

COPY

In The Matter Of:

*Kleinhans Farms Estates, LLC v.
Flathead County*

*B.J. Grieve
September 24, 2009
DV 08-614(B)*

*Martin-Lake & Associates, Inc.
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Attorney Notes

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1 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT
 2 OF THE STATE OF MONTANA
 3 IN AND FOR THE COUNTY OF FLATHEAD
 4
 5 KLEINHANS FARMS ESTATES, LLC
 6 Montana Limited Liability
 7 Company,)
 8 Plaintiff,) No. DV-08-614(B)
 9 vs.
 10 FLATHEAD COUNTY,
 11 Defendant.
 12
 13
 14 DEPOSITION OF
 15 B.J. GRIEVE
 16
 17
 18 On September 24, 2009, beginning at 9:33 a.m.,
 19 the deposition of B.J. GRIEVE, appearing at the
 20 insistence of Plaintiff, was taken at the Earl Bennett
 21 Building, 1035 First Avenue West, Kalispell, Montana,
 22 pursuant to the Montana Rules of Civil Procedure, before
 23 Bambi A. Goodman, Registered Professional Reporter,
 24 Certified Realtime Reporter, Notary Public.
 25

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1
 2
 3
 4 A P P E A R A N C E S
 5
 6 Terance P. Perry, Esq.
 7 DATSOPOULOS, MACDONALD & LIND, P.C.
 8 201 West Main Street, Suite 201
 9 Missoula, MT 59802
 10 406-728-0810
 11 appeared on behalf of Plaintiff.
 12
 13 Alan F. McCormick, Esq.
 14 GARLINGTON, LOHN & ROBINSON
 15 199 West Pine
 16 Missoula, MT 59802
 17 406-523-2595
 18 appeared on behalf of Defendant.
 19
 20 Also Present: Keith Simon and Sean Averill
 21
 22
 23
 24
 25

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1 I N D E X
 2 WITNESS: PAGE:
 3 B.J. GRIEVE,
 4 Examination By Mr. Perry 4
 5
 6
 7 EXHIBITS:
 8 Deposition Exhibit No. 67
 9 (Flathead County Planning and Zoning
 10 Report #FPP-07-32)
 11 marked for identification 28
 12 Deposition Exhibit No. 68
 13 (1/17/08 Letter; Sands Surveying to
 14 BJ Grieve)
 15 marked for identification 86
 16 Deposition Exhibit No. 69
 17 (12/6/07 Handwritten Notes)
 18 marked for identification 88
 19 Deposition Exhibit No. 70
 20 (3/5/08 E-mails Spratt/Grieve)
 21 marked for identification 97
 22 Deposition Exhibit No. 71
 23 (Summary of 4/22/08 Conversation)
 24 marked for identification 116
 25
 26 Reporter's Certificate 127
 27
 28 * Denotes phonetic spelling
 29
 30

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1 B.J. GRIEVE,
 2 having been first duly sworn to testify to the truth,
 3 the whole truth and nothing but the truth, testified
 4 upon his oath as follows:
 5 EXAMINATION
 6 BY MR. PERRY:
 7 Q Good morning, sir.
 8 A Hello.
 9 Q My name's Terance Perry. I represent Kleinhans
 10 Farms, LLC with regard to the North Shore project. I
 11 believe you're familiar with that project.
 12 A Yes, sir.
 13 Q I'm going to ask you a few questions here today
 14 about your involvement in the project. And during the
 15 course of the deposition, if you don't understand one of
 16 my questions, just tell me, I'll be happy to rephrase
 17 it. If you need to take a break to use the men's room
 18 or get a glass of water, that's not a problem, take a
 19 break anytime, as long as there's not a question in
 20 front of you at that moment.
 21 The court reporter, in order to have an
 22 accurate transcript, can only take down verbal
 23 statements, so you have to verbalize your answers. You
 24 can't nod your head or motion, that type of thing.
 25 Could you please state your full name for the

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1 record.
2 A Brandon Scott Grieve.
3 Q And could you spell your last name.
4 A G-r-i-e-v-e.
5 Q And your date of birth?
6 A January 12th, 1977.
7 Q And your current residential address?
8 A 1826 Bluestone Drive, Kalispell, Montana.
9 Q And for how long have you lived in Kalispell?
10 A Since July 4th of 2003.
11 Q Two thousand three. Are you originally from
12 Montana?
13 A No, sir.
14 Q When did you first live in Montana -- move to
15 Montana?
16 A July 4th, 2003.
17 Q Okay; where did you live before that?
18 A Greenville, North Carolina.
19 Q And is that where you were born and raised?
20 A No, sir.
21 Q Where were you born and raised?
22 A Just outside of Madison, Wisconsin.
23 Q Can you tell me a little bit about your
24 educational background, starting with where you attended
25 high school?

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1 A I attended high school at Wayland Academy in
2 Beaver Dam, Wisconsin. Then I went to undergraduate at
3 University of Wisconsin Whitewater, in Whitewater,
4 Wisconsin. Then I went to graduate school at East
5 Caroline University in Greenville, North Carolina.
6 Q When you graduated from undergraduate, what
7 degree did you receive?
8 A Geography, a bachelor of science in geography.
9 Q And what was your course of study in the
10 master's program?
11 A Geography.
12 Q And you graduated from the master's program?
13 A Yes, sir.
14 Q After you graduated from the master's program,
15 what did you do, if anything, do for employment?
16 A I worked for Smith Surveying & Consulting here
17 in Kalispell.
18 Q And what year would that have been?
19 A Two thousand three.
20 Q Two thousand three? And can tell me, are you
21 currently employed?
22 A Yes, sir.
23 Q And where?
24 A Flathead County Planning and Zoning.
25 Q And what is your current position with Flathead

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1 County Planning and Zoning?
2 A The assistant planning director.
3 Q And to whom do you directly report?
4 A Jeff Harris.
5 Q For how long have you been the assistant to
6 Jeff Harris?
7 A Approximately four years. The anniversary date
8 of my position is September, so almost exactly four
9 years.
10 Q Almost four years as the assistant to Jeff
11 Harris?
12 A As the assistant planning director.
13 Q And was he the planning director during that
14 entire four-year term?
15 A No, sir.
16 Q Who occupied that position before Mr. Harris?
17 A Forrest Sanderson.
18 Q And do you know for how long he occupied that
19 position while you were employed by the county?
20 A I started work at Flathead County Planning and
21 Zoning on March 1st, 2004, and he was the planning
22 director until the end of 2004.
23 Q Okay. And so would it be fair to approximate
24 Mr. Harris's assumption, so to speak, of the position of
25 planning director to have occurred sometime during 2006?

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1 Is that about right?
2 A No, sir. Jeff Harris became the planning
3 director in -- in -- it would have been June of 2005,
4 approximately.
5 Q June of 2005; okay. So you've answered to him
6 since June of 2005?
7 A Yes.
8 Q Okay.
9 A And between Forrest Sanderson leaving and him
10 being hired as the director, Johna Morrison was the
11 interim director. And I answered to her during that
12 time.
13 Q Okay. And during 2007 and 2008, that time
14 period, were you then the assistant planning director
15 for Flathead County?
16 A Yes, sir.
17 Q And can you describe for me, in a general
18 sense, what that job entails, in terms of your job
19 responsibilities?
20 A Supervising the planning staff in terms of
21 workload and many routine personnel issues such as
22 scheduling planner on duty, performance evaluations.
23 Also, many projects to which I'm assigned are projects
24 that require a degree of experience which, due to
25 turnover, not all the planners have always had. So,

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1 therefore, if there's institutional knowledge which
 2 would be beneficial to the project, or if there's a
 3 level of experience which would be beneficial to the
 4 project, or if the project -- yeah. So that's the
 5 general nature of the work projects I do in addition to
 6 the supervising -- you might say supervising
 7 responsibilities.
 8 Q And I know in this case, with regard to the
 9 North Shore Ranch project, you had occasion, I believe
 10 you did, correct me if I'm wrong, to render some staff
 11 reports regarding the project. Is that true or untrue?
 12 A Explain "render" and "staff reports," plural.
 13 Q Sure. Let me just show you one and ask you if
 14 it's something that you drafted or had any part in
 15 drafting.
 16 In front of you is Exhibit 51 down in that
 17 pile.
 18 A Okay.
 19 Q Is the document marked as Exhibit 51 dated
 20 February 1, 2008 captioned Flathead County Planning and
 21 Zoning Subdivision Report Number FPP-07-32 North Shore
 22 Ranch Subdivision, a document that you wrote?
 23 A Yes.
 24 Q Okay. And was this a document that you wrote
 25 in its entirety? Or did other staff assist in drafting

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1 any of the sections, or how did that work?
 2 A I wrote it in its entirety.
 3 Q Okay. And in a general sense, since you became
 4 assistant planning director, have you had occasion to
 5 render other staff reports like Exhibit 51?
 6 A For other subdivision projects?
 7 Q Yes, sir.
 8 A Yes, I have.
 9 Q Okay. And I'm going to tax your memory a
 10 little bit here today. If you don't know, that's fine.
 11 I'm just going to ask you some questions about, you
 12 know, in the time you've been assistant planning
 13 director, can you approximate for me how many
 14 subdivision applications you've written a staff report
 15 regarding; your best approximation?
 16 A Approximately three dozen.
 17 Q Okay. So maybe approximately eight or ten a
 18 year? Would that be about right, since you became --
 19 A No, it couldn't be -- it would not be accurate
 20 to approximate it that way, simply because when I first
 21 started working for the planning office, I was working
 22 more with subdivisions than I do now.
 23 Q Okay. When did you experience a decline, so to
 24 speak, in reviewing subdivisions?
 25 A It wouldn't be accurate, necessarily, to say "a

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1 decline in reviewing subdivisions" as much as a reduced
 2 number of subdivisions, because the subdivisions I did
 3 have were larger and more complex.
 4 Q Okay.
 5 A Therefore, for example, I have not done a minor
 6 subdivisions, which is five lots or less, in quite a
 7 while. I don't remember the last one I did. But -- and
 8 I have not done a subdivision in 2009 at all.
 9 Q Okay.
 10 A But in 2007 and 2008 -- I believe in 2007 I did
 11 approximately three or four, and in 2008 I did two or
 12 three.
 13 Q Okay. And would it be fair to say that at some
 14 point in time while you were assistant planning
 15 director, you were assigned the task of evaluating
 16 larger subdivisions versus smaller ones?
 17 A Not officially.
 18 Q Okay; how did that work? How did you -- and I
 19 don't want to misstate your testimony. I think you said
 20 that as time progressed, you were kind of not involved
 21 so much in reviewing small subdivisions, under five
 22 lots, but you were concentrated more on larger
 23 subdivisions. And my question is, when did that first
 24 start to occur?
 25 A Soon after becoming assistant director, the

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1 subdivision -- boy, that's a difficult question to
 2 answer specifically because, due to staff turnover
 3 throughout my time with the planning office, it has
 4 always been -- the -- correctly describing a mechanism
 5 by which files are assigned to planners is difficult.
 6 Because over time, if a file was -- if the other
 7 planners had full workload and I was available, I would
 8 take a file. If a file was maybe more complicated, Jeff
 9 would say I would prefer you to work on that file.
 10 There was no -- there was no standard way of assigning
 11 files that was always true throughout every year. It
 12 was -- assigning subdivision files was based on
 13 workload, based on perceived complexity of the file, and
 14 so it's difficult to say with one sentence Here's how
 15 it's done.
 16 Q Sure; no, I understand. Let me see if I can
 17 ask it another way. After you became the assistant
 18 planning director, would it be fair to say that if you
 19 had time available to you to work on a given project,
 20 Mr. Harris would generally assign the larger
 21 subdivisions to you for your review?
 22 A No.
 23 Q No?
 24 A Because "larger," larger based on what
 25 qualifying factors such as number of lots, larger in

1 terms of public involvement or public desire for
2 involvement? Therefore, it would be difficult to
3 quantify it based on the term "larger" subdivisions. It
4 would primarily be based on, I guess -- I understand
5 your question.

6 Q Let me see if I can ask it another way.

7 A Okay.

8 Q Maybe that wasn't a good question either.

9 Would it be fair to say that after you became assistant
10 planning director, if there were a complex subdivision,
11 a term that you have used, would it be true to say that
12 Mr. Harris generally assigned those subdivisions to you
13 versus other planning staff for review?

14 A Not always. Because although the files I was
15 assigned were commonly more complex, there were some,
16 such as Whitetail Pines that I processed in 2008, which
17 was not particularly complex. But I had the time
18 available in my workload to process that subdivision.
19 Therefore, I offered to take it because other planners
20 were busy and were -- had items to work on. So I
21 offered to take it. So you can see from that example
22 that it's not accurate to say I was always assigned or I
23 always -- you know, it would be fair to say that due to
24 my level of experience, I was utilized for processing
25 subdivisions.

1 Q How many lots was that one?

2 A I don't recall.

3 Q More than 300, though?

4 A Yes, I believe it was. That's why I include
5 that one is I know that it was very large. It was a
6 very large number of lots. Tree Farm at Whitefish had a
7 large number of lots.

8 Q And do you recall, in a general sense, in what
9 year you processed the Hungry Horse Villages
10 subdivision?

11 A Hungry Horse Villages was in 2007 or 2008.
12 Because of the time involved in processing a
13 subdivision, I can't recall the exact date it was
14 submitted or that I prepared the staff report or that
15 the planning board hearing was held, because that can be
16 a long period of time.

17 Q Sure.

18 A It can be spread out over a period of two
19 years, 2007 or 2008.

20 Q Okay; same question with regard to the Tree
21 Farm at Whitefish.

22 A Two thousand seven or 2008.

23 Q So would it be fair to say that in the '07 to
24 '08 time period, you were processing three complex
25 subdivisions in excess of approximately 250 lots?

1 Q Okay; fair enough. Fair enough.

2 Would you characterize the North Shore Ranch
3 subdivision as a complex subdivision?

4 A Yes.

5 Q Okay. And this was a subdivision that
6 initially sought approval of approximately 310 lots. Do
7 you recall that, in a general sense?

8 A Yes.

9 Q Can you tell me, during the time you were
10 assistant planning director, did you process other
11 subdivisions of approximately that same number of lots
12 or larger?

13 A Yes.

14 Q Okay. Can you approximate for me how many
15 subdivisions you processed, as assistant planning
16 director, that involved 300 lots -- 300 proposed lots or
17 more?

18 A Specifically 300 or more?

19 Q In that vicinity.

20 A Two or three.

21 Q Okay. And aside from the North Shore project,
22 can you identify for me any other large project like
23 that?

24 A The one that I worked on around that same time
25 was Hungry Horse Villages in Hungry Horse.

1 A I guess it would be more accurate to simply
2 tell you the subdivisions I worked on during that time.

3 Q Well, and all I'm really looking at are the
4 larger ones that you and I had -- that you've discussed,
5 Hungry Horse Village and Tree Farm at Whitefish. And I
6 know from the records North Shore Ranch was being
7 processed as well. And I was just trying to sum up your
8 testimony.

9 A Yeah. And I'm trying to be as accurate as
10 possible. And the problem is I don't remember the exact
11 number of lots in many projects I worked on. For
12 example, Spur Wing Creekside in Lakeside. And I know
13 that was a larger project, but I don't remember the
14 exact number of lots, unfortunately. So that's why I'm
15 finding the questions a little bit challenging, because
16 I'm trying to be as accurate as possible.

17 Q Sure; and I appreciate that. Let me ask you it
18 this way. Would it be fair to say that in the '07 to
19 '08 time period, you were involved in processing at
20 least three subdivisions over 200 lots, perhaps more?

21 A Yes.

22 Q Okay. And among those would be the Hungry
23 Horse Villages project, Tree Farm at Whitefish and the
24 North Shore Ranch project.

25 A Yes. And I don't recall the exact number of

1 lots that were in Tree Farm at Whitefish. I remember it
2 was a clustered subdivision, therefore, it had a large
3 number of smaller lots with open space preserved. And
4 it was a planned unit development. For some reason, I
5 don't think it was around 300 lots, but I know it was a
6 good-sized project, both in number of lots and acreage.

7 Q Okay.

8 A And complexity due to the fact that it was a
9 planned unit development as well.

10 Q In the Hungry Horse Villages, do you recall
11 whether or not that project abutted any waterway of any
12 type, a lake or river?

13 A It did.

14 Q Can you describe that for me?

15 A It abutted the South Fork of the Flathead.

16 Q Okay. And do you recall, sitting here today,
17 whether or not that project was encumbered by the PP&L
18 easement?

19 A No, I do not believe it was, because it was the
20 South Fork of the Flathead. And the PP&L easement to
21 which you are referring is the flood easement for
22 Flathead Lake?

23 Q Yes, sir.

24 A Miles away from Flathead Lake.

25 Q Fair enough.

1 Lake that I should be aware of, in terms of my report
2 and my research on the project, and the fourth of which
3 was the presence of flood easements that were held by
4 PP&L, if not originally -- I don't believe PP&L was the
5 original. The original in the easements, I believe, was
6 Montana Power Company. And he wanted to make me aware
7 of those easements. And I asked him if the subject
8 property had those easements. And he said he didn't
9 know, but if I sent him legal -- a description of the
10 property, he would research that. So I e-mailed him on
11 that same date with a -- the section of my staff report
12 that discussed the location of the property, including a
13 map of the property. And he said he would get back to
14 me, which he never did.

15 Q Okay.

16 A So at that time, I was aware of the
17 existence -- that was the first I'd ever heard of flood
18 easements. And at that point I was aware that flood
19 easements existed, in his words, on some properties on
20 Flathead Lake. But at that point I did not know
21 specifically if that property had those flood easements.

22 Q And did you subsequently learn that the subject
23 property had those easements on it?

24 A The first time I saw those easements on the
25 subject property was when Katherine Maxwell presented

1 In the time that you've been the assistant
2 planning director, have you ever processed, aside from
3 the North Shore Ranch application, any other
4 applications that involved land encumbered by the PP&L
5 easement?

6 A Not since I learned that the PP&L easements
7 exist.

8 Q And when did you learn that?

9 A February 27th, 2008.

10 Q Okay. And how did you learn that; do you
11 recall?

12 A I received a phone call from Sean Morris, who
13 is an attorney with Worden Thane in Missoula
14 representing PP&L. And he -- the reason I know this
15 specifically is because I was reviewing some of
16 my -- prior to this, I reviewed some of my -- some of
17 the records from this, including staff reports and
18 whatnot. And I came across my notes from when I'd
19 received that phone call. Because I thought to myself I
20 should make a -- I should document this phone call. So
21 I did document that. And so it was -- that was the
22 date.

23 And it was after I had completed my staff
24 report and sent it out. He called me to tell me four
25 things, three of which were characteristics of Flathead

1 those documents at the public hearing.

2 Q And --

3 A Prior to Katherine Maxwell presenting physical
4 copies of those documents, during my staff presentation,
5 I mentioned to the planning board what Sean Morris had
6 mentioned to me on the phone.

7 Q Okay. And the public hearing before the
8 planning board, I believe, was on March 26th, 2008. So
9 that would have been about a month after you spoke to
10 Sean Morris?

11 A Yes.

12 Q When you spoke before the planning board, would
13 it be fair to say that you were of the opinion that
14 mitigation could address any potential risk of harm
15 posed by the PP&L easement?

16 A No.

17 Q Okay.

18 A The reason I say "no" is because your
19 question -- I perceive your question to generalize a
20 vast amount of details. And so, therefore, it would not
21 be accurate to say -- to summarize it at all that way.

22 Q Well, let me ask it this way. When you
23 determined or learned that the subject property, and by
24 that I mean the North Shore Ranch property, was
25 encumbered by the PP&L easement, did you form any

1 opinion as to whether or not residential construction
2 could safely occur on that property, given that fact?

3 A I did not form an opinion on that. I thought
4 it was noteworthy to present to the planning board for
5 their consideration.

6 Q Okay. And after you learned of the existence
7 of these PP&L easements on some properties on the lake,
8 did you do any further evaluation in terms of how many
9 properties on the lake were encumbered by the PP&L
10 easement? Did you look at any maps, anything like that?

11 A I did not, because those easements -- you give
12 the example of a map. Those easements are not mapped,
13 to my knowledge. And I did not do my own research
14 because I had e-mailed Sean Morris. He had said if I
15 e-mailed him a description of the property, he would let
16 me know if those easements existed on the subject
17 property. So I did not follow up on it. I waited for
18 his e-mail.

19 Q Okay; fair enough.

20 A I waited for him to contact me back.

21 Q Since you first became employed by the county
22 in, I believe you said, July 4th, 2003; is that correct?

23 A No; March 1st, 2004.

24 Q March 1st, 2004. Are you aware of any
25 subdivision application that was denied by the county

1 denied for those reasons. Wildlife and wildlife habitat
2 is a more general category that I feel has been a topic
3 of concern for a variety of subdivisions during my time
4 here but, unfortunately, I would not be able to
5 specifically say which ones. I just know that that is a
6 topic that is frequently addressed, discussed.

7 Decisions are made given consideration to that issue in
8 most subdivisions during my time here.

9 Q Okay. And let me just clarify my question a
10 little bit. On the subdivision applications -- or with
11 respect to the subdivision applications that you
12 actually processed yourself, do you recall any such
13 application that was denied by the county commissioners
14 predicated upon potential adverse impacts on the
15 Flathead WPA, whether it be wildlife or wildlife
16 habitat?

17 A No.

18 Q Okay. And by the way --

19 A You said that were "denied" based on --

20 Q Yes, sir.

21 A No.

22 Q And just so I'm clear, I think you testified to
23 this earlier but I just want to be clear, the projects
24 that you processed, subdivision applications that you
25 have processed while an assistant planning director, are

1 commissioners because it was encumbered by the PP&L
2 easement?

3 A No.

4 Q And aside from the North Shore Ranch project,
5 in the time that you've been employed by Flathead
6 County, have you ever become aware of any subdivision
7 application that was denied by the county commissioners
8 due to any potential risk of harm posed by seismic
9 activity in Flathead County?

10 A No.

11 Q During the time that you've been an employee of
12 Flathead County, have you ever come to learn of any
13 subdivision application that was denied by the county
14 commissioners due to any perceived risk of harm posed by
15 liquefaction?

16 A No.

17 Q During the time that you've been employed by
18 the county, are you aware of any subdivision application
19 that was denied by the county commissioners due to its
20 proximity to the Flathead WPA and potential impacts on
21 wildlife or wildlife habitat?

22 A Impacts to wildlife and wildlife habitat is a
23 category that -- the previous two questions, references
24 to seismic activity and liquefaction, are noteworthy
25 enough that I would remember if I'd heard of one being

1 all of those projects projects that were directly
2 assigned to you by Mr. Harris? Or how does that work?

3 A No. Typically, files come in. We accept the
4 application -- the front office accepts the application.
5 They do some administrative things with the file, such
6 as assigning a file number and logging it into their
7 records. And then, typically, the files are given to me
8 to assign to the planners. As I mentioned earlier,
9 assigning workload is typically my responsibility. And,
10 therefore, if a file comes to my desk which is -- which
11 I think would be interesting, I might take it. If I
12 think it is -- if it is complex or if I chat with the
13 director and feel that there's a reason for me to take
14 it, I'll take it. Or if the other planners are too
15 busy, or if I perceive that there is a fair distribution
16 of workload and that workload is very high and my
17 workload would allow for it, I will take the file. But
18 typically, assigning the files is -- all files,
19 subdivisions, conditional use permits, zone change
20 requests, is done by me.

21 Q And you processed the North Shore Ranch
22 application; correct?

23 A Yes, sir.

24 Q How did that application get to you for
25 processing, so to speak?

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1 A When Annie Thompson, who had the file before
2 me, she resigned, and Jeff requested that I take the
3 file.
4 Q Okay. And I noticed when I went through the
5 administrative record here, and by that I'm referring to
6 the documents here at the county regarding this
7 subdivision, the North Shore Ranch subdivision, there
8 were a number of planners that were involved at various
9 times on this file; correct?
10 A Uh-huh.
11 Q Yes?
12 A Yes.
13 Q Annie Thompson being one of them; correct?
14 A Yes.
15 Q And she resigned, and was somebody else than
16 assigned to assist in processing the file?
17 A After Annie Thompson?
18 Q Yes.
19 A I was.
20 Q And did Nicole Stickney Lopez -- is that her
21 name?
22 A Close enough.
23 Q Was she involved in processing the file, as
24 well, at some point?
25 A Yes. She -- to my best recollection, she was

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1 the original planner assigned to the original
2 application back in 2006.
3 Q Okay. To your knowledge, aside from --
4 A Let me -- I believe at that time, Kirsten
5 Holland and Nicole Lopez Stickney were assigned that
6 file together because of its size. At that time, there
7 was a brief period where we thought assigning two
8 planners to a project might be beneficial if it was a
9 larger and/or more complex file, for the sake of
10 teamwork.
11 Q Okay; fair enough.
12 A We then found out that didn't work as well as
13 we hoped.
14 Q Why not? Why didn't that work?
15 A Because two people can't be typing on the same
16 computer at the same time trying to write a staff
17 report. It just came down to eventually one person
18 needs to be the lead planner on a project. And if they
19 request help from someone else, fine.
20 Q Okay.
21 And so do you recall at what point you took
22 over processing this application, the North Shore Ranch
23 application?
24 A A date?
25 Q General -- your best approximation.

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1 A Sure. Generally, it would have been the very
2 end of 2007.
3 Q Okay.
4 A It would have been around -- I would have
5 gotten it around -- you might say officially taken over
6 in about December of 2007.
7 Q Okay. I'll ask you a tough question now. Can
8 you approximate for me all the time, hours, that you
9 spent processing the North Shore application; your best
10 estimate?
11 A Hundreds.
12 Q Hundreds of hours.
13 A Hundreds, easily hundreds. It was -- it was my
14 primary project for all of my time from December of 2007
15 until the end of March, April, 2008.
16 Q Okay. And obviously you felt -- or you had the
17 opinion at that time, obviously, that you possessed the
18 necessary skill set to competently evaluate and process
19 the North Shore Ranch application; right?
20 A I was assigned the file, so I determined to do
21 the best I could.
22 Q And let me ask it another way. When you were
23 processing the North Shore Ranch application, did you at
24 any point in time conclude, even just to yourself, that
25 maybe these issues were too complex for you to deal with

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1 or it was too complex a project for you to be able to
2 competently evaluate? And I'm not suggesting that's the
3 case.
4 A No.
5 Q Okay; fair enough. So it would be fair to say
6 that you felt you had the necessary skill set to
7 adequately and competently process this application.
8 A Yes.
9 Q And I noticed in going through the voluminous
10 record that's maintained by the county, there was a
11 preliminary staff report that was drafted regarding this
12 application, back in November of '07. Is that fair to
13 say?
14 A Define "preliminary staff report."
15 MR. PERRY: And that's probably a misnomer.
16 It was a staff report predicated on an application that
17 was subsequently amended.
18 Let me mark this as an exhibit.
19 (Deposition Exhibit No. 67 marked for
20 identification.)
21 Q (By Mr. Perry) Do you recognize the document
22 as the exhibit -- or soon to be marked as Exhibit 67?
23 A Yes, sir. That is Annie Thompson's staff
24 report that she prepared.
25 MR. PERRY: That she prepared; okay. And I

1 see that with respect to this subdivision
2 application -- did I give you a copy, Counsel?
3 **MR. MCCORMICK:** You did not.
4 **MR. PERRY:** My apologies.
5 **Q** (By Mr. Perry) I see with respect to this
6 staff report and the prefatory paragraph, the first
7 paragraph, it references the -- obviously, the North
8 Shore Ranch subdivision proposing to create 290 lots
9 south of Montana Highway 82 on approximately 367 acres;
10 fair to say?
11 **A** Yes.
12 **Q** Yes?
13 **A** Based on the document in front of me, yes, I
14 would agree with what you're reading.
15 **Q** And I see there's some handwriting up on the
16 top right. Do you recognize that handwriting?
17 **A** Yes; that is my handwriting.
18 **Q** I got this from counsel representing the
19 county, Attorney McCormick. And I'd suggest that it was
20 maintained, obviously, by the county. It's Bates
21 stamped FCPZ00592 on the first page.
22 **MR. MCCORMICK:** Just to clarify for you,
23 that Bates stamp was done by the county.
24 **MR. PERRY:** Okay; fair enough.
25 **MR. MCCORMICK:** That's how we received the

1 **Q** Okay; fair enough.
2 I see in this document, Ms. Thompson, she does
3 make a recommendation on the last -- second-to-last
4 page. Or I'm sorry; it's on page FCPZ982 to 983. It's
5 at the bottom of the page under the title
6 Recommendation. I see in the concluding several
7 sentences on FCPZ982, she stated, and I quote, "Staff
8 finds that with the findings of fact and conditions
9 recommended, it is possible that these issues may be
10 addressed by the time of final plat approval. Staff
11 therefore recommends the Flathead County Commission
12 adopt staff report FPP0732 as findings of fact and
13 approve North Shore Ranch subdivision subject to the
14 following conditions." After which are listed a number
15 of conditions. Have I read that correctly?
16 **A** Yes.
17 **Q** Okay. When you first became involved in
18 processing the North Shore Ranch application, did you
19 have any discussions with Annie Thompson, as the
20 previous planner on the project, with respect to her
21 conclusions and, in particular, with regard to her
22 recommendation of approval?
23 **A** I don't recall.
24 **Q** Okay; fair enough. And as you've testified, at
25 least since you've been the assistant planning director,

1 records in turning them over to you.
2 **MR. PERRY:** Even better.
3 **MR. MCCORMICK:** I thought you'd like that.
4 **Q** (By Mr. Perry) Fair to say you've seen this
5 document before?
6 **A** Yes, sir.
7 **Q** Did you take any part in drafting it?
8 **A** None whatsoever.
9 **Q** Okay. Did you become involved in processing
10 this application after this document was created?
11 **A** Yes.
12 **Q** And I see it's dated November 15, 2007. Would
13 it be fair to say that you became involved in processing
14 this application at sometime after November 15th?
15 **A** Yes.
16 **Q** Now, in the staff reports from the county that
17 you have written yourself, in the four years that you
18 were assisting -- or have been assistant planning
19 director, have you had any custom or habit in terms of
20 recommending or making recommendations regarding
21 approval of the application?
22 **A** I have a custom with regard to the topic of
23 recommendations in general on subdivision staff reports.
24 **Q** And what is that?
25 **A** I don't make them.

1 you have a custom, yourself, when you write a staff
2 report, to avoid making any recommendation in that
3 regard.
4 **A** Since I've been assistant planning director, I
5 don't think that would be completely accurate, because
6 my feelings about the topic of making recommendations in
7 subdivision staff reports has evolved as I have gained
8 experience in my job, as I've gained professional
9 experience, to a point where by 2007 to present, I don't
10 feel that there is -- I don't feel that -- that I don't
11 make staff report -- that I don't make recommendations
12 in subdivision staff reports. The reason I clarify is
13 because when I first became assistant planning director,
14 I believe at that time, based on -- based on input from
15 Jeff Harris, I was making recommendations, to my best
16 recollection at that time. So, therefore, there may be
17 staff reports from 2005, 2006 in which I do make
18 recommendations because, as I said, my thinking about
19 that topic and my professional opinion on that topic has
20 evolved and continued to grow over time.
21 **Q** Okay. Would it be fair to say that at some
22 point in time in the four years that you've been
23 assistant planning director, you came to conclude that
24 you would not provide opinions regarding approval in
25 staff reports?

1 A Subdivision staff reports?
 2 Q Subdivision staff reports.
 3 A Can you phrase that question again? Same way
 4 is fine, but again just to make sure I got it?
 5 Q Sure. I'm just trying to summarize. At some
 6 point in time during the fours years you've served as
 7 assistant planning director for Flathead County, you
 8 came to conclude that you would no longer make any
 9 recommendations regarding whether a subdivision
 10 application should be approved or denied?
 11 A Yes.
 12 Q And is there a particular reason that you came
 13 to that conclusion that you would not do that anymore?
 14 A That's a good question. I -- I came to the
 15 conclusion, after working with Montana state law
 16 regarding subdivision review and regarding staff's role
 17 and how the staff is hired by the governing body to
 18 assist the boards in administerial acts and the
 19 responsibilities of the boards based on statutes, that
 20 in terms of subdivision review, there was not -- there
 21 is not an obligation for a recommendation from planning
 22 staff; that, in fact, subdivision review can be
 23 objectively done based on the criteria for subdivision
 24 review contained in Montana law. And staff's
 25 responsibility is to essentially write a research

1 project and give that to the planning board as
 2 performing administerial acts, in our role as being
 3 hired by the governing body to perform administerial
 4 acts for the planning board. That administerial act
 5 would be collecting information, reviewing it for its
 6 reasonableness and its validity, and presenting that to
 7 the planning board for their consideration. And they
 8 make a recommendation to the governing body.
 9 Q Okay; fair enough.
 10 When you first came onto this project, and by
 11 that I mean the North Shore Ranch subdivision
 12 application, first became involved in processing it, did
 13 you read Annie Thompson's staff report?
 14 A Yes.
 15 Q In your own mind, did you disagree with her
 16 recommendation to approve?
 17 A No.
 18 Q At some point in time -- well, strike the
 19 question.
 20 A Did you say "strike the question"?
 21 Q Yeah. There's no question in front of you. I
 22 just struck it on the record.
 23 A Okay. This is my first time.
 24 MR. MCCORMICK: Even though it's still
 25 sitting there on the record.

1 MR. PERRY: Till we get to trial.
 2 Q (By Mr. Perry) As a planner, assistant
 3 planner -- assistant planning director, obviously,
 4 you've had experience in that position with FEMA and the
 5 hundred year flood line five hundred year flood line,
 6 that type of thing.
 7 A Yes, sir.
 8 Q The project at issue, do you recall whether or
 9 not it was encumbered by the hundred year flood line?
 10 A The lands on which the project was proposed
 11 were mapped on the flood insurance rate map as having
 12 both areas within the one hundred year floodplain and
 13 five hundred year floodplain. During the course of my
 14 review, and a discussion pertaining to this is contained
 15 in the staff report, the applicants made -- the flood
 16 insurance study, which is the document that accompanies
 17 the flood insurance rate maps from FEMA which contains
 18 the flood elevations, that the elevation of the one
 19 hundred year floodplain for Flathead Lake, ergo, the one
 20 hundred year floodplain for the subject property, was
 21 known to the applicant and was submitted as part of the
 22 application, mapped on the subject property and was
 23 shown to only encumber a portion of the subject
 24 property, the one hundred year floodplain and,
 25 therefore, the applicant was -- I recall that the

1 applicant was -- as part of their application, stated
 2 that they would submit to FEMA an application for a
 3 letter of map amendment to the flood insurance rate map
 4 prior to application for final plat. And as best I
 5 recall, that was a condition in the staff report that I
 6 wrote. And I presented this -- a discussion of this, as
 7 well as an explanation of the difference between the
 8 Somers datum and the NGVD datum to the planning board as
 9 part of my staff presentation so that this issue was
 10 clearer to them right off the bat.
 11 Q Okay; fair enough. Do you recall, in a general
 12 sense, whether or not the applicant sought to construct
 13 any residential structures in the hundred year
 14 floodplain?
 15 A The -- my best recollection is that the
 16 boundary of the one hundred year floodplain shown on the
 17 applicant's preliminary plat application, which
 18 reflected the base flood elevation, if that were the one
 19 hundred year floodplain and if FEMA ultimately approved
 20 the letter of map amendment, that the lots on which
 21 residential structures would be built were outside of
 22 that boundary.
 23 Q Okay.
 24 A The reason I'm clarifying is because the flood
 25 insurance rate map, which I clarified as part of my

1 staff presentation, is a graphical depiction of the
2 flood insurance study and is, therefore, subject to
3 letters of map amendment. If there is error on that
4 map, the flood insurance rate map, the one hundred year
5 flood boundary was depicted differently than the
6 applicant's submittal. But the applicant's submittal
7 used the flood insurance study data for the base level
8 elevation and they did the topo on the subject property
9 and, therefore, there was reason to believe that that
10 boundary shown on the preliminary plat application would
11 be accurate.

12 Q Okay.

13 Back in the '07 to '08 time period, was there
14 any subdivision regulation in effect in Flathead County
15 that prohibited residential construction outside of the
16 hundred year floodplain but inside of the five hundred
17 year floodplain?

18 A No. And my staff report reflects that.

19 Q So that wasn't prohibited in the county at that
20 time, construction in that area.

21 A Correct.

22 Q And in the time --

23 A Again, my staff report reflects that.

24 Q Right. And in the time that you were
25 the -- you have been the assistant planning director,

1 years ago, it is a frequent topic of discussion. And I
2 can't recall off the top of my head -- in order to make
3 generalizations such as the one you're making in that
4 statement, I cannot agree with it because I know that
5 that discussion has been had many times and many
6 decisions have been made based on it. I just don't
7 recall off the top of my head how many or exactly what
8 subdivisions were denied based on that topic.

9 Q Okay; fair enough.

10 A That was a long way of saying I don't know, I
11 guess.

12 Q You missed your calling. You should be a
13 lawyer.

14 A I'm just trying to be careful is all.

15 Q While you were processing the North Shore Ranch
16 application, do you recall whether or not you were
17 presented with evidence from any scientist or engineer
18 who opined, in words or substance, that residential
19 structures could not be safely constructed on any part
20 of the North Shore Ranch property?

21 A If I can restate your question as part of the
22 answer, I don't believe I was ever told by any scientist
23 that a residential structure could not be built on any
24 part of the North Shore Ranch property.

25 Q Okay. And while you were processing this

1 have you, yourself, processed, to your recollection, any
2 subdivision application that involved high groundwater
3 such as characterized part of this parcel we're
4 discussing today?

5 A Yes.

6 Q Okay; more than one?

7 A Yes.

8 Q Okay. And it would be fair to say that in the
9 time that you've been the assistant planning director
10 for Flathead County, there have been subdivisions
11 approved in the county that had high groundwater of the
12 type and kind which the North Shore Ranch parcel
13 exhibited, at least on part of it.

14 A I -- I can't agree with that statement.

15 Q Why not?

16 A The shallow groundwater conditions on the North
17 Shore Ranch project, in some places, were very shallow.
18 To my best recollection, there were areas that were
19 mapped in their application as having groundwater four
20 feet below the surface or -- and the reason I can't
21 agree with that, necessarily, is because I know that I
22 have dealt with that subject. I know that that subject
23 has been the topic of many discussions in front of both
24 the planning board and the commissioners regarding the
25 issue of shallow groundwater. Recently, as well as many

1 application in the '07 to '08 time period, you had
2 general knowledge, did you not, of construction
3 techniques in areas of high groundwater that involved
4 the use of piers to support a structure.

5 A Restate the question.

6 Q Sure. In the '07 to '08 time period, were you
7 generally aware that there were sound construction
8 techniques that could be utilized to safely construct
9 residential structures in areas of high groundwater,
10 such as the use of piers, for support?

11 A No, because I am not well-versed in numerous
12 residential construction techniques.

13 Q Okay.

14 A I know things generally about residential
15 construction techniques. But the topic of appropriate
16 residential construction techniques in a variety of soil
17 conditions or any other unique conditions, I would not
18 be an expert on.

19 Q Okay; let me ask it another way.

20 A Okay.

21 Q You spent some time in North Carolina; is that
22 correct?

23 A Yes, sir.

24 Q North Carolina. You've been to the Outer
25 Banks?

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1 A Yes; yes, sir.
 2 Q You've seen the houses in the Outer Banks.
 3 A Yes, sir.
 4 Q How are they generally constructed?
 5 A In conformance with floodplain regulations.
 6 Q And most of them are elevated on piers, are
 7 they not?
 8 A I could not say that most of them are; no.
 9 Q Well, let me ask it this way. When you visited
 10 the Outer Banks on one or more occasions, did you have
 11 occasion to see houses constructed on piers?
 12 A Yes.
 13 Q Okay. When you studied in grad school, did you
 14 have any education in the area of structural
 15 engineering?
 16 A No.
 17 Q Have you ever had any education in the area of
 18 structural engineering?
 19 A No.
 20 Q And you don't profess to be a structural
 21 engineer.
 22 A Correct.
 23 Q And you're not a professional engineer.
 24 A Correct.
 25 Q Right.

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1 With respect to this project, do you recall
 2 that the applicants submitted opinion, at least one
 3 opinion letter, signed by two professional engineers who
 4 both opined that construction techniques -- safe
 5 construction techniques were available to construct
 6 residential structures on the North Shore Ranch
 7 property?
 8 A Yes.
 9 **MR. MCCORMICK:** Objection; document speaks
 10 for itself.
 11 Q (By Mr. Perry) And we've marked that as an
 12 exhibit. Maybe we'll just take a chance to refer to
 13 that for a second. I believe that it is a CMG
 14 Engineering document marked as Exhibit 46. Do you have
 15 that in front of you, sir?
 16 A Yes.
 17 Q And do you recognize that document? Have you
 18 seen this before? Do you recall it?
 19 A Yes.
 20 Q Okay. And this was the CMG Engineering
 21 two-page opinion letter provided by the applicant on
 22 January 25, 2008, regarding the propriety of various
 23 construction techniques on the subject property; fair to
 24 say?
 25 A We received it on January 30th, 2008, yeah.

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1 And the rest of your question, my answer is yes.
 2 Q Okay. And the next exhibit, right down in the
 3 pile here, this one here, do you recall the -- having
 4 reviewed the letter when you were processing this
 5 application dated December 5, 2007, received by Carver
 6 Engineering December 6th, 2007, from Montana Helical
 7 Piers?
 8 A Yes.
 9 Q And let me ask you a question. After you
 10 reviewed the two documents, did you reach any conclusion
 11 or form any opinion as to whether or not residential
 12 structures could safely be constructed on the property?
 13 A Yes. The evidence that was submitted from
 14 experts was that there were construction techniques
 15 that, in their opinion, could be used to safely
 16 construct residential structures on the subject
 17 property.
 18 Q Okay.
 19 A And I believe my staff report reflects that.
 20 Q It does. And just one follow-up question. I
 21 believe we touched on it a little earlier. But the
 22 opinions proffered by the professional engineers, Josh
 23 Smith and John Ayers in their letter of January 25,
 24 2008, were those opinions, to your recollection,
 25 controverted by opinions provided by any other scientist

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1 or engineer in the record in this case?
 2 A Not to my knowledge.
 3 **MR. PERRY:** Okay.
 4 Could we take a five-minute break? Is that
 5 okay?
 6 **MR. MCCORMICK:** Sure.
 7 (Deposition in recess from 10:30 a.m. to
 8 10:38 a.m.)
 9 Q (By Mr. Perry) Sir, referring you back to
 10 Exhibit 51 which you and I touched on a little earlier
 11 today, your staff report dated February 1, 2008, do you
 12 have that in front of you?
 13 A Yes, sir.
 14 Q Now, in this very comprehensive staff report
 15 that you wrote, 63-page report regarding this
 16 application, you evaluated, obviously, the criteria
 17 under Title 76 with respect to impacts on wildlife,
 18 wildlife habitat, et cetera, et cetera; fair to say?
 19 A Yes.
 20 Q And I see in a couple of places you discussed
 21 risk of flooding. And in particular, if I could turn
 22 you to page 46 and, in particular, findings number 37
 23 and 38, fair to say that the findings that you made,
 24 numbers 37 and 38, basically stand for the proposition
 25 that the risk of harm posed by flood to the lots on the

1 North Shore Ranch property were acceptable and, in
2 particular, because as you state and I quote, "Final
3 plat will not be granted and those lots will not be
4 created unless a LOMA is granted showing those lots to
5 be above the BFE of 2892.9 (NGVD 29) and therefore
6 outside the one percent chance annual flood area," close
7 quote. Long question. Do you understand my question?

8 A No.

9 Q I thought that might happen. Let me ask it
10 again. After you reviewed all the materials, fair to
11 say that you, yourself, concluded that the risk of harm
12 from flood was acceptable? Take your time if you want
13 to read those findings.

14 MR. MCCORMICK: And I would object on the
15 basis the document speaks for itself.

16 THE WITNESS: I prepared findings that I
17 thought were a reasonable conclusion to submit to the
18 planning board for their consideration.

19 Q (By Mr. Perry) Okay. And I'm just trying to
20 summarize your findings. Would it be fair to
21 characterize your findings, with regard to the risk of
22 flood, that you were of the opinion that that risk was
23 acceptable, given limitations on the granting of a final
24 plat and other considerations?

25 A And we're referring only to findings under 37

1 of single family residential dwellings?

2 MR. MCCORMICK: Objection; the document
3 speaks for itself.

4 THE WITNESS: I would agree with that.

5 Q (By Mr. Perry) Do you understand my question,
6 though?

7 A I do understand your question. I think what's
8 stated in the staff report is -- I don't know if I can
9 do this -- but as Alan said. I would agree that what's
10 stated there is the most accurate representation of what
11 I wrote at that time.

12 Q Okay. And just in summary, would it be fair to
13 say that you reached the conclusion that county
14 residents were not concerned with public health and
15 safety issues related to residential construction, due
16 to the fact the county had disbanded the building
17 department?

18 MR. MCCORMICK: Objection; the document
19 speaks for itself.

20 THE WITNESS: When you say "objection," am
21 I not supposed to say anything, or what's the --

22 MR. MCCORMICK: You are. You get to
23 answer. I will instruct you on the rare occasion when
24 you cannot answer a question due to attorney-client
25 privilege or other objection.

1 and 38?

2 Q Yes, sir.

3 A Yes.

4 Q Okay.

5 And with respect to construction techniques you
6 and I have touched on a little bit here this morning, I
7 see on page 48, at the bottom of the page, the ultimate
8 paragraph, you stated in Exhibit 51, and I quote, "It is
9 worth noting here for consideration that during the
10 1990s, Flathead County implemented building codes and a
11 building department to enforce these codes. Flathead
12 County rural building codes and the building department
13 were abolished after a public vote indicated a clear
14 lack of support for the program, and the commissioners
15 voted to end it. It is therefore questionable whether
16 the health and safety of new single family residential
17 structures built in rural Flathead County is a public
18 health and safety concern among residents," close quote.
19 Have I read that correctly?

20 A Yes.

21 Q In summary, would it be fair to say that you
22 concluded that due to the fact the county had, in fact,
23 disbanded its building department, that the county
24 residents, anyway, weren't really concerned with public
25 health and safety issues pertinent to the construction

1 THE WITNESS: You're just entering your
2 objection for the record.

3 MR. MCCORMICK: For the record.

4 THE WITNESS: I didn't know if I was
5 supposed to --

6 Q (By Mr. Perry) No, you get to answer.

7 A I understand your question. The reason I
8 included this paragraph and started it with "It is worth
9 noting here" is because the history of the building
10 department and the existence, abolishment, et cetera, of
11 the building department in Flathead County is a fact, a
12 historical fact.

13 The reason why I'm hesitant to just agree with
14 what you're saying is because that historical fact does
15 not absolve me from reviewing a subdivision based on the
16 criteria established under law.

17 Q Uh-huh.

18 A And those criteria are clearly representative
19 of public health and safety impacts to agriculture,
20 those public issues --

21 Q Okay.

22 A -- to summarize. Therefore, your question as
23 stated, I am hesitant to agree with it because it gives
24 the impression that I would relinquish that
25 responsibility due simply to a historical fact, which is

1 not the case.

2 Q Okay. You did, however, question whether or
3 not the residents of the county were really concerned
4 with health and safety issues related to the
5 construction of single family residential dwellings;
6 fair to say?

7 A What I wrote was "It is therefore questionable
8 whether the health and safety of new single family
9 residential structures built in rural Flathead County is
10 a public health and safety concerns among residents."

11 Q Fair enough.

12 I see there's an indication made under finding
13 number 43, and I quote, "The impact of the proposed
14 subdivision on public health and safety is an elevated
15 risk of unsafe and unhealthy single family residential
16 structures because no comprehensive mitigation technique
17 for building single family residential structures in
18 areas with groundwater within two to 14 feet of the
19 surface and soft to medium stiff consistency clay and
20 soils and loose to medium density sand soils (such as
21 deep foundations with helical piers or slab-on-grade
22 foundations) is verifiable by a public entity enforced
23 permitting process at this time." Have I read that
24 correctly?

25 A Yes.

1 Q So your concern, as you expressed in that
2 paragraph, wasn't with respect to whether or not there
3 were safe construction techniques that could be brought
4 to bear on constructing residential structures on the
5 North Shore property but, rather, that the county didn't
6 have an agent to verify that those techniques were safe.

7 A Correct.

8 Q Okay. And you'd agree with me that the lack on
9 the part of the county to have such an agent to verify
10 the safety of proposed construction techniques was
11 something that the applicant was incapable of
12 mitigating.

13 A Restate that one more for me, please.

14 Q Sure. This lack of a county agent, whether it
15 be in the building department or another agent employed
16 by the county to verify the safety of residential
17 construction techniques, the absence of that employee,
18 paid, hired, employed by the county, that was something
19 that the applicant could not mitigate; right, insofar as
20 only the county could hire that employee?

21 A The first part of your question, I agree with.
22 When you added "insofar as the county could hire such an
23 employee," that -- that doesn't track with the -- the
24 first part of your question, I would concur that the
25 applicant for this subdivision is unable to mitigate

1 the -- is unable to mitigate the lack of a verifying
2 mechanism for the safety of residential structures.

3 Q And that's what I was trying to get at.

4 So with respect to this concern that you
5 articulated which, as you know, made its way to the
6 final decision in this case, denying the application,
7 this basis for denial that there was no verification
8 mechanism or person employed by the county to verify it,
9 as codified in the final decision as a basis for denial,
10 that was an issue that the applicant had really no way
11 of addressing. Do you understand my question?

12 A I think so. But if you could restate it, that
13 would be helpful.

14 Q Sure. We know from the final decision that one
15 of the bases for denial was the lack of this
16 verification mechanism. You agree with that?

17 A I don't, because I don't have the basis for
18 denial fresh in my mind.

19 Q Let me get it in front of you. It's Exhibit
20 40. Should be right on top of your stack there.

21 A Okay.

22 Q If you turn to findings number 43 and 45 on
23 page three of this document --

24 A Okay.

25 Q -- and take your time to read that through.

1 Have you had a chance to read those findings?
2 A I have read the findings. However, I'm reading
3 item B as well because it follows those findings and
4 appears to be relevant to them.

5 Q Maybe I --

6 A Maybe it's not.

7 Q Maybe it's not. Let me just see if I can
8 explain here. If you turn back a page, there are -- you
9 know, paragraph 3 of this document, Exhibit 40, states
10 in the caption "Facts and conclusions the commissioners
11 relied on to make its decision and reference documents,
12 testimony, or other materials that form the basis of the
13 decision." Do you see that? It's on the second page of
14 the document, paragraph 3.

15 A Okay.

16 Q And then there are three paragraphs, a, b, and
17 c after that.

18 A I see.

19 Q And I see that the first one talks about
20 seismic activity, paragraph a; fair to say, right?

21 A Yes, I got it.

22 Q And then the second one after -- it goes into
23 finding 43 and 45 --

24 A I understand the organization of this document
25 now.

1 Q So there's three major bases for denial. The
2 seismic risks, that's paragraph 3a, finding 43 and 45,
3 then impacts on wildlife which is set forth in paragraph
4 3b, and then we have paragraph 3c which talks to the
5 PP&L easement.

6 A Understood.

7 Q Okay? And I just wanted to refresh your memory
8 and make sure that we're on the same page, in terms of
9 the bases of denial here.

10 One of the bases of denial was predicated upon
11 your findings number 43 and 45; correct?

12 A That is apparently what this letter reflects.

13 Q Okay.

14 Have you seen this document before, Exhibit 40?

15 A I don't recall having read this. I may have,
16 but it does not jump to mind as being familiar to me.

17 Q Okay. And as you previously testified when we
18 talked about your staff report and, in particular, page
19 49 of your staff report, these findings essentially
20 codify your findings with respect to the lack of a
21 county agent to verify the safety of construction
22 techniques; fair to say?

23 A My findings were submitted to the planning
24 board for their consideration. Then they adopt those
25 findings as part of their recommendation for forwarding

1 A Because the findings -- and again, I'm just
2 trying to be as accurate as possible here.

3 Q Sure.

4 A The findings 43 and 45 that I wrote in the
5 staff report is that there is an elevated risk of unsafe
6 and unhealthy single family residential structures.

7 Because -- so the first part of that causal relationship
8 is the impact of the proposed subdivision on public
9 health and safety is an elevated risk of unsafe and
10 unhealthy single family residential structures. The
11 finding is not -- the basis for that elevated

12 risk -- the cause of that elevated risk to public health
13 and safety is that because of the unique conditions on
14 the subject property that were submitted as part of the
15 application, evidence that -- that evidence -- that the
16 unique conditions on the subject property, evidence of
17 those unique conditions being submitted as part of the
18 application and the effort to mitigate those -- and the
19 effort to mitigate that risk by certain construction
20 techniques, regardless of whether or not

21 the -- regardless of whether or not, say, for example,
22 the public determined that this wasn't important by
23 getting rid of the building department, if the
24 subdivision were to be approved, after the subdivision
25 was approved and the final plat was granted, any

1 to the commission.

2 Q So it went along the line until it got to this
3 document; true?

4 A Apparently, yes.

5 Q And, again, just so we're clear and we can move
6 off this topic, your findings 43 and 45 didn't state
7 that there was no way to safely construct structures on
8 this property but, rather, there was no way to verify
9 whether construction techniques were safe?

10 A That is correct.

11 **MR. MCCORMICK:** Objection; misstates the
12 document.

13 Q (By Mr. Perry) And so --

14 A If I -- what I understood your question to be
15 was the findings 43 and 45 do not reflect that there was
16 no way to build structures -- to safely build structures
17 on the subject property. That is what I agree with.
18 But I'm not --

19 Q And my follow-up was that you didn't render
20 that conclusion or form that opinion, but what you did
21 state as fact is that the county had no way -- no agent,
22 no employee, to verify that construction techniques
23 would be safe on the property.

24 A No, I wouldn't characterize it that way.

25 Q Why not?

1 construction after that point would not be verifiable by
2 a public entity. Therefore, there was no way to know if
3 the mitigation was actually taking place or not, the
4 mitigation proposed. Unlike mitigation proposed which
5 would take place prior to final plat being granted, such
6 as mitigation to build a fence around the property for
7 something else, for example. That fence could be
8 verified prior to the county's last checkpoint, you
9 might say, which is the final plat application and
10 inspection by staff.

11 The reason I'm stating this is that I feel that
12 the -- the reflection of what those findings are
13 intending that you are putting forth in your line of
14 questioning, is focusing more on the second part of the
15 finding rather than the finding that there is -- the
16 impact of the proposed subdivision on public health and
17 safety is an elevated risk of unsafe and unhealthy
18 single family residential structures. I also realize
19 what I'm saying here is not particularly cogent. I'm
20 hesitant to go along with some of the generalizations
21 that you're making.

22 Q Okay. And I'm just reading the plain language
23 of your findings 43 and 45.

24 A Yeah, I understand.

25 Q You link the risk of harm to public health and

1 safety to the lack of, and I quote, "Comprehensive
2 mitigation technique for building single family
3 residential structures in areas susceptible to
4 liquefaction of soils during a seismic event is
5 verifiable by a public entity enforced permitting
6 process at this time."

7 A That's correct. And, therefore, what I'm
8 saying there -- and it makes it difficult because it's a
9 heck of a run-on sentence. What I'm saying there is
10 it's the lack of a mitigation technique which is
11 verifiable by a public entity, means the mitigation
12 technique will not, at some point in the future, be
13 known -- be verified to occur. It is possible to do.
14 But in terms of reviewing the impact of the subdivision
15 to public health and safety and my responsibility to
16 represent the -- to research the impacts put forth in
17 state law, that it would be my responsible to note that
18 that lack of verification mechanism means that this
19 mitigation technique proposed will, at no point in the
20 future, be verified by a public entity.

21 Q Okay. So the construction techniques could
22 have been entirely safe as proposed. But to the extent
23 that the county had no way to verify that, you
24 considered that to be a risk to public health and
25 safety.

1 you had a building department, that would not
2 necessarily mean that the county could have verified the
3 safety of proposed construction techniques. And on the
4 other hand, because there is no building department, you
5 say it can't be verified, so there's a risk of harm to
6 public health and safety. So it's lose-lose for the
7 applicant. Would you agree with that?

8 MR. MCCORMICK: Objection; calls for
9 speculation.

10 Q (By Mr. Perry) Do you understand my question?

11 A I do.

12 Q So even if you had a building department, the
13 applicant's still in the same position, you're telling
14 me, as if there were no building department. So how is
15 the applicant supposed to demonstrate to the county that
16 proposed construction techniques are safe?

17 MR. MCCORMICK: Objection; calls for
18 speculation and relevance.

19 THE WITNESS: I understand your question.
20 My responsibility is to review and analyze every project
21 and its unique location and attributes as they're
22 submitted to me. It is possible, during the course of
23 subdivision review, based on the criteria contained in
24 state law, that some locations or projects may exhibit
25 attributes which are more challenging to mitigate than

1 A Yes.

2 Q Okay.

3 A A potential risk.

4 Q A potential risk. If at this time, at the time
5 you were writing this report, this staff report, there
6 had been a building department in the county and there
7 were an employee who could have verified the propriety
8 of proposed construction techniques, obviously findings
9 43 and 45 would not be relevant at that point in time.
10 Would that be fair to say?

11 MR. MCCORMICK: Objection; calls for
12 speculation.

13 THE WITNESS: I agree with that. It
14 would -- because building departments implement --

15 Q (By Mr. Perry) Do you understand my question?

16 A I do. It would be speculative to say that a
17 building department, if it existed, would verify these
18 construction techniques. Because every building
19 department is run a little bit differently, and every
20 regulatory framework in every local jurisdiction is
21 organized a little bit differently. So it would be
22 speculative to say for sure that -- yes. So I agree
23 that it's speculative, and I can't say that for sure.

24 Q Okay. I guess it's lose-lose for the applicant
25 then. Because what you're telling me is that even if

1 others.

2 Q (By Mr. Perry) And my question is, with
3 respect to this issue, the safety of residential
4 construction techniques on this piece of property, we
5 know from findings 43 and 45, we've been over that, you
6 say there's a right risk of harm to the public health
7 and safety due to essentially the lack of a verifying
8 agent to determine whether the construction techniques
9 are safe or not. And what I've asked you in the
10 converse is, Well, even if you had a building
11 department, you're telling me that you're of the opinion
12 that there would still be a risk to public health and
13 safety, even if you had a verifying agent.

14 MR. MCCORMICK: Objection; speculation and
15 relevance.

16 Q (By Mr. Perry) I'm sorry; go ahead. I'm
17 confused then. I'm seeing an incongruity here. Because
18 on one hand you say Well, we don't have a verifying
19 agent to verify that these construction techniques are
20 safe and, therefore, even though they might be safe,
21 since we can't verify, we can't be sure and, therefore,
22 there could be a risk to public health and safety. And
23 on the other hand you're saying Well, even if we did
24 have an employee or a building department, I can't say
25 that the safety of the construction techniques could

1 have been verified. And I guess my question at the end
2 of the day is, how does an applicant demonstrate, then,
3 that the proposed construction techniques are safe?
4 Because, as we know, we have the CMG letter. We have
5 the helical piers letter. The applicant did all he
6 could to demonstrate that it can safely construct
7 residential structures on the property. But it seems
8 that the applicant, from what you're telling me, is in a
9 lose-lose position with respect to this issue, because
10 there's no demonstration it could make that would
11 satisfy your concerns. Am I confused?

12 **MR. MCCORMICK:** Objection; speculation,
13 relevance, Counsel is testifying, narrative question,
14 multi-part question.

15 **Q (By Mr. Perry)** Am I confused? I feel confused
16 at this point in time, and I'm just trying to understand
17 your testimony. Can you just expound on what you're
18 telling me here? Because -- do you understand my
19 quandary in terms of your testimony?

20 **A** Yes.

21 **Q** And I'm just trying to understand, given your
22 concerns. And I understand your concerns as expressed
23 in findings 43 and 45. I understand your concerns. But
24 what you've told me is that even if the county had a
25 verifying agent, you're of the opinion that there would

1 still potentially be a risk to public health and safety?

2 **A** Not necessarily. Because what I said was I
3 have no way of knowing, if there were a building
4 department or if there was an employee who followed up
5 on residential construction in some manner, I don't know
6 what their authority would be, per se. They may -- if
7 there was a department and if we worked with them and I
8 knew how, in terms of reviewing a subdivision, how that
9 department could follow up with possibly unique
10 conditions applied to a subdivision, given the unique
11 attributes of the soils, if I knew that -- if I knew
12 that the Flathead County building department could
13 follow up in a certain way, I may be able to find
14 differently. Because I don't know, I can't say for
15 certainty that if there was a building department, he
16 would still lose.

17 **Q** Okay; I understand what you're saying.

18 **A** Because I don't -- because if I -- as a
19 planner, if I know the way that we interact with, say,
20 the health department, and I know what they're able to
21 follow up on and what they're not, then I know, in
22 reviewing a subdivision, Oh, this is something that the
23 health department can follow up on.

24 **Q** Uh-huh.

25 **A** Let's say the building department, their only

1 job was to follow up with a certain residential building
2 code. And let's say that code -- and that was their
3 only authority. And that code did not involve anything
4 pertaining to unique soil attributes, for example, then
5 I would know that that department would not be able to
6 follow up on a concern that is within the, you might say
7 jurisdiction of concern, in reviewing subdivisions. But
8 if they had the authority to -- if they had an authority
9 or a regulatory mechanism whereby a certain property
10 could be identified as having additional construction
11 needs and, therefore, they would have the regulatory
12 authority to follow up on those needs unique to the
13 property, then I could find differently, in terms of
14 reviewing my staff report. Because I could say
15 something like a condition -- because in that case I
16 could say something like A condition could be added to
17 this subdivision that the building department follow up
18 on the construction of slab-on-grade or helical pier
19 foundations. That is not the case. So I can't answer
20 your question with certainty that it is for sure
21 lose-lose.

22 The other part of your question is that it is
23 not my responsibility to ensure that every application
24 find a way to be approved. It is my responsibility to
25 identify what I perceive to be accurate findings. And

1 if the applicant proposed a mitigation technique which
2 is -- which we know can happen, and if it happens we
3 will be able to make sure that it happened, then we can
4 do that. We can propose a condition to the planning
5 board, a condition of approval. We can propose that to
6 the planning board that would say If they do this as
7 part of the final plat, it will mitigate this final
8 concern.

9 The issue of residential construction is not
10 one of those -- is not, because residential construction
11 takes place after final plat is granted, typically.
12 And, therefore, if this project were in an area where
13 the type of foundation used was not a unique concern,
14 then this might not be a concern. Then the type of
15 foundation used might not be a concern. And because we
16 have no verifiable -- because we have no way to verify
17 what the type of foundation being used later is, if a
18 different area has not been identified as having these
19 unique attributes, then it might not be -- it might not
20 pose an elevated risk to public health and safety. But
21 if, during the process of subdivision review
22 and -- during the process of subdivision review and
23 based on the applicant's information and staff research,
24 if a unique attribute of an individual project is
25 identified, that needs -- that -- mitigation of that

1 unique attribute needs to be explored.
2 Q Okay. Let me ask you this question. With
3 respect to this concern about the lack of a verification
4 mechanism regarding the structural safety of residential
5 structures proposed for this project, couldn't a
6 condition have been proposed that the applicant be
7 required to retain, at its expense, a professional
8 engineer competent in geotechnical analysis, of the
9 county's choosing, to verify the safety of construction
10 techniques?

11 MR. MCCORMICK: Objection; speculation and
12 relevance.

13 THE WITNESS: And not possible to do,
14 because a condition is -- a condition of preliminary
15 plat approval is verified at final plat approval.

16 Q (By Mr. Perry) Right.

17 A That condition which you just stated, which
18 would be to retain an engineer of our choosing to verify
19 construction techniques, when you reviewed the final
20 plat for compliance with the conditions of preliminary
21 plat, no structures would have been built yet.

22 Therefore, there would be nothing to inspect and
23 nothing -- and then after that was done, there is no
24 mechanism whereby the county would continue to follow up
25 in any way. It would be unclear who that person would

1 work with, for example.

2 Q Okay.

3 Wasn't a condition that the applicant placed on
4 the preliminary plat application the requirement that
5 structures be constructed only after analysis by a
6 geotechnical engineer?

7 A Which condition number was that?

8 Q I believe it was on the preliminary plat, was
9 it not?

10 MR. SIMON: Yeah, that was the way we were
11 going to try to handle it. We had to have a sign-off on
12 a structural and a geo on any one resident called out in
13 the CCRs and put out on the plat.

14 MR. PERRY: And put on the plat.

15 THE WITNESS: Which condition was that?

16 Q (By Mr. Perry) I don't know if it was
17 articulated in this document, quite frankly. I know it
18 was proposed in the CC and Rs. And I believe it's
19 referenced by Annie's original staff report.

20 A Anything that's in Annie's staff report would
21 not be relevant, simply because my staff report was the
22 one that ultimately was --

23 Q I understand. I just notice that she had a
24 condition, condition 34, in her staff report that
25 states, and I quote, "The applicant shall provide to the

1 planning and zoning office a detailed soil survey of the
2 property and a statement from an engineer licensed to
3 practice structural design stating that soils are not
4 limited for the construction of dwellings. If the
5 engineer finds that some of the soils are limited for
6 the construction of dwellings, plans certified by an
7 engineer will be provided which will demonstrate how
8 limitations will be addressed to ensure the safety of
9 residents, builders, and to ensure that the quality of
10 water in the shallow aquifer will be maintained," close
11 quote. And I guess my question is, wouldn't that
12 condition have addressed the concerns that you've
13 articulated?

14 A No. And that's why I didn't include that
15 condition. Because I did not think that was a workable
16 condition, because it essentially suggests that the plan
17 be submitted. And that plan wouldn't -- who would it be
18 submitted to? It would be after final plat, after the
19 subdivision review process was concluded, which is
20 the -- which is our office's responsibility to
21 administer the subdivision review process. It would be
22 after that process was concluded. It might be ten years
23 in the future, it might be two days in the future. But
24 to whom would that plan be submitted? And if -- let's
25 say they did not, what would be the enforcement? We

1 cannot revoke final plat if they don't do it, because
2 the final plat's already been granted. There is no
3 enforcement mechanism, if they choose not to do it, just
4 like there's no verification method, if they do do it.

5 Q Well, how does the county address --

6 A Statements -- if I can continue.

7 Q I thought you were done; go ahead.

8 A I was; I'm sorry. Statements on the final plat
9 are only useful in terms of a communication technique to
10 those who look at the final plat in the future. No
11 follow-up to anything that's written on the final plat
12 can be enforced, if -- can be enforced.

13 Q Is it your testimony that if a subdivision
14 applicant has a 50-lot subdivision approved and he
15 decides to go in and cut out 82 lots, that the county
16 has no way to stop that construction?

17 A I don't understand that question; I'm sorry.

18 Q Yeah. Let me ask you a hypothetical. I file a
19 subdivision application with the county.

20 A For preliminary plat.

21 Q For preliminary plat.

22 A Okay.

23 Q I get approved.

24 A For how many lots?

25 Q Fifty lots.

1 A Fifty lots. Fifty residential lots.
 2 Q Fifty residential lots. I get final plat
 3 approval.
 4 A You now have 50 residential lots, final plat.
 5 Q Final plat. But I go in with my D-8 and I
 6 create 82 lots on the property.
 7 A Okay.
 8 Q Is it your testimony that the county has no
 9 mechanism, no way to stop me from building 82 houses?
 10 A You would not have 82 lots. If the area was
 11 unzoned, you could build 82 houses on 50 lots, if the
 12 area was unzoned; yes.
 13 Q But I could create lot lines completely outside
 14 of the plat approval.
 15 A No, you can't.
 16 Q How do you stop me?
 17 A Because the only way to, quote, unquote,
 18 "create lot lines" as you said, is to have those lots on
 19 file with the clerk and recorder. And in the process of
 20 resubmitting an amended final plat to add 32 lots, they
 21 would not allow that to happen because it would require
 22 a new review for subdivision.
 23 Q But what I'm saying is what if I, you know,
 24 went completely off the reservation and didn't record
 25 anything with the clerk and recorder?

1 builders. I can't answer that.
 2 I'm a little bit -- this line of questioning
 3 about the lots in a subdivision, what we're talking
 4 about here is just basic surveying lots. You cannot
 5 convey a lot which doesn't exist. And if you've got
 6 final approval for 50, you can't just pull 32 extra ones
 7 out of thin air and sell something that doesn't exist
 8 unless you amend your final plat. And the plat room
 9 would not -- and the clerk and recorder would not allow
 10 this to be filed. Therefore, again, if it were unzoned,
 11 you could build -- it might look like 82 homes out
 12 there, because you could build 82 homes. But they'd all
 13 be sitting on 50 lots. And you could only sell 50 lots
 14 and convey 50 lots. And, therefore, I feel -- I might
 15 be losing you a little bit because I'm just not -- like
 16 I said, this is pretty standard surveying law that
 17 is -- that would preclude that from occurring. And I
 18 guess I'm feeling a little confused.
 19 Q Well, my question really is simply, I just want
 20 to be clear that your testimony is that the county has
 21 no way to enforce compliance with a preliminary and
 22 final plat.
 23 A No; that's not true at all. We have very much.
 24 We have a mechanism known as final plat whereby we
 25 review and approve preliminary plat for compliance with

1 A Then you would not have 82 lots to sell. You
 2 could build 82 homes, but a deed would not
 3 recognize -- any legal document would only recognize you
 4 as legally having what's on your final plat, which is 50
 5 lots.
 6 Q And I could functionally have 80 lots, though,
 7 some of which had houses on them, some of which had farm
 8 equipment or --
 9 A You could sell a lot which had two homes on it
 10 to a buyer who wanted to buy a lot with two homes. But
 11 you would not have the additional 32 lots to sell. They
 12 just wouldn't exist.
 13 Q Let me ask you this question. In your
 14 experience here at the county, has the county attorney
 15 ever commenced a cease and desist action against any
 16 developer or builder in the county, in your
 17 recollection?
 18 A Developer or builder?
 19 Q Or builder.
 20 A A cease and desist against any -- I can't
 21 answer that question.
 22 Q You're familiar with a cease and desist, what
 23 that means?
 24 A Yes. I just -- I would have no way of knowing
 25 what -- if they have done that with developers or

1 the conditions and for conformance to the subdivision
 2 regulations. That final plat, when we review it, an
 3 application for final plat, if it conforms with all the
 4 conditions and it meets the basic requirements of
 5 subdivision review such as elements that must be
 6 contained on the final plat, a north arrow, you know,
 7 things like that, then we do a site inspection to make
 8 sure that all of the infrastructure that is to be
 9 developed is developed, is in the ground. That's all a
 10 verification mechanism for our responsibility in
 11 reviewing subdivisions and conformance with the
 12 subdivision regulations, the local subdivision
 13 regulations as called for in state law. We then verify
 14 everything that was part of that preliminary
 15 plat application, everything. And then if it complies,
 16 we send a letter to the commissioners documenting how it
 17 complies for their consideration and action.
 18 Q And I guess my question is, quite simply, I
 19 mean, after you verify, after you do the site visit,
 20 after the final plat is approved, what if the applicant
 21 just goes and changes the subdivision?
 22 A That's where I'm losing you.
 23 Q Rips out a road that was part of the design.
 24 Changes the sidewalks. Gets rid of the walking trails
 25 that were part of the mitigation for impacts on wildlife

1 and wildlife habitat. And I'm not trying to confuse you
2 here.

3 A No, that part of the question I understand.
4 And I think that's a good question. The part to which
5 I'm referring is the question of -- let's say the
6 developer decided I'm going to tear out the road.

7 Q Right.

8 A This was after final plat. The issue of
9 creating more lots, very clearly, in my opinion, can't
10 happen because of the mechanisms in place to ensure that
11 no randomly created pull-out-of-thin-air lots could be
12 conveyed. But let's say the developer decided to tear
13 out the road. Number one, I have no idea why a
14 developer would do that. Because it's expensive to
15 install the road. Because once you have that approval,
16 you wouldn't dare undo it by tearing out a road which
17 was both expensive and difficult to get approval for in
18 the first place.

19 Q How about the walking trails that were required
20 as mitigation for impacts on wildlife?

21 A Again, they were required as mitigation, and
22 they were built. And why you would tear them out, I
23 have no idea. I understand that you're speaking
24 hypothetically, What if they did. But I have a hard
25 time answering that because I don't know why they would.

1 Q But my question is not why they would. My
2 question to you is, if they did do that, assuming,
3 hypothetically, is it your testimony that the county has
4 no enforcement mechanism to go in and say Hey, condition
5 of final plat was these walking trails. You just tore
6 them out. You need to put them back in.

7 A Yeah. Because I've never dealt with that
8 situation, it is very difficult for me to answer
9 authoritatively. Nor has that topic even been
10 hypothesized in terms of what we might do if that were
11 the situation. I just don't know. I know that after
12 final plat is granted, an issue we have dealt with is
13 conditions that -- conditions of preliminary plat
14 approval which deal with an action after final plat is
15 granted. And we have not had a mechanism to -- and this
16 is, you know, years ago -- we have not had a mechanism
17 to follow up on that. Therefore, over time, what I have
18 learned is that conditions that can't be dealt with at
19 the final plat inspection process are questionable in
20 terms of their effectiveness at either mitigating or
21 accomplishing pretty much anything. And that works both
22 for and against developers, depending on the situation.
23 Because, for example, you referenced Annie's report. In
24 Annie's report there were a number of things -- a number
25 of plans and things that she wrote, conditions that

1 would require that these things be done many of which
2 were not verifiable or doable or left evidence that
3 should have been -- that would be more appropriate to
4 submit prior to a preliminary plat approval, it left
5 that evidence to be approved or considered later. And
6 that wasn't appropriate. And at the time I reviewed
7 Annie's report and started from scratch on my own
8 report, I recognized that those weren't reasonable
9 conditions. And you might say that worked in favor of
10 the applicant because they were -- they were difficult
11 to follow up on. There were other things that you might
12 say worked not in favor of the applicant, simply because
13 they were a concern that I found to be factual and
14 needed to be put forth for the planning boards and the
15 commissioners' consideration.

16 Q Sure; and I understand that. And I guess at
17 the end of the day, as you previously testified, this
18 concern about the inability on the county's part to
19 verify because it was after final plat approval as
20 you've referenced, the applicant just had no way to
21 mitigate that.

22 A I guess what -- I guess -- I understand
23 completely your line of questioning and the
24 conclusion -- the conclusion to which you are trying to
25 come, or the explanation you're trying to elicit from

1 me. My comment is that though I understand completely
2 your statement about maybe the applicant can't mitigate
3 this, not every project on every property throughout
4 Flathead County will always have a perfect mitigation
5 for every potential problem. Whether that's the
6 applicant's fault or not, it is what it is, given every
7 unique property.

8 Q I understand.

9 A For example, if a property were adjacent to a
10 cliff, a 200-foot cliff, that property might be subject
11 to an avalanche risk. And short of bulldozing the
12 cliff, if the applicant chooses to apply for a
13 subdivision on that property, there is probably very
14 little they can do about avalanche risk on that
15 property. That's that. And just because they can't do
16 anything -- just because the developer, a person, cannot
17 do anything about that avalanche risk over the next
18 hundred, two hundred, three hundred years, that doesn't
19 mean that a project should be -- will be approved simply
20 because they can't do anything about it. It's still a
21 risk to public health and safety and still is a fact.

22 Q And I just want to be clear that you and I
23 agree that the lack of this verification mechanism,
24 regardless of whether it should have been approved or
25 not, is something that these developers could not

1 mitigate. Do you agree or disagree with that?
 2 A I think I have agreed with that already, and I
 3 would tend to agree with that; yes.
 4 Q Now we talked about mitigation under Title 76
 5 with regard to the six main criteria for evaluation of a
 6 subdivision; did we not?
 7 A Yes, sir.
 8 Q This isn't one of those six main criteria,
 9 though. The lack of a verification agent on the part of
 10 the county? That's not in Title 76 anywhere. That the
 11 applicant -- let me just get my question out. That's
 12 not in Title 76 anywhere that the applicant can be
 13 placed in the position where the county says that there
 14 is a risk to public health and safety due to the lack of
 15 a county agent competent to verify whether or not
 16 construction techniques is something, first of all,
 17 that's considered within the six main criteria and,
 18 secondarily, something that the applicant can be
 19 compelled to mitigate. I mean, do you agree with that?
 20 A No.
 21 Q Okay; why not?
 22 A Because one of the criteria is impact on public
 23 health and safety.
 24 Q Right.
 25 A And the findings to which you're referring,

1 findings 43 and 45, is that the applicant is placed in
 2 the position of being compelled, in some way, to find a
 3 way to mitigate the county's own lack of resources.
 4 Because what you've said in those findings is it's not
 5 the risk of harm by the construction techniques
 6 proposed, it's the fact we can't verify the safety of
 7 those construction techniques. So what you're really
 8 saying is the applicant has to mitigate the county's own
 9 lack of resources; isn't that true?
 10 A I don't think I can agree with that, simply
 11 because the way it was stated is too complex for me to
 12 definitively answer yes or no to.
 13 Q Okay; let me rephrase it. We've been over
 14 findings 43 and 45. My question is, with regard to the
 15 applicant's obligation under Title 76 to mitigate, what
 16 you're really saying in those findings is, the applicant
 17 has been placed in the position of having to find a way
 18 to mitigate the county's own lack of resources, and by
 19 that I mean, an appropriate agent who could verify the
 20 safety of the construction techniques.
 21 A No, I can't agree with that, simply because the
 22 way you're stating it -- conditions 43 and 45, I think,
 23 are clear and state for themselves that my
 24 responsibility, which is reviewing the impacts of the
 25 subdivision, the unique proposal that is before me on

1 they state that the impact to the proposed subdivision
 2 on public health and safety is an elevated risk of
 3 unsafe and unhealthy single family residential
 4 structures. That is the finding being made. And that
 5 is a criteria under Title 76. The reason for that
 6 finding is because, even if they propose to build
 7 structures on helical piers or slab-on-grade
 8 foundations, there's no way to know for sure that that
 9 will be done. There's no way to verify that. That lack
 10 of a verification mechanism I found to be a legitimate
 11 cause for determining an elevated risk of unsafe and
 12 unhealthy single family residential structures, just as
 13 I would if there were a cliff next to the property and
 14 there was an avalanche risk. Even if they proposed to
 15 shoot artillery shells at it every winter to make sure
 16 that the avalanche risk was minimized, that mitigation
 17 technique cannot be enforced or verified after final
 18 plat that that's something they would do each winter.
 19 I'm just using that as an example. But my point is that
 20 Title -- the criteria for impact review, to which this
 21 issue is referring, is the issue of impact on public
 22 health and safety and specifically the safety -- the
 23 health and safety of structures.
 24 Q Uh-huh. And I understand your testimony. But
 25 really, at the end of the day, what you're saying in

1 the unique piece of property on which it is proposed and
 2 the unique circumstances by which I'm reviewing it, the
 3 day that I'm reviewing it, my understanding of the
 4 regulations that are in place at that time, et cetera,
 5 what I perceive is that given the circumstances, what
 6 they're -- given the circumstances that evidence has
 7 been submitted to me that there's shallow groundwater,
 8 the soils are -- although appropriate utilizing certain
 9 construction techniques, they also have -- they are
 10 noteworthy in terms of concern as outlined in the
 11 geotechnical list -- the letter from the geotechnical
 12 assessment, given those circumstances on this particular
 13 property, there is an elevated risk for
 14 structure -- elevated risk to public health and safety
 15 for structures that would be built in the proposed
 16 subdivision because they could build them on any type of
 17 foundation they want. Even though the applicants are
 18 stating you could use helical piers, we don't know that
 19 they would use helical piers. We have no way of knowing
 20 that. Therefore, it would be incorrect for me to
 21 assert -- it would be incorrect for me to say There is
 22 no risk because they say they'll use helical piers or
 23 slab-on-grade foundation, because that's not a fact.
 24 It's speculating that I feel that they probably will
 25 require that in the future. But I have no way of

1 knowing that they will because there's no verification
2 mechanism. Therefore, in my review I can only
3 find -- in my opinion, I can only put forth as a finding
4 I have evidence that the unique attributes of this
5 subdivision in this unique location on earth provides
6 cause for concern. And whether or not that works for or
7 against the applicant, I try not to consider that. I
8 take each individual fact as it's submitted to me and
9 try to review it based on what I perceive to be the
10 framework by which I'm reviewing it on that day and
11 everything else.

12 Q And I guess, really, at the end of the day,
13 this concern that you had about the lack of
14 verifiable -- a verifiable or verification process,
15 there's just no way for the applicant to assuage your
16 concern or to remedy that concern.

17 MR. MCCORMICK: Objection; speculation.

18 Q (By Mr. Perry) Because what I'm hearing you
19 saying is They could say they're going to use helical
20 piers, but since we have no verification mechanism, I
21 don't know if they're going to do it. So it's a risk to
22 public health because I don't know if they're actually
23 going to do it. And I don't mean to be confusing, but
24 my question is how is the application going to assuage
25 that concern?

1 then that would be something that could be verified
2 prior to final plat, because you could see on a
3 subdivision plat that there would be no residential
4 structures in that area because it was open space, and
5 it would be deeded as such, for example. And you could
6 verify that the safety concern had been mitigated.

7 Another example. If this project -- let's use
8 this project as an example. If there were portions of
9 the 300-plus acres which had soil conditions which were
10 different from those identified as having -- as having
11 issues with residential construction, and I'm
12 speculating. I'm not saying this as if it should have
13 been something they did. You're asking me a question
14 which is more speculative in nature and more
15 hypothetical in nature of how would a developer deal
16 with that. And so maybe I shouldn't use this project
17 just so we're not thinking of this one on the ground.

18 If there were a project that were 40 acres and
19 20 of those acres were just identified as having very
20 poor soils for residential construction, if those areas
21 were to be utilized for something other than residential
22 construction, then that would be something that could be
23 mitigated prior to final plat.

24 Again, I look at the unique attributes of each
25 individual project. And based on the regulations and

1 MR. MCCORMICK: Objection; speculation.

2 Q (By Mr. Perry) I mean, you're a planner.
3 You're more familiar with these rules than probably
4 anybody at the table. And I'm asking you as an expert
5 in this area. I'm frankly interested. Because it's a
6 unique situation that's been described in these findings
7 43 and 45. And I -- I'm genuinely interested, how does
8 an applicant address that issue?

9 MR. MCCORMICK: Objection; relevance.
10 Objection; speculation. Objection; assumes facts not
11 established.

12 THE WITNESS: Well, it's really confusing
13 to me whether I proceed after you make objections. I'm
14 like but I, um, let's see here.

15 Q (By Mr. Perry) No, you get to answer.

16 A Let me use some other examples to answer your
17 question.

18 Q Okay.

19 A Let's say we were talking about the subdivision
20 with a cliff that there might be an avalanche.

21 Q Okay.

22 A If the unique attributes of the subdivision
23 were changed such that it was determined where the risk
24 zone for a potential avalanche would be and there were
25 no lots in that area, that area was left as open space,

1 based on what I perceive to be my responsibility in
2 finding facts and researching information to present to
3 the planning board and ultimately commissioners for
4 their consideration, again, I look at the unique
5 attributes of the project, whether or not the mitigation
6 is adequate, and by "adequate," do we know that it will
7 even happen. And I don't put a lot of trust in any
8 applicant to say they're going to do something, if the
9 county can't verify that it's going to be done.

10 I -- on a personal level, my interactions with
11 Keith leave me no reason to think that he wouldn't do
12 something he said he's going to do. But professionally
13 speaking, it's my responsibility to make sure the county
14 is not left with the short end of the stick, you might
15 say, particularly given there are many projects right
16 now that the original developer is not part of the
17 picture any more. Say the bank owns it. If the bank
18 owns it and they don't know about the commitment to
19 build on helical piers, they might just start selling
20 lots. If that doesn't get communicated or verified
21 somehow, they might not do that. Again, speculative.
22 But if this project were located elsewhere, same
23 project, you just pick it up and put it in a different
24 place, then maybe this wouldn't be a concern because the
25 soils might be different. Again, this is just

1 speculative and using examples and probably shouldn't be
2 talking like this. But those are just hypothetical
3 answers to your hypothetical question regarding that
4 issue.

5 Q Yeah. No; thank you for that. And we can move
6 on to a new topic now.

7 But the way I look at this, just to tell you
8 how I view this catch-22 situation is that two major
9 cities in the United States would not exist if this
10 logic prevailed in their respective states. Those two
11 cities being Manhattan, New York and Boston,
12 Massachusetts. Because it's all built on landfill, and
13 it's all built on helical piers. And I look at the
14 logic brought to bear on this issue in this case. And
15 it leads to me to conclude that if anybody in this
16 county ever has a parcel of land that's encumbered by
17 high groundwater and yet proposes scientifically
18 accurate structural sound construction techniques, the
19 county can deny the application based solely on the fact
20 that it lacks the resources to verify the fact that the
21 construction techniques A, were performed and B, are
22 sound.

23 MR. MCCORMICK: Objection; Counsel is
24 testifying. Objection; assumes facts not established.
25 And there isn't a question on the table.

1 Q And you had spoken a little earlier about some
2 of the FEMA mapping regarding base flood elevations,
3 that type of thing. And I believe you testified that
4 the applicant had provided some information regarding
5 potential revision to the FEMA map; is that correct?

6 A The applicant submitted with their application
7 a map of the base level elevation on the subject
8 property -- the boundary of the base flood elevation
9 from the flood insurance study on the subject property.
10 They had provided that with their application with the,
11 you might say, footnote, not technically a footnote, but
12 you might say with the statement that prior to final
13 plat they would apply for and get a letter of map
14 amendment.

15 Q And this was one of the documents that was
16 relevant to the applicant's discussions, for lack of a
17 better word, with the county regarding this issue.
18 Would that be fair to say?

19 A No.

20 Q Okay.

21 A This letter is in reference to a request I made
22 that the applicant clarify that the difference between
23 the NGVD datum and the Somers datum was known to the
24 applicant and was calculated as part of their
25 delineating the hundred year floodplain boundary from

1 Q (By Mr. Perry) Do you understand my confusion?

2 A My response would be do Boston and New York
3 City have building departments?

4 Q They all do.

5 A There you go.

6 Q Yeah. And Flathead should have a building
7 department, too, if it's going to deny applications on
8 this basis, wouldn't you think?

9 MR. MCCORMICK: Objection; Counsel is
10 testifying.

11 THE WITNESS: I can't answer that.

12 MR. PERRY: Can we go off the record?

13 (Deposition in recess from 11:42 a.m. to
14 11:46 a.m.)

15 (Deposition Exhibit No. 68 marked for
16 identification.)

17 Q (By Mr. Perry) Sir, a document marked as
18 Deposition Exhibit 68 to your deposition, do you
19 recognize this document?

20 A Can I read it first, just to make sure?

21 Q You bet you; oh, yeah.

22 A I get a lot of letters based on that from Sands
23 Surveying.

24 Q No, take your time.

25 A Yes, I recognize this document.

1 the flood insurance study so that this -- if my memory
2 serves me correctly, I specifically requested this
3 particular letter from them to document that they dealt
4 with the issue of the NGVD 29 datum versus Somers datum,
5 so that if it came up during public hearing or questions
6 were asked by the planning board or by the
7 commissioners, I could refer to this document and say
8 I'm not an authority on datums, however, I did request
9 evidence from an authority on datums and Eric got that
10 from their licensed surveyor who said Yeah, we dealt
11 with that and here it is.

12 Q And there was a little divergence between the
13 Somers datum and the NGVD datum.

14 A One foot.

15 MR. PERRY: One foot.

16 (Deposition Exhibit No. 69 marked for
17 identification.)

18 Q (By Mr. Perry) Sir, the document marked as
19 Exhibit 69 to your deposition, I ask you if you
20 recognize this document.

21 A Yes, I do recognize this as my handwriting.

22 Q And this is your handwriting. It's dated
23 December 6th, 2007, fair to say?

24 A Yes. And fair to say it says "B.J. Grieve's
25 Notes" at the top written by me.

1 Q I had a feeling they were your notes.
 2 A Yes.
 3 Q And this arose out of a meeting that you had
 4 with the North Shore Ranch representatives, Keith Simon
 5 and Sean Averill?
 6 A Yes. And there were a number of folks there.
 7 I obviously didn't document who was there, but it was a
 8 big meeting that took place in the conference room
 9 downstairs, I believe.
 10 Q And that was when you were taking over this
 11 project; right?
 12 A Yes, sir.
 13 Q Okay. Do you recall having had any discussion
 14 with Jeff Harris or with the applicant's representatives
 15 regarding the continued recommendation of approval once
 16 this application went from Annie to you to process?
 17 A I don't recall specific conversations I may
 18 have had with Annie or Jeff at that time, specific
 19 conversations. The reason I say "specific
 20 conversations," I work in the same office as both of
 21 them. Obviously, this was a project that was being
 22 talked about and being discussed.
 23 Q Right.
 24 A But I do not recall any specific conversation
 25 pertaining to the issue of the recommendation at that

1 time.
 2 Q Okay. So you weren't privy to any conversation
 3 with Sean Averill and Keith Simon and Jeff Harris during
 4 the course of which Mr. Harris indicated, in words or
 5 substance, that the original recommendation of approval
 6 would be preserved in the subsequent staff report
 7 regarding the North Shore Ranch project?
 8 **MR. MCCORMICK:** Objection; assumes facts
 9 not established.
 10 **THE WITNESS:** No, I don't recall a
 11 conversation to that effect.
 12 Q (By Mr. Perry) Okay. Let me ask you a
 13 question. With regard to the subdivision regulations in
 14 Flathead County, is there a specific provision that
 15 articulates a basis for a mid-course correction?
 16 A Yes.
 17 Q Okay. What does that provision say, in a
 18 general sense?
 19 A The mid-course correction -- okay. The
 20 subdivision regulations by which this project was
 21 originally reviewed in 2006, to my knowledge, did not
 22 contain a reference to the phrase "mid-course
 23 correction." Those regulations did not contain that.
 24 This project, when it was resubmitted on August
 25 17th -- I believe that date is correct -- the

1 application was a new application which was submitted
 2 and, therefore, was reviewed by the regulations in place
 3 on that date which, I believe, took effect on August
 4 1st, 2007. Those regulations were a pretty significant
 5 departure from the previous regulations. When I say
 6 "departure," I just mean that they were a significant
 7 update, you might say, significant reworking.
 8 And Montana law states that subdivisions are
 9 reviewed by the regulations in place on the date they
 10 receive sufficiency. This application received
 11 sufficiency -- I don't remember the date that this
 12 application received sufficiency, but it was after that.
 13 And those regulations -- and I refer to them as the
 14 middle set, because they have since been updated again.
 15 So essentially we have three sets of subdivision
 16 regulations to which we refer, generally, in the office;
 17 the old old, the old new, and the new new, which are the
 18 ones we're currently operating under. And obviously,
 19 those aren't technical terms, it's just that that's sort
 20 of how we refer to them in the office. Because it's
 21 very important when reviewing a subdivision, or dealing
 22 with final plat, that you know which subdivision
 23 regulations you're operating under.
 24 The regulations in place when this project was
 25 submitted, were the middle version. And that middle

1 version contains an option for a mid-course correction,
 2 to my knowledge.
 3 Q Okay. That at the time of filing the original
 4 application, the regs did not have that provision; is
 5 that correct?
 6 A To my knowledge, right now, without a copy of
 7 those regulations in front of me, I can't say with one
 8 hundred percent certainty. Because although the term
 9 "mid-course correction" might not appear in there
 10 specifically, there may be something in there that
 11 enables the same concept; I don't know. I can't state
 12 that without being able to look at them in front of me.
 13 Q Okay; fair enough.
 14 By the way, during the course of the pendency
 15 of this application --
 16 A Did you say "pendency"?
 17 Q Pendency.
 18 A Can you explain that?
 19 Q Sure; while it was pending with the county.
 20 A Got you; that's what I assumed.
 21 Q Before it was denied, did you personally speak
 22 with Gael Bissell about this project?
 23 A This would be since I took over the project?
 24 Q Yes, sir.
 25 A I don't know. And I -- the reason I say "I

1 don't know" is because I know Gael Bissell. I know of
2 her. If I ran across her in the street -- I know I've
3 talked with her in a professional capacity in the past.
4 Specifically regarding this one, I can't remember. The
5 other thing is, right now, if she walked in the room, I
6 don't know if I'd say Oh, hi, Gael. Because I don't
7 have a good mental image of her, therefore, I
8 can't -- so I don't know the answer to that.

9 Q Fair enough. Did you speak with any employee
10 of FWP at all, to your recollection, regarding this
11 project while it was pending with the county?

12 A With me, while I was the planner dealing with
13 it.

14 Q Yes.

15 A I would have to say -- my answer to that would
16 be there's a good chance I did, but I don't recall any
17 specific conversations off the top of my head. The
18 reason I say that is because if you had something that
19 said -- that was an e-mail from me to them, it wouldn't
20 surprise me. Yeah, that's feasible. But just right
21 now, off the top of my head, specifically, I can't say
22 Oh, yeah, I talked with this person on this date.

23 Q Okay; fair enough.

24 Do you recall having spoken, during the
25 pendency of this project and your involvement in it,

1 operate a secure website with which it communicates with
2 other entities regarding subdivision applications or
3 anything else?

4 A We have a website.

5 Q Okay. Is that referred to by the county as the
6 plan web, planning web account? Or what's the name of
7 that?

8 A Oh, no. The plan web account is an e-mail
9 account, whereby anybody in the public who wants to
10 contact any county department -- if you go to the
11 Flathead County website, if you Google Flathead County
12 and you go to any department, you click on the -- you
13 click on a button on the left-hand side of any
14 department's page and it says Contact us? or Contact?,
15 what you get is you get a contact page which has a box
16 for your name, your first name, your last name, your
17 e-mail address, and your comment. And then you click
18 Send. When you do that, it generates an e-mail that
19 goes into a web account. And the county creates an
20 e-mail account for every department. Ours is called
21 Plan Web Account. It probably should be called Planning
22 Web Account, but IT does crazy stuff. I don't know why.

23 Q Don't they all?

24 A When they name stuff, I don't know. But like
25 the road department would have a Road Web Account.

1 with anybody from any of the nonprofits who were
2 opposing the project, including Flathead Lakers,
3 Flathead Land Trust, and Citizens for a Better Flathead?

4 A I'm sure I did, because they regularly called
5 the office to check on the project in general. And
6 because I was the planner and I was working on it for so
7 long, I'm sure I did. But kind of a similar answer with
8 agencies. I sent agency referral letters to most of the
9 agencies. If they called, they would have talked to me.
10 The problem is, I get a lot of phone calls from a lot of
11 agencies every day, and they all kind of blur together.
12 So in terms of this project, there are some
13 conversations which specifically stand out in my mind,
14 such as the one with Sean Morris regarding flood
15 easements. I remember that one because it was unique.
16 It would not surprise me at all if I talked to any of
17 the nonprofits, specifically Mayre Flowers or Marilyn
18 Wood, because they call pretty regularly about
19 everything. So if they called and they had questions
20 about North Shore, they would have talked to me.

21 Q Okay.

22 A Again, sitting here off the top of my head, I
23 can't tell you a date or a specific topic of
24 conversation with them, but I probably did.

25 Q Does the planning department maintain or

1 Q Okay.

2 A And the e-mail comes in, and the girls in the
3 front office check that account sporadically. We don't
4 get a lot of e-mails into there. But when they do, if
5 it's -- because the public -- for example, if you're a
6 member of the public and you have questions about
7 zoning, most people would just say Oh, let me check
8 their website. So you Google the website, you go to the
9 website, and then if you don't find your answer, you
10 want to contact us, well, we don't put our e-mail
11 addresses on there because of harvesting by bots. So
12 that's not common practice for anybody to put actual
13 e-mail addresses or hot links on websites. You do a
14 contact page.

15 Q Right.

16 A And the contact page is a way to send a message
17 to the planning -- so if I have a question about zoning,
18 I couldn't find the answer, I'd fill out this. I'd say
19 my name's B.J. Grieve, here's my e-mail address, and
20 then it generates an e-mail which goes into that
21 account. In our office, the girls in the front office
22 check it -- I don't know; they probably do it every
23 other day or something. If an e-mail is in there
24 pertaining to a particular project, they'll forward that
25 e-mail to the planner working on that project. If

1 there's an e-mail in there which is a general question,
2 like I'm in an R2, what's my setbacks? they'll just send
3 it to the planner on duty at that time.

4 So it's a standard thing on all websites for
5 ways for the public to contact it. You know, same thing
6 on like a Pepsi website or anybody's website would
7 probably have a similar thing.

8 Q Is there any other website maintained by the
9 county, to your knowledge?

10 A Our website is the website that is the planning
11 office's website; yeah.

12 (Deposition Exhibit No. 70 marked for
13 identification.)

14 Q (By Mr. Perry) I show you the document marked
15 as Exhibit 70 to your deposition. If you could take a
16 look at that, I'll ask you a couple of questions.

17 A I've skimmed it. Would you like me to read it?

18 Q In a general sense, can you describe for me
19 what this document is?

20 A Well, first and foremost, I can see at the
21 bottom it has my e-mail signature tag. However, any
22 e-mail that's printed usually will have information at
23 the top clearly indicating that it's an e-mail, which
24 this exhibit does not have. It then has an original
25 message from Mark Spratt to B.J. Grieve, cc to Keith

1 what it says speaks for itself. I'd just state that a
2 more accurate draft finding along these lines could be
3 that -- yeah. Because Mark is proposing -- "Thank you
4 for the time you spent with me discussing water
5 elevations at Flathead" -- I'm reading out loud.

6 I'm sorry. I don't mean to offend you. If I
7 need to say something like....

8 "Please confirm the issues we discussed today
9 and that we concurred on the following: Both of the
10 USGS gauging records for Somers and Polson are
11 referenced"; okay. "The correction" --

12 Q Maybe I can just cut to the chase here and ask
13 it to you this way. Fair to say that in response to an
14 e-mail dated March 5, 2008 from Mark Spratt at RLK
15 Hydro, you stated, and I quote, "A more accurate draft
16 finding along these lines could be that" second quote,
17 "The probability of increased risk to public health and
18 safety from flooding on those areas of the proposed
19 subdivision above 2892.9 (NGVD 29) feet above sea level
20 is low because only one flood event since Hungry Horse
21 Dam became operational has caused Flathead Lake to
22 exceed the BFE and that flood event was estimated by
23 FEMA to be statistically less probable than the
24 estimated .02 percent annual chance flood event," close
25 quote. Have I read that correctly?

1 Simon. And it appears -- okay; this appears to be a
2 follow-up from a meeting I had with Mark Spratt that I
3 do remember that meeting.

4 Q And, really, I just wanted you -- well, first
5 of all, let me suggest to you this is how I received it
6 from the county through counsel, this document. So to
7 the extent there's no header on it regarding an e-mail
8 address, that's how I received it.

9 A This came from the Board of County
10 Commissioners?

11 Q Yeah.

12 A Okay.

13 Q And, really, I just wanted to ask you a little
14 bit about the middle paragraph on the top of the page.
15 I see you're responding to Mark Spratt who was,
16 obviously, one of the applicant's representatives; fair
17 to say?

18 A Yes.

19 Q And, basically, you articulated -- what you
20 articulated in your final staff report in the middle of
21 the page under number 9 that, again, in your opinion, at
22 this time when you were evaluating this project, the
23 risk of flooding on the property you considered to be
24 low.

25 A No -- I would say that -- as you might say it,

1 A Yes.

2 Q And you wrote that e-mail, did you not?

3 A Yes.

4 Q And this is essentially the information you
5 provided the Board of Commissioners at the April 23,
6 2008 public meeting regarding this application. Is that
7 fair to say?

8 A I don't know, because I don't recall what I
9 presented to the commissioners specifically. I do
10 recall -- I do recall that I submitted to the planning
11 board a revised finding number 39 based on -- and I
12 believe this language -- do you have a copy of that
13 revised 39 that I submitted that I handed out to the
14 planning board the night of the public hearing?

15 Q You know, I don't have that in front of me.
16 But what I do have is the Commissioners' Journal from
17 the public meeting that you attended and at which you
18 spoke. And that's marked in the stack in front of you
19 as Exhibit 52, right on top there. And I see on the
20 third page of this exhibit, second full paragraph down,
21 there's an indication made, and I quote, "Planner Grieve
22 explained that to the best of his knowledge when Kerr
23 Dam was built, the owners (Montana Power Company) went
24 around the lake and negotiated easements on properties
25 that they felt if they were to raise or lower the lake

1 level could be flooded; these were flood easements,"
2 close quotes. Do you see that indication up there?

3 A Uh-huh.

4 Q And do you recall, in a general sense, having
5 spoken at the public meeting on April 23, 2008?

6 A I don't recall if it was a public meeting. The
7 reason I say -- it was open to the public, but the
8 commissioners don't hold a public hearing. Typically
9 the commissioners don't hold a public hearing on
10 subdivisions. The public hearing is held by the
11 planning board. That's why I'm hesitant to agree with
12 that statement. To be honest with you, no, I do not
13 recall sitting in front of the commissioners on that
14 date, although, obviously I was there.

15 Q Fair enough.

16 A But it's one of those I might have blocked it
17 out.

18 Q I just seek the truth, that's all.

19 A I understand.

20 Q If you don't recall, that's fine.

21 Do you have any recollection, at all, of that
22 meeting or that -- yeah, that meeting?

23 A Yeah, yeah, that.

24 Q And it's okay if you don't.

25 A I know it sounds ridiculous, but I honestly --

1 on those findings that you and I discussed at length,
2 the findings 43 and 45 in your staff report marked as
3 Exhibit 51.

4 A Okay.

5 Q My question is, these findings that you made
6 with respect to the North Shore Ranch proposal, do you
7 know whether or not you have made any similar finding
8 with regard to any other subdivision you've processed
9 during the time that you've been an employee of the
10 county?

11 A Similar in what regard?

12 Q In the regard that the lack of a verification
13 agent, as you and I discussed, formed a predicate, so to
14 speak, for you to state that there is an elevated risk
15 of unsafe or unhealthy single family residences on a
16 given parcel of land?

17 A There is a good chance that the subdivisions
18 I've done recently would contain -- could contain
19 similar language. I don't know any specific conditions
20 for any specific projects, off the top of my head. But
21 I know that it is a way of looking at a situation that I
22 would apply to other projects, were it relevant.

23 Q Okay. And sitting here today, though, you
24 can't identify any other such project that contained
25 language similar to these conditions in regard to the

1 Q Not at all.

2 A Unless something happened which jogged my
3 memory or somebody said Do you remember when so and so
4 stood up and said this? then I might, Oh, yeah, I do
5 remember that. But right now, just saying that, I don't
6 remember that.

7 Q That's fine.

8 A I go over there a couple times a day sometimes,
9 so....

10 Q Have you ever referred to the Commissioners'
11 Journal here in Flathead for any reason?

12 A Oh, many times.

13 Q Okay. And in your experience, is it generally
14 accurate as to what occurs at public meetings, for
15 instance?

16 A Yeah.

17 MR. PERRY: Okay; fair enough.

18 Why don't we take a break until five of 1:00,
19 and we'll see if we can get Mr. Grieve done by two
20 o'clock; okay?

21 (Deposition in recess from 12:09 p.m. to
22 1:04 p.m.)

23 Q (By Mr. Perry) Sir, when we broke for lunch,
24 we had been discussing the North Shore Ranch
25 subdivision. I just had a couple of follow-up questions

1 North Shore Ranch project -- or findings, I should say;
2 excuse me.

3 A Again, I would -- I could think of a few
4 projects that I -- if given the opportunity, I would
5 want to see in front of me because I would think Yeah, I
6 might have considered certain aspects of that project
7 similarly. Hungry Horse Village springs to mind. My
8 staff worked for Hungry Horse Villages comes to mind.
9 Not saying that I know there is one in there, it's just
10 that I do remember it was an extensive staff report.

11 There were a variety of elements to review with that
12 project because there were, you know, more complexities
13 than a fairly standard small subdivision, you know.
14 Therefore, I would want to look at that. But off the
15 top of my head, I cannot say, Oh, yes, X subdivision
16 condition number Y. You know, I can't.

17 Q Understood. Aside from the Hungry Horse
18 project, is there any other project in your mind that
19 may have conditions? Not asking you to say --

20 A Findings?

21 Q -- findings rather, similar to findings 43 and
22 45 in your staff report here? I'm not asking you for
23 you to say Certainly, I know.

24 A You're saying that may have similar?

25 Q (Nods head.)

1 A Yeah. Tree Farm in Whitefish may because of
2 its nature as a PUD and because of some other
3 complexities with access that it had. Whitetail Pines
4 may, because it had some issues with shallow groundwater
5 in just one particular area of the project. I guess all
6 I'm really doing is thinking of projects that had
7 complexities that would be noteworthy. Therefore, if
8 given the opportunity, I would want to look at them to
9 more accurately answer your question.

10 Q Okay.

11 A Spur Wing Creekside had a creek running right
12 next to it which they had proposed some setbacks. So,
13 yeah, I might want to take a look at that one as well.

14 Q Any other ones that come to mind?

15 A Not off the top of my head right now; no.

16 Q Did you have any involvement in the Flathead
17 River Landing subdivision, in terms of evaluating?

18 A None whatsoever; no.

19 Q Can I just point you for a second to Exhibit 60
20 in front of you? This is, in fact, the final decision
21 from the Board of Commissioners on the Flathead River
22 Landing subdivision.

23 A Number 60; okay.

24 Q And just as a preliminary matter, have you ever
25 seen this document before, to your knowledge?

1 A Probably not.

2 Q Okay. I suggest to you it was produced by
3 counsel for the county in this case in response to a
4 request made by myself for certain documents. And I see
5 on page -- well, why don't I just ask you the question.
6 If you could just give this document a read, and then
7 I'm just going to ask you whether or not there are any
8 findings, in your opinion, that are in any way similar
9 to findings 43 and 45 in the North Shore Ranch staff
10 report.

11 A I would have no way of knowing that because
12 this document does not contain any findings.

13 Q I see on the last page of the document, under
14 the Conditions, there are a number of conditions set
15 forth starting prior to -- I'm sorry -- the
16 second-to-last page of the document, page three of the
17 document. I see that there's an indication in paragraph
18 10, quote, "All buildings shall be set back 50 feet from
19 the hundred year floodplain boundary."

20 A I'm sorry; I don't think I'm looking at the
21 right page. The second-to-last -- excuse
22 me -- second-to-last page?

23 Q Second-to-last page.

24 A Condition number 10; okay.

25 Q Condition number 10. Sorry about that. I see

1 in paragraph 10 it's stated, and I quote, "All buildings
2 shall be set back 50 feet from the hundred year
3 floodplain boundary. The setback boundary shall be
4 staked in the field prior to the application for final
5 plat," close quote. Was that -- in your opinion,
6 assuming that the groundwater in this area was
7 approximately five feet below the surface, was that a
8 condition that you find to be consistent with the
9 findings that you made with respect to the North Shore
10 property?

11 MR. MCCORMICK: Objection; speculation and
12 assumes facts not established.

13 THE WITNESS: First of all, I don't know
14 anything about this project, therefore, I don't know
15 anything about the depth of the groundwater on this
16 project.

17 You said, assuming the depth of groundwater was
18 five feet --

19 Q (By Mr. Perry) Yes, sir.

20 A -- on this project. And then what was the
21 second part of your question? Assuming that the depth
22 of groundwater was five feet, which I don't know to be
23 true, but --

24 Q If you make that assumption for me.

25 A Okay.

1 Q And my question is, do you consider paragraphs
2 10 and 11 to be consistent with the findings that you
3 made with respect to the North Shore Ranch project set
4 forth in your report at finding 43 and 45?

5 MR. MCCORMICK: Same objections.

6 THE WITNESS: I understand your question.
7 And I understand, but I have difficult time answering it
8 because these are conditions, not necessarily findings.
9 And conditions have a little bit of a different basis
10 than findings. So comparing a condition to a finding in
11 my report, also based on the fact that this condition,
12 given that this letter came out November 8th, 2006,
13 these conditions were probably developed early 2006,
14 middle of 2006, and the constant evolution of, you know,
15 our office improving our review of each individual
16 subdivision and the fact that I wasn't -- I'm just
17 having a hard time drawing a comparison here. So maybe
18 if you could restate it or rephrase it for me.

19 Q (By Mr. Perry) Happy to. Assuming for me, if
20 you will, that the subdivision was subject to
21 groundwater at five feet.

22 A Okay.

23 Q If you had reviewed this subdivision back in
24 '06, would you have put -- would you have made findings
25 consistent with those findings that you made with

1 respect to the North Shore Ranch property? And by that,
2 I'm referring to 43 and 45.

3 **MR. MCCORMICK:** Objection; speculation,
4 assumes facts not in evidence, and foundation.

5 **THE WITNESS:** I don't know. Because as I
6 mentioned earlier, it's possible that -- it's possible
7 that the lands adjacent to the hundred year floodplain
8 were not the same lands on which the groundwater was
9 within five feet of the surface, because every project
10 is unique. Every piece of ground is unique. It is
11 possible that next to the hundred year floodplain there
12 was a -- an elevated area of land on which possibly the
13 structures were to be built and then on the other side
14 of that is where the five-foot depth of groundwater
15 would be. And, therefore, that area might be, you know,
16 the cause for concern for a finding that would be
17 similar to 43 and 45. But in this case, I have no way
18 of knowing that, therefore, I can't say that it would
19 be -- therefore, I can't agree with your question.

20 **Q (By Mr. Perry)** Yeah. And let me just clarify.
21 I asked you to assume that this property was subject to
22 five foot groundwater.

23 **A** Sure; the entire property.

24 **Q** The entire property. And my question is, if
25 you had reviewed this application, would you have made

1 sufficiency. The reason I say that is because I feel
2 that there is some language in there about unique
3 circumstances whereby -- completeness is, Did you submit
4 everything that's meant to be there? Sufficiency is, Is
5 that information sufficient to allow for review? And
6 that -- there is an element of if, during the
7 sufficiency review, you identify that there is a very
8 obvious noteworthy concern, again, say, for example, the
9 cliff, right? Because it's so visually obvious, there
10 would be grounds to request from the applicant
11 additional information to make the file sufficient for
12 review, within reason. And, therefore, that's why I
13 can't answer your question for sure unless I had the
14 regulations here in front of me to point to and say Oh,
15 yeah, if you had cause, you could request a
16 geotechnical. And you might do that before, so I'm --

17 **Q** And the request for a geotechnical analysis, so
18 to speak, of a particular piece of property, was that,
19 during the '06 to '08 time frame, made on an ad hoc
20 basis at the planning department here in the county?

21 **A** Define "ad hoc."

22 **Q** Depending upon how you reviewed a particular
23 application, you may determine that you'd like to see a
24 geotechnical analysis on a given application but perhaps
25 not on another one.

1 findings consistent with findings 43 and 45 that you
2 made with respect to the North Shore Ranch property?

3 **MR. MCCORMICK:** Same objections.

4 **THE WITNESS:** Given that chain of
5 assumptions, I would have to argue it -- I would have to
6 say I may have. I understand you're looking for a
7 definitive answer, and I wish I could give one, but I
8 feel that there's too many assumptions and it would be
9 too speculative to for me to answer your question by
10 saying Yes, I would have. I don't feel I can.

11 **Q (By Mr. Perry)** What additional information
12 would you need in order to determine whether or not you
13 would have rendered findings consistent with 43 and 45?

14 **A** All the same information which is typically
15 submitted with a subdivision application on which I base
16 my review.

17 **Q** In the '07 to '08 time period -- well, '06 to
18 '08 time period, was a geotechnical analysis of a
19 proposed subdivision required for completeness in the
20 county?

21 **A** No.

22 **Q** Was it required for sufficiency in the county
23 during that time period?

24 **A** I can't answer that, because I'd want to look
25 at the detailed language of the criteria for

1 **A** Yes, both -- potentially both prior to
2 sufficiency or after sufficiency, if there -- if staff
3 identified a cause for concern -- if staff identified
4 something that had been submitted or observed by staff
5 or further researched by staff which caused concern for,
6 say, impacts to public health and safety and staff felt
7 that more information was warranted in order to
8 determine was this a cause for concern or not, then
9 there would be grounds for requesting a geotechnical. I
10 shy away from the term "ad hoc" because it gives the
11 impression that we might just say Yes, we want one, No,
12 we don't, you know.

13 **But** in my review of a subdivision, if there
14 were grounds for requesting more information to show
15 Hey, this has been brought up, but it's not a concern
16 because they did a geotechnical analysis or Hey, I've
17 identified this, I'd like this done, and it comes back
18 Oh, there is a cause for concern, that would be the
19 mechanism whereby if it were -- if it were relevant to
20 the criteria review -- the review criteria, excuse
21 me -- and would provide a better analysis and a more
22 accurate analysis, then yes.

23 **Q** In your experience as the assistant planning
24 director here in Flathead County for approximately four
25 years, has the planning department ever required an

1 applicant, a subdivision applicant, to conduct a year of
 2 groundwater monitoring?
 3 A Oh, I know that groundwater monitoring can
 4 typically take a year simply because there is a season
 5 for doing it, and that season -- it's during the high
 6 groundwater time period during the spring. And if a
 7 subdivision application comes through and it happens to
 8 get to the planning board or the commissioners in the
 9 middle of summer and it hasn't -- it doesn't have
 10 accurate groundwater monitoring -- or doesn't have
 11 sufficient groundwater monitoring at that point, then it
 12 could be -- then that could be a noteworthy cause for
 13 concern. Say there hadn't been any done yet. And if
 14 there were to be some required, yeah, it would take a
 15 while because they'd have to wait for that cycle to come
 16 around.
 17 Q How is it determined, here at the county, when
 18 any given subdivision applicant has to conduct
 19 groundwater monitoring?
 20 A There is information pertaining to groundwater
 21 required as part of an application, under statute, to my
 22 best recollection. And I'm not crystal clear on every
 23 subdivision regulation today because, you know, I
 24 refamiliarize myself with them each time I do a project,
 25 especially if there's a gap between the time I do

1 subdivision projects.
 2 The issue on which you are questioning is one
 3 that is discussed quite a bit statewide, regarding the
 4 issue of how much information is to be submitted with a
 5 subdivision application as opposed to with an
 6 application to DEQ for your subdivision approval. And
 7 the difference in those is always discussed and debated
 8 and interpreted slightly differently between different
 9 jurisdictions.
 10 What I can say is that information pertaining
 11 to groundwater and water in general is one of the issues
 12 that is required for subdivision review, and we try to
 13 do the best job that we can.
 14 Q Okay. In reviewing some of the other
 15 subdivision applications that have been conditionally
 16 approved by the county, I noted that some of the
 17 subdivisions that I reviewed, although subject to high
 18 groundwater, did not have groundwater monitoring studies
 19 conducted. And my question is --
 20 A "Although subject to high groundwater" you
 21 said?
 22 Q Although subject to high groundwater, were not
 23 required to conduct groundwater monitoring. And my
 24 question is, how is that determination made between,
 25 say, the North Shore Ranch property that had 14 months

1 of groundwater monitoring and another project on the
 2 river that has no groundwater monitoring and used the
 3 groundwater mapping in order to provide that data, so to
 4 speak, to the county?
 5 A I don't know the answer to that question.
 6 Q Okay. So that wouldn't be something that you,
 7 if you're processing an application, would necessarily
 8 go back to an applicant on and say Well, hey, the
 9 groundwater map is good but I want groundwater
 10 monitoring. Or how do you make that determination, you,
 11 as a planner? Do you understand my question?
 12 A I do understand your question. I'd like to
 13 reference something real quick.
 14 Q Sure; take your time.
 15 A In my review of a subdivision, there
 16 is -- statutorily, there is a requirement to review
 17 impact on the natural environment. And our Flathead
 18 County Development Code has a definition for that, what
 19 is a natural environment, which includes water. And in
 20 terms of in my review of any project, I can't speak to
 21 projects I haven't -- that weren't mine to review. And
 22 I should also say in my review of projects recently,
 23 because my experience and knowledge of this in general,
 24 I like to think continues to improve as I work longer,
 25 like anybody, hopefully. I would use an element of

1 reasonableness to start with if a project is adjacent to
 2 water or if a project is low lying and exhibits plant
 3 species which are typically associated with shallow
 4 groundwater or wetlands, or if there are depressions
 5 which is seasonally filled with water or, you know, I
 6 any other types of clues or research going to the
 7 Montana Groundwater Information Center, GWIC, and going
 8 at well logs from adjacent properties that are public
 9 record. If, amongst any of those, as well as other
 10 techniques, there is cause for concern, or if not
 11 concern then cause for further research, I would do that
 12 research by potentially asking for additional
 13 groundwater monitoring to document Is it a concern, is
 14 it not a concern? If it's not, I would prefer to know
 15 it's been done on the subject property and it's not a
 16 concern. Therefore, if it comes up in the course of the
 17 hearing, you can refer back to it and say This is not an
 18 issue. If it is a concern, then that would -- it would
 19 be documented either way.
 20 (Deposition Exhibit No. 71 marked for
 21 identification.)
 22 MR. PERRY: Okay; fair enough.
 23 Let me show you one last exhibit here for your
 24 deposition, Exhibit 71. Attorney McCormick, your copy
 25 is on the table, actually in your hand.

1 Q (By Mr. Perry) Sir, the document marked as
 2 Exhibit 71, do you recognize this document?
 3 A Not immediately.
 4 Q And again, this was a document produced by
 5 Attorney McCormick, on behalf of the county, in response
 6 to a request made by my office. And I was just
 7 asking -- really, I just want to know if you know who
 8 drafted this or what meeting this refers to?
 9 A Well, I'm trying to read and think at the same
 10 time. It's really slowing me down.
 11 Q Lucky we don't have any gum.
 12 A Yeah.
 13 This seems vaguely familiar to me as me having
 14 written it. I know it sounds kind of weird, but the way
 15 it looks, you know, it doesn't have any reference. It
 16 doesn't have a title like Written By. It doesn't
 17 have -- so at first glance, but I do generally recall
 18 Gary -- a flurry of communication with Gary because he
 19 was curious about a variety of things. He needed
 20 clarification on a number of things. He had a number of
 21 questions. And so in reading this, it seems familiar to
 22 me. I wish I -- again, I know that sounds weird to just
 23 say it seems familiar to me, but I think I wrote this.
 24 Q That is what I thought as well. And when you
 25 refer to Gary, you're speaking of Gary Hall?

1 Peter's office," close quote.
 2 A Yes.
 3 Q Have I read that correctly?
 4 A Yes.
 5 Q Peter Steel?
 6 A Yes.
 7 Q And who was Peter Steel at the time?
 8 A Peter Steel is a Deputy Flathead County
 9 Attorney.
 10 Q Is he still a deputy?
 11 A Yes, sir.
 12 Q He is; okay. And do you recall why he was
 13 involved in this discussion between you and Gary?
 14 A I believe -- say your question again.
 15 Q Yeah. Do you have any recollection or
 16 understanding as to why Peter Steel, a deputy county
 17 attorney for Flathead County, was involved in your
 18 discussion with Gary Hall on April 22, 2008?
 19 MR. MCCORMICK: Objection; to
 20 attorney-client privileged information. May I speak a
 21 little to that?
 22 MR. PERRY: Your objection is fine. I just
 23 asked why he was there.
 24 MR. MCCORMICK: I understand that. I just
 25 want to make sure he understands that you've asked sort

1 A Yes, sir.
 2 Q And he was a county commissioner at the time.
 3 A Yes, sir.
 4 Q And this is a document dated 4/22/2008;
 5 correct?
 6 A That's what's written on the top here.
 7 Q And I suggest to you that was the day before
 8 the public meeting on the North Shore Ranch application
 9 before the commissioners. Does that refresh your memory
 10 at all about this meeting, the day before the meeting?
 11 A No, that doesn't help. But you would be
 12 correct because it was April 23rd; correct?
 13 Q Yeah.
 14 A Okay.
 15 Q Do you recognize the handwriting on the page?
 16 A No.
 17 Q Okay. It's not yours?
 18 A No, it's not.
 19 Q And in the past, have you seen Gary Hall's
 20 handwriting on any documents? Would you recognize his
 21 handwriting?
 22 A No. If Gary Hall's handwriting were sitting
 23 here in front of me, I would not recognize it, no.
 24 Q And there's a reference made at the top of the
 25 page, and I quote, "Summary of 4/22/08 Conversation at

1 of a yes-and-no question.
 2 He's not trying to elicit from you, I assume,
 3 any communications that would be considered revealing
 4 attorney-client privileged communication.
 5 MR. PERRY: Absolutely not, no.
 6 Q (By Mr. Perry) My question is just do you know
 7 why he was there? Because, as you said, Gary had some
 8 questions about the North Shore Ranch project; correct?
 9 A Yes.
 10 Q And I was just wondering why the deputy county
 11 attorney would have been there during your discussion
 12 with him. I don't want you to reveal any communications
 13 you had with him.
 14 A Sure. As we're talking here, bits and pieces
 15 are coming to me because it's just jogged my memory. As
 16 I said, Gary -- this was obviously on his plate. It was
 17 on the agenda for the next day, and he was at work
 18 reviewing everything. I guess that's speculating but,
 19 you know, he was busy with this at that time. And I
 20 vaguely remember participating -- being called over to
 21 Peter's office because the staff report was mine,
 22 because I was the planner on the project, because Gary
 23 had questions about this, that and the other thing. And
 24 Peter would be involved because -- to get to your
 25 question -- Peter would be involved because he is

1 the -- to my knowledge, he is the deputy county attorney
2 who deals with subdivision. For example, when I have a
3 zoning issue, I go to Jon Smith, because we've been
4 informed that -- "we've been informed." That's hard to
5 type; sorry. Generally speaking, it's my understanding
6 that they have partitioned out their workload there that
7 Peter deals with subdivision, Jon deals with zoning.
8 That's a really hard way to say something really simple.

9 Therefore, to answer your question, Peter would
10 be involved because it was a subdivision issue. And I
11 would think that if John -- if Gary had legal questions,
12 he would engage Peter with those questions. Legal
13 questions regarding subdivisions, he would engage Peter
14 with those questions, in a general nature, as I'm pretty
15 sure he did with other subdivision questions, if they
16 were of a legal nature.

17 Q I see there's a reference in the middle of the
18 page after this first bullet, and I quote, "See
19 memorandum," and then it says "Read," and it's
20 underlined. Do you know what memorandum that would be?

21 A I don't.

22 MR. MCCORMICK: I object; foundation and
23 speculation.

24 THE WITNESS: I'm trying to think if there
25 was anything -- because the bullet is in reference to

1 privilege and instruct him not to answer the question
2 because you're talking about a meeting here that
3 apparently was held between Gary, B.J., and the County
4 Attorney's Office.

5 MR. PERRY: I asked for a discussion,
6 though, between him and Gary. I said -- my question was
7 very specific in that regard. I asked Do you recall
8 speaking with Gary about getting sued?

9 MR. MCCORMICK: If you're asking about a
10 conversation that took place at this meeting, I object
11 and instruct him not to answer the question. If you're
12 asking him about conversations outside of that meeting,
13 that's an appropriate question.

14 Q (By Mr. Perry) You acknowledge and agree with
15 me at the bottom of this page, Exhibit 71, it is
16 handwritten, "Get sued"?

17 A (Nods head.)

18 Q Yes?

19 A Yes.

20 Q Okay. Without getting into any attorney-client
21 issue, do you recall ever having a discussion with Gary
22 Hall about the county getting sued over the North Shore
23 Ranch subdivision?

24 A I do generally recall that Gary was concerned
25 with legal defensibility of whatever action he chose to

1 the flood easements. The flood easement record would be
2 my knowledge that they existed and then the evidence
3 submitted by Katherine Maxwell at the public hearing
4 which, then, we had a copy of, et cetera. I can't think
5 of any -- anything that would be a "memorandum."

6 Q (By Mr. Perry) I was just wondering, because I
7 hadn't seen a memorandum from the county with respect to
8 either of these top two issues. I do recall the
9 memorandum from Katherine Maxwell, though, so perhaps
10 that explains it.

11 A Oh, is the cover of her -- does it say
12 "Memorandum"?

13 Q It does.

14 A Oh, well, that might be it.

15 Q Fair enough.

16 And I see at the bottom of the page, there's an
17 indication made, and I quote -- I believe it
18 says -- it's handwritten, "Get sued," close quote. Do
19 you see that indication?

20 A Yeah.

21 Q Do you recall a discussion with you and Gary
22 about getting sued?

23 MR. MCCORMICK: Objection; foundation and
24 objection; speculation.

25 And I'm going to object on attorney-client

1 take.

2 Q Okay. And, I mean, the public meeting at which
3 the commission was to vote, was scheduled for April 23,
4 2008. In your opinion, had Gary Hall concluded, prior
5 to that meeting, that he was going to vote to deny this
6 application?

7 MR. MCCORMICK: Objection; foundation and
8 objection; speculation.

9 THE WITNESS: Can you restate that question
10 for me?

11 MR. PERRY: Sure.

12 Q (By Mr. Perry) We know the public meeting for
13 the North Shore Ranch application was conducted on April
14 23, 2008. And my question to you is, did you ever have
15 a discussion with Gary Hall before that day, during the
16 course of which he stated to you, in words or substance,
17 that he intended to vote to deny the application?

18 A Yes.

19 Q There was such a conversation.

20 A I spoke with Gary Hall on the phone because, as
21 I said, he was having a variety of --

22 Q Uh-huh.

23 A -- he was concerned with being defensible. He
24 was very stressed out by the project. He called me to
25 ask about findings, about the basis for findings,

1 how those -- the basis of those findings related to
2 state law. And he asked me specifically about findings
3 that were -- he asked me to clarify specifically, and
4 explain in more detail, findings that I remember
5 thinking were the negative ones.

6 Q So as a result of that conversation, did you
7 form an opinion or reach a conclusion that, in fact,
8 Gary Hall was intending to vote to deny the application?

9 A I got that impression.

10 Q Fair enough.

11 At any time before April 23, 2008, did you ever
12 have a discussion with Commissioner Joe Brenneman during
13 the course of which he stated to you, in words or
14 substance, that he, too, intended to vote to deny this
15 application?

16 A No.

17 MR. PERRY: If I could have one minute,
18 I'll be done.

19 MR. MCCORMICK: Sure.

20 (Deposition in recess from 1:38 p.m. to
21 1:40 p.m.)

22 Q (By Mr. Perry) This meeting that we discussed
23 briefly in Exhibit -- referenced by Exhibit 71, was
24 there anybody else there besides Peter Steel, Gary Hall,
25 and yourself, to your recollection?

1 A To my recollection, no. And it's a very vague
2 recollection at that. But there's something there. But
3 no, I don't recall anyone else being there.

4 MR. PERRY: Okay; fair enough. Thanks so
5 much for your time today, Mr. Grieve; appreciate it.

6 THE WITNESS: All right.

7 (Deposition concluded at 1:40 p.m.; witness
8 excused, signature reserved.)
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REPORTER'S CERTIFICATE.

I, BAMBI A. GOODMAN, CSR, RPR, CRR and Notary
Public in and for the State of Montana, residing in
Whitefish, Montana, do hereby certify:

That I did report the foregoing deposition
after having duly sworn B.J. GRIEVE to the truth; that
the deposition was taken at the time and place stated on
the caption hereto; that the testimony of the witness
was taken in shorthand by me and subsequently reduced to
writing under my direction; that the foregoing is a true
and correct transcript of the testimony given by the
witness;

I further certify that I am not counsel,
attorney nor relative or employee of any party, nor
otherwise interested in the event of this suit.

IN WITNESS WHEREOF, I have hereunto subscribed
my name and affixed my seal of office this 5th day of
October, 2009.

BAMBI A. GOODMAN, CSR, RPR, CRR and
Notary Public, State of Montana
Residing at Whitefish, Montana
My Commission expires 3/21/10

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CERTIFICATE OF WITNESS

PAGE LINE CORRECTION

I, B.J. GRIEVE, have read the foregoing
transcript of my testimony and believe the same to be
true, except for the corrections noted above.

DATED this day of , 2009.

Deponent

SUBSCRIBED AND SWORN to before me this day
of , 2009.

Notary Public for the State of Montana
Residing at , Montana
My Commission expires:

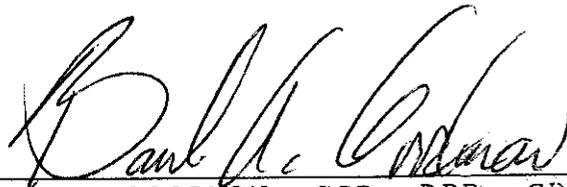
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15 otherwise interested in the event of this suit.

16 IN WITNESS WHEREOF, I have hereunto subscribed
17 my name and affixed my seal of office this 5th day of
18 October, 2009.

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22 BAMBI A. GOODMAN, CSR, RPR, CRR and
23 Notary Public, State of Montana
24 Residing at Whitefish, Montana
25 My Commission expires 3/21/10



		83:9	69:4,11;70:4;71:6, 13,13,14;106:18; 107:2	48:10
0	2	30th (1) 42:25		above (3) 45:5;99:19,19
02 (1) 99:24	20 (1) 83:19	310 (1) 14:6	50-lot (1) 68:14	absence (1) 50:17
06 (3) 108:24;110:17; 111:19	200 (1) 16:20	32 (3) 69:20;70:11;71:6	51 (6) 9:16,19;10:5; 44:10;46:8;103:3	Absolutely (1) 120:5
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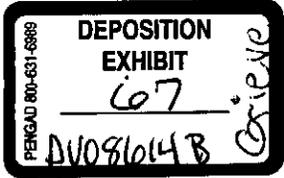
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Y			







FLATHEAD COUNTY PLANNING AND ZONING
REPORT #FPP-07-32
NORTH SHORE RANCH SUBDIVISION
NOVEMBER 15, 2007

Staff Report by JEBT
Greene's Condition Notes

A report to the Flathead County Planning Board and County Commission regarding a request for preliminary plat approval of North Shore Ranch Subdivision. This subdivision proposes to create 290 lots south of MT Hwy 82, north of Flathead Lake and the USFWS Blasdel Waterfowl Production Area. The subdivision is proposed on 367.470 acres. The majority of the property is unzoned; a portion is zoned Scenic Corridor.

The Flathead County Planning Board will hold a public hearing on this proposal at 6:00pm on November 28, 2007 at 1035 1st Ave West, Kalispell. A recommendation will be forwarded to the County Commission for review.

FILE HISTORY

North Shore Ranch was originally reviewed in 2006. The original file, FPP-06-32, was submitted to this office on April 18, 2006. This office forwarded a recommendation of approval to the Flathead County Planning Board. The file was reviewed by the Planning Board on July 19, 2006. Significant agency and public comments were received after staff's report was forwarded to the Planning Board or at the Planning Board hearing. Agency and public comments noted the following concerns:

- Too many accesses onto MT Hwy 93
- Impacts to traffic congestion due to access layout
- Impacts to traffic congestion due to density
- Conflicts with the Somers Water & Sewer District
- Impacts to wildlife and wildlife habitat, specifically concerning the subdivision's proximity to the WPA
- Disagreements with statements made in the wildlife report and environmental assessment
- Concerns with enforcement of the covenants
- Concerns for water quality in the shallow aquifer
- Concerns for water quality in Flathead Lake and the Flathead River
- Visual impacts of the subdivision
- Impacts to the floodplain
- Density
- Concerns regarding the integrity of sewer mains located below the water table
- Concerns for housing and the integrity of foundations in regards to soils and the high water-table
- Concerns for perceived inadequacies in the proposed Stormwater Management Plan
- Mosquito issues
- Impacts to surrounding agricultural uses

In response to these concerns, the Flathead County Planning Board voted unanimously (all members present with the exception of Jeff Larsen) to deny the application, citing the following reasons for denial:

- Density
- Impacts to MT Hwy 82, including the number of approaches proposed
- Impacts to the Waterfowl Production Area
- Pollution
- Commuter Traffic
- High groundwater/runoff issues
- Unrestricted household pets
- Division of subdivision into two school districts
- Comments received from Montana Fish, Wildlife, and Parks and the US Fish and Wildlife Service

- Threats to Flathead Lake
- Conflicts with adjacent hunting area at WPA
- Location not suitable for equestrian center
- Difficulty in monitoring and enforcing residents' adherence to covenants
- Conflict between Lakeside and Somers Water and Sewer Districts
- Larger buffer needed from adjoining lands
- Agency comments in general

Instead of proceeding to the Flathead County Commission, the applicant decided to make a mid-point correction. This process would stop the 60 day time period for review, and allow them to address the issues raised by the public, agencies, and Planning Board. The applicant submitted a new application to this office on August 17, 2007. It has been reviewed for completeness and sufficiency and forwarded to agencies and adjoining land owners for comments. As stated above, the file will be reviewed by the Flathead County Planning Board on November 28, 2007. The applicant has made changes to the application to address the issues raised at the original Planning Board hearing, including the following:

- Reduced number of lots from 310 to 290
- Revised wetlands delineation (dated 9/6/07)
- Revised hydrogeological analysis (dated 6/07)
- Revised wildlife report with responses to agency and public comments
- New vegetation and wildlife management plan
- Revised stormwater management plan (dated 7/07)
- Letter from the State Historical Preservation Office (dated 4/9/07)
- Revised Traffic Impact Study (10/6/06)
- Responses from MDT (7/18/06; 10/1/06)

The new file (FPP-07-32) has been reviewed by staff with additional attention to review of the issues which were brought up in the original Planning Board hearing. Review of this file follows.

BACKGROUND

I. Applicant: Kleinhans Farms Estates, LLC
1399 Wisconsin Avenue
Whitefish, MT 59937
(650) 365-4020

Technical Assistance: Sands Surveying, Inc.
2 Village Loop
Kalispell, MT 59901

Carver Engineering
1995 3rd Ave E
Kalispell, MT 59901

Epikos Design
PO Box 2490
McCall, ID 83638

RLK Hydro
PO Box 1579
Kalispell, MT 59901

F0PZ00953

II. Project Description:

The application proposes to create 290 residential lots. The lots will be served by a public water system and a public sewer system to be managed by Lakeside Water & Sewer District. Access to the lots is from a proposed internal subdivision road system which includes a main horseshoe road (Ranch Road East/West), three loop roads (Fox Run, North Shore Drive, Keller Court) and seven cul-de-sacs (Swan Court, Pheasant Glen, Quail Court, Upland Circle, Sanctuary Drive, Lake Drive, Mallard Court). The name "Mallard Court" appears twice on the preliminary plat. Access to MT Hwy 82 is proposed in three locations: at the west end of Ranch Road West; near the center point of North Shore Drive; and at the east end of Ranch Road East.

III. Location:

The property is located on MT Hwy 82, north of Flathead Lake, north and northeast of the USFWS Blasdel Waterfowl Production Area (WPA), and west of Mackinaw Estates subdivision. The west end of the property is approximately 1.4 miles east of the intersection of MT Hwy 82 and US Hwy 93. The property fronts MT Hwy 82 for approximately 1.62 miles. The property shares a common border with approximately 1.57 of the Blasdel WPA. The site is legally described as Tracts 2A, 2BB, 3 and 4 in Section 20, Township 27 North, Range 20 West; Tracts 3, 3B, 4, 4A, 4B, 4C, 5 and 6A in Section 19, Township 27 North, Range 20 West; and Tract 1 in Section 24, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

IV. Size:

Subdivision area:	367.470 acres
Minimum lot size:	0.270 acres
Maximum lot size:	1.600 acres
Acreage in lots:	150.838 acres
Acreage in roads:	36.729 acres
Acreage in parks, open spaces, or common areas:	179.903 acres

V. Existing Land Use:

The site is classified as agricultural land and rural farmstead. The land has been in agricultural production for many years. The wildlife report provided with this application states that "The project area currently is composed of about 312 acres of cultivated farm land, producing grain crops and hay, and about 34 acres of non-cultivated wet meadow and wetland complex. There are four residences on the property, three with outbuildings and shade trees. There are no other trees on the property." The wetland and wet meadow complex was used in the past for cattle grazing.

VI. Proposed Land Use:

The applicant proposes 290 single family residential lots. A portion of this proposed project is zoned Scenic Corridor, but is unzoned for use, lot size, etc. as the Scenic Corridor zoning designation only applies to signage. The rest of the property is unzoned. There is no zoning regulation to ensure that the lots are all used for single family residential uses. However, a statement on the face of the final plat notifies land owners that if the properties are used for any use other than single family residential an amended final plat will have to be filed to show all changes.

The application also proposes an equestrian center with stables and associated paddocks, a clubhouse with a fitness center and other amenities for use by residents, soccer fields, baseball courts, and several miles of pedestrian and equestrian trails. The application proposes restoring and maintaining one of the historic buildings and grain silo, possibly for educational purposes, or for community or private events. In total, 179.903 acres are proposed as parks, open spaces, or common areas, with some areas being developed and some being maintained in a natural state.

The applicant proposes fifteen phases, addressed in a phasing plan submitted with this application. The phasing plan addresses improvements to be made in each phase of the development. Concerns were

raised by this office regarding the long time frame over which a development with fifteen phases could develop. If all phases used the maximum time for final plat approval (three years for the first phase and two years for each additional phase, plus a possible one year extension for each phase), the time frame for this subdivision could last through 2038 (without extensions) or 2053 (with extensions for each phase). The developer agreed that this was an unreasonable time frame for preliminary plat approval, but did not wish to aggregate any phases of the development to maintain flexibility during the final platting process. To address the concerns raised by this office, the developer proposed a 15 year maximum time frame for approval of all final plat phases. Conditions require that all phases receive final plat approval by December 31, 2022. Any phases which have not received final plat approval by that time will be terminated and any further development would be subject to a new preliminary plat approval.

VII. Adjacent Land Uses:

North: Unzoned/Scenic Corridor/AG-20: Agricultural; Residential; Commercial; Flathead County Solid Waste Green Box Site; Bigfork Water & Sewer District Dose Site
South: Unzoned: Blasdel Waterfowl Production Area, 535 acres; Burlington Northern, 7.485 acres
East: Unzoned/Scenic Corridor: Blasdel Waterfowl Production Area, 535 acres
West: Unzoned: Agricultural; Residential

VIII. Utilities:

Water: Public water system: two wells to be built by the applicant, but operated and maintained by Lakeside Sewer & Water District
Sewer: Public sewer system: applicant will extend Lakeside Sewer & Water District sewer mains to all lots
Electricity: Flathead Electric Cooperative
Telephone: CenturyTel
School Districts: Somers/Lakeside (K - 8); Bigfork (9 - 12); Flathead (9 - 12)
Fire: Somers/Lakeside Rural Fire District
Police: Flathead County Sheriff

REVIEW AND FINDINGS OF FACT

The application is reviewed as a major subdivision in accordance with statutory criteria and the Flathead County Subdivision Regulations.

A. ~~Neighborhood and Agency Comments Received:~~

As of the date of this report, one neighborhood comment has been received. The comment outlined several concerns with the quality of the Waterfowl Production Area and a perceived poor management of the area by US Fish and Wildlife Service. The comment also addressed concerns for "water quality, infiltration, runoff, nutrients, 'hard' chemicals, and 'the clay lens'" and the need to obtain clear, historically accurate data on these important issues.

The application, preliminary plat, and environmental assessment have been forwarded for agency referral. Comments have been received from five agencies: Montana Department of Transportation, Right of Way; Montana Department of Transportation, Program & Policy Analysis; Montana Department of Environmental Quality, Public Water Section; Flathead City-County Environmental Health; Flathead County Superintendent of Schools; and Somers/Lakeside School District Superintendent. Agency comments are summarized under the relevant sections below and included with this report.

Additional neighborhood and agency comments are expected to be received prior to the Flathead County Planning Board public hearing. All comments will be provided for review at the earliest convenience.

Note: This report has incorporated comments from the Department of Environmental Quality. On November 15, 2007, an email was forwarded to this office from DEQ stating that the comments made were informal comments, and were not the official comments of DEQ as no submittal package has been received by that agency. Comments from DEQ also state "It appears that cursory comments I outlined (informally) have been addressed. A full evaluation of the EA and entire package will be completed once a formal submittal is made to DEQ." As this email was received late in the writing of this report, DEQ's comments have remained incorporated into the report. Please review them as informal comments.

B. Compliance with the Flathead County Zoning Regulations:

A portion of the subject property is zoned Scenic Corridor. The Scenic Corridor zoning designation is defined as "an overlay or standing district intended to protect the scenic vistas and provide greater traffic safety along the highway corridors by restricting the number, size and location of outdoor advertising signs and billboards... No other land use restrictions apply in this district other than those relating to signs." The rest of the project is unzoned. Other than signage restrictions, this property is not regulated by the Flathead County Zoning Regulations.

FINDING

- Other than signage restrictions, this property is not regulated by the Flathead County Zoning Regulations.

C. Compliance with the Growth Policy:

The Flathead County Growth Policy was adopted March 19, 2007. Following is a list of several policies relevant to this proposal and an assessment of how this proposal meets or does not meet these policies.

RESIDENTIAL DEVELOPMENT

P.4.3 Identify a desirable gross density for rural residential development that retains land values, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc.)

- The proposed subdivision is located in a transition area between the community of Somers and the primarily agricultural uses of Lower Valley. Surrounding lot sizes are varied. To the west, Mackinaw Estates, a subdivision which received final plat approval in 2004, has 41 lots on 24.56 acres (a density of 0.59 acres). Agricultural and rural residential uses to the north and east range in size from under 20 acres to over 300 acres. The Blasdel Waterfowl Production Area borders the property to the east and south and contains 535 acres.

North Shore Ranch subdivision is proposed at a density of 1.28 acres per lot, although lot sizes range in size from 0.27 to 1.6 acres. All lots are proposed with no further subdivision and no residential development is proposed on the open space areas.

The Flathead County Growth Policy (Chapter 10: Neighborhood Plans) outlines the following density designations which are applicable to the subject property:

SMALL PARCEL – Small Parcel allows a range of one dwelling unit per 1 acre to one dwelling unit per 5 acres. This density category is intended to promote detached single-family residential development at medium densities and promote areas within unincorporated Flathead County that are already developed with similar densities. Multiple-family dwellings are not appropriate.

LARGE LOT – Large Lot permits a range of single-family development from half acre lots to one dwelling unit per acre. This category is intended to be in proximity to public services. Multiple-family dwellings are not appropriate. Such residential development is intended to be in conjunction with public or community water systems.

The subdivision proposes these densities and will be served by a public water and sewer system. As stated above, the subdivision is located in an area with varied densities. Following is a discussion of the property's proximity to public services.

The subject property is approximately 1.5 miles from the community of Somers which provides some services (elementary school, fire district, solid waste green box site, parks, etc.) but few employment opportunities and retail centers. The site is approximately 7.5 miles from the community of Lakeside which will provide sewer and water service, and the Lakeside Quick Response Unit. Lakeside has more employment and retail opportunities but still not enough to serve the subdivision at the proposed density. The subdivision is located approximately 8 miles from Bigfork which will provide high school to a portion of the proposed subdivision (no bus service) and additional employment and retail opportunities. It is unlikely that the three communities noted will be adequate to serve the proposed subdivision. The traffic study provided by the applicant proposes the following trip distribution:

- to Bigfork and vicinity (east on Hwy 82): 15%
- to Somers: 5%
- to Cooper Farms development: 5%
- to Lakeside and vicinity (south on Hwy 93): 10%
- to Kalispell and vicinity (north on Hwy 93): 65%

The proposed subdivision is located approximately 9.5 miles from the city of Kalispell, which would provide high school to a portion of the subdivision, advanced life support and medical services, police protection, etc. It is assumed that the city of Kalispell would have adequate employment and retail centers to support the proposed subdivision.

As the subdivision is located in a transitional area between rural communities and agricultural lands, and at varying distances from urban facilities and services, it is difficult to determine at this point whether the density proposed is appropriate for the area.

FLOODPLAIN

- P.10.2 Discourage development within the 100-year floodplain that displaces floodwaters to neighboring properties.
- P.38.3 Development in floodway or floodway fringe should not create a net increase in the floodplain area.
- P.38.5 Discourage development that displaces floodwaters within the 100-year floodplain.

→ Floodplain issues on the subject property are addressed under the section Effects on the Natural Environment: Floodplain. Due to the small amount of development proposed by trail-building in the 100-year floodplain, it is not expected that this subdivision will cause a net increase in the floodplain area or displace floodwaters. However, this will have to be verified by the Flathead County Floodplain Administrator and other applicable agencies.

WETLANDS AND RIPARIAN AREAS

- P.10.5 Protect wetlands and riparian areas.
- P.37.4 Encourage constructed wetlands as part of on-site drainage plans to restrict untreated storm water from entering lakes, rivers, and streams.

➤ The subject property does not contain any riparian areas as it does not border Flathead Lake or any rivers or streams.

Wetlands on the property are further addressed under the section Effects on the Natural Environment: Wetlands. The wetland delineated by the applicant is proposed to be protected and constructed wetlands are proposed as detention ponds for stormwater management. Staff finds that the application meets the policies of the Growth Policy in terms of wetlands and riparian areas.

OPEN SPACE

- P.10.7 On lands that contain areas both suitable and unsuitable for development, encourage open space development design techniques to cluster dwellings away from hazardous and/or unsafe areas.
- P.18.2 With the exception of water based parks, subdivision park requirements should be used to create and/or fund dedicated park sites of optimal size of no less than five acres to accommodate operation and maintenance costs.
- P.18.6 Flathead County should preserve and increase recreational access to public lands and waterways by procuring necessary land, easements, or rights of way.
- P.19.3 Support "pocket parks" which are owned and maintained by Home Owner groups and Associations.
- P.42.3 Recognize and respect the important history and heritage of hunting and fishing by encouraging development that creates new or preserves existing access to public lands and waters.

- The North Shore Ranch subdivision proposes 179.903 acres of open space. The open space proposed is further addressed below in the section Effects on Local Services: Parks. Staff finds that the proposed parks meet the requirements of the Flathead County Growth Policy in terms of open space areas and parkland dedication.

WATER QUALITY/QUANTITY

- P.10.3 Encourage impact-mitigated development in areas of shallow groundwater. Use test holes or bore holes and best available data to determine areas of shallow groundwater.
- P.29.2 Promote the installation of community sewer and/or water services in areas where the quantity and/or quality of drinking water resources are threatened.
- P.40.4 Encourage rural low-intensity land uses in areas where the groundwater is less than eight feet unless scientific evidence shows that a higher or lower intensity of land use is appropriate.
- P.40.2 Promote development into areas with public facilities or appropriate depth to groundwater to preserve water quality and water supply.
- P.29.4 Land use and subdivision activities should not threaten drinking water sources.
- P.36.6 Support non-point source pollution reduction within the Flathead Basin watershed.
- P.29.1 In compliance with state regulations developers should provide evidence that drinking water of sufficient quantity and quality is available in areas of proposed development.
- P.36.1 Require development to demonstrate compliance with local, State, Tribal, and Federal water quality standards, where applicable.
- P.28.7 Encourage wastewater treatment facilities and technologies adequate to meet or exceed water quality standards.
- P.37.1 Encourage the development of stormwater collection, detention and retention systems.

- The application provides a hydrogeological analysis which addresses water quality, water quantity, and the depth to groundwater on the subject property. The analysis states that the property is located above a shallow aquifer and a deep aquifer. The technical assistant searched the GWIC database for all wells in Sections 17, 18, 19, and 20 of Township 27 North, Range 20 West, and Sections 13 and 24 of Township 27 North, Range 21 West. Seven wells were found which utilize the shallow aquifer, with depths to 35 feet. Seven wells were found which utilize the deep aquifer, with depths to 629 feet.

The application proposes a public water and sewer system which will be constructed and tested by the developer and then transferred to Lakeside Sewer & Water for ownership, operation, and maintenance. The water system proposes to use the deep aquifer. Further analysis and discussion of water quality and quantity issues on the subject property are addressed below in the section Effects on the Natural Environment: Water Quality and Quantity. As noted in the comments provided by the Flathead City-County Health Department, DEQ approval is required for all water, sewer, and storm drainage systems. It appears that the deep aquifer will not be adversely impacted by this development, although DEQ and DNRC will make the final determination on that point. Concerns are raised by water quality and

quantity in the shallow aquifer. Later sections of this report address these concerns in detail. It appears that the issues raised by the Growth Policy can be addressed by conditions.

TRANSPORTATION

- P.23.10 Restrict direct access from private properties onto the Montana State highways and require frontage roads where needed and internal vehicle circulation roads for all development outside of urban areas.
- P.24.4 As subdivision developments are proposed, require road easement dedications for identified areas of future connectivity to serve the present and future needs of the county residents.
- P.24.2 County road improvements needed to mitigate impacts directly attributable to the subdivision or development should be required as a necessary component of that development to preserve the carrying capacity of the roadway.
- P.24.5 Restrict signalized highway intersections to a minimum of one mile spacing outside of urban areas to promote mobility and ½ mile within urban settings such as Evergreen.
- P.25.1 Encourage developments that provide functional alternative modes of travel such as bicycle and pedestrian paths.
- Transportation is further addressed below in the sections Effects on Public Health & Safety: Fire & Emergency Access, and Effects on Local Services: Roads. Staff finds that with conditions, the proposed subdivision will meet the goals of the Growth Policy in terms of transportation.

SOLID WASTE

- P.14.4 Visually screened, wildlife resistant, centralized collection sites or contract hauling should be encouraged in new subdivisions.
- P.26.1 Create design criteria for new development to ensure the safe, efficient, and effective collection and disposal of solid waste. Require all new subdivision site plans to be reviewed by the solid waste district and/or private hauler.
- P.26.2 New subdivisions should be encouraged to establish centralized refuse and recycling collection sites within the development when curb-side pick-up is not feasible.
- P.26.3 New development should be encouraged to utilize contractor haul of refuse.
- P.26.4 Solid waste containers and disposal methods in rural areas should require measures such as animal-proofing and public education so as to discourage the attraction of wildlife.
- P.27.1 Contract hauling should be encouraged in all new developments to reduce traffic and disposal burden at satellite container sites (green boxes).
- The applicant proposes contract haul for all homeowners. Due to the subdivision's close proximity to the WPA, an area with significant wildlife habitat, conditions require that a centralized, wildlife proof solid waste container be utilized. Conditions will also require that the site plan be reviewed by the contract hauler. With the imposition of conditions, the application meets the goals of the Growth Policy relating to solid waste.

FIRE PROTECTION/EMERGENCY SERVICES

- P.32.1 Require new subdivisions to have adequate on-site water capacity and recharge for fire protection.
- P.32.4 Ensure convenient access to and within all subdivisions for the largest emergency service vehicles.
- The applicant has been in contact with the Somers Rural Fire District regarding fire protection. Conditions require that the applicant provide proof of meeting the reasonable requirements of the Fire Chief for fire suppression and access at the time of final plat.

WILDLIFE HABITAT

- P.41.2 Discourage unmitigated development in areas identified as critical wildlife habitat.

- Significant concerns were raised at the July 19, 2006 Planning Board hearing regarding conflicts with wildlife and wildlife habitat in the adjoining WPA. The applicant has provided responses to several of the concerns raised by Montana Fish, Wildlife, and Parks, the United States Fish and Wildlife Service, and the public. The applicant has also provided a Wildlife and Vegetation Management Plan which outlines methods for addressing conflicts with wildlife and wildlife habitat. The applicant's responses are further addressed below, in the section on Effects on Wildlife and Wildlife Habitat. As of the writing of this report, comments have not been received from these agencies in rebuttal to the new information provided by the applicant. At this time, it is difficult to assess whether their concerns have been addressed. Any comments received prior to the Planning Board's public hearing will be forwarded at the earliest convenience. Should no comments be received which recommend alternative conditions or raise ongoing issues, conditions will require that the applicant provide proof that they have met the reasonable requirements of Montana Fish, Wildlife, and Parks, and the US Fish and Wildlife Service to mitigate their impacts to wildlife and wildlife habitat.

FINDINGS

- As the subdivision is located in a transitional area between rural communities and agricultural lands, and at varying distances from urban facilities and services, it is difficult to determine at this point whether the density proposed is appropriate for the area. The subdivision is proposed with public water and sewer service and proposes no further subdivision of lots.
- The applicant proposes contract haul for all homeowners. Due to the policies of the Growth Policy which encourage centralized solid waste containment, and the subdivision's close proximity to the WPA, an area with significant wildlife habitat, conditions require that a centralized, wildlife proof solid waste container be utilized. Conditions will also require that the site plan be reviewed by the contract hauler. With the imposition of conditions, the application meets the goals of the Growth Policy relating to solid waste.
- Significant concerns were raised at the July 19, 2006 Planning Board hearing regarding conflicts with wildlife and wildlife habitat in the adjoining WPA. The applicant has provided responses to several of the concerns raised by Montana Fish, Wildlife, and Parks, the United States Fish and Wildlife Service, and the public. The applicant has also provided a Wildlife and Vegetation Management Plan which outlines methods for addressing conflicts with wildlife and wildlife habitat. As of the writing of this report, comments have not been received from these agencies in rebuttal to the new information provided by the applicant. At this time, it is difficult to assess whether their concerns have been addressed. Any comments received prior to the Planning Board's public hearing will be forwarded at the earliest convenience. Should no comments be received which recommend alternative conditions or raise ongoing issues, conditions will require that the applicant provide proof that they have met the reasonable requirements of Montana Fish, Wildlife, and Parks, and the US Fish and Wildlife Service to mitigate their impacts to wildlife and wildlife habitat.
- Other than the issues raised in the three prior findings of fact, the project, with conditions, is in general compliance with the goals and policies of the Flathead County Growth Policy.

D. Effects on Public Health and Safety:

Fire and Emergency Access:

Access to MT Hwy 82

Access to the subdivision is proposed via an internal road system accessing MT Hwy 82. Access to MT Hwy 82 is proposed with three accesses: Ranch Road West, North Shore Drive, and Ranch Road East. The applicant has submitted a Traffic Impact Study (April 2006) and a revised Traffic Impact Study (October 2006) in response to concerns raised by the Montana Department of Transportation (MDT). The application also includes comments received from MDT (December 1, 2006) in response to the October 2006 Traffic Impact Study. These comments (December, 2006) state the following concerns:

- Need for a scaled site plan explicitly showing the existing approaches on Hwy 82 and

how they will align with the proposed approaches.

- "The three approaches must not interfere with possible geometric changes on Hwy 82. There must be adequate distance between the equestrian approach and Farm Road for back-to-back left turn lanes to be built. These lanes should be constructed to a 60 mph design speed. Including taper rates and the deceleration lane, this equates to 1135 feet for each lane. Which means the equestrian approach and Farm Road should be at least 2270 feet apart. If the actual distance between the equestrian approach and Farm Road does not allow for back-to-back left turn lanes or the left turn lane associated with the equestrian approach negatively offsets any existing approaches on the north side of Hwy 82, restricting the equestrian approach will be required."
- A desire for the equestrian approach or the east approach to align with Farm Road.
- An inconsistency in the volume of vehicles used throughout the Traffic Impact Study (October 2006). The comment states "This comment does not need correcting, however it should be noted."

The environmental assessment states that the three approaches have been designed to meet the requirements outlined in the MDT letter (December, 2006). This office received agency comments from MDT on November 6, 2007 in response to agency referrals for this file which state "To date, we have not received a response [to MDT's December 2006 letter] from the developer. MDT has not approved the number or location of approaches onto Hwy 82. The access locations shown on the site plan are subject to change based on the developer's response to our 12/1/2006 letter and subsequent MDT review." The applicant submitted a letter from Carver Engineering on November 13, 2007 which addresses MDT's letter from December 2006 and specifically addresses how the application has been modified to incorporate those comments. Comments from MDT (November 6, 2007) state that "Numerous steps in MDT's review process still need to be completed by the developer prior to MDT granting the developer permission to enter MDT's right-of-way on Hwy 82." Conditions require that the developer provide proof that their Traffic Impact Study received final approval from MDT and that all required improvements have been made.

Agency comments from MDT (11/6/07) also note that although the environmental assessment states that the developer will contribute towards the traffic signal at the intersection of MT Hwy 82 and US Hwy 93, that will not be possible as the project is already underway. "However, future plans call for a traffic signal at the intersection of MT Hwy 82 and School Addition Road. It may be appropriate for the development to participate in the future signal." It should be noted that the Growth Policy recommends that traffic signals be at least one mile apart in rural areas. The traffic signal at the intersection of MT Hwy 82 and School Addition Road is 0.64 miles from the intersection with US Hwy 93. In terms of compliance with the Growth Policy, this office would encourage the signalization of the intersection at MT Hwy 82 and Somers Road instead, as it is located 1.14 miles from the intersection with US Hwy 93; however, the final determination will be made by MDT. Conditions require that the developer provide proof of meeting the requirements of MDT in regards to any required donation for future signalization in the area.

Comments from MDT (November 6, 2007) also recommend that the developer allow easements for future connectivity to the east and west of the subdivision. This issue is addressed in greater detail below in the section Effects on Local Services: Roads.

Comments were also received from MDT's right of way representative stating concerns regarding potential future expansion of the highway in that location. Comments state that any "visual buffer" should allow for the future demands for highway expansion. "Typically subdivisions this size will only contribute to greater increases in traffic count and greater demands for wider roads to serve the community. We cannot allow a development to restrict the community from any future expansion." Conditions require that a statement be placed on the face of the final plat allowing future highway expansion into the "visual buffer" area, or that the applicant provide proof from MDT that they have

addressed MDT's expansion needs in another way.

Internal Road System

The internal road system is proposed with a main horseshoe road (Ranch Road East/West), three loop roads (Fox Run, North Shore Drive, Keller Court) and seven cul-de-sacs (Swan Court, Pheasant Glen, Quail Court, Upland Circle, Sanctuary Drive, Lake Drive, Mallard Court). The name "Mallard Court" appears twice on the preliminary plat. This issue is addressed by standard conditions requiring the applicant to receive the approval of the Flathead County Address Coordinator for road names prior to final plat.

The roads are proposed with a 22 foot paved width to reduce the amount of impervious surfaces on site. The environmental assessment states "The roads will be built to county standards with 22 feet of pavement width and two foot shoulders. The cul-de-sacs meet the standards and no subdivision variances are requested."

The Flathead County Minimum Standards for Design and Construction (MSDC) state that the paving width for local roads in rural areas should be 24 feet, not including additional shoulder width on each side of the roadway prism (Section 7, Table 3). The proposed subdivision requires a variance to have a paved road width of 22 feet. Although the applicant did not apply for a subdivision variance in their application, staff has evaluated the variance below in the section Compliance with the Subdivision Regulations and has found that the proposal meets the criteria for granting a variance. The stormwater management plan states that the road right of ways will be 60 feet. This meets the requirements of the MSDC.

The MSDC (Section 7, Table 1) requires that rural, local road cul-de-sacs be a maximum length of 2640 feet, with a cul-de-sac travel surface with a 50 foot radius and 60 foot right of way radius. All cul-de-sacs appear to meet the maximum length requirement. Proposed cul-de-sac travel surfaces are not provided with this application. However, the proposed right of ways for four cul-de-sacs do not appear to meet the 60 foot radius requirement: Swan Court, Quail Court, Pheasant Glen, Mallard Court (the northern). It appears that this issue can be addressed by conditions which require that proof be provided that all roads meet the requirements of the Minimum Standards for Design and Construction.

Fire Protection

The subject property is not rated as a high or extreme fire hazard area, nor does it contain hazardous wildfire components. The subject property is located in the Somers/Lakeside Volunteer Fire District. The original North Shore Ranch file submitted in 2006 discussed a possible tanker recharge facility on site and noted discussions that had been held with the fire chief. The current file does not address these conversations with the fire chief; however, it is assumed that the same fire suppression requirements would be made. Standard conditions require that the applicant meet the reasonable requirements of the fire district for fire suppression and access.

Police Protection

The property is in rural Flathead County, which is served by the Flathead County Sheriff. The area is not anticipated to have routine patrols by the department. Given existing staffing levels, the size of the County and the dispersed nature of the populations, service to this subdivision is anticipated to be consistent with other rural areas of Flathead County. Lot owners should be aware that emergency services will be extremely slow in responding to any emergency in this area of Flathead County.

Medical Services: The Kalispell Regional Medical Center is approximately 11 miles from the proposed subdivision. Kalispell Station 62 would provide Advanced Life Support in the case of a medical emergency. The environmental assessment also states that ambulance service is available from the Lakeside Quick Response Unit.

FINDINGS

- Comments from MDT state that the Traffic Impact Study provided with this application has not received final approval from MDT. The environmental assessment states that all changes required by MDT in December 2006 have been made and incorporated into the current proposal; however, MDT has not reviewed or approved these alterations. Conditions require that the developer provide proof that their Traffic Impact Study received final approval from MDT and that all required improvements have been made.
- Comments from MDT note that although the environmental assessment states that a donation is proposed towards the signalization of the intersection of MT Hwy 82 and US Hwy 93, the donation will not be possible as the project is already underway. However, donation to the signalization of another nearby intersection may be possible. Conditions require that the developer provide proof of meeting the requirements of MDT in regards to any required donation for future signalization in the area.
- Comments from MDT note that additional right of way may be needed for future expansion of MT Hwy 82. The proposed "visual buffer" may serve the need for expansion at a later date. Conditions require that a statement be placed on the face of the final plat allowing future highway expansion into the "visual buffer" area, or that the applicant provide proof from MDT that they have addressed MDT's expansion needs in another way.
- The application proposes internal roads with a paved width of 22 feet. This requires a variance from the Flathead County Subdivision Regulations as the Minimum Standards for Design and Construction require that rural local roads have a paved width of 24 feet. Staff has evaluated the variance in the section Compliance with the Subdivision Regulations and has found that the proposal meets the criteria for granting a variance.
- Four of the proposed cul-de-sacs do not appear to meet the Minimum Standards for Design and Construction in terms of the width of the proposed right of way. Conditions require that proof be provided at the time of final plat that all roads meet the requirements of the Minimum Standards for Design and Construction.

E. Effects on Wildlife and Wildlife Habitat:

The subject property borders the Blasdel Waterfowl Production Area (WPA). The US Fish and Wildlife Service manages WPAs throughout the state of Montana to provide wildlife habitat for numerous species, specifically waterfowl, to provide recreational opportunities for visitors, and to maintain healthy native vegetation in wetlands and upland areas for ecological purposes. The WPA provides important wildlife habitat for a variety of species. Mapping provided by Montana Fish, Wildlife, and Parks also notes that the area provides habitat for white-tailed deer at a density of 5 - 15 deer per square mile and serves as a transitional area for moose.

The applicant provided a wildlife report with this application. The report notes the following species on the subject property: white-tailed deer, red fox, striped skunk, mink, raccoon, coyote, small mammals, sandhill cranes, ring-necked pheasant, great blue heron, long-billed curlew, raptors (bald eagle, osprey, northern harrier, red-tailed hawk), nesting waterfowl, Hungarian partridge, Canada goose, and diverse passerine birds including red-winged blackbird, eastern kingbird, vesper sparrow, savannah sparrow, magpie, bobolink, and western meadowlark. It also states that while no critically important seasonal habitats or migration corridors for big game are apparent, black bear may be transient users of the project area. The wildlife report addresses threatened or endangered species found on site, specifically bald eagle, long-billed curlew, and bobolink.

During the original review of this subdivision in 2006, significant concerns were raised by Montana Fish, Wildlife, and Parks (FWP) and the United States Fish and Wildlife Service (USFWS) regarding impacts to wildlife and wildlife habitat, and the claims made by the retained wildlife biologist. The wildlife report submitted with the current application attempts to address the concerns raised by those agencies. The applicant also submitted a wildlife and vegetation management plan which proposes the following methods to address conflicts with wildlife and wildlife habitat:

- Fencing along the southern boundary of the pedestrian and equestrian footpaths
- Providing restrictions in the covenants which require dogs to be under owner control at all times (Note: the covenants do *not* address keeping cats under owner control at all times)
- Managing wildlife such as white-tailed deer, skunks, or raccoons if the populations become oversized or problematic
- Enhancing nesting sites for osprey, bluebirds, and tree swallows

As of the writing of this report, no comments have been received from FWP or USFWS in response to the data provided with this application. It is difficult to assess whether their concerns have been addressed and whether the impacts to wildlife and wildlife habitat have been adequately mitigated. Any comments received prior to the Planning Board's public hearing will be forwarded at the earliest convenience. Should no comments be received which recommend alternative conditions or raise ongoing issues, conditions will require that the applicant provide proof that they have met the reasonable requirements of Montana Fish, Wildlife, and Parks, and the US Fish and Wildlife Service to mitigate their impacts to wildlife and wildlife habitat.

FINDINGS

- Significant concerns were raised by wildlife agencies during the original review of this subdivision in 2006. The applicant has provided new information with this file in an attempt to address their concerns. As of the writing of this report, no comments have been received from FWP or USFWS in response to the data provided with this application. Therefore, it is difficult to assess whether their concerns have been addressed and whether the impacts to wildlife and wildlife habitat have been adequately mitigated. Any comments received prior to the Planning Board's public hearing will be forwarded at the earliest convenience. Should no comments be received which recommend alternative conditions or raise ongoing issues, conditions will require that the applicant provide proof that they have met the reasonable requirements of Montana Fish, Wildlife, and Parks, and the US Fish and Wildlife Service to mitigate their impacts to wildlife and wildlife habitat.

F. Effects on the Natural Environment:

Water Quality and Quantity: The application provides a hydrogeological analysis which addresses water quality, water quantity, and the depth to groundwater on the subject property. The analysis states that the property is located above a shallow aquifer and a deep aquifer. The analysis states that the GWIC database was searched for all wells in Sections 17, 18, 19, and 20 of Township 27 North, Range 20 West, and Sections 13 and 24 of Township 27 North, Range 21 West. Seven wells were found which utilize the shallow aquifer, with depths to 35 feet. Seven wells were found which utilize the deep aquifer, with depths to 629 feet.

Shallow Aquifer

The hydrogeological analysis states that "the [shallow] aquifer materials are permeable, allowing fairly rapid movement of water and contamination from the land surface to the aquifer." On the subject property, depths to the shallow aquifer range from less than 12 inches to over 15 feet. The technical assistant dug eight wells on the subject property to study the shallow aquifer. Hydrographs were provided with the hydrogeological analysis which show groundwater elevations monitored in seven of these wells. Groundwater was monitored from April 2006 to April 2007. On November 9, 2007 the applicant submitted a groundwater contour map showing the minimum depth to groundwater based upon water elevations measured on April 17, 2006. This map shows that approximately 18 lots are proposed in areas with two feet or less to groundwater; 37 lots are proposed in areas with three feet or less to groundwater; and 52 lots are proposed in areas with four feet or less to groundwater. Several other lots in the southern, western, and eastern portions of the property are shown as being less than five feet to groundwater but are not further delineated. Comments from MDEQ note concerns with this depth to groundwater map because it reflects measurements from an individual date, while groundwater

levels can often fluctuate from year to year or throughout the year. Comments recommend that depths to groundwater be delineated from a longer time frame for monitoring or a statement from the hydrogeologist/engineer that they believe this is the maximum water level the site will see. These concerns are reinforced by the title of the map: Minimum Depth to Water Table. Conditions require that the applicant provide a statement from a certified hydrogeologist or engineer that they believe this is the maximum water level the site will see. If this groundwater contour map does not show the maximum water level the site is expected to see, the applicant will provide a map updated with that information, and an associated statement from a certified hydrogeologist or engineer.

The hydrogeological analysis presents data on the water quality in the shallow aquifer. The data provided shows that the aquifer has very hard water, described as a calcium bicarbonate water. The analysis states that iron concentrations and total organic carbon concentrations are high. Almost all measured substances are found at higher concentrations than found in the deep aquifer, Flathead Lake, or Flathead River.

The hydrogeological analysis states that there is no hydrological connection between the shallow aquifer and Flathead Lake. This is demonstrated by a series of hydrographs showing the groundwater elevation, precipitation, and Flathead Lake elevation from April 2006 to April 2007. The hydrogeological analysis states that "these data indicate there is no connection between Flathead Lake and the shallow aquifer. Instead, the shallow aquifer is recharged by precipitation events only." As of the writing of this report, the Flathead County Planning & Zoning Office has not received any information which refutes this claim.

The hydrogeological analysis also states "Groundwater flow direction [in the shallow aquifer] is controlled by seasonal stages in the Flathead River and Lake; and generally flow is from the aquifer to the river when river levels are low and from the river to the aquifer when river levels are high." The east end of the subject property is located approximately 1.16 miles from Fennon Slough, the westernmost point of the Flathead River in this location. The analysis states that "the much higher quality of the Flathead River and Lake further demonstrates that there is no connection between the shallow aquifer and the Flathead River and Lake at the North Shore Ranch Property." There is no further information provided by the hydrogeological analysis which points to a lack of connection between the shallow aquifer and the Flathead River. Transmissivity (the rate at which water is transmitted through the aquifer) in the shallow aquifer is not addressed. It appears that there is conflicting information presented on the relationship of the aquifer to Flathead River and Flathead Lake. Given the provided information, it is difficult to ensure that a reduction in the water quality in the shallow aquifer would not impact water quality in adjacent water bodies---

The depth to the shallow aquifer presents significant concerns. Contamination of the shallow aquifer would at a minimum adversely impact neighboring properties who utilize the shallow aquifer as a water source. As stated above, it appears that there is conflicting information presented on the relationship between the aquifer and the Flathead River and Flathead Lake. If there is a connection between the shallow aquifer and the Flathead River or Flathead Lake, contamination of the shallow aquifer could decrease water quality in these regionally important water bodies. As a planner, and not a hydrogeologist or engineer, staff is limited in their ability to discern whether or not a connection is present. Conditions require that the applicant provide a written statement from the Department of Environmental Quality which specifically states that the proposed development will not adversely impact water quality in the shallow aquifer. Additionally, conditions require that the applicant provide a written statement from the Department of Environmental Quality which specifically states that the shallow aquifer over which this development is located is not hydrologically connected with the Flathead River or Flathead Lake.

Deep Aquifer

The depth to the deep aquifer ranges from approximately 345 feet at the west subdivision boundary to 695 feet at the center of the property to 415 feet at the east subdivision boundary. Elevations for the deep aquifer are provided in Figure 2 of the hydrogeological analysis. The applicant drilled a test well to the deep aquifer to test water quality and quantity. Data found that the water quality meets the primary drinking water standards set by the EPA.

The applicant conducted a step drawdown test on April 25, 2007 which "indicated that the test well could be pumped at 400 gpm for 72-hours without problem." The hydrogeological analysis states the pumped water was "discharged on the ground surface approximately 1000 feet to the south of the pumping well. No sudden flattening of the drawdown record was noted in the pumped well or any of the three [deep aquifer] observation wells..." This indicates that the discharged water did not return to the deep aquifer within the monitored time period.

The consultant also monitored two nearby wells in the shallow aquifer during this time frame. One of the wells (Well B5) showed an increase in water level during the test and one (Well B8) did not appear to react. The consultant also monitored drawdown induced by the pump test on three nearby existing wells. Drawdown was approximately 0.14 feet on two of the wells and 0.70 feet on another well. Verbal comments from MDEQ note that this is not a significant drawdown. Standard conditions require that the applicant obtain DEQ approval for all water, sewer, and stormwater drainage systems, and require that the applicant obtain a provisional water right permit from DNRC. These conditions ensure that water quality and quantity are adequate to serve the proposed subdivision and will not adversely impact surrounding water users or the aquifer.

Proposal: Water & Sewer

The application proposes a public water system. Two public wells will be drilled on site and will then be transferred to Lakeside Water and Sewer District for ownership, operation, and maintenance. The environmental assessment states that the applicant did not connect to the Somers Water & Sewer District because the existing Somers water system does not have sufficient capacity to meet the water demands or provide fire flows for North Shore Ranch.

The applicant will also extend sewer mains to the subject property to connect into the Lakeside Water & Sewer District system for sewage treatment. The environmental assessment states the following regarding proposed sewer hookups.

"The Lakeside Wastewater Treatment Facility is located approximately 1.5 miles from the subject subdivision. The nearest gravity sewer main is located approximately 200 feet from the west end property line in Mackinaw Estates; however, this sewer main is on the Somers Water & Sewer District public sewer system. The Somers Water & Sewer District's system does not have sufficient capacity to serve North Shore Ranch. The nearest Lakeside Water & Sewer District force main is in School Addition Road, approximately 3/4 mile west of the northwest corner of North Shore Ranch; however, the Lakeside Water & Sewer District has requested that wastewater from North Shore Ranch be pumped directly to their treatment facility to save capacity in their existing force main."

Sewer system infrastructure will be completed by the developer. With the exception of the individual grinder pumping systems, the sewage collection system will be owned and operated by Lakeside Water & Sewer. Comments were presented at the Flathead County Planning Board hearing on July 19, 2006 concerning leakage from the sewer mains into the shallow aquifer as much of the infrastructure will be constructed in or in close proximity to groundwater. Comments from DEQ on November 13, 2007 also note the following concerns:

"A substantial portion of the site appears to be served by gravity sanitary sewer, with a smaller section of force main sewer pumping toward the northwest corner of the property. Over its installation life, the gravity PVC sewer will have a good chance of developing leaks, which on this site will infiltrate water into the sewer, which will need to be treated in Lakeside's wastewater treatment lagoon. This proposal should address the expected level of infiltration and Lakeside's retained engineer should provide feedback regarding whether Lakeside's system can accommodate that level of infiltration.

Also, the force main sewer, due to its pressure that will overcome the groundwater level pressure, has the potential to discharge raw wastewater. At these groundwater depths, this will be directly discharging to the shallow aquifer and Flathead Lake. Further, over the life of every sewer system, sewer pipes break. When a sewer pipe breaks on this site, it will definitely discharge to shallow aquifer and Flathead Lake. This proposal should address these risks and the precautions beyond standard utility installation that will be made to minimize the risks. Flowable fill placed around the sewer utilities may be a minimum safeguard."

On November 13, 2007 the applicant submitted a letter from Carver Engineering which provides greater detail on the proposed sewer main infrastructure and engineering, stating "We can think of no other sewage collection system that affords greater protection against leakage than the low pressure sewer system being proposed." This letter was forwarded to DEQ, which responded with the following comments:

"I concur that Carver's choice to use butt-fused HDPE is a much better material and jointing system than conventional PVC joints for I & I problems in this high groundwater application. However, that proposal does mean that the entire site will be installed with pressure sanitary sewer. So if and when a break occurs, there will certainly be raw sewage discharge from the higher pressure pipelines to the groundwater that it is submerged in... I encourage you to keep in mind that sewer infrastructure in Montana is commonly in operation for 60 - 100 years before it is replaced. Even with the best technology and the best testing at time of installation, sewer breaks over that long time span are inevitable."

Comments from DEQ also expressed concerns regarding the disturbance to the soil and shallow aquifer that will occur during construction, and the difficulty of mitigating the disturbance and turbidity using conventional construction methods. The comments state that "other communities have required trenchless pipe installation in sensitive areas to mitigate these short-term impacts." The information provided by the applicant does not specifically address this concern. Standard conditions require that the applicant receive DEQ approval for the water, sewer, and stormwater drainage systems. Some of DEQ's concerns may be addressed by that process.

Proposal: Stormwater Management

The application includes a stormwater management plan which addresses some potential impacts to water quality in the shallow aquifer. The stormwater management plan proposes the following practices:

- Open space design;
- Protection of natural features;
- Narrower residential streets;
- Eliminating curbs and gutters;
- Bioswales;
- Detention ponds;
- Porous pavement in arena and ball field parking areas;

- On-lot treatment; and
- Horse manure management.

As stated below in the section Effects on Local Services: Parks, conditions require that the applicant submit a detailed open space plan which identifies all improvements to be made and vegetation plans for open space areas. Approximately 180 acres of open space are proposed with this subdivision; however, the amount of that area which is to be improved may alter its suitability as a stormwater management device.

The internal road system is being proposed with a paved width of 22 feet. The Minimum Road Design and Construction Standards require a paved width of 24 feet for local roads. A variance request is evaluated in the section below on compliance with the Flathead County Subdivision Regulations. As curbs and gutters are not required by Flathead County this should not be an issue.

Bioswales are proposed in the right of way along all internal roadways. Bioswales are gently sloped drainages filled with vegetation, compost, or riprap which are designed to maximize the amount of time that the water spends in the swale, thereby allowing the system more time to remove pollutants and silt before the stormwater enters the shallow aquifer. The stormwater management plan states the following:

“All runoff from the 2-year, 1-hour design storm event will infiltrate into the bioswales that will be adjacent to all roads in the subdivision. It is anticipated that most of the runoff from the 10-year and 100-year storm event will infiltrate into the bioswales and the excess portion will be conveyed by the bioswales to detention ponds in the open space areas.”

Detention ponds are proposed “in natural depressions that will also be used as trails, wildlife habitat, or protected as wetlands and floodplains.” It is not noted whether these are the “ponds” proposed in Open Spaces A, B, and E. As stated below in the section Effects on the Natural Environment: Wetlands, conditions require that the applicant provide detailed information regarding the specific locations, and management, maintenance, and development of these pond/wetland areas. Conditions also require that the applicant address data provided by the NRCS Web Soils Survey which shows that 21.6% of the soils on the subject property are rated as “somewhat limited” for pond reservoir areas, and 78.4% of the soils are rated as “very limited” for pond reservoir areas. Limitations are due to seepage on the property. Conditions require that the applicant address this data by providing a detailed soils analysis of the property and a statement from an engineer or hydrogeologist licensed to certify soils that the stormwater management value of detention ponds will not be reduced by limitations in the soils.

Porous pavement is proposed in the parking lots for common areas. The stormwater management plan states “Porous pavement is a permeable pavement surface, often built with an underlying stone reservoir that temporarily stores surface runoff before it infiltrates into the subsoil... allowing parking lot stormwater to infiltrate directly and receive water quality treatment.” The Minimum Standards for Road Design and Construction do not currently address porous pavement. Conditions require that all road surfaces be approved by Flathead County Road & Bridge Department and the Somers/Lakeside Rural Fire Department.

On-lot treatment refers to drywells, cisterns, or rain barrels that will allow the infiltration of rooftop runoff. This is a tool that would be used at the time of lot development and would not be addressed by the time of final plat.

Horse manure management is also a stormwater management tool that would not be addressed until after final plat approval. Concerns were raised in the Planning Board hearing on July 19, 2006 regarding the management of horse manure and potential impacts of manure on water quality in the

shallow aquifer. It should be noted that the original plan allowed for grazing and pasturing of horses on Open Space A. That area is no longer proposed for grazing or pasturing of horses.

The stormwater management plan states that North Shore Ranch will have a maximum of 40 horses on site. Although it is not stated in the application, it is assumed that some of these horses would be boarded at the common equestrian center and stables located in Open Space D. The covenants provided with this application state that homeowners with lots over one acre in size would be able to keep horses on their lots as well, at a maximum density of two horses per acre. The subdivision proposes 16 lots over one acre in size which could result in approximately 32 horses being boarded on individual lots. If this occurred, only eight horses would be allowed to board at the common equestrian center, per the maximum total number of 40 horses for the subdivision.

The stormwater management plan states that manure/bedding will be managed in the following manner:

"Since this manure/bedding will be used as fertilizer, it must be stored to prevent rain from washing out the nutrients that may cause pollution. The size of the storage facility must be able to accommodate six months of manure/bedding production. Six months volume of manure/bedding can be safely piled between 4 and 5 feet high (Bactawar 2006). The resulting building footprint needed to store the manure would be 3,200 square feet or an 80-foot by 40-foot area, with a roof to help prevent the contamination of both groundwater and surface water.

At least twice each year, ideally in April and September, the manure will be hauled from the storage area and applied to the open space areas within the subdivision. One acre of a well managed productive pasture can use up to 2,500 cubic feet of manure/bedding per year. As a general guideline, a manure/bedding mixture from 3 - 4 horses can be spread on each acre of productive pasture (Bactawar 2006). North Shore Ranch plans to have a limit of 40 horses and the acreage needed to spread all of the manure is approximately 12 acres. Since there is approximately 150 acres of open space in the subdivision, the horse manure can easily be disposed of in an environmentally friendly manner and the groundwater, stormwater, and Flathead Lake water quality can be preserved."

The application does not address how the manure will be collected. If all horses were to be kept at the equestrian facility it is possible that the homeowner's association could determine a method for gathering manure. However, with up to 32 horses allowed on individual lots, and no manure acquisition policy or maintenance policy proposed for individual horse owners, it is unlikely that this method of horse manure management would be successful.

Additionally, the application does not provide for the location of the manure storage facility. Conversations with the technical assistant infer that the storage facility may be located near the equestrian center. This location would have to be provided with the Open Space Plan that is required by conditions.

This stormwater management practice (Horse Manure Management) raises several concerns regarding the methods of collecting manure, the storage of manure, and enforcement of manure collection practices. Inadequate information is provided at this time to fully assess whether or not this stormwater management practice would be successful. Conditions require that the applicant integrate a more detailed horse manure management plan into the stormwater drainage plan. This horse manure management plan shall be approved by DEQ and the Flathead County Planning & Zoning Office to ensure that all details are addressed. Specifically, the horse manure management plan shall address in detail those inadequacies noted above.

No comments have been received from agencies regarding the forms of stormwater management proposed. All stormwater drainage must be approved by DEQ prior to final plat approval. It is unclear at this point whether the stormwater drainage which is proposed would be sufficient to ensure that the water quality in the shallow aquifer is maintained. Conditions require that an open space plan be submitted to the Planning & Zoning Office which detail improvements and management of the open space areas, detention ponds, etc. Conditions further require that a statement be placed on the face of the final plat which requires all lot owners to abide by the policies set forth in the stormwater management plan provided with this application and approved at the time of final plat.

Proposal: Home Construction

In many locations on the subject property, the depth to groundwater is less than four feet, as noted above in the section on the shallow aquifer, and the majority of the property has a depth to groundwater less than eight feet. Significant concerns were presented at the Planning Board hearing on July 19, 2006 regarding the construction and ongoing integrity of residential or common buildings in areas of shallow groundwater. The environmental assessment states the following on this issue:

“According to the NRCS Web Soils Survey the soils where development will occur are not limiting or may be somewhat limiting for construction; however, conventional construction techniques should be adequate. In areas where the seasonal high groundwater is within 2.5 feet of the natural ground surface, buildings will be constructed using a reinforced slab on grade supported by helical screw piles. There will be no footings and foundation walls, and therefore no crawl spaces at these building sites.”

The covenants provided with this application also require these construction standards, although they state “The Design Review Board may, in its discretion, require that any building plans submitted to it for approval which include anything other than such reinforced slab on grade, shall include a groundwater study so as to ensure the appropriate application of this covenant.” Comments from DEQ expressed concern with this construction standard, stating the following:

“It appears that approximately 25% of the site has groundwater level four feet or shallower. This groundwater level prohibits most conventional home foundations, which extend below frost depth. I don't believe flat slab construction is allowed in high groundwater areas where freezing will occur, by Uniform Building Code or International Building Code, due to the huge potential for frost heave in the homes. State of Montana Building Codes department only has jurisdiction over commercial buildings, but could offer some information regarding this issue...”

A geotechnical report with on-site drilling should be presented in order to assess whether an adequate foundation for homes and streets can be implemented given site conditions. The geotechnical report should be prepared by a licensed professional engineer...”

Flathead County does not have a building department and the subdivision process would not address any concerns raised at the time of lot development. The Montana Department of Labor and Industry, Building Standards Program regulates electrical and plumbing permitting of residential homes, but does not further regulate any single family residential building or building issue. The Building Standards Program would regulate and review any common buildings proposed. Although the county and state departments are not given regulatory ability over the development of lots, the creation of lots that may not be suitable for building is a concern of Flathead County. Valid concerns are raised for the safety of residents, the safety of builders, and the quality of water in the shallow aquifer below.

Conversations with the Building Standards Program of the Montana Department of Labor and Industry referenced staff to a related regulation in the State of Montana Building Codes. Administrative Rules of Montana Section 24.301.142(9) states the following:

"Subsection 1805.2.1 of the International Building Code requires that footings and foundations shall extend below the frost line. In all areas of the state outside of certified local government jurisdictions, the minimum depth from finished grade to the bottom of footings shall be 3.0 ft. for single story wood or metal frame buildings, and 4.0 ft. for multistory or masonry buildings. Buildings located on highly expansive or unstable soils may need engineered footings and foundation walls that extend below the minimum depths indicated above. At the discretion of the building official, the above minimum depths may not be required for properly designed so-called monolithic slabs for single story storage and similar use buildings. The building official may require monolithic slabs to be designed and stamped or certified by a Montana registered engineer who practices structural design. The design and stamp of a Montana licensed architect may be accepted in lieu of an engineer's stamp when the monolithic slab design is an incidental part of an architectural building design, as allowed by 37-67-103, MCA."

This section of the Building Codes references requirements for single story storage and similar use buildings and would not have any regulatory authority over residences. However, it is useful to note that for a less intense use in a similarly suited environment, "buildings located on highly expansive or unstable soils may need engineered footings and foundation walls that extend *below* the minimum depths." As stated above, the environmental assessment states that the soils are not limiting or somewhat limiting for development. Staff's review of the NRCS Web Soils Survey finds that only 16.4% of the subject property is rated as "not limited" for the construction of dwellings with or without basements.

Maps and additional information on the soil ratings for dwellings are attached to this report in Appendix A. The definitions of the terms used are provided below:

"Not limited" indicates that the soil has features that are very favorable for the specified use. Good performance and very low maintenance can be expected. "Somewhat limited" indicates that the soil has features that are moderately favorable for the specified use. The limitations can be overcome or minimized by special planning, design, or installation. Fair performance and moderate maintenance can be expected. "Very limited" indicates that the soil has one or more features that are unfavorable for the specified use. The limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.

The Web Soils Survey states that the soil ratings for dwellings with or without basements are "based on the soil properties that affect the capacity of the soil to support a load without movement and on the properties that affect excavation and construction costs." The following properties affect the load-supporting capacity or ease and amount of excavation:

- depth to a water table
- ponding
- flooding
- subsidence
- linear extensibility (shrink-swell potential)
- compressibility
- slope
- depth to bedrock or a cemented pan

- hardness of bedrock or a cemented pan
- amount and size of rock fragments

This information from the Web Soils Survey shows that in fact 83.6% of the subject property is rated as "somewhat limited" or "very limited" for the construction of dwellings with or without basements. Please review the mapping provided in Appendix A to review where on the property these soil ratings occur. The NRCS Web Soils Survey also provides mapping which shows the soils' rating for the corrosion of concrete and the corrosion of steel. These ratings are based on potential soil-induced electrochemical or chemical action that corrodes or weakens the concrete or steel and can be based on numerous soil content factors. Three areas of the property were rated as high risk for corrosion of concrete and one area was rated as moderate risk for the corrosion of concrete. All of the soils on the property were rated as high or moderate risk for the corrosion of steel.

These soil ratings raise considerable concerns regarding the limitations of the soil on which this development is being proposed. More detailed soils and engineering information is necessary before review can assess the actual limitations of the soil for building and development. No engineering plans are presented with this report to address the limitations of the soil for building except for the above noted statement from the environmental assessment which appears to be in conflict with the information found on the NRCS Web Soils Survey. As stated above, valid concerns are raised for the safety of residents, the safety of builders, and the quality of water in the shallow aquifer below if building is to take place in areas with these soils as rated by NRCS.

To return to the section of the Montana Building Codes referenced above, the section states "At the discretion of the building official, the above minimum depths may not be required for properly designed so-called monolithic slabs for single story storage and similar use buildings. The building official may require monolithic slabs to be designed and stamped or certified by a Montana registered engineer who practices structural design. The design and stamp of a Montana licensed architect may be accepted in lieu of an engineer's stamp when the monolithic slab design is an incidental part of an architectural building design, as allowed by 37-67-103, MCA." As stated above, neither county nor state statutes require engineering at the time of development of a single family residential home in Flathead County. To ensure that all lots are developable, conditions require that the applicant provide to the Planning and Zoning Office a detailed soil survey of the property and a statement from an engineer licensed to practice structural design stating that the soils are not limited for the construction of dwellings. If the engineer finds that some of the soils are limited for the construction of dwellings, plans certified by an engineer will be provided which demonstrate how limitations will be addressed to ensure the safety of residents, builders, and to ensure that the quality of water in the shallow aquifer will be maintained. Additionally, conditions require that a statement appear on the face of the final plat which notifies all potential lot owners that the soils may be limited for development and encourage all structural design to be approved by an engineer licensed for structural design.

Utilities: All new utilities shall be extended underground. Will serve agreements are provided with the application. Standard conditions address the provision of utilities.

Floodplain: The subject property is mapped by FEMA on Panels 2280 and 2285. Portions of the property are mapped Flood Zone C (areas of minimal flooding), Flood Zone B (500-year floodplain), and Flood Zone A (100-year floodplain). The 100-year floodplain is shown on the preliminary plat with green diagonal striping. Conditions require that the applicant receive FEMA approval for the base flood elevation shown on the preliminary plat.

The current proposal has removed all subdivision lots from the 100-year floodplain. Equestrian and pedestrian trails are proposed in the 100-year floodplain. All activities must conform to the Flathead County Floodplain and Floodway Management Regulations. Pedestrian and equestrian trails are allowed without a floodplain development permit, provided that they do not require fill or excavation.

Conditions require that the applicant provide proof of receiving a floodplain development permit for any work conducted in the 100-year floodplain or proof that a floodplain development permit is not required for work proposed.

Wetlands: There is a wetland in the southeastern portion of the property. A wetland delineation has been provided with this application and conditions require that it be approved by the US Army Corps of Engineers prior to final plat approval. The wetland delineation reviewed 30.1 acres of wet meadow and wetlands bordering the WPA and the agricultural lands of the proposed subdivision. The delineation was conducted on August 21, 2007 and states "At the time, northwest Montana was experiencing a very dry summer with annual precipitation totals approximately 5 inches below normal."

The technical assistant dug six shallow groundwater test pits, reviewing vegetation, soils, and hydrology. The delineation determined that 11.66 acres of the property meet the standards provided by the US Army Corps of Engineers wetland delineation methodologies, and 18.47 acres of upland community. The delineation also notes that in addition to the wetland area:

"There appears to be some indication of relict hydric soil features within the upper 18-inches of the soil profile in the upland soil pits... Relict features may indicate that wetland conditions existed in the past, but the sampling area has since been converted to an upland community most likely as the result of decades of farming activities within and around the delineation area."

Any activity which would result in the excavation, discharge, or placement of dredged or fill material into the wetland would require a 404 permit through the US Army Corps of Engineers. The environmental assessment states that no activity is proposed at this time which would require such a permit. Equestrian and pedestrian trails are proposed through the upland area, as noted on the plat. No lots are proposed in the upland area.

The environmental assessment states that hydrologists studied three other areas on the subject property (no location provided) that had the potential for wetland classification, which were determined not to meet the standards for jurisdictional wetlands. Three pond areas are proposed within the subdivision, in Open Spaces A, B, and E. The application does not specifically address how these ponds will be maintained and/or vegetated. Conditions require that the applicant provide detailed information regarding the specific location, and management, maintenance, and development of these pond/wetland areas.

Topography: The subject property is a series of fields that have been in agricultural production for several years. The property is flat. Topography does not present any concerns.

Weed Control: The environmental assessment states that the property is actively managed for weeds as an agricultural operation. A vegetation and wildlife management plan is included with this application which addresses what vegetation will be planted on site and proposed weed control throughout the project. This plan is addressed further below in the section Effects on Local Services: Parks. Conditions require that a statement be placed on the face of the final plat, informing lot owners that they are required to abide by the policies set forth in the vegetation and wildlife management plan proposed. Conditions also require that the applicant comply with the requirements of the Flathead County Weed Department for weed control.

FINDINGS

- All water, sewer, and stormwater drainage systems shall be approved by the Department of Environmental Quality. A provisional water rights permit is required from DNRC. These approvals will help to ensure that water quality and quantity issues are addressed. This finding is addressed by standard conditions.
- On the subject property, depths to the shallow aquifer range from less than 12 inches to over 15 feet.

Groundwater was monitored from April 2006 to April 2007. On November 9, 2007 the applicant submitted a groundwater contour map showing the minimum depth to groundwater based upon water elevations measured on April 17, 2006. This map shows that approximately 18 lots are proposed in areas with two feet or less to groundwater; 37 lots are proposed in areas with three feet or less to groundwater; and 52 lots are proposed in areas with four feet or less to groundwater. Several other lots in the southern, western, and eastern portions of the property are shown as being less than five feet to groundwater but are not further delineated. Conditions require that the applicant provide a statement from a certified hydrogeologist or engineer that they believe this is the maximum water level the site will see in a normal year. If this groundwater contour map does not show the maximum water level the site is expected to see, the applicant will provide a map updated with that information, and an associated statement from a certified hydrogeologist or engineer.

- The depth to the shallow aquifer presents significant concerns for water quality. Contamination of the shallow aquifer would at a minimum adversely impact neighboring properties who utilize the shallow aquifer as a water source. As stated in the section Effects on the Natural Environment: Water Quality and Quantity, it appears that there is conflicting information presented on the relationship between the aquifer and Flathead River and Flathead Lake. If there is a connection between the shallow aquifer and the Flathead River or Flathead Lake, contamination of the shallow aquifer could decrease water quality in these regionally important water bodies. To address these concerns and to ensure the health of the shallow aquifer, Flathead River, and Flathead Lake, conditions require that the applicant provide a written statement from the Department of Environmental Quality which specifically states that the proposed development will not adversely impact water quality in the shallow aquifer. Additionally, conditions require that the applicant provide a written statement from the Department of Environmental Quality which specifically states that the shallow aquifer over which this development is located is not hydrologically connected with the Flathead River or Flathead Lake.
- A stormwater management plan is included with this application. Conditions require that a statement be placed on the face of the final plat which requires all lot owners to abide by the policies set forth in the stormwater management plan provided with this application and approved at the time of final plat.
- Detention ponds are proposed as a method of stormwater management. Data provided by the NRCS Web Soils Survey shows that 21.6% of the soils on the subject property are rated as "somewhat limited" for pond reservoir areas, and 78.4% of the soils are rated as "very limited" for pond reservoir areas. Limitations are due to seepage on the property. Conditions require that the applicant address this data by providing a detailed analysis of soils on the property and a statement from an engineer or hydrogeologist licensed to certify soils that the stormwater management value of detention ponds will not be reduced by limitations in the soils.
- Horse manure management is proposed as a method of stormwater management/water quality management. ~~This proposal raises several concerns regarding the methods of collecting manure, the storage of manure, and enforcement of manure collection practices.~~ Inadequate information is provided at this time to fully assess whether or not this stormwater management practice would be successful. Conditions require that the applicant integrate a more detailed horse manure management plan into the stormwater drainage plan. This horse manure management plan shall be approved by DEQ and the Flathead County Planning & Zoning Office to ensure that all details are addressed. Specifically, the horse manure management plan shall address in detail those inadequacies noted above.
- As stated in the section Effects on the Natural Environment: Water Quality and Quantity, information provided by the NRCS Web Soils Survey indicates that soils on the property may be limited in terms of development potential. To ensure that all lots are developable, conditions require that the applicant provide to the Planning and Zoning Office a detailed soil survey of the property and a statement from an engineer licensed to practice structural design stating that the soils are not limited for the construction of dwellings. If the engineer finds that some of the soils are limited for the construction of dwellings, plans certified by an engineer will be provided which demonstrate how limitations will be addressed to ensure the safety of residents, builders, and to ensure that the quality of water in the shallow aquifer will be maintained. Additionally, conditions require that a statement appear on the face of the final plat which notifies all potential lot owners that the soils may be limited for development and encourage all structural design to be approved by an engineer licensed for structural design.

- The subject property is mapped by FEMA on Panels 2280 and 2285. Portions of the property are mapped Flood Zone C (areas of minimal flooding), Flood Zone B (500-year floodplain), and Flood Zone A (100-year floodplain). Conditions require that the applicant receive FEMA approval for the base flood elevation shown on the preliminary plat. Conditions also require that the applicant provide proof of receiving a floodplain development permit for any work conducted in the 100-year floodplain or proof that a floodplain development permit is not required for work proposed.
- There is a wetland in the southeastern portion of the property. A wetland delineation has been provided with this application and conditions require that it be approved by the US Army Corps of Engineers prior to final plat approval. Any activity which would result in the excavation, discharge, or placement of dredged or fill material into the wetland would require a 404 permit through the US Army Corps of Engineers. The environmental assessment states that no activity is proposed at this time which would require such a permit.
- The environmental assessment states that hydrologists studied three other areas on the subject property (no location provided) that had the potential for wetland classification, which were determined not to meet the standards for jurisdictional wetlands. Three pond areas are proposed within the subdivision, in Open Spaces A, B, and E. The application does not specifically address how these ponds will be maintained and/or vegetated. Conditions require that the applicant provide detailed information regarding the specific location, and management, maintenance, and development of these pond/wetland areas.
- The environmental assessment states that the property is actively managed for weeds as an agricultural operation. A vegetation and wildlife management plan is included with this application which addresses what vegetation will be planted on site and proposed weed control throughout the project. Conditions require that a statement be placed on the face of the final plat, informing lot owners that they are required to abide by the policies set forth in the vegetation and wildlife management plan proposed. Standard conditions require that the applicant comply with the requirements of the Flathead County Weed Department for weed control.

G. Effects on Local Services:

Roads: The subdivision proposes an internal road system with three accesses onto MT Hwy 82. The main accesses will be from Ranch Road East and Ranch Road West. The subdivision does not propose future connectivity to the east or south due to the neighboring WPA. The far western portion of the property is also not proposed for future connectivity as it is currently developed (Mackinaw Estates). The subdivision does propose a potential area for future connectivity between Lots B19 and D38 and between Lots A38 and B12 to connect with properties to the southwest. Easements for future road connection are not shown on the preliminary plat. Conversations with the developer indicate that easements are not shown because they would like to reserve the right to revoke the easement if use was negatively impacting residents of the subdivision from overuse, improper use, etc. Conditions require that a statement appear on the face of the final plat regarding this easement.

The applicant has been working with Montana Department of Transportation (MDT) to determine mitigation measures to address their impacts on the road system. Concerns noted by MDT are addressed above in the section Effects on Public Health and Safety: Fire and Emergency Access.

Schools: The subject property is located in the Somers/Lakeside Elementary School District. The proposal received positive comments from the Superintendent of that district, stating that the developer has been very proactive in addressing the impacts of the subdivision on their facilities. The school district has signed a contract with the developer for \$310,000 to be paid in installments. The developer has also "expressed willingness to work with the district to acquire land for future building structures." Comments also note that the plans for bus turnouts and parent parking are "exceptionally positive" and will assist the district in transporting students safely.

The subject property is split between high school districts. Approximately 2/3 of the proposed project

is located in the Flathead High School District and approximately 1/3 of the project is located in the Bigfork High School District. The environmental assessment states that "students within the Bigfork High School District would have the option of transferring to Flathead and paying tuition, and students in the Flathead High School District would have the option of transferring to Bigfork with no out of district tuition." The environmental assessment provides comments from the Director of Facilities and Transportation for the Flathead School District stating that "there would be minimal impact from the proposed development on the school district." It also notes comments from the Superintendent of the Bigfork School District which state that there is capacity in all grades in the district.

This office also received comments from the Flathead County Superintendent of Schools regarding bussing. Comments state that Somers and Flathead provide bussing to this location, while Bigfork does not. Comments also note that "Because of the size of the subdivision, three bus stops are necessary – one at each entrance." Standard conditions require that the applicant provide proof of meeting the requirements of the Flathead County Superintendent of Schools for the bus stops provided.

Parks: The North Shore Ranch subdivision proposes 179.903 acres of open space, ranging in size from 0.377 acres (Open Space H within North Shore Drive serving Lots F1 – F7) to 96.627 acres (Open Space A which follows the exterior boundary of the proposed subdivision except that portion between Ranch Road West to Ranch Road East and includes trails and a pond area between proposed Upland Circle and Sanctuary Drive). All open space areas are proposed to be maintained by the Homeowners' Association. The open space areas are proposed to be open to the public unless use by the public is detrimental to use by homeowners, at which time the open spaces would be limited to private use.

The applicant has stated that some open spaces will be undeveloped, some will be undeveloped with the exception of pedestrian and equestrian trails, and some will be developed with basketball courts, soccer fields, an equestrian center with stables and paddocks, and a historical site with a homestead and grain silo. A vegetation and wildlife management plan is provided with the application which states the types of vegetation proposed and the methods for planting them; however, it does not specifically address the locations of natural vegetation or other improvements. Conditions require that the applicant submit a detailed open space plan which outlines specific improvements and vegetation plans for each open space area, and that each phase comply with the approved open space plan. Conditions also require that a statement be placed on the face of the final plat, informing lot owners that they are required to abide by the policies set forth in the vegetation and wildlife management plan proposed.

Although the proposed open spaces border the WPA, the proposal does not provide access to the WPA recreational area due to comments from US FWS that requested that access be limited to the existing access sites. This request was due to seasonal closures of the WPA, and concerns regarding enforcement and trespass issues during the closed season.

Solid Waste: The application states that lots will be served by contract haul for solid waste disposal. The Growth Policy recommends centralized waste facilities, especially in areas with wildlife habitat. Due to the subdivision's close proximity to the WPA, an area with significant wildlife habitat, conditions require that a centralized, wildlife proof solid waste container be utilized. Conditions also require that the site plan be reviewed by the contract hauler.

Mail Delivery: The developer will contact the local postmaster to determine requirements for mail delivery in accordance with Section 4.7.29 of the Flathead County Subdivision Regulations. This issue is addressed by standard conditions.

FINDINGS

- The subdivision proposes an internal road system with three accesses onto MT Hwy 82. The main accesses will be from Ranch Road East and Ranch Road West. Easements for future road connection and interconnectivity are not shown on the preliminary plat. This issue is further addressed in the

section Effects on Local Services: Roads. Conversations with the developer indicate that easements are not shown because they would like to reserve the right to revoke the easement if use was negatively impacting residents of the subdivision from overuse, improper use, etc. Conditions require that a statement appear on the face of the final plat regarding this easement.

- The North Shore Ranch subdivision proposes 179.903 acres of open space. All open space areas are proposed to be maintained by the Homeowners' Association. The open space areas are proposed to be open to the public unless use by the public is detrimental to use by homeowners, at which time the open spaces would be limited to private use. The applicant has stated that some open spaces will be undeveloped, some will be undeveloped with the exception of pedestrian and equestrian trails, and some will be developed with basketball courts, soccer fields, an equestrian center with stables and paddocks, and a historical site with a homestead and grain silo. A vegetation and wildlife management plan is provided with the application which states the types of vegetation proposed and the methods for planting them; however, it does not specifically address the locations of natural vegetation or other improvements. Conditions require that the applicant submit a detailed open space plan which outlines specific improvements and vegetation plans for each open space area, and that each phase comply with the approved open space plan.
- The application states that lots will be served by contract haul for solid waste disposal. The Growth Policy recommends centralized waste facilities, especially in areas with wildlife habitat. Due to the subdivision's close proximity to the WPA, an area with significant wildlife habitat, conditions require that a centralized, wildlife proof solid waste container be utilized. Conditions also require that the site plan be reviewed by the contract hauler.

H. Effects on Agriculture/Silviculture and Agricultural Water User Facilities:

The subject property has historically been used for agricultural production and is in close proximity to, or bordering significant areas which are currently used for agricultural production. The subject property is not part of an agricultural water user facility. The subdivision is proposed with a minimum 50 foot buffer around the perimeter of the property to attempt to reduce impacts on adjoining or nearby agricultural uses. A soil disturbance and weed management plan will be required through standard conditions and the applicant has proposed a vegetation and wildlife management plan which addresses long term weed management. Conditions require that a statement be placed on the face of the final plat, informing lot owners that they are required to abide by the policies set forth in the vegetation and wildlife management plan proposed. Conditions also require that a statement be placed on the face of the final plat which notifies lot owners of the right to farm on adjoining properties.

FINDINGS-

- The subject property has historically been used for agricultural production and is in close proximity to, or bordering significant areas which are currently used for agricultural production. The subject property is not part of an agricultural water user facility. Conditions which address the impacts on adjoining agricultural uses have been noted in previous sections of this report. Conditions also require that a statement be placed on the face of the final plat which notifies lot owners of the right to farm on adjoining properties.

I. Compliance with the Flathead County Subdivision Regulations:

The project is in general compliance with the Flathead County Subdivision Regulations, with the following exception: the environmental assessment states "The roads will be built to county standards with 22 feet of pavement width and two foot shoulders. The cul-de-sacs meet the standards and no subdivision variances are requested."

Section 4.7.17 of the Flathead County Subdivision Regulations requires that all subdivisions adhere to the Flathead County Minimum Standards for Design and Construction (MSDC) which state that the paving width for local roads in rural areas should be 24 feet, not including additional shoulder width on each side

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of the roadway prism (Section 7, Table 3). The proposed subdivision requires a variance to have a paved road width of 22 feet. The stormwater management plan states that the road right of ways will be 60 feet. This meets the requirements of the MSDC. A variance to Section 4.7.17 of the Flathead County Subdivision Regulations and Section 7, Table 3 of the Flathead County MSDC is reviewed below.

Subdivision Variance Review Criteria

- a. The variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

Staff finds that the proposed width of 22 feet will not pose negative impacts to public health and safety. The site is flat and has multiple access points for safe egress in the event of an emergency. Further, by reducing impervious surface area, this road design will likely result in more efficient stormwater management. This has positive implications for public health and general welfare.

- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed.

Due to the site's proximity to Flathead Lake and documented shallow groundwater, allowing a 22-foot road width will more effectively protect water quality by reducing impervious surface area. Strict compliance with the regulations would increase the impervious surface area and would reduce the benefits to stormwater management and water quality. While requiring the 24 foot standard would not likely impose an undue hardship on the owner in terms of road building, it may impose an undue hardship on the owner in terms of additionally required stormwater drainage mitigation required due to the increased impervious surface area.

- c. The variance will not cause a substantial increase in public costs, now or in the future.

All costs incurred in the development of the road system will be the responsibility of the developer. The homeowner's association will bear the costs of road maintenance. The variance will not cause a substantial increase in public costs, now or in the future.

- d. The variance will not place the subdivision in nonconformance with any adopted growth policy, neighborhood plan or zoning regulations.

Adopting the variance will not place the subdivision in nonconformance with the growth policy, as no policies relate specifically to road width. The site is not located within a neighborhood plan. The property is unzoned in areas and zoned Scenic Corridor in areas. The Scenic Corridor zoning designation does not include road standards.

- e. The variance is consistent with the surrounding community character of the area.

A reduced road width is in character with the surrounding community. There are numerous established roads in the area that are significantly less than 24 feet in width.

FINDINGS

- The project is in general compliance with the Flathead County Subdivision Regulations, with the following exception: the proposed subdivision requires a variance to have a paved road width of 22 feet. The variance criteria have been evaluated and staff finds that the proposed road widths meet the criteria for granting a variance.

SUMMARY OF FINDINGS

1. This subdivision is proposed with fifteen phases. If all phases used the maximum time for final plat approval (three years for the first phase and two years for each additional phase, plus a possible one

year extension for each phase), the time frame for this subdivision could last through 2038 (without extensions) or 2053 (with extensions for each phase). The developer agreed that this was an unreasonable time frame for preliminary plat approval, but did not wish to aggregate any phases of the development to maintain flexibility during the final platting process. The developer proposed a 15 year maximum time frame for approval of all final plat phases. Project specific condition 20 requires that all phases receive final plat approval by December 31, 2022. Any phases which have not received final plat approval by that time shall be terminated and any further development shall be subject to a new preliminary plat approval.

2. Other than signage restrictions, this property is not regulated by the Flathead County Zoning Regulations. No project-specific conditions are required to address this issue.
3. As the subdivision is located in a transitional area between rural communities and agricultural lands, and at varying distances from urban facilities and services, it is difficult to determine at this point whether the density proposed is appropriate for the area. The subdivision is proposed with public water and sewer service and proposes no further subdivision of lots or open spaces. Standard conditions and project-specific condition 21 address these aspects of the proposal.
4. The applicant proposes contract haul for all homeowners. Due to the policies of the Growth Policy which encourage centralized solid waste containment, and the subdivision's close proximity to the WPA, an area with significant wildlife habitat, and impacts to local services, project-specific condition 22 require that a centralized, wildlife proof solid waste container be utilized. Project-specific condition 23 will also require that the site plan be reviewed by the contract hauler. With the imposition of conditions, the application meets the goals of the Growth Policy relating to solid waste.
5. Significant concerns were raised at the July 19, 2006 Planning Board hearing regarding conflicts with wildlife and wildlife habitat in the adjoining WPA. The applicant has provided responses to several of the concerns raised by Montana Fish, Wildlife, and Parks, the United States Fish and Wildlife Service, and the public. The applicant has also provided a Wildlife and Vegetation Management Plan which outlines methods for addressing conflicts with wildlife and wildlife habitat. As of the writing of this report, comments have not been received from these agencies in rebuttal to the new information provided by the applicant. At this time, it is difficult to assess whether their concerns have been addressed. Any comments received prior to the Planning Board's public hearing will be forwarded at the earliest convenience. Should no comments be received which recommend alternative conditions or raise ongoing issues, project-specific condition 24 will require that the applicant provide proof that they have met the reasonable requirements of Montana Fish, Wildlife, and Parks, and the US Fish and Wildlife Service to mitigate their impacts to wildlife and wildlife habitat. With approval from these agencies, the proposal will meet the goals of the Growth Policy in terms of wildlife and wildlife habitat.
6. Other than the issues raised in the three prior findings of fact, the project, with conditions, is in general compliance with the goals and policies of the Flathead County Growth Policy.
7. Comments from MDT state that the Traffic Impact Study provided with this application has not received final approval from MDT. The environmental assessment states that all changes required by MDT in December 2006 have been made and incorporated into the current proposal; however, MDT has not reviewed or approved these alterations. Due to concerns for public health and safety and local services, project-specific condition 25 requires that the developer provide proof that their Traffic Impact Study received final approval from MDT and that all required improvements have been made.
8. Comments from MDT note that although the environmental assessment states that a donation is proposed towards the signalization of the intersection of MT Hwy 82 and US Hwy 93, the donation will not be possible as the project is already underway. However, donation to the signalization of another nearby intersection may be possible. Due to concerns for impacts to public health and safety and local services, project-specific condition 26 requires that the developer provide proof of meeting the requirements of MDT in regards to any required donation for future signalization in the area.
9. Comments from MDT note that additional right of way may be needed for future expansion of MT

Hwy 82. The proposed "visual buffer" may serve the need for expansion at a later date. Due to concerns for impacts to public health and safety and local services, project-specific condition 27 requires that a statement be placed on the face of the final plat allowing future highway expansion into the "visual buffer" area, or that the applicant provide proof from MDT that they have addressed MDT's expansion needs in another way.

10. The application proposes internal roads with a paved width of 22 feet. This requires a variance from the Flathead County Subdivision Regulations as the Minimum Standards for Design and Construction require that rural local roads have a paved width of 24 feet. Staff has evaluated the variance in the section Compliance with the Subdivision Regulations and has found that the proposal meets the criteria for granting a variance. Project-specific condition 44 requires that the applicant receive this variance.
11. Four of the proposed cul-de-sacs do not appear to meet the Minimum Standards for Design and Construction in terms of the width of the proposed right of way. Standard conditions require that proof be provided at the time of final plat that all roads meet the requirements of the Minimum Standards for Design and Construction.
12. All water, sewer, and stormwater drainage systems shall be approved by the Department of Environmental Quality. A provisional water rights permit is required from DNRC. These approvals will help to ensure that water quality and quantity issues are addressed. This finding is addressed by standard conditions.
13. On the subject property, depths to the shallow aquifer range from less than 12 inches to over 15 feet. Groundwater was monitored from April 2006 to April 2007. On November 9, 2007 the applicant submitted a groundwater contour map showing the minimum depth to groundwater based upon water elevations measured on April 17, 2006. This map shows that approximately 18 lots are proposed in areas with two feet or less to groundwater; 37 lots are proposed in areas with three feet or less to groundwater; and 52 lots are proposed in areas with four feet or less to groundwater. Several other lots in the southern, western, and eastern portions of the property are shown as being less than five feet to groundwater but are not further delineated. Due to concerns for impacts to the natural environment, project-specific condition 28 requires that the applicant provide a statement from a certified hydrogeologist or engineer that they believe this is the maximum water level the site will see in a normal year. If this groundwater contour map does not show the maximum water level the site is expected to see, the applicant will provide a map updated with that information, and an associated statement from a certified hydrogeologist or engineer.
14. The depth to the shallow aquifer presents significant concerns for water quality. Contamination of the shallow aquifer would at a minimum adversely impact neighboring properties who utilize the shallow aquifer as a water source. As stated in the section Effects on the Natural Environment: Water Quality and Quantity, it appears that there is conflicting information presented on the relationship between the aquifer and Flathead River and Flathead Lake. If there is a connection between the shallow aquifer and the Flathead River or Flathead Lake, contamination of the shallow aquifer could decrease water quality in these regionally important water bodies. To address these concerns and to ensure the health of the shallow aquifer, Flathead River, and Flathead Lake, and the natural environment in general, project-specific condition 29 requires that the applicant provide a written statement from the Department of Environmental Quality which specifically states that the proposed development will not adversely impact water quality in the shallow aquifer. Additionally, project-specific condition 30 requires that the applicant provide a written statement from the Department of Environmental Quality which specifically states that the shallow aquifer over which this development is located is not hydrologically connected with the Flathead River or Flathead Lake.
15. A stormwater management plan is included with this application. To address impacts to the natural environment, project-specific condition 31 requires that a statement be placed on the face of the final plat which requires all lot owners to abide by the policies set forth in the stormwater management plan provided with this application and approved at the time of final plat.
16. Detention ponds are proposed as a method of stormwater management. Data provided by the NRCS

Web Soils Survey shows that 21.6% of the soils on the subject property are rated as "somewhat limited" for pond reservoir areas, and 78.4% of the soils are rated as "very limited" for pond reservoir areas. Limitations are due to seepage on the property. To address impacts to the natural environment, project-specific condition 32 requires that the applicant address this data by providing a detailed analysis of soils on the property and a statement from an engineer or hydrogeologist licensed to certify soils that the stormwater management value of detention ponds will not be reduced by limitations in the soils.

17. Horse manure management is proposed as a method of stormwater management/water quality management. This proposal raises several concerns regarding the methods of collecting manure, the storage of manure, and enforcement of manure collection practices. Inadequate information is provided at this time to fully assess whether or not this stormwater management practice would be successful. To address impacts to the natural environment, project-specific condition 33 requires that the applicant integrate a more detailed horse manure management plan into the stormwater drainage plan. This horse manure management plan shall be approved by DEQ and the Flathead County Planning & Zoning Office to ensure that all details are addressed. Specifically, the horse manure management plan shall address in detail those inadequacies noted above.
18. As stated in the section Effects on the Natural Environment: Water Quality and Quantity, information provided by the NRCS Web Soils Survey indicates that soils on the property may be limited in terms of development potential. To ensure that all lots are developable, and to address impacts to public health and safety and the natural environment, project-specific condition 34 requires that the applicant provide to the Planning and Zoning Office a detailed soil survey of the property and a statement from an engineer licensed to practice structural design stating that the soils are not limited for the construction of dwellings. If the engineer finds that some of the soils are limited for the construction of dwellings, plans certified by an engineer will be provided which demonstrate how limitations will be addressed to ensure the safety of residents, builders, and to ensure that the quality of water in the shallow aquifer will be maintained. Additionally, project-specific condition 35 requires that a statement appear on the face of the final plat which notifies all potential lot owners that the soils may be limited for development and encourage all structural design to be approved by an engineer licensed for structural design.
19. The subject property is mapped by FEMA on Panels 2280 and 2285. Portions of the property are mapped Flood Zone C (areas of minimal flooding), Flood Zone B (500-year floodplain), and Flood Zone A (100-year floodplain). To address impacts to the natural environment, project-specific condition 36 require that the applicant receive FEMA approval for the base flood elevation shown on the preliminary plat. Project-specific condition 37 requires that the applicant provide proof of receiving a floodplain development permit for any work conducted in the 100-year floodplain or proof that a floodplain development permit is not required for work proposed.
20. There is a wetland in the southeastern portion of the property. A wetland delineation has been provided with this application. To address impacts to the natural environment, project-specific condition 38 requires that it be approved by the US Army Corps of Engineers prior to final plat approval. Any activity which would result in the excavation, discharge, or placement of dredged or fill material into the wetland would require a 404 permit through the US Army Corps of Engineers. The environmental assessment states that no activity is proposed at this time which would require such a permit.
21. The environmental assessment states that hydrologists studied three other areas on the subject property (no location provided) that had the potential for wetland classification, which were determined not to meet the standards for jurisdictional wetlands. Three pond areas are proposed within the subdivision, in Open Spaces A, B, and E. The application does not specifically address how these ponds will be maintained and/or vegetated. To address impacts to the natural environment, project-specific condition 39 requires that the applicant provide detailed information regarding the specific location, and management, maintenance, and development of these pond/wetland areas.
22. The environmental assessment states that the property is actively managed for weeds as an agricultural

operation. A vegetation and wildlife management plan is included with this application which addresses what vegetation will be planted on site and proposed weed control throughout the project. To address impacts to the natural environment, project-specific condition 40 requires that a statement be placed on the face of the final plat, informing lot owners that they are required to abide by the policies set forth in the vegetation and wildlife management plan proposed. Standard conditions require that the applicant comply with the requirements of the Flathead County Weed Department for weed control.

23. The subdivision proposes an internal road system with three accesses onto MT Hwy 82. The main accesses will be from Ranch Road East and Ranch Road West. Easements for future road connection and interconnectivity are not shown on the preliminary plat. This issue is further addressed in the section Effects on Local Services: Roads. Conversations with the developer indicate that easements are not shown because they would like to reserve the right to revoke the easement if use was negatively impacting residents of the subdivision from overuse, improper use, etc. To address impacts to local services, project-specific condition 41 requires that a statement appear on the face of the final plat regarding this easement.
24. The North Shore Ranch subdivision proposes 179.903 acres of open space. All open space areas are proposed to be maintained by the Homeowners' Association. The open space areas are proposed to be open to the public unless use by the public is detrimental to use by homeowners, at which time the open spaces would be limited to private use. The applicant has stated that some open spaces will be undeveloped, some will be undeveloped with the exception of pedestrian and equestrian trails, and some will be developed with basketball courts, soccer fields, an equestrian center with stables and paddocks, and a historical site with a homestead and grain silo. A vegetation and wildlife management plan is provided with the application which states the types of vegetation proposed and the methods for planting them; however, it does not specifically address the locations of natural vegetation or other improvements. To address impacts to the natural environment and local services, project-specific condition 42 requires that the applicant submit a detailed open space plan which outlines specific improvements and vegetation plans for each open space area, and that each phase comply with the approved open space plan.
25. The subject property has historically been used for agricultural production and is in close proximity to, or bordering significant areas which are currently used for agricultural production. The subject property is not part of an agricultural water user facility. Conditions which address the impacts on adjoining agricultural uses have been noted in previous sections of this report. To address impacts to agriculture, project-specific condition 43 also requires that a statement be placed on the face of the final plat which notifies lot owners of the right to farm on adjoining properties.
26. ~~The project is in general compliance with the Flathead County Subdivision Regulations, with the following exception: the proposed subdivision requires a variance to have a paved road width of 22 feet. The variance criteria have been evaluated and staff finds that the proposed road widths meet the criteria for granting a variance. Project-specific condition 44 requires that the applicant receive this variance.~~

RECOMMENDATION

The North Shore Ranch Subdivision is proposed with 290 lots on 367.470 acres with 179.903 acres of open space and public water and sewer service. Any subdivision of this scale will undoubtedly raise concerns for public health and safety, wildlife and wildlife habitat, the natural environment, local services, and agricultural uses. The applicant has proposed mitigation to address many issues and concerns. However, there are remaining concerns, specifically in regards to impacts to the natural environment and wildlife and wildlife habitat. As of the writing of this report, agency comments have not been received to address whether the mitigation proposed by the applicant is sufficient to address the impacts of this subdivision; therefore, it is difficult for staff to assess whether proposed mitigation is adequate. Several findings of fact and conditions are proposed which attempt to address these concerns. Staff finds that *with* the findings of fact and conditions recommended it is possible that these issues may be addressed by the time of final plat approval. Staff therefore recommends the Flathead County Commission adopt Staff Report FPP-07-32 as findings of fact and

approve North Shore Ranch Subdivision subject to the following conditions:

STANDARD CONDITIONS

1. The applicant shall receive physical addresses and road names in accordance with Flathead County Resolution #1626. All road names shall appear on the final plat. Street addressing shall be assigned by the Address Coordinator. [Section 4.7.17(iv), FCSR]
2. The applicant shall show proof of a completed approach permits for all approaches from the Montana Department of Transportation), indicating the approaches have been built and received final inspection. [Section 4.7.17, FCSR]
3. With the application for final plat, the applicant shall provide a Road Users' Agreement which requires each property owner to bear his or her pro-rata share for maintenance of the roads within the subdivision. [Section 4.7.16(e), FCSR]
4. All internal subdivision roads shall be certified by a licensed engineer and constructed in accordance with the Flathead County Minimum Standards for Design and Construction. [Section 4.7.17, FCSR]
5. Except for sewer and water lines, underground utilities (if placed in the road right-of-way or easement) shall be located between the roadway and the right of way or easement line to simplify location and repair of lines. These underground facilities shall be installed after the road has been brought to grade and before it is surfaced. Utility lines shall be designed by utility firms in cooperation with the subdivider, subject to all applicable laws and all rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities. At the time of final plat, letters shall be provided from the appropriate utilities stating that the lines constructed meet these requirements and any of their additional requirements. [Section 4.7.24, FCSR]
6. Utility easements shall be 10 feet wide unless otherwise specified by the utility company. These easements shall be shown on the face of the final plat. [Section 4.7.24(c), FCSR]
7. The proposed water and sewage treatment systems and storm drainage systems for the subdivision shall be reviewed by the Flathead City-County Health Department and approved by the Montana Department of Environmental Quality. [Sections 4.7.21 and 4.7.22, FCSR]
8. The applicant shall submit to the Flathead County Planning and Zoning Office an approved Storm Water Pollution Prevention Plan from the MT DEQ - Water Protection Bureau prior to any construction activity. [Section 4.7.13, FCSR; 75-5-101, MCA]
9. The applicant shall provide a provisional water right permit approved by DNRC with the application for final plat. [Section 4.7.21(b), FCSR]
10. The applicant shall provide proof of water and sewer service in the form of a contractual agreement for service from the Lakeside Water & Sewer District for the number of lots proposed. [Sections 4.7.21 and 4.7.22, FCSR]
11. The applicant shall comply with reasonable fire suppression and access requirements of the Somers/Lakeside Volunteer Fire District. A letter from the fire chief stating that an agreement has been made shall be submitted with the application for Final Plat. [Section 4.7.27, FCSR]
12. The applicant shall provide an approved Weed Control Plan and a letter from the County Weed Supervisor stating that the Weed Control Plan has been approved and implemented. The Weed Control Plan shall be implemented prior to final plat application. The County Weed Supervisor may charge a fee to inspect the subdivision and approve the implementation. [Section 4.7.26, FCSR]
13. The mail delivery site shall be provided with the design and location approved by the local postmaster of USPS. A letter from the postmaster stating that the applicant has met their requirements shall be included with the application for final plat. [Section 4.7.29, FCSR]
14. The developer shall contact the Superintendent of Schools and, if required, provide and improve a location for the safe loading and unloading of students. [Section 4.7.30, FCSR]

Applicants are ok w/ these.

OK #

⊗

OK

OK

OK

15. The following statements shall be placed on the face of the final plat applicable to all lots:

- a. All new subdivision roads are public access easements. All roads in the Road Users' Agreement shall be maintained by the property owners within the subdivision. The County Commission accepts no responsibility for development or maintenance of roads unless accepted by the Commission for maintenance. [Section 4.7.16(e), FCSR]
- a. Address numbers shall be posted at the commencement of construction and be clearly visible at all times thereafter. Numbers shall be placed in the driveway entrance and at any subsequent divergent points of access for shared driveways. All address numbers shall be displayed on a contrasting background using a minimum four-inch numeral height. [Section 4.7.27(c), FCSR]
- b. All utilities shall be placed underground. [Section 4.7.24, FCSR]
- c. Lot owners are notified they are living in a rural area of Flathead County and delayed response times may be experienced from emergency service providers.
- d. Lot owners are bound by the Weed Control Plan to which the developer and the Flathead County Weed Department agreed.
- e.

Waiver of Protest

Participation in Special Improvement District

[per County Resolution 503-M]

_____ (Owner) hereby waives any and all right to protest which it may have in regards to any attempt to be made by a local governmental entity, to initiate a Special Improvement District which includes _____ Subdivision, shown on the plat therefore, for any of the purposes related to roads, water facilities and systems, and sewer facilities and systems, set forth in Sections 7-12-2102 and 7-12-4102, M.C.A.; provided however that _____ understands that (he/she/it/they) retains the ability to object to the amount of assessment imposed as a result of the formation of a Special Improvement District, including the right to object on the basis that the property is not benefited by the Special Improvement District. _____ agrees that this covenant shall run to, with and be binding on the title of the real property described above and shall be binding on the heirs, assigns, successors in interest, purchasers, and any and all subsequent holders or owners of the real property shown on the subdivision plat for _____ Subdivision.

- 16. The final plat shall comply with state surveying requirements. [Section 76-3-608(b)(i), MCA]
- 17. All required improvements shall be completed in place or a Subdivision Improvement Agreement shall be provided by the subdivider prior to final approval by the County Commissioners. [Section 4.4.27, FCSR]
- 18. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions. [Section 4.4.23, FCSR]
- 19. Preliminary plat approval is valid for three years. [Section 4.4.20, FCSR]

PROJECT-SPECIFIC CONDITIONS

- 20. All proposed phases receive final plat approval by December 31, 2022. Any phases which have not received final plat approval by that time shall be terminated and any further development shall be subject to a new preliminary plat approval.
- 21. The following statements shall appear on the face of the final plat:
 - a. No lot shall be further subdivided.
 - b. The open space shall not be subdivided. Use shall abide by the open space plan approved with this subdivision.

- ✓ 22. The applicant shall provide a centralized, wildlife proof solid waste container. Its location shall be shown on the face of the final plat.
- ✓ 23. The applicant shall provide proof that the site plan for this subdivision is approved by the contract hauler.
- ★ 24. The applicant shall provide proof that they have met the reasonable requirements of Montana Fish, Wildlife, and Parks, and the US Fish and Wildlife Service to mitigate impacts to wildlife and wildlife habitat.
- ★ 25. The applicant shall provide proof that the Traffic Impact Study has received final approval from MDT and that all required improvements have been made. Improvements shall be certified by an engineer.
- ★ 26. The applicant shall provide proof of meeting the requirements of MDT in regards to any required donation for future signalization in the area.
- ★ 27. The applicant shall provide proof from MDT that right of way needs for future expansion have been met or the following statement shall be placed on the face of the final plat:
 - a. The "visual buffer" area may serve as a location for highway expansion in the future.
- ★ 28. The applicant shall provide a statement from a certified hydrogeologist or engineer that the groundwater elevations shown on the submitted "Minimum Depth to Water Table" groundwater contour map are believed to be the maximum water level the site will see in a normal year. If this groundwater contour map does not show the maximum water level the site is expected to see, the applicant shall provide a map updated with that information, and an associated statement from a certified hydrogeologist or engineer.
- ★ 29. The applicant shall provide a written statement from the Department of Environmental Quality which specifically states that the proposed development will not adversely impact water quality in the shallow aquifer.
- ★ 30. The applicant shall provide a written statement from the Department of Environmental Quality which specifically states that the shallow aquifer over which this development is located is not hydrologically connected with the Flathead River or Flathead Lake.
- ★ 31. The following statement shall appear on the face of the final plat:
 - a. All lot owners are required to abide by the policies set forth in the approved stormwater management plan.
- ★ 32. The applicant shall provide a detailed analysis of soils on the property and a statement from an engineer or hydrogeologist licensed to certify soils that the stormwater management value of detention ponds will not be reduced by limitations in the soils.
- ★ 33. The applicant shall integrate a more detailed horse manure management plan into the stormwater drainage plan. This horse manure management plan shall be approved by DEQ and the Flathead County Planning & Zoning Office to ensure that all details are addressed. Specifically, the horse manure management plan shall address in detail the methods of collecting manure, the storage of manure, and enforcement of manure collection practices.
- ★ 34. The applicant shall provide to the Planning and Zoning Office a detailed soil survey of the property and a statement from an engineer licensed to practice structural design stating that the soils are not limited for the construction of dwellings. If the engineer finds that some of the soils are limited for the construction of dwellings, plans certified by an engineer will be provided which demonstrate how limitations will be addressed to ensure the safety of residents, builders, and to ensure that the quality of water in the shallow aquifer will be maintained.
- ★ 35. The following statement shall be placed on the face of the final plat:
 - a. All lot owners are notified that the soils present on this property may be limited for

work to
M13
OK.

FCPZ00985

development. It is recommended that all structural designs be approved by an engineer licensed for structural design.

☆ 36. The applicant shall provide a Letter of Map Amendment approved by FEMA. The base flood elevation for the 100-year floodplain shall be delineated on the face of the final plat and the 100-year floodplain shall be shown on the face of the final plat as a "No Build Zone." Should any of the proposed lots be found to not contain a suitable building site and access outside of the 100-year floodplain, they shall be eliminated from the subdivision.

OK 37. The applicant shall receive a floodplain development permit for any work conducted in the 100-year floodplain or proof that a floodplain development permit is not required for work proposed.

☆ 38. The wetlands delineation shall be approved by the US Army Corps of Engineers prior to final plat approval.

☆ 39. The applicant shall provide to the Planning & Zoning Office detailed information regarding the specific location, and management, maintenance, and development of the pond/wetland areas shown in Open Spaces A, B, and E.

40. The following statement shall appear on the face of the final plat:

OK a. Lot owners are required to abide by the policies set forth in the approved vegetation and wildlife management plan.

41. The following statement shall appear on the face of the final plat:

☆ ~~☆~~ a. An area between Lots A38 and B12 and between Lots B19 and D38 is reserved for connection to adjoining roads to provide interconnectivity. Any future road connection shall be approved by the Homeowner's Association.

☆ 42. The applicant shall submit to the Planning & Zoning Office for approval a detailed open space plan which outlines specific improvements and vegetation plans for each open space area. All phases shall comply with the approved open space plan.

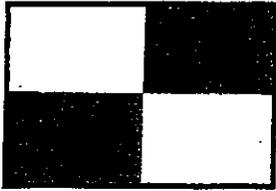
43. The following statement shall appear on the face of the final plat:

OK a. This subdivision is located in a silvicultural/agricultural area and potential nuisances such as noise, dust, odors, and irregular hours of operation are commonplace. As such, the right to farm on adjoining properties shall not be restricted as a result of the development or occupancy of this subdivision.

☆ 44. The applicant shall receive a variance to Section 4.7.17 of the Flathead County Subdivision Regulations.

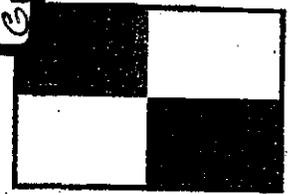
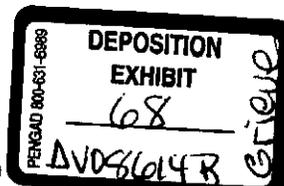
AT

Appendix A
Soil Ratings for North Shore Ranch
Source: NRCS Web Soils Survey



SANDS SURVEYING,

2 Village Loop Road
Kalispell, MT 59901
406-755-6481
Fax 406-755-6488



January 17, 2008

BJ Grieve, Assistant Director
Flathead County Planning & Zoning Office
1035 1st Ave. West
Kalispell, MT 59901

RE: 100 year flood plain for North Shore Ranch on the north shore of Flathead Lake

Dear Mr. Grieve:

Eric Mulcahy from our office, asked how we determined the Base Flood Elevation (BFE) of 2892.9 NGVD29 for this site. Our vertical control was brought in by GPS from USGS bench marks, and all the elevation/contours shown on our map(s) is on the NGVD29 datum. From the Flathead County Flood Insurance Study (FIS) report the 1 percent annual chance, or 100 year flood plain, listed for Flathead Lake is 2893.9. This table shows a foot note that this figure of 2893.9 is on the Somers Datum, and one (1) foot needs to be subtracted for consistency with USGS regional datum (NGVD 29). Therefore the BFE for Flathead Lake is 2893.9 minus one foot or 2892.9 to be on the NGVD 29 datum. This is the datum the FEMA FIRM maps were based on for our plat application of the North Shore Ranch.

The Somers Datum was derived from the old gauging station that was near the yacht club in Somers on Flathead Lake. In 1947 the USGS determined there was an error in that gauging station and one foot needed to be subtracted to get to the USGS regional datum (NGVD 29). Currently the only operating gauging station on the lake is in Polson, and still uses the Somers Datum to report the 15 minute lake elevation intervals. A major reason for the reporting of this gauging station to stay on the Somers Datum, verses either NGVD29 or NAVD88 datum's, is that all of the easements around Flathead Lake for flooding rights caused by the regulation of the lake by Kerr Dam, were created before 1947 and are based on the erroneous elevation from the Somers Datum.

If you need any further clarification, please feel free to contact me.

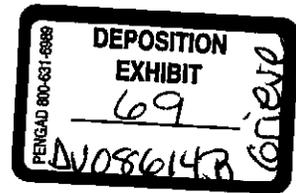
Professionally

Daniel P. Brien, PLS
Sands Surveying, Inc.

FBCC00456

12/06/07
Meeting w/ NSR reps.

BT
Grievor's
Notes.



- ① They have concerns w/ acquiring water rights.
- ② Clarify in staff report that hydrants are being provided as fire suppression method.
- ③ They have concerns w/ item #22
- ④ Condition #22 change to allow for individual best-proof trash containers
- ⑤ Cond. #24 - They will submit evidence that the met w/ FWP + U.S.F.W. requests for mitigation. This condition can then be removed, or reworded to be more specific
- ⑥ Cond. #25 is redundant w/ Cond. #2. Rework 2 or 25 to include all necessary language, also #26
- ⑦ Cond #27 should be reworded to reflect the applicants willingness to set back homes and reflect a concrete distance ~~to~~ away from R.O.W.
- ⑧ Cond. #28 ~~to~~ wording is odd. Consider rewording to reflect Condition can be removed if it is explained why April 17, 2006 is chosen as highest groundwater

- ⑨ ~~Cond # 29~~ Cond # 29 should be reworded to reflect DEQ approval. is what's needed.
- ⑩ Cond # 30 - Come back to this over issue of 3rd party review
- ⑪ An addendum is how stuff will be submitted.
- ⑫ Cond # 32 - will be ~~removed~~ removed, as long as storm water management plan is clarified to talk about detention/retention
- ⑬ Cond # 33 - Remove when base manure plan is submitted.
- ⑭ Cond # 34 - Will submit a pier report and requirements in CCPR that says a geotech must sign off on foundations
- ⑮ Cond # 36 - Rewrite to require LOMA, but change to just a statement on final plat (w/ LOMA) indicating you must get FDP to do something here.
- ⑯ Cond # 38 remove.
- ⑰ Cond # 39 remove, info ^{about ponds} will come in prior to proposal for public review

⑩ Cond # 41 "or" rather than "and"

⑪ Cond # 42 remove once plan for open spaces is submitted, just a statement on final plat holding knowledge to land



I agree with all except #6 and #9.

#6 is comparing discharge and flood elevations. Although clearly related, a more accurate statement, based on data within the FIS would be

"The FEMA calculated .02% annual chance flood discharge for Flathead River at the Columbia Falls gage is 140,000 cfs (Table 3, FIS). Unregulated flow for the 1964 flood was estimated at 245,000 cfs, although the location of this estimated flow is not provided in the FIS (page 21, paragraph 2)."

Regarding #9, when reviewing a subdivision in MT for impacts to public health and safety, the determination can only be made by the governing body. A more accurate draft finding along these lines could be that "The probability of increased risk to public health and safety from flooding on those areas of the proposed subdivision above 2892.9 (NGVD 29) feet above sea level is low because only one flood event since Hungry Horse Dam became operational has caused Flathead Lake to exceed the BFE and that flood event was estimated by FEMA to be statistically less probable than the estimated .02% annual chance flood event."

Based on our conversation yesterday, and pending further discussion with Mark Lorang regarding the data he sent me, I would be comfortable proposing the language above (re: #9) to replace Finding #39 in the draft staff report. I will add this email response to the file and discuss it during my presentation.

Again, I would caution you against adding too much additional information to the file because at a certain point it becomes awkward for staff to present all the new information to the board and public. It won't bother me if you all want to present errors in or criticisms of staff's report to the Board.

-BJ

BJ Grieve, CFM
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Flathead County Planning and Zoning
1035 First Avenue West
Kalispell, MT 59901
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www.co.flathead.mt.us

-----Original Message-----

From: Marc Spratt [mailto:marc@rlkhydro.com]
Sent: Wednesday, March 05, 2008 6:05 PM
To: BJ Grieve
Cc: Keith Simon
Subject: North Shore Ranch

BJ, Again thank you for the time you spent with me discussing water elevations at Flathead Lake today. Please confirm the issues we discussed today and that we concurred on the following:

- 1) Both of the USGS gaging station records for Somers and Polson are referenced to the Somers Datum and published as such.
- 2) The correction, according to the USGS, is the NGVD 29 (mean sea level elevation - Somers Datum) minus 1 foot.
- 3) The BFE for the .02% chance flood is 2892.9 NGVD 29.

- 4) The peak lake elevation related to the '64 flood was 2393.23 ft. NGVD29.
- 5) The '64 flood resulted from precipitation that closely approximates the probable maximum precipitation for the upper Flathead Drainage.
- 6) The '64 flood discharge was greater than the 500-yr. or 0.2% chance flood.
- 7) The difference in elevation between the highest elevation recorded for Flathead Lake ('64) since 1953 and the BFE is 0.33 ft.
- 8) Hungry Horse moderates flood effects in Flathead Lake and that, since 1953, the lake elevation has been less than the BFE except in 1964.
- 9) Public health and safety is protected through regulation of the 1% chance (100-yr) flood event as defined by FEMA.

Marc Spratt

Summary of 4/22/08 conversation at Peter's office.



Gary-

Per your direction, the following is a bullet-point summary of the discussion that took place today in Peter's office.

- The impacts of the proposed subdivision to wildlife and wildlife habitat are further addressed in evidence submitted by MT FWP that higher numbers of subdivision lots near a wildlife area will impact the wildlife and evidence submitted by USFWS both prior to and at the public hearing that some species of animals in the Flathead Waterfowl Production area will be negatively impacted by the proposed subdivision. See Finding #32 in staff report and text beginning on page 41 for further discussion.

See memorandum Read

- Based on evidence that was submitted at the public hearing, there are easements on the subject properties that allow them to be flooded.

*Health Safety
will fail*

- The flood of 1964 did exceed the Flathead Lake base flood elevation (as estimated by FEMA) by .33 feet.

- The geotechnical analysis submitted by the applicant on January 30, 2008 states that typical concerns with the types of soils and "relatively high groundwater level" found on the subject property when building residential structures include "foundation bearing capacity, settlement, infiltration of groundwater into below grade structures and liquefaction potential during the design level earthquake." The geotechnical assessment goes on to state that "Construction of residential structures on these types of soils is feasible; however, specific recommendations will need to be developed for each proposed lot to reduce the risk of construction on these soils adversely affecting the planned residences." Discussion of this topic can be found beginning on page 47 of the staff report and is addressed in Finding # 43 of the original staff report.

*gt
Sued*