

# Flathead City-County Health Department

Donald and Victoria Burton  
**Tract 3AB, Section 22, Township 28, Range 21**  
**Tract 7B, Section 21, Township 28, Range 21**  
324 Wild Goose Run  
Kalispell, MT 59901

Report to the Board of Health

September 10, 2010



## **Flathead City-County Health Department**

1035 First Ave. West Kalispell, MT 59901  
(406) 751-8101 FAX 751-8102  
[www.flatheadhealth.org](http://www.flatheadhealth.org)

Community Health Services  
751-8110 FAX 751-8111  
Environmental Health Services  
751-8130 FAX 751-8131  
Reproductive Health Services  
751-8150 FAX 751-8151  
Home Health Services  
751-6800 FAX 751-6807  
WIC Services  
751-8170 FAX 751-8171  
Animal Shelter  
752-1310 FAX 752-1546

### **Memorandum**

September 10, 2010

To: Flathead City-County Board of Health

From: Joe Russell, Health Officer

Re: Variance Request of Donald and Victoria Burton  
Legal Description of Property: Tract 3AB, Section 22, Township 28, Range 21  
and Tract 7B, Section 21, Township 28, Range 21  
Property Address: 324 Wild Goose Run, Kalispell

#### **Introduction**

The applicants, Donald and Victoria Burton, are requesting a variance from the Board of Health that, if granted, would allow the placement of a sewer line in the floodway portion of the 100-year floodplain. These properties have been in front of the board for almost four years. A chronology of events will be provided in a subsequent section of this report and will describe the situation that exists on this property,

Please note that this request does not follow the normal denial, appeal and variance procedures as specified in the regulations as a permit has not yet been denied.

#### **Property Description:**

The property consist of 2 parcels that are legally described as Tract 3AB, Section 22, Township 28, Range 21 and Tract 7B, Section 21, Township 28, Range 21. The property address is 324 Wild Goose Run, Kalispell. The property is located on Wild Goose Island, an island located east, and southeast of Kalispell and is accessed on Leisure Lane off of Willow Glen Drive. A map and aerial photograph of the site is provided as Exhibit A. The red dot on the map gives you a general idea of where the facility lies on the island.

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*It is the mission of the Flathead City-County Health Department to assure the conditions in which people can be healthy through collaboration, education, promoting stewardship of our resources, and providing preventative health services to our community.*

### **Applicable Regulation**

The Burtons are requesting a variance to Section 9 of the Flathead County Sewage Treatment Regulations (Regulation) that requires sealed components of a sewage treatment system to be set back five feet from the 100-year floodplain. Specifically, the Burtons seek to place the sewer line from a septic tank to a drainfield in the floodway of the 100-year floodplain.

### **Relevant Chronology**

*December 21, 2006:*

The Flathead City-County Board of Health held a hearing regarding the Burton's request to operate a complex alternative system that would utilize a composting toilet and a greywater holding tank and transport system. The Board considered the Burton's proposal as a waste segregation system and subsequently denied the variance. The Report to the Board of Health (without attachments) dated November 6, 2006 is provided as Exhibit B.

*January 22, 2007:*

The decision of the Board of Health is appealed to the Montana Department of Environmental Quality (DEQ). The DEQ held a hearing on February 25<sup>th</sup> and 26<sup>th</sup> of 2008 and a proposed decision, dated March 27, 2008, was prepared by John C. Melcher, Assistant Attorney General. A final decision on the original appeal has not yet been rendered by agreement of the parties.

*September 8, 2009:*

The Federal Emergency Management Agency (FEMA) issued a Letter of Map Amendment (LOMA) on four portions of Burton's two tracts of land. The FEMA determination and accompanying map are provided as Exhibit C.

*February 17, 2010 - April 22, 2010:*

The Burtons applied for a permit to install a greywater irrigation system to serve three residences on the above described properties. The proposals did not comply with Montana statutes and the accompanying administrative rules and the proposal was abandoned.

*Prior to April 1, 2010:*

Health Officer Joe Russell met with Don Burton and discussed development of the properties with portions of the properties mapped out of the floodplain by the issuance of the LOMA. A letter, dated May 6, 2010, and provided as Exhibit D identifies our position and establishes Burton's next proposal.

*May 5 2010:*

The Flathead County Planning and Zoning Office issued Burton a permit to fill the floodplain to attain the setbacks established in the Regulation (Exhibit E).

Burton  
September 10, 2010  
Page 3

*May 21, 2010:*

A letter was sent from our office verifying the position of the Department (Exhibit F).

*August 31, 2010:*

After several exchanges of letters and subsequent revisions to the proposal, our office provided Burton an implied approval for the proposal to install two sewage treatment systems to serve the house and RV garage (Exhibit G). A plan of the proposal is provided as Exhibit H. The dark, thicker line on the drawing illustrates the filling of the floodplain necessary to attain the setbacks required to sealed components – specifically the forcemain from the septic tank serving the RV garage to the northernmost drainfield location.

*September 1, 2010:*

We received a letter dated August 28, 2010 from Don Burton requesting a variance to the regulations regarding filling the floodplain to attain the setback required from the floodplain to a solid component of a septic system. The letter referenced is provided as Exhibit I and Burton's letter is provided as Exhibit J.

#### **Department's and Health Officer's Position.**

The position of the Department and the Health Officer is:

- Section 9.1 (2) requires sealed components of a septic system to be setback 5 feet from the 100-year floodplain.
- The Administrative Rules of Montana 17.36.918 does not require sealed components of a septic system to be set back from the floodplain. That is, seal components of a septic system are allowed in the floodplain.
- The public works standards also allow sealed lines to be located in the floodplain.

With regard to this request, I believe the Board may grant a variance and allow the placement of the sewage forcemain to be located in the floodplain. Properly constructed and tested, this line poses no additional public health threat and allows less area to be filled in the floodplain. Filling the floodplain may cause the base flood elevation to decrease relative to other properties, hence other properties may be prone to flooding that otherwise would not have under similar circumstances. Filling the floodplain may also cut off the natural flow of flood waters and cause detrimental effects to other properties.

If the Board grants the variance I would suggest the following condition:

- The forcemain be pressure tested to 1.5 times the maximum operating pressure with no loss in pressure over a two hour period.

**Analysis of Section 11.6 Conditions Governing Variances.**

Before any variance can be granted, the Section 11.6 of the Regulations requires that the Board make findings of fact based upon evidence produced at the public hearing setting forth and showing that all of the following circumstances exist:

1. That special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location not applicable to other lands in the same area and that literal interpretation of the provisions of these regulations would deprive the property owner of rights commonly enjoyed by other properties similarly situated under the terms of the Regulations;

Department Comment:

- The applicants have removed portions of their property from the floodplain. The regulations allow primary drainfields to be placed in unfilled areas that are not in the floodplain. Filling portions of the floodplain properly is allowed to attain the setbacks. The applicants have requested the Board grant a variance to allow a sewage forcemain to be placed in the floodplain. Regulations of the DEQ and others allow the placement of sealed components in the floodplain.

2. That special conditions and circumstances did not result from the actions of the applicant;

Department Comment:

- The request to allow the placement of a sewage forcemain in the floodplain is a result of the property being in the floodplain, not the result of actions by the applicant.

3. That granting the variance requested will not confer a special privilege to the applicant or his property that is denied other applicants or property owners;

Department Comment:

- This decision of the board may confer a privilege to the applicant not conferred to others by previous decisions of the Board. However, the Board's rules may not be consistent with other regulatory authority's decisions regarding the allowance of sealed components in the floodplain.

4. That granting the variance will not adversely affect or injure any adjacent properties, will not conflict with the purpose of these regulations and will not adversely affect the health or safety of any person or be contrary to the six factors set out under "Purposes of Regulations" (See *Purposes of Regulations* next section below);

Department Comment:

- The granting of a variance and allowing a properly constructed sewage forcemain in the floodplain will not adversely affect the health and safety of adjacent properties. Filling less on the Burton's property may have less impact on neighboring properties than requiring the forcemain to be filled to attain the setback in the Regulations.
5. That the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that can be granted under the regulations;

Department Comment:

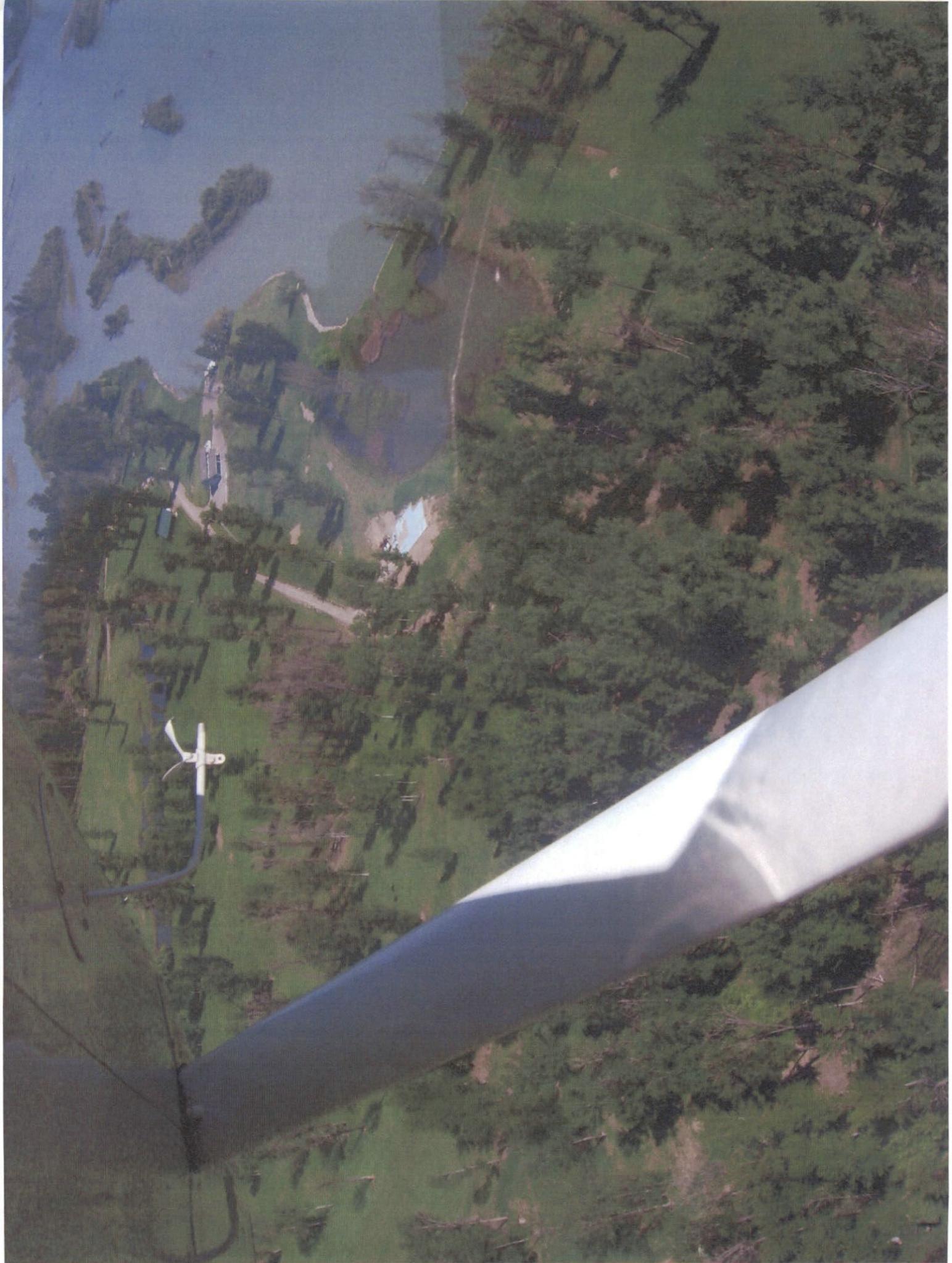
- This is the minimum variance that can be granted.
6. That there does not exist for the applicant a reasonable alternative method of complying with these regulations.

Department Comment:

- The applicants could fill the area and comply with the Regulation as written. Reviewing other regulations indicates that our Regulations may be excessive in relation to allowing sealed sewage transmission lines in the floodplain.



(Scale 1:24,000)  
 FLOODING EFFECTS FROM ASHLEY CREEK  
 AS 40'000" N  
 Flathead County Incorporated Areas 300023  
 ZONE AE  
 ZONE X  
 2928  
 BEGG PARK DR 2926  
 Ashley Creek PROFILE BASELINE  
 TEAL DR  
 CANYASBACK CT  
 5339'000" N  
 COOT CT  
 MORGANSER DR  
 5337'000" N  
 JOINS PANEL 1815  
 JOINS PANEL 1840





## Flathead City-County Health Department

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751-6800 FAX 751-6807  
WIC Services  
751-8170 FAX 751-8171  
Animal Shelter  
752-1310 FAX 752-1546

### Memorandum

EXHIBIT B

November 6, 2006

To: Flathead City-County Board of Health

From: Joe Russell, Health Officer

Re: Variance Request of Donald and Victoria Burton  
Legal Description of Property: Tract 3AB, Section 22, Township 28, Range 21  
and Tract 7B, Section 21, Township 28, Range 21  
Property Address: 324 Wild Goose Run, Kalispell

#### Introduction

The applicants, Donald and Victoria Burton, are requesting a variance for the issuance of a permit or other remedy so that they may continue to occupy a structure located in the 100-year floodplain of the Flathead River system. The Burtons were issued a floodplain development permit to construct a barn/agricultural building in the 100 year floodplain. Thereafter they converted the upper story into their personal residence. The Burtons did not apply for a sewage treatment system permit. The Burtons have informed the Department that they use a composting toilet for their black water treatment and collect, treat and eventually dispose of their grey water off site. However, the Regulations require that their grey water must be treated in an approved system on the parcel. As you may have surmised by now, the Burtons live on this property and legal action is pending by the Health Department and the Flathead County Planning and Zoning Office for violations associated with the Department's septic system regulations and County's floodplain regulations. Before filing a lawsuit, the Flathead County Attorney's Office, at the request of the Burton's attorney, Mr. Judah Gersh, has agreed that the Burtons can apply for a permit for a sewage treatment system and if the application is denied by the Department, as it has been, that the Burtons can apply for a variance.

At a meeting with the applicant, their attorney, their consultant Tom Abel, Traci Tull of the Planning Office, Joe Russell and Dennis Hester, the Burtons were given verbal notification that their application would be denied at the staff level and as noted in Section 11.1 of the Flathead County Regulations for Sewage Treatment Systems (Regulations), the process would proceed directly to the Health Officer. It is the Health Officer's position that a permit cannot be issued

for a “complex alternative system” as requested in the application. The Burtons’ consultant and attorney were notified of this decision. Don Burton then requested a variance.

### **Property Description:**

The property consist of 2 parcels that are legally described as Tract 3AB, Section 22, Township 28, Range 21 and Tract 7B, Section 21, Township 28, Range 21. The property address is 324 Wild Goose Run, Kalispell. The property is located on Wild Goose Island, an island located east, southeast of Kalispell and is accessed on Leisure Lane off of Willow Glen Drive. A map is provided as Exhibit A and the red dot on the map give you a general idea of where the facility lies on the island. Please note that this map is a preliminary/Draft flood insurance rate map (FIRM). This map has been created by the National Flood Insurance Program, Federal Emergency Management Agency and is a newly created map utilizing the existing FIRM panels underlying imagery to make the maps more easily readable. They are only preliminary and used in this report so that the Board can more readily identify the area where the property is located. During the oral presentation, the Department will provided the adopted FIRM panel.

### **Applicable Regulation**

The Burtons are requesting that the Department issue a permit for a “complex alternative system” that would allow the continued use of a currently unpermitted system that utilizes a composting toilet and grey water holding, treatment and transport. Although the application does not address the specific section of the regulation that calls for a variance, the only way to consider the system is as a Waste Segregation System because black water is segregated from grey water and each component of the sewage is processed by different means.

### **A waste segregation system constitutes a sewage treatment system.**

Section 10.2 of the Regulations Construction Standards states in part:

#### Waste Segregation Systems

##### 1) General

A sewage treatment system may include a facility for dry disposal of human waste such as various composting, chemical and incinerator type systems with separate collection of greywater. However, regardless of the type of dry disposal system used, the greywater must be treated in an approved wastewater treatment system.

##### 2) Limitation

Waste segregation systems will only be considered where it is demonstrated that the parcel has an acceptable drainfield and 100 % replacement site for future development needs.

3) Maintenance

A written plan of maintenance and final disposal of humus must be provided (if appropriate).

At this time, the Burtons do not utilize a drainfield for the treatment and disposal of the grey water generated from the residence. A drainfield (soil absorption system) is required for the final disposal of sewage effluent when utilizing a waste segregation system (Section 10.2.2, Construction and Design Standards of the Regulation).

**As defined in the Regulations, grey water is considered sewage.**

3.43 "Sewage" shall mean a combination of liquid wastes that may include usual household chemicals, domestic wastes, human excreta, animal or vegetable matter in suspension or solution, and other solids in suspension or solution, which is discharged from a dwelling, building or other establishment. Within the scope of this definition sewage shall also include greywater.

FEMA has officially mapped the Burtons' property as being in the Floodway of the Flathead River. This property is located on Leisure Island; the western boundary is the Stillwater River and the eastern boundary is the Flathead River. All land designated as being in the Floodway is also in the 100-year floodplain.

**The general rule is that the drainfield component of a sewage treatment system is not permitted within 100 feet of a mapped 100 year floodplain for new construction.**

Section 9.2 (5) of the Regulations states:

Floodplain : (a) No soil absorption system shall be located within 100 feet of a 100 year floodplain of any river, lake, stream, pond, or watercourse and from any swamp or seep as delineated by the most current Federal Emergency Management Agency (FEMA) floodplain maps available and accepted for use in Flathead County (see Table 1). The shaded zones as shown on the map shall generally be considered as a guideline in determining the boundary of the 100-year floodplain.

The Burtons are utilizing a sewage holding tank as a component of the unpermitted waste segregation system. Because no permit was applied for at the time the agricultural building was converted into a residence, both it and the unpermitted system should be considered to be new construction.

**A sewage holding tank will not be considered for new construction under Section 9.6 of the Regulations.**

Holding Tanks: As defined in 3.23, holding tanks will not be considered where new construction is proposed. Their only use will be for replacement of existing systems

where current regulations cannot be met and variances cannot be granted due to the potential adverse impact that a sewage treatment system might have on ground or surface waters and/or the health of any person. The only exception to the above rule shall be where connection of the structure shall be made to a public or municipal system within one year of issuance of a temporary permit (see Section 4.8).

### **Relevant Chronology**

*March 3, 1996:*

Donald Burton applied to the Flathead Regional Development Office, the predecessor to the Flathead County Planning and Zoning Office for a Floodplain Development Permit for the property on Wild Goose Island. Exhibit B provides all relevant information associated with this permitting event. A Floodplain Development Permit was issued in May, 1996 with conditions. The conditioned permit allowed the Burtons to construct a 20' X 50' barn to be "used only for agricultural type storage, such as: hay, implements, tractors, and other items that would not be damaged by flooding or that could be easily be removed prior to flooding." A follow-up inspection was conducted May 1, 1998 and a letter generated June 4, 1998. The letter reiterated that the building is for agricultural purposes and equipment only.

*February 2, 1999:*

Donald Burton applied for a another Floodplain Development permit (Exhibit C). In this application, he requested "sealed vaults for sewage disposal." On April 23, 1999 the Flathead Regional Development Office issued a Floodplain Development Permit (FDP-99-4) with conditions. Condition #2 (Exhibit C.5) states that "installing the sealed vault for sewage disposal is denied."

*April 28, 2004:*

Flathead County Registered Sanitarian, Glen Gray, was asked by Mr. Burton to respond to a specific question regarding whether there was a law that would prevent building and occupying a structure on property out of the floodway that had no discharge (Exhibit D.1). Glen Gray responded on the same day with the attached letter provided as Exhibit D.2. He stated that any system not connected to a municipal or publicly owned system would be subject to the Health Department regulations and that any system "subject to these regulations is precluded from installation within the 100 year floodplain for new construction." Glen's letter went on to give Mr. Burton an alternative means of complying.

### **Response to Abel Engineering Submittal.**

Tom Abel, P.E., of Abel Engineering submitted a septic system application and supporting information to the Health department on May 24<sup>th</sup>, 2006. This packet is provided as the Exhibit Series E. The application is for a “complex alternative system”. The system described by Mr. Abel is not addressed in the regulation. This system is a waste segregation system as the black water (toilet waste) is treated in a composting toilet and the grey water is passed through a “nutrient removal system” and stored in a holding tank where bromine is added. As stated in the application “A drainfield is not utilized”. The Health Officer’s response is provided as Exhibit F. The Health Officer’s response clarifies the position that this is a holding tank and, as it is situated on the property, it does not meet the horizontal setback to the floodplain. The letter also clarifies when a holding tank may be utilized. Holding tanks may not be used for new construction and the Department believes this can only be considered as new construction. The letter states that the Health Officer and Department can not support the use of holding tanks as they may pose significant public health risk if they are not maintained properly.

There are three analytical reports submitted in Mr. Abel’s packet. Although the Department has no reason to contest the validity of the information, the results should be taken cautiously. There is no information on the “quality of the effluent prior to treatment and the Board and Department in the past have only accepted data from third-party independent testing firms such as the National Sanitation Foundation (NSF). NSF would employ specific testing criteria (such as how the system will work in cold temperatures) and utilize known qualities of sewage so that efficiencies can be determined.

### **Department’s and Health Officer’s Position.**

The position of the Department and the Health Officer is:

- The only way to consider the currently operating, unpermitted system is as a Waste Segregation System because black water is segregated from grey water and each component of the sewage is processed by different means.
- Grey water is to be treated as defined in Section 10.2.2, Construction and Design Standards of the Regulation. A drainfield (soil absorption system) is required for the final disposal of sewage effluent when utilizing a waste segregation system
- The property in question is in a 100-year floodplain.
- This is new construction. It does not replace any existing, damaged or destroyed structure that may have been present on the lot prior to the Burtons purchase of the property.
- The Regulations do not allow the placement of any portion of a sewage treatment system subject to the regulation to be placed within 100 feet of the 100-year floodplain for new construction.

- A variance should not be granted as it may set a dangerous precedent for further construction in floodplains.
- If the Board is unaware or uncertain of the negative public health impacts of a decision to grant a variance for new construction in the floodplain, the Department is prepared to address this issue and suggest conditions that the Board might impose, if a variance is granted, that might minimize the risk to the public's health.

### **Analysis of Section 11.6 Conditions Governing Variances.**

Before any variance can be granted, the Section 11.6 of the Regulations requires that the Board make findings of fact based upon evidence produced at the public hearing setting forth and showing that all of the following circumstances exist:

1. That special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location not applicable to other lands in the same area and that literal interpretation of the provisions of these regulations would deprive the property owner of rights commonly enjoyed by other properties similarly situated under the terms of the Regulations;

Department Comment:

- The fact that the property is located within the 100-year floodplain Flathead River system is not a special conditions and circumstances which are peculiar to this land. Most property adjacent to or within low lying areas along river courses is in the 100-year floodplain.
- The approval of the variance would grant the property owners rights not commonly enjoyed by other properties similarly situated under the terms of the Regulations

2. That special conditions and circumstances did not result from the actions of the applicant;

Department Comment:

- The Burtons bought the property and then constructed an agricultural structure under a floodplain development permit. The conditions set forth in the permit did not allow for the occupancy of the structure. When the Burtons applied for their second floodplain development permit, they asked for sewage holding tanks and this request was denied. The Burtons are well aware that their property is on the 100-year floodplain, and based on their actions, are fully aware that a sewage treatment system permit can not be issued on this property.

3. That granting the variance requested will not confer a special privilege to the applicant or his property that is denied other applicants or property owners;

Department Comment:

- The granting of the variance will certainly confer a special privilege to the applicant or his property that is denied other applicants or property owners;
  - In addition, the granting of the variance will create a precedence for
  - other new construction located within floodplains in Flathead County
4. That granting the variance will not adversely affect or injure any adjacent properties, will not conflict with the purpose of these regulations and will not adversely affect the health or safety of any person or be contrary to the six factors set out under "Purposes of Regulations" (See *Purposes of Regulations* next section below);

Department Comment:

- The reason the Regulation prohibits placement of septic systems for new construction within 100 feet of the 100-year floodplain is because sewage treatment systems inundated with floodwaters have a high potential to release pathogens with the potential to cause disease or contaminants that could cause violations of the water quality act and pollute state waters. Although the grey water system proposed by the Burtons is mobile and employs treatment, it may not always be operated as described.
5. That the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that can be granted under the regulations;

Department Comment:

- If the Burtons could be successful in removing the floodway designation from their property, they could then fill the property to a point above the base flood elevation and place a conventional sewage treatment on the property to serve the living quarters that emanated from obtaining a floodplain development permit for an agricultural storage facility. The Department believes this would then be the minimum variance that could be granted – in fact, no variance would then be required.
6. That there does not exist for the applicant a reasonable alternative method of complying with these regulations.

Department Comment:

- As stated above, if the Burtons could be successful in removing the floodway designation from their property, they could then fill the property to a point above the base flood elevation and place a conventional sewage treatment on the property to serve the living quarters that emanated from obtaining a floodplain development permit for an agricultural storage facility. The Department believes this would then be the minimum variance that could be granted – in fact, no variance would then be required.



# Federal Emergency Management Agency

Washington, D.C. 20472

EXHIBIT C

September 08, 2009

THE HONORABLE GARY HALL  
FLATHEAD COUNTY  
800 SOUTH MAIN ST.  
KALISPELL, MT 59901

CASE NO.: 09-08-0601A  
COMMUNITY: FLATHEAD COUNTY, MONTANA  
(UNINCORPORATED AREAS)  
COMMUNITY NO.: 300023

DEAR MR. HALL:

This is in reference to a request that the Federal Emergency Management Agency (FEMA) determine if the property described in the enclosed document is located within an identified Special Flood Hazard Area, the area that would be inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood), on the effective National Flood Insurance Program (NFIP) map. Using the information submitted and the effective NFIP map, our determination is shown on the attached Letter of Map Revision (LOMR) Floodway Determination Document. This determination document provides additional information regarding the effective NFIP map, the legal description of the property and our determination.

Additional documents are enclosed which provide information regarding the subject property and LOMRs. Please see the List of Enclosures below to determine which documents are enclosed. Other attachments specific to this request may be included as referenced in the Determination/Comment document. If you have any questions about this letter or any of the enclosures, please contact the FEMA Map Assistance Center toll free at (877) 336-2627 (877-FEMA MAP) or by letter addressed to the Federal Emergency Management Agency, LOMC Clearinghouse, 6730 Santa Barbara Court, Elkridge, MD 21075.

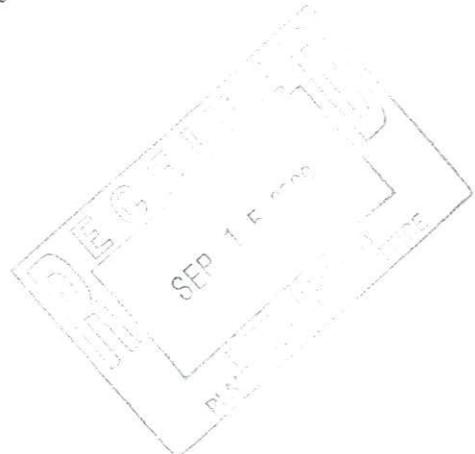
Sincerely,

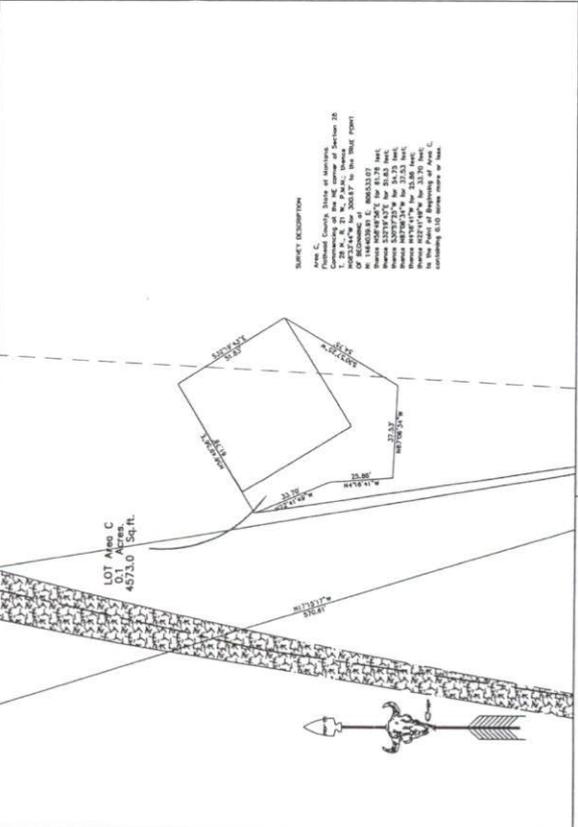
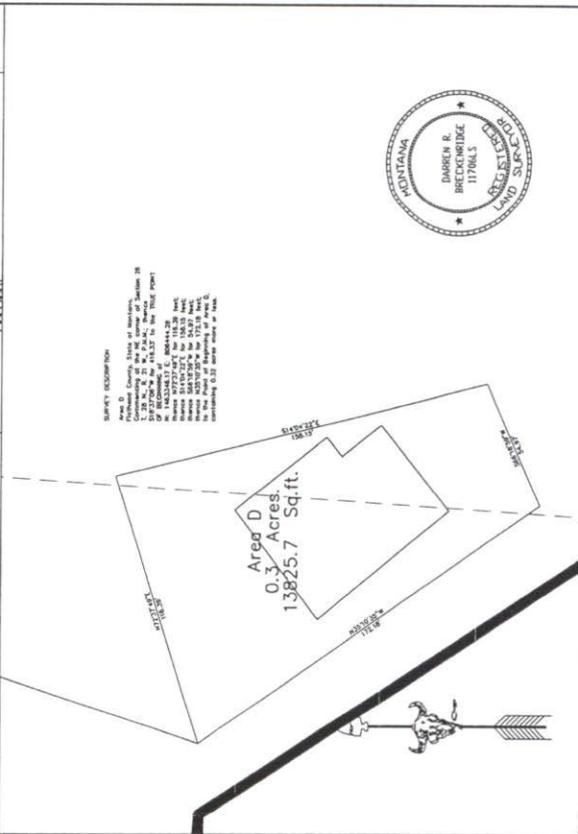
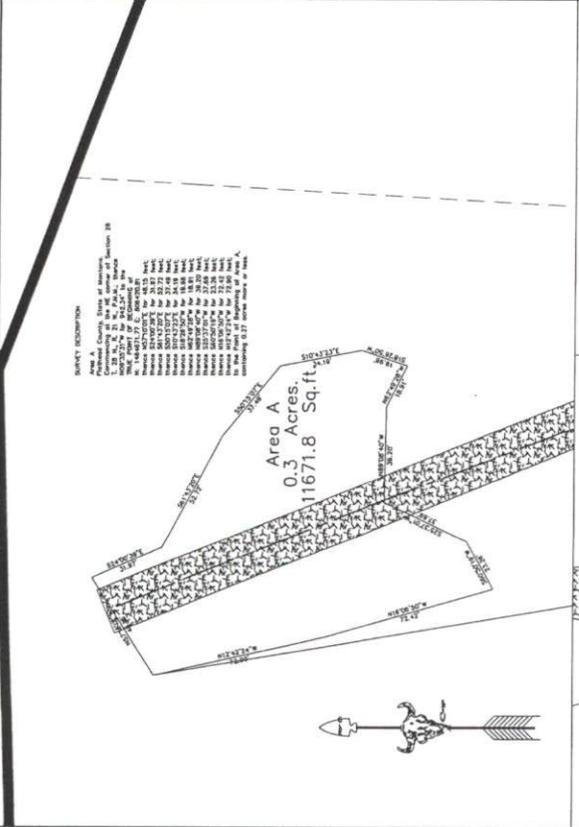
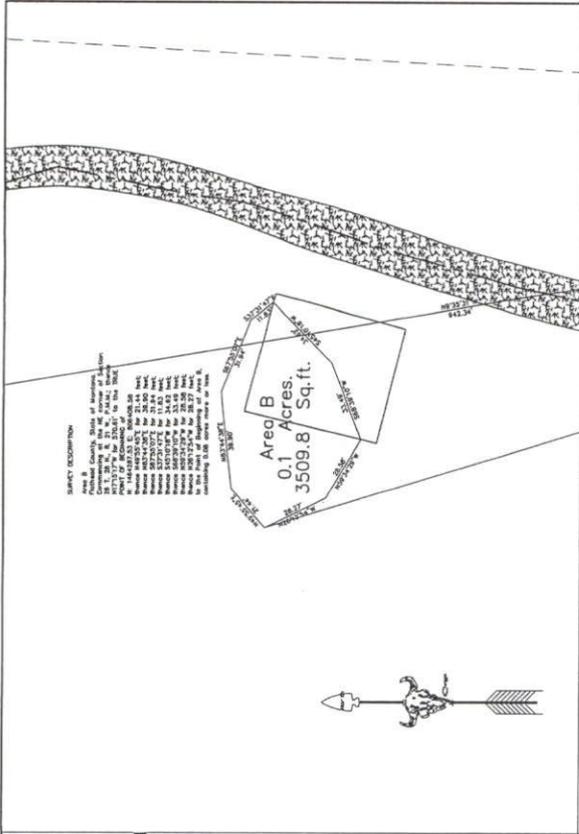
Kevin C. Long, Acting Chief  
Engineering Management Branch  
Mitigation Directorate

#### LIST OF ENCLOSURES:

LOMR-FW DETERMINATION DOCUMENT (REMOVAL)

cc: State/Commonwealth NFIP Coordinator  
Community Map Repository  
Region  
Mr. Olaf Ervin





Montana Mapping Associates, Inc.  
 1405 US Hwy 2 West  
 Kalispell, MT 59901  
 406-756-5539

DATE: \_\_\_\_\_  
 SCALE: BY: \_\_\_\_\_  
 DRAWN BY: \_\_\_\_\_  
 CHECKED BY: \_\_\_\_\_

Area A Area B Area C Area D

Sheet 2 of 6



## ENGINEERING

212 SEGIAH WAY, KALISPELL, MT. 59901 (406) 752-7665



EXHIBIT D

May 6, 2010

Glen Gray, R.S.  
Environmental Health Services  
1035 First Ave. West  
Kalispell, MT 59901

RE: Don Burton gray water system application.

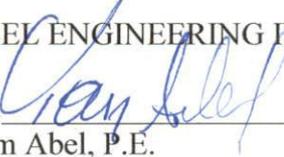
Dear Glen:

With the gray water system being denied, Don is looking at other options for his property. In a meeting with Joe Russell early in this process, Joe stated if there was enough land on Dons' property to install a drainfield that was out of the flood plain and floodway, Don could fill for setbacks and a permit could be issued. At the time of this conversation, all of Don's property was in the floodplain and floodway according to the FEMA maps. Since then the property has been surveyed and portions of his property are now out of the flood plain and floodway by the LOMA process. There is room for a standard drainfield out of the floodplain installed in native soil.

Now that parts of his property are out of the floodway and floodplain, is Joe Russell's statement still good? If Don fills for setbacks will the County grant him a permit for an on-site septic system as long as ground water is not encountered within 4' feet of the surface? Can a conditional permit or some form of written assurance of a permit be issued before the filling is done with the provision the filling is completed within a certain timeframe? Don wants to avoid the situation where he spends a sizeable amount of money for fill only to be denied a permit once again.

Regards,

ABEL ENGINEERING INC.

By:   
Tom Abel, P.E.

TEA/sb  
Encl.  
gra040610.doc



1035 First Ave West  
Kalispell, MT 59901  
PHONE 406.751.8200  
FAX 406.751.8210  
EMAIL [planningweb@flathead.mt.gov](mailto:planningweb@flathead.mt.gov)  
WEB [flathead.mt.gov/planning\\_zoning](http://flathead.mt.gov/planning_zoning)

EXHIBIT E



May 5, 2010

Don Burton  
324 Wild Goose Run  
Kalispell, MT 59901

Re: Floodplain Development Permit FDP-10-01

Dear Mr. Burton,

Your Floodplain Application FDP-10-01 has been reviewed and granted under the terms and conditions contained within the enclosed Decision. Before the project is started, you and your consultant and/or contractor should carefully read the conditions and terms of the Decision. Please be sure you understand what is approved and the conditions which must be met.

Please note your permit expires in one (1) year. All work must be completed prior to this expiration. A one (1) year extension to the permit is possible upon written request to the Flathead County Planning and Zoning Office. Submitted with this written request is the extension fee. These should be sent prior to the permit deadline date.

The enclosed Floodplain Permit Compliance Certification must be submitted within ten (10) days of project completion. The form must be submitted to remain in compliance with the permit. Upon completion of all construction activities we will need to complete an onsite inspection to ensure the requirements of the floodplain permit have been met.

If you have any questions please contact me by phone at 751-8200, or via email at [biott@flathead.mt.gov](mailto:biott@flathead.mt.gov).

Sincerely,

Bailey Iott, CFM  
Planner I

Flathead County Planning and Zoning



## Environmental Health Services

1035 First Ave. West Kalispell, MT 59901  
(406) 751-8130 Fax: 751-8131

Administration  
751-8101 FAX 751-8101  
Community Health Services  
751-8110 FAX 751-8111  
Reproductive Health Services  
751-8150 FAX 751-8151  
WIC Services  
751-8170 FAX 751-8171

May 21, 2010

Abel Engineering Inc.  
212 N Segiah Way  
Kalispell MT 59901

Re: Burton gray water system applications

Dear Tom,

This is in response to your May 6 letter concerning filling for the drainfield setbacks from the 100 year floodplain. Portions of these properties have been granted a LOMA showing area above the base flood elevation (BFE) of the 100-year floodplain.

Although there can be no "conditional permit" or other assurance given, you may have sufficient property mapped out of the floodplain to install conventional sewage treatment systems with the following caveats:

- The entire drainfield area (including a replacement drainfield site) must fit completely in the area that has received the LOMA,
- the drainfield site must have sufficient area in native soils that meets the separation requirement above seasonally high groundwater,
- the drainfield(s) must meet the sizing criteria found in the Flathead County Sewage Treatment System Regulations (Regulations), and
- with the exception of setbacks to the floodplain that will be described later, all other setbacks are met.

If you feel you can meet these above stated conditions, your next step is to properly fill the properties to attain the floodplain setbacks required in Section 9 of the Regulations. Be advised that our office will take no action on the applications until a LOMR based on fill is obtained. If you plan to proceed this year, groundwater monitoring through the high water period must be completed.

Should you have any further questions, please contact this office.

Sincerely,

Glen Gray, R.S.  
Flathead County Sanitarian



## Environmental Health Services

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WIC Services  
751-8170 FAX 751-8171

August 31, 2010

Don Burton  
324 Wild Goose Run  
Kalispell, MT 59901

Re: Septic permit applications, Tr. 3AB/ 7B and 8AA, 21 & 22-28-21

Dear Don,

The plans regarding the fill for sewage treatment system setbacks received by this office on August 24 appear to address the concerns in the August 18 letter from this office. The plans adequately illustrate how the fill will be placed to ensure compliance with the setback requirements stated in the Flathead County Sewage Treatment System Regulations with regard to the sealed components of the systems and the drainfields. The compaction of the fill as it is being placed has also been addressed.

Should you have any questions, please contact this office.

Sincerely,

Glen Gray, R.S.  
Flathead County Sanitarian

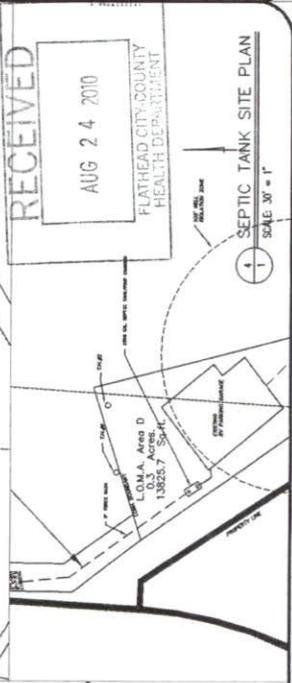
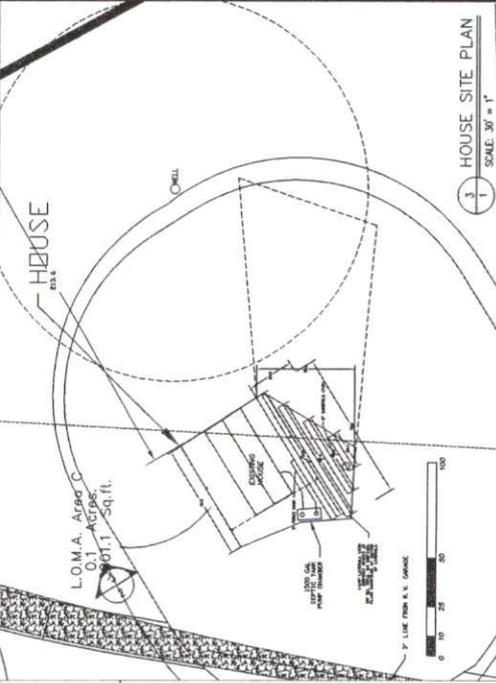
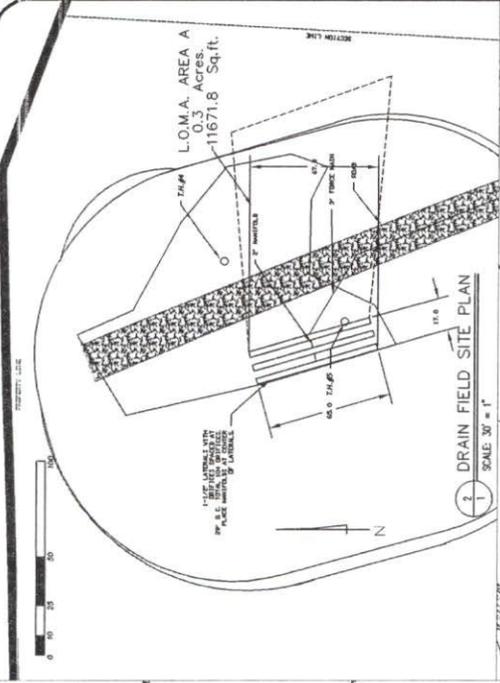
c: Tom Abel

ENGINEERING INC  
 212 SEGAH WAY, KALISPELL, MT. 59901 (406) 752-7665



SITE PLAN RESIDENCE  
 DON & VICKIE BURTON  
 324 WILD GOOSE RUN  
 KALISPELL, MONTANA

SHEET  
 1 OF 2  
 DRAWN BY: T.A.  
 ENGINEER: T.A.  
 CHECKER: T.A.  
 OWNER: 1879  
 DATE: 8/23/10  
 DATE: FEBRUARY, 2010



RECEIVED  
 AUG 24 2010  
 FLATHEAD CITY-COUNTY  
 HEALTH DEPARTMENT



# LEGEND

- Elevation Contour
- Tract Boundary
- Section Line
- L.O.M.A. Area Boundary
- Section Corner

NO WELLS ARE LOCATED WITHIN  
 100' OF LEACHFIELD NOR WITHIN  
 50' OF SURGETANK  
 BASE DRAWING PROVIDED BY MONTANA MAPPING



## Environmental Health Services

1035 First Ave. West Kalispell, MT 59901  
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WIC Services  
751-8170 FAX 751-8171

August 18, 2010

Abel Engineering  
212 N. Segiah Way  
Kalispell, MT 59901

Re: Septic permit applications, Tr. 3AB/ 7B and 8AA, 21 & 22-28-21 (Burton)

Dear Tom,

The plan for placement of fill in the 100 year floodplain has been reviewed by this office. The following are aspects of the project that must be addressed in more detail.

- What is the base flood elevation (BFE)? We could not find it indicated in the design report or on the plans.
- The cross section and footprint of the fill around the proposed drainfields should be shown on the plans. It must be demonstrated that the fill extends at least 100 horizontal feet at an elevation above the BFE before it tapers off to the natural surface catchpoint. This footprint will be an area larger than just the 100 foot setback shown on the plan sheet.
- The cross section of the road fill must show it is of sufficient width at the top to allow a full five foot horizontal setback of the forcemain pipe from the BFE.
- All fill must be designed and installed as necessary to insure the entire top surface will forever remain above the BFE. This can be done by providing necessary initial compaction to prevent settlement or by placing sufficient excess fill to allow for any eventual natural compaction.

This response refers only to the fill plan. The design aspects of the systems and other supporting information will be reviewed at the time the fill has been placed and the LOMR process completed. Should you have any further questions, please contact this office.

Sincerely,

Glen Gray, R.S.  
Flathead County Sanitarian

c: Don Burton

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*It is the mission of the Flathead City-County Health Department to assure the conditions in which people can be healthy through collaboration, promoting stewardship of our resources, and providing preventive health services to our community.*

EXHIBIT J

August 28, 2010

Mr. Glen Gray, R.S.

Flathead County Sanitarian

Environmental Health Services

1035 First Ave West

Kalispell, Mt 59901

Dear Glen,

My thanks to you and Joe for meeting with Tom Abel and myself on August 20, 2010. As to your third bullet point on your letter of August 18, 2010, I would request a variance to the horizontal setback of the force main pipe. Thank you for your immediate attention to this matter.

Sincerely,



Don Burton

324 Wild Goose Run

Kalispell, Mt. 59901

406-250-1477

