

COPY

In The Matter Of:

*Kleinhans Farms Estates, LLC v.
Flathead County*

*Gary Hall
September 23, 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 GARY HALL
 16
 17
 18 On September 23, 2009, beginning at 9:42 a.m.,
 19 the deposition of GARY HALL, appearing at the insistence
 20 of Defendant, was taken at the Earl Bennett Building,
 21 1035 First Avenue West, Kalispell, Montana, pursuant to
 22 the Montana Rules of Civil Procedure, before Bambi A.
 23 Goodman, Registered Professional Reporter, Certified
 24 Realtime Reporter, Notary Public.
 25

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

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1 I N D E X
 2 WITNESS: PAGE:
 3 GARY HALL,
 4 Examination By Mr. Perry 4
 5 EXHIBITS:
 6 Deposition Exhibit No. 58 57
 7 (Aerial Color Photograph of North
 8 Shore Ranch property)
 9 marked for identification
 10 Deposition Exhibit No. 59 88
 11 (Farmland Acres Subdivision Decision)
 12 marked for identification
 13 Deposition Exhibit No. 60 93
 14 (Flathead River Landing Subdivision
 15 Decision)
 16 marked for identification
 17 Deposition Exhibit No. 61 102
 18 (Pheasant Haven Subdivision Decision)
 19 marked for identification
 20 Deposition Exhibit No. 62 104
 21 (3/25/04 Letter to Commissioners)
 22 marked for identification
 23 Deposition Exhibit No. 63 107
 24 (6/11/03 Letter to Commissioners)
 25 marked for identification
 Deposition Exhibit No. 64 109
 (Tiebucker Subdivision Decision)
 marked for identification
 Deposition Exhibit No. 65 113
 (Wachsmuth Subdivision Conditional
 Approval)
 marked for identification
 Deposition Exhibit No. 66 122
 (7/18/06 Letter to Plan Web Account)
 marked for identification
 Reporter's Certificate 133

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1 GARY HALL,
 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. My name is Terance Perry.
 8 I represent Kleinhans Farms, LLC with regard to the
 9 North Shore Ranch project. I'm here to ask you some
 10 questions today about your involvement and, in
 11 particular, your involvement in rendering a final
 12 decision to deny the subdivision application.
 13 Before we get going, just a couple of ground
 14 rules. If you don't understand one of my questions just
 15 tell me. I'm happy to rephrase it. If you need to take
 16 a break at any point in time, not a problem, as long as
 17 there's not a question in front of you.
 18 For the transcript, for it to be clear, you and
 19 I can't kind of talk over each other. So if you could
 20 just give me a chance to get the question out before you
 21 answer it, and I'll do the same with you with respect to
 22 your answers.
 23 Can you please state your full name for the
 24 record?
 25 A Gary Duane Hall.

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1 Q And your date of birth?
 2 A 1/8/48.
 3 Q And your current residential address?
 4 A 969 Vans Avenue.
 5 Q And can you spell Vans Avenue?
 6 A V-a-n-s, V as in Victor.
 7 Q Can you tell me a little bit about your
 8 educational background, starting with high school.
 9 A High school, college, business college in
 10 Honolulu, Hawaii; military, Vietnam, 18 months Vietnam.
 11 Started my first business in 1971, and owned and
 12 operated businesses for twenty-five years. And then
 13 last stint was county commissioner.
 14 Q Let me just parse that out a little bit. Where
 15 did you go to high school?
 16 A Flathead.
 17 Q Flathead. And you graduated in what year?
 18 A 'Sixty-seven.
 19 Q And then where did you go for schooling at that
 20 point?
 21 A Went to -- entered the military. After
 22 Vietnam, then I went to Honolulu Business College.
 23 Q How long were you in Vietnam?
 24 A Eighteen months.
 25 Q And when you came back, you went right to

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1 Honolulu?
 2 A No; I went to Seattle for a year and then was
 3 discharged from Seattle. Then I came back here and then
 4 moved to Hawaii, just a couple months after coming back
 5 to the Flathead in '69.
 6 Q And the college you attended in Hawaii, I'm
 7 sorry, what was the name?
 8 A Honolulu Business College.
 9 Q And you graduated from there?
 10 A No, I just went one semester.
 11 Q And what did you do at that point in time, just
 12 in terms of education, if anything?
 13 A That was it.
 14 Q And that one semester that was in '69?
 15 A No, it was in, I think, '70.
 16 Q 'Seventy.
 17 A Yeah.
 18 Q And what did you do at that point in time after
 19 you attended that school for a semester?
 20 A I started my first business. I worked at
 21 Salvation Army as a truck driver for, I think, almost a
 22 year and then started my first business.
 23 Q And what was that business?
 24 A It was a plant store.
 25 Q A plant store?

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1 A Uh-huh.
 2 Q And did you operate that for some period of
 3 time?
 4 A For two years.
 5 Q And what did you do then, in terms of
 6 employment?
 7 A I then opened an antique store and operated the
 8 plant store at the same time, kind of in the same
 9 building.
 10 Q And was that in Honolulu?
 11 A Uh-huh.
 12 Q Oh, and just one more rule of the road, so to
 13 speak. You've got to verbalize your answers. The
 14 stenographer can't take down head nods or shakes of the
 15 head. So "yes" or "no," just so we have a good
 16 transcript.
 17 Okay. So you had the plant store and the
 18 antique store going at the same time in Honolulu. How
 19 long did you operate both of those businesses?
 20 A Oh, I think approximately three years.
 21 Q And what did you do then?
 22 A Four years, I don't remember; three or four
 23 years.
 24 Q Okay.
 25 A After the antique business, I don't remember a

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1 lot of it, what we were doing back then, it was so long
 2 ago.
 3 What does this have to do with this case?
 4 **MR. MCCORMICK:** He's entitled to ask you
 5 background information just to get a feel for you as a
 6 person.
 7 **THE WITNESS:** Okay. I'm just trying to
 8 remember.
 9 Q (By Mr. Perry) So you just don't remember what
 10 you did after you stopped running the plant store and
 11 the antique store?
 12 A I'm trying to remember. No, I don't remember.
 13 Q Okay.
 14 At some point in time did you leave Hawaii?
 15 A I left in -- I came back at Christmastime
 16 of '76 and met my wife -- my future wife, and went back
 17 to Hawaii for a couple months, came back and got
 18 married, and then we went on a two-month honeymoon and
 19 moved back here and have been back ever since.
 20 Q And you met your wife here in Montana?
 21 A Right.
 22 Q And when you came back to Montana for good, can
 23 you approximate for me what year that would have been?
 24 A 'Seventy-seven.
 25 Q 'Seventy-seven. And what did you do at that

1 point for employment, here in Montana?
2 A Well, I started out -- when we first got back,
3 there was no work here. I was cleaning carpets for
4 approximately a year, and then I worked at Superior
5 Building Company in Columbia Falls as an operator, and
6 then I went to work, in probably '81, for a travel
7 agency. And I became manager of a travel agency. And
8 then we opened a -- built and opened a new restaurant in
9 1984 in Columbia Falls, operated that for ten years,
10 sold that, bought a city block with houses on it in
11 Columbia Falls, and turned it into a bed and breakfast
12 resort -- little mini-resort and operated that for
13 twelve years and sold that -- or yeah, sold that.
14 During that time I worked at Costco. I was in sales and
15 marketing at Costco during the time we had the bed and
16 breakfast, and then was mayor five years in Columbia
17 Falls before I ran for office for commissioner seven
18 years ago and worked full time at the commissioners.
19 Q Okay; fair enough. Thank you.
20 What year were you elected as a commissioner
21 of -- for Flathead County?
22 A Nineteen ninety-eight.
23 Q And you've been a commissioner ever since then?
24 A No, no. My office -- I was not re-elected last
25 year, so my term ended December 31, 2008.

1 Q For how long -- how many years were you a
2 commissioner for Flathead County?
3 A I've got the date wrong there, I think. I'm
4 sorry; your question again?
5 Q How many years were you a commissioner for
6 Flathead County?
7 A Six years.
8 Q Six years. And what year to what year?
9 A It was 2002. I think I was mayor in '98, and
10 2002 would have been the year I was elected as
11 commissioner.
12 Q So 2002 to the end of 2008.
13 A Yeah.
14 Q Sir, prior to becoming a commissioner for
15 Flathead County, what, if any, experience did you have
16 in land use planning?
17 A Well, before commissioner, I was the land use
18 issues that we dealt as a mayor in Columbia Falls for
19 five years.
20 Q And when you were in Columbia Falls serving as
21 mayor, did you have any involvement in, you know, zoning
22 initiatives or land use planning issues, that type
23 thing?
24 A On a very limited scale. We do not have a lot
25 of development in Columbia Falls. I think five years as

1 mayor, we only had just a very small handful of
2 subdivisions to even look at, but nothing that -- and
3 anything close to the scope of what we dealt with as a
4 commission.
5 Q And after you became a commissioner, I know you
6 were a commissioner for a fair amount of time, can you
7 approximate for me, on an annual basis, how many
8 subdivision applications you reviewed?
9 A You know, there's no way, without looking back
10 on the records, that I could answer that question
11 accurately. I have no idea. It seemed like for a while
12 there were quite a few coming across the desk and took a
13 lot of time to deal with those. But I really -- I
14 wondered that question myself.
15 Q Yeah. And I was just looking for your best
16 ballpark estimate, you know, ten a year, a thousand a
17 year? Is there any estimate you could give me?
18 A No, I really couldn't.
19 Q Okay; fair enough.
20 After you were elected commissioner for
21 Flathead County, what, if any, training did you undergo
22 with regard to subdivision process under Title 76 of the
23 Montana Code?
24 A No real official training, other than just
25 workshops at our annual MACo conferences which they just

1 talk about, at those conferences, some of the things,
2 pitfalls that can happen in land use planning and give
3 like real-case stories. But there wasn't even any real
4 training done at those MACo conferences, just
5 discussions of what happened in this county, what
6 happened in that county. But nothing real structured or
7 officially put together for training in land use.
8 Q And MACo, that's the Montana Association of
9 Counties?
10 A Of Counties.
11 Q After you became commissioner, did you receive
12 any training or education regarding the subdivision
13 review process from the county attorney here in
14 Flathead?
15 A Not that I recall.
16 Q Let me ask you a question. While you were a
17 commissioner reviewing subdivision applications, did you
18 have any custom or habit with respect to consulting with
19 the county attorney on subdivision applications?
20 A Very seldom. There was times that, obviously,
21 I would call and ask questions. But -- yeah, I think
22 it's safe to say that I would consult with the county
23 attorney, yeah, on questions that I would have.
24 Q Do you recall having consulted with the county
25 attorney regarding the North Shore Ranch project?

1 A Interestingly, I do not recall. I may have,
2 but I cannot recall actually specifically. I remember
3 doing that particular subdivision with -- without much
4 input from the outside. I just spent a lot of time
5 doing my own research. But I'm sure I consulted the
6 county attorney at some point, but I don't recall.

7 Q With respect to the North Shore Ranch project,
8 and we'll get into the final decision in greater detail
9 later today, but do you recall having read the actual
10 PP&L easements regarding that property?

11 A I read -- I always read everything that comes
12 to me --

13 Q Okay.

14 A -- on every subdivision.

15 Q So if it were in the administrative record, so
16 to speak, you would have read it.

17 A Uh-huh.

18 Q That's a yes?

19 A Yes; sorry.

20 Q In the time that you were a
21 commissioner -- strike the question.

22 As we know, one of the bases for denial of the
23 North Shore Ranch project was the fact that it was
24 encumbered by the PP&L easement; fair to say?

25 A Could you repeat your question?

1 in fact, subject to that easement?

2 A I do not recall that.

3 Q Okay. To your recollection -- well, strike the
4 question.

5 Do you know whether or not any other
6 subdivision application was ever denied during your
7 tenure as a commissioner based on the fact that it
8 involved property encumbered by the PP&L easement?

9 A I do not recall that.

10 Q You'd agree with me that Flathead County
11 subdivision regulations, while you were a commissioner,
12 had to be applied fairly and in an even-handed manner
13 with respect to all applicants.

14 A I think I understand your question, but go
15 ahead and repeat it so I don't --

16 Q Sure. You'd agree with me that the Flathead
17 County subdivision regulations that were in place while
18 you were a commissioner, had to be applied fairly and in
19 an even-handed manner with respect to all applicants.

20 A I think it's fair to say that that was my
21 position.

22 Q Okay. And you'd agree with me that if two
23 applicants were similarly situated, in terms of having
24 property near each other, similar vicinity to the lake,
25 similar vicinity to the WPA, similar soil

1 Q Sure. It's true, is it not, that one of the
2 reasons that the North Shore Ranch application was
3 denied was the fact that it had the PP&L easement on the
4 property.

5 A If that -- I believe the record shows that.

6 Q In the time that you were a commissioner in
7 Flathead County, do you recall having reviewed any other
8 subdivision application that was subject to the PP&L
9 easement?

10 A I can only -- I cannot give you a definite
11 recollection of that. I can recall reading it at some
12 point during the six years of seeing that. But I
13 couldn't give you specifics.

14 Q Okay.

15 A I had seen that, yeah.

16 Q Okay. So it's true, then, that while you were
17 serving as a commissioner for Flathead County, aside
18 from the North Shore Ranch project, you had occasion to
19 review a subdivision -- another subdivision application
20 or applications that involved land that was also
21 encumbered by the PP&L easement.

22 A I would assume so, yes.

23 Q And do you recall, sitting here today, whether
24 or not any other application regarding property that was
25 subject to the PP&L easement was denied because it was,

1 characteristics, they should be treated similarly,
2 should they not?

3 A Well, you're asking me to agree with you on a
4 fact that is -- that -- I made my determinations on
5 every single subdivision based on the information that I
6 had at that time and my perception of what was given to
7 me and what I gathered and what I researched. So for me
8 to agree with you that I have made different decisions
9 on different subdivisions, you know -- again, your
10 question's -- you know, I'm trying to answer it fairly.
11 But like I say, I've already forgotten your question,
12 how you posed it. Your asking me to agree with you and
13 so I'm thinking how I'm to agree with you. But no,
14 every subdivision is different, and every fact or every
15 bit of information that comes that I use for my decision
16 on that subdivision is based on that information. It's
17 not based on what I did on another subdivision.

18 Q I understand. And let me just put it another
19 way. When you and Mr. Brenneman voted to deny the North
20 Shore Ranch application, obviously one of the reasons
21 you voted to deny it was the fact that it was encumbered
22 by the PP&L easement; correct?

23 A If that's what the record shows, yes.

24 Q Why don't we get the record out.

25 A Sure.

1 Q Exhibit 57. Oh, I'm sorry; it's not exhibit
2 57.

3 MR. MCCORMICK: How about 40.

4 MR. PERRY: 40, right on top of the pile.

5 Q (By Mr. Perry) Exhibit 40. Do you have that
6 in front of you?

7 A I do.

8 Q Do you recognize this document as the final
9 decision from the Flathead Board of Commissioners
10 regarding the North Shore Ranch project?

11 A I do.

12 Q Okay. And it's fair to say that one of the
13 reasons articulated for denial of the subdivision
14 application was the existence of flood easements. And
15 it's referenced on page four of the document.

16 A Yes.

17 Q And I see that on page four, under finding
18 number 58, there's a paragraph C, and it states, and I
19 quote, "The commission's determination that the proposed
20 subdivision's unmitigated impacts on public health and
21 safety per Section 76-3-608(3)(a), MCA, were
22 unacceptable was based on evidence of flood easements
23 held by PP&L on the subject property," close quote.
24 Have I read that correctly?

25 A Yes.

1 application, that that was something that could not be
2 mitigated by the applicant; is that true, existence of
3 the easement?

4 A That's true.

5 Q Okay. And so you'd agree with me that any
6 subdivision applicant in Flathead County who is seeking
7 approval of a residential subdivision on land encumbered
8 by the PP&L easement would at least, with respect to
9 that issue, be similarly situated to the North Shore
10 Ranch project.

11 A No.

12 MR. MCCORMICK: I need to object for the
13 record. The prior question misstated the testimony --
14 or misstated the language in the letter. Which I can
15 explain if you want or I'll leave it at that.

16 MR. PERRY: That's fine.

17 THE WITNESS: My answer to that question is
18 no, that this particular property's location had, in my
19 mind, have been more affected by the flood easement than
20 other lands that maybe had the PP&L flood easement on
21 it. This one, with its location and proximity to the
22 water and all the things that I'm trying to recall why I
23 made my decision based on this, this is -- as I stated
24 earlier, this is its own application and own
25 subdivision, own particular property. And what I did

1 Q So you'd agree with me that one of the reasons
2 that you and Mr. Brenneman voted to deny this
3 application was the sheer fact that it was, in fact,
4 encumbered by the PP&L easement.

5 A I do not recall Mr. Brenneman's without reading
6 the record of all of his reasonings. But I remember
7 mine, and it did, in fact, include that concern with the
8 flood easement.

9 Q Okay; fair enough. I don't want you to testify
10 to Mr. Brenneman's thoughts or anything like that, just
11 what you know.

12 So it's fair to say, then, that one of the
13 reasons you personally voted to deny the North Shore
14 Ranch application was the sheer fact that the land was
15 encumbered by the PP&L easement.

16 A Yes.

17 Q Okay. And was that, to you, with respect -- I
18 know there were three bases for denial essentially
19 articulated; impacts on wildlife and wildlife habitat,
20 issues regarding potential harm from seismic activity,
21 and the existence of the PP&L easement. Is that fair to
22 say?

23 A I believe so; yes.

24 Q Okay. And with respect to the PP&L easement,
25 it was your opinion, when you voted to deny this

1 with other subdivisions that had PP&L easements have
2 nothing to do with this particular one. I felt this
3 particular one was unique.

4 Q (By Mr. Perry) Okay. With regard to this
5 issue regarding the PP&L easement, it's your testimony,
6 then, that other lands subject to that easement on the
7 lake did not pose the risk to public health and safety
8 that this land did. Is that your testimony?

9 A Based on this particular -- the information I
10 had on this particular subdivision -- what was your
11 question again?

12 MR. PERRY: That -- can you read my
13 question back, please.

14 (Whereupon the previous question was read back
15 by the court reporter.)

16 THE WITNESS: That's my testimony in the
17 affirmative.

18 Q (By Mr. Perry) Okay. With respect to that
19 issue, during the course of the public meeting on April
20 23rd, 2008, you were presented with no evidence that
21 would support your testimony in that regard; isn't that
22 true?

23 A I was not presented -- repeat your question.

24 Q Sure. At the time of the public meeting on
25 this application at which you voted to deny it, it's

1 true, is it not, that you were presented with no
2 evidence that would substantiate the conclusion that
3 this land, the North Shore Ranch property, was any more
4 at risk from flooding with respect to the PP&L easement
5 than any other land on the lake that was subject to that
6 easement.

7 A Based on the information I had in front of me
8 on this particular subdivision, without remembering or
9 thinking of any other subdivisions, what I felt the
10 information that I had, it justified my decision based
11 on my concerns for that easement.

12 Q And you'd agree with me that as a commissioner,
13 for you to make a determination such as that, that this
14 land, the North Shore Ranch property, was at greater
15 risk of harm due to the existence of the PP&L easement
16 than other land on the lake, you'd need to have evidence
17 in front of you to support that conclusion, would you
18 not?

19 A I can simply say yes. And I feel that I did
20 have that.

21 Q Okay; fair enough.

22 And you'd agree with me that in rendering a
23 decision on a subdivision application while you were a
24 commissioner, you were prohibited from speculating with
25 respect to potential impacts; right? You had to have

1 documents regarding the North Shore Ranch project?
2 A I, in fact, was very frustrated with myself,
3 because I had had meticulous records through the years.
4 And I had a three-ring binder full of everything I had
5 on this North Shore division -- subdivision with where I
6 got my information. And I spent hours looking for it
7 and have -- it's gone. I can't find it. So I took a
8 few minutes. And the only thing I've looked at today
9 was actually this (indicating) and --

10 Q Exhibit 40?

11 A Exhibit 40 and, yeah, the Commissioners'
12 Journal. That's the only two things I've looked at.

13 Q Okay.

14 A And I didn't even read this. I just glanced
15 through it.

16 Q Did you have a chance to read the
17 Commissioners' Journal?

18 A Yes.

19 Q And when you read the Commissioners' Journal,
20 fair to say that at least in that journal describing the
21 public meeting on April 23, 2008, there isn't described
22 or referenced any testimony or statement from any
23 engineer or scientist, aside from engineers and
24 scientists provided by the applicant; fair to say?

25 A Fair to say.

1 evidence.

2 A True.

3 Q And you'd agree with me that during the course
4 of considering this application, you were presented with
5 evidence from the applicant in the scientific and
6 engineering disciplines; fair to say?

7 A Without looking at it, it's fair to say that it
8 was a good application, there was plenty of information.

9 Q And by the way, have you ever had your
10 deposition taken?

11 A I have had one time.

12 Q Okay; when was that?

13 A Oh, approximately two years ago.

14 Q And was that involving a case here in Flathead?

15 A Yes.

16 Q Was it a land use case?

17 A I don't recall. To be honest with you -- it
18 had something to do with -- who was our friend we were
19 talking about? Rich DeJana is the one that did it, and
20 I just don't recall what it was about at the time.

21 Q And that's the only time you've been deposed.

22 A Yes.

23 Q Beside today.

24 A Uh-huh.

25 Q Before you came here today, did you review any

1 Q Do you recall, sitting here today, what, if
2 any, evidence you relied upon in concluding that the
3 North Shore Ranch property was at greater risk for
4 flooding than other property on the lake subject to the
5 PP&L easement?

6 A You're talking about official? Repeat the
7 question.

8 MR. PERRY: Can you read the question back,
9 please?

10 (Whereupon the previous question was read back
11 by the court reporter.)

12 THE WITNESS: No.

13 Q (By Mr. Perry) You'd agree with me that if
14 there were two applicants, one of whom being the North
15 Shore Ranch people, Kleinhans Farms, LLC, and there was
16 another applicant owned an identical piece of land right
17 next to it, same soil conditions, same proximity to the
18 WPA, same proximity to the lake, similar habitat, you'd
19 agree with me that, in terms of those two applications,
20 they should be treated similarly, should they not?

21 MR. MCCORMICK: Objection; speculation.

22 Q (By Mr. Perry) You get to answer.

23 A Yeah -- based on -- no. My answer -- that has
24 nothing to do with the answer.

25 Based on the information I had for this

1 particular subdivision, the other guy's subdivision
 2 aside, my decision was based on the information I
 3 gathered for this particular subdivision. And, you
 4 know, if the other subdivision had the exact information
 5 that I received and that I gathered and that I had for
 6 this particular subdivision, then it's fair to say that
 7 both should be treated equally. But the
 8 subdivision -- yeah, so....
 9 Q Okay. Do you have an understanding regarding
 10 the general soil characteristics on the north shore of
 11 Flathead Lake in the vicinity of the North Shore Ranch
 12 property and the WPA?
 13 A From the information that I received, that's
 14 pretty much it, other than as a child playing on the
 15 Somers beach area and knowing how swampy it is over
 16 there. And that's my limited knowledge.
 17 Q Okay. And as you -- while you were
 18 commissioner, rather, fair to say that not only with
 19 respect to this project but other projects, you had
 20 occasion to review scientific data regarding soils
 21 analysis in the vicinity of the WPA.
 22 A I don't recall that.
 23 Q Okay. You were one of the commissioners who
 24 decided the Mackinaw Estates application; right?
 25 A Yes.

1 Q That's in the same general vicinity as North
 2 Shore Ranch; yes?
 3 A Yes.
 4 Q And there are other subdivisions in that
 5 general vicinity, within two or three miles of the North
 6 Shore Ranch, that you had occasion to vote to approve
 7 while you were a commissioner; fair to say?
 8 A Approve or deny. I denied another one out
 9 there as well.
 10 Q Which one did you deny?
 11 A I don't recall the name of it. It's across the
 12 highway.
 13 Q But you'd agree with me that in a general
 14 sense, there are at least two or three subdivisions that
 15 you voted to approve within a mile or two of the WPA.
 16 A I assume so. I don't recall all of them, but
 17 yes.
 18 Q Okay. And we'll get to them in greater detail
 19 later, because I do have them with me. But in a general
 20 sense, when you evaluated those other subdivisions
 21 within a couple of miles of the WPA, did you have any
 22 concerns with regard to public health and safety related
 23 to seismic events, with respect to those subdivisions?
 24 A I do not recall that.
 25 Q Do you recall, with respect to any other

1 subdivision aside from this one we're discussing, the
 2 North Shore Ranch project, whether you ever voted to
 3 deny any subdivision predicated upon a risk of harm from
 4 a seismic event?
 5 A No, I don't recall. I do not recall that; no.
 6 Q Okay. Now, you'd agree with me that all of
 7 Flathead Valley is subject to the same seismic risk?
 8 A Repeat your question.
 9 Q Sure. You'd agree with me that all of Flathead
 10 Valley is subject to the same risk of a seismic event.
 11 A The same -- all of Flathead County is at risk
 12 of a seismic event, not that each area would be affected
 13 the same.
 14 Q Understood. But the risk of a seismic event,
 15 it isn't limited to just the north shore of Flathead
 16 Lake; right?
 17 A No.
 18 Q It would include Bigfork; right?
 19 A Yes.
 20 Q Big Arm; right?
 21 A Yes.
 22 Q All of the towns that are in Flathead County.
 23 A Absolutely.
 24 Q They're at risk for a seismic event; right?
 25 A Uh-huh.

1 Q Yes?
 2 A Yes.
 3 Q You're not of the opinion that due to the risk
 4 of a seismic event in Flathead County, no residential
 5 subdivision can be approved.
 6 A I'm not of the mind --
 7 Q You're not --
 8 A -- that no subdivision should be approved
 9 because of seismic risk?
 10 Q Yes.
 11 A No, I'm not of that mind.
 12 Q So the risk of a seismic event, aside from this
 13 project, it didn't drive the bus, so to speak, with
 14 regard to other projects.
 15 A No, it did not.
 16 Q Okay. And in a general sense, while you were a
 17 commissioner, you were aware that residential housing
 18 can be safely constructed in a seismically active area.
 19 A Depending on the soils and the location, yes.
 20 Q And the structural engineering; right?
 21 A Structural engineering is not under the purview
 22 of the commissioners for land use only.
 23 Q And in a general sense, though, I mean, you're
 24 aware of the fact that residential structures are
 25 constructed, and continue to be constructed in San

1 Francisco, for instance.

2 A Right.

3 Q And you're aware that's a seismically active
4 area.

5 A Right.

6 Q And, in fact, you're aware that all of
7 California is a seismically active area.

8 A Right.

9 Q But yet, you were aware, while you were a
10 commissioner, that houses were being constructed in
11 California, despite the threat of seismic risk.

12 A Right.

13 Q And you'd agree with me that in Flathead Valley
14 or Flathead County, rather, houses can be safely
15 constructed, despite the risk of a seismic event.

16 A Depending on the location.

17 Q And in this particular case with regard to the
18 North Shore Ranch project, you were never presented with
19 any evidence, as a commissioner, that would lead you to
20 conclude that houses could not be safely constructed on
21 the property, were you?

22 A I believe that by the information that I
23 received and that I assimilated, it was, in fact, a risk
24 to build a home on this particular property.

25 Q Okay. If I could refer you to Exhibits 46 and

1 construct housing on this property that would be safe;
2 fair to say?

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

5 Q (By Mr. Perry) And take your time to read it,
6 sir, if you need to.

7 A Well, yeah. I mean, it says that construction
8 of residences of these type is feasible. However, they
9 are asking for specific recommendations for each
10 proposed lot to reduce the risk, which says to me, there
11 is a risk.

12 Q Well, fair to say that in the middle of the
13 paragraph, toward the end of it, they state, and I
14 quote, "We anticipate that foundations will be able to
15 be constructed on the native soils in some areas and
16 that excavation below foundation level and replacement
17 with granular structural fill will be necessary in other
18 areas," close quote. Have I read that correctly?

19 A That's what I'm reading as well; yes.

20 Q Okay. And I see that in the next sentence they
21 indicated, quote, "Concrete slab-on-grade floors with no
22 basements or crawl spaces are recommended to reduce the
23 risk of moisture problems affecting interior finishes
24 due to high groundwater levels and capillary rise,"
25 close quote. Have I read that correctly?

1 47.

2 A Okay.

3 Q 46 first.

4 A Tom Cowan. Tom Cowan and I were friends from
5 high school.

6 Q Do you remember having seen this two-page
7 letter signed by John W. Ayers, PE and Joshua C. Smith,
8 PE?

9 A Your question was do I recall seeing this?

10 Q Yes, sir.

11 A I -- no. I mean, I'm sure I did. But I mean
12 as far as do I remember specifically when this came in
13 and reading it, no. But if this is part of what I
14 received, then obviously I did receive it.

15 Q Okay. And just for clarification's sake, I
16 suggest to you that counsel for the county provided this
17 to me during the course of this litigation. And it's
18 Bates stamped, as you see at the bottom, FBCC, standing
19 for Flathead Board of County Commissioners. Do you see
20 that?

21 A Yes.

22 Q And I see in this engineering report from CMG
23 Engineering here in Kalispell, on January 25, 2008, two
24 engineers, Josh Smith and John Ayers, both stated, the
25 second paragraph on page two, that there were ways to

1 A You read that correctly which gives me, even at
2 this time, cause to reflect that this is not a good land
3 makeup for a subdivision.

4 Q And that is solely because of the high
5 groundwater?

6 A The high groundwater, the special things that
7 would need to be -- the helical piers and different
8 viable foundation options; yes, that causes me concern.

9 Q Okay. So even though in this letter these two
10 engineers identify construction techniques that are
11 feasible on this property --

12 A Uh-huh.

13 Q -- you essentially didn't believe those
14 opinions; fair to say?

15 MR. MCCORMICK: Objection; misstates the
16 testimony.

17 THE WITNESS: The facts are there. It's
18 not that I didn't believe them. The facts are in the
19 letter.

20 Q (By Mr. Perry) Well, what facts can you point
21 to in this letter that substantiate any opinion
22 or -- strike the question.

23 What facts can you point to in this letter that
24 stand for the proposition that residential housing
25 cannot be safely constructed on the property?

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1 A It does not say that.
 2 Q Okay.
 3 A Nor did I say that.
 4 Q What did you say?
 5 A I said it caused me concern.
 6 Q Okay. Well, concern's a little different from
 7 protecting public health and safety, is it not?
 8 A Okay; yes.
 9 Q Okay. And your job is to protect public health
 10 and safety; right?
 11 A Yes.
 12 Q And your job doesn't involve denying
 13 applications based upon concerns. It involves denying
 14 applications based on evidence that substantiates your
 15 opinion that there's a risk to public health and safety;
 16 right?
 17 **MR. MCCORMICK:** Objection; misstates the
 18 law.
 19 Q (By Mr. Perry) You get to answer, though.
 20 A I guess you're going to have to repeat the
 21 question.
 22 **MR. PERRY:** Sure.
 23 Once again, want to read that back?
 24 (Whereupon the previous question was read back
 25 by the court reporter.)

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1 **THE WITNESS:** Right.
 2 Q (By Mr. Perry) Sir, let me point your
 3 attention, if I can, to another exhibit here.
 4 A You mentioned 47, so we're not going there
 5 then?
 6 Q We're going to hold that in abeyance for the
 7 time being, but we shall return.
 8 Do you recall ever having voted to approve any
 9 subdivision that was also subject to high groundwater?
 10 A I do not recall, sir.
 11 Q Do you recall having voted to approve
 12 subdivisions within a half a mile of the WPA?
 13 A I do not recall.
 14 Q Okay.
 15 This Exhibit 47 --
 16 A Yes.
 17 Q -- that was the attachment to the letter from
 18 the professional engineers that we previously referred
 19 to, Exhibit 46. This is the helical pier data.
 20 A Okay.
 21 Q Do you recall having seen this document?
 22 A I do not recall.
 23 Q Okay. Do you recall whether or not any other
 24 engineering firm or consultant or scientist ever
 25 provided the county with any written opinion that

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1 housing could not be safely constructed on the property
 2 at issue?
 3 A I do not recall.
 4 Q You'd agree with me that absent such evidence
 5 in the record, or testimony to that effect, the
 6 formation of an opinion that housing could not be safely
 7 constructed on this property would be based on
 8 speculation, would it not?
 9 A Would you repeat the question?
 10 **MR. PERRY:** Sure.
 11 Can I have it read back, please.
 12 (Whereupon the previous question was read back
 13 by the court reporter.)
 14 **THE WITNESS:** Boy, I don't know how to
 15 answer that. Could you rephrase it?
 16 Q (By Mr. Perry) You bet. With respect to your
 17 conclusion that there was a risk of harm posed by the
 18 high groundwater and public health and safety required
 19 you to vote to deny this application, at least, in part
 20 due to that issue --
 21 A Okay.
 22 Q -- you'd agree with me that in order to reach
 23 that conclusion that there was actually a risk of harm
 24 because housing could not be safely built on the
 25 property, you'd need to have evidence that would support

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1 that conclusion; right?
 2 **MR. MCCORMICK:** Objection; speculation.
 3 **THE WITNESS:** Yeah. The question is
 4 difficult to answer because, you know, just based on the
 5 facts of what I received and all the information,
 6 whether it's conclusive or not, is -- was enough to
 7 cause me to deny.
 8 Q (By Mr. Perry) Okay; let me ask you another
 9 question. If the only evidence in the record had been
 10 evidence from the applicant that stood for the
 11 proposition that housing, in fact, could be safely
 12 constructed on the property, you'd agree with me that
 13 voting to deny the application, based on the conclusion
 14 that housing could not be safely constructed on the
 15 property, would rely upon speculation because there's no
 16 evidence to support that conclusion.
 17 **MR. MCCORMICK:** Objection; calls for
 18 speculation.
 19 **THE WITNESS:** You know, I don't -- I don't
 20 know what I'm missing here. But I based my decision on
 21 all the facts, not just that one bit of information.
 22 Q (By Mr. Perry) No, I understand that. And my
 23 question is, in order to conclude that there is a risk
 24 of harm because houses can't be safely built on the
 25 property --

1 A Uh-huh.

2 Q -- you have to have some evidence that would
3 support that conclusion.

4 A Right.

5 Q Correct?

6 MR. MCCORMICK: Objection; calls for
7 speculation. It's a hypothetical.

8 Q (By Mr. Perry) You'd agree with that.

9 A I felt I had enough information.

10 Q But as a general proposition, you'd agree with
11 me that in order to reach that conclusion, you have to
12 have evidence in the record that would support it;
13 right?

14 A Yes.

15 Q And if there's no evidence in the record to
16 support it, then that conclusion is arbitrary and
17 capricious, is it not?

18 MR. MCCORMICK: Objection; calls for a
19 legal conclusion.

20 Q (By Mr. Perry) You get to answer, though.

21 A I guess I have to say yes, I -- yeah.

22 Q Because in rendering a decision as a
23 commissioner on a subdivision application, you can only
24 consider the evidence that you have in the record to
25 make the decision; right?

1 Q Actual evidence.

2 A While not recalling all that happened that day,
3 I don't recall if I introduced any of my own evidence or
4 not. But I would think that I would have the authority,
5 as a quasi judicial or as an elected county commissioner
6 making a decision based on this subdivision, that I, in
7 my research, if I found evidence that coincided the
8 evidence that was before me, that I would bring that
9 forth. But I don't see -- I guess the answer to your
10 question -- the short answer, yes, I could bring
11 evidence into the case that I found.

12 Q Okay. And you did that in this case, did you
13 not?

14 MR. MCCORMICK: Objection; calls for a
15 legal conclusion.

16 THE WITNESS: I don't recall.

17 Q (By Mr. Perry) Well, let me point you to a
18 couple of exhibits that we went over yesterday with
19 Commissioner Brenneman, Exhibits 54 and 55. And
20 starting with Exhibit 54, I assume you recognize this
21 document.

22 A Oh, that's an assumption. We get a lot of
23 paperwork, and there was a lot of paper created on this
24 file. I do not recognize this. But it says at the
25 bottom that I, in fact, received this, so yes, I did see

1 A Which I did; yes.

2 Q And you'd agree with me that as a county
3 commissioner at a public meeting, such as this one that
4 took place on April 23rd, 2008, you sit in a quasi
5 judicial capacity, do you not?

6 A Yes.

7 MR. MCCORMICK: Objection; calls for a
8 legal conclusion.

9 THE WITNESS: Quasi judicial.

10 Q (By Mr. Perry) And sitting in that capacity,
11 in a quasi judicial capacity, it's your understanding,
12 is it not, that you and the other commissioners sit as
13 judges of some type; fair to say?

14 A Fair to say.

15 Q Okay. And you'd agree with me that as a
16 commissioner hearing a subdivision application at a
17 public meeting, you, sitting as a judge, are prohibited
18 from introducing your own evidence?

19 MR. MCCORMICK: Objection; calls for a
20 legal conclusion.

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

22 A I understand your question, yeah.

23 Q Would you agree with that?

24 A That I am not able to offer an opinion or
25 actual evidence?

1 it. But I don't recall it, in answer to your question.

2 Q Okay. Well, I see it became part of the
3 record, the administrative record in this case. It's
4 Bates stamped FCPZ, for Flathead County Planning &
5 Zoning, 1119 through 1132.

6 A Okay.

7 Q And my question to you is, do you know how this
8 got into the administrative record?

9 A I do not, sir.

10 Q Okay. So this wasn't a document that you
11 utilized or relied upon in any way in rendering a final
12 decision on this application?

13 A I do not recall, sir.

14 Q Okay.

15 How about the next document, Exhibit 55? Do
16 you recognize that document?

17 A I do not.

18 Q It's true, is it not, that before you attended
19 the meeting, the public meeting on April 23, 2008, you
20 engaged in your own research regarding seismic risks in
21 the Flathead Valley.

22 A I vaguely recall doing some of my own research.
23 I don't recall what I did exactly.

24 Q Okay. It's my understanding that you actually
25 got onto the Internet and did some research on seismic

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1 events in Northwestern Montana. Is that not correct?
 2 A I believe that that could have happened,
 3 because I did that frequently.
 4 Q Well, why don't we go to the commissioners'
 5 minutes -- Commissioners' Journal.
 6 A Could I ask for a short break to go to the
 7 bathroom?
 8 MR. PERRY: Oh, yeah; sure.
 9 (Deposition in recess from 10:32 a.m. to
 10 10:37 a.m.)
 11 Q (By Mr. Perry) Sir, the document that I
 12 directed your attention to before our short break,
 13 Exhibit 52, the Commissioners' Journal dated 4/23/2008
 14 regarding the North Shore Ranch project, do you have
 15 that in front of you?
 16 A I do.
 17 Q And I believe you testified earlier you had a
 18 chance to review that before your deposition today.
 19 A Yes, sir.
 20 Q And pointing your attention, if I could, to the
 21 third -- fourth page of this document, Bates stamped
 22 FCPZ385.
 23 A Yes, sir.
 24 Q And in the middle of the page I see it states,
 25 and I quote, "Chairman Hall continued with saying that

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1 Montana is one of the most seismic active states in the
 2 United States. He then reviewed statistics of seismic
 3 events in Montana and stated that we in the Flathead are
 4 past due for a significant earthquake with a magnitude
 5 of 6.5 or greater," close quote. That's information
 6 that you obtained yourself; fair to say?
 7 A Apparently.
 8 Q Okay. And that's not information that was
 9 provided by the applicant; right?
 10 A I do not recall.
 11 Q Okay. I see that it goes on to state further,
 12 quote, "In the geotechnical assessment of the subject
 13 property performed by CMG Engineering and submitted with
 14 the application, the engineer states that the potential
 15 of liquefaction during the design level of an earthquake
 16 is one of a variety of listed typical concerns with
 17 residential construction on the type of soils present on
 18 this subject property," close quote. Have I read that
 19 correctly?
 20 A Yes. This Hall guy sounds pretty smart.
 21 Q You recall the engineer stating, in words or
 22 substance, though, that, you know, the risk of
 23 liquefaction during a design level earthquake was, in
 24 fact, one of a variety of typical concerns associated
 25 with residential construction on the type of soils

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1 present on the property?
 2 A I would assume, yes.
 3 Q Okay. And I see that this document, Exhibit
 4 52, goes on to say, and I quote, "Hall then said
 5 according to the USGS website, that liquefaction can be
 6 defined as a physical process which can occur during an
 7 earthquake when clay free soil temporarily loses
 8 strength resulting in ground failure. Liquefaction
 9 occurring beneath buildings and other structures can
 10 cause major damage during earthquakes. Although
 11 earthquakes in Flathead County are uncommon and
 12 relatively minor in recent history and the risk proposed
 13 by liquefaction seems remote at this time, it seems
 14 irresponsible for staff to ignore. Hall then read
 15 project specific conditions number 20(d) that states:
 16 Residents are advised that according to the geotechnical
 17 assessment that was conducted on the subject property
 18 liquefaction on the subject property during a seismic
 19 effect is a typical concern associated with the soil
 20 type and depth to groundwater on the property subject
 21 property. As a result, structures should be designed by
 22 an engineer and built accordingly," close quote. Have I
 23 read that correctly?
 24 A As stated, yes.
 25 Q So fair to say that at least in the

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1 commissioners' record of the hearing, the Commissioners'
 2 Journal, it's codified that you, in fact, stated at the
 3 hearing that you had done some research yourself on the
 4 USGS website regarding liquefaction.
 5 A Yes.
 6 Q And you made some statements into the record
 7 regarding what you had learned and what conclusions you
 8 had reached, did you not?
 9 A If the record so states, yes.
 10 Q Well, you say at the end of that paragraph I
 11 read that it's irresponsible for staff to ignore this
 12 issue. Do you recall that statement?
 13 A I'm so sorry; what did you just say again?
 14 Could you repeat your question?
 15 Q Sure; not a problem.
 16 I see at the end of that paragraph that I read
 17 that before the specific condition language, you
 18 indicated that the liquefaction issue, so to speak, was
 19 an issue that staff had been irresponsible in ignoring.
 20 MR. MCCORMICK: Objection; misstates the
 21 statement in the Journal.
 22 THE WITNESS: I'm trying to follow you so I
 23 can answer it correctly.
 24 Q (By Mr. Perry) Yeah. Let me just point your
 25 attention to it. It's right here.

1 A Right.

2 Q It states in the Journal anyway, quote, "It
3 seems irresponsible for staff to ignore," close quote.
4 Do you see that indication?

5 A Yes.

6 Q And when you made that statement in the public
7 meeting, you were referring to the liquefaction issue,
8 were you not?

9 A I believe I was.

10 Q Okay. So you obviously had the opinion that
11 staff appeared, to you anyway, to have been
12 irresponsible in ignoring it, that issue; is that true?

13 A That's what the record shows that I said; yes.

14 Q Okay. And you recall, do you not, that during
15 the course of this hearing -- or this public meeting,
16 rather, the applicant's engineers essentially stated
17 that that risk was remote and that design techniques for
18 construction were available to address that risk; fair
19 to say?

20 A I recall -- I believe the record shows that;
21 yes.

22 Q Okay. And I can't seem to find the language
23 now, but I seem to recall someplace in the Journal, one
24 of the engineers indicated at the meeting that if there
25 had been a design level, if there were a design level

1 number of local nonprofits who wrote letters in
2 opposition to this project; fair to say?

3 A Fair to say.

4 Q Okay.

5 And while you were a commissioner from fiscal
6 year 2002 through fiscal year 2008, were you ever a
7 member of the Flathead Land Trust?

8 A Oh, no.

9 Q Okay.

10 A Oh, no, no.

11 Q How about the Flathead Lakers?

12 A Oh, no, no, no, no.

13 Q Were you ever a member of a Citizens for a
14 Better Flathead?

15 A Oh, my gosh, no.

16 Q Okay; I had to ask the questions. Hope you're
17 not insulted?

18 A I am, but I'll get over it.

19 Q And to your recollection, those three groups
20 were pretty vocal in their opposition to this project,
21 were they not?

22 A They were.

23 Q Did any of the members of those groups ever
24 seek to contact you before you voted to deny this
25 project?

1 seismic event, the most likely result would be
2 settlement of a house four to six inches. Do you recall
3 that testimony?

4 A I do not recall that.

5 Q Okay. Do you recall the engineers indicating,
6 in words or substance, that a design level seismic event
7 would not result in houses being sucked down into the
8 ground in a sinkhole-type of thing?

9 A I don't recall that.

10 Q Okay; fair enough.

11 I see that there's a statement on page three of
12 this document, the Commissioners' Journal, referencing
13 comments that Commissioner Lauman had made. He
14 indicated, and I quote, in the middle of that page,
15 quote, "Lauman stated there are a lot of emotional
16 issues with North Shore Ranch. But in reality, you need
17 to sort the emotional issues from the factual issues,
18 and they need to judge their decision based on the
19 facts," close quote. Do you see that?

20 A I do.

21 Q Fair to say this project, this subdivision
22 application, was an application that created a fair
23 amount of opposition in the community?

24 A Simple answer is yes.

25 Q And it's true, is it not, that there were a

1 A Not to my knowledge.

2 MR. MCCORMICK: Objection; foundation.

3 MR. PERRY: I'm sorry?

4 MR. MCCORMICK: Objection; foundation.

5 MR. PERRY: In terms of his having voting
6 to deny it?

7 MR. MCCORMICK: No. You asked if any of
8 those members sought to contact him. He wouldn't know
9 if any of those members sought to contact them. He
10 would only know if members did contact him.

11 MR. PERRY: Fair enough.

12 Q (By Mr. Perry) Do you know if any person who
13 was a member of any of organizations ever sought to
14 contact you during the pendency of this application
15 before you voted on it?

16 MR. MCCORMICK: Objection; foundation.

17 THE WITNESS: Again, I don't know. They
18 may have tried, but they also know that they did not
19 have easy access to me from past experience. I
20 was -- well, no.

21 Q (By Mr. Perry) Okay. Tell me about that past
22 experience you just referenced.

23 A I just -- as a commissioner, there were certain
24 groups, ones that were just previously mentioned, that
25 while I would look at their information that came in, I

1 would not give audience to them, ever. And so they knew
2 that. And so I -- whether they attempted or thought
3 about approaching me, I'm not sure. But no, I did not
4 have a good working relationship with any of the
5 previously-mentioned groups.

6 Q Okay. On prior projects before the North Shore
7 Ranch project, do you recall any of them having tried to
8 contact you to discuss an application?

9 A No, I do not.

10 Q Okay.

11 Did you ever have occasion to actually visit
12 the North Shore Ranch property yourself?

13 A Not with anyone. I did by myself. I drove
14 down and viewed it, took a little bit of a walk, not
15 much of a walk. But I know the area well.

16 Q Okay. And was that before you voted on the
17 application?

18 A Yes, sir.

19 Q Okay. Was it -- I know it was some time ago.
20 Was it in the spring of 2008 that you visited?

21 A You know, it was. In fact, the weather wasn't
22 very good. But I assume -- yeah, I think it was, yeah.

23 Q Okay.

24 A I don't remember much.

25 Q I'm sorry?

1 A No, I was just trying to think. March sounds
2 about right.

3 Q Okay; approximately March you would have
4 visited?

5 A I can't recall.

6 Q Okay. Spring of '08, though; we know that.

7 With respect to this project in terms of your
8 evaluating it at the public meeting and rendering a
9 decision, voting on it, do you feel pressured to vote
10 for a denial, given public sentiment about it?

11 A Absolutely not.

12 Q Okay.

13 A This -- it's interesting -- well....

14 Q Go ahead.

15 A You'd like that.

16 Q I just want a complete thought.

17 A A complete thought? Me? No, this -- I had
18 never met with the developers. I had never met with
19 their attorneys. I had never been on the project. I
20 have never been to a public meeting. And this was one
21 of the subdivision -- large subdivisions, controversial
22 so to speak, I guess by your own words, that I based my
23 decision based on my -- what was before me and my own
24 research and not by talking to either side. And a lot
25 of times it was hard not to have one side or the other

1 come and try to influence you. And this one was based
2 on my own research, which I was actually personally
3 proud of.

4 Q Okay; fair enough.

5 During the course of your evaluation of this
6 project before you voted on it, and just for the record,
7 you did vote to deny it; right?

8 A Yes.

9 Q Okay. Before you voted to deny this project,
10 had you had -- strike the question.

11 Before you voted to deny this project, had you
12 come to learn that those organizations I referenced
13 earlier, the nonprofits, Flathead Land Trust, Flathead
14 Lakers, Citizens for a Better Flathead, were trying to
15 acquire some interest in the property?

16 A My recollection is I saw that in the newspaper.

17 Q Okay. And so before you voted, you had some
18 understanding that those organizations really were
19 trying to get an interest in the property; fair to say?

20 A Yes.

21 Q And in my review of the file, and I can show
22 you the letters if you need to refresh your memory,
23 USFWS, Fish and Wildlife Service, and Montana Fish,
24 Wildlife & Parks issued a number of letters regarding
25 this project. Do you recall that, in a general sense?

1 A In a general sense, yes.

2 Q Do you recall that, in a general sense, one of
3 the requests they made to the county in their letters
4 was that the county delay a decision on the project,
5 pending finalization of the growth policy and in order
6 to give them time to work with others to try to acquire
7 the property.

8 A I felt that -- I have similar feelings toward
9 those two organizations you just mentioned as I do the
10 three previous to that. I have seen mismanagement in
11 their organization. And being an avid sportsman, have
12 not agreed with much of what they do. And so I felt
13 that they were -- it got to the point of where they
14 would come in, I'd glance through it, pick up the
15 highlights of the letter and set it just in the file of
16 all the letters that were coming in. And I noticed
17 there seemed to be a push to get us to deny. And I
18 purposely did not give a lot of brain time to those
19 letters.

20 Q In a general sense, over the six years
21 approximately that you were a commissioner dealing with
22 subdivision applications in Flathead County, oftentimes
23 Fish, Wildlife & Parks would submit an opinion letter or
24 letters, would they not?

25 A More and more as time went along. In the

1 beginning of my term, hardly ever. And at the end,
2 every one.

3 Q Right; and multiple ones on this file.

4 A Yes.

5 Q Did you ever form an opinion, as you were going
6 along in your tenure as a commissioner, that Fish,
7 Wildlife & Parks was biased against development in this
8 area?

9 A In this particular area, geographical area?

10 Q Just in Flathead Valley, in the Flathead
11 County. Did you ever form an opinion, you know, a
12 personal opinion, that Fish, Wildlife & Parks was biased
13 or prejudiced against development?

14 A That's both a yes and no question. At certain
15 times I felt that there was a bias against development.
16 And yet, at other times I did not sense that that was
17 the purpose.

18 Q Okay; fair enough. With regard to this
19 particular project, do you recall having reached any
20 conclusion or formed any opinion that, in your opinion,
21 they were biased, FWP, against this project?

22 A I don't recall.

23 Q Okay. And I notice you had testified that as
24 time went on as you were commissioner, FWP issued more
25 and more impact letters regarding subdivision

1 regarding geological issues and liquefaction, had you
2 previously been knowledgeable about those issues? If
3 you don't understand my question, just tell me. It
4 wasn't worded the best.

5 A Believe it or not, I understood that one. I
6 had heard of liquefaction. I had not applied it
7 to -- that I can recall, to any other subdivisions. I
8 had heard of that, I think, even before I became a
9 commissioner. But I had not used that information in
10 applying to other subdivisions.

11 Q Okay; fair enough.

12 Have you ever been on the WPA, the Flathead
13 Waterfowl production area?

14 A Waterfowl -- no. I have not walked the trail
15 that's there.

16 Q In the time that you've lived in Flathead
17 County, have you ever heard of anybody on the Eagle Bend
18 golf course being hurt by rifle hunting, rifle use on
19 the WPA or shotguns?

20 A I have not heard that.

21 Q And as a general proposition, do you read the
22 local newspaper here?

23 A No, not anymore.

24 Q Okay; was there a time?

25 A Yeah, there was a time where I read it

1 developments; correct?

2 A Uh-huh.

3 Q The answer is yes?

4 A Yes; I'm sorry.

5 Q That's okay. And I notice that they, both of
6 them, submitted multiple letters regarding this project.
7 And I looked at some of the other letters regarding
8 prior projects that you had voted on in this county.

9 And it seemed like, as time went on, their letters got
10 kind of more inflammatory with regard to impacts on
11 wildlife and wildlife habitat. Do you share my opinion
12 in that regard?

13 A Yes, I do.

14 Q And I may have asked this question earlier.
15 Forgive me if I did. Do you recall, aside from this
16 project, having voted to deny any other project based on
17 any risk of harm associated with seismic activity?

18 A I do not recall.

19 Q Do you recall having voted on any other
20 subdivision while you were a commissioner, voting to
21 deny it predicated upon any risk of harm posed by
22 liquefaction?

23 A No, I do not recall.

24 Q Before you did this research that's referenced
25 in the Commissioners' Journal marked as Exhibit 52

1 regularly.

2 Q When you were a commissioner, did you read it?

3 A Yes.

4 Q And before you were a commissioner, did you
5 read it?

6 A Yes.

7 Q All right. But after you ceased being a
8 commissioner, you stopped reading it?

9 A I get it on e-mail, and I read it sometimes. I
10 don't get it at my house like I used to or have it in my
11 office.

12 Q Okay. And in all the issues that you read of
13 the local newspaper -- and by the way, is it the Daily
14 Inter Lake?

15 A Daily Mistake -- Daily Inter Lake, yes.

16 Q In any newspaper published by the Daily Inter
17 Lake, any daily newspaper, did you ever see any article
18 or any information that in any way referenced anybody at
19 the Eagle Bend subdivision or on the golf course being
20 hurt by a hunter on the WPA?

21 A I do not recall.

22 Q If that had happened, if somebody had been hurt
23 as a result of hunting on the WPA, do you feel that
24 you'd remember that event?

25 A I would.

1 Q While you were a commissioner, did you have
 2 occasion to vote to approve or conditionally approve any
 3 subdivision within a mile or two of the Blasdel WPA?
 4 A I cannot recall specifics, but I believe that
 5 maybe -- maybe we did, yes.
 6 Q Okay.
 7 A I don't recall specifics.
 8 (Deposition Exhibit No. 58 marked for
 9 identification.)
 10 Q Sir, the aerial color photograph marked as
 11 Exhibit 58 to your deposition, I'd just like to ask you
 12 to take a look at that for a minute just to familiarize
 13 yourself with the map. I suggest to you it's an aerial
 14 map of the North Shore Ranch property and surrounding
 15 property. Does it appear to be so to you?
 16 A Yes.
 17 Q Okay. Now, I see at the -- it shows the lake.
 18 And to the north of the lake we see delineated the
 19 Flathead waterfowl production area; fair to say?
 20 A Yes.
 21 Q Okay. And I see that there are obviously a
 22 number of parcels of land that are in the vicinity of
 23 the North Shore Ranch and the waterfowl production area
 24 that have been developed as residential subdivisions;
 25 fair to say?

1 A Yes.
 2 Q Okay. And do you recall the Sky View Estates
 3 subdivision which is, just for ease of access, it's up
 4 here (indicating) Sky View Estates. Do you recall that
 5 subdivision?
 6 A I don't know why I can't find it.
 7 Q Well, let me ask you this question. Do you
 8 recall the Farmland Acres and Ficken Farms subdivision?
 9 A I recall that.
 10 Q And I see that the Ficken Farms subdivision
 11 nearly abuts the Blasdel waterfowl production area; is
 12 that fair to say?
 13 A Yes.
 14 Q Okay. And you'd agree with me that the Goose
 15 Meadows subdivision is in relative proximity to the
 16 Blasdel production area?
 17 A Yes, sir.
 18 Q And next to that we have subdivision number
 19 243. Do you see that?
 20 A Yes, sir.
 21 Q And they're all kind of close to the WPA, the
 22 Blasdel WPA; right?
 23 A Yeah, relatively.
 24 Q And you know this area far better than I
 25 probably ever will. Can you tell me, your best

1 approximation, how far from the Blasdel WPA would you
 2 approximate lies the Goose Meadows subdivision?
 3 A The Goose Meadows; approximately a quarter mile
 4 up to a half a mile.
 5 Q Up to a half a mile; okay.
 6 And the Mackinaw Estates subdivision which is
 7 down --
 8 A That must be 255. Because it doesn't list
 9 Mackinaw. They have Tiebucker, and then they have
 10 subdivision 255, but they don't list it as Mackinaw
 11 Estates. Or am I missing something?
 12 Q No, I think you're a hundred percent right. I
 13 think that's what happened. It was listed as 255. And
 14 just let me ask you this question. To the west of the
 15 WPA, to the northwest of the WPA, fair to say there are
 16 a number of subdivisions that have been approved by the
 17 county, including the Tiebucker subdivision and
 18 subdivision number 255?
 19 A Yes, it's safe to say that they are small
 20 subdivisions that were approved there.
 21 Q And with respect to the WPA, the Flathead
 22 waterfowl production area, if I can shift your attention
 23 to the east, it appears that there are several
 24 subdivisions that have been approved by the county in
 25 the general vicinity of the eastern section of the WPA

1 as well; would that be fair to say?
 2 A That would be fair to say.
 3 Q And they would include Flathead River Landing
 4 and Hanging Rock Harbor, would they not?
 5 A Yes, sir.
 6 Q And it's true, also, that obviously Harbor
 7 Village, just to the south, was a subdivision obviously
 8 approved well before you became a commissioner; true?
 9 A Yes, sir. All of those on that side of the
 10 river are in a very rock -- rocky area, solid rock
 11 subdivisions.
 12 Q And would you agree with me that the Harbor
 13 Village subdivision -- is that relatively the same
 14 elevation as North Shore Ranch?
 15 A According to your map, they're exactly the
 16 same.
 17 Q Okay. And so would you agree with me or
 18 disagree that they would both, ostensibly, suffer the
 19 same risk of harm from flooding?
 20 MR. MCCORMICK: Objection; speculation.
 21 THE WITNESS: No, I don't agree with that.
 22 Q (By Mr. Perry) And in your opinion, is one at
 23 more risk of harm from flooding than the other?
 24 A Yes.
 25 Q Which one?

1 A North Shore Ranch.
 2 Q Despite they're at the same elevation.
 3 A Yes, sir.
 4 Q Okay.
 5 And in a general sense, you'd agree with me
 6 that the county has approved a number of subdivisions in
 7 the vicinity both of the Blasdel waterfowl production
 8 area and the Flathead waterfowl production area.
 9 A I would agree with that. If I may add the
 10 statement that the Blasdel is different than the
 11 Flathead in that it is in a higher elevation, yeah.
 12 Q Okay. But in a general sense, with respect to
 13 both of those WPAs, the county has, in the past,
 14 approved or conditionally approved residential
 15 subdivisions that were in the general vicinity of both
 16 of them.
 17 A Yes.
 18 Q Okay. In the time that you've lived in this
 19 area, have you ever -- have you ever seen any of the
 20 properties that abut the lake get flooded?
 21 A I have not been in those areas during flooding;
 22 no.
 23 Q And you weren't here in '64 for the big flood,
 24 though; right?
 25 A Yes.

1 having observed the north shore of Flathead Lake get
 2 flooded?
 3 A No.
 4 Q And in reviewing the file documents in this
 5 case, I saw that there was an e-mail that was forwarded
 6 by Dr. Mark Lorang at the Flathead Biological Station.
 7 Is that the --
 8 A I don't know.
 9 Q Have you ever heard of Mark Lorang?
 10 A The name sounds familiar, but I have no idea
 11 who he is.
 12 Q And I believe it's in front of you as Exhibit
 13 48, if I could just refer you to it for just a second.
 14 A Okay.
 15 Q Sir, the document marked as Exhibit 48 to
 16 Commissioner Brenneman's deposition yesterday, I suggest
 17 to you is an e-mail from Mark Lorang, a Ph.D. at the
 18 Flathead Lake Biological Station to B.J. Grieve.
 19 A Okay.
 20 Q And you're familiar with B.J. Grieve.
 21 A Yes, sir.
 22 Q And while you were a commissioner, what
 23 position did he hold with the county?
 24 A He was the -- probably the wrong title -- but
 25 the assistant director of the Flathead County Planning

1 Q That's true or not true?
 2 A Yes.
 3 Q You were here.
 4 A Yes.
 5 Q Okay. So you saw the '64 flood.
 6 A Well, yeah, I saw it in Evergreen. We lived up
 7 north, and so I did not come down and spend time in any
 8 areas that were flooded. I just saw Evergreen, and that
 9 was it.
 10 Q Okay. Did you see any flooding in the vicinity
 11 of Evergreen?
 12 A Yes.
 13 Q How bad was it?
 14 A It was -- it was bad.
 15 Q And I've seen some data. You know, there's a
 16 lot of data in this file, obviously. But my
 17 recollection is there was some data recording that flood
 18 that indicated that it was approximately a third of a
 19 foot over the base elevation, 2892.9; that's correct.
 20 A I'd just say that I'll assume you're correct.
 21 I do not know that fact.
 22 Q Okay. And I know you've lived here a long time
 23 and you've seen the years pass here. I guess my
 24 question is, after you got married and you were residing
 25 with your wife, having a family, do you recall ever

1 and Zoning office.
 2 Q And I see in the cover e-mail Dr. Lorang
 3 states, and I quote, "Hi, B.J. Attached are figures that
 4 show lake levels for all of the USGS data that I have.
 5 There still are some gaps but for now this is the best I
 6 can do. Mark," close quote.
 7 A Okay.
 8 Q Attached he sent three pages regarding lake
 9 elevations; fair to say?
 10 A Yes.
 11 Q Okay. And I see the first page is just one
 12 that goes from approximately mid-1998 up through
 13 approximately mid-2002, I believe.
 14 A Okay.
 15 Q And fair to say that, at least during that time
 16 period, his data indicated that the lake had not gone
 17 much over the 2893 mark.
 18 A Right.
 19 Q Is that consistent with your observations
 20 during that time period living here, in a general sense?
 21 A In a general sense, yes.
 22 Q And I see on the next page, he has a little
 23 more encompassing data set. He provides daily lake
 24 elevations from approximately 1910 up to 2000; fair to
 25 say?

1 A Yes, sir.
 2 Q And I see that his data, anyway, describe only
 3 a handful of occurrences on which the lake exceeded
 4 2893; approximately six of them. Is that fair to say?
 5 A Uh-huh.
 6 Q Yes?
 7 A Yes.
 8 Q And I see that the highest elevation -- lake
 9 elevation that was achieved during that time period was
 10 approximately 2896. Is that fair to say?
 11 A Yes, sir.
 12 Q Okay. And in a general sense, you're familiar
 13 with the lake elevation under the FERK license that PP&L
 14 has held?
 15 A Yes.
 16 Q And it's 2892.9, is it not?
 17 A That sounds familiar. If the facts show that,
 18 then I would agree with that.
 19 Q And I suggest they do. I guess my question
 20 would be, you know, the highest events that we see in
 21 almost a hundred years, at least from Dr. Lorang, is
 22 only about three feet over the average lake level.
 23 Would that be a fair conclusion?
 24 A Yes.
 25 Q And in your opinion, knowing as much as you do

1 long as you have and knowing as much as you do about the
 2 lake. Do you have an understanding as to whether the
 3 two dams at either end of the lake are capable of
 4 controlling lake level?
 5 MR. MCCORMICK: Same objection.
 6 THE WITNESS: They are.
 7 Q (By Mr. Perry) And do you have an
 8 understanding as to who operates the Kerr Dam?
 9 A I did. If I was to do my research again, it
 10 would come clear to me. But to be able to espouse what
 11 it all means right now, no. But yes, I did. In my
 12 research, yes, I understood it.
 13 Q And when you were a commissioner, was it the
 14 same entity that controlled both dams; do you recall?
 15 A No, I do not recall.
 16 Q Okay. Do you have something you wanted to add?
 17 Feel free.
 18 A No.
 19 Q When you were evaluating this project and
 20 before you voted on it, did you gain an understanding,
 21 in a general sense, that Fish, Wildlife & Parks was
 22 working with Flathead Land Trust, Flathead Lakers, and
 23 other nonprofits to try to conserve the north shore of
 24 Flathead Lake?
 25 A I assumed so at this point, but I recall

1 about the lake and having lived here as long as you
 2 have -- and I know you're not a structural engineer, I'm
 3 not asking for a professional opinion in that
 4 regard -- do you think that a three-foot increase in the
 5 lake level would cause substantial harm to residential
 6 housing on the north shore of the lake, as it exists
 7 right now?
 8 A Actually, I do believe that. I believe that we
 9 may -- with the climate changes that we're seeing, and
 10 I'm not a climate change person at all, but I know that
 11 we've had some major weather events in our country that
 12 are unpredictable and that are surprising and that I
 13 believe that could happen at any time here.
 14 Q Okay. And I know you're not a hydrologist.
 15 And, again, I'm not asking for an engineering opinion.
 16 But do you have an understanding, in a general sense, as
 17 to whether or not the operators of the Kerr and Hungry
 18 Horse Dam are able to control lake levels?
 19 MR. MCCORMICK: Objection; foundation and
 20 speculation.
 21 THE WITNESS: Could you repeat the
 22 question?
 23 Q (By Mr. Perry) Sure. In a general sense, and
 24 I'm not asking for an engineering opinion, I'm just
 25 asking your own personal opinion, having lived here as

1 reading that in the paper.
 2 Q Given your experience with the Fish,
 3 Wildlife & Parks agency in Montana, and given your prior
 4 testimony, when they submitted opinion letters on the
 5 North Shore Ranch property, did you find them to be
 6 credible?
 7 A They sounded credible. I somewhat
 8 doubted -- it's not that I doubted their information.
 9 But I felt that they were pushing the envelope, having
 10 not received that volume of information from them on any
 11 project before. I felt like it was -- they were pushing
 12 the envelope, as far as reaching to get to trying to
 13 influence us.
 14 Q They sure seemed interested to get a denial,
 15 didn't they?
 16 A I can't answer that, because I tried not to let
 17 their information influence my decision.
 18 Q Right; and I understand that. In a general
 19 sense, though, do you recall the letters that were
 20 submitted by FWP, in particular, repeatedly called for
 21 denial of this project?
 22 A I remember seeing the word "denial" in their
 23 letters, but I can't recall how many times or anything.
 24 But I do remember them.
 25 Q Let me ask you a question, too, with respect to

1 that language.

2 A It's going to be a quick answer. I have to go
3 to the bathroom again.

4 MR. PERRY: Let's take a break.

5 (Deposition in recess from 11:16 a.m. to
6 11:23 a.m.)

7 Q (By Mr. Perry) You know, when I look through
8 this file, the administrative record from the planning
9 office all the way through the public meeting, it seemed
10 that there were a number of planners who had been put on
11 this file then taken off then and a new person would get
12 put on and they'd get taken off. Do you know why there
13 were so many different planners involved in this
14 application?

15 A No, I do not.

16 Q Okay.

17 Would you agree with me that it would be unfair
18 for a given subdivision applicant to have subdivision
19 regulations applied to it in a manner inconsistent with
20 how those same regulations had been applied in the past
21 two other applicants?

22 A Each subdivision is unique and different from
23 the other ones, so I don't see how that would apply.

24 Q Okay. Well, with respect to the application of
25 subdivision regulations to any application, any

1 Q Sure.

2 A I have an answer, but I need to hear it one
3 more time.

4 Q Sure. Let me -- and I think -- I see where you
5 may be going with your answer, and let me see if I can
6 just clarify the question.

7 A Okay.

8 Q Assuming, if you will, that the county had
9 reached a conclusion, the county commissioners, that no
10 subdivision application should be allowed if the land is
11 encumbered by the PP&L easement. If you make that
12 assumption --

13 A Okay.

14 Q -- hypothetical. If you make that assumption,
15 you'd degree with me that that limitation should be put
16 into the subdivision regulations so that landowners have
17 notice of it.

18 A Yes, sir. Can I follow up?

19 MR. MCCORMICK: Yes.

20 Q (By Mr. Perry) No. No; go ahead.

21 A The PP&L easements are in
22 different -- obviously, they run across the country.
23 And each area of our valley is different in makeup where
24 the PP&L easement goes. So that's kind of a broad
25 statement. But it doesn't really apply because it may

1 subdivision application, you'd agree with me that the
2 way they are applied to the application, any
3 application, should be the same.

4 A Yes.

5 Q Okay. And would you agree with me that if the
6 county, Flathead County, intended to enact a substantive
7 restriction on the ability of a landowner to develop his
8 or her property for residential housing, that a
9 subdivision applicant would be entitled to fair notice
10 of such a limitation?

11 A Yes. I'm not sure how you would --

12 Q Let me give you an example.

13 A Yeah, give me one.

14 Q For instance, if the county intended to
15 prohibit residential construction within one hundred
16 feet of a stream, you'd agree with me that that is a
17 restriction that should be put into the county
18 regulations so that landowners have notice of that.

19 A Yes, sir.

20 Q And you'd agree with me that if Flathead County
21 intended to prohibit all residential construction on
22 land encumbered by the PP&L easement, that that
23 restriction should also have been put into the
24 regulations so that landowners had notice of that.

25 A I need you to rephrase the question.

1 be in an area that is up on a mountain. It's a lot
2 different ground makeup than if it was down on the
3 shore. So --

4 Q Sure.

5 A -- while I agree with your question, I had to
6 put that in.

7 Q No; thank you for your clarification.

8 When you lived in Hawaii, you saw houses that
9 were built right on the seashore, did you not?

10 A Yes, sir.

11 Q They're common. They're everywhere in Hawaii;
12 right?

13 A Yes.

14 Q And Hawaii's a seismically active place too,
15 isn't it?

16 A Uh-huh.

17 Q Yes?

18 A Yes.

19 Q And do you recall, in a general sense, when you
20 were in Hawaii, that the State of Hawaii or the county
21 in which you resided generally applied construction
22 requirements for housing that was in the flood zone?

23 A I would assume so.

24 Q And in Flathead County, though, during the
25 pendency of this application up to April 23, 2008, there

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1 was no building department; right?
 2 A Yes, sir.
 3 Q That's true?
 4 A That's true, sir.
 5 Q And do you recall that the building department
 6 was disbanded, so to speak, in the '90s at some point?
 7 A I believe that that's part of our history; yes.
 8 Q Okay.
 9 A I believe there was an attempt made for one. I
 10 don't know if we ever had one, but there was an attempt
 11 made to have one but not during my term.
 12 Q And I see in Exhibit 40, the decision to deny
 13 this application, with respect to the seismic issue, the
 14 commission determined that because there was no county
 15 employee who could verify whether construction
 16 techniques on the property would be safe, the commission
 17 determined that that absence rendered the risk of harm
 18 posed by a seismic event incapable of mitigation. Do
 19 you recall that?
 20 A Yes.
 21 Q You recall that.
 22 A Yes.
 23 Q Okay. So you'd agree with me as, I believe
 24 Mr. Brenneman did yesterday late in the day, that it
 25 wasn't so much the risk of harm from a seismic event

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1 that the commission determined was a basis to deny the
 2 North Shore Ranch application but, rather, the fact that
 3 the county didn't have an employee -- a building
 4 department, that could verify that proposed construction
 5 techniques would be safe.
 6 A That conversation was had; yes, sir.
 7 Q And that was part of the final decision; right?
 8 A Yes, sir.
 9 Q Okay.
 10 A As I recall.
 11 Q Oh, and feel free to refer to Exhibit 40. So
 12 you, as a commissioner, would it be fair to say, that
 13 you were of the opinion that because the county didn't
 14 have a building department that could verify the safety
 15 of construction techniques, it was kind of a safer thing
 16 to do to deny the application. Because without a
 17 building department to verify safety of construction
 18 techniques, you thought there would be a risk of harm.
 19 A Yes.
 20 Q Okay. And would you agree with me that the
 21 county's lack of a building department, or an employee,
 22 who was charged with verifying the safety of
 23 construction techniques, was something that the
 24 applicant, in this case, was incapable of mitigating,
 25 this absence of an employee?

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1 A Well, you better ask the question again,
 2 because I'm starting to think like you, and it's scaring
 3 me. Going way off here thinking of ways to --
 4 Q That was not well-worded.
 5 A I know.
 6 Q Let me rephrase that. This concern that you
 7 had and Mr. Brenneman shared that the county lacked a
 8 building department, or an employee, who could verify
 9 that construction -- proposed construction techniques on
 10 this parcel of land would be safe, that was -- this lack
 11 of an employee or a building department, that wasn't
 12 something that the applicant could fix; right?
 13 A I guess that's where I got tripped up. Because
 14 the applicant actually could have provided an assurance
 15 that each building was mitigated for in the soils and
 16 the construction to assure the commission that each
 17 house would be safe. And in -- not that they were
 18 required to do that; they are not. And we did not
 19 expect that, really. But when you say that he did not
 20 have the opportunity to mitigate for that, again, I
 21 can't answer that for you.
 22 Q And I guess we can go back to the covenants
 23 which are part of the file. And, frankly, I don't have
 24 them in front of me today. But I recall that the
 25 covenants in this case required the construction of

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1 houses be subject to structural engineering constraints.
 2 Do you recall that?
 3 A I don't -- I don't recall that. But if you say
 4 that they're in there, in the CCRs, then they're in
 5 there.
 6 Q Why don't I just point you back to the exhibits
 7 that we went over a little earlier, the Montana Helical
 8 Pier exhibit and the CMG Engineering exhibit which is
 9 Exhibit 46. Why don't we just start with Exhibit 46.
 10 With regard to this issue about the safe construction of
 11 houses on this property that some of which was -- had
 12 some high groundwater, you and I discussed this document
 13 a little earlier. And I mean, I think you'd agree with
 14 me that this document, in a general sense, stands for
 15 the proposition that there are structural engineering
 16 techniques and construction techniques that would allow
 17 for the safe construction of houses on the property;
 18 fair to say?
 19 A Fair to say.
 20 Q Okay. And, you know, the helical pier issue,
 21 it was addressed obviously by Exhibit 47 which was
 22 attached to this letter. And I guess I'm kind of
 23 unclear as to, in your opinion, what other or additional
 24 evidence the applicant could have submitted to address
 25 any concern on the safety of construction techniques.

1 **MR. MCCORMICK:** Objection; speculation,
2 relevance.

3 **THE WITNESS:** I can't answer that at this
4 time.

5 **Q** (By Mr. Perry) Okay. And if the county --

6 **MR. SIMON:** Can I interrupt you just for a
7 second?

8 **MR. PERRY:** Yeah. Just a second.

9 (Deposition in recess from 11:34 a.m. to
10 11:35 a.m.)

11 **Q** (By Mr. Perry) Assuming for me, if you will,
12 Mr. Hall, that the CC and Rs regarding the North Shore
13 Ranch had design limitations with respect to housing on
14 the property, requirement that the houses be evaluated
15 in terms of their construction by appropriate engineers
16 and, also, that the applicant represented to the
17 planning board that that requirement would become part
18 of the final plat, would that have -- would that be
19 sufficient to assuage your concerns or not?

20 **MR. MCCORMICK:** Objection; calls for
21 speculation.

22 **THE WITNESS:** Not.

23 **Q** (By Mr. Perry) Why?

24 **MR. MCCORMICK:** Again, objection; calls for
25 speculation.

1 **A** Yes, sir.

2 **Q** And with respect to that project, do you have
3 any knowledge or understanding or belief that the
4 Averill family deviated from the terms of the approval
5 of the project by the county?

6 **A** Not that I'm aware of, sir.

7 **Q** Have you ever become aware of any enforcement
8 action taken by the county, with respect to the
9 applicant in this case or either of their principles,
10 regarding their failure to comply with any county
11 ordinance or regulation?

12 **A** I am not aware at this time.

13 **Q** Okay.

14 **Q** Would you agree with me that it's unfair for
15 the county to deny a subdivision application predicated
16 upon the fact that the county itself lacks an agent to
17 ascertain whether or not residential construction
18 techniques would be safe?

19 **MR. MCCORMICK:** Objection; speculation,
20 calls for a legal conclusion.

21 **THE WITNESS:** I have to ask you questions
22 because it confuses me how I'm supposed to answer that.

23 **Q** (By Mr. Perry) Let me ask it again.

24 **A** Yeah.

25 **Q** Would you agree with me that it's unfair to an

1 **THE WITNESS:** Just historically, the way
2 subdividers have treated the county in their -- in
3 saying one thing and doing another.

4 **Q** (By Mr. Perry) And did you, yourself,
5 personally -- well, as a commissioner, have any prior
6 experience with the two principles of this developer,
7 Keith Simon and Sean Averill?

8 **A** No.

9 **Q** And in a general sense --

10 **A** That I can recall. I don't know Sean.

11 **Q** Let me ask you this. In a general sense,
12 you're aware of the Averill family here in the valley.

13 **A** Yes.

14 **Q** And you're aware of Sean's relatives who have
15 developed properties in the vicinity of Kalispell?

16 **A** Yes, sir.

17 **Q** And, to your knowledge, has the Averill family,
18 in terms of development, ever deviated from
19 representations made to the county?

20 **A** Not that I'm aware of.

21 **Q** The Averill family has a pretty good reputation
22 around here for development, does it not?

23 **A** Yes, sir.

24 **Q** The Lodge at Whitefish is one of their
25 projects, is it not?

1 applicant to deny his application predicated upon the
2 fact that the county lacks an agent to determine whether
3 or not proposed construction techniques on the property
4 would be safe?

5 **MR. MCCORMICK:** Same objection.

6 **THE WITNESS:** Yes.

7 **Q** (By Mr. Perry) And you'd agree with me that it
8 would be unfair to an applicant -- well, strike the
9 question.

10 **Q** In your tenure as a county commissioner, would
11 it be fair to say that at the public meetings on a
12 subdivision application, you, in the past, and other
13 commissioners, have had occasion to discuss mitigation
14 with an applicant?

15 **A** Yes, sir.

16 **Q** Okay. And would it be fair to say that in your
17 history as a commissioner, at these public meetings on
18 subdivision applications, you and your fellow
19 commissioners have negotiated mitigation with
20 applicants?

21 **A** Yes, sir.

22 **Q** And in this case with regard to your concern
23 and Mr. Brenneman's concern regarding whether or not
24 housing could be safely constructed on this property, do
25 you recall whether or not anybody -- any commissioner at

1 the public meeting raised the issue of an evaluation by
2 an independent professional engineering firm, as
3 mitigation?

4 A I do not recall that.

5 Q If the county had had a building department or
6 an employee who could, at the time of this application,
7 determine whether or not proposed construction
8 techniques were safe, one of the three bases for denial
9 of this application would not have existed; true?

10 MR. MCCORMICK: Objection; speculation.

11 Q (By Mr. Perry) I'm sorry; I didn't hear your
12 answer.

13 A Could you ask the question again?

14 Q Sure. If the county had had a building
15 department at the time of this application, before you
16 voted on it -- before you and Mr. Brenneman voted on it,
17 one of the bases for denial of this application, that
18 being the county's lack of a building department --

19 A Now, you're asking another question. Start
20 again; I'm sorry. Because you started out with a
21 question and then you're -- go ahead.

22 Q All right.

23 A I was tracking with you. Now you're on another
24 subject, and I'm trying to track with you.

25 Q Let me try to simplify it. Assume for me, if

1 unquote, of not allowing construction -- residential
2 construction on land encumbered by the PP&L easement.
3 Do you recall his use of that term?

4 A I don't recall that.

5 Q Now, you'd agree with me that if the county,
6 you as a commissioner when you served as a commissioner,
7 if you three commissioners intended to adopt a new
8 subdivision regulation that in any way limited anyone's
9 ability to develop land, that had to go through a
10 statutory process before it became a regulation.

11 A Yes.

12 Q Okay. So that people have a chance to comment
13 on it, the public gets notice of it; right?

14 A Yes, yes.

15 Q At the public hearing on April 23, 2008, did
16 you form the conclusion that

17 Mr. Brenneman -- Commissioner Brenneman, was attempting
18 to create a new subdivision regulation at that hearing
19 with respect to this PP&L issue?

20 A No.

21 Q Okay.

22 You'd agree with me that a subdivision
23 applicant attending a public meeting before the
24 commissioners is entitled to a fair and impartial
25 hearing.

1 you will, that at the time of this application the
2 county had a building department.

3 A Yes; okay.

4 Q Now, as you and I went over earlier, one of the
5 three bases for denial arose out of the lack of a
6 building department.

7 A It was one of the factors; yes.

8 Q One of the factors.

9 A Yes.

10 Q That factor wouldn't have existed if a building
11 department had existed at the time; right?

12 MR. MCCORMICK: Objection; speculation.

13 THE WITNESS: True.

14 Q (By Mr. Perry) And I'm going to test your
15 knowledge of the subdivision regulations a little bit in
16 the county. You'd agree with me that the subdivision
17 regulations in effect in the county up to April 23,
18 2008, did not give any notice to a subdivision applicant
19 that his or her application could be denied due to the
20 lack of a building department in the county.

21 A I would agree with you.

22 Q I see in reviewing some of the documentation
23 with Commissioner Brenneman yesterday, he referred
24 during the course of the public meeting and as reported
25 in the Daily Inter Lake, to the "policy," quote,

1 A Yes.

2 MR. MCCORMICK: Objection; misstates the
3 law.

4 MR. PERRY: He's not entitled to a fair
5 hearing?

6 MR. MCCORMICK: Madison River RV --

7 MR. PERRY: Yeah.

8 MR. MCCORMICK: -- has a longer, more
9 involved statement of what Mr. Perry is referring to.
10 So I'm just noting for the record that there's a longer,
11 more involved statement.

12 MR. PERRY: There always is.

13 Q (By Mr. Perry) You'd agree with me that a
14 subdivision applicant is entitled to be treated fairly
15 by the county.

16 A I could agree with you on that. I mean, yes.

17 Q Would you agree with me that it would be unfair
18 to single out any particular subdivision application in
19 order to apply county subdivision regulations in a
20 manner more harshly than they had been applied to other
21 subdivision applications?

22 A Yes.

23 Q Would you agree with me that it would be unfair
24 to a subdivision applicant to apply a subdivision
25 regulation to him or her at the hearing on the

1 preliminary plat before the county commissioners when
2 that regulation had never previously been announced or,
3 you know, put into the county regulations?

4 A Well, if the regulation isn't in the
5 regulations, then, clearly, you would not impose a
6 regulation that's not in the regulations on that
7 developer at that time.

8 Q Because that would be unfair, would it not?

9 A Yes.

10 Q Now, in reaching your decision on any given
11 subdivision application while you were a commissioner,
12 with respect to how you're going to vote on it, you'd
13 weigh the evidence, would you not?

14 A Yes.

15 Q Okay. And bias would be one issue that you
16 would look at, would you not, in weighing the evidence?

17 A Bias? A personal bias toward a project?

18 Q Toward a project.

19 A I tried to professionally not have a bias
20 toward any project.

21 Q Oh, I'm not talking about you. And thank you
22 for clarifying my question.

23 My question really is, when you're weighing the
24 evidence provided by, you know, anybody with respect to
25 a project, whether it's FWP or a neighbor or anybody

1 A I would not.

2 Q Okay. If your wife had an interest in the
3 project --

4 A I would not.

5 Q If you felt that you were so biased against the
6 project that you questioned whether or not you could
7 fairly treat the applicant, would you vote on the
8 project?

9 A Yes.

10 Q Even though you questioned whether or not you
11 could fairly treat the applicant?

12 A Yes, because I base my decisions on facts, not
13 bias.

14 Q Okay.

15 Would you agree with me that the US Fish and
16 Wildlife Service, the owner of the Flathead WPA, would
17 probably be in the best position to analyze and express
18 opinions on potential impacts on the WPA posed by this
19 project?

20 A Yes.

21 MR. PERRY: Why don't we do this? Could we
22 go off the record for a second?

23 MR. MCCORMICK: Sure.

24 (A discussion was held off the record.)

25 (Deposition in recess from 11:52 a.m. to

1 else, you, as a commissioner, when you look at that
2 evidence, you take into account potential bias, do you
3 not?

4 A I take into account all the information given
5 to me and recognizing bias; yes.

6 Q As a factor to consider.

7 A As a factor to consider.

8 Q Both pro and con to development.

9 A Yes.

10 Q And would you agree with me that in considering
11 subdivision applications while you were a commissioner,
12 one of the facets, so to speak, of bias, would be
13 manifested by self-interest in the project?

14 A Yes, I guess.

15 MR. MCCORMICK: Did you say "I guess." Did
16 you get that down?

17 THE COURT REPORTER: (Nods head.)

18 THE WITNESS: Trying to understand

19 "self-interest."

20 Q (By Mr. Perry) Let me ask you a couple of
21 questions about serving as a commissioner and reviewing
22 subdivision applications. You, as a commissioner during
23 your tenure in Flathead County, if you had a financial
24 interest in a given project, would you render a
25 decision?

1 1:04 p.m.)

2 MR. PERRY: Sir, I'd just like to take a
3 little bit of time to go over some of the subdivision
4 applications you had occasion to render final decisions
5 on while you were a commissioner with the county.

6 (Deposition Exhibit No. 59 marked for
7 identification.)

8 Q (By Mr. Perry) And what I've marked as
9 Deposition Exhibit Number 59 to your deposition is the
10 subdivision Farmland Acres.

11 A Farmland Acres.

12 Q Do you recall that project?

13 A No, I do not.

14 Q Do you recall, in a general sense, referring
15 back to previously marked map, aerial, I believe marked
16 as Exhibit 58; is that correct?

17 A That's up here. What's that?

18 Q That's Exhibit 58; right?

19 A Right.

20 Q The Farmland Acres, can you point that out to
21 me?

22 A Right here (indicating).

23 Q So it's in the vicinity of the Blasdel WPA?

24 A Yes.

25 Q And although it doesn't immediately about it,

1 it's darn close; fair to say?
 2 A Uh-huh.
 3 Q Yes?
 4 A Yes.
 5 Q Now, you voted, did you not, to approve the
 6 Farmland Acres subdivision?
 7 A The record shows that I seconded the motion,
 8 and the motion was approved.
 9 Q Now, the one thing I noticed about the decision
 10 in the Farmland Acres matter, on page three, there's an
 11 indication made at paragraph F, and I quote, "This area
 12 is located within one-quarter mile of a waterfowl
 13 production area. As such, homeowners are hereby
 14 notified that hunting is open in this area and that they
 15 will need to keep pets from roaming. Homeowners should
 16 obtain information on the rules associated with the
 17 Blasdel waterfowl production area and other relevant
 18 information about the impacts of pets on birds," close
 19 quote. Have I read that correctly?
 20 A Uh-huh.
 21 Q That's a yes?
 22 A Yes.
 23 Q And that's a decision dated -- well, the
 24 written decision dated April 5, 2004; correct?
 25 A Yes.

1 Q Now, back in 2004 when you were evaluating this
 2 project, fair to say that you concluded that any
 3 potential risk of harm posed by hunters on the Blasdel
 4 waterfowl production area was alleviated by requiring
 5 that homeowners be notified that hunting was open in
 6 that area and that they would need to keep their pets
 7 from roaming; is that fair to say?
 8 A Yes.
 9 Q Okay. Now, this same issue, obviously, as you
 10 recall, undoubtedly, was an issue that was raised with
 11 respect to the North Shore Ranch project. And by that,
 12 I mean, its proximity to the WPA with respect to risks
 13 of harm posed by hunting; fair to say?
 14 A Fair to say.
 15 Q And in particular, it was an issue that was
 16 raised by some of the commenting agencies. And I guess
 17 my question to you is, you know, in 2008, were you still
 18 of the opinion that the language in paragraph F of the
 19 Farmland Acres final decision was appropriate and
 20 sufficient to alleviate potential risks of harm posed by
 21 the Flathead WPA?
 22 MR. MCCORMICK: Objection; relevance.
 23 THE WITNESS: In -- in 2008, it was four
 24 years after I rendered the decision on Farmland Acres.
 25 Q (By Mr. Perry) Right.

1 A During the course of those four years, we had
 2 discussed this issue many times and always continued to
 3 try to improve the mitigation for hunting in the
 4 subdivisions that we approved close to a hunting area.
 5 So this was right after becoming commissioner after a
 6 year, and I know that it was always a concern of ours.
 7 Q Okay. And the risk of harm posed by hunting on
 8 whether it's the Blasdel WPA or the Flathead WPA,
 9 hunting in those two areas would pose identical -- or
 10 similar, if not identical, risks of harm; fair to say?
 11 A Yes.
 12 Q So if there's a risk of harm posed by hunting
 13 on the Blasdel WPA with respect to residential
 14 subdivisions that abut it and are in its vicinity, that
 15 would be the same type of risk of harm associated with
 16 hunting on the Flathead WPA with respect to potential
 17 houses on the North Shore Ranch property; true?
 18 A Yes. At this point, I can say that. But
 19 looking at the map, you know, if I was to be making my
 20 decision today, there is a big difference in this
 21 compared to this -- this small subdivision compared to
 22 this big subdivision with this small area of hunting.
 23 Do you see what I'm saying?
 24 Q Yeah.
 25 MR. MCCORMICK: Could we note for the

1 record the witness is pointing to Exhibit Number 58.
 2 MR. PERRY: Sure.
 3 Q (By Mr. Perry) And I see at paragraph 12 of
 4 Exhibit 59, the commissioners indicated in their final
 5 decision on the Farmland Acres application, quote, "A
 6 300-foot-no-build zone shall be placed on lots 7 and 8
 7 to of the final plat to ensure living structures are not
 8 within bullet range of the waterfowl production area,"
 9 close quote. Have I read that correctly?
 10 A Yes, sir.
 11 Q Was that the -- in your opinion, I mean, was
 12 that the type of protection that was appropriate with
 13 respect to the North Shore Ranch project?
 14 A I don't know if that was, in fact -- I don't
 15 know what was said. Could you repeat your question?
 16 Q Sure. Let me just suggest to you that the
 17 applicant on the North Shore Ranch project had proposed
 18 an approximately 70-acre buffer between the North Shore
 19 Ranch land and the waterfowl production area. Do you
 20 recall that?
 21 A Yes, I do.
 22 Q Okay. And in a general sense, my question is,
 23 this idea of a buffer between a place where people are
 24 going to hunt and residential structures, as outlined in
 25 Exhibit 59 at paragraph 12, that would be the same type

1 of protection that the North Shore Ranch people offered;
2 fair to say?
3 A Fair to say.
4 (Deposition Exhibit No. 60 marked for
5 identification.)
6 Q (By Mr. Perry) And sir, in a general sense,
7 I'm going to turn to another subdivision here. Do you
8 recall the Flathead River Landing project?
9 A I do not.
10 Q And I just presented to you Exhibit 60 to your
11 deposition, which is the final decision from the
12 Flathead Board of County Commissioners granting
13 conditional approval for this project. Do you recognize
14 that document as such?
15 A Yes.
16 Q And fair to say that you and Mr. Watne, then
17 chairman of the Board of Commissioners, you both voted
18 to conditionally approve this project.
19 A Yes, sir.
20 Q And this final decision is dated November 8,
21 2006; is that correct?
22 A Yes, sir.
23 Q So just within a year or so before the North
24 Shore Ranch folks first submitted their application, I'd
25 suggest to you.

1 certificates to have been obtained, in your opinion?
2 A No, no.
3 Q So would it be fair to assume that some or all
4 of this property was, in fact, in the floodplain?
5 A Yes.
6 Q And I see at paragraph e of Exhibit 60 to your
7 deposition, there's a discussion regarding wildlife. Do
8 you see that indication?
9 A Yes.
10 Q And fair to say that in paragraph e, the
11 commissioners for Flathead stated, and I quote, "Lot
12 owners are alerted to the presence of large and
13 potentially dangerous wildlife in the area and are
14 reminded feeding big game such as deer and bear is
15 illegal in Montana. Lot owners are strongly encouraged
16 to contact the Department of Fish, Wildlife & Parks to
17 obtain information on methods for safely living near
18 wildlife and minimizing habitat impact," close quote.
19 Have I read that correctly?
20 A Yes.
21 Q And was this kind of standard language, during
22 the first four years of your tenure as a commissioner,
23 with respect to, you know, the issue about living with
24 wildlife becoming part of the conditions of an approval?
25 A Each of the subdivisions that came before us

1 Turning to page two of Exhibit A, I see that at
2 paragraphs d and e, there are some conditions set forth
3 for the preliminary plat. Is that fair to say?
4 A Yes, sir.
5 Q And at paragraph d, the first condition on page
6 two of Exhibit A to Exhibit 60 to your deposition, is a
7 statement, and I quote, "Elevation certificates for all
8 residential structures shall be submitted to the
9 Flathead County floodplain administrator as stipulated
10 in floodplain permit FDP-04-17," close quote. Have I
11 read that correctly?
12 A Yes, sir.
13 Q Can you tell me what that condition means, just
14 in layman's terms? What are the commissioners saying in
15 that paragraph?
16 A I believe what they're saying is that it just
17 needs to be run through the Flathead County floodplain
18 administrator as to where the location of the house is
19 going to be placed on the property.
20 Q Okay. And would that presuppose that some or
21 all of this property was in the floodplain?
22 A I can't answer -- I do not know.
23 Q Well, let me ask you this way. If some or all
24 of this property had not been impacted by the
25 floodplain, would there have been any need for elevation

1 that had to deal with areas that had wild animals, we
2 dealt with it differently on each one, because we were
3 always trying to do the right thing for the subdivision
4 as well as the people that would eventually live there.
5 And a lot of the times it depended on how dense the
6 subdivision was.
7 Q As a general proposition while you were a
8 commissioner rendering final decisions on subdivision
9 applications, did the county usually require, if there
10 were covenants associated with the subdivision, that the
11 covenants include some language consistent with FWP's
12 Living With Wildlife document?
13 A Yes.
14 Q So that was generally required in covenants.
15 A Yes.
16 Q And do you recall that the applicants in the
17 North Shore Ranch matter offered all of that language?
18 A I do not recall specifically, but I do remember
19 them offering generous mitigation for wild animals and
20 pets. But I don't recall the details to that.
21 Q Okay; fair enough. I didn't mean to interrupt
22 you.
23 I see, also, that there's some additional
24 language in that paragraph e. And there's some numbered
25 paragraphs under it. The county indicates as a

1 condition that, number 1, "Dogs must be kept under owner
2 control at all times, either leashed or confined." Have
3 I read that correctly?

4 A Yes.

5 Q And was that a condition that the county
6 generally applied to subdivisions of the type and kind
7 represented by the Flathead River Landing? And by that
8 I mean a subdivision in the vicinity of either a
9 production area or wilderness area.

10 A Yes.

11 Q And that's language -- well, strike the
12 question.

13 When you were a commissioner, were you at all
14 concerned that this condition with respect to dogs was a
15 toothless condition?

16 A Yes.

17 Q Okay. Did the county try to do anything, in a
18 regulatory manner, to add any teeth to that condition?

19 A I recall having a discussion, but I don't
20 recall the outcome of that discussion.

21 Q Okay. And I see there's some further
22 requirements set forth in that paragraph e with respect
23 to wildlife, including using bear-proof containers,
24 prohibition on compost piles, pets must be kept indoors
25 or food dishes brought in at night, and bird feeders

1 basements shall be allowed. The lowest floor and gas
2 forced air system with ducts below the floor shall be
3 elevated at least two feet above the BFE of 2893.0 feet
4 MSL (applicant/agency comment)," close quote. Have I
5 read that correctly?

6 A Yes.

7 Q Now, it's true, is it not, that while you were
8 a commissioner before the decision on the North Shore
9 Ranch project, you had occasion, as represented by this
10 final decision, to review subdivision applications that
11 involved land with high groundwater.

12 A Yes.

13 Q And you and the other commissioners
14 consistently required as a condition of approval, to the
15 extent that such an application were to be approved,
16 that either no basements would be allowed or that it had
17 to be -- the residence had to be constructed on a slab.

18 A Yes.

19 Q And that was -- that would have been an
20 appropriate condition for the North Shore Ranch project,
21 given its high water table in various places, would it
22 not?

23 MR. MCCORMICK: Objection; speculation.

24 THE WITNESS: No.

25 Q (By Mr. Perry) Why not?

1 must be placed out of reach of deer, bear and other
2 large game. And my question is, are those five
3 conditions, including the dog condition, a set of
4 conditions that the commissioners generally applied to
5 subdivisions of the type and kind represented by North
6 Shore Ranch?

7 A Yes.

8 Q And I see that there's an indication at the
9 bottom of the page on page two of Exhibit 60 to your
10 deposition, and I quote, "A native vegetative buffer
11 should be maintained 20 horizontal feet from the bank
12 full of Flathead River," close quote. Have I read that
13 correctly?

14 A Yes.

15 Q Fair to say that this project abutted the
16 Flathead River?

17 A Yes.

18 Q Okay. And you'd agree with me that that area
19 in which this subdivision was proposed is an area
20 characterized by high groundwater?

21 A What -- yeah. Without looking at the
22 floodplain map, I would assume yes.

23 Q Okay. And the reason I ask that question is I
24 see on page three of Exhibit A to this exhibit, there's
25 an indication made in paragraph 11, and I quote, "No

1 A In my opinion and my research, I felt that that
2 was -- at the time, you know, trying to recall what went
3 into my decision, I just didn't feel that it was -- that
4 the land was the same as some of the other ones we had
5 seen and that that would work on that particular land.
6 In some places it would work; most places it would not.

7 Q And I know I'm going back some time testing
8 your memory a little bit, but why did you think it would
9 work with respect to the Flathead River Landing
10 subdivision?

11 A I believe, because of my visual of the
12 property, I felt that it looked like it was high enough
13 above the, you know, floodplain to be safe for homes.
14 And, again, you're testing my memory. And I don't
15 recall all that went into that decision.

16 Q Sure; and that's fair enough. And one of the
17 other things I noted in this final decision on that
18 project at paragraph 10 on page three of Exhibit A was
19 the statement, and I quote, "All buildings shall be set
20 back 50 feet from the 100-year floodplain boundary. The
21 boundary shall be staked in the field prior to the
22 application for final bracket (applicant comment),"

23 close quote. Have I read that correctly?
24 A Yes.

25 Q So it would be true, would it not, that up to

1 the time of the denial of the North Shore Ranch project,
2 the county, and by "the county" I mean the Board of
3 Commissioners, had conditionally approved at least one
4 subdivision that was in the five hundred year
5 floodplain.

6 A It appears to be, yes.

7 Q Do you know whether or not, while you were a
8 commissioner, any subdivision application was approved
9 that involved residential construction in the one
10 hundred year floodplain?

11 A I do not recall, but I cannot imagine that we
12 would approve that.

13 Q Okay. And do you know -- again, testing your
14 memory. Do you know whether or not there was a
15 prohibition, so to speak, in the subdivision
16 regulations, while you were a commissioner, that
17 prohibited construction in the hundred year floodplain?

18 A No.

19 Q Okay.

20 Now, obviously at the time that you considered
21 this application, the Flathead River Landing subdivision
22 application, you considered -- you, yourself, considered
23 the Flathead River to be a sensitive area. Would that
24 be fair to say?

25 A Yes.

1 Q So it would be north of the North Shore Ranch
2 project; is that correct?

3 A Yes.

4 Q And does the Pheasant Haven project, in your
5 opinion, lie in proximity to the Blasdel waterfowl
6 production area?

7 A No.

8 Q Can you approximate for me -- well, actually, I
9 see on Exhibit 58, we have a diagonal distance reading
10 of approximately 3,776 feet from the corner of Blasdel
11 waterfowl production area to Pheasant Haven. Is that
12 fair to say?

13 A Okay.

14 Q Do you see that?

15 A Yes.

16 Q So that would be less than a mile; right?

17 A Yeah, it would be less than a mile from Blasdel
18 to there.

19 Q And do you recall -- and again, I'm testing
20 your memory a little bit. I know it was some time ago.
21 Do you recall, in a general sense, how many lots were
22 proposed for Pheasant Haven? Was it a big development,
23 little?

24 A There were big lots, but there weren't that
25 many of them. But I don't recall. Does it say? I

1 Q So when you conditionally approved this
2 application along with Commissioner Watne, you did so
3 with full knowledge that this subdivision would abut a
4 sensitive river habitat. Is that fair to say?

5 A Yes.

6 (Deposition Exhibit No. 61 marked for
7 identification.)

8 Q (By Mr. Perry) Sir, the document I'm going to
9 mark as Deposition Exhibit Number 61 I suggest to you is
10 the commissioners' -- Board of Commissioners' approval
11 of the Pheasant Haven subdivision. Do you recognize
12 that as such?

13 A That's what the document says.

14 Q And do you recognize your signature on the
15 first page?

16 A Yes.

17 Q And, obviously, you also recognize your
18 signature on the prior exhibit on the first page?

19 A Yes.

20 Q And in a general sense, can you describe for
21 me, and please refer to Exhibit 58 if you need to, where
22 Pheasant Haven is located with respect to -- well, if
23 you could tell me where it's located.

24 A Yes. It's further north, probably by four to
25 five miles, minimum, from Highway 82.

1 don't know how many lots were in there.

2 Q And in a general sense, when you conditionally
3 approved the Pheasant Haven subdivision, would it be
4 fair to say that you didn't have any concerns about
5 potential adverse impacts on the Blasdel WPA?

6 A That's affirmative.

7 (Deposition Exhibit No. 62 marked for
8 identification.)

9 Q (By Mr. Perry) And I do have a document that
10 will help you with respect to the number of lots that
11 were proposed on that subdivision. Marked as Exhibit 62
12 to your deposition is the March 24 -- March 25, 2004
13 planning board -- I'm sorry -- Flathead County Planning
14 and Zoning office letter to the Board of County
15 Commissioners.

16 A Yes.

17 Q Do you have that in front of you, sir?

18 A Yes.

19 Q And fair to say that the preliminary plat for
20 Pheasant Haven subdivision proposed 24 residential lots
21 on approximately 122 acres.

22 A Yes.

23 Q And I see that in referring back to the prior
24 exhibit, Exhibit 61, there is an indication made that
25 there was some open space associated with this

1 subdivision. And if I could turn you to page three of
 2 the final decision dated April 5, 2004, I see at
 3 paragraph 11, there's an indication made that "The
 4 developer shall dedicate the 37.86 acre open space as
 5 parkland or dedicate 1.9 acres specifically as parkland
 6 with the remainder as open space for the subdivision."
 7 Have I read that correctly?
 8 A Yes.
 9 Q So out of the approximately 122 acres, 38-or-so
 10 acres were proposed for open space.
 11 A Yes.
 12 Q And that would have left about 80 acres for 22
 13 homes -- or 24 homes.
 14 A Yes.
 15 Q Okay. Do you know, in a general sense, how big
 16 the lots were?
 17 A I think they were -- I think it was a ten-acre
 18 density, but I don't know.
 19 Q Well, in any event, we know that --
 20 A Five or ten, if I recall.
 21 Q In any event, we know that the subdivision
 22 application was conditionally approved and that it
 23 called for 24 residences on approximately 122 acres with
 24 a 38-acre set aside for open space.
 25 A So you do the math.

1 Q Right. There were some occasions on which you
 2 found their opinions credible.
 3 A Yes.
 4 Q And there were other occasions where you found
 5 their opinions not to be credible.
 6 A Yes.
 7 Q And, obviously, as you've testified, you took
 8 each application on an individual basis --
 9 A Yes.
 10 Q -- and looked at their opinions in each case.
 11 A Yes, sir.
 12 (Deposition Exhibit No. 63 marked for
 13 identification.)
 14 Q (By Mr. Perry) The next subdivision I want to
 15 talk about is on the Tiebucker subdivision. We talked a
 16 little bit earlier about it today. I just want to ask
 17 you some questions about that one as well. Marked as
 18 Exhibit 63 to your deposition is the final
 19 decision -- oh, no, it's not actually. Strike that
 20 question.
 21 What we have in front of you, actually, is the
 22 Flathead County Planning and Zoning office enclosing the
 23 decision by the Flathead County Planning Board, dated
 24 June 18th, 2003. Do you recognize that?
 25 A June 11th.

1 Q I'm figuring about four acres,
 2 three-and-a-half -- three acres, maybe, with
 3 infrastructure. Is that about right?
 4 A Yes, I would agree with that.
 5 Q Okay. And when you conditionally approved the
 6 Pheasant Haven subdivision, you didn't have any concerns
 7 about seismic issues; right?
 8 A No, sir.
 9 Q Didn't have any concerns about liquefaction.
 10 A No, sir.
 11 Q And as you testified, didn't have any concerns
 12 about impacts on the WPA, the Blasdel WPA.
 13 A True.
 14 Q Okay. And do you recall -- again I'm going to
 15 test your memory a little bit. Do you recall that this
 16 was one of the subdivision applications that the FWP
 17 team came out to speak against?
 18 A Yes.
 19 Q Okay. And, obviously, you disagreed with their
 20 opinions?
 21 A Yes.
 22 Q And in a general sense, would it be fair to say
 23 that during your tenure as a commissioner, you would
 24 disagree with FWP opinions on more than one occasion.
 25 A On more than one occasion, but not exclusively.

1 Q June 11th was the decision; right. The letter
 2 itself was dated June 18th.
 3 A I got you.
 4 Q And I know this was some time ago, and you may
 5 not recognize this document, but I see on page three of
 6 this document, before we get to the conditional approval
 7 final decision, I see on page three there's an
 8 indication made that this preliminary plat, the
 9 Tiebucker subdivision, proposed 38 lots on 20.45 acres;
 10 fair to say?
 11 A Yes.
 12 Q And so approximately 40 lots on about 20 acres.
 13 About -- well, it would be less than half an acre a lot
 14 then; would it not?
 15 A Yes.
 16 Q Pretty dense subdivision, would you say?
 17 A Yes.
 18 Q This was conditionally approved; right?
 19 A Yes.
 20 Q And when you conditionally approved it or voted
 21 to conditionally approved it, you didn't have any
 22 concerns about seismic risk of harm?
 23 A Not at that time. And it was on a public sewer
 24 system, so I recall that being one of the deciding
 25 factors on approval.

1 Q Okay. And you didn't have any concerns, in
2 voting to conditionally approve this application,
3 related to liquefaction.

4 A No, sir.

5 Q And you didn't have any concerns with respect
6 to this subdivision's potential impacts on wildlife or
7 wildlife habitat in either the Flathead WPA or the
8 Blasdel WPA.

9 A No, sir.

10 MR. PERRY: And just for clarity of the
11 record, why don't I mark that final decision that you
12 and I have just discussed, otherwise your attorney will
13 castigate me later.

14 MR. MCCORMICK: My copy is actually
15 attached to --

16 MR. PERRY: Oh, you have it; okay. Well,
17 I'll just mark it as an independent Exhibit 64.

18 (Deposition Exhibit No. 64 marked for
19 identification.)

20 Q (By Mr. Perry) Exhibit 64, and appended
21 obviously, apparently, to Exhibit 63, is the final
22 decision on the Tiebucker subdivision; fair to say?

23 A Yes, sir.

24 Q And on the first page is --

25 MR. MCCORMICK: Actually, let me ask you a

1 10th, 2005 letter that you just handed out is a
2 resubdivision of four of the lots within the
3 Tiebucker --

4 MR. PERRY: Oh, it is. Yeah, resale of
5 lots 1, 2, 3, and 4. All right. Well, let me see if I
6 can clear up the record.

7 MR. MCCORMICK: Got another letter?

8 MR. PERRY: I might. Well, let me just
9 step back for a second.

10 Q (By Mr. Perry) Do you recall that the
11 Tiebucker subdivision, as you and I talked about a
12 little earlier, was a pretty dense subdivision, about
13 half an acre per lot. Do you recall that?

14 A Yes, it is.

15 Q And do you recall, in a general sense, that
16 there were approximately 40 lots involved, 38 lots?

17 A Do I recall that?

18 Q Yeah. And maybe I'd just refer you back to
19 Exhibit 63.

20 A I had been commissioner for six months, so I'm
21 having trouble remembering all the details of this.

22 Q Well, I just see in the Exhibit 63, the FCPZ
23 letter to the Board of County Commissioners dated June
24 18, 2003. I see on page two of Exhibit A to that
25 letter, as you and I discussed earlier, the subdivision

1 question. And we can do this off the record if you'd
2 like. I'm seeing two different dates on the letters.
3 I'm seeing a July 8, 2003 and a June 8, 2004.

4 MR. PERRY: June 8, 2004.

5 MR. MCCORMICK: One's a phase one and one's
6 a phase two.

7 MR. PERRY: Why don't we go off the record
8 for just a second.

9 (A discussion was held off the record.)

10 Q (By Mr. Perry) Exhibit 64 is the conditional
11 approval of --

12 A Preliminary plat Tiebucker phase two.

13 Q Phase two. And do you recall that there were
14 two phases to this subdivision?

15 A I recall that.

16 Q And in a general sense, you recall that it was
17 phased, but the subdivision itself was conditionally
18 approved.

19 A Yes.

20 MR. PERRY: Okay. And I think what we have
21 here is the first phase, Counsel.

22 MR. MCCORMICK: I don't agree.

23 MR. PERRY: Oh, wait a minute. No; you're
24 right.

25 MR. MCCORMICK: I would guess that the May

1 is described as being a 38-lot single family subdivision
2 on approximately 20.45 acres.

3 A Yes.

4 Q And is that consistent with your memory?

5 A Yes.

6 Q Okay; fair enough.

7 And the Tiebucker subdivision, would you say
8 that that's in proximity to Pheasant Haven?

9 A Well, is Pheasant Haven 255?

10 Q No. I believe Pheasant Haven is up top.

11 A Is that close proximity? Tiebuckers is down in
12 Somers. And Pheasant Haven is several miles away.

13 Q Several miles away; okay. Would you agree with
14 me that the Tiebucker subdivision is in proximity to the
15 Flathead WPA?

16 A Yes.

17 Q Okay. And when this subdivision was
18 conditionally approved by yourself and the commission,
19 fair to say that you, yourself, anyway, didn't have any
20 concerns about adverse impacts on wildlife or wildlife
21 habitat on the Flathead WPA associated with this
22 subdivision?

23 A I vaguely recall having that conversation, but
24 I don't recall. I'd have to say no.

25 Q You'd have to say no, that impacts on the WPA

1 were a concern of yours?

2 A I would have to say that they were a concern of
3 mine; yes.

4 Q Okay. Would it be fair to conclude, though,
5 given your vote to conditionally approve, that the
6 applicant, in your opinion, had effectively mitigated
7 potential impacts on the WPA?

8 A I cannot recall, sir.

9 Q Okay. Well, let me ask you this question.
10 Would you have voted to conditionally approve that
11 subdivision if there had been adverse impacts on
12 wildlife or wildlife habitat in the Flathead WPA that,
13 in your opinion, had not been mitigated?

14 A After having been in office only six months, I
15 would have to say if it was not mitigated, it would have
16 been a concern; yes.

17 Q And if, in your opinion, it hadn't been
18 mitigated, would you still have voted to approve it or
19 conditionally approve it, rather?

20 A Yes.

21 Q Do you remember the Wachsmuth Estates
22 subdivision?

23 A No, sir.

24 (Deposition Exhibit No. 65 marked for
25 identification.)

1 Q (By Mr. Perry) I show you the conditional
2 approval for that subdivision. The Wachsmuth
3 subdivision, do you recall having voted, in December of
4 2005, to conditionally approve the Wachsmuth
5 subdivision?

6 A Did you ask if I recalled doing that?

7 Q Yes, sir.

8 A I do not.

9 Q Do you recognize on the first page of Exhibit
10 65 your signature?

11 A I do.

12 Q Okay. Would it be fair to say that you voted
13 to conditionally approve this subdivision?

14 A Yes.

15 Q And do you recall, in a general sense, how big
16 that subdivision was?

17 A No.

18 Q Okay. And does referring to Exhibit 58 at all
19 refresh your recollection with respect to how big the
20 Wachsmuth subdivision was?

21 A No, sir.

22 Q Okay. And just in a general sense, do you
23 recall whether it was a real big subdivision, a little
24 one, in the middle?

25 A I do not.

1 Q Okay; fair enough.

2 A I still don't know where it's at, but I guess
3 it's irrelevant.

4 Q During the time that you were a commissioner,
5 do you know approximately how many lots were approved in
6 the vicinity? And by that I mean within ten miles of
7 the north shore of Flathead Lake.

8 A No, sir.

9 Q And I just want to be clear on your testimony
10 here today. It's not your opinion, is it, that no
11 residential construction should be permitted in Flathead
12 County in areas of high groundwater.

13 A That's true. But that's depending on the
14 conditions; yes.

15 Q And I appreciate that. Maybe I can just
16 clarify a little bit. If, in your opinion, when you're
17 looking at a subdivision as a commissioner, the only
18 issue that really catches your eye in a public health
19 and safety context is high groundwater, would that be
20 enough, in and of itself, for you to vote to deny an
21 application?

22 A No.

23 Q And that would be because you know that there
24 are construction techniques enabling people to safely
25 build, despite high groundwater.

1 A Yes.

2 Q And while you were a commissioner, as you and I
3 touched upon just briefly a little bit ago, it's true
4 that with respect to other subdivisions that had high
5 groundwater on some or all of the land, the county had
6 regularly conditioned approval of the application on an
7 agreement by the applicant to have no basements or to
8 build on a slab; right?

9 A Each subdivision being unique, that was one of
10 the tools that we used; yes.

11 Q Okay. And, again, in your opinion, that was
12 calculated to make the structures safe; right?

13 A Yes, sir.

14 Q Aside from this application -- and I know I'm
15 going to test your memory a little bit again -- but
16 aside from this application, to your memory, while a
17 commissioner for Flathead County, did you ever vote to
18 deny a subdivision application predicated upon its
19 potential impacts on wildlife or wildlife habitat in the
20 Blasdel or Flathead WPAs?

21 A I don't recall. It seems like that I did. It
22 seems like that I did, but I don't recall exactly.

23 Q Fair enough. Fair enough. I know it was some
24 time ago. Thought I'd test your memory.

25 A Well, I failed.

1 Q You'd agree with me that it would be unfair to
2 an applicant to deny his or her subdivision application
3 predicated upon potential impacts on wildlife or
4 wildlife habitat and to allow another application if
5 that other application posed the same potential impacts
6 on wildlife or wildlife habitat?

7 A As one of the factors. It would not be the
8 only factor. So what you're saying is that I would not
9 deny a subdivision based on just that issue, the
10 wildlife.

11 Q Well, no. And let me rephrase the question. I
12 appreciate your confusion.

13 If that were the only issue, everything else
14 looked okay in terms of a public health and safety
15 aspect -- context, but the only issue that really was of
16 concern to you was potential impacts on wildlife and
17 wildlife habitat, would you agree with me that it would
18 be unfair to deny one subdivision application filed by
19 one applicant, predicated upon potential impacts on
20 wildlife and wildlife habitat, but to allow another
21 subdivision application that posed the same potential
22 impacts?

23 A Depending on the volume of residents on that
24 particular subdivision would be the determining factor.
25 The fact that it's just wildlife and if they're both

1 on wildlife or wildlife habitat at the Flathead WPA
2 posed by the Eagle Bend subdivision ever been quantified
3 or studied by the county?

4 A Not to my knowledge.

5 Q Now, with respect to the North Shore Ranch
6 project, I just want to be clear, in terms of your
7 opinion as codified in the denial of the application.
8 Was it your opinion that due to the PP&L easement, the
9 seismic issue that you and I have discussed, and the
10 potential impacts on wildlife and wildlife habitat in
11 the WPA, that the North Shore Ranch property cannot be
12 utilized in any way for residential construction?

13 A You better rephrase that, because I got the
14 last half and forgot the first half.

15 Q My question basically is, you and I have gone
16 over the final decision from the Flathead commissioners
17 denying the application. And given the reasons for the
18 denial --

19 A Yes.

20 Q -- the seismic issue, the wildlife and wildlife
21 habitat issue and PP&L issues --

22 A Yes.

23 Q -- was it your opinion then, when you voted to
24 deny the application, that this land is just completely
25 unsuitable for any residential construction?

1 identical, no, I would not be able to deny based on just
2 that one factor.

3 Q And, again, we just come back to equality of
4 treatment.

5 A Right.

6 Q If the two applicants are virtually identically
7 situated, and the habitat issue -- wildlife and
8 habitat's the only issue --

9 A Right.

10 Q -- you can't deny one and allow the other;
11 right?

12 A I agree.

13 MR. MCCORMICK: Objection; misstates the
14 law.

15 Q (By Mr. Perry) I'm sorry?

16 A I would say yes.

17 Q Okay.

18 To your knowledge, has the Eagle Bend
19 subdivision ever been flooded in, say, the last forty
20 years?

21 A Not to my recollection.

22 Q To your knowledge, has the Eagle Bend
23 subdivision ever been harmed by liquefaction?

24 A Not to my knowledge.

25 Q To your knowledge, have any potential impacts

1 A No.

2 Q Okay. So it was your opinion at that time that
3 although this subdivision application you felt you could
4 not vote to approve, there could be some design for this
5 land that could be approved. Would that be true?

6 A Yes.

7 MR. MCCORMICK: Are you seeking an
8 objection?

9 MR. PERRY: No, I was just -- I was glad to
10 see he corroborated some statements you recently made.

11 MR. MCCORMICK: I speak nothing but the
12 truth.

13 MR. PERRY: I know that, Counsel. I know
14 that.

15 Q (By Mr. Perry) In rendering a final decision
16 on a preliminary plat, while you were a commissioner,
17 it's true, isn't it, that, to some extent, you relied
18 upon the final staff report from the Flathead County
19 Planning and Zoning people.

20 A Yes, sir.

21 Q Okay. And would you agree with me that the
22 planning staff in place at the time that the North Shore
23 Ranch project was going through the county planning and
24 zoning office were competent at what they did?

25 A Yes.

1 Q And during the time you were a commissioner,
2 did you have any question regarding the competency of
3 B.J. Grieve as a planner?

4 A Never.

5 Q Very competent planner.

6 A Very.

7 Q And, obviously, before you voted to deny this
8 project, it had already been before the planning board;
9 correct?

10 A Correct.

11 Q Okay. And I'd suggest to you that the planning
12 board voted five-to-one to recommend approval of this
13 project. Do you recall that?

14 A Yes, sir.

15 Q Okay. And was it common for you to disagree
16 with the planning board, in terms of its recommendations
17 on whether or not a given subdivision application should
18 be approved or conditionally approved or denied?

19 A I would hesitate to use the word "common" but
20 not uncommon either.

21 Q Okay. Can you give me a percentage of the time
22 when you would disagree with the planning board? I
23 mean, just an estimate.

24 A Over a period of six years, maybe ten percent.

25 Q Ten percent of the time. So 90 percent of the

1 time you agreed with the planning board.

2 A Yes.

3 Q And would those same figures hold true with any
4 planning staff recommendations that might have been made
5 in the final staff report? Did you generally agree with
6 them as well?

7 A Yes.

8 Q And would it be about ten percent of the time,
9 also, that you didn't agree with planning staff's final
10 report?

11 A I'd say that's -- yes.

12 Q And you'd agree with me that at the time the
13 North Shore Ranch application was reviewed by the
14 Flathead County Planning Board, the members of that
15 planning board were competent to review that
16 application?

17 A Yes.

18 (Deposition Exhibit No. 66 marked for
19 identification.)

20 Q (By Mr. Perry) Sir, the document marked as
21 Exhibit 66 to your deposition, if you could just take a
22 quick look at that. I just really wanted to inquire
23 about this Plan Web Account that I see referenced at the
24 top of the page. And without taking the time to read
25 the whole document, I suggest to you that it's a letter

1 from the Flathead Lakers, dated July 18th, 2006, from
2 Robin Steinkraus. And it was sent to the Plan Web
3 Account. And I see at the top of the page, page one of
4 this document, there's an indication made that it was
5 Kirsten Holland, a former planning employee here for the
6 county, who printed the document. Do you see that
7 indication?

8 MR. MCCORMICK: Objection; foundation.

9 THE WITNESS: Yeah, I -- it was to her, so
10 I assume that she printed it.

11 Q (By Mr. Perry) My question is, what is the
12 Plan Web Account?

13 A I would -- I have -- I would have to ask you
14 that. I have no idea.

15 Q Have you ever heard of that before?

16 A I don't recall seeing that before. I kind of
17 vaguely recognize it, but I don't have any idea what
18 it's about.

19 Q And I see in the text -- or the body, rather,
20 on the first page of the letter from Robin Steinkraus to
21 the Plan Web Account, it says via e-mail,
22 planningweb@co.flathead.mt.us. Do you see that?

23 A Planningweb; yes.

24 Q I mean, sitting here today, have you never
25 heard of that --

1 A I have never heard of that. All the
2 correspondence between my planning staff and myself was
3 always their first initial and last name at
4 co.flathead.mt.us.

5 Q Right; that's what I thought as well. And in
6 reviewing documents, I found this Plan Web Account. And
7 I was just wondering if you knew what it was or what was
8 kept there.

9 A No, sir.

10 Q Okay.

11 A I do not. In fact -- no. It reminds me of
12 what's going on now.

13 Q Yeah, it does, doesn't it? Do you know if Jeff
14 Harris has any involvement with that account in any way?

15 A I do not know that.

16 Q Okay. And let me ask you kind of an
17 organizational question with respect to Jeff Harris.

18 A Yes.

19 Q Jeff Harris, what was his position while you
20 were a commissioner?

21 A He was the planning director.

22 Q And did you, as a commissioner, exercise or
23 have the authority to exercise any control over him as a
24 county employee?

25 A Yes.

1 Q And while you were a commissioner, with respect
2 to Jeff Harris, did you ever try to direct or control
3 what he did for the county?

4 A There were many times that I questioned his
5 procedures. But as to -- as far as controlling him and
6 how he ran his office, no, I did not. But I would
7 question him frequently on his -- either his methods or
8 his information presented.

9 Q And in this case, having gone through all the
10 documents and thousands of pages your attorney was kind
11 enough to provide to me, I notice that the applicant was
12 directed by Jeff Harris during the process, to take what
13 he called a mid-course correction. Have you heard that
14 term before?

15 A I've heard that term before.

16 Q Okay. And what's your understanding of that
17 term?

18 A In -- specifically related to this case?

19 Q Or in the subdivision process in general.

20 A I recall it happening very infrequently. I do
21 not recall a mid-course correction. I don't recall
22 specifics of a mid-course correction with the North
23 Shore Ranch subdivision. I recall hearing something
24 about that but was not privy to what was going on behind
25 the planning office doors in that -- in their

1 that wasn't codified anywhere in the subdivision
2 regulations, was it?

3 A No, sir.

4 Q Was this a creation of Jeff Harris? And does
5 that pertain to one of the issues -- one of the
6 procedural issues that you questioned him on?

7 A I do not have recollection of correcting him on
8 a mid-course correction in this particular subdivision.

9 Q Did you ever criticize him in any way for
10 this --

11 A Mid-course correction?

12 Q Yes, sir. Just the idea that he was doing this
13 without -- essentially without any authority, in a
14 regulatory sense?

15 MR. MCCORMICK: Objection; assumes facts
16 not established.

17 THE WITNESS: My only recollection is
18 correcting Jeff Harris in the way he handled some of the
19 developers, and -- but I cannot give you any specifics.

20 Q (By Mr. Perry) Okay. And what did you
21 question him on, in terms of how he related to some of
22 the developers? What were the issues with which you
23 were concerned?

24 A I felt that, at times, it was -- it became
25 personal and the facts of the case were not justifying

1 relationship with our director.

2 Q Okay.

3 A You know, I'm trying to think of other cases.
4 But, you know, sometimes they'll -- yeah, they'll talk
5 about changing density because it just isn't working
6 because there's too many areas that are in the
7 floodplain and not enough building sites. So that's a
8 mid-course correction. But I do not recall the
9 specifics of this subdivision and Jeff Harris and any
10 kind of mid-course correction.

11 Q And I suggest to you my understanding is that
12 after the -- there was a planning board hearing
13 regarding the initial application that had 310 lots,
14 approximately.

15 A Okay.

16 Q And after the planning board initially decided
17 to recommend denial to the county, to the commissioners,
18 yourself and Mr. Brenneman and Mr. Lauman, the applicant
19 was informed -- this is my understanding, and correct me
20 if I'm wrong. Just hold off. Correct me if I'm wrong.

21 The applicant was informed that there was
22 available this mid-course correction option. And my
23 question is, this mid-course correction
24 option -- despite my perhaps inaccurate description of
25 the procedural history -- this mid-course correction,

1 his reactions. And I didn't have justification for it,
2 but I sensed that it was personal -- his -- he was
3 imposing his personal ideas into the project more than
4 what the facts were.

5 Q Okay; fair enough. So his personal kind of
6 bias entered into the planning process?

7 A At times.

8 Q At times.

9 A Frequently.

10 MR. PERRY: If we take five minutes, I
11 think we're darn close.

12 MR. MCCORMICK: Sure.

13 (Deposition in recess from 2:02 p.m. to
14 2:08 p.m.)

15 Q (By Mr. Perry) Let me ask you a question. Was
16 there anybody at the county, on the commissioner level,
17 who, in any way, oversaw Jeff Harris's conduct on a
18 weekly or monthly basis?

19 MR. MCCORMICK: I'm going to object for
20 relevance purposes.

21 THE WITNESS: No, other than staff.

22 Q (By Mr. Perry) Other than staff. And can you
23 tell me what, if any, relationship did you observe
24 between Commissioner Brenneman and Jeff Harris?

25 MR. MCCORMICK: Same objection.

1 THE WITNESS: I did not observe any
2 relationship.

3 Q (By Mr. Perry) My client reminded me at the
4 break that one of the documents we got from FWP
5 referenced a secure website at the county. Are you
6 aware of a secure website here at the county?

7 A No, sir, I am not.

8 Q Okay. Having been a commissioner for the
9 period of time that you were, would it be fair to say
10 that the operation and maintenance of the county
11 websites or website, as the case may be, was something
12 that you may not have had direct control over but you
13 had the authority to have control over?

14 A Yes.

15 Q And would it be fair to say that if somebody at
16 the county were going to create a secret or secure
17 website, that's information that should have been
18 provided to the commissioners?

19 A Yes.

20 Q And this website that I've referenced, and I'm
21 sure I'll discuss it with Mr. Harris (sic) tomorrow, I
22 believe it's on a server here at the county, but I'm
23 uncertain of that. Do you know if the county maintains
24 any website or secure server off the premises?

25 A No. I have never heard of one; no.

1 sheriff?

2 A No.

3 Q Was that an agency that was overseen by
4 somebody else?

5 A That is an elected office similar to the
6 commission office. So they were autonomous. The only
7 thing we had to do with the sheriff's office was their
8 budget.

9 Q Their budget.

10 A Yes, sir.

11 Q A fair amount of control when you have the
12 purse strings in your hand, though, you would agree with
13 me.

14 A Yes, sir.

15 Q Did the sheriff ever come to you or any deputy
16 sheriff, or anybody from the sheriff's department at any
17 point in time while you were the commissioner, and tell
18 you, in words or substance, We have a trespass problem
19 with respect to the Flathead WPA; dogs, cats or horses,
20 whatever? Did they ever come to you and have that
21 conversation?

22 A Sir, I recall a conversation, but I do not
23 believe it was with the sheriff's office.

24 Q Okay.

25 A I don't recall when or where, but I had heard

1 Q Okay.

2 Since the approval of the Eagle Bend
3 subdivision, have you ever come to learn whether or not
4 pets from that subdivision have represented an increased
5 trespass or harm to the Flathead WPA?

6 A No. We're talking about here. And this is
7 way -- this only goes up to about here (indicating).

8 Q And doesn't it go down?

9 A Does it go all the way over to here?

10 Q Well, the Flathead waterfowl production area
11 also lies to the south of Harbor Village there. You see
12 that isthmus or peninsula (indicating)?

13 A This right here (indicating)?

14 Q Just up to the right of it, right there.

15 That's part of the waterfowl production area.

16 A I did not realize that until this moment.

17 Q That is part of the waterfowl production area.
18 My question was, since the Wanagan* subdivision was
19 approved, have you ever come to learn that pets from
20 Eagle Bend, from that subdivision, have represented any
21 increased harm or trespass on the Flathead WPA?

22 A No, sir.

23 Q Okay.

24 As a commissioner from 2002 to 2008, did you
25 have -- did you have any authority over the county

1 of infractions and concerns. But I do not believe it
2 was from the sheriff's office.

3 Q And let me ask you another way. Insofar as the
4 commissioners controlled the budget for the sheriff's
5 department -- sheriff's office, do you recall whether or
6 not there was ever any request made to the commissioners
7 for increased funding in order to combat trespass on
8 either the Blasdel WPA or the Flathead WPA?

9 A No, sir.

10 Q That did not happen?

11 A Not that I recall.

12 MR. PERRY: If I could have a minute, I
13 think I'm just about done.

14 (Deposition in recess from 2:15 p.m. to
15 2:15 p.m.)

16 MR. PERRY: I think I have no further
17 questions. I can't thank you enough for your time
18 today, Mr. Hall.

19 (Deposition concluded at 2:15 p.m.; witness
20 excused, signature reserved.)

REPORTER'S CERTIFICATE.

1
2 I, BAMBI A. GOODMAN, CSR, RPR, CRR and Notary
3 Public in and for the State of Montana, residing in
4 Whitefish, Montana, do hereby certify:
5 That I did report the foregoing deposition
6 after having duly sworn GARY HALL to the truth; that the
7 deposition was taken at the time and place stated on the
8 caption hereto; that the testimony of the witness was
9 taken in shorthand by me and subsequently reduced to
10 writing under my direction; that the foregoing is a true
11 and correct transcript of the testimony given by the
12 witness;

13 I further certify that I am not counsel,
14 attorney nor relative or employee of any party, nor
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.

19
20
21
22
23 BAMBI A. GOODMAN, CSR, RPR, CRR and
24 Notary Public, State of Montana
25 Residing at Whitefish, Montana
My Commission expires 3/21/10

CERTIFICATE OF WITNESS

1
2 PAGE LINE CORRECTION

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I, GARY HALL, 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:

1 REPORTER'S CERTIFICATE.

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11 and correct transcript of the testimony given by the
12 witness;

13 I further certify that I am not counsel,
14 attorney nor relative or employee of any party, nor
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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21 

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



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		Y	<p>year (19) 5:17;6:2,22;8:23; 9:4,20,25;10:8,8,10; 11:16,17;47:6,6; 91:6;93:23;101:4,10, 17</p> <p>years (26) 5:12;7:4,20,22,23; 9:9,13,16,18;10:1,5, 7,8,19,25;14:12; 22:13;23:3;52:20; 62:23;65:21;90:24; 91:1;95:22;118:20; 121:24</p> <p>yesterday (4) 39:18;63:16; 73:24;82:23</p>	
		Z	<p>zone (2) 72:22;92:6</p> <p>zoning (7) 10:21;40:5;64:1; 104:14;107:22; 120:19,24</p>	
<p style="text-align: center;">V</p> <p>vaguely (3) 40:22;112:23; 123:17</p> <p>Valley (7) 27:7,10;29:13; 40:21;53:10;71:23; 78:12</p> <p>Vans (2) 5:4,5</p> <p>V-a-n-s (1) 5:6</p>				

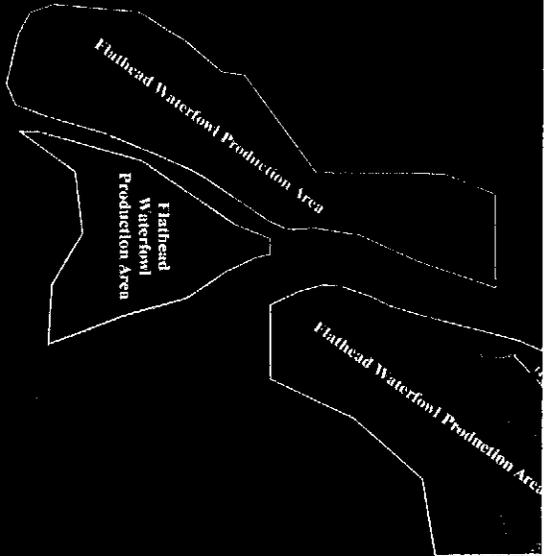




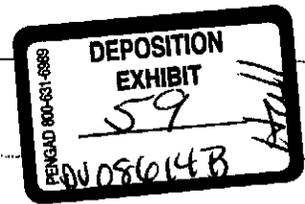
Water
Height
Elev. = 1000'

Legend:
 1000'
 Distance to Flathead Lake
 Distance to Waterfowl Production Area
 Elevation Spot on Site (unless noted)

Note:
 All Elevations are in NAD 83 Datum



609-137-008 CVD
 DEPOSITION
 EXHIBIT
 10/1/8
 HLL



Flathead County
Board of Commissioners

(406) 758-5503

Howard W. Gipe
Gary D. Hall
Robert W. Watne



April 5, 2004

Mr. Forrest Sanderson, Director
Flathead County Planning & Zoning Office
1035 1st Avenue West
Kalispell, Montana 59901

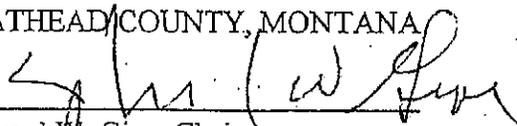
RE: Preliminary Plat of FARMLAND ACRES

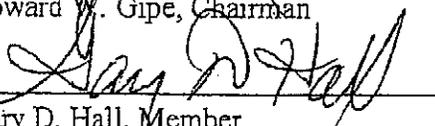
Dear Mr. Sanderson:

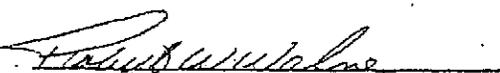
On this date, the Flathead County Board of Commissioners reviewed the preliminary plat of Farmland Acres. The Board of Commissioners has granted conditional approval to this request. A copy of the conditions, Exhibit A, is attached for your reference. This preliminary plat approval is in effect for three years and will expire on April 5, 2007.

Please be advised the applicant, if he so chooses, can appeal any of the conditions placed on this plat based on the Flathead County Subdivision Regulations, Section 7.6, as set forth in the attached Exhibit A-1.

Sincerely,
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Howard W. Gipe, Chairman


Gary D. Hall, Member


Robert W. Watne, Member

Attachment: Exhibit A, Exhibit A-1

FCBC:ecm

c: Kenneth Kramer
2900 Wilcrest, Suite 245
Houston, TX 77042

Montana Mapping Associates
115 Valley View Dr.
Kalispell, MT 59901

County Weed & Parks Dept.

County Road Dept.

EXHIBIT A

Conditions, upon which preliminary plat approval has been granted to Farmland Acres this date of April 5, 2004, are as follows:

1. All areas disturbed during development of the subdivision shall be revegetated in accordance with a plan approved by the County Weed & Parks Department.
2. The applicant shall receive physical addresses and name all roads in accordance with Flathead County Resolution #1626. The addresses and road names shall appear on the final plat.
3. The developer shall contact the Child Transportation Committee and, if required, provide and improve a location for the safe loading and unloading of students.
4. Any road right-of-ways shall be dedicated on the final plat as being open to public use but privately owned and maintained.
5. The internal subdivision roads shall have a 60-foot right-of-way, a 20-foot hard drive surface and 55-foot radius cul-de-sacs. 750 feet of the internal road shall be paved.
6. Electrical and telephone utilities shall be extended underground to abut and be available to each lot in accordance with Flathead County Subdivision Regulations (see Sections 3.17 and 3.18). Utility plans shall be approved by the applicable utility companies. \
7. The developer shall contact the Somers fire chief and fire suppression shall be placed per the chief's requirements. The developer shall receive a letter from the fire chief stating his requirements have been met.
8. If required by the local postmaster, the developer shall provide a common mailbox facility in accordance with Flathead County Subdivision Regulations (see Section 3.22).
9. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. All house or business addresses will be visible from the road, either at the driveway entrance or on the house.
 - b. All utilities shall be placed underground.
 - c. All lot owners are responsible for the eradication and control of noxious weeds upon their property.
 - d. This subdivision is located in an agricultural area and that such potential nuisance 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.

e. The property owners of this subdivision shall waive the right to protest any Rural Special Improvement District (RSID) formed for the paving or maintenance of Manning and/or North Somers Road.

f. This area is located within ¼ mile of a Waterfowl Production Area, as such, homeowners are hereby notified that hunting is open in this area and that they will need to keep pets from roaming. Homeowners should obtain information on the rules associated with the Blasdel Waterfowl Production Area and other relevant information about the impacts of pets on birds.

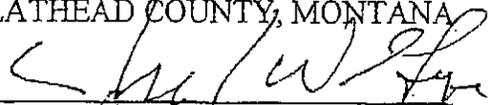
10. All required improvements shall be completed in place or an improvement guarantee in accordance with Chapter 8 of the Flathead County Subdivision Regulations shall be provided by the subdivider, prior to final approval by the Flathead County Commissioners.

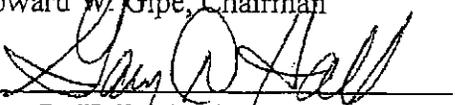
11. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions.

12. A 300-foot no-build zone shall be placed on Lots 7 & 8 of the final plat to ensure living structures are not within bullet range of the waterfowl production area.

13. Preliminary plat approval is valid for three (3) years.

BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Howard W. Gipe, Chairman


Gary D. Hall, Member

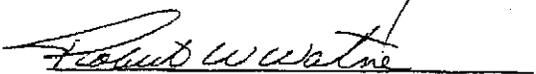

Robert W. Watne, Member

EXHIBIT A-1

7.6 APPEALS:

Any final action, decision, or order of the governing body or a regulation adopted pursuant to these regulations that is arbitrary or capricious is subject to appeal to District Court.
(See Section 76-3 M.C.A.)

MONDAY, APRIL 5, 2004
(CONTINUED)

Morrison reviewed the preliminary plat for Macnaw Estates Subdivision filed by William, Robert and Grace Lincoln. Macnaw Estates creates a fifty-five (55) lot residential subdivision on approximately 24.56 acres. The property is located in the Somers area off Somers Road just south of the intersection of Highway 82 and Somers Road. All lots in the subdivision are to be served by Somers Municipal Sewer and Water. Staff recommends denial of the Preliminary Plat.

Discussion continued regarding development of parkland and placing bike path in development.

Commissioner Watne made a motion to adopt Staff Report #FPP-04-02 as Findings of Fact. Commissioner Hall seconded the motion. Aye - Watne, Hall and Gipe. Motion carried unanimously.

Commissioner Hall made a motion to the Preliminary Plat for Macnaw Estates Subdivision subject to 14 conditions. Commissioner Watne seconded the motion. Aye - Watne and Hall. Chairman Gipe abstained from the vote and the motion carried by decision.

PRELIMINARY PLAT: FARMLAND ACRES

Present at the April 5, 2004 10:30 A.M. Meeting were Chairman Gipe, Commissioners Hall and Watne, Planner John Morrison, Dave Hains, Steve Cummings, Amy Waller, Wally Massie, Rick Breckenridge and Peggy Mathison of Montana Mapping Associates, and Clerk Eisenzimer.

Morrison reviewed the preliminary plat for Farmland Acres filed by Kenneth Kramer Trust, a major subdivision that will create 15 residential lots on approximately 77.81 acres. The property is located in the Somers area on the south east side of the intersection of North Somers Road and Manning Road. Staff recommends approval of the Preliminary Plat.

Commissioner Hall made a motion to adopt Staff Report #FPP-04-01 as Findings of Fact. Commissioner Watne seconded the motion. Aye - Watne, Hall and Gipe. Motion carried unanimously.

Commissioner Watne made a motion to approve the Preliminary Plat for Farmland Acres subject to 13 conditions. Commissioner Hall seconded the motion. Aye - Watne, Hall and Gipe. Motion carried unanimously.

PRELIMINARY PLAT: PHEASANT HAVEN

Present at the April 5, 2004 10:45 A.M. Meeting were Chairman Gipe, Commissioners Hall and Watne, Amy Waller, Tom Sands of Sands Surveying, and Clerk Eisenzimer.

Morrison reviewed the preliminary plat for Pheasant Haven filed by Dan Brosten-Brosten Farms. Pheasant Haven Subdivision creates a twenty four lot residential subdivision on 122,203 acres. The property is located in the Somers area on Manning Road, just southeast of the intersection of Farm and Manning Roads. Staff recommends approval of the Preliminary Plat.

Commissioner Watne made a motion to adopt Staff Report #FPP-04-03 as Findings of Fact. Commissioner Hall seconded the motion. Aye - Watne, Hall and Gipe. Motion carried unanimously.

Condition 6e is amended to read "The property owners of this subdivision shall waive the right to protest any RSID formed for the paving of Manning and Farm Roads and Condition 9 is amended to read "The developer shall submit a letter from Somers Fire Chief stating that all reasonable conditions for fire suppression have been met.

Commissioner Hall made a motion to approve the Preliminary Plat for Pheasant Haven as amended subject to 12 conditions. Commissioner Watne seconded the motion. Aye - Watne, Hall and Gipe. Motion carried unanimously.

CONSIDERATION OF LAKESHORE PERMIT: HOLLINGER

Present at the April 5, 2004 11:00 A.M. Meeting were Chairman Gipe, Commissioners Hall and Watne, Planner Traci Tull, and Clerk Eisenzimer.

Tull reviewed Lake and Lakeshore Construction Permit filed by Scott Hollinger on Echo Lake to install electrical service line within a buried conduit along lakebed to island. Construct landing ramp on shore for a construction barge. Ramp will be used for next 10 years. Build an I-shaped 8-foot x 40-foot floating dock. General discussion was held. Board recommends approval of permit as presented.

Commissioner Hall made a motion to approve Lakeshore Permit #FLP-04-24 with 32 conditions and authorize Chairman to sign. Commissioner Watne seconded the motion. Aye- Watne, Hall and Gipe. Motion carried unanimously.

CONSIDERATION OF LAKESHORE PERMIT: MCCARTHY

Present at the April 5, 2004 11:00 A.M. Meeting were Chairman Gipe, Commissioners Hall and Watne, Planner Traci Tull, and Clerk Eisenzimer.

Tull reviewed Lake and Lakeshore Construction Permit filed by Don McCarthy on Flathead Lake to replace two existing docks with an F-shaped piling dock. New dock will measure 60 feet in length with two breakwater wings, each measuring 25 feet in length. Relocate two shore stations and one boat shelter currently located on existing dock. Construct new boat shelter over second shore station. General discussion was held. Board recommends approval of permit as presented.

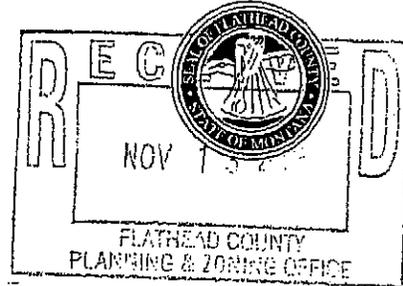
Commissioner Hall made a motion to approve Lakeshore Permit #FLP-04-26 with 25 conditions and authorize Chairman to sign. Commissioner Watne seconded the motion. Aye- Watne, Hall and Gipe. Motion carried unanimously.

Flathead County
Board of Commissioners

(406) 758-5503



Joseph D. Brenneman
Gary D. Hall
Robert W. Watne



November 8, 2006

Mr. Jeff Harris, Director
Flathead County Planning & Zoning Office
1035 1st Avenue West
Kalispell, Montana 59901

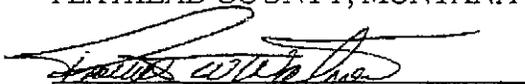
RE: Preliminary Plat for FLATHEAD RIVER LANDING SUBDIVISION

Dear Mr. Harris:

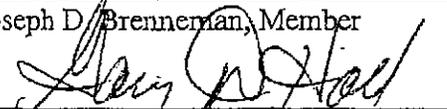
On this date, the Flathead County Board of Commissioners reviewed the preliminary plat of Flathead River Landing Subdivision. The Board of Commissioners has granted conditional approval to this request. A copy of the conditions, Exhibit A, is attached for your reference. This preliminary plat approval is in effect for three years and will expire on November 8, 2009.

Please be advised the applicant, if he so chooses, can appeal an of the conditions placed on this plat based on the Flathead County Subdivision Regulations, Section 7.6, as set forth in the attached Exhibit A-1.

Sincerely,
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Robert W. Watne, Chairman

Opposed

Joseph D. Brenneman, Member

Gary D. Hall, Member

Attachment: Exhibit A, Exhibit A-1

c: Dan Evans
295 Middle Road
Kalispell, MT 59901

Sands Surveying
2 Village Loop
Kalispell, MT 59901

County Weed & Parks Dept.

County Road Dept.

EXHIBIT A

Conditions, upon which preliminary plat approval has been granted to Flathead River Landing Subdivision this date of November 8, 2006, are as follows:

1. The subdivider shall receive physical addresses and road name in accordance with Flathead County Resolution #1626. The addresses and road names shall appear on the final plat. [Section 3.9(I)(7), FCSR]
2. The subdivider will obtain and show proof of a completed approach permit from the Flathead County Road Department for access onto Oldenburg Road, indicating the approach has been built and received final inspection. [Section 3.8(A), FCSR]
3. The subdivider will dedicate a 15-foot bicycle/pedestrian easement the portion of all lots that abut Oldenburg Road. [Section 3.18(A), FCSR]
4. New electrical and telephone utilities shall be extended underground to abut and be available to each lot, in accordance with a plan approved by the applicable utility providers. [Sections 3.17 & 3.18, FCSR]
5. The lots within the subdivision shall be reviewed and approved for water, sewer systems and storm water by the Flathead City-County Health Department at the time of development. [3.15(B), FCSR].
6. The subdivider shall comply with reasonable fire suppression and access requirements of the Somers Fire Department. A letter from the fire chief stating requirements have been met shall be submitted with the application for Final Plat. [Section 3.20, FCSR]
7. All areas disturbed during development of the subdivision shall be re-vegetated in accordance with a plan approved by the Flathead County Weed Department. [7-22-21-16-MEA and Section 3.12(J), FCSR]
8. The applicant will obtain a letter from the local Postmaster, indicating the applicant has met the Postal Service's requirements for mail delivery in accordance with the Flathead County Subdivision Regulations. [Section 3.22, FCSR]
9. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. All addresses will be visible from the road, and at the driveway entrance or on the house.
 - b. All utilities will be extended underground.
 - c. Lot owners are bound by the soil disturbance and weed management plan to which the developer and the Flathead County Weed Department agreed.

d. Elevation certificates for all residential structures shall be submitted to the Flathead County Floodplain Administrator as stipulated in Floodplain Permit FDP-04-17.

e. To comply with Section 5.09.020 FCZR, no lot shall be further subdivided. Lot owners are alerted to the presence of large and potentially dangerous wildlife in the area and are reminded feeding big game such as deer and bear is illegal in Montana. Lot owners are strongly encouraged to contact the Montana Department of Fish, Wildlife and Parks to obtain information on methods for safely living near wildlife and minimizing habitat impact. The following are required:

- i. Dogs must be kept under owner control at all times, either leashed or confined.
- ii. Bear-proof containers are required for refuse and feed for pets or livestock.
- iii. Compost piles are prohibited unless secured by electrical fencing or otherwise enclosed.
- iv. Pets must be fed indoors or food dishes must be brought in at night.
- v. Bird feeders must be placed out of reach of deer, bear, and other large game.

f. Waiver of Protest
Participation in Special Improvement District

_____ (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.

g. A native vegetative buffer should be maintained 20 horizontal feet from the bank full of Flathead River.

Construction

wildlife

pets

10. All buildings shall be set back 50 feet from the 100-year floodplain boundary. The setback boundary shall be staked in the field prior to the application for final plat. [Applicant Comment]

11. No basements shall be allowed. The lowest floor and gas forced air system with ducts below the floor shall be elevated at least two feet above the BFE of 2893.0' msl. [Applicant/Agency Comment]

12. There shall be no removal, destruction or cutting of trees, plants, or spraying of biocides, or herbicides, except to control noxious weeds. A native vegetative buffer should be maintained twenty (20) horizontal feet from the bank full of Flathead River. [Floodplain Administrator Comment]

13. Application of fertilizers, herbicides, and biocides shall be limited to the minimum required for maintenance on all landscaped areas and not permitted within the vegetated buffer zone. [Floodplain Administrator Comment]

14. The portion of the property that abuts Flathead River is a critical bank stabilization area. Removal of vegetation from this area should not be allowed. Any alteration to this area will need to go through Flathead County Floodplain Permit Process, Flathead County Conservation 310 Permit Process and the Army Corp. of Engineers 404 Permit Process. [Floodplain Administrator Comment]

15. All required improvements shall be completed in place or a Subdivision Improvement Agreement, in accordance with Chapter 8 of the Flathead County Subdivision Regulations, shall be provided by the subdivider prior to final approval by the County Commissioners. [Chapter 8, FCSR]

16. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions. [Section 2.7(E), FCSR]

17. Preliminary plat approval is valid for three (3) years. [Section 2.5(D)(6), FCSR]

BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Robert W. Watne, Chairman

Joseph D. Brenneman, Member

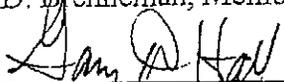

Gary D. Hall, Member

EXHIBIT A-1

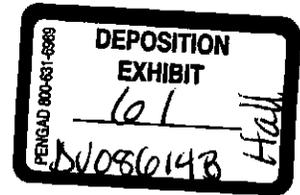
7.6 APPEALS:

Any final action, decision, or order of the governing body or a regulation adopted pursuant to these regulations that is arbitrary or capricious is subject to appeal to District Court. (See Section 76-3 M.C.A.)

Flathead County
Board of Commissioners

(406) 758-5503

Howard W. Gipe
Gary D. Hall
Robert W. Watne



April 5, 2004

Mr. Forrest Sanderson, Director
Flathead County Planning & Zoning Office
1035 1st Avenue West
Kalispell, Montana 59901

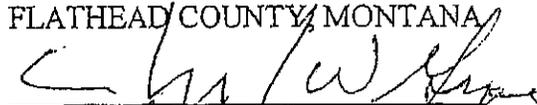
RE: Preliminary Plat of PHEASANT HAVEN

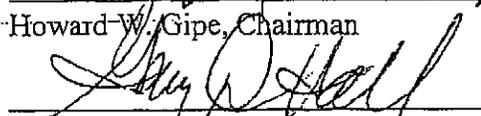
Dear Mr. Sanderson:

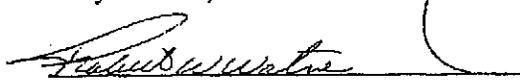
On this date, the Flathead County Board of Commissioners reviewed the preliminary plat of Pheasant Haven. The Board of Commissioners has granted conditional approval to this request. A copy of the conditions, Exhibit A, is attached for your reference. This preliminary plat approval is in effect for three years and will expire on April 5, 2007.

Please be advised the applicant, if he so chooses, can appeal any of the conditions placed on this plat based on the Flathead County Subdivision Regulations, Section 7.6, as set forth in the attached Exhibit A-1.

Sincerely,
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Howard W. Gipe, Chairman


Gary D. Hall, Member


Robert W. Watne, Member

Attachment: Exhibit A, Exhibit A-1

FCBC:ecm

c: Brosten Farms, LLC
2879 Lower Valley Road
Kalispell, MT 59901

Sands Surveying
2 Village Loop
Kalispell, MT 59901

County Weed & Parks Dept.

County Road Dept.

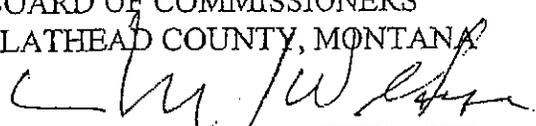
EXHIBIT A

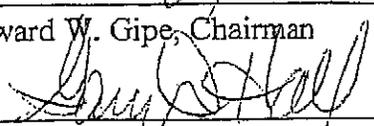
Conditions, upon which preliminary plat approval has been granted to Pheasant Haven this date of April 5, 2004, are as follows:

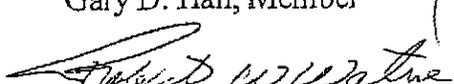
1. All areas disturbed during development of the subdivision shall be revegetated in accordance with a plan approved by the County Weed & Parks Department.
2. The internal subdivision roads shall have a 60-foot right-of-way, 20-foot drive surface and 55-foot radius cul-de-sacs. The internal subdivision roads and cul-de-sacs shall be paved.
3. The developer shall contact the Child Transportation Committee and, if required, provide and improve a location for the safe loading and unloading of students.
4. Electrical and telephone utilities shall be extended underground to abut and be available to each lot in accordance with Flathead County Subdivision Regulations (see Sections 3.17 and 3.18). Utility plans shall be approved by the applicable utility companies.
5. If required by the local postmaster, the developer shall provide a common mailbox facility in accordance with Flathead County Subdivision Regulations (see Section 3.22).
6. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. All house or business addresses will be visible from the road, either at the driveway entrance or on the house.
 - b. All utilities shall be placed underground.
 - c. All areas disturbed during development of structures and driveways shall be revegetated in accordance with a plan approved by the County Weed & Parks Department.
 - d. This subdivision is located in an agricultural area and that such potential nuisance 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.
 - e. The property owners of this subdivision shall waive the right to protest any Rural Special Improvement District (RSID) formed for the paving of Manning and Farm Roads.

7. All required improvements shall be completed in place or a Subdivision Improvement Guarantee in accordance with Chapter 8 of the Flathead County Subdivision Regulations shall be provided by the subdivider, prior to final approval by the County Commissioners.
8. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions.
9. The developer shall submit a letter from the Somers Fire Department stating all reasonable conditions for fire suppression have been met.
10. The developer shall apply for and receive approach permits from the Flathead County Road Department for the accesses off Manning and Farm Roads.
11. The developer shall dedicate the 37.86 acre open space as parkland or dedicate 1.9 acres specifically as parkland with the remainder as open space for the subdivision.
12. Preliminary plat approval is valid for three (3) years.

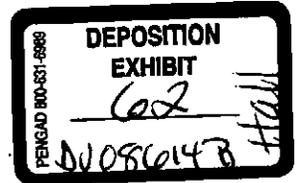
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Howard W. Gipe, Chairman


Gary D. Hall, Member


Robert W. Watne, Member

Flathead County Planning and Zoning Office
1035 1st Avenue West
Kalispell, Montana 59901



Phone: (406) 751-8200
Fax: (406) 751-8210

March 25, 2004

Board of County Commissioners
Flathead County
800 S. Main
Kalispell, MT 59901

Re: A request by Dan Brosten-Brosten Farms for Preliminary Plat Approval of Pheasant Haven Subdivision, a major subdivision that will create 24 residential lots on approximately 122.203 acres. All lots in the subdivision will be served by individual on-site or multi-user wells and individual septic systems.

Dear Commissioners:

The Flathead County Planning Board met on March 10, 2004 and held a public hearing to consider a request by Dan Brosten-Brosten Farms for Preliminary Plat Approval of Pheasant Haven Subdivision, a major subdivision that will create 24 residential lots on approximately 122.203 acres.

All lots in the subdivision are to be served by individual on-site or multi-user wells and individual septic systems. The property is located in the Somers area on Manning Road, just southeast of the intersection of Farm and Manning Roads. The property can further be described as Assessor's Tracts 3, 3B, 3C, 3D, & 3E in Section 8, Township 27 North, Range 20 West, P.M.M., Flathead County Montana.

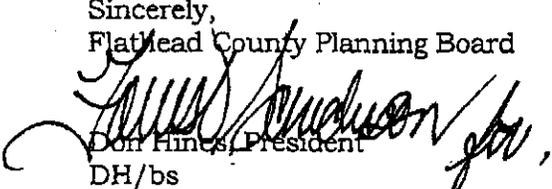
Johna Morrison of the Flathead County Planning & Zoning Office presented Staff Report FPP-04-03 and reviewed the application in accordance with statutory criteria.

During the public hearing, two people (2) spoke in favor of the proposal and two (2) people spoke in opposition.

After discussion the Planning Board voted to approve Staff Report FPP-04-03 unanimously.

You may contact Johna Morrison at the Flathead County Planning and Zoning Office if you have any questions regarding this matter.

Sincerely,
Flathead County Planning Board


Don Hines, President
DH/bs

FCBC-PH 000022

Attachments: Exhibit A
Staff Report FPP-04-03 w/application materials
Draft minutes of March 10, 2004

C: w/o Att: Dan Brosten-Brosten Farms
2879 Lower Valley Road
Kalispell, MT 59901

Sands Surveying
2 Village Loop
Kalispell, MT 59901

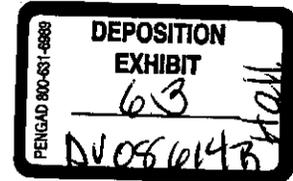
Exhibit A
Pheasant Haven #FPP-04-03
Conditions
March 10, 2004

CONDITIONS:

1. All areas disturbed during development of the subdivision shall be revegetated in accordance with a plan approved by the County Weed Department.
2. The internal subdivision roads shall have a 60-foot right-of-way, 20-foot drive surface and 55-foot radius cul-de-sacs. The internal subdivision roads and cul-de-sacs shall be paved.
3. The developer shall contact the Child Transportation Committee and, if required, provide and improve a location for the safe loading and unloading of students.
4. Electrical and telephone utilities shall be extended underground to abut and be available to each lot in accordance with Flathead County Subdivision Regulations (see Sections 3.17 and 3.18). Utility plans shall be approved by the applicable utility companies.
5. If required by the local postmaster, the developer shall provide a common mailbox facility in accordance with Flathead County Subdivision Regulations (see Section 3.22).
6. The following statements shall be placed on the face of the final plat applicable to all lots:
 - All house or business addresses will be visible from the road, either at the driveway entrance or on the house.
 - All utilities shall be placed underground.
 - All areas disturbed during development of structures and driveways shall be revegetated in accordance with a plan approved by the County Weed Department.
 - This subdivision is located in an agricultural area and that such potential nuisance 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.

- The Property Owners of this subdivision shall waive the right to protest any RSID formed for the paving ~~or maintenance~~ of Manning and Farm Roads.
7. All required improvements shall be completed in place or a Subdivision Improvement Guarantee in accordance with Chapter 8 of the Flathead County Subdivision Regulations shall be provided by the subdivider, prior to final approval by the County Commissioners.
 8. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions.
 9. The developer shall contact the ^{Somers} ~~Creston~~ Fire Chief and fire suppression shall be placed per the Chief's requirements. The developer shall receive a letter from the Fire Chief stating ~~his~~ requirements have been met.
all reasonable
 10. The developer shall apply for and receive approach permits from the Flathead County Road Department for the accesses off Manning and Farm Roads.
 11. The developer shall dedicate the 37.86 acre open space as parkland or dedicate 1.9 acres specifically as parkland for the subdivision.
w/ the remainder as open space
 12. Preliminary plat approval is valid for three years.

Flathead County Planning and Zoning Office
1035 1st Avenue West
Kalispell, Montana 59901



Phone: (406) 751-8200
Fax: (406) 751-8210

June 18, 2003

Board of County Commissioners
Flathead County
800 S. Main
Kalispell, MT 59901

Re: Preliminary Plat for Tiebucker Subdivision.

Dear Commissioners:

The Flathead County Planning Board met on June 11, 2003 and held a public hearing to consider a request by Timothy and Julie Birk, William Paullin, and Carol Keys for preliminary plat approval. The applicant proposes to have public water and sewer systems. This property is located near School Addition Road along Sunnybrook Lane in Somers.

Johna Morrison, representing the Flathead County Planning & Zoning Office, presented Staff Report FPP-03-15 and reviewed the application in accordance with statutory criteria.

During the public hearing, the applicant's representative spoke in favor of the proposal and a few people spoke in opposition.

After discussion the Board voted to adopt Staff Report FPP-03-15 as findings of fact and forward the preliminary plat approval for Tiebucker Subdivision to the Board of Commissioners. The conditions of approval are attached as Exhibit A.

The motion to recommend approval passed on a vote of 6-1 with Bangeman dissenting.

Please place this matter on the agenda at your earliest convenience. You may contact Johna Morrison at the Flathead County Planning and Zoning Office if you have any questions regarding this matter.

Sincerely,
Flathead County Planning Board

A handwritten signature in black ink, appearing to read "Jeff Larsen". The signature is written in a cursive style and is positioned above the typed name.

Jeff Larsen, President
JL/bs

Exhibit A
Preliminary Plat for Tiebucker Subdivision
Conditions of Approval
June 11, 2003

1. The developer shall pave the entire subdivision road to mitigate any impacts to surrounding ownerships. Interior roads shall be 20 feet in width and built to AASHTO standards.
2. Sunnybrook Lane shall be brought to County standards from School Addition Road into the subdivision, this portion of the road shall be 24 feet in width, built to AASHTO standards, and paved. The right-of-way width shall be 60 feet.
3. All areas disturbed during development of the subdivision shall be revegetated in accordance with a plan approved by the County Weed Department.
4. The developer shall name the internal subdivision road. The County Plat Room shall approve the name of the internal subdivision road.
5. The developer shall contact the Child Transportation Committee and, if required, provide and improve a location for the safe loading and unloading of students.
6. Road right-of-ways shall be dedicated on the final plat as being open to public use but privately maintained.
7. Electrical and telephone utilities shall be extended underground to abut and be available to each lot in accordance with Flathead County Subdivision Regulations (see Sections 3.17 and 3.18). Utility plans shall be approved by the applicable utility companies.
8. The developer shall contact the Somers Fire Chief and fire suppression shall be placed per the Chief's requirements. The developer shall receive a letter from the Fire Chief stating his requirements have been met.
9. If required by the local postmaster, the developer shall provide a common mailbox facility in accordance with Flathead County Subdivision Regulations (see Section 3.22).
10. The following statements shall be placed on the face of the final plat applicable to all lots:
 - All house or business addresses will be visible from the road, either at the driveway entrance or on the house.
 - All utilities shall be placed underground.

DRAFT

are advisory. It can't be used as an excuse to not hear the proposal. Tim Calaway was a strong proponent of this project.

Bangeman asked that since we didn't have any input from the Advisory Committee shouldn't we table it?

Stevens said we have plenty of input and it is obvious that the Committee doesn't want the subdivision if they don't want the zone change.

Larsen said that the Bigfork Advisory Committee was split 3-3 and the ones for the zone change would have probably approved the subdivision. It could be the same result. Larsen said that a condition should be added that requires the property owners inability to protest an RSID. He added he hates to put the applicant through the expense of a traffic study.

Crowder said that we are governed by the Flathead County Zoning Regulations - we are in that process right now. The Committees are there as the neighborhood's eyes and ears - there is nothing that includes the Committees in any part of that process.

Bangeman asked if the Advisory Committee should be included as an entity that could propose an amendment to the text.

Tanner said that the Board should be careful of what they impose on the homeowners.

MOTION Stevens made a motion seconded by Linne to amend Condition #12 to add a note on the plat to waive the right to protest an RSID for Lake Hills Drive.

ROLL CALL On a roll call vote the motion passed unanimously.

ROLL CALL On a roll call vote, the motion passed on a vote of 6 - 1 with Bangeman dissenting.

PRELIMINARY A request by Timothy & Julie Birk, William Paullin, & Carol Keys
Plat -- for preliminary plat approval of the Tiebucker Subdivision, a
Tiebucker thirty-eight (38) lot single-family subdivision on approximately
Subdivision 20.45 acres. All lots in the subdivision are proposed to have
public water & sewer systems. This property is located near
School Addition Road along Sunnybrook Lane in Somers.

DRAFT

**STAFF
REPORT**

Johna Morrison of the Flathead County Planning & Zoning Office reviewed Staff Report FPP-03-15 for the Board. Morrison received one inquiry regarding this subdivision.

APPLICANT

Bret Birk 2302 Highway 2 East, Kalispell - reviewed the proposal. The subdivision encourages smaller lots sizes in close proximity to the lake. Municipal water and sewer is available. He has no objections to the conditions imposed.

Larsen asked if Somers Water and Sewer have the capacity and Birk said yes.

AGENCIES

None.

PROPONENTS

None.

OPPONENTS

Seivers - Sunnybrook Lane stated this impacts her greatly. The road is dirt and this will be a huge impact she doesn't believe that Somers is high density. She has a higher end home for the area and is very concerned regarding her property values. Her home is not on the map there are a number of people who drive into her driveway to turn around. She doesn't feel that she needs to install a fence to keep people off her property. There is also the issue of the road to the subdivision, which is right next to the middle school. Those are her biggest concerns - traffic, pollution, and the wildlife preserve is there. She has talked to her neighbors about this subdivision and no one even knew about it. This is a problem with the lack of notification.

Crowder asked how many homes are on Sunnybrook Lane. Seivers said that there are 7 homes.

Larsen said that by law we notify property owners within 150 feet and there is a notice in the legal section of the local newspaper.

Morrison noted that Sunnybrook Lane would be paved to the subdivision. All internal subdivision roads will be paved.

Birk said that Sunnybrook is separated from the subdivision by one property.

APPLICANT

William Paullin Box 2918 Kalispell said because of the close

Flathead County
Board of Commissioners

(406) 758-5503

Howard W. Gipe
Gary D. Hall
Robert W. Watne



July 8, 2003

Mr. Forrest Sanderson, Director
Flathead County Planning & Zoning Office
1035 1st Avenue West
Kalispell, Montana 59901

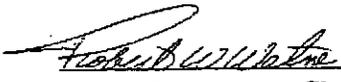
RE: Preliminary Plat of TIEBUCKER SUBDIVISION

Dear Mr. Sanderson:

On this date, the Flathead County Board of Commissioners reviewed the preliminary plat application for Tiebucker Subdivision. The Board of Commissioners has granted conditional approval to this request. A copy of the conditions, Exhibit A, is attached for your reference. This preliminary plat approval is in effect for three years and will expire on July 8, 2006.

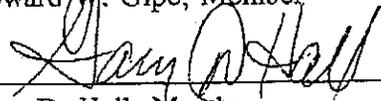
Please be advised the applicant, if he so chooses, can appeal any of the conditions placed on this plat based on the Flathead County Subdivision Regulations, Section 7.6, as set forth in the attached Exhibit A-1.

Sincerely,
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Robert W. Watne, Chairman

Not Available for Signature

Howard W. Gipe, Member


Gary D. Hall, Member

Attachment: Exhibit A, Exhibit A-1
c: Tim & Julie Birk
William Paullin & Carol Keys
880 Farm Road
Kalispell, MT 59901

Birk Engineering
2302 Highway 2 East
Kalispell, MT 59901

County Weed & Parks Dept.

800 South Main ** Kalispell, Montana 59901 ** Fax (406) 758-5861

County Road Dept.

FCBC-Tie 000001

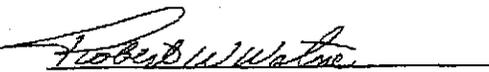
EXHIBIT A

Conditions, upon which preliminary plat approval has been granted to Tiebucker Subdivision this date of July 8, 2003, are as follows:

1. The developer shall pave the entire subdivision road to mitigate any impacts to surrounding ownerships. Interior roads shall be 20 feet in width and built to AASHTO standards.
2. Sunnybrook Lane shall be brought to Flathead County standards from School Addition Road into the subdivision, this portion of the road shall be 24 feet in width, built to AASHTO standards, and paved. The right-of-way width shall be 60 feet.
3. All areas disturbed during development of the subdivision shall be revegetated in accordance with a plan approved by the Flathead County Weed & Parks Department.
4. The developer shall name the internal subdivision road. The Flathead County Plat Room shall approve the name of the internal subdivision road.
5. The developer shall contact the Child Transportation Committee and, if required, provide and improve a location for the safe loading and unloading of students.
6. Road right-of-ways shall be dedicated on the final plat as being open to public use but privately maintained.
7. Electrical and telephone utilities shall be extended underground to abut and be available to each lot in accordance with Flathead County Subdivision Regulations (see Sections 3.17 and 3.18). Utility plans shall be approved by the applicable utility companies.
8. ~~The developer shall contact the Somers fire chief and fire suppression shall be placed per the chief's requirements. The developer shall receive a letter from the fire chief stating his requirements have been met.~~
9. If required by the local postmaster, the developer shall provide a common mailbox facility in accordance with Flathead County Subdivision Regulations (see Section 3.22).
10. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. All house or business addresses will be visible from the road, either at the driveway entrance or on the house.
 - b. All utilities shall be placed underground.

- c. All areas disturbed during development of structures and driveways shall be revegetated in accordance with a plan approved by the Flathead County Weed & Parks Department. All lot owners are responsible for the eradication and control of noxious weeds upon their property.
 - d. This subdivision is located in an agricultural area and that such potential nuisance 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.
 - e. The property owners association shall be responsible for maintenance of roads. Roads shall be maintained, including necessary repairs and snow-removal, to insure safe all-weather travel for two-way traffic.
- 11. The developer shall reserve one (1) acre of parkland or pay a cash-in lieu fee equal to the appraised value of one undeveloped, undivided acre.
 - 12. All required improvements shall be completed in place or an improvement guarantee in accordance with Chapter 8 of the Flathead County Subdivision Regulations shall be provided by the subdivider, prior to final approval by the Flathead County Commissioners.
 - 13. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions.
 - 14. Preliminary plat approval is valid for three (3) years.

BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Robert W. Watne, Chairman

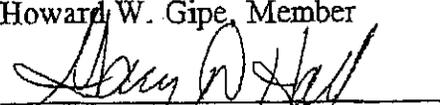
Howard W. Gipe, Member

Gary D. Hall, Member

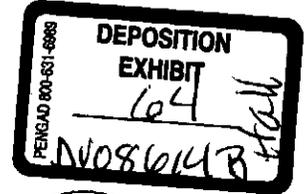
EXHIBIT A-1

7.6 APPEALS:

Any final action, decision, or order of the governing body or a regulation adopted pursuant to these regulations that is arbitrary or capricious is subject to appeal to District Court.
(See Section 76-3 M.C.A.)

Flathead County
Board of Commissioners
(406) 758-5503

Howard W. Gipe
Gary D. Hall
Robert W. Watne



June 8, 2004

Mr. Forrest Sanderson, Director
Flathead County Planning & Zoning Office
1035 1st Avenue West
Kalispell, Montana 59901

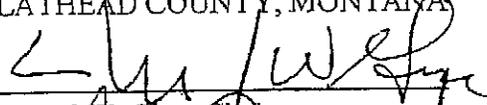
RE: Preliminary Plat of TIEBUCKER PHASE TWO

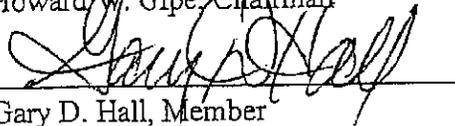
Dear Mr. Sanderson:

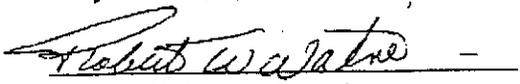
On this date, the Flathead County Board of Commissioners reviewed the preliminary plat of Tiebucker Phase Two. The Board of Commissioners has granted conditional approval to this request. A copy of the conditions, Exhibit A, is attached for your reference. This preliminary plat approval is in effect for three years and will expire on June 8, 2007.

Please be advised the applicant, if he so chooses, can appeal any of the conditions placed on this plat based on the Flathead County Subdivision Regulations, Section 7.6, as set forth in the attached Exhibit A-1.

Sincerely,
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Howard W. Gipe, Chairman


Gary D. Hall, Member


Robert W. Watne, Member

Attachment: Exhibit A, Exhibit A-1

FCBC:ecm

c: N.W. Montana Human Resources
P. O. Box 8300
Kalispell, MT 59904-1300

County Weed & Parks Dept.

Montana Mapping Associates
115 Valley View Dr.
Kalispell, MT 59901

County Road Dept.

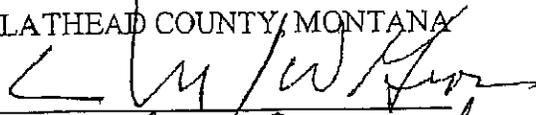
EXHIBIT A

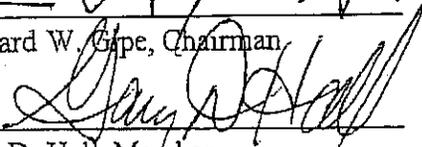
Conditions, upon which preliminary plat approval has been granted to Tiebucker Phase Two this date of June 8, 2004, are as follows:

1. The developer shall pave the entire subdivision loop road (Klondyke Loop) to mitigate any impacts to surrounding ownerships. Interior roads shall be 20 feet in width and built to AASHTO standards.
2. All areas disturbed during development of the subdivision shall be revegetated in accordance with a plan approved by the County Weed & Parks Department.
3. The developer shall contact the Child Transportation Committee and, if required, provide and improve an additional location for the safe loading and unloading of students.
4. Road right-of-ways shall be dedicated on the final plat as being open to public use but privately maintained.
5. That water supply and septic treatment plans shall be approved by the Flathead City-County Health Department and the Montana Department of Environmental Quality. A storm water management plan shall also be reviewed and approved by the Flathead City-County Health Department and the Montana Department of Environmental Quality.
6. Electrical and telephone utilities shall be extended underground to abut and be available to each lot in accordance with Flathead County Subdivision Regulations (see Sections 3.17 and 3.18). Utility plans shall be approved by the applicable utility companies.
7. The developer shall contact the Somers fire chief and fire suppression shall be placed per the chief's requirements. The developer shall receive a letter from the fire chief stating his requirements have been met.
8. If required by the local postmaster, the developer shall provide a common mailbox facility in accordance with Flathead County Subdivision Regulations (see Section 3.22).
9. The developer shall dedicate a 10-foot bike/walk path easement to facilitate student access to Somers (K-8) Schools.
10. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. All house or business addresses will be visible from the road, either at the driveway entrance or on the house.
 - b. All utilities shall be placed underground.
 - c. All areas disturbed during development of structures and driveways shall be revegetated in accordance with a plan approved by the County Weed & Parks Department. All lot owners are responsible for the eradication and control of noxious weeds upon their property.

- d. This subdivision is located in an agricultural area and that such potential nuisance 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.
 - e. The property owners association shall be responsible for maintenance of roads. Roads shall be maintained, including necessary repairs and snow removal, to insure safe all-weather travel for two-way traffic.
11. The developer shall dedicate 1.11 acres of parkland during this phase of development. It is noted that this dedication exceeds the regulatory requirement.
 12. The applicant shall receive physical addresses and name all roads in accordance with Flathead County Resolution #1626. The addresses and road names shall appear on the final plat.
 13. All required improvements shall be completed in place or an improvement guarantee in accordance with Chapter 8 of the Flathead County Subdivision Regulations shall be provided by the subdivider, prior to final approval by the Flathead County Commissioners.
 14. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions.
 15. Preliminary plat approval is valid for three (3) years.
 16. The developer shall install a new approach to the Cephers property prior to submitting an application for final plat. This approach shall be approved by the Flathead County Road & Bridge Department.

BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA


Howard W. Gipe, Chairman


Gary D. Hall, Member

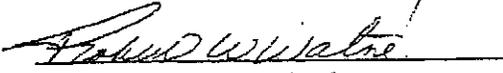
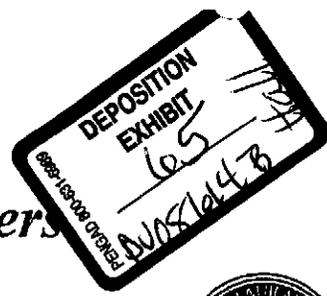

Robert W. Watne, Member

EXHIBIT A-1

7.6 APPEALS:

Any final action, decision, or order of the governing body or a regulation adopted pursuant to these regulations that is arbitrary or capricious is subject to appeal to District Court. (See Section 76-3 M.C.A.)

Flathead County
Board of Commissioners
(406) 758-5503



Joseph D. Brenneman
Gary D. Hall
Robert W. Watne

December 8, 2005

Mr. Jeff Harris, Director
Flathead County Planning & Zoning Office
1035 1st Avenue West
Kalispell, Montana 59901

RE: Preliminary Plat for WACHSMUTH ESTATES

Dear Mr. Harris:

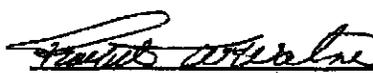
On this date, the Flathead County Board of Commissioners reviewed the preliminary plat of Wachsmuth Estates. The Board of Commissioners has granted conditional approval to this request. A copy of the conditions, Exhibit A, is attached for your reference. This preliminary plat approval is in effect for three years and will expire on December 8, 2008.

Please be advised the applicant, if he so chooses, can appeal any of the conditions placed on this plat based on the Flathead County Subdivision Regulations, Section 7.6, as set forth in the attached Exhibit A-1.

Sincerely,
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA



Gary D. Hall, Chairman



Robert W. Watne, Member

Not Available for Signature

Joseph D. Brenneman, Member

Attachment: Exhibit A, Exhibit A-1

c: John Wachsmuth
P. O. Box 2185
Kalispell, MT 59903-2185

County Weed & Parks Dept.

Flathead Geomatics
5098 Highway 93 South
Whitefish, MT 59937

County Road Dept.

EXHIBIT A

Conditions, upon which preliminary plat approval has been granted to Wachsmuth Estates this date of December 8, 2005, are as follows:

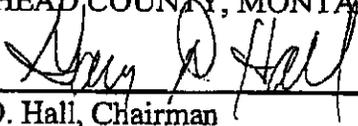
1. The applicant shall receive physical addresses and road names in accordance with Flathead County Resolution #1626. The addresses and road names shall appear on the final plat. [Section 3.9(I)(7), FCSR]
2. The applicant will obtain and show proof of a completed approach permit from the Flathead County Road Department for access onto School Addition Road, indicating the approach has been built and received final inspection. [Section 3.8(A), FCSR]
3. New electrical and telephone utilities shall be extended underground to abut and be available to each lot, in accordance with a plan approved by the applicable utility providers. [Sections 3.17 & 3.18, FCSR]
4. All water, sanitary, and storm water drainage systems will be approved by the Flathead City-County Health Department and approved by the Montana Department of Environmental Quality. [Section 3.14(A) and 3.15(A), FCSR]
5. The applicant will comply with reasonable fire suppression and access requirements of the Somers Fire Department. A letter from the fire chief stating requirements have been met shall be submitted with the application for Final Plat. [Section 3.20, FCSR]
6. All areas disturbed during development of the subdivision will be re-vegetated in accordance with a plan approved by the Flathead County Weed Department. [7-22-2116 MCA and Section 3.12(J), FCSR]
7. If required by the local postmaster, the developer shall provide a common mailbox facility in accordance with the Flathead County Subdivision Regulations. [Section 3.22, FCSR]
8. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. All addresses will be visible from the road, and at the driveway entrance or on the house.
 - b. All utilities will be extended underground.
 - c. Lot owners are bound by the soil disturbance and weed management plan to which the developer and the Flathead County Weed Department agreed.
 - d. This subdivision is located in an 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.

e. Waiver of Protest
Participation in Special Improvement District

_____ (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.

- 9. All required improvements shall be completed in place or a Subdivision Improvement Agreement, in accordance with Chapter 8 of the Flathead County Subdivision Regulations, shall be provided by the applicant prior to final approval by the County Commissioners. [Chapter 8, FCSR]
- 10. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions. [Section 2.7(E), FCSR]
- 11. Preliminary plat approval is valid for three (3) years. [Section 2.5(D)(6), FCSR]

BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA



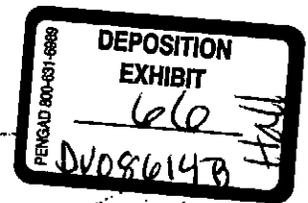
Gary D. Hall, Chairman



Robert W. Watne, Member

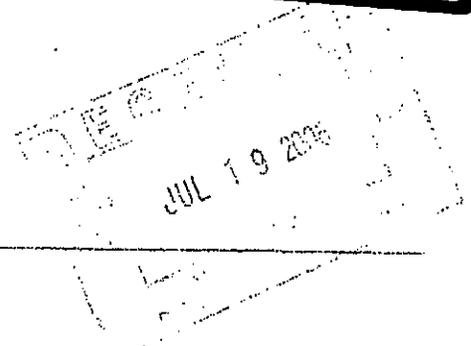
Joseph D. Brenneman, Member

Flathead Lakers



Kirsten Holland

From: Plan Web Account
Sent: Wednesday, July 19, 2006 8:49 AM
To: Kirsten Holland
Subject: FW: North Shore Ranch subdivision proposal



From: Robin Steinkraus [mailto:lakers@flatheadlakers.org]
Sent: Tuesday, July 18, 2006 4:42 PM
To: Plan Web Account
Subject: North Shore Ranch subdivision proposal

Flathead Lakers
PO Box 70
Polson, MT 59860

July 18, 2006

Flathead County Planning Board
Flathead County Planning & Zoning
1035 1st Ave W
Kalispell, MT 59901
via e-mail: planningweb@co.flathead.mt.us

Re: North Shore Ranch subdivision proposal

Dear Planning Board Members:

Please accept the following comments submitted by the Flathead Lakers opposing the proposed North Shore Ranch subdivision. The Flathead Lakers is a nonprofit organization working for clean water, healthy ecosystems and lasting quality of life in the Flathead Watershed. The Flathead Lakers was founded in 1958 and currently has over 1,300 members.

The Flathead Lakers urge you to recommend denial of the North Shore Ranch subdivision proposal. The density of the proposed development is inappropriate for this unique area due to the very shallow groundwater, potential to degrade water quality in Flathead Lake, and the significant potential impacts on the adjacent U.S. Waterfowl Production Area, waterfowl, a bald eagle nest, and other wildlife.

Flathead Lake is a local, state and national treasure. Surveys have shown that the public believes protecting water quality should be a top priority in the Flathead area. But water quality in Flathead Lake has declined and continues to be threatened:

- The state has declared water quality in Flathead Lake impaired (listed on the 303d list of impaired water bodies).
- University of Montana Flathead Lake Biological Station researchers report a decline in water quality over the past 25 years.
- Two major lake-wide pollution algae blooms have occurred.
- Algae on shoreline rocks has increased.

Through the TMDL (Total Maximum Daily Load) process required by the Clean Water Act, the
FCPZ00133

Montana Department of Environmental Quality determined that at least a 15 percent reduction in nutrient pollution (phosphorus and nitrogen, nutrients that contribute to algae growth) from current levels is needed to safeguard clean water in Flathead Lake. As efforts to reduce pollution in Flathead Lake from nonpoint sources throughout the watershed increase, it is important to make sure new development does not add to this problem through increased polluted runoff or contamination of groundwater.

In 1999, the Flathead Lakers initiated the Critical Lands Project, a major, collaborative project with participation from resource managers from local, state, federal and tribal governments, scientists, representatives of land conservation organizations and interested individuals. The purpose of this project is to identify and protect or restore lands and waters critical to maintaining and improving water quality in Flathead Lake and its tributaries, as well as protect the fish and wildlife habitat and recreation opportunities those lands and waters provide.

The Critical Lands Project identified the Flathead River corridor and riparian areas, nearby wetlands and sloughs above Flathead Lake as a high priority for protection due to this area's multiple natural values and amenities. The proposed subdivision is in this important area.

The new draft Flathead County Growth Policy includes policies that:

- "Encourage development away from sensitive water areas..." (P.34.2)
- "Discourage high and medium density development within proximity to the 100-year floodplain." (P.37.4)
- "Encourage rural residential densities at one dwelling unit per five acres in areas where the groundwater is less than five feet." (P.39.4)
- "Encourage rural low-intensity land uses in areas where the groundwater is less than five feet." (P.39.5)
- "Establish a Natural Resources Task Force to exchange critical information and data, propose coordinated conservation strategies to protect natural resource areas and wildlife habitat and corridors of regional importance, with elements of the strategies to be implemented by various federal, state and local governments, nonprofit organizations, and the private sector." P.40.1
- "Provide incentives for non-development in areas of critical habitat." (P.40.3)
- "Discourage development in wetlands and riparian areas." (P.40.5)

The Flathead Lakers are very concerned about the density of the proposed development due to the shallow depth of groundwater. The Environmental Assessment for the proposal indicates that the depth to groundwater varies from 0 to 15 feet. Shallow aquifers are vulnerable to degradation from nonpoint source contamination. Runoff from residential development carries sediments and nutrients as well as toxic materials, such as heavy metals, benzene and hydrocarbons (from vehicles). Development over a shallow aquifer should not be allowed to use infiltration systems to treat storm water runoff as this will directly contaminate the groundwater in the area and potentially the lake.

Until the risks to the aquifer and lake have been fully evaluated and effective methods to mitigate them have been determined, the level of density proposed is unacceptable at this location.

The Flathead Lakers are also concerned about the impacts on wildlife. The north shore wetlands provide important wildlife habitat. The north shore contains the most significant wetland acreage around the lake. This large wetlands complex includes the U.S. Fish and Wildlife Service Waterfowl Production Area. The adjacent upland agricultural areas provide an essential buffer that protects the wetland values as well as providing important habitat and forage areas for waterfowl. Waterfowl travel between the WPA on Flathead Lake and other wetlands, the Flathead River and farm lands for feeding. If the protected wildlife areas become islands in a sea of development, there is the potential for the loss of a significant amount of waterfowl use of these areas.

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The Wildlife Report prepared by Joe C. Elliott, Ph.D., does not adequately evaluate the potential impacts to the various wildlife species that would likely be affected by the proposed development. The letter from U.S. Fish and Wildlife Service Biologist Lynn Verlanic describes the priority species listed under the North American Waterfowl Management Plan and the ten species of shorebirds listed as highly imperiled or of high concern by the U.S. Fish and Wildlife Service that use the area, and the bald eagle nest within 100 yards of the proposed development. The Elliott report simply states that habitat for these species would not be impacted by the proposed development because the proposal will leave a small area of wetland habitat in the southeast corner of the project as open space, and that some species can adapt to human presence. However, it does not provide any information about the species-specific impacts of intense use of the residential area by over 300 households (including the 3,100 vehicle trips per day described in the staff report and impacts on waterfowl from light pollution) or use of the open space (which will contain equestrian trails, walking trails and wildlife viewing platforms).

The open space/common area proposed in the development is fragmented by residences and roads and includes features, such as ball fields and equestrian trails, that cannot be considered habitat or a habitat buffer. The North Shore Ranch proposal for an equestrian facility and horse use of trails throughout the open space would result in additional impacts to both water quality and wildlife, with trampling of vegetation, manure, wildlife disturbance, and easy access to the WPA.

Relying on covenants enforced by a volunteer homeowners association is an inadequate and untenable method for ensuring protection of such important public resources. We do not believe the public is willing to risk sacrificing the significant wildlife values in the north shore area for this type of residential development.

The existing Flathead County Master Plan designates this area for agricultural use and recognizes the importance of agricultural lands for the aesthetic and wildlife quality of the county and as an integral part of the county's tourism industry, its recreation opportunities and its quality of life. The proposed development would allow intensive development on important agricultural lands and waterfowl habitat, and would not protect public scenic and recreational values.

Despite some positive elements in the subdivision proposal, such as limiting the amount of impervious surface area by restricting road widths and connecting to the Lakeside Water & Sewer sewage treatment plant, the subdivision as proposed is inappropriate for the special area at the north shore of Flathead Lake adjacent to a federally protected wildlife area.

The Flathead Lakers strongly recommend that the Flathead County Planning Board recommend denial and that the Flathead County Board of Commissioners deny the preliminary plat proposed for the North Shore Ranch subdivision.

We further recommend that:

- The county adopt the U.S. Fish and Wildlife Service's recommendation to initiate a collaborative effort to "develop a comprehensive plan for the lower valley area that protects its unique wildlife, recreational, scenic, and quality of life values."
- A hydrology study and the nutrient loading study described in the Storm Water Management Plan prepared by RLK Hydro, Inc. be completed in coordination with the University of Montana Flathead Lake Biological Station before considering for approval development proposals with a density greater than one lot per 20 acres in the north shore area.
- A more thorough analysis of the impacts of development on various sensitive wildlife species be completed prior to considering for approval development proposals in this area.

- The county require a thorough review and analysis of the cumulative impacts of development on water quality, wildlife habitat and wildlife use in the north shore area prior to considering for approval development proposals in the north shore area.
- The county complete the Growth Policy currently in draft form and designate a "Special Consideration Area" as a growth policy implementation tool for north shore wetlands, shallow groundwater and wildlife habitat prior to considering for approval development proposals in the north shore area.

The Flathead Lakers recognize the difficulty the county faces in balancing the public interest with private economic endeavors. But the pace of development now occurring in the Flathead Valley challenges the county to make sure growth, development and economic enterprise can be accommodated in ways that do not degrade or destroy the environmental quality and natural amenities that provide many public benefits and that are the very things attracting growth. The north shore area is a place that provides such benefits and is truly deserving of thoughtful consideration of how to best ensure those benefits endure.

Thank you for the opportunity to comment.

Sincerely,

Paul Williams
President

Robin Steinkraus
Executive Director

cc: Flathead County Board of Commissioners