

**KLEINHANS FARMS ESTATES, LLC v. FLATHEAD COUNTY**

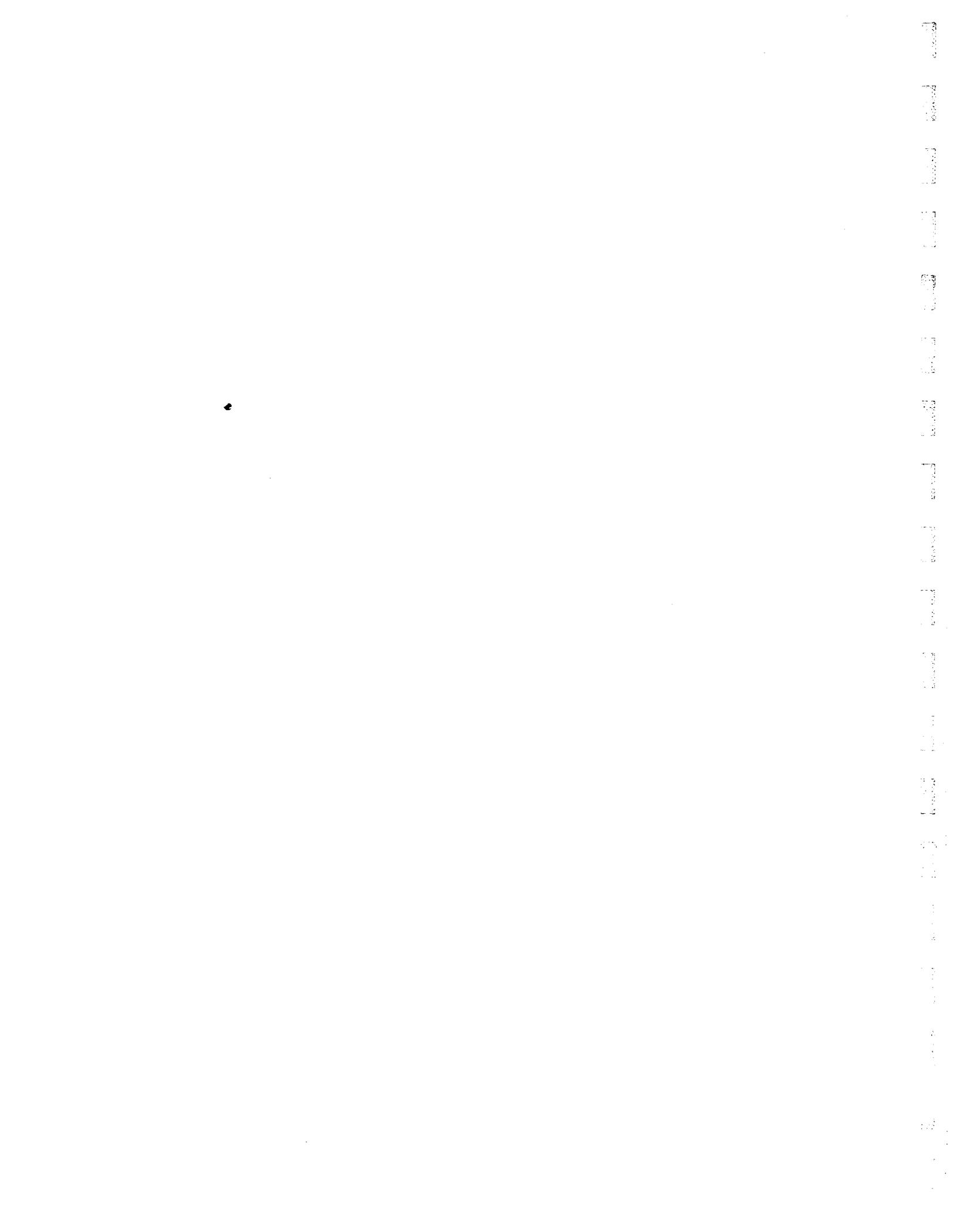
**DEPOSITION OF THOMAS LITCHFIELD**

**MAY 15, 2009**

**Reported by: SueAnn Jones, CSR, RPR**

**Johnson Reporting Services, Ltd.  
Certified Shorthand Reporters  
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West Des Moines, Iowa 50265**

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MONTANA ELEVENTH JUDICIAL DISTRICT COURT,  
FLATHEAD COUNTY

-----:  
 KLEINHANS FARMS ESTATES, LLC :  
 Montana Limited Liability :  
 Company, :  
 : No. DV-08-614(B)  
 Plaintiff, :  
 : DEPOSITION OF  
 vs. :  
 : THOMAS LITCHFIELD  
 FLATHEAD COUNTY, :  
 :  
 Defendant. :  
 -----:

DEPOSITION OF THOMAS LITCHFIELD, taken before SueAnn Jones, Certified Shorthand Reporter and Notary Public, at 803 Braden Avenue, Chariton, Iowa, commencing at 10:15 a.m., on May 15, 2009.

A P P E A R A N C E S

Plaintiff by: ALEX BEAL  
 Attorney at Law  
 Suite 201  
 201 West Main Street  
 Missoula, Montana 59802  
 Defendant by: ALAN F. McCORMICK  
 Attorney at Law  
 P.O. Box 7909  
 Missoula, Montana 59807-7909  
 Reported by: SueAnn Jones, CSR, RPR

1 THOMAS LITCHFIELD,  
 2 called as a witness, having been first duly sworn,  
 3 was examined and testified as follows:  
 4 DIRECT EXAMINATION  
 5 BY MR. BEAL:  
 6 Q. Good morning, Mr. Litchfield.  
 7 A. Good morning.  
 8 Q. We are in the basement of the public  
 9 library in Sheridan, Wyoming -- Chariton, Iowa.  
 10 A. Yeah. A little further east.  
 11 Q. Am I pronouncing that correct?  
 12 A. Chariton, yes.  
 13 Q. Terrific. And would you be so kind as  
 14 to spell your name for the record.  
 15 A. Okay. My name is Thomas Litchfield.  
 16 The last name is L-i-t-c-h-f-i-e-l-d.  
 17 Q. And my name is Alex Beal. I am with  
 18 the law firm of Datsopoulos, MacDonald & Lind. We  
 19 represent a limited liability company, but  
 20 actually, Keith Simon is probably who you would  
 21 know.  
 22 A. Uh-huh.  
 23 Q. Keith wanted me to apologize first  
 24 that he couldn't be here today. It's a little off  
 25 the beaten path --

I N D E X

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2				
3	EXAMINATION BY	DIRECT	CROSS	REDIRECT
4				RECROSS
5	Mr. Beal	3		118
6	Mr. McCormick		101	
7				
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9	EXHIBIT		PAGE(S) REFERRED TO	
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13	12		23, 90, 105	
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1 A. Uh-huh.  
 2 Q. -- and kind of a difficult place to  
 3 get to, but he did want to apologize that he  
 4 couldn't personally be here.  
 5 We are involved in a lawsuit.  
 6 Mr. Simon has filed suit against Flathead County  
 7 over the denial of a subdivision referred to as  
 8 North Shore Ranch. When I say North Shore Ranch,  
 9 do you know what I am talking about?  
 10 A. Yes.  
 11 Q. Okay. May I ask you about your  
 12 educational background first?  
 13 A. Sure. I have a bachelor's in wildlife  
 14 biology, minor in forestry, and a master's in  
 15 wildlife biology also and a little over 20 years  
 16 experience.  
 17 Q. And where did you go to school?  
 18 A. I went to school for my undergraduate  
 19 degree at University of Vermont and my graduate  
 20 degree at University of Georgia.  
 21 Q. And after you graduated from Georgia,  
 22 can you tell me about your work history?  
 23 A. Sure. I was initially hired by the  
 24 U.S. Cooperative Wildlife Disease Study Group in  
 25 Athens, Georgia, and I worked for them for eight

5

1 months.

2           Then I was hired by the Georgia DNR,

3 worked for them for two years, went to Wyoming on a

4 temporary assignment, worked for them for about a

5 half year, went back to Georgia DNR for two more

6 years, to the Utah -- Utah Division of Wildlife

7 Resources in 1992 and worked for them for about

8 five and a half years and moved up to Montana to

9 work for the Montana Department of Fish, Wildlife &

10 Parks in December of 1997 and was there through

11 September 2007 where I moved here. I'm the state

12 deer biologist for Iowa currently.

13       Q.     And what kind of deer do they have in

14 Iowa?

15       A.     White-tailed deer.

16       Q.     Exclusively?

17       A.     Yes.

18       Q.     Okay.

19       A.     Just a very small scattering of mule

20 deer but --

21       Q.     So you worked for the Montana Fish,

22 Wildlife & Parks for approximately ten years?

23       A.     Uh-huh.

24       Q.     And did you have one job title or role

25 there the entire time, or did it change?

6

1       A.     One job title, area wildlife

2 biologist, regional wildlife biologist, and started

3 out working at White Sulfur Springs, Montana, and

4 then in 2000 -- fall of 2002, transferred up to

5 northwest Montana, and that's when I started

6 getting involved -- still had the same job title,

7 still had areas of responsibility in season setting

8 and things like that, but that's where I first

9 started becoming more heavily involved in

10 subdivision reviews and things like that.

11       Previous it was more reviews of forest

12 service or BLM or Fish & Wildlife service projects,

13 not necessarily private development.

14       Q.     And is that because based out of White

15 Sulfur Springs, there wasn't a whole lot of that

16 going on?

17       A.     Exactly.

18       Q.     Would you be able to estimate how many

19 subdivisions you were asked to comment on while you

20 worked for the Montana Fish, Wildlife & Parks

21 Department?

22       A.     While I worked out of the Kalispell

23 office, off the top of my head, I would have to say

24 around 30.

25       Q.     And were those primarily for Flathead

7

1 County, or were they for other counties in

2 northwest Montana?

3       A.     Flathead and Lake County.

4       Q.     Flathead and Lake. Do you have an

5 estimate of how many of those 30 comments were to

6 Flathead County?

7       A.     The majority, at least two-thirds to

8 three-quarters of them. I didn't have all of Lake

9 County, and of course, a lot of Lake County is

10 reservation too.

11       Q.     And as part of that job and role of

12 reviewing subdivisions, were you asked by the Fish,

13 Wildlife & Parks to comment on the North Shore

14 Ranch development?

15       A.     Yes. Or I should say I was made

16 responsible for comment on the North Shore Ranch.

17 I left before the final comment was ever submitted.

18       Q.     Did you have a normal procedure that

19 you followed when you were making comments on a

20 subdivision?

21       A.     Typically I would either initially

22 receive materials from the county planning board,

23 or sometimes some developers being more proactive

24 would contact me initially before they submitted

25 projects to the -- to the county planning board to

8

1 get my impressions at an earlier stage and possibly

2 work them in.

3           After I received the comments, I'd

4 review the area, what historical data we had for

5 the area, my -- my impression on how it would

6 impact wildlife resources within that area, what

7 major wildlife resources were in the area and where

8 problems might arise, conflicts between people and

9 wildlife within the proposed subdivision.

10       Q.     And when you say "major wildlife

11 resources," could you expand on that?

12       A.     For instance, if it was in a major big

13 game wintering range, very important wetland areas,

14 if it was in a major area for grizzly bear or black

15 bear use or mountain lion use, and then, you know,

16 whenever we start talking about those things, we're

17 starting to drift from impact to wildlife resources

18 to actual interactions between wildlife and people

19 that could have -- end up in bad consequences.

20       Q.     And was that primarily -- I mean you

21 mentioned, you know, grizzly bears and mountain

22 lions. The bad consequences can obviously be

23 people being eaten?

24       A.     Yeah.

25       Q.     Was that the focus, or was the focus

1 more on the consequences to the wildlife itself?

2 A. I'd say it was twofold because I never  
3 felt it was the agency's responsibility to approve  
4 or deny a subdivision but to provide information on  
5 the impacts of that subdivision.

6 And along the lines if that  
7 subdivision was approved, I felt it was -- was our  
8 responsibility to -- also to provide through the  
9 covenants ways that that community could better  
10 live with the wildlife in the area so we were --  
11 would be less likely to have to deal with future  
12 problems within -- within a subdivision.

13 Q. And in terms of that, that would be  
14 things like using bear-proof garbage containers and  
15 that type of thing?

16 A. Right, and feeding birds or just  
17 feeding wildlife in general, the type of fencing,  
18 if it was in a major wildlife movement area, if  
19 there was lots of deer around, you know, shrubs  
20 that would be smart to plant and things that  
21 wouldn't be smart to plant.

22 You know, and just letting people  
23 know, the future owners of the subdivision, if it  
24 were approved, what they might have to deal with  
25 and how to best deal with it.

1 Q. And in terms of that, did you work up  
2 a sort of standard set of covenants that you would  
3 recommend to people, or was it more on a  
4 case-by-case basis?

5 A. It was on a case-by-case basis, but  
6 with time for many things, I could -- I could cut  
7 and paste from other recommendations because  
8 dealing with similar instances would -- would  
9 result in utilizing similar remedies, and so I  
10 could pull from a standard set of -- of comments  
11 and then tried to tailor each one if they had  
12 special circumstances.

13 Q. Do you know who Keith Simon is?

14 A. Yes. I met Keith once or twice.

15 Q. And when you say you met him, was that  
16 in the context of his submission of the North Shore  
17 Ranch project?

18 A. Yes, yeah.

19 Q. And in addition to meeting him once or  
20 twice, did you speak with him on the phone?

21 A. Yes.

22 Q. Did you send e-mail or written  
23 correspondence to him?

24 A. Yes.

25 Q. Do you know if you sent both?

1 A. If I sent --

2 Q. Both e-mails and --

3 A. Just e-mails. I wouldn't have sent  
4 any written comments until the final comment.  
5 Seems like everybody uses e-mails nowadays.

6 Q. While you were at the northwest  
7 office -- which is in Kalispell; correct?

8 A. Uh-huh.

9 Q. How many other people were at that  
10 office?

11 A. In total, wildlife and fisheries?  
12 Thirty to forty, and parks was there too and of  
13 course law enforcement.

14 Q. And --

15 A. And I should say worked out of the  
16 region. Actually in the office, yeah, there's  
17 still at least 20 or 30 people that worked in the  
18 office too.

19 Q. Okay. How many of them were involved  
20 in subdivision review and commenting?

21 A. Out of the -- out of the Kalispell  
22 office itself, it would have been -- at that time  
23 it would have been just myself. Well, myself for  
24 wildlife and then -- and then fisheries, and  
25 fisheries, it was more divided up.

1 Like, from the wildlife end of it, I  
2 would handle everything wildlife as far as what was  
3 coming out of the Kalispell office. And fisheries,  
4 it would be broken up. Since all the fisheries  
5 biologists, per se, were located in the Kalispell  
6 office, it would be broken up between different  
7 ones.

8 The one most frequently -- and his  
9 name slips my mind right now, but he lives in  
10 Lakeside, and he retired just before I left.  
11 Trying to think of his name. Scott, and  
12 I can't think of his last name, but he's retired  
13 now.

14 Q. Sure.

15 A. He would have been the one making  
16 comments for the North Shore area if there were any  
17 to make from their perspective. And for the  
18 wildlife, the northwest region was divided -- is  
19 divided into districts or regions amongst the  
20 biologists.

21 Mine encompassed the -- the lion's  
22 share of the Flathead Valley and the -- and the  
23 northern part of Lake County, so anything going on  
24 in those areas, you know, as far east as Hungry  
25 Horse and as far north as Columbia Falls and west,

1 you know, on towards Kila and stuff would have all  
2 been my -- my responsibility to respond to.

3           Once you got, like, White -- Whitefish  
4 and north, then -- then it goes into a different  
5 biologist.

6           Q.     So yours was generally the area around  
7 the lake in kind of a ring?

8           A.     Yeah, and down Swan Valley too was  
9 another area. So actually, I did make some  
10 comments for Missoula County also then. I forgot  
11 that initially.

12          Q.     So if I understand you, the wildlife  
13 commenting was always you for that area, but the  
14 fisheries was more broken up by specific areas?

15          A.     Yeah, and that's simply because the  
16 bulk of the subdivision was going on in an area  
17 that was my responsibility while for fisheries,  
18 they were -- that same area was a little bit more  
19 broken up amongst the fisheries people.

20          So it all just depended on how our --  
21 the divisions between wildlife and fisheries  
22 were -- were different.

23          Q.     Sure. Scott, the --

24          A.     And Scott Ramsey.

25          Q.     Ramsey. Fantastic. Do you know if

1 you discussed the project with him in terms of its  
2 effect on fish or other --

3           A.     I believe I mentioned it to him for  
4 sure, and right now I can't say with a hundred  
5 percent surety, but my recollection is that  
6 fisheries wasn't going to have any -- any comments  
7 on -- on this subdivision.

8           Q.     There are some other people from Fish,  
9 Wildlife & Parks who issued comments or became  
10 involved in this project. I will list a few of  
11 them. Tell me if you know of any more who might  
12 have been.

13          A.     Okay.

14          Q.     Mr. Satterfield, Ms. Bissell,  
15 Mr. Williams.

16          A.     Okay.

17          Q.     Do you know of any others?

18          A.     No, and I can tell you sort of the  
19 sequence of that.

20          Q.     Thanks.

21          A.     For a period of time, I was -- I was  
22 laid off, budget thing from Fish, Wildlife & Parks,  
23 and so initially when the -- when the North Shore  
24 subdivision was submitted, it was -- came under  
25 Gael's responsibility at that time, and she made

1 the initial response, I believe, and I looked for a  
2 copy of that, but unfortunately I was trying to  
3 refresh my memory with the project this morning. I  
4 didn't have electronic copy of that, but I know --  
5 I'm sure you two would, and it was also in my  
6 folder when I left.

7           And so she made the initial comment,  
8 and the planning board at that time denied the --  
9 denied the project and which -- which isn't  
10 uncommon initially.

11          And so when it was coming on its  
12 second go-around, I was able to be brought back on  
13 board by Fish, Wildlife & Parks, and then that's  
14 when, you know, I assumed responsibility for it.

15          Jim would have been my supervisor, not  
16 responsible for writing -- and this would be Jim  
17 Williams -- not responsible for writing direct  
18 comments but there for consultation and mediation  
19 if there needed.

20          Typically Jim Satterfield -- like,  
21 several of the letters that I wrote bear his  
22 signatures. The more contentious ones or if it was  
23 a feeling it might be contentious, he would tend to  
24 sign off on them.

25          And so I would draft the -- draft the

1 response, and then he would look it over. He'd  
2 make any edits or suggest any edits that he felt  
3 may be necessary, and then he would sign off on it.

4           And -- and again -- well, and you  
5 probably aren't interested in assumption. I'm  
6 assuming the letter that was finally submitted was  
7 probably written by Gael and then signed off on  
8 by -- by Jim Satterfield.

9           Q.     And just as a way of a little bit of  
10 background for you, there have been some other  
11 depositions in this case. I was not involved.  
12 Mr. McCormick was. Another attorney from my firm  
13 was involved in those, and Mr. Williams,  
14 Mr. Satterfield, and Ms. Bissell were all deposed  
15 in the last two weeks or so.

16          MR. MCCORMICK: Correct.

17          Q.     And so fear not. If there are any  
18 issues with you assuming things, we will lodge  
19 objections, but for the most part we have actually  
20 already talked to those people --

21          A.     Okay.

22          Q.     -- and so have a very good idea of  
23 what was said or what wasn't.

24          Organizationally, how were  
25 Mr. Satterfield, Mr. Williams related to you sort

1 of on the flow chart? Who was whose boss?

2 A. Okay. Jim Williams was my immediate  
3 supervisor. He was the regional wildlife  
4 supervisor, and then Jim Satterfield, he was the  
5 regional supervisor over everybody, so he would  
6 have been Jim Williams' boss, so he would have been  
7 my boss's boss.

8 Q. What responsibilities would  
9 Mr. Satterfield have in addition to those that  
10 Mr. Williams had? You mentioned Mr. Williams was  
11 sort of the wildlife --

12 A. He's the wildlife supervisor.

13 Q. Yes.

14 A. So Jim Williams supervised all  
15 wildlife personnel in the region, and Jim  
16 Satterfield is responsible for -- for management of  
17 the region in total, supervision of the -- of all  
18 the staff of Region 1, so he would be, you know,  
19 the -- the -- supervise the wildlife, fisheries,  
20 parks, and enforcement staff, more coordinator-type  
21 role.

22 Q. Fair enough. You mentioned that there  
23 were some periods of noninvolvement for you,  
24 budgetary layoff. Do you know approximately what  
25 that time period was?

1 A. Let's see. I went off the payroll in  
2 October of 2005. You'll have to forgive me if I'm  
3 sketchy there, and I was brought back on in August  
4 of 2006.

5 Q. So the comments that Gael Bissell made  
6 in the initial submission of the North Shore Ranch  
7 project, those would have been before August 2006?

8 A. Yes.

9 Q. And then you took over the project?

10 A. Yeah. I believe it was just two or  
11 three months previous to that were when comments --  
12 first comments went in.

13 Q. It's my understanding that during Jim  
14 Williams' deposition, he said something to the  
15 effect of -- regarding the FWP's comments on North  
16 Shore Ranch, "If it was okay with Litchfield, it's  
17 okay with me."

18 Does that seem about right with your  
19 relationship?

20 A. Yeah. We had some -- some discussions  
21 a couple months prior to whenever the final  
22 comments would have -- would have gone out. There  
23 was some disagreement amongst staff.

24 Gael Bissell was pretty much against  
25 it, and when I gained responsibility of it, you

1 know, she, you know, tried to bring me up to speed  
2 and provide me with her impressions and -- which I  
3 did not agree with, and I went to Jim and told him  
4 I wouldn't be able to support comments of that  
5 type.

6 For myself, I was trying to build a  
7 platform where -- where if I raised a red flag that  
8 people would pay attention to it and not raise a  
9 red flag over -- over every single subdivision, and  
10 so I wanted to develop some trust between the  
11 County and the Department and also between the  
12 developers and the Department that, you know, when  
13 concerns were raised that they were valid concerns.

14 Q. You didn't want to be the boy who  
15 cried wolf?

16 A. Right.

17 Q. Okay.

18 A. And you know, from a personal  
19 standpoint, you know, if I had my way, I would say  
20 let's have no subdivisions, but that's not reality,  
21 and so I tried to view each one objectively by its  
22 merits and what I felt the actual impact would be,  
23 and a lot of that impact depends upon development  
24 that's already gone on, you know, around the area  
25 and how much the area that's being proposed to

1 develop has been under development, you know,  
2 previously as far as not in its natural habitat any  
3 longer.

4 Q. Sure. The status quo changes over  
5 time?

6 A. Right.

7 Q. You mentioned -- and I am probably  
8 going to get the words a little bit off here but  
9 that you didn't agree with Gael's methodology  
10 essentially. And if I am misstating that,  
11 please --

12 A. I would say I didn't agree with some  
13 of the areas that she was using to -- to object to  
14 the subdivision.

15 Q. Can you tell me about that some more?

16 A. For instance, waterfowl and that the  
17 subdivision would greatly impact waterfowl use.  
18 Well, the actual property for the most part had  
19 been an alfalfa field at least for the length of  
20 time that I'd been there.

21 You know, alfalfa fields have very  
22 limited value for waterfowl. They might be used  
23 some for grazing by Canada geese, a little bit by  
24 mallards, but that's pretty much it. Canada geese  
25 and mallards aren't really a species of great

1 concern. They're plentiful.

2 As far as that, that's pretty much  
3 where in my view that the wildlife -- or the  
4 waterfowl use would end.

5 She had some concerns about waterfowl  
6 going through the area, and well, they fly, and  
7 they're used to flying over -- over houses, and so  
8 I didn't see the problem that they would be lifting  
9 up and flying over the subdivision.

10 Just north of the highway -- and off  
11 the top of my head -- and I forget things like that  
12 quick -- is it Route 80 or 81 that cuts through  
13 there?

14 Q. Eighty-three, I believe.

15 A. Eighty-three? Okay. Typically north  
16 of that highway, there was some -- some farming  
17 going on such -- a little bit of corn or grain,  
18 things like that, wheat, that were useful for  
19 waterfowl, and that's typically where I would see  
20 the birds mainly -- mainly feeding while I was  
21 there.

22 Another thing, the eagle nest with --  
23 with just -- just some thoughtful considerations  
24 from the developer's standpoint, I felt that the  
25 area could be developed and subdivision be there

1 without impacting the eagles one bit.

2 And since then, I believe I've been  
3 told that that eagle nest has fallen out of the  
4 tree that it was once in, so it wouldn't --  
5 wouldn't be an issue any longer anyway but --

6 Q. Other than waterfowl or eagles, were  
7 there other things that Gael was bringing up that  
8 you didn't think were appropriate or relevant?

9 A. You can bring up -- you know,  
10 grassland species of birds were -- were brought up,  
11 but for an alfalfa field, they're constantly being  
12 mowed, and so that's not conducive for grassland  
13 nesting birds or ground nesting birds. They get  
14 mowed over, run over, things like that, so they  
15 would tend to use the more naturally vegetated  
16 areas around the fringe of the property and the WPA  
17 to whatever extent they could.

18 In the subdivision plans, at least as  
19 far as they'd progressed when I was still there,  
20 the bulk of that area was going to be left as open  
21 space, and so I felt that also would mitigate those  
22 impacts. Things, like, in the letter like --

23 Q. And let me stop you for just one  
24 second.

25 A. And you can have this.

1 Q. I am fairly certain we have that same  
2 one. Let me just find our version of it so we can  
3 refer to that.

4 A. Okay.

5 Q. And then there's no --

6 A. It would have been the Department's  
7 comment letter that Jim Satterfield signed. It's  
8 online. I found it this morning and read it.

9 Q. Okay. Can I ask you to turn to  
10 Tab 12 --

11 A. Sure.

12 Q. -- in that book?

13 A. Uh-huh.

14 Q. Is that the same letter that you are  
15 referring to?

16 A. Yes.

17 Q. And for the record that is what was  
18 previously stipulated to as Exhibit 12.

19 A. Okay. Yes.

20 Q. Now please.

21 A. Exhibit 12 is the same.

22 Q. Carry on.

23 A. For instance, at the top of the second  
24 page, snowy owls are mentioned. Snowy owls were  
25 just a very occasional visitor to the Flathead

1 Valley, and when they did show up, they tended to  
2 end up south of Flathead Lake down reservation in  
3 those more vast grasslands/wetland complexes,  
4 which -- which makes -- makes perfect sense.

5 And so for me, you know, snowy owl,  
6 you know, wouldn't be -- incidental species aren't  
7 something that you manage for. They happen when  
8 they -- when they happen. And to say something  
9 impacts an incidental species that's not even there  
10 on an annual basis, I don't feel is cause for --  
11 for great concern.

12 I've already spoke about the bald  
13 eagles. Harriers would tend to use more naturally  
14 vegetated areas, not necessarily an alfalfa field.  
15 Rough-legged hawks would have utilized the area in  
16 the wintertime, but you could find rough-legged  
17 hawks throughout the valley and in amongst the  
18 subdivisions in the wintertime, and so they would  
19 still utilize the open areas.

20 Q. You mentioned a couple times more  
21 naturally vegetated areas. If I can shift you for  
22 a second, what would that --

23 A. Portions of the property that hadn't  
24 been mowed on an annual basis, so the vegetation  
25 was allowed to grow up on an annual basis, and so

1 if it was mowed -- mowed portion of the alfalfa  
2 field or if it was pastured areas, then -- then  
3 that wouldn't necessarily -- wouldn't fall under  
4 that.

5 Harriers typically, they're associated  
6 with wetland areas and hunt over the -- the taller  
7 more vegetated areas. And those by their nature  
8 have -- have higher rodent populations, which is  
9 what they're keying in on.

10 Q. Please continue.

11 A. Upland game birds, pheasant, Hungarian  
12 partridge, both of those are introduced species. I  
13 never gave them very much concern whatsoever simply  
14 by the fact because they are introduced, but also  
15 the upper part of the valley isn't good habitat for  
16 them. It's a little too harsh, a little too much  
17 snow.

18 It's not until you start getting down  
19 towards the Pablo area, and if you drive through  
20 the country, it's real recognizable. You're up in  
21 Kalispell, and the trees would grip into the  
22 valley. If they could get up into the Pablo area,  
23 they don't.

24 It's true grassland area in there, and  
25 those -- those areas are more conducive to upland

1 while I was there, a slough was always the main  
2 concentration area for them and their migratory  
3 path, and that's in the middle of the -- middle of  
4 the valley.

5 And pintails never saw -- saw a lot  
6 for pintails, but the -- but for either of those  
7 two species, the tundra swans or pintails, I would  
8 feel that the actual use of the property would be  
9 very, very low.

10 And I would -- I would challenge  
11 someone to document the thousands of waterfowl  
12 utilizing even the north shore of the Flathead.  
13 There has been some -- some changes through the  
14 years. Some of that could even be, you know, they  
15 mentioned subdivision could be an impact to some of  
16 that previous subdivision, and that's entirely  
17 true.

18 Other things that come into effect are  
19 weather patterns, having winters that -- that have  
20 late onset, and then all of a sudden they hit hard  
21 causes birds to -- to fly over you instead of --  
22 instead of dropping in.

23 There's many things that -- that can  
24 change -- that can change those patterns. And  
25 somewhere in here -- and it would be the fourth

1 game species like pheasants and Hungarian  
2 partridge, simply because by displaying that --  
3 that grassland-type there, they're -- they're --  
4 they're showing that they -- they receive less  
5 moisture, and so they're drier habitats.

6 And the wintertime would be -- would  
7 be most important, and again, even from the  
8 property itself, pheasants and Hungarian partridges  
9 are most ideally linked to the raising of small  
10 grains which they utilize for -- for food, and  
11 alfalfa wouldn't -- wouldn't have provided a lot  
12 of -- a lot of food for the species.

13 Short-eared owls, again, would be --  
14 short-eared owl was just a nighttime equivalent of  
15 the northern harrier. They would hunt over the --  
16 the taller grasslands, per se, or natural short  
17 grass prairie-type areas associated with -- with  
18 wetlands.

19 Kestrels can make a living in amongst  
20 subdivisions as long as they have some open space.  
21 So -- so things like that.

22 And you know, I circled, you know,  
23 "thousands of upland waterfowl such as mallards,  
24 pintails, tundra swans, Canada geese" -- I've spoke  
25 some about mallards and Canada geese. Tundra swans

1 paragraph on page 2, the last sentence, talking  
2 about the hunting and the bird hunting economy in  
3 the valley as well as in other intermountain  
4 regions, I seriously doubt that development of --  
5 of this property would have any effect whatsoever  
6 on -- on intermountain regions.

7 They're talking about the whole  
8 country there. You know, you start making  
9 statements like that, then I -- I think you have to  
10 be able to stand up and show, and I don't think  
11 Fish, Wildlife & Parks could document that there's  
12 an annual use of thousands and thousands of  
13 waterfowl of the area.

14 You know, they mention a lot of the  
15 divers, and I believe they started out saying  
16 that -- yeah, the littoral zone, which is  
17 essentially the shallow water zone of the lake  
18 itself, not the upland forging habitat for many  
19 diving species of -- of waterfowl.

20 That would be probably one of the --  
21 the biggest uses of that north part of the lake for  
22 feeding, loafing, staging areas for those species  
23 in the migrations and also loafing areas during  
24 migration for mallards, Canada geese, but the  
25 subdivision, you know, wasn't on the shore of the

1 lake. It was back away from the shore of the lake,  
2 and so in my mind there should be no real impact  
3 there.

4 Q. My memory is the closest point to the  
5 shoreline from the subdivision is about 600 feet.  
6 Is that --

7 A. Yeah, and I believe it's not in here,  
8 and I believe that's the actual property lines, and  
9 there was the open zone would -- open areas would  
10 make that actual distance to an actual house would  
11 be -- would be further. I looked at that this  
12 morning too.

13 Q. Let me ask you about a different  
14 letter --

15 A. Okay.

16 Q. -- for a moment. This one has been  
17 marked as Exhibit 4. It should be Tab 4 in your  
18 book. This is a letter signed by Jim Williams. It  
19 is not dated, but it was received on June 22 of  
20 2006.

21 A. Uh-huh.

22 Q. It's dated June 16, 2006, rather.

23 A. Yep. Yes, it is. Okay. Exhibit 4.

24 Q. Are you familiar with this letter?

25 A. I'd have to look through it quick.

1 Q. No, please. Take your time.

2 A. I haven't read the whole thing yet,  
3 but I believe it's the one that Gael would have  
4 written initially, and my assumption is that Jim  
5 probably signed off on it, and that's why it says  
6 the last sentence "If you need more information,  
7 contact Gael Bissell."

8 Q. You could say for sure that you did  
9 not write this letter?

10 A. Oh, definitely I did not write it.

11 Q. And could you say for sure that you  
12 had no -- I mean you didn't write a draft of it or  
13 a section of it or anything like that?

14 A. No. This would have been while I was  
15 laid off. I would have been brought on a couple  
16 months after this. Well, month and a half, six  
17 weeks, so I was brought back on just several weeks  
18 after this was written, and it had a different name  
19 at that time too I see, Kleinhans North Shore  
20 Ranch.

21 Q. Let me ask you about some things in  
22 the back here now.

23 A. Okay.

24 Q. It should be No. 35.

25 A. Okay. There's 34. Okay.

1 Q. This is an e-mail from -- well, an  
2 e-mail chain between yourself and Keith Simon; is  
3 that correct?

4 A. Uh-huh.

5 Q. And do you remember this e-mail chain?

6 A. Yes. It looks familiar to me. I  
7 remember. I remember --

8 Q. This would have been something that  
9 you wrote?

10 A. Yep, yeah.

11 Q. Okay.

12 A. And this is -- you know, this is some  
13 of the -- how Keith was being a developer that's on  
14 the proactive end of things instead of just  
15 throwing something together and sending it in to  
16 the planning board, that he'd already done that  
17 once, and so this time through, he was trying to --  
18 trying to work with -- with various entities to  
19 identify problems beforehand and hopefully get  
20 things ironed out and lined out so when the project  
21 was submitted, there would be less areas for -- for  
22 objection.

23 And you know, looking -- looking  
24 through this, and I know of the last set of CC&Rs  
25 that I received from Keith, like, he'd incorporated

1 some of these things that -- that I had written  
2 about here, and I don't know if it's in the changes  
3 or not and -- but one of the things we discussed,  
4 and I don't know whether it ever got in there with  
5 regard to cats because cats can be a big issue,  
6 whether they're somebody's house cat or they're  
7 house cat turned feral in a wildlife production  
8 area or any wildlife area especially where you're  
9 dealing with birds.

10 And I was at that time in discussions  
11 with Keith -- I don't know if it's, you know,  
12 written down here or not -- hoping that -- that the  
13 ultimate covenants would say indoor cats only or no  
14 cats.

15 That way the -- the subdivision, that  
16 would be one black mark that couldn't be held  
17 against the subdivision.

18 Q. Let me ask you about the next one, 36.  
19 Appears also to be an e-mail between yourself and  
20 Keith; is that correct?

21 A. Uh-huh.

22 Q. And do you recognize this e-mail?

23 A. I do. I'd have to read it to -- to  
24 understand exactly what we were -- we were writing  
25 about again. But it does fall under some of the

1 notes I was making to myself this morning when I  
2 was going through the last set of CC&Rs that I had  
3 reminded myself of some of the -- some of the  
4 issues that I had concerns with and that I was  
5 talking over with -- with Keith.

6 Yeah, and that's -- I was talking  
7 about grazing and things like that, and I do -- do  
8 remember it, and that's one of the things that --  
9 that I noted here, and both of you are free to take  
10 this with you if you want.

11 You know, I just stuck in sections  
12 from the CC&Rs that I knew he had drawn my  
13 attention where I highlighted about horses, and  
14 then I had written over here "grazing issues," and  
15 that's exactly what we're talking about here.

16 The open space areas could provide  
17 valuable wildlife benefit if they were left in a  
18 natural state or -- or a very well-managed state,  
19 and too often in the valley you'd see subdivisions  
20 with -- with one or two or more horses thrown on an  
21 acreage that -- that couldn't support that number  
22 of horses, and they essentially would turn into --  
23 you know, look like a billiard table or something  
24 like that, essentially no vegetation, and that  
25 would be --

1 Q. Sure.

2 A. That would be not beneficial for most  
3 species of wildlife, and when you start talking  
4 about impacts, that's when -- when things get --  
5 get difficult.

6 There's nothing that -- that people do  
7 that doesn't benefit some species of wildlife to  
8 the detriment of others, even if it's a wildlife  
9 management area. There tends to be a focus on  
10 certain wildlife species, and that focus and -- and  
11 promoting certain habitats is to the benefit of  
12 some wildlife species and to the detriment of  
13 others.

14 And so there's -- there's always  
15 some -- some give-and-take in those issues. It all  
16 depends on what concerns the individuals -- or what  
17 species in the area might be of most concern.

18 Q. And is that true even to the extent  
19 of, say, you have a number of -- let's say  
20 potentially even two species that were on the  
21 endangered species list.

22 A. Uh-huh.

23 Q. That actions that you would take to  
24 protect one of them might have an adverse effect to  
25 the other?

1 A. That possibly could happen, yes.

2 Q. The second page of No. 36 --

3 A. Uh-huh.

4 Q. -- is a document entitled "North Shore  
5 Ranch Stable and Trail Rules"?

6 A. Uh-huh.

7 Q. There's some handwriting in the top  
8 right-hand corner of that document.

9 A. Yeah.

10 Q. Do you know whose handwriting that is?

11 A. That's my handwriting.

12 Q. That is. Okay.

13 A. Yeah. And those would have been notes  
14 that I was making to myself to -- either while I  
15 might have happened to be visiting with Keith on  
16 the phone or after receiving this to -- to include  
17 in an e-mail or conversation with them -- with him  
18 to answer questions that I had in looking --  
19 looking through what was being sent.

20 It's something that was fairly --  
21 fairly common with me, and this obviously is from  
22 the folder I was putting -- putting together while  
23 I was there. There should have been, like, one  
24 with -- with CC&Rs in it with notes written in  
25 about cats and things like that similar to what

1 I've done here.

2 MR. McCORMICK: Are you introducing  
3 these as exhibits or just asking him about them for  
4 the time being?

5 MR. BEAL: It was my understanding  
6 that we were introducing the 34 through 39 as  
7 exhibits.

8 MR. McCORMICK: Through 39? Could we  
9 have her mark those as you do them, or has she  
10 already done that?

11 MR. BEAL: They are marked --

12 MR. McCORMICK: His copy?

13 MR. BEAL: -- in the official copy.

14 MR. McCORMICK: Excellent.

15 A. And -- and what my memory is telling  
16 me now looking at this handwriting is that in the  
17 rules, you couldn't graze a horse unless you had  
18 certain acreage, and so what I was trying to find  
19 out here -- and this is all drawn from memory  
20 without reading through everything again -- were  
21 how many lots bordering the open area were bigger  
22 than an acre that could -- that could entertain the  
23 possibility of having horses graze on them.

24 And so I was trying to get it -- get  
25 it -- even though there's a rule in place saying

1 you could graze horses on over an acre ground, what  
2 then I was trying to determine, well, how many lots  
3 that actually bordered the open space areas are  
4 over an acre that we'd even have to worry about in  
5 the first place?

6 Q. Sure.

7 A. And then in those instances, you know,  
8 one thing I might have tried to do, and this is --  
9 and I don't know if I talked with Keith about this  
10 or not -- would be saying, well, there's only  
11 eight -- like, in this instance, okay. There are  
12 only -- and I'm going from memory -- there are only  
13 eight lots bordering this open space that you could  
14 possibly entertain grazing of horses. Why not just  
15 make those eight lots you can't graze horses on  
16 them and then -- you know, because something like  
17 that, then it would take out that thing, that black  
18 mark, from --

19 Q. Sure.

20 A. -- from lots bordering open areas, and  
21 horse grazing, you wouldn't have to deal with the  
22 issue of, well, will they be managed properly or  
23 not?

24 We're just going to make it so yeah,  
25 you can graze a horse if it is over an acre in size

1 except for those eight lots, and they could just be  
2 marked out in the plot or the covenants, you know,  
3 prior to purchase that they wouldn't be allowed.

4 Q. And in your discussions with Keith  
5 about things like that, did you find him to be  
6 proactive and willing to listen and willing to work  
7 with you?

8 A. Yes, yeah.

9 Q. Let me ask you about 37, which I think  
10 may be what you were describing before actually.

11 A. Even more of my scratching.

12 Q. These are -- it's entitled  
13 "Declaration of Covenants, Conditions and  
14 Restrictions"?

15 A. Uh-huh.

16 Q. That's your handwriting at the top?

17 A. Yes, it is.

18 Q. And can you tell us what your  
19 handwriting means there?

20 A. Okay. And this -- this first one,  
21 "Clarification: Horse pastures needs to be  
22 developed," what I was getting at with that was  
23 probably more of this is probably subsequent to  
24 those -- those notes, my wanting to find -- find  
25 out about more how horses were going to be grazed

1 and maybe develop that part of the covenants more  
2 so in the critical areas where horse grazing might  
3 be an issue with -- with wildlife concerns that  
4 those could be mitigated or eliminated.

5 "Will be hunting and shooting on the  
6 adjacent property," that was also something that  
7 right before I leave -- left, I received the last  
8 mailing -- off the top of my head, I want to say it  
9 was October 16 was where these were pulled out  
10 from, was where I saved it to my hard -- hard  
11 drive, and before I left, everything that was on my  
12 hard drive, I saved to a jump drive and brought it  
13 with me. I've just found things like that are  
14 handy.

15 And I wanted to make sure that -- that  
16 if the area was approved for development that --  
17 that -- that the Department and the U.S. Fish &  
18 Wildlife Service and the valley in general wouldn't  
19 have to deal with a subdivision that said "Oh, we  
20 don't like shooting or hunting around our place,"  
21 and so that was something I wanted to make clear in  
22 the covenants that there will be hunting and  
23 shooting going on around the -- around the  
24 property, and I know in the last version that I  
25 received that that was -- that was in there.

1 Asking about fences, fences are -- are  
2 very much a barrier to wildlife movement depending  
3 on -- on the type of fence it is, and so these  
4 notes up at the top, trying to find out what kind  
5 of fences is there going to be? What kind of  
6 boundary fence?

7 Let's see. And on the -- on the --  
8 "on the conservancy side of the fence on both sides  
9 of paths," you know, wondering if -- you know, you  
10 had open space, and then you had paths, hiking  
11 trails through this open space. Were they going to  
12 be fenced? And if yes, what kind of fence was it  
13 going to be?

14 Because depending on what species of  
15 wildlife you're interested in, you know, fence can  
16 be very much a barrier. Net wire fence is very  
17 much a barrier to everything except the smallest  
18 things.

19 Q. Sure.

20 A. They either have to jump it or go  
21 around it. You know, and I wrote "if a fence, a  
22 jack fence," and jack fence is a very open-style  
23 fence that allows wildlife to move through it with  
24 relative ease but would also contain livestock,  
25 and -- and they're fairly a long-life fence.

1 Q. And is jack fence a sort of term of  
2 art describing something particular or --

3 A. It is, and I don't know how common --  
4 common it is. A jack fence simply is -- it's --  
5 they're all made out of wood, wood rails, and so  
6 that's something that kind of goes with a  
7 horse-type community.

8 They're cross-pieces set in a  
9 triangular fashion, teepee fashion, so they cross  
10 at the top, and then going down one side, there's  
11 usually two or three rails, horizontal rails, and  
12 so that provides the barrier for livestock,  
13 although a good jumping horse could jump over them.

14 But also the rails are far enough  
15 apart so anything -- any small animal just walks  
16 right underneath them. Other animals, fawns,  
17 things like that, can easily move through them. A  
18 deer can jump them. An elk would have to jump it.

19 A lot of times deer will just work  
20 their way through the barriers if there's space far  
21 enough apart because there's only bars on one side,  
22 and so they just go under or through the bars, just  
23 something that -- that would permit movement of  
24 wildlife through it.

25 Q. Anything else about the handwritten

1 notes --

2 A. No.

3 Q. -- on the sheet?

4 A. Not without reading everything. I  
5 think I've covered it. I don't know what the tree  
6 comment would have been, if I was wondering if they  
7 were going to plant rows of trees, you know,  
8 through the open space or what. That's just  
9 supposition on my part about the -- about the  
10 trees.

11 Q. Had you had discussions with them  
12 about what sorts of vegetation would be in the open  
13 space?

14 A. Well, my -- my understanding, the bulk  
15 of the open space or all of the open space to the  
16 south was going to be left in -- in a natural state  
17 and some of it even rehabilitated into a more  
18 natural state.

19 Q. And when you say "natural state," that  
20 can --

21 A. Native vegetation, you know, in that  
22 type of area, it's going to be mostly grassland,  
23 although with time you might have cottonwoods  
24 growing in the area.

25 Q. The property, or at least that piece

1 of the property, is not currently in a natural  
2 state because it's being farmed?

3 A. Right.

4 Q. Okay.

5 A. And -- and going by my memory, most of  
6 the area where the subdivision was -- was going to  
7 occur were in -- in the old farming field or  
8 fields, and the -- and the grazed portions of the  
9 property and the -- and the set-aside open space,  
10 buffer areas, were the parameters of the property  
11 that hadn't been actively farmed or grazed, and --  
12 and so that's, I guess, where I'm getting it.

13 That portion of the property was  
14 already in a more natural state, although it may  
15 have been comprised of a lot of introduced species,  
16 and that's the portion of the property that had  
17 retained the bulk of its wildlife value through  
18 time.

19 Q. Sure. But there were other portions  
20 of the property probably adjoining those, I would  
21 assume, that you could transform back into a more  
22 natural state?

23 A. Right, and -- and I believe there was  
24 a wetland area in the southern portion that I  
25 thought Keith was talking about rehabilitating it

1 or -- or reclaiming it to put it more, you know,  
2 back into a wetland-type state.

3 Q. And let me ask you about the next tab.

4 A. Okay.

5 Q. This should be No. 38.

6 A. Exhibit 38.

7 Q. And that's an e-mail between you and  
8 Keith again?

9 A. Yes.

10 Q. Can you tell us what this one is  
11 about?

12 A. Yes. He was -- at that time he was --  
13 he was wondering, well, we could have these  
14 covenants, you know, regarding pets. How can there  
15 be more teeth put in them so people pay more --  
16 more attention to them?

17 And that's where searching through  
18 federal laws, displaying that if -- that if these  
19 animals were on the refuge that they could be shot,  
20 euthanized, whatever, if they were, you know, being  
21 uncontrolled, you know, on the -- on the WPA area.

22 So essentially trying to put something  
23 into the covenants to let the residents know, you  
24 know, if it was approved that -- that this is  
25 something that you do need to pay attention to

1 because your -- your pet could -- could wind up  
2 dead.

3 Q. Sure. And then it appears from the  
4 pages after that from this exhibit that you had  
5 actually sent him the text of the law itself?

6 A. Possibly. Either that or it's a  
7 printout of the link. I can't -- I can't  
8 remember --

9 Q. Okay.

10 A. -- now. But yeah. It's just -- it's  
11 just the literature that goes with the links.

12 Q. Fair enough. Let me ask you about the  
13 final one then, No. 39. Can you tell us where  
14 these e-mails are to or from?

15 A. Okay. Let me go to the oldest and  
16 work forward then. Yeah. This is just e-mails  
17 from myself regarding contact information to get  
18 the CC&Rs to myself, and it looks like this Heidi  
19 Rauch, she also sent maps and stuff, which I did  
20 receive, and I still have copies too.

21 Q. Okay. These documents, e-mails and  
22 such, 35 through 39, are the only ones that we have  
23 in terms of e-mails that were sent to or from you  
24 by and between Keith. We obtained these by sending  
25 a subpoena to Fish, Wildlife & Parks and asking

1 them for all of their records on this.

2 A. Uh-huh.

3 Q. Do you think that there are other  
4 e-mails out there between you and Keith or anyone  
5 else about this project?

6 A. Were these provided in a hard copy  
7 format in a folder?

8 Q. I believe they were.

9 A. Because my -- typically what I would  
10 do is any e-mail that I felt was of any  
11 consequence, I would print it out and stick it in  
12 the folder, just to keep -- keep track of it that  
13 way.

14 If it was just something that I felt  
15 of little or no consequence, then I probably  
16 wouldn't have printed it off, and it would have  
17 just stayed on -- on my computer.

18 I don't know if -- if they -- I'm sure  
19 they wiped out my account, but if they -- if they  
20 save e-mails from accounts or not -- but these  
21 should represent what I felt were pertinent and of  
22 some importance.

23 Q. Well, let me ask you a different way.  
24 Do you recall writing e-mails to anyone else about  
25 this project?

1 A. No.

2 Q. You wouldn't have e-mailed internally  
3 between yourself and Jim Williams or Jim  
4 Satterfield about it?

5 A. No. I would have gone and talked to  
6 them, and I typically -- you know, I wouldn't be  
7 interacting with Jim Satterfield until the final  
8 letter-writing phase came.

9 Q. Sure.

10 A. Otherwise, you know -- and I would  
11 have only gone to Jim Williams if I had a question  
12 concerning policy or something like that.

13 Otherwise, you know, from the wildlife end of  
14 things, it was my responsibility to put this stuff  
15 together.

16 Q. These e-mails are more or less only on  
17 the question of the covenants and the domestic  
18 animal issues.

19 A. Uh-huh.

20 Q. It does sound, though, that your  
21 conversations with Keith were more extensive than  
22 that on the telephone?

23 A. Yeah, although, you know, they -- they  
24 all revolved around either wildlife and what could  
25 impact that wildlife or impact the habitat,

1 especially habitat that was being set aside for  
2 wildlife purposes.

3 The only other thing that I remember  
4 that we talked about extensively, and I made a note  
5 of it here, is that with the property, there also  
6 was a -- to my understanding a very good water  
7 rights that went with the property that was to  
8 surface water from Flathead Lake, and upon -- and I  
9 won't answer this, but when it quits ringing, I'll  
10 put it on vibrate.

11 And upon purchase of the property from  
12 the original owner -- and I don't -- don't know who  
13 it was. I'm sorry.

14 Q. That's okay.

15 A. It will quit. And I will --

16 Q. We won't fine you.

17 A. -- vibrate so it won't -- Upon the  
18 purchase of the property and the -- an adjacent  
19 landowner finding out that it might be developed,  
20 he removed their right to run the water line from  
21 the -- from the lake across that property to  
22 this -- to the property in question, North Shore  
23 Ranch, and -- and Keith or Sean Averill had  
24 approached the U.S. Fish & Wildlife Service about  
25 allowing them to run their line across the WPA to

1 the property, and there should be written letters  
2 of this because I believe I -- I saw them.

3 But anyway, the biologist in charge of  
4 the refuge had denied them, and I was very adamant  
5 to Keith that they could not do that and that one  
6 of the things that -- that I would be -- and I  
7 would have probably mentioned it in the letter --  
8 that if the subdivision was approved that water --  
9 they were going to -- the proposal was to drill  
10 deep wells for culinary water.

11 You know, I told Keith it was a waste  
12 of water resources to utilize good clean water from  
13 deep aquifers for the ponds that were proposed or  
14 for irrigation when you had a good water right from  
15 the -- from the lake.

16 And I told him that if he did a little  
17 investigation, he'd find that -- or I was sure that  
18 he would find that the -- that the federal  
19 government, in this case U.S. Fish & Wildlife  
20 Service, couldn't -- couldn't bar his right to  
21 his -- to his access to his water rights from the  
22 surface water, and I said under an ideal  
23 circumstance, you'd get that line run across the  
24 WPA.

25 Once it's in, there should be no

1 impact to wildlife because of it, but then from a  
2 water conservation side of things, then you'd be  
3 irrigating lawns or filling ponds from the existing  
4 water right from surface water and not using water  
5 from a deep aquifer.

6 In my mind that was just going to be a  
7 waste of the valley's water resources.

8 Q. So while there might be a bit of  
9 disturbance to wildlife while they were putting the  
10 water line in --

11 A. Right. It wouldn't be a long-term  
12 thing. You know, and it was my feeling that the --  
13 that the U.S. Fish & Wildlife Service had misspoke  
14 when it came to that -- that issue.

15 And there's -- I've had adequate -- or  
16 many interactions in the past, for instance, people  
17 owning a mining -- five acre, ten acre mining claim  
18 in the middle of a national forest and saying  
19 "Well, I want to build a road to my property."  
20 They can't be stopped. They get to, you know, and  
21 putting a road, you know, in across, you know,  
22 acres and acres of forest service land has much  
23 more of an impact than a pipe, you know, going  
24 through -- going through tall grass or even being  
25 buried.

1 Q. Sure. Let me ask you a bit more about  
2 your conversations with Keith and the issues that  
3 you were working through. Your e-mails are  
4 primarily on the domestic animal issue --

5 A. Uh-huh.

6 Q. -- and controlling that. Was that  
7 sort of a sticking point or something where there  
8 were -- it wasn't obvious, at least up-front, how  
9 to solve it?

10 A. I wouldn't say obvious up-front how  
11 to -- how to solve it. I always approached each  
12 subdivision in sort of a two-pronged approach.

13 First of all, I would look at the  
14 subdivision and -- and make an assessment of -- of  
15 what the -- what I felt the real impacts to  
16 wildlife would be, and then I would look at now  
17 what will the impacts be if the subdivision -- you  
18 know, first of all, taking the ground and  
19 subdividing it, what would those impacts be?

20 Then secondly, I would -- I would  
21 investigate, what are the potential impacts once  
22 there's houses built and there's people there and  
23 all the things that people do?

24 And that's where you start addressing  
25 things like the -- like the pets and the horses

1 because they can -- they can provide an impact  
2 that's much more far-ranging, especially, you know,  
3 dogs and cats than the actual subdivision itself.

4 And so having things like that  
5 contained with good covenants, you know, about the  
6 subdivision, it all feeds back into the people  
7 living with the wildlife and those interactions.

8 You know, for the horses, it  
9 probably -- primarily would have been interaction  
10 with them in the habitat, open space areas. For  
11 dogs and cats, it would have been when those  
12 animals, if they're left to run at large, you know,  
13 going off the property onto the WPA, which would  
14 have been a definite, you know, sticking point  
15 and -- you know, and something, you know, to at  
16 least raise a red flag, you know, once about --

17 Q. And between dogs and cats, cats are  
18 the larger problem?

19 A. More so because people tend to keep  
20 more control of their -- their dogs, and there's --  
21 like, for instance, there are already covenants  
22 about, you know, keeping dogs on a leash if they're  
23 outside your yard, and if they're in your yard,  
24 they have to be contained.

25 People view cats differently, like

1 they become part of the landscape, and they're  
2 free-ranging. Cats are instinctively very good  
3 hunters, and having those animals in a WPA where --  
4 where the, you know, main focus is birds and  
5 they're nesting in low vegetation, you can provide  
6 quite an impact that way.

7 Q. Sure.

8 A. And that's not to say there were no  
9 cats there already because with nearby community  
10 and other developments not that far away, cats had  
11 probably at least -- at the very least been an  
12 infrequent visitor to the area.

13 Just having all those horses right  
14 there would greatly up the odds of -- if, you know,  
15 cats were allowed to run at large that you'd have a  
16 lot of -- a lot of cats utilizing the area.

17 Q. I believe that there was a study --  
18 maybe Fish, Wildlife & Parks did it -- dogs at  
19 least, maybe cats as well, but they were seeing  
20 them from as far away as two and a half kilometers  
21 getting onto the WPA?

22 A. I'm not aware of that -- of that  
23 study. I can verify that yes, dogs go miles, and  
24 cats will -- cats will easily go a mile. They'll  
25 cover long distances.

1 Q. So problems with dogs and cats getting  
2 onto the WPA is hardly unique to this particular  
3 parcel of ground?

4 A. No. It's something that needs to be  
5 considered, you know, in any -- any WPA or  
6 refuge-type situation, and you know, it would be  
7 one of the concerns, you know, as the area, you  
8 know, around those are developed.

9 Q. In terms of cats, it would seem to me  
10 if there was a covenant that was followed that  
11 people had to keep all cats indoors, that would  
12 essentially eliminate that issue?

13 A. Yeah. No cats or indoor cats only,  
14 you know, would effectively, you know, eliminate  
15 it.

16 Q. Let me ask you about one of the  
17 documents again, No. 35.

18 A. Okay.

19 Q. The second paragraph of the e-mail,  
20 you say "Other than the things that we" -- excuse  
21 me -- "Other than the things we have previously  
22 discussed and a copy of the application package, I  
23 think anything else that might turn up can be dealt  
24 with as the process moves forward."

25 Keith's memory of the situation is

1 that at that time you had told him that it looked  
2 like everything was fine. There may have been some  
3 other issues that would come up as the process  
4 moved on but that the main issues had been worked  
5 out. Is that your memory as well?

6 A. Yeah. I felt -- I felt, you know,  
7 from a wildlife perspective that -- that we'd done,  
8 you know, what we could do.

9 Again, given the fact that, you know,  
10 a subdivision is going to have an impact of some  
11 sort, period, no matter how good or -- good it is  
12 or how -- how bad it's put together. But, you  
13 know, best case scenario, I felt that everything  
14 that could be done to minimize the impact of the  
15 subdivision, if it was approved, that we discussed  
16 in moving in the proper direction.

17 I'm just looking at the first  
18 paragraph and saying I'm still interested in seeing  
19 the rules and regulations about the equestrian  
20 center and private stables and again hitting at the  
21 grazing and then asking about wildlife management  
22 plan and vegetation management plan, the scope of  
23 that.

24 And so basically I was saying in  
25 addition -- in addition to that, I felt that we'd

1 covered most -- most of the bases and what's --  
2 the date would have been sometime in July, so we  
3 were getting down towards the end there.

4 Q. It looks like it was printed at least  
5 on July 9, 2007. That's the date in the lower  
6 left-hand corner.

7 A. Okay. Yep.

8 Q. And by that was your intent to convey  
9 there to Keith that you felt like all of the major  
10 issues had been resolved?

11 A. Or -- or they were at least in the  
12 process of being resolved because I'm still asking  
13 for -- for more stuff so --

14 Q. But you were --

15 A. But I didn't -- what I'm trying to  
16 convey, I believe, in that last sentence is that I  
17 didn't think -- there wasn't anything that I had  
18 concern over that we hadn't at least discussed, and  
19 if I envisioned anything else coming up, it was  
20 going to be something small that we could take care  
21 of in the process.

22 Q. You didn't believe that there was  
23 anything that couldn't be mitigated at that point?

24 A. Correct.

25 Q. Can I ask you a little bit about

1 mitigation in general?

2 A. Sure.

3 Q. I think it means -- well, I think  
4 pretty clearly it means different things to  
5 different people.

6 A. Yeah.

7 Q. Do you think it is possible to  
8 eliminate 100 percent adverse impacts to wildlife?

9 A. No.

10 Q. Do you think that is the goal of Fish,  
11 Wildlife & Parks?

12 A. Not in this regard, no, because if it  
13 was, then we would say no subdivisions, and we  
14 wouldn't bother reviewing. We would just send in a  
15 letter saying "No. It's going to impact wildlife."

16 Q. So the standard obviously then must be  
17 something lower than that. What, in your mind, is  
18 or was the standard of review?

19 A. If a highly critical wildlife resource  
20 was being impacted or a highly critical habitat was  
21 being impacted, and so in my view the two most  
22 critical things in this area were -- were species  
23 associated with the WPA and the eagle nest.

24 You know, other things are of a  
25 consideration, you know, deer, you know, common

1 species, but they're common species, and so -- so  
2 then I would adopt the more educational approach,  
3 people living with those species.

4 For the -- for the eagle nest, I felt  
5 downtime in development or -- or working on the far  
6 side of the -- far side of the subdivision, if it  
7 was approved, would -- would mitigate any impacts  
8 to that eagle nest, that the pair would still  
9 continue to use it.

10 As far as the WPA, I felt that the  
11 subdivision would have no major impact on the WPA  
12 based on -- on what the land had previously been  
13 being used for and that a lot of the land was being  
14 left as open space.

15 And another thing that I was utilizing  
16 as a consideration -- and it's no fault to U.S.  
17 Fish & Wildlife Service. It has to do with staff  
18 and funding -- is that that WPA hadn't really been  
19 managed intensively through time, that it was a  
20 WPA, and they owned it, but it hadn't really been  
21 actively managed. It was just there.

22 Q. Are you aware of it having any  
23 management plan at that time?

24 A. I am not aware of that. That would  
25 have been something that Keith's contact with U.S.

1 Fish & Wildlife Service should have -- should have  
2 filled him in on on that.

3 There should have been a management  
4 plan of some sort, but as far as active management,  
5 as far as making sure there were wetland pools  
6 for -- for waterfowl to -- to use and things like  
7 that, I know that that was not being -- being done.

8 The area was predominantly  
9 emergent-type vegetation. The area held water  
10 seasonally on some years, and you know, it had the  
11 ability to be more than it was, but there wasn't  
12 the staff and the funding to make it more at the  
13 current time, but you know, very important thing is  
14 that the land, you know, had been protected, and so  
15 the land wasn't going to go away, sort of like a  
16 diamond in the rough. You can do something with it  
17 in the future. You don't need to cut it -- cut it  
18 immediately.

19 Q. Referring to the WPA?

20 A. Correct.

21 Q. Now, you mentioned that your standard  
22 was whether there was a highly critical resource or  
23 a highly critical habitat that would be affected.

24 In some of the letters that were sent  
25 by FWP either before or after your time, they use

1 the term critical wildlife habitat. Is that a term  
2 of art that you know of?

3 A. A term of art? You'll have to define  
4 your term.

5 Q. Does it refer to anything specific? I  
6 mean is that a term that is generally known of in  
7 your industry as having a specific meaning?

8 A. I would have to say it would have a --  
9 a sliding scale of meaning amongst -- amongst  
10 people. Generally critical -- critical wildlife  
11 habitats just in general nationwide, wetland  
12 habitats, you know, immediately pop up just because  
13 wetland habitats are limiting throughout the  
14 nation, and they've been heavily impacted through  
15 time, through development of the nation, you know,  
16 draining of wetlands, things of -- things of that  
17 nature.

18 And so wetland areas, by the fact that  
19 they already were naturally a low percentage of the  
20 landscape, have been reduced far more than that, so  
21 anything that -- that impacts wetlands  
22 automatically becomes -- becomes an issue, both on  
23 the state and federal level. There's many, many  
24 regulations regarding what you can and can't do,  
25 you know, with -- with wetlands.

1 Q. Are you aware of whether the  
2 Endangered Species Act defines the term "critical  
3 habitat"?

4 A. I am not aware of that.

5 Q. Well, assuming for the moment that it  
6 does --

7 A. Okay.

8 MR. McCORMICK: Objection.  
9 Speculation.

10 MR. BEAL: Acknowledged.

11 Q. Let's --

12 A. If you want to ask me did the  
13 subdivision contain any critical habitat, I would  
14 have to say by and large, no.

15 The one small area that might have  
16 been considered critical habitat was part of the --  
17 the set-aside, the 70-acre easement. The WPA could  
18 be considered critical habitat, wetland area  
19 federally owned for a specific purpose, and it was  
20 my feeling that the subdivision would not impact  
21 that property.

22 Q. And it's your opinion that the  
23 developed portion of it, which is to say the  
24 portion that wasn't being left in open space, none  
25 of that contained critical habitat?

1 A. Correct. And one thing that I think  
2 lends importance to this is, you know, at the same  
3 time this was going on, Gael and other groups in  
4 the valley were working together trying to put  
5 together a deal, and Keith and Sean, you know,  
6 had -- had indicated that they would be interested  
7 in such a thing, if an equitable piece of property  
8 could be put together that could just be swapped  
9 that they might be interested in that.

10 You know, at that time in discussions  
11 with Gael, she was -- she was looking at a  
12 potential piece of property up in -- up in the  
13 mountains, which I was against, and again I'll get  
14 back to, you know, looking at the landscape version  
15 of things.

16 The Flathead Valley is already heavily  
17 developed. It's a checkerboarded habitat now from  
18 a wildlife perspective, a piecemeal habitat from a  
19 wildlife perspective while our mountains were still  
20 fairly whole and had -- had good integrity in them,  
21 and so I was resistant to having her swap a piece  
22 to throw a chunk up -- up in the mountains and  
23 start breaking up that habitat more.

24 Q. Robbing Peter to pay Paul?

25 A. Right, because once -- and especially

1 say, for instance, migratory species, big game  
2 species, the valley bottom at one time probably was  
3 a very important habitat for them. It no longer is  
4 that so much.

5 You have resident white-tails there,  
6 but as far as animals coming from the mountains and  
7 living in the valley in the wintertime, they can no  
8 longer do that.

9 And so -- and so then the value of the  
10 foothill areas around the valley automatically  
11 raises them in importance, and so to -- so to  
12 potentially save another little small piece of the  
13 valley to impact a relatively whole chunk of  
14 wildlife habitat, I felt, would be a very poor  
15 trade.

16 Essentially the valley has already  
17 been heavily impacted, and thereby, you have a  
18 heavily impacted landscape. Each further impact  
19 may become that much more critical, but also, how  
20 much is it actually impacting what's already  
21 been -- been done, you know? The major impacts in  
22 the valley, you know, have already occurred to a  
23 great extent.

24 Q. Your other definition or your other  
25 review point, it seems to be those critical

1 species, if I am understanding you correct; is that  
2 right?

3 A. Uh-huh.

4 Q. Were there any critical species that  
5 either currently reside on the North Shore property  
6 or would need mitigation as a result of development  
7 of the North Shore property?

8 A. The one that would have raised the  
9 biggest flag right off the bat would have been the  
10 bald eagle nest.

11 As far as, you know, having  
12 long-billed curlews there, and I believe bobolinks,  
13 those habitat areas within the subdivision were --  
14 were slated for being protected, but also I think  
15 it's important to -- to realize that -- that those  
16 are disjunct habitat areas for both those species.

17 You get further south into the more  
18 grassland types down around Pablo, that's the --  
19 the true heart of those habitat areas. You get  
20 east of the mountains, especially for long-billed  
21 curlews into the short grass prairies, that's the  
22 true heart of the habitat for those species.

23 So while the -- while the bald eagles  
24 were definitely a native species and also a  
25 threatened species, the other species, although

1 they're sensitive species, they would be a little  
2 lower in my ranking simply because it was an  
3 incidental-type habitat area.

4 Q. And the habitat that we were talking  
5 about then, you are saying, really wasn't all that  
6 good anyway?

7 A. For those two species?

8 Q. Yes.

9 A. Good for a limited number of animals  
10 but -- but not a population driver for the species.  
11 It wouldn't be like starting to throw development,  
12 you know, throughout the heart of the -- you know,  
13 the Pablo wetland grassland complex or starting to,  
14 you know, put large developments into the short  
15 grass prairies. Those are the heart of those -- of  
16 those species, you know, within Montana of their --  
17 their habitat areas.

18 It's great that there was a small  
19 little piece of habitat that those -- those species  
20 could utilize, but it wasn't -- it wasn't a key  
21 habitat area for the population of the species. Do  
22 you get what I mean? It's a difference between  
23 individuals and -- and populations.

24 Q. I think I do follow you. Let me ask  
25 you about one of them specifically, the bald eagle.

1 in -- in that area, that portion of the bald eagles  
2 range and for the time of the year when the bald  
3 eagles are there.

4 And so they have been utilizing the  
5 Flathead River, the Flathead Lake itself for --  
6 primarily for their -- for their activities and the  
7 surrounding lakes, but you know, each pair has a  
8 territory, so I imagine that that pair's territory  
9 was restricted to the -- along the north shore of  
10 Flathead Lake.

11 Q. And in terms of a nesting site, it's  
12 my understanding that they do -- or prefer to build  
13 them quite a bit off the ground?

14 A. Yeah, and they prefer live trees.  
15 Actually, the tree that that nest was in was one of  
16 the smallest trees that I'd ever seen an eagle nest  
17 in. I first noticed the eagle nest back in the  
18 early '90s when I was just up in that part of the  
19 state on vacation. You could see it from the --  
20 from the highway.

21 And at the time that I saw it, I was  
22 surprised at the tree that it was in. There again,  
23 all the trees through that area were relatively  
24 small, and so they -- they picked what was  
25 available.

1 A. Okay.

2 Q. When this process started --

3 A. Uh-huh.

4 Q. Let's see if I can get my time line  
5 right. It was an endangered species, but in 2007  
6 it was removed from that list?

7 A. Correct.

8 Q. And is now a threatened species?

9 A. I believe it's removed completely from  
10 the list.

11 Q. Okay.

12 A. But I may be mistaken there, but that  
13 would be easy to check.

14 Q. Fair enough. Do you know what makes  
15 good bald eagle habitat?

16 A. Yes.

17 Q. So if you are a bald eagle flying  
18 around looking for someplace to set up home, what  
19 do you look for?

20 A. You need good foraging habitat. That  
21 foraging habitat is -- is typically going to be  
22 water based. They do some land-based hunting, and  
23 they're scavengers, and so they'll utilize roadkill  
24 deer, wounding loss of deer or game birds, but  
25 principally they'll be feeding on fish, especially

1 Showing -- showing just with that,  
2 that choice, that there -- there is some  
3 adaptability in the species that they aren't, you  
4 know, hard-wired into one certain thing or  
5 circumstance.

6 Q. And are you aware of any trees that  
7 are currently on the North Shore Ranch site that  
8 are of the normal size that eagles tend to build a  
9 nest in?

10 A. From memory I would say no. I can't  
11 remember for sure the size of the trees around the  
12 old home site, but I'm thinking that there wasn't  
13 much size or even any trees, but I could be  
14 mistaken. I'm going by memory there.

15 Q. And so if there were some, the trees  
16 that would be good would be the ones that were near  
17 an already existing home?

18 A. Yeah, and there was an old abandoned  
19 home site there. My memory wants to tell me that  
20 there was -- there was some trees associated with  
21 it, but I can't remember for sure.

22 Q. And generally speaking, an eagle would  
23 be unlikely to build a nest near a home?

24 A. Typically but not unheard of. An  
25 abandoned home, it would be of little consequence

1 to them. On Echo Lake there's a bald eagle nest  
2 that's right over -- that was built right over an  
3 existing home that actually debris from the nest  
4 and their feeding, you know, falls right onto  
5 the -- the house.

6 Q. So eagles will set up their nests and  
7 their homes near people at times at least?

8 A. Yes. That instance, you know, in the  
9 Echo Lake area -- and I may have the name of the  
10 lake wrong but right there in the valley. I  
11 believe it's Echo. You could easily be filled in  
12 on that. That's the exception to the rule.

13 Having eagle nests relatively close to  
14 houses or that can be seen from houses isn't that  
15 uncommon. Has to do -- eagles are fairly tolerant  
16 of any activity that's there when they set up the  
17 nest because they chose the site with that activity  
18 ongoing.

19 It's new activity that can be more of  
20 an impact, and then that's when you get into the  
21 distance-related thing -- issue.

22 Q. Can I ask you about a few other  
23 species that had been mentioned otherwise? You  
24 have talked about a number of them, and I don't  
25 want to go into those again.

1 But bears, both black bears and  
2 grizzly bears, either the WPA or the North Shore,  
3 are they good habitat for bears?

4 A. No. There would have just been  
5 incidental possibly bears, you know, traveling  
6 across the valley, so transitional, incidental-type  
7 habitats.

8 If the subdivision had been, you know,  
9 more closer over to the -- to the Flathead River,  
10 then they would have been in a corridor of more  
11 bear use, or if they'd been -- if it was, you know,  
12 further to the west, closer to the -- to the  
13 mountains, then there would have been picking up a  
14 lot more black bear use, but just stuck out in the  
15 middle of the North Shore, I'm sure from time to  
16 time a bear goes through that area, but as far as  
17 being an area that's typically frequented by bears,  
18 it would not have been.

19 Q. And I believe you already mentioned  
20 that given its distance geographically from the  
21 lake, it wasn't really shorebird or waterfowl  
22 habitat?

23 A. Correct. Depending on the crop grown  
24 in the fields would have impacted what value it had  
25 for, say, in the fall for migrating waterfowl or --

1 or spring use, but under the alfalfa regime, that  
2 would greatly cut into the -- the number of species  
3 that might have benefited.

4 Q. And it likely is white-tailed deer  
5 habitat, but just about everything is white-tailed  
6 deer habitat?

7 A. Yeah.

8 Q. And there's no forest on the North  
9 Shore Ranch property?

10 A. No.

11 Q. Are you aware that there are at least  
12 12 residences that are a quarter mile or less from  
13 the WPA boundary as of today's date?

14 A. If they're to the -- if they're to the  
15 west, I am aware that there was a subdivision going  
16 up there during the time when I left and, you know,  
17 was started before I left and was still -- still  
18 going on at the time I left, yes.

19 Q. And that there's also a golf course  
20 very near to the WPA?

21 A. Should be to the east.

22 Q. To the other side, yes.

23 A. Yes. And there's an eagle nest down  
24 there near that golf course too.

25 Q. Are you yourself a hunter?

1 A. Yes.

2 Q. As a hunter, do you ever find yourself  
3 hunting within, you know, a few hundred feet of a  
4 fence line that you don't have permission to go to  
5 the other side of?

6 A. Sometimes, yes.

7 Q. Would you describe it as a best  
8 practice?

9 A. Depends on what type of hunting you're  
10 doing and -- and your field of fire and what  
11 direction you're shooting in.

12 Q. Let's say for deer.

13 A. For deer typically I wouldn't be right  
14 close to a property boundary, especially if it's  
15 open -- open property like the North Shore area is.

16 But there's no reason where if you  
17 were, you know, close to the property boundary and  
18 firing away from it that it wouldn't still be  
19 completely safe. It would just be noisy.

20 Q. I guess I meant that more in terms  
21 of -- well, what if you wound the deer and it hops  
22 the fence?

23 A. Oh. I don't wound deer that often.

24 Q. Well, I admire your confidence.

25 A. Typically -- typically if you were

1 near a fence and shooting away from the fence, the  
2 animal is going to run away from you, not towards  
3 you.

4 But would it be possible for deer to  
5 be wounded and going onto the subdivision if it was  
6 approved and developed? Yes, that would be  
7 possible. Is it something that the residents would  
8 need to have in the back of their minds could  
9 happen? Yes. And would it have to be dealt with?  
10 Yes.

11 Q. Perhaps my question is more to the  
12 point of big game hunting usually requires a fair  
13 amount of space to hunt.

14 A. Yes. And you know, being private --  
15 private property, you know, along the north shore  
16 of the lake except for the WPA, you know, it would  
17 have been -- you know, you'd have to have  
18 permission to be hunting out there in the first  
19 place.

20 I would -- I would check into how much  
21 deer hunting actually went on on the WPA itself,  
22 especially to the parts south of the -- south of  
23 the proposed development. To the east there may  
24 have been some, but I would envision it was more  
25 open game hunting than deer hunting.

1 MR. BEAL: Sure. I don't have too  
2 much more. Does anyone need a break?

3 (Short recess.)

4 Q. Let's go back on the record then. Let  
5 me back up and talk to you about some things that  
6 we talked about a little bit before but just in  
7 perhaps a bit more detail, and some of these are  
8 just to confirm what you said before.

9 As part of your process of gathering  
10 information about the North Shore Ranch project to  
11 make comments, who did you talk to?

12 A. I would have visited some with Gael,  
13 visited some with Jim Williams for history, Dwight  
14 Bergeron, may have talked with him.

15 Q. And who is Dwight?

16 A. He is a biologist out of Kalispell, or  
17 he was when I left, deals primarily with -- with  
18 nongame species, works a lot with mitigation  
19 projects that are ongoing.

20 He does the bald eagle -- flies the  
21 bald eagle surveys in the valley, and I would  
22 fly -- fly them with him at times. I believe he  
23 does osprey surveys, so in general he's a good  
24 resource for nongame issues.

25 And let's see. I don't believe I

1 contacted the biologist that did the original EA  
2 for the project. That would have been about it.

3 Q. And all of those people were within  
4 Fish, Wildlife & Parks?

5 A. Yes.

6 Q. Did you speak with anyone at the  
7 United States Fish & Wildlife Service?

8 A. No, no direct contacts, no, because I  
9 knew they'd already been -- they'd been contacted  
10 directly.

11 Q. Anyone in the county planning office?

12 A. Yeah, definitely would have spoke with  
13 people in the county planning office, either  
14 through -- through e-mails at the very least but  
15 mostly information exchange, getting materials to  
16 me, working -- working how the North Shore project  
17 was being -- being worked.

18 When I assumed responsibility for it,  
19 they had already been to the planning board once  
20 and were denied, and so before they were submitting  
21 again, they were -- they were working with me, and  
22 so the -- so the planning office wouldn't have had  
23 the information to provide me in the first place  
24 because the project hadn't been formally  
25 resubmitted yet at that time.

1 Q. Would you have spoken to anyone in the  
2 county commissioner's office?

3 A. No.

4 Q. Anyone at the county attorney's  
5 office?

6 A. No.

7 Q. Anyone at the Flathead Land Trust?

8 A. No.

9 Q. Anyone with the Flathead Lakers?

10 A. No. Now, the Flathead Land Trust --  
11 and I can't remember the name of the woman  
12 that's -- that either heads it up or is the  
13 spokeswoman for it.

14 She may have spoken -- spoken about it  
15 to me at some point in passing when I was at some  
16 other -- other hearing for some different  
17 subdivision. That would be entirely possible.

18 Q. And would that be Marilyn Wood?

19 A. Yes.

20 Q. But only kind of an informal  
21 conversation?

22 A. Yeah, not me contacting her for  
23 information, no.

24 Q. Sure. Citizens for a Better Flathead?

25 A. No.

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1 Q. Any other nonprofit groups?

2 A. No. Because in my mind, that's all --

3 you're starting to move away from making

4 determination of the actual impacts to wildlife and

5 getting into more social impacts, viewscape

6 impacts. I know there's a lot of concerns over

7 viewscape impacts. I'm not in the viewscape impact

8 business.

9 Q. You don't think that's part of the

10 wildlife review?

11 A. No.

12 Q. Are you aware that members or the

13 groups themselves, the Flathead Land Trust,

14 Flathead Lakers, Citizens for a Better Flathead,

15 provided comment to Flathead County about this

16 project?

17 A. I would be aware of the Flathead Land

18 Trust, that they would have intended to provide

19 comment. I've never read what their -- their

20 comment actually was.

21 Q. And so we can infer that if you have

22 not read it, you certainly did not make any

23 comments to them about that letter?

24 A. Correct.

25 Q. And you didn't allow them to make any

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1 comments or critique of anything that you would

2 have submitted?

3 A. No, because I had -- as of yet, I'd

4 never written a letter. I never did write a

5 letter.

6 Q. You mentioned that you can start to

7 get outside of the appropriate comment areas if you

8 start to do those things. That raises a question.

9 Are there specific ethical standards

10 or guidelines that govern your profession about

11 things like that?

12 A. Like the same as bar standards for

13 attorneys? I'd have to say no.

14 Q. Well, probably not something quite

15 that formal. Thankfully few other groups have

16 anything that bad, but are there sort of

17 professional norms that people in your field

18 follow?

19 A. I would have to say by and large, yes.

20 Q. And I know that this is a broad

21 question, but can you describe what those would be?

22 A. Well, in a situation like this, and --

23 and I feel that public wildlife agencies weren't

24 set up necessarily to deal with private entities,

25 multimillion dollar developments, as far as being,

79

1 you know, a big -- a big source. That's my -- my

2 personal feeling.

3 But in that arena, you know, I felt

4 that it was, you know, my job to look at each one

5 objectively and remove myself personally from it as

6 much as I could and actually look at the actual

7 impacts to wildlife and the habitats involved in

8 the area in question.

9 I also felt it was my responsibility

10 to provide information and typically was within --

11 within my letters that if the subdivision was --

12 was approved, various things that I felt should be

13 done to make that subdivision better interact with

14 the wildlife that would still be utilizing the

15 area.

16 And you have to remember that in many

17 instances, I was always -- I'd be coming in on the

18 back end of this. The project would be submitted

19 to the planning board, or that was the typical way,

20 and then I'd hear from the planning board, and so I

21 wouldn't have all this interaction beforehand that

22 I was having with Keith.

23 And -- and initially when -- when the

24 proposal was submitted, they didn't have that

25 interaction beforehand either. They -- they'd

80

1 submitted -- they'd gotten rejected by the planning

2 board, and so they were being more proactive the

3 second time around trying to get some things ironed

4 out beforehand.

5 Q. You had a chance not just to comment

6 so much but to actually shape what the design would

7 be like to make it wildlife --

8 A. Correct.

9 Q. -- friendly?

10 A. And a more typical manner that it

11 would happen is that the project would be in there,

12 and I'd make some of these comments that I was

13 making ahead of time to Keith, and then it would be

14 the planning board amending them into the -- the

15 covenants.

16 Q. Would you agree that in your

17 commenting role, an employee of Fish, Wildlife &

18 Parks is not supposed to be an advocate?

19 A. Either for or against?

20 Q. Yes.

21 A. Yes. You should make a determination,

22 you know, your feelings based upon the impact to

23 the wildlife and habitat, and that was -- that was,

24 you know, something that I would, you know, point

25 out several times, you know, because you get

1 comments from -- from different people through  
2 various subdivisions, you know, "Oh, you know --  
3 you know, the Department should be against that."

4 And my reply was "Well, the Department  
5 doesn't approve" or -- or "The Department, you  
6 know, should -- should, you know, disapprove of  
7 this subdivision."

8 And my comment was "Well, the  
9 Department doesn't approve or disapprove of any  
10 subdivision. They're to provide information on  
11 those impacts and whether those impacts are very  
12 detrimental or not."

13 Q. Are you aware now that Fish, Wildlife  
14 & Parks has been for some time attempting to  
15 purchase this property where the North Shore Ranch  
16 development was proposed?

17 A. When I was brought back on in the  
18 summer of 2006, within two or three months, I knew  
19 that Gael was working with groups in the valley,  
20 and that's something Gael is very good at, is  
21 putting together deals like that to do something,  
22 either trade them out of the property -- that's  
23 initially what was being talked about when I was  
24 there, was -- was being able to purchase another  
25 property and just swapping them, you know, if the

1 property, you know, was up to the standards of --  
2 of Keith and Sean.

3 Q. Do you know other than Gael who at FWP  
4 would have been involved in that process?

5 A. Alan Wood might have been involved  
6 some too. They both work with -- with mitigation  
7 money, purchasing of -- of public lands, and with  
8 time, they've both gotten very good at putting  
9 together land deals while using very little money  
10 from our pots, basically good at drawing people in  
11 that have money that are willing to -- to donate  
12 money --

13 Q. Sure.

14 A. -- or finding federal match dollars  
15 and things like that through various programs.

16 Q. Can I ask you one that is kind of out  
17 of sequence? I have to find it here first, though.  
18 It's No. 9, Exhibit 9. It is some typewritten  
19 notes that appear to be written to Gael Bissell.  
20 Have you ever seen these before?

21 A. Let me look -- look through them  
22 first.

23 Q. Sure, please.

24 A. No, I don't believe I have ever --  
25 ever seen this and don't know -- I can make a guess

1 who it might be between, but I have no idea.

2 Q. Well, to date, we have not been able  
3 to determine who it was, so any suggestions you  
4 have would be helpful.

5 A. I would check with the refuge manager  
6 for that area. She lives out west of town on Lost  
7 Prairie. She was the -- I can't remember her name.  
8 She was the biologist that was responsible for --  
9 for that complex area for the U.S. Fish & Wildlife  
10 Service refuge lands. I can't remember her name.

11 Q. But one of the U.S. Fish Service  
12 people?

13 A. That. Another one could possibly be  
14 the land trust, although I can't -- you know, the  
15 first two bullets are separating arguments and  
16 stuff. That sounds like somebody who's fairly  
17 technical oriented.

18 Q. If it was someone at Fish, Wildlife &  
19 Parks, is there anyone who would be more likely to  
20 have written it?

21 A. If it was -- if this was someone at  
22 Fish, Wildlife & Parks, I would have to say it  
23 would either be Alan Wood or -- or Jim Williams.

24 Q. Okay.

25 A. But I can't picture either of them

1 taking the time to type out lots of comments, not  
2 just relaying them verbally to her.

3 Q. Sure.

4 A. And it wouldn't make sense that  
5 they -- you know, their little footnote they  
6 haven't actually seen the preliminary plat.

7 Q. So that to you suggests someone --

8 A. Outside of FWP.

9 Q. Okay.

10 A. Because if they didn't have it and  
11 they were reviewing her letter, they could say  
12 "Well, give me a copy of it so I can look at it."

13 Q. Sure. All right. Well, I got a bit  
14 off the track we were on there. So let me pick  
15 that back up, if you don't mind.

16 Given that Fish, Wildlife & Parks was  
17 interested in purchasing the property, would it be  
18 fair to say that those people at Fish, Wildlife &  
19 Parks who were interested in seeing it purchased  
20 would also be interested in seeing the project  
21 denied by the county commissioners?

22 A. That would kind of be speculation on  
23 my part to some extent. I don't know if there was  
24 any interest in -- in FWP -- or I don't know if  
25 there was any interest in having the property under

1 public ownership prior to being known that it might  
2 be developed. Again, that occurred during a time  
3 where I was out for several months.

4 Q. All things being equal, would you say  
5 that a piece of land that has had subdivision  
6 approval has more or less value on the free market?

7 A. More value.

8 Q. Do you know of anyone -- did anyone at  
9 Fish, Wildlife & Parks tell you or infer to you  
10 that they wanted to see the North Shore Ranch  
11 proposal denied?

12 A. Gael.

13 Q. Anyone other than Gael?

14 A. No.

15 Q. And I asked that as tell or infer, so  
16 did she tell you specifically explicitly that she  
17 wanted the project denied?

18 A. That I should be against it or the  
19 Department should be against it, one or the other.  
20 I can't remember exactly. Not -- I think I  
21 referred to that earlier, and that's, you know, I  
22 told you that I'd gone to Jim and said that from  
23 what I was seeing that I -- I wouldn't put my name  
24 on anything that -- that was taking a strong stance  
25 against it.

1 Q. Would you turn to Exhibit No. 2?

2 A. (The witness complied.)

3 Q. Exhibit No. 2 is a petition to the  
4 Flathead County commissioners regarding the Ficken,  
5 F-i-c-k-e-n, Farm Phase I and II and Sky View  
6 Estates subdivisions.

7 Are you aware of what those  
8 subdivisions were?

9 A. Just vaguely. At that time Gael was  
10 handling that part of the valley.

11 Q. And do you recognize the lowest  
12 signature that has a block?

13 A. Gael's signature? Yeah.

14 Q. And that is Gael's signature to the  
15 best of your knowledge?

16 A. Yeah. Looks like Gael's signature to  
17 me.

18 Q. Do you think it's appropriate to sign  
19 a petition asking the commissioners to deny a  
20 subdivision that would be in part of your  
21 responsibility to comment on?

22 MR. McCORMICK: Objection.  
23 Foundation. You can answer.

24 A. Everyone has a personal life too, and  
25 so she did it on her own time. Yeah. There's got

1 to be -- there's got to be some point where a  
2 biologist gets to be a person too. These  
3 subdivisions weren't that far from -- from where  
4 Gael lives.

5 Q. Do you think that it demonstrates a  
6 likely bias on her part?

7 MR. McCORMICK: Objection.  
8 Foundation.

9 THE WITNESS: Want me to answer  
10 anyway?

11 MR. McCORMICK: Yes.

12 A. With a very deep-seated interest in  
13 what goes on in that portion of the valley, she's a  
14 long-term resident and has -- and while I came into  
15 the valley after it had already changed a lot,  
16 she'd been there to see the valley go through many,  
17 you know, dramatic and continuing changes.

18 Q. Sure. Just asking you personally, if  
19 there was a proposal for something that was going  
20 into a place that you felt very strongly about,  
21 would you have felt that you were able to comment  
22 in an unbiased manner about it?

23 A. Would have been very hard, but I don't  
24 know if -- if there's really anything set up in FWP  
25 so we can shunt some of that to somebody else

1 that -- that might be -- you know, possibly be more  
2 objective because the person that tends to know the  
3 information is the -- is the on-ground person, you  
4 know, for that area, and so to -- to shift it to  
5 somebody else, then you put the person that you're  
6 telling to shift it into the spot of providing the  
7 other person all the information, and so just as  
8 easily, you could provide biased information.

9 Q. Sure.

10 A. So it's hard, and that's where --  
11 where I feel that -- that many of the -- the things  
12 that -- that are going on, say in Flathead Valley,  
13 for instance, with having the public agency comment  
14 that maybe there should be a wildlife biologist on  
15 staff at the county level that does this and then  
16 gathers the information from the different public  
17 agencies and then formulates an opinion.

18 Then I think you'd be -- have more --  
19 a more objective opinion. There's also many other  
20 FWP signatures on this page.

21 Q. Could you identify some of those?

22 A. R. D. Mace, Nancy Ivy, Lydia Bailey,  
23 David Landstrom, Sharon Johnston, Carolyn Sime, Kim  
24 Lindstrom. I can't read the first name for Grisak.  
25 But anyway, I'll skip that one. I can't make out

1 the first name. But anyway, Brian Marotz, Colin  
2 Maas, Tom Meier. He would have been with U.S.  
3 Fish & Wildlife Service working out of the  
4 Kalispell office. He's up in Alaska now. And I  
5 can't read the last name for Mike there.

6 Q. So the majority of the names on that  
7 page?

8 A. A lot of them, yeah.

9 Q. Okay. Regarding that bias question  
10 and in your statement that it is hard to separate  
11 bias if you are involved, if you know that someone  
12 is providing you information that is biased, is it  
13 fair to say that you need to take steps to discount  
14 that?

15 A. If you know it's -- it's biased or to  
16 at least rate it differently.

17 Q. Let's say, for instance, if you know  
18 that someone is interested in purchasing a piece of  
19 property that they are providing comments on, its  
20 value or habitat value, is that something that  
21 should be considered, that bias?

22 A. I would think so.

23 Q. If you in your role at FWP had  
24 received comments from a third party that you knew  
25 was interested in purchasing the property, you

1 know, what weight would you have given those  
2 comments?

3 A. If a third party was interested in  
4 purchasing the property? Myself, none. That was  
5 one of the notations that I made in the -- I can't  
6 remember what exhibit it is. You may have to help  
7 me. The letter from Jim Satterfield.

8 Q. His comment letter?

9 A. Yes. I've got to be closing in on it  
10 somewhere here.

11 Q. I think it was early.

12 A. Thirty-two? No.

13 MR. McCORMICK: Let's try 12.

14 Q. And that's the November 16, 2007,  
15 letter?

16 A. Yep.

17 Q. Okay.

18 A. Yep. For instance, and I highlighted  
19 the last paragraph on the second page. "FWP  
20 encourages you to consider development for the  
21 lands between Somers and Flathead River that  
22 includes increased public ownership," da, da, da  
23 and then going on to say "It takes time to put such  
24 an alternative together. FWP is confident that the  
25 community and agencies can work together to bring

1 in funds necessary to purchase lands" blah, blah,  
2 blah.

3 You know, I wrote in the comment when  
4 I was reading it this morning, essentially they  
5 were promoting the denial of a current project  
6 based on the speculation that somebody might be  
7 able to get funds together to purchase it, and so  
8 that is something that I wouldn't have felt  
9 comfortable with being put in, you know, if I had  
10 any involvement in it because if they have the  
11 money and can make an offer, fine, but -- but to  
12 hint at maybe the commission should take a  
13 different path based on the speculation or the  
14 confidence that money can be raised, I don't think  
15 is appropriate.

16 Q. Speaking of opinions, have you read  
17 the opinion letters that were submitted by the  
18 United States Fish & Wildlife Service?

19 A. I'm trying to think if I had -- had  
20 the opinion letter for the original -- for the  
21 original submittal of the project in my folder.  
22 I'm thinking that I may have, and I may have read  
23 it at that time. As far as the last one, no.

24 Q. Would it surprise you if I told you  
25 their opinion was significantly different than the

1 final one issued by the FWP?

2 MR. McCORMICK: Objection. Assumes  
3 facts not established.

4 A. That it would be a lot different from  
5 FWP? And I can -- I can still answer?

6 Q. Please.

7 A. Well, FWP comes across as being  
8 against it, so I would assume that the U.S. Fish &  
9 Wildlife Service would have said the same thing  
10 because I do know that Gael and the refuge  
11 biologist were doing a lot of communicating on --  
12 on this before -- before it became my  
13 responsibility or that there had been communication  
14 between both of them, and that's why I was -- about  
15 that bullet-pointed exhibit that seems to be  
16 strategizing, that's what makes me -- that  
17 knowledge makes me think that that may have -- be  
18 representative of something that was going on  
19 between them.

20 Q. Would it surprise you that their final  
21 letter did not recommend denial of the project?

22 A. It would surprise me if the U.S.  
23 Fish & Wildlife Service did not recommend denial of  
24 the project.

25 Q. It would surprise you?

1 A. It would surprise me.

2 Q. And that's because they are the owners  
3 of the WPA?

4 A. Yeah, and I think -- I think it may,  
5 you know, also tie in, you know, to relationships  
6 you know, between staff too.

7 I was just going to say, you know, as  
8 I've -- I've said before, you know, if I had my  
9 way, I'd say, you know, always no to every  
10 subdivision. That's my, you know, personal  
11 feeling. I shouldn't say to every one. A lot of  
12 the ones that I saw going on in the Flathead, you  
13 know, if -- if it was just -- if I was giving my  
14 personal opinion, it would have been no to -- to  
15 many of them.

16 Q. But you felt that professionally, you  
17 had to give a different answer?

18 A. Right.

19 Q. Would you feel that just saying no to  
20 all of them because there was an effect is  
21 essentially trying to set public policy?

22 A. No. I would say it would be an  
23 ineffective way to set public policy because people  
24 would just start ignoring you.

25 Q. Fair enough, but an attempt

1 nonetheless?

2 A. Yeah.

3 Q. Do you feel it's appropriate for a  
4 state agency to try and set the public policy of  
5 Flathead County?

6 A. In a way, yes, if they're coming to us  
7 for opinions and, essentially, opinions that --  
8 that the County doesn't pay for or the developers  
9 aren't paying for. It's hunters and fishermen that  
10 are paying for those opinions.

11 So -- and so that's another reason  
12 where I feel that the public agencies are -- are a  
13 little shifted from the -- from the direct line  
14 of -- of how these comments should be being put  
15 together because you have staff and staff time  
16 being -- being tied up.

17 Even though that we are a public  
18 agency and we're supposed to serve every --  
19 everybody, you have a lot of time and money being  
20 tied up in a -- in a certain segment of -- of the  
21 public where one -- one portion of the public will  
22 gain -- make lots of money, but no one is  
23 contributing any money to help -- help pay for --  
24 for everything that's going into it except for the  
25 hunters and fishermen in Montana because that's --

1 that's who funds the entire budget.

2 Q. A bit of an unusual order, but I feel  
3 that I did skip over this a bit at first, so I want  
4 to ask you some more questions about your  
5 background.

6 You mentioned a degree from the  
7 University of Vermont --

8 A. Uh-huh.

9 Q. -- in wildlife biology and a master's  
10 degree from the University of Georgia in wildlife  
11 biology?

12 A. Uh-huh.

13 Q. And I think you said something else?

14 A. I have a minor in forestry from the --  
15 from the University of Vermont, and I've been  
16 involved in management of, you know, small game all  
17 the way up to big game.

18 In Utah I was regionally -- bigger  
19 than a district but for the northeastern region  
20 of -- of Utah. If I said Montana, excuse me.  
21 Northeastern region of Utah, you know, responsible  
22 for the -- for the surveying and management of  
23 peregrine falcons, ospreys, eagles, nongame birds.  
24 I co-ran a MAPS branding station. That's  
25 Monitoring Avian Populations and Survivorship with

1 the U.S. Fish & Wildlife Service. And so that's  
2 just to show that I have a lot of nongame  
3 involvement.

4 Q. Oh, sure.

5 A. And besides just game management.

6 Q. Sure. Well, was there any specialty,  
7 I suppose, in your master's, most likely in terms  
8 of wildlife management? Was it something specific?

9 A. It was with white-tailed deer.

10 Q. White-tailed deer? Then you are in a  
11 good job right now.

12 A. Yeah, and also in Region 1, I was  
13 regional coordinator for white-tailed deer and  
14 mountain lion management.

15 Q. Okay. Your work history, you stated  
16 at first you were working for -- I can't remember  
17 the name of the state agency in Georgia.

18 A. Would have been the Georgia Department  
19 of Natural Resources.

20 Q. Okay. And what were you doing for  
21 them?

22 A. For them my title was wildlife  
23 biologist/forester, and what my job was was to work  
24 out of a small forestry office in the state that  
25 worked throughout the entire state of Georgia, and

1 they worked on all the wildlife management areas  
2 and -- and state parks in the state of Georgia, and  
3 what my job was was to provide a wildlife slant to  
4 all their activities throughout the state,  
5 especially to either make them more wildlife  
6 friendly or to promote wildlife and their  
7 activities, so basically a mitigation-type role.

8 Q. Sure. And then you said you were  
9 briefly in Wyoming?

10 A. Yes.

11 Q. What did you do then?

12 A. I was a project biologist and looking  
13 at the impacts of oil and gas exploration on mule  
14 deer and pronghorn antelope.

15 Q. And then you went back to Georgia?

16 A. Yeah, same job.

17 Q. Okay.

18 A. Doing the same thing.

19 Q. And while you were in school in  
20 Vermont, did you have any employment or work  
21 history or anything like that?

22 A. Yeah. Every summer I -- I worked  
23 gathering data for graduate students there at the  
24 University of Vermont. Every summer it was with  
25 nongame birds, breeding bird work.

1 The summer of my senior year I was in  
2 Montana, worked the summer with the U.S. Forest  
3 Service mapping out critical elk habitat areas  
4 within the Beaver Head National Forest.

5 And I did some -- when I was a  
6 freshman at the University of Vermont, did some  
7 fisheries work with graduate students, field  
8 projects.

9 Q. It would seem to me, certainly  
10 untrained at this, but between Vermont and Georgia  
11 and Wyoming and Utah and Montana, you have got it  
12 covered just about every kind of ground there is in  
13 this country. Is that fair to say?

14 A. Yeah. All except the desert  
15 Southwest, but there's a lot of desert country in  
16 Utah. I did high desert in Utah but not  
17 tropical-type desert like you'd find down in  
18 southern Arizona, things like that, Baha areas.

19 Q. And you have done work with fish, is  
20 that correct, at least in school?

21 A. Just -- yeah, just very little with  
22 fish.

23 Q. Work with birds?

24 A. Uh-huh.

25 Q. Both game and nongame?

1 A. Uh-huh.

2 Q. And work with larger animals, elk,  
3 deer, et cetera?

4 A. Yeah.

5 Q. And how did you get to Iowa?

6 A. Well, I wasn't real pleased with  
7 things that were going on in the Flathead Valley.  
8 You know, when I'd moved west in '92, I didn't --  
9 didn't move west to be -- be in a mini-urban area,  
10 and when I moved west, all the 15 years I was out  
11 west except for one year, I was always living in a  
12 town of some sort, even if it was a small town,  
13 like White Sulfur Springs was a very small town,  
14 but I was still in town and never got out -- really  
15 out in the country how I was raised.

16 And in the Flathead Valley, to me the  
17 valley was essentially turning into a small  
18 concentrated urban area, and I didn't like the idea  
19 of being in an urban area looking at the mountains  
20 or the countryside. I wanted to live back out in  
21 it.

22 And so I started looking around for  
23 jobs and received many interview opportunities of  
24 which I turned down almost all of them, but this  
25 job came open in Iowa and interviewed for it and

1 was offered it and checked out the area and liked  
2 it and so then -- then made the move. I haven't  
3 dealt with one subdivision yet.

4 Q. Is this a significant area for  
5 white-tailed deer?

6 A. Yes. It's one of the top rated in the  
7 nation. It's always -- always ranked in the top  
8 five, usually top three for quality of the deer  
9 herd.

10 Q. And is that in terms of size of the  
11 population or size of the individuals?

12 A. Size of the individuals, the quality  
13 of the individuals.

14 Q. There is some good hunting here, you  
15 are saying?

16 A. Yeah, very big bucks. Yeah. We  
17 actually have one of the smaller white-tailed herds  
18 in the Midwest, and that's part of the reason why  
19 the quality is so good.

20 MR. BEAL: Well, that actually is the  
21 end of my questions. I think Mr. McCormick will  
22 have some questions for you, and then I may have a  
23 few follow-up questions after that.

24 THE WITNESS: Okay.

## CROSS-EXAMINATION

BY MR. McCORMICK:

Q. Mr. Litchfield, my name is Alan McCormick. I am an attorney with Garlington, Lohn & Robinson in Missoula, Montana. We represent Flathead County in this case. As Mr. Beal noted, I have a number of questions for you.

A. Okay.

Q. Hope not to take too much of your time so you can get back to your work and enjoy the day.

Is Gael Bissell a good biologist?

A. Yes.

Q. How good?

A. I'd say very good.

Q. Do you respect her work?

A. Yes.

Q. Fair to say she has probably two and a half times the experience in the Flathead Valley that you do?

A. Definitely.

Q. I am just curious about some of the statements you made. You mentioned that you were adamant to Keith Simon that the WPA could not bar his access to his water right on Flathead Lake?

A. Uh-huh.

Q. Do you recall that comment?

A. Yeah. I don't know if I used the word adamant but --

Q. It would be a shame to waste good water from a deep aquifer? That was another one of your comments; correct?

A. It wouldn't be proper water conservation practice.

Q. Did you review the WPA's rules and regulations governing them before you made those comments?

A. Repeat that. Did I --

Q. Did you review the governing rules and regulations for the WPA before you made those comments to Keith?

A. No. That was based on the comment from the -- from the U.S. Fish & Wildlife Service biologists that they could not have access.

Q. Are you an expert in water rights?

A. I am not.

Q. Are you an attorney?

A. I am not.

Q. Expert in hydrology?

A. Nope. Just exposure to it.

Q. I get the impression that your opinion

is essentially if we can get mitigation measures into the covenants for a particular subdivision that the wildlife problems will be fixed.

Is that a correct characterization of your testimony?

A. No.

Q. Well, I believe the phrase I wrote down was in response to a question from Mr. Beal about wildlife mitigation aspects in the covenants, you said it would effectively eliminate the problem.

Are you now disagreeing with that statement?

A. Well, if you're referring to that specific statement in regards to cats, then yes.

Q. Okay.

A. If -- if cats were not allowed on the -- on the property or if cats could only be inside, then that would effectively eliminate the problem of cats from the subdivision being on the WPA.

Q. And the same with horses?

A. And the horses, it was a grazing -- grazing issue. If you had open space and horses could not be grazed anywhere within that open

space, then that would effectively eliminate any impacts that horse grazing could have on that open space area --

Q. How about --

A. -- as far as the set-aside area to the south.

Q. What about noise from hunting?

A. Noise from hunting? That would have an impact on the subdivision. That's for the people there to be aware of beforehand.

Q. Would it increase the likelihood that people from the subdivision would complain about hunting activities?

A. Yes, it could. That's why it was recommended by me to have in the covenants so anyone purchasing lots would know that hunting would be going on in the area.

Q. Would that effectively eliminate the problem of them complaining?

A. No. It would provide a foundation that they knew that there would be noise in that existing beforehand.

Q. Would that effectively eliminate the possibility of people being hurt from stray bullets?

1 A. No. That's -- that's the hunter's  
2 responsibility. But that same argument could be  
3 used for any country subdivision or any house in  
4 the country anywhere in the nation.

5 Q. So it's your opinion that putting  
6 300 homes adjacent to the WPA is not going to have  
7 a significant impact on the WPA; correct?

8 A. From the wildlife standpoint, correct.

9 Q. And I am understanding this correctly.  
10 You did not ask anyone at the U.S. Fish & Wildlife  
11 Service for input before you made that  
12 determination; correct?

13 A. Correct, and I never made the  
14 determination because I never wrote the letter.

15 Q. But you are critical of it; correct?

16 A. I'm critical of the amount of impact  
17 that they say that it will have. They imply that  
18 thousands of waterfowl annually use the property  
19 that's being proposed to be developed, and I would  
20 be highly critical of that.

21 Q. Well, I see you brought a copy of  
22 Exhibit 12 with you to the deposition; correct?

23 A. Uh-huh.

24 Q. Where did you get that copy?

25 A. Off the Internet this morning.

1 Q. And you have highlighted quite a bit  
2 of it?

3 A. Yeah. And you are free to have it.

4 Q. Using pink highlighter?

5 A. Well, if you're color biased, yeah, I  
6 used a pink highlighter.

7 Q. I have no issue with the color you are  
8 using.

9 Who directed your attention to that  
10 letter?

11 A. Nobody. I just did a search on  
12 Google.

13 Q. So the letter was important to you?

14 A. To give me some background information  
15 on what FWP might have submitted, yeah.

16 Q. Did you talk with anybody from  
17 Mr. Beal's firm before your deposition today?

18 A. No. I talked to a biologist that  
19 Keith Simon had hired, I believe, to -- to go over  
20 the -- the information again.

21 Q. You never talked to anybody at  
22 Datsopoulos, MacDonald & Lind in Missoula, Montana?

23 A. I had a secretary or somebody contact  
24 me, and maybe -- and maybe you contacted me  
25 initially. I don't know. I didn't keep -- keep

1 notes on that.

2 Q. So it's possible you did talk to  
3 people at Mr. Beal's firm?

4 A. On the initial occasion if I was --  
5 would be willing to provide a deposition.

6 The reason that I have the letter and  
7 the reason, like I told you, that I keep all the  
8 files is I'm kind of a very organized person and  
9 try to keep track of what's going on, and so  
10 obviously, if I was being contacted -- and before I  
11 was contacted by an attorney, I'd been contacted by  
12 the biologist that was looking at this information  
13 again and told that it had been denied.

14 So -- and I have an interest in -- in  
15 knowing what FWP wrote, and so I looked it up.

16 Q. Well, I am curious about that. You  
17 said you downloaded the information off your hard  
18 drive, I presume from FWP, onto a jump drive to  
19 take it with you when you left; is that correct?

20 A. Uh-huh.

21 Q. Because you are an organized person?

22 A. Yep.

23 Q. Is that your testimony?

24 A. Yeah. I have it from Utah too. And  
25 there's information on there on how I do different

1 things. They're handy when I go to another state  
2 as far as putting together reports, analyzing  
3 information. There's stuff that I can use again,  
4 not the exact information but the processes.

5 Q. Why was it you who was laid off when  
6 the budget cuts hit?

7 A. I don't know. They said there was a  
8 shortage in funding, and so a position had to be  
9 eliminated, and I had the least experience, tenure,  
10 in Region 1.

11 Q. You made a statement that if someone  
12 who was making comments was interested in  
13 purchasing this property that you would give no  
14 effect to their comments because of their inherent  
15 bias; correct?

16 A. If you consider that a bias. What I  
17 would consider a bias is if -- if someone told me  
18 they're interested in buying the property, if it  
19 biased what I then wrote, that's where the bias  
20 would enter.

21 Q. I don't understand that.

22 A. Well, maybe I didn't -- maybe I didn't  
23 understand where you were coming from with your  
24 question.

25 Q. Well, would you find that someone who

1 has an interest in purchasing the property would be  
 2 biased in their comments they would make against  
 3 the subdivision or a characterization --  
 4 A. Well, for instance, if FWP was  
 5 interested --  
 6 Q. Hang on. Let me get the question out  
 7 before you start.  
 8 A. I'm sorry.  
 9 Q. You might not anticipate the question  
 10 I am asking. Most of the time you will probably  
 11 get it right.  
 12 If someone was making comments on that  
 13 subdivision and also had an interest in purchasing  
 14 the property, you would consider that to be an  
 15 inherent bias?  
 16 A. Not just across the board. It would  
 17 provide the possibility for there to be a bias.  
 18 Q. Well, the answer I heard you give  
 19 Mr. Beal to a similar question was you would give  
 20 those comments no effect because of that bias. Do  
 21 I have that wrong?  
 22 A. I would think you'd have it wrong if  
 23 you looked back at the thing. I might have said  
 24 I'd give it less -- less of an assessment if I knew  
 25 that -- that that opinion was a biased opinion.

1 Doesn't have to be biased.  
 2 Q. What would be biased?  
 3 A. What would be biased? If I wanted to  
 4 buy a piece of property and somebody else already  
 5 had it, if I portrayed that property in the worst  
 6 possible light so it would increase the odds of me  
 7 being able to buy it, that would -- that would be  
 8 biased.  
 9 Q. It's your personal opinion that no  
 10 subdivision should be approved or very few  
 11 subdivisions should be approved; correct?  
 12 A. My personal opinion, strictly my  
 13 personal opinion, that yeah. Many subdivisions, I  
 14 don't like to see because it does impact something  
 15 that I personally enjoy, and that's open space.  
 16 Q. And your job with Fish, Wildlife &  
 17 Parks in Kalispell, Montana, was to make comments  
 18 about potential impacts to subdivisions from the  
 19 development of those subdivisions; correct?  
 20 A. Impacts to wildlife and wildlife  
 21 habitat from those subdivisions.  
 22 Q. Good clarification.  
 23 A. Yes, yes.  
 24 Q. So you were able to separate your  
 25 personal bias against subdivisions and evaluate the

1 impacts to wildlife from those subdivisions in a  
 2 professional and objective manner?  
 3 A. Yes, and I'm sure other people can too  
 4 if that's where you're -- you're getting at.  
 5 Q. That is exactly where I am getting at.  
 6 A. Yeah.  
 7 Q. I am very curious why you think you  
 8 are the only person who can do that.  
 9 A. I do not think that.  
 10 Q. Okay. That's a very important  
 11 clarification because that seems to be what you  
 12 have been saying.  
 13 A. Oh, no, definitely not.  
 14 Q. Is it fair to say that wildlife  
 15 management is as much art as it is science?  
 16 A. Yes. There's a lot of unknowns and  
 17 there always will be.  
 18 Q. And is that why wildlife management is  
 19 always a subject of debate among wildlife managers?  
 20 A. Yes. It's definitely one of the  
 21 reasons.  
 22 Q. Differences of opinions?  
 23 A. Uh-huh.  
 24 Q. Biologists with the same credentials  
 25 could reach different conclusions?

1 A. Uh-huh.  
 2 Q. Is it safe to say in this case your  
 3 beliefs about the subdivisions were overruled by  
 4 three other biologists working for Fish, Wildlife &  
 5 Parks?  
 6 A. No.  
 7 Q. Gael Bissell, Jim Williams, and Jim  
 8 Satterfield all appear to have a different opinion  
 9 about the impacts as you as reflected in the letter  
 10 written by Jim Williams, the letter written by Jim  
 11 Satterfield -- I should say the letters signed by  
 12 those individuals --  
 13 A. Very good.  
 14 Q. -- likely written with input from you,  
 15 Gael Bissell, and many others; correct?  
 16 A. Incorrect. The first letter was  
 17 likely written solely by Gael Bissell. I wasn't  
 18 around to provide any input.  
 19 The second letter, I wasn't providing  
 20 input into either because I wasn't there any  
 21 longer. If I'd been there to write the letter for  
 22 the final one, I guarantee you, it would have read  
 23 very differently, and it would have been approved  
 24 and signed by Jim Satterfield.  
 25 Q. You know that?

1 A. 99.9 percent sure.  
 2 Q. You are speculating; correct?  
 3 A. Not in regards to what I would have  
 4 written and what I'm sure would have gone through.  
 5 Q. So the end result mattered based on  
 6 who the biologist was working on the project, not  
 7 the internal policies and governing agency at Fish,  
 8 Wildlife & Parks?  
 9 A. We never even on other contentious  
 10 subdivisions that went -- went through  
 11 beforehand -- for instance, Eagles Crest, which is  
 12 almost three sections of ground up in the mountains  
 13 west of Lakeside, signed off by Jim Satterfield,  
 14 they were written by myself, reviewed, and signed  
 15 off with very, very little change.  
 16 Q. But you are not happy with the way  
 17 this letter turned out, are you?  
 18 A. I wouldn't say I'm not happy. I'm  
 19 surprised at some of the things in the letter.  
 20 Q. And different biologists with the same  
 21 credentials can come to different conclusions;  
 22 correct?  
 23 A. Correct.  
 24 Q. And --  
 25 A. And I'll state again that Gael Bissell

1 is a -- Gael Bissell is a very good biologist.  
 2 Q. And has two and a half times the  
 3 experience in number of years with working with  
 4 Fish, Wildlife & Parks in that area?  
 5 A. Yeah, and she probably lives four  
 6 miles from the area.  
 7 Q. You talked about helping developers  
 8 remove black marks from their subdivision?  
 9 A. That was just a term I used. I never  
 10 said black marks to them but just things that could  
 11 raise concern.  
 12 Q. Understood. Understood. I took that  
 13 to mean you were offering them ways to mitigate an  
 14 impact to reduce the significance of those impacts  
 15 so it wouldn't be a black mark or a black eye  
 16 against that subdivision?  
 17 A. Right. The subdivision would have  
 18 less impact, and typically that was -- came post  
 19 and not pre.  
 20 Q. You had had a number of years working  
 21 with Flathead County on subdivision comments;  
 22 correct?  
 23 A. Uh-huh.  
 24 Q. I believe you said two-thirds of maybe  
 25 30 subdivisions you had commented on were in

1 Flathead County?  
 2 A. Yes.  
 3 Q. Did they approve most of those  
 4 subdivisions?  
 5 A. Yes.  
 6 Q. Is it your general experience that  
 7 Flathead County would approve subdivisions that  
 8 came before them?  
 9 A. Yep.  
 10 Q. Did that ever make you mad?  
 11 A. Sometimes.  
 12 Q. Is it safe to say you assumed the  
 13 county commissioners would approve the North Shore  
 14 Ranch?  
 15 A. I thought the likelihood was probably  
 16 fairly high, but they denied it once in which --  
 17 which that in itself wasn't the norm.  
 18 Q. Did the commissioners deny that  
 19 subdivision once? Do you know that for certain?  
 20 A. I think the first time maybe the  
 21 planning board denied it initially.  
 22 Q. I think that's correct. I don't  
 23 believe it ever made it to the county  
 24 commissioners.  
 25 A. Right.

1 Q. Does that refresh your recollection?  
 2 A. Yes. If the planning board kicks it  
 3 out, then it's back to square one, although I  
 4 believe -- and again, and you can correct me. That  
 5 may be at the option of the developer.  
 6 If the planning board denies it, I  
 7 think it could still go to the commission for  
 8 voting, but the smart thing to do from a developer  
 9 if it looked like things were heavily stacked  
 10 against them would be to pull the project and make  
 11 some adjustments and then resubmit or pull it  
 12 forever.  
 13 Q. Did you ever hear the term mid-course  
 14 correction?  
 15 A. Uh-huh.  
 16 Q. I do believe that's what occurred in  
 17 this case. Does that sound familiar to you?  
 18 A. Yes. And I would have come in during  
 19 that mid-course correction.  
 20 Q. Is it a fair characterization to say  
 21 that your overall beliefs of this subdivision is  
 22 that it was well designed but in the wrong place?  
 23 A. Well designed, yes. Wrong place, for  
 24 myself, not necessarily so.  
 25 Q. Okay.

1 A. For others, definitely because a lot  
2 of -- a lot of what goes on gets back -- you know,  
3 you have a lot of people in the valley, anybody --  
4 could be anybody -- where you have probably heard  
5 the phrase NIMB, not in my backyard, how they view  
6 a -- how they view a subdivision.

7 If it was on the other side of the  
8 valley as opposed to right next to where they live  
9 can be two totally different -- different  
10 perspectives even though that the site could be  
11 equally good and the subdivision could be equally  
12 well designed, and so there's a lot of social  
13 parameters to be taken into account.

14 Q. You mentioned that the wildlife  
15 habitat in the Flathead Valley is highly fractured.  
16 Would it surprise you that Mr. Beal's clients think  
17 otherwise?

18 A. Yeah, I guess so to a point.

19 Q. If, in fact, the wildlife habitat in  
20 the Flathead Valley is highly fractured, would that  
21 make it more or less important to minimize impacts  
22 on what's left?

23 A. Makes it more and especially the  
24 critical areas.

25 Q. And you are clear that the WPA is of

1 critical importance, critical habitat?

2 A. Simply by the fact that it's a  
3 wetland. I view the WPA right now as a diamond in  
4 the rough. It can be made far more better in the  
5 future sometime than in the state that it currently  
6 is in.

7 Q. So it would be important then to carry  
8 out that mission of making it better than it is to  
9 ensure as few impacts as possible on the WPA;  
10 correct?

11 A. Uh-huh.

12 MR. McCORMICK: I will stop there.

13 REDIRECT EXAMINATION

14 BY MR. BEAL:

15 Q. Mr. McCormick noted that wildlife  
16 management is more art than science, and you  
17 agreed?

18 A. Yeah, or as much art as science  
19 because there's a lot of unknowns.

20 Q. Is it fair to say that one of the core  
21 principles of science is repeatability, that if you  
22 give someone the recipe, you can get the same  
23 outcome that they had?

24 A. (The witness nodded his head  
25 affirmatively.)

1 Q. And thus, the art part is that that  
2 isn't always possible?

3 A. Right, and the art part is that with  
4 managing habitats or wildlife are you very rarely  
5 dealing with the exact same circumstances each time  
6 you try to put that recipe together.

7 Q. And because there is an artistic part  
8 to it, would you say it is more important than it  
9 would be, say, for a physicist to know what their  
10 biases are when they are giving an opinion?

11 A. I'd like you to rephrase it so I could  
12 better understand it, I guess.

13 Q. Fair enough. If a physicist says "I  
14 think that car is traveling 65 miles an hour," does  
15 it matter much what his personal biases might be?

16 A. I guess not because you can measure  
17 the speed of the vehicle.

18 Q. Because there is an objective answer,  
19 and there's no subjectivity involved. With things  
20 that do have subjectivity involved, I assume you  
21 would agree that that's where it's important to  
22 know what people's biases are?

23 A. Yes, or at least to be able to  
24 ascertain if that -- that bias is part of the --  
25 part of the reason, you know, for the answer, but

1 then when you're getting back to art, bias and  
2 knowledge can be possibly confused too.

3 Q. If I told you I had a chocolate shake  
4 for lunch, would you find it important that I don't  
5 like chocolate shakes in determining if my  
6 description of it was accurate or not?

7 A. Yes, if you said it -- if -- if it was  
8 determined if you thought it was good or not.

9 Q. I apologize. Not a clear question.  
10 If I had a chocolate shake for lunch and said it  
11 wasn't very good, it would be important to know  
12 that I just don't like them in general?

13 A. (The witness nodded his head  
14 affirmatively.)

15 Q. And so if I gave a description of the  
16 wildlife value of a parcel of ground, it would be  
17 important to know what my hopes were for that  
18 parcel of ground?

19 A. I think so, at least to know.

20 Q. You said you were quite sure that if  
21 you had written an opinion letter regarding this  
22 project that was different than the one that was  
23 finally issued by Fish, Wildlife & Parks that  
24 Mr. Satterfield likely would have signed it?

25 A. I feel it's highly likely.

1 Q. Had you ever taken an opinion letter  
2 to him in the past where he did not sign it?

3 A. No, although there had been some  
4 editorial changes made but -- but nothing dramatic.

5 Q. Sure. Was there ever a case where the  
6 core point of the letter was changed?

7 A. No. And again, it all gets back to  
8 because a lot of reliance is put onto the person on  
9 the ground, you know, that's writing the letter in  
10 the first place, and it details in with my comments  
11 saying that maybe a wildlife biologist in the  
12 employ of the county would be a better way to go,  
13 but it would cost the county more money.

14 MR. BEAL: That's all I have.

15 MR. MCCORMICK: I am good.

16 MR. BEAL: It has been a pleasure,  
17 Mr. Litchfield. I think we are done.

18 (Deposition concluded at 1:00 p.m.)  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, SueAnn Jones, a Certified Shorthand  
Reporter and Notary Public in and for the State of  
Iowa, do hereby certify that prior to the  
commencement of the deposition THOMAS LITCHFIELD  
was duly sworn by me to testify to the truth;

That the foregoing is a true and accurate  
computer-aided transcription of the testimony as  
taken stenographically by and before me at the time  
and place indicated on the title page;

That I am neither a relative nor employee  
nor attorney nor counsel of any of the parties to  
this action, and that I am not financially  
interested in the action.

Dated this 8th day of June, 2009.

\_\_\_\_\_  
SueAnn Jones, CSR, RPR



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**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**SUBDIVISION REPORT #FPP-04-02**  
**MACINAW ESTATES**  
**FEBRUARY 20, 2004**

A report to the Flathead County Planning Board and Board of Commissioners regarding a request for preliminary plat approval of Mackinaw Estates Subdivision, a major subdivision that will create 55 residential lots. The subdivision is proposed on 24.56 acres and will be served by Somers municipal water and sewer. The Flathead County Planning Board will conduct a public hearing on this project at their March 10, 2004, meeting, beginning at 6:00 P.M., in the 2<sup>nd</sup> floor Conference Room, 1035 1<sup>st</sup> Ave West, Kalispell. A recommendation will be forwarded to the Flathead County Board of Commissioners for final action.

**BACKGROUND**

**Applicant:** William, Robert and Grace Lincoln  
203 Lakeshore Drive  
Lakeside, MT 59922

**Technical Assistance:** Carver Engineering  
1995 3<sup>rd</sup> Avenue East  
Kalispell, MT 59901

**A. Project Description:**

The application proposes to create 55 new single-family residential lots, approximately 10 miles south of Kalispell. The lots are 12,632 to 25,700 square feet in size. The lots will be served by Somers Municipal Sewer and Water. The development is in an unzoned portion of the county.

**B. Location:**

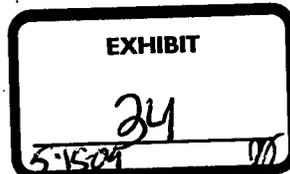
This subdivision is located in the Somers area off Somers Road just south of the intersection of Highway 82 and Somers Road. The property may be described as Assessor's Tracts 2P, 2PA and 2PB, Section 24, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

**C. Size:**

Subdivision area:	24.56 acres
Area in roads	4.18 acres
Area in lots	19.61 acres
Open space	cash in lieu/parkland

**D. Existing Land Use:**

The site is undeveloped and looks as though it has been used as an open area or for grazing.



**E. Proposed Land Use:**

All fifty-five lots within the development are proposed as single-family residential lots.

**F. Adjacent Land Uses:**

South:	Agricultural / Single family residential
North:	Agricultural / Single family Residential/commercial
West:	Single family residential
East:	Agricultural / Single family residential

**G. Utilities:**

Water:	Somers Municipal Water System
Sewer:	Somers Municipal Sewer System
Electricity:	Flathead Electric Cooperative
Telephone:	CenturyTel
School District:	Somers (K-8) Kalispell (9-12)
Fire:	Somers Volunteer Fire Department
Police:	Flathead County Sheriff

**REVIEW AND FINDINGS OF FACT**

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

**A. Neighborhood Comments Received:**

Notice of the proposed subdivision and public hearing were sent to adjacent landowners on January 28, 2004 and a legal notice appeared in the Daily Inter Lake on Sunday, February 8, 2004 advertising the time, date and place of the Flathead County Planning Board Public Hearing. As of the date of this report, I have received 1 letter of opposition. It is reasonable to expect that interested persons will attend the public hearing and voice their opinion to the Flathead County Planning Board on March 10, 2004.

**B. Compliance with the Flathead County Zoning Regulations:**

The property is currently not zoned.

**C. Effects on Health and Safety:**

Fire and emergency access: The site is moderately flat with each lot being proposed to have access via a private 60 foot right-of-way with a 20 foot wide driving surface. The road will have a low grade, well within the County's acceptable grade standards

The property is a part of the Somers Fire Service area, access should be well within the fire department's standards. The developer will need to address any concerns the fire department may have. A loop road system is proposed in the subdivision.

Flooding: The property is classified as flood zone "C" areas of minimal flooding. Information was supplied per FEMA Flood Insurance Rate Map Panel 3000232280E.

Topography: The property is flat (0-2%). Each lot has an adequate area for a building site.

The affect on public health and safety is acceptable with the imposition of conditions.

**D. Effects on Wildlife and Wildlife Habitat:**

This subdivision is located within ¼ mile of a high density area. Due to the close proximity to the preserve some wildlife is present. Notice was sent to Montana Fish, Wildlife and Parks but no comments were received.

Effects on Wildlife and wildlife habitat are within acceptable parameters.

**E. Effects on the Natural Environment:**

Sewage Disposal: This subdivision will be reviewed by the City-County Health Department and the Montana Department of Environmental Quality for compliance with Sanitation Regulations.

Development of the lots within the subdivision will require some excavation. These activities should not activate erosion or trigger other environmental problems; as the lots are level.

The ~~Effects~~ effects on the natural environment from the development of this subdivision are minimal.

**F. Effects on Local Services:**

Roads: The Flathead County Subdivision Regulations require that the roads be open to public use. As such the developer should be required to note that the roads within the subdivision are private and privately maintained but open to public use.

In order to mitigate concerns with erosion, snow removal, safe all weather travel, dust, and other small particulate pollution; the property owners will form a Property Owners Association for maintenance of the internal subdivision roads.

Schools: The property is located within the Somers (K-8) and Kalispell (9-12) School Districts. The Somers and Kalispell School Districts have been notified of the project but neither has responded. This subdivision is within walking distance of the Somers School. Any need for bus pullouts for high school students will be addressed by the Child Transportation Committee. The developer should also dedicate a 10 foot wide bike path easement along Somers Road for any future planned bike paths.

Parks: Open space dedication is required for subdivisions, the regulations state that the developer will dedicate 11% of the combined area of all land to be divided into lots ½ acre or smaller in size and 7.5% for lots over ½ acre to 1 acre, as provided by Section 3.19 of the Flathead County Subdivision Regulations. The total combined area the developer must dedicate for parkland or cash in lieu would be 2.01 acres. The developer has parkland as .78 of an acre but the plat has the

space designated as a storm drainage area. This drainage area is not acceptable as parkland because it is not a useable parkland. The developer will need to give cash in lieu of parkland.

Police Protection: The site is served by the Flathead County Sheriff's Office, with only one sheriff's officer patrolling the area at any given time. Routine patrolling of this area is not expected and response times will be consistent with other rural areas of Flathead County.

Fire Protection: The site is a portion of the Somers Fire Service Area, which provides fire protection for this area. The Chief of the Somers Fire Department has not commented on this proposal. The developer will need to provide a letter from the Somers Fire Department stating this development has met any conditions they have prior to final plat.

Refuse Disposal: Refuse disposal will be provided by contract collection and owner haul to the green boxes approximately 1/4 mile north of this site and then disposed in the County Landfill. The County Landfill has adequate capacity to accommodate the additional refuse generated from this subdivision.

Medical Services: Medical services are available at the Kalispell Regional Medical Center approximately 10 road miles from the site respectively. The Alert helicopter ambulance services are available.

The affect on local services with the imposition of conditions to mitigate impacts is within acceptable parameters.

**G. Effects on Agriculture and Agricultural Water User Facilities:**

The property has been used in the past for some cattle grazing. The property is not a portion of an irrigation project. The subdivision is located in an area that is used for agricultural purposes. The right to farm on adjoining lands should be preserved.

This project will remove very limited acreage from the Agricultural base of Flathead County. The impacts to Agriculture and Agricultural water user facilities are minimal.

**H. Compliance with the Flathead County Subdivision Regulations:**

The Project is in compliance with the Flathead County Subdivision Regulations.

**I. Compliance with the Flathead County Master Plan/Growth Policy:**

The proposal to create lots that average 12,000 to 26,000 square feet in size does not comply completely with the Flathead County Master Plan/Growth Policy. The property is designated Agricultural. However, no insight was given to the close proximity to municipal water and sewer and the proximity to small surrounding ownerships in this area. The master plan/Growth Policy even has areas that have been residential for decades master planned as agricultural. The Master Plan also says that if an area has municipal services, that this is where the high density should be. This subdivision has a "will serve" letter from Somers Water and Sewer District. The master plan is only a guideline and cannot be used

as a sole basis to deny a subdivision.

## CONDITIONS:

1. The developer shall pave the entire subdivision road to mitigate any impacts to surrounding ownerships. Interior roads shall be 20 feet in width with a 60 foot right-of-way and 55 foot radius cul-de-sacs. All roads shall meet AASHTO standards.
2. All areas disturbed during development of the subdivision shall be revegetated in accordance with a plan approved by the County Weed Department.
3. 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.
4. The developer shall contact the Child Transportation Committee and, if required, provide and improve a location for the safe loading and unloading of students.
5. Road right-of-ways shall be dedicated on the final plat as being open to public use but privately owned and maintained.
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:
  - 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. All lot owners are responsible for the eradication and control of noxious weeds upon their property.

- 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 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.
10. The developer shall reserve 2.01 acres of parkland or pay a cash-in lieu fee equal to the appraised value of 2.10 undeveloped, undivided acres. The storm drainage area is not acceptable parkland area.
  11. The developer shall dedicate a 10 foot bike/walk path easement along Somers Road for a future bike/walk path.
  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 years.

# CERTIFICATION

APPLICANT: Mackinaw Estates Sub.

FCPZ FILE #: FPP-04-02

I, the undersigned, certify that I did this date mail via certified mail a copy of the attached notice to the following list of landowners adjoining the property lines of the property where a major subdivision preliminary plat has been requested.

Traci R. Yell

Date: 28-Jan-04

---

<u>Assessor's No.</u>	<u>S-T-R</u>	<u>Lot/Tract No.</u>	<u>Property Owner &amp; Mail Address</u>
			William, Robert & Grace Lincoln 203 Lake Shore Dr. Lakeside, MT 59922
			CARVER Eng. 1995 3rd Ave. E. Kalispell, MT 59901

**Litchfield, Tom**

---

To: Simon Ventures LLC Simon  
Subject: RE: North Shore Ranch - Federal Statute Inquiry

Hi Keith,

I am still interested in seeing the Rules and Regulations of the Homeowner's Assoc. Equestrian Center and Private Stables - I want to get an idea of how grazing might effect open space areas, particularly the proposed easement areas. Also, in Section 2.26 I was wondering what you envision the scope of the Wildlife Management Plan and the Vegetation Management Plan to be for the area.

Other than the things we have previously discussed and a copy of the application package, I think anything else that might turn up can be dealt with as the process moves forward.

Sincerely,

Tom

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

**From:** Simon Ventures LLC Simon [mailto:simonventures@sbcglobal.net]  
**Sent:** Monday, July 09, 2007 3:54 PM  
**To:** Litchfield, Tom  
**Cc:** Sean Averill; Kent Saxby  
**Subject:** Re: North Shore Ranch - Federal Statute Inquiry

Thanks, I will pass this on to our CC&R attorney for potential incorporation, and I will read this tonight. Do you need anything from us at this time and are there any issues remaining that need to be mitigated?

Thanks,  
Keith

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

**From:** "Litchfield, Tom" <TLitchfield@mt.gov>  
**To:** simonventures@sbcglobal.net  
**Sent:** Monday, July 9, 2007 2:42:43 PM  
**Subject:** North Shore Ranch - Federal Statute Inquiry

Hello Keith,

Re: Federal Law concerning cats and dogs

I did a little looking and I believe this is the federal law you were inquiring about - 50 C.F.R. 28.43

Here is a link: <http://law.justia.com/us/cfr/title50/50-6.0.1.2.11.4.1.3.html>

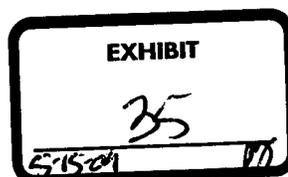
This one may also apply - 50 C.F.R. 31.14

A link: <http://law.justia.com/us/cfr/title50/50-6.0.1.2.14.2.1.4.html>

Let me know if this is what you were looking for.

Sincerely,

7/9/2007



MT FWP 001959

Litchfield, Tom

From: Simon Ventures LLC Simon [simonventures@sbcglobal.net]  
Sent: Sunday, July 15, 2007 8:15 AM  
To: Litchfield, Tom  
Subject: RE: North Shore Ranch - Federal Statute Inquiry



3972025654-Stable  
\_Rules\_NSR4.d...

Tom, Here are the Private Stable Rules. The Equestrian Center will be run by the Homeowners Assoc. and will be managed by a hired manager. . When we hire a barn manager, he will create Barn Rules that users will follow. Grazing will be managed by the barn manager and North Shore Ranch general manager. The variables of pasture growth (rain, heat, etc.) will determine when and for how long an area can be grazed. The scope of the wildlife and vegetation plan will be what is necessary to maintain a noxious weed free natural state that can support wildlife. No hunting. I envision a committee or committees controlled by the Home Owners Assoc. board comprised of a board member, home owners and professionals such as yourself and folks like Joe Elliot (our biologist) and Oasis Environmental, etc. As you know, conservation management changes with new research. Our structure of independent plans that require only board vote will allow for change without trying to get a majority vote of all homeowners. This is part of the developments CC'd in R's.

Keith

--- "Litchfield, Tom" <TLitchfield@mt.gov> wrote:

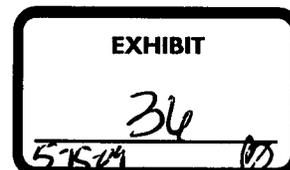
> Hi Keith,  
>  
> I am still interested in seeing the Rules and  
> Regulations of the Homeowner's Assoc. Equestrian  
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> of how grazing might effect open space areas,  
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> Other than the things we have previously discussed  
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> anything else that might turn up can be dealt with  
> as the process moves forward.

> Sincerely,

> Tom

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> From: Simon Ventures LLC Simon  
> [mailto:simonventures@sbcglobal.net]  
> Sent: Monday, July 09, 2007 3:54 PM  
> To: Litchfield, Tom  
> Cc: Sean Averill; Kent Saxby  
> Subject: Re: North Shore Ranch - Federal Statute  
> Inquiry



# North Shore Ranch

## Stable & Trail Rules

Min lot size  
yes > 1 ac  
8 lots  
are  
over an  
acre

### INTENT

It is hereby expressly declared to be the intent of the North Shore Ranch Home Owners Association Board ("ASSOCIATION") that the standards and regulations set forth in these rules shall apply to the maintenance and operation of the commercial and private stable and trails within the North Shore.

### Equestrian Facility

The Equestrian Facility is for the use by homeowners, and their guest, of North Shore Ranch. Homeowners shall have first priority for stalls and use of the arenas. Available stalls shall be on a "first come, first serve" basis. If there is more demand than the number of stalls, the Association will keep a list prioritized for those waiting the longest down to those waiting the least amount of time. Each Homeowner shall be entitled to have two stalls, unless there are open stalls, then a Homeowner may have more than two stalls. The Association reserves the right to Lease stalls to non-homeowners if all the stalls are not let to homeowners. Non-homeowners may lease on a "monthly basis" only, and must relinquish the stall, with one months notice in the event a homeowner signs up for a stall. In the event there is more demand than capacity, the Homeowners Association will add stall capacity and shall balance the number of stalls to the arena capacity. In the event stall capacity and demand exceeds the arena capacity, then additional arenas will be added.

All events for the Equestrian Center must be approved by the Association. Private events by and/or for the Homeowners shall have priority over all other events, unless the Association deems otherwise.

The Association shall appoint an Equestrian Center Manager, and shall have jurisdiction over the Equestrian Center and it's manager.

Stable Operating Rules shall be made by the Equestrian Center Manager and approved by the Association.

There shall be a Homeowners Base Fee (all homeowners of North Shore Ranch) and a Trail Usage Fee (included in a Private Stable Permit Fee and the Equestrian Center Stall Rent). These Fees shall be set by the Association, and are for the sole purpose of maintaining the Equestrian Center and the Equestrian Trail Systems.

### DEFINITIONS

For the purpose of these rules, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ACCESS ROAD.** Any road or trail upon private property leading to or from a stable or other building where horses are confined.

**APPROVED.** The approval of the Fire Chief or a nationally recognized testing agency.

**AUTOMATIC SPRINKLER SYSTEM.** An approved fire protection system which dispenses water through specially sized pipe and to which sprinkler heads are attached for the extinguishment of fire.

**CALL BOX.** An approved, manually operated firebox alarm.

**Commercial Stable.** A new commercial stable that has facilities within a structure to feed and care for five or more head of horses.

**CODE BOX RELAY STATION.** An approved electrical device which receives and transmits a coded fire alarm signal to a distant receiving station.

**DOOR.** A movable frame by which an entryway can be opened or closed.

**ENCLOSED STABLE.** A stable where the stalls do not immediately exit to the outside directly from each stall.

**EXIT WAY.** A continuous and unobstructed means of egress from a stable or building.

**FIRE CHIEF.** The Fire Chief of the Sommers Rural Fire District or other person acting under his/her direction.

**FLAMMABLE LIQUID.** A volatile liquid which will readily combust when subjected to heat.

**HORSE.** Any member of the horse family, including, but not limited to, donkeys and mules.

**METAL LOCK.** Any combination lock or lock which requires a key to open such lock.

**UNDERWRITERS.** A nationally recognized fire protection organization.

**NEW COMMERCIAL STABLE.** Any commercial stable not legally existing on April 12, 2006.

**PORTABLE FIRE EXTINGUISHER.** A movable first aid extinguishing appliance.

**RAPID RISE IN TEMPERATURE FIRE ALARM SYSTEM.** An approved electrical device which automatically detects fire by a rapid change in temperature. Detecting devices are electrically connected to each other in a circuit, and, upon being activated, such detecting device transmits a signal.

**STABLE.** A building, or portion thereof, used for the feeding and housing of more than one horse.

**STALL.** An enclosure provided and designed for the feeding and housing of one horse.

**UNENCLOSED STABLE.** A stable where the stalls are so located that each stall door opens immediately to the outside.

**INTERNATIONAL BUILDING CODE.** The International Building Code which has been adopted by the North Shore Ranch, including all amendments thereto.

**INTERNATIONAL ELECTRICAL CODE.** The International Electrical Code and the National Electrical Code which have been adopted by the North Shore Ranch, including all amendments thereto.

**COMMERCIAL STABLE.** The central boarding and/or training establishment regularly providing services or facilities for the keeping and/or use of horses, other than for private use, including, but not limited to, boarding stables, riding schools, stables, and pastures or corrals to accommodate horses belonging to clubs or organizations or the members thereof.

**CORRAL.** A fenced area of less than one acre of net open land for the confinement of horses.

**PASTURE.** A fenced area of one acre or more for the grazing or feeding of horses.

**PRIVATE STABLE.** Any noncommercial establishment providing facilities for the keeping and/or use of horses

**SHELTER.** A roofed structure with a windbreak on at least three sides, dry footing, a minimum of ten feet by ten feet, adjacent to paddocks measuring a minimum of 600 square feet, with water and feed containers.

**SPECIAL EVENT.** An event involving horses not usually owned, boarded, or trained on-site.

**STABLE.** A building, or portion thereof, designed or used for the housing or feeding of horses.

**STALLION.** Any uncastrated male horse which has attained the age of 18 months.

**STREET.** Streets and private roads as defined in Montana Vehicle Code.

## **PROHIBITED ACTS**

The provisions of these rules shall not be construed as authorizing any act prohibited by the state laws or regulations adopted pursuant thereto.

## **ENFORCEMENT OF PROVISIONS.**

The enforcement of the provisions of these rules shall be performed by such persons or governmental bodies as authorized by the ASSOCIATION or by the provisions of these rules.

## **APPEALS.**

Any person may appeal to the ASSOCIATION from the decision of the enforcement agency.

## **TITLE.**

These rules shall be known and may be cited as the 'Stable Law of the North Shore Ranch.'

## **PURPOSE AND INTENT.**

The provisions of these rules are adopted to establish requirements for the commercial and private keeping of horses and to regulate their keeping and maintenance in order to protect and promote both public and animal health, safety, welfare, comfort, and convenience and to establish conditions and requirements for the operation of stables.

## **INTERPRETATION AND APPLICATION OF PROVISIONS.**

It is the intention and direction of the ASSOCIATION that the interpretation and application of the provisions of these rules shall be held to be the minimum requirements, except where it is expressly stated that maximum requirements shall prevail. The provisions of these rules are not intended to impair or interfere with any private restriction placed upon property by covenant or deed; however, where the provisions of these rules impose a greater restriction upon such property, the provisions of these rules shall control. Where the provisions of these rules impose regulations or requirements which are different from or in conflict with those of any other law of the North Shore Ranch, the law establishing the more stringent requirements shall prevail.

## **PERMIT REQUIRED.**

No horse shall be kept for more than 30 consecutive days without obtaining a stable permit therefore pursuant to the provisions of these rules. The fees for such permits shall be fixed by resolution of the ASSOCIATION.

## **PERMIT APPLICATION; ISSUANCE OR DENIAL.**

(A) *Applications made to North Shore Ranch Secretary.* Applications shall be made to the North Shore Ranch Secretary on a form provided by the North Shore Ranch for such purpose and shall be accompanied by the required annual fee. Applications received during the year shall have the applicable annual fee prorated to the nearest month. Annual billings shall be mailed in the month of January of each year with payment due 30 days after mailing.

(B) *Fees.* All applications shall be made by or on behalf of the owner of the property. Permits shall be issued (subject to inspection as provided in division (C) below) upon collection of fees, and shall be issued for an annual term commencing January 1 of each year. Stable fees are not refundable.

(C) *Inspections.* The North Shore Ranch management shall make, or shall cause to be made an inspection of the premises to verify that the use or proposed use is or will be in conformity with the provisions of these rules and any conditions imposed by the Planning Commission in approving a conditional use permit for commercial stables or by the Association in approving an exception for private stable permits. Inspections shall occur no less frequently than bi-annually (every two years) for all types of stables as well as promptly upon issuance of a permit for a newly constructed stable and upon receipt of a written complaint about the stable from neighbors or other concerned persons.

(D) *Denial or revocation.* If the North Shore Ranch management finds that the use or proposed use is not or will not be in conformity with the provisions of these rules, the North Shore Ranch management or designee shall deny such a permit (if none has been issued), or if issued, shall take action to revoke such permit .

(E) *Appeals.* All appeals from the issuance or denial of a stable permit shall be made to the Planning Commission in accordance with the appeals procedures.

(F) *Conditions.* Each stable permit issued shall state the number of horses permitted, the activities and facilities permitted, and any special conditions or requirements to be met.

(G) *Transferability.* No stable permits issued pursuant to these rules may be transferred or assigned.

## PRIVATE STABLE REGULATIONS.

The following regulations apply to all private stable permits:

<b>Minimum size</b>	One acre
Number of horses permitted	Maximum two per acre In calculating the number of horses permitted by any section, a horse shall not be counted if under one year of age.
Stalls	Minimum 10 feet by 10 feet; every horse shall have access to shelter
Corrals	Minimum 600 square feet; with water and shelter available if not stalled. Footing must be adequate to avoid standing water and mud at all time.
Feed	Feed must be properly stored to avoid habitat for vermin, protected from the weather and in such manner as to not pose any health risks
Training	Only horses owned by the permittee or boarded on the site
Traffic/circulation	Shall be served by a driveway meeting the minimum North Shore Ranch standards
Health	If at any time livestock is not kept in good health, the Association, in conjunction with the proper governmental agencies, may revoke the stable permit and impound the livestock at the owners expense.
Setbacks	The minimum distance of a corral or pasture from any adjoining property line, other than a property line adjacent to a street, shall be ten feet, except that the minimum distance from any neighboring swimming pool, patio, or other regularly used living area existing prior to the application for the use of the corral or pasture fences shall be 25 feet. A lesser setback or no setback shall be permitted if the neighboring property owner agrees in writing. This agreement is subject to revocation if change of ownership of either property occurs.

	Structures, other than fences, for housing or maintaining livestock shall be located as follows: not less than 50 feet from any main dwelling existing on an adjoining parcel at the time such structure is erected; not less than 50 feet from any neighboring property line, when either the parcel upon which the structure is located or the adjoining parcel is not designated horse property.
Fire protection	Garden hose of a minimum 3/4 inch diameter and hose bib no more than 50 feet from the stable capable of reaching all areas of the barn or stable with adequate water flow and pressure; fire extinguishers; and halter and lead rope at the door of each stall
Waste disposal & Cleaning	Weekly removal and composting in a contained bin, and maintenance of clean, sanitary conditions; an insect and dust and odor control plan shall be required and implemented. Stalls to be cleaned daily.
Drainage	Adequate drainage and maintenance of drainage as to avoid standing water or mud at all times
Structures	All equestrian related structures within 1,000 feet of a road and are visible from the road shall have Architectural and Site Review Board review and the approval
Residence	The primary residence of the permittee shall be on-site
Events	Special events involving horses not usually stabled or trained on-site shall be regulated by special permit issued by the Association.
Trailer Storage	Adequate off-street parking not in front of the primary residence must be provided for trailers
Lighting	No exterior lighting, other than needed for safe passage around buildings, unless specifically authorized by the Association.
Fences	All corrals and pastures shall be enclosed by an adequate fence in accordance with North Shore Ranch requirements
Stallions	Fencing shall be six feet in height. Signs shall be posted on stall doors, corral gates, and fences adjacent to trails indicating a stallion is kept therein. The owner shall disclose on the stable permit that a stallion is on the property and/or shall so amend an existing stable permit prior to bringing a stallion onto the property. Corrals shall be at least ten feet from neighboring property lines and dedicated trail easements.

## SUSPENSION AND REVOCATION OF PERMITS.

Any stable permit granted pursuant to the provisions of these rules shall be subject to suspension or revocation by the ASSOCIATION for failure to comply with the material provisions of these rules. A notice shall be served by registered or certified mail, return receipt requested, or by personal service on the person holding such permit specifying therein that he/she is failing to comply with the provisions of these rules or with any term or condition specified in the permit for the maintenance of horses. Such notice shall require him/her to report or appear before the ASSOCIATION, at a date and hour specified, to show cause at such time and place why the permit should not be suspended or revoked. At such time and place the person holding such permit shall have the right to appear in person or by counsel and to introduce such evidence as he/she may desire, and the ASSOCIATION shall confront the permit holder with any charge the ASSOCIATION may have against him. After the conclusion of the hearing, the ASSOCIATION, if it makes a finding that the permit holder has violated the material terms of these rules or the terms of his/her permit, may revoke or suspend the permit or set conditions for its continuance.

## EXCEPTIONS.

Exceptions to the private stable standards may be granted by the Association after review and recommendation by the Association, subject to the following findings and limitations:

(A) For all exceptions, the Association must make all of the following findings:

- (1) The exception will not impair the health, safety or welfare of the livestock maintained on the site.
- (2) The exception will not result in any adverse health, safety, noise, traffic or visual impacts on surrounding properties and roadways.
- (3) The proposed use complies with all other standards of above regarding private stables.

(B) For any exception involving a request to exceed two horses per acre, the Association must make all of the following additional findings:

- (1) That the site is adequate in size, shape, and topography to accommodate the proposed use;
- (2) That the site for the proposed use can be served by roads of adequate width and design to accommodate the quantity and type of traffic generated by such use, including parking demands;
- (3) That fire protection measures are provided.
- (4) That the number of horses allowed shall not exceed four horses per acre on a property.

(C) Applications for stable permit exceptions shall be accompanied by a fee, as set forth in the North Shore Ranch 's fee and deposit resolution, to recover the costs of staff and Association review (in addition to the annual stable permit fee), along with stamped envelopes addressed to all owners of properties located within 100 feet of the subject property. Notice of the Association meeting to consider the exception shall be mailed to all such property owners not later than ten days prior to the Committee meeting date.

(D) The Association may require periodic review or renewal of the stable permit for the excepted property as a condition of approval of the exception, and may revoke such exception at any time upon finding the existence of an immediate health or safety hazard, or after recommendation of the Association that the required findings can no longer be made.

(E) Any decision made by the Association approving or denying a stable permit exception may be appealed pursuant to the provisions of the North Shore Ranch rules.

## **PUBLIC NUISANCE ABATEMENT.**

Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of these rules or any permit issued pursuant to the provisions of these rules, and any use of any land, building, or premises established, conducted, operated, or maintained contrary to the provisions of these rules or any permit issued pursuant to the provisions of these rules shall be, and the same is hereby declared to be, unlawful and a public nuisance. The North Shore Ranch Attorney, upon an order of the ASSOCIATION, shall commence an action or proceedings for the abatement, removal, and injunction thereof in the manner provided by law and shall take such other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building or structure and restrain and enjoin any person from setting up, erecting, building, maintaining, or using any such building or structure or using property contrary to the provisions of these rules. The remedies provided for in these rules shall be cumulative and not exclusive. All costs and attorneys' fees relating to the enforcement of the provisions of these rules shall be borne by, and recoverable from, the persons in violation thereof.

## **NONCONFORMING LIVESTOCK USE.**

A nonconforming livestock use or the use of a nonconforming structure for livestock purposes may be continued except as otherwise provided in rules. The right to continue a nonconforming livestock use shall run with the land, provided, however, that such right shall lapse if the use shall be abandoned for a period of one year or more.

## **Commercial Stable**

The Commercial Stable rules are the same as the Private Stable rules except for the following:

Breezeways must have 12' clear width at all times

No long term trailer parking.

A fire protection system approved by the Fire Chief, and in operation at all times.

All equipment may be operated by the Barn Operator and its direct employees only.

## **Trail Rules**

Two sets of trails, equestrian and pedestrian, exist for the use of the Home Owners and their guests. The Association has the right to open the pedestrian trail system to the general public.

Horses must stay on the equestrian trails only.

Pedestrians must stay on the pedestrian trails only.

Horses have the right of way.

Pets must be on a leash, and are not allowed off the trails where designated.

The North Shore Ranch has provided the trail system as an amenity to residents and guests, and the residents and guests use the trails of their own free will, and indemnify North Shore Ranch for any liability regarding the trail usage and any incidents there upon.

Any kind of motorized vehicle and cycles are prohibited on all trail systems, except for vehicles used by the Association for trail maintenance.

*only needs to be developed if a fence a Jack fence*  
*Boundary Fence*  
*an etc.*  
*considerations more fence on both sides of property*  
*TREES?*

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**NORTH SHORE RANCH**

THE UNDERSIGNED, KLIENHANS FARM ESTATES, LLC, a Montana Limited Liability Company (herein known as the "Developer") of 1399 Wisconsin Avenue, Whitefish, MT 59937, hereby encumbers and restricts the real property situated in Flathead County, Montana, known as North Shore Ranch, according to the plat thereof recorded in the records of the Office of the Clerk and Recorder of the County of Flathead, State of Montana (the "Plat") with this Declaration of Covenants, Conditions and Restrictions of North Shore Ranch (referred to herein as the "Declaration") as set forth below, and declares that the real property shall at all times be owned, held, used and occupied subject to the provisions contained in this Declaration and to the covenants, conditions, and restrictions contained herein from and after the date this document is recorded with the Flathead County Clerk and Recorder's office. The property shall not be used, nor shall any activities be conducted on it in violation of this Declaration.

**ARTICLE I  
Purpose**

**Section 1.1 Purposes.** The purposes of this Declaration are to ensure that North Shore Ranch Subdivision is developed for single-family residences; to ensure appropriate development and improvement of each lot within the property; to ensure that all homes and improvements constructed on the lots meet certain minimum size and construction standards; to ensure the enjoyment of the wildlife amenities and the use of all recreational amenities; to protect the owners against such improper use of surrounding lots as will depreciate the value of their lot; to prevent the construction of inappropriate structures; to encourage and secure the building of attractive homes on the lots with appropriate locations; and in general to provide adequately for a high quality of improvements on the property and thereby to enhance the values of improvements made by owners so that each property owner in the Subdivision can quietly and peacefully enjoy and use their property.

**ARTICLE II  
Covenants**

**Section 2.1 Single-Family Residences.** No lot shall be used except for one single-family residence and no building shall be erected, altered, placed or permitted to remain except for residential purposes, except with the prior approval of the Design Review Board. Outbuildings shall conform in appearance with the single-family residence and must be approved by the Design Review Board, which shall have the right in its discretion, to not allow any outbuildings which, in the opinion of the Design Review Board impede an adjoining property owner's use or enjoyment of his/her property (including the view from such property), do not fit with the character of the surrounding residences, or are otherwise unsightly.

*\** **Section 2.2 No Further Subdivision.** No lot shall be further subdivided. A change in boundary lines between adjacent owners shall not be considered subdivision. Two or more contiguous lots may be combined to form 1 large lot; but such a combination shall not reduce the assessments or voting rights for the combined lots.

**Section 2.3 Construction.** No structure or other improvement may be constructed on any lot until such has been approved by the Design Review Board, all as further provided for

**EXHIBIT**  
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herein. No temporary building, house trailer, mobile home, or other temporary structure shall be erected or placed upon this property during construction. All construction, including landscaping, shall be completed within 18 months from the date construction begins. After a lot is purchased, the lot owner shall be responsible for mowing the lot on a regular basis and keeping it clean of all debris, prior to construction. Lot owners shall be fined \$ \_\_\_\_\_ if lots are not maintained and mowed after purchase. All dwellings shall be constructed on the lot and no trailer homes, mobile homes, modular homes, prefabricated homes, or "Kit Type" homes of any kind shall be placed on a lot. All structures shall be constructed of new materials, except that suitable used materials such as used brick or beams may be utilized, provided that advance approval has been obtained from the Design Review Board. The dwelling shall not be occupied until such time that exterior construction is completed and all building debris is removed. If construction activity on any lot should cause damage to the roads or improvements, the cost of repairs shall be solely borne by the owner of said lot. A graveled driveway shall be constructed on each lot prior to site preparation, excavating of basement, or septic field and contractors shall use the graveled driveway for access to the lot. The driveway shall be paved prior to or within 90 days of occupancy (weather permitting). The Homeowners Association or the Design Review Board may adopt rules and regulations governing construction, including trash and debris removed, sanitary facilities, parking areas, restoration of damaged areas, fire protection and other construction activities. No building materials, vehicles or other items of personal property shall be stored on any lot prior to commencement of construction of the dwelling. Any lots extending into the flood plain shall not be permitted to construct any buildings or structures in the flood plain area.

**Section 2.4 Residences.** All residences located on lots of .4 acres or more shall contain no less than 2,200 square feet of ground floor living space. All residences located on lots of less than .4 acres shall contain no less than 1,800 square feet of ground floor living space. For purposes hereof, the ground living space shall not include attached garages, decks or porches, nor shall any basement space be included as part of the required 2,200 square feet. All bi-level structures shall contain no less than 2,200 square feet of living space on the main floor, exclusive of attached garages, basements, decks, porches, and the floor space above the main floor. No residence shall have more than two (2) levels, and any basement area shall count as one level of the two allowable levels. The floor-to-floor height shall be a maximum of eleven (11) feet per floor. A residence with a daylight basement shall have at least one outside access, and the ground level immediately outside the basement access shall be at least six inches (6") below the floor level of the walkout basement, and there shall be proper drainage away from the residence. Height restrictions for lot numbers 288 through lot number 310 shall be as follows: the residences located on these lots shall not be more than one (1) level. The residences located on these lots shall have a maximum ceiling height of ten (10) feet and a maximum pitch of 1/1 or 12/12.

**Section 2.5 Design Character.** The design character should create a residence that blends with its environment instead of standing out against it. Emphasis on natural-looking materials and muted colors is essential. Use of natural rock is strongly encouraged. Metal Roofs are strongly discouraged, but may be permitted by the discretion of the Design Review Board if the Board deems the materials and appearance are suitable and appropriate.

**Section 2.6 Setbacks.** No building on any lot over .4 acre shall have a 15 foot side set back. No building on any lot under .4 acre shall have a 10 foot side setback. Front and back setbacks shall be 25 feet.

**Section 2.7 Sight Lines.** For elimination of traffic hazards and to promote traffic safety, no hedge or shrub planting which obstructs sight lines at elevations between three (3) and six (6) feet above the roadway shall be placed or be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in case of a round property concern, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10 ) feet from the intersection of a street property line with the edge of a

driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight items.

**Section 2.8 Garages.** A minimum two-car attached garage shall be required for each lot. There shall be a maximum four-car attached garage permitted per lot. Carports will not be allowed.

**Section 2.9 Maintenance.** Every structure once constructed on a lot shall be kept in the same condition as at the time of its initial construction, excepting normal wear and tear. All structures shall be preserved and of pleasant appearance by maintaining paint, stain or sealer as needed. If any structure is damaged in any way, the owner shall, with due diligence rebuild, repair and restore the structure to its appearance and condition prior to the casualty. Reconstruction or repair of any structure (including any landscaping) shall be completed within nine (9) months of any casualty that damaged or destroyed any improvements or landscaping. Any changes or alterations to the structure, landscaping or lighting must be approved by the Design Review Board.

**Section 2.10 Address Identification Posts.** Each home is required to have an address sign which shall be standardized by the Design Guidelines. The post shall have the address number on it. The post shall be located by the driveway entrance, as specified by the Design Guidelines. Lot owners are responsible to maintain this post, keeping it free from snow coverage, so it is clearly visible from the adjoining roadway at all times.

**Section 2.11 Outdoor Lights.** Ground level lighting of patio, deck, driveway and entryway areas on any lot that do not light areas outside such lot or create glare are permitted as provided in the Design Guidelines. No flood, spotlights or halogen lighting is permitted except as may be authorized by the Design Review Board. Christmas seasonal decorative lighting may be allowed subject to such rules and restrictions as the Design Review Board may have or approve.

**Section 2.12 Landscaping.** All lots shall be fully landscaped, including to the paved street. However, no owner may change the alignment of the drainage swale next to the road, which would redirect or inhibit the flow of runoff. Landscaping of the entire lot shall occur simultaneously with the construction of other improvements on the lot. All homeowners must plant a minimum of three (3) trees, at a minimum of ten (10) feet tall, by the completion of construction of their residence. No trees shall block any mountain or lake views of other residences under any circumstances and all tree placement shall be prior approved by the Design Review Board at the time house plans are submitted to the Board.

**Section 2.13 Landscaping On Roadway Boundary.** All lots shall have an eight foot (8') foot wide landscaped edging bordering the entire roadway. This landscaping must be 8' in width, starting at the roadway and continuing into the lot. The landscaping shall be designed and maintained in accordance to the Vegetation Management Plan.

**Section 2.14 Fencing.** No fence shall be over six (5) feet in height only on sides of house that can extend ten (10) feet forward and rear of house, all other areas not over three (3) feet in height only. In no event can six (6) foot fence be in a setback area. All fencing must be approved by the Design Review Board.

**Section 2.15 Retaining Walls.** Stone retaining walls recommended. Railroad ties and plain concrete blocks or plain poured walls are not permitted. A maximum of 6' in height is allowed, unless the Design Review Board determines that an exception is warranted because of extraordinary circumstances. Areas that require walls taller than 6' should be terraced with multiple walls.

**Section 2.16 Driveways.** All driveways shall be paved with asphalt or finished with concrete surfacing or pavers from the street pavement to the garage; each driveway shall not

exceed 12' in width and have a culvert (12-inch) minimum corrugated galvanized steel with flared end pieces or equal at the drainage point next to the road. Lots 48 and 49 will have their driveways access directly onto Buckboard Lane. No house shall have a driveway exceeding twelve (12) feet in road easement area. All lots on corners shall have driveway access onto the culvasac. All corner lots on Ranch Road are not permitted to have a driveway on Ranch Road. The amount of impervious surface area for each lot shall not be greater than 20% of the total lot area and in no event greater than 10,000 square feet of impervious surface per lot. The Homeowner's Association recommends no more than three feet additional width of impervious surface for each garage door and no more than a thirty-six (36) foot apron in front of the garages. Any variance from these recommendations must get prior approval by the Design Review Board.

**Section 2.17 Vehicles.** No recreational vehicles, trailers, trucks exceeding one-ton capacity, unsightly, wrecked or inoperable vehicles, boats, recreational vehicles, including four-wheelers, snowmobiles, motorcycles, or equipment shall be parked or allowed to remain upon any of the said lots unless placed in a garage or screened from view. No vehicle shall be parked upon or encroach upon the "Common Area". No boats, watercrafts, or flotation devices may be stored on any lakeshore property bordering the North Shore Ranch Subdivision. No outdoor maintenance, service, rebuilding, dismantling, painting or repair work shall be performed except washing and polishing.

**Section 2.18 Utilities.** All utility service lines, whether for power, telephone, or otherwise, shall be installed underground to access each lot. The owner of each lot shall be solely responsible for all utility connecting costs and extending service from the underground service line to the residence. All necessary utility easements shall be provided.

**Section 2.19 Easements for Utilities, and The Water System.** The Developer and the Homeowner's Association shall have an easement to cross any lots contained in the North Shore Ranch Subdivision for the purpose of installing any necessary utilities and to construct the Water System, all of which shall be installed underground.

**Section 2.20 Sewer System.** No individual sewage disposal system shall be permitted on any lot unless such system is designed, located, and constructed in accordance with the requirements, standards, and recommendations of the Montana State Department of Health and Environmental Services, and the County of Flathead, Montana.

**Section 2.21 No Business Use.** No professional business, manufacture, trade or commercial activity may be conducted on the premises except for those conducted by the Homeowners Association in the recreation area, pool, and horse facility. No activities of the Developer or its agents during its sales efforts shall be considered to be in violation of this Section.

**Section 2.22 Signs.** No signs shall be allowed except for developer signs.

**Section 2.23 Fuel Tanks.** No fuel tanks above or below ground are allowed.

**Section 2.24 Antennas, Satellites, Clotheslines, and Poles.** No antennas, large satellite dish receivers, transmitters, security alarms, clotheslines or similar devices shall be erected on any building or rooftop. Satellite dish receivers 24" in diameter or less are permitted; the dish shall be located out of view, screened by design features, fences or landscaping as approved by the Design Review Board.

**Section 2.25 Storage.** Firewood shall be stored in a storage shed or stored out of view.

**Section 2.26 Environmental.** Any provisions, terms, regulations, or restrictions, identified in the Wild/Life Management Plan and The Vegetation Management Plan shall be strictly followed to help preserve the natural environment of the North Shore Ranch. The Wild

Life Management Plan and the Vegetation Management Plan are incorporated into these covenants by this reference and made a part hereof as if restated in full herein.

**ARTICLE III  
Animals, Birds, and Pets**

**Section 3.1 Pets Permitted.** No poultry, birds (except inside pet birds, which must be kept inside a home), hogs or other livestock or animals shall be kept or raised. Notwithstanding the foregoing, cats, dogs, or other small household pets, not to exceed three (3) in total number, may be kept by each lot owner. Horses may be kept on lots larger than one (1) acre. There is a maximum of two (2) horses per acre.

*I want to see*

**Section 3.2 Horse/Stable Rules.** For property owners with lots of 1 acre or more that choose to have horses on their lot, all rules and regulations identified in the Rules and Regulations of the Homeowner's Association Equestrian Center and Private Stables of North Shore Ranch shall be followed and the Rules and Regulations of the Homeowner's Association Equestrian Center and Private Stables of North Shore Ranch are incorporated into these covenants by this reference and made a part hereof as if restated in full herein.

**Section 3.3 Pet to Remain Within Owner's Property.** All pets, except cats are to be leashed, fenced or otherwise confined to the premises and not allowed loose at any time outside the property owner's own premises. If any pet goes outside of the owner's property, the owner of the pet is responsible for any damages or liability caused by the pet and must clean up after the pet. Leashes are required on dogs at all times and in all areas of subdivision, except for dogs contained in fenced yards.

*INDOOR CATS ONLY*

**Section 3.4 Pet Noise.** No property owner shall have or keep any dog, which barks or whines on a regular or continuous basis; or any other pet, which creates an ongoing disturbance for any adjoining or neighboring property owner.

*WPA  
Laws about  
dog on cats  
can be shot*

**ARTICLE IV  
Removal of Waste, Property Appearance and Upkeep**

**Section 4.1 No Offensive Activity.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which is or which may become an annoyance or nuisance to the neighborhood or any adjoining property owner.

**Section 4.2 Lots to be Maintained.** Each Owner shall be responsible to maintain all structures on such Owner's lot in a manner consistent with its original design, including painting, repair, landscaping, and removing trash and debris. No outside burning will be permitted except for outdoor barbecues. Each lot at all times shall be kept in a clean, sightly and in a wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any lot so that the same are visible from any neighboring lot or any street or any open space.

**Section 4.3 Landscape Maintenance.** All yards and landscaping shall be maintained and shall not be allowed to become unsightly. Lawns and native grasses shall be mowed on a regular basis. All weeds, including any noxious weeds, shall be eradicated or controlled and all property owners shall comply fully with Montana laws and the Vegetation Management Plan regarding the control or eradication of noxious weeds.

**Section 4.4 Garbage and Refuse Disposal.** No garbage, refuse, rubbish, trash or cuttings shall be deposited on any street, lot or any common area. All garbage, refuse, trash and cuttings shall be kept in approved covered containers at all times and any such covered container

shall be kept within an enclosed structure except for scheduled collections. No junk automobiles are allowed. Undeveloped lots shall be mowed at least twice each year.

**Section 4.5 Adjacent Agricultural Activities.** The acquisition of property within this Subdivision is a waiver of any claims for normal agricultural activities conducted on adjacent properties. Any owner of a lot within this Subdivision recognizes that there are agricultural activities on the adjoining land and relinquishes all rights for relief from such activities. Each owner specifically reserves the right to seek compensation or injunctive relief for injuries to person or property caused by any dangerous instrumentality or toxic waste or for negligent or intentional actions by those using the agricultural or industrial property.

**Section 4.6 Well Protection Zone.** A "Well Protection Zone" of one hundred (100) feet around all water supply wells is hereby established to secure water quality for the residents of the Subdivision. The following activities shall be prohibited from the well protection zone:

- a. Construction or operation of on-site sewage disposal systems that utilize absorption of the waste into the soil.
- b. Storage or disposal of toxic and/or hazardous wastes, chemicals or hydrocarbons such as fuels and oils.
- c. Applications of excessive amounts of lawn fertilizers, pesticides, herbicides or insecticides.
- d. Storage or disposal of solid wastes.

## **ARTICLE V Common Properties**

**Section 5.1 Common Properties.** Common Properties means the property, which is subject to this Declaration, but excluding the individual lots within the property. Thus, the Common Properties include any areas shown on any plat of the property within the Subdivision as roads, parks, common areas, open space or open area and other property intended for the common use, benefit and enjoyment of the owners and such other persons as may be permitted to use the Common Properties under the terms of this Declaration or any agreement with the Association. The Common Properties shall include but not be limited to the 24' private roadway and utility easement areas, the Park, and the Common Areas A and B, as shown on the Plat of North Shore Ranch Subdivision, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana. Common Properties as used herein shall include pathways, entryways into the Subdivision, and all non-city or non-county roads, which are for the benefit of the Subdivision, whether located within or without the Subdivision. No motorized vehicles are permitted on any trails or paths except for those vehicles needed for maintenance.

**Section 5.2 Maintenance of Common Properties.** The Homeowners Association shall maintain the open space portions of the Common Properties, so they will be an attractive and useful amenity for the owners and provide natural habitat for indigenous species. The main roadway through the Subdivision has a sixty (60) foot road easement, but the paved road is only twenty-four (24) feet wide. The Homeowners Association shall be responsible for managing and maintaining the remaining thirty-six (36) feet of the road easement.

**Section 5.3 Easement Over All Common Properties.** The owners shall have an easement for use and enjoyment of all of the Common Properties, subject to such rules and regulations as the Homeowners Association may develop from time to time, and also subject to the rights reserved to Developer and the reserved rights of any third parties with respect to the Common Area. If the Developer adds any property to the original Subdivision, the owners of such property shall be entitled to utilize the Common Properties in the original Subdivision and the owners in the original Subdivision shall be entitled to use the Common Properties located within the added property.

**Section 5.4 Retained Easement for Roads and Utilities.** Developer hereby reserves and shall have an easement for access and utility purposes over all of the 60' Private Road and Utility Easement areas, all of the Water Line Easement areas, all of the Utility Easement areas and over the Well Lots 1, 2 and 3, the Park, Common Areas A and B and other Common Properties, all as shown on the plat of North Shore Ranch.

**Section 5.5 Road Maintenance.** The roads within the Subdivision shall be maintained, repaired, and replaced by the Homeowners Association, including plowing of snow and recoating payment. The roads shall be maintained in good condition to allow year-around access to all lots. During the "Period of Developer Control" no gates, other impediments, or signage may be placed on any roads without the prior written consent of Developer. The Homeowners Association may elect to landscape and/or maintain portions of the road right-of-way not actually used for road purposes. The Homeowners Association may take such action as it deems appropriate to maintain the private character of the roads and to discourage or prevent usage of the roads by persons other than owners and their guests and invitees, or others who are authorized to use the roads. The roads within the Subdivision shall be private roads, to be used by the owners and their guests and invitees only, except to the extent that Flathead County may require that roads be open to the public.

**Section 5.6 Property Taxes.** It is acknowledged that, for property tax purposes, Flathead County and the State of Montana may allocate to each lot a fractional, proportional portion of the value attributable to the Common Properties. By accepting a deed to a lot the owner agrees to this mechanism for property taxation and agrees to pay a proportional share (as allocated by Flathead County and the State of Montana) of the taxes attributable to the value of the Common Properties, while at the same time allowing the Homeowners Association to administer and control the Common Properties.

**Section 5.7 Approval of Developer.** During the "Period of Developer Control" no construction of improvements shall take place within the Common Properties nor shall any other changes or alterations be made to the Common Properties or the uses within the Common Properties without the prior written consent of the Developer.

**Section 5.8 Insurance on Common Area.** The Homeowners Association shall maintain the following types of insurance: property insurance, liability and comprehensive fidelity to the extent that such insurance is reasonable and available, considering the availability, cost and risk coverage provided by such insurance, and the cost of such coverage shall be included in the budget and shall be paid by the Homeowners Association as a common expense.

## **ARTICLE VI Homeowners Association**

**Section 6.1 Membership in the Association.** The members of the Homeowners Association shall consist of the owners of each lot of the Subdivision. Each owner covenants and agrees that he/she will automatically be and will remain a member of the "North Shore Ranch Homeowners Association Inc. (known as the "Association") so long as the property owner retains any ownership interest in any lot located within this Subdivision. By accepting the conveyance of the property, the owner binds himself to abide by this Declaration, the Articles of Incorporation and Bylaws of the Association, and the reasonable rules and regulations of the Association, which may be adopted by the Board of Directors from time to time. Upon sale of a lot, the membership associated with that lot shall be deemed automatically transferred from the former lot owner to the purchaser of such lot. Such transfer shall not relieve the former lot owner of any obligations incurred by such former lot owner prior to the transfer. For the purposes of membership in the Association, the purchaser under any contract for deed notice of which is recorded in the real estate records of Flathead County, Montana, shall be considered the owner.

**Section 6.2 Membership Dues.** Membership dues for the Homeowners Association are initially \$500.00 per calendar year. The first year dues are paid upon closing. Dues will be calculated on a pro-rated basis. The dues will be evaluated yearly and are subject to change.

**Section 6.3 Voting.** The Owner(s) of each lot shall be entitled to a single vote in the Association for each lot owned, except that the Developer shall be entitled to three (3) votes for each lot owned by the Developer. When more than one person holds an interest in any lot, all such persons shall be members of the Association. The vote for such lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any lot; except the Developer may cast three (3) votes for each lot it holds.

**Section 6.4 Bylaws.** The bylaws of the Association shall govern the conduct of meetings of the members of the Association, the Board of Directors and other aspects of the operation of the Association not addressed in this Declaration.

**Section 6.5 Management During Period of Developer Control.** The "Period of Developer Control" shall mean the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of: (a) the date which is 10 years later or (b) the date on which the Developer has sold 80% of the

lots within North Shore Ranch Subdivision (including all phases) and the Developer has notified the Association in writing that the Developer has determined that no additional property shall be added to the Subdivision. During the Period of Developer Control, Developer may appoint, remove and replace from time to time any or all of the Directors and Officers of the Association. Each member of the Association gives the Developer an irrevocable proxy for this purpose. If Developer so elects, Developer may from time to time relinquish, either on a temporary or permanent basis, the right to appoint all or a portion of the Directors and Officers of the Association; provided that any such relinquishment shall be expressed in writing to the Association. The Period of Developer Control may be reinstated or extended by agreement between Developer and the Association upon such terms and conditions as the parties agree. After the termination of the Period of Developer Control, the Developer, if still an owner of any lots in the Subdivision, will continue to have all the rights ordinarily given to owners under this Declaration.

**Section 6.6 Assessments.** Each property owner (except the Developer, as to lots owned by the Developer and not yet sold) agrees to pay to the Association such annual dues and assessments as the Board of Directors shall determine. Such dues and assessments may include amounts for operation of the Association, payment of taxes and insurance on Common Properties, Common Properties maintenance, use of the equestrian center and recreation center, utilities, and snow removal, a fund for acquisition or replacement of capital improvements, legal and accounting fees, reasonable reserves and any and all other matters determined to be appropriate by the Association for the benefit of the owners and approved or assessed in accordance with the applicable rules and procedures of the Association. The Association dues and assessments shall be the same for each lot of the Subdivision, except as follows:

If the Board of Directors determines in good faith that a portion of dues and assessments benefit fewer than all the lots, such portion shall be assessed only against the benefited lots. Road maintenance repair and replacement shall be considered to benefit all lots equally among all lots. Any trails, paths, open space, pool facilities, recreation centers, recreation fields, and equestrian centers may not be removed at any time.

**Section 6.7 Developer's Responsibility for Assessments.**

Notwithstanding the foregoing, the Developer, although a member of the Association, shall not be responsible at any time for payment of the Assessments with respect to lots owned by the Developer. The foregoing shall include Association dues and assessments, amounts assessed, levied or charged with respect to the water system, and any other amounts charged, levied or assessed any Subdivision lot owner with respect to ownership of property within the Subdivision, except that Developer shall pay its pro-rated share of property taxes assessed against Common Properties within the Subdivision. Developer's share of the property taxes shall be calculated based on the number of lots owned by Developer as of the date each property tax payment is payable. Also, the Developer shall at all times pay all expenses of maintaining the lots that it owns, including any improvements located thereon. For lots that are sold by Developer during a year, the assessments for that year shall be pro-rated and paid by the purchaser at closing.

**Section 6.8 Collection of Assessments.** Assessments shall be the personal responsibility of the owners of each lot. In addition, assessments shall be a lien on each lot. Failure to pay assessments will result in a lien statement being filed by the Board of Directors, which shall describe the lot, state the amount of the unpaid assessment and the date of such assessment. If any assessment is not paid when due, the assessment shall accrue interest at fifteen percent (15%) per annum until paid (or such other rate as the Board of Directors may establish from time to time). A lot owner whose lot is subject to lien must pay the assessment, interest, costs for preparation of the lien and lien release, and all recording fees before the lien is released. The Association is empowered to initiate any legal action to enforce payment of any past-due assessments, dues, or fees including an action to foreclose any lien on a Subdivision Lot. This lien may also be foreclosed in the manner of foreclosure for mortgages. In the event of

litigation, the prevailing party shall be entitled to attorney's fees and costs. The voting rights of an owner whose assessments are delinquent shall be suspended during the period of delinquency.

**Section 6.9 Priority of Lien for Assessment.** The lien of the assessments will be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Montana, and to all other liens and encumbrances except the following:

- a. Liens and encumbrances recorded before the date of the recording of this Declaration.
- b. Liens for property taxes and other governmental assessments or charges made superior by statute.
- c. The lien for all sums unpaid on a First Mortgage, as defined below.

A "First Mortgage" is a mortgage, deed of trust, trust indenture, contract for deed, or other similar financial encumbrance granted by an Owner to secure a debt, (1) which is recorded in the office of the Clerk and Recorder of Flathead County, Montana, before the date of filing of a written lien statement for delinquent assessments, (2) which encumbers a lot, and (3) which is first in priority among all such mortgages, deeds of trust, trust indentures or other similar financial encumbrances. There can only be one First Mortgage with respect to a lot. Any First Mortgagee who acquired title to a lot by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchase at a foreclosure sale of the First Mortgage, will take the lot free of any claims for unpaid assessments, interest, late charges, costs, expenses, and attorney's fees against the lot which accrue prior to the time such First Mortgagee or purchaser acquires title to the lot.

All other persons who hold or who may in the future hold a lien or encumbrance of any type not described in subsection a., b. or c., will be deemed to consent that their lien or encumbrance will be subordinate to the Association's future liens for assessments, interest, late charges, costs, expenses and attorney's fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

**Section 6.10 Protection of First Mortgage.** No violation or breach of, or failure to comply with, any provision contained in this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage on any property taken in good faith and for value and perfected by recording in the Office of the Clerk and Recorder of Flathead County, Montana, prior to the time of recording in said office of a written lien statement for delinquent assessments. No violation, breach, failure to comply or action to enforce this Declaration shall affect, defeat, render invalid or impair the title or interest of the holder of any First Mortgage or result in any liability, personal or otherwise, of any such holder or purchaser. Any purchaser upon foreclosure shall, however, take subject to his Declaration.

**Section 6.11 Statement of Status of Assessments.** On written request, the Association will furnish to an owner or his designee or to any mortgagee a statement setting forth the amount of unpaid assessments then levied against the lot in which the owner, designee or mortgagee has an interest. The information contained in such statement, when signed by an officer, director or agent of the Association, will be conclusive upon the Association, the Board of Directors, and every owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

**Section 6.12 Liability.** Neither the Developer, the Association, Design Review Board, nor their respective members, directors, employees or agents shall be responsible for any actions taken by any of the lot owners.

## **ARTICLE VII Design Review Board**

**Section 7.1 Formation of Board.** A Design Review Board is hereby formed and shall initially consist of three (3) members. During the period of Developer Control, the members of the Design Review Board may be appointed, removed, and replaced by the Developer. After the Period of Developer Control, the members of the Design Review Board shall be appointed by the Board of Directors. The Developer or parties related to the Developer may serve on the Design Review Board. Members of the Design Review Board are not required to be members of the Association. At least one out of the three Design Review Board members shall be associated with the Homeowners Association Equestrian Center and Private Stables of the North Shore Ranch to ensure that all interests of the North Shore Subdivision are represented.

**Section 7.2 Plans and Specifications.** All owners intending to construct a dwelling or build any type of fence, outbuilding or other structure or improvement upon any lot shall first submit their detailed plans and specifications in writing to the Design Review Board, including the following:

- a. Site plans showing the location of the house, outbuilding, other structure, proposed driveway. The plan must also show finished grade elevations.
- b. A complete set of building plans including plans for all floors, cross-sections, and elevations showing all dimensions and finished square footage.
- c. Plans and samples including exterior materials, colors, finishes and windows being used.
- d. Detailed landscaping plans.
- e. Fencing plans, including materials, colors and sizes and heights.
- f. Outdoor lighting plans, including layout, type of light, and colors be specified.

The Design Review Board may require that the applicant submit additional information reasonably required to perform its review function. Any proposed plans and other related or required information shall be submitted with the applicable fee, that is required by the Design Review Board.

**Section 7.3 Submittal Fee.** The initial fee required for the Design Review shall be the sum of \$300.00. The amount of the fee may be revised by the Design Review Board from time to time. If additional professional services are needed, an additional fee will be charged for any of these services.

**Section 7.4 Approval.** Upon receipt of plans and other required material, the Design Review Board shall review the proposed improvement to determine whether it is in accordance with the goals stated in this Declaration and is otherwise in conformance with the Declaration and the Design Guidelines. No house, other structure or fence shall be erected, placed or altered on any lot, nor shall any site work be commenced, until the plans and specifications have been approved in writing by the Design Review Board as to such compliance and as to the quality of workmanship and materials, harmony of external design with existing structures, and location of the structure with respect to topography and finish grade elevation. Approval or disapproval by the Design Review Board must be in writing. The design review process specified in the Design Guidelines must be followed. If the Design Review Board disapproves of any portion of the plans and specifications, the reason for such disapproval shall be stated. In the event the Design

Review Board fails to act within thirty (30) days after the final plans and specifications of any structure, together with any required fee, have been submitted in writing, or in any event, if no suit to enjoin the construction has commenced prior to the completion of an entire dwelling, no specific approval shall be required for such structure and the pertinent provisions of this Declaration shall be deemed to have been fully complied with.

**Section 7.5 Violations of the Design Guidelines.** If the Design Review Board, upon its own inspection or upon receiving a complaint, determines that any Owner is violating the Design Review Board's guidelines, or has failed properly to maintain their owned lot or any permanent improvements thereon, including necessary repairs, or has constructed or made any change to any improvement not in conformance with an approved plan, the Design Review Board will notify the Owner in writing. Such notice will contain a statement of the nature of the violation, the steps needed to remedy it, and demanding the Owner remedy it within a period of thirty (30) days. If the Owner fails or refuses to remedy the violation, the Design Review Board, may at its election, correct the deficiency set forth in the notice at the Lot Owner's expense. If the Lot Owner fails to reimburse the Design Review Board within thirty (30) days after mailing a statement for correcting the deficiencies, the Design Review Board, through the Association, may assess a lien to the same extent as those liens described in Article VI: Sections 6.8 and 6.9 of this Declaration. The remedies provided above are not exclusive and the Design Review Board and the Association may exercise any other remedies allowed by law for violations, including but not limited to injunctive relief.

**Section 7.6 Design Guidelines.** The Design Review Board shall adopt guidelines for its overall design review, the design review application process, and its operating procedures (referred to as "Design Guidelines"). The Design Guidelines may be amended from time to time. It is the responsibility of each owner to obtain and review a copy of the most recently adopted Design Guidelines.

**Section 7.7 Deposit.** The Design Review Board may require each owner to provide a deposit in an amount set by the Board to ensure that the roads and other Common Properties are not damaged during construction and that the other provisions of this Declaration and applicable rules and regulations are not violated during construction. If the construction is completed without such damage or violation, the deposit shall be returned to the owner (without interest). If there has been such damage or violations, the deposit may be applied toward remedying such damage or violations. If the owner disagrees that such damage or violations have occurred, the Design Review Board shall give the owner an opportunity to meet with the Design Review Board and provide such evidence as the owner may desire. After considering such evidence the Design Review Board shall make a determination of whether such damages or violations occurred, including the amount thereof and the determination of the Design Review Board, made in good faith, shall be final. If the cost of remedying any such damage or violation exceeds the deposit amount, the owner shall be responsible for any excess costs. Initially, the deposit amount is set at \$500.00.

**Section 7.8 Liability.** Neither the Developer or the Design Review Board nor their respective members, officers, directors, employees or agents shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved under this Article, nor for any defects in construction pursuant to such plans and specifications. Approval of plans and specifications under this Article shall not be deemed in lieu of compliance by owner with applicable building codes or other governmental laws or regulations.

## **Article VIII Water System**

**Section 8.1 Community Water System.** Developer intends to develop a community water system (the "Water System") to serve all of the lots in the Subdivision. All lots in the

Subdivision shall be required to connect to the Water System, and all water consumed or used on each lot shall be provided by the Water System. No individual wells shall be permitted on any lots. Other property(ies) developed by Developer or an affiliate of Developer may also be allowed or required to connect to the Water System. Such other properties may include properties added to North Shore Ranch Subdivision or properties which are not a part of North Shore Ranch Subdivision, but which are obliged to pay a proportionate share of the cost of operation, maintenance, repair and replacement of the Water System.

**Section 8.2 Facilities Included in Water System.** The Water System includes the water, wells, water reservoir, pump house(s) pumps, main water lines and other equipment and facilities for providing a domestic water supply to the Subdivision lots and Common Properties. The Water System does not include the service lines running from the house located on each lot to the shut off valve located near the property line of each lot.

**Section 8.3 Water System Operator.** Initially, the Water System will be owned and operated by the Developer. The Developer may transfer the Water System to a third party (which may or may not be related to the Developer). At some point, a water district may be established. The Developer also retains the right to transfer the Water System to the Association, at the election of the Developer, in which case the Association agrees to accept and operate the Water System. The owner/operator of the Water System is referred to herein as the "Water System Operator". The Water System Operator shall operate the Water System in accordance with applicable State and Federal laws and regulations.

**Section 8.4 Initial Construction.** Developer shall be responsible for the initial drilling of the wells; installation of pumps and the equipment; and construction of the water mains, the shut off valve (curb stop) located at or near the property line of each lot; and the portion of the service line running between the water main and the shutoff valve. Each owner shall be responsible for the initial construction of the portion of the service line running from the shut off valve to the residence and all other water facilities located on the owner's lot, including but not limited to a water meter. The water meter must be installed in an easy access place (kept free from debris) at the street. A digital reader is required and must be installed on the exterior. The Water System Operator shall have an easement over each lot for access, construction, maintenance, repair and replacement of the Water System from the main water lines up to and including the shutoff valve where it is located on the lot and for other purposes in operating the "Water System". A one-inch (1") line is required. A sprinkler system or any type of connection CANNOT be connected ahead of the water meter.

**Section 8.5 Maintenance.** The Water System Operator shall be responsible for maintenance of the Water System. Each owner shall be responsible for the operation, repair, maintenance and replacement of the portion of the service line running from the shutoff valve to the residence and all other water facilities located on that owner's lot. Each owner agrees to install, operate, repair, maintain and replace the water facilities for which the owner is responsible in such a manner as to cause no injury to other property or the overall Water System, and to be in compliance with any rules and regulations adopted by the Water System Operator concerning the Water System. Each lot owner shall be responsible for all cost and any damages, which originate from the water facilities for which the owner is responsible, including but not limited to any water damage to any residence or other structure on the owner's lot.

**Section 8.6 Use of Water.** The Water System is intended for domestic household and yard and garden use only, and not for use for any form of commercial irrigation. Use of water for large swimming pools must be authorized by the Association. No owner shall sell, transport or utilize water from the Water System on any property other than the owner's lot (except in the event of an emergency). The Homeowner's Association may use water in connection with its maintenance of the Common Properties or for other purposes. If the Water System has excess capacity, the Water System Operator may deal with the excess capacity in any manner it shall see fit, provided that water service to the Subdivision is not unreasonably impaired.

*Developer + Affiliates  
existing HOA systems  
for yards, gardens,  
etc.*

