go into executive session for questions and discussion amongst ourselves. We may choose to recall anyone who comments for their response to questions. If you have any questions, please state them in your comment time and we’ll consider them while in executive session. Comments on non-agenda items will be taken at the end of the meeting as required by state law.

We’ve asked today--we have several staff that we would like to make a presentation before we take public comment so that everyone understands what brings us here today to reconsider this issue. The first person that the Commission would like to hear from is Mike Sehestedt from the County Attorney’s office.

Mike Sehestedt: Thank you, Chairman Curtiss. By way of background as was noted or at least implied by placing the earlier materials in the record, this is the second time the Commissioners have visited the question of whether or not emergency or interim zoning should be adopted in this area. If I can take you back to the earlier hearing, and whether anyone agrees or not, essentially the evidence that came in was that this would be subject to the full

DEQ permitting process and that the Department of Environmental Quality would address issues such as water quality, noise, visual impacts, hours of operation, and so on as a part of their permitting process. The other component and major issue of concern was access, movement of trucks from this proposed operation onto and off of Highway 93. As presented at the time, the access was to be a new access, reviewed and approved by the Montana Department of Transportation, which would then have the jurisdiction and authority to impose the requirement, including improvements to the roadway that it deem necessary for this to be a safe and adequate access without prejudging. I don't think MDOT knows what they would require now, because their first step would be a traffic study, but could include such things as deceleration and acceleration lanes, left-turn bays, so and so forth. That would be a matter vested in the Department of Transportation and the Commissioners conclusion was to DEQ require would be sufficient, if I understand your action, to adequately address the environmental impacts and the Montana Department of Transportation review would be sufficient to address the issues surrounding traffic entering and leaving this pit.

Last Wednesday--well, by way of background, there had been a series of cases involving gravel pit operators other than JTL around the state and the Department of Environmental Quality. DEQ has been losing these cases on a pretty regular basis. The upshot is DEQ is simply ordered to issue the permit. The view of the courts being the timelines and the permitting process trump any of the provisions in [inaudible] or environmental review statutes. This has been of concern to us, but last Wednesday, we discovered or heard via the grapevine that Knife River, JTL's successor was going to be in court Monday in Helena, seeking essentially an issuance of a writ of mandamus directing DEQ to issue the permit. We further discovered that a letter from our Public Works Department noting the fact that in 1994 two access permits were granted on Valley Grove Drive, which is the county road immediately to the south of the proposed pit, permitting access from the pit area to Valley Grove Drive and then hence from Valley Grove Drive to Highway 93 existed. That information was transmitted by Knife River to DEQ, the open-cut mining program, with the comment, if access to Highway 93 from the [inaudible] approach, which is the area in which their new pit approach would be constructed, is a problem. We can access the site by the approved county approaches as referenced by the attached letter. What this means in practical terms, since Valley Grove is an existing county road, is that this traffic would then be entering via the county road. MDOT would not have jurisdiction or authority to require the improvements at that intersection, and we do not have the regulatory authority to impose that requirement on a user of a county road.

The upshot of this is that the two points the Commission depended on in making it's earlier decision, full and complete review and conditioning by DEQ addressing the environmental impacts, and I would specifically note out of the permitting statute, surface and groundwater protection, noise, visual impacts on residential areas, and additional proceedings for monitoring are necessary to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented. At this point, we no longer have the certainty of that review and that conditioning of the permit. Further, although I believe we'll have a response from Knife River, that they have no intention of using those alternative permits, the issue has been put on the table. It's been put in play and the permitting process, and I think it's--again, would mean that the second or perhaps the first most serious issue the Commission considered when they looked at this back in December will again not be adequately addressed. With that, we felt it was appropriate to bring this matter back to the Commissioners and let you look at it in light of the new and additional information you now have. With that, I will conclude my staff report and respond to any questions that the Board County Commissioners might have.

Chairman Jean Curtiss: Thank you, Mike. Next, we'd like to ask Pat O'Herren from Rural Initiatives to talk a little bit more about some of the anticipated regulatory oversight.

Pat O'Herren: Thank you, Chairman Curtiss. Without repeating in depth what Mike has informed you about relative to DEQ and MDT, I would just like to enter into the record a couple of documents. In a phone conversation with DEQ, I was informed that indeed they had received an email from JTL/Knife River regarding access and Mike has referred to that email and has quoted from it, so I won't go into that.

DEQ also informed us of the show cause hearing that occurs next week and alerted us that the outcome might be similar, might be similar to the court hearings on other gravel pits in the Gallatin County area. We then tracked down the letter that Ken Allen or JTL was referring to when they emailed JTL and you have copies of that. It is dated May 12 and is from the Public Works Department. I would note that that letter does say, quote, that Brent O'Connor, speaking in the first person, "I have inspected those two approaches and they meet minimum county standards. This letter is to provide documentation that these approaches are legal approaches only." After receiving that letter and talking to DEQ, I did call the Montana Department of Transportation Duane Kailey, here in Missoula, and asked him if there were any conditions that MDT could apply to the user of the county roads,

specifically if it was a commercial or industrial use? His response and I quote, "I have no jurisdiction and no authority," in the matter. That's been followed up by a copy of a letter that you also have from the Montana Department of Transportation Jim Skinner, the program and policy analysis section. He states that, "It is these permit requests which allow MDT to place conditions upon the requestor for roadway improvements to mitigate the impacts their actions will have on the safety and operation of state facilities." These permits refer to applications such as JTL and Knife River to access a state highway. Jim goes on to state that, "If an adjacent developer will access an existing public road, which then accesses MDT facilities, the public road authority is the permitting entity and MDT does not have review or approval authority and cannot place conditions on the requestor." Those conditions, Mike outlined some of them that MDT could no longer require if the county right-of-way is utilized, in addition to those that Mike mentioned, the requirement for flaggers, timing of entry and exit of trucks onto the parcel or onto the highway, the distribution of those trucks, and other conditions are also limited in that MDT cannot impose those. As far as DEQ goes in their ability to have some sort of anticipated regulatory oversight, that seems to be at the discretion of the court at this point and DEQ has no guarantee that they'll have any authority whatsoever, however, if the gravel pit is permitted, they will be able to inspect it. In talking to Chris Cronin [phonetic] of the Open-Cut Mining Bureau of DEQ today, he indicated that, once again, they are limited in terms of staff. They do not do regular inspections of gravel pits and his inspections would be complaint-driven only. That's the information that we have received from DEQ and MDT. If you have any questions, I'd be happy to try to answer them later.

Chairman Jean Curtiss: Thank you. I think I'd like one follow-up with Mike in regard to what Pat just said about the fact that two existing approaches are already there onto the county road, Valley Grove. Could you tell us, for the record, a little bit about the county's legal ability to limit the use of those approaches that already exist?

Mike Sehestedt: Our ability to limit is very limited. We look at the geometry of the intersection, the site lines. If it meets minimum ASTO [phonetic] standards, then we are largely required to grant the approach permit. We cannot deny access to a county road if the property does not otherwise have access. All we can do is condition the location and place it in a safe location or in the safest location. Need to bear in mind, we are a limited powers government. We have only that authority that is specifically granted to us by the legislature. The legislature has chosen to grant us much authority in this particular area. It is unfortunate in this context and in many others that we do not have additional authority, but that's simply the way it is.

Chairman Jean Curtiss: Thank you, Mike; that's helpful. Next I'd like to ask Matt Boulanger from Rural Initiatives to do a little bit of a summary of the draft resolution that we will be looking at today to address the emergency--the interim zoning proposal and it's compliance with the Growth Policy. Matt.

Matt Boulanger: Thank you. The draft resolution you have in front of you and which we distributed to members of the audience, and the boundaries of the zoning that resolution proposes which are on a map behind Pat and I, as well as in your packet, in the packet we distributed, would address this emergency by interim zoning for a period of one year, the North Lolo area, as shown by the boundary on the map. In compliance with the 2002 Lolo Plan. This would use existing county zones, and in the case of the site of the proposed operation, the zoning would prohibit gravel mining, per the Missoula County Zoning Resolution. That's essentially what all of this comes down to, what you'll find is description of how various parcels are impacted by zoning, that map, and a verbal description of the zoning in your package.

Mike Sehestedt: I might supplement that just briefly. The boundaries were chosen because they are the highway to the northwest is an existing Citizen-initiated Zoning District, District 33, which does not have gravel extraction among the permitted uses. We chose the south boundary because it represents essentially the edge of the completely developed area. The west boundary is all proposed in the Lolo area plan as open and resource. Zoning it in accordance with that plan wouldn't address gravel extraction one way or the other, so we simply picked that portion of the Lolo plan lying north of Lolo up until where we hit an already existing zoning district and then did not extend it into the open and resource areas.

Chairman Jean Curtiss: So Matt the portion that's the pointed part at the top of the map behind you, is that where Bird Lane comes in, is that Bird Lane?

Matt Boulanger: That's correct; Bird Lane comes in right at the very tip of the top of the North Lolo district as we've mapped it here.

Chairman Jean Curtiss: Thank you. At this time, then we would--for those of you who came late, make sure you've signed in and let us know if you would like to speak. Again, we will be asking for new information today, as everything we received previous to this is part of the record. The first person on the list asking to speak is Mr. Dave Zinke. If you come to this microphone and, is it already turned on? It needs to have a green light.

Dave Zinke: Test. Yep.

Chairman Jean Curtiss: There it is, okay.

Dave Zinke: Good afternoon, Commissioners, my name is Dave Zinke, Z-I-N-K-E, Vice President/General Manager of Knife River, formerly JTL, Missoula operations. What I would like to do is address, I guess, some of the concerns in the resolution, namely on the second page, top of the second page. The first one is "Whereas," it says, "recent legal decisions in the State of Montana may compel DEQ to issue a permit without the review that is normally carried out by DEQ; and, whereas, if the DEQ permit has not been adequately reviewed, there is no assurance that public health and safety will be protected." In this case, #1, the reason we're going to court to sue DEQ is the fact that they stopped working on this permit. In emails, voice messages, and letters, they've stated to us that due to the controversy and the number of staff hours it would take to work on this, that they had other priorities and did not know when they were going to be able to get back on this permit application. Secondly, we've been working on this permit for over two years. It's not like it's just coming out of the shoot and we're going to DEQ and they're going to issue a permit. An EA (Environmental Assessment) has been performed on the site. In our application, we have addressed all the concern that DEQ had and we're working diligently with DEQ for resolutions and ways to monitor the concerns. There is a plan in place, operating plan. We have assurances there to mitigate concerns and so forth, water, monitoring wells, site aspects, air, noise, pollution, a lot of the things that were mentioned earlier and to mitigate these. There is some assurance that there is authority also, I mean, our application has not been modified. We have not asked for amendment or anything else to our application, so DEQ, if the permit is issued, we will be running, to the best of our knowledge, that application and our plan of operations, which is pretty spelled out.

Secondly, it says, "Whereas, the BCC has received new information from DEQ indicating that JTL is considering changing their access to a county road, in which case MDT will not be able to require traffic control measures during the operation of the pit that will adequately protect public health and safety." We were given some information from the landowner on the access. We in turn--he in turn shared that with us. We in turn shared that with DEQ and I was not part of the conversation between Mr. Orvey [phonetic] and Mr. Sandahl [phonetic] emails. We supplied that to the DEQ for informational purposes just in case it would help. We had nothing to hide or--you know, so we share all the information with DEQ, so we sent that on to DEQ. It's public record; we have not modified or requested any amendments to our original plan of operation or application for this project. So in essence, nothing has changed from the prior hearing. It is our position that we would come out of the access onto MDT and get a permit, just like it's stated. Again, if there was something read into this email, I think it was more for comment purposes and for DEQ's information, but if we had intended to change our permit in any way, we would have had to modify our operating permit and application and we did not. That's public record. I hope that addresses that. Again, we don't anticipate making any changes.

The last thing is here, the protection of the public health and safety. It's our understanding, if a permit is granted here, that DEQ still has jurisdiction and is the governing agency that will look over this facility and I must say they do it to all our facilities. We have to do reporting, we have to do monthly reporting, annual reporting. They come out and investigate things and check everything. The other thing is there's other agencies also, like we discussed in the earlier hearing, that have observation over this, that we still have to get [inaudible] and so forth. It's not only DEQ, but there's other legal entities that will be monitoring this project. It's not going to be like we're going to be able to go out there and rip and snort and tear the land up and do everything else. We're responsible gravel operators in this community. We know we have to be. Safety is a concern of ours. Image is a concern. I think if you look at our operations, and I'll open it up to anybody, if they would like to come and see our operations, give me a call. I'll be more than happy to take you through. That's all I have to say, any questions, I'd be more than happy to answer them.

Chairman Jean Curtiss: Any questions at this time? Thank you Mr. Zinke. The next person who signed up is Chris Swartley.

Chris Swartley: Thank you, Commissioners; my name is Chris Swartley, S-W-A-R-T-L-E-Y. I'm a lawyer in private practice here in Missoula and have been for 32 years. I represent Knife River in this matter. I do not

represent Knife River in relation to what's happening over in Helena in the courts, but I do have familiarity with that and be happy to answer any questions about that. I have a couple of short comments and then Knife River [inaudible], which I hope all of you know is the subsidiary of MDU Resources in North Dakota, has asked me to put a statement into the record. I will keep it brief.

Number 1, notice, we feel shortchanged on the notice here. I got involved in this yesterday. We've mustered all the forces and done what we can, the best we can under the circumstances to be here, but I did want to make a formal objection on the record that we don't feel two days notice on a matter of this importance is sufficient. That's all I will say. We're here, we've done our best to try and be able to respond. Secondly, the December 19 hearing, I did not attend that. I have reviewed the record, thanks to Mr. Sehestedt directly me to a copy. Our position is there is absolutely no change from what the record was then to what the record is now. You heard Mr. Zinke discuss this, access, ingress and egress is governed by MDT. The original plan included the MDT access. Knife River will go to MDT and get the appropriate access permits or not, depending upon MDT's jurisdiction if and when a permit is issued. That hasn't changed, nothing has changed. I noticed that a representative of MDT testified at the December hearing. They still have jurisdiction control and the power to regulate ingress and egress. There is no effort on JTL's part to use county roads referenced to the extent that the Commissioners might need something in writing from JTL/Knife River, you've got it. We think you did the right thing after the December 19 hearing, unanimous decision, no change today. Third, Mr. Allen's road request; you can read the email, you can see that there was nothing underhanded, there ways nothing on Mr. Orbey's [phonetic] part to try to sway the DEQ to give some special consideration to this additional fact. It was a piece of information, it belonged in the DEQ file, it came from your own offices. I want to assure the Commission that there was no effort by my client to sneak something into the record. They would be foolish to amend the permit that was applied for because, as you know, I think you know, that permit was applied for under the old law that applies. They're not going to change the permit, the permit request stands and it was the only that was considered at the hearing.

If the permit is issued, based on this litigation in Helena, nothing changes. DEQ has had, will have, will always have jurisdiction over the health, safety, welfare, noise, dust, et cetera issues. The legislature has seen fit to give it to them. Unfortunately, they're slow; they're somewhat out of control. They've been chastised by several judges; they might get chastised again on Monday. All we're asking them to do, all Knife River's asking the judge to order DEQ to do is issue the permit. They can still, they will, we assume they should apply their standards and regulations. Maybe they got to go hire 50 employees to process this. Maybe they got to issue the permit and process it over the next 30, 60, or 90 days. That's their business. The judge has the power to tell them to issue this permit; that's all Knife River is asking the judge to do. After permit issue, Knife River goes to MDT; MDT either does or doesn't grant access. Those issues were covered in the last hearing, there is no change. We're not asking for anything different. There was no emergency determination in December. We don't think there should be one now. Don't want to sound like I'm lecturing, but Webster's Dictionary, an emergency is a sudden generally unexpected occurrence or circumstance, floods, fires, earthquakes, tornadoes. This is not an emergency. We'd just ask you to just affirm what was done in December.

I'll try and be brief; this is the statement from Knife River, again subsidiary of MDU. The Knife River in Missoula Division made the decision to file this lawsuit against the DEQ because Knife River has waited more than two years for the DEQ to issue permits to work in the Lolo Pond. Other aggregate and excavation operators have been issued permits in the interim. The courts in Helena have the expertise to review these issues. Second, Knife River has worked extensively and committed hundreds of personnel hours to complete the application and necessary paperwork for the permitting process. Three, the original application and operations for the Lolo Pond have not been modified since the application was published for public comment in December 2007. Four, the company has addressed all of DEQ's environmental concerns, have worked diligently with DEQ and other state agencies to be in compliance with all state laws and regulations, and is in compliance. Five, Knife River bid the current project that it's working on in the Lolo area with the intent to use aggregate from the Lolo Pond. If the permit is not approved to use materials from the pond, Knife River is going to be negatively impacted and that's going to impact the city and county. First, additional 10 to 15 belly dump trucks will be hauling asphalt through the city, creating more emissions because of the additional diesel fuel being burned. It will create additional safety and traffic issues with these trucks going back and forth, whether Reserve Street, Mullan Road, but issues for the driving public. Finally, the additional hauling creates more wear and tear on city roads. We don't think that's--that's a downside of this that we don't think has been considered. Six, Knife River and its employee are being directly impacted. First, added fuel usage of more than 12 to 15,000 gallons of diesel impacts project cost versus the bid and obviously, impacts air quality issues for the county, 12 to 15,000 gallons of diesel. Also, there are safety concerns for drivers and employees who have to do this additional driving. It's just more time on the road, more highway hours every day.

Knife River understands that the controversy around this Lolo Pond issue. We understand the concerns of the citizens. Knife River has been, I think everybody will agree, a good corporate citizen in Missoula. We have reiterated, Dave has said it again, there is no intent of putting a permanent site in this pond. They intent to comply fully with all laws, regulations, local, state, whoever. By the way, DEQ has the right on any complaint to come out and do the monitoring if they choose to do so. That's their job.

The last point they made and asked me to forward on it you is they didn't want to file a lawsuit in Helena, but this permit has been going on for two years. There have been, by my count, four cases now in front of two judges in Helena on exactly the same issue in Gallatin and Lewis & Clark Counties, and now Missoula. It's unfortunate; DEQ's understaffed, but that's not the problem of the corporate public, the companies that are trying to build things for state, local governments, and private parties. That's all I have to say. Thank you.

Chairman Jean Curtiss: Thank you, Mr. Swartley. Next speaker would be Cary Hegreberg.

Cary Hegreberg: Madam Chairman, members of the Commission, for the record, I'm Cary Hegreberg. It's H-E-G-R-E-B-E-R-G with the Montana Contractor's Association. We'd like to again thank you for the constructive approach that you've taken towards these issues in the past and ask that you do the same today. In our estimation, the only emergency here is that DEQ may be compelled to do the job they should have done months ago. We believe that the resolution currently before you is a poster child for spot zoning and should not be adopted. We believe more and more as we look at these situations around the state, that environmental reviews for these types of projects should include the impacts of not doing it. In this case, it was mentioned earlier, what are the impacts of denying the gravel operation at Lolo Pond? What are the environmental consequences to the Missoula community? We think that should be considered by agencies such as DEQ and certainly by local government because there will be a tremendous number of motorists who are inconvenienced. Public safety is certainly going to be an issue, as those truck trains go down Reserve Street. I don't live here, but I come here often enough to know that Reserve Street is certainly a problem in terms of the traffic. That is going to be greatly exacerbated by those trucks going down Reserve Street, down Highway 93 when the gravel source could be located right there at the job site, not to mention, of course, the environmental impacts of the pollutants that was mentioned earlier.

We have been involved in these situations around the state in conjunction with Gallatin County, the Montana Contractor's Association, and our member companies developed and agreed to abide by a good neighbor policy. We'd be happy to provide that. Our companies are very intent on being good corporate citizens, good neighbors in their communities, they want to operate in good faith. These situations that are resulting in lawsuits are the result of tremendous frustration on the part of companies who are trying to get these permits after months, after years. One thing I do want to mention is that our organization supposed legislation in two successive sessions of the legislature, 2005 and 2007, to get more money to DEQ for personnel to review these permit applications, to look a bond releases, to do compliance inspections, and we agreed to impose fees on ourselves to pay for DEQ's cost. We saw some of this train wreck coming a long time ago. For various reasons, that legislation did not pass. We certainly will be supporting legislation again in 2009 to help DEQ address the legal concerns that they have to deal with.

One final thing, we would just like to reiterate our suggestion, our request, our plea, that county governments around the state, including Missoula County, identify where your gravel reserves are and protect those gravel reserves into the future through some sort of growth management. Protect those landowner's ability in the future to extract and process that resource. You know that it's a valuable resource; you need it on your county roads. We can't have any kind of construction without it and these issues are going to continue to be problematic until county governments get their arms around this issue. We're certainly anxious to work in the legislative arena and with local governments to try and find ways to do that. Thank you.

Chairman Jean Curtiss: Thank you. Okay, the next person on the list is Mr. Ken Allen.

Ken Allen: I would like to defer to my attorney [inaudible, spoke from audience.]

Chairman Jean Curtiss: You'd like to defer to your attorney? Who's your attorney?

Cory Gangle: Good afternoon, Commissioners, my name is Cory Gangle. I am actually on that list, so if you want to cross me off that would be fine.

Chairman Jean Curtiss: Could you spell your name please?

Cory Gangle: Last name G-A-N-G-L-E. Thank you for your time today. I just want to spend a few minutes outlining my client's position in regard to this proposed resolution. I have some serious concerns from a legal standpoint with the resolution. It's interim zoning and in order to establish a need for interim zoning, there must be an emergency demonstrated. Here I could attest that there is no emergency and I would concur with the statements that have already been made on the record. The only issue here is that there's speculation that DEQ will not be able to review the permit that was sent to them and submitted to them two years ago in regard to the gravel pit operations on this property. Well, whose fault is that? That's not Knife River's fault and that's not Ken Allen's fault; that was property submitted. That is a DEQ problem and to establish interim zoning under the title of an emergency, because of DEQ's problem, actually constitutes a penalty for both Knife River and for Ken Allen. We do not believe that that should be an issue here. In fact, I'm going to talk just briefly in a little bit about spot zoning, without going into the legal arguments due to the time constraints.

The second issue that we have here is in looking at the map and in looking at the resolution, there's only one very small piece of property that is really at issue and that is the property owned by Ken Allen up in the top corner, constitutes less than one-third of all the property referenced in that map. I too have some grave concerns about the notice requirements. There's the largest property owner identified on there is out of state and had no idea that this was going on until just today. He's not here to be able to testify on his behalf and is not able to defend his position. He has no idea what is taking place and we just think that is patently unfair.

I go back to the requirement of the emergency. If you look at all the other properties around in that particular map, with the exception of Ken Allen's property, there is no other gravel pits being contemplated. You don't see a gravel pit being contemplated in Paul Rossignol's property. You don't see a gravel pit being contemplated in Norma Rossignol's property or any of the Valley Grove property. Yet they included in this emergency zoning, they should not be included in this and that's an issue that does need to be addressed. Now, I'm going to take the position as an attorney and as representation for Mr. Allen that this spot zoning and here is why. The Montana Supreme Court has outlined several factors, which would give rise to consideration of spot zoning and one of those... [tape ended].

One of those factors is whether or not the requested use differs significantly from other uses in the area. I remind you that this is a rural area. I also respectfully remind you that literally just a few hundred yards across the street, there is also a gravel pit that is currently in operation. This is not different than what is currently out in that particular area. The other factor to consider when considering spot zoning is the size of the property, although not just solely the actual physical size, but in considering the facts, this is a relatively small piece of property, a relatively small segment of a gravel pit that is being contemplated here. The one issue is who is this going to benefit and who is requesting the interim zoning and why? I don't have to go into a lot of detail to be able to remind that his property has been the subject of a dispute for many, many years. There was originally a subdivision applied for against this property in which the county turned down this subdivision applicant, which was going to be residential, due to traffic concerns. Now interestingly, the county wants to zone it or is contemplating zoning it residential, again due to traffic concerns. I think that's a very controversial issue and is something that should be addressed. It seems like for this particular piece of property, there's simply been one fight after another for many years to prohibit any type of development on this property. Why this has been the target, I am not sure, but that is what is happening here.

The zoning that is requested is not designed to benefit Missoula County. It is not even designed to benefit all of the representatives or the residents of the Lolo community. You don't see all of them here today. The zoning that is proposed and the complaints that have been submitted in regard to the development of this property concern a relatively small group of landowners who simply do not want to see development here. I understand the concepts, and I'm not going to argue about that, here again, due to the lack of time, but we have to consider the long-term effects that development in this area is going to have. We are not proposing some type of ghetto-like environment in the Lolo community. Long-term, this is going to be a nice project and that is something that should be considered now as opposed to down the road. Again, I conclude with the argument and the belief that what this interim zoning is representing is illegal spot zoning. The status quo should be preserved. There is no substantial change. DEQ, if that is the concern, if that is the emergency, only affects Ken Allen's property, not the rest of the property that's alleged here or included here and they still will have, as everybody has already said this afternoon, adequate review. They will be able to take a look at everything that is going on, if they choose to do so. Thank you for your time.

Chairman Jean Curtiss: Thank you, Mr. Gangle. Next on the list is Candy Goff. That microphone will pull down where you need it, Candy.

Candy Goff: For the short person. I'm Candy Goff, C-A-N-D-Y G-O-F-F. I live at 7600 Mull Road. What I'd like to address today is the traffic concerns. I testified at the hearing on December 19 regarding traffic. I just want to remind you that, of the traffic studies that were submitted, this section of highway is considered a high crash corridor. There have been seven fatalities between the two corners, the south end being the corner near Lolo and the north end, the corner posted at 55 miles per hour. Now, if MDT does not get involved in the access permitting process, there will be no review of public health and safety as far as access to the highway. If, however, as JTL is suggesting that they will apply for a permit there anyway and go through the process, even though it may not be necessary because they have an alternative access through Valley Grove, there's no guarantee that that's going to happen. They may not like what MDT is going to require them to do as far as improvements. They always have the back door. They always have that availability of access through Valley Grove with no oversight. That's really what is concerning me is that nobody then will have any authority to do anything about it. That's all I have to say.

Chairman Jean Curtiss: Thank you, Ms. Goff. Next on the list is Jim Kaufman.

Jim Kaufman: Good afternoon, Commissioners and everyone here today, my name is Jim Kaufman and the last name is spelled K-A-U-F-M-A-N. I'm the Vice Chairman of the Lolo Community Council. Towards the end of 2007, we had an emergency meeting that 200 people attended approximately. More than 40 people addressed DEQ and other members of the community and the agencies at that meeting. One of the things that was brought up was that they were very concerned about their wells, the people living on this property. That would include this whole area that's being requested for temporary emergency zoning. That aquifer is in that whole area. I'm not sure what the results were from DNRC, the application for change of use and water use at this side. We understood that those could be considerable change in the amount of water that they're going to be using at that site. The homeowners were very concerned about their own water, what level it would be at, at the time the plant would be processing, and if there would be any kind of contamination after that. One of the other big concerns that was addressed at the meeting was that not only the quality of the air, noise, light pollution, and traffic in that area, but actually it was more [inaudible] health issues. Those issues have not been addressed yet. They do feel that there [inaudible] should have been a study conducted that would address issues if this plant was to be put in. [Inaudible] to realize is that this is a processing plant, asphalt plant, pug mill. They're going to be processing these materials at the site and it's not just a gravel pit, These things [inaudible] they're most concerned about and what was talked about at the meeting in terms of why they're so concerned about this being put in.

On behalf of Lolo Community Council, we support the emergency zoning and we thank you very much.

Chairman Jean Curtiss: Mr. Kaufman, before you leave, did the council--the council took a vote in December. Did they have time to have a discussion this week?

Jim Kaufman: We didn't have time to have a discussion this week. At the time of the meeting though, we did have a vote for a letter of support regarding the zoning.

Chairman Jean Curtiss: Thank you. Next on our list is Kim Kaufman.

Kim Kaufman: Thank you. Good afternoon, Jean, Bill, Larry, you all know me. I'm just a little [inaudible] citizen. I don't live near the gravel pit, but I do access the highway all the time and...

Unidentified Speaker: [Inaudible, spoke without microphone.]

Kim Kaufman: Kim Kaufman, K-A-U-F-M-A-N. I thank you for calling this meeting today. I thank you for putting our testimony from the December meeting in. I just want to reiterate please do the right thing today. Vote for this emergency zoning. Thank you.

Chairman Jean Curtiss: Thank you, Ms. Kaufman. The next person on our list is Myra Shults.

Myra Shults: Madam Chairman, Members of the Commission, my name is Myra Shults, S-H-U-L-T-S. I own the house at 7650 Moe, M-O-E, Road in Lolo. I appeared before you many times in November and December of

2007 and again in January of 2008. I request that my appearance--that the testimony in 2008 also be included in this record regarding the proposed gravel operation in the field below my house. At Jean's request, I'll not repeat everything I said on November 28, January 9, December 19, and December 12, but I ask that it be incorporated into the record.

The only effective way to address the inevitable conflict in residential use which exists in that area all around the proposed [inaudible, too close to the mic] site and extraction and processing of gravel is through zoning. In fact, the Montana Contractor's Association alluded to that before you on December 19 and also today. I'm here today to support the adoption of the proposed resolution to zone north of Lolo for the interim to give you a window of opportunity to address this conflict. In a commentary on [inaudible, too close to mic], the executive director of MCH chastised the people of Lolo for exercising their constitutional right to be heard on the proposed Lolo pit because it prevented JTL/Knife River from using the product from the Allen property for the Missoula to Lolo re-surfacing. I heard then, and I heard again today, that Knife River will burn 12,000 gallons of diesel fuel to truck the product [inaudible], thus polluting in air in Missoula and clogging the traffic. The [inaudible] Missoula Valley is much more capable of dealing with and dissipating truck fumes than the little nook on Highway 93 just north of Lolo in which there would have been concentrated asphalt emissions. The maximum traffic speed in Missoula along Reserve Street is 45 miles an hour, so heavy industrial trucks traveling at a somewhat slower speed, have less of an impact than heavy industrial trucks trying to access a highway where the speed limit is 70 miles an hour. There are no traffic signals and thousands of cars pass every day. Now with its requested writ of mandamus in the first judicial district, Knife River is asking the district court to force DEQ to issue its open-cut mining permit before DEQ has the opportunity to evaluate all the public comment. The EA that the attorneys and Knife River seem to think was a done deal is a draft and that's exactly what it says, Draft Environmental Assessment November 2007. They didn't tell you it was a draft and they didn't tell you that after the Lolo Community Council meeting, Rod Sandahl said, "I am [inaudible] of things tonight that should be taken into consideration before the final environmental assessment issues." It's important that DEQ evaluate all the public comment. This request of Knife River to the court in Helena violates two constitution guarantees, the public's right to particulate, we talked, but if it isn't taken into consideration, what good is the talking, and the public's right to a clean and healthful environment. [Inaudible] of DEQ attended the Lolo Community Council meeting on the fourth of December, it said the only way DEQ could deny an open-cut mining permit is if the local zoning prohibited it. Section 82-4-432, subsection 2, subsection b requires in an application, "A statement from the local governing body having jurisdiction over the area to be mined, certifying that the proposed sand and gravel open-cut operation complies with that local zoning regulations adopted under Title 76, Chapter 2." In January, I brought your attention to the fact that you, as the governing body, had never seen or made this statement, which I thought was a defect in the application. You passed my comments onto DEQ, which stated that this is a county or a court problem. In addition to adopting interim zoning to temporarily suspend an industrial operation in what you described to the Montana Department of Transportation as the most dangerous stretch of Highway 93, I ask that you immediately notify DEQ you are rescinding the zoning compliance statement made by OPG before the court hearing on Monday.

In November and December, you said you didn't want to hear emotion, only the facts. I explained we were emotional because of the facts. Every night since December 19, the gravel pit and the worry about not being able to sell my house consumed my thoughts as I tried to go to sleep. I worry about making the house payments and not being able to. I worried that I'll never be able to retire, which you guys should wish I would. I worry that I may lose my most valuable retirement asset. Yes, I'm emotional, because I lost the sale of my house, but that emotion is nothing compared to the survivors of people who have been killed on that stretch of highway and continue to maintain those crosses. Thank you.

Chairman Jean Curtiss: Thank you, Ms. Shults. Next person on our list is Bill Nooney. Mr. Nooney?

Bill Nooney: Commissioners, thank you. My name is Bill Nooney; I'm a representative for House District 100. I want to say that I've been Representative there for a couple of years, going door-to-door, getting emails, and attending most of the meetings in Lolo that I have found and would like to request on behalf of the residents in Lolo and all of House District 100, I formally request the Board of County Commissioners to adopt an interim emergency zoning resolution establishing zoning districts in the North Lolo area. I have some other things that have been duplicated here and I'll just close out as saying this. To date, the residents and motorists impacted by the Lolo Ponds Gravel pit have still not had the opportunity to fully voice their concerns. In addition, significant public health and safety concerns have not been reviewed by either state or local agencies, therefore, I strongly urge the Board of County Commissioners to adopt an interim emergency zoning resolution to ensure the county

has time needed to allow for [inaudible] public comment and take whatever steps necessary to ensure the health and safety of the public. I thank you very much. I do have some written comments that I'll hand off.

Chairman Jean Curtiss: Thank you, Mr. Nooney. Next, we have Jim Ganon or Canon, one of the two. You don't have a comment, okay. Michelle Landquist has a question mark, Michelle, would you like to speak?

Michelle Landquist: For the record, Michelle Landquist. Good afternoon, at the time I put the question mark there, I just wasn't sure if I was going to feel the need to say anything. I just want to reiterate the fact that the emergency interim zoning would provide the opportunity to bring all of the affected people/parties whose properties are there together to have that meaningful conversation and discussion about how that property/all those properties should be zoned for everybody's protection. You've got enough information before you now to be somewhat dangerous, you know. That's a lot of information to evaluate to do the right thing. You can't do it without having that meaningful dialogue in an unrushed fashion. Just because the emergency interim zoning could last up to a year, doesn't mean it has to last up to a year. You could get everything done in a timely fashion and it doesn't have to be a year. You could undo that resolution, but it does give you a year to get everybody to the table to talk and discuss in a meaningful way without some of the emotions that have been driving some of this stuff and rightly so, those emotions are very justified, but you just need that time to think a little more clearly. I do think that an emergency exists and I would appreciate you adopting the emergency interim zoning based on those findings.

Chairman Jean Curtiss: Thank you, Ms. Landquist. Ken Miller, you have a question mark also. Did Mr. Miller decide if he'd like to speak?

Ken Miller: I'm Ken Miller. I'm retired, live at 9050 Bird Lane, Lolo. I'd like to address a question to one of the lawyers here that stated that you have abided...

Chairman Jean Curtiss: You have to speak to us remember. We'll write down...

Ken Miller: ...you have abided.

Chairman Jean Curtiss: We'll write down the questions.

Ken Miller: ...by all the laws.

Chairman Jean Curtiss: Turn this way.

Ken Miller: I think that you should go back and check.

Chairman Jean Curtiss: Mr. Miller.

Mike Sehestedt: Sir.

Chairman Jean Curtiss: You have to address the Commission. We'll write down the questions and we'll ask them later.

Ken Miller: That's fine. But anyway, check your ARM laws or you know the Montana--t was conveniently omitted on your map all the wells within a thousand feet of this project. Those people living in Bird Lane [inaudible, too close to the microphone] of the EA draft and also in the report for your [inaudible] in this area was--seemed to be, as I believe I remember it saying, that it was bedrock, which is not true. About the environmental impacts in Missoula, so what they're saying is they want to move the environmental impacts to Missoula out to Lolo where we have this and if it's for more than 10 years, well, so be it I guess. About zoning, I believe the zoning was already implemented adjoining this on the west side. Someone said none of the neighborhood is zoned or anything, but I believe that's already been zoned for subdivision. I believe Mr. Allen is wanting to get the neighbors to permit him to rezone that so he could create more houses there, create more traffic.

My last question is, as I asked out in Lolo, is can this be addressed to the representative here from the Montana Contractor's Association? Why aren't we focused on putting these gravel pit complexes in non-residential areas, statewide basis so it's not impacting negatively people's health et cetera? As a past research specialist for the riparian [inaudible] research program, I'm well aware of what happens and how easy it is to contaminate

underground aquifers. As we're the first house downstream on this abandoned meander, I know that they're wanting to excavate in the sand and gravel down to 30 feet. Well, that's where we take our well water from. There is a [inaudible] of solid sand between 30 and 80 feet because a well was drilled last year right next to us and it's on record with the state. Thank you.

Chairman Jean Curtiss: Thank you. Mr. Miller, we did state that Zoning District, is it 33, 33 does exist there on the end.

Mike Sehestedt: It is Zoning District 32 essentially restricts to residential uses with a single-family or minimum lot size rather of one acre.

Chairman Jean Curtiss: Thank you. So I have a note that Mr. Daneke thought he signed in to speak. You left it blank, but if you'd like to speak, your name's on the list. Mr. Daneke.

Dennis Daneke: Thank you, Jean, County Commissioners. I'm Dennis Daneke; I work for the carpenter's union. I'm also representing the Western Montana Building Trades today.

Chairman Jean Curtiss: Could you spell your name for Cathie please?

Dennis Daneke: D-A-N-E-K-E. I'm concerned for workers in Missoula County. Our high housing costs in the city drive workers into the county, where they face additional burdens of commuting and what have you. For many of these people, their property values are their nest egg. When those values decline, it has a profound negative impact on their quality of life and quite possibly on that of their children and grandchildren. The question becomes, if the people in Lolo that surround this project can be negatively impacted by this, how many more out there in the county are there that could also be facing this soon? On the other hand, we have a major employer in the area. They pay good wages and benefits. That's important too. Now they're facing a changing game plan. In this case, I happen to agree with Carey that we need to identify the gravel resources that are available in the county and to protect them, but I also believe that we need to identify the human resources that are in the county and also protect that. Thank you.

Chairman Jean Curtiss: Thank you, Mr. Daneke. Next on the list is Stan Dugdale.

Stan Dugdale: My name's Stan Dugdale, D-U-G-D-A-L-E, live at 3480 Jack Drive. I'm Vice President of LS Jensen Construction and ready mix. Thank you for listening to my comments. I feel that I'm here speaking as a representative of many local aggregate producers, businesses, and landowners. I think our community needs to support affordable aggregates. We need aggregates in our community and we need them to be affordable. We need to support aggregate producers, which I feel Knife River is. I do support responsible land use planning. I don't feel this emergency zoning is an effective way to take care of our aggregate needs in the valleys. I feel that we need to have responsible aggregate producers and [inaudible] that meet or exceed the law, that they meet or exceed industry standards, and follow the best practices or the good neighbor policies that the Montana Contractor's Association has developed. Thank you.

Chairman Jean Curtiss: Thank you, Mr. Dugdale. Alex Beal.

Alex Beal: I'm Alex Beal and this is Harrison. Mama's got some flu-like symptoms, so we're having dad day today. I am an attorney, though I'm not here in that regard. I'm here because I live at the southwest corner of the CA-3 district there, as does Harry. It's one of those little quirks of us attorneys, we always feel like we have to comment on legal things, but you don't have any spot zoning problems and certainly Mr. Sehestedt will talk to you about that. I would certainly advice you to take his advice with all due respect to the rest of us out here. The room is a little thick with lawyers. He is the best one in the room and I do advise you to take his counsel seriously.

What I am here though to talk to you about is an emergency. Maybe it's just a little fortuitous that my wife was sick and Harry's up commenting with me today because he is your emergency, right here. We live, like I said, at the end there and there's a draw that follows more or less Valley Grove Drive. The wind blows up the draw all morning long. What you have there is a situation where all the dust, all the asphalt byproducts, and things like that, they're all blowing right up the hill, right past us, all morning long during the large portion of the time when they're going to be doing work. That's the emergency and it's not just Harry, it's the other little kids who live on those blocks and their little developing minds. They're not going to benefit from the kind of chemicals that are

involved in asphalt and they're not going to benefit from the particulate matter that comes from a gravel pit. I certainly sympathize with Knife River and Mr. Allen and everyone else. I've got no problem with someone trying to make a living and make a profit, but at the same time we have to consider what the costs are there, what the costs are to the rest of the people. Apparently, he's a big supporter. There are places where gravel pits are appropriate and places where they're not. I really encourage you guys, hopefully during the time of this interim zoning, to look at a big picture assessment of where it is appropriate to have gravel pit and where it isn't and start to do this on a bigger picture way. It's not going to be a real benefit to do this piece by piece for anybody.

At the same time though, it's pretty clear what's going to happen in Helena with that DEQ case. The judge is going to tell them that they have to issue the permit and so we're going to have what is effectively a completely unreviewed process, an unreviewed gravel pit and asphalt plant. That concerns me quite a bit. While I think the best way to do this is as a big picture, at the same time, don't punish the people who live there because the DEQ can't get it right. I do encourage you to pass this resolution. If there are no questions, it's well past our naptime, so I think we'll go.

Chairman Jean Curtiss: Harry wanted the last word, however. Thank you, Mr. Beal. Jeanette Zentgraf.

Jeanette Zentgraf: I'm Jeanette Zentgraf, Z-E-N-T-G-R-A-F and I live on Sleeman Creek Road. I'm not directly affected by this, but as a neighbor of someone who lives in Lolo, my community means a lot to me. I believe that people have to stand together and I think for you people as public servants, you have a commitment to the citizens who live in this area. All of Ridgeway would be affected by the fumes and all that we've talked about. I don't have to go into detail about any of this, it's been well expressed. It's not a service to the citizens who live there and I know a good number of those involved with the various businesses and so forth, the industry, [inaudible] lose money if they have to go into the outskirts and bring in gravel and so forth, the asphalt from a distance. It will cost them money, it will cost them gas, but there's no question, it's going to cost the people in property value who live throughout that area, all of Ridgeway, all of the homes, not just the immediate ones. So I just ask you to be compassionate to those of us who attended those meetings in 2002 and we're so happy to think that our community would be safer. [Inaudible, too close to microphone] of open space [inaudible] is vulnerable and the recommendation was for something really worthwhile. We thought the original plan was very good. This is our request, that you do support this resolution. Thank you very much.

Chairman Jean Curtiss: Thank you, Ms. Zentgraf. Wendy Sturgis.

Wendy Sturgis: Wendy Sturgis, its S-T-U-R-G-I-S and I live at 10980 Sleeman Creek Road. I'm the executive director of the Lolo Water Shed Group. In my position through work, I have concerns about safety, of course, but mainly impacts to the water aquifer and our groundwater's important, and what will drain to the river. Also, even more important probably air pollution. Somebody earlier just referred to the breeze moving up the hill in the morning. Even though I live two hills away and I'm not directly in the neighborhood, I'm not here saying I don't want this because it's in my backyard, I'm saying this is the whole town that's affected by this. It's not isolated to just people who live surrounding the area. Property values are much broader than a particular street or neighborhood, but a whole town and community.

As a citizen, I'm here just hopefully I'm speaking for fifty or a hundred, maybe hundreds of people who have showed up today to voice their support, but chose or couldn't leave their jobs to be here today. I think that people who live outside the neighborhood of this proposed asphalt plant are most certainly affected by and concerned about this. I also just encourage you to recognize that many people did work for years to learn about zoning, as citizens before it was even a household word. I'd say five, 10, 15 years ago, zoning is not something people embrace quickly or easily or learned about, and I think it's been moving along, thanks to the work of people in planning to help people to understand how they can look forward. I think in some ways it's frustrating for the public to be invited to participate in either public meeting that are scheduled when they can attend or to spend time in meetings trying to come to consensus with a diverse view of their neighbors, and then have their hard work later on not considered. When I read through the proposal, I think what really struck me is that there already is a land use plan for this area that has been worked on for years by people of diverse backgrounds and interests, who have tried to work together. As the county has been able to get out to more rural areas like Lolo and help people learn and plan, I couldn't think of another way to say it, but I imagine that many people feel like it's a slap in the face to be told to participate and come out to try and plan what you envision for your community and then have, since it's currently unzoned, have something industrial come in and be approved, which is like pulling the rug out from under the public process. So why invite people to meetings and help when no one's going to listen to or consider what's already been laid out.

We're in a Catch 22. I understand business needs things to move along in a certain pace to work out. I'm all for people running their business in an efficient and cost-effective way, but in this case, I do see the emergency being people have planned and they'll probably just about to figure this out and zone it. I just urge you to follow the existing land use plan such as it is, that's the consensus so far, and what's appropriate for this area. I would just say, I think continuing to allow permits, business permits, to be processed before you have zoning in place, it's like spot permitting. You worry about spot zoning, why not finish the process that the public counts on the county to do and figure out where it's appropriate before you allow people to permit and do some damage that they can't undo later? Thank you very much.

Chairman Jean Curtiss: Thank you. Pamela Gehrig.

Pamela Gehrig: My name is Pamela Gehrig and I live on 8000 Mull Road in Lolo, Montana. I've been before you many times regarding this topic and just recently my husband and I purchased land very close to this area and we weren't sure today whether or not our land was affected by this or not. It was a purchase from Plum Creek. We purchased 160 acres. We decided that whether we were or were not that we were very much in favor of this resolution. Having 180 acres in this area, again we support doing this.

I just wanted to make a couple of comments because I've been to many of these meetings about some of the things that have been said. We do know that the DEQ is very short-staffed and, in theory, they could monitor and do everything that they're supposed to do, but we know that the reality of that is just not the case. It is the difference between theory and reality. It looks good on paper, but it is not realistic with the current staffing that they have. I know that Knife River and JTL has a good record and they're very responsible people, but when you think about [inaudible] for those of us who live out there, you really, you really have to look at Highway 93, and that stretch of Highway 93, it really has a life of its own. I'm not sure that JTL, or really anybody, can control all the circumstances that happen out there. In fact, I think it's impossible. I think there are things that are out of everybody's control on that very dangerous highway and, with the speeds at 80 miles an hour, I think there's really only something you can do. Again, it's more of a theory versus what reality is that happens out there every day. There seems to be a lot of talk about what happens in Missoula, what would happen in Missoula, Reserve Street versus the impact of Lolo. I will tell you that I frequent Reserve Street and Reserve Street is a cakewalk compared to Highway 93. If anybody disputes that, then they can come spend a week or two in Highway 93. I almost took offense to that. In fact, I do take offense to it, very much offended by that statement.

I do agree that we do need to determine where the appropriate places are for gravel pits and asphalt plants. They are necessary and we do need them because we all like to travel on very nice newly blacktopped or, you know, new roads. Everybody needs that, we all need it, but there has to be a balance about where you get the material. To my knowledge, it's not the responsibility of Missoula County to determine the profit margin of JTL. I know it isn't. I also work for a very large corporation that's probably and three billion dollar company and I don't think it's the responsibility of [inaudible, too close to mic] place is located for the county to determine what their profit margin is. As far as the people that are talking about that are in favor of this, I'm almost certain that they don't live in the area. It's very easy to determine the outcome of this type of a place or to want to determine it, if you don't live there, if you're really really impacted by it, and we are. I would say that several of the people that are for it are not.

To the point of, [inaudible] ongoing dispute with the town of Lolo or Valley Grove and the people off of Bird Lane and Mull Road, the dispute [inaudible] with Ken Allen. I personally have nothing against Ken Allen. I would love to sit down with Ken Allen and anybody who wants to discuss what is going to happen in this field. Yes, he does have the right to develop this field. In fact, he has permission to build these condos now, but not at the risk of our safety and that has always been the issue. That has for me. I have nothing against Ken Allen or any of the people from JTL or anybody. I just would like to be able to travel safely on that highway and none of those people can guarantee that I can do that. Until they can, I need--who do I hold accountable if I can't? They don't want to be held accountable. So I too agree that this resolution will give us time to look at the big picture, to resolve this ongoing dispute because it has been a dispute. There's no questioning that. We are just as tired of this in the community of Lolo as they are. That is the truth. Everybody wants this to have some type of a resolution. We just ask that it be fair. Thank you.

Chairman Jean Curtiss: Thank you, Ms. Gehrig. I think that's all the names that I have that checked that they wanted to speak. Is there someone who's changed their mind or came in late? Go ahead and come to the microphone. What is your name?

Bill Burt: My name is Bill Burt, B-U-R-T. I'm the property owner of 8989 Bird Lane. [Tape ended.] I'm also a law enforcement officer here in Missoula. I have been a law enforcement officer since 1992. Having lived in that particular area, unless the Department of Transportation does something about the way traffic does merge or exit from there, there currently is no merge lane. People often use the center lane as a merge lane, but that's not what it's designed for. It's strictly designed to be a turning lane. It was described [inaudible] earlier about the 16 belly dump trucks; you can imagine how slow and how long it takes to get one of those trucks moving. There is no way that traffic is going to be able to safely merge or exit the highway in that area and it will--speak to any law enforcement officer in the community, they will tell you that this will result in crashes. It will result in serious injury; it will result in people being killed. I think the rest of the people up here touched on the rest of my comments pretty well. It's just if people--if the people that are standing here before you telling you that this is a good idea, they just don't live in the area. This is strictly about profit to them; it's strictly about money. The people that are standing before you asking you for this interim zoning are people who live there and they're concerned about safety, health issues, and traffic issues. Thank you.

Chairman Jean Curtiss: Thank you, Mr. Burt. Is there anyone else who would like to speak who didn't have the opportunity yet? Would Knife River or your attorney like to make any rebuttal statements? Okay. At this time, we'll move to executive session for the Commission to discuss what we've heard today and what we've heard previously and ask questions. I tried to make a note of some of the questions folks asked. One question that I have, that I'm sure if anybody knows for sure, but I'll ask Mike to start with. If the judge orders a permit be granted, at least in reference to the most recent cases that have happened in this regard, will DEQ be able to condition that permit or will they have to grant the permit as proposed.

Mike Sehestedt: What the order says is, "Based on the above, it is hereby ordered, judged, and decreed the Department of Environment Quality forthwith issue a permit, allowing the operation of the Cameron Springs Gravel Pit as requested in the application submitted and found acceptable by the department."

Chairman Jean Curtiss: So that was one of the cases recently?

Mike Sehestedt: Yes, I'm sorry; I was quoting from Cameron Springs LLC versus Department of Environment Quality and Richard Oper [phonetic], its director. The date of the decision is 23 April 2008.

Commissioner Larry Anderson: Given that decision, that would be imposing conditions or restrictions in the original application rather than any restrictions developed by DEQ.

Mike Sehestedt: That is what the decision appears to say flat out. Different cases may result in different decisions, but all I've got going for me is the recent writ of mandamus decisions involving gravel operations, DEQ, and the failure to complete the permitting process in a timely manner.

Commissioner Larry Anderson: If that court ruling does not address the MDT application or other environmental concerns, that bothers me quite a bit.

Mike Sehestedt: No, it does not. What we heard here and what we heard before is that if they use the access proposed in their application, it would be treated as a new access by the Montana Department of Transportation before a permit would be granted for that access, Montana Department of Transportation would most likely require a traffic study and then, based on the results of that traffic study, impose certain conditions on that permit. I suspect, based on history, that MDOT might well require some fairly extensive modification. I don't that, I doubt that MDOT could speak to it at this moment without the traffic study.

Chairman Jean Curtiss: One other question that I wrote down is a couple folks brought up spot zoning.

Mike Sehestedt: I'd be happy to respond to that. Two points, first of all this zoning is in accordance with the adopted Growth Policy and, specifically, the Lolo Plan component of that. Second, with particular reference to the property involved in the gravel pit, I would note that the adjoining property, to basically the west and the north, is currently included in a citizen-initiated zoning district, which limits uses there to residential uses. This, in that regard, can be viewed as simply an extension of that district. I don't think it's appropriate to characterize it as spot zoning when it's done in accordance with the Comp Plan--or excuse me, Growth Policy. I think it's particularly inappropriate where the zoning substantially matches the zoning on adjacent property.

Chairman Jean Curtiss: Thanks. The next one I wrote down was the issue of notice. The reason we're here on such short notice is because we had short notice and need to have a meeting before Monday.

Mike Sehestedt: I would respond to that. One, this is emergency zoning and, while you commonly think of emergencies as floods, famine, something else associated with the Four Horseman of the Apocalypse, this is situation in which the emergency arises because of essentially a regulatory failure. I say that without faulting DEQ. They've been literally buried as a result of growth and activity with these permit applications, but, as a consequence, they're not getting them processed timely. When these kind of cases arise, and I understand the frustration of the applicants as well, and the court looks and says, time has run, we're granting--DEQ has violated its rules, it's violated the statute, we're granting the permit as applied for. If there are serious environmental or serious traffic problems involved in project, the fact that it's not going to be reviewed and may not be appropriately conditioned creates an emergency. We just discovered this by happenchance and it's nobody's fault, nobody was under any duty to tell us, but by happenchance that this legal action had been filed with regard to this particular pit, and when we followed up on it, basically street gossip, we discovered that the hearing was set for next Monday.

We're going to act with any hope of it being effective than the duty to act is now. We had the same short time and short notice. It's not the way we like to do things, but fortunately, this was an issue that was heard previously. We did get a lot of comment on it. The action that's proposed is action in accordance with the Lolo Area Plan, which receives substantial public testimony and public comment. Again, I'm not particularly happy about it, I wish I'd known a month ago and we could have dealt with this in a much more deliberative manner, but that may just be the nature of an emergency.

Chairman Jean Curtiss: One other question that Mr. Miller asked was if they followed the law because of wells within 1,000 feet of the project could be affected. I believe that's what we expected DEQ to address.

Mike Sehestedt: That's a DEQ issue, to determine what the zone of impact is and what adverse impacts, if any, could be expected as a result of the action. Reach a conclusion and propose appropriate mitigation. There is, it's been noted, a draft EA out that addresses some of that. There was substantial additional public testimony to DEQ at a hearing on this. It does not appear that that has been integrated or addressed in a revised EA. I'm not in a position to say whether or not the application was adequate, that's DEQ's job, resultive workload, apparently, they're not going to get it accomplished, and apparently, the court will order them basically to skip it and issue the permit.

Chairman Jean Curtiss: Thank you. Are there other questions, Commissioners?

Commissioner Larry Anderson: Several comments were made regarding the need to inventory these gravel deposit areas in the county. Has that been done or has that been undertaken, does anyone know?

Mike Sehestedt: I think the answer to that is there's no formal governmental inventory and, essentially, gravel deposits exist throughout the county, in riparian areas particularly. There are others in dry [inaudible]. It would be a task that you could assign to Planning or Rural Initiatives, but I don't believe it's been done yet.

Chairman Jean Curtiss: Any other questions? Comments? Discussion?

Commissioner Larry Anderson: I guess I'd share much of the concern about the lack of DEQ's ability to perform its duties too. It's also, I guess, a problem for all of us. That sets up a situation that we'll have to deal with these issues here. I just want to state that it is certainly not my intention to denigrate the fact that we need gravel, we need asphalt if we're going to maintain our infrastructure and generate the economic development that creates jobs and industry in this area. We need gravel every day for foundations, concrete blocks, asphalt driveways, or asphalt roadways to our homes. So it's a critical and vital part of where we live, but at the same time, what we were told by the DEQ back in December was the fact that the environmental assessment would be done and the issues that the public expressed concern about would be addressed.

Mike Sehestedt: Let me touch a couple of other comments that were made. One is it's not the applicant's fault that DEQ didn't do its work timely. It's not the citizen's fault that DEQ didn't do its work timely. Frankly, given the volume of work that DEQ is dealing with, given their staff, I would join Judge Sherlock in that decision I just quoted from and say I'm not faulting the department either for this, but, as a result of the review not happening,

you're confronted with either taking a chance that there are no adverse impacts or making whatever other decision you deem appropriate.

The traffic concerns were a very real part of the rejection of the residential subdivision here and when we thought that the traffic concerns would be addressed by MDOT review and permitting, rather than by use of existing county roads, as was the case in the subdivision, that issue became something that could be resolved through another process, through engineering and technical studies and approach. I continue to be concerned about the possibility of Valley Grove becoming the access for this if Knife River/JTL is not able to reach agreement with MDOT on the conditions for that access permit. That will be an amended or an amendment to an existing permit. A far less rigorous process and given how little we get told about these, I'm not sure we'd have an opportunity to object before it was done. Something needs to be done to address that; something needs to be done to address the funding for DEQ or the timelines for these reviews. We had a legislator here and I saw a couple of candidates in the audience early, but I think they've all snuck off, probably to start their door-to-door for the weekend. For whatever its worth, I think this highlights a legislative fix.

One other thing, interim zoning can be undone just by a resolution, but to put permanent zoning in place and I think everybody better take a deep breath because interim zoning's good for only one year. It can be extended for one year thereafter. At that point, it lapses. If you haven't placed permanent zoning, in effect, before that happens, you're barred for one year from--Commissioners are, from undertaking any zoning. That zoning put forward by the County Commissioners is subject to protest. Protest can kill it in one of two ways. One, in any particular zoning classification, if 40% of the property owners by nose count protest the zoning, its dead, can't be attempted again for one year. Alternatively, within any zoning district, if the owners of 50% or more of the property taxed as either forest or agricultural land protest, the zoning is dead. Acres count if the acres are taxed as farm or forest and if 50% of those acres protest, the zoning dies. Property owners count and it's a strict nose count in terms of property owners, a minority, 40%, can kill zoning in any particular area. Bear in mind, unless there is consensus, not only within the community but within each zoning district that zoning is appropriate, this is merely an interim, temporary fix, given existing law.

Chairman Jean Curtiss: Thank you for clarifying those, Mike. So the first order for the Commissioner to decide today is whether or not we believe an emergency exists today that did not exist in December when we did not find that there was an emergency. What is the pleasure of the Commission?

Commissioner Bill Carey: I would offer a motion, but I would say beforehand that it's unfortunate that JTL/Knife River has had to go through this because they do provide an essential product to the area. They're extraordinarily good corporate citizens, many benefits have flowed out of there work here. I think that the contractors around Montana have a very legitimate grievance about, in this case, DEQ taking too much time to do anything, get the job done. I hope they can fix that in the legislature.

It's clear to me at least that there has been a deficiency in the regulatory process in this regard and we all take very seriously the profound duty that we have as County Commissioners to do what we can to ensure the health and safety of our citizens. In my view, we need to error on that side of this particular equation and somehow find the time to do this right.

Commissioner Bill Carey made a motion that the Board of County Commissioners find the application of a permit from the JTL Group, also known as Knife River, constitutes an emergency related to issues of public health, welfare and safety, because the Board of County Commissioners find a deficiency, or failure, of the regulatory process regarding these issues as promulgated by the State of Montana Department of Environmental Quality and the State of Montana Department of Transportation.

Commissioner Larry Anderson: I would just like to add in regard to the emergency, I think the court case that is quoted by the Deputy County Attorney regarding JTL/Knife River may be completely different and a different decision may be made. That's one of the great unknowns that the court decision could render. It could find in favor of DEQ, it could find in favor of JTL/Knife River, so right now, given that great unknown, I think that--and it's impact in possibly granting the permit without the benefit of a full Environmental Assessment or full traffic impact study that I would concur that an emergency does exist.

Commissioner Larry Anderson seconded the motion.

Chairman Jean Curtiss: It's been moved and seconded, is there further discussion? I too agree that, unfortunately, there's just no certainty of review or the environment assessment being done and conditions to mitigate that at this time, which puts us in a bad position. I would recommend that all of you that came and testified today also contact your legislator, the Governor's Office, the DEQ, whoever and say, come on, we need to get our work done, because it's not fair to a good corporate citizen to put in a legal application and not even get it reviewed so that they can meet the conditions that would make it meet health and safety regulations.

The motion carried on a vote of 3-0.

Commissioner Bill Carey made a motion that the Board of County Commissioners find that the proposed Zoning Resolution #2008-066 adopting zoning in the North Lolo area addresses this emergency and is consistent with Missoula County's Growth Policy. Commissioner Larry Anderson seconded the motion. The motion carried on a vote of 3-0.

Public Comment

Chairman Jean Curtiss: That concludes the business that was on our agenda today, but at this time, we would accept public comment on items on the agenda. Is there anyone who wants to make public comment on other items?

Other Business

There being no further business to come before the Board, the Commissioners were in recess at 3:51 p.m.